

# THE MÜNKNER SERIES

An online series of articles and tributes to celebrate Professor Hans-H Münkner's scholarship and contribution to cooperative law and cooperative development

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The Münkner Series is an online and open-access series of publications contributed to honour and celebrate the scholarship and contribution of Professor Hans-H. Münkner with special reference to his work on cooperative law and development. The series will be published monthly, and at the end of the series the works will be combined to produce an e-book. Each volume in the series will include an editorial, scholarly contributions on a theme relevant to Professor Münkner' scholarship, as well as personal tributes from those who knew him personally. It will also include extracts from a bibliography that relate to the monthly topics.

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## Foreword/Editorial

On behalf of my fellow members of the editorial committee, Dante Cracogna, Leonardo Rafael de Souza, Ifigeneia Douvitsa, Hagen Henry, Santosh Kumar, Akira Kurimoto, and Willy Tadjudje it is my privilege to introduce this inaugural issue of the ‘The Münkner Series’. The series is dedicated to honouring and celebrating Professor Hans H. Münkner’s significant contribution to the fields of cooperative law and cooperative development. It will include the publication of six or more issues online and ultimately, we will combine the contributions into a single book which will be available in both digital and hard copy.

To compile this series, we sent out a general call for contributions, as well as directly approaching some of Professor Münkner’s colleagues and students. However, if any of our readers were unaware of the call for papers, or if you were a former colleague or student of Professor Münkner and you would like to contribute to the series, please do not hesitate to contact the editors. Each issue will have a theme that aligns with some of the areas addressed by Professor Münkner in his prolific list of publications. We also intend to include an updated bibliography of his literary work in the series and book, so that cooperative researchers from all disciplines will have ready access to a reference list. We hope that it will help to ensure that his legacy continues to influence and shape the thinking of cooperative scholars around the world.

We introduce the series with an article by Hagen Henry, the Chair of the Cooperative Law Committee of the and a friend and colleague of Professor Münkner for more than 45 years. The article, ‘The Legal Principle of Sustainable Development and Cooperative Law’ is a detailed examination and analysis of the interrelationship between cooperative law, ‘the cooperative principles’, and sustainable development. The topic of the article is most fitting for a tribute to the enormous contribution made by Professor Münkner to the field of cooperative law. In a later issue in this online series, we bring together contributions from scholars in the Global South on the theme of co-operative laws and development in Africa, Asia and South America. Henry’s article is concerned with a broader notion of ‘development’ and the potential of cooperatives to contribute to sustainable development globally. Many of Professor Münkner’s publications on the topic of ‘development’ were concerned with the very practical task of assisting lawmakers in developing countries to draft cooperative laws that would be effective in promoting the development of cooperatives. In the article, Henry takes this opportunity to conduct a meta-analysis of the philosophy and underpinnings of Professor Münkner’s pragmatic approach to cooperative law. Henry is best placed to do this, and notes that his article is a ‘*continuation of conversations we had over many years.*’ The tribute builds on two shared beliefs. The first is that cooperative law should translate the cooperative principles. The second is that such a law will enable cooperatives to contribute to development. Henry’s article also builds on his earlier thesis, that lawmakers are legally obliged to translate the cooperative principles into cooperative law. The analysis builds a strong case that a binding obligation can be found in a combination of legal sources including the articles of association between the ICA and its member organisations and various instruments that have force as public international law. Henry links this thesis to sustainable development. He argues that the central aspect of sustainable development is social justice. Cooperatives

are a unique and distinct organisational form or type because their capacity to contribute to social justice inheres in the cooperative form itself, when its legal identity is defined by the cooperative principles. Henry acknowledges that the cooperative's capacity to generate social justice has sociological barriers including the willingness of members and management to implement those principles, and the impact of structural changes to the regulatory and cultural environment in which they must operate. Finally, Henry challenges readers to improve their awareness of cooperative law in a broader sense, and to consider how it may continue to contribute to social justice in a globalised and digitalised world.

The next three articles contribute to the theme 'Cooperatives and the social economy'. This theme attracted Professor Münkner's critical attention as he grappled with the notion of the 'social economy' used initially by academics, and later by policy makers and lawmakers in the European Union in the 1990s and 2000s. Professor Münkner's concerns centred on the threat of state interference and the potential erosion of the cooperative's distinct identity as an organisation whose primary obligation is to its user/members. Nicole Göler von Ravensburg, Professor of Socioeconomics at Frankfurt University of Applied Science, is well qualified to explore Professor Münkner's critique of the social economy, as she was mentored by him during her PhD studies at Marburg University at around the same time that he first became interested in the debate. In her article, 'Cooperatives, the Social Economy Debate and the German Strategy for Social Innovation and Social Enterprises' Göler von Ravensburg provides the reader with a nuanced insight into Professor Münkner's concerns about the notion of a separate social economy in Germany. However, as Göler von Ravensburg observes, in the 30 years or so since he first expressed those concerns, the Germany economy has undergone a 'green, digital and sustainable' transformation and there has been a surge in the formation of new enterprises with a 'common-good' orientation, including new kinds of cooperatives, with objectives that go beyond member promotion. The most significant development occurred in 2023, when the Federal Government adopted a National Strategy for Social Innovation and Social Enterprises (SIGU). The strategy expressly includes cooperatives. Göler von Ravensburg provides some background context for SIGU and a useful summary of elements in the strategy that are relevant to cooperatives, and importantly some analysis of Professor Münkner's likely position on SIGU in so far as it impacts cooperatives. While Göler von Ravensburg concludes that the strategy is not likely to impact the majority of cooperatives in Germany, it does provide common-good oriented cooperatives with equal access to services and benefits that were previously only available to other social enterprises. Finally, and as part of her tribute to Professor Münkner, the article concludes with some practical suggestions for improving the cooperative research agenda. These suggestions include ideas to inspire cooperative researchers in a variety of disciplines and have the potential to be adapted to areas including but also beyond the social economy.

Ian Adderley's article, 'The Centrality of Member, rather than General Interest, in the Co-operative Legal Identity' takes aim at the recognition of a subset species of cooperative, 'the general interest cooperative' (GIC) which includes at least some examples of common-good oriented cooperative referred to above. Adderley had previously engaged in correspondence with Professor Münkner on this issue, and his arguments are acknowledged and accepted by Professor Münkner in his publication, *'How Co-operative are Social Co-operatives?'* (2016). Adderley argues that the prioritisation of member interest is a key structural

element of the cooperative. He notes that member interest is not confined to economic interest and in accordance with the 1995 International Cooperative Alliance Statement on the cooperative identity (ICA Statement) it may encompass the members' social and cultural needs. The centrality of member interest does not preclude cooperatives from paying attention to the broader needs of the community in which it operates. Adderley suggests that a failure to heed those interests may hinder success, as the cooperative may rely upon the community as a source for its future members. Adderley uses Gui's framework to compare different types of organisations by identifying who controls the organisation, and who benefits from its activities. A cooperative falls into a 'mutual interest' category. The controllers and beneficiaries are the same group. In the charity or 'general interest' category, the controllers and beneficiaries are separate groups. This analysis supports the argument that member interest is a key structural element of the cooperative as an organisational type. Adderley critiques the articulation of the GIC in the Principles of European Cooperative Law (PECOL) and the implications of recognising them as a subset or type of cooperative because of the adoption of democratic control in their governance structure. Adderley does acknowledge the challenge faced by the authors of PECOL who were dealing with a rapidly changing landscape where GICs were fast emerging as a significant player in the social solidarity economy in many European countries. However, he warns that isomorphic degeneration of the cooperative identity is not only a risk at the commercial end of the spectrum, but also at the benevolent end. Adderley concludes with a recommendation that the emergence of new types of general interest organisations should be accommodated as an evolution of the benevolent form to include the structural element of democratic control, rather than an evolution of the cooperative form that reduces the significance of the structural element of member control.

We are grateful to Chantal Chomel, a member of the editorial board of the leading French journal, *Revue internationale de l'économie sociale* (RECMA), who has provided our readers with a fitting tribute, by providing an overview of Professor Münkner's many contributions to the journal between 1987 and 2009. We are taken on a journey that includes Chomel's nuanced insights into Professor Münkner's writings and the context that provoked them. The journey, briefly summarised here, begins with his review in 1987 of the book written by the former ICA director, William Pascoe Watkins' "Co-operative Principles Today and Tomorrow". In 1988 he wrote about the institutionalisation of cooperative science in German universities, describing it as 'an interdisciplinary branch of the social sciences, combining political economy, business management, sociology and law' and involving close collaboration between the researcher and the cooperative organisation. In 1992, the editor in chief of RECMA, André Chomel, interviewed Professor Münkner about reforms to German cooperative law, in particular the introduction of new financial instruments, and allowing investor members, as well as providing comparative insights regarding similar reforms to French cooperative law. In 1996, after the fall of the Berlin wall, he wrote about his contribution to the working group on the reformulation of the cooperative principles in ICA Statement. In 2001, in the RECMA article included in the reference list at the end of this Issue, he wrote about categorising enterprises in the German social economy as 'promoter enterprises' and encouraged researchers to pay attention to the role of cooperatives in the social economy. In 2009 he contributed two articles, the first on the taxation of German cooperatives and the second on cooperative groups in Germany. Chomel acknowledges the clarity

and coherence of Professor Münkner's articulation of the cooperatives' primary mission, to serve its members. She also pays respect to his encyclopaedic knowledge of cooperative law in Germany and Europe, and the significance of the role of law in determining the vision of cooperatives and what they should be.

It is our intention to include in each issue in this series, 2- 3 short tributes, written by those who knew Professor Münkner well, either in a professional capacity, or as a friend, colleague or student. In this journal we include a tribute by friend and colleague, Thierry Jeantet, Honorary President of ESS-Forum International in French language, and honouring Professor Münkner's contribution to European debates on the social and solidarity economy. The second tribute is published in both Spanish and English, and is by Professor Münkner's former postgraduate student, and Law Professor at Pontificia Universidad Javeriana de Bogotá DC, Antonio Sarmiento Reyes, who had travelled from Columbia in Latin America to Philipps Universität in Marburg, to study cooperative law. Both tributes provide readers with a greater insight into Professor Münkner's personality and reveal not only his enormous passion for the study of cooperatives, but also his generosity and kindness to those who shared his interest and curiosity for cooperatives and their potential to improve the lives of many.

Ann Apps (member of the editorial committee)

## ARTICLES

Hagen Henry\*

# The Legal Principle of Sustainable Development and Cooperative Law

- remembering Professor Hans-H. Münkner -

Keywords: Cooperative principles; sustainable development; cooperative law

Mottos

*« [...] la liberté politique et civile mises sous la sauve-garde d'une autorité tutélaire. « Mars est le tyran ; mais le droit « est le souverain du monde [...] » »<sup>1</sup>*

*« Il n'y a pas un monde développé et un monde sous-développé, mais un seul monde mal-développé. There is not one developed world and one under-developed world, just one mal-developed world.*

*No existe un mundo desarrollado y otro sub-desarrollado, sino un solo mundo mal-desarrollado. »<sup>2</sup>*

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\*Hagen Henry is a longtime friend and colleague of Professor Hans-H. Münkner. He is currently Chair of the International Cooperative Alliance Cooperative Law Committee and Visiting scholar at the University of Helsinki.

\*\*The author thanks Dr. Ann Apps for her thorough language revision and her suggestions concerning the content. The author is also grateful to Professor Leonardo Rafael de Souza for his contribution to the text of Part 3.2.

<sup>1</sup> De Mirabeau, Honoré-Gabriel Riqueti, Des lettres de cachet et des prisons d’Etat, published in Oeuvres de Mirabeau, par M. Merlhou. Des prisons d’Etat. Paris : Dupont et Brissot-Thivars 1827, Chapitre iv (p. 86).

<sup>2</sup> Homepage of the Centre Europe – Tiers Monde, CETIM, Genève, see at : <https://www.cetim.ch/> (31.1.2025)



## 1. Introduction

Professor Hans-H. Münkner gave my professional life a decisive turn, twice. The second, in 1992, took me toward cooperative law. The first was when he suggested that I should combine my legal training with my interest in the development *problématique*. I had been drawn to it and its intercultural intricacies in the early 1970s during personal contacts with *fokon-olona* and *fokon-tany* structures in Madagascar,<sup>3</sup> and I had pursued this interest through postgraduate studies at the then *Institut universitaire d'études du développement* (IUED) in Geneva in the late 1970s.<sup>4</sup> The right place for this combination, Professor Münkner suggested, would be the *Institut des sciences juridiques du développement* (ISJD) at the Université de Paris V (René Descartes). It offered a *Maîtrise* and a *Diplôme d'Etudes Approfondies* program in development law.<sup>5</sup> I followed his advice in the early 1980s.

The Director of the ISJD at that time was Professor Eugène Schaeffer, and he and Professor Münkner knew each other. Three of their vast gamut of interests coincided, namely development, law, and cooperatives. While Professor Schaeffer focused on law and development and Professor Münkner on cooperatives and law, they both related cooperative law to development.<sup>6</sup>

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<sup>3</sup> These structures are based on kinship relations and on territorial cohesion, respectively. See de Gaudusson, J., *Le socialisme et le droit en Afrique (A partir des expériences de Madagascar et de la Tanzanie)*, in : G. Conac (dir.), *Dynamiques et finalités des Droits africains*, Paris : Economica 1980, 337-357 ; Ramarosona, Zaïveline, *Les fokon-olona (?)*, thèse de doctorat 3<sup>ième</sup> cycle, EHESS Paris 1979 (source not verified).

<sup>4</sup> The Institut universitaire d'études du développement (IUED) has since merged with the former Institut de hautes études internationales (IHEI) to form the Institut de hautes études internationales et du développement (IHEID).

My subjects (lectures and seminars) were : Culture et développement (Professor Louis Necker) ; Outils et méthodes d'analyse en économie du développement (Professor Gilbert Blardone); Problèmes socio-politiques du développement en Afrique noire (Professor Guy Adjété Kouassigan).

<sup>5</sup> See Henry, H., *Das Studium am Institut des Sciences Juridiques du Développement (ISJD) der Universität René Descartes (Paris V)* [Studies at the Institute of the Legal Sciences of Development of the University René Descartes (Paris V)], in: Hans-H. Münkner (ed.), *Erfahrungen mit entwicklungsländerbezogenen Postgraduiertenstudiengängen an deutschen Hochschulen*, Marburg: Institut für Kooperation in Entwicklungsländern 1986, 61-64; Henry, H., *Die Funktion europäischer Institutionen bei der Ausbildung afrikanischer Juristen - das Studium am Institut des Sciences Juridiques du Développement (ISJD) der Universität René Descartes (Paris V)* [The role of European institutions in the formation of African lawyers – the studies at the Institute of the Legal Sciences of Development of the University René Descartes (Paris V)], in: *Jahrbuch für Afrikanisches Recht. Annuaire de Droit Africain, Yearbook of African Law* Vol. 6 (1985/1986), 65-68.

The subjects for the *Maîtrise* prepared for the diploma program. That included the following lectures: Droit international du développement (Professor Guy Feuer); Droit privé du développement (Professor Eugène Schaeffer); Droit constitutionnel et institutions politiques dans les pays en voie de développement (Professor Bernard Chantebout); Relations internationales des pays en voie de développement (Professor Alain Pellet) and Ethno-sociologie du sous-développement (Professor Jean Bruyas), as well as seminars with related thesis writing, namely: Droit public interne du développement (Professors Michel Durupt and Andrieu ; Droit international du développement (Professor Maurice Flory) ; and Droit privé du développement (Professor Eugène Schaeffer).

<sup>6</sup> As for Professor Münkner, this is obvious for all those familiar with his work; as for Professor Schaeffer, see, for example, his Preface to Camboulives, Marguerite, *L'organisation coopérative au Sénégal*, Paris: Pedone 1967, V-VIII.

Professor Münkner's innumerable written and oral contributions to our knowledge provide us with a clear idea of what he understood by 'cooperative law', namely law derived from the internationally recognized cooperative principles. From the many multi-faceted interactions he and I had over a period of 45 years on many issues, such as law in Africa and land law, in addition to cooperative law, I understand that Professor Münkner did not want to elaborate a theory of development, adhere to any of the abundant existing ones or engage in the debate on 'law and development' which may be roughly and insufficiently regarded as summarizing these many theories. The 'law and development' debate rose to prominence among scholars and politicians in the aftermath of World War II, ignoring its earlier roots, and those schools that did not share mainstream opinion about its content. It accompanied much of the decolonization processes during the three so-called development decades.<sup>7</sup> The debate supposedly disappeared for several decades and reappeared in the early years of this century, only to be superseded by the concept of sustainable development. While this contribution does not disregard the continued relevance of the debate on 'law and development', it is limited to discussing the relationship between sustainable development and cooperative law.<sup>8</sup>

Professor Münkner did deal with 'development', albeit often only implicitly, as can be seen from a great number out of the more than 500 entries in his bibliography, which is included in this book. He sought to promote the idea of a general moral, ethical, political and/or legal duty to address whatever basic need<sup>9</sup> of whomever, wherever. He was a practicing theorizing humanist. Improving the lot of human beings was 'development' for him. He was convinced that cooperative law as derived from the universally recognized cooperative principles and furthering the interests of the members would go a long way towards this development. He saw no need to widen by law the circle of beneficiaries of cooperatives beyond the user-members or to impose a legal obligation on cooperatives to also work for the common good.<sup>10</sup> The sum of the improved lot of the many cooperative members would contribute substantially to overall development.

Ashish Shah, one of Professor Münkner's students and a contributor to this book, reflects Professor Münkner's position by arguing "that legislation, used as an instrument of "social engineering", can be a catalyst in inducing or accelerating the process of development in its broader sense. In particular [...] cooperative law, which provides a legislative framework for the operations of cooperative organizations." He goes on to conclude that "[i]t follows that a law conducive to the development of cooperatives could

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<sup>7</sup> 1960-1970: First United Nations Development Decade (Doc. A/RES/1710 (XVI)); 1971-1980: Second United Nations Development Decade (Doc. A/RES/2626 (XXV)); 1981-1990: Third United Nations Development Decade (Doc. A/RES/35/56).

<sup>8</sup> I deal in more detail with the evolution of the notion of development and its relation to law and cooperative law in a forthcoming article entitled "From Cooperative Law and Development to Sustainable Development and Cooperative Law". To be published in *Cooperativismo & Desarrollo* 4/2025.

<sup>9</sup> Among the many approaches to development the basic-needs approach may be seen as having prepared the ground for the current human rights approach to development.

<sup>10</sup> In her deep-thought discussion of Professor Münkner's many contributions to *RECMA*, the *Revue internationale de l'économie sociale*, Chantal Chomel presents in this book her firm opinion that there is not only no need to do so, but that doing so bears the risk of "banaliser" cooperatives, i.e. of losing their being based on the universally recognized cooperative principles.

have a strong and beneficial impact on overall development.”<sup>11</sup> By using the potential form (‘could’) Ashish Shah enters a field that Professor Münkner belabored intensively and extensively, theoretically and practically: the field of cooperative law-making.

Indeed, if cooperative law fails to promote the development of cooperatives, and if cooperatives do not contribute to “development in its broader sense”, then either cooperatives, law or both are ineffective in fostering development. Alternatively, cooperative lawmaking is plagued with deficiencies, as is suggested by much of Professor Münkner’s work. He would respond to the persisting belief that the former argument is correct, by pointing to the positive correlation in many countries between a cooperative law that is derived from the internationally recognized cooperative principles, and both the development of cooperatives and “development in its broader sense”.

However, Professor Münkner equally opposed those who abstracted the effectiveness of such a cooperative law in terms of the development of cooperatives and development in general from its necessary conditions. He argued against construing this correlation as a causal positive effect and treating such law as an easily exportable/importable good.

Of course, Professor Münkner knew perfectly well that transferring (exporting) and borrowing (importing) laws remain the most used of lawmakers’ ways.<sup>12</sup> Despite suggestions to the contrary, the practice of borrowing law is currently being kept alive by lawmakers imitating ‘good practices’, while the measure of what is ‘good practice’ remains obscure. While some,<sup>13</sup> often with reference to Montesquieu,<sup>14</sup> deny the effectiveness of legal transfers, others remain convinced.<sup>15</sup> Professor Münkner held the middle ground. For him, the question was not about transferring or not transferring foreign legal solutions. The question for him was rather how to ensure the necessary adaptation of any legal solution to the circumstances of the ‘recipient’. This adaptation would require that those who are to implement/live a law that is based on, or

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<sup>11</sup> Shah, A., Cooperative law: An instrument for development?, in: *International Labour Review*, Vol. 131, 1992, No. 4-5, 513-524 (513). This is how cooperative law was commonly understood, at least until then. See also Watkins, W. P. [ICA Director-General from 1951-1963], *The Promotion and Role of Co-operation in the Developing Regions*, in: *International Labour Review* 1965, 85-101 (85).

<sup>12</sup> As they have been since time immemorial. The Codex Hammurabi, for example, borrowed from and unified the laws of the various people who lived in the Tigris and Euphrates valleys (see *Código de Hammurabi*, Buenos Aires: Editorial Hammurabi 2010, 16). Whether the Codex Hammurabi contains law, let alone the first proof of law, is being debated (see for example Halpérin, J.-L., *Une histoire des droits dans le monde*, Paris: CNRS Editions 2023, 19 ff.).

<sup>13</sup> For example, Pierre Legrand (see his “The Impossibility of Legal Transplants”, in: *Maastricht Journal of European and Comparative Law* Vol. 4, no.2, 1997, 111-124).

<sup>14</sup> « La loi, en général, est la raison humaine, en tant qu'elle gouverne tous les peuples de la terre; et les lois politiques et civiles de chaque nation ne doivent être que les cas particuliers où s'applique cette raison humaine. Elles doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un très grand hasard si celles d'une nation peuvent convenir à une autre. » (Montesquieu, *De l'esprit des lois* 1758, Première Partie, Livre premier : Des lois en général, Chapitre III : Des lois positives).

<sup>15</sup> For example, A. Watson. See his “Legal Transplants. An Approach to Comparative Law”, 2<sup>nd</sup> ed., Athens and London: The University of Georgia Press 1993; Idem, *From Legal Transplants to Legal formants*, in: *The American Journal of Comparative Law*, 1995, 469-476.

influenced by, a foreign model, must participate in its making.<sup>16</sup> This position reflects an indispensable and unavoidable fact of lawmaking. Considering foreign legal solutions is the functional equivalent of experiments in natural sciences. We continue assuming wrongly that experiments in natural sciences are culturally neutral.<sup>17</sup> We know - at least theoretically - that foreign legal solutions cannot be grasped without understanding the culture underlying that specific legal solution to a problem,<sup>18</sup> i.e. the interplay of its sociological, socio-psychological, economic, philosophical, ethical and religious underpinnings. Instead, a problem is often defined as a legal problem in order to make it fit for the foreign legal solution. This challenge to the widely used functional approach in comparative law requires three steps. Firstly, the foreign legal solution must be decontextualized to understand why the problem it seeks to solve qualifies as a legal problem, and to understand the foreign legal solution to it. Secondly, the problem in the recipient locality needs qualifying in order to see whether it is a legal problem that can only be solved by law. Thirdly, if the foreign legal solution is considered for a transfer, it must be re-contextualized to ensure its effectiveness in the new location.<sup>19</sup>

While the process of de-contextualizing and re-contextualizing legal solutions is necessary, it will not change the concept of laws forming a mosaic, with each country's laws sitting side by side. This idea is strengthened by the fact that each country mainly enforces its own laws. The question is whether this concept is a sufficient answer to the ubiquitous, permanent intercultural interactions we see today:

[...] le fait interculturel n'a rien à voir avec la seule cohabitation plus ou moins harmonieuse, la coexistence pacifique sans plus. L'interculturel ne s'épuise ni dans la recherche d'un consensus universel, ni dans un *modus vivendi* universel, qu'il soit éthique, social, du droit international, etc. Le fait interculturel est la toile d'araignée dans sa totalité, c'est le donné per excellence dont est concerné chaque fibre, chaque chose, tout ce qui est, le divin, le cosmique, l'humain.<sup>20</sup>

<sup>16</sup> See Professor Münkner's writings on participative law-making. For example, "Participative Law-Making: A New Approach to Drafting Co-operative Legislation in Developing Countries", in: *Verfassung und Recht in Übersee*, 19. Jahrgang, 2. Quartal 1986, 123-137; Idem, Comment créer un cadre juridique approprié pour les organismes d'assistance mutuelle paysannes: Le cas du Burkina, in: Université de Paris I, Centre d'études juridiques et politiques du monde africain. Les politiques de l'eau en Afrique, développement agricole et participation paysanne. Actes du Colloque de la Sorbonne, Paris 1985, 291-299.

<sup>17</sup> Nils Bohr has proved this assumption wrong.

<sup>18</sup> This is now commonly accepted in comparative legal science. But see already, for example, Constantinesco, L.-J., *Rechtsvergleichung* [Comparative Law], 3 Vol., Köln: Heymanns 1971, 1972 and 1983 (also published in French as "Traité de droit comparé", Paris: Economica).

<sup>19</sup> See Henrÿ, H., *Kulturfremdes Recht erkennen. Ein Beitrag zur Methodenlehre der Rechtsvergleichung* [How to know culturally different law. Contribution to the methodology of comparative law]. *Forum Iuris*, Helsinki 2004, D. IV; Frankenberg, G., *Verfassungstransfer* [The transfer of constitutions], in : P. Dann/S. Kadelbach/M. Kaltenborn (eds.), *Entwicklung und Recht. Eine systematische Einführung* [Development and Law. A Systematic Introduction], Baden-Baden: Nomos 2014, 589-617 (599-608).

<sup>20</sup> Lomomba Emongo, «L'interculturalisme sous le soleil africain : L'entre-traditions comme épreuve du nœud », in : *INTERculture*, Vol. XXX, no. 2, Cahier 133, 1997.

Globalization, driven by factors like digitization (converting information into digital form), digitalization (using digital technologies to change the ways of doing), and the ability to transfer data almost instantly, all make it easier to experience and perceive the intercultural.

The phenomenon of intercultural is experienced by cooperatives when members come from different cultural backgrounds or when cooperatives are integrated organizationally into global value chains consisting of different enterprise types governed by different laws and legal systems. Intercultural requires lawyers to do more than manage the mosaic of different national legal contexts. They must be able to interweave different laws without diluting them into one law.<sup>21</sup> This ‘*interjuridique*’<sup>22</sup> approach is required to pursue sustainable development.

This tribute to Professor Münkner is a continuation of the conversations we had over many years. It builds on his insistence that cooperative law should translate the internationally recognized cooperative principles,<sup>23</sup> and his conviction that such law contributes to development. Professor Münkner relied on the normative power of the fact that most cooperators worldwide subscribe to the internationally recognized cooperative principles. He argued that for the sake of the effectiveness of cooperative law, all those who legitimately make, interpret and/or implement cooperative law (cooperative lawmakers) would eventually have to recognize the cooperative principles.<sup>24</sup> I shall go a step further to argue that all cooperative

<sup>21</sup> See Bude, H., *Solidarität. Die Zukunft einer grossen Idee* [Solidarity. The future of a great idea], München: Hanser 2019

<sup>22</sup> See Henry, H., *Essai sur l’interculturel du droit coopératif et le concept juridique de développement durable*, in : RECMA 2022 (No. 364), 132-142.

<sup>23</sup> See most recently his “Co-operative Principles and Co-operative Law”, second revised edition, LIT Verlag Münster et al. 2015 and “Ten Lectures on Co-operative Law”, second revised edition, LIT Verlag, Münster et al. 2016.

<sup>24</sup> It was all too obvious for Professor Münkner, as it is for me, that for sociological, socio-legal and legal policy reasons law-makers, i.e. all those who legitimately make, interpret and/or implement cooperative law, should translate the cooperative principles as enshrined in the 1995 International Cooperative Alliance Statement on the cooperative identity (hereinafter ICA Statement and ‘the cooperative principles’). In fact, I refer to these reasons when arguing that the 2002 Promotion of Cooperatives Recommendation [No. 193] of the International Labor Organization (ILO R. 193) is legally binding as far as cooperative law is concerned. These reasons are unique. This uniqueness derives from the following facts:

i.) According to the ICA, the members of some three million cooperatives, the bulk of cooperatives world-wide, identify with ‘the cooperative principles’ (see at: <https://www.ica.coop/en/cooperatives/facts-and-figures>. Visited 3.4.2025). The total number of cooperatives world-wide is not known. Even estimates are difficult to make as the notions of cooperative vary and as statistics are not harmonized. For an attempt to remedy the situation, see the efforts of the Cooperative Branch of the International Labor Office at: [https://www.ilo.org/Search5/search.do?sitelang=en&locale=en\\_EN&consumercode=ILO](https://www.ilo.org/Search5/search.do?sitelang=en&locale=en_EN&consumercode=ILO)

The number of memberships (not that of persons being a member) is estimated to be more than one billion. The number of multiple memberships of one person is not known. Given the restrictions in many jurisdictions as to such multiple memberships, at least as concerns memberships in the same or similar type of cooperative, it may however be assumed that the total number of members in cooperatives is not much below the one billion mark. This number is considerably higher than the number of holders of shares of capital-centered enterprise types.

ii.) The ICA Statement is the only case where such a big group of enterprises of the same type documents the identity of its members in writing, reflects some 200 years of theorized practice and practiced theory or practiced theory and theorized practice in an open-ended, ongoing process. The different sequences

lawmakers have a legal obligation to translate these cooperative principles into law and that they have a legal obligation to ensure that such a cooperative law respects the principle of sustainable development.

The following Part 2 deals therefore with the legal relevance of the internationally recognized cooperative principles and of sustainable development; Part 3 discusses this relevance for cooperative law; the concluding remarks (Part 4) vary the mottos that precede this contribution.

## 2. The legal relevance of the cooperative principles and of sustainable development

After having clarified for the purpose of this contribution the meaning of the terms ‘the cooperative principles’, ‘cooperatives’ and ‘cooperative law’ (2.1), this Part will demonstrate the existence of a legal obligation to translate ‘the cooperative principles’ into cooperative law (2.2) as well as the existence of a legal obligation to respect the principle of sustainable development (2.3).

### 2.1 Clarification of the terms ‘the cooperative principles’, ‘cooperatives’ and ‘cooperative law’

By “the cooperative principles” I understand the principles enshrined in the 1995 International Cooperative Alliance Statement on the Cooperative Identity (ICA Statement).<sup>25</sup> The ICA Statement contains a definition of a cooperative, a statement of the values incorporating six cooperative values (values on which “cooperatives are based”) and ethical values (those in which the “cooperative members believe”), and lists and explains seven principles. Through the sentence that introduces these principles the Statement describes what it means by ‘the cooperative principles’, namely “[t]he [seven] cooperative principles [as listed and explained in the Statement] are guidelines by which cooperatives [as defined in the Statement] put the [six] values [on which they are based and as separated in the Statement from the four ethical values in which the members believe] into practice.” Not only are the listed seven principles mutually regenerative, reinforcing and interdependent – as must be understood from a historical interpretation of the ICA Statement and from its current interpretation by the ICA,<sup>26</sup> but three of the four parts of the ICA Statement are reciprocally

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of theory and practice reflect different histories, which, despite their slowly weakening influence, must still be taken into account.

iii.) Before this identity was documented by the ICA for the first time, cooperators referred to it to support their claim to have their own law, distinct from that on other types of organization. I.e. the law followed the sociological phenomenon, although not in all parts of the world (see ii.)).

iv.) By joining the ICA, ‘the cooperative principles’ become binding on that member (see 2.2.1).

v.) This autonomously (legally) recognized identity of cooperatives is completed with a heteronomous recognition in, respectively through, national, supranational and public international law (see 2.2.2, 2.2.3 and 2.2.4).

<sup>25</sup> First published in: *International Co-operative Review*, Vol. 88, no. 4/1995, 85 f.. Also available at: <http://ica.coop/en/whats-co-op/co-operative-identity-values-principles>.

For the ease of reading, the ICA Statement is annexed to this article.

<sup>26</sup> Preparatory work leading to the adoption of the ICA Statement: Resolution from the ICA Board to the ICA General Assembly on “The Statement on the cooperative identity” (see especially its Point 5) and the Declaration on Cooperatives towards the 21<sup>st</sup> century” in connection with Point 3 of the Introductory comments to the principles in the



linked. Contrary to its frequently erroneous use, the term ‘the cooperative principles’ is therefore not synonymous with terms such as ‘cooperative values’, ‘cooperative principles’ or ‘cooperative identity’.

Following this logic, the term ‘cooperative’ refers to the definition in the ICA Statement, namely “[a] cooperative 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.” This definition distinguishes cooperatives from other types of enterprise as member needs-oriented by their objective (“persons [the members] ... meet their ... needs”) and as member-centered by their form (“[they meet their needs ...] through a jointly owned and democratically controlled enterprise”). This definition of cooperatives places cooperative law among the host of organizational enterprise laws which can generally be found in any jurisdiction.

In line with this definition and the principle of equal treatment,<sup>27</sup> the term ‘cooperative law’ refers to ‘organizational cooperative law’. It comprises any legal principle, legal rule or legal practice that shapes cooperatives so that their form or legal structure allows and obliges the members to pursue the distinctive objective, and (in many jurisdictions) justifies attributing to cooperatives the status of legal personality.<sup>28</sup>

## 2.2 The legal bases of the obligation to translate ‘the cooperative principles’ into cooperative law

This section discusses as possible legal bases of an obligation to translate ‘the cooperative principles’ into cooperative law the Articles of Association of the ICA (2.2.1), the fact that laws on cooperatives include

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Background paper to the ICA Statement on the cooperative identity, as well as MacPherson, Ian, Co-operative Principles for the 21<sup>st</sup> Century. All texts available in pdf format from the ICA.

Interpretation tools: Following its World Cooperative Congress in 2012, which was to celebrate the first United Nations International Year of Cooperatives (see UN Doc. A/RES/64/136), the ICA issued the “International Cooperative Alliance Blueprint for a cooperative decade 2011-2020” (available at: [ica.coop/sites/default/files/media\\_items/ICA%20Blueprint%20%20Final%20version%20issued%207%20Feb%202013.pdf](https://ica.coop/sites/default/files/media_items/ICA%20Blueprint%20%20Final%20version%20issued%207%20Feb%202013.pdf)) and in 2015 the “Guidance notes to the co-operative principles” (available at: <https://ica.coop/en/media/library/the-guidance-notes-on-the-co-operative-principle>). Following its World Cooperative Congress in 2021 on the overall theme of “Deepening our Cooperative Identity” the ICA set up the Cooperative Identity Advisory Group, CIAG. It is to advise the ICA on how to deepen the cooperative identity. The work is still ongoing.

<sup>27</sup> Relevant international texts promote this limitation to organizational aspects. See, for example, Paragraph 11 of the 2001 United Nations Draft guidelines aimed at creating a supportive environment for the development of cooperatives, Annex to the 2001 Report of the Secretary-General of the United Nations on “Cooperatives in social development” (A/56/73-E/2001/68) (UN Draft guidelines) and Paragraph 7. (2) of the ILO R. 193. It must however be noted that a number of jurisdictions do include in their laws on cooperatives rules on specific activities and/or rules on the promotion of cooperatives and/or rules on the set-up and functions of public authorities and their mandate to register and/or to promote and/or to control cooperatives. As for an example of other legal policy approaches see, for example, the law on cooperatives of Mexico (Ley general de sociedades cooperativas en 1994, Título III, Capítulo II and Título IV). The term “cooperative law” will be further elaborated below at 3.3.4.

<sup>28</sup> This latter limitation is not tantamount to excluding entities which do not meet the necessary requirements for being recognized as legal persons from a wider definition of cooperatives. Legal person status is not a definitional element of cooperatives. It must be sought only if necessary. However, a number of laws on cooperatives restrict the use of the denomination “cooperative” to registered cooperatives with legal person status.

cooperative principles (2.2.2), the 2002 Promotion of Cooperatives Recommendation [No. 193] of the International Labor Organization (ILO R. 193) (2.2.3), and the International Covenant on Civil and Political Rights (2.2.4). The addressees and the substance of the obligation vary with its legal basis.

### 2.2.1 The Articles of Association of the International Cooperative Alliance

Article 12.2 read together with Appendix “A” of the Articles of Association of the ICA <sup>29</sup> contains the whole text of the ICA Statement. The ICA is an association registered under Belgian law. Therefore, its Articles of Association are legally binding on the ICA and its members. A more complex question is whether they are also legally binding on the members of the members of the ICA.

The substance of the obligation stemming from Article 12.2 of the Articles of Association of the ICA varies with the addressee: The ICA must not admit to its membership entities that do not abide by ‘the cooperative principles’. The obligation of these entities varies with their legal type. <sup>30</sup> Some are constituted as cooperatives – their obligation consists in having statutes/byelaws that translate ‘the cooperative principles’ and they must not have members who do not respect ‘the cooperative principles’. Some members are constituted as another legal type, most often as an association – they must not have members (cooperatives or other legal types) that do not respect ‘the cooperative principles’. These obligations lead to further obligations for members of the ICA that are constituted as cooperatives or as another legal type, namely the obligation to employ their efforts to ensure that the cooperative law of the State where they are registered is aligned on ‘the cooperative principles’. Some members of the ICA are public institutions. If they are part of the government, the respective State must not register under its law, any entities, cooperatives or other types, which are members of the ICA, unless these entities abide by ‘the cooperative principles’. As far as this concerns cooperatives, the cooperative law of the State must be aligned on ‘the cooperative principles’ as these cooperatives must also abide by that law. Alternatively, these cooperatives must be exempt from the application of the cooperative law to the extent necessary to comply with the Articles of Association of the ICA. If not, the State risks having a split system comprising cooperatives that comply with the Articles of Association of the ICA, and others which do not.

As will be discussed in the following subsections, all states may have an obligation under public international law to align their cooperative law on ‘the cooperative principles’; other subjects of law may have a legal obligation to employ their efforts to bring the cooperative law of their country in line with ‘the cooperative principles’.

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<sup>29</sup> According to Article 12.2 of the Articles of Association of the ICA “All Members [of the ICA] shall expressly adhere to the Statement on the Cooperative Identity as set forth in Appendix “A” to these Articles of Association.” See at <https://www.ica.coop/en/media/library/governance-materials/ica-articles-association>) (13.9.2023). As the ICA is registered in Belgium, the official language version of the Articles of Association is French. The ICA provides the English translation for information purposes only.

<sup>30</sup> As for the different legal types of the members of ICA see at <https://ica.coop/en/our-members/search-our-members> (visited 3.4.2025)



### 2.2.2 The fact that laws on cooperatives include cooperative principles

The obligation of states to translate ‘the cooperative principles’ into cooperative law may be supported by the fact that many laws on cooperatives include cooperative principles. Some include ‘the cooperative principles’ in whole or in part; some include ‘the cooperative principles’, but with modifications; some refer to ‘the cooperative principles’ or only to ‘cooperative principles’; some include cooperative principles. These inclusions may constitute a source of public international law in the form of an “international custom as evidence of a general practice accepted as law” in the sense of Article 38, 1. b. of the Statute of the International Court of Justice (ICJ Statute).

It is not always clear if the cooperative principles included in cooperative laws are ‘the cooperative principles’. The preliminary result of my ongoing scrutiny of seventy national laws, the regional laws and the regional model laws on cooperatives <sup>31</sup> has revealed a wide variety of approaches to this inclusion.

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<sup>31</sup> The following are random examples. For more examples see the Introductory chapters of the country reports in: D. Cracogna/A. Fici/H. Henry (eds.), *International Handbook of Cooperative Law*, Heidelberg: Springer 2013 and the Legal Framework Analyses commissioned by the ICA (available at: <https://coops4dev.coop/en>).

National laws on cooperatives: See for example the laws of

- Argentina, Article 2 of Ley N° 20.337, Ley de cooperativas de 1973 (<https://www.argentina.gob.ar/normativa/nacional/ley-20337-18462> (5.12.2022)).
- India, Article 3 of the Multi-State Co-operative Societies Act, 2002 (available at: [www.google.com/search?q=indian+multi+state+cooperative+law+First+schedule&ei](http://www.google.com/search?q=indian+multi+state+cooperative+law+First+schedule&ei) (5.12.2022)).
- Madagascar, Article 3 of the Projet de loi n° 007/2023 du 03 mai 2023 Régissant les Sociétés Coopératives à Madagascar (validated by Parliament, but not yet promulgated).
- Norway (English, non-official language version at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=88380](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88380)).
- Portugal, Article 3 of Código Cooperativo português (<https://dre.pt/dre/legislacao-consolidada/lei/2015-70147380> (17.1.2023)).
- Spain, Basque Country, Article 1 of Ley 11/2019, de 20 de diciembre, de Cooperativas de Euskadi ([https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-615](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-615) (5.12.2022)).
- Spain, Canary Islands, Article 2 of Ley 4/2022, de 31 de octubre [de 2022], de Sociedades Cooperativas de Canarias ([https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2022-19625](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-19625)).
- Tanzania, Zanzibar, Article 3 of Zanzibar Cooperatives Societies Act 2018 (<https://zanzibarassembly.go.tz/document/the-zanzibar-cooperative-societies-act-no-15/> (5.12.2023)).
- Uruguay, Article 7 of Ley N° 18.407 de fecha 24/10/2008, Ley de cooperativas (<https://www.gub.uy/ministerio-vivienda-ordenamiento-territorial/institucional/normativa/ley-n-18407-fecha-24102008-ley-cooperativas-regulacion-constitucion> (5.12.2022)).
- Vietnam: Amendments to the law on cooperatives adopted on June 20, 2023, in force since July 1, 2024. According to information by the ILO “the Law has been amended in line with Viet Nam’s 2019 Labour Code and the values and principles of cooperatives as articulated in the Cooperative Identity Statement of the International Cooperative Alliance” (see at: [www.ilo.org/global/topics/cooperatives/sse/WCMS\\_895494/lang--en/index](http://www.ilo.org/global/topics/cooperatives/sse/WCMS_895494/lang--en/index)).

Regional uniform laws on cooperatives:

- Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE), Recitals (6) to (10) (EU Regulation on SCE).

Because of this variety, these inclusions do not form a common pattern and so do not qualify as a “custom [evidencing] a general practice”. In addition, it cannot be ascertained whether the inclusion of ‘(the) cooperative principles’ in the laws on cooperatives is driven by the opinion that this “practice [is] accepted as law”, which is the second requirement for it constituting a source of public international law. I assume that a scrutiny of all laws on cooperatives would not change this result.

An even stronger argument against the qualification of the inclusion of cooperative principles in laws on cooperatives as a custom in the sense of Article 38, 1. b. of the ICJ Statute is the circumstance that the law on cooperatives is just one element of the cooperative law.<sup>32</sup> In most, if not all countries, most of these other elements of the cooperative law are modeled on capital-centered enterprise types; they do not translate ‘the cooperative principles’.

This raises in addition a legal policy issue. While the inclusion of ‘(the) cooperative principles’ in laws on cooperatives may constitute a source of public international law, the practice of approximating the structural features of cooperatives through cooperative law, to those of capital-centered enterprises continues. Professor Münkner warned against the consequences of this practice as early as the 1970s.<sup>33</sup> Among the possible reasons for this phenomenon in many countries, ignorance of cooperative law stands out. Cooperative law is quasi absent from the research and education curricula. This neglect violates Paragraph 8.(1)(f) of ILO R. 193 which states that “[n]ational policies should notably ... promote education and training in cooperative principles and practices, at all appropriate levels of the national education and

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- Acte uniforme relatif aux sociétés coopératives de l’Organisation pour l’harmonisation en Afrique du droit des affaires (OHADA) of 2010 (<https://www.ohada.org/actes-uniformes/>), Articles 6 and 18.
  - East African Community Cooperative Societies Bill 2014 (<http://www.eala.org/documents/category/bills/P16>), Article 4. This Bill is not yet in force.

Regional model laws on cooperatives:

- Ley marco para las cooperativas de América Latina de 2008, Article 4 – a model law elaborated by the ICA and, although not a law, of a considerable persuasive character.
- African Union Model Law on Cooperatives for Africa, Article 7
- (<https://www.aciamericas.coop/-Legislacion-Cooperativa-en-las-Américas->).

<sup>32</sup> As for these other elements see below at 3.3.4.

<sup>33</sup> See Chantal Chomel’s contribution in this book on this practice, the two variants of which I have been calling “companization” and “convergence”. See Henry, H., Quo Vadis Cooperative Law?, in: CCIJ Report No. 72 (2014), 50-61 (in Japanese; original in English); Idem, Reflexiones en torno al derecho cooperativo desde una perspectiva global - homenaje a Dante Cracogna –, in: Congreso Continental de Derecho Cooperativo : San José de Costa Rica, 20 al 22 de noviembre de 2019 / compilado por Dante Cracogna. - 1a ed compendiada. - Ciudad Autónoma de Buenos Aires : Intercoop ; San José de Costa Rica : Cooperativas de las Américas, 2020. Libro digital, EPUB Archivo Digital: online ISBN 978-987-1596-59-1, 109-123.

On “companization”, see also Villafañez Perez, I., Algunas reflexiones en torno a la necesidad de integrar la perspectiva cooperativa en el estudio y desarrollo del ordenamiento jurídico, in: H. Henry, P. Hytinkoski and T. Klén (eds.), Co-operative Studies in Education Curricula. New Forms of Learning and Teaching, Mikkeli and Seinäjoki/Finland. University of Helsinki/Ruralia Institute Publications No. 35 (2017), 54-71. Both with ample further references.

training systems, and in the wider society”; it violates the principle of equal treatment <sup>34</sup> as other forms of enterprise, especially the capital-centered one, are a firm part of the research and education curricula; and it violates the vital principle of diversity (see below 3.1).

### 2.2.3 The 2002 Promotion of Cooperatives Recommendation of the International Labor Organization

The obligation to translate ‘the cooperative principles’ into cooperative law may be based on Paragraph 10. (1) of the ILO R. 193. It reads: “Member States [of the ILO] should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out in Paragraph 3 [...]”. <sup>35</sup> The question is whether the ILO R. 193 constitutes legal obligations for legislators, and whether its Paragraph 3. refers to ‘the cooperative principles’.

Apart from my previous publications which answer this question affirmatively, the first question has not yet been addressed. <sup>36</sup> General comments on the legal nature of recommendations of international organizations lead to the conclusion that the ILO R.193 is not legally binding. *Prima facie*, recommendations of the ILO are not legally binding instruments in the sense of Article 38, 1. a. of the ICJ Statute. However, as is the case with other instruments of international organizations, including ‘guidelines’, ‘decisions’, ‘resolutions’ etc., the denomination of the ILO R. 193 is simply a starting point to the question of whether the instrument is legally binding or not. <sup>37</sup> A strong indication that it is not binding is the differentiation in Article 19, 1. of the ILO Constitution between conventions and recommendations. If the International Labor Conference

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<sup>34</sup> Which is a “general principle of law”, i.e. a source of public international law according to Article 38, 1.c. of the Statute of the International Court of Justice (ICJ Statute). It is specified in Article 7.(2) of the ILO R. 193 and it is repeatedly underlined in the UN Draft guidelines (see its Points 6., 11., 19., 20., 21.).

<sup>35</sup> As for the link the ILO R. 193 establishes between cooperative law and “the cooperative principles”, see also its Paragraphs 6. (a), (c) and (d); 7. (2), 1st and 2nd sentence; and 18. (d). Paragraph 6. seems to be similar to Paragraph 10. (1). However, it is part of Chapter II (policies), whereas Paragraph 10. forms part of Chapter III which deals with the implementation of policies. The prominent position of law in this Chapter is more than symbolic.

<sup>36</sup> This is why “[there are no] teachings of the most highly qualified publicists of the various nations [...]” which could be recognized as subsidiary source of public international law according to Article 38, 1. d. of the ICJ Statute.

<sup>37</sup> See Virally, M., *La valeur juridique des recommandations des organisations internationales*, in : *Annuaire français de droit international*, Vol. II (1956), 66-96 (reprinted, in: *Le droit international en devenir*, Paris, Presses Universitaires de France, 1990, 169-194). This is not undisputed. Some suggest considering the instruments of international organizations as elements of one of the sources of public international law listed in Article 38, 1. of the ICJ Statute. Agreeing with this view, especially considering the difference between “conventions” and “recommendations” of the ILO, Pellet, A., *Le rôle des résolutions des organisations internationales à la lumière de la jurisprudence de la Cour internationale de Justice*, in: G. Politakis/T. Kohiyama/T. Lieby (eds.), *Law for Social Justice*, Genève, International Labour Organisation, 2019, 149-160 (154 ff.). For another view, see Politakis, G. et Markov, K., *Les recommandations internationales du travail: instruments mal exploités ou maillon faible du système normatif ? Les normes internationales du travail : un patrimoine pour l’avenir. Mélanges en l’honneur de Nicolas Valticos*, Genève, Bureau International du Travail, 2004, 497-525.

wanted to make R. 193 a legally binding instrument, it would have chosen to adopt a convention instead of a recommendation.

However, this argument unduly solidifies the initial legal status of the ILO R. 193. The legal nature of international instruments may, and often it does, change over time because of changing circumstances. It is not static and the ICJ is not bound in its assessment of the legal nature of an instrument by the initial legal status of that instrument. Other circumstances may influence that assessment. In this case, the specific way of adopting ILO R. 193,<sup>38</sup> the fact that it was adopted after instruments with similar content as far as cooperative law is concerned, and that this content has been repeatedly endorsed through other regional and international instruments<sup>39</sup> are relevant to any assessment of the legal nature of the ILO R. 193. This leads to my opinion that ILO R. 193 is legally binding as far as cooperative law is concerned. In response to the frequent objections to this opinion, it is important to emphasize the following: the arguments are limited to ILO R.193 and do not extend to other recommendations of the ILO, or other international organizations, and they only deal with those parts of the R. 193 concerned with cooperative law.<sup>40</sup>

Besides binding the Member states of the ILO to do what Paragraph 10. (1) states, namely “[... to] adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles [...]”, Paragraph 14. in connection with Paragraph 10. (1) requires the two other constituents of the ILO, the employers’ and the workers’ organizations of the Member states,<sup>41</sup> as well as the cooperative organizations, to see to it that their own States align their cooperative law on ‘the cooperative principles’. To the extent ILO R. 193 forms a source of public international law according to Article 38, 1.a. of the ICJ Statute, it is binding on all subjects of public international law.

A further argument is that Paragraph 10. (1) of the ILO R. 193 is a step towards materializing the obligations of States under Articles 55 and 56 of the Charter of the United Nations and of Article 2 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the 1966 International

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<sup>38</sup> In this respect several factors set the ILO R.193 apart from other “recommendations” or similarly denominated instruments of international organizations, such as ‘guidelines’, ‘decisions’, ‘resolutions’. These are

- its having been adopted by an unusual high majority (see at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-23vote.pdf>);
- the high degree of democratic legitimacy of the ILO as evidenced by
- its being a tripartite organization (see Article 3, 1. of the Constitution of the ILO) and a transnational organization (see Article 4, 1. of the Constitution of the ILO); and by
- its having included almost literally the text of the ICA Statement, endorsed at the time of the adoption of ILO R. 193 in 2002 by some 700 million members of cooperatives world-wide and now subscribed by an estimated one billion.

<sup>39</sup> For a more detailed discussion, see Henry, H., *International Cooperative Law. Utopia ...*, op. cit.. See also UN Draft guidelines and EU Regulation on SCE.

<sup>40</sup> Namely Paragraphs 1; 2.; 3. and Annex; 6. (a), (c) and (d); 7. (2), 1. and 2nd sentence; 10. (1) and 18. (d).

<sup>41</sup> See Article 3, 1. of the Constitution of the ILO.

Covenant on Economic, Social and Cultural Rights (both in force since 1976). All three instruments are legally binding conventions in accordance with Article 38, 1.a. of the ICJ Statute.

While I have no doubts that ILO R. 193 is legally binding as far as cooperative law is concerned,<sup>42</sup> I have some doubts as to whether Paragraph 3 of the ILO R. 193, to which its Paragraph 10. (1) refers, refers to ‘the cooperative principles’ in the sense outlined earlier. These doubts are based on the following facts: Paragraph 2 of ILO R. 193 reproduces the definition of cooperatives as contained in the ICA Statement without change; Paragraph 3. (a) reproduces the values on which “cooperatives are based” and the “ethical values” in which “cooperative members believe”. However, it does not distinguish between the two sets of values in the way that the ICA Statement does. Paragraph 3. (b) reproduces literally the titles of the seven principles and the Annex to the ILO R. 193 also reproduces literally the titles of the seven principles and the explanations that go with them in the ICA Statement. The sentence in the ICA Statement which introduces the seven principles and links them to the definition of cooperatives and the values on which “cooperatives are based”, (and which composes the term ‘the cooperative principles’) and which is reproduced in the Annex to the R. 193, does not have the meaning it has in the ICA Statement. This is because Paragraph 3. (a) also designates as “cooperative values” the “ethical values” in which “cooperative members believe”. In addition, Paragraph 3. (a) does not mention any external authorship for the values, as does Paragraph 3. (b) for the principles. However, this external author, namely “the international cooperative movement”, is different from the author implied in the Annex to the R. 193 as this Annex is named “Extract from the statement on the cooperative identity, adopted by the general assembly of the international co-operative alliance in 1995”. All of this is reason to doubt whether the meaning given in this article to the term ‘the cooperative principles’ applies also to the term “cooperative principles” as used in the ILO R. 193.

These uncertainties complicate the interpretation of the cooperative principles and poses the question ‘whose principles are those referred to in Paragraph 10. (1) of the ILO R. 193?’. It may be further complicated if a change of the text of the ICA Statement is the outcome of its current review by the ICA.

The debate on whether ILO R. 193 is legally binding as far as cooperative law is concerned may not be relevant for the purpose of this article if the legal obligation of all states with respect to cooperative law can be based with certainty on another source of public international law. This is the subject of the next subsection.

#### 2.2.4 The International Covenant on Civil and Political Rights

The obligation of states to translate ‘the cooperative principles’ into cooperative law can be based on Article 22, 1. of the ICCPR in connection with the principle of the prohibition of contradictory behavior. As an “international convention” in the sense of Article 38, 1.a. of the ICJ Statute, the ICCPR is legally binding. The principle of the prohibition of contradictory behavior is a “general principle of law” in the sense of

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<sup>42</sup> Where this opinion is not shared, the arguments put forward here, together with the ever more frequent inclusion of cooperative principles in laws on cooperatives (see above 2.2.2) constitute, however, a reversal of the burden of argumentation should a legislator decide to not abide by Paragraph 10. (1) of ILO R. 193. And, even if not binding in the legal sense, ILO R. 193 would still be legally relevant.

Article 38, 1.c. of the ICJ Statute. Hence it is also a source of public international law.<sup>43</sup> Article 22, 1. of the ICCPR reads: “Everyone shall have the right to freedom of association with others [....].” This right to associate is a right of all persons, natural and legal,<sup>44</sup> nationals and foreigners, and it includes the right to adhere to an association registered in a foreign state. The criteria for restrictions allowed under Article 22, 2. of the ICCPR, do not apply to the case dealt with here, i.e. the case of legal persons (cooperative organizations, associations or similar, public institutions) joining an association registered in a foreign State, namely the ICA, registered in Belgium.

The reason to opine that states have a legal obligation to translate ‘the cooperative principles’ into law, based on Article 22, 1. of the ICCPR in connection with the legal principle of the prohibition of contradictory behavior, is the following: If a state does not allow an entity registered under its law to join the ICA as a member, it contravenes Article 22, 1. of the ICCPR. If it does allow it to do so, it must allow it to comply with its obligations stemming from Article 12.2 of the Articles of Association of the ICA (see 2.2.1) - unless these Articles were not compatible with its *ordre public* - if not, it violates the legal principle of the prohibition of contradictory behavior. Consequently, the cooperative law of that state must either be aligned on ‘the cooperative principles’, exempt these cooperatives from its application to the extent necessary for them to be able to comply with ‘the cooperative principles’, or it must accept a cooperative sector which is split into two, namely cooperatives that comply with ‘the cooperative principles’ and cooperatives which do not.

### 2.3 The legal basis of the obligation to respect the principle of sustainable development

With its recognition of sustainable development, the ICJ has introduced sustainable development into the world of binding law. In its first decision on the matter in 1997 the ICJ recognized sustainable development as a “concept” of public international law;<sup>45</sup> later as an “objective”.<sup>46</sup> The Arbitral Tribunal classified it as a “principle”.<sup>47</sup> Since then, sustainable development has increasingly become part and parcel of sources of law, from international and supranational conventions, treaties and court decisions to national constitutions,

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<sup>43</sup> Literature on public international law does not explicitly recognize the principle of the prohibition of contradictory behavior as a “general principle[s] of law”, such as the principle of good faith and the principle of estoppel. As for these, see for example, Shaw, M. N., *International Law*. Latest edition 2017; A. Verdross/B. Simma, *Universelles Völkerrecht. Theorie und Praxis* [literally: Universal Ius Gentium. Theory and Praxis], 3<sup>rd</sup> ed., 2010. Another argument is to say that it is in the very nature of any legal system to function in a non-contradictory way.

<sup>44</sup> Compare wording of Article 6 (“human being”) and that of Articles 8-12 of the ICCPR (“everyone”, “(all) persons” ...).

<sup>45</sup> See Case Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment. I.C.J. Reports 1997, Paragraph 140.

<sup>46</sup> See Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, ICJ Reports (2010) 14 at Paragraph 177.

<sup>47</sup> See Indus Waters Kishenganga (Pakistan v. India), Partial award 2013, at Paragraph 450.



laws and court decisions.<sup>48</sup> It has gradually permeated all law and it has become part of the legal discourse in general, albeit with varying qualifications, such as ‘concept’, ‘principle’, etc. (hereinafter the term ‘principle’ is used).<sup>49</sup> There is reason to hypothesize that a Human Right to sustainable development is emerging.<sup>50</sup> While all subjects of law have a legal obligation to respect the principle of sustainable development,<sup>51</sup> there is not yet a legal recognition of the substance of its notion. The relevant literature

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<sup>48</sup> International and supranational law: for example, the 1992 Convention on Biological Diversity (Articles 2 and 6); the Marrakesh Agreement Establishing the World Trade Organization (Recital 1); the Treaty on European Union (Article 21) and the Treaty on the Functioning of the European Union (Article 11); the European Court of Human Rights, Decision 9.4.2024.

National law : for example, the Constitutions of Germany (Article 20a) and of Switzerland (see Glaser, *Nachhaltige Entwicklung und Demokratie* [Sustainable Development and Democracy], 2006; *La Charte de l’environnement*, incorporated into the Constitution of France in 2000; in 2019 the Hoge Raad sentenced the Dutch State to do more for climate protection; in 2021 the German Bundesverfassungsgericht [Constitutional Court] recognized climate protection as an intergenerational right to freedom (Article 2 of the German Grundgesetz [Constitution]).

<sup>49</sup> For a comprehensive account of the presence of “development”, including sustainable development, in law, see Dann et al. (eds.), *op.cit.*; Gehne, K., *Nachhaltige Entwicklung als Rechtsprinzip* [Sustainable development as a legal principle], 2011; Glaser, *op. cit.*; Voigt, *Sustainable Development as a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law*, 2008; Diepold, A., *Nachhaltigkeitsaspekte in der EGMR-Rechtsprechung* [Aspects of sustainability in the jurisdiction of the European Court of Human Rights], Tübingen: Mohr 2025; the CIRIEC Working Paper No. 2024/07 written by Frédéric Tiberghien details a panoply of policy and legal measures the French State has taken to address sustainable development issues; the contributors to Kahl (ed.), *Nachhaltigkeit durch Organisation und Verfahren* [Sustainability through organisation and procedure], Tübingen: Mohr 2016, suggest how to implement sustainable development in the German and European constitutional and administrative law.

For some, however, sustainable development is ‘only’ a (legally not binding) guiding principle of (public international) law. See, for example Goldmann, *Staatsverschuldung und Entwicklung* [Public debt and development], in: Dann et al. (eds.), *op. cit.*, 377-431 (419); Marauhn, *Umwelt und Entwicklung* [Environment and development], in: Dann et al. (eds.), *op. cit.*, 433-468 (456).

For the history of the concept of sustainable development, see Gehne, *op. cit.*; Henry, H., *Sustainable Development and Cooperative Law: Corporate Social Responsibility or Cooperative Social Responsibility?*, in: *International and Comparative Corporate Law Journal* Vol.10, Issue. 3 (2013), 58-75. Barral, V., *The Principle of Sustainable Development*, in: L. Krämer/E. Orlando (eds), *Principles of Environmental Law*, Cheltenham: Elgar 2018, 103-114.

<sup>50</sup> I am indebted for this idea to Professor M. A. Bekhechi (see Bekhechi, *Quelques notes et réflexions sur le statut du droit international du développement durable*, in: Mohammed-Jalal Essaid (sous la dir.), *Variations sur le système international. Mélanges offerts en l’honneur du Professeur Mohamed Lamouri*, Casablanca, Najah Al Jadida, 2010, 107 ss.). See also Henry, H., *La identidad cooperativa y el derecho cooperativo - en vía a un derecho humano al desarrollo sostenible*, in: *Anales del VIII Congreso Continental de Derecho Cooperativo*, organizado los 27-29 de octubre de 2022 en Asunción/Paraguay por Cooperativas de las Américas (ACI) sobre el tema “El Derecho Cooperativo y la Identidad Cooperativa en la Post Pandemia” (*Anales Congreso 2022. Versión final (2).pdf*), 113-128; and Mania, K., *Legal and historical aspects of sustainable development* in: A. Kuźniarska/K. Mania/M. Jedynak (eds.), *Organizing Sustainable Development*, 2023 (DOI <https://doi.org/10.4324/978100379409>), 5 ff.

<sup>51</sup> I do not share Barral’s view (*op. cit.*) that it is an obligation of “international subjects” only.

seems to agree that it is composed of four aspects, namely a social, a political, an economic and an environmental (biosphere) one,<sup>52</sup> but there is no source of law to validate this consensus.<sup>53</sup>

### 3. The implications of the legal relevance of ‘the cooperative principles’ and of sustainable development for cooperative law

This part contributes to the debate on the substance of the notion of sustainable development and argues that its central aspect is social justice (3.1). It then considers the functionality of the form of cooperatives for the regeneration of social justice and the sociological barriers to making fully use of this mechanism (3.2); Section 3.3 deals with challenges facing the lawmaker.

#### 3.1 The substance of the notion of sustainable development: the centrality of social justice

The substance of the notion of sustainable development is examined by considering the source of development and the interconnections between the four aspects of sustainable development. The source of development, like that of life, is diversity in its two aspects, biological and cultural.<sup>54</sup> Recognizing this requires a paradigm shift in law, from universality to diversity, from difference to alterity. While the vital importance of biological diversity is well recognized,<sup>55</sup> the importance of cultural diversity is hardly known, despite its being enshrined in international legal instruments, and despite academia having called for it as early as 1988.<sup>56</sup> In the economic context there is growing evidence that the co-existence of diverse forms of enterprise makes an economy more resilient against market and other shocks.<sup>57</sup> Without cultural

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<sup>52</sup> Except for political stability, these aspects of sustainable development are generally recognized. See, for example, the 2002 Delhi Declaration of Principles of International Law Relating to Sustainable Development of the International Law Association (ILA). Annex to Res. 3/2002, preamble, paragraph 14, which contain a rather elaborate definition of sustainable development; European Union (available at: [https://ec.europa.eu/europeaid/sites/devco/files/communication-next-steps-sustainable-europe-20161122\\_e\\_](https://ec.europa.eu/europeaid/sites/devco/files/communication-next-steps-sustainable-europe-20161122_e_)); Club of Rome & Wuppertal Institute (eds.), *Earth for All Deutschland*, München: Oekom 2024; and Pufé, I., *Nachhaltigkeit [Sustainability]*, München: UKV Verlag 2012. As here, recognizing four aspects, UNESCO ([http://www.unesco.org/education/tlsf/mods/theme\\_a/popups/mod04t01s03.html](http://www.unesco.org/education/tlsf/mods/theme_a/popups/mod04t01s03.html) –). The word ‘biosphere’ is either used as a synonym for ‘nature’ or ‘environment’ or as comprising the three or four aspects of sustainable development. In this latter sense, see for example, Grinevald, J., *La Biosphère de l’Anthropocène. Climat et pétrole, la double menace. Repères transdisciplinaires (1824-2007)*, Genève : Georg 2007.

<sup>53</sup> There is no consensus on whether the existence of an obligation may be affirmed in the absence of a consensus on its content. To be noted, however, that the case discussed here is not a singular case.

<sup>54</sup> As for cultural diversity as a vital correlate to biological diversity, see Gruzinski, *La pensée métisse*, 1999. Gervereau, *Pour une écologie culturelle*, in: *Le Monde*, 3 Octobre 2008; Martí et al., *Palabras y mundos, Informe sobre las lenguas del mundo*, in: *El País*, Babelia, 24.2.2007, 12. For more details, see Henry, *Kulturfremdes Recht ...*, op. cit., Part D III.

<sup>55</sup> See, for example, Willoughby et al., *The reduction of genetic diversity in threatened vertebrates and new recommendations regarding IUCN conservation rankings*, in: *Biological Conservation* 191 (2015), 495 ff.

<sup>56</sup> See, for example, the Convention on Biological Diversity and Article I, 3. of the Constitution of UNESCO, the United Nations Educational, Scientific and Cultural Organization; and Arizpe, L., *Culture in International Development*, Keynote, 19<sup>th</sup> World Conference of the Society for International Development, New Delhi 1988.

<sup>57</sup> See, for example, Burghof, *Vielfältiges Bankensystem besteht die Krise [A diverse banking system resists the crisis]*, in: *Wirtschaftsdienst* 2010/7, 435 ff.; and Groeneveld, H., *The Value of European Co-operative Banks*



diversity, biological diversity may be protected, but its capacity to regenerate cannot be preserved. Without bio-cultural diversity, the way to sustainable development is blocked. The four aspects of sustainable development are interrelated, mutually regenerative and mutually dependent: without social justice, no political stability; without political stability, no economic security; without economic security, no concern for the biosphere. Hence, social justice is the central aspect of sustainable development. Its absence, i.e. social injustice, should not be conflated with poverty. Although linked, measures against social injustice are not the same as those aimed at poverty reduction/elimination. Mechanisms to regenerate social justice are the key to the pursuit of sustainable development. The cooperative form is one such mechanism, as explained in the next section.

### 3.2 The form of cooperatives as a mechanism for the regeneration of social justice and sociological barriers to its effective use

This Section discusses first the specific organizational form of cooperatives as a mechanism to regenerate social justice (3.2.1); it then points to several sociological barriers to its use (3.2.2).

#### 3.2.1 The functionality of the form of cooperatives for the regeneration of social justice

This subsection deals with a premise and hypothesis: The premise is that law is a mechanism to regenerate social justice. The ultimate common purpose of laws is the regeneration of justice and social justice is a part of justice (3.2.1.1). The hypothesis is that notwithstanding what they and other enterprise types do contribute to sustainable development by abiding by their Corporate Social and Societal Obligations (CSSOs),<sup>58</sup> and/or as a prerequisite and consequence of them being recognized on the basis of respective laws as social and/or solidarity economy actors, cooperatives are distinct from other enterprise types by what they potentially contribute to sustainable development by having to keep their form in line with ‘the cooperative principles’, i.e. cooperatives have both a CSSO and a Coop SSO<sup>59</sup> (3.2.1.2).

##### 3.2.1.1 Law/justice/social justice

The premise that laws serve the purpose of regenerating justice, and that social justice is a part of justice is, in my view, supported by the works of Bertrand Badie, Arthur Kaufmann, Amartya Sen, Alain Supiot, and - of course – Aristotle.<sup>60</sup>

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for the Future Financial System, in: J. Heiskanen/H. Henry/P. Hytinkoski/T. Köppä (eds.), *New Opportunities for Co-operatives: New Opportunities for People. Proceedings of the 2011 ICA Global Research Conference*, Mikkeli and Seinäjoki/Finland. University of Helsinki/Ruralia Institute Publications No. 27 (2012), 185 ff..

<sup>58</sup> As the stakeholder value is gradually superseding the shareholder value (capital-based enterprises) and the member value (person-based enterprises), the corporate social responsibility (CSR) is shifting to a corporate social and societal responsibility (CSSR). This CSSR is juridicising, thus it is shifting to a corporate social and societal legal obligation (CSSO). The CSSO may be seen as the juridical correlate to the economic stakeholder concept. The CSSO is a legal obligation of all enterprises, independently of their type.

<sup>59</sup> See Henry, *Sustainable Development*, op. cit..

<sup>60</sup> For example : Badie, B., *Nous ne sommes plus seuls au monde*, Paris : La Découverte 2016 ; Idem, *L’art de la paix. Après l’art de la guerre*, Paris : Flammarion 2024. Kaufmann, A., *Gerechtigkeit. Der vergessene Weg*

### 3.2.1.2 *The form of cooperatives and social justice*

According to the definition of cooperatives, contained in the ICA Statement and in Paragraph 2 of the ILO R. 193, cooperative members must “meet their [...] needs [...] through a jointly-owned and democratically controlled enterprise.” This form is further specified through ‘the cooperative principles’. It condenses in the meta-principle of member democratic participation, including control. Member democratic participation means the equal say of all members in decisions on what to produce and/or how to operate the cooperative and how to distribute the wealth that ensues from that, independently of the members’ financial or other contributions. This meta-principle permeates the elements that, according to the ICA Statement, compose the cooperative identity, i.e. the definition of cooperatives, the values and the principles.<sup>61</sup> Because of the way these elements are linked, “democratically controlled” (definition) and “Democratic Member Control” (2<sup>nd</sup> ICA Principle) should not be reduced, as is often done, to the ‘one member, one vote’ rule enshrined in the 2<sup>nd</sup> Principle. Indeed, the definition designates the members as actors; they themselves, and not the cooperative, “[...] meet their common economic, social and cultural needs and aspirations [...]. Hence, they are co-entrepreneurs. This reading is supported by the cooperative values of “self-help” and “self-responsibility”. Using an ‘*a maiore ad minus*’ argument, this means that the meta-principle of member democratic participation may only be restricted where the status of legal personality requires it, and/or where for practical reasons the members may not be involved in steering the affairs of the cooperative.

This specific form of cooperatives is a function of the distinct objective of cooperatives (meet the economic, social and cultural needs and aspirations of the members); it balances these three aspects of the objective, and it sets cooperatives apart from other enterprise types. It is the *raison d’être* of cooperative law.

### 3.2.2 Sociological barriers to using the form of cooperatives to regenerate social justice

Putting the meta-principle of member democratic participation into practice, the lawmaker will meet a number of sociological barriers. Firstly, members may not understand that according to the definition of cooperatives they should serve themselves through the running of an enterprise, instead of the cooperative serving them; and/or they may lack time, motivation, interest and/or knowledge and know-how to participate in decision-making bodies; and/or some active members may pursue interests which are not congruent with the interest of all members. Secondly, the management may lack the necessary qualifications and/or the willingness to run a cooperative according to ‘the cooperative principles’; and/or it may pursue own

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zum Frieden [Justice. The forgotten way to peace], München: Piper 1986; Idem, Grundprobleme der Rechtsphilosophie [Basic problems of legal philosophy], München: Beck 1994. Sen, A., Development as Freedom, Oxford: Oxford University Press 1999; Idem, The Idea of Justice, London: Penguin Books 2009. Supiot, A., L’esprit de Philadelphie. La justice sociale face au marché total, Paris: Seuil 2010. Aristotle, Nikomachean Ethics.

<sup>61</sup> For a demonstration of this see Henry, H., Cooperativas, democracia em ação [original: Cooperatives, Democracy at Work], in: Economia Social. Revista da Cooperativa António Sérgio para a Economia Social número 21, março (2024), 20 ss.. Electronic version in Portuguese and English available at: [https://www.revista-es.info/numero\\_21.html](https://www.revista-es.info/numero_21.html)

interests.<sup>62</sup> Thirdly, there is a cooperative-typical ‘six-fold control risk’.<sup>63</sup> It is a risk; it is not a feature of cooperatives. Fourthly, when cooperatives join higher-level cooperative organizations or federations (following the 6<sup>th</sup> ICA Principle), they need to balance their horizontal heterarchical structure of member democratic participation with the vertical hierarchical structure of the higher-level cooperative organizations. This balance is necessary for the higher-level organizations to support their member cooperatives effectively.<sup>64</sup> Fifthly, implementing member democratic participation through law faces challenges due to radical structural changes of cooperative enterprises, as well as the ‘de-organization’ of all types of enterprises.

The structure of cooperatives is becoming more complex in terms of who the members are, what activities they do, and who benefits from those activities. If we consider the establishment in 1844 of the Rochdale Society of Equitable Pioneers as the origin of modern cooperatives, we can assess the changes since then. While cooperatives of the Rochdalian type continue to have their justification, new cooperative structures have emerged. The dynamics of cooperative development has led from the Rochdale Society of Equitable Pioneers, a group of persons of the same social class and a set of similar basic (consumer) needs, to cooperatives being established by persons coming from all social strata; being active in virtually all sectors from agro-ecological food chains in urban horticulture and farming to education, health and care services (social cooperatives); from labor contracting cooperatives to bio-data banks and data protection cooperatives etc.. Some cooperatives are active in several sectors (multi-purpose cooperatives); some have very high numbers of members (especially cooperative banks, insurance cooperatives, consumer cooperatives). Their memberships may be heterogeneous by interest, need, social background or profession, or by the contribution members make to the production or provision of services. For example, it is possible to have a combination of worker-members, volunteer workers, user-members, investor members and financing members or supporters all in one cooperative. A cooperative may not only serve its members, but also, or even exclusively, non-members, its community or the public at large (public or general interest

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<sup>62</sup> As for these first two challenges, see Anderson, B., Democratic Control and Cooperative Decision Making: A Conceptual Framework, in: *Journal of Agricultural Cooperation* 1987, 1-15.

<sup>63</sup> These risks may arise from an information, knowledge and know-how gap between the various stakeholders within the cooperative. I.e. between

- the members and the general assembly;
- the members and the delegates (if any);
- the members/delegates (if any) and the surveillance committee (if any);
- the delegates/the surveillance committee/the members (as the case may be) and the board, especially where some of the board members are not members of the cooperative;
- the board and the administration/management, especially where managers are not themselves members of the cooperative; and between
- the administration/management and the employees.

<sup>64</sup> See Henry, H., Cooperation Among Cooperatives, in: G. Fajardo/A. Fici/H. Henry/ D. Hiez/D. Meira/H. -H. Münkner/I. Snaith (eds.), *Principles of European Cooperative Law. Principles, Commentaries and National Reports*, Cambridge et al, Intersentia 2017, 119-134.

cooperatives). Cooperatives may have some mix of private and public interests and actors, as well as commercial and non-commercial approaches, e.g. cooperative groups. Some cooperatives confuse the figures of producer and consumer, e.g. energy/utilities cooperatives. Some cooperatives may (have to) take other stakeholders' legal interests into account, including those of non-user investor members, or investors who do not have the status of member (but may have some control rights). Some cooperatives count among their membership, public law persons, e.g. municipalities, especially in the health, care, education and utilities sectors.

The factors of globalization open new ways to realize the meta-principle of democratic member participation in traditional cooperative structures. However, these new structures must also consider new loci of participation, an enlarged group of participants and new modes of participation. In terms of the loci of participation, it must permeate all organizational and operational aspects of cooperatives. An enlarged circle of participants may require attention to be given to members and non-member stakeholders without transforming cooperatives into public service organizations or charities. New modes of participation are available to complement physical participation in decision-making, such as virtual participation using latest secure technology, in the general assemblies and beyond.<sup>65</sup>

The issue of 'de-organization' is prompted, respectively it is made possible, by the factors of globalization. It affects enterprises of all types including cooperatives. Enterprises 'de-organize' when their own organization dissolves, either by integrating organizationally into (global) horizontal and/or vertical value chains, or by becoming part of networks of actors. The value chains may be composed of different enterprise types, subject to different national and/or regional laws. The value chain itself might not be subject to any law but is typically regulated by the general contract clauses imposed by the chain leaders. It is not clear how the meta-principle of member democratic participation can operate in value chains, where some elements are hierarchically structured, others are heterarchical, and where some, like cooperatives, may have a combination of both. The whole or parts of the value chain might dissolve further into global ephemeral and amorphic (de-organized) networks of actors (connectives). It may not be possible to regulate the networks of actors by law. However, increasingly, they are regulated by algorithms whose authors are either anonymous or cannot be held accountable through traditional legal means.<sup>66</sup>

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<sup>65</sup> See, for example, Meira, D., Cooperative Virtual General Assemblies and Cooperative Principles. A Legal and Empirical Analysis, in: *International Journal of Cooperative Law* V/2023, 131 ff.

<sup>66</sup> Abriani N./G. Schneider, *Diritto delle imprese e intelligenza artificiale*, Bologna: Mulino 2021.

We are confronted with a double phenomenon - organizational relationships contractualize<sup>67</sup> and contractual relationships organize.<sup>68</sup> It is unclear how the meta-principle of member democratic participation can operate in de-organized networks and organized contractual arrangements.

The Rochdalian experience may serve as a starting point for the reflection on these types of ‘de-organization’.<sup>69</sup> Rochdalian cooperatives were a response to the social problems caused by industrialization where economic growth was linked to interactions between the means of production, labor and capital, causing power imbalances. Cooperatives were designed as an alternative way to control the means of production. They provided a peaceful method of transforming the social and technical division of labor, production, credit, and consumption.<sup>70</sup> Today, however, there is a new paradigm. Commercial and social structures have shifted from the productive process of industrialism to focus on information. The dominant economic functions and processes are increasingly organized around networks, using the internet. Economic development/ growth relies on knowledge generation, information processing, and data communication.<sup>71</sup> Consequently, enterprises are mutating from organized collectives to contractual connectives. We do not know how this will impact cooperatives in their role as levers of sustainable development. Cooperatives also connect in networks and even in cyberspace, in addition to organizing in the traditional way. Information/data will increasingly guide both cooperatives and sustainable development. This leads to the question of whether the core principle of the cooperative idea, ‘solidarity’, can only regenerate through an organized collective, or if it can also regenerate through an institutionalized connective,<sup>72</sup> regulated by a new type of cooperative law.

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<sup>67</sup> For example, decentralized autonomous organizations (DAO). See Fleischer, H., Decentralized Autonomous Organization LLC (DAO LLC), Wyoming 2021, in: H. Fleischer (ed.), *Rechtsformneuschöpfungen im in- und ausländischen Gesellschaftsrecht*; Tübingen: Mohr Siebeck 2024, 681 ff..

<sup>68</sup> For example, certain types of multi-party contracts. See Legner, S., *Gestaltung mehrseitiger Austauschverträge [The design of multi-party contracts]*, Tübingen: Mohr Siebeck 2024.

<sup>69</sup> I owe the following ideas to Professor Leonardo Rafael de Souza.

<sup>70</sup> Castells, *The network society: a cross-cultural perspective*, 2004.

<sup>71</sup> Castells, *op. cit.*.

<sup>72</sup> Different disciplines have different notions of the word ‘institution’. Douglass North stands for the economists’ view. William Barnes and Roger Granger are representative of the lawyers’ view. Among the many definitions of “institution” the one by North seems to be the most widely known. He writes: Institutions are “humanly devised constraints that structure political, economic, and social interactions. They consist of both informal constraints (sanctions, taboos, customs, traditions and codes of conduct) and formal rules (conventions, laws, property rights).” See North, D., *Institutions*, in: *Journal of Economic Perspectives* 1991, 97 f. I follow the more juridical definition proposed by Granger. He writes : « L’institution peut être définie comme le regroupement de règles de droit, agencées selon un certain esprit, autour d’une idée ou fonction centrale dont elles sont les instruments de réalisation. » (Granger, R., *Problèmes généraux du mouvement coopératif dans les pays en voie de développement*, in : *Annales malgaches*, 1, série droit, 1963, 149 ff ; Idem, *La tradition en tant que limite aux réformes du droit*, in : *Revue internationale de droit comparé* 1979, 37 ff (44, 106).

### 3.3 Challenges facing the lawmaker

This section deals with the following questions: What is the meaning of “translating ‘the cooperative principles’ into law”? (3.3.1). How to transit from ‘the cooperative principles’ to law? (3.3.2). How is cooperative law derived from the meta-principle of member democratic participation while remaining consistent with aspects of sustainable development? Does cooperative law require a special notion of law? (3.3.4).

#### 3.3.1 What is the meaning of “translating ‘the cooperative principles’ into law”?

Often, the obligation to translate ‘the cooperative principles’ into law is construed as meaning unifying cooperative laws. The need for and the feasibility of unification (examples include the *Acte uniforme relatif aux sociétés coopératives de l’Organisation pour l’harmonisation en Afrique du droit des affaires* (OHADA) and the *East African Community Cooperative Societies Bill*) is a separate issue. Translating ‘the cooperative principles’ into law does not mean the unification of cooperative laws for two reasons. Firstly, the sources of public international law do not promote the idea of unification. The relevant paragraphs of ILO R. 193 are proof of this interpretation of the term ‘translation’. Paragraph 10. (1) of ILO R. 193 states that “[...] legislation [be] guided by the cooperative [...] principles [...]”. This does not suggest unifying the cooperative laws. Paragraph 18. d) of the ILO R. 193 could be read otherwise. It states: “International cooperation should be facilitated through [...] developing, where it is warranted and possible [...], common regional and international [...] legislation to support cooperatives.” However, in addition to the caveat in Paragraph 18. d) (“where [...] warranted and possible”), Paragraphs 6. and 14. of ILO R. 193 are a clear plea against unifying cooperative laws and for diversity as a condition of sustainable development. Secondly, the proper of the principles is that they allow for a plurality and diversity of derivations, so long as this plurality and diversity of derivation does not void the unity of the sense of the principles. Translating ‘the cooperative principles’ must not mean the unification of the cooperative laws, because the legal principle of sustainability presupposes the possibility of a diversity of cooperative laws (see above at 3.1).

#### 3.3.2 How to transit from ‘the cooperative principles’ to law?

The transition from ‘the cooperative principles’ to law is a complex process. Generally, principles and values - moral, ethical or others - enter the realm of law through legal principles. However, ‘the cooperative principles’ are not legal principles. The reemerging cooperative legal science is developing cooperative legal principles<sup>73</sup> that can either form a subgroup of legal principles or an autonomous set of legal principles.

The task of elaborating cooperative legal principles is made difficult by the use of the terms “values” and “principles” in the ICA Statement. The use of these terms is not consistent, and it differs from their use in scientific disciplines. For example, the ICA Statement classifies “democracy” both as a principle and as a

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<sup>73</sup> See, for example, Fajardo et al. op. cit; Henry, H., Una teoría del derecho cooperativo. ¿Para qué?, in: J. E. de Miranda/L. R. de Souza/E. Gadea (organizadores), *Direito cooperativo e identidade cooperativa. Derecho cooperativo e identidad cooperativa*, Cristo Rei – Curitiba: Brazil Publishing 2019, 175-191.



value. The ICA values of “equality”, “equity” and “solidarity” are described as ethical notions, but they are also universal legal principles, as is the value of “democracy”.

### 3.3.3 How to derive cooperative law from the meta-principle of member democratic participation while remaining consistent with aspects of sustainable development?

Professor Münkner forged the tools needed to derive cooperative law from ‘the cooperative principles’ and he inspired us with his energy to use them. It is up to us to find answers to the question.<sup>74</sup>

### 3.3.4 Does cooperative law require a special notion of law?

The question of whether cooperative law requires a special notion of law can be subdivided into three subjects: the concept of social justice in the context of sustainable development; the meaning of the term ‘cooperative law’ considering that its function is to regenerate social justice; and the very notion of law for cooperative law.

We need to consider two dimensions when conceptualizing social justice: One dimension relates to social justice as an aspect of the objective of cooperatives. According to the definition of cooperatives this objective is “to meet the economic, social and cultural needs and aspirations [of the members]”. The second dimension relates to *solidum* in the sense of ‘the whole’, the globality of sustainable development.<sup>75</sup> This globality stems from the link between the four aspects of sustainable development. If the four aspects of sustainable development are linked as described earlier (see 3.1) and one aspect, the biosphere, is global, the whole of sustainable development is a global issue. This situation sets certain requirements for the law. It recalls the concept of ‘double bodies’ in law. This concept, developed by classical Roman lawyers, translates the idea that there is a fundamental difference between the whole and the sum of its parts.<sup>76</sup>

A search for the meaning of ‘cooperative law’ as a medium to regenerate social justice includes the paradigm shift from universality to diversity in order to secure the source of development (see 3.1). We also need to take the following matters into account: where different cultures meet, so do different laws, hence different conceptions and perceptions of (social) justice. Different cultures meet in cooperatives whose members

<sup>74</sup> I have attempted to give it a try over the years. See, for example, Henry, H., The Legal Structure of Cooperatives: Does it Matter for Sustainable Development?, in: H. J. Rösner/F. Schulz-Nieswandt (eds.), Beiträge der genossenschaftlichen Selbsthilfe zur wirtschaftlichen und sozialen Entwicklung, Berlin: LIT 2009, Vol. 1, 199-229; Idem, Guidelines ..., op. cit.; Idem, Quo Vadis ..., op. cit..

<sup>75</sup> As for the global aspect of social justice, see Henry, H. Justice through Cultural Diversity. The Problem of Justice in a New International Economic Order, in: The Finnish Yearbook of International Law, Vol. I (1990), 387-414; Idem, Social Justice through Enterprises. The End of the 1972/1973 Conjuncture? A Legal Perspective, in: International Journal of Social Quality 5(2), Winter 2015: 81-96; Idem, Social Justice in the Global World – the Role of Enterprises, in: J. Laurinkari/F. Unger (eds.), Justice and Solidarity: The European Utopia in a Globalising Era, European Academy of Sciences & Arts, Kuopio: Grano 2015, 88-99; Idem, Who Makes the Law? Parliaments, Governments, Courts or Others? Social Justice through Cooperatives at Stake, in: C. A. d’Alessandro/C. Marchese (eds.), Ius Dicere in a Globalized World. A Comparative Overview, Volume One, Studies in Law and Social Sciences 3, Roma Tre Press 2018, 251-260.

<sup>76</sup> The idea of double bodies in law might be helpful in addressing the increased occurrence of transnational, supranational and privately set laws alongside national state laws. See, for example, Meder, S., Doppelte Körper im Recht [Double bodies in law], Tübingen: Mohr 2015. The idea is also related to that of Übersumme.

identify with different cultures, and in cooperatives that are integrated organizationally in global value chains (see 3.2.2). Different cultures also meet at the national level, where written state law meets other types of law, including religious law, customary laws, standards set by private actors, laws of or in the informal sectors, and oral laws as part of oral cultures.<sup>77</sup> The growing effectiveness of these other laws correlates with the diminishing outreach of state law, and by extension, the outreach of regional and international law.<sup>78</sup>

The delimitation of ‘law’ from other norms and its content differs from culture to culture. Law filters through three, culture-specific continuous processes: one that determines to what extent facts have power over norms; one that distinguishes norms from policies; and one that distinguishes law from other norms. The results of these processes are not static. For example, facts may push lawmakers to mold them into law; a policy may become a norm; a social norm may become a legal norm. The reverse may also occur. In addition, the interrelationship among facts, policies and norms, as well as that between these categories varies. The interrelationship between norms is described by Jean Carbonnier as ‘internormativity’.<sup>79</sup>

The meaning of the term ‘cooperative law’ was explained in section 2.1 as follows: “[Cooperative law is] any legal principle, legal rule or legal practice that shapes cooperatives so that their form or legal structure allows and obliges the members to pursue the distinct objective and that justifies attributing the status of legal personality to cooperatives.”<sup>80</sup> Based on the arguments that followed, this notion may now be expanded in several respects: Firstly, cooperative law is only that law which translates ‘the cooperative principles’ (see 2.2); secondly, cooperative law is only that law which in translating ‘the cooperative principles’ enables and obliges cooperatives to contribute to sustainable development (see 2.3); thirdly, cooperative law is not only state law but also other states’ laws and other laws (see above); fourthly, the notion of ‘cooperative law’ is wider than that of ‘law on cooperatives’. The term ‘cooperative law’ comprises all legal principles, legal rules and legal practices, such as written laws, administrative acts, court decisions, jurisprudence,

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<sup>77</sup> As for the nature of such oral law, as opposed to law not written, but forming part of a written culture, see the works of Glissant.

<sup>78</sup> This must not be construed as depreciating the indispensable role of national state law, foremost because of its enforcement mechanisms. For a critique of the written, state law-centeredness of legal science, see De Sutter, L., *Hors la loi. Théorie de l’anarchie juridique*, 2021.

<sup>79</sup> Carbonnier, J., *Internormativité*. Dictionnaire encyclopédique de théorie et de sociologie du droit. Dir. A. J. Arnaud. 1988, 313 ff.

<sup>80</sup> The term “any legal principle, legal rule or legal practice” means any such phenomenon, independently of whether it is written or oral; independently of the law-maker, be it national, regional or international; independently of whether the law-maker is the state or by extension a regional or international (governmental) organization, or a non-state entity; independently of which part of that entity makes the law; and independently of whether it applies on a specific territory, such as state law (the boundaries of which it co-determines), of whether it applies to a certain group of people defined by religious or ethnical affiliation for example, of whether it applies to a specific group of economic actors, whether it regulates the relationship between natural and/or legal persons or between these and objects or whether it applies to the relationship between objects, algorithms for example.



cooperative bylaws/statutes or any other source of law which regulates or has an impact on the objective or structure of cooperatives.

The following legal principles, rules and practices are those most likely to shape the cooperative enterprise. Legal principles: the principle of equal treatment, related to cooperatives as compared with other types of enterprises and as related to the cooperative members as compared to stakeholders of other types of enterprise. Legal rules: the constitution,<sup>81</sup> labor law, competition law, land law, taxation, (international) accounting/prudential standards, book-keeping rules, audit and bankruptcy rules, as well as general enterprise law and laws regulating certain activities to the extent they impact the organizational structure of cooperatives. Legal practices: those practices which relate to the making (legal policy) and implementation of cooperative law,<sup>82</sup> for example, regulations and practices concerning registration, prudential mechanisms and audit. In addition, where the law on cooperatives is explicitly or implicitly incomplete, rules on other types of enterprises or even rules of the general civil or commercial law may apply as default rules.

Furthermore, the very notion of ‘law’ might have to be rethought. While the notion of ‘sustainable development’ has overcome the *mal-entendu* of C.P. Snow’s the “Two Cultures” (the divide between the natural sciences and the humanities), the lawmakers still have to deal with the following: The factors of globalization cause a new friction between phenomena which remain conditioned by time and space (biological life) and those which are not (most elements of economic life). For cooperative law makers this is particularly relevant. Cooperatives are both associations, whose physical members have a biological life conditioned by time and space, and enterprises (economic organisations) that are increasingly driven by data and less by capital and labor. Data is not conditioned by time or space. The associative aspects of cooperatives will continue to be regulated by law and the enterprise aspect increasingly by algorithms. The effects of this friction on the very notion of ‘cooperative law’ requires further research.

Finally, if law is a means to regenerate social justice, then the individualistic/privative notion of ‘law’ as it currently dominates the legal discourse,<sup>83</sup> may no longer serve its purpose as it does not allow for the legal principle of solidarity.<sup>84</sup> The legal principle of solidarity requires members to accept and fulfill their

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<sup>81</sup> For studies on constitutions and cooperative law, see Cracogna, D., *Las cooperativas en las constituciones nacionales*. Congreso Continental de Derecho Cooperativo, Montevideo 16-18 de noviembre 2016, Intercoop Buenos Aires 2018, 393-400; Douvitsa, I., *National Constitutions and Cooperatives: An Overview*, in: *International Journal of Cooperative Law*, I/2018, 127-147.

<sup>82</sup> Given that the border line between pure implementation and creation of law is not a clear-cut one and as that between the powers of the legislature and the executive branch of government are hardly as clear as textbooks portray them to be, I suggest including also the practices and praxes of those who implement/apply the law, especially cooperatives and public administration. As for the latter, similar, Galligan, D.J., *Law in Modern Society*, Oxford: Oxford University Press 2007, especially pp. 293 ff..

<sup>83</sup> For a critique, see, for example, De Conto, *A hermenêutica dos direitos fundamentais nas relações cooperativo-comunitárias*. Universidad do Vale do Rio dos Sinos-Unisonos. Sao Leopoldo/Brasil, 2013; Menke, Chr., *Kritik der Rechte [A critique of law]*, Berlin: Suhrkamp 2015.

<sup>84</sup> See a great number of UN resolutions. For example, the UN Res. XXVI on the Rights and Obligations of States. See also Bude, op. cit.; Rodotà, S., *Solidarietà. Un’utopia necessaria*, Roma: GEDI 2017. In her seminal

obligations without a legally protected expectation of any return. Without solidarity social justice will remain deficient. It highlights the vital idea that all beings are interconnected and dependent on each other and nature. This mutual dependency is a fundamental reason for fostering solidarity.<sup>85</sup>

#### 4. To conclude, a variation on the mottos opening this tribute to Professor Hans-H. Munker

Law can only do so much to make us adapt our behavior to the insight that the world is one, and in the words of the Constitution of the ILO, that “[...] universal and lasting peace can be established only if it is based upon social justice [...]”.<sup>86</sup> “[*Seul si je me révolte, [...] nous sommes.*” The prize for failing is destruction. It might be worth trying to avoid it by practicing solidarity.<sup>87</sup>

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oeuvre « Les forces imaginantes du droit » ( 4 volumes, Paris: Seuil 2004-2011) Mireille Delmas-Marty distills the principle of solidarity out of numerous contexts.

<sup>85</sup> Idea inspired by Bude, op. cit.; Camus, *L’homme révolté*, Paris: Gallimard 1951; P. Servigne/G. Chapelle, *L’entraide, l’autre loi de la jungle, Les liens qui libèrent* 2019. See also Henrÿ, H., *Vom Entwicklungsrecht zum Menschenrecht auf Entwicklung - vielfältige Einheit anstelle von Einheitlichkeit* [From development law to the human right to development – unity in diversity instead of uniformity], in: *Zeitschrift für Rechtsvergleichung* 1994, 3-29.

<sup>86</sup> Constitution of the International Labour Organisation, Preamble, 1<sup>st</sup> Recital.

<sup>87</sup> Bude, op. cit., takes Camus’ dictum (op. cit., 38) as the starting point for his discussion of possible reasons for solidarity behavior.

## Annex - 1995 International Cooperative Alliance Statement on the Cooperative Identity

### Definition of a Cooperative

A cooperative 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.

### Cooperative values

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

### Cooperative Principles

The cooperative principles are guidelines by which cooperatives put their values into practice.

#### 1. Voluntary and Open Membership

Cooperatives 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.

#### 2. Democratic Member Control

Cooperatives 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 cooperatives, members have equal voting rights (one member, one vote) and cooperatives at other levels are also organised in a democratic manner.

#### 3. Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. 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 cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.

#### 4. Autonomy and Independence

Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into 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 cooperative autonomy.

#### 5. Education, Training, and Information

Cooperatives 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 cooperation.

#### 6. Cooperation among Cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

#### 7. Concern for Community

Cooperatives work for the sustainable development of their communities through policies approved by their members.

## THEME: CO-OPERATIVES AND THE SOCIAL ECONOMY

Nicole Göler von Ravensburg\*

# Cooperatives, the Social Economy Debate and the German Strategy for Social Innovation and Social Enterprises

In memory of Hans-H. Münkner (1935-2023)

Keywords: Social economy, Strategy for Social Innovation and Social Enterprises, Germany, Cooperatives, Research Agenda

## Abstract

European policy debates on the social (and solidarity) economy (SSE) were not considered to be particularly relevant in Germany until recently. Reasons included - a well-developed welfare state and cooperatives that mainly identified with the private sector. Policy makers and organized civil society considered SSE concepts to be incompatible with the existing institutional landscape. However, over the last twenty years, social entrepreneurship start-ups and several academic study programs have gained attention. In the 2020s several Federal States introduced promotional programmes, and in 2023 the Federal government adopted a *National Strategy for Social Innovation and Social Enterprises* (SIGU), which also explicitly addresses cooperatives. Professor Münkner was probably the first among German academics to seriously enter the discourse in the 1990s. This article explores the position that he might have taken on the SIGU regarding cooperative development, and it proposes ideas about where further research is needed for cooperative scientists of various disciplines.

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## 1. Introduction

Hans-H. Münkner's advice on cooperative law and policy was frequently sought by various international and national agencies for more than five decades. One of his concerns in any policy dialogue was to strike a good balance between the benefits to co-operators, be they consumers, entrepreneurs, farmers, tenants, savers or borrowers, and effective socio-economic development. In operative terms he was a proponent of participatory law making and emphasized the need for adequate capacity building. For him, training and education of cooperative promoters included not only management skills but the formation of a genuinely development-oriented attitude, as well as an entrepreneurial outlook.

In alignment with most parts of the German Cooperative movement, Münkner firmly rejected the instrumentalization of cooperatives by the state (Münkner 1994 and 1995a, p.34). Because he spoke and understood several European languages, he was able to follow and understand in depth the processes of policy and law making here and in many other parts of the World, and to observe the resulting development effects. The more he exposed himself to multitudinous national cooperative landscapes, policies and laws, the more he became convinced that, regardless of culture and legal system, the foundations of a successful cooperative system, in terms of improving social living conditions, are based on the core principles of self-help, self-responsibility and self-administration (most recently Münkner 2023a, p. 251). In this vein, he also took a keen interest in policy approaches to introduce a 'Social (and Solidary) Economy' (SSE) across the European Union in the 1990s and 2000s. Yet, it was to be another twenty years before the EU Commission finally agreed on an *Action Plan for the Social Economy* (EU Commission 2021) and the United Nations passed a *Resolution on the Promotion of the Social and Solidarity Economy* (A/77/281) of 18 April 2023.

In Germany, the *Strategy for Social Innovation and Social Enterprises* (SIGU) was put in place in September 2023.<sup>1</sup> It is regarded as the national starting point in formal state recognition of entrepreneurial activities aimed at the common good,<sup>2</sup> and which go beyond the more narrowly defined welfare sector. This strategy re-emphasizes the multi-faceted role cooperatives have played for more than 150 years in the economic and social development of Germany (Federal

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<sup>1</sup> As a result of the new strategy, the German term ' Gemeinwohlorientiertes Unternehmen' has now been politically introduced in Germany. However, the English term 'social enterprise' (SE) is used in the relevant Ministries' English language version, as this term has been common in international academia for years, and the underlying definitory concept is the one used by the EU. The term SE is also used by various stakeholder groups in Germany (e.g. the biggest lobby and promotion agency is called Social Enterprise Network Deutschland (SEND, in German too), and will presumably not disappear from German-language debates, which is why it will continue to be used in the rest of this article. In order to emphasize where I am specifically addressing cooperative type social enterprises (as a subgroup of all SEs) I tend to use this term interchangeable with the term cooperative for the common good.

<sup>2</sup> This term is used by the authors of the strategy to translate the German term "Gemeinwohl".

Government 2023, p.2). This is a good reason to reflect upon its content, the political rationale behind it and the most important messages it bears for (common-good oriented) cooperatives. This reflection will consider Münkner's scepticism of a European Union wide introduction of a SSE from the mid-1990s and contemplate the role cooperative science should assume in the wake of this strategy, which also announces changes to the *Cooperative Act*.

I was privileged to be mentored by Münkner during my PhD and benefitted greatly from his academic guidance, and so I would like to dedicate this contribution to him. Because I believe that he would have liked it, I will also use this opportunity to address German scholars of economics, business administration, sociology and company law in general, but particularly cooperative scholars, to motivate them to initiate further research on the actual social effects of cooperatives oriented towards the common good. There is a need to take a comparative look at the suitability of this organisational form for common good purposes, to evaluate the fit of promotional and funding instruments used, and to generate empirical data so that these instruments can be continuously adapted to suit the changing and particular needs of cooperatives. German cooperative science can draw on a wide range of existing empirical and theoretical research explaining the comparative advantages and disadvantages of cooperative entrepreneurship in an economic and social policy context. Cooperative scholars should not leave the task of positioning this unique organisational form within the economic transformation that Germany is about to undergo, exclusively to other disciplines or business consultants.

## 2. German cooperatives and the European Social Economy debate

### a. German cooperatives

To provide context, I will highlight a few facts about the types of cooperatives that are prevalent in Germany. From the early stages of cooperative history in Germany, credit and savings cooperatives,<sup>3</sup> agricultural (service) cooperatives,<sup>4</sup> and producer type cooperatives,<sup>5</sup> have outnumbered consumer,<sup>6</sup> worker,<sup>7</sup> and housing cooperatives,<sup>8</sup> (Göler von Ravensburg 2023, p.

<sup>3</sup> According to Stappel savings and credit coops numbered 875 at the end of 2018 (Stappel 2023), p. 806), with the total number of coops then being 7748 (ibid., p. 801).

<sup>4</sup> By the end of 2018 1315 agricultural coops were active in purchasing, marketing and processing and an additional 789 former production coops which have survived re-unification as coops of a (limited) number of family farms (ibid. p.812).

<sup>5</sup> Stappel reports 2898 producer coops at the end of 2018 (ibid. 2023, p.815). These are not to be confused with production coops, see following explanations.

<sup>6</sup> 24 consumer coops seem to have been left at the end of 2018 (ibid. 2023, p. 819).

<sup>7</sup> According to Stappel, 787 agrarian and 379 non-agrarian worker cooperatives in crafts and trades were accounted for in the statistics at the end of 2018 (within the larger category of producer coops) in Germany (ibid. p. 812). This makes about 14.9 percent of all coops (ibid. 2023, pp. 812, 815 and 801). Most of these are remnant production coops in agriculture (Landwirtschaftliche Produktionsgenossenschaften (LPG)) as well as in various craft branches stemming from the times of the German Democratic Republic and registered as cooperatives following re-unification (ibid. p. 820).

<sup>8</sup> According to Stappel, registered housing cooperatives numbered 1934 at the end of 2018. (ibid. p. 821).

996 and 2011, p. 23). The majority of cooperatives in agriculture, commerce, crafts industries, and among professionals as well as credit cooperatives aimed to promote their (entrepreneur) members by offering them purchasing, storage, marketing, processing and technical as well as administrative services. Although disrupted during the National Socialist era, the dominance of service rendering cooperatives continued in the West after World War II, while in East Germany, most of the economy, including the agricultural sector, was organized in worker type cooperatives, called production cooperatives. Production cooperatives, as well as pre-existing producer cooperatives were integrated into state-devised central production schedules, and production cooperative were given outstanding economic importance in East Germany (Münkner 1990). After German reunification (1990 ff) many of the East German production cooperatives dissolved, choosing non-cooperative type organisational structures or converting into service cooperatives. The quantitative dominance of service cooperatives in Germany was thus maintained, and the self-image of the cooperative sector pursued in Western Germany before reunification became the common credo for all of Germany:

“Cooperatives pursue the private economic goals of their members, they have no direct social or socio-political mission, they are therefore not aid organisations to pursue charitable endeavours, or even instruments for tackling problems of social, labour market, regional or development policy.” (Wülker 2000, p. 58, transl. by the author).

b. The Social Economy debate in the 1990s and early 2000s

In the wake of the Iron curtain coming down, and with countries who once had very different economic philosophies joining the European Union, it was suggested, mainly by the roman language member states, that associations, non-profits, cooperatives and mutuals be united into one economic sector, namely an *Économie Sociale (ES)*, *Économie Sociale et Solidaire (ESS)* or *Social (and Solidarity) Economy (SSE)* respectively.<sup>9</sup> The rationale was that all of these organisations were more likely to be pursuing the common good than capital interests. Declaring them to be a distinct sector would enable the state to treat them differently to the rest of the economy.

In the decades before and immediately after the turn of the millennium, Münkner repeatedly grappled with various European level policy papers derived from the concepts of an ESS/SSE and especially with the inclusion of cooperatives in this sector. His scepticism was mainly related to the issue of state interference and transnational, even transcultural levelling, since he firmly believed that cooperatives should primarily be obliged to support their members. If they also

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<sup>9</sup> In France an *Économie Sociale* made up of said organisations was first introduced in 1792 with a law Le Chapelier. For a brief history of the concept in Europe and the relative structures in Germany see Göler von Ravensburg 2023, pp. 997-999.



produced common good effects or intended to do so, such effects were or ought to be regarded as secondary, positive external effects.

At the same time, Münkner shared many of the social values inherent in social economy thinking. He did not believe that just economic development could be obtained solely with individualistic motivations combined with market-oriented allocation mechanisms. He was happy to defend the *German Social Market Economy* with its institutionalized ways of limiting the misuse of economic power and state interference (e.g. in wage disputes). He well recognized the shortcomings of economic systems and the hindrances to economic participation in many other parts of the world (e.g. Münkner in Bakhit et al 1996). Overall, he firmly believed in the innovative prowess of small and middle-sized enterprises and entrepreneurial freedom as a prerequisite for economic advances. According to him, cooperation, not amalgamation, could gain small and medium enterprises clout, while reconciling a company's economic success with higher degrees of economic justice throughout societies.

Münkner was not the only German who was sceptical of SSE concepts. Unlike social movements in other European countries, the German social movements and welfare producing organisations showed no affinity with the concept of the SSE. In Germany, the Welfare sector employs more people than the automobile industry and is regarded as the economic sector that is strongest on employment (Bundesarbeitsgemeinschaft freier Wohlfahrtspflege 2016, p. 3; BUNDESMINISTERIUM FÜR WIRTSCHAFT UND KLIMASCHUTZ 2024). The introduction of New Public Management into the procurement relationships between (Local) Government and the Welfare sector from 1992 onwards means that today the Welfare sector finances itself, predominantly from service fees, and has come to identify with what would be a literal translation of Social Economy, namely the term '*Sozialwirtschaft*'. Consequently, the sector is not socialistically inclined, nor does it describe all phenomena which are included in the term ESS in some countries, including France, Spain and Portugal. On the contrary, New Public Management was intended to decrease political steerage and controls on the Welfare sector and to strengthen its management along economic parameters (Kluth 2023, p.1051). This did not always increase the freedom of private sector (non-profit) organisations, but it does show that German socio-economic policies, since the 1990s, have tended to be more neo-liberal than socialist.

In addition, the wider philanthropic sector (which is huge in Germany) is diverse in missions ranging from sports to culture, and from political representation to welfare. Types of organisations, which identify with the term 'Third Sector' elsewhere, do not do so in Germany. Apparently, not even those in the philanthropic sector who engage with markets (e.g. certain foundations) can agree on any unifying societal motive for their actions, nor do they see the need to actively aim at being part of a singular sector. The trade union sector, after bad experiences for the last thirty years, hardly harbours any entrepreneurial, let alone public service ambitions. And the cooperative sector traditionally aligns itself with self-employed professionals, farmers and entrepreneurs, thus with the middle class. None of these categories of the German social movement maintains any real



connection with a structured public economy, beyond an occasional flirtation. All in all, the idea of a separate social economy sector alongside the state and the market economy has, for many reasons, historically met with little sympathy in Germany (Münkner 1995b).

Similarly, the concept of a *Social and Solidarity Economy* (SSE) never really featured in German academic circles, especially not in the economic and business disciplines. Even as the terms *Social Economy* or *Business for the common good* became associated less and less with a certain ideology or dogma, and lost some of their original normativity, Münkner was one of very few German scholars who looked into the concept in any depth.

c. Münkner's differentiated critique of a Social Economy

It may seem to be a little contradictory that Münkner, with his background and wealth of international experience (which is unique in German cooperative research), rejected the SE idea, while at the same time he considered the promotion of co-operatives, motivated by development policy, to be justifiable, even if such promotion might overturn one or more of the three core principles (Münkner 1995a, p. 34f.; *ibid.* 2023b, p. 979). A deeper look is needed to understand how his views can be reconciled.

For one, when concerning himself with the global South, Münkner always pointed to the need to accept different cultural practices, and to involve those concerned in policy making. He was also well aware of the many voids in governance and administrative systems, at times resulting in clientelism and overbearing rent-seeking. He focussed on the ecosystems for cooperative capacity building and developed a differentiated attitude towards public promotion and promotion through associations and federations. He saw it as crucial that any kind of promotion be based on the responsible authorities' profound understanding of the specific governance conditions and inherent incentive-contribution relationships for members, together with the assignment of suitable promoters (Münkner 1971, 1982, 2023a). His findings were also ground-breaking for cooperative promotion in Europe and Germany, especially his emphasis on the importance of community-building values and rules for cooperative governance, and thus for the sustainability of the essence, and results of cooperative business (most recently Münkner 2023b, p. 979).

For Germany, Münkner was opposed to a Social Economy as a special sector. He did not share the socialist-influenced hope placed in it, that solidarity and common-good orientation can actually replace profit orientation and individual egoism. Indeed, these were the arguments dominating the discourse within the EU in the 1990s and early 2000s. Münkner also doubted that an SE supported by the state with tax reductions and privileges was needed in Germany in order "... to achieve more economic democracy and to humanize the economy" (Münkner 1995b, p. 33). He provided reasons for the German view in detail in his 1995 publication *Économie sociale aus deutscher Sicht*. Apart from what Münkner described as a general German scepticism that "... the economic and social programme of the *Économie Sociale* will turn out to be a political programme aimed at altering the economic system." (*ibid.* p.34-35), he summarized two central arguments:

- The dynamic status of economically active associations. Large cooperatives might feel the need to enlarge their customer base, invest large amounts, and professionalize, and so move away from the classical ideal type towards a promotional or even commercial enterprise. At the other end of the spectrum, smaller, volunteer driven associations who lack these features will remain weak (addendum by author: too weak to have the intended social impact, and so unable to reach critical mass).
- The existence of rules that “... govern the labour market and the entire economic and social system and are effective in protecting employees against their employers or “capitalists” in Germany(transl. by the author) (ibid. p.35) including: the autonomy of trade unions in collective bargaining, statutory worker participation, a solid net of social security, as well as employee participation in the companies in which they work, the duty for employers to respect labour law and social ties attached to the means of production in their possession, as well as environmental regulations.

Looking at Germany in 1995, Münkner saw little space for an *Économie Sociale*/ Social Economy. Yet, he did concede that some welfare associations, ‘alternative’ enterprises,<sup>10</sup> as well as enterprises based on co-ownership with local governments and state supported Work Integration Enterprises (WISEs)<sup>11</sup> could be seen as comprising a German *Économie Solidaire* (expressing his opinion that this was the term that best suited the grouping). However, he considered the number of organisations as too low, and the group as too marginal, to justify any fundamental structural policies (ibid. p. 35). He conceded that the German socio-economic model is far from being perfect and named a few of its shortcomings. But he did not believe that a Social Economy would offer better solutions.

#### d. Developments since the turn of the millennium

It is now 30 years since Münkner published his rendition of the German view on the *Économie Sociale*, and 25 years since the (then) president of the *Deutsche Genossenschafts- und Raiffeisenverband*, Wülker, categorically excluded cooperatives from having any social or socio-political mission.

Since then, traditional social movements, as well as most of academia, continue to show little interest in the common-good contributions of the cooperative sector. However, rapid changes in the natural and social environments have resulted in the green, digital and sustainable transformation of the entire economy becoming a major structural task of our time (not just in

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<sup>10</sup> The term alternative enterprise was used in the late 70s and 80s of the last century to group enterprises with specific green, ethical or social objectives. Today, many authors (i.a. Birkhölzer) see them as a first wave of social enterprises.

<sup>11</sup> WISEs form a subgroup of what is considered a social enterprise today. It was them that the Social Economy debate in neighbouring European countries frequently centred on in the 1990s. Many of these were and are run successfully by welfare associations in Germany, and as agents for inclusion of persons with handicaps in the labour market they are state supported.

Germany). In addition, an unprecedented number of new German enterprises are founded primarily, if not exclusively, for the common good (Kiefl et al 2022, pp. 22-23).

The socio-political environment in which cooperatives operate has also changed significantly. Until recently, socialist political forces had lost strength in most of Europe, while fundamentally nationalist right-wing forces are on the rise in many EU member states. European regulations governing market and competition have had significant influences on the German Welfare system. In the 2000s most services became subject to quasi market competition with service fees and tendering. As an exemplary result, 30% (stationary) to 50% (ambulant) of aged care services have become commercialized. Welfare associations that are active in service fields and require significant investments (especially stationary services) have frequently hived-off social enterprises in the form of limited liability companies, albeit (to stay true to their mission) with a ‘for public benefit’ status (Göler von Ravensburg et al 2018, p.20). Service fees rather than grants make up most of the state finances to the Health and Social Service Sector, rendering these organisations to be market participants in the EU sense.

Major changes have also occurred within the cooperative sector. Since the turn of the millennium, federations have become much more active in public relations work. This fact, together with cooperative law reform in 2006 has resulted in more than one third of all currently registered cooperatives having been started since the beginning of the millennium (Stappel 2023, p.828). The cooperative law reform in 2006 introduced the promotion of social and cultural member interests, alongside or besides their business and household interests, as a justifiable *raison d’être* for German cooperatives. This has led to a significant change in the kinds of cooperatives being founded. At this stage, cooperative statistics do not provide data on the exact number of common-good oriented cooperatives. Yet, looking at the type of cooperatives which Stappel calls the ‘2000s cooperatives’ (ibid.), we may assume that cooperative bio-energy-villages, cooperative village shops, social cooperatives, cooperative inns, cooperatives for communal services are considered to be cooperatives for the common good, and therefore they are cooperative-type SEs. According to Stappel, their numbers added up to about 407 (ibid. p.827) by the end of 2018. This means that about 5.2% of all registered cooperatives in Germany have objectives reaching beyond member promotion.

My guess is that Münkner might think differently today about his assessment of critical mass (see Part 2c, above). However, he would have remained sceptical of any policy measures that take self-reliance and self-determination away from any segment of the cooperative sector.

Münkner might have also agreed with those demanding that further changes be made to the tax law regarding the eligibility of organisations to ‘for public benefit’<sup>12</sup> status and their treatment.

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<sup>12</sup> This term is used as a translation of “Gemeinnützigkeit”, which originates in tax law. It is not to be confused with the term “for the common good” (Gemeinwohlorientierung) which is used in the strategy. An enterprise for

Some changes, which make it easier for common-good oriented and public benefit registered enterprises, had taken place long before the strategy was adopted. For example, philanthropic organisations (who were the original target of the tax reduction status), may, under certain circumstances, accumulate some of their surplus for investments in the future, rather than having to spend all income within two years of accrual. On the other hand, larger associations have been made to draw up balance sheets and profit and loss accounts, improving their transparency. I believe that Münkner's would have approved both of these measures. However, more change is needed to protect cooperative members from mismanagement in public benefit coops.

Münkner was one of the first cooperative researchers, who supported the idea of Multi-Stakeholder Cooperatives<sup>13</sup>, a phenomenon that is widely spread in several other European countries (e.g. Kiesswetter 2023). Multi-Stakeholder Cooperatives are becoming increasingly attractive in Germany. For example, where cooperatives are founded to make citizens participate in the establishment, maintenance, co-production, or even the reclaiming of regional or local infrastructure and services for the public (Kluth 2023, p.1052-1056). The federations were, and to a certain degree are still sceptical of Multi-Stakeholder-Cooperatives, fearing that members might develop conflicting interests that would threaten the survival of the cooperative. This issue still needs to be considered in a wider context.

Eventually, after what seemed to some German politicians to be an endless European policy debate on the social (and solidarity) economy (most recently see, for example, State Secretary Sven Giegold at the 9th International EMES Conference in Frankfurt am Main on 12 September 2023, Video Semi-Plenary 2.1,<sup>14</sup> minute 15f.), the debate became productive. German policy makers, together with colleagues from a number of other European countries, finally achieved an EU wide understanding that Social Economy policies should not base their inclusion and exclusion criteria on legal forms, but on microeconomic characteristics, above all a statutory common good purpose, and at least a partial restriction on the distribution of surpluses or assets.<sup>15</sup> The EU Commission's *Action Plan for the Social Economy* (EU Commission 2021) is based on this common understanding, and provides a concrete roadmap for the national promotion of social entrepreneurship. Last but not least, Germany ratified the United Nations *Resolution on the Promotion of the Social and Solidarity Economy* (A/77/281) of 18 April 2023. This resolution has highlighted the importance of the social economy in promoting democracy and social justice, especially in times of crisis. It recognizes the vital role of the social economy in fighting poverty

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the common good can apply for and possibly obtain “for public benefit” status, yet it does not have to in order to benefit from measures foreseen in the strategy.

<sup>13</sup> Regrettably, is not possible to consider this issue in any depth. For further reading, see Röbl 2023, p. 516-529.

<sup>14</sup> This video is no longer publicly accessible but can be accessed through the author.

<sup>15</sup> In this context, phenomena at the organizational and sector level are now also receiving attention, such as impact investment or tech-based projects that promise to increase accessibility to artificial intelligence for the common good (Krlev et al 2023).

and reducing inequalities exacerbated by crises, such as the COVID-19 pandemic and climate change. Additionally, it emphasizes the social economy's contribution to labour standards, local community development, digital and green transitions, and democratic participation. These are all objectives that Münkner shared whole-heartedly.

As a party to the EU Action Plan and the UN resolution, Germany must now take national policy action. In a first step, the current German coalition government in September 2023 has adopted a *National Strategy for Social Innovation and Social Enterprises*, which explicitly addresses cooperatives.<sup>16</sup>

e. National policy context for the strategy

Many Germans, and young people in particular, are increasingly aware of the limits of both, market and state, as the dominant resource allocation systems. Seasoned commercial enterprises see an opportunity to make their supply chains more sustainable through products and services from social enterprises (Kiefl et al 2022, p. 7), "... three out of four company founders in this country consider positive social or ecological effects to be very important." (PWC et al 2023). 35% of all start-ups are 'green' in the sense of sustainability (Fichter et al 2023, p.6). Numerous start-ups are based on innovations that are specifically geared towards one or several of the multitude of transformation tasks that currently challenge our economy and society. To a certain extent, this also applies to many cooperative start-ups (e.g. Thürling 2019, Blome-Drees et al 2021, Kluth 2019 and 2022, Stappel 2022). However, according to the survey for the Social Entrepreneurship Monitor 2021-22 (N= 396) (Kiefl et al 2022, p. 84), only 1.7% of the social enterprises surveyed have adopted the legal form of a cooperative (Kiefl et al 2022, p.25).

Like most market economies, German investors are still focussed on expected returns. The achievement of social or ecological goals does not usually pay-off financially in the short term, as results are delayed and/or returns lie below market interest rates. Consequently, it is difficult for SEs, especially those that focus on social rather than technological innovation, to obtain loans and/or professionalize. There is also a lack of standardised impact measurement instruments making it difficult for impact driven investors or sustainability-oriented banks to assess their contributions to social or ecological transformation in monetary terms, or to compare investment opportunities (Zarah Bruhn, Commissioner for Social innovation, BUNDESMINISTERIUM FÜR BILDUNG UND FORSCHUNG, at the 9th International EMES Meeting in Frankfurt am Main on 12 September 2023, Video Semi-Plenary 2.1, Minute 30f.; for comparison Kiefl et al 2022, pp. 38-39).

The *National Strategy for Social Innovation and Social Enterprises* (SIGU) is intended to counter these and other obstacles experienced by SEs (BUNDESMINISTERIUM FÜR WIRTSCHAFT UND

<sup>16</sup> Hesse, Berlin, and Bremen have been promoting social entrepreneurship through their own programs since 2020. Hamburg, Saxony, Saxony-Anhalt and Schleswig-Holstein have also already launched support programs or broader strategies or are in the process of doing so (Kiefl et al 2022, p.7).

KLIMASCHUTZ and BUNDESMINISTERIUM FÜR BILDUNG UND FORSCHUNG 2023). The SIGU was developed jointly by the Federal Ministry of Economic Affairs and Climate Action (BUNDESMINISTERIUM FÜR WIRTSCHAFT UND KLIMASCHUTZ) and the Federal Ministry for Education and Research (BUNDESMINISTERIUM FÜR BILDUNG UND FORSCHUNG) during the last legislative period<sup>17</sup>. It addresses barriers for the development of all SEs, while also explicitly addressing cooperatives and foreseeing changes to the *Cooperatives Act* (ibid., in particular pp. 16 and 17). In the run-up, around 200 online statements were gathered from ‘stakeholders’ in the community, including twelve from registered, common-good oriented cooperatives. Some of the cooperatives also participated in the seven strategy development workshops that were held in autumn 2022 (BUNDESMINISTERIUM FÜR WIRTSCHAFT UND KLIMASCHUTZ 2023).

At the beginning of his remarks at the EMES conference (Video Semi-Plenary 2.1, minute 15ff), the then State Secretary at the Federal Ministry for Economic Affairs and Climate Action, Sven Giegold<sup>18</sup> explained that the strategy-object ‘*Gemeinwohlorientierte Unternehmen*’ matches the English term ‘Social Enterprise’. Literally translated ‘*Gemeinwohlorientierte Unternehmen*’ means ‘common-good oriented enterprises’<sup>19</sup>. The adoption of this term seems to be a way of ending a drawn out, and from a political perspective, unproductive terminological debate with the various German stakeholder groups.

Notwithstanding this terminological crutch, the strategy adopts the conceptual understanding of the European Social Enterprise concept.<sup>4</sup> Consequently, for the purposes of promotional policy, all companies are referred to as common-good oriented companies ...

- “for which the social or ecological, common-good orientated goal is the meaning and purpose of their business activity, which often manifests itself in a high degree of social innovation,
- the profits of which are largely reinvested in order to achieve this goal and
- whose organisational structure or ownership structure reflect this goal, as they are based on principles of co-determination or employee participation or are geared towards social justice.” (BUNDESMINISTERIUM FÜR WIRTSCHAFT UND KLIMASCHUTZ and BUNDESMINISTERIUM FÜR BILDUNG UND FORSCHUNG 2023, p. 4, transl. by author)

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<sup>17</sup> The new coalition government, constituted in early May 2025, has not yet published its attitude towards SIGU, while the old government published a positive implementation report at the end of April 2025 (Die Bundesregierung 2025).

<sup>18</sup> From 2009 to 2021 Sven Giegold was a Member of the European Parliament and spokesperson for ALLIANCE 90/THE GREENS. During this time, he also was a member of the Committee on Economic and Monetary Affairs and actively involved himself on the dialogue surrounding the EU Social Enterprise policy making.

<sup>19</sup> This is also explained in some detail in footnote 9, p. 4, Definitions Chapter in the English version of the Strategy document (Federal Government 2023).



This SIGU is the first policy document where a German government has politically recognised the innovations and contributions to the common good made by common-good oriented enterprises and cooperatives in Germany. The strategy creates a specific supportive framework for them, ensuring a new relationship between state economic policy and the social enterprise community, including parts of the cooperative sector.

The SIGU is not a major revision of general economic policy, nor is it a socialistic move. Nevertheless, it represents one element of several in a kind of a revised version of ‘*Soziale Marktwirtschaft*’, named a ‘*Öko-soziale Marktwirtschaft*’, which can be translated as ‘a socio-ecological market economy’ (e.g. Minister Robert Habeck, in: Federal Ministry of Economic Affairs and Climate Action & Federal Ministry of Education and Research (2023)). Other elements of this structural realignment are legislative limits against economic activities that exceed the natural and social carrying capacity of the planet, and pricings and incentives in response to negative and positive external economic effects (Giegold at the 9<sup>th</sup> EMES Int. Conference, Video Semi-Plenary 2.1, Minute 16ff). In this context, Giegold emphasised that Germany plays a key role in shaping the EU's Green Deal, which is hugely important for Europe. The Green Deal gives the state an important economic policy role. This role can only be fulfilled in democracies that have a (more or less) socially contained market economy, if they also have an economically active civil society. In Giegold's view, there is a great deal of potential for community-orientated enterprises and cooperatives in the eco-social transformation that is needed. However, apart from a few lighthouses, he considers their current contribution to be limited. At the same time, he concedes that the number of social enterprises in Germany is growing at a significant pace.

The past has shown us that socially unacceptable situations often lead to the emergence of new common-good oriented enterprises and cooperatives from within civil society. German cooperative literature frequently even talks of cooperatives being children of distress. The post-WWII social market economy in Germany thrived largely due to the ability of diverse civil society organizations, and enterprises with varied organisational structures, to forge numerous issue-based relationships and networks. In contrast, new social enterprises and common-good oriented cooperatives that have emerged since the 2000s, now face a highly legalized ecosystem, as well as economic policies, and bureaucratic and other hurdles, that makes it increasingly difficult for them to enter markets.

### 3. Strategy elements of special relevance to common-good oriented cooperatives

According to Giegold, the then government wanted to create equal access. This approach to the provision of government support would have been very important to Münkner. SIGU does not want to give preferential treatment, and it certainly does not want to allow young (cooperative) SEs to become permanently dependent on state support measures or subsidies (Giegold at the 9<sup>th</sup> EMES Int.

Conference, Video Semi-Plenary 2.1, Minute 18ff). Instead, it intended to ease access to existing support measures for (cooperative) SEs. It will only create new support measures where existing measures are not appropriate for (cooperative) SEs. This is to be done in a participatory way. For example, Giegold mentions that the new strategy envisages organising regular summits between ministries and organisations of the common-good economy and opening up funding programmes. While a special funding programme for local ‘incubators’ for (cooperative) social enterprises in the start-up phase already exists (Exist with Impact), a whole range of training programmes and a website dedicated to social innovation and social entrepreneurship was developed by the BUNDESMINISTERIUM FÜR BILDUNG UND FORSCHUNG/BMZ (<https://sigu-plattform.de/en/about/>).

SIGU comprises seven main principles, eleven fields of action and over 70 measures (Bundesregierung 2023). The following is a summary of its elements that are specifically or particularly relevant to cooperatives.

Field of action 1 - Optimise the policy environment and remove structural impediments - addresses, among other things, the review of the legal framework for companies and cooperatives, the regulation of the ‘for public benefit’ status,<sup>20</sup> cooperative employee-owned companies, and a new ‘for public benefit’ status for housing cooperatives. It reads explicitly: “We want to bring the law on cooperatives into line with the advances in digitalisation and improve the conditions for crowdfunding-based digital equity finance.” (Fed. Government 2023, p.16).

Field of action 4 - "Using public procurement as a lever" includes the promise of increasing the visibility of common-good start-ups in public procurement, thus encouraging more intensive use of public procurement to strengthen social innovation (p.27).

Field of action 5 - “Promotional instruments” includes the development of housing cooperatives with a funding programme for the acquisition of cooperative shares (Bundesregierung 2023, p. 31)<sup>21</sup>. In addition, there are a whole series of general funding measures that should be of interest to cooperatives that are oriented towards the common good, such as an expansion of start-up and funding advice, improved access to public funding measures for SMEs (already partially accessible through *REACT with impact* and *Exist*), and completely new avenues to access financing (e.g. p. 20 and p. 34-35). Field of action 5 also quotes an *Innovation programme for Business Models and Pioneering Solutions (IGP)* and the programme *Improvement of the Regional Economic Structure (GRW)* run in cooperation by Federal and State governments (p. 29).

Cooperative researchers may be interested in the promise to examine public innovation and funding programmes of the participating ministries regarding their openness to social innovations

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<sup>20</sup> In German: Gemeinnützigkeit, comparable to but not identical with non-profit or not for profit status in other countries; also see footnote 10.

<sup>21</sup> Homeowners have been able to raise (first time ownership) state subsidized loans, while cooperative members creating pooled housing ownership are not.

and social enterprises (p. 16). Cooperative researchers might also obtain funding for participatory research into new social practices and processes in local communities and in the care sector via the *Kommunen innovativ* programme (p. 30).

In addition, field of action 7 is specifically dedicated to research. Several key points might be especially interesting for cooperative researchers (p.39):

- funding guidelines on innovation impact assessment (INSIGHT), with the explicit intention of improving the data situation of the Economy for the Common Good (Gemeinwohlökonomie), and
- examination of the possibility of establishing satellite accounts in the national accounts to better capture the common good economy,
- the promotion of research and testing of social innovations for climate-neutral and liveable cities and municipalities in (inter-) regional real-world laboratories ("Transformation Cluster Social Innovations for Sustainable Cities and Regions"),
- junior research groups in socio-ecological research,
- Urban-Rural-Future funding programme "Sustainable mobility in regional transformation areas – in metropolitan regions, regiopolitan regions and intermunicipal alliances",
- promotion of a Citizens' Council "Joint transport turnaround in city and country" as part of the "Sustainable Urban Mobility" research agenda.

It remains to be seen how suitable these funding programmes will be in practice, and whether the strategy will help to create an awareness of the role of (cooperative) SEs in the German economy and society, and if they will motivate additional start-ups and ease their ability to scale up to make a significant common-good impact. It promises a more equal playing field for (cooperative) SEs in regard to 'for public benefit' status and/or tax benefits (if appropriate), as well as access to state supported financing and advice services that are already available to Small and Medium Enterprises (SMEs). At face value, all the proposed measures align well with the German social economy model. This is especially true because the strategy was developed through a participatory process, and there are several legal avenues for providing input during the lawmaking process.

It follows that cooperative federations need to take their role seriously in relation to mediation, networking and lobbying on behalf of their common-good oriented member cooperatives. Cooperative science and research will have the task of critically monitoring the use and impact of the funding instruments for cooperatives. In doing so, they can draw on a wide range of existing empirical and theoretical research.

#### 4. Bearings of the strategy for the wider German Cooperative Sector

From the beginning, many cooperatives have been orientated towards the common good (I. a. Blome-Drees 2023 with reference to and appreciation of the academic work of Werner Wilhelm

Engelhardt). The German cooperative movement has always recognized the societal role of cooperatives. If it didn't, the highest-level German cooperative federation, the *Deutsche Genossenschafts- und Raiffeisenverband*, as a member of the International Cooperative Alliance, would hardly have agreed to the cooperative principles adopted in 1995, with the seventh principle specifically encompassing care for the community: "Cooperatives work for the sustainable development of their communities through policies approved by their members" (ICA 1995). The strategy now formally recognizes that in certain type of cooperatives, these objectives may be of prime importance or even their *raison d'être*. There is no suggestion that these initiatives would have to be initiated by the state or given special incentives to start or grow. Nothing in the strategy is in conflict with members acting from free will, regardless of whether their objectives align to certain social or economic policy objectives.

Ex ante, the strategy to promote social innovation and social enterprise does not contradict the essential cooperative principles of self-help, self-responsibility and self-administration. It is designed as a procedural strategy that does not touch the previous regulatory embeddedness of cooperatives in the private sector, nor the current self-image of the majority of cooperatives. It only concerns a small portion of all cooperatives. It places cooperatives with a common-good orientation on equal terms with other legal and organisational forms of entrepreneurship for the common good. It also creates greater and more even competition. An example is the promise to do away with impediments to obtaining the 'for public benefit' status which is a prerequisite for tax savings. Another example is giving members who want to invest into a housing cooperative equal financial conditions to non-cooperative buyers, a move that has immediate social benefit in a time when there is a critical shortage of affordable housing.

The Key Issues paper by the Federal Ministry of Justice on the comprehensive digitization of cooperatives and the associated modernization and strengthening of the legal form, was published in July 2023, before the strategy was released (BUNDESMINISTERIUM DER JUSTIZ 2023). This meant that one important part of field of action 1 (legal changes) specific to cooperatives was already under way when the strategy was published, with stakeholders having been asked to comment on the intention to lower the thresholds in the Start-up phase for all cooperatives (e.g. pre-start-up audit etc).

Cooperative stakeholders might join future discussions on the 'for public benefit' legislation (also field of action 1) and access to public procurement (field of action 4). Issues which had been neglected by cooperative federations. The same applies to field of action 5 ("Promotional instruments") which includes the development of housing cooperatives with a funding programme for the acquisition of cooperative shares (Bundesregierung 2023, p. 31). Housing Coops have been waiting for this for a long time (Bundesverband deutscher Wohnungs- und Immobilienunternehmen e.V. (GdW) 2021). Cooperatives can also apply for any of the funding and coaching services offered to all SE. The strategy outlines several funding possibilities which should also be accessible for research on cooperatives for the common good (see part 3). In summary, the strategy does not

directly affect the majority of cooperatives, but it gives common-good cooperatives better access to services which already exist or will also be made accessible to other SEs.

## 5. Cooperative research desiderata resulting from common- good oriented public policy

Cooperatives or social enterprises in other legal forms will not save the world in the short term. Nevertheless, they lie at the core of an economically active civil society, and their importance for preserving democracies facing internal and external challenges is (still) underestimated.

I would like to make some practical suggestions for improving the cooperative research agenda in this respect.

- Political support for (cooperative) enterprises that are oriented towards the common good should be accompanied by critical economic and social research. The grounded theory-based, qualitative-empirical dissertation research by Rüdiger Hein, which was published in 2021 under the title "Typical Social Entrepreneurship" (Hein 2021), is a good example of what this could look like. The author provides many methodological and substantive points of reference that are also relevant for the empirical study of cooperatives oriented towards the common good. This sort of "bottom-up" research will help to clarify how politics, legislation, public and private support, counselling and financing services influence the thinking and actions of members, boards and entrepreneurs.
- Funding may be accompanied by public mandates. This is frequently the case in sector policies aimed at solving particular economic shortcomings and is currently the case in regard to the provision of affordable housing. A dependency on finance which comes with a public mandate bears the risk of coercive isomorphism. DiMaggio and Powell described the compulsion of organisations to adopt similar structures on account of this as early as 1983 (DiMaggio and Powell 1983). Or there may even be a change in objectives (mission drift). A particularly interesting research question could be whether and under what conditions cooperative decision-making structures offer a certain degree of immunisation from this risk.
- It may be useful for cooperative researchers to take a fresh look at earlier cooperative discourses on the prerequisites for sustainable membership commitment and solid performance relationships between members and the cooperative enterprise (e.g. Dülfer 1984). In this context, cooperative science might also take a (self-)critical look at why it has apparently not yet succeeded in making progress with regard to methods for reporting and accounting of member support (Wiegner 2018). It is possible that access to the field is easier in the younger generation of explicitly common-good orientated cooperatives. With politicians now calling for the development of a monetarised and standardisable impact measurement toolkit, these lessons from the past may unveil valuable methodological and integral lessons.

- Connections can presumably be found in and for cooperative science on the ‘hybridisation’ of organisational patterns, including the recognition by some of a ‘new normality’ in many sectors and enterprises (Evers 2017, further e.g. Blome-Drees and Moldenhauer 2021).
- Cooperative science certainly has something to offer on the third constitutive SE characteristic that is inherent in the strategy, namely organisational structures and ownership relationships that ‘reflect’ the common-good oriented goal and are (to be) ‘based on principles of co-determination or employee participation or geared towards social justice’ (BUNDESMINISTERIUM FÜR WIRTSCHAFT UND KLIMASCHUTZ and BUNDESMINISTERIUM FÜR BILDUNG UND FORSCHUNG 2023, p. 4). Field research comparing cooperatives with differently organised SEs will be useful. Cooperative science can also make a substantial contribution to the preservation of economically usable commons (e.g. Micken and Moldenhauer 2021).

At the 9<sup>th</sup> EMES Int. Conference, Sven Giegold made an impressive plea for the development of common positions among all common-good oriented enterprises, as this is the only way to motivate political change. The difficulties this presents in reality for those working in secondary and tertiary level federations, representing different traditions of common-good orientation (philanthropist, welfarist, trade unionist, cooperative, mutualist etc.) has already been discussed. However, among the many new SEs, new alliances and networks are occurring. One example is SEND, which is already proving to be politically effective with its annual SE Monitor (Giegold in Kiefl et al 2022, p. 8). A function that (cooperative) research can and should fulfil, is to generate, analyse and interpret objective data to assist certain sub-groups to formulate their concerns for further policy development. This will help to forge alliances. It is also likely that there will be shared interests between SEs that are organised and constituted along cooperative lines and those that are organised and constituted differently. Perhaps the most critical issue will be the call by policy makers for standardised and pecuniary methods of impact measurement (Federal Government 2023, pp. 42-43; Field of action No. 9). Other issues that may arise include the admissibility of digital procedures for committee elections, alternative individual decision-making processes and administration, as well as access to loans and conditions of contract law.

The constitution of an ‘economically active civil society’ reaches far beyond this strategy and will remain in the making for years to come. If cooperative practitioners and scholars do not want an economically active civil society to remain a largely ‘cooperative-free zone’, they will need to closely monitor (and actively engage in) this dynamic.

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# The Centrality of Member, rather than General Interest, in the Co-operative Legal Identity

Keywords: Co-operative identity, co-operatives, co-operative definition, general interest co-operative.

## Abstract

Member interest is an important structural element of co-operative identity. The rise of the ‘general interest co-operative’ has challenged this view. Drawing on work by Professor Hans-H Münkner, this paper restates the centrality of member interest rather than general interest. The points of difference in the structure of investor-owned firms and general interest organisations, compared to co-operatives, is explored by looking at who owns those entities, who benefits from them, and how that benefit is obtained. This prompts the question of whether a co-operative can exist mainly for that wider community benefit, or ‘general interest’. As the late Professor Hans-H. Münkner noted, in organisational law, “the object determines the form”.<sup>1</sup> This paper starts by looking at the definition and purpose of a co-operative, and the underlying nature of the relationship between a co-operative and its members. It then considers co-operatives in the context of other types of organisations – particularly those focused on public or community benefit. The characteristics of the ‘general interest co-operative’ (GIC) as set out in the *Principles of European Cooperative Law* (PECOL),<sup>2</sup> are explored in more detail, followed by a critique. The theoretical debate is then grounded in practice, using the United Kingdom as an example.

## 1. Introduction

Co-operatives are enterprises owned and controlled by their members, who benefit from their interaction with it. Co-operatives can and often do deliver benefits for those beyond their membership – such as the community. The same can be true of other types of business, and is a requirement for some organisations, such as charities. Being democratic and ‘doing good’ is an incomplete definition of a co-operative and describes other types of organisations too. Similarly, providing benefit to those who have control of an entity is an inadequate description of a co-operative because it overlooks how in a co-operative, unlike an investor-owned firm, the benefit is derived from participation rather than capital investment. Member interest is therefore a structural element in a co-operative and is as important a part of co-operative identity as

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<sup>1</sup> Hans-H Münkner, ‘How Co-operative are Social Co-operatives?’ (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 48.

<sup>2</sup> Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017).

democratic member control. General interest co-operatives, as articulated by some, do not fall within accepted articulations of co-operative identity because they lack the centrality of member interest.

## 2. Defining a co-operative

The International Co-operative Alliance (ICA) provides a definition:

A cooperative 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.<sup>3</sup>

This definition is widely accepted, having been recognised by the International Labour Organization (ILO) through its inclusion in Recommendation 193.<sup>4</sup> The definition is the minimum statement of a co-operative.<sup>5</sup> The definition is accompanied by three interrelated parts, which are intended to carry equal weight:<sup>6</sup>

- Co-operative values
- Ethical values
- Co-operative principles

The co-operative values are most relevant here:

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity.<sup>7</sup>

The co-operative principles are guides for putting the values into practice and include:

Voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; and concern for community.<sup>8</sup>

Before the ICA definition, myriad definitions existed.<sup>9</sup> However, it has been argued that “The leading co-operative principle and maxim for co-operative work was, and still is, *member-promotion* (*original emphasis*).”<sup>10</sup> Drawing on a historical perspective and looking at the foundations of co-operatives, it has been suggested that “...all founding fathers of the co-operative movement agreed that co-operatives are

<sup>3</sup> International Co-operative Alliance, ‘Cooperative identity, values & principles’ <<https://ica.coop/en/cooperatives/cooperative-identity>> accessed 28 September 2024.

<sup>4</sup> International Labour Organization, *Recommendation 193 on the Promotion of Co-operatives*.

<sup>5</sup> Ian MacPherson, ‘Background paper to the ICA Statement’ (1996), *International Co-operative Information Centre*.

<sup>6</sup> Ian MacPherson, ‘Co-operative Principles [Keynote Presentation]’ (1995) *Review of International Co-operation* 88(4), 18.

<sup>7</sup> International Co-operative Alliance, ‘Cooperative identity, values & principles’ <<https://ica.coop/en/cooperatives/cooperative-identity>> accessed 28 September 2024.

<sup>8</sup> Ibid

<sup>9</sup> Hans-H Münkner, *Co-operative Principles and Co-operative Law* (2<sup>nd</sup> edn LIT 2015), Ch 1.

<sup>10</sup> Werner Grosskopf, Hans-H. Münkner, Günther Ringle, *Our Co-operative*, (2<sup>nd</sup> edn LIT 2016), 8.

based on self-help and accordingly are self-governed and characterised by self-responsibility.”<sup>11</sup> These have been distilled into the three ‘S’ principles of ‘self-help’, ‘self-administration’, and self-responsibility’.<sup>12</sup>

#### a. Member relationships

The nature of the relationship between a co-operative and its members is of central importance. Members may be workers – receiving a job and salary; consumers – purchasing goods or services; or producers – such as farmers supplying their produce to be marketed and sold. In some co-operatives, there are multiple categories of member e.g. workers and consumers. These are known as ‘multi-stakeholder co-operatives’.<sup>13</sup>

There are different conceptualisations of the roles of members:

- Members as: owners, controllers, users, and beneficiaries.<sup>14</sup>
- Member roles of: user-owner, user-controller, and user-benefit.<sup>15</sup>
- Members roles of: patron, investor, owner, and as a member of a community of purpose.<sup>16</sup>

The theme that runs through these descriptions of the member role is the member transacting with the co-operative – in the broad sense, which would include supplying, purchasing, working, etc., and receiving benefit from the co-operative. Münkner articulated:

The position of members of a co-operative society is characterized by their dual capacity as a member of the co-operative group and user of the services to be rendered by the co-operative enterprise.<sup>17</sup>

The nature of the relationship between a member and the co-operative has been considered a ‘structural element’ of a co-operative:

Where an investor may also be the user of the services provided by a stock company or be the buyer/ seller of its products, this position is rather accidental. In cooperatives this position is, in principle, a structural element.

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid, Ch1.

<sup>13</sup> Other phrases are found elsewhere, such as ‘integral co-operatives’, ‘multi-purpose co-operatives’, ‘solidarity co-operatives’ etc. The use of ‘multi-stakeholder’ here is adopted for consistency with: International Labour Organization, *Statistics of Cooperatives* (ILO 2020).

<sup>14</sup> Adrien Billiet, Johan Bruneel and Frédéric Dufays, ‘Exit, Voice, or Both: Why Organizations Engage with Stakeholders’ (2023) *Business and Society* <<https://doi.org/10.1177/00076503231182612>> accessed 28 September 2024, 5-6; Gert van Dijk, Panagiota Sergaki, George Bourakis, *The Cooperative Enterprise*, (Springer 2019), 67-68.

<sup>15</sup> Patrick Mooney, Thomas W Gray, *Cooperative Conversion and Restructuring in Theory and Practice* (Research Report 185) (USDA 2002); Gert van Dijk, Panagiota Sergaki, George Bourakis, *The Cooperative Enterprise*, (Springer 2019).

<sup>16</sup> Tim Mazzarol, Richard A. Simmons and Elena Mamouni Limnios, ‘A Conceptual Framework for Research in Co-operative Enterprise’ (2011) *CEMI* <<http://dx.doi.org/10.2139/ssrn.2015641>> accessed 28 September 2024

<sup>17</sup> Hans-H Münkner, *Ten Lectures on Co-operative Law* (2<sup>nd</sup> edn, LIT 2016), 36-37.

Members are the main users of the services of their cooperative or are the majority of the workforce in a workers' cooperative.<sup>18</sup>

This leads us to the nature of the member benefit.

#### b. Member benefit

The ICA definition refers to a co-operative meeting the “economic, social and cultural needs” of its members. Münkner explained:

The object of co-operative societies is pursuing a long-term, mainly economic purpose, combined with additional social and/or cultural objectives.<sup>19</sup>

There are detractors from this view – arguing instead that there is ‘one clear aim’ of a co-operative, and that is to meet the economic needs of its members.<sup>20</sup> The majority view, and that reflected in the ICA Statement, is that co-operatives are intended to meet the economic, social and cultural needs of members.<sup>21</sup>

#### c. Community benefit

The fact that co-operatives serve the needs of their members does not mean that they cannot or do not meet the needs of others too. Münkner was clear on this:

This does not exclude that co-operatives – according to the 7<sup>th</sup> co-operative principle of the ICA (concern for community) – also take social responsibility for the fellow citizen and for the region in which they operate, if the members agree and approve.<sup>22</sup>

While co-operatives meet the needs of their current members, they should also have future members in mind:

Current members have a legacy responsibility to ensure that the co-operative survives, as a strong and vibrant business enterprise, for the benefit of future generations of members and the wider community the co-operative serves.<sup>23</sup>

<sup>18</sup> Hagen Henry, *Guidelines for Co-operative Legislation* (3<sup>rd</sup> edn ILO 2012) 37-38; Ian Adderley, “Principle 1: Able to use the Services.” *Journal of Co-operative Studies* 52(2), 25-27.

<sup>19</sup> Hans-H Münkner, ‘How Co-operative are Social Co-operatives?’ (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 62.

<sup>20</sup> Johnston Birchall, *The Governance of Large Co-operative Businesses* (2<sup>nd</sup> Ed, Co-ops UK 2019), 27.

<sup>21</sup> Sonja Novkovic, Anu Puusa, Karen Miner, ‘Co-operative identity and the dual nature: From paradox to complementarities’ (2022) *Journal of Co-operative Organization and Management*, Vol 10(1) <DOI <https://doi.org/10.1016/j.jcom.2021.100162>> accessed 28 September 2024; Ian Adderley, ‘Don’t forget the definition: The importance of ‘and’ versus ‘or’ (2019) *Journal of Co-operative Studies*, 52(2), 19-21.

<sup>22</sup> Werner Grosskopf, Hans-H. Münkner, Günther Ringle, *Our Co-operative*, (2<sup>nd</sup> edn LIT 2016), 186.

<sup>23</sup> International Co-operative Alliance, *Guidance Notes to the Co-operative Principles* (ICA 2015), 37.



Future members must come from somewhere, and the community in which the co-operative operates is the logical place to find them. Having positive presence or being ‘salient’ within the community is considered to be an important aspect for a successful co-operative.<sup>24</sup>

The value of self-help can be distinguished from a narrow form of ‘self-interest’. Solidarity sits alongside self-help as a value. MacPherson, the architect of the ICA Statement, explains that solidarity “ensures that co-operative action is not just a disguised form of limited self-interest”, noting too that “the general interest is always kept in mind”.<sup>25</sup>

#### d. Co-operative Purpose

This leads us to purpose. Münkner explained:

The fundamental criterion for classification as a co-operative society is the purpose of the organisation: for whom is the co-operative set up? In whose interest is it acting? [...] There is a fundamental difference between a co-operative society set up by and for the members who act for self-help but also in the interest of others and an organisation set up for general benefit.<sup>26</sup>

This difference can be explored by comparing and differentiating co-operatives from other types of organisations.

### 3. Differentiating co-operatives

There are lots of types of organisations, particularly when looking internationally. At a high-level, these can be split between:

- organisations pursuing ‘capital interest’ – e.g. the conventional ‘investor-owned firm’. This includes companies – both private and publicly listed, family-owned businesses, partnerships etc.
- those pursuing the ‘general interest’ – such as the State/government, charities, etc.
- organisations pursuing ‘mutual interest’ – like co-operatives and mutuals (e.g. building societies, friendly societies, etc.).<sup>27</sup>

A framework set out by Gui helps explore differences by considering a ‘beneficiary’ category – i.e. those receiving benefit; and the ‘dominant’ category – i.e. those with control.<sup>28</sup>

<sup>24</sup> Tushaar Shah, *Making Farmers’ Co-operatives Work* (Sage 1995), 47-48.

<sup>25</sup> Ian MacPherson, “Background paper to the ICA Statement”, (1996), *International Co-operative Information Centre*.

<sup>26</sup> Hans-H Münkner, *Ten Lectures on Co-operative Law* (2<sup>nd</sup> edn, LIT 2016), 15-16.

<sup>27</sup> Using the three ‘principles of interest’ as articulated by Defourny and Nyssens: Jacques Defourny, Marthe Nyssens, ‘Fundamentals for an International Typology of Social Enterprise Models’ (2017) *Voluntas* **28**, 2469–2497 <<https://doi.org/10.1007/s11266-017-9884-7>> accessed 28 September 2024.

<sup>28</sup> Benedetto Gui (1991) The Economic Rationale for the “Third Sector” *Annals of Public and Cooperative Economics*, 62(4), < <https://doi.org/10.1111/j.1467-8292.1991.tb01367.x>> accessed 28 September 2024 as applied in Jacques Defourny, Marthe Nyssens, and Olivier Brolis, ‘Testing Social Enterprise Models Across the



- In the ‘mutual interest’ category, such as in a co-operative, the beneficiary and the dominant categories will be populated by the same people. For example, in a worker co-operative, the workers control it, and they are also the intended beneficiary of the business, through the provision of jobs, salaries, and sharing of distributable profits.
- A conventional company – in the ‘capital interest’ category, also has a coincidence of beneficiary and dominant category membership. The business is owned/controlled by, and run for, the benefit of investors. The point of difference between the company and the co-operative in this case rests in the nature of the benefit accrual, and dominant control. The investor-owned company distributes benefit, and control, based on capital investment by that investor (e.g. votes and dividends based on the number of shares that investor has purchased). In a co-operative, benefit derives from a member’s participation in the business, and control would usually be equal between members, reflecting their status as joint-owners of the enterprise.
- In the ‘general interest’ category, we can take the example of a charity. In a charity the beneficiaries may, for example, be the homeless or those in poverty. The dominant category would likely be the trustees of the charity, who exercise control. As trustees are not usually beneficiaries, there is no coincidence of beneficial and dominant categories. The two categories are populated by different people. Where the beneficiaries of an organisation are not its controllers, it follows that there may be a greater inherent risk that the needs of those beneficiaries are not met.<sup>29</sup> In the ‘general interest’ category, there are examples of organisations who are controlled democratically by members. In the UK, some charities have a membership structure, with members voting to appoint or remove the trustees of the charity (see later).<sup>30</sup> Those members may be supporters who are not generally beneficiaries. Members in a charity are effectively required to operate as a fiduciary, voting in the interests of the charity as a whole, rather than for their own benefit.<sup>31</sup> It is therefore still the case here that there is no overlap between those who populate the ‘dominant’ or ‘beneficiary’ category. This is a point of difference from co-operatives.

This framework helps to highlight the varying points of difference between co-operatives and investor-owned firms, and between co-operatives and general interest organisations. Münkner articulated this distinction:

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World: Evidence From the “International Comparative Social Enterprise Models (ICSEM) Project” (2020) *Nonprofit and Voluntary Sector Quarterly*, 1-21.

<sup>29</sup> Benedetto Gui (1991) The Economic Rationale for the “Third Sector” *Annals of Public and Cooperative Economics*, 62(4), < <https://doi.org/10.1111/j.1467-8292.1991.tb01367.x>> accessed 28 September 2024.

<sup>30</sup> Charity Commission for England and Wales, “Membership charities (RS7)” (2004), < <https://www.gov.uk/government/publications/membership-charities-rs>> accessed 28 September 2024.

<sup>31</sup> Ibid.

A joint action to do business to help others is not a co-operative action, but a benevolent action. A joint action to do business with members and non-members alike with the aim to distribute the economic results between the members as owners is not a co-operative action but ordinary business.<sup>32</sup>

Some organisations may pursue more than one interest. As set out earlier, co-operatives can and do benefit their community as well as their members. Investor-owned companies may choose to donate funds to charity or carry out work in their communities too. The difference goes back to purpose:

There is a decisive difference between positive external effects being by-products of co-operatives operating successfully in promoting their members' interests and organizations in which positive external effects are part their institutional objectives.<sup>33</sup>

It is therefore important to look first at the primary purpose of the organisation. Second, consideration of how funds are used, and for whose benefit, will either confirm that purpose, or cause it to be questioned. It is helpful to consider the questions in that order because, for instance, a charitable organisation should still have delivered public benefit even if it made a loss that year. The benefit will have been delivered through its activity. If it made a surplus, its use of that surplus to carry out more charitable work would support the conclusion that it had a primary purpose of public benefit. By contrast, if it distributed its funds to its supporters, its status as a charity would quickly be questioned.

Similarly, in a co-operative, members should benefit throughout the year by their participation in the business activity of the co-operative. They may be receiving a service from the co-operative throughout the year. Whether the co-operative has a distributable surplus, and how it uses it, is a secondary question. Where there is a distributable surplus, it is then open to the members to decide what to do with it. They may choose to distribute some of the surplus as a patronage dividend,<sup>34</sup> or donate it to the community in some way. Where members are making that choice, neither course of action undermines its status as a co-operative.

#### 4. General interest co-operatives

The Principles of European Cooperative Law (PECOL) is a valuable text that has been put together by co-operative legal scholars, including Professor Münkner.<sup>35</sup> It brings together a set of co-operative law principles, or 'meta principles' drawing on comparative perspectives throughout Europe.<sup>36</sup> Each chapter

<sup>32</sup> Hans-H Münkner, *Co-operative Principles and Co-operative Law* (2<sup>nd</sup> edn LIT 2015), 7.

<sup>33</sup> Hans-H Münkner, 'How Co-operative are Social Co-operatives?' (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 72.

<sup>34</sup> A dividend based on an equitable formula linked to the amount of trade a member has carried out with the co-operative, distinct from a dividend based on how many shares a member owns (though there are distinctions in some agricultural co-operatives which are not relevant to this discussion, and outside the scope of this work).

<sup>35</sup> It has, for instance, informed a Law Commission consultation in the UK: Law Commission, *Review of the Co-operative and Community Benefit Societies Act 2014*, (Law Com Consultation Paper No 264).

<sup>36</sup> David Hiez, 'Introduction' in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 11.

opens with sections that could be translated into co-operative law, followed by commentary explaining them. It is principally focused on co-operatives with ‘mutual purpose’ in a manner consistent with the ICA Statement. It does however also set out distinctly a different type of co-operative, referred to as a ‘general interest co-operative’ (GIC).

The GIC was articulated in PECOL as a reflection of developments (mainly relating to social co-operatives) within various European Union (EU) states, including Italy, Portugal, France and Spain.<sup>37</sup> Distinct from pursuing a ‘mutual purpose’:

GICs differ from other cooperatives primarily in relation to their stated purpose, which is to satisfy not the interests of the members (through transactions with them as consumers, providers or workers of the cooperative enterprise) but ‘the general interest of the community’.<sup>38</sup>

Interestingly, the GIC is not confined to exclusively delivering in the general interest of the community. GICs can act “mainly in the general interest of the community”<sup>39</sup> It is explained that, in the same way that co-operatives are ‘mainly’ for member benefit, GICs are:

mainly outward oriented, which means that they may also, though not principally, act in the interest of their members.<sup>40</sup>

As well as the different purpose, there are other requirements in PECOL set out for co-operatives that do not apply to GICs:

- a requirement to limit the amount of non-member transactions is disappplied,<sup>41</sup>
- surpluses cannot be distributed to members,<sup>42</sup>
- members are not required to participate economically in the GIC.<sup>43</sup>

Other more general requirements that apply for co-operatives also apply for GICs. For example:

- open membership,<sup>44</sup>

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<sup>37</sup> Antonio Fici, ‘Definition and Objectives of Cooperatives’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), Ch 1.

<sup>38</sup> Ibid, 27.

<sup>39</sup> Ibid, 19.

<sup>40</sup> Ibid, 31.

<sup>41</sup> Ibid, 45.

<sup>42</sup> Gemma Fajardo and Deolinda Meira, ‘Cooperative Financial Structure’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 89.

<sup>43</sup> Ian Snaith, ‘Cooperative Governance’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 54-55.

<sup>44</sup> Ibid, Ch 2.

- democratic governance is required, and is said to be “perhaps the main feature identifying the organisation as a cooperative”,<sup>45</sup>
- Education and information provision.<sup>46</sup>

While it is assumed that they may choose a multi-stakeholder model, where different types of members may exist (employees, users, suppliers, investors), there is no requirement to be structured in that way.<sup>47</sup>

We can therefore surmise that GICs are businesses operating mainly for the general interest of the community, owned and democratically controlled by their members. Their membership is generally open. Members may or may not be beneficiaries, and do not need to participate economically in the GIC. Its funds cannot be distributed to members.

## 5. Critique of the general interest co-operative

The GIC will be critiqued briefly on the text of PECOL as it stands, and then in the context of whether it fits within the ICA Statement.

### a. Are GICs for the general interest of the community?

A conceptual challenge with the construct of the GIC is that it operates ‘mainly’ for the general interest of the community and can also benefit members. This calls into question its purpose. While profits cannot be distributed to members, this leaves open the question as to the permissible extent of member benefit. This wide scope appears to depart from the more tightly defined general interest purpose of the Italian social co-operatives that the GIC drew its inspiration from.<sup>48</sup>

It is difficult to only ‘part-do’ community benefit. The ‘community’ is inherently in a difficult position when it comes to enforcing the benefit it should receive, usually leaving a role for the State in terms of determining what is in the community interest and having powers to enforce it.

### b. Are GICs co-operatives?

Münkner asked of GICs, “are such organisations genuine co-operatives?”<sup>49</sup> and noted it had become “increasingly difficult to distinguish authentic co-operatives from false co-operatives”.<sup>50</sup> There are a range

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<sup>45</sup> Ibid, 48.

<sup>46</sup> Ibid, Ch2.

<sup>47</sup> Ibid, 65-66.

<sup>48</sup> Antonio Fici, ‘Definition and Objectives of Cooperatives’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 28.

<sup>49</sup> Hans-H Münkner, *Co-operative Principles and Co-operative Law* (2<sup>nd</sup> edn LIT 2015), 30.

<sup>50</sup> Ibid, 32.

of views. Some see GICs as definitively being a type of co-operative.<sup>51</sup> Others give more voice to the challenges and seek to provide an inclusive definition.<sup>52</sup> The PECOL text itself summarises the extent of overlap with the ICA definition:

If a business entity is to be defined as a cooperative at all, it must be subject to member control, and in the absence of the latter a general interest association or society will not be a cooperative. The distinction concerns the purpose, not the governance structure.<sup>53</sup>

There is a danger in reducing the meaning of ‘co-operative’ or ‘co-operative principles’ to mean simply ‘democratic’, or ‘democratic and doing good’. As outlined earlier in relation to the ICA Statement, the definition is the minimum criteria, with the principles acting as guidelines to put the values into practice.

Co-operatives do not have a monopoly on democracy. Publicly listed companies operate democratically – based on one-share-one-vote. Mutuals more generally operate democratically based on one-member-one-vote. In the UK, there are charities and other community organisations that operate based on one-member-one-vote too.<sup>54</sup>

To claim every organisation doing good work for the general interest of the community is a co-operative if it operates democratically could be an arguable position to take. This can however only be achieved by using a definition of ‘co-operative’ other than the ICA definition. This approach is not without precedent. Hansmann effectively does just this in describing “nearly all privately-owned firms” as ‘capital co-operatives’, by reducing the definition of a co-operative to “a firm that is owned by (a subset of) its patrons”.<sup>55</sup>

The missing component in the GIC model is the nature of the relationship between the member and the GIC. There is potential for a lack of alignment between the beneficiary, and controller (see earlier). From a definitional perspective, this can be best viewed through the lens of the ICA value of ‘self-help’. Münkner draws this contrast:

The basic difference between co-operatives and general interest organizations is that co-operatives are working according to the motto “we for us” and general interest organizations are working according to the motto “we for you”.<sup>56</sup>

<sup>51</sup> Antonio Fici, ‘Cooperative Identity and the Law’ (2012) Euricse Working Paper, N.023|12.

<sup>52</sup> David Hiez, ‘The General Interest Cooperatives: A challenge for cooperative law’ (2018), *International Journal of Cooperative Law*, Vol 1(1), 93.

<sup>53</sup> Ian Snaith, ‘Cooperative Governance’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 48.

<sup>54</sup> Charity Commission for England and Wales, “Membership charities (RS7)” (2004), <<https://www.gov.uk/government/publications/membership-charities-rs>> accessed 28 September 2024.

<sup>55</sup> Henry Hansmann, All firms are cooperatives – and so are governments, *Journal of Entrepreneurial and Organizational Diversity*, Vol 2(2) (2013), 2.

<sup>56</sup> Hans-H Münkner, ‘How Co-operative are Social Co-operatives?’ (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 54

The antecedents to the GIC are often cited as the social co-operatives in Italy, from the 1990s onwards, with subsequent examples in Portugal, France, and Canada.<sup>57</sup> It is however important to draw a distinction here. The social co-operatives are not all structured in the same way. Münkner explains:

it is important to understand the difference between social co-operatives and general interest organizations. The borderline between these two types of organization is the presence or absence of the self-help element: Another important criterion for distinguishing co-operatives from general interest associations is the composition of the membership group.<sup>58</sup>

Social co-operatives are structured as multi-stakeholder co-operatives.<sup>59</sup> The 'composition of membership group' point speaks to who can become a member of the co-operative, and the categories of member within that co-operative. For example, a co-operative may have multiple categories of member such as 'supporter', 'user', 'worker', 'investor'. Münkner suggests:

A co-operative consisting only of investing members or promoting members cannot be a genuine co-operative society.<sup>60</sup>

In the example of solidarity co-operatives in Canada, there must be several categories of member including users and employees.<sup>61</sup> An analysis of the social co-operative legislation in different countries is beyond the scope of this work and has been carried out elsewhere.<sup>62</sup>

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<sup>57</sup> Antonio Fici, 'The Essential Role of Cooperative Law' (2014) *The Dovenschmidt Quarterly* 147 < doi: 10.5553/DQ/221199812014002004003> accessed 28 September 2024; David Hiez, 'The General Interest Cooperatives: A challenge for cooperative law' (2018), *International Journal of Cooperative Law*, Vol 1(1), 93. Though Münkner instead draws origins back to 1960s India, with the *Maharashtra Co-operative Societies Act 1961*: Hans-H Münkner, *Ten Lectures on Co-operative Law* (2<sup>nd</sup> edn, LIT 2016), 16.

<sup>58</sup> Hans-H Münkner, 'How Co-operative are Social Co-operatives?' (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 39.

<sup>59</sup> Piero Ammirato, *Cooperative Enterprise*, (Routledge 2024), 173.

<sup>60</sup> Hans-H Münkner, 'How Co-operative are Social Co-operatives?' (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 54.

<sup>61</sup> David Hiez, 'The General Interest Cooperatives: A challenge for cooperative law' (2018), *International Journal of Cooperative Law*, Vol 1(1), 93; Hans-H Münkner, 'How Co-operative are Social Co-operatives?' (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 54

<sup>62</sup> David Hiez, 'The General Interest Cooperatives: A challenge for cooperative law' (2018), *International Journal of Cooperative Law*, Vol 1(1), 93; Giulia Galera, 'The evolution of the co-operative form: an international perspective', in Carlo Borzaga, Roger Spear (eds), *Trends and Challenges for Co-operatives and Social Enterprises in Developed and Transition Countries* (Edizioni31, 2004); Hans-H Münkner, 'Multi-stakeholder co-operatives and their legal framework', in Carlo Borzaga, Roger Spear (eds), *Trends and Challenges for Co-operatives and Social Enterprises in Developed and Transition Countries* (Edizioni31, 2004); Hans-H Münkner, 'How Co-operative are Social Co-operatives?' (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024

We can therefore see that GICs deliberately differ in relation to their purpose. ‘Purpose’ is a significant element of a definition to choose to vary. As well as its impact on the value of ‘self-help’, Table 1 provides a brief assessment of the GIC as set out in PECOL against the component parts of the ICA Statement.

*Table 1 - GIC and ICA Statement*

ICA Statement	Met? (Yes/No/Partly)
<b>Definition</b>	
an autonomous association of persons	Partly – the entity would be legally autonomous from the state, but the state is likely to have a greater role than it would over a co-operative
united voluntarily	Partly – membership is optional. But there is no basis on which someone can opt-out of the benefits of the GIC if they are within the community
to meet their common economic, social and cultural needs and aspirations	No – individuals unite voluntarily to meet the needs of others, rather than the common needs of members. Though the needs of others could be economic, social and cultural.
through a jointly-owned	Yes
and democratically- controlled	Yes
enterprise.	Yes
<b>Values</b>	
Self-help	No – help could be entirely to others
Self-responsibility	No – benefit could be entirely to others
Democracy	Yes
Equality	Yes
Equity	Yes
Solidarity	Yes



<b>Ethical Values</b>	
honesty, openness, social responsibility and caring for others	Yes
<b>Principles</b>	
Principle 1 – Voluntary and open membership	Partly – membership is more broadly open to all, rather than those ‘able to use the services’
Principle 2 – Democratic member control	Yes
Principle 3 – Member economic participation	No – cannot distribute surpluses to members
Principle 4 – Autonomous and Independent	Partly – the state may have a greater role, and members would be obliged to vote in the interest of the community
Principle 5 – Education, Training and Information	Yes
Principle 6 – Co-operation amongst co-operatives	Partly – interaction with other co-operatives would have to be justified as beneficial to the general interest of the community
Principle 7 – Concern for community	Yes

Münkner was clear in his assessment that the ICA Statement “excludes general interest co-operatives”.<sup>63</sup>

The question that follows is, does it matter? PECOL expects all co-operatives, including GICs, to include ‘cooperative’ (or coop) in their name, and explains:

legal entities that are not cooperatives in their substance may not formally qualify as cooperatives. This would generate confusion in the public and damage the cooperative image.<sup>64</sup>

The underlying requirement sets out a protection against misuse by non-co-operatives:

<sup>63</sup> Hans-H Münkner, *Co-operative Principles and Co-operative Law* (2<sup>nd</sup> edn LIT 2015), 66.

<sup>64</sup> Ibid, 33.

The words ‘cooperative’, ‘coop’, or similar, may not be included in the name of entities not formed and managed as cooperatives in accordance with cooperative law and universally recognised cooperative values and principles.<sup>65</sup>

Ironically, based on this test and the views set out above, a GIC could not call itself a co-operative (because it does not conform with the ‘universally recognised cooperative values and principles’), and thus could not exist under PECOL. But that technicality aside, there is a more substantive risk, as outlined in PECOL. At an international level, allowing entities to call themselves co-operatives despite not meeting the ICA Statement can undermine confidence in the co-operative image or identity. While the existence of democratic businesses sympathetic to co-operative values, delivering in the general interest of the community clearly exist, the rationale for calling them co-operatives is less compelling.

Given these risks, it is worth exploring why PECOL included GICs. Hiez set out the challenge the authors of PECOL faced:

The general interest cooperative may appear to some cooperators or scholars as an oxymora. Indeed, it does not fit properly to the traditional definition of cooperative that can be found, both in legislations and in the ICA statement. However, if the word may surprise, the thing already exists. The present situation is, therefore, more characterized by the inconsistency of cooperative laws that have not yet adapted their definition to the evolution.<sup>66</sup>

This view is reflected elsewhere. Galera charts the evolution of the co-operative model, distinguishing between the ‘fundamentally mutualistic’ model, and the ‘fundamentally sociological’ model:

The fundamentally sociological model makes reference to co-operatively structured organizations which are explicitly extroverted. They can be expressly aimed at promoting the general interest of the community or they can tailor the economic system’s democratization.<sup>67</sup>

The challenge here is in the use of ‘co-operatively structured’. This appears to be short-hand for ‘democracy based on one-member-one-vote’. As set out above, this feature is not unique to co-operatives. Even if it were, it is only one of the parts of a co-operative structure. Given the relationship with members is a ‘structural element’ of a co-operative<sup>68</sup>, can something be ‘co-operatively structured’ without the presence of that relationship?

Elsewhere, we see inconsistently applied logic. For example, Fici argues against Hansmann’s articulation of investor-owned firms as ‘capital co-operatives’ (above) because it “fails to consider...the double-quality of cooperative members” as users and beneficiaries, yet in the same text supports general interest co-

<sup>65</sup> Antonio Fici, ‘Definition and Objectives of Cooperatives’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), Section 1.1.(5).

<sup>66</sup> David Hiez, ‘The General Interest Cooperatives: A challenge for cooperative law’ (2018), *International Journal of Cooperative Law*, Vol 1(1), 93.

<sup>67</sup> Giulia Galera, ‘The evolution of the co-operative form: an international perspective’, in Carlo Borzaga, Roger Spear (eds), *Trends and Challenges for Co-operatives and Social Enterprises in Developed and Transition Countries* (Edizioni31, 2004), 20.

<sup>68</sup> See above, Hagen Henry, *Guidelines for Co-operative Legislation* (3<sup>rd</sup> edn ILO 2012).

operatives lacking this feature.<sup>69</sup> Isomorphic degeneration can happen in more than one direction.<sup>70</sup> There is a risk that a co-operative may morph into an investor-owned firm, but there is also risk that they can morph into benevolent organisations.<sup>71</sup> The difference appears to be that some criticise the former but tolerate the latter. This could be justified on the basis that the GIC is societally useful, but investor-owned businesses play a useful role in market-based societies too.<sup>72</sup>

Rather than general interest entities being seen as an evolution of the co-operative form, they may better be seen as an evolution of the benevolent form – adding in an element of democracy and business activity that was previously less present in some countries. The UK context provides a helpful example.

## 6. A UK perspective

The UK operates a flexible legislative framework for co-operatives, and other businesses. There is no overarching legislative definition of a co-operative, or social enterprise, or community business. Most co-operatives choose to register under the *Co-operative and Community Benefit Societies Act 2014* (previously the *Industrial and Provident Societies Act 1965*).<sup>73</sup>

That Act allows for registration of two different types of legal entity:

- Co-operative Society
- Community Benefit Society

The Financial Conduct Authority (FCA) is the registering authority and provides guidance on the two types of entity.<sup>74</sup> The co-operative society is, unsurprisingly, used by co-operatives. The community benefit society is distinct, and particularly relevant in relation to GICs.

<sup>69</sup> Antonio Fici, 'The Essential Role of Cooperative Law' (2014) *The Dovenschmidt Quarterly* 147 < doi: 10.5553/DQ/221199812014002004003> accessed 28 September 2024, 153

<sup>70</sup> See for instance Roger Spear, 'Formes cooperatives hybrides' (2011) RECMA < <https://oro.open.ac.uk/32268/>> accessed 28 September 2024

<sup>71</sup> Ian Adderley, *Co-operatives: Linking Practice and Theory* (Co-op Press 2025) [Forthcoming]

<sup>72</sup> Beyond the scope of this work to explore this further, but as well as investor-owned firms providing jobs, much of the pension market rests on the ability to invest in equities for growth.

<sup>73</sup> Ian Adderley, *Co-operatives: Linking Practice and Theory* (Co-op Press 2025) [Forthcoming], – others may choose to register under the *Companies Act 2006* – modifying the standard articles of association to conform with the ICA definition or use other legal structures.

<sup>74</sup> Financial Conduct Authority, Handbook, RFCCBS < <https://www.handbook.fca.org.uk/handbook/RFCCBS>> accessed 28 September 2024.

A community benefit society can be registered where it ‘conducts business for the benefit of the community’.<sup>75</sup> The FCA explain that such societies must be ‘entirely’ for the benefit of the community, and the benefit should be to ‘the community at large’.<sup>76</sup>

The FCA have been clear in articulating that they do not consider co-operatives capable of being registered as community benefit societies, and do not consider community benefit societies to be co-operatives:

We acknowledge that many co-operative societies also choose to benefit the community; and that many community benefit societies have active and engaged memberships who control the society democratically. However, a community benefit society must fundamentally exist entirely for the benefit of the community, not for benefits that depend on membership. Our view is that the purposes of a co-operative society and a community benefit society are fundamentally different.<sup>77</sup>

The option to register a society for the benefit of the wider community has existed and been used since the commencement of the *Prevention of Fraud (Investments) Act 1939*.

Community benefit societies have been seen as analogous to the GIC.<sup>78</sup> The GIC can be characterised based on i) purpose; and ii) democratic governance. These can be used compare the two. There is a clear synergy when it comes to the purpose of a GIC, and a community benefit society. If anything, the community benefit society is tighter on the need to serve the community at large.

Democracy has been suggested as a point of potential difference.<sup>79</sup> FCA guidance explains the position in relation to community benefit societies:

It is not usually appropriate for a community benefit society to give any particular group of members greater rights or benefits, because the society must be conducting its business for the benefit of the community. So, for example, we would expect to see community benefit societies run democratically on the basis of one-member-one-vote.

<sup>75</sup> *Co-operative and Community Benefit Societies Act 2014*, s2(2)(a)(ii).

<sup>76</sup> Financial Conduct Authority, Handbook, RFCCBS < <https://www.handbook.fca.org.uk/handbook/RFCCBS> > accessed 28 September 2024, Paras 5.1.3 and 5.1.1.

<sup>77</sup> Financial Conduct Authority, *FG15/12 Summary of Feedback Received*, (2015, FCA) < <https://www.fca.org.uk/publication/finalised-guidance/fg15-12-summary-feedback.pdf> > accessed 28 September 2014, 15.

<sup>78</sup> Hans-H Münkner, ‘How Co-operative are Social Co-operatives?’ (2016) 38 *Cooperativismo e Economía Social*, <<https://revistas.uvigo.es/index.php/CES/issue/view/78/>> accessed 28 September 2024, 37-38; Law Commission, *Review of the Co-operative and Community Benefit Societies Act 2014*, (Law Com Consultation Paper No 264) para 3.53; Ian Snaith, ‘Cooperative Governance’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 48.

<sup>79</sup> Ian Snaith, ‘Cooperative Governance’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 48; Antonio Fici, ‘The Essential Role of Cooperative Law’ (2014) *The Dovenschmidt Quarterly* 147 < doi: 10.5553/DQ/221199812014002004003 > accessed 28 September 2024, 157.

A community benefit society deviating from this principle would need to be able to satisfy us that the arrangement helps it fulfil its purpose of benefiting the community.<sup>80</sup>

Deviations from the principle of one-member-one-vote tend to reflect the practice by some societies of having an ‘anchor institution’, such as a local charity, who has a legal duty to protect the purpose of the organisation.<sup>81</sup> On specified statutory resolutions, these societies must operate based on one-member-one-vote.<sup>82</sup>

Given the above, and that PECOL recognises (but doesn’t require) plural voting structures for GICs,<sup>83</sup> the principle of one-member-one-vote is not a point of difference.

Differences may arise in relation to democracy through the application of the principle of ‘open membership’. Some community benefit societies limit their membership to their own board members (directors). This is also common in the broader charity sector. This could be considered as a mechanism to help ensure purpose is met. However, many operate with open membership instead.

PECOL permits a GIC with only two members, but at section 2.2, requires ‘open membership’ for GICs. Section 1.3(6) of PECOL permits a co-operative to “make membership subject to reasonable conditions related to their particular type or objective”. Within PECOL, the basis for the open membership principle is explained:

The rationale and basis of the principle is the avoidance of artificial restrictions on membership to increase the value of the rights of existing members at the expense of potential new members.<sup>84</sup>

This is less relevant for GICs, whose members cannot financially benefit in their capacity as members. The conceptual challenge in a GIC would be if members were to vote out of their own interests, rather than in the general interest of the community. This could be managed through plural voting – restricting the total weight of membership classes, which may be a better alternative than restricting membership at the outset. Both approaches have their advantages and disadvantages. The community benefit society clearly can meet the definition of a GIC.

The community benefit society is not the only type of legal form in the UK to have a general interest purpose and democratic governance. The *Charities Act 2011* set the basis for the creation of the ‘Charitable

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<sup>80</sup> Financial Conduct Authority, Handbook, RFCCBS < <https://www.handbook.fca.org.uk/handbook/RFCCBS> > accessed 28 September 2024 paras 5.1.7 and 5.1.8.

<sup>81</sup> Law Commission, *Review of the Co-operative and Community Benefit Societies Act 2014*, (Law Com Consultation Paper No 264) para 4.44.

<sup>82</sup> See for instance, on a special resolution to transfer to another society, the vote must be passed by “two-thirds of eligible members who vote”: *Co-operative and Community Benefit Societies Act 2014*, s111.

<sup>83</sup> Antonio Fici, ‘Definition and Objectives of Cooperatives’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 40.

<sup>84</sup> Ian Snaith, ‘Cooperative Governance’ in Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner, Ian Snaith, *Principles of European Cooperative Law* (Intersentia 2017), 50.

Incorporated Organisation' (CIO) in England and Wales. The CIO comes in two forms: Foundation, and Association. The Association CIO has a wider membership base as part of the legal structure, with open membership and one-member-one-vote.<sup>85</sup> Although the CIO legal structure was legislated for in 2011, the model of a democratic charity is not new.<sup>86</sup> The Charity Commission for England and Wales, in 2004, estimated that there were 80,000 membership-based charities, using a range of structures such as unincorporated associations, companies limited by guarantee.<sup>87</sup> However, they do differ from GICs in that charities are generally not directly trading entities, but could be providing services to the community in the same way as a GIC.

The approach in the UK has not required deviation from the ICA Statement. Democratic businesses working in the general interest of the community have a range of legal structures they can use, as do co-operatives. However, the two are distinct.

## 7. Conclusion

GICs as set out in PECOL do not fit within the ICA Statement. The development of the GIC reflected the practice that appeared in several countries, especially Italy from the 1990s. The challenge the PECOL authors faced was how to classify organisations that were democratic, and doing good. The solution they landed on was to create a new, additional type of 'co-operative', the GIC.

The fact that the GIC is pitched as additional or alternative type of co-operative reflects the acceptance that it does not conform to the ICA Statement. It is found wanting in several regards, both in its purpose and its structure.

There has been a tendency to reduce the definition of a co-operative, by reference to 'co-operative structure' to simply mean 'democratic' or 'democratic and doing good'.

This approach misses other significant parts of the co-operative structure – particularly the user/beneficiary member relationship. It is therefore not complete to describe a 'co-operative structure' in a way that includes democracy but misses the member relationship. Put in reverse, would it be accepted as a 'co-operative structure' if the user/beneficiary member relationship was present, but democracy was omitted?

In placing democracy above self-help, a hierarchy of co-operative values has been created where one should not exist. Once one starts to cherry-pick aspects of a definition, who is to judge which parts are more

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<sup>85</sup> Charity Commission for England and Wales, *Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees (association model constitution)*.

<sup>86</sup> Examples date back to the late 17<sup>th</sup> Century, see Chapter 3: Roberts, M.J.D. (1998). Head versus Heart? Voluntary Associations and Charity Organization in England, c.1700–1850. In: Cunningham, H., Innes, J. (eds) *Charity, Philanthropy and Reform*. Palgrave Macmillan, London. [https://doi.org/10.1007/978-1-349-26681-4\\_3](https://doi.org/10.1007/978-1-349-26681-4_3)

<sup>87</sup> Charity Commission for England and Wales, "Membership charities (RS7)" (2004), <<https://www.gov.uk/government/publications/membership-charities-rs>> accessed 28 September 2024.



important than the other? The logic underpinning the acceptance of a GIC is the same logic that allows the acceptance of a capital co-operative. Neither are consistent with the ICA Statement.

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Chantal Chomel\*

## Hommage de la RECMA – Revue internationale de l'Economie sociale à Hans-H. Münkner

« Le compagnonnage de vingt-deux ans de Hans H Münkner à travers une revue de ses articles »

Hans-H. Münkner disparu fin 2023, a eu un long compagnonnage avec la Recma, entre 1987 date de son premier article et 2009, pour le dernier. C'est sans doute l'auteur étranger qui y a le plus publié et cette fidélité aussi bien que cette longévité méritent d'être saluées et ont indéniablement marqué la revue. Juriste chevronné et érudit dans le droit comparé des coopératives, il était reconnu et très estimé par ses pairs en France. Francophone et anglophone, outre sa langue maternelle, il maîtrisait parfaitement les concepts du Droit coopératif dans plusieurs langues, dont ces deux-là, ce qui lui permettait de comprendre toutes les facettes du droit et des réalités coopératives.

Vingt-deux ans c'est aussi une temporalité qui permet d'identifier des évolutions dans la législation des coopératives tout comme faire des comparaisons, entre France et Allemagne ou encore porter un regard sur le travail de l'Alliance Coopérative Internationale (ACI) sur les principes coopératifs. Cette temporalité donne aussi à voir le jugement que porte M. Münkner sur ces évolutions et lui permet de réaffirmer les caractéristiques des coopératives auxquelles on ne peut porter atteinte, sous peine de les banaliser.

Hans-H. Münkner avait une connaissance intime et précise, une vision fine d'aspects très techniques du régime juridique et fiscal des coopératives tout en les reliant aux principes qui les gouvernent, en Allemagne bien sûr mais pas seulement : ses écrits dénotent une connaissance approfondie de la situation française, anglaise, et tant d'autres. Son propos vise aussi à mieux faire connaître la réalité allemande des coopératives, avant et après la chute du Mur en 1989.

La meilleure façon de rendre hommage à la pensée de Hans-H. Münkner, et à travers celle-ci, à la personne qu'il était, attentif et chaleureux, curieux et toujours prêt à échanger avec ses interlocuteurs, est de cheminer autour de sa pensée exprimée durant ces vingt-deux années.

Dans le numéro 24 de la Recma en 1987, pages 41 et suivantes, est publié « le point de vue anglais confronté à une lecture allemande » et porte sur l'ouvrage de W.P. Watkins (ancien directeur de l'ACI), « Co-operative Principles, Today and Tomorrow ». Au Royaume Uni, il n'existe pas de législation spécifique pour les coopératives, et la place et le rôle des principes sont déterminants pour caractériser celles-ci. Ce qui intéresse Watkins, ce sont « les questions idéologiques, morales, en relation avec le rôle que les coopératives, le mode de pensée coopérative et l'éducation des hommes sont susceptibles de jouer dans la réforme de l'ordre

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économique et social ». Watkins et Münkner partagent une inquiétude commune, celle de voir l'identité des coopératives menacée par des dirigeants insuffisamment ancrés dans les principes coopératifs et qui ont fait leurs les méthodes agressives de la concurrence. On ne peut que s'incliner devant l'actualité de cette analyse. Il rappelle que pour Watkins, « le progrès social consiste à accroître l'aptitude des hommes à travailler ensemble de façon organisée ».

Le rapport sur les principes coopératifs a été publié en 1986 à Manchester et son contenu conduit à s'interroger sur sa pertinence dans les économies socialistes planifiées. Pour Watkins, les coopératives sont alors détournées de leurs fonctions, et les principes coopératifs ne sont pas respectés. Pour Münkner, l'approche par les principes, développée par Watkins, trouve à s'appliquer dans les démocraties occidentales mais n'est pas applicable dans les pays socialistes du bloc soviétique d'alors, ni dans les pays en voie de développement. Il regrette que les apports de la science coopérative allemande qui travaille sur les caractéristiques propres des coopératives comme système économique particulier et comme type spécifique d'organisation sociale n'aient pas été davantage pris en compte.

L'article suivant publié en 1988 dans la Recma (no 28) lui donnera l'occasion de développer davantage cette approche. Intitulé « sciences coopératives allemandes, des apports méconnus en France », l'article les caractérise comme une branche interdisciplinaire des sciences sociales, croisant l'économie politique, la gestion des entreprises, la sociologie et le droit. Elles appartiennent aux sciences « qui s'occupent de la réalité » et dépendent d'une collaboration étroite avec les organisations coopératives. Ce lien crucial entre entreprises coopératives et chercheurs est au cœur du projet de la Recma, tout comme son positionnement interdisciplinaire auquel on pourrait ajouter l'histoire. Contrairement à la France, à cette époque, les sciences coopératives sont enseignées en licence et master (selon les normes d'aujourd'hui) de sciences économiques ou gestion, et il existe 8 instituts universitaires de recherche coopérative, avec bien sûr la possibilité d'abriter des doctorants. Cette institutionnalisation remarquable est selon Hans H. Münkner liée au rôle important joué par les coopératives dans le développement économique et social de l'Allemagne dès le 19<sup>ème</sup> siècle dans le sillage de Raiffeisen et Schulze-Delitzsch, entre autres, mais également après la seconde guerre mondiale comme « formule appropriée de reconstruction ». Cette dynamique, et le besoin en cadres bien formés, va générer des « réactions en chaîne » sur l'organisation et la vitalité de l'enseignement et de la recherche dédiés aux coopératives, l'université allemande encourageant fortement la combinaison de l'enseignement académique et de la recherche. Et Münkner de noter que « les chercheurs allemands ont tendance à analyser les phénomènes qui les intéressent d'une manière très intensive et avec une préoccupation de détail et de classification systématique et précise ». Néanmoins il exprime ses inquiétudes sur l'avenir de ce système et liste des préoccupations des praticiens sur lesquelles les chercheurs devraient développer des pistes de travail : les relations entre sociétaires et coopératives, le fonctionnement concret de la démocratie, le financement des coopératives, pour ne citer que quelques thèmes, qui quarante ans après, sont toujours d'actualité.

Il conclut en soulignant l'importance de ce dialogue et de ce travail en commun chercheurs-praticiens des coopératives « qui s'inspire les unes les autres » et la Recma ne peut qu'être sensible à cette approche, qu'elle tente d'incarner à travers les articles publiés.

Le numéro spécial de la Recma 44-45, paru en 1993 avec un dossier sur la loi portant modernisation des entreprises coopératives du 13 juillet 1992, donne lieu à une interview faite par André Chomel, alors rédacteur en chef de la Recma, portant sur les leçons à tirer de la réforme de la loi sur les coopératives allemandes. Münkner s'interroge d'une part sur les effets sur la spécificité des coopératives des dispositions introduisant à la fois des nouveaux instruments financiers et des associés non coopérateurs ou investisseurs, et d'autre part sur l'efficacité de ces dispositions sur la « permanence des coopératives basées sur la coopération de ses membres, co-décideurs et usagers-clients ». Les innovations introduites dans la loi française de 1992, notamment l'introduction d'associés investisseurs, avec le cas échéant un recours à un vote proportionnel au capital détenu, une option permettant de partager une partie des réserves, dans certaines limites, par exemple sont autant de dispositions conduisant à une dilution de l'identité des coopératives. Pour Hans H. Münkner « si la liberté de rédiger des statuts inclut celle de quitter le concept de base, je dirai qu'une telle loi n'est pas vraiment une loi coopérative. »

Il souligne la divergence d'approches entre les techniciens des coopératives, qui recherchent l'efficacité opérationnelle et économique, et du point de vue des sociétaires, un sentiment de la dégradation de leur relation avec leur coopérative. L'Allemagne avait introduit dès avant 1973, date de la réforme de la loi coopérative, le recours à des instruments financiers, également présents dans la loi française de 1992, afin de renforcer les fonds propres. Mais pour Münkner, il vaut mieux s'adresser d'abord aux coopérateurs eux-mêmes, et pratiquer « une ascèse des parts sociales ». Il détaille ensuite avec une précision chirurgicale les différents dispositifs existant en France et en Allemagne. Du Droit comparé à l'état pur et la relecture de cet article laisse la lectrice pée d'admiration pour cette leçon de curiosité et de souci du détail sur l'étude des législations des deux côtés du Rhin. La promotion des ristournes qui peuvent être transformées en titres participatifs en Allemagne est aussi un exemple intéressant. Au terme de ce comparatif, Münkner s'interroge sur la pertinence du diagnostic d'origine : la demande du sociétaire est-elle réellement une meilleure rémunération de son capital ou plutôt avoir un réel sentiment d'appartenance qui génère une responsabilité dans le financement de « sa » coopérative ?

On peut partager le constat que cette approche législative de création d'outils financiers s'est peu appuyée sur une analyse des besoins des sociétaires mais plutôt sur ceux de l'entreprise indépendamment de ses membres. Et trois décennies après le vote de la loi, force est de constater que ces outils ont été peu utilisés, et que les coopératives ont préféré rester dans le schéma d'origine.

Au passage il s'interroge sur le paradoxe de la loi qui à la fois libéralise le statut coopératif et prévoit une interdiction -sauf exceptions strictes- de sortir du statut coopératif.

Les travaux de l'ACI sur la reformulation des principes de l'ACI sous l'égide d'un groupe de travail- dont fait partie Münkner- piloté par Ian McPherson, le conduit à réintervenir dans la Recma en 1996 dans un article « éviter toute rupture non nécessaire avec le passé ». Entre temps, le Mur de Berlin est tombé, et l'ACI peut alors ajouter le principe « d'autonomie et d'indépendance » aux principes initiaux et ce, après une vaste enquête auprès de ses membres. La définition de la coopérative est également incluse en reprenant



celle de l'Organisation internationale de travail (OIT) qui sera modifiée en 2002. Pour Münkner, l'histoire du mouvement coopératif est une valeur qui doit être préservée.

La notion de « self-help » ou auto-promotion est complétée par celle de solidarité. La référence à l'écologie fut envisagée mais finalement pas retenue, sans doute était-ce trop tôt malgré la conférence de Rio en 1992 qui acta les piliers du développement durable.

Cet article précise aussi la portée des principes -davantage conçus comme des lignes directrices que les organisations coopératives peuvent s'approprier et s'y référer selon leurs besoins et leurs pratiques- que comme des dispositions intangibles, ce qui eut été difficile en raison de la diversité des coopératives que ce soit dans leur aire géographique, leur organisation ou leur activité économique.

Si le concept d'économie sociale fait en France l'objet d'une reconnaissance institutionnelle, il n'en va pas de même en Allemagne, où au contraire il suscite des réticences fortes, voire un rejet. En 2001, dans le n° 281 de la Revue, Hans-H. Münkner propose un essai de définition de l'économie sociale en Allemagne à partir du terme de l'entreprise promotrice, qui réunit les coopératives, les entreprises d'intérêt général, les associations. Une des craintes exprimées en Allemagne serait que « l'économie sociale ne soit qu'une forme camouflée d'une économie socialiste étatique ». Il met également en évidence les différences d'organisation de l'Etat providence, qui en Allemagne s'appuie sur des groupes économiques forts et structurés comme les coopératives ou les assurances mutuelles. Les entreprises à finalité sociale, ne se considèrent pas comme relevant d'un secteur commun des coopératives ou des mutuelles, caractéristique que l'on peut aussi retrouver en France, mais pondéré par la reconnaissance institutionnelle de l'Economie sociale.

Il prend un peu de recul -à regret- avec l'article paru en 1988 sur l'apport des sciences coopératives, et constate qu'il devient de plus en plus difficile d'en donner une vision claire et qu'elles peinent à inclure dans leur champ d'études le concept d'économie sociale. Il pointe aussi le manque de leaders à même d'en porter la pertinence et l'intérêt auprès de l'opinion et des décideurs politiques pour répondre aux défis sociaux et économiques. Et pourtant, Münkner cite plusieurs chercheurs qui dans leurs travaux, déclinent le concept d'entreprise auto-promotrice, et en définissent les caractéristiques de gestion, ce qui rend d'autant plus inexcusable aux yeux de Münkner le manque d'intérêt pour l'économie sociale en Allemagne.

C'est ainsi qu'il propose une comparaison et un rapprochement entre le concept de l'entreprise promotrice allemande et l'économie sociale française. L'entreprise promotrice vise la satisfaction des besoins de ses membres et non le profit en tant que tel. Relèvent ainsi de cet ensemble, les coopératives, les entreprises d'intérêt général, celles à finalité sociale, les associations, ce qui n'est pas radicalement éloigné de la conception française. Leurs modes de fonctionnement ont beaucoup de points communs qui les distinguent des sociétés capitalistes.

Tous ces débats s'inscrivent dans une période -les années 80-90- caractérisée par une grande libéralisation de l'économie, la disparition de certains pans des coopératives, notamment celles de consommation. Ces phénomènes s'accompagnent de l'émergence dans l'encadrement de ces entités, de cadres d'entreprises rompus à une gestion tournée vers le marché, qui contribue à la banalisation de ces entreprises, tout comme l'apport de capitaux extérieurs et une part croissante du chiffre d'affaires provenant des non-membres.

A l'instar de plusieurs chercheurs allemands, Münkner se prononce pour l'élaboration d'une théorie particulière des entreprises promotrices, fondée à la fois sur leurs finalités et leur mode de fonctionnement. Il appelle -une fois de plus- à un dialogue soutenu entre chercheurs et praticiens, mais estime toutefois que l'introduction dans les débats d'une dimension politique aurait plutôt des effets négatifs à court terme (2001). Cette dimension ne pourrait prendre place utilement qu'après une consolidation de la théorie des entreprises promotrices et s'étendre alors à l'ensemble de l'Union européenne.

Les deux derniers articles donnés à la Recma par Hans-H. Münkner datent tous deux de 2009. Le premier publié dans le numéro 311 porte sur « La problématique de la fiscalité des coopératives en Allemagne » et le second publié dans le numéro 313 s'intitule « La législation allemande : un regard particulier sur les groupements coopératifs ».

L'article sur la fiscalité est publié à un moment où la fiscalité des coopératives est sur la sellette auprès de la Commission européenne. Plusieurs plaintes contre des régimes fiscaux qui seraient constitutifs d'aides d'Etat interdites, ont été déposées auprès de la Commission : coopératives de travail en Italie, coopératives agricoles en France et en Espagne notamment. C'est donc un débat qui traverse les frontières et les Etats membres de l'Union européenne. Il sera tranché en faveur des coopératives par un arrêt remarqué de la CJUE en septembre 2011.<sup>1</sup>

Fidèle à sa vision des coopératives, outil de promotion des membres, Münkner analyse les critiques adressées aux coopératives sur deux points : les conditions préférentielles (en prix) faites aux membres, qui constitueraient une distribution cachée de bénéfice, et le traitement des ristournes faites aux membres sur les opérations réalisées avec leur coopérative.

Sur le premier point la jurisprudence allemande ne fait guère de différence entre sociétés coopératives et sociétés commerciales, là où Munkner (et d'autres) verraient la pertinence d'opérer une distinction. S'agissant des ristournes, le Bundesfinanzhof (BFH, la plus haute instance judiciaire en matière de fiscalité en Allemagne) a statué en 1966 sur ce point : « *Le législateur n'entend pas taxer les sociétés coopératives au même titre que les sociétés commerciales dans la mesure où les sociétés poursuivent des objets spécifiques... Les affaires des sociétés coopératives n'ont pas pour but de réaliser des bénéfices mais plutôt de générer des économies pour leurs membres* ».

C'est ainsi que les ristournes -qui ne sont accordées qu'aux membres des coopératives et non aux tiers non-membres- doivent être considérées « comme une forme de remboursement aux membres des sommes perçues en trop par la coopérative ».

C'est à peu près la situation existante en France où les ristournes sont déductibles de l'assiette de l'impôt sur les sociétés et parfois réintégrées dans l'assiette fiscale du membre, lorsque celui est un professionnel -artisan ou agriculteur par exemple-. Mais dans cet article, Münkner se borne à analyser la situation allemande de manière assez fine, ce qui permet aux praticiens de faire des comparaisons avec la situation de leur pays.

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<sup>1</sup> CJUE 8 septembre 2011 C-78/08 et C 80/08

Le dernier article s'intéresse aux groupes coopératifs formés de coopératives et de filiales sous forme de sociétés commerciales. Ces groupes sont très répandus que ce soit en Allemagne ou en France, tout comme au Danemark, qui se distingue néanmoins par une absence de loi coopérative.

Hans-H. Münkner passe en revue les outils existants à la disposition des coopératives pour créer et faire vivre des groupes, institutionnels (des fédérations et unions), législatifs (des sociétés commerciales) ou contractuels, même s'il n'existe pas de définition juridique d'un groupe coopératif (ni même de sociétés). Bien qu'il reconnaisse que parfois le marché nécessite des groupes coopératifs puissants, une fois encore il rappelle la nécessaire vigilance sur la prise en compte de l'intérêt des membres et de leur promotion, et préconise d'éviter la banalisation. C'est ainsi qu'en Allemagne, les coopératives « qui ont transféré toutes leurs activités économiques dans des filiales [...] ne peuvent conserver le statut de coopérative. Les opérations économiques avec des non-membres, lui semble une voie dangereuse à suivre - ce qu'en France nous appelons des coopératives « ouvertes ».

Selon Münkner la combinaison de la possibilité de vote plural avec la diversification des parts sociales et instruments de fonds propres et l'introduction d'associés investisseurs, rend en théorie possible une banalisation du statut coopératif.

Il rappelle, que les « coopératives ne doivent pas se transformer en entreprises au service d'investisseurs avec mission de créer de la valeur pour les actionnaires », et on ne peut que souscrire à cette salubre mise en garde.

De ce compagnonnage de vingt-deux ans entre Hans-H. Münkner et la Recma, se dégage une cohérence de sa pensée et un attachement fort à une vision de la coopérative au service de ses membres et non comme un instrument au service de finalités autres, si respectables soient-elles, adossés sur une connaissance fine de leur fonctionnement et de la spécificité de leur gestion. Il affirme aussi sa connaissance quasi encyclopédique des lois coopératives existantes en Europe, mais pas seulement, et son souci d'un dialogue sur des aspects qui peuvent paraître fort techniques mais qui s'inscrivent dans une vision et un sens de ce que devraient être les coopératives. Cette distinction entre intérêt général au sens où on l'entend en France et intérêt des coopératives pour leurs membres, n'empêche pas de faire apparaître une vision au service d'une autre économie, liée à ses membres et à son territoire et profondément divergente de l'économie capitaliste.

Chantal Chomel

31 janvier 2025

## TRIBUTES

Thierry Jeantet\*

### Hommage au Professeur Münkner

Le Professeur Münkner, homme très discret, à l'intelligence fine et aigüe, était toujours en alerte. Son ouverture d'esprit lui permettait d'être à l'écoute d'interlocuteurs parfois fort éloignés de ses idées. C'était un enseignant et chercheur très exigeant vis-à-vis de lui-même comme des autres, ce qui lui donnait la réputation d'être incontournable. Il faut ajouter son humour parfois piquant et ironique. Il était aussi très chaleureux.

Il avait bien voulu traduire un de mes livres sous le titre en allemand de « Economie Sociale, eine Alternative zum Kapitalismus ». Dans son introduction avec son sens provocateur mais lucide de la formule il disait :

*L'économie sociale allemande, celle qui ne se connaît pas elle-même.*

Cette affirmation était frappante ! En effet personne (et surtout pas lui) n'ignorait la puissance des coopératives de son pays et leur longue histoire (rappelons-nous les pionniers Schulze-Delitzsch et Raffeisen), d'ailleurs inscrites sur la liste du patrimoine culturel immatériel de l'humanité. Les banques coopératives en étant un des exemples marquants. Personne non plus n'ignorait le succès des mutuelles d'assurance dommages et vie allemandes. Il existe en Allemagne des Fondations extrêmement puissantes ainsi que des organisations humanitaires fort développées. Et depuis toujours les associations, en particulier confessionnelles, ont joué un rôle significatif comme les associations de bienfaisance d'origines syndicale.

Cette non-connaissance de l'Economie Sociale allemande par elle-même tenant à plusieurs facteurs :

- Le système santé public allemand très décentralisé ne laisse par contre peu de place, il est vrai, à des assurances santé de type mutualiste.
- Les organismes, au rôle important, de services à la personne sont assez « encadrés » par les Politiques publiques.
- L'effondrement, dans la fin des années 1980, de ce qui a été appelé le « système syndicalo-coopératif » a constitué un véritable traumatisme jetant un voile sombre sur tout ce qui était coopératif. Ce qui a d'ailleurs créé une « prise de conscience » sur la nécessité de s'organiser, se renforcer, dans le respect des valeurs d'Economie Sociale de la part d'acteurs de l'Economie Sociale d'autres pays. Le G.E.I.E. Euresa, créé à l'origine par Macif (France), Unipol (Italie), PV

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\* Président d'Honneur d'ESS-Forum International

(Belgique), Folksam (Suède) et qui a aujourd'hui plus de 14 mutuelles d'assurance (ou assimilées) est né de celle-ci.

- L'absence de liens transversaux, donc d'organisations, entre les différentes familles coopératives, mutualistes, associatives.

Ces considérations méritent certainement d'être revues car entre le début des années 2000 et aujourd'hui de nouvelles formes d'Economie Sociale et Solidaire se sont développées en Allemagne, notamment les entreprises sociales d'insertion.

Au-delà de cette constatation le Professeur Münkner nous interrogeait sur le besoin ou non de créer des ponts entre familles d'Economie Sociale entre organisations d'un même pays ou au-delà en Europe. Ceci étant donné les différences nationales malgré des histoires comparables. Il faisait part d'un doute, là encore, provocateur ! Nous avons eu des entretiens passionnants à ce sujet. Ils m'ont aidé à approfondir mon approche des relations entre coopérations inter-ESS au plan européen et international notamment dans le cadre de la conception des Rencontres du Mont-Blanc devenues le Forum International de l'ESS.

Les RMB/ESS-Fi ayant été le « déclencheur » originel du long processus ayant abouti au vote par l'Assemblée Générale de l'ONU en avril 2023 de la Résolution sur l'ESS, résolution portée par évidemment des Etats et préparée en particulier par la Task Force Onusienne dédiée à l'ESS.

Antonio Sarmiento Reyes<sup>1</sup>

## Recuerdos de un latinoamericano que fue alumno del Profesor Hans Münkner en Marburg

### Homenaje (versión' en español)

En el año 1988, cuando solo tenía 2 años de haber obtenido mi título como abogado en la Universidad de los Andes de Bogotá, D.C. Colombia, entré a trabajar como Director Jurídico del Instituto de Financiamiento y Desarrollo Cooperativo de Colombia (FINANCIACOOP).

Tenía un gran interés en aprender algo sobre derecho cooperativo, ya que en la facultad de derecho no había visto ninguna materia sobre legislación cooperativa. Entonces, tuve la fortuna de encontrar en la Biblioteca de FINANCIACOOP un libro escrito por el Profesor Hans- H- Münkner, publicado por la FRIEDRICH EBERT STIFTUNG en español: “Principios cooperativos y derecho cooperativo.” Lo leí con mucha atención y deseé poder tener algún día un conocimiento profundo del derecho cooperativo, como lo tenía el profesor alemán que no conocía, pero que desde entonces fue un gran referente para mí.

En 1989 presenté mi solicitud para obtener una beca para estudiar en Alemania y mi propuesta fue derecho cooperativo. Para ello necesitaba un tutor. El Profesor Volker Beuthin, gran amigo del Profesor Münkner, me envió su carta manifestando que estaba dispuesto a ser mi tutor en Marburg. Yo no tenía el contacto del Profesor Münkner, pero sabía que enseñaba en esa Universidad.

Felizmente, obtuve la beca otorgada por el DAAD y llegué a Alemania el 2 de octubre de 1990, un día antes de la reunificación. Después de 6 meses de un curso intensivo de alemán, fui admitido en la Philipps Universität de Marburg. En enero de 1991, conocí al Profesor Beuthin y él me recomendó hablar con el Profesor Hans Münkner. Entonces, tuve la gran alegría de conocer al autor del libro que había leído en Colombia sobre derecho cooperativo y que me había motivado para ir a estudiar esa materia en Alemania.

Desde el primer día, el Profesor Münkner fue especialmente amable conmigo. Le llamó la atención que fuera abogado, pues ninguno de sus alumnos extranjeros en sus clases tenía su misma profesión. Desde 1991 hasta 1994, tuve la oportunidad de asistir a sus clases de derecho cooperativo general, derecho cooperativo africano, derecho cooperativo asiático, derecho cooperativo en la Unión Europea y derecho cooperativo alemán. Las primeras materias las vi junto con estudiantes extranjeros que estaban en el Instituto de Cooperación para los países en vías de desarrollo adelantando un pregrado en economía cooperativa. Las últimas con los estudiantes alemanes de administración de empresas y economía.

Durante el primer semestre, el Profesor realizó unos exámenes de prueba y quedó satisfecho con mis resultados. Entonces me invitó a formar parte de su equipo de investigaciones jurídicas. El estaba

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adelantando una investigación sobre el tratamiento tributario en los diferentes países de la Unión Europea y le hacía falta alguien que hablara español para poderse comunicar con los profesores españoles y hacer una encuesta. Mi labor era traducir del alemán al español las preguntas y luego, traducir las respuestas al alemán.

Yo trabajé durante más de 4 meses con dedicación en ese encargo y me sorprendía que no me preguntara nada. Un día me llamó y me pidió que le entregara lo que llevaba. Afortunadamente le gustó mi trabajo. Le había hecho un resumen de la legislación española, especialmente, en el tema tributario; era un texto adicional a lo que él me había solicitado.

Desde ese día sentí que me trataba como si fuera un colega, más que un alumno. Yo quería empezar el diplomado en economía cooperativa, pero el curso iba en el tercer año. Tuve que esperar dos, años. Fui admitido, pero entonces me enteré que era mejor hacer una maestría en derecho y escribir mi tesis comparando la legislación cooperativa alemana con la colombiana.

El lamentó que no siguiera en el Instituto de cooperación en países en vía de desarrollo, pero me siguió dando su respaldo. Gracias a él puede obtener la prórroga de la visa de estudiante y permanecí casi 5 años en Marburg.

Durante los años en que tuve la inmensa fortuna de escuchar sus clases, fui aprendiendo los aportes de los mejores profesores alemanes en el tema cooperativo, tales como las características estructurales de las cooperativas, el concepto de cooperativas en sentido económico y en sentido jurídico, la doble naturaleza de las cooperativas y el criterio o principio de identidad de las cooperativas, según el cual, las cooperativas se caracterizan porque los asociados son simultáneamente dueños, gestores y usuarios de sus servicios, a diferencia de lo que sucede en las sociedades comerciales.

Todo esto me sirvió enormemente para poder escribir mi tesis de maestría, bajo la tutoría del Profesor Beuthien. Obtuve Magna cum Laude. El Profesor Münkner me solicitó una copia de la tesis de grado. Inmenso honor para mí, que siempre me consideré solo un alumno suyo.

Son innumerables las anécdotas contadas por el Profesor Münkner en clase, sus experiencias en África y Asia. Tenía un fino sentido del humor. Cuando se trataba del derecho cooperativo latinoamericano, me preguntaba en clase como “experto” latinoamericano. Era un estrés para mí contestarle en alemán ante estudiantes nativos y extranjeros.

En marzo de 1996 regresé a Colombia, con el título de Magíster Legum (LL. M.). Al poco tiempo, fui contratado para dictar derecho cooperativo en las Universidad Cooperativa de Colombia y en un posgrado de la Pontificia Universidad Javeriana. No había abogados que tuvieron algún estudio en el exterior en esos temas, pero sí muy buenos juristas en la materia.

En octubre de 1999 se creó la Superintendencia de la Economía Solidaria y fui nombrado Jefe de la Oficina Jurídica. En ese momento tuve la oportunidad de desarrollar normas para el sector cooperativo y solidario colombiano, aplicando lo aprendido con el Profesor Münkner y otros profesores. Esas primeras normas expedidas en los años 1999 a 2022, todavía se encuentran vigentes en Colombia. En esta forma se puede decir que existe un gran aporte del Profesor Münkner al derecho cooperativo colombiano.

Lamentablemente, por mi pereza para escribir, perdí el contacto con el Profesor Münkner. Sin embargo, en el año 2012, después de más de 15 años sin verlo, recibí una invitación de la Universidad de Oslo Noruega para un evento de derecho cooperativo. Observé que asistían el Profesor Münkner y el Profesor Hagen Henry, a quien había conocido en Marburg y encontrado después en Bogotá.

Entonces resolví ir a Oslo, especialmente, para volver a ver al Profeso Münkner y disculparme por mi ingratitud. Él se acordaba de mí, aunque noté que al comienzo me saludó como si no me reconociera. Pero después volví a sentir su aprecio de siempre.

Después de esto, el Profesor Münkner me pidió que le colaborara con una entrevista que él estaba haciendo a algunos de sus ex alumnos de Marburg sobre la experiencia de sus estudios en Alemania. El libro se publicó en el año 2012 en inglés y en alemán.

En el año 2013 organizamos en la Pontificia Universidad Javeriana, con el profesor Alberto García Müller, el primer encuentro América-Europa. Con una nómina de lujo. Varios de los mejores profesores de derecho cooperativo de Latinoamérica estuvieron en el evento (Dante Cracogna, Mario Schujman, Alfredo Moirano, Carlos Naranjo, Alberto García Müller, entre otros). Por Europa vinieron, entre otros, Gemma Fajardo de España, Hagen Henry de Finlandia y naturalmente, el Profesor Münkner. Conservo la ponencia del Profesor Münkner y de otros participantes.

Era un sueño tener a mi profesor de Marburg, en un evento en Colombia, en Bogotá, a 2.600 mts sobre el nivel del mar. El consultó a su médico cardiólogo, quien lo autorizó a aterrizar en Bogotá.

Fue un evento inolvidable. Todas las ponencias, salvo la del Profesor Münkner (en inglés), fueron en español. Sin embargo, el Profesor no faltó a ninguna de las ponencias, él entendía bastante español, ya que hablaba muy bien francés e inglés y conocía las bases del latín.

La obra del Profesor Münkner es incommensurable. Sus aportes a cientos de leyes de cooperativas en el mundo entero, a miles de estudiantes que escuchamos sus clases, no se pueden dimensionar. Cuando estuvo en el evento en Bogotá, comentó que le alegraba saber que no había perdido el tiempo enseñando derecho cooperativo a sus estudiantes.

Quienes realmente no perdimos el tiempo, fuimos los afortunados estudiantes que lo pudimos escuchar en Marburg y en otras partes. El entregó todo su saber a sus alumnos por el bien del cooperativismo mundial, sin reserva alguna de su parte. El Señor lo debe estar recompensando por todas sus buenas obras. Su recuerdo va a ser perenne.

Antonio Sarmiento Reyes\*

## Reflections from a Latin American who was a student of Professor Hans Münkner in Marburg

### Tribute (English version)

In 1988, two years after obtaining my law degree at the Universidad de los Andes in Bogotá, D.C. Colombia, I started working as the Legal Director of the Institute of Financing and Cooperative Development of Colombia (FINANCIACOOP). I was keen to learn something about cooperative law, as there were no cooperative law subjects available to study when I was in law school. Fortunately, I found in the FINANCIACOOP Library a book written by Professor Hans-H-Münkner, "Cooperative Principles and Cooperative Law" published by Friedrich-Ebert Stiftung in Spanish : After reading it closely, I wished to have a deeper knowledge of cooperative law, like the German professor who authored the book. I did not know it then, but he was to become a great mentor to me.

In 1989 I applied for a scholarship to study in Germany and my proposed subject area was cooperative law. To do this, I needed a tutor. Professor Volker Beuthien, a great friend of Professor Münkner, sent me a letter stating that he was willing to be my tutor in Marburg. I did not have Professor Münkner's contact, but I knew that he taught at that University.

I was fortunate to obtain the scholarship awarded by the DAAD and arrived in Germany on October 2, 1990, one day before reunification. After 6 months of an intensive German language course, I was admitted to the Philipps Universität in Marburg. In January 1991, I met Professor Beuthien, and he recommended that I speak with Professor Hans Münkner. It was a great joy to meet the author of the book on cooperative law that I had read in Colombia, and that had motivated me to go to Germany to study this subject.

From day one, Professor Münkner was especially kind to me. He was struck by the fact that I was a lawyer, since none of the other foreign students in his classes shared the same profession. From 1991 to 1994, I had the opportunity to attend his classes in general cooperative law, African cooperative law, Asian cooperative law, cooperative law in the European Union, and German cooperative law. The first three subjects were designed for foreign students who were attending the Institute of Cooperation for Developing Countries to obtain an undergraduate degree in cooperative economics. The latter two were mainly intended for German students of business administration and economics.

During the first semester, the Professor set some mock exams for his students and he was satisfied with my results. He then invited me to be part of his legal research team. At the time he was researching the tax treatment of cooperatives in the different countries of the European Union. He needed someone who spoke Spanish to communicate with Spanish teachers and to help carry out a survey. My job was to translate the questions from German to Spanish and then translate the answers back into German.

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I worked with dedication for more than four months on that assignment. I was surprised that he never asked me about my work during that time. Then, one day, he called me in and asked to see what I had done. Fortunately, he was pleased with the results. I had prepared a comprehensive summary of Spanish legislation, especially on tax matters. The summary was in addition to his original request and provided him with a useful resource.

From that day on, I felt that he treated me as a colleague, rather than a student. I was keen to commence the diploma in cooperative economics, but the course was in the third year. I had to wait two years before I could start. I was admitted to the diploma but found out that it would be better for me to do a master's degree in law and write my thesis comparing German cooperative legislation with Colombian law.

Professor Münkner regretted that I was no longer studying at the Institute for Cooperation in Developing Countries, but he continued to give me his support. It was thanks to him that I was able to get an extension of my student visa and to stay almost 5 years in Marburg.

During the years in which I was fortunate enough to listen to his classes, I learnt about cooperatives from the best German professors. My education covered key topics related to cooperatives, including their structural characteristics and their definition from both economic and legal perspectives. I studied the dual nature of cooperatives, as well as the principle of cooperative identity. According to this principle, cooperatives are unique in that their members simultaneously serve as owners, managers, and users of the cooperative's services—unlike commercial companies, where these roles are typically separate.

All this helped me enormously with writing my master's thesis under the mentorship of Professor Beuthien. I was awarded the degree magna cum laude. Professor Münkner asked me for a copy of my thesis. As his former student, I considered this to be a great honour.

Professor Münkner told countless anecdotes in class about his experiences in Africa and Asia. He had a fine sense of humour. When it came to Latin American cooperative law, I was treated as a Latin American 'expert'. I found the experience of having to answer his questions in German in front of native and foreign students to be stressful.

In March 1996 I returned to Colombia, with the title of Magister Legum (LL.M.). Soon after, I was hired to teach cooperative law at the Cooperative University of Colombia and in a postgraduate program at the Pontificia Universidad Javeriana. There were no lawyers who had any study abroad on cooperative law, although there were very good lawyers in the field.

In October 1999, the Superintendence of the Solidarity Economy (*Superintendencia de la Economía Solidaria*) was created and I was appointed Head of the Legal Office. At that time, I had the opportunity to develop standards for the Colombian cooperative and solidarity sector, applying what I learned from Professor Münkner and other professors. These first regulations, issued in the years 1999 to 2022, are still in force in Colombia. In this way, it can be said that Professor Münkner has made a great contribution to Colombian cooperative law.

Unfortunately, I lost contact with Professor Münkner, at least partly due to my laziness in keeping up correspondence. However, in 2012, after more than 15 years without seeing him, I received an invitation from the University of Oslo, Norway to attend a cooperative law event. I noted that Professor Münkner and Professor Hagen Henry, whom I had met in Marburg, and later met in Bogota, would both attend.

I decided to go to Oslo. I especially wanted to see the Professor Münkner again and to apologize for what may have seemed to be my ingratitude. At first, he greeted me as if he didn't recognize me. But it soon became clear that he did remember me, and I quickly felt the warmth of his familiar appreciation.

After the Oslo event, Professor Münkner asked me to collaborate with him on an interview he was doing with some of his former Marburg students about their experiences of studying in Germany. The book was published in 2012 in English and German.

In 2013 we organized the first America-Europe meeting at the Pontificia Universidad Javeriana, with Professor Alberto García Müller. With good funding, some of the best professors of cooperative law in Latin America were able to attend the event (Dante Cracogna, Mario Schujman, Alfredo Moirano, Carlos Naranjo, Alberto García Müller, among others). From Europe came, among others, Gemma Fajardo from Spain, Hagen Henry from Finland and, of course, Professor Münkner. I have kept the papers presented by Professor Münkner and other participants.

It was my dream to have my teacher from Marburg, at an event in Colombia, in Bogotá, at 2,600 meters above sea level. He consulted his cardiologist, who authorized him to land in Bogotá. It was an unforgettable event. All the presentations, except for Professor Münkner's (in English), were in Spanish. However, the Professor did not miss any of the presentations, he understood a lot of Spanish, since he spoke French and English very well and knew the basics of Latin.

The value of Professor Münkner's contribution is beyond measure. His work on the development of hundreds of cooperative laws around the world, and to the education of thousands of students who attended his lectures has left an enduring legacy. While in Bogotá, he commented that he was happy to know that he had not wasted time teaching cooperative law to his students.

It was those students who were lucky enough to hear his lessons in Marburg and elsewhere, whose time was not wasted. Without any reservation, he gave all his knowledge to his students for the good of cooperativism around the world. The Lord must surely be blessing him for all the good he has done. His memory will live on forever.

## List of Professor Münkner's Publications Related to the Theme of Cooperatives and the Social Economy

### BOOKS

#### GERMAN

Economie Sociale aus deutscher Sicht [Social economy from a German perspective], Marburger Beiträge zum Genossenschaftswesen Nr. 30, Veröffentlichung des Instituts für Genossenschaftswesen an der Philipps-Universität Marburg, Marburg 1995

Rechtliche Rahmenbedingungen für Unternehmen mit sozialer Zielsetzung in Deutschland [Legal framework conditions for enterprises with a social objective/purpose in Germany], in: Netz e.V. (Hrsg.): Münkner et al., Unternehmen mit sozialer Zielsetzung, Rahmenbedingungen in Deutschland und in anderen europäischen Ländern, Neu-Ulm 2000

Als Übersetzer von [as translator of] Jeantet, Thierry, Economie Sociale - eine Alternative zum Kapitalismus [Social economy - an alternative to capitalism], Neu-Ulm 2010

#### ENGLISH

Legal Framework for Enterprises with Social Objectives in Germany, Marburg 2001

### ARTICLES

#### GERMAN

Economie sociale in Frankreich [Social economy in France], in: Genossenschaftsforum 10/88, 457- 462

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Sozialgenossenschaften in Europa – vorhandene und zu hebende Potenziale [Social cooperatives in Europe – existing potentials and potentials to be uncovered], in: Schmale, Ingrid/Blome-Drees, Johannes (eds.), Genossenschaft innovativ – Genossenschaft als neue Organisationsform in der Sozialwirtschaft, Springer VS, Wiesbaden 2016, 283-297

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How co-operative are social co-operatives?, in: Servizo de Publicacións da Universidade de Vigo, Andavira Editora, Cooperativismo e Economía Social (CES), N° 38, Curso 2015-2016, Vigo, España, 33-75

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