

Articles

COOPERATIVE PRINCIPLES IN THE HARMONIZATION OF COOPERATIVE LEGISLATION

(With special reference to Latin American countries)

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Abstract:

The term '*principles*' has different meanings in different contexts. This work considers the term in the context of the cooperative principles. The cooperative principles are understood as guidelines for actions that facilitate the realization of the cooperative values. Initially, the cooperative principles were mainly found in the bylaws of cooperatives. This was because cooperative legislation was either non-existent or did not incorporate the cooperative principles. Following the publication by the International Cooperative Alliance (ICA) of a definition of the cooperative principles, the principles were more likely to be included in cooperative legislation. This trend became stronger when the Statement on the Cooperative Identity was issued by ICA in 1995. Subsequently, cooperative legislation in many jurisdictions has addressed the cooperative principles in various ways. The adoption of the Statement on the Cooperative Identity by international organizations such as the United Nations (UNO) and the International Labor Organisation (ILO) has significantly contributed to this outcome. However, the harmonization of cooperative legislation varies, as each national cooperative legislation has their own specific regulations. Therefore, harmonization should focus on incorporating the cooperative principles, as they constitute the core of the cooperative identity. This work examines the Project for a Framework Law for the Cooperatives in Latin America and its attention to the cooperative principles as an example of a potential approach to regional harmonization of cooperative legislation.

Keywords: cooperative legislation; cooperative principles; International Cooperative Alliance; Framework Law for the Cooperatives in Latin America.

Meaning of the principles

The term '*principles*' is subject to a broad and open-ended discussion. This is true both in philosophy, which seeks a general and comprehensive definition,¹ and in individual disciplines,

¹ Ferrater Mora, José (*Diccionario de Filosofía abreviado*, Sudamericana, Buenos Aires, 1981, p. 312 y ss), refers that the term was already used before Aristotle, who provides a series of meanings in *Metaphysics*, and that the debate around this notion has persisted in western philosophical tradition.

each with their own set of principles with exclusive meanings.

In this work, and without delving into more complex discussions, two meanings of the term *principles* and their intersection are considered. The first belongs to the field of cooperatives, and the second, to the legal field. It is evident that they differ significantly. In the legal field there are ‘general’ *principles* of law and there are principles exclusive to each branch, such as constitutional law, civil law, commercial law and criminal law.

Consideration of these digressions is unlikely to be productive and are avoided. Instead, these conceptual and terminological differences are set aside to allow this analysis to proceed on solid, or at least uncontested grounds.² This approach involves accepting that in this analysis, a reference to ‘*principles*’ refers to the cooperative principles, understood as *guidelines for action*. When these principles are observed, they enable the realization of cooperative values. Together they ensure that the cooperative is true to its nature and operates in accordance with the Statement on the Cooperative Identity.³

The origin of the cooperative principles

For a long time, cooperative principles were only found in the bylaws of cooperatives, since they were not incorporated in cooperative legislation. This was the case with the Rochdale Cooperative and continued for a lengthy period. Early versions of cooperative legislation provided for certain features of the cooperative model and did not expressly refer to the set of principles that would ultimately characterize cooperatives.

Throughout this period it was left to the bylaws to define the organization and operation of cooperatives pursuant to guidelines which set them apart from other forms of business organization. The Rochdale Cooperative was an important inspiration for later cooperatives who replicated the bylaws and the fundamental features of the cooperative. A prominent role was also played by those who disseminated information about the successful Rochdale experience.⁴

² It is timely to mention the important study on the Principles of European Cooperative Law (PECOL) carried out by a qualified group of specialists from different countries, which addresses this topic in five chapters: definition and objectives; government; financial structure; auditing and co-operation among cooperatives (Study Group on European Cooperative Law (SGECOL), *Draft Principles of European Cooperative Law (draft PECOL)*, May 2015).

³ The Statement on the Cooperative Identity issued by ICA Centennial Congress held in Manchester in 1995 has three parts: a) definition of a cooperative; b) cooperative values and c) cooperative principles. There, it is expressly stated: "Cooperative principles are guidelines through which cooperatives put their values into practice." This Statement contains the current formulation of cooperative principles and has been recognized by UNO in the *Guidelines aimed at creating a supportive environment for the development of cooperatives* (Annex to Resolution 56/114 of the General Assembly) and by ILO Recommendation No. 193, which includes them verbatim. The complete version of the Statement, together with the accompanying reference document, can be found in: MacPherson, Ian, *Cooperative Principles for the 21st Century*, International Cooperative Alliance, Geneva, 1995

⁴ A paradigmatic case is that of *The History of the Rochdale Pioneers*, written by Georges J. Holyoake, which was widely disseminated in England and Continental Europe, thereby greatly influencing the organization of numerous

The replication of the Rochdale Cooperative by laws is the reason why it is safe to speak of the ‘Rochdale principles’ as true cooperative principles. It was the Rochdale principles that would provide their distinctive stamp on the cooperatives that became part of the ICA towards the end of the 19th century. However, the Rochdale principles were only present in the bylaws of cooperatives and not in cooperative legislation. In many countries there were no laws specifically regulating cooperatives. In this sense, the bylaws determined the cooperative identity, in so far as they observed these principles, even if their legal structure corresponded to other forms of organization.⁵

This situation continues to exist today in those countries whose laws do not include the cooperative principles but whose cooperatives rely on their bylaws to define their unique characteristics. This is true in most States of the United States of America as well as in other countries.⁶

The cooperative principles in the ICA

In 1937, following years of studies and consultations, the ICA made public its first statement of cooperative principles at the Paris Congress. This statement meant that lawmakers could avail themselves of a precise and specific set of principles which would serve as a guide to define the unique profile of cooperatives.⁷

These principles were based mainly on the ones established by the Rochdale Cooperative, and those reformulated at the Vienna Congress in 1966.⁸ However, these principles were slowly added to many cooperative laws without mentioning where they came from. They were included only in relation to the specific rules in each law. Clearly, having a well-defined set of principles made it easier to include them in the legislation.⁹

cooperatives. (There is an abridged version in Spanish: Holyoake, Georges J., *Historia de los Pioneros de Rochdale*, trad. B. Delom, Intercoop, Buenos Aires, with several editions).

⁵ A typical example of this is the Argentine Commercial Code of 1889, which in section 380 set forth that cooperatives may be formed under any of the types of business organizations provided by such Code (corporations, general partnerships, etc). In this way, the cooperative was not a form of legal organization in its own right but a business entity characterized by the rules provided for in its bylaws.

⁶ Czachorska-Jones, Barbara - Finkelstein, Jay Gary - Samsani, Bahareh, "United States", in Cracogna, Dante-Fici, Antonio-Henry, Hagen (Eds.), *International Handbook of Cooperative Law*, Springer, Heidelberg, 2013. p. 759 ss. Also, it has been pointed out in an interesting article that cooperative principles are not a source of law (Santos Domínguez, Miguel Angel, "La relación de los principios cooperativos con el derecho", *Revista Jurídica de Economía Social y Cooperativa*, N°27, CIRIEC España, Valencia, 2015, p. 87 y ss).

⁷ (Vienna, 1930 and London, 1934), and it was based on extensive research made on the topic of the different types of ICA- member cooperatives, on the basis of the principles applied by the Rochdale Cooperative.

⁸ International Cooperative Alliance, *Twenty-third Congress Vienna 5th to 8th September 1966. Agenda and Reports*, N.V. Drukkerij Dico, Amsterdam, s/f, p. 48 . The valuable report of the Committee on Cooperative Principles, authored by W. P. Watkins, a former ICA director general for years, is useful for understanding and interpreting the principles.

⁹ Cfr. Münkner, Hans-H. (*Cooperative Law and Cooperative Principles*, Friedrich-Ebert-Stiftung, Bonn, 1985) published in 1974 an enlightening study on this topic, whereby he addresses how cooperative principles are

This shift explains how cooperatives transitioned from being characterized as cooperatives at the level of bylaws to the level of national or state legislation. Cooperatives gradually became a distinct form of legal organization. The legal form continued to co-exist with those already in existence. However, they were distinguishable by their legal right to use the term “cooperative” granted by their adoption of the features prescribed by the legislation. These features were the cooperative principles, now turned into legal characteristics.

The Statement on the Cooperative Identity

There is a difference between the formulations of cooperative principles made in 1937 and those made in 1966. The difference impacted on the way the cooperative principles were adopted by cooperative legislation. The 1937 formulation used short, categorical phrases intending to convey only the core meaning of each principle. The 1966 version used longer sentences to explain the content of each principle in an educational way.¹⁰

This difference had an impact on the legislation adopting the principles. While it was easier to adopt simple and concise language, its intended meaning was less clear. The use of more detailed explanations made the meaning clearer and resulted in a more precise implementation of the principles.

The Statement on the Cooperative Identity approved by the 1995 ICA Congress in Manchester contributed a new formulation of the principles. In this formulation, the principles are described using both a concise title and a more detailed explanation. This approach represents a symbiosis between 1937 and 1966 formulations. It might be assumed that the third approach was superior to the earlier formulations, as it combines elements of both. However, this is not necessarily the result. In some cases, such as the third principle, the concise title “Member Economic Participation” is followed by a heterogeneous text which makes reference to several different aspects of the principle, including: the capital contributed by the members; the different types of capital; the compensation on the contributed capital; the possible allocation of surplus; the setting up of reserves, etc., all of which gives rise to ambiguity and inconsistencies. As an additional difficulty, the explanation includes vague or imprecise expressions such as “usually”, “at least”, “possibly”, etc. It seems obvious that the intention was not to produce excessively rigid statements. The problem for lawmakers is that these generalized explanations make it difficult to translate the principles into legal texts.

The Statement on the Cooperative Identity adds a further complication. Not only does it contain the enumeration of cooperative principles, but unlike the earlier formulations, it adds a

reflected in the legislation, taking into account that at the time numerous countries in Africa and Asia were undergoing a legislative revision process on that matter.

¹⁰ The report of the Committee which served as a basis for the 1966 statement expressly mentions that, in order to avoid the risk of simple and brief texts, a longer formulation was preferred so as to clearly convey the meaning of each topic (International Cooperative Alliance, *Twenty-third Congress Vienna 5th to 8th September 1966. Agenda and Reports*, N.V. Drukkerij Dico, Amsterdam, s/f, p. 57).

definition of a cooperative and describes the cooperative values. The issue is whether the definition of the cooperative and its values are relevant elements to be considered when characterizing the legal nature of cooperatives. If so, the further issue is whether these values can be translated into law. Despite these complications, it must be acknowledged that the Statement, as a whole, provides a more comprehensive explanation of the cooperative identity.¹¹

The cooperative principles in the legislation

Following the publication of the Statement on the Cooperative Identity the incorporation of the cooperative principles into cooperative legislation has intensified, although different techniques are adopted by different countries. These techniques can be summarized as follows:

- a) A verbatim -or almost verbatim- transcription of the principles described in the Statement, or, in some cases, the copy of the whole text, including the definition of cooperative and the values. This transcription usually appears in the first sections of the legislation, to serve as a general guideline for the interpretation of the remaining provisions of the law;
- b) An incorporation of the content of the principles -rather than the text- in the different provisions of the law regulating the organization and operation of cooperatives. For example, where the principle of voluntary and open membership is assimilated into the provisions regarding the members; the principle of democratic member control into the provisions on the meeting of members; and the principle of member economic participation is embedded into provisions in the legislation dealing with capital and surplus, etc.
- c) Making a general reference to the cooperative principles “as they have been formulated by the International Cooperative Alliance”, or a similar expression, as a guideline for the interpretation of the provisions included in the law. The principles are referred to as an external source to orient the construction and enforcement of the law instead of being copied or transcribed. By reference to their source, the ICA, the legislation makes it clear that these are the relevant cooperative principles, to the exclusion of principles arising from a different source;¹²
- d) Legislation which combines all or some of these techniques. For example, a) and b) or b) and c) above, etc.

¹¹ In that respect, in order to facilitate the appropriate interpretation of the principles within ever changing social and economic circumstances, instead of favoring a possible revision thereof, the International Cooperative Alliance entrusted the Principles Committee with the drafting of a document that would serve as a guide to that effect. Such a document was submitted before the General Assembly held in Antalya in 2015 under the title *Guidance Notes to the Cooperative Principles*.

¹² It should be mentioned that there exist other formulations of cooperative principles such as the ones arising from IRU for agricultural cooperatives, WOCCU for credit unions, Mondragón for worker cooperatives, etc.

Cooperative principles and the harmonization of cooperative law

There is a relation between the incorporation of the cooperative principles into cooperative legislation and the harmonization of cooperative legislation in different jurisdictions. Harmonization is a controversial issue, which gives rise to different opinions and experiences. Harmonization is different from unification. Unification is a process requiring special conditions to implement, as demonstrated by the experience of the OHADA countries.¹³ The harmonization of cooperative legislation creates similar legislation in different jurisdictions based on shared rules on the key aspects of cooperatives. This process allows each country to manage other details in their legislation, provided that these details do not jeopardize the fundamental identity features of the cooperative.¹⁴

Harmonization should be based on the cooperative principles, as they give cooperatives their unique character. All other regulatory aspects are secondary and contingent on the principles. The process of harmonization may rely on one of the techniques described above. The technique described in b) is arguably the best approach to guarantee the realization of the principles in action. This technique is complemented by the reference to the ICA as the course of the principles as described above in c). In this way, the characterization of cooperatives in each national legislation is consistent with international harmonization.

The case of the Framework for the Cooperatives in Latin America. Conclusion

An illustration of this style of harmonization is the Framework Law for the Cooperatives in Latin America approved by ICA Americas in 2008 and later by the Latin American Parliament in 2012.¹⁵ As explained in its presentation to Parliament, "The Framework Law is not intended to be a model to be copied by the lawmakers of the different Latin American countries. Its purpose is to provide orientation on the key guidelines of the cooperative legislation as they derive from jurisprudence, academic studies and the most recognized practice of comparative law".¹⁶

¹³ On this topic: Hiez, David - Tadjudge, Willy, "The OHADA Cooperative Legislation", in Cracogna, Dante - Fici, Antonio - Henry, Hagen (Eds.), *International Handbook of Cooperative Law*, Springer, Heidelberg, 2013, p. 89.

¹⁴ When dealing with the harmonization of cooperative legislation, Henry, Hagen highlights the need to reach an agreement on the nature of the cooperative identity and how to translate it effectively into the law ("Trends and Prospects of Cooperative Law", en Cracogna, Dante - Fici, Antonio - Henry, Hagen (Eds.), *International Handbook of Cooperative Law*, Springer, Heidelberg, 2013, p. 809).

¹⁵ On this topic: Cracogna, Dante, "El Derecho Cooperativo en Latino América y el Proyecto de Ley Marco", *Anuario de Estudios Cooperativos*, Universidad de Deusto, Bilbao, 1989, p. 129 y ss, for the original version and Cracogna, Dante, "Nueva versión de la Ley Marco para las Cooperativas de América Latina", *Revista Jurídica de Economía Social y Cooperativa*, N° 20, CIRIEC España, Valencia, 2009, p. 183 y ss. for the revised version of 2008.

¹⁶ This is how it reads in the presentation made by ICA Americas authorities, which summarizes the rationale, the drafting process as well as the purposes of the document.(ACI Américas, *Ley Marco para las cooperativas de América Latina*, San José, 2009, p. iv).

Section 3 of the Framework Law replicates the definition of cooperative included in the Statement on the Cooperative Identity, with only one addition that is intended to clarify that cooperatives are private legal persons, as opposed to those that are governed by public law, which are part of the State.

Chapter 4 states that cooperatives must observe the principles included in the Statement of the Cooperative Identity and reproduce the title of each cooperative principle. It also provides that the principles shall have such meaning and scope as it is universally recognized. This ensures that the interpretation of the principles is pursuant to general standards and not according to particular cases which could distort their true meaning.

In subsequent chapters, each of the principles are introduced and their meaning and scope explained. For example: in section 21, voluntary and open membership (Chapter dealing with the members); in sections 25, 50 and 85, democratic member control (Chapters referring to the members and integration); in sections 34, 40, 41, 44 and 49, member economic participation (Chapter devoted to the economic regime); in section 2, autonomy and independence (Chapter of general provisions); in section 49, subsection 2, and sections 68 and 90, education, training and information (Chapters regarding the economic regime, management, dissolution and liquidation); in sections 79 to 85, cooperation among cooperatives (Chapter dealing with integration) and in sections 42 and 49, subsection 3, concern for the community (Chapter in reference to the economic regime).

In conclusion, the process of harmonizing cooperative legislation should be based on the incorporation of the content of the cooperative principles into the relevant sections in the legislation, rather than simply transcribing the actual wording of each principle in the legislation. In addition, the legislation should stipulate that the Statement of the Cooperative Identity is the relevant text for the interpretation of any legal provisions in the legislation.

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