

Review of International Co-operation

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Editor : Iain Williamson

Co-Editor: Karl-Johan Fogelström

Editorial Assistant : Patricia Vaucher

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Editorial

In this issue of the Review we look forward to the ICA General Assembly scheduled for Seoul, Korea, in October 2001, which promises to be a highly significant meeting for co-operative organisations throughout the world.

This issue leads off with an overview of the Korean movement, which has seen remarkable growth during the last half century. There is a dynamism about Korean co-operatives that is exemplified by its leading national body, NACF (National Agricultural Co-operative Federation), which undertakes a wide range of services for its two million members including marketing, supply, banking and insurance. The reports from the National Credit Union Federation of Korea (NAKUFOK) and National Forestry Co-operatives Federation (NFCF) are equally impressive in the scope and scale of their activities.

One article that stands out among those from Korea, however, is the remarkable story of the foundation and growth of the Co-operative Childcare Movement, which has been successfully developed to meet the country's urgent need for good quality and affordable childcare. Since the first co-operative example in 1994, 37 childcare centres and 16 after-school centres have been set up nationally. This is a truly remarkable and inspirational example of co-operatives



moving into a vacuum to fulfil demands that neither the state nor private enterprise can meet satisfactorily.

The articles from Korea not only help to set the scene for those of us visiting Seoul but also fit in well with the topics that will be discussed at the business forums during the General Assembly, where the themes include the co-operative advantage in financial services (in which several of the main Korean federations are major players) and the development of service co-operatives, of which the childcare movement referred to above is an outstanding example.

Linking with the themes for the General Assembly itself, this issue contains a thoughtful paper on "Globalisation, Sustainability,

Development and Peace: The Role of National and International Co-operation". This is the work of Professor Dr. F.J. Radermacher, the eminent scientific director of the Research Institute for Applied Knowledge Processing in Ulm, Germany. Although it is essentially a European perspective on the challenges facing us, this paper has relevance for co-operatives everywhere as we find our place in the new global order. As he says, co-operatives must adapt. And he adds: "At the same time, taking account of high political aims such as sustainability, peace and development, co-operatives have a lot to offer. They should make that point more widely known." This is essential reading for all of us.

Towards the end of this Review we are reminded that the on-going work of the ICA includes promoting the co-operative movement and protecting our values and principles. Two specific initiatives that show we have been active in both these fields are highlighted in the "Co-operative Policy and Legislation" section. A brief mention of the important process of the revision of Recommendation no.127 on the Role of co-operatives in the Economic and Social Development of Developing Countries, adopted by the International Labour Organization

(ILO) is made to show the importance of international documents on co-operative policy and legislation. The major part of this section however, is dedicated to the presentation of a manual entitled "Guidelines for co-operative Legislation" which aims to assist co-operators with the revision or drafting of appropriate legislation in their own countries. This is the first tangible result of the newly formed Legislative Committee and its Advisory Group of legislative experts. These legislative guidelines will be finalised in the coming months and then published as a COPAC document.

As we note in the introduction to this section, these two separate but related issues demonstrate the work of the ICA in important areas of policy and legislation. More relevantly, they are tools oriented to the future that will help co-operatives to address the new conditions and opportunities in this era of globalisation.

So there is much to read here - and much food for thought. Overall I hope you will find this issue of the Review interesting and inspiring - and a foretaste of what the ICA has to offer delegates to the 2001 General Assembly.

Karl-Johan Fogelström
ICA Director-General

Message from the Mayor of Seoul

Dear co-operative members,

On behalf of the more than ten million people of Seoul, I would like to welcome all co-operative members from around the world to Seoul for this historic event – the ICA General Assembly Seoul 2001.

The capital of Korea for over six centuries, Seoul is a place where the past and future of the country coexist.

The name of Seoul has become familiar to citizens of the world through many momentous events, which have been or are to be held in Seoul. The 1986 Asian Games, 1988 Seoul Olympic Games, 2000 ASEM Summit and 2002 FIFA World Cup are some examples.

The year 2001 is “Visit Korea Year”. Various festivals are scheduled to encourage foreign tourism. You will have a good chance to experience the unique traditions of Korea, not to



mention beautiful blue skies and vivid autumn leaves.

I hope the ICA General Assembly Seoul 2001 is fruitful and successful for all participants.

Welcome to Seoul!

Goh Kun
Mayor of Seoul

Message from the Minister of Agriculture and Forestry, Republic of Korea

It is my great pleasure to welcome all participants of the ICA General Assembly Seoul 2001.

The National Agricultural Co-operative Federation – this year’s host organisation – has been a role model in co-operative activities such as agricultural development, environmental preservation, and food security.

At the same time, it has offered many excellent opportunities for all ages to come together to share experiences, concerns and ideas for the future.

People around the world have always sought co-operation and peace. The citizens of Korea are no exception. Koreans realise that those ideals can be achieved through co-operative activities. This General Assembly will provide an occasion to create a friendlier environment between Korea and the rest of the world.



I hope and trust your stay here in Seoul, Korea, will be both fruitful and enjoyable.

Han, Kap-Soo
Minister
Ministry of Agriculture
and Forestry,
Republic of Korea.

Interesting Places to Visit in Seoul

Around Gyeongbokgung Palace



At the north end of Sejongno Street appears the imposing Gyeongbokgung Palace, the oldest Joseon Dynasty palace.

In the palace grounds stands the National Museum, where visitors can see the unique cultural and historical inheritance of Korea and the lifestyle of former days.

Built in 1394 as the main palace of the Joseon Dynasty (1392-1910) by its founder, King Taejo, this palace is the most comprehensive in terms of buildings and the largest of the five palaces of the Joseon Dynasty.

The Joseon Dynasty Museum, the largest museum in Korea, was built in 1908 and for many years exhibited not only some 120,000 cultural assets from Korea, but also those of neighbouring countries and regions including China, Japan and Central Asia.

After the oldest museum building was demolished in 1996, the current building was erected as a temporary structure inside Gyeongbokgung Palace and now displays more than 5,400 items in 18 exhibition halls. A new museum is due to be completed by 2003 at Yongsan Family Park.

www.museum.go.kr)

This palace was used as the main one by many Joseon kings and is the best preserved among the five royal Joseon palaces. It is most famous for its beautiful garden for the royal family, Huwon or Biwon (“Secret Garden”) with superbly landscaped ponds and wooded areas.



Notable Shopping Areas

Namdaemun Market

Just a few minutes' walk from Seoul's ancient Namdaemun (South Gate) is an open-air market of the same name. It is close to the downtown area and luxury hotels and boasts the very best selection of merchandise in the whole country. The market's history goes back to the Joseon Dynasty and since

then has become the main trading place for daily products between the urban and rural areas of Korea.

Namdaemun Market is also the nation's wholesale centre and virtually anything you want can be found here: clothing and shoes in vast array, houseware, foodstuffs, flowers, tools, glasses, accessories of every kind, gift items, sporting goods, luggage, electric appliances, furniture, etc.



Namdaemun Market



Itaewon

Insa-dong

Along the streets of Insa-dong, visitors are attracted by hundreds of shops filled with traditional ink paintings, calligraphic works, antique furniture, curios, handicrafts, ceramics, and modern-style traditional dresses.

In Insa-dong's back alleys are traditional-style cafes and restaurants serving meals that are hearty and delicious. Every Sunday, Insa-dong is closed to vehicles to offer free stroll-

ing and local performances including traditional percussion and music.

Itaewon

From the Itaewon Intersection, this special tourism zone stretches all the way past the Hamilton Hotel to Hannam-dong.

It is honeycombed with about 2,000 shops as well as jazz bars, nightclubs and ethnic restaurants. This district is popular with both foreign residents and tourists.

- All photos are provided by the Korea National Tourism Organisation (KNTO).
 - For more information while in Seoul, phone 1330 or visit the Korea National Tourism Organisation (KNTO) on-line at www.knto.or.kr
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OVERVIEW OF THE KOREAN CO-OPERATIVE MOVEMENT

Korea's National Agricultural Co-operative Federation

by Shil-Kwan Lee*

Introduction

The National Agricultural Co-operative Federation (NACF) is the apex organisation for 1,387 farmer-owned agricultural co-operatives with two million members in Korea. NACF represents member co-operatives and their member farmers, as well as running its own businesses. At the end of 2000, 17,806 staff members were undertaking Federation work, along with 51,231 employees at member co-operatives. NACF and its member co-operatives were established in 1961, when the Agriculture Co-operative Law was enacted.

NACF aims to both raise the living standard of farmers by enhancing their economic, social and cultural status, and to ensure the balanced development of the national economy



by enhancing the competitiveness of Korean agriculture. The main services of the NACF, which are available to member co-operatives, member farmers and customers, include:

- a) marketing and supply services that support farmers from the field through to the market during the production, marketing and processing activities;
- b) banking and insurance services that include the banking business of NACF, the mutual credit of members, insurance and credit

* *Shil-Kwan Lee is General Manager of the International Co-operation Office of the National Agricultural Co-operative Federation (NACF) and Secretary General of the International Co-operative Agriculture Organisation (ICAO)*

Email: shilkee@nonghyup.com



NACF Headquarters in Seoul

card businesses and credit guarantee;

- c) guidance and extension services which include training to improve farming skills, provision of welfare facilities and supply of cultural needs, in addition to promotion of the farming industry and the co-operative movement.

Organisation

Agricultural co-operatives in Korea are organised into a two-tier system: member co-operatives in local areas and their national federation, NACF. Until 1980, co-operatives had been vertically organised into three levels: primary co-operatives at the township level; city/county co-operatives at the

city or county level; and the national federation.

Member co-operatives are classified into both regional co-operatives and specific commodity co-operatives. The former are organised by agricultural producers who are mainly engaged in raising such crops as rice, while the latter are organised by fruit and vegetable growers.

The current two-tier system came into being in 1981, in an effort to improve the managerial competency of primary co-operatives with which farmers have direct contact, and to develop them as the core organisations in the co-operative movement. The former city/county co-operatives were transformed into city/county offices of NACF. They began to perform banking operations, which became their main task.

Regional co-operatives organised at the village level numbered 21,500 in 1961. The number was drastically reduced during the 1968-74 period due to an amalgamation campaign, designed and initiated by NACF, to achieve economies of scale in co-operative management.

NACF currently has 1,278 regional co-operatives and 109 commodity co-operatives as its members. The total number of member co-operatives surged from 1,177 in 1999 to 1,387 as at the end of 2000, as a result of last year's merger with the National Livestock Co-operative Federation and the National Ginseng Co-operative Federation. Almost all the nation's farmers are affiliated with these co-operatives. The member co-

operatives conduct such business as the marketing of agricultural products, the supply of farm inputs and consumer goods, agricultural extension, banking and credit, and co-operative insurance. Since 1989 the special co-operatives, which previously handled only the marketing and supply business, have also been allowed to provide banking and credit services to their member farmers.

At of the end of 2000, the NACF has 16 regional head offices, 156 city/county offices and 494 branch offices across the country. It is also operating 10 training institutes and 20 agricultural marketing centres to support member co-operatives efficiently.

In addition, the NACF runs various subsidiaries and affiliated companies. They include the Korea Agricultural Co-operative Trading Co Ltd, Korea Co-op-Agro Inc, the NACF Futures Corporation, the Namhae Chemical Corporation, Nonghyup Tours, Korea Agricultural Co-operative Marketing

Inc., the Agricultural Co-operative Chungbuk Marketing Co., the Agricultural Co-operative Daegu Gyeongbuk Marketing Co., Co-operative Busan Gyeongnam Marketing Inc., the Daejeon Agricultural Product Distribution Centre, Livestock Co-operative Trade and Marketing, the Farmers Newspaper and Agricultural Co-operative College. It also has four overseas representative offices in Tokyo, New York, Beijing and Brussels.

Marketing

Co-operative marketing of farm products is one of the most essential services in providing stable markets and higher returns to member farmers. NACF continued to pursue an increase in the sales of agricultural products by expanding the business of direct marketing, by increasing the number of agricultural marketing complexes, and by operating the agricultural wholesale marketing centres in the large consumer marketing areas. NACF and member co-operatives also expanded the



A Korean Farmer

number of distribution centres, agro-products and rice processing complexes. NACF launched “The Marketing Revitalisation Project” with the goal that member co-operatives would become innovative leaders in agricultural marketing in 2000. As part of the project, NACF selected 99 member co-operatives, loaned KRW 264 billion at a reduced interest rate, and helped establish an action plan to construct marketing facilities such as agro-products processing complexes. As a result of

agricultural marketing complexes, 2,206 Hanaro Marts (non-membership supermarkets), 12 Hanaro Clubs (membership warehouse discount stores) and 601 Sintoburi (mini-grocery marts in NACF’s banking branches).

During 2000 the turnover totalled KRW 814 billion in agricultural wholesale marketing centres, KRW 1,149 billion in agricultural marketing complexes, KRW 1,464 billion in Hanaro Marts and KRW251 billion in Sintoburis.

Table 1. Co-operative Marketing of Farm Products (in KRW billion)

	1997	1998	1999	2000
Total	8,619	3,442	1,567	2,400
Grain	1,210	9,603	3,991	1,497
Fruit	2,557	1,558	10,355	4,082
Vegetables	1,734	2,819	1,720	11,125
Livestock & Others	4,392	1,701	2,860	2,172

expanding the marketing and production facilities, the sale of farm products by NACF and member co-operatives totaled KRW 11,125 billion in 2000, an increase of 7.4 per cent over the previous year. Sales of member co-operatives reached KRW 7,774 billion - 69.9 per cent of the total sales. The combined market share of the co-operatives in Korea is about 40 per cent.

To increase farm product sales and help to reduce intermediary marketing costs, NACF and member co-operatives now run 99 agricultural wholesale marketing centres, six

NACF and member co-operatives continued to support 20,919 farming groups to help them in their role as the centre for production and marketing in their regions, and provided KRW 115 billion for a co-operative shipping and a standardisation promotion fund. More funds were accrued to the “Demand and Supply Stabilisation Project for Vegetables” in 2000.

The programme allows farmers to contract with the member co-operative and guarantees a minimum price for farm participants if the eventual selling price falls below the forecast

price. Farmers who grow any of seven vegetables varieties - radish, cabbage, garlic, onion, red pepper, stone-leek and carrot - are eligible for the programme. Fifty billion won in additional funds were provided in 2000, bringing the total to KRW 350 billion.

Supply

Farm Supplies

The total value of farm supplies provided by NACF and its member

During the year, NACF lowered the supply price for farm chemicals, farm machinery, feedstuffs, etc. This was beneficial to farmers. For both the supply of fertilisers and the marketing of agricultural products, NACF improved its pallet carrying system. NACF supplied member co-operatives with 200 forklift trucks and increased the number of member co-operatives participating in the system by 347 to 880.



NACF General Assembly - February 2001

co-operatives was KRW 2,518 billion in 2000, a 36.8 per cent increase over the previous year, due to the merger with the Livestock and Ginseng Co-operatives referred to earlier. The major farm supplies handled are fertilisers, chemicals, machinery, polyethylene films, seeds, seedlings, foodstuffs and oil.

In 2000 NACF had the new responsibility of supplying livestock supplies as a result of the co-operative merger. This year NACF handled a range of 530 items such as oil presses and milk refrigerators.

Consumer goods

In spite of making inroads into the dis-



International delegates visiting Korean farms

tribution industry and increasing the number of large discount stores, the total value of consumer goods supplied by agricultural co-operatives remained steady in 2000 at KRW 1,566 billion. NACF organised the joint buying department and supported 40 large Hanaro Marts to supply competitively priced consumer goods. NACF also updated its EDI system and standardised the POS system at Hanaro Marts.

By establishing a network of consumer goods suppliers and setting up the POS system, NACF improved the competitiveness of Hanaro Marts in the retail sector.

Banking

“A Leading Co-operative Bank in the 21th Century”, NACF introduced its

plan to become “The NACF Super-Bank - trustworthy and safe” while remaining competitive in the midst of restructuring in the banking industry. This master plan includes improving the risk-adjusted profit structure, enhancing asset soundness, building a strong management system and bringing innovation to agricultural and mutual finance.

A leading co-operative bank in Korea, NACF provided funds for agricultural development and offered more financial services for customers, especially for farmers and corporations. Relatively low interest rates have discouraged savings in recent years, but NACF is still one of the leading players in the savings market, ranking second among the domestic banks at the end of the year. Except

for the trust account, the volume of deposits increased by KRW 14,606 billion to KRW 50,322 billion at the end of 2000, mainly fuelled by a KRW 14,397 billion surge in savings deposits and a KRW 595 billion growth in demand deposits. The major source of funding includes deposits (demand deposits, savings deposits, certificates of deposits) and borrowings, which account for 64.2 per cent and 28.0 per cent of the total funding respectively.

In keeping with its responsibilities, NACF extended funding for agricultural purposes. The source of funds primarily came from customers' deposits. Savings deposits recorded steady growth, despite a sharp fall in interest rates. Korea experienced a volatile financial market and widespread restructuring in the financial sector, which caused customers to seek the safer, more secure and reputable banks. In addition, the bearish stock market also prompted the transfer of funds to secure bank accounts.

Outstanding loans in local currency were the major source of funding, which accounted at the end of the year for 60.0 per cent of the total assets. The increase in loans in local currency was primarily due to the rise in corporate

and consumer lending, accounting for 63.2 per cent and 27.6 per cent respectively of NACF's loan portfolio. In the industrial sector, loans to the agricultural, fishery and forestry sectors were 42.1 per cent, or KRW 18,634.1 billion, out of the total outstanding loans in local currency of KRW 44,308.8 billion.

Mutual Credit

Mutual credit - based on co-operative finance, mutuality and self-financing (ie. members making deposits and lending to other members) - is one of the main business operations of NACF's primary co-operatives.

<i>Co-ops</i>	<i>Branches</i>	<i>Employees</i>	<i>Customers</i>
1,387	2,754	51,231	2,377,000

Co-operatives receive deposits from farmers and general customers. They loan to the farmers and agribusinesses and use the money for their own agribusiness in marketing, supply and processing. Tax-free deposit accounts up to KRW20 million are available for members and quasi-members.

Mutual credit deposits topped KRW 50 trillion in April. After the merger with NLCF and NGCF on 1 July 2000, deposits jumped to KRW 72.9 trillion and reached KRW 77 trillion at the end

Table 2. Mutual Credit Growth (in KRW billion)

	<i>1995</i>	<i>1999</i>	<i>2000</i>
Mutual Credit Deposits	310,649	579,944	769,877
Loans	238,424	369,573	490,418
Special Account Reserves	30,597	58,185	76,257
Deposits	40,391	138,551	163,497
Loans to co-operatives	19,418	17,419	16,792
Securities	46,853	178,095	20,640

of the year. With KRW 49 trillion in outstanding loans, mutual credit is the biggest lender in rural areas and the agricultural sector. NACF functions as the central bank for its member co-operatives. It monitors the financial safety of all the co-operatives in lieu of the financial watchdog and runs a Mutual Credit Special Account for connecting mismatched funds left in their credit sectors. NACF receives 10 per cent of the mutual credit deposits from every co-operative as required reserve.

The co-operatives are also required to deposit more than 70 per cent of the money that is surplus into a Special Account. The Special Account is usually loaned to co-operatives at 8 per cent interest and the remaining is invested into securities or bonds. The

member farmers and customers for unexpected losses and to provide them a means for long-term savings. NACF is not only the re-insurer of policies sold by member co-operatives but also the direct underwriter through its branches.

At the end of 2000, active life insurance policies accounted for KRW 65,242 billion, and premium income stood at KRW 7,097 billion, up 62.9 per cent from the previous year. Total insurance assets reached KRW 13,187 billion, up 34.7 per cent from the previous year. Assets consisted of KRW 10,072 billion in securities, KRW 433 billion in deposits, KRW 2,193 billion in loans and KRW 84 billion in real estate. Co-operative insurance redistributes its surplus through welfare activities. To help ensure the

**Table 3. Co-operative Insurance Growth
(in KRW billion)**

	1998	1999	2000
Premium Income	4,270	4,355	7,097
Policies in Force	54,753	55,859	65,241
Total Assets	7,848	9,791	13,187

profit of the account is used to invest in information technology, public relations and administration expenses and to provide assistance for financially weak co-operatives. The remaining profits are divided among the co-operatives at the end of the year.

Insurance

Agricultural co-operatives in Korea conduct their own co-operative insurance business to compensate

health of member farmers and policyholders, NACF supports and promotes health care and comprehensive physical examinations for the early detection and treatment of disease.

A free health check service for 24,000 customers was provided during the year. NACF also operates recreational facilities at Mount Sorok National Park and Baik-am Hot Springs. These



Community Development Programme of NACF

facilities are for the convenience of policyholders and their families, and help ensure their physical health and well being.

Rural Development and Research

Farm Development

NACF selected 200 model farm couples in 2000 and awarded them “New Farmer of the Month” prizes. Since 1966, 2,003 couples have been awarded this prize. The couple’s farm is then designated as an Agricultural Co-operative Model Farm and is open to other farmers for educational purposes. NACF supported autonomous farming clubs organised by age group or farming product in various regions around the country. Nationwide, there are approximately 63,000 farming clubs or associations that include the Farming Club, the Rural Ladies Club, the Agri Co-op

Youth Club and the Old Farmers Club.

To encourage sustainable and environmentally friendly farming, NACF supported 2,054 organic agro-product farming clubs.

Beginning in 1996, NACF has promoted a “Soil Revitalisation Campaign”, which is the basis for national environmental conservation and sustainable agriculture. In co-operation with the Rural Development Authority in Korea, the campaign aims to reduce the application of pesticides and chemical fertilisers by two-thirds of 1996 levels by the year 2004.

Development for Living

Since 1995, agricultural co-operatives have provided free legal advice to member farmers who are at a disadvantage in disputes due to lack of legal knowledge. The Hanaro Service Centre plays an active role in

protecting farmers' rights as well as providing legal advice for member farmers. The centre helps farmers to settle disputes, file suits by proxy and implement legal deposition upon request. Agricultural co-operatives encourage the participation of women in their co-operatives and women farmers are actively involved in the decision-making processes of co-operatives. Since the appointment of the first woman board member in 1997, 22 women board members and 347 delegates have become involved in managing member co-operatives. To develop new sources of income for the farmers and provide new holiday opportunities for urban people, NACF administers development projects for agro-tourism resorts. At the end of 2000, NACF supported 257 weekend farms and 40 farm-stay villages.

The NACF published 50,000 copies of the book entitled "To My Home Resorts" to advertise agro-tourism holiday opportunities. To improve the medical care situation in rural areas, agricultural co-operatives also provide member farmers and their families with a medical care service. In particular, a regular medical check-up service is provided to mutual insurance policyholders. Funeral services are given to member farmers in many co-operatives to reduce economic burdens and to help maintain traditional customs.

Education and Training

NACF runs five provincial training institutes and an institute for Human Resource Development for staff members, as well as three Agricultural

Co-operative Leaders' Training Institutes for member farmers. In addition, the Agricultural Co-operative College run by NACF aims to educate future leaders about the agricultural co-operative movement and about rural development as a whole.

Research & Public Relations

NACF directed its research in 2000 towards strengthening agricultural competitiveness and supporting its own business activities and its member co-operatives. Policy proposals in the interests of farmers and agricultural co-operatives were given to the respective authorities. In addition, statistical data and information on agriculture and agricultural co-operatives are collected on a regular basis, and are published in research bulletins, such as the *Monthly Review* and the Annual Report. NACF installed a research and information section on its internet homepage (www.nonghyup.com) in 1998 and provides clients and customers with research results. To provide necessary information in the areas of business management and decision-making, *CEO Focus* has been issued regularly on a weekly basis since 1998. NACF conducts extensive public relations and political/legislative activities. It distributes a number of publications, including the *Farmers Newspaper* and a monthly magazine, *Rural Life*. NACF also runs the Agricultural Museum and the Kimchi Exhibition Hall to preserve and display the richness of the Korean agricultural heritage.



Quality Korean Credit Unions in the New Millennium

by Jin-Woo Park*

Introduction

The Korean credit union movement has been recognised as one of the most successful movements all over the world because of its prosperity and fulfilment of the credit union philosophy and principles. In their early stage, the Korean credit unions strove to implement their movement through the enthusiasm of “self-help, self-reliance and co-operation” without external contributions. Furthermore, leaders and members of credit unions took the lead in promoting democracy under the previous authoritarian regime of the 1970s.

In the late 20th century, the movement confronted many challenges and crises, which not only prompted the restructuring of the organisation but also threatened the co-operative principles and not-for-profit philosophy. Nevertheless, as external turmoil is prone to encourage internal components to converge their spirit and strength to overcome, the credit unions have shown a great deal of



potential, and it can be said that they have overcome difficulties successfully. Furthermore, they are in a solid position in the competitive financial market and will continue to be a sound co-operative financial institution.

The National Credit Union Federation of Korea (NACUFOK) and its affiliated credit unions are committed to attaining their ultimate goal of improving the welfare of their communities and to stay ahead of the competition.

Brief History of the Movement

The Korean credit union movement today originates from the founding of the first credit union in the 1960s. On

* *Jin-Woo Park is President and Chairman of the Board of the National Credit Union Federation of Korea (NACUFOK) and President of the Asian Confederation of Credit Unions (ACCU).
Email:*



Sister Mary Gabriella

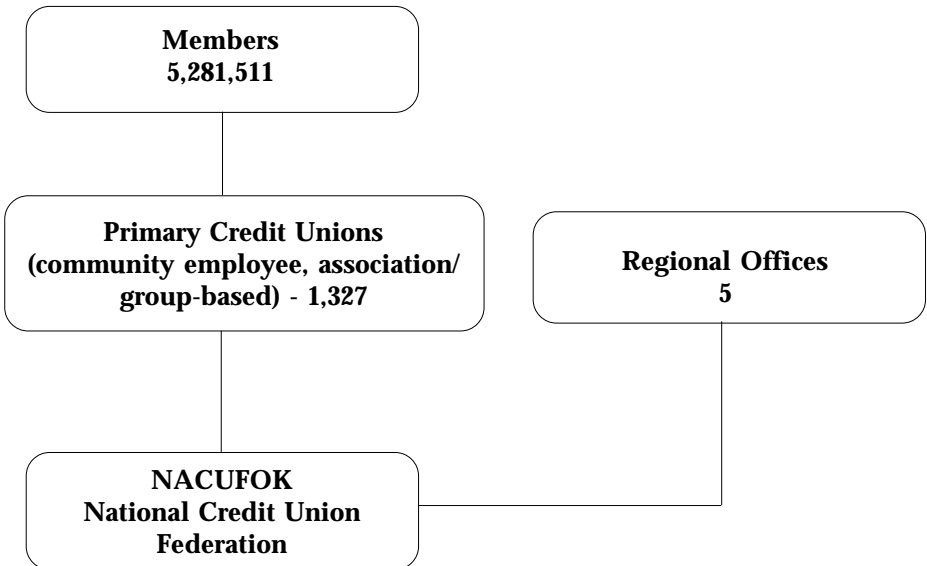
1 May 1960, Holy Family Credit Union was established by Sister Mary Gabriella. In 1964, the Korean Credit Union League (KCUL), a trade asso-

ciation, was founded with 63 member credit unions.

The Korean Credit Union Act was promulgated in 1972. NACUFOK (formerly KCUL) was reorganised as an official co-operative association according to the Act in 1973. In 1988, the organisational structure of NACUFOK was changed into a two-tiers system: Credit Union, Provincial League and NACUFOK, according to the amendment of the 1973 Act.

In 1992, NACUFOK joined the International Co-operative Alliance. Five years later, its organisational structure was reshuffled into two-tiers: Credit Union and NACUFOK. As of 1 July 2000, ten branch offices were consolidated into four regional offices.

Organisational Structure of the Movement



There were 5.2 million members at the end of 2000. Korean credit unions are classified into community, employee and association/group-based credit unions. There are 1,317 primary credit unions nationwide, 62% of which are community-based credit unions.

The National Credit Union Federation of Korea is a non-profit institution and is an apex trade association, financial intermediary and business organisation consisting of all credit unions.

As a trade association, NACUFOK represents member credit unions at government and regulator level and also internationally. It is involved in publicity, supervision, management consulting and education. As a financial intermediary, NACUFOK manages an inter-lending service as a central financial facility and it invests

the surplus funds in high grade mutual funds, government and corporate bonds, and other securities.

Primary Credit Unions

A primary credit union provides savings and loans, insurance services, and conducts other financial transactions. Its target is the low and middle class, such as the self-employed, proprietors of small businesses, urban salary workers and farmers.

Even though primary credit unions have been facing overwhelming challenges from commercial banks or other similar financial institutions since the 1997 financial crisis, they search for new niche markets where they are located and strive to attract potential members by providing customer-centred services.



Korean credit unions offer extensive financial services

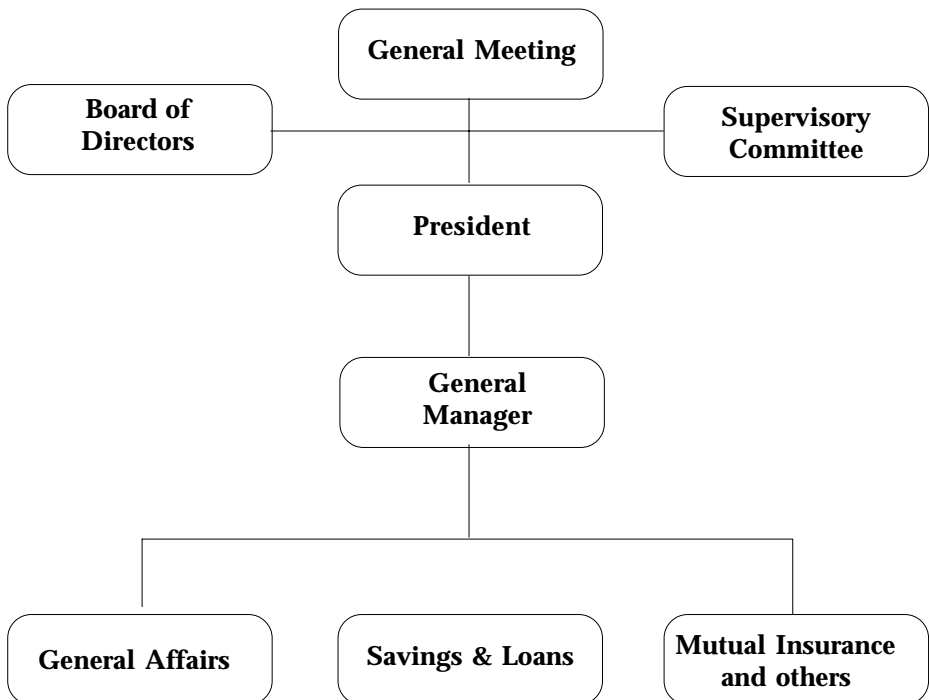
The number of primary credit unions decreased from 1,671 to 1,371 between 1996 and 2000 because of structural adjustments. But the number of their members increased from 4.7 million to 5.2 million between 1996 and 2000 because of their efforts to gain public confidence.

A general meeting is held, usually in February, for all members who hold a share. Members of a board of directors, including a president, and members of a supervisory committee are elected at the general meeting for a four-year term of office. The board of directors decides internal regulations and principles and sets the

policy of the credit union. Furthermore, it has the authority to appoint and remove chief managers when necessary. The president serves as the chairperson of the board meeting and the general meeting. The supervisory committee performs a periodic examination of management, then reports the results to the board of directors and the general meeting.

The general manager takes responsibility for the management of a credit union under the direction of the general meeting and the board of directors. He/she carries out all the business activities of a credit union under the leadership of the President

Organisational Structure of Primary Credit Union



and direction of the board of directors. Korean credit unions provide full-fledged financial services nationwide. Most credit unions offer basic savings and loan services including mutual insurance.

Recently, commercial banks have shifted their target, especially in the loan business, from commercial and industrial sectors to the consumer banking sector, mainly the members of credit unions. However, member-oriented services and consistent targeting to a niche market encourage a credit union to strengthen member participation.

More importantly, a new integrated on-line network among credit unions was launched in October 2000, covering members' demands to transfer funds. The financial services offered by primary credit unions are: demand savings; term deposits; instalment savings; secured and unsecured loans; line of credit; mutual insurance services; wire transfer; access to ATM and CD through bank networks; bill payment; financial planning; and consultancy service.

Community development programmes fulfil a significant goal of "creating a welfare society". Most credit unions carry out community development activities, sponsoring various social activities and education. Some credit unions retain recreation facilities for public use, for example fitness centres, gymnasiums and auditoriums.

Urban credit unions, in co-operation with rural credit unions, set up distribution networks to provide fresh and

chemical-free agricultural products at a fair price.

National Credit Union Federation of Korea

Management consulting, political advocacy and examination are consistently performed under the Credit Union Act and other relevant regulations. On behalf of its member credit unions, NACUFOK raises various issues of advocacy and negotiates with government regulators to settle problems. When the Act and regulations are amended, the National Credit Union Federation of Korea revises internal rules and guidelines and distributes the information to credit unions to follow up changes in legislation, and provides the necessary regulations & guidelines to meet the unions' needs.

NACUFOK also offers a wide range of knowledge-driven management consultations, which enable a credit union to compete with other financial institutions, and counselling on legal matters. By publishing periodic surveys and research papers, NACUFOK helps credit union management by pipelining information about the rapidly changing market environment.

Low premiums and high coverage insurance services are available to members and their families. NACUFOK is mainly in charge of the general management of the mutual insurance business and asset management. To deliver products and services successfully to members, NACUFOK is closely working with affiliated credit unions which play a



Most credit unions carry out community development activities

key role in marketing products in their community. The total assets of NACUFOK's mutual insurance business are KRW 550 billion and the number of contracts for life and non-life insurances have reached 505,934 and 39,227 respectively.

One of the remarkable achievements in 2000 was the significant increase in the number of insurance contracts, which reached 264,000 thanks to a joint marketing campaign by NACUFOK and credit unions. In addition to an increase in market penetration, NACUFOK also formed a strategic alliance with the Dongbu Insurance Co Ltd, a leading domestic fire and casualty insurer, to launch auto insurance services. The main insurance products offered by a credit union are: life insurance; non-life insurance; auto insurance; LP/LS.

State-of-the-art IT resources bring together the Korean credit union system to streamlining communications linking NACUFOK to more than 1,300 credit

unions. Information is widely recognised as an important tool in business, where there is overheated competition to attract customers. To meet the technological challenge, NACUFOK embarked in February 2000 on the Group Ware, an independent intranet system which disseminates information and exchanges electronic documents between the head office and regional and branch offices.

NACUFOK's website at www.cu.co.kr is periodically updated with useful information that contributes to the site's effectiveness

Human resource development through proper and timely education was a driving force in becoming a successful and competitive credit union movement. The NACUFOK Training Centre conducts a wide range of programmes to satisfy various requests from member credit unions. More than 52,000 volunteers and employees and 300,000 individual members have participated in

educational programmes since their establishment in 1981.

The Credit Union Collegial Course, which is a two-year correspondence diploma programme run in collaboration with the Training Centre, develops the capabilities of the senior management of credit unions. It offers 18 subjects with 53 credits and more than 900 have graduated from the programme. These graduates now play a vital role in upgrading the high quality of services to members. For the employees, NACUFOK organises professional courses such as financial planning, fund investment, IT, etc.

The supervision and regulatory environment has been advanced since the financial crisis that shook the national economy in 1997. The government moved swiftly to consolidate the financial regulatory framework in order to eliminate supervisory grey areas and produce sounder and more effective regulations over the entire financial sector. On 1 April 1998, the Financial Supervisory Commission (FSC) was established as the nation's highest and integrated financial supervisor. Each Banking, Securities, Insurance and Non-banking Supervisory Board was consolidated into a single body, the Financial Supervisory Services (FSS), which carries out its duties under the supervision of the FSC.

Reform and restructuring for safety and soundness were initiated to squeeze out insolvent credit unions or to merge weak credit unions with sound ones, and also to promote mergers between safe credit unions for competitiveness and economies of

scale. As a result, 329 credit unions have been liquidated, closed or merged since the first quarter of 1998. According to the survey, employee oriented credit unions have decreased significantly in the last three years as many companies - sponsors of employee credit unions - were closed. In the case of NACUFOK, ten branch offices were integrated into four regional offices

International Collaboration

International collaboration and networking have provided a valuable opportunity to understand the rapidly changing environment of the international credit union community. From an Asian perspective, NACUFOK was one of the five incorporators of the Asian Association of Credit Unions in 1971 and has been playing a significant role in consolidating credit unions in the Asian region through technical consultation and education programmes. It currently holds the Presidency of the Asian Confederation of Credit Unions.

From a worldwide perspective, NACUFOK joined CUNA International in 1964 and represented credit unions in developing countries during the 1970s and 1980s. It has become the third largest of all the members affiliated to the World Council of the Credit Unions, the apex trade organisation and development agency of the international credit union system. NACUFOK is also an active participant in the International Co-operative Alliance and the International Raiffeisen Union. □

Co-operative Childcare Movement in Korea

by Byung-Ho Chung*

The Co-operative Childcare Movement in Korea has started establishing parent-initiated community childcare centres to meet the urgent need for childcare. As in other industrial societies, the need for public childcare has been growing rapidly due to the fast-moving social changes such as industrialisation, urbanisation, nuclearisation of the family and the participation of married women in the salaried work force. Since the opening of the first co-operative centre in the summer of 1994, 37 childcare centres and 16 after-school centres have been established nationwide as of May 2001.

A co-operative centre is usually established by about 30 families with children from four months to ten years old. Each family deposits KRW 3 million (about USD 2,500) as an investment. The exact amount depends on the locality. For example, it is KRW 1.2 million in Pyungtaek and KRW 5.5 million in Bundang). With this initial capital, parents in a co-operative rent a relatively large house



with a garden and renovate it into a childcare centre. They may add after-school centres when their children enter elementary schools. As the children grow and the needs for the care diminish, the initial investment of a co-operative family will be returned in full. It may seem unstable but, as long as the need for the care exist, the total of nearly KRW 100 million (about USD 80,000) initial capital has been mobilised in many centres by parents and teachers who want to have full control over their childcare programme.

Parents also pay monthly tuition fees to cover the expenses for teachers' salaries, snacks and meals, and educational materials. These fees are much higher than those of the

* *Ph. D. Byung-Ho Chung, Professor at the Department of Cultural Anthropology of the Hanyang University, is Director of the Centre for Co-operative Childcare.*
Email: gongdong@gongdong.or.kr



By playing in natural surroundings, children grow to be friends with nature

government-subsidised public childcare centres, but they are not as high as those of private or family-care centres. The co-operative centres have a much better teacher-child ratio (1:3 for babies under 20 months; 1:4 from 20 months to 36 months; 1:10 from three to four years-old; 1:15 for over four years old) than the commercial centres, and much better than government regulations (1:5 for babies under two years old; 1:10 from two to three years old; 1:20 for over three years old).

Even without any institutional or financial support from the government, co-operative centres have expanded very rapidly during the last seven years. There are three major action groups which have

helped this rather miraculous development of co-operative childcare arrangements.

First, a group of researchers and childcare advocates who have practised alternative childcare programmes for children in the poor areas since the late 1970s established the Centre for Co-operative Childcare to support the establishment of co-operative centres.

The Centre has developed the co-operative childcare methods and programmes: the pedagogy of children, teacher-training and parent education. It is an essential instrument for gaining social trust for this rather unfamiliar childcare arrangement and for guiding childcare activity to become a civil educational movement.

Second, the brave parents who have voluntarily organised the co-operative centres are mostly from the student movement generation who fought against the military dictatorship during the 1980s - the generation that brought democracy to Korea. Some of them are critical of the conservative remnant in child-rearing practices and also of the uniform pressure of early education. Once they have found co-operative childcare, they have eagerly responded to it as an alternative way of democratic child-rearing.

Third, the teachers who have suffered from feudalistic human relationships and profit-seeking management in many existing kindergartens and childcare centres wanted to find an educational field where they could realise their pedagogic dreams. They have devoted themselves fully to the

co-operative centers, free from the pressure of inhumane drills for little children – a very common practice in many centres for early education.

Rapid Social Change

Korean society has not been able to cope with the needs of social childcare caused by the rapid social change. The Childcare Law was formulated in 1990, only after society had witnessed many children being victimised. However, even after the law was enacted and the national childcare system established, the structural problems of childcare have yet to be solved.

A few government-subsidised public centres have been established, but they are run by private individuals and groups and are not able to meet public welfare roles properly. Private childcare centres, which suffer from



Thanks to co-operative networking, families move close to the centres and form real urban communities.

financial problems and have no support from the government, find the way to secure minimal profit is to reduce the number of teachers. More competition-oriented programmes are introduced to attract more children. The less profitable full-day care for the infants and toddlers is easily ignored. Parents are left to depend on expensive individual arrangements or on the insecure commercial family-care centres.

Compared with these conditions, a co-operative centre is an open space where parents can participate and monitor the contents and quality of the centre. Above all, it is a place where they can care for infants and handicapped children together. It is a small-scale community where not only the children, but also the adults, can experience the effectiveness of co-operation and autonomy.

Co-operative childcare centres want children to experience and to internalise a communitarian way of life. It is an educational movement that encourages children to grow along with people and nature.

By having daily experiences of living with many different people, children develop their own sense of understanding of others and spontaneous socialising. And, by playing in natural surroundings daily, children grow to be friends with nature and find creative ways to live with nature. Children have the right

to enjoy life and they should have the freedom to experiment with all the possible ways of living. Co-operative Childcare is a movement that seeks an alternative way of socialisation of children and, at the same time, the re-socialisation of adults through the participation in communal childcare.

The period of child-rearing is the most critical period for adults to reconsider their values and way of life. The effects of adult re-socialisation through communal child-rearing becomes evident in many co-operative centres. Parents meet daily at the centre, they purchase organic food collectively, and they share childcare even during the evenings and the weekends.

It is a rather unusual revival of the community way of living in an urban environment. Because of these functional merits of co-operative networking, families move closer to the centre and form a real urban community. They become involved in many community activities including local politics. Their childcare networks extend to the elementary school in the form of after-school care. The parents' organised voice often strengthens their position to the level of demanding school reform.

The Co-operative Childcare Movement is a new civil movement that cultivate fundamental culture change by practising communal childcare in everyday life.



National Forestry Co-operatives Federation in Korea

by Youn Jong Lee *

Introduction

The National Forestry Co-operatives Federation (NFCF) was founded in 1962 with the aim of contributing to the balanced development of the national economy, by enhancing the economic and social standing of forest owners and managers and by facilitating the conservation and development of forests.

Korea was successful in making its land green, probably in the shortest time period recorded in the world. Behind this success were the efforts of two million foresters, as well as the strong support from the whole nation. Needless to say, forestry co-operatives played a leading role in the process, despite being faced with many adversities.

On the basis of its past accomplishments, NFCF will continue to improve its services for member co-operatives and increase its efforts to protect the interests of 2,100,000 forest owners in Korea. We are also determined to play a leading role in the development of the Korean forestry industry in the 21st century, by improving sustainable



forest management and by enlarging the productive capacity of Korean forests.

Roles and Functions

The principal roles of the National Forestry Co-operatives Federation can be summarised in the following terms. Through democratic co-operative organisations:

- expedite sustainable forest management and enlarge the productive capacity of forests.
- enhance the economic, social and cultural standing of co-operative members.
- contribute to the balanced development of the national economy.

The main functions of the organisation are as follows:

* *Youn-Jong Lee is President and Chairman of the National Forestry Co-operatives Federation.*

Email: yjrhee@nfcf.or.kr

Assistance for member co-operatives

- providing guidance and support to co-operatives for their growth and development.
- education and training for the officials and staff of co-operatives.

Management guidance for private forests

- disseminate forest management techniques among co-operative members.
- advise on mutual finance activities of member co-operatives.

Development of forest resources

- production and supply of seedlings required for reforestation.
- development of commercial forests and conservation of forest resources.

Infrastructure for forest developments

- carrying out civil forestry work, including forest road construction.
- development of forest villages and recreational forests.

Promotion of direct trade of forestry products

- facilitating direct trade of forestry products between producers and consumers.
- undertaking the production/supply, brokerage and export/import of forestry products.

Forest Resource Development

For the effective development of forest resources, forestry co-operatives implement comprehensive forest management programmes, which reflect the interests of forest owners and co-operative members. Under these programmes, the co-operatives produce

and supply superior planting stocks, and they lead and assist forest owners to participate, on their own initiative, in forest management, including forestation, tending trees and protecting forests. In an effort to foster private forests, forestry co-operatives operate the proxy forest management system on behalf of forest owners. The programmes include:

- formulation of forest management plans
- planting trees
- forest management by proxy
- forest tending
- forest protection
- supply of seedlings
- operation of “tree markets”.

Extension Services

In pursuit of a bright and prosperous future for their members, forestry co-operatives provide them with up-to-date technical information relating to forestry management, and they train specialised forestry technicians to ensure a stable supply of forestry manpower. The co-operatives also help to foster joint management programmes among private forests, particularly those in forestry development promotion zones designated by the government, by providing:

- management and technical advice
- fostering joint management among private forests
- visits to advanced forestry countries
- education and training
- affiliation with ICA

- international co-operation with Indonesia and other countries
- public relations.

Infrastructure for Forestry Development

With various objectives in mind - such as forest resource development, the stable supply of forestry products, development of diverse income sources for mountain villages, the establishment of a comfortable living environment, rational use of mountainous land, and the enhancement of public benefit functions of forests - forestry co-operatives have worked to establish the foundations for forest management through teams of forestry experts specialising in different sectors. These include:

- operation of forest management units
- forest road construction
- development of natural recreation forest
- erosion control
- development of mountain villages
- forestry engineering.

Forest Product Marketing

Forestry co-operatives collect forest products, which are usually produced in small volumes during the different seasons of the year. Then they grade, reprocess, pack and distribute the products directly to the end users. The co-operatives also contribute to increasing the incomes of their members by developing the infrastructure required for rectifying the high-cost, low-efficiency distribution system and by

establishing the system of direct trade of forestry products between producers and consumers. The marketing services can be summarised as:

- forest production distribution facilities at local levels
- distribution of forest products of “short-term income source” types
- operation of internet shopping mall (www.nfcf.or.kr)
- supply of high-quality spawns for mushroom cultivation
- operation of automated facilities for sawdust-based cultivation of oak mushroom.

Forest Product Distribution Centre

NFCF is effectively operating a Forest Product Distribution Centre, which was set up in May 1997 on a site at Yoju, Kyonggi Province. It is the first of its kind in Korea. This distribution facility is designed to stimulate consumption of locally produced forestry products and increase producers' income.

The centre collects and upgrades the forest products, which are produced in small volumes, to meet the demand from large consumption centres, and it improves the distribution system for forest by-products. The Forest Product Distribution Centre is capable of processing wood comprehensively. It is equipped with various facilities, such as cool storage, grading and packing facilities, sawmill, pole-processing and laminating facilities, and sawdust/charcoal/plant vinegar plants, as well as a joint marketing

centre, exhibition centre and office building.

NFCF is building the second Forest Product Distribution Centre on a site in Donghae, Kangwon Province, scheduled to open in 2002. This centre will process small-diameter logs (from pruning) produced in Kangwon and Kyongbuk Provinces and be a general distribution centre for forestry products cultivated as short-term income sources.

Mutual Credit Activities

Under the slogan "Love Humans and Love Nature", forestry co-operatives perform mutual credit activities that help to finance the forestry business. In an effort to strengthen the economic situation of member forest owners and managers, NFCF has expanded the banking facilities at forestry co-operatives, with emphasis also being placed on upgrading their mutual credit services as well as the timely supply of finance.

Forestry co-operatives are safe banking institutions, free from bad debts. They operate their own security funds with which to protect depositors. They also provide government-funded loans.

Overseas Forest Resource Development

Since the Rio Declaration of 1992, more emphasis has been placed on forest conservation and there has been a strong move by wood exporting countries to protect their own forestry industries. This has made it difficult to import foreign wood products. NFCF has tried to deal with the

situation by securing long-term forest resources abroad, ensuring a stable supply and price for wood products. Through its subsidiary, Seyang Cosmo Co, NFCF has undertaken a forest development project (as a pilot project) on forest lands near the Mekong River in Vietnam, where land and labour are readily available. The project covers planting, tending and logging. NFCF plans to expand forest development projects in foreign countries, such as Indonesia, which offer favourable environments for development.

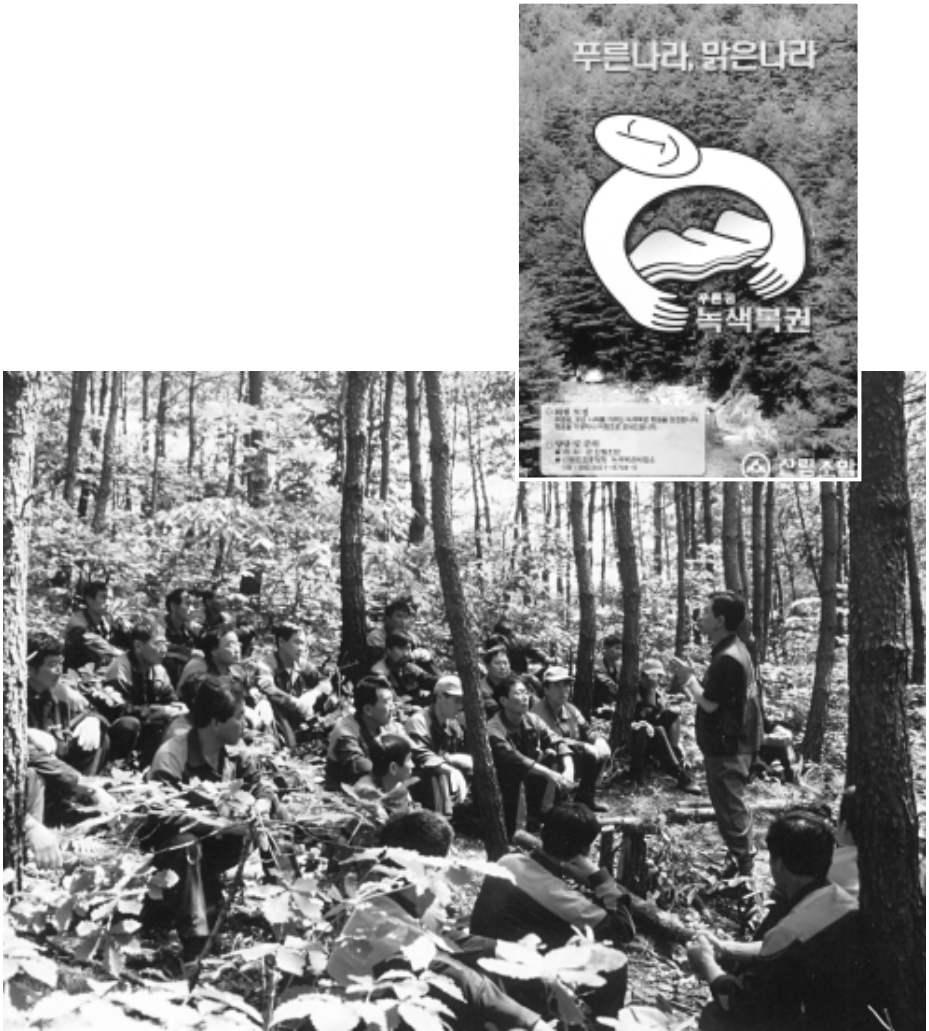
Green Lottery Ticket Business

NFCF issues and sells Green Lottery tickets to raise the financial resources required to make forests denser and to establish a healthier natural environment.

All money from Green Lottery ticket sales enters the Green Fund, which is used exclusively for greening forests and enhancing the public benefit of forests by environmental preservation, such as the supply of clean water, prevention of pollution and protection of wildlife. Purchasing one Green Lottery ticket may be equivalent to planting one tree.

The Green Lottery ticket is an instant lottery and one ticket costs KRW 500, which is about 40 US cents. The first prize is 1,000 million won (about USD 800,000) and some popular gifts are also awarded, such as cars, gasoline coupons and admission vouchers to natural recreation forests.

As part of the new millenium commemorative events for making forests green, NFCF sold 15 million



Poster advertising Green Lottery.

Green Green Super Lottery tickets. This was a set of four lottery tickets which cost KRW 2,000 (about USD 1.6).

The Green Green Super Lottery ticket

had the highest ratio of winning numbers ever seen in Korea.

The first prize was KRW 1 billion (approx. USD 8 million) and various bonus gifts were also awarded.

CO-OPERATIVES AND PEACE IN THE ERA OF GLOBALISATION

Globalisation, Sustainability, Development and Peace:

The Role of National and International Co-operation

by F. J. Radermacher*

Introduction

This paper reflects a background in civil society and consulting with governments and industry on the issues of globalisation, sustainability, development and peace. In particular, it reflects the state of debate in the Information Society Forum of the European Union and its Global Society Dialogue on the issue of sustainability and global governance. The paper, in Part I, makes clear that we are not on a sustainable track. We discuss some of the reasons why, until now, we have not progressed further with this issue. In particular, there is a divergence of views within developed countries on



* *Professor Dr Franz Josef Radermacher is the scientific director of the Research Institute for Applied Knowledge Processing, Ulm, Germany, and also has a faculty position for Data Bases/Artificial Intelligence at the University of Ulm. Since 1995 he has been a member of the Information Society Forum of the European Commission.*
Email: radermacher@faw.uni-ulm.de

the nature of the problem. Is this an issue to be dealt with only by technological progress or do we, because of the rebound effects, need more?

In Part II, we discuss a strongly European inspired perspective on this topic that leads to the position that a better global order and global co-financing issues are essential. The paper will go broadly into the co-financing issue.

In Part III, the topic of co-operatives is addressed in the national and international context. The paper argues that co-operatives are a powerful organisational method between the extremes of either small or large “ordinary” companies. Co-operatives are also an interesting intermediate approach between independence and dependence. Certainly, in the modern world economy, co-operatives have a reasonable chance of economic performance. This is particularly so in situations such as the food industry, where a handful of huge vendors are lined up against hundreds of small farmers. Here co-operatives are one of the possible answers. In fact, we might need more of them. However, in the face of globalisation, co-operatives must also globalise more.

The example of the Grameen Bank and the Microcredit movement shows there is indeed a huge potential in this approach that is not yet fully tapped. This could and should be better exploited, particularly through partnerships among co-operatives.

I. Sustainability and Related Issues

What is Sustainability?

For sustainability the following definition is used. Sustainability should reflect a state of human affairs on the earth in which value creation only occurs by using as input the “interest” of natural and social systems, but never the “capital” itself. The idea is to preserve or increase capital and not to use it, and only to pursue value creation under the

constraint of keeping the capital intact. This means not allowing any growth that essentially consists only of “burning” capital for short-term cash generation.

Are We Sustainable?

The answer is no, we are not sustainable. The world is not on a sustainable track. The same situation applies in Europe. Currently we lack a reasonable worldwide economic framework and corresponding economic incentives that could channel our activities in a sustainable direction. With globalisation we are in fact seeing the opposite process. It is no longer possible to build or keep in tact the appropriate framework for maintaining sustainability at a country level or even a continent level. Therefore the global framework is becoming the really important issue for sustainability. Today the global framework has a major anchor in the World Trade Organization (WTO) system. However, the WTO system is essentially a free-trade regime that fails to reflect social, cultural and ecological considerations to a sufficient degree. For that reason sustainability stands no chance as long as we want to stay competitive, because the global economic system honours a non-sustainable mode of operation, more than a sustainable one. Whatever may be said in politics, the truth is: we are not on a sustainable track.

The Need for a Double Strategy

Given the economic pressures of competition on a global scale and knowing that on a continental level we

are not sustainable, we need adequate regional strategies. What does not work is adopting an unsustainable response to global pressures and then calling this “intelligent modernisation”, while failing to tell the public that this approach is not sustainable at all. A better route would be to learn from NATO’s double strategy 20 years ago with the SS20 missile programme of the former Soviet Union. Thus we could tell the public that we were doing wrong, but also explain why, pointing out that this failure is related to global pressures and particularly decisions made by dominating economic powers elsewhere.

The Rebound Effect and the Need for Co-Financing

Do we at a global level have a common understanding of the challenges lying ahead of us? The answer is unfortunately no, though there might be a consensus that we are already putting too much pressure on nature. Also, we all know that it is the wealthiest fifth of humankind that creates four-fifths of all the problems and pollution, and that we do this with the cleanest technology available. Yet we do not have a common understanding of where the problems are. In particular US thinkers, in common with technology-driven experts all around the globe, hope that new technologies alone, together with a ten-fold increase in resource productivity, will eventually solve all the global problems. Yet it is the considered position of many non-governmental organisations around the world that this viewpoint is incorrect. The problem here is the so-

called “rebound effect”.

Historically we have always seen that good technical solutions for solving a problem invariably do this by creating a new and even bigger problem. On our planet today, the main problem is that we are not sufficiently socially balanced. Europe, Canada or Japan have been and still are examples of what a reasonable social system state could be.

But at a global level, we have a much higher degree of asymmetry than for example in Europe. This is true for the United States and even more so for countries such as Brazil, Mexico, Nigeria, South Africa and for the world in total. What we really need therefore are better frameworks for the world economy. What is meant here is not only frameworks for the economy that deal with antitrust questions and issues of ownership rights, but also frameworks that deal with social, cultural and ecological concerns. Essentially it is with these frameworks that social, cultural and ecological sustainability will be established or not. Frameworks include rules, incentives and, in particular, co-financing.

There is no doubt that the essential issue for sustainability is co-financing, particularly in the social field. This means taxes, wealth redistribution and so on, invested for development so as to create open political structures at the nation state level. We have to take some money from where it comes in “fountains” and put it where there is only a trickle to empower fair economic development. This could be the way to obtain worldwide a more

socially balanced position. In such a socially balanced situation there is a reasonable chance that world population pressures might finally be reduced, and there is also a fair chance that we could make contracts for the protection of the environment. This will not be possible under democratic rule as long as people are dying in the streets, because in a democracy caring for those people (which does not happen enough in any case) will always take priority over protecting animals and trees.

II. Co-Financing Needs at a Global Level – Ways to Implementation

The EU as an Example

If we ask what kind of solutions are needed, the European Union and its enlargement processes provide an enlightening example. It is instructive to contrast this with the situation in the North American Free Trade Association (NAFTA). In NAFTA we have free market co-ordination, but no social dimension via co-financing. In one sense there is no bridging of the gap, which therefore will remain as a clear divide in social terms. In a deeper sense it means that people in general will see none of the gains. It is a process of undermining social structures in the US and of exploitation and division in places like Mexico.

The European picture is completely different. Whenever we enlarge the European Union, we understand that the issue is to agree with the in-coming countries on higher standards. This creates an advantage for the older

members of the EU in the sense that there is less pressure from what they used to call social dumping. However, seen from the viewpoint of the newcomers, this kind of social dumping is not dumping at all, but is their reason to have a relative competitive advantage in a situation where they have enough disadvantages anyhow. Insisting on higher standards is usually therefore a way of disowning the weaker partner, unless this is done within a framework of co-financing. The European enlargement process always incorporates a contract between equal partners about the speed of convergence of standards relative to the degree of co-financing.

The more co-financing there is, the higher the speed of convergence. The less co-financing, the longer the transition period. In any case, it is this dimension of co-financing of development and the flow of wealth from the richer parts to the poorer parts that makes Europe a real union and gives this process the quality approach to European citizenship.

Certainly this is what is needed in an extended form all around the globe, eventually approaching a form of world citizenship with fair rights and duties. Again, what should be seen is that the co-financing itself is not the solution, rather it is the enabler and door-opener for better local regimes that eventually will open the way to a more balanced global system.

Co-Financing at a Global Level

As we have noted, the critical question for sustainability is the global order system. The public has become

generally aware of this since the failure of the opening of the Millennium Round of the WTO in Seattle last year. The crucial issue now is how to develop the WTO further. In a sense the WTO is today our best approximation to something like a world governance system. It is the most important global order system we have and is a major (though less than perfectly tuned) instrument of global governance. With its own jurisdiction and instruments of financial sanction, it is also a kind of substitute for a global government.

The issue now is to make this WTO regime compatible with other regimes that humankind, in an isolated fashion, has created globally, in particular the International Labour Organization (ILO), United Nations Educational Scientific and Cultrual Organization (UNESCO) and the Global Environ-mental Agreements (GEA) for aspects of social fairness, labour rights, child protection issues and the global environment.

In all these examples there is no real compatibility. Given the WTO's power in case of conflict, the economic system and free-markets logic of the WTO usually wins against any social, cultural or ecological concerns. We have to make all these dimensions consistent within one system of global governance. We have to do this in a global contract. Here, the door-opener for consensus, in particular consensus for the convergence of standards at a high level and fair forms of political organisations in all countries, can only be a reasonable co-financing scheme. Maybe we need something like 3 per

cent of global gross national product to be redistributed worldwide for speeding progress towards more equity and for achieving sustainability. The crucial factor here is not the money invested as such, but the door-opener dimension towards a political system in all countries that would allow the local population to make a reasonable living through their own value creating potential within a sustainable global context. Points of entry for global co-financing might be a Tobin-type tax on global financial transactions or taxing air transport kerosene and channelling this money in the right way into global development. As an even more attractive alternative, trading of pollution rights is discussed below. Of course, the flow of wealth must always be correlated with the implementation of standards within the receiver countries.

Working on Three Pillars

The programme described is tough, but it is in the best interests of all the players involved. Enlightened self-interest, if not global ethos, should be the driving force. To get there, we need a strong interaction of co-regulation between the three major agencies working in the field of global governance. These agencies are governments with their international agreements; industry with its codes of conduct, its accounting and reporting systems etc.; and, finally, the world civil society, in particular the non-governmental organisations. These three groups are heavily supported by science, the legal systems and the

juridical systems. Of course, there is also a very delicate relationship with consumers, eg. consumer behaviour and consumer protection. Certainly, everything stated here has to be seen in the context of subsidiarity: that means issues have to be addressed at the respective stakeholder levels, be they global, continental, national, regional or local.

Connection with the Kyoto Agreement

The Kyoto Agreement provides us with a case study about the topics at hand. This agreement is important because here we are talking about global resources (e.g. the right to create greenhouse gases) that are very heavily used and exploited by the richest countries of the world. This exploitation is part of our wealth creation processes. Currently we are consuming these resources so rapidly that we are eating up the future chances of development progress for the poorer countries.

We urgently need steps towards a solution by which the global increase in greenhouse gases is stopped or at least regulated. We know that any prospect for reasonable success will take until 2012 at the earliest. At the moment preparatory steps (for the time period until 2012) are being discussed between the most developed countries.

One essential question here is: where do we invest the financial resources we are willing to provide for solving this problem? There is a tough debate on whether at least 50 per cent should be domestic implementation or not.

The US insists on global implementation and from an economic point of view it is absolutely right. The Europeans argue differently. They follow a somewhat confused ethical argument by which they "have first to do their homework domestically". For a number of reasons this does not really make sense, however. The solution must be a global implementation and any such global implementation has domestic consequences, of course.

For instance, any global trading of permission rights makes it necessary to generate domestically the money for buying those rights. The generation of such a cash flow could and should be done via national eco taxes, which put the pressure on that society to adapt. In addition, whether these are implemented globally or nationally will be decided by the economic system and by questions of efficiency, not by politics. Certainly, any such eco tax scheme should reasonably be enforced in a way that pushes innovation in a direction towards eliminating the present high level of pollution relative to our industrial production.

III. National and International Co-operatives

The Economic Logic of Co-operatives

Co-operatives are an interesting economic structure. The idea is that a number of smaller enterprises join under a certain mode of operation into something bigger, namely into a co-op which is a kind of empowered network. In this structure there are usually some functions taken over by

the network or its central structures, while other functions remain with the single units within the co-operative.

A co-operative, therefore, is an interesting intermediate organisational system between huge centralised organisations and a great number of tiny, individual businesses.

It is a way to combine the advantages of the small – e.g. to be close to the customer, individual ownership, motivation, independence, responsibility – and the advantages of the large, for example making use of economies of scale, bargaining power, joint marketing, creating prestige brands etc.

Obviously in many situations where maintaining a degree of independence is required, co-operative forms are the only remaining alternative when there is too much pressure from big business against individual small enterprises. And of course there are many examples where this approach has succeeded, for example in the agricultural and food sectors and in banking. So the question of whether this approach has a reasonable chance of success is easily answered: yes, it has a chance. There are many examples, where co-operatives do very well and are totally competitive, although the details have to be fine-tuned in every single case.

The questions usually concern how much is done by the centre, how strictly the partners involved have to follow rules and how much freedom is left. Of course, a very important question is whether the partners get exclusive guarantees for certain

geographical regions or whether there is also competition between the partners in a co-operative.

The situation is not straightforward though, as every advantage also has a disadvantage. Certainly this type of organisation is not as effective as a centralised scheme. Sometimes fast-moving partners are bound in agreements with slower ones, or larger partners with smaller ones. Decision processes are often slow, and this is a matter of balance. The co-operative approach also has a dimension of equity and co-financing. So this form of organisation certainly is much in line with what was described above as a balanced global approach. Often, this turns out as a disadvantage under the present WTO framework conditions.

It should also be mentioned however that there is one further advantage in the co-operative approach, namely that in times of globalisation there is a certain protection against unfriendly mergers in the market.

Recently we have witnessed a number of cases where unfriendly takeovers of stock market companies have taken place. It is much more difficult to take over co-operatives in an unfriendly way. It is the personal vote of the members that makes the difference. The partners know that it is their co-operative that is at stake. In addition, a co-operative may sometimes turn out to be a little more expensive, but members know that money remains in their own local circle, in their sphere and in their region. So, putting all arguments together, co-operation is certainly a valid approach and there

are a number of examples where co-operatives, reflecting a balanced way forward, have shown great potential in the market.

Now, however, co-operatives need to innovate so that they can cope more successfully with the pressures of globalisation. We will return to this theme later. A final remark: We are seeing today, particularly in the German banking field, that there is enormous pressure to use the free market system to put pressure on “unusual” organisational bodies such as the Sparkassen Organisation. We are seeing a similar indirect pressure on smaller Volksbanken, i.e. on co-operative banks.

The pressure comes in the form of banking regulations that bring ever-increasing legal requirements and pressures. As a result it is becoming impossible for the smaller of these Volksbanken to survive alone. They have to merge with their peers because the burden of formal regulations means that they would need more staff than they need and otherwise can afford to employ. The same pressure is seen in the IT field, which leads to new forms of co-operatives which have to organise these services on a larger scale.

All these developments show that the modern institutionalised market-oriented system sometimes forces co-operatives into situations where in the end they cannot survive without change. This also means that in the long term, the position of co-operatives will be defined via future frameworks.

This paper aims to give more attention

to the kind of frameworks that are good for co-operatives and that should give certain options to co-operatives. A balanced way global framework which, as this paper has argued, we should be following for other reasons anyhow, is certainly advantageous both for sustainability and also for co-operatives.

Co-operatives in the International Field – Opportunities and Threats

The last section should have made clear that globalisation has distinct consequences for co-operatives. Companies are increasingly globalising and the role of global super-players, in the food market for instance, is growing. The best chance for co-operatives to cope with this is for them to globalise themselves as co-operatives. It is therefore to be expected that we will witness a co-operative building process between co-operatives.

This will not easily be achieved, however, because the logic of co-operatives is often regional or nation-state influenced. A global logic here often involves bridging the differences between countries and this is very difficult to achieve, as we know from the trade unions and the ILO.

We have to find new ways to bring together partners from different fields and different stages of development. Without an intelligent strategy and if the present WTO logic is pursued, the prospects for co-operatives working together are not good. The position taken in this paper is that co-operatives should give the globalisation of their own structures

a greater priority. At the same time they should try harder to promote the ideas of co-operation throughout the world, thus reducing the pressures on this form of economic organisation in, for example, the European Union, NAFTA and the WTO. Thus it might be argued that if a co-operative solution works in some countries and if in the long term they want to continue with this solution, it makes absolutely sense to work on worldwide implementation. This is important because in the long term, under the WTO system, one has to invest in the structures that already exist, in this case co-operatives.

Co-operatives in the banking field give us a good starting point. A good example is the microcredit movement that is discussed next. I just want to mention at this point that the opening up of Eastern Europe and the situation in China should have provided great opportunities for progressing co-operatives. However, neither with co-operatives nor with the microcredit movement was this opportunity seized as it should have been. This is all the more sad given that the historical context of Eastern Europe, the Soviet Union and China should have offered good opportunities for such an approach.

The Microcredit Movement

It is very interesting to see that microcredit development is exploding, starting from Bangladesh with the Grameen Bank and spreading to India and other Asian countries and likewise with Finca and other forms of co-operatives in Latin America. Here, in the field of small money

lending in rural areas, there is a very strong movement that is based on the ideas of co-operation. Some of the ideas can be rooted back to Raiffeisen in Germany and his ground work in co-operatives. At the centre of this approach is the observation that the economic system is quite unfair, particularly to the poorest people.

The poor often have no chance to advance. Very often women have been subject to very unfair treatment and kept captive in their own homes. The power of the small loan system is quite astonishing. Women are empowered and help each other. They establish groups that take a loan together, and the loan revolves from one to the other. We have seen in recent years that a USD50 loan to women in the countryside can change the world. It is astonishing how high the reliability in repaying the loan is. It is unbelievable how much can be achieved with so little money.

This is an area in which big banking money is not interested – the loans are too small and the bureaucratic effort too great. But here is an opportunity where the ideas of co-operation can become deeply rooted in hundreds of millions of people, with significant consequences for the future. Grameen Bank is now the strongest bank in rural Bangladesh. Today the microcredit movement may be the most important new development tool we have on earth. Behind this movement are the ideas of co-operatives.

The point to be made here is that co-operatives around the world should co-operate. They should form a strong network that articulates much more

loudly the ideas behind their particular approach. If this gets to the grass-roots of development, it will help to ensure that at the WTO and other levels the co-operative system is never treated unfairly in the future.

Summary

This paper clearly states that globalisation has an impact on the situation for co-operatives. Co-

operatives must therefore adapt. At the same time, taking account of high political aims such as sustainability, peace and development, co-operatives have a lot to offer. They should make that point more widely known. An important ingredient would be stronger marketing worldwide of the idea of co-operatives. In this context the microcredit movement is a good starting point. □

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Co-operative Policy and Legislation

Introduction

One of the aims of the ICA is to promote the co-operative movement and another is to protect the values and principles of co-operatives. It is to fulfill these aims that the ICA continued to play a leading role by influencing co-operative policy and legislation both at the international and national levels.

Two specific initiatives are highlighted below.

The first is the important process of the revision of Recommendation no. 127 on the Role of Co-operatives in the Economic and Social Development of Developing Countries adopted by the International Labour Organisation (ILO). This Recommendation has been recognised as having contributed significantly to official support for the development of co-operatives through legislation, policy, human resources development and finance. In addition the Recommendation has given strong support to basic co-operative values and principles.

In June 2001, the ICA participated in the first review of the Recommendation where a set of proposed conclusions were adopted. These will be circulated to ICA members to give them the opportunity to review the text with their respective governments to ensure that this new recommendation truly promotes autonomous co-operatives and clearly sets out the role of the state vis-a-vis co-operatives. The ILO will again meet in June 2002 to review and adopt a new text that will serve as policy framework for ILO's member states regarding co-operatives.

The second important item is a manual entitled Guidelines for Co-operative Legislation which is included in this publication. Over the last few years, ICA has received a large number of requests to address the issue of co-operative legislation in a more systematic way. Although efforts were made through ICA's Ministerial conferences, regional activities and expert groups, it is only in the last year that the ICA Board decided to create a Legislative Commission to bring elected leadership and co-operative experts together.

The first concrete result of this sharper focus on legislation is this draft document Guidelines for Co-operative Legislation. These Guidelines aim to assist co-operators with the revision or drafting of appropriate legislation under which co-operatives are regulated.

The Guidelines are a work in progress, recommended by the Global Legislative Conference of Prague, the Legislative Expert Group of ICA Europe, with input from a wide variety of legislative experts worldwide. They build on the excellent work commissioned by the Co-operative Branch of the International Labour Office (ILO) under its COOPREFORM programme. Thanks must also go to the Committee for the Promotion of Co-operatives (COPAC), of which both ICA and ILO are members, and whose support has made the preparation of the document possible. We wish to thank also Hagen Henry, the author of the Guidelines, for his personal contribution to providing an updated guide to how to formulate appropriate co-operative legislation in our ever-changing world.

The guidelines will be finalised in the coming months and the published as a COPAC publication.

These two separate but related issues demonstrate the work of the ICA in the important areas of co-operative policy and legislation. More importantly, they are future oriented tools that help co-operatives to address the new conditions and opportunities afforded to them in this era of globalisation.

Guidelines for Co-operative Legislation

by Hagen Henry

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1. Background

Under the ILO-DANIDA programme on co-operative development in rural areas the International Labour Office (ILO) initiated in 1993 a specific programme, called COOPREFORM. This programme supports ILO member states in revising their co-operative policies and legislation. Under this programme the ILO commissioned in 1996 a working paper on co-operative legislation from the present writer, Framework for Co-operative Legislation. Originally in French, this working paper gradually became available also in Arabic, Chinese, English, Portuguese, Russian and Spanish.¹

On the initiative of the International Co-operative Alliance (ICA) and in particular the ICA European Legislative Expert Group of ICA, the Committee for the Promotion and Advancement of Co-operatives (COPAC) sought the agreement of ILO to have this working paper revised and prepared as Guidelines for those involved in co-operative legislation.

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

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

- all COPAC members engage in

co-operative policy and legislation advice

- the ILO Recommendation concerning the role of co-operatives in the economic and social development of developing countries, 1966 (Recommendation no. 127) and the ICA Statement on the Co-operative Identity, 1995 (ICA Statement) imply co-operatives to be granted legal person status by legislators. In order to show how such a specific legal person might be structured the present guidelines could serve as an example. ILO Recommendation No. 127 contains a large section on co-operative law.
- the draft “Guidelines aimed at creating a supportive environment for the development of co-operatives”, elaborated by COPAC for adoption by the UN General Assembly in 2001 (UN Guidelines)², contain a section (Part B) on co-operative legal issues which reflects the co-operative principles advocated by ICA and ILO
- there is a set of public international legal instruments which pre-shape national co-operative laws. COPAC and its members are well advised to help recognising the legal nature of these international instruments.

The present guidelines are meant to be a check list of items to be considered when making a co-operative law which, whilst taking a clear position on certain, if not all, issues also make mention of other options and their

consequences. They are not, however, a recipe to follow, nor are they intended to contribute to scientific discussions on co-operative law.

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

It is hoped that these guidelines will contribute to harmonising co-operative laws on the lines of the internationally recognised co-operative principles. Heterogeneous co-operative laws diminish the competitiveness of national co-operative movements, make cross border operations of co-operatives difficult and decelerate regional integration.³ Harmonisation is both a consequence of and a prerequisite for regional and international economic integration. If co-operatives are to remain competitive, the question is not

whether they should follow this trend but how can they safeguard their peculiarities within this trend.

The claim that the Guidelines are of universal applicability does therefore not contradict this statement. While it is true that, contrary to (stock) companies, which are centred on a universal notion of how to manage capital, co-operatives are centred on members whose behaviour is closely tied with cultural specificities, it is equally true that culture is no longer a matter of geography. This is why these Guidelines call, on the one hand, for an adequate space to be left for co-operatives to be able to express their specificities through their bylaws. On the other hand, only a document for universal use will carry the necessary weight to counter-balance the uniformisation and “companisation” of all forms of business organisations, driven by some supra- and international law makers upon request from globally acting networks for which legal diversity is a little welcome cost factor.

The advantages of co-operatives, as compared with companies – lower transaction costs and higher human rights functionality⁴, to mention but two – need to be advocated through a common global effort. Instead of denying the contradiction between globalisation and cultural diversity, co-operators, being more affected by this contradiction than other economic actors, should take advantage of it.

By proposing guidelines for universal use, COPAC also expresses its view that co-operatives are neither something of the past nor an

instrument for the use in certain countries only. Co-operatives are one of many forms of doing business which has all the potential to cope with new challenges. Not only will the future show whether the trend towards “companisation” of business enterprises continues or whether old and new problems like unemployment, preventive health care, services for the elderly, environmental protection, leisure time management etc. will continue to be tackled by co-operatives. The future will show that co-operatives are a suitable form of performing in a changed business world.⁵ Where knowledge production and management gradually replace those of goods and services, the person becomes the centrepiece of the economy since knowledge is generated, applied and passed on by people. Organisations like co-operatives, which put people at their centre, should therefore not fear of soon becoming outdated.

Although these guidelines promote a model co-operative where, according to co-operative principles, the members are co-owners, co-managers, co-controllers and co-users of a commonly established enterprise (principle of identity) and where member promotion is preferred over producing high returns on invested capital (principle of member promotion), they also give in to new economic necessities in a number of adaptations of these principles. Thus, the Guidelines try to capture three lines of co-operative evolution, which divide co-operative systems into two,

within countries and/or between countries, suggesting that they can all be contained in the one form of co-operative. These three lines are where legislation:

- provides for state assisted and for independent co-operative organisations;
- allows one group to follow the co-operative identity principle and another one to depart from it⁶; and
- supports the idea of co-operatives belonging to the social economy alongside an independent business-minded sector.

It is commonly accepted that the role of government in co-operative affairs be restricted to four functions: legislation, registration, dissolution/liquidation, and monitoring the application of the law by the co-operatives.

These guidelines therefore take as a premise that the main objective of a co-operative law be to guarantee minimum government involvement, maximum deregulation, maximum democratic participation and minimum government spending by translating the co-operative principles into a legally binding framework for the organisation of self-determined self-help.

Since discussions on the original working paper started six years ago, governments have changed, legislations have been adapted, and co-operative movements have evolved in the sense described here.

Although the speed and extent of these

developments differ significantly from one place to the other, it is believed that the trend of evolution underlying these Guidelines remains unchanged. This is why the spirit of transition to be found here and there in the guidelines is maintained.

Finally, it must be mentioned that these Guidelines are the result of a truly co-operative effort, despite of the fact that responsibility for its contents rests entirely with the author.⁷

2. Introduction

Co-operative law is a reflection of economic, social and political circumstances. Over the past 20 years employment has decreased in number and its nature has been transformed fundamentally. Population patterns and demographic structures have changed. Economic decision-making processes have been concentrating. Rapidly accelerating urbanisation has aggravated the ensuing social problems. These developments have occurred amidst a reciprocal process of globalisation and technological innovations and amidst growing concern for sustainable modes of production and consumption.

For various ideological and structural reasons, the prevalent state model prior to the 1980s catered for a gamut of social and economic needs. Since the early 1980s this model has been questioned.

Internal budget constraints, external debt burdens and the end of the ideological world-divide led governments, international donor organisations and non-governmental organisations to advocate a minimalist

state model⁸ as a first reaction. Today, they agree that development requires an effective state⁹ – everywhere – limited to creating market-enabling political and legal frameworks and concentrating government action on those public goods which the market cannot or does not provide effectively. More and more governments understand that structural adjustment measures, which are implied by these changes, compel governments to reduce their role in the economic and social sphere, to decentralise and liberalise administrative, political and economic structures, to move from planned to market economies and to balance the development of the different sectors of the economy.

These measures will fall short of success if not complemented by the development and strengthening of social institutions based on self-help and self-responsibility. Thus, co-operatives are increasingly¹⁰ being rediscovered as a means in their members' hands to achieve goals which governments are no longer able or willing to achieve.

At the same time this growing demand for alternatives to company forms of business organisation has been shedding light on the fact that the gap between co-operative values and principles, on the one hand, and legal reality on the other, leaves huge co-operative self-help potential under-utilised, if not unutilised.

The current new worldwide wave of co-operative law reforms is, therefore, to provide institutional support to these structural adjustment measures. As for its content, the reform of co-

operative laws is marked by efforts to reinstate the universally recognised co-operative values and principles. The challenge for the national legislator is two-fold: reinstate the internationally defined distinctive features of co-operatives and respond to appeals by the international community for more cultural diversity in legislation in general. As for the procedure, these legal reforms are marked by a harmonisation within and across the boundaries of economically defined regions.¹¹ The international community supports these legal reform initiatives. Law is increasingly being recognised as a political stabiliser¹² and as an adequate regulator of changing social relationships. Legislation is the answer to the universal call for the rule of law. That law and legislation be embedded in international understandings is a precondition and a consequence of our globalising ways of life.

3. Guidelines for co-operative legislation

3.1 Co-operative Principles

The ILO and the ICA, the only two universal organisations that promote the development of co-operatives, practise the following principles:

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

The interpretation of the open-door principle – ie. negative and positive non discrimination as

regards gender, social origin, race, political affiliation or religion – must take into account the associative character of co-operatives. The free will of the members to work together constitutes one of the keys of their motivation. This is incompatible with any attempt to impose membership.

- self-determination (ie. self-help, self-administration, self-responsibility) and democratic control (“one member - one vote”). This principle embraces the one of co-operative autonomy, meaning that co-operatives should be allowed to regulate their internal affairs free of outside influence, be it by government or any other actor.

The matter is also linked to the one of positive discrimination of co-operatives by the state. It is now commonly accepted that negative discrimination of co-operatives violates basic rights and rules on fair competition and thus distorts market conditions. More and more, it is also held that positive discrimination, ie. the granting of privileges and advantage, prevents co-operatives from becoming competitive. Competitors are not willing to enter into business relations with entities which are known to be fed by the state. Regional and universal economic organisations, like the European Union and the World Trade Organisation, increasingly insist on states abiding by international

competition law. In addition, positive discrimination is often the justificatory basis for infringing upon the autonomy of co-operatives.

- economic contribution by the members to the activities of their co-operative;
- information to the members from the co-operative officers;
- identity principle (the members co-found, co-finance, co-own, co-administer, co-use and co-control their co-operative);
- service to the members and concern for the community.

The ICA added the principle of “concern for the community” during its Centennial Congress in Manchester in 1995. The longstanding debate on the question whether co-operatives should exclusively serve their members or whether they should also serve their communities was, however, not re-opened. Nothing prevented the members of a co-operative in the past from working in a voluntary manner in favour of their community. As specified by the ICA Statement, they may continue to do so “through policies approved by their members”, ie. on a voluntary basis.

By design, co-operatives are to further their members’ interests. This design is not suited to further the interests of society at large. According to the co-operative ideal, the well-being of the members of co-operatives should contribute to that of the community. Questions linked to finding sustainable modes of life, ie. modes which care for ecological balance, economic security and social justice,

require that the interests of the members of co-operatives be constantly redefined.

Whether emanating from the ICA or the ILO, these co-operative principles do not legally bind the national legislator, although they are the internationally recognised principles which define co-operatives. This said, the ICA is a non-governmental organisation, whose decisions cannot be imposed upon states, and the ILO recommendations do not have the mandatory character of its conventions. This explains why these principles, elaborated in the past and reflecting the spirit of the time, were not always respected. However, with the absence of the ideological divide of the world, attitudes have changed, and many countries now consider themselves more at risk by not adhering to universally agreed principles. The co-operative movements benefit from this evolution even though, at the same time, there are counterproductive forces that aim at limiting the margin of their autonomy through co-operative legislation.

Undoubtedly, international and regional governmental and non-governmental co-operation in co-operative reforms is working in favour of a universal consensus on these co-operative principles. A public international co-operative law is emerging. Thus, a country which does not respect the principles established by the ICA and the ILO not only risks losing the support of these organisations and, consequently, that of others, but it also risks losing the

possibility of remaining or becoming a member of these organisations.

3.2 Socio-economic, political and administrative factors

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

Apart from exercising the functions of registration, deregistration, legislation and general normative control, the state in a market economy must maintain favourable conditions for the development of co-operatives and it must not interfere in their economic affairs.

This statement needs three clarifications:

- (i) This type of relationship between the state and co-operatives in a market economy is not co-operative-specific. It determines the legal nature of the co-operative law and restrains the possibility to grant co-operatives preferential treatment.
- (ii) After decades of interference in the affairs of co-operatives, and in times where the living conditions of disadvantaged people in a number of countries are further deteriorating, the

state must not withdraw instantly and/or completely from economic affairs.

For new and genuine co-operatives to develop without hindrance, co-operative policy needs to be complemented by a policy of disengagement of the state and of promotion of co-operatives. Because of its temporary and subsidiary character, the latter should be conceived and applied alongside the co-operative policy as such. The birth of an authentic co-operative movement can only become effective once the old system has been discharged. The redefinition of the role of co-operatives must be accompanied by a fair redistribution of the assets and the debts of the dissolved or restructured entities, taking into account, in particular, the responsibility of the state for errors of the past while preserving the interests of the creditors.

The gradual transfer of tasks to the co-operative movement means that government personnel will have to be retrenched. The state will have to take into account the problems related to this.

It goes without saying that the application of these necessary measures should be dealt with case by case, associating the persons concerned with the decisions.

(iii) It would be an illusion to think that the modern market economy needs only a simple political and legal structure. Quite to the contrary. It functions because of its highly complex political and legal structure.¹³ The balance between non-intervention and a policy of laissez-faire, which would be destructive in the long term to the system as a whole, can only be maintained by such a complex structure. The law must induce maximum participation of private agents who should have the essential decision-making power in economic matters. With regard to co-operatives, this implies the impossibility for governments to convert co-operatives into transmission belts for national policies and, in particular, for policies accompanying structural adjustment.

The private character of co-operative law should thus prevent co-operatives from being used as instruments for political, developmental, social or other goals. Any such use of co-operatives endangers their economic efficiency.

This necessary redistribution of roles between the state, the co-operative movement and other private actors might be facilitated by setting up a national council for co-operatives, which could reconcile state sovereignty with the independence of the co-operative movement. Conceived as a discussion forum and

as a consultative body, this council should in no case take on a mission of tutelage.

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

The administration of co-operatives by the state must be as restrained as that of the private sector in general. Thus, for example, one single, possibly decentralised, register for companies and co-operatives could be envisaged.

For the rest, government should be concerned with providing a well-functioning business environment at all levels, for example an effective and efficient tax administration, independent judiciary, banking and insurance systems, and with promoting chambers of commerce, industry and agriculture as well as professional organisations.

In theory, the administration is only an instrument in the hands of the government. Frequently, however, administrators acquire such independence as to be able to effectively oppose changes in policy orientation. The situation of the

employees of the old state and parastate structures in charge of the control of co-operatives is particularly delicate, since the passage to the market economy brings about a real revolution in their domain. The transition from a more or less direct intervention in the management of dependent co-operatives to the necessity to recognise co-operatives as independent structures by applying more subtle rules, requires flexibility and qualifications which administrators have not always been prepared to exercise.

3.3 Systemic nature of the co-operative law

Co-operative legislation is part of co-operative law. Co-operative law is constituted by all national, supra- and international normative, administrative and judicial acts and the praxes commonly accepted among co-operators as they bear on the formation, the structure, the operations and the dissolution of co-operatives. Thus, the rule on the non discretionary and non discriminatory exercise of administrative power and on the justifiability of all public acts, constitutional and administrative norms, rules on local and regional administration, real estate and private law in general, irrigation, water, investment, commercial law, company, tax, competition, labour, bankruptcy, and credit laws, regulations on imports, exports and pricing, on contracts, inheritance, accountancy, banking, consumer protection and social security, transports and marketing, etc. must all be separately and jointly conducive to

and supportive of genuine co-operatives if co-operative legislation is to be effective.

When drafting the law the legislator must therefore make sure that other legal provisions do not run counter to his/her project. It will be particularly important to be vigilant regarding the provisions contained in social and labour laws. These are marked by the wish to guarantee minimum social protection and to re-establish a balance between unequal partners, and they are at times incompatible with the right to self-determination of co-operatives and their members.

This approach requires resorting to a legal expert who looks after the compatibility of the different texts. In general, the ministry of justice supervises the harmonisation of the laws.

4. Co-operative legislation

4.1 Why a co-operative law?

In certain countries, such as Denmark and Norway, co-operative movements prosper without being ruled by their own law. But there are no co-operative movements prospering without legal rules applicable to them. Three main reasons for this may be given:

- (i) The existence of a co-operative law is a necessary but not a sufficient condition for getting a co-operative policy to work. The rule of law is a fundamental element in the new approach to development, which emphasises the respect for human rights.

This presupposes that the legal relationship between citizens and

the state be founded on acts of parliament. International co-operation uses law in an ever increasing manner as a means of information and communication. Law is a reference point and a guide mark.

- (ii) In complex societies, where social control can no longer be based on close personal relationships, law has proven to be the most adequate means of regulating the activities of economic agents who are not personally linked to one another.

By definition, this is especially true where economic relations are not entertained by physical persons but by legal persons. In order to provide for legal security, the law has to establish the criteria for the definition of these persons, the power of their organs and their liability in lieu of that of the members or the shareholders.

- (iii) Law is a suitable and tested means to represent and maintain the just balance between the autonomy of the co-operators and the co-operatives on the one hand, and the scope of normative control by the state on the other.

4.2 Scope and nature of the co-operative law

4.2.1 Scope of the co-operative law

Before elaborating the law, the legislator will have to consider its scope: Is the law to apply to all forms of self-help or to organised forms of self-help only? Is the distinction between associations and communities to be considered?

It is suggested that the scope of the co-operative law be limited to co-operative organisations, ie. to one specific, organised type of self-help. State structures do not allow for the reproduction of knowledge necessary to administer unorganised self-help groups, let alone a combination of these and organised groups in one single law.

Legislation on all forms of self-help in one law tends to neglect the informal, non organised in favour of the formal sector. Besides, the administration of a comprehensive law on all forms of self-help would be extremely difficult and costly.

It is important to distinguish between co-operatives as voluntary associations of persons, ie. a mode of organising a group, and communities, ie. a way of life.¹⁴ Co-operatives may only prosper if their members are autonomous in their economic activities and if economic life in general is kept separate from other social activities.

Societies where the community is considered as an indivisible entity find it difficult to integrate the concept of legal personality, which allows for abstract bodies to exist independently of their members. Thus, they find it for example difficult to understand that the financial liability of co-operators may be limited to their shares.

Where the concepts of association and community are confused, it may happen that the implementation of the co-operative law will be hampered by community-type mechanisms. This

mixture tends to be harmful to both the co-operative and the community-type group in which co-operative members often continue living.

The distinction between associations and communities must not be confused with that between co-operatives and simplified co-operative structures, as proposed in these Guidelines. With the latter distinction these guidelines draw on a trend to be observed in recent co-operative laws.¹⁵ These include chapters on “simplified co-operative structures”, ie. organisations that function according to co-operative principles without fulfilling all the requirements of a fully-fledged co-operative.

Other laws do exempt such structures from a number of otherwise compulsory requirements. Such structures might not need, for example, a supervisory committee (where required), a full-time manager, an elaborate accounting system or a chartered accountant as an auditor.

The distinguishing criteria might be the turnover or the membership size. This concept is gradually replacing that of “pre-co-operatives” according to which these entities had to either convert into “full” co-operatives or to dissolve after an unsuccessful probationary period of time.

4.2.2 Nature of the co-operative law

4.2.2.1 Public or private law?

The legal nature of the co-operative law depends on the definition of its objective. If it is to regulate the activity of the co-operative sector, it will be part of public economic law and

should include, besides rules on the formation, structure, operations and dissolution of co-ops, also rules on the establishment, the set-up and the powers of a supervisory authority. If, on the other hand, it is to only propose in accordance with ILO Recommendation no.127 (para.10 (a)) to potential co-operators a mode of organisation which will permit them to develop their activities in an autonomous manner, then it will be part of private law.

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

4.2.2.2 Development law?

The answer to the question of whether externally geared, accelerated development in many countries requires a specific law, also defines the kind and scope of issues to be dealt with in a co-operative law.

The history of co-operatives has been frequently marked by their being used as instruments to serve the development goals of the state, be it socialist or capitalist. Guided by the theory of the “development of law”, which saw law as a technique apt to be developed, and ignoring the theory of “development law”, which is rather concerned with finding out how development could be induced and supported by law, states often ended up in managing co-operatives on a

day-to-day basis in order to make them fit modern, more often than not imported law. What was originally meant to be provisional, often became institutionalised. Public funding brought about tight control, thus closing the vicious circle of government involvement and a growing dependence of the co-operative system on the state.

No longer masters of their destiny, co-operatives have seen state officials survey their formation and operations, define their activities or organise their vertical integration and use the co-operative law to shape society at large. More concretely, their formation has often been characterised by:

- the obligation to limit their activities to a specified territory, coinciding more often than not with the boundaries of administrative districts

This obligation, allegedly for the sake of co-operatives' economic efficiency, not only contravened the freedom of the co-operative movement, but it also contributed to its politicisation. By the same token, the positive effects of competition on economic efficiency were excluded.

- compulsory membership
Not only did individuals lose the possibility to constitute themselves freely as co-operatives, but they were, furthermore, obliged to join structures established in the area of their residence.

Once these interventions were accepted, the interference would not

stop there. State administration intervened in the management of co-operatives, more or less directly. For example, it:

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

Practically without a say in defining their field of activity and their internal functioning, co-operatives were often:

- excluded from certain sectors, saw themselves assigned pre-determined objectives, and even the services to be provided to their members and users were the object of external decisions
- deprived of the choice of their activities, they were not free to dispose of their resources. Loans, investments, and even decisions on the distribution of a surplus had to be submitted for approval by the government
- supposedly inefficient management could be sanctioned by freezing the co-operative's

bank account. To this control, the administration would add a control by auditing or having the co-operatives audited.

Not only did the administration interfere in the day-to-day management of primary co-operatives, it also arbitrated the relationships between the different levels:

- by creating and running secondary and tertiary co-operative organisations
- by merging/amalgamating or dividing such structures and
- by settling disputes without there being any possibility of an appeal to ordinary tribunals.

On the other hand, co-operatives were allowed privileges in matters of taxation, access to credit or state controlled support. Such constraints and privileges can no longer be part of co-operative law. They are incompatible with co-operatives belonging to the private sector.

Moreover, the law should regulate potential or existing activities and not try to give birth to them. Past experience with the theory of the “development of law” have not proved satisfactory. Law is not to create social reality but to structure it. The widely ignored “development law” theory, on the other hand, pre-shaped the current human rights approach to development, at least as far as law is concerned. The legislator has to respect the implications of the universally recognised Human Right to Development for co-operative legislation, foremost by allowing for

cultural diversity to exist, within the limits of the internationally recognised co-operative principles.

4.3 Which instrument?

The choice between the different legal instruments, ie. the constitution¹⁶, laws, ordinances, decrees, regulations, government orders, (government) model bylaws etc., is not a free one. The principle of co-operative autonomy and the rule of law determine the choice. The autonomy of co-operatives will only be achieved and/or maintained by respecting the principle of subsidiarity. Only matters which surpass the competence of an individual co-operative, which are of public concern or involve third party interests may be regulated through public norms, while everything else must be left to be determined through bylaws. This notwithstanding, the co-operative law should be sufficiently detailed to avoid its character being altered through government rules. This is of particular importance in countries where laws take effect only once the relevant government decree of application is issued.

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

Once inscribed in the law, a rule cannot be overturned unless a competent court of law so requires or the law is revised. Similarly, rules on

co-operatives, of whatever legal nature, do not nullify clauses contained in other texts of the same legal ranking. This is an additional reason for the importance of taking into account the systemic character of co-operative law when drafting.

4.4 One co-operative law or several laws?

In view of the wide range of self-help organisations with differing activities, needs, membership bases, stages of development, sizes, degrees of complexity and inter-relatedness with competitors, it must be decided whether there shall be one law for all types of co-operatives (for example service, workers, consumer), all types of activities (for example agriculture, housing, fishery, cattle raising, savings and credit, transport, supply, marketing etc.), all types of professions (for example fishers, craftspeople, medical doctors, lawyers etc.), single- and/or multi-purpose co-operatives, one law with separate parts for every or some types of co-operatives or several distinct laws. It might even be that there is no need for a separate co-operative law at all if the civil code, commercial or other laws provide for the regulation of co-operatives.

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

- one law for all types of co-operatives, possibly with specific parts for specific types of co-

operatives, for example housing or savings and credit co-operatives, best guarantees the autonomy of co-operatives, i.e. their power to regulate their own affairs as far as possible through bylaws, since the degree of detail in such a law will be lower than in a multitude of laws.

- this low degree of detail diminishes bureaucracy.
- one single law avoids the fragmentation of the co-operative movement that might occur where different types of co-ops were registered under different acts and placed under the supervision of different public authorities with, perhaps, heterogeneous policies.
- one single law creates legal security for those dealing with co-operatives. Legal security relates rather to structural and liability aspects than to a specific type of activity of a co-operative.
- in the context of development constraints, one single law is the most adequate tool to reach congruency between development oriented, member-oriented and self-sufficiency goals of co-operatives.

However, in the light of the recent discussion on how to restore co-operative distinctiveness, especially in the industrialised countries, different laws on the lines mentioned are being considered.

4.5 Language of the co-operative law

Understanding the law is a prerequisite of its implementation. It

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

But the co-operative law must not be an exception. Its language must be consistent with that of the other legal texts of the legal system so as to ensure its cohesiveness.

4.6 Format of the co-operative law

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

A brief law, only defining an organisational framework for co-operatives, necessarily refers to other provisions, making it less intelligible and therefore relatively difficult to apply. From a practical point of view, a detailed law thus seems preferable. However, such a text risks impeding the autonomy of co-operatives by limiting notably the space to be filled with the bylaws/statutes. On the other hand, a detailed law prevents the excessive resort to government decisions.

The time dimension has to be taken into consideration as well. Often, too detailed co-operative laws have

become inapplicable because of the political, social and economic changes occurring over time.

Frequent changes of the law not only consume resources but they also affect public opinion about the value of a law. They do not match the long term perspective of co-operative development, for which legal stability is vital, and they meet the inertia of administrators.

There are many ways to present the sequence of the different sections of a law. They have no influence on the legal value of the sections. However, the “life” of a co-operative pre-shapes to a certain extent this sequence. On the other hand, one may also think the sequence of the different sections from the point of view of those who shall apply the law, ie. the members, the organs or their representatives.

These guidelines try to marry these two approaches by suggesting a sequence which follows the phases of a co-operative from its formation to its dissolution, on the one hand, while regrouping those sections which pertain to either single members or to the organs, on the other.

4.7 An ABC of a co-operative law

Starting with their formation and ending with their dissolution, co-operatives as legal entities have to be subject to legislation. Their internal functioning as well as their position vis-à-vis third parties have to be regulated.

The following main topics of a co-operative law will be presented here:

- Preamble
- General Provisions

- Formation, registration and publication of the registration
- Obligations and rights of the members
- Organs and management of the co-operative
- Capital formation, accounts and distribution of surplus
- Audit
- Forms of dissolution
- Simplified structures
- Vertical integration
- Dispute settlement
- Miscellaneous, transitory and final provisions

4.7.1 Preamble

If the legal system of the country permits it, and by clearly stating its legal nature, the co-operative law could contain a preamble, possibly alongside a clause in the constitution or a policy declaration on co-operatives.

The preamble will define guidelines for the interpretation of the law, which are all the more important where genuine co-operatives are not yet solidly implanted.¹⁷ The preamble could indicate the following matters:

- the role and the function of co-operatives in society in general and in the economy of the country in particular
- the character of co-operatives as private and autonomous organisations having access to all lawful activity
- the limited intervention of the government regarding the formation and promotion of co-operatives

- equal treatment of co-operatives with regard to other business organisations, i.e. no positive or negative discrimination in order to avoid the formation of bogus co-operatives and in order to avoid distortions between competitors. Equal treatment in the legal sense means identical treatment with other business organisations, where possible, but different whenever the specific nature of the co-operatives so requires.

As an example, one might point out to the question of taxation of two typically co-operative items: surplus and patronage refunds.

Surplus produced on transactions with the members is the result of a co-operative specific way of calculating costs (near costs) and patronage refund, as a pro-rata of the business of the members with their co-operative, is a deferred price reduction or a correction of the price calculation at the end of the financial year, should the economic risk included in the original cost calculation not have materialised. If surplus may therefore not be compared with profit, it should not be taxed as such.

Except in special cases, the economic relationships between co-operatives and the state must therefore be based on private law contracts.

4.7.2 General provisions

4.7.2.1 Definition of co-operatives

In spite of the widespread abuse of the term “co-operative” in the past, it

should not be replaced by another term. It helps to differentiate between co-operatives and capital-centred as well as between co-operatives and non-profit organisations.

The law must define precisely what a co-operative is by distinguishing it from other possible forms of self-help organisations. This helps -

- the government to carry out the normative functions of the state
- to distinguish genuine co-operatives from false ones,
- to determine the rights and obligations of the members, as well as those of the organs of the co-operative,
- to specify the qualifications and duties of co-operative officers concerning capital management and serving the interests of the members,
- to state minimum rules concerning accountancy and audit in order to further the efficient use of financial and human resources,
- to resolve the conflicts that might arise between co-operative law and labour law or between co-operative law and competition law
- to establish criteria for the taxation of the members and/or of the co-operative,
- to regulate the relationship between private and public entities according to liberal principles,
- to facilitate the evaluation of the

economic, social and political impact of co-operatives,

- to promote international co-operation between co-operatives.

Certain laws have acquired over the years the status of a model when it comes to the definition of co-operatives, such as:

- Section 4 of the 1912 Indian Co-operative Societies Act
- Section 2 of the 1970 Zambian Co-operative Societies Act
- the 1977 Sierra Leone Co-operative Societies Act
- Section 2 of 1991 Tanzanian Co-operative Societies Act
- Article 8 of the 1992 Cameroon Law relating to co-operative societies and common initiative groups.

But rather than copying a definition from a law belonging to a different history, it is advisable to formulate a new one rooted in the local context whilst paying respect to the universally recognised co-operative principles.

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

Whatever the choice may be, the definition must take into account the dual nature of co-operatives. They are both associations and business enterprises. More precisely, they are not investor controlled enterprises, but associations of persons who, working towards common objectives, have

decided to become owners and users of a joint enterprise. Although this enterprise must be run in a profit oriented way, it is distinct from capitalist enterprises in that it is oriented towards its members' interests and not towards its own interests.

It must also be remembered that this definition of co-operatives is not limited to primary co-operatives but that it also applies to secondary and tertiary co-operatives if they are allowed to carry out an economic activity.

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

The definitions contained in ILO Recommendation No. 127 (para.12 (1)(a)), and in the ICA Statement have been guiding a great many legislators over the past years.

According to ILO Recommendation No. 127, a co-operative is "an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organisation, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate".

According to the ICA Statement a "co-operative is an autonomous

association of persons united voluntarily to meet their economic, social and cultural needs and aspirations, through a jointly-owned and democratically controlled enterprise".

In addition, the definition should reflect four elements of the co-operative identity principle and of the principle of member promotion:

- members should, ideally, be the sole, at least the main, owners of the co-operative
- co-operatives must promote their members' interests
- co-operatives are "user driven", that is the members should, ideally, be the sole users of their co-operative, at least they should be their main users and
- while "voluntary" joining together to form a co-operative is necessary, it might not be sufficient. Formation should not only be voluntary but it should also start on the initiative of the future members.

4.7.2.2 Co-operative principles

The universally recognised co-operative principles may be included in the preamble or in the definition of the co-operative by listing them or by making reference thereto.

A reference has the merit of being more flexible and of not imposing a revision of the law should the principles change, but it makes the application of the law more complicated because it refers to external texts.

Another solution is to draw up a list

of the co-operative principles, taking care not to give this list a limiting and definite character. This could be translated by the use of expressions such as “among others ...” or “in particular ...”. Thus the reference would include possible changes.

Whatever the solution, it is important that the nature of the referred to or cited co-operative principles be expressly stated and that the co-operative principles not be written as if they were legal norms, because that would limit the legislator in a way to make adaptation of these principles to the national circumstances impossible and, in fact, the respect of these principles rather improbable.

It would also limit the autonomy of co-operatives. On the other hand, legal rules must not be written in the form of principles because in that form they are not applicable and will most likely call on government to replace the legislator by issuing norms where it should limit itself to issuing regulations, which make legal norms operational, where necessary.

4.7.2.3 Definition of the terms used in the law

A glossary of the legal terms used in the law could be included in the text, annexed to it or contained in a separate document.

This is all the more necessary where this kind of law is new or marks a sudden change of politics, or where a single general text replaces several more detailed ones. Such a glossary would also have the merit of facilitating communication at the international level.

4.7.3 Formation of and membership in co-operatives

4.7.3.1 Registration and publication

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

Noting what has happened during the last decades in a number of countries, it appears that the law must foresee severe sanctions against any abuse of the name “co-operative”.

The granting of the status of legal entity is, as a rule, motivated by the wish to favour the participation of private persons in joint economic activities since these are judged to be more viable.

The fact that their personal responsibility and, in particular, their financial liability, is not committed beyond the amount of the shares subscribed, unless decided otherwise in the bylaws/statutes, is certainly an encouraging factor for people to become members of legal entities.

One might object that the distinction made between the organisation and its members contradicts the co-operative principle according to which the co-operative may not be dissociated from its members. Since the capital of a co-operative varies with the number of its members, the constitution of a legal entity, independent of its members, is however indispensable in the interest of third parties.

4.7.3.1.1 Types of registration

There are two basic types of registration:

Documents to be attached to the Application for Registration

- the minutes of the constitutive general assembly, with the signatures or finger prints of all founder members. If the bylaws/statutes were adopted on the basis of model bylaws/statutes, the minutes must document a detailed discussion of these model bylaws/statutes;
- a sample of the signatures of the persons with the right to represent the co-operative;
- several copies of the bylaws/statutes with the signatures or the finger prints of all founder members;
- the list of the members with their names and addresses as well as their date of admission. These data are important when one has to determine the financial liability of a member;
- the report of an economic feasibility study concerning the planned activities of the co-operative. This study should be carried out by a co-operative apex organisation or another recognised structure. Where there is not yet a vertical co-operative structure in place, government may temporarily carry out this task. The task must not be given to the registration authority in order to avoid it to be judge and party at the same time;
- the objective of this requirement, which is not imposed on the founders of other business organisations, is not to hamper the freedom of potential co-operators, but to see to the interests of their members and their potential business partners, since the risks these are running are greater than those usually permitted for other types of enterprises, because co-operatives have no minimum capital requirement and, generally, their capital base is weak. The legislator must, however, refrain from such preventive measures if it cannot exclude abuses of power in connection with this study;
- proof that the co-operative will be properly audited by a qualified auditor;
- a list of persons entitled to file the application for registration and to notify all subsequent changes to be made to the registry; and
- a document showing that an adequate portion of the total amount of the co-operative shares has been paid up and stating the period of time within which the remainder must be paid.

- (i) the quasi-automatic registration, and
- (ii) the registration after approval by a public authority.

According to first option, which complies best with liberal democracy, a co-operative must be registered once the conditions laid down in the law are fulfilled. If, for whatever reason, a previous approval is necessary, the discretionary power of the approving authority must be strictly and effectively limited.

4.7.3.1.2 Registration authority

The separation of state powers, the legal nature of the law, the definition of co-operatives or the use of the registration procedure as a means to control are elements to consider when choosing the registration authority.

Recognition of co-operatives as economic organisations of the private sector would permit having all types of enterprises registered in one single register. Even though registration is an administrative task, it could be exercised by the judiciary.

But experience has also shown that an authority specialised in co-operative matters, and possibly helped by personnel seconded by the co-operative movement, is more apt to handle registration issues properly.

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

potential co-operators with one of them.

4.7.3.1.3 Registration procedure

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

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

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

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

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

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

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

Only published or known information is binding on third parties. After registration, co-operatives must therefore make sure that any subsequent changes in the registered data be notified to the registration authority, failing which, the persons

not having fulfilled this duty will be held financially liable for the consequences.

4.7.3.1.4 Nature and effects of the registration

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

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

The legal person status includes the right to own subsidiaries in another legal form than a co-operative. The establishment of such independent bodies should not, however, discard members from the decision making. It thus appears that the attribution of the status of legal entity is not compatible with the frequently used formula according to which co-operatives were "the mandatories of their members". Once a co-operative

is registered, acts performed on its behalf exclusively commit the co-operative.

The status of acts performed on behalf of the co-operative during the period from its constitution until its registration must be clearly defined.

In order to favour the rapid development of co-operatives, justified by the economic situation in numerous countries, most of the legislation adopted during the 1960s provided for the possibility of provisional registration of mainly “pre-co-operatives”. After thirty years of experience, one must, however, admit that most of these pre-co-operatives, often preferred because of their light structure, have not evolved towards autonomous co-operatives. On the contrary, their dependence on the state increased as a result of ever growing support aiming at their becoming co-operatives. The ensuing control has discredited government as a promoter of co-operative organisations.

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

4.7.3.2 Membership

4.7.3.2.1 Membership qualifications

According to western legal concepts, only physical and legal persons may hold rights and hence be members of a co-operative. This definition is based on a cultural assumption which individualises physical persons.

European culture defines men and women as individuals. Other societies are organised on the basis of extended families, or even larger groups, as the smallest entity.

These entities may be admitted as members in co-operatives, provided they are stable. One would have to make certain, however, that the decision-making procedure within the co-operative is not affected by admitting such groups as members and that the democratic rights of individual members are not infringed upon.

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

As a rule and with the exception of service co-operatives, legal persons should not be members of primary co-operatives. There are, however, no legal objections to them being members as long as the democratic principle of “one member – one vote” is respected in real terms.

4.7.3.2.2 Restrictions concerning age

The admission of legal minors is generally an exception to the civil law of the country concerned. Without preventing economically active minors from membership, the possibility of minors to affiliate themselves to a co-operative needs careful studying of the implications in terms of financial responsibility, the

right to vote and the eligibility to posts of responsibility.

In order to avoid that joining a co-operative becomes a means of access to a level of social responsibility for minors which would not legally be accorded to them individually, their number and rights must be limited. Notably, minors must be prevented from being able to control the co-operative. Exceptions might be made for school co-operatives.

4.7.3.2.3 Minimum number of members in primary co-ops

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

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

4.7.3.2.4 Maximum number of members

In theory, the open-door principle does not authorise any restriction on the number of members. In practice, the number of members must be compatible with the objective of the

co-operative in question. Just as with the minimum number of members, it is difficult to define absolute upper or relative limits for the different types of co-operatives.

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

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

4.7.3.2.5 Admission of members

4.7.3.2.5.1 Principle

Within the limits of the objective of the co-operative in question and according to the open-door principle, all persons who request membership should be admitted. The associative character of the co-operative must, however, permit the members to have a say.

Mutual acceptance by the members is

a condition sine qua non for the success of the co-operative.

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

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

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

4.7.3.2.5.2 Admission procedure

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

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

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

4.7.3.2.6 Resignation/withdrawal of members

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

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

The effect of the resignation/withdrawal is the postponement or immediate termination of the rights and obligations of the resigning member. Remaining under certain conditions financially liable, the resigning/withdrawing member has a right to have his/her shares reimbursed, in principle at nominal value. However, the co-operative

must have the possibility to withhold the reimbursement if an immediate reimbursement would seriously affect its functioning. In this case, the co-operative will pay a limited interest on the sum to be reimbursed.

4.7.3.2.7 Exclusion and suspension of members

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

Depending on the kind of misconduct, the co-operative might decide a partial or total suspension of the rights of a member during a certain period of time.

In both cases, the member concerned must be heard and, at his/her request, the motives for the decision of the co-operative must be communicated to the member in writing. The member may appeal before the general assembly of the co-operative and/or use the dispute settlement procedures provided for in the law and/or in the bylaws/statutes. The terms and effects of an exclusion or suspension are the same as those for the resignation.

4.7.4 Obligations and rights of members

4.7.4.1 Obligations

4.7.4.1.1 Principle

Membership is linked to rights. These are conditioned by the discharge of obligations. The co-operative law and

subsidiary legislation must ensure that this rule is respected, even in cases where general social rules tend to override these rights and obligations. In no case must family ties, race, age, religion or any other affiliation to a group affect the independence and the equality of the members.

4.7.4.1.2 Personal obligations

By belonging to a co-operative, members commit themselves:

- to respect the bylaws/statutes as well as the decisions taken by the general assembly, whether they voted for their adoption or not
- to abstain from any activity detrimental to the objective of their co-operative
- membership in several co-operatives having the same objective and territory of activity must not automatically be considered as harming the co-operative(s).
- to participate actively in the life of the co-operative. This obligation may not, however, be enforced.

4.7.4.1.3 Financial obligations

Membership in a co-operative implies the following financial obligations:

- each member must subscribe to and pay for the minimum number of shares fixed in the bylaws/statutes
- each member is financially liable for the debts of the co-operative, at a minimum with the amount of money to be paid for the shares subscribed by him

In order to compensate, at least in part,

for the financial weakness inherent in most co-operatives, and in order to incite the members to actively contribute to the success of their co-operative, the law or the bylaws/statutes may impose an obligation on the members to make supplementary payments in case the co-operative is unable to pay its debts. This may result in an unlimited financial liability of the members.

The amount of these supplementary payments may be the same for each member, it may be proportional to the transactions made by each of the members with the co-operative, according to the method used to distribute a surplus, or it may be determined according to the number of shares held by each member.

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

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

4.7.4.1.4 Other obligations

One might envisage obliging the members to use, to a certain extent at least, the services or installations of

their co-operative. Although favouring the development of the co-operative in the short run, such a rule would in time have a negative influence on the competitiveness of the co-operative and it might violate competition law in those cases where the members themselves run a business.

Therefore, rather than reasoning in terms of legal obligations, one might consider that co-operators have the moral duty to work with their enterprise. Furthermore, it is up to the co-operative to offer sufficiently attractive services to its members.

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

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

4.7.4.2 Rights

4.7.4.2.1 Personal rights

Each member has the right to:

- use the installations and services of the co-operative
- participate in the general assembly, propose a motion therein, and vote
- elect or be elected for an office in the co-operative or in that of a higher level structure of which his co-operative is a member

- obtain at all reasonable times, from the elected bodies of the co-operative, information on the situation of the co-operative and
- have the books and registers inspected by the supervisory committee.

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

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

4.7.4.2.2 Financial rights

The members have the right to:

- receive a share of the surplus in the form of a patronage refund, calculated as pro-rata of their transactions with the co-operative, and/or a limited interest on the paid-up shares
- ask, when terminating their membership, that the paid-up shares be reimbursed. Losses or devaluations may be deducted from the nominal value of these shares.
- receive, in the case of liquidation, a share of the remaining sum, if any, unless the bylaws/statutes foresee – as required by strict co-operative principles – that this must be credited to another co-operative or to a charitable organisation.

4.7.4.3 Provisions relating to member employees

The employer/employee relationship in co-operatives is a complex issue when the employees are members of

the co-operative and, consequently, their own employers. These members might find contradictory interests in terms of working hours, salary, trade union rights etc. The problem presents itself at varying degrees of intensity in the different types of co-operatives:

- in service co-operatives, it is unusual that members are employees of their co-operative
- in consumer co-ops, the employees are frequently members of their co-operative. However, the objective of the co-op is not identical with that of the labour contract.

To prevent the interests of member employees from dominating, the voting rights of these members must be limited in cases relating to work conditions, or the general assembly must delegate its decision power in this matter to the board of directors. Besides, member employees will refrain from encroaching upon the interests of the employer since they are themselves their own employers.

In producer co-operatives the conflict is obvious. Here, the substance of the labour contract is co-operatised. It is identical to the objective of the co-operative. With the exception of the rules on social protection, the labour law must not normally be applied to these relationships because the co-operators freely consented to organise their work according to co-operative principles instead of seeking a work relation.¹⁸ Some legislation does see, however, the co-operative – a separate legal person – as the employer and the individual members as employees

with an employment contract with the co-operative while, as members, they have a separate contract with it, concluded with the acceptance of the bylaws/statutes when becoming member.

4.7.5 Organs and management of the co-operative

4.7.5.1 Principles

The functioning of co-operatives, as opposed to that of companies, depends on the participation of the members who must be able to exert an effective influence on the business of the co-operative. Nevertheless, as a legal entity, the latter must be able to keep a certain independence. Therefore the internal organisation, the sharing of powers between the different organs, the elections to offices as well as all important decisions must reflect the will of all members, regardless of their financial contribution. Broadly speaking, matters relating to the associative character of the co-operative are to be dealt with by the general assembly, matters pertaining to the enterprise of the co-operative are to be dealt with by a board of directors, whereas the day-to-day running of the enterprise should be delegated by the board of directors to a (professional) manager. This demarcation of powers is to avoid inefficiencies that arise where a non-informed membership retains too much of the management powers and it is to prevent a loss of co-operative identity where the membership loses its effective control because the management uses its information without properly consulting with the membership.

Every co-operative must at least have:

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

Although the formation of a co-operative does not require the existence of a control unit, it is advisable to at least provide for the possibility of its nomination and leave the decision to the members. Co-operatives which have such an organ, a “supervisory committee”, “supervisory commission” or “control commission”, seem to function better than those without it because the members often lack the necessary qualifications to exercise an effective and continuous control.

The supervisory committee must be independent from the board of directors in order to be able to control the administration and the management on behalf of the members.

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

As for the optional post of manager, it is not an organ of the co-operative since its powers are delegated from the board of directors.

4.7.5.2 General assembly

4.7.5.2.1 Composition

The ordinary or extraordinary general assembly, composed exclusively of the members of the co-operative, is the supreme decision taking body of the

Contents of the Bylaws

The bylaws must contain:

- the name and the trade name of the co-operative, which may be freely chosen as long as there is no confusion possible with the name of another legal entity already registered and as long as the public is left in no doubt about the limited financial liability of the members
- the locality of the head office, its postal address and, possibly, the conditions for its transfer
- the definition of the objective (including the indication of whether the co-operative is a single- or a multi-purpose co-operative)
- the conditions and procedures for admission, resignation, exclusion and suspension of members as well as eligibility criteria. These must reflect the particular character of the co-operative in question, as also reflected by its being a primary, a secondary or a co-operative of an even higher level
- the value and minimum number of the shares to be subscribed by each member. The general assembly ensures that the economic means of the least affluent members form the basis for the decision
- the procedure and conditions for the subscription and payment of the shares. Shares may be paid in cash, kind, labour, service or by leaving the share of the surplus, to which a member is entitled, with the co-operative
- the type of financial liability of the members for the debts of the co-operative
- the administration of the co-operative registers
- the conditions and procedures for convening and holding general assemblies (form of notice, fixing and notifying the agenda, election of the president of the session, preferably not a member of the board of directors, quorum and voting, etc.)
- the size of the board of directors and, possibly, of the supervisory committee; the conditions of eligibility to the various offices, the duration of the mandates and the reimbursement of their and the expenditures of the manager, if any. The rights and obligations of officers, mode of decision taking
- the conditions and procedures for convening the board if directors and, if any, the supervisory committee (quorum, voting etc.)

- financing: capital formation, constitution of the legal reserve and of the statutory funds
- surplus distribution and contribution to cover losses
- the distribution of the capital in case of resignation, exclusion or liquidation
- definition of the financial year
- auditing
- conditions and procedures for voluntary dissolution
- dispute settlement procedures
- decision making
- specification of any other legal matter and finally
- the procedure for modifying the bylaws/statutes.

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

- the duration of the co-operative
- its geographical area of activity
- its affiliation to one or several secondary or higher level apex organisations
- the nature and volume of transactions possible with non-member users. A balance must be found between the efficiency and the autonomy of the co-operative. This may translate into a definition of a threshold (percentage of total turnover which the transactions with non-member users must not exceed). These transactions must be kept separately in the accounts of the co-operative
- the remuneration of office holders. While it is true that according to co-operative principles office holders should not be remunerated, it is also true that thus financially weaker members may not afford to take office
- the number of additional or supplementary shares per member and the conditions of their subscription
- the formation of regional and/or assemblies by sections, their decision making, voting and number of delegates to represent at the central level
- the voting by proxy
- the establishment of education and other statutory funds
- any other matter falling within the autonomy of co-operatives.

co-operative. Third parties who have invested in the enterprise may possibly participate in the general assemblies, but they should not have voting rights.

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

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

These basic rules about the general assembly fit with the reality of most co-operatives. Generally, co-operatives are locally rooted, in the physical sense of the term. While this is a safeguard against quick shifts of their activities in search for comparative business advantages, one must not exclude the co-operatives

from being run without a physical centre of activity.

More and more, the structure of economic activities moves away from the classical, 17th century drama-like set-up where time, place and action formed a unity. New ways of communication and production neither require a stable physical production unit nor the physical presence of the members in order to hold a general assembly. Where this is required, the members may decide so in their bylaws/statutes. Otherwise, they should be free to discuss and vote via, for example, the internet. What matters is the democratic control by the members, not their physical presence at meetings, although this may still help to generate and regenerate the necessary reciprocal confidence.

4.7.5.2.2 Powers

As already mentioned, the dual character of co-operatives as associations and enterprises is indicative of the way in which powers must be shared amongst the general assembly and the board of directors. According to the definition of co-operatives, the members use the co-operative enterprise to attain certain economic or social objectives. The management must have the necessary working margin which is indispensable for efficient management, whereas all decisions concerning the co-op as an association must be taken by the general assembly. Starting from this basic distinction, one may draw a list of the matters to be dealt with exclusively by the

general assembly. These matters may not be transferred to any other body or person, not even by a unanimous decision of all the members.

4.7.5.2.2.1 Bylaws/statutes

Among these powers the most prominent is the right and obligation to adopt, and if necessary, to modify the bylaws/statutes within the limits of the law and the co-operative principles.

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

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

4.7.5.2.2.2 Other powers and obligations

In addition to drafting bylaws/statutes the general assembly has the following powers:

- distribution of powers between the different organs according to the above-mentioned principles, and the adoption for each of them of internal regulations

- election and the dismissal of the members of the supervisory committee and the board of directors unless the latter are to be chosen by the supervisory committee. The more powers the management has, the easier it must be to remove it from office.
- distribution of surplus or loss
- amalgamation, the scission, the conversion or the dissolution of the co-operative
- keeping of the minutes
- decisions concerning the possible limitation in matters of loans, deposits or investments
- nomination of auditors, the duration of their mandate and their remuneration
- examination of the auditor's report as well as of the annual report
- giving or refusing the final discharge of board members
- adoption of the annual budget
- final admission of new members
- decisions in matters of education and training of members
- extension of the duration of the co-operative
- the decision on whether the board of directors may appoint a professional manager, member or not of the co-operative
- the possible creation of sub-committees with specific tasks, and the duration of their mandate.

4.7.5.2.3 Decision making

4.7.5.2.3.1 Quorum

The conflict of principle engendered

by the dual nature of co-operatives must be solved by adopting a mode of decision making which respects the principles of both democracy and economic efficiency. Fixing a quorum, i.e. the minimum number of members who must be present for the general assembly to validly sit, deliberate and vote, constitutes such a compromise.

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

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

4.7.5.2.3.2 Voting

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

voting rights the member is holding or representing.

In secondary and higher level co-operative organisations, a system of plural voting rights may be applied without the above mentioned restrictions.

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

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

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

If voting by proxy is considered, the proxy must be a member of the co-operative and should not represent more than two or three members, him/herself included. Voting by mail or via the internet might be a way to involve the greatest possible number of members in the decision making process whenever the physical presence of the members is not necessary. At least, important decisions should be taken by ballot in order to limit the influence of certain members, mainly the president of the assembly. Elections should always be held by ballot.

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

- represent the co-operative in all acts of civil life, to administer and manage the co-operative
- This power is limited by the legal capacity of the co-operative and the decisions taken by the general assembly. Thus, the latter may for example fix a financial ceiling above which the board of directors cannot by itself commit the co-operative, or decide that certain decisions of the board of directors must be taken unanimously.
- keep the registers of the co-operative and minutes of its own meetings
- make certain that the accounts and the balance sheet are drawn up according to the rules in force, always keeping in mind the specific character of co-operatives
- verify that the audit is conducted regularly and within the prescribed time limits before discussing the conclusions with the supervisory committee and/or the general assembly
- convene ordinary or extraordinary general assemblies and prepare their agenda according to the bylaws/statutes
- prepare the management report and the annual budget
- admit, possibly provisionally, new members
- co-opt in the case of a vacancy new members unless this power is explicitly given to the general assembly
- facilitate the exercise of the rights of the members and make certain that they assume their obligations
- facilitate the work of the auditors
- nominate, if necessary, a manager or director, member or not of the co-operative, having the same qualifications as required for the board members, and to ensure that the manager or director carries out the assigned duties correctly. In practice, this employee must assume the management functions which are not explicitly reserved to be performed by the board. He may employ and direct the necessary number of personnel
- file, if necessary, an application for the opening of bankruptcy procedures
- make certain that its functioning be transparent by adopting internal regulations, unless drawn up by the general assembly
- assume several and joint responsibility in case of wrongdoings and finally
- take on any other rights or obligations, assigned by the general assembly or contained in the bylaws/statutes.

4.7.5.2.3.3 Majorities

Generally, decisions may be taken by simple majority if the required quorum of members is present. Resolutions concerning the “association contract”, be it a modification of the bylaws/statutes or a decision on merging/amalgamating, dividing, dissolving or on affiliating the co-operative with an apex organisation, must be taken by a qualified majority, generally a two thirds majority. In a second general assembly, convened because the required quorum was not attained for the first meeting, these rules may be different, as mentioned.

4.7.5.3 Board of directors

4.7.5.3.1 Composition

As the executive organ of the co-operative, the board of directors must function according to precise legal rules. The board members are not only the representatives of the members but they are also under the obligation to protect the co-operative as such and to preserve its assets for the members to come.

4.7.5.3.2 Provisions relating to the board of directors

The law must contain rules on the:

- minimum and maximum number of members to accommodate the specificity of each co-operative;
- eligibility criteria and a decision on whether or not all board members must be members of the co-operative. In cases where non-member investors sit on the board of directors, one must ensure that they are not able to take decisions on their own nor constitute a

blocking minority;

- incompatibilities, for example between belonging to the supervisory committee and the board of directors of the current or financial year which is subject to control by the supervisory committee. Also, members of the same family (to be defined) must not sit on the supervisory committee and the board of directors of the current or that financial year which is subject to control by the supervisory committee;
- duration of the mandate;
- quorum and the mode of voting;
- qualifications of the members of the board of directors;

These qualifications must be technical and personal. A professional manager may compensate a deficit in the first case, but nothing will replace a lack of confidence of the members in their representatives;

- liability of the board members.

3.7.5.3.3 Powers and obligations

4.7.5.4 Supervisory committee

4.7.5.4.1 Composition

The supervisory committee carries out the control function in the interest of the members. Consequently, it is exclusively composed of members of the co-operative.

4.7.5.4.2 Provisions relating to the supervisory committee

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

- the minimum and maximum number of members to accommodate the specificity of each co-operative;
- the eligibility criteria and the prohibition to sit at the same time on the board of directors of the current or a financial year which may be subject to control by the supervisory committee. The presence of several members of a same family (to be defined) in one or several organs must be avoided;
- the duration of the mandate
- the quorum and the mode of voting
- the financial liability.

4.7.5.4.3 Powers and obligations

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

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

4.7.6 Capital formation, accounts and distribution of surplus

4.7.6.1 Financial resources

4.7.6.1.1 Principle

The autonomy of co-operatives, guaranteed by law, will not become reality unless they have the necessary economic independence and, in particular, the financial independence. After having tried all possible ways of internal financing and before resorting to external financing, the consequences thereof must be sufficiently considered.

4.7.6.1.2 Internal financial resources

4.7.6.1.2.1 Shares

The shares do not constitute a gainful investment. The money paid-up is money which the members put at the disposal of their co-operative for the time of their membership in order for the co-operative to attain the jointly fixed objective. Shares are nominative, indivisible, non-transferable (unless decided otherwise by the general assembly), not attachable and non-negotiable. The amount of capital held by one member must be limited so that the principle of equality of the members in real terms is not endangered. When this balance becomes disturbed through the termination of a membership, the co-operative must redistribute the shares. In order to rebalance the relationship between the overall economic situation and the nominal value of the shares, co-operatives should be allowed to re-evaluate their shares under strict supervision of the competent authorities.

4.7.6.1.2.2 Additional shares

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

4.7.6.1.2.3 Further means to ensure internal financing

The financial weakness of co-operatives, brought about mainly by the instability of the number of members and thus the amount of share capital, is also a result of the economic rationality of the average member. As a rule, the members have limited amounts of cash only, which they might not necessarily be inclined to invest in the co-operative. This behaviour is explained by the limited interest payments that they may expect on such investment but also by the fact that additional shares do not increase their power in decision-making.

To counterbalance, the legislator might fix a limit below which the share capital must not fall, even if this means that a withdrawing member is not immediately reimbursed his share, or that the remaining members are obliged to contribute to the re-capitalisation by making supplementary payments. Such a system of separating the amount of share capital from the number of members, brings co-operatives closer

to the financial structure of capitalist enterprises.

On the contrary, the constitution of a reserve fund is a genuine co-operative way to overcome the inherent financial weakness. It must be obligatory. If indivisible, at least until liquidation, such a fund assures minimum stability and limits the risk of voluntary liquidation driven by speculation.

The legal reserve fund could be supplied by:

- the transfer of a minimum percentage of the surplus gained on transactions with the members until the fund reaches at least an amount equivalent to the share capital
- the transfer of the total profit gained on transactions with non-member users.

This use of the positive results of the co-operative enterprise becomes all the more interesting if the sums transferred to the reserve fund are not taxed, as opposed to that part of the surplus a member may receive, even when that part is transformed into a credit, a deposit or an additional funding by that member.

- the transfer of the results of activities not related to the objective of the co-operative, such as for example the sale of fixed assets.

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

4.7.6.1.3 External financial resources

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

Another way of attracting external financing is the issuance of transferable investment certificates for members and non-members, granting a right to participate in the distribution of the surplus and in the distribution of the assets in case of dissolution. Where these certificates do not grant any decision-making power or, in the case of members, any additional decision-making power, they might represent a still acceptable case of deviation from co-operative principles.

Where, however, these certificates do grant voting rights, even to a limited extent only, the co-operative principle of identity is in danger.

When it comes to external financing, the distinctive features of co-operatives are easily at risk. Ideally, co-operative members are the sole investors and users (co-operative principle of identity). Non-user members and non-member users have been accepted as "deviations".

The admission of investment members and non-member investors is a further step away from this identity principle.

Where, as some legislation provides for, co-operative shares may be traded at the stock exchange and members' shares have a symbolic value only, capital holders become anonymous and the (capital) structure of the co-operatives may not be distinguished any more from that of stock companies. In addition to violating the identity principle, these developments put the co-operative principle of the promotion of the members at risk.

4.7.6.2 Surplus distribution at the end of the financial year

As already mentioned, it is important to distinguish between profit and surplus. By definition, co-operatives ought to calculate the prices for transactions with their members near costs. In order to cover market related risks, a small profit margin must be included which will, however, be returned to the members at the end of the financial year, should the risk not have materialised, and should the balance sheet show a profit. This redistribution, in the form of patronage refunds, calculated as a pro rata of the transactions with the co-operative, thus constitutes a deferred price calculation/reduction. Therefore, instead of speaking of "profit" in this connection, one should speak of temporary surpluses.

The surplus will be distributed in the following manner:

- transfer to the legal reserve fund
- transfer to the statutory funds, if any
- interest payments on the paid-up shares and the investments, at a rate not higher than that paid by

the banks for certain kinds of deposits

- patronage refunds to the members calculated as a pro rata of their transactions with the co-operative
- premium payments to employees.

Any payment to members is conditioned by them having fulfilled their obligations, especially having paid up their shares.

4.7.6.3 Reimbursement of capital

In the case of resignation/withdrawal or exclusion, the shares are reimbursed at their nominal value, in order to avoid membership motivated by speculation. Where the economic interests of the co-operative are seriously threatened by such (immediate) reimbursement, it may be withheld.

As a rule, the same type of reimbursement of shares applies in the case of liquidation. The remaining liquidated assets are transferred to the co-operative movement, to a charity organisation or, in the exceptional case where the legal reserve fund is divisible, they are distributed among the members according to the method used in distributing a surplus at the end of the financial year.

4.7.6.4 Transactions with non-member users

Depending on its objectives and its situation, each co-operative must decide whether it wants to offer its services to non-members as well. In cases where membership comes from a pre-existing group, for example savings and credit co-operatives founded within an enterprise or a

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

If non-member business is admitted, it is important not to let it jeopardise the independence of the co-operative. As already mentioned, the volume of transactions with non-members must consequently be limited so as not to restrain the freedom of co-operative members. This might be done by fixing a percentage of the total turnover, above which no transactions may be made with non-members. For the purpose of taxation, distribution of the surplus and supplying the legal reserve fund, book keeping must distinguish between the transactions made with members and those made with non-members.

4.7.7 Audit

The establishment of an effective audit system, whose services will be accessible by all interested, should be made an obligation.

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

The specificity of co-operatives requires the auditor to make additional investigations to ensure that co-operatives comply with their task of promoting their members.

Especially where economic developments require a management system of co-operatives that does not allow for direct participation of the

membership, the audit must also include a control of whether the democratic rights of the members were respected.

The fact that the objective of co-operators differs from the purely financial interest of company stockholders must especially be taken into account by the auditors who have to be trained accordingly.

The audit of a co-operative can thus not be made only on the basis of accountancy documents. The auditors have to verify whether the overall objectives, which the co-operators set, were reached or at least furthered, and that the decisions of the management were taken in conformity thereto (management audit in order to establish a social balance alongside the financial or economic one).

Scrutiny of the minutes of the meetings of the board of directors might give useful information. The members must be consulted and their opinion used in drawing up the final report.

Periodical internal and external audits are indispensable procedures. The turnover, the kind of activities or other criteria may serve as a basis for defining their frequency.

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

The external audit will be carried out by a union, a federation, or a confederation of co-operatives or by private, preferably chartered, auditors. If the co-operative movement is not yet able to provide this service and if private services are not affordable, a public authority may audit co-operatives.

In no case must an administrative unit in charge of the promotion or the registration of co-operatives audit co-operatives.

The conclusions drawn from the audit must be communicated to the competent authority. The auditor's report is to be submitted to the board of directors and the supervisory committee, if any, with a view to them explaining it to the general assembly.

The auditors must have the right to participate in this meeting and, should the board of directors or the supervisory committee not have convened the general assembly, or not have (sufficiently) explained the contents of the auditor's report, they may do so.

The establishment of an audit system, independent from the state and the co-operatives must be a priority task. An audit fund might be created to allow those co-operatives which need auditing most to be able to afford it.

4.7.8 Forms of dissolution

4.7.8.1 Dissolution without liquidation: Amalgamation, scission and conversion

4.7.8.1.1 Principle

The autonomy of co-operatives

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

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

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

3.7.8.1.2 Amalgamation

There are two types of amalgamation:

- (i) one co-operative is absorbed by another one, something which is at times psychologically difficult for the members of the absorbed co-operative, or
- (ii) a new co-operative is born by merging two or more co-operatives. In this case, new bylaws/statutes will have to be adopted.

Often, expectations as to the economic effects (rationalisation of management and administration, economies of scale, etc.) are not met because of identification problems related to the enlargement, which in turn entails demotivation and difficulties in decision-making, etc.

4.7.8.1.3 Scission

Only those co-operatives that have a divisible legal reserve fund may divide. The others have to dissolve, after which the members may set up

two or more new co-operatives. In the case of a scission, members, assets and debts have to be split.

4.7.8.1.4 Conversion

Only those co-operatives that have a divisible legal reserve fund may be converted into another form of business, within the limits of the provisions relating to the new organisation. In the case where the legal reserve fund is indivisible, the members have the possibility of dissolving their co-operative and constituting a new organisation.

4.7.8.2 Dissolution with liquidation

In the case of dissolution with liquidation, too, the decision may freely be taken by the co-operators. A quorum and a qualified majority is, however, required due to the importance of the decision. Several examples of legislation require that at least two successive general assemblies be held and decide on the question.

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

- the duration of the co-operative laid down in the bylaws/statutes has come to term
- the objective of the co-operative has been attained or is impossible to attain
- the conditions for registering the co-operative are no longer given, for example when the number of

members remains below the required minimum during a specified period of time

- the co-operative has repeatedly violated laws, regulations and/or its own bylaws/ statutes
- the co-operative is bankrupt, after having taken into consideration the possible obligation of the members to make supplementary payments.

If there is no legislation concerning bankruptcy or if it turns out to be insufficient, it will be necessary to include provisions in the co-operative law.

- the co-operative has not had any activity during a given period of time or
- for any other reason, to be specified by law in order to avoid arbitrariness.

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

4.7.9 Simplified co-operative structures

As already mentioned, even though the experiences with pre-co-operatives can be criticised, this does not mean that the provision of a less complex form of organisation than co-operatives is not necessary. The French groupement d'intérêt économique (GIE),¹⁹ and the Cameroonian common initiative groups,²⁰ served as models.

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

4.7.10 Apex organisations: Unions, federations and confederations of co-operatives

The freedom of association includes the right of co-operatives to form apex organisations, i.e. unions, federations and/or confederations. The number of tiers should be decided by the co-operatives, keeping in mind the cost/benefit relation of the structures. The state should refrain from any intervention, except monitoring these organisations' compliance with their obligation to support and represent their members. The co-operative law must consequently define:

- the legal form of the different levels of this co-operative pyramid, specifying the activities which each level can exercise in the form specified
- the rights and obligations of the organisations of the secondary and higher structures in terms of:
 - › representation of their members at national, regional and international level

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

The very idea of the vertical structures defines also their functions as being subsidiary to those of their members, ie. a higher level co-operative should not be allowed to act if and as long as its members are able to perform the same task. In order to establish a system of partnership between the state and co-operatives, in full respect of the freedom of association, the state should promote an independent and competent co-operative movement.

4.7.11 Dispute settlement

The question is whether disputes within the co-operative movement, ie. disputes involving exclusively members, the organs of the co-operatives, the co-operatives themselves or their apex organisations, must be subject to reconciliation, mediation and/or general or special arbitration procedures before the parties may access a general or a special court of law.

Because of the importance of good personal relations for the success of co-operatives, most legislation provides

for an obligation to resort to out-of-court procedures before submitting a dispute to a court of law. This is stipulated either by law or through the bylaws/statutes of the co-operatives.

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

The rule of law out-rules any obligation to submit disputes to government authorities for final solution. In no case may access to court be prohibited as a last resort.

4.7.12 Miscellaneous

4.7.12.1 Government decrees of application

In countries where the law is traditionally accompanied by a government decree, the statutory powers of the government must be limited to setting rules for the application of the law only. Each section of the government decree should state that clause of the law on which is based.

4.7.12.2 Sanctions

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

This should prevent co-operatives from taking on the role of a judge, a duty which is not within their competence. Their own sanctions are

those foreseen by the bylaws/statutes and by individual contracts. The daily functioning of co-operatives is guaranteed by the possibility of dismissing the members of the board of directors and of the supervisory committee and by applying sanctions to those who do not fulfil their obligations.

4.7.12.3 Repeals, transition, applicable law in case of lacunae

4.8 Legislative procedure

Since the very idea of co-operation is based on participation, it is suggested to adopt a participatory approach to co-operative law making. This method constitutes the organic link between the generation, dissemination and implementation of the law. The right to participate in the definition and design of law, the right to share ideas of justice to create legal structures, and the right to use law to change law is an undeniable human right.²¹ This approach must, however, be embedded in the procedures laid down in the respective national constitution in order to ensure that the text fit into the legal system and be respected by non co-operators as well.

After having been suggested for some time²², participatory law making is now being practised. Several countries have institutionalised this participatory approach by establishing, a national council for co-operatives or a similar organisation.

4.9 Dissemination of the co-operative law

The co-operative law, by and of itself, does not change anything. Besides the

many other conditions to be fulfilled in order for an effective and efficient co-operative movement to emerge and/or to evolve, the law must be applied. In order to be applied the law must be understood.

Knowing that in a good many countries the official language and, a fortiori, the legal vocabulary are not mastered by the addressees of the law, who are often even illiterate, and knowing that the difficulties related to the implementation of the law are not limited to language issues, one understands that maximum attention must be focused on the dissemination of the co-operative law. This task rests as much with the state as with the co-operative movement. Some countries have started to develop lay-persons' guides in the main vernacular languages and to organise nationwide popularisation campaigns. In a similar move, co-operative apex organisations of most industrialised countries have produced guides to or commented versions of the legislation, and the internet is increasingly being used to popularise and explain the legal provisions.

5. International dimension of co-operative legislation

Just like any other law reform, especially in the field of economic law, the reform of co-operative legislation has become a field of international co-operation. There are two main reasons why the international aspect is increasingly being taken into account. Governments feel more and more bound by public international co-operative law and the locus of

legislation is shifting from national parliaments to supra- and international mechanisms, which leads to the harmonisation of co-operative laws worldwide.

The harmonisation of co-operative laws through regional, supranational and international law making has already been mentioned. Though not in detail, the contents of co-operative law are framed by the two international instruments already mentioned, namely the ICA Statement and the ILO Recommendation No.127.

Their binding force for national legislators has long been questioned. The ICA is a non-governmental body whose decisions do not bind states. ILO recommendations do not have the binding force of conventions. This view contradicts, however, binding, co-operative-relevant human rights instruments.

As far as the ICA Statement is concerned, the recognition of the human right to participation in law making requires the respect for those rules by which the ICA members and the ICA itself have to abide.

As for ILO Recommendation No. 127, it currently applies to developing countries' governments only, but is in the process of being revised. It is very likely that its current revision will lead to it becoming universally applicable.

Despite its nature as a recommendation, its universal binding force may already today be based on its being a mere concretisation of binding human rights instruments.

The co-operative-relevant human

rights instruments contain all the basic prerequisites²³ for co-operative legislation. The draft UN guidelines mentioned synthesise the above mentioned considerations.

One has to conclude that the co-operative principles, as set out in the ICA Statement and in ILO Recommendation No. 127, and as supported by the human rights instruments, establish the corpus of a public international co-operative law.

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

There are, however, numerous obstacles on the way that could lead to the adoption of co-operative laws which are better adapted to their cultural context. In order to surmount these problems one must start to:

- redefine the role of lawyers in development co-operation by rejecting the widespread conception according to which law is a technique without technology
- reject the idea of western law being universal. Its merits, as well as those of the other laws, must be discovered by finally using available comparative legal methods

- formulate and apply a theory of the Right to Development
- recognise each country as the agent of its own development and cease to consider many countries as objects of development
- universalise the process of public international law making
- cease to consider co-operative law as a means of development aid and
- search for ways of resolving the conflict between different legal systems within the same state.

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

6. Notes and Bibliography

NOTES

- 1 cf. bibliographical data under “ILO, Canevas”
- 2 doc. A/54/57
- 3 cf. Schwetmann
- 4 Henry and Penn, in: ILO,
- 5 cf. the highly inspiring article by Snaith
- 6 cf. Münkner,
- 7 The 1996 ILO working paper, on which they are based, has been widely distributed and discussed. Apart from numerous valuable comments on the occasion of several gatherings⁷, whose authors unfortunately remain anonymous, ILO and/or the author received written comments from the governments of Ghana, Jamaica, the Seychelles Islands and South Korea. The French (Mme.Chantal Chomel), the Italian (Avv. Pietro Moro) and the Bulgarian (Mr.Kuzman Georgiev) co-operative movements also reacted in writing. The ICA Europe Legislative Expert Group of co-operative lawyers discussed the paper and forwarded helpful suggestions.

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

8 cf.Boer, 935 ss. (936)

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

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

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

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

Specialised UN organisations and UN programmes, such as UNESCO, UNHCR, FAO, WHO, UNFPA, UNRISD, HABITAT, UNDP, WFP, IFAD, UNIDO, refer to co-operatives as vital organisations in the pursuit of their goals, cf. von Muralt, 898 ss.

Co-operative policy issues have been on the agenda of innumerable regional and international meetings, for example

- ministerial meetings organised by the International Co-operative Alliance for different regions of the world (Gaborone 1984, Lusaka 1987, Nairobi 1990, Sydney 1990, Arusha 1993, Colombo 1994, Chiangmai 1997)
 - meetings of the member states of the SAARC region, especially in 1997
 - FAO sponsored meeting at Gödöllő/Hungary on co-operative issues in Central and Eastern Europe
 - ILO and DSE sponsored regional conference for Anglophone Africa 1996 at Diessen/Germany (results in Co-operative Development and Adjustment)
 - meetings of the Conférence Panafricaine Co-opérative, especially its 11th and 12th meetings in 1996 and 1998 respectively
 - two ILO Expert Meetings in 1993 and 1995 on Co-operatives and co-operative law respectively (results published in ILO, Meeting of Experts ...)
 - series of ILO commissioned studies and co-sponsored colloquia on different aspects of co-operative policy and law, cf. Creating a favourable climate and conditions for co-operative development in Africa; Creating a favourable climate and conditions for co-operative development in Asia.; Creating a favourable climate and conditions for co-operative development in Latin America; Creating a favourable climate and conditions for co-operative development in Central and Eastern Europe; Structural changes; The relationship between co-operative organisation and Competition Law
- 11 A number of regional organisations have elaborated model co-operative laws or at least guidelines in view of harmonisation:
- the 1989 project for harmonising co-operative legislations in South America (Proyecto de Ley Marco para las Cooperativas de América Latina), elaborated by the Organización de las Cooperativas de América (OCA) is being used as a guideline by national law-makers. It has become an important stimulus for the modernisation of co-operative legislations in several Latin American countries. Its promoters are currently contemplating to review

the framework law in the light of recent socio-economic and political developments.

- in 1997 the Inter-Parliamentary Assembly of the Community of Independent States (CIS) adopted a “Model Law on Co-operatives and their Associations and Unions”
- the member states of the West African Monetary Union (UEAO) have adopted a uniform law on savings and credit co-operatives, which has been transformed into national legislation by several West African states
- similarly, the sixteen member states of the “Organisation pour l’harmonisation du droit des affaires en Afrique” (OHADA) has organised in March 1999 a meeting with the objective of launching the elaboration of a uniform co-operative law
- the 1997 “Referential Co-operative Act” of India is influencing the harmonisation process among the Indian federal states.
- the European Union is debating/finalising the adoption of a Regulation on the statute for a European co-operative society which will have a harmonising effect on the co-operative legislations of its member states
- the member states of the South Asian Association of Regional Co-operation (SAARC) entertain permanent, quasi institutionalised consultations on co-operative law matters which have already had a harmonising effect on the co-operative laws in the region
- the Organisation of East Caribbean States and CARICOM elaborated a credit union legislation which has been translated into national laws by seven Caribbean states

12 cf. Partant, 155; Watkins, 54 ss.

13 Hösle, 13

14 cf. Henry, in: Co-operative Development ...

15 1992 Co-operatives Act of Cameroon (“common initiative groups”); 1997 Italian co-operative law (“small co-operatives”); 1999 co-operative law of Madagascar; 1982 Co-operative Act of South Africa; Co-operative Law of Burkina Faso; Co-operative Law of Mali. A number of general co-operative laws (Austria, Belgium, Finland, France, Germany include exceptions for “smaller” co-operatives

16 Bangladesh, Columbia, Guyana, Italy, Mexico, Namibia, Portugal, Spain and Thailand, for example, recognise co-operatives in their constitutions

17 The already mentioned OCA project for harmonising co-operative legislation in South America could be a valuable source of ideas concerning the preamble and the general provisions

- 18 The ILO organised a meeting of experts on co-operative legislation in 1995 which dealt with this problem (cf. ILO, Meeting of Experts ...and ILO, Labour Law and Co-operatives)
- 19 The French GIE dates from 1967, respective legislations from 1984 and 1985
- 20 Cf. law no. 92/006 of 14 August 1992 relating to co-operative societies and common initiative groups, and decree of application no. 92/455/PM of 23 November 1992
- 21 cf. Paul/Dias
- 22 cf. Diaby-Pentzlin, 310 s.; Münkner, Hans-H., Participative Law-making. 123 ss.; Recommendations générales ...
- 23 the right to assemble, associate and federate, and the right not to do so, without negative legal or administrative consequences; the right to freely choose one's economic activity and business partner, be it at home or abroad; the right to property; - the right to self-determination; the right to free access to competitive national and international markets excluding, for example, transport, storage and marketing monopolies; the rule of law, i.e., inter alia: all acts of public authorities must be based on a law, all basic matters must be regulated in the law and cannot be left to the administration, discretionary powers of the administration must be kept to a minimum; the right to positive and negative non-discrimination (for example, no prohibitive taxation of co-operatives or their members. This is not only a question of justice but also one of competition); the right to free access to ordinary courts of law.

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ICA STATUTORY BUSINESS

ICA General Assembly

Convention and Exhibition Centre (COEX), Seoul, Korea

Draft Agenda

Tuesday, 16 October

- | | |
|---------------|--|
| 08:00-09:30 | Registration |
| 09:00-09:30 | Musical Programme |
| 09:30-12:30 | Opening Ceremony <ul style="list-style-type: none">- ICA President- President of the National Co-operative Agricultural Federation (NACF) of Korea- Entertainment- President of the Republic of Korea- Secretary-General of the United Nations |
| 12:30-14:00 | Lunch hosted by NACF |
| 14:00 - 16:00 | “Co-operation and Peace in the Era of Globalisation” <ul style="list-style-type: none">- Panel Presentation of “Co-operative Thinkers”- Discussion |
| 16:00 - 17:30 | Introduction to the Business Fora <ul style="list-style-type: none">- Panel Presentation of Thematic Issues- .COOP: The new internet domain for co-operatives- Global Co-operative Learning Centre |

Wednesday, 17 October

- | | |
|-------------|---|
| 09:00-12:00 | Business Fora: Co-operative Best Practice <ul style="list-style-type: none">- How are co-operatives meeting the challenge of guaranteeing safe food?- Co-operative financial services: Is the co-operative advantage “on-line”?- Service co-operatives in development: Solutions with care! |
|-------------|---|

12:00-13:30

Lunch

13:30-17:00

General Assembly Statutory Business

- Reports to Membership
 - Report from the Business Fora
 - Report of the President
 - Report of the Director-General
 - Annual Report 2000
 - Financial Reports
- Presentation of Candidates to the Board and Audit and Control Committee
- Proposed Amendments to the ICA Standing Orders
- Elections
 - President, Vice-presidents, Board members
 - Audit and Control Committee
- Motions
- Resolutions
- Future Meetings
- Presentation of Rochdale Prize award

Closing of the General Assembly

Proposed Amendments to ICA Standing Orders

In order to facilitate the voting process, the following amendments recommended by the Elections Committee are being proposed by the Board:

STANDING ORDERS

Representation at the General Assembly

Delete paragraph 4 “Member organisations shall have the right to entrust all their votes to one or more representative from the same country, provided that no representative shall hold more than ten votes.”

III. STANDING ORDERS FOR GENERAL ASSEMBLY PROCEDURES

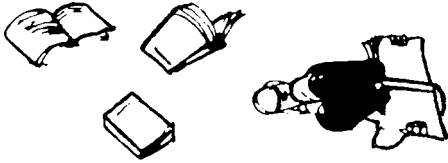
Voting

Delete all after the first sentence of paragraph 20

Replace with “A ballot shall be held on the recommendation of the Board, or on the demand on five member organisations.”

New paragraph 20 would then read as follows:

“All motions shall in the first instance be submitted to the vote by a show of hands. A ballot shall be held on the recommendation of the Board, or on the demand of five member organisations.”



Book Review

Happy Highways

by Trevor Bottomley - Published by ELSP, 1 The Shambles, Bradford on Avon, Wiltshire, BA15 1JS, UK. ISBN 1 903341 54 X. Orders from U.K: Grange Books, 31 High Street, Graveley, Herts. SG4 7LA. Price £10 incl. postage. Overseas orders: T.N. Bottomley, 23 The Mews, Norton Hall, Farm, Letchworth, Herts SG6 1AL, UK.

A revered past British co-operative leader, John (later Lord) Jacques, is fondly remembered for many things, one being his habit of suggesting “three reasons” for any argument he advanced. It also seems a good way of reviewing Trevor Bottomley’s memoirs, *Happy Highways*. The first reason for recommending it is that the author has much to say about co-operative development, having spent “fifty years and visited more than fifty countries as a co-operative development expert.” Secondly, Trevor, being a past member of the ICA staff, will be remembered by many in the international co-operative fraternity. The third reason is that his book is lively, entertaining and a thoroughly good read.

It traces Trevor’s co-operative work from his youthful days as an employee of a British consumer society, as well as his two years as a student of the Co-operative College at Stanford Hall, Loughborough. Of that he observes: “When I arrived at Stanford Hall I was

a Co-op employee; when I left I was a Co-operator by belief and conviction.” His course was set. After College, and for the next 13 years, Trevor worked in British co-operative education. He was appointed regional Education Officer within several sections of the Co-operative Union. Later he returned to Stanford Hall as the officer responsible for adult education and youth work within the Co-operative Union’s Education Department.

At Stanford Hall he came to the notice of the British Colonial Office, which had close links with the Co-operative College. After the end of the second world war the Colonial Office encouraged co-operative development as part of its economic and social development programmes within British colonial and dependent territories. Each year it granted about 25 scholarships to colonial co-operative officials and managers to study at the College. Its collaboration with the College enabled it to identify British co-operators who would be suitably

qualified and experienced to undertake co-operative development work in Britain's remaining colonies. This was at a time when the British Empire was coming to an end. It was also largely before the UN's Technical Assistance programmes were underway. Trevor declined initial approaches from the Colonial Office because his children were still very young. However, in the 1960s he accepted an appointment as Deputy Registrar of Co-operatives in Basutoland, now Lesotho. Several years later he became Registrar of Co-operative Societies and Marketing Officer in Bechuanaland, now Botswana. In the 1970s, and as part of the Commonwealth's contribution to the Colombo Plan, he became a co-operative and marketing adviser in Laos.

Trevor's account of his work in these years offers insights into practical aspects of co-operative development at that time. It also shows how he had to adapt to environments that were quite different from those in Britain. From being employed in a well-established co-operative movement he found himself working with co-operatives that had to be coaxed into life from nothing. Moreover, he had to work in conditions that were unfamiliar and often harsh. These included travelling huge distances, sometimes by means that were none too safe. He also had to adapt to unfamiliar local political and economic situations.

As Trevor's time in Laos came to an end a new phase of international co-operative work opened up. The ICA Director, then Dr. Suren Saxena, asked if, on his way home, Trevor could in-

vestigate the need for education and training materials by co-operative organisations in Asia. He thus found himself travelling to Bangkok, Kuala Lumpur, Singapore, Colombo, Madras and Delhi. Back in London the ICA offered him a six-month contract to take charge of, and complete, a worldwide inquiry into the needs for co-operative education and training materials. Funded by the then Co-operative League of the USA, and based in the ICA's head office in London, the project included co-ordinating research in Africa, Asia and central and south America.

One result of the project was the setting up of the ICA's Co-operative Education Materials Advisory Service. With funding principally from Sweden, it was based at the ICA's head office and Trevor was appointed its first head. His account of CEMAS's early years is authoritative because of his close involvement with its establishment and its early days. It also makes a valuable contribution to the ICA's recorded history. In addition it shows how such a service could be organised before the age of the computer and the internet. CEMAS had three main functions. The first was to prepare and produce co-operative education and training materials.

The second was to collect and evaluate materials being produced throughout the world and assess where these might help co-operatives elsewhere, thus providing a mechanism for exchange. The third was to identify gaps in materials and assess whether there was a need for them to be filled. If there was, CEMAS would then draft

outlines and production criteria, commission authors and conduct field trials. Trevor reminds us that one of the consequences of CEMAS was the establishment of the ICA's first Education Committee. This provides another very interesting and useful contribution to the ICA's recorded history; also a pleasant reminder of some of the personalities involved.

In 1977 Trevor took two years' leave of absence from the ICA to undertake an assignment in Jamaica on behalf of the British Ministry for Overseas Development. There he became a co-operative and agricultural marketing adviser to the Ministry of Agriculture. When he returned to the ICA Trevor became its Chief Officer for Education and Development. Again, another useful historical record which shows how this Department was organised together with its functions and personnel. Change lay ahead, however, when the ICA head office moved from London to Geneva in 1982. Just two years short of retirement, Trevor was not keen to move and so returned to the Co-operative College at Stanford Hall to teach courses for overseas students; also to undertake a number of short overseas assignments.

The third reason I mentioned for recommending this book is that it is a thoroughly enjoyable read. Many of

his past friends in the ICA will recall Trevor's forthright style of speaking, his abilities as a raconteur, and his sense of humour. All these are present in his written word.

His recollections of some hilarious incidents had your reviewer laughing aloud. One was the occasion when Trevor, and several colleagues, were put in charge of a firework display to celebrate Basutoland's independence. Instead of the rockets zooming triumphantly into the night sky, "they rose about ten feet then dropped back to the ground and went fizzing, bouncing, and skidding around the arena; to the considerable fright of the assembled soldiers, brought from the UK to lend dignity to the occasion".

The title of the book is taken from A.E. Houseman's poem A Shropshire Lad:

*"The happy highways
where I went
And cannot come again."*

The book is therefore one of reminiscence. In writing it, however, Trevor Bottomley has allowed his readers to share in his recollections of the highways he has travelled in co-operative service.

Rita Rhodes

* *Rita Rhodes is Visiting Research Fellow,
Co-operative Research Unit,
Open University, UK.*