



CO-OPERATIVE LEGISLATION

*Legislative and regulatory trends ---
with special reference to
co-operatives in the Asia Pacific Region*

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A presentation at the National Congress of the
Canadian Co-operative Association
Winnipeg, June 23-26, 1998

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by

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Regional Director, Asia and the Pacific
International Co-operative Alliance

334: 340(8)
IOA

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Preface

The adoption of the ICA Co-operative Identity Statement (ICIS) in 1995 has provided an empowering guidepost for co-operators worldwide -- as well as an important directive for government policymakers and legislators -- to amend co-operative legislation and policies by incorporating the new co-operative definition, values and principles. ICIS opens the opportunity to make important changes that define the role of government in its relationship to the co-operative, the relationship between co-operative and members, and the distinct character of the co-operative enterprise itself.

The Canadian Co-operative Association (CCA) has been a key sponsor of the ICA in undertaking policy reforms and legislative changes in many countries in Asia and the Pacific. Although we have seen encouraging results in co-operative legislation through constructive engagement and dialogue with various governments in the region, much remains to be done. This brief paper is an attempt to identify critical areas and regulatory trends in order for co-operators -- not merely policymakers and legislators -- to appreciate transformational processes required in trying to *improve* co-operative legislation. The analysis will focus more on realities in the developing nations.

It will hopefully complement the thorough analysis of Mr. J.J. Dierker on the development of co-operative legislation in Canada. His analysis was made in the context of the general corporate law in Canada, and I believe his authoritative views and analysis will be relevant to realities in the developed/industrialized countries.



Co-operative Legislation: *a case of paternalism and co-option.*

There have been major changes to the legislative environment for cooperatives around the globe since the collapse of Communism. The end of communism has meant victory to market economics. As a result, "Governments" have been busy developing new legislation regulating the development and management of co-operatives as a result of some co-operative failures in responding to globalization and market-oriented economies, as well as during the introduction of structural adjustment programs in many developing nations in the late 1980s.

A number of legislative changes were initiated to react swiftly to increased competition for cooperatives but also due to pressures for governments to withdraw their subsidies. Deregulatory policies of various governments, along with greater competition both domestic and international, are presenting major challenges to cooperatives and government policy makers. In the face of such challenges, questions are being raised about the sustainability of the cooperative structure.

Although legislative changes are valid and important given the new environment, there seem to be a tendency on part of governments and legislative bodies to take a paternalistic approach to making these changes. Co-operatives members are not actively involved in effecting the change, and in many cases are not even consulted in the process. As often described by Prof. Hans Munkner, "co-operative Acts are designed for co-operatives as a legal pattern of its own, not as a way to suit the needs of the co-operative society in terms of a people centered, member/user-driven self-help organization, following the co-operative principles"¹⁾.

However, such paternalistic tendency also occurs because of the inherent indifference and/or weakness within the co-operatives themselves. Many co-operative leaders are not ready to look beyond the rapidly changing environment and instinctively respond to changes as they occur. On the one hand, the absence of democratic governance in many developing countries in the South has created over-dependence on government support.

Consequently, these leaders automatically rely on governments to set the course of legislative reforms without any notion that they, let alone members, should be involved.

1) Prof. Hans-H, Munkner, *Journal of Co-operative Studies* Vol. 29:2 (no. 87), September 1996.



On the other hand, business pragmatism among co-operative professionals in more developed countries in the North, has prompted many of them to take short term solutions to overcome the imminent dangers of competition, usually spurred by bottom-line considerations -- rather than by members' needs -- to anticipate the future. Consequently, the fate of co-operatives is gradually being determined by professionals rather than by members.

Despite progress made since the 1980s through various co-operative Ministerial conferences organized by the ICA in Africa, Asia and the Pacific, the top-down syndrome continues to prevail in these regions. Paternalism is more pronounced among the developing nations because of historical reasons. Colonial powers in the past parachuted co-operative laws, which originated from the European continent, into their colonies to suit their own colonial agenda. These "imported" laws were then fitted to perpetuate their dominance: they are adapted to the local environment not to fit peoples' needs but to give special powers to the rulers themselves. As a result, post-colonial governments in many Asian and African Continents – wittingly or unwittingly – continued to pursue the same practice by holding on to their exclusive privileges. Up until today many of these governments have maintained their active involvement in the development of co-operatives, mainly to use co-operatives as instruments for their national development agenda, either as conduits for soft loans and subsidies, and/or for the promotion of micro enterprises. Government assistance are in most cases not based on the interest of the co-operative members but on meeting program targets of national policies, hence government-initiated co-operatives are intricately woven into the political fabric of the countries concerned. This being the case co-operative legislation and policies are by necessity initiated from above, the usual "top-down" approach.

Notwithstanding, greater understanding among co-operative ministers has been created since the Second Asia Pacific Co-operative Ministers Conference that was held in Jakarta, Indonesia, in 1992, and better relationship has also been developed between the government and the co-operative movement. Co-operative ministers show greater respect to the co-operative principles, especially the recently adopted principle of autonomy and independence. However, since co-operative law is an integral part of the national legal system, especially in countries where the co-operative concept has been enshrined in their national constitution, it is not easy to change the paternalistic approach. The constitutional mandate that has existed for so many decades places the national agenda well above the co-operative agenda.



The following examples show improvements in the way new laws have been enacted by a number of countries in this region, but which can still be further refined.

In **Indonesia**, during the process of developing the new co-operative law of 1992, there was 'indirect' input coming in from co-operative members, namely through the National Apex body (i.e. DEKOPIN). The latter was allegedly requested to share their views on the new co-op legislation just as the final draft was debated in parliament. The co-operative Act of 1993 in **Malaysia** was well intended to promote good co-operative management practices, but failed to incorporate the critical views of the Co-operative movement (ANGKASA). The Islamic Consultative Assembly of **Iran** passed the Co-operative Law in 1991. A Ministry of Co-operatives was established soon afterwards to oversee the promotion of co-operatives in that country, and people-initiated co-operatives have apparently not been galvanized.

The Co-operative Act of 1992 in **Nepal** was promulgated with the institution of a powerful registrar, with the latter exercising its power to institute the national co-operative Federation after the passage of the law. The government of **Thailand**, by way of the Co-operative Promotion Department, has introduced legislative changes in their Co-operative Act and has vigorously set the course for gaining input from co-operatives through the Apex co-operative body (CLT).

Sri Lanka has modified its co-op law of 1972 twice, first in 1983 and secondly in 1992. More recently they have set up a committee composed of representatives from co-operative national federations to draft a new co-operative law. This draft that sprang out from this participatory process is apparently not readily sanctioned by both the government and parliament, and continues to linger until now. The only legislation that was enacted by popular involvement and participation of the co-operative movement is the current Co-operative Code in the **Philippines**. There is, however, an ongoing debate within the co-operative movement over the way the Co-op Code is being enforced by the Co-operative Development Authority.

All the co-operative laws referred above are not special laws for each co-operative sector like those seen in Japan or Korea, but are national co-operative laws of the corresponding countries that are applicable to all sectors and types of co-operatives.

In cases where government assistance/subsidies are involved, co-operatives are usually co-opted as mere instruments to further the national development agenda of the corresponding government.



They are further convoluted by a number of bilateral and multi-lateral funding agencies that exert substantial influence over national policy formulation in these countries. Soedjono and Cordero reported that "Many of bilateral and multilateral agencies nurture misconceptions of co-operatives because their experiences are limited to government programs and approaches.

The result is a paradox of:

- (i) the continued perpetuation of donor-supported government programs using "overnight co-operatives" as conduits;
- (ii) a growing mistrust among the same donor agencies of the cyclical creation of "boom and bust" co-operatives under the very government programs which these agencies support²⁾.

It is against this backdrop that the International Co-operative Alliance, especially in Asia and the Pacific, proposes to improve the manner by which future Co-operative Ministerial Conferences will be conducted. If future legislation is to be successful, people-initiated co-operatives must take a front seat and come forward to show their "bottom-up" strength. Only people-initiated co-operatives have the capacity to transform paternalistic tendencies if they can showcase that member-driven co-operatives can self-regulate and ultimately contribute to the national development agenda as well. The latter may also involve many new innovations in legislating their co-operative institutions, not only under the general co-operative law but also under different laws such as banking and commercial laws, insofar as the ICIS is not being compromised. The case study of the SANASA movement in Sri Lanka is an interesting one. Hence the theme of "Co-operative Legislation and Competitive Strength" in future ministerial conferences continues to be relevant. The Canadian Co-operative Association -- together with the Developpement international Desjardins -- have agreed to become key partners of ICA in supporting critical studies and sub-regional workshops, leading to the Ministerial Summit in Beijing, scheduled for October 1999.

Recent trends in general cooperative legislation

2) Ibnoe Soedjono and Mariano Cordero, "Critical Study on Co-operative Legislation and Competitive Strength", International Co-operative Alliance, Regional Office for Asia and the Pacific, July 1997, Page 16.



Three major trends can be readily seen in the process of changing co-operative legislation against the background of increased competition for cooperatives due to deregulation and structural adjustment.

The first trend refers to the industrialized countries, particularly in Europe and North America, where many co-operatives have grown into massive, large-scale enterprises.

In the public eye these co-operatives look similar to their private business competitors. Reform of co-operative legislation in these countries tends to tilt towards making co-operatives more “private sector oriented”, pursuing growth orientation and controlled by professional managers (executives) rather than elected member representatives (board of directors). The tendency to raise capital from the open market, rather than from members is another one. Dividends are also paid on invested capital rather than patronage refund in proportion to business done with the co-operative enterprise.

Questions have been raised on the strict adherence to the “one man -- one vote” concept for very large co-operatives which need to act on complex business issues. Some of the concerns include : (i) the physical difficulty in mustering members to decide on impending issues; (ii) questions on the decision-making capability of members to decide on complex business issues; (iii) the expediency of such a process and its practical application to a rapidly changing business environment.

The perceived inhibition of the Co-operative Law and certain co-operative traditions are making a growing number of co-operatives to seriously consider **privatization/demutualization**, citing corporate flexibility over co-operative rigidities. On the other hand, there is a fear that if co-operatives are far too willing to pay so much for flexibility to seek the corporate option co-ops may throw the baby out with the bath water.

The challenge for members is to address this issue by creating the right balance in co-operative legislation, i.e.:

- (i) how co-operative legislation can reconcile the provision of being facilitative (non restrictive), that enables cooperatives to effectively adapt to increased competition, while maintaining the true cooperative identity;
- (ii) to examine and enact legislative provisions which can promote capital mobilization within cooperatives;
- (iii) to enhance skills, accountability and responsibility of cooperative directors and management;



- (iv) to seek greater consistency of co-operative legislation within the national co-operative framework, the Co-operative Identity Statement, relative to laws on taxation, labor and competition.

If the co-operative identity is lost in the reformation process, co-operatives could be slowly drawn into privatizing their business and work under ordinary commercial law, hence treated like other commercial, investor-driven business enterprises.

The second trend refers to many developing countries where the principle of “autonomy and independence” is currently being actively pursued, in an attempt to incorporate this principle in respective co-operative laws. Before the adoption of the new Co-operative Identity Statement at the ICA Centennial Congress in Manchester in 1995, there had been serious misconceptions in the minds of many members and governments as to the role of co-operatives and the role of government. Co-operatives were construed as either government-run institutions or instruments for their own development agenda. Government created the false notion that co-operatives are for the poorest of the poor, hence a good justification for them to use co-ops as tools for poverty reduction programs. Massive funds were poured into supporting bureaucratic structures of government ministries, technical expatriates, and subsidies with the label “credit-for-the-poor”, causing the proliferation of overnight co-operatives all over the country with serious repercussions to the movement.

Autonomy and independence must limit the role of the government to allow co-operative to become a self-help organization and to become more self-reliant. Of particular concern is the reality in some countries where the institution of the Registrar is so powerful and overly dominating. For a long time co-operators have called for de-officialization and de-bureaucratization as key pre-requisites to attain greater autonomy and independence of co-operatives. Unfortunately, these terms remain constant buzzwords whereas the size and scope of government institutions promoting co-operatives in many developing countries continue to increase rather than shrink.

Change has been slow in coming, especially when it pertains to explicit changes in the Co-operative Law in terms of defining the role of the Registrar. K.K. Taimni (Manchester 1995) stated that “The institution of the Registrar of Co-operative Societies in South Asia (Bangladesh, India, Pakistan and Sri Lanka) is over 90 years old.

There were three functions of the Registrar - all pervading, ubiquitous and bordering on intrusion into the internal affairs of co-operatives - that vitiated the climate for co-operatives, particularly at the primary level.



These were supervision, inspection and audit. All were bestowed on the registrar with noble intent, but all provided opportunities for the minor field-level co-operative department officials to play havoc with the co-operatives³⁾. Co-operatives, under such circumstances, are perceived as “government owned, governed run, and government-led”, in spite of the ILO recommendation of 1966 which define co-operatives as “autonomous association of persons⁴⁾”.

The de-emphasized role of capital in a co-operative, still in force in many co-operative laws and in by-laws of primary societies in developing countries, also bereft co-operatives of entering into mainstream business undertakings. As a result, co-operatives are used by governments as mere instruments “to help the poorest of the poor”, as part of their national development program. The new definition of “member economic participation” in the ICIS will help to trigger changes in outdated co-operative laws.

The Third Trend pertains to co-operatives in transitional economies where the old socialist collectives of communist governments are gradually being transformed into co-operatives with a market-oriented base. This is an extremely difficult process because of the vacuum of democratic governance as collectives were considered organs of the party in the past. In the beginning, governments wanted to abolish co-op apexes, and realized afterwards that co-ops are legitimate and fruitful for rebuilding of society. In drafting co-operative legislation, emphasis was given on economic reforms and increased independence from the state, and this put heavy demands on those transformed co-operative structures to adjust to the new situation.

This was the case in Vietnam when ICA was asked to participate in drafting the co-operative law. No less than twelve government ministries were involved in the process, each trying to form their own interpretation of what a co-operative is and how it should be structured. The draft legislation was changed thirteen times before it went to parliament for enactment on 20th March, 1996, and ultimately valid for implementation on January 01, 1997.

3) Krishan K. Taimni, paper presented at the Co-operative Research Forum in Manchester on 17-18 September, 1995.

4) ILO recommendation 127 of 1966 concerning the Role of Co-operatives in the Economic and Social Development of the Developing Countries, para 12 (I) (a): “A co-operative society is an autonomous association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically-controlled organization, 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”. -- This definition has been reviewed and rewritten in the ICA Co-operative Identity Statement of 1995.



The law stipulates the authority, functions and tasks of a co-operative including its organizational principles, registration, and 'congress of co-operative members', rights and obligation of members, assets and funds of the co-operative. Unlike the usual pattern the co-operative law also specifies the functions and tasks of state management agencies relative to the corresponding co-operative tier. According to Professor Ngo The Dan, "government policies to encourage development of co-operatives such as policy for land rental and the reduction of land rent; policy on tax exemption, policy on loan, policy for training co-operative, export and import, and joint venture in consumers products, and policy on social insurance. These documents also specifically stipulate former co-operatives established under centralized economic management to new co-operatives registered under the (new) Co-operative law"⁵⁾.

In China, the draft Law on Supply and Marketing Co-operatives has been submitted to National People's Congress for due approval and enactment. Drafting of the law was partly assisted by ILO and ICA, and has gone through enlightening debates over their chosen term of 'socialist market economy'. In Mongolia, co-operative legislation has not yet been reviewed. Co-operative property is still considered public, and is not subject to private ownership. When the consumers co-operative privatized their property during the reform and renovation process in 1991-1992, the co-operative structure, democracy and membership were infringed and resulted in financial uncertainties ever since.

If we look at these transitional economies, it is interesting to appraise the manner in which they develop their co-operative legislation. Unlike many developing nations which "imported" their laws from the European continent in the past, there exist a more genuine effort to develop co-operative laws by way of learning from their own experiences under past collectives. Furthermore, co-operative promoters are genuinely concerned about making market economy work by banking on their pragmatic economic considerations. Most co-operators regard savings as investment, so restriction on capital is kept at a minimum, and they seem to show some reluctance in fully understanding the owner-cum-user concept that is unique to a co-operative. In line with their economic pragmatism they prefer to see their savings as investor-based in order to increase their market shares. This is further compounded by the fact that state-subsidies are still being provided to accelerate the growth of co-operatives.

⁵⁾ Professor Ngo The Dan, Vice Minister of Agriculture and Rural Development of Vietnam, in his Country Statement during the 4th Asia-Pacific Co-operative Ministers' Conference on "Co-operatives in a Changing Socio-Economic Environment", Chiangmai, Thailand, March 18-22, 1997, Page 189.



These transitional economies, seen from the way debates occurred during the drafting of coop legislation, could be perceived as a unique middle ground between the capitalist co-operative model in the West and the government-dominated co-operatives in the South, if not a unique model of its own.

Gender and Development issues

In a number of co-operative laws -- especially those in developing countries -- provisions that impose strict criteria on women is still prevalent and act as a deterrent for women to become members of a co-operative. Terms such as "head of household", "holder of removable properties", etc. indirectly hinder women from becoming members of co-operatives. Unmodified co-op laws still use such terms as "he" and "him", instead of "he/she" or "person", and this is considered male bias. This contradicts the new co-operative identity statement that indicate that co-operatives should be open to all persons "without gender, social, racial, political and religious discrimination".

Co-operative legislation is key to enhancing the participation of women in co-operatives and henceforth in decision making as well. This is particularly important in producers' co-operatives, including agriculture and fisheries, where women have not taken part in mainstream business and decision making processes. Women are said to be almost "invisible" in these co-operative sectors. On the other hand, women are seen to participate more actively in the credit union or thrift and credit sectors, although this is considered more the exception than the rule.

The need for future reforms in co-operative legislation

Contemporary co-operative organizations should be perceived as economic enterprises operating under a new social and economic environment. It is important that co-operatives project a distinct corporate identity to ensure the same level of, if not a better, acknowledgement and support as private and state enterprises. For that purpose, the corporate philosophy, culture and business practices of co-operatives must represent a unique set of values in the competitive marketplace.

The ICA Co-operative Identity Statement (ICIS) has been adopted to provide a pivotal guidepost for future co-operative legislation, so that misconceived co-operatives practices could be avoided in the future.



Members, the co-operative reason for being, have been rediscovered as the sole source of strength in a co-operative. Because of the growing needs for capital in a host of co-operative sectors, the allocation of funds from annual surpluses will often be insufficient. Even more than in the past, co-operatives will have to explore innovative ways to raise more funds, and they should look first to **members**.

In general, because of the need for quick fixes co-operatives have been remiss in not employing the member advantage to raise capital. And leaders are tempted to propose legislative changes that will enable them to raise capital from outside. It is not unreasonable for members to expect that they will have to make regular investments in their co-operatives, and it is reasonable for them to expect a return, perhaps a delayed return, on the investments they make in their co-operative.

However, any arrangement that would bring external capital into the co-operative, be it a joint venture, government loan, or a strategic alliance, must not be at the cost of sacrificing the autonomy and capacity of members to control their own co-operative organization in a democratic manner. This rule of behavior must also be clearly expressed in co-operative legislation, and that violation to such democratic conduct should not go unpunished.

Co-operative laws are meant to provide legal protection for members in ensuring that co-operatives work according to universally accepted values and principles. The legal framework under which co-operatives operate is composed of the law, bylaws adopted by the membership assembly, and related rules and regulations. Hence co-operative laws must be enabling, not curtailing, so management and operations of the co-operative are empowered in order to provide better services to members. In Denmark and Norway there is no co-operative law. Co-operatives are governed by their own bylaws approved by members. Yet the co-operative movements in Denmark and Norway are thriving and possess major shares as strong economic actors in the marketplace.

In his new book on "Co-operative Laws in Asia and the Pacific", Mr. G.K. Sharma wrote, inter alia, "in many European countries co-operatives are regulated by commercial laws, without any specific co-operative laws. Only in Australia, co-operatives have the option to get themselves registered either under the State Co-operative Law or under the Federal Corporation law. However, only when they have more than 90% of business with members, they can get tax benefits under the federal revenue laws as co-operatives"⁶⁾

⁶⁾ Sharma, G.K., "Co-operative Laws in Asia and the Pacific", Bonow Memorial Trust, September 1997, page 194.



There is the challenge for co-operatives in developing countries that are still being interfered with by the government to rise to their own autonomy and independence. Autonomy and independence as modeled by many European and North American countries are deemed favorable, for so long as co-operatives are not trapped into the so-called "professional syndrome" where members only take a backseat.

In the least, the following strategy for reform is suggested for consideration:

- There is a need to formulate a co-operative development policy that is clear, consistent, realistic, authoritative and valid for a long term, by involving members and leaders throughout the process. Such a policy should be written in clear and simple terms and language that it can be easily understood by members, so it will be a practical reference for them and a good directive for lawmakers and government officials.
- Existing co-operative legislation and policies should be reviewed and reformulated, not only to incorporate and make them consistent with the ICIS (ICA Co-op identity Statement), but also to redefine relationship between co-operative and the state, co-operative and its members, and to satisfy the needs of all different types of co-operatives.
- In advocating for appropriate legislation and policies that will enable co-operatives to develop themselves as autonomous, independent, and democratic people-based associations, the co-operative movement must seek methods of advocacy that are persuasive, appropriate, and done in the spirit of co-operation.
- It is also important that co-operatives, and governments at all levels, review, identify, and eliminate all legislation, regulations, and policies which hinder the full participation of women in leadership roles in co-operatives.

Ottawa, June 1998