

## *Interviews*

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### **Interview with Professor Dr. Hans-H. Münkner**

Few scholars have had the impact Professor Münkner has had on cooperative law. His research is all too well known. He taught cooperative law over decades, not only at his home university, the University of Marburg in Germany, but also abroad. He kept the subject alive and both reminded politicians of its value and international organizations of its necessity as a decisive development factor. And (above all?) he inspired young people to take the subject up at the risk of doing something, which many had come to believe as outdated.

For this reason, the editors thought it appropriate that they should open the series of interviews, which the International Journal of Cooperative Law (IJCL) intends to publish, with an interview with Professor Münkner.

The questions were prepared by Ifigeneia Douvitsa and Hagen Henry, with input from David Hiez. The interview was conducted in writing at the beginning of 2018.

Douvitsa & Henry: Professor Münkner, we are very grateful that You accepted to be interviewed for this 1<sup>st</sup> issue of the IJCL. To our knowledge, this journal is the first of its kind in the sense that it aims at world-wide coverage of cooperative law in English. We believe that there is a renewed and sustained interest in cooperative law. Given Your work on cooperative law, which spans over nearly six decades, do You think that we are right and that launching such a journal makes sense?

Professor Münkner: In my opinion, launching an international journal of co-operative law makes sense and is long overdue. Such a journal will bring together specialists from all over the world who for the first time will have a platform on which they can present their findings and exchange views.

Douvitsa & Henry: What made You work on cooperative law? Was the subject part of your formal education? Did you ever doubt as to the choice of your career?

Professor Münkner: During my formal education at school and at the Faculty of Law of Marburg University, co-operative studies and co-operative law were not taught.

After my studies of law in Marburg, Mainz, Berlin and again in Marburg, I was offered an interesting position, initially as a lecturer and later as University Professor specialized on organization law, co-operative law and co-operative theory. I filled this position for 40 years. This choice proved to be very satisfying for me. However, there was no similar position in other German universities for which I would have been qualified with my specialization. Accordingly, career-prospects outside Marburg would have been bad. But I have never regretted my choice.

Douvitsa & Henry: Your doctoral thesis is on Ghanaian cooperative law. Africa and African law seems to have been/to be close to Your heart. Why?

Professor Münkner: My interest in Africa has several sources. Relatives were working in Tanganyika in the 1920's (Bethel Mission, Usambara Mountains) and through them I received some information on life in Africa and on African art. Today, our house is full of African art.

In Marburg, a Professor for religious studies (Prof. Damman) had worked as a pastor in Tanzania. In Marburg, he offered courses in Suaheli in which I participated. At the same time (in the 1950ies, three students from Sierra Leone studied medicine in Marburg. Together with them and German students we established the German African Students Association in Marburg, which still exists today.

Moreover, I was among the founder-members and a long-term board member of the German Association of African Law. Between 1975 and 1997, this society organized annual conferences and published nine volumes of its Yearbook.

When I was accepted by Prof. Rudolph Reinhardt as a doctoral student, the combination of interest in Africa and in co-operative law resulted in a thesis on development of co-operative law in Africa, with Ghana as an example. Ghana was selected because it was the first African territory in which the British Colonial Co-operative Legislation was introduced in 1929. In Ghana, a strong co-operative movement developed and passed through phases of political interference. It was and still is a country reflecting the experience of many countries of English-speaking Africa.

Henry: You influenced my thinking on cooperatives and cooperative law. Was there somebody in your life who had a similar influence on you?

Professor Münkner: My interest in co-operatives and co-operative law was influenced by the Directors of the Marburg Institute for Co-operative Studies, Prof. Kirsch and Prof. Reinhardt, who designed the degree course of co-operative economics for students from Africa and Asia, in which I later worked. Prof. Kirsch had close contacts to the German Federation of Consumer Co-operatives, which became instrumental when planning the new degree course on co-operative economics together with the German national co-operative federations.

In 1962 I was advised by the Professors Reinhardt and Kirsch to take part in a special two-years training program for co-operative advisers in developing countries, organized jointly by the Committee of German Co-operative Federations (Freier Ausschuss der deutschen Genossenschaftsverbände) and the German Federal Government. I worked as a trainee in different types of co-operatives, including an Israeli Kibbutz, and participated in several seminars. After successful completion of this program, I was invited by Prof. Kirsch to join a team of lecturers for the new Masters' Degree Course in Co-operative Economics of Marburg University.

Working as a doctoral student of Prof. Reinhardt gave me the opportunity to learn a lot from one of the leading academic teachers of organization law, in general, and co-operative law, in particular. I will never forget his advice when writing my doctoral thesis: “Underline what is important and leave out the rest.”

Henrÿ: In a short telephone conversation in 1992, You convinced me to start working on cooperative law. What made You so sure then that we would eventually overcome the disinterest in the subject and see cooperative law reestablishing itself side by side with other fields of enterprise law?

Professor Münkner: In 1992 I had already established many contacts with colleagues in developing countries, travelled widely, given lectures in Goethe-Institutes (German cultural centers) in many countries and participated in the International Cooperative Alliance (ICA) Committee on Co-operative Values. I was convinced that the subject matter of co-operative law was a field with a future, provided that enough qualified and gifted people could be interested to work for a career in this field, reaching far beyond the formal law of business organizations and being present on international level. My work in the Masters’ Degree Course on Co-operative Economics for students from Africa, Asia and Latin America gave me ample opportunity to meet colleagues and to gain experience in this field. I tried – successfully – to interest You in this field of research and teaching, which I found most promising.

Douvitsa: Would you recommend to young scholars to take up the subject?

Professor Münkner: Young scholars looking for a field of specialization should be aware that the subjects of co-operative law and co-operative studies in general are usually not part of curricula and at best a side-line of law professors, who usually have a much broader qualification. For good reasons I remained in my Marburg position from 1964 to 2000. In other universities there would not have been much interest in someone with my specialization – tailor-made for the legal part of our Marburg Degree Course in Co-operative Economics.

Douvitsa & Henrÿ: You have been part of the debate on whether cooperatives are or have an enterprise through which they act. The three main international instruments on cooperatives, namely the 1995 ICA Statement on the cooperative identity, the 2001 UN Guidelines aimed at creating a supportive environment for the development of cooperatives and the 2002 International Labour Organization Recommendation No. 193 concerning the promotion of cooperatives (ILO R. 193) are clear on that: they are! Despite this, it is being questioned again and again. Not the least at the time when some of the members of COPAC, the inter-agency Committee for the Promotion and Advancement of Cooperatives, prepared the activities for the 2012 International Year of Cooperatives. The debate might lose its sense given that the very notion of “enterprise” is undergoing radical changes under the condition of globalization. Economic actors integrate ever more into vertical and horizontal value chains, operationally and organizationally. The position of producers and consumers merge into that of co-pro-sumers. What is Your view on this?

Professor Münkner: In the 1960ies it was still very clear that co-operatives did not have an enterprise as part of their dual structure, but a “joint plant”, one reason being that in co-operatives their economic unit was not connected with the market on both sides (buyer/seller), but only on one side – while on the other side economic relations with their members followed different rules.

Today, in Spain, Portugal and countries of Latin America, “actos cooperativos” are perceived as being different from commercial relations with third parties. In Germany, a distinction is made between “internal markets” (relations between co-operatives and their members), also referred to as “Zweckgeschäft” (purpose transactions – transactions for which the co-operative was formed) and “external markets” (“Gegengeschäft” – counter-transaction), linking the co-operative enterprise to the market. This distinction is mainly designed to distinguish business policies – profit making on external markets, on the one hand, and maximum member-promotion on the internal market – service near cost –, on the other.

This clear distinction is gradually fading away. Regarding organization and management, co-operative enterprises, like any other enterprises, must aim at a maximum economic efficiency to survive on the market. Enterprises, including co-operative enterprises, are not only seen as elements of a market economy, competing with other enterprises to survive in the market, but also as an organizational pattern designed to make best possible use of scarce resources in an efficient and effective manner for achieving the objects of an economic organization. In this meaning, co-operatives have an enterprise.

Douvitsa & Henry: Despite the declared end of the times of ideologies, cooperatives continue being a preferred subject in some quarters who would like to revive those times. Some see cooperatives as a cure to all the inconsistencies of capitalism. Others see them as a tool to substitute capitalism. Are we reviving/ should we revive the old debate about the transformative role of cooperatives?

Professor Münkner: The issue “co-operatives and capitalism” has been discussed for many years and in great detail in France, e. g. by Thierry Jeantet in his book “Social Economy as an Alternative to Capitalism”, which I translated into German. It appears that most people propagating Social Economy (SE) no longer see SE as an alternative to capitalism, but as a means to improve capitalism, avoiding mistakes made by dangerous financial capitalism, while regarding “family capitalism” as less dangerous and in effect a necessary form of “mild” capitalism, prevailing in up to 85 % of all enterprises.

Positive features of the co-operative form of doing business, making the co-operative way “better” than capitalism are

- to be need-oriented, instead of profit-oriented,
- to work with patient capital rather than being focused on maximizing profit on investment,
- to aim at sustainable development, instead of seeking short term success – irrespective of negative “externalities” (toxic quarterly capitalism).

Co-operatives and companies require different designs of organization law, suited for accomplishing different tasks.

Douvitsa & Henry: You were one of the founding members and then, for many years, the Managing Director of the Institute for Co-operation in Developing Countries at the University of Marburg/Germany. The institute trained hundreds of cooperative experts. Many of them are now in key positions in their countries. It was closed shortly after You retired. In hindsight the decision to close it was certainly a mistake. But was it also a mistake at the time of its closure when cooperatives and cooperative law were not so high on political and academic agendas, to say the least?

Professor Münkner: When the Degree Course in Co-operative Economics started in Marburg in 1964, this was a time when – after colonial rule – models for development of the new African States were in high demand. Co-operative Economics was seen as a well-tested model to help these new states develop their economies and infrastructure. When the Degree Course in Co-operative Economics was closed in 2002, demand for this very special degree-course was still very high, but the Department of Economics, of which the degree course was part, was flooded by students of business administration – without disposing of adequate teaching staff. In this situation, four professors teaching about 30 students of co-operative economics were seen as inadequate – although the funds for these professors had originated from the foreign aid budget of the Government of the federal state of Hessen.

When the original team of professors of the Institute for Co-operation in Developing Countries (ICDC) was reduced, because two colleagues died and a third retired, the Department decided to close the degree course with the official reason that this study program did not fit into the planning of the Department. Reactions to this decision from former students and from abroad were that it was a mistake to close down this successful project.

Douvitsa & Henry: You have written and published extensively, not only on cooperative law. The jubilee publication on the occasion of your 65<sup>th</sup> birthday in 2000 contains a never ending list of Your writings. It has grown since, just to mention the new edition of Your “Ten Lectures on Cooperative Law”. Despite that, is there still a text inside You waiting for publication? Did You ever refrain from publishing something which was already in the making? If so, why?

Professor Münkner: A new project which I am currently preparing is a “Handbook on Programs and Projects against Rural-Urban Migration of the Young”. My idea is to present models how the trend among young people to desert the rural areas and to look for greener pastures in the urban areas can be stopped and what the role of organized self-help in groups could play in this process.

It is intended to analyze the situation in industrialized countries and in developing countries and to invite scholars with practical experience from both worlds to participate.

So far, I have managed to complete all publication projects that I started.

Douvitsa & Henry: The perception of the world has changed since You started Your career. We assume it has changed from a more universal perspective to that of seeing it from the perspective of its cultural

diversity. If that is so, do You think that we can still defend the position that cooperatives across the world share and should share a common set of distinctive features? And if so, which are these features?

Professor Münkner: Having been involved as an adviser in many different countries, I have always been impressed by the cultural diversity in which co-operatives operate. This is most visible in African countries, where local and international values and norms meet.

When we discussed co-operative values and principles in the ICA Commissions on co-operative values and on co-operative principles between 1990 and 1995, the members of the Commissions were aware of the broad spectrum of value systems in the different countries. Therefore, care was taken not to define co-operative values too precisely, leaving margins for interpretation, avoiding clear borderlines of principles, but insisting on core values (distinctive features) which determine the nature of co-operative societies being self-help organizations of their members, serving mainly their needs and aspirations, in which members are at the same time owners of its facilities and users of its services, ruling out

- forced co-operation – i.e. involuntary organizations without internal mobilizing force,
- co-operatives for helping others – i.e. charity being different from self-help and mutual aid and
- co-operation for making profit – not being need-oriented and sustainable.

Douvitsa & Henry: The distinctive features of cooperatives are - or should be - a translation of the internationally recognized cooperative values and principles. Are these values and principles still relevant in our globalized world? Should they be revised or should we drop them?

Professor Münkner: Co-operative values and principles, as defined by the ICA, were formulated in 1995. Co-operative values, not being hard and fast rules to be followed by the letter, and the cooperative principles, being guidelines for putting them into practice, allow adjustments, but not complete negation without leaving the co-operative model.

Douvitsa & Henry: Is it not a sign of intellectual blindness to defend the need to maintain the distinctiveness of cooperatives and the need for its institutionalization through law in times of a paradigmatic change as concerns the social responsibility of enterprises in general and in times of a reemerging social economy debate? In addition, there is a school of thought whose adepts have thought for some time that there is no need for the legislator to distinguish enterprise forms - which led to what I call the companization of cooperatives - , who see their opinion confirmed and who see organizational law dissolve into contractual arrangements. So, is there really a need to distinguish cooperatives through law from other forms of enterprise? If so, why?

Professor Münkner: The reason to distinguish different forms of enterprises and to offer different legal frameworks for each of these forms is to offer legal patterns for pursuing different objectives and purposes. In organization law, the object determines the form.

- Accumulate sums of money for investment: Company

- Organize economic co-operation to meet common needs of participants: Co-operative Society
- Organize economic collaboration of people without strict rules: Partnership with unlimited liability of the members
- Organize collaboration of people for pursuing mainly common social or cultural objectives: Association, not allowed for running a joint enterprise as its main purpose.

These different legal forms help founder-members to find a suitable legal framework for pursuing their common objectives.

There are also hybrid forms of organization, e. g. co-operative companies (e. g. the Indian Producer Companies Law of 2001), where shareholders and users of the joint facilities have to be identical, and social co-operatives, where services of the organization are offered to members and third parties.

Douvitsa & Henry: The reported school of thought even claims that, if there is any effect of cooperative law on the development of cooperatives, that effect is a negative one. Is there evidence for this or for the contrary view, which You certainly hold?

Professor Münkner: To answer this question, it is useful to look at the reasons given by the Norwegian law makers, who after 50 years of discussions decided to adopt a co-operative law, because

- it gives founder-members guidance and facilitates the formation process,
- it saves legal costs and
- it protects members and creditors in an effective manner.

Douvitsa & Henry: State involvement in cooperatives has been a constant subject of Yours. Is there any role for the state, apart from registration and deregistration, at least in the form of supervision/audit?

Professor Münkner: Here are clear opinions – based on experience – where state involvement has negative effects on co-operative development:

- Financial support, subventions – usually combined with supervision: Control follows money. As a rule, such projects do not succeed in mobilizing members' resources and run only as long as external support lasts.
- Outside goal setting not suited to mobilize active member-participation.
- External control – audit – which should be a matter left to the co-operative movement, carried out by their auditing federations, with “super-audit” i.e. control of the proper working of the auditing federations by the state.
- Use of co-operatives as instruments for the implementation of government policies.



Henry: Besides a long career in research and teaching, You also have a long practical experience in cooperative law and legislation matters. A certain aversion against theory building has crept into the high places of theory, including universities. Among the many things I learned from You is that “there is nothing more practical than a good theory”. If one of our aims is to rebuild a cooperative legal theory, can we/must we learn more from practitioners?

Professor Münkner: A good theory should help to decide what to do, what to avoid and what are tested ways out of problems. A good theory should be derived from analyzing practical cases and drawing conclusions. It should compare the rules derived with past experience, without developing dogmas, ready to rethink existing theories.

Douvitsa & Henry: Cooperative legal studies (research, education and training) have been neglected over decades. Where do you see the direst need for change? Are there particular issues that academia must change?

Professor Münkner: Co-operative legal studies are a neglected field. SGECOL, the Study Group on European Cooperative Law, has tried to bring this subject matter into the academic discussion and to raise interest in the research-findings through its project on the Principles of European Co-operative Law (PECOL), now published as a book with this title.

Problems with this field of studies and research are:

- to raise funds for such projects from co-operative sources,
- to draw attention to research results,
- to link up with the growing interest in co-operation among enterprises (networks, franchising, vertical integration, business groups etc.) among researchers of business administration and organization law, who often ignore more than one hundred years of experience made by co-operatives in this field.

What is needed is more public attention following the UN International Year of Co-operatives in 2012.

As often suggested, generating knowledge on co-operatives and the way they work has to start at school by adding this subject matter to the curricula and by training teachers. What can be learnt from Japan is that university co-operatives could be a good way of bringing co-operative ideas to young people.

Douvitsa & Henry: The history of cooperatives abounds of examples of compulsory (membership in) cooperatives, also in our countries. In Greece, for example, the constitution allows for the prescription of compulsory cooperatives by law; in Germany cooperatives must be a member of an audit union. Many of these compulsory cooperatives failed. Are there successful cases? Are all these cases comparable? If not, why not?



Professor Münkner: In Germany there are classical examples of co-operatives with compulsory membership, existing for more than a century: Co-operatives of forest owners and of water users. Membership in such co-operatives is combined with the obligation to protect the environment and natural resources and with self-interest of the members in efficient and effective management of these resources. Such co-operatives with compulsory membership are different from voluntary co-operatives, as defined by the ICA, and closer to public corporations.

The quoted example of compulsory membership of German co-operatives in co-operative auditing federations has to be seen differently: According to the German courts, the choice of legal forms for joint activities is voluntary. Nobody is forced to choose the legal form of co-operative society. But once this choice is made, the legal pattern is selected as it is regulated by law, including the obligation to be affiliated to a co-operative auditing federation, the reason being that every registered co-operative society with its object of member promotion has to be audited by specially qualified auditors.

German Co-operative Law also provides for pre-registration audit of new co-operative projects by a co-operative auditing federation, meant to protect this legal form from misuse and against false or non-viable projects under the co-operative name.

Different cases are compulsory membership in co-operatives as part of a government policy, e. g. using co-operatives for land reform like the Samahang Nayons in the Philippines in the 1980ies.

Voluntary participation of members in co-operatives means that the members decide to join and to make contributions because it is in their interest. They also have the right to withdraw.

I have no information on compulsory co-operatives in Greece.

Douvitsa & Henry: One of the debated issues is whether cooperatives may only serve their members or, more precisely, that the members may serve only themselves through a jointly owned and democratically controlled enterprise. You have been defending this position with good arguments. The internationally recognized definition of cooperatives, which is in-built into our question, supports Your opinion. Not without sophism, one could argue that it could well be the need of the members to serve non-members, and we are not only referring to workers cooperatives.

Professor Münkner: The principle that in co-operatives owners and users must be the same people (principle of identity) is the core of the co-operative form of organization. The reason for participation and for commitment of own resources (shares) to the common cause is expecting a “co-operative advantage”. The principle of identity of owners and users is a source of strength. As a result, there is no conflict of interest between investors and market partners, as in the case of commercial business.

In co-operative theory there are two reasons why deviations from this principle are justified and should be allowed, namely

- attempts to recruit new members and
- the use of idle capacities.

Members have to decide whether to allow transactions with non-members. They also must be aware that deviation from the principle of identity devaluates membership. The danger is to turn members into simple customers and to attract free-riders. Special problems arise in multi-stakeholder co-operatives, where non-using, but investing members are expressly admitted.

A good example of problems arising when transactions with non-members are prohibited by law, but the number of using members is decreasing and the number of using non-members is growing, is the case of agricultural multi-purpose co-operatives in Japan, where a new category of quasi members or second class members was invented: “associate members” with the right to use the facilities of the co-operative, but without the right to vote.

Workers co-operatives are a special case: Relations between the co-operative enterprise and its worker-members are mainly regulated by the bye-laws, while the relationship between the co-operative and non-members working in the co-operative enterprise is governed by labor law.

Douvitsa & Henry: You have also had a long career as a consultant. You participated in the elaboration of the above mentioned international instruments on cooperatives. The sort of internationalist/universalist spirit which carried these elaborations seems to be vanishing. Is this a reason for concern?

Professor Münkner: Internationalist/universalist spirit concerned with co-operative development still exists (e. g. SCECOL). The danger of growing mass poverty, rural urban migration and growing numbers of refugees from wars and social unrest will see new promoters of organized self-help emerge. There is no need for concern. International instruments are in place. However, the need to revise and to adjust them to changing conditions remains. More co-operative education and research would be helpful to support such innovations

Douvitsa & Henry: You strongly pushed for widening the notion of cooperative law and to become aware of the fact that it is not sufficient to focus on the law on cooperatives. You were the master-mind behind a series of events in the 1990ies on labour law, competition law, taxation and other fields of law in their relation to cooperatives/cooperative law. You were also the master mind behind the so-called favourable climate studies by the ILO. These were decisive steps toward the adoption in 2002 of the ILO R. 193. These subjects are as relevant today as they were then. Is this due to the nature of the issues or is it that we still have not worked out satisfactory answers to the questions raised then?

Professor Münkner: Co-operative law as a special branch of organization law and private law cannot be seen and studied separately from the general legal system of which it is part. Other domains of law, like labor law, tax law and competition law, apply to co-operatives as they do to other legal forms of organization. However, the special character of co-operatives may need considering. E. g., collaboration of enterprises allowed under co-operative law cannot be prohibited under competition law. In tax law, an equal level playing field means that co-operatives cannot be given favorable tax treatment without good reason, based on their special way of doing business.

Mixing provisions of organization law, tax law, labor law and competition law in one enactment – the co-operative societies act – is not recommended. Among other things because organization law has to be stable and lasting, while tax law, for example, may be subject to frequent changes.

Douvitsa & Henry: The argument goes that the world of cooperatives, and that of similar organizational types, has become so complex and diverse (common and public interest cooperatives, multi-stakeholder cooperatives, especially in the utilities, health and social care, as well as education sectors; social and solidarity enterprises etc.) that appeals for the maintenance or restoration, as the case may be, of the classical cooperative identity, by law or otherwise, will neither work, nor would it be desirable. These new types of cooperatives also add additional flavor to the classical questions, such as the participation of legal persons, including public authorities, as members in cooperatives, the limits to transactions with non-members, the deviation from the one member/one vote rule, the allocation of surpluses and profits.

We know, or rather sense, that You do not share the opinion that there is no need for maintaining the classical cooperative identity. Why not?

Professor Münkner: Clear (good) law can only be made, if the concept on which it is based is also clear. The original co-operative model was clear in many respects. It had the following features:

- Homogeneous membership group;
- One member – one vote;
- Focus on member-promotion;
- No (purpose-) transactions with non-members;
- Patient capital (de-emphasized role of capital, voting rights per head, limited return on capital, indivisible reserves);
- Service near cost, patronage refund.

With the introduction of new types and forms of co-operatives, multi-stakeholder co-operatives, social co-operatives, deviations from clear principles are being allowed in order to overcome presumed weaknesses of co-operative societies as compared with companies. Such new rules are calling co-operative strengths into question without generating new strengths. Such deviations are:

- Admission of non-using, investing members,
- Plural voting with inbuilt limits by number of votes per member and subject-matter,
- Transactions with non-members,
- Introduction of new financial instruments from the tool-kit of company law.

All these innovations make co-operative law more complicated and complex, e.g. allow deviations from established principles, and define limits of such deviations in order to preserve the co-operative character of the organization. All this is making the co-operative societies acts long and complicated, e. g., in Finland, where one third of the more than 300 sections are on new financial instruments.

Henry: When You convinced me to work on cooperative law in 1992, we had known each other already for a number of years. In fact, we had met in the late 1970ies through our membership in the German Association of African Law, which You mentioned before. In 1982, You encouraged me to do postgraduate studies in development law. This led to us exchanging over questions of the role of law in development and over (African) land law. Cooperatives played a central role in development thinking over decades. Our common friend, deceased Professor Paul Trappe, wrote extensively on the issue in the late 1950ies already. During the 1960ies, land law was closely related to the debate on cooperative law. For example, the International Labour Organization Co-operatives (Developing Countries) Recommendation, 1966 (No.127), so to speak the predecessor instrument to the mentioned ILO R. 193, includes a chapter on this. Subsequently, the subject disappeared from the debate. Lately, it has become virulent again, not the least in the face of unprecedented land-grabbing by international investors. The Food and Agricultural Organization of the United Nations (FAO) has renewed its interest; during some of my recent work trips related to cooperative legislation, I was confronted with the question: do you think that organizing in cooperatives could help farmers to defend their interests and to strengthen their position by increased integration, operationally and organizationally, into food producing and distributing value chains?

Professor Münkner: Organizing in co-operatives is an old strategy of farmers, not only to defend their farms against land-grabbing by international investors, but also to co-operate in production, to establish themselves jointly as potent market partners and to work together with other co-operatives and in vertically integrated systems. This allows local farmers, through a network of co-operative organizations, to protect and strengthen their production units and marketing channels so as to benefit from co-operation on international markets.

The issue of ownership of natural resources, such as land, is strongly reflected in autochthonous African law. The Tanzanian Village Land Act of 1991 is a good example. All village land is vested in the President. Village land cannot be sold, but limited use rights can be given to “investors”, also limited by time, ruling out “land-grabbing”. Rules may be imposed to be respected by users of land, e. g. preventing deforestation, excessive use of chemical fertilizers and pesticides, industrial agriculture on large surfaces of land no longer available to local farmers.

In rural Africa, as a rule, land is not a commercial commodity that can be freely sold and bought, but is the inalienable basis of life, that needs to be protected and used with care. Attempts to enforce land reforms by using co-operative organizations were made in the Philippines (Samahang Nayons) and in Tanzania (ujamaa) in the 1980ies. Both attempts failed.

Co-operatives for common land use (like the Israeli Kibbutz and the East German rural production co-operatives (LPGs) during the times of the German Democratic Republic) have lost their importance. In many of the former socialist countries of Eastern Europe, collective farms were dissolved and land was either returned to their original owners or the former land owners were compensated. In countries like China and Vietnam, small surfaces were returned to original owners after dissolution of socialist collectives, but were usually too small to support individual farmers, who had to join new agricultural co-operatives to survive on the market. In Germany, former LPGs were transformed into Agrarian Co-operatives being highly efficient large industrialized farms, while former land owners were compensated.

Douvitsa & Henry: The development debate has shifted toward global issues. There is consensus that sustainable development is the new paradigm. As in previous periods, there is a risk of seeing cooperatives as a panacea, this time as a means to achieve the numerous SDGs, the sustainable development goals. Are cooperatives a panacea and/or are there sectors for which cooperatives should rather not be established? A case could be the banking sector. It is strictly regulated (prudential regulation). Does this denaturalize cooperative banks?

Professor Münkner: Co-operatives and sustainable development are one of the major topics of the ICA Blueprint for a Co-operative Decade 2011 – 2020. The co-operative way of doing business is different from their commercial competitors, because co-operatives do not

- work for short-term profit (toxic quarterly capitalism), but for long-term promotion of their members, and do not
- work with high risk aiming at high return, but with low risk, with security first, even with moderate return, offering their members services near cost.

Good law should not allow what can cause damage to business partners in order to increase their own profit.

Corporate social responsibility has become a new trend in commercial firms, a feature known to co-operatives for a long time and laid down in the 7<sup>th</sup> ICA Co-operative Principle: “Concern for Community” with policies approved by their members.

Banking laws are made to keep risks at a balance. Some co-operative banks have introduced “ethic filters” in their bye-laws to avoid the use of co-operative money for detrimental purposes, excluding investment in unethical or dangerous projects, e. g. industries producing military equipment, speculation on food and natural resources, violation of rules of fair trade, use of chemical fertilizers and deforestation. The prudential regulation of the banking sector does not de-naturalize co-operative banks, but only confirms what they should have been all the time.

Douvitsa & Henry: Harmonization of cooperative laws at national, regional and international levels is both a fact and a highly questioned phenomenon. What are, in Your opinion, the “pros” and “cons” of harmonizing cooperative laws, taking also into account some of the questionable examples, like the European Council Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE)?

Professor Münkner: Harmonization of co-operative laws at national, regional and international levels raises the question: who is in charge of making and harmonizing co-operative laws and making supranational regulations?

In the Preamble of the SCE Regulation of the European Union of 2003 it is expressly said that the Regulation is not meant to harmonize national laws. In fact, national laws are regulating the legal, economic and social system of co-operatives in line with the special needs of the respective country, e. g.

in Spain with 16 different laws by province and by subject-matter. In France there are many laws and decrees by subject-matter and type of co-operative, e. g. the Rural Code for agricultural co-operatives. In Italy, part of co-operative law is contained in the Civil Code and in special laws, e. g. a law for small co-operatives.

Best practice can be found in Latin America, where a law for transnational co-operatives was made by the MERCOSUR countries and a model law for all Latin American countries with commentaries was adopted to advise national lawmakers of the region on how to make good national co-operative laws. A similar approach is taken by the Credit Unions Movement, where in 1987 WOCCU offered its member organizations a model Credit Union Law with commentaries, leaving the national lawmakers to decide, but giving them ideas and models for their work.

Douvitsa & Henry: According to the ILO R. 193 governments should include the subject of cooperatives in the education curricula at all levels of the national education system. What could be done/what should be done in order for this to happen? Would this imply major changes in the curricula, in the way enterprise law is being researched and taught?

Professor Münkner: The ICA in its Statement on the Co-operative Identity of 1995 (5<sup>th</sup> Co-operative Principle), the UN in its Guidelines of 2001 and the ILO in Recommendation 193 of 2002, as well as the EU Commission in 2003 all recommended that co-operative subject matters should be taught in schools and universities, but few countries reacted to that.

Good examples are Japan, Singapore and Korea with their university or campus co-operatives. Experience in Indonesia and Malaysia show that it is not enough to introduce co-operative studies in schools and universities, but that it is important to train qualified and motivated teachers or lecturers, to plan such education, to produce good textbooks and other learning material. In Singapore, membership of students in a campus co-operative is recognized in the examination with extra points.

Co-operative studies remains a neglected field in school and academic teaching and, despite the existence of research institutes at universities (in Germany, Austria, and Switzerland, for example), co-operative studies have not reached the mainstream of academic research and teaching.

Douvitsa & Henry: The emergence of social economy enterprises entails the question of social impact measurement, if they are to be promoted. Might that be a chance to revive interest in cooperative specific audit, which is being neglected more and more? Is there a need to agree internationally on audit criteria and rules?

Professor Münkner: In case of social economy enterprises, profit made by the enterprise is not the essential criterion for social impact measurement. The same is true in case of co-operatives working for member-promotion by a jointly owned co-operative enterprise. This difference between success-criteria of commercial enterprises, on the one hand, and co-operatives, as well as social enterprises, on the other, has led to the development of a special type of “material” audit, meaning that, apart from auditing the

economic performance of the enterprise (books correct, complete and in accordance with law), the audit has to cover the efficiency and effectiveness of the organization in reaching its particular objectives – effective member-promotion in the case of co-operatives and the degree of social impact in the case of social enterprises. Instruments to allow such audits include, for co-operatives, a promotion plan, a promotion program and a promotion report. In the case of social enterprises they include the planned and achieved social impact. In each case that is in addition to the financial audit.

Trends to approximate co-operative management to company management and to apply international standards of (company) audit to all enterprises have led to changed views on the need for special co-operative audit. If large co-operative enterprises operate like companies, there is no need to give co-operative auditors special training. But co-operative leaders and the ICA should make the point that because there is a special way of doing business in co-operatives, even large co-operative enterprises should respect this difference, and that there is need for special co-operative audit, namely financial and management audit, irrespective of the size of the co-operative enterprise.

Douvitsa & Henry: At least insiders know about Your skills as chef/cook. What are the main ingredients for the composition of a tasty cooperative meal?

Professor Münkner: The main ingredients for the composition of a viable co-operative society are:

- a) A group of co-operative individualists, i.e. of people who have decided to improve their own situation and pursue their own interests by working together with others having similar interests for their individual and mutual benefit.
- b) Leaders elected and controlled by the group, able and willing to combine the economic efficiency of the co-operative enterprise with effective member-relations-management to achieve a measurable co-operative advantage for the members.
- c) A legal and administrative environment allowing the establishment and operation of private economic group activities without undue government control and interference.

Douvitsa & Henry: We wish to thank You, Professor Münkner, for the interview and we wish all of us many more of Your inspiring contributions to the debate on cooperative law!