

HAGEN HENRÿ  
CARLOS VARGAS VASSEROT  
(Coordinadores)

UNA VISIÓN COMPARADA E INTERNACIONAL  
DEL DERECHO COOPERATIVO  
Y DE LA ECONOMÍA SOCIAL Y SOLIDARIA  
*LIBER AMICORUM PROFESOR DANTE CRACOGNA*

AGUILAR RUBIO, MARINA  
ALCALDE SILVA, JAIME  
ARNÁEZ ARCE, VEGA M.<sup>a</sup>  
ATXABA RADA, ALBERTO  
COLÓN MORALES, RUBÉN  
DE SOUZA, LEONARDO R.  
DOUVITSA, IFIGENIA  
FERNÁNDEZ ANDREANI, PATRICIA  
FERNÁNDEZ QUINTAS, GRACIELA  
FICI, ANTONIO  
GADEA SOLER, ENRIQUE  
GARCÍA MÜLLER, ALBERTO  
HENRÿ, HAGEN  
HERNÁNDEZ AGUILAR, ORISEL  
HERNÁNDEZ CÁCERES, DANIEL  
HIEZ, DAVID

KUMAR PADMANABHAN, SANTOSH  
KURIMOTO, AKIRA  
MACIAS RUANO, ANTONIO JOSÉ  
MEIRA, DEOLINDA  
MIRANDA, JOSÉ EDUARDO  
MONTIEL VARGAS, ANA  
NARANJO MENA, CARLOS  
RAICHAKOWSKI GONZÁLEZ, HERNANDO E.  
REYES LAVEGA, SERGIO  
RODRÍGUEZ MUSA, ORESTES  
SÁNCHEZ BOZA, ROXANA  
SANTANA FÉLIX, JUAN ENRIQUE  
SARMIENTO REYES, ANTONIO JOSÉ  
TADJUDJE, WILLY  
TORRES MORALES, CARLOS  
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Editorial DYKINSON, S.L. Meléndez Valdés, 61 - 28015 Madrid  
Teléfono (+34) 91 544 28 46 - (+34) 91 544 28 69  
e-mail: [info@dykinson.com](mailto:info@dykinson.com)  
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<http://www.dykinson.com>

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## *CAPÍTULO 20*

### **Cooperatives & public international law: causes and consequences**

SANTOSH KUMAR PADMANABHAN

*Director of Legislation at International Cooperative Alliance (ICA)*

Summary: 1. Introduction. 2. Exploring the meaning and scope of Law within the context of the chapter. 3. Relevance of International Law to Cooperatives. 4. From practice to customary international law. 4.1. Fundamentals. 4.2. Specific case of cooperatives. 5. Practices and principles of social movements that have become international law. 6. Legal basis for the creation of COPAC. 7. Two legally binding essential instruments that impact our freedoms of association. 8. Conclusion. 9. Bibliography

#### **1. INTRODUCTION**

International law is a set of rules that nations agree upon to govern their behaviour towards each other. Much of the international law we see today is a set of highly sophisticated expressions that convey the need to safeguard human rights, principles of self-determination and sovereignty, and freedoms related to a secure future through sustainable development, which in particular is rapidly growing as an inseparable aspect of the foundations of international law as it has become today. The chapter attempts to present some of the main points of intersection between cooperatives, as represented by the International Cooperative Alliance, and public international law, and aims to be an introduction to the subject rather than an expert account.

This chapter, like others in this book, is written on the occasion of the 80th birthday of the highly respected and much-loved Prof. Dante Cracogna, who continues to inspire not only people like the authors of this book, but also institutions like the Cooperatives of the Americas, and through them the International Cooperative Alliance, which benefit immensely from his vision, thinking and actions. The beginning of the 21st century was remarkable for cooperatives because of the high-level political support that the international community offered at that time. The United Nations Resolution A/RES/56/114 of 2001 containing draft guidelines on creating a supportive environment for cooperatives (Guidelines) and the ILO Recommendation on the Promotion of Cooperatives (No. 193) of 2002 can be seen as watershed moments that marked a decisive shift in the understanding of cooperatives in the field of international law. In particular, the ILO Recommendation, as part of the International Labour Standards, is the international law which, through its influence on national legislation, its incorporation into national legal systems and its role in guiding and shaping laws, policies and practices at the national level, aims to ensure the highest level of protection and opportunities for the development of all types and forms of cooperatives worldwide. It is an honour for me to contribute to this book with thoughts on cooperatives and international law, to celebrate the work and life of Prof. Cracogna, who on several occasions advised experts and representatives of international organisations that coordinated the drafting and adoption of the Guidelines and Recommendation, providing a solid basis for cooperative lawyers to strive for international research and action, for which we all remain eternally grateful.

There are different schools of thought and theoretical frameworks when it comes to the recognition and validation among nations of the substance and processes involved in the construction and implementation of international law. Notable among these are the Third World Approaches to International Law, a critical theoretical framework that emerged in the late twentieth century to challenge dominant perspectives on international law that are considered Eurocentric. With its roots in the decolonisation movement, TWAIL seeks to analyse and critique the ways in which international law has historically served the interests of the Global North, often to the detriment of the Global South. This academic discourse emphasises the need to address the power imbalances and structural inequalities inherent in the international legal order. At its core, TWAIL aims to give a voice to marginalised states and peoples by offering alternative perspectives on international law that reflect their unique historical, political and economic experiences. It emphasises the interconnectedness of different systems of oppression, such as colonialism, imperialism and economic exploitation, in shaping international legal norms and practices.

TWAIL scholars argue that Eurocentric perspectives have long dominated the discourse, perpetuating a hierarchy that favours the interests of Western states and multinational corporations. TWAIL challenges the notion of universality in international law, arguing that legal principles and norms should be understood and applied contextually. It highlights the ways in which international institutions and legal frameworks have been complicit in maintaining the status quo, often disregarding the needs and aspirations of the Global South. By foregrounding the experiences of marginalised communities, TWAIL seeks to bring about transformative change in international legal scholarship and practice. TWAIL also advocates for a more inclusive and participatory approach to international law, engaging with grassroots movements, civil society organisations and indigenous communities. It emphasises the importance of empowering marginalised actors to shape and contest the norms and rules that govern their lives. This perspective challenges the traditional boundaries between domestic and international law and recognises the ways in which global forces affect local realities.

## **2. EXPLORING THE MEANING AND SCOPE OF LAW IN THE CONTEXT OF THE CHAPTER**

“Law is used in two main senses -> abstract and concrete. In its abstract sense, the term law means the legal system such as the law of a sovereign nation, law of defamation, law & justice, etc. and is denoted by the Latin word *jus* or the law, while in its concrete sense, the term law means a statute, regulation, ordinance or any other exercise of legislative authority and is denoted by the Latin word *lex* or a law. Law is often thought of as the rules of human action, and as William Blackstone, the famous English jurist, put it, “Law is a rule of action, whether animate or inanimate, rational or irrational,” and thus helped to qualify the use of the term when talking about the laws of motion, mechanics and, if we may take a sporting example, the laws of cricket! John Salmond, another legal scholar of English origin who later became a famous judge in New Zealand, classified laws into 8 main categories: Imperative Law, Physical or Scientific Law, Natural or Moral Law, Conventional Law, Customary Law, Practice or Technical Law, International Law and Civil Law. He further explained that common law was a rule or system of rules agreed upon by people to regulate their behaviour towards each other, and applied to voluntary organisations such as clubs or cooperatives. Several legal scholars after Salmond agreed with this definition of customary law and added that this customary law included international law because its principles had been explicitly or implicitly agreed upon by member states. Another important

class of law is customary law, which is so called because it has always existed in the community, even before the existence of states, and has acquired the force of law over time.

International law is the law of nations and is said to have been coined by the philosopher, lawyer and social reformer Jeremy Bentham, who is widely regarded as the founder of modern utilitarianism. International law consists of rules that govern relations between states. Lassa Francis Lawrence Oppenheim, the eminent German jurist and father of the modern discipline of international law, defined international law as the body of customary and conventional rules regarded as binding by civilised States in their relations with each other. The Permanent Court of International Justice, the forerunner of the International Court of Justice, had in 1927 defined international law as principles in force between all independent nations. The defender of the idea of the aforementioned similarity between conventional law (e.g. through the laws of cooperatives) and international law, John Salmond, believed that international law was a kind of conventional law and that the former had its source in international agreements. He added that international law consists of rules that states have agreed to observe in their dealings with each other. International agreements are usually of two kinds: express agreements, as contained in treaties and conventions, and implied agreements, as found in the customary practices of States. Scholarly writings and judicial decisions of national and even lower courts are also sources of international law, as long as they are mutually accepted by nations.

### **3. RELEVANCE OF INTERNATIONAL LAW FOR COOPERATIVES**

Public International law is relevant to the laws governing cooperatives, starting with the recognition and protection it provides through a framework that recognises cooperative enterprises as a form of economic and social organisation. It establishes principles and norms that guide states in recognising the importance of cooperatives and in enacting laws and regulations to support their establishment and operation. Human rights instruments emphasise the right of individuals to freely associate and participate in economic activities. This includes the right to organise and operate cooperative enterprises as a means of promoting economic and social interests. Human rights principles, as enshrined in international legal instruments, can inform and influence the legal framework for cooperatives. International law has a role to play in facilitating cross-border cooperation between cooperative enterprises. It can address issues related to international trade, investment and cooperation,

including the establishment of cooperative networks, partnerships and joint ventures across national borders. International legal frameworks, such as regional trade agreements and international investment agreements, can provide a basis for promoting cooperation and ensuring a supportive environment for cross-border cooperative activities. Where disputes arise between cooperative enterprises or between cooperatives and other parties, international law provides mechanisms for dispute resolution. These include international arbitration, mediation and other means of peaceful settlement that can be used to resolve conflicts in accordance with internationally recognised legal principles. International law, as reflected in the UN Sustainable Development Goals (SDGs), recognises the role of cooperatives in achieving sustainable development goals. Cooperatives are seen as vehicles for promoting inclusive economic growth, poverty reduction, social cohesion and environmental sustainability. International legal frameworks and initiatives support the integration of cooperative enterprises into national and global sustainable development strategies.

Both the UN Agenda 2030 and ILO-193 are considered part of international law because, although many experts, including the ICJ, stress their “non-binding” nature, such resolutions and recommendations often lead to the development of international law through their practice by states and their incorporation into customary law. Therefore, both Agenda 2030 and ILO-193 can be considered as sources of international law. It is expected that the statement of identity and its inclusion in full in the statutes of the ICA, whose members are legally bound to adhere to the cooperative identity, and in full or in part in various national legislations, as well as the inclusion of the idea and practice of organising common interests in cooperatives in the list of UNESCO’s intangible cultural heritage, will be indicators of the *cooperative definition, values and principles* becoming part of international law.

**Legal relevance of UNGA resolutions:** UNGA resolutions are not legally binding in the strict sense of creating legally enforceable obligations on Member States. However, they carry considerable political weight and have legal implications in a number of ways. General Assembly resolutions reflect the political will and consensus of Member States on specific issues. They represent collective statements and commitments by the international community, signalling shared goals and aspirations.

**Soft law:** While resolutions are not legally binding, they can contribute to the development of customary international law or establish soft law principles. Over time, consistent state practice and compliance with resolutions can shape the expectations and behaviour of states and gradually influence customary international law. Resolutions provide normative guidance and standards

for Member States to follow. They may recommend specific actions, policies or measures to address global challenges, promote human rights or foster cooperation in various fields. Resolutions often serve as reference points for states in formulating national legislation or policies. They can play a role in the negotiation and interpretation of treaties and agreements. They may be cited as evidence of the understanding or intent of States, help shape the legal interpretation of treaty provisions, or guide the subsequent implementation of agreements. Resolutions can establish or modify the mandates of UN bodies, specialised agencies and programmes. They provide legal authority and direction to these entities and define their roles, functions and responsibilities within the UN system. General Assembly resolutions can influence state behaviour through diplomatic, political and moral pressure. Although resolutions are not legally binding, they can help shape the practices and policies of Member States by encouraging them to take certain actions or modify their behaviour in line with the objectives of the resolutions. Although General Assembly resolutions have no direct legal force, they have significant normative, political and practical implications. They reflect the collective will of the international community and provide a framework for addressing global challenges, promoting cooperation and advancing international law and norms. Member States are generally expected to consider and take appropriate action in light of these resolutions, although the specific legal implications will depend on the context and subject matter of each resolution.

Two reflective questions that arise from the title of this chapter are, first, whether the principles of the Declaration on Cooperative Identity are becoming customary international law? And second, whether the ICA plays or can potentially play a role in the construction of international law on cooperatives. The international legal framework governing international organisations plays a crucial role in maintaining global order and cooperation. However, there remains ambiguity regarding the scope of this framework and whether it encompasses non-state actors such as international non-governmental organisations (INGOs) and international civil society movements. This paper seeks to shed light on this issue by examining the provisions of Article 38(1)(c) of the ICJ Statute and analysing the significant role played by the International Cooperative Alliance (ICA) in promoting and upholding international law. Article 38(1)(c) of the ICJ Statute states that in deciding disputes the Court shall apply 'international custom as evidence of a general practice recognised as law'. This provision indicates that customary international law, which includes the conduct and practices of both States and other actors in the international arena, can be a source of legal obligations. Consequently, this provision can be interpreted to include INGOs and civil society movements as participants in the creation and implementation of

customary international law. While INGOs and civil society movements are not typically considered subjects of international law, their increasing participation in global affairs has raised questions about their legal status. Despite their lack of formal statehood, these entities exert influence through their advocacy, expertise and engagement in transnational activities. As such, their activities can contribute to the formation of customary international law. The ICA, with its Category A consultative status with the UN ECOSOC, serves as an exemplary case to demonstrate the important role of INGOs in shaping and promoting international law. By actively participating in the development of policies, standards and guidelines related to cooperative enterprises, ICA has significantly influenced the development of international law in this area.

#### 4. FROM PRACTICE TO CUSTOMARY INTERNATIONAL LAW

##### 4.1. BASIC PRINCIPLES

A practice becomes customary international law through a gradual process of consistent State practice and acceptance of that practice as legally binding (*opinio juris*). The essential elements in the formation of customary international law are based on the actual behaviour of states. It requires a consistent and widespread pattern of behaviour by States that demonstrates their adherence to a particular practice. *State practice* may include acts, policies or omissions in relation to a particular matter. In addition to state practice, *opinio juris*, or the belief that a particular practice is required by law, is an essential element. States must engage in the practice out of a sense of legal obligation and not merely as a matter of convenience or courtesy. *Opinio juris* distinguishes customary law from mere habit or voluntary action. Customary international law usually requires a certain *duration and generality of State practice*. The practice must have been followed consistently over a significant period of time and by a significant number of States. The precise time frame and number of states involved may vary depending on the specific circumstances and subject matter. Furthermore, other states, international organisations and legal scholars should acknowledge and accept the existence of the customary rule. This recognition and acceptance may take the form of diplomatic statements, judicial decisions, treaty provisions or scholarly consensus. Lastly, the so called *persistent objector rule* which lays down a state may object to the formation of a customary rule if it consistently and explicitly objects to the practice during its development. This “persistent objector” rule allows a state

to maintain a different position and not be bound by the customary norm if it has consistently objected to it.

#### **4.2. THE SPECIFIC CASE OF COOPERATIVES**

The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage provides a framework for the safeguarding of intangible cultural heritage, including elements included in the Representative List of the Intangible Cultural Heritage of Humanity. The Convention establishes mechanisms and guidelines for the identification, documentation, preservation and promotion of these elements. The inclusion of the “idea and practice of organising common interests in cooperatives” in UNESCO’s Representative List of Intangible Cultural Heritage has several legal implications, such as recognition and preservation: by including the idea and practice of organising common interests in cooperatives in the List, UNESCO recognises the cultural significance and value of cooperatives as a form of intangible heritage. This recognition helps to raise awareness and promotes the preservation, safeguarding and transmission of cooperative traditions, knowledge and practices across generations. The inclusion of cooperatives in the list can encourage international cooperation and support for cooperative movements. UNESCO recognition can contribute to increased visibility, networking and exchange of experiences among cooperatives worldwide. It can also attract international support and funding for initiatives that promote and strengthen cooperative enterprises. The inclusion of cooperative practices as intangible cultural heritage highlights the importance of cultural rights and the diversity of cultural expressions. It reinforces the notion that cooperatives are not only economic entities but also cultural institutions that embody shared values, social cohesion and community participation. This recognition can contribute to the protection and promotion of cultural rights related to cooperatives. UNESCO inscription can influence national and international policy frameworks related to cooperatives. It can provide a reference point and inspiration for policy makers to integrate cooperative principles into legal, economic and social policies. Inclusion can help governments create an enabling environment for cooperatives, support their development and align policies with the cultural significance of cooperative practices. Inclusion can encourage countries to adopt legal measures to protect and promote cooperative practices. This may include the adoption or revision of laws, regulations and policies to protect and support cooperative enterprises and ensure their viability and sustainability. Listing can facilitate education and awareness-raising initiatives to promote cooperative values and principles. It can encourage the integration of cooperative knowledge and practices into

formal and non-formal education systems and cultural heritage programmes. This can contribute to the transmission of cooperative traditions and the cultivation of cooperative values among future generations.

## **5. PRACTICES AND PRINCIPLES OF SOCIAL MOVEMENTS THAT HAVE BECOME INTERNATIONAL LAW**

Social movements play a crucial role in shaping legal norms and influencing the development of international law. The global anti-apartheid movement, which campaigned against racially discriminatory policies in South Africa, had a significant impact on international law. The movement led to the adoption of several UN General Assembly resolutions and the imposition of economic and diplomatic sanctions against the apartheid regime. The principles of non-discrimination, equality and human rights promoted by the movement were subsequently incorporated into international legal instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. The women's rights movement has been instrumental in advancing gender equality and women's rights worldwide. It has influenced the development of international law through advocacy, lobbying and mobilisation. The movement's efforts contributed to the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments that protect and promote women's rights. The movement's principles of gender equality and non-discrimination are now recognised as fundamental principles of international human rights law. The indigenous rights movement has played a significant role in raising awareness of the rights and issues facing indigenous peoples around the world. The movement's efforts contributed to the adoption in 2007 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which recognises the rights of indigenous peoples to self-determination, land, resources and cultural preservation. Principles advocated by the indigenous rights movement, such as the right to free, prior and informed consent, have become an integral part of international legal discussions and norms. Various environmental movements have influenced the development of international environmental law. For example, the movement against whaling and for the conservation of marine species led to the adoption of the International Convention for the Regulation of Whaling and subsequent measures to protect endangered species. The environmental movement's advocacy of sustainable development, climate change mitigation and biodiversity conservation has influenced the formulation of international agreements such as the Paris Agreement and the Convention on Biological Diversity.

## **6. LEGAL BASIS FOR THE ESTABLISHMENT OF COPAC**

The committees established by the United Nations, such as the Main Committees as per Rule 98 of the Rules of Procedure of the UNGA, or the other committees set up per Rule 96, such as is the likely case with the Committee on the Promotion and Advancement of Cooperatives (COPAC), derive their legality and potential influence from the general legal framework of public international law. The legal basis for such committees can be found, *inter alia*, in the Charter of the United Nations, which serves as the fundamental legal instrument establishing the United Nations and outlining its functions and powers. Article 22 of the Charter empowers the UN Economic and Social Council (ECOSOC) to establish subsidiary bodies, such as committees, to carry out specific tasks within the mandate of ECOSOC. Secondly, ECOSOC, as one of the principal organs of the United Nations, has the authority to establish and mandate committees to address specific issues within its purview. ECOSOC resolutions serve as the legal instruments by which committees are established, their mandates defined, and their functions prescribed. The legal basis of a committee is defined by its mandate and functions, as established by the relevant governing body, such as ECOSOC. The committee's mandate outlines the specific purpose for its establishment, while its functions describe the tasks and responsibilities assigned to it. COPAC, for example, is mandated to promote and develop cooperatives as important economic and social actors. Committees established by the United Nations, including COPAC, operate within the framework of international law. This means that their actions, decisions and recommendations must be consistent with international legal norms, principles and obligations. The legal basis for their existence does not exempt them from compliance with the broader legal framework of international law. Committees are often required to submit periodic reports, directly or through their members, to the relevant governing body assessing their activities, progress and compliance with their mandates. This reporting mechanism ensures transparency, accountability and evaluation of their legal functioning in accordance with the applicable legal framework.

## **7. TWO KEY LEGALLY BINDING INSTRUMENTS AFFECTING OUR FREEDOM OF ASSOCIATION**

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both recognise freedom of association as a fundamental human right. While

the ICCPR focuses primarily on civil and political rights and the ICESCR on economic, social and cultural rights, both covenants uphold the right to freedom of association, which includes the right of individuals to organise themselves into cooperatives. Article 22 of the ICCPR specifically addresses the right to freedom of association. It states that everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. While cooperatives are not explicitly mentioned in the text of the ICCPR, the broad language of Article 22 includes the right of individuals to form and join cooperatives as voluntary associations for the promotion of their economic and social interests. The ICESCR recognises the right to freedom of association in the context of economic and social rights. Article 8 of the ICESCR recognises the right of individuals to form and join trade unions, which may include cooperatives in certain contexts. Cooperatives are seen as a form of association that enables individuals to engage in economic activities collectively, to protect their economic interests and to improve their working conditions. Furthermore, Article 6 of the ICESCR recognises the right to work, which includes the right to free choice of employment, to just and favourable conditions of work and to protection against unfair treatment. Cooperatives can provide individuals with opportunities for self-employment, democratic decision-making and economic empowerment, thereby supporting the realisation of these rights.

## 8. CONCLUSION

Although this chapter was conceived as an attempt to provide an introductory analysis of the causes and consequences of the direct and indirect intersection between cooperatives and international law, it has ended up as a series of disjointed reflections on some aspects of international law that may be directly or indirectly relevant to cooperatives. The development of international law has emphasised the protection of human rights, self-determination, sovereignty and sustainable development as integral aspects of the international legal order. In particular, the recognition and support of cooperatives has made significant progress within this framework. The 21st century has been a pivotal moment for cooperatives, with high-level political support from the international community. Resolutions such as UN A/RES/56/114 and ILO Recommendation No. 193 on the Promotion of Cooperatives marked a decisive shift in the understanding of the role of cooperatives in public international law. The intersection between cooperatives and public international law has significant implications for the promotion of cooperative principles, human rights and sustainable

development worldwide. As cooperatives continue to gain recognition and support within the international legal framework, it is crucial to further explore their potential contributions and challenges. Future research and action in this area can build on the foundations laid by Prof. Dante Cracogna and contribute to the continued development of cooperatives within public international law.

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