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Report III
(Part 4B)

Third Item on the Agenda :
Information and Reports on the Application
of Conventions and Recommendations

**General Survey on the Application of
the Conventions on Freedom of
Association and on the Right to Organise
and Collective Bargaining**

Report of the Committee of Experts on the Application of Conventions and
Recommendations (Articles 19, 22 and 35 of the Constitution)/volume B

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appear to constitute an obstacle to the furthering and defending of the interests of workers and employers by their organisations. As regards the prohibition of commercial activities, the situation may deserve re-examination in the light of the development of trade union activities in general. In any case restrictions of this type should not prevent trade unions from promoting and developing, for example, producers' and consumers' co-operatives.¹

106. With regard to activities which have an occupational character or are closely connected with the furtherance of the social and economic interests of workers and employers, there are certain restrictions which merit special consideration, namely those concerning collective bargaining (which will be examined in the relevant chapter), the right to strike and political activities.

107. The right to strike is subject to restrictions in many countries, but the scope and severity of these restrictions may vary to a considerable extent, ranging from temporary prohibition and prohibition for only certain categories of workers, to prohibition of a general character applicable to all workers. A general prohibition of strikes may result from specific provisions in the law², and it may also result, for all practical purposes, from the cumulative effect of the provisions relating to the established dispute settlement machinery, according to which labour disputes are channelled through compulsory conciliation and arbitration procedures leading to a final award or decision which is binding on the parties concerned.³ A similar situation may arise in cases where in the absence of an agreement reached by the parties, disputes can be settled by compulsory arbitration or decision at the discretion of the public authorities.⁴ Severe restrictions may also occur where the procedure to be followed before a strike can be called is so cumbersome that in practice lawful strike action becomes almost impossible; the effect of restrictions of this kind is accentuated where the workers have not yet been able to develop strong and experienced organisations. A general prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organise their activities (Article 3); it should be recalled, in this connection, that Article 8 of the Convention establishes that the law of the land shall not be such as to impair nor shall it be so applied as to

¹ See, in this connection, the Co-operatives (Developing Countries) Recommendation, 1966 (No. 127), Paragraph 16.

² For example, Portugal (Legislative Decree No. 23870 of 1934).

³ For example, Brazil (Act No. 4330 of 1964, ss. 10, 23 and 25, Consolidated Labour Laws, s. 872), Cuba (Act No. 1022 of 1962, s. 36), Dominican Republic (Labour Code, ss. 374, 377, 633 and 655), Haiti (Labour Code, ss. 190, 191, 192, 197, 199 and 210), Iran (Labour Code, Chapter IX), Libyan Arab Republic Labour Law, ss. 143 and 146), Mali (Labour Code, ss. 268, 269, 274, 278 and 280), Paraguay (Labour Code, ss. 284, 296, 302 and 308), Peru (Supreme Decree of 8 August 1956, s. 2, Supreme Decree No. 009 of 1963 and Supreme Decree No. 006-71-TR of 1971), Spain (Decree No. 1376 of 1970), Tanzania (Tanganyika) (Permanent Labour Tribunal Act, 1967), Zambia (Industrial Relations Act, 1971).

The situation is somewhat different in the USSR, where the Labour Code of the RSFSR establishes (s. 10) that disputes between the management of an undertaking and the trade union committee concerned arising on the occasion of the conclusion of a collective agreement shall be settled by the higher economic and trade union organs, with the participation of the parties.

⁴ For example, Ethiopia (Labour Relations Proclamation, ss. 2 and 18), India (Industrial Disputes Act, 1947, ss. 10 and 23), Malaysia (Essential (Industrial Relations) Regulation 1969), Mauritania (Labour Code, Book IV, ss. 40 and 48), Nigeria (Trade Disputes (Emergency Provisions) Decree, 1968 and Trade Disputes (Emergency Provisions) (Amendment), Decree, 1969), Singapore (Industrial Relations Ordinance, 1960), Sri Lanka (Industrial Disputes Act, 1950, s. 4, as amended by Act No. 62 of 1957).

impair the guarantees provided for in the Convention, including the right of trade unions to organise their activities.

108. The situation is different where the law only imposes a temporary prohibition on strikes, as for example, during the conciliation and arbitration procedure, or during a cooling-off period, or before the lapse of a period of strike notice, or during the currency of a collective agreement. Restrictions of this type exist in several countries and they have usually been accepted by the Committee on Freedom of Association, with the proviso that the conditions which have to be fulfilled, under the law, in order to render a strike lawful, should be reasonable and, in any event, not such as to place a substantial limitation on the means of action open to trade union organisations.¹

109. The situation may also be different where the right to strike is denied to a certain category of workers, especially public servants and workers in essential services. With regard to the former, it may be considered that the recognition of the principle of freedom of association does not necessarily imply the right to strike. While in many countries they are prevented from going on strike, in others their right to strike is recognised.² Strikes in essential services are also forbidden in a number of countries, although in certain cases the prohibition depends on whether the authorities decide to refer any unsettled dispute in this sector to compulsory arbitration. The concept of essential services may vary according to national legislation, and sometimes this term is used in a wide sense including such activities as the production, supply and distribution of fuel, dockwork, public transport, markets, agriculture, or all other activities which the government may consider appropriate.³ The Committee on Freedom of Association has called attention to the abuses that might arise out of an excessively wide definition in the law of the term "essential services" and has suggested that the prohibition of strikes should be confined to services which are essential in the strict sense of the term.⁴

110. In certain countries strikes may be prohibited if the authorities consider that they may be prejudicial to the public order or to the general interest, or may affect economic development.⁵ Provisions drafted in such general terms entail the risk of being applied in a wide range of circumstances and not only in cases of real emergency, thus creating an obstacle in the free organisation of trade union activities.

111. In all the cases where strikes may be prohibited for certain workers, particularly civil servants and persons engaged in essential services, it is important that sufficient guarantees should be accorded to these workers in order to safeguard their interests, such as adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can participate at all stages and in which the awards are binding on both parties and are fully and promptly implemented.

¹ See, for example, Committee on Freedom of Association, 58th Report, Case No. 192 (Argentina), para. 445; 92nd Report, Case No. 454 (Honduras), para. 185.

² This appears to be the case, for example, in Dahomey, France, Italy, Ivory Coast, Mexico, Norway, Senegal, Sweden, Togo.

³ See, for example, Colombia (Labour Code, s. 430), Costa Rica (Labour Code, s. 369), Kenya (Trade Disputes Act, 1965), Malawi (Trade Disputes (Arbitration and Settlement) Ordinance), Pakistan (Industrial Relations Ordinance, 1969), Sierra Leone (The Regulation of Wages and Industrial Relations Act, 1971), Trinidad and Tobago (Industrial Relations Act, 1972), Uganda (Trade Disputes (Arbitration and Settlement) Act, 1964).

⁴ See, for example, Committee on Freedom of Association, 74th Report, Case No. 363 (Colombia), para. 230.

⁵ See, for example, Argentina (Act No. 16939 of 1966), Chile (Act No. 12927 of 1958), Ivory Coast (Labour Code, s. 183), Mali (Labour Code, s. 278), Pakistan (Industrial Relations Ordinance, 1969, s. 32, as amended), Senegal (Labour Code, s. 238), Tunisia (Labour Code, s. 387).