

Freedom of association and effective recognition of collective bargaining: from principle to action

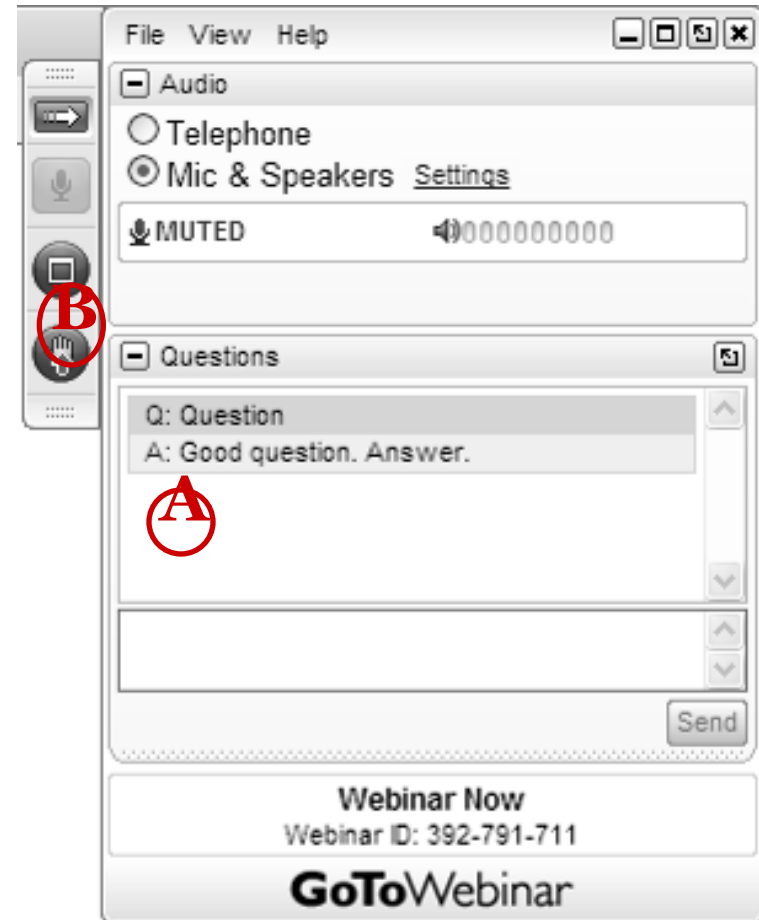
Karen Curtis,
Chief, Freedom of Association Branch
International Labour Standards Department

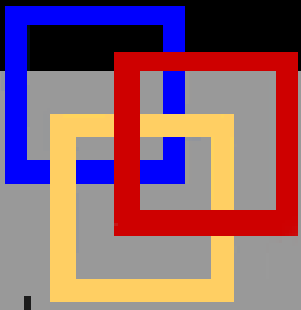


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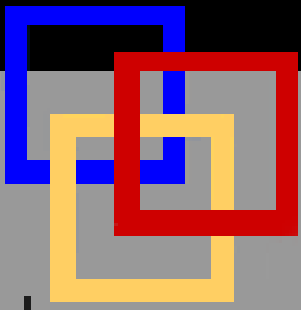
Example: *Question for John Doe: What is Human Trafficking?*





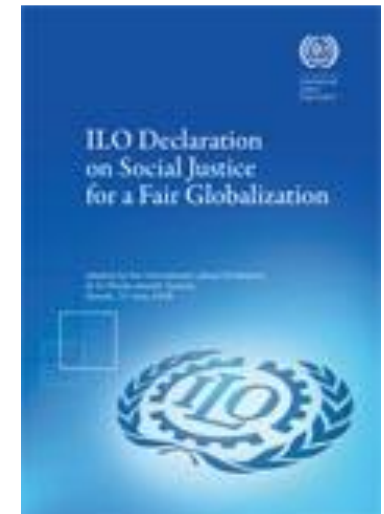
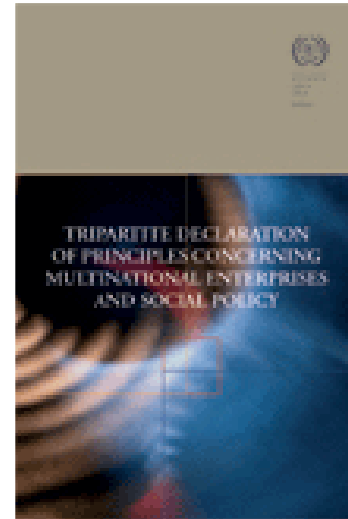
Outline

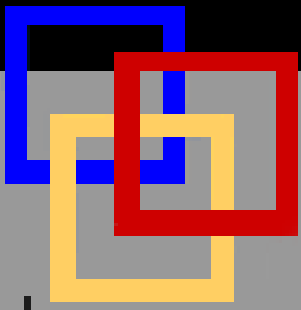
- International framework for FACB
 - Within the ILO
 - Other frameworks
- Freely chosen workers' representatives
 - National challenges and what companies can do
 - Workplace challenges and company action
- Genuine dialogue
 - National challenges and what companies can do
 - Workplace challenges and company action



Freedom of association is key

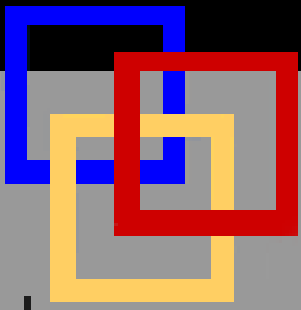
- 1919 - Preamble to the ILO Constitution
- 1944 - Declaration of Philadelphia
- 1977 – MNE Declaration
- 1998 - Declaration on Fundamental Principles and Rights at Work
- 2008 – Social Justice Declaration
- 2009 – Global Jobs Pact





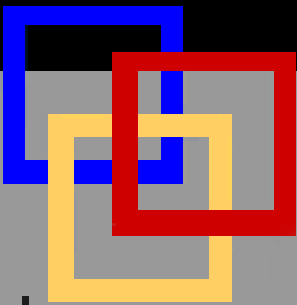
ILO legal framework

- Freedom of Association Convention No. 87, 1948 - 153 ratifications
- Collective Bargaining Convention No. 98, 1949 - 163 ratifications
- Workers' Representatives Convention No. 135, 1971 – 85 ratifications
- Collective Bargaining + Convention No. 154, 1981 – 46 ratifications



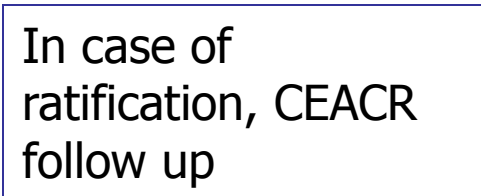
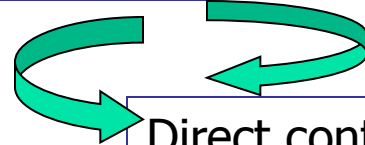
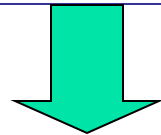
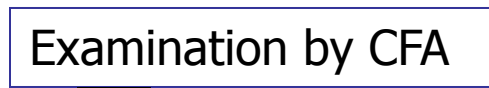
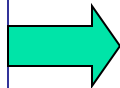
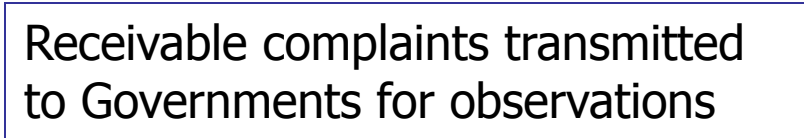
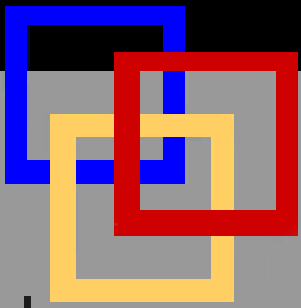
And more for agricultural workers

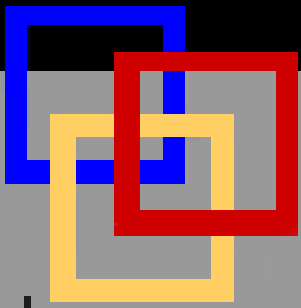
- Right of Association Convention 11, 1921 – 122 ratifications
- Rural Workers' Organizations 141, 1975 – 40 ratifications



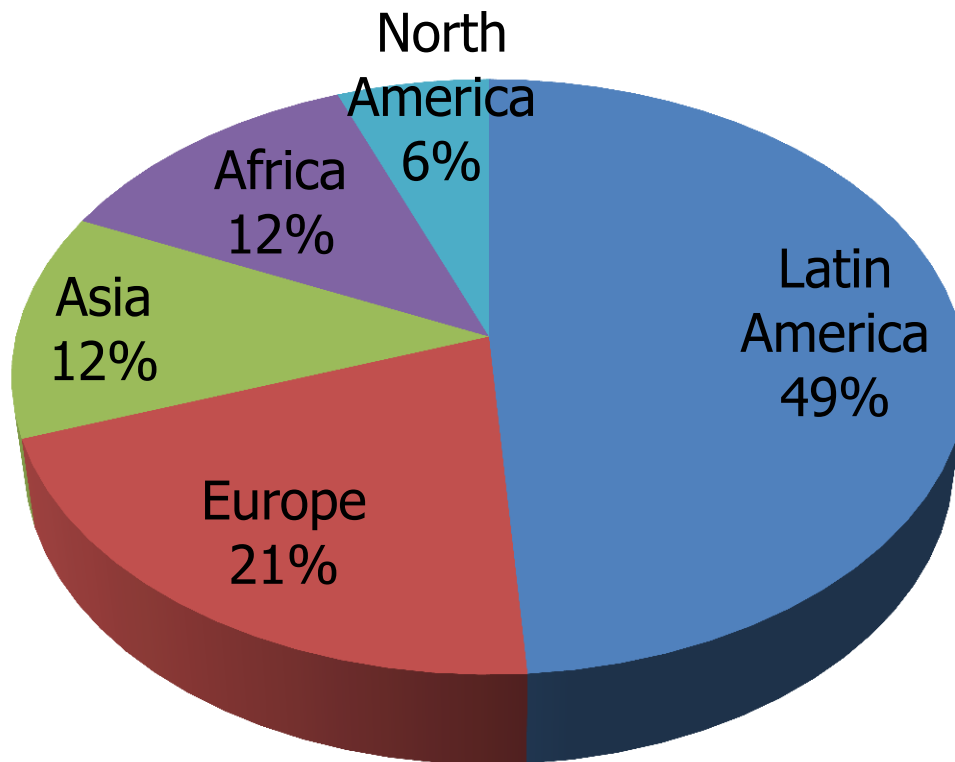
Reporting on compliance with ratified Conventions



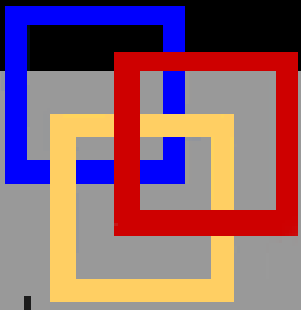




Complaints presented before the Committee on Freedom of Association (1951-2015)

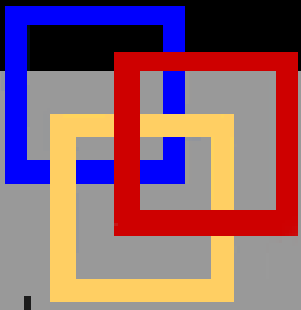


Region	No. of cases
Africa	382
Asia	383
Europe	645
Latin America	1523
North America	183
Total	3116



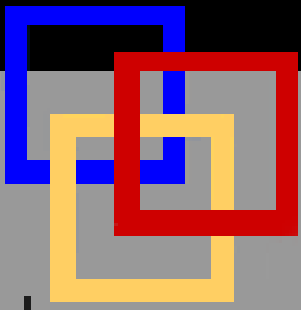
And beyond the ILO

- 2000 - Global Compact Principle 3
- 2011 - UN Business and Human Rights Guiding Principles
- 2011 up-date – OECD MNE Guidelines



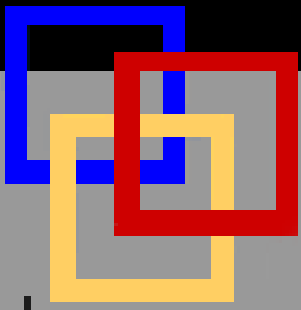
Freely chosen workers' representatives

- Right to form and join organizations of their own choosing
- No interference allowed by the national legal framework
- Registration as a formality
- Non-union elected representatives should not undermine trade unions or usurp their prerogative in collective bargaining



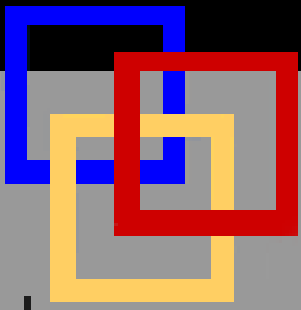
Facilities for workers' representatives

- Time off without loss of pay (representative function, trade union meetings, training)
 - By agreement or permission
 - Reasonable limits, not impair efficient operation
- Access to all workplaces in company
- Access to management
- Check-off facilities or collection of dues at company
- Post trade union notices, distribute pamphlets
 - Not such to prejudice orderly operation



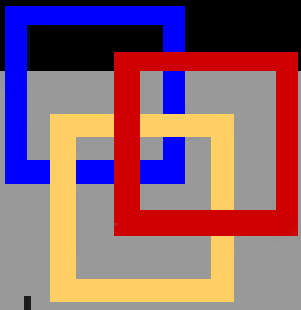
A challenging environment for freely chosen worker representation

- Trade union monopoly imposed by law
- Non-recognition/registration of freely formed organizations
- Excessive membership requirements
- Undue restrictions on eligibility requirements for trade union office



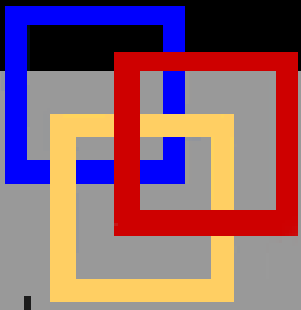
And challenges at the workplace – what not to do

- Employers' ability to review registration requests
- Intimidation and undue influence over workers' choice in membership or activities
 - Harassment
 - Dismissal, non-renewal, forced retirement, blacklisting, demotion, transfer
- Interference in election process
- Bringing trade union under employer domination or control



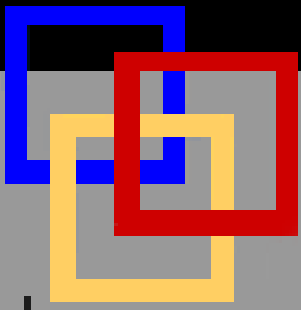
State responsibility for protection against anti-union discrimination

- Particularly necessary for **trade union officials** both for the protection of the individual and for collective action
- National framework should have procedures for examining complaints promptly, impartially and inexpensively with effective and dissuasive sanctions



What companies can do when national framework insufficient

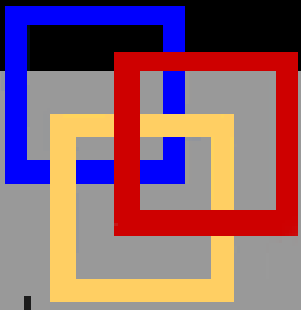
- Put in place agreed non-discriminatory policies and procedures
- Provide detailed and precise reasons for dismissal, disciplinary action or other prejudice
- Consult with the trade union or independent or joint body before action
- Provide preventive or reparatory mechanisms, in which all parties have confidence and which would include the possibility of reinstatement with back wages where violation found



Trade unions should have adequate protection against acts of interference

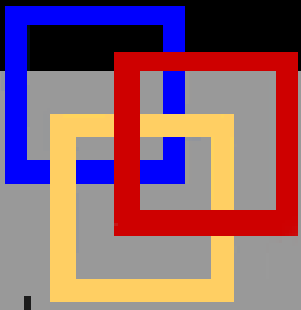
- Independence of workers' organizations from employers and their organizations in exercising their functions (establishment, function or administration)
- Protection against acts intended to
 - promote the establishment of a trade union under the **domination** of the employer
 - Support trade unions by financial means, with the object of placing such organization under **control**





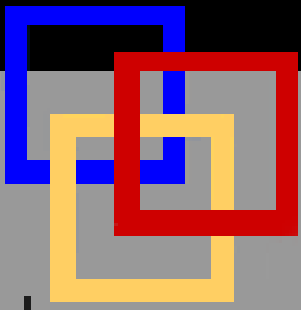
Genuine dialogue with workers' representatives

- **Consultation** and **cooperation** between employers and workers at company level on non-CB matters of mutual concern
- Facilitated by voluntary agreements
- Rapid dissemination and exchange of complete and objective information



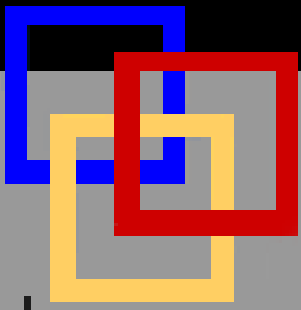
Dialogue at sectoral and national level

- At the industrial level between social partners, for establishment of bodies related to OSH, minimum wage, vocational training, etc.
- Ensure social partner buy-in to relevant policies with broad coverage



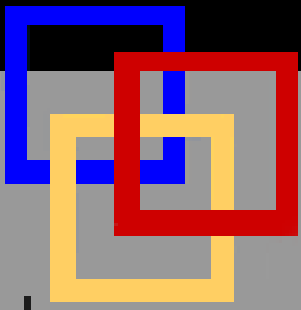
Collective Bargaining

- Between employers or their organizations, and **workers' organizations**
- Where clear legal frameworks, **recognize** representative organizations
- Provide information/facilities
- **Consider** alternative levels of bargaining (company, sectoral)
- Concept of **voluntary** accompanied by that of **good faith**



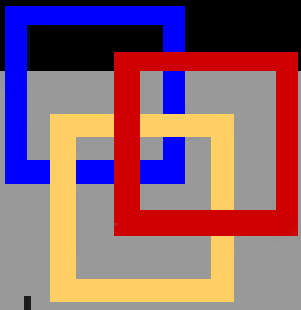
Negotiating in good faith

- Implies genuine and persistent efforts by both parties to reach an agreement
- Does not mean that there is an obligation to **conclude** an agreement
- Facilities aimed at promoting collective bargaining (*information, statistics*)
- Access to real decision makers
- Voluntary procedures designed to facilitate bargaining – (conciliation, mediation, voluntary arbitration)



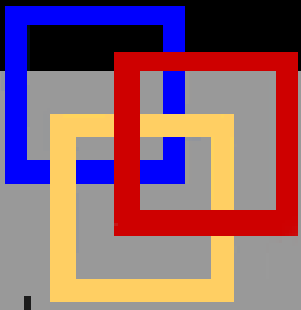
Bargaining subjects

- Terms and conditions of employment and matters that affect them
- Relations between employer and trade union
- Restructuring and training, redundancy procedures, safety and health issues, grievance and dispute settlement mechanisms and procedures, disciplinary rules



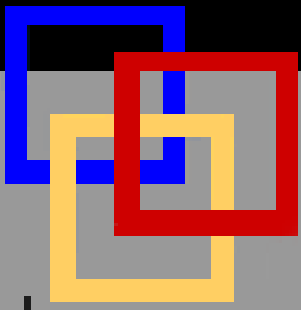
Some rules where exclusive bargaining agent regimes

- Certification made by an **independent** body
- Chosen by a majority vote of those in the unit concerned
- Right of organization failing vote to ask for a new vote after a stipulated time
- Right of another organization to demand new election after fixed period



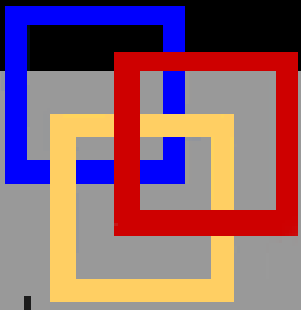
What companies can do when national framework is not conducive to CB

- Where trade unions fragmented and legislation does not clarify bargaining channels
 - Nurture constructive engagement/exchange of information with all freely chosen representatives
 - Encourage development of effective IR system
 - Work with national employers' organization
- Where legislatively imposed trade union monopoly and interlocutor not freely chosen
 - Encourage and provide facilities for union dialogue with workers on their needs
 - Encourage Government to allow trade union pluralism
- Where no union de facto – workplace cooperation should not be used to undermine workers' choice to form trade unions



Freedom of association and industrial action

- Essential means available to workers for the defense of their economic and social interests
- Not an absolute right.
 - Restrictions or prohibitions possible in essential services
 - Procedural requirements should be followed
- Minimum services
 - Genuinely minimum
 - Trade union and employer's participation in definition
 - Best negotiated outside of conflict situation



Resources for business

- The Labour Principles of the United Global Compact: A guide for Business:
http://www.ilo.org/empent/Publications/WCMS_101246/lang--en/index.htm
- ILO Helpdesk for Business:
www.ilo.org/business
 - ✓ Tools and resources for business, including Q&As on freedom of association and collective bargaining
 - ✓ Specific queries can be submitted by email to the Helpdesk: assistance@ilo.org

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