COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2008)[1]: UNITED STATES
FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	**Fulfillment of Government's reporting obligations**	**YES**, except for the 2007 Annual Reviews (AR) and no change reports for the 2001 and 2002 ARs.
	Involvement of Employers' and Workers' organizations in the reporting process	**YES**, according to the Government: Involvement of the United States Council for International Business and the American Federation of Labor and Congress of International Organizations (AFL-CIO) by means of consultation and communication of a copy of Government's reports. The updated report under the 2007 AR has been communicated to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Change to Win Federation, and the U.S. Council of International Business. In addition, in keeping with longstanding practice, as well as U.S. obligations under Convention 144, the draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO.
OBSERVATIONS BY THE SOCIAL PARTNERS	**Employers' organizations**	
	Workers' organizations	**2008 AR:** Observations by the AFL-CIO. Observations by the International Trade Union Confederation (ITUC). **2007 AR:** Observations by the International Confederation of Free Trade Unions (ICFTU). **2006 AR:** Observations by the AFL-CIO. **2005 AR:** Observations by the AFL-CIO. Observations by the ICFTU. **2004 AR:** Observations by the AFL-CIO. **2003 AR:** Observations by the AFL-CIO. **2002 AR:** Observations by the ICFTU. **2001 AR:** Observations by the ICFTU. **2000 AR:** Observations by the ICFTU

[1] Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: http://webfusion.ilo.org/public/db/standards/normes/libsynd

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	**Ratification**	**Ratification status**	**The United States has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87) nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).**
		Ratification intention	**2004 AR: There are no ongoing efforts to ratify C.87 and C.98.** The Government made this statement in September 2003 (Cf. GB.291/LILS/4 (November 2004, paragraph 13). **2002 AR:** According to the Government: There had been no development concerning ratification of C.87 and C.98 which was still under consideration (Cf. GB.291/LILS/7 (November 2001, paragraph 9).
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	**Constitution**	**YES** The First Amendment to the United States Constitution, adopted in 1791, provides that «Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances».

		Policy, legislation and/or regulations	• **Policy** **2000-2005 ARs:** According to the Government: it is the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. This policy includes the concept that «sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the process of conference and collective bargaining between employers and the representatives of their employees» (29 U.S.C. §171(a)). Railways and airline employees are covered by the Railway Labor Act (RLA) (45 U.S.C.§§151-188), and are provided protections similar to those contained in the NLRA. The RLA expressly recognizes that employees «have the right to organize and bargain collectively through representatives of their own choosing,» prohibits a carrier from denying «the right of its employees to join, organize, or assist in organizing the labor organization of their choice,» and makes it unlawful for an employer to interfere in any way with the organization its employees… or to influence or coerce employees in an effort to induce them to join or remain or not join or not remain members of any labor organization…» (41 U.S.C. § 152). The right of employees of the United States Government, except members of the Armed Forces and certain national security agencies, to organize is governed by the Civil Service Reform Act of 1978 (CSRA) (5 U.S.C. §§ 7101-7135). The CSRA applies to almost all federal civilian employees, and provides that «each employee shall have the right to form, join, or assist any labour organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right» (5 U.S.C. § 7102). Postal workers are protected under the NLRA and provisions of the Postal Reorganization Act of 1970, as amended (39 U.S.C. §§ 1201-1209). State and local government employees are excluded from coverage of the NLRA, but they too are entitled to the protections of the United States Constitution described above. In addition, the state and local governments have a diverse variety of legislation covering freedom of association and collective bargaining by state and local employees: however, those laws cannot be inconsistent with fundamental constitutional guarantees of freedom of association. Private sector employees who are not covered by the RLA or the NLRA (primarily agricultural, domestic, and supervisory employees who are excluded from NLRA coverage under 29 U.S.C. §152(3)), are nonetheless protected by the First, Fifth and Fourteenth Amendments of the United States Constitution which, taken together, guarantee that workers are entitled to establish and join organizations of their own choosing, without previous authorization by or interference from either the Federal Government or the State Governments.

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	**Recognition of the principle and right (prospect(s), means of action, basic legal provisions)**	**Basic legal provisions**	(i) The First Amendment to the United States Constitution, 1791; (ii) the National Labor Relations Act (NLRA) (29 U.S.C. §§ 151-187) (1935); (iii) the Labor-Management Relations Act (1947); (iv) the Labor-Management Reporting and Disclosure Act (1959); (v) the Civil Service Reform Act (1978); (vi) the Norris-LaGuardia Act (1932); (vii) The Railway Labor Act (1926); (viii) the Postal Reorganization Act (1970); (ix) the Congressional Accountability Act (1995); and (ix) the Presidential and Executive Office Accountability Act (1996).	
		Judicial decisions	**2008 AR:** According to the AFL-CIO: Many decisions by the National Labour Relations Board (NLRB) in 2006/2007 illustrate the assault on fundamental workers' rights. For example, in *Sacred Heart Medical Centre, 347 NLRB No.48 (June 2006),* the Board held that an employer could lawfully prevent nurses from wearing a button stating «RNs Demand Safe Staffing» in those parts of the medical facility where employees might encounter patients or their families. Other decisions: (i) *Roosevelt Medical Centre, 348 NLRB No. 64 (Oct 2006)* and *Bud Antle, Inc., 347 NLRB No.9 (May 2006)* on the right to strike; (ii) *Airport 2000 Concessions, 346 NLRB No.86 (April 2006), Winkle Bus Company Inc., 347 NLRB No. 108 (August 2006), Weldon, Williams & Lick, 648 NLRB No. 45 (Sept 2006), Medieval Knights, LLC, 350 NLRB No.17 (June 2007)* on unlawful management threatening statements and intimidating conducts and (iii) *Garden Ridge Management, Inc., 347 NLRB No. 13 (May 2006)* regarding the employer's conduct blocking the negotiation of a first agreement and withdrawing the recognition of the unions' representative status. **2007 AR:** According to the Government: *In American Federation of Government Employees, AFL-CIO, v. Rumsfeld, 452 F.3d 839 (D.C.Cir 2006)* the Court of Appeals enjoined the Department of Defense from implementing new personnel regulations. This decision has been appealed. In *National Treasury Employees Union v. Chertoff, 452 F.3d 839 (D.C.Cir 2006), affirming, reversing and remanding National Treasury Employees Union v. Chertoff,* 385 F. Supp.2d 1 (D.D.C.2005), the Court of Appeals invalidated portions of disputed personnel regulations. DHS did not appeal the ruling and plans to engage the DHS unions in further dialogue in order to redraft the regulations in compliance with the Court's ruling. Until DHS issues revised rules, DHS employees are still covered by the current federal civil service rules. *District of Columbia National Treasury Employees Union v. Chertoff,* 385 F. Supp.2d 1,25 (D.D.C. 2005) *Hoffmann Plastic Compounds v. National Relations Board,* 535 US 137 (2002).	
	Exercise of the principle and right	**At national level (enterprise, sector/industry, national)**	**For Employers**	**2003-2005 ARs:** No Government's authorization is required to establish an employers' organization or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for all categories of employers.
			For Workers	**2003-2005 ARs:** No Government's authorization is required to establish a workers' organization, or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for the following categories of workers: (i) medical professionals; (ii) teachers; (iii) agricultural workers; (iv) workers engaged in domestic work; (v) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vi) migrant workers; (vii) workers of all ages; and (viii) workers in the informal economy. All workers in the public service can exercise freedom of association, but not the right to collective bargaining.

			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	**2000 AR:** According to the Government: Several Government agencies publish a wide variety of information regarding their operations, including statistics and trends relating to their areas of responsibility. This material includes weekly, periodic and annual reports; summaries of cases; information on representation and unfair labour practice cases; information on mediation, arbitration and other alternative dispute resolution methods used to resolve labour-management issues; general information on United States labour law and enforcement of that law; and national labour force statistics, including collective bargaining agreements, major work stoppages, and union membership statistics.
		At international level	According to Government: There are no particular restrictions for the international affiliation of employers' or workers' organizations.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	**Monitoring, enforcement and sanctions mechanisms**	**2003 AR:** According to the Government: The following measures have been implemented to promote and realize the principle and right (PR): (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal, civil or administrative sanctions; (iv) special institutional machinery; and (v) capacity building of responsible Government officials. **2000 AR:** According to the Government: The NLRA protects Enforcement of most provisions of the NLRA is by the National Labor Relations Board (NLRB), an independent General Counsel, and the judicial system. Disputes that cannot be resolved by the parties themselves are generally resolved through the use of mediation, conciliation and arbitration. The FMCS has authority to help resolve bargaining disputes between federal agencies and workers' organizations. If a federal-sector the dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The Federal Labor Relations Authority (FLRA) performs functions for federal employee labour organizations similar to those performed by the NLRB for private sector employees, including resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations (5 U.S.C. §§ 7104-7105).	
	Involvement of the social partners	NIL		
	Promotional activities	**2000 AR:** According to the Government: the FMCS has outreach programs that include promotion of a wider understanding, acceptance and proper use of the collective bargaining process and third-party assistance in the prevention and constructive resolution of labour-management and other disputes.		
	Special initiatives/Progress	NIL		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	**According to the social partners**	**Employers' organizations**	NIL
		Workers' organizations	**2007-2008 ARs:** The ICFTU raised the following additional challenges: (i) The NLRA excludes many categories from private sector employees from its scope, such as agricultural and domestic workers, supervisors, and independent contractors; (ii) at federal level, in the public sector, approximately 40 per cent of all workers are still denied basic collective bargaining rights and the statutes outlaw strikes; (iii) the law allows employers to replace striking workers permanently; (iv) employers have a legal right to engage in a wide range of anti-union tactics that discourage the exercise of freedom of association; (v) the penalties are too weak to deter employers who violate labour laws from doing it again; (vi) 2005 showed a disturbing trend of employers using the bankruptcy system to declare collective bargaining agreements no longer valid. **2006 and 2008 ARs:** According to the AFL-CIO*:* Actions on the part of the United States (U.S.) Government during the year 2005 continue an alarming trend of weakening workers' fundamental rights of freedom of association and collective bargaining. In *District of Columbia National Treasury Employees Union v. Chertoff*, 385 F. Supp.2d 1,25 (D.D.C. 2005), the Court opined that «collective bargaining has at least one irreducible minimum that is missing from the HR System: a binding contract.» *Id.* at 17[2]. The Court's decision reveals the U.S. Government's so-called human resources management system for what it really is: a full-fledged and unprecedented assault on the fundamental rights of federal Government workers. In addition, decisions by the National Labor Relations Board (NLRB or Board) in 2005 severely curtailed workers' rights in the private sector. **2005 AR:** The AFL-CIO strongly disagreed with the draft update to the report on the PR. According to the AFL-CIO: (i) Legislation does not protect workers (e.g. the Homeland Security Act in 2002); (ii) other developments in 2004 threaten workers' fundamental rights, such as the National Labour Relations Board's decision to review the legality of the rules regarding majority verification and neutrality of procedures to form unions; (iii) the Department of Defense's employees are denied the right to collective bargaining under the Department of Defense Reauthorization Act, passed by Congress in 2003. According to the ICFTU: (i) Many categories of employees in the private sector are excluded from the right to freedom of association and the right to join trade unions; (ii) legal restrictions on the exercise of the PR; (iii) law also allows employers to replace striking workers permanently, and the statute of the 1978 Federal Labor Relations Act outlaws strikes for employees of the Federal Government; (iv) the U.S. Supreme Court ruled in 2002 that undocumented workers are not entitled to back pay as a remedy for unfair labour practices under the NLRA, and they are not entitled to reinstatement; (v) several restrictions have made difficult the enforcement of trade union rights on behalf of the millions of undocumented workers in the country.

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	**According to the social partners**	**Workers' organizations**	**2004 AR:** The AFL-CIO stated the following: (i) The often glaring discrepancies between the rights guaranteed to workers in theory under United States law, and the failure to extend these same rights in actual practice; (ii) the situation has not improved since last year, and the conditions of undocumented workers are getting worse (e.g. *Hoffman Plastic Compounds v. National Labour Relations Board*, 535 US 137 (2002). **2003 AR:** The AFL-CIO strongly disagreed with the draft update to the report on the PR. According to the AFL-CIO: (i) By admitting no vulnerabilities whatsoever in law or practice, the United States report entirely lacks perspective, analysis, and self-awareness; (ii) the draft Report gave the highly misleading impression that under the NLRA, virtually all categories of workers in the United States can exercise meaningfully their rights to freedom of association and collective bargaining; (iii) State and local legislation fails to cover in any significant way workers excluded from coverage under the NLRA, thus no statutory protection or enforcement of their two key collective rights; (iv) almost half of all states within the United States either fail to cover entirely, or leave significant gaps in coverage for, their Government workers; (v) lack of capacity of responsible Government institutions; (vi) 75 per cent of employers hire consultants to help them fight organizing drives; (vii) 78 per cent of employers force workers to attend one-on-one anti-union meetings with managers, and 92 per cent force employees to attend mandatory anti-union meetings; (viii) a quarter of all employers illegally fire at least one worker for union activity during an organizing campaign; (ix) and lack of sanctions against employers where the PR has not been respected. **2000-2002 ARs:** ICFTU's observations: (i) One in ten union supporters campaigning to form a union is illegally fired; lack of protection of the trade union representatives against the employers; (ii) the procedures of the National Labor Relations Board (NLRB) do not provide workers with effective redress in the face of abuses by employers; (iii) trade union representatives are denied access to the employer's property to meet employees during non-working time; (iv) the National Labor Relations Act requires the NLRB to seek injunctions in a federal court against trade unions committing certain kinds of unfair labour practices but there is no corresponding obligation when the unfair labour practices are committed by employers; (v) employers regularly challenge the results when the union wins a representation vote, regardless of the margin of victory; (vi) restrictive strikes right; (vii) there is little collective bargaining in the construction industry; (viii) should the company and the union reach an agreement during a strike, striking workers do not automatically return to work; (ix) national labour legislation does not cover agricultural or domestic workers and certain kinds of supervisory workers; (x) approximately 40 per cent of all public sector workers, nearly 7 million people, are still denied basic collective bargaining rights.
	According to the Government		**2008 AR:** The Department of Homeland Security (DHS) and the Department of Defense (DoD) each issued regulations in 2005 that implement legislation authorizing them to establish new human resources management systems. DHS published its final regulations in the *Federal Register* on February 1, 2005 (70 Fed. Reg. 5,272) and DoD published its final regulations on November 1, 2005 (70 Fed. Reg. 66,116). The validity of each of these regulations is the subject of ongoing litigation. A federal judge enjoined the labour-management portions of the DHS regulations on August 12, 2005 (National Treasury Employees Union v. Chertoff, 385 F.Supp. 2d 1(D.D.C. 2005)), and she declined to modify the injunctions on October 7 (394 F.Supp. 2d 137 (D.D.C. 2005)). These decisions have been appealed. No ruling has been made on the pending challenge to the DoD regulations, which was scheduled to take effect on February 1, 2006. In response to ITUC's observations, the Government indicated that the information, that it has regularly submitted under the Declaration's Annual follow-up, has shown that the Government is deeply committed to the basic principles that were reaffirmed in the ILO Declaration, and that the country's law and practice reflect those principles.

TECHNICAL COOPERATION	**Request**	**2000 AR:** According to the Government: To the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would be interested in any such proposals. **2003 AR**: According to the AFL-CIO: Priority needs for technical cooperation to facilitate the realization of the PR in the United States exist in the following areas: (1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle; (2) strengthening data collection and capacity for statistical analysis; (3) legal reform; and (4) capacity building of responsible Government institutions.
TECHNICAL COOPERATION	**Offer**	NIL
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	**2008 AR:** The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of United States (and three other governments) had indicated the current impossibility to ratify C.87 and C.98 without further justification (Cf. Paragraphs 12 and 29 of the 2008 Annual Review Introduction – ILO: GB.301/3). They also noted that restrictions on the rights of certain categories of workers in United States, such as workers in the public service and agricultural workers, to organize, were not compatible with the realization of this principle and right (Cf. Paragraphs 29 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3). **2007 AR:** The ILO Declaration Expert-Advisers (IDEAs) listed the United States among the four countries in which 52 per cent of the total labour force of ILO member States lives and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. (Cf. Paragraph 32 of the 2007 Annual Review Introduction – ILO: GB.298/3). **2005 AR**: The ILO Declaration Expert-Advisers listed the United States among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (paragraph 13 of the 2005 AR Introduction). They also considered that the example of regular and constructive contributions by AFL-CIO should be expanded upon, in particular among other national workers' organizations, as well as employers' organizations (Cf. Paragraph 190 of the 2005 Annual Review Introduction – ILO: GB.292/4).	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	