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Sexual harassment and women seafarers: The role of laws and policies to ensure occupational safety & health

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ABSTRACT

The #MeToo campaign has put under the spotlight an old issue and exposed how little societies have advanced since the first sexual harassment law was enacted. The maritime sectors are not free from this criticism with a number of aggravating factors. First, there has not been a separate discussion from the general one on sexual harassment on board. Second, this discussion is necessary in light of the work environment in which it takes place, on board a ship, and the fact that maritime professions are male-dominated. Third, enforcement of laws and policies in these matters is weak in view of the (potentially) different laws to which social aspects on board might be submitted. This paper analyses the already existing mechanisms to combat sexual harassment from a socio-legal perspective and argues that a tailor-made approach to this damaging problem is necessary. The traditional reluctance of maritime professionals to report any issues on board is aggravated in the case of sexual harassment, thereby a zero-tolerance policy has to be strongly asserted in order to realize a work environment free from discrimination, and enhance the effective recruitment and retention of women seafarers.

1. Introduction

Sailing the oceans has been considered a male profession for a long time. In fact, this perception is still common in many parts of the world, and indeed accurate numbers of women seafarers are difficult to obtain. According to the International Maritime Organization (IMO), the percentage of women seafarers in 1998 was reported as approximately 2% [1], including those women in non-operational sections of vessels such as hotel and catering. The percentage of female deck officers and engineers on cargo vessels was estimated to constitute 0.12% of the total seafaring population [2]. Twenty years after the IMO's estimation, the latest large workforce survey reveals that women seafarers in deck and engine departments represent only 1% of all seafarers [3]. Approximately half of them are cadets and trainees who have not yet completed their 12-month sea time in order to obtain a Certificate of Competence (CoC); women seafarers with CoC in deck and engine departments would be considered to occupy only 0.5% of the total survey participants. This figure does not take into account women working in the cruise sector although any person working on board falls under the definition of 'seafarer' in accordance with the Maritime Labour Convention,2006[1] (MLC, 2006). The latter may represent 28 to 30% of cruise ships workers as estimated by the International Transport Workers' Federation (ITF) based on collective agreements signed with operators in the sector [4].

Overall, the abovementioned statistics, though limited, lead to the conclusion that women seafarers are still a minority on board ships [5] despite various international and national efforts devoted to promoting women seafarers in the last couple of decades. In 1988, the IMO launched a programme called the Integration of Women in the Maritime Sector (IWMS), which has since developed a gender strategy and regional associations for women maritime professionals [6]. In 2013 the IMO hosted a regional conference relating to the development of a global strategy for women seafarers in South Korea. The conference concluded with the Busan Declaration,[2] which refers to supporting women seafarers around the world. Nevertheless, there are still few women seafarers.

Kitada and Langåker [5] argue that women seafarers can be seen as a risk factor on board ships, simply because of their gender in a

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[1] 2952 UNTS 51299.

[2] Busan Declaration available at: <http://www.imo.org/en/MediaCentre/HotTopics/women/Documents/BUSAN%20DECLARATION(Revised1)%20(3).pdf> (Accessed on 30 January 2019).

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male-dominated workplace. In 2014, a survey on women seafarers' health and welfare was conducted as a joint initiative of the International Maritime Health Association (IMHA), International Seafarers' Welfare and Assistance Network (ISWAN), ITF and Seafarers Hospital Society (SHS) [7]. Remarkably, the survey report reveals that 17% of women seafarers reported sexual harassment as an issue, while in a pilot survey nearly half of the participants revealed that they had experienced sexual harassment on board. The differences between the outcomes of the two surveys can be explained in light of the respondents to the extent that the pilot survey respondents occupied relatively junior roles, while the main survey was answered by women in supervisory roles.

In line with other studies [8], the abovementioned report suggests that women with less power in the workplace are more vulnerable to sexual harassment [7]. From that it is easy to conclude that if women seafarers face sexual harassment in their early careers, it will not encourage them to retain their jobs. Moreover, it is notable that seafarers tend to be vulnerable to feelings of isolation as they are away from family and friends for long periods. This mental aspect of seafarers' health should not be under-estimated. If harassment or bullying occurs, one can feel even more isolated and find it difficult to cope with life on board. In the Nautilus survey, 79% of respondents felt that their experience of being bullied, discriminated, or harassed affected their morale at work and their performance [9]. In other words, sexual harassment impairs equal employment opportunities while also having a significant impact on labour productivity and business profit.

This paper approaches the topic from a socio-legal perspective to establish whether laws and regulations are effective and whether other actions are needed. While it is assumed that a legal framework obliges governments to take steps to prevent and address it [10], the social significance of sexual harassment requires the involvement of other actors. The study only focuses on women seafarers as the main minority across the shipping sector, although their examination might be extended to other minorities and sectors. Social research methods include literature review and observation in social media, while the legal analysis focuses on conventions, laws and regulations, and policies. The conclusion is that the situation is unsatisfactory, to say the least. To this end, the following section discusses the definition and various approaches to sexual harassment, against the multi-cultural background that can be found on board. Indeed, the diverse population on board is mirrored by very different national policies on sexual harassment that hamper the implementation of a zero-tolerance policy, as discussed in the third section. Legal harmonization in these matters is, thus, of the essence and the MLC, 2006 plays a key role in securing minimum standards worldwide. Nevertheless, section four contends that there is still much room for improvement. In this vein, sections five and six focus on measures and discussions around which policies and programmes might help in the fight against this abuse of power. The paper closes with some brief remarks reminding that sexual harassment is a factor that not only impedes an onboard work environment free from discrimination, but also the effective recruitment and retention of women seafarers.

2. Sexual harassment in a multi-cultural workplace

2.1. Legal approaches to sexual harassment

'Sexual harassment is not simply misdirected sexual desire; it is the exploitation of a relationship of unequal power', as indicated by Tahmindjis [11]; p. 337). The perception of sexual harassment as a significant social issue that needs to be prevented and redressed is, however, a very challenging issue. Awareness of sexual harassment in the workplace is relatively new as it can only be traced back to the 1970's, the issue having been largely overlooked before that. In fact, sexual overtures and disparaging remarks about workers' competence based on their gender were widely considered to be 'acceptable behaviour' [12]. Regrettably, such behaviour is still deemed acceptable by a large segment of the world population and these perceptions are reflected in laws and policies in various ways, i.e. they do not mention sexual harassment, are inappropriate to combat it, are interpreted in a restrictive manner, or are mildly enforced.

After being legally conceptualised, in particular by Catharine MacKinnon in her 1979 leading book entitled *The Sexual Harassment of Working Women,* published in the United States, sexual harassment law has evolved and has been implemented in many, but not all, countries. That has been partially due to the role of international law in putting the issue on the agenda. Although the Convention on the Elimination of All Forms of Discrimination against Women[3] (CEDAW Convention) adopted in 1979 at the General Assembly of United Nations does not mention sexual harassment, the 1992 General Recommendation 19 of the UN Committee on the Elimination of Discrimination Against Women,[4] established by Article 17 of CEDAW Convention, concludes that discrimination against women as defined in Article 1 thereof, includes acts of physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, against a woman because she is a woman.

Other international conventions, in particular those of the International Labour Organization (ILO) on discrimination in employment, do not include the specific prohibition of sexual harassment. In line with the approach taken by the CEDAW Committee, there is, however, an explicit understanding of the essential wrongfulness of this behaviour, although only expressed in the form of soft law. In this vein, ILO has provided useful explanations about sexual harassment, in line with MacKinnon's definitions, characterizing it as 'a sex-based behaviour that is unwelcome and offensive to its recipient' [13] that exists in a context of:

a. 'Quid Pro Quo, when a job benefit - such as a pay rise, a promotion, or even continued employment - is made conditional on the victim acceding to demands to engage in some form of sexual behaviour; or;
b. A hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim' (ILO, n.d.).

In 2019, ILO approved the Violence and Harassment Convention[5] (No. 190) where the following definition is included: 'the term "gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment'. Remarkably, this convention was preceded by a Report on Ending Violence and Harassment Against Women and Men in the World of Work [14], which presents the findings on a survey analysis of domestic legislation on violence and harassment in the world of work, covering 80 countries.

For our purposes, it is notable that only 65 out of the 80 countries subject to the abovementioned study regulate sexual harassment. The World Bank has run a more extensive analysis concluding that this type of legislation has been adopted in 114 out of 173 countries, i.e. in all regions of the world with the exception of the Middle East and North Africa [15]. Remarkably, only 31 of the 80 countries studied by the ILO Report define sexual harassment as including the two abovementioned types, hostile working environment and quid pro quo sexual harassment [14]; p. 11). According to the same study, the regional distribution of these 31 countries is as follows: 14 countries (54%) from Europe and Central Asia; six countries (40%) from Asia and the Pacific; six countries (40%) from the Americas; five countries (25%) from Africa; and zero

[3] 1249 UNTS 13.

[4] The document can be found at the UN Human Rights Office of the High Commissioner: < https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

[5] ILO Convention No. 190 can be found at the ILO website: <https://www.ilo.org/ilc/ILCSessions/108/committees/violence-harassment/WCMS_711570/lang–en/index.htm>.

countries from the Arab States. Other relevant differences affect the scope of the legislation in place to tackle this issue. In seven of the countries analysed in the report, only women and not men are protected against sexual harassment, while some laws do not cover sexual harassment perpetrated by co-workers [14]; p. 18). More specifically, 50 out of the 80 countries analysed (62%) protect against both horizontal and vertical sexual harassment, and 12 (15%) protect employees against only vertical sexual harassment, i.e. that perpetrated by the employer.

At a regional level, the issue has not gone unnoticed either. In this vein the European Union first agreed on the explicit prohibition of sexual harassment in the 2002 Equal Treatment Directive,[6] and now Directive 2006/54/EC[7] defines it as 'where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment'. A similar definition has been used by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence[8] (the Istanbul Convention) and the Secretariat of the Organization of American States (OAS) while issuing guidelines and procedures for the prevention and handling of sexual harassment cases against the framework of the Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted in Belem do Para in 1994.[9] The African Charter on Human and Peoples' Rights[10] does not explicitly prohibit sexual harassment, but its 2003 Protocol on the Rights of Women in Africa[11] enshrines the States' obligation to fight discrimination against women, in particular by adopting appropriate measures against harmful practices that endanger women's well-being, and where 'harmful practices' are defined as behaviour, attitudes or practices which negatively affect fundamental rights such as the right to dignity. In a similar vein, the 2008 Protocol on Gender and Development[12] adopted by the Heads of State and Government of the Southern African Development Community further promotes national legislation.

In view of all these instruments, it cannot be denied that there has been progress in this area. However, and while MacKinnon's effort to recognize sexual harassment as an illegal workplace behaviour and a type of gender discrimination has paid off [16], the benefits of such sexual harassment law are still subject to much controversy even in those countries where it has been adopted, either because it is considered that it has gone too far or just failed in managing the problem by not properly establishing a culture of equality [17]. The point to be made now is that sexual harassment, as any other form of violence and harassment, is highly contextual, i.e. its meaning depends on power relations, gender norms, cultural and social norms, and discrimination, among others, that diverge from country to country [14]; p. 23, [18].

2.2. Risk factors for sexual harassment

Sexual harassment includes a variety of behaviours ranging from physical and verbal, to non-verbal forms. According to Johnson et al. [19]; there are 'three categories of sexually harassing behaviour: (1) gender harassment (verbal and nonverbal behaviors that convey hostility, objectification, exclusion, or second-class status about members of one gender), (2) unwanted sexual attention (verbal or physical unwelcome sexual advances, which can include assault), and (3) sexual coercion (when favorable professional or educational treatment is conditioned on sexual activity)' [19]:2). However, and although classifications help us to understand the everyday nature of sexual harassment, the problem of its appreciation - and thus rejection - by societies at large, including victims and perpetrators, remains.

A first issue is that, if the perception of what sexual harassment is may diverge from country to country [20], a multi-cultural crew increases the challenge of establishing a common understanding of gender equality on board and may lead to misbehaviour towards the other gender. For example, European women seafarers might encounter different perceptions and expectations about gender when working with Asian male seafarers. That has been the case of a German woman seafarer who explained that she could wear sleeveless clothing in front of Romanian crew but that it would be problematic in front of Filipino crew [21]. A similar challenge to approaching gender equality on board multi-cultural ships was observed in the report of the Gender Empowerment and Multi-cultural Crew (GEM) project [22]. The issue has also been identified as regards temporarily posted workers who might not be aware of the applicable legislation and/or policy. In this vein, Council Directive 91/383/EEC[13] specifically requires equal treatment for all workers working for the same company and the latter to be the only responsible for occupational safety and health.

Likewise, there are other risk factors on board that increase the odds of suffering sexual harassment, namely, the isolation of the workplace and the inability to leave it after the shift, and in the cruise passenger sector, the interaction with third parties [23]; Appendix X); [14]; p. 69). Further, intersectionality of gender, such as race, age, social class, and marital status, is relevant to the vulnerability of women being subject of sexual harassment [24]; p. 126). In particular, and although only a limited number of surveys and research on sexual harassment have so far been conducted in the maritime sector, it can be asserted that sea-based women professionals are more vulnerable to sexual harassment in the form of physical behaviour than shore-based women professionals because of the confined space on board, which increases the risk of sexual harassment [1]. In a similar vein, Thomas [25] highlights how the residential and isolated nature of the ship increases the chance of sexual harassment.

Research has uncovered various incidents such as the following: a male colleague visits a woman seafarer's cabin or forces her to enter his cabin [1]; [49]; a couple of holes are created in the female toilet room [1]; constant telephone calls and love letters to a woman seafarer's cabin [21]; [49]; a male colleague exposing his genitals to a female seafarer.[14] Kitada [21] also learned from interviews that some women have experienced attempts by male colleagues to kiss and/or hug them as well as touch their shoulders or lap while on duty. In the worst scenarios, rape and attempted rape have been reported [26]. In addition to physical

[6] Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Text with EEA relevance), [2002] OJ L 269/15.

[7] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), [2006] OJ L 209/23.

[8] CETS No. 210.

[9] The Convention of Belém do Para can be found at the OAS website: < https://www.oas.org/en/mesecvi/convention.asp>, and more on the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) at the same site: <https://www.oas.org/en/mesecvi/about.asp>.

[10] 1520 UNTS 217.

[11] The 2003 Protocol can be found at the African Union website: <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>.

[12] The 2008 Protocol can be found at the Southern African Development Community website: <https://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf>.

[13] Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, [1991] OJ L 206/19.

[14] Examples of sexual harassment were also revealed in the Swedish MeToo campaign (#lättaankar), which is discussed in Section 5 (Reporting and investigating complaints) of this paper.

behaviour, both verbal and non-verbal sexual harassment are also reported on board. For example, male seafarers comment about a woman seafarer's appearance, make sexist jokes and remark about inevitable sexual abstinence on board; they constantly stare at women seafarers' breasts and steal, or play with, their underwear; and calendars or photographs of naked women are commonly displayed in the workplace or on computer screens [21,26].

Remarkably, some of these behaviours, in particular verbal and non-verbal ones, have not been recognized as sexual harassment by some women seafarers, while others directly seek to neutralize their gender by hiding their femininity in their way of dressing, hair style or body postures [21,26]. As said, research shows that the cultural background has an influence on the approach to what sexual harassment is, affecting not only perpetrators but also victims. A ship functions as a micro-universe when it comes to these matters adding layers of difficulty to the task of addressing this very complex problem. Against this backdrop, the need for international standards is more urgent and the work of international institutions in this regard more valuable than in a purely national context.

3. The internationalization of maritime employment and the prohibition of sex discrimination

The war against sexual harassment in the workplace requires an appropriate legal framework to be set up to combat it, in all of its forms, before it reaches the category of criminal [10]. However, shipping is international to its core. And that also applies to employment relationships, posing the perennial question of which legal jurisdiction is responsible for ensuring a work environment free from discrimination. In fact, and although it is possible to identify a legal system as primarily ordering human interaction on board a ship - that of the flag State - employers and employees in shipping are exposed, consecutively or successively, to different legal frameworks - i.e. different flag State jurisdictions, but probably others as well -, and thus to different cultures and approaches to sexual harassment [20]. Sexual harassment prevention requires not only consistency in policies and programmes, but also individual as well as collective commitment with a zero-tolerance approach to these matters, which are difficult to achieve against a changing legal culture backdrop.

Flag State and labour jurisdiction selection might not be avoided, but they can be harmonized to a certain extent, thereby the role of international institutions is paramount in tackling sexual harassment. As already mentioned, sexual harassment is a form of sex discrimination that severely impairs equal employment opportunities. Framed in this vein, it is to note that it is within the ILO's mandate to promote gender equality at work as established in its Constitution[15] and later reinforced by the Declaration of Philadelphia,[16] including the fight against sex discrimination. More specifically, the 1998 ILO Declaration on Fundamental Principles and Rights at Work[17] is essential for our purposes in that it establishes that all ILO member States, 'even if they have not ratified the conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution', the elimination of discrimination in respect of employment and occupation. Hence, 187 States have the obligation to promote a work environment free from discrimination, including sexual harassment.

Notwithstanding this, the 1998 ILO Declaration does not tackle the operation of these principles and rights at work, which is left to the relevant conventions, namely, the Equal Remuneration Convention, 1951 (No. 100),[18] and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).[19] The latter is of interest to us as it includes in the term, discrimination, 'any distinction, exclusion or preference made on the basis of (…) sex (…), which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation' [art. 1(a)], to later require member States to enact legislation and promote educational programmes to ensure equality at work and avoid discrimination on an on-going basis (art. 3). Remarkably, Convention No. 111 has been ratified by 175 States.

As fundamental, the 1998 ILO Declaration and the abovementioned conventions also apply to the maritime sector. More specifically, the Maritime Labour Convention (MLC, 2006) reinforces its significance by requiring that 'each member shall satisfy itself that the provisions of its laws and regulations respect, in the context of this Convention, the fundamental rights to: (…) (d) the elimination of discrimination in respect of employment and occupation' (art. III). The reference to conventions No. 100 and No. 111 is, however, confined to the MLC, 2006's Preamble for political reasons [27]. As it is the case of the Work in Fishing Convention, 2007 (No. 188),[20] which lacks a similar provision to Article III of the MLC, 2006, but reminds of the fundamental conventions in its Preamble.

The prohibition of sex discrimination in maritime and fishing employment is, nevertheless, only a first step in a long way towards a healthy work environment. As put forward by Convention No. 111 and the MLC, 2006, States have to take further steps to ensure this objective that not only requires the adoption of laws and regulations on their side, but also policies and programmes on the side of businesses operating under their jurisdiction. The next section is devoted to these further steps. Before that, some private international law remarks are necessary in light of the likely legal divergence stemming from national implementation of the non-discrimination principle.

The prohibition of discrimination in labour matters is pervasive to the labour framework, but it asserts itself in the form of rules of safety and conduct. As such, these rules pursue a fundamental right at work on the one hand, while on the other they safeguard a public interest involving the social and economic organization of a country, thereby rules on sex discrimination can be classified as overriding mandatory provisions [28]. Outside a law court scenario and because they are meant to be applied at a workplace, private persons are submitted to the occupational safety and health (OSH) in force at the place where they work, either habitually or temporarily. In shipping and distant fishing, this place is not clear as the workplace sails through a non-sovereignty area and/or in several jurisdictions, for which reason private international law relies on the allocation of social matters to the flag State jurisdiction as stated in art. 94 of United Nations Convention of the Law of the Sea (UNCLOS).[21]

The submission to the law of the flag State is, however, a fiction that has not always been held by conflict rules. In fact, the law applicable to a contractual matter - such as unfair dismissal on grounds of sexual harassment - or that to a non-contractual matter - because of employer's liability in keeping the work environment free from sexual harassment -, might be a different one from the law governing the workplace - i.e. the law of the flag State for our purposes - such as the law chosen by the parties to the employment contract [28]. In such a case, the rules of safety and conduct in the flag State shall be taken into account. Yet, it depends on the approach taken by the seized court. As indicated for example by art. 17 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to

[15] 15 UNTS 35.

[16] Declaration concerning the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia), 15 UNTS 35.

[17] The 1998 ILO Declaration can be found at the ILO website: <https://www.ilo.org/declaration/lang–en/index.htm>.

[18] 165 UNTS 303.

[19] 362 UNTS 31.

[20] ILO Convention No. 188 can be found at the ILO website: < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188>.

[21] 1833 UNTS 3.

non-contractual obligations (*Rome II*),[22] those rules may only be regarded 'as a matter of fact and in so far as is appropriate'. In other words, OSH rules on board are provided by the flag State, but other jurisdictions may have the final say on these matters [29]. Such an approach is based on the principle of applying the closest law to an individual claim, but it fails to submit all workers at the same workplace to the same law and thereby undermines the role of law as instrument of social planning. In view of more than likely legal divergence, harmonization in these matters is urgently needed.

4. Laws and regulations, policies and programmes

A work environment free from discrimination requires rules of safety and conduct that are primarily provided by the State. They are to be included within the occupational health and accident prevention framework, as a form of social protection that is nowadays embedded in Article IV of the MLC, 2006. The latter develops this right in Regulation 4.3 that seeks to 'ensure that seafarers' work environment on board ships promotes occupational safety and health' along the lines set up in the Code of the MLC, 2006 and by means of laws and regulations and other measures. In addition to this, paragraph 2 of Regulation 4.3 requires member States to 'develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations.'

Standard A4.3, paragraph 1, of the MLC, 2006 lays down the contents of the laws and regulations and other measures to be adopted in accordance with Regulation 4.3, paragraph 3, that point, in particular, to the adoption and effective implementation and promotion of OSH policies and programmes on ships flying the flag of a member State, as well as on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in OSH protection. In line with the prohibition of sex discrimination, national OSH laws and regulations are expected to include the fight against sexual harassment within the policies and programmes to be adopted. However, it is remarkable that harassment was not mentioned in the first version of the Convention, not even in the long list of matters to be considered in the national guidelines for the management of OSH as indicated by Guideline B4.3.1 of the MLC, 2006. Bullying and harassment is not included either in the issues dealt with by the ILO code of practice entitled *Accident prevention on board ship at sea and in port.*

Like any other guideline in the MLC, 2006, Guideline B4.3.1 plays the role of a model law. Although it is not binding, the Convention strongly insists on States taking due consideration of guidelines when implementing standards. Hence, the lack of reference to harassment in such a detailed guideline might imply the disregarding of this important issue in those countries that have not already addressed the matter in their labour laws. The 2016 amendment of the MLC, 2006, came to bridge this gap by including in Guideline B4.3.1, paragraph 1, a specific reference to the latest version of the *Guidance on eliminating shipboard harassment and bullying*, jointly published by the International Chamber of Shipping (ICS) and the ITF. Paragraph 2 of Guideline B4.3.1 lists harassment and bullying now in subparagraph (d).

Despite being only a recommendation, the 2016 amendment to the MLC, 2006 – which is effective from January 2019 on - is a step forward in the fight against sex discrimination because it informs on the OSH policies and programmes to be adopted and effectively implemented on board, now including the fight against shipboard harassment and bullying. In this vein, the amendment emphasizes the responsibility of States and shipowners to ensure a safe and healthy work environment on board for crew. Without such an emphasis, seafarers tend to feel pressure of losing their jobs if they report any incidents to the company. This applies to women seafarers as well, who do not want to project themselves as a trouble-maker or feel helpless about finding effective solutions when an incident happens [1,21]. In effect, the ICS/ITF Guidance suggests that companies develop a policy on harassment and bullying, which should take the form of a written statement. The latter should be disseminated between company employees whose understanding of and commitment against sexual harassment should be ensured.

Sexual harassment and gender discrimination are, indeed, addressed in the ICS/ITF Guidance as it is obvious from the examples of harassment therein provided. Ten out of 11 examples in the Guidance document describe a conduct that may be included within the sexual harassment definition. However, the Guidance only specifically singles out sexual harassment in order to suggest that, whenever possible, a related complaint should be handled by a person of the same sex as the victim. A similar approach can be found in the ETF/ECSA *Eliminating workplace harassment and bullying. Guidelines to shipping companies*, first elaborated in 2004 and reworked in 2013 [30]. Nevertheless, while indeed sexual harassment is just a type of harassment, it is related to a specific type of discrimination with particular connotations in a male-dominated environment against which it is strongly advised to provide specific guidance on how to address it. Naming and reporting are important in the process of tackling sexual harassment and its seriousness should not be hidden behind other behaviours.

Specifically targeting sexual harassment is essential in light of the applicable law factor, i.e. the law governing the workplace may not provide any protection against gender discrimination, may provide it but just within the realms of criminal or civil laws, or may undermine the role of shipowners in preventatively addressing sexual harassment. Against a multi-cultural backdrop, a rights-based approach to sexual harassment unveils its many shortcomings that can be, to a certain extent, overcome by a worker-safety approach where the social partners take the lead in tackling the issue [11]; p. 360). However, no single approach is sufficient. In view of extreme legal divergence, it is advisable to provide clear guidelines to flag States and shipowners on what type of policies and programmes they should introduce in order to finally provide a work environment free from sex discrimination. In doing so, States will be honouring Standard A4.3 of the MLC, 2006 whose second paragraph requires that laws and regulations 'clearly specify the obligation of shipowners, seafarers and others concerned to comply with the applicable standards and with the ship's occupational safety and health policy and programme'.

5. Reporting and investigating complaints

Inappropriate male behaviors towards women seafarers often remain unchallenged [1], and this may happen because of the lack of reporting mechanisms as well as seafarers' fear of losing their jobs by reporting 'trouble'. The MLC, 2006 has not forgotten to establish reporting mechanisms available to seafarers, their representatives, welfare organizations and any other interested party. More specifically, a procedure has to be set up on board all ships flying the flag of a member State for the fair, effective and expeditious handling of seafarers' complaints alleging breaches of the requirements of the MLC, 2006 (see Regulation 5.1.5), including OSH requirements and thus sexual harassment. The Convention requires member States to specifically prohibit and penalize any kind of victimization of a seafarer for filing a complaint. Other relevant guarantees are the confidentiality principle, the right to be accompanied by a person of trust, to which end shipowners are required to name someone on board with this in mind, and the mandate of solving the complaint at the lowest level possible with a view to minimizing damage to the persons involved in the complaint procedure (see Standard A5.1.5 and Guideline B5.1.5). At any rate, and as reminded by Guideline B4.3.6, complaints and incidents have to be investigated by the company, and also by the flag State.

[22] [2007] OJ L 199/40.

The ICS/ITF Guidance on Shipboard Harassment and Bullying replicates to a certain extent the abovementioned complaint procedure by emphasizing the said guarantees. The references made to who should handle a complaint are also worth noticing, i.e. that person should be someone on board specifically designated by the company to undertake this task or, even better, 'an independent third party based ashore to whom those suffering harassment or bullying might address their complaints'. As said, if the complaint concerns sexual harassment-related behaviours, the ICS/ITF Guidance suggests that it ought to be handled by a person of the same sex as the victim.

This approach to shipboard harassment and bullying basically aims to give the problem visibility by demanding from companies a written commitment to combat it while establishing adequate procedures for reporting and investigating complaints. The appraisal is thus positive to the extent that it sheds light on a hidden and very serious issue at sea. For example, it was highlighted by ISWAN that clear policies by all employers to deal with harassment and bullying are important, and all seafarers should feel comfortable reporting incidents in line with company procedures. They also offer a 24-h hotline service called "SeafarerHelp" where seafarers can speak to trained officers about their concerns and problems through multiple communication channels.

Another relevant point made by the ICS/ITF Guidance is that informal and formal procedures to solve a complaint should be put forward, but not imposed on the victim, i.e. the use of complaint mechanisms should depend on the victim's willingness to face the alleged perpetrator. The degree of seriousness of the complaint is also a determinant in the type of procedure to follow, whether formal or informal. However, informal methods, in particular mediation, may prove particularly effective in a work environment characterized by a lack of willingness to report. As acknowledged in the ICS/ITF Guidance, 'seafarers do not normally make an accusation unless they feel seriously aggrieved', thereby 'complaints should be investigated promptly and objectively'. The impact of the #MeToo campaign in the Swedish maritime industry illustrates this point well enough to make it clear why formal as well as informal complaint mechanisms are necessary.

"#MeToo" is a movement originally founded in 2006. In 2017, the global campaign against sexual harassment and abuse of women spread worldwide through social media under the "MeToo" hashtag. In the maritime sector, more than 1150 Swedish maritime women joined a Facebook group under the hashtag #lättaankar (Swedish for anchors aweigh). It is a closed group in which women share their experiences of sexual harassment and bullying, with some women sharing their stories for the first time [31]. Their stories show that reporting to the company and other bodies is not always easy, nor is it the preferred option.

The Swedish #MeToo (#lättaankar) has uncovered various stories of serious abuse experienced by women seafarers. These witness accounts span over decades and range from subtle comments and discrimination, to groping and rape. These problems have been an open secret within the industry, resting largely on the silence of victims and bystanders alike, embedded in a variety of norm-bearing institutions, that deny and rationalize this kind of behaviour towards women. The collective effort of the #lättaankar and the #MeToo campaign exhibits the impact of social media in the era of digitalisation. Many women have kept silent while enduring sexual harassment at work in order to avoid being perceived as a trouble maker. In a small, confined space like a ship, it is even more difficult to speak out about such issues because doing so may destroy the harmony among the crew. The campaign has given an opportunity to women seafarers to establish a collective 'voice' against unacceptable behaviour, including sexual harassment. The significance of this collective voice is that each individual started to talk about a 'taboo'.

There is very little research on the role of social media in the maritime industry. Many studies on Information, Communication and Technology (ICT) and seafarers look into, for example, e-learning [32], labour [33], port-based welfare [34], and seafarers' families [35]. In these studies, seafarers are seen as recipients of ICT-driven products. The #MeToo campaign exhibits the possibility of seafarers as active users and drivers of ICT to empower them through virtually organized action to say "No" to unethical acts and to support OSH on board. In a similar vein, the Voices in Action webpage has been opened to enable victims to anonymously report their experiences [36]. Their individual reports are followed by electronic acknowledgment that could be useful for court or police purposes. In addition to that, reports are assessed by a 'trauma--trained moderator' on a confidential basis, while other types of support will also be made available. Interestingly, the power of social media is that repeated perpetrators will be uncovered without communication among the victims in order to avoid biases that may compromise the legal case.

This empowerment is, unfortunately, highly necessary in a culture characterized by reluctance to report. As already established by Fitzgerald Gold et al. [37]; filing a complaint, and in particular seeking for institutional relief, are the last-resort measures with other strategies taking preference, namely: endurance (ignoring it), detachment (avoiding the harasser), denial (pretending it is not happening), relabeling (re-interpreting the situation), and illusory control (blaming oneself). According to these authors, the latter are internal reactions to harassment situations that may also give rise to a variety of external responses such as just avoiding the harasser or the situation; seeking to appease the harasser without direct confrontation; finding relief in social support among friends or other workers; and confronting the harasser. As said, filing a complaint is a last-resort measure. Indeed, and despite all the above-mentioned guarantees, victims of sexual harassment may be victimized again through the grievance procedure. In this vein, retaliation is the most extreme reaction, but others such as inaction from the relevant authority or minimization of the reported behaviour can also be very damaging to the victim's well-being, in addition to being complicit with sexual harassment. Against this backdrop, social media is the ICT version of the 'Responsible Employee' figure included for example in the U.S. Office for Civil Rights' 2001 guidance on sexual harassment [38], who is supposed to inform the company of any report of sexual harassment as soon as they learnt about it.

6. Promoting a culture of gender equality on board

Reporting is indeed important in terms of understanding what is happening on board, applying laws and policies, and taking appropriate care of victims. However, such reactive measures should be combined with more proactive measures to protect seafarers from sexual harassment and bullying. Gender discrimination is pervasive in many societies and certainly in the multi-cultural male-dominated society on board ships. Although essential in addressing this issue, reporting, either formally or informally, does not solve this structural problem, but mainly only points to its existence and a (certain) willingness to combat it. In some countries, it is also a requirement to avoid employer liability for not providing a work environment free from sex discrimination. Hence, while businesses do make their anti-harassment policy and provide grievance procedures, this culture of compliance does not really seek to eradicate the problem, but mainly to avoid liability [39].

Against this backdrop, other measures targeting a cultural change by raising maritime professionals' awareness of sexual harassment behaviours and promoting a culture of gender equality on board have to be taken. Collective bargaining agreements (CBAs) are an important tool and it is to note the ITF Standard CBA includes an equality clause that reads as follows: 'Each Seafarer shall be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated, in accordance with ITF policy guidelines'.

However, such a clause still needs to be made operational, for example by providing a best practices guide as has been done by the Ship Operations Cooperative Program, Inc. in United States [40], in parallel to the adoption in 2016 of the law Subtitle C- Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric

Administration (NOAA) of the National Defense Authorization Act for Fiscal Year 2017,[23] as a reaction to 21 cases reported in a short period of time [41]; pp. 4, 9–11). This Best Practices Guide on Prevention of Sexual Assault and Sexual Harassment in the U.S. Merchant Marine specifically targets, and sends the right message about, this type of abuse. As said, ILO should integrate within the MLC, 2006 a similar guide in addition to the ICS/ITF Guidelines. While the latter do address bullying and harassment, they do not sufficiently name and shame a behaviour that is pervasive to all cultures. Such a universal approach is particularly important to establishing a consensus about unethical conduct across the maritime industry, regardless of its location.

In addition to reporting and grievance proceedings, prevention policies and programs are required at company level. A zero-tolerance policy in these matters starts with a clear and strong stance by company management and a top-bottom implementation. Research in the public sector and others such as manufacturing and higher education shows how important it is to have several policies or programs put in place at the company level - statements, formal presentations, posters placed in conspicuous places, reminders in the form of emails, social media, training and others - to properly combat sexual harassment as it encourages harassed women and men to take a more assertive response [42]. The point is to make personnel on board aware of the zero-tolerance policy adopted by the State and, in particular, the company. At any rate, it has to be done in a language comprehensible to all those on board, and where appropriate in their mother tongue.

For example, Anglo-Eastern [43]; one of the largest ship management companies based in Hong Kong, published a booklet on gender diversity in order to raise awareness about gender among its crew from different countries. It includes the definition of sexual harassment as 'making unwanted advances of a sexual nature towards a particular person' [43]:11) which affect the dignity of women and men at work. The booklet was used as a training material but also widely shared with other maritime organizations to promote gender equality. As part of the preventative measures, educating crew is seen as a powerful tool to prevent harassment on board.

Any tools for promoting gender equality on board require an effective implementation scheme. To this end, education and training programs have delivered better outcomes than just establishing an anti-harassment policy along with complaint mechanisms. However, there is great reluctance towards making them compulsory as can be learnt from the ICS/ITF Guidance itself, which only acknowledges its significance by reminding that 'the company might also consider running workshops and/or seminars to ensure smooth implementation and understanding of the policy'. This approach is, nevertheless, too passive as findings show that training programs are essential in raising awareness about sexual harassment in all of its forms and changing attitudes and behaviors [39].

This type of training is particularly relevant in a diverse seafaring population. As said, the very same definition of sexual harassment might be highly problematic, for which reason a meaningful discussion on it should be run during the course. The same applies to consent as understanding of the concept is apparently not only cultural, but also gender-driven. Both issues have to be the core of any training that should also inform on the zero-tolerance policy, including specific reference to the consequences of engaging in such kind of behaviour. Against this background, the trainer should alert trainees about the impact of any form of sexual harassment upon the victim and ultimately the whole work environment. The point to be clearly made is that all employees on board are responsible for a work environment free from gender discrimination. In other words, passive bystanders are to be considered accomplices of any abuse of power.

Because it is about raising awareness, training should be face-to-face at least the first time it is provided, in order to promote discussion. In general, tailor-made courses should be designed taking into account the diverse cultural background on board. Maritime institutions take mainly a technical approach to training that is long overdue and requires diversity mainstreaming [43,44]. Nevertheless, and given the complexities of the issue, regular training in other forms should be provided [40, 45]. While maritime professionals are already overwhelmed by training and bureaucracy, the significance of the problem makes this type of training unavoidable, although it should be done in such a way not to burden trainees and certainly not to compromise their rest hours.

In seeking for a pro-active cultural change, the involvement of all employees is essential. In OSH matters, the MLC, 2006 identifies the master or a person designated by the master as the main person responsible for their implementation and compliance. However, while top positions have to take the lead, companies ought to make sure that all employees are aware of their obligation to stand against sexual harassment and intervene in case they identify a situation as a form of sexual harassment. In this vein, the safety committee that the MLC, 2006 requires on board ships with five or more seafarers should take the lead in setting up and reinforcing positive behaviours, i.e. once the prohibition of any tolerance as regards sexual harassment has been clearly put forward at a company level, strategic personnel should actively promote a work environment free from sexual harassment by encouraging the zero-tolerance policy. Actually, in light of diversity on board and isolation from management, the safety committee might be better placed than other bodies in the company including the human resources department to implement and enforce this type of policy.

The ultimate objective of any preventative measures is that sexual harassment is recognized as an aggravated form of gender discrimination by all those working on board. Against this backdrop, there is one essential structural measure that can take place on the side of management and it comes down to enhancing diversity on board, including gender balance. The low figures in women seafarers, not to mention the non-existent ones in women fishers, increase their vulnerability, and in general resistance towards behavioural change. On the one hand, some research shows that men with greater peer support to commit sexual violence are more likely to do so [46], while on the other, a study run in eight African countries concluded that gender equality might be largely absent in collective bargaining discussions on workplace violence and harassment because women had not been included in the workers' groups [47]. According to the ILO Meeting of Experts on Violence against Women and Men in the World of Work, sexual harassment 'affects labour market participation and, in particular, may prevent women from entering the labour market, especially in male-dominated sectors and jobs, and remain therein' [23]; Appendix I, para. 1).

In fact, the background against which sexual harassment is reported is one of extensive gender discrimination. In the UK, a gender pay gap was reported in several major shipping companies. In the NYK Group (Europe) Ltd known as one of the top three Japanese shipping companies, women employees earn 60.5 pence for every pound their male colleagues make. Similarly, in the Carnival Plc, the world's largest cruise operator, women receive 61.6 pence in comparison with their male counterparts' pound. In V.Ships UK Ltd, women are earning 51.6 pence for every pound a male colleague earns, which shows the worst rate of all [48]. Structural gender discrimination can lead to Quid Pro Quo type of harassment as well as verbal and non-verbal sexual harassment in their workplace where men are dominant and privileged. Although more research is needed in these matters, the link between the equal opportunity principle and a work environment free from sexual harassment can be safely concluded.

7. Final remarks

Awareness of shipboard harassment and bullying against seafarers as an OSH issue has remarkably increased in recent times. Sexual harassment is undoubtedly part of such a discussion although the issue is faced with resistance as gender equality in maritime professions is very

[23] S. 2206. In 2019, further amendments have been proposed (S. 2782).

limited. Nevertheless, a small number of studies has already identified a range of examples of physical, verbal and non-verbal harassment against women seafarers. They point to a work environment that is not free from discrimination and actually discourages recruitment and retention of women seafarers. If the number of women in the maritime professions is to be increased, the issue of sexual harassment on board has to be tackled.

In a multi-cultural work environment such as the one of board, understanding of the sexual harassment concept is a problem in itself. Indeed, the global nature of the shipping industry permits each flag State to take a different approach to the issue of sexual harassment, which clearly undermines the fight against this abuse of power. Accordingly, and despite the issue being tackled within the ICS/ITF Guidance on Eliminating Shipboard Bullying and Harassment, the recommendation is made in this paper to elaborate a specific guide on eliminating shipboard sexual harassment along the lines of the Best Practices Guide on Prevention of Sexual Assault and Sexual Harassment in the U.S. Merchant Marine. A similar guidance should be incorporated within the ILO framework and in particular the MLC, 2006 in order to promote a harmonized approach to this issue in light of the many (potentially) applicable laws on board that nowadays tackle the issue from a different angle.

The MLC, 2006 already includes reporting and grievance procedures that can be used to complain about sexual harassment. However, victims are usually reluctant to report out of fear of retaliation and further victimization. This is another reason for requiring a tailor-made instrument within the international framework to the extent that it would send a strong message as regards to a zero-tolerance policy on these matters and encourage more reporting on the side of the victims, but also on the side of bystanders. As an OSH matter, the fight against this type of discrimination cannot be but collective. Today, in addition to traditional forms of reporting harassment to either the company or a third party, social media is becoming a powerful tool for reporting. A good example is provided by the Swedish version of the #MeToo campaign, #lättaankar, collectively reporting how awful it was for women seafarers to experience different types of sexual harassment on board. Once such a voice is raised, it is possible to follow up with legal procedures. In general, and in light of seafarers' reluctance to report any issues on board as doing so may compromise their job security, various reporting mechanisms should be put in place to be resorted to b victims and bystanders.

Complaint procedures are clearly not sufficient, however, and a strong preventative approach is necessary on the side of both States and businesses. In particular, education and training to raise awareness amongst the whole crew are of utmost importance to ensure a work environment free from sex discrimination on board. While cultural change as regards this type of behaviour is required, a multi-cultural crew makes the challenge even more difficult and thus education and training are essential in this game change. Nevertheless, the risk exists of adopting anti-harassment measures just as a form of window-dressing, in particular when it comes to complaint procedures but also as regards to preventative measures. Behaviour change has to be structural and to this end increasing gender diversity on board is strongly recommended.

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