

JOINT ILO/IMO TRIPARTITE
WORKING GROUP TO IDENTIFY AND
ADDRESS SEAFARERS' ISSUES AND
THE HUMAN ELEMENT
2nd meeting
Agenda item 3

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**CONSIDERATION OF FUTURE STEPS, E.G. LEGISLATION, MECHANISMS AND
POLICIES FOR REPORTING AND ADDRESSING OF BULLYING AND HARASSMENT,
INCLUDING SEXUAL ASSAULT AND SEXUAL HARASSMENT (SASH),
IN THE MARITIME SECTOR**

The human element – Harassment and bullying

Submitted by France

SUMMARY

Executive summary: This document includes a presentation on the specific context for preventing and combating harassment, bullying, gender-based and sexual violence in the shipping industry. It offers proposals aiming at improving the international regulatory framework as well as sharing best practices in terms of dedicated national policies. France has identified gaps within international law that need to be filled through three types of actions: working on the development of dedicated adjustments of the current international legislation; working on additional non-mandatory instruments in support of mechanisms and policies to address harassment and bullying, and assist in drafting and adopting guidelines and dedicated best management practices; sharing French public and industry stakeholders' work leading to the launch of a national campaign that can become an international campaign based on the same materials available for IMO/ILO Conventions' contracting States.

Action to be taken: Paragraph 20

Related documents: ILO Maritime Labour Convention, 2006, as amended; the International Chamber of Shipping and the International Transport Workers' Federation Guidance on eliminating shipboard harassment and bullying, 2016; ILO Violence and Harassment Convention, 2019 (No. 190)

Introduction

1 Moral and sexual harassment and bullying particularly affect maritime industry. National studies¹ depict several aspects that should be taken into account and addressed to struggle against such unacceptable and sometimes criminal behaviours:

- .1 the nearly male-only presence on board; the lack of social and gender diversity on board is a real human resources issue as far as ships are concerned;
- .2 the supportive – and selective – onboard culture; what happened on board is not repeated to others because of feared retaliation; and
- .3 the confined and restless onboard life; far from family and friends, with no option to quit for a soothing weekend or evenings; it is particularly difficult to maintain a balanced daily life as a seafarer.

2 France for instance regularly receives complaints of onboard occurred harassment and bullying cases, concerning specifically gender-based sexual harassment and assault.

3 France considers several kinds of issues when it comes to dealing with harassment and bullying behaviours on board:

- .1 very few complaints of moral and sexual harassment are made, while a lot of seafarers express they suffered such behaviour, meaning that harassment occurs but is not denounced neither to the master, a manager nor the employer, while no decisions of suing are made neither;
- .2 some aggravating factors can be depicted; among them, being a woman, being young, having contracted a fixed-term employment agreement and having low or no responsibilities;
- .3 the lack of sanctions after a fault has been demonstrated and after a complaint;
- .4 sexual assaults and harassments are likely to be committed by male seafarers towards female seafarers;
- .5 very few employers – shipowners, companies exploiting ships or hiring seafarers – have achieved prevention policies: in France, it was less than one out of five employers a few years ago²; and
- .6 there is no international specific procedure – even though the Maritime Labour Convention, 2006, as amended (MLC, 2006) created a general procedure which is used – to deal with a harassment or bully report for the port State and how to intervene to protect the alleged victim.

¹ Such as Claire Flécher's thesis of 2015 *Human navigations in globalised flows: the work of merchant seafarers nowadays* or another thesis by Angèle Grövel and Jasmina Stevanovic, 2017: *Work onboard ships of the merchant navy*

² Study made by the Défenseurs des droits (French authority which is in charge of studying a large range of topics dealing with people's rights), 26 March 2015. The study focused on the general working sphere in France, not only on the maritime sector. It can be accessed following this link: <https://www.defenseurdesdroits.fr/etudes-et-resultats-enquete-sur-le-harcèlement-sexuel-au-travail-463>

4 France recognizes that priority actions should be related to the implementation of existing instruments – ILO conventions along with recommendations dedicated to seafarers. A full implementation would be an important step towards a more effective framework against harassment and bullying. However, further action needs to be taken in adapting this ILO regulatory framework to the maritime sector, dealing with onboard work specificities (remoteness, closed spaces, promiscuity, tough working conditions and so on). The Violence and Harassment Convention, 2019 (Convention No. 190) which aims at tackling harassment and bullying, that France has ratified in April 2023, and the Violence and Harassment Recommendation, 2019 (Recommendation No. 206) depict key mechanisms of work law to help victims of harassment. However – since they are general and non-sectorial-instruments – the maritime sector and its specificities are not taken into account and they do not fit well enough the above-described specificities to have a satisfying effect on the industry. The general regulatory framework needs to be usefully supplemented. It is particularly relevant when it comes to disciplinary procedures, other sanctions against the people who harass or bully, and the right of protection of the victim by the employer.

5 Moreover, France has already seized the opportunity to request the struggle against onboard harassment and bullying to be a linchpin of training courses revisions within the STCW expected to be amended by 2024. Discussions will be held in dedicated working groups following HTW 9 which took place in 2023.

Proposals

Proposals for the development of international rules and regulations

6 France proposes to work on including the following amendments to the existing MLC, 2006 in order to address bullying and harassment:

- .1 adding the definitions of harassment and bullying and a general prohibition (A);
- .2 creating compulsory prevention policy and public displaying of the definitions of harassment and bullying by the employer (B); and
- .3 inviting industry stakeholders to complement the International Chamber of Shipping (ICS) and the International Transport Workers' Federation (ITF) Guidance on eliminating shipboard harassment and bullying, 2016 mentioned by the MLC, 2006 (C).

7 (A) The definitions of harassment and bullying and a general prohibition.

The MLC, 2006 itself should define more precisely what harassment – both moral and sexual – and bullying are, and compel the Member States to adapt their legislative background in consequence. As a starting point for discussion, some definitions are proposed below:

- .1 moral harassment: repetitive actions which can worsen the working conditions of the victim or infringe his/her rights, dignity or alter physical or mental health;
- .2 sexual harassment: repeated sexual or gender-based words or behaviours which either jeopardize the victim's dignity because they are degrading or humiliating, either create an intimidating, hostile or offensive situation towards the victim. These acts can be committed either by one individual or

by several ones. If committed by several individuals, the repetition is not required to define these actions as sexual harassment;

- .3 bullying: direct or indirect interjections, actions, behaviours or tactics such as verbal aggression or manipulation which are used attempting to or in order to hurt someone. These acts are repetitive. It can also consist in a kind of threat; and
- .4 gender-based behaviour, which is broader than sexual harassment as it does not require a repetition, should be defined too: it is made of gender-based words or behaviours which either jeopardize the victim's dignity because they are degrading or humiliating, either create an intimidating, hostile or offensive situation towards the victim.

8 France would also like to particularly stress the issue of religious harassment. A multicultural crew can easily lead to religious harassment. Besides, a particular attention should be paid to racist behaviours and harassment.

9 These acts are prohibited in the workplace in France and are penalised.

10 The MLC, 2006 should provide for a general prohibition of harassment (including sexual harassment) and bullying and make it compulsory for Member States to forbid harassment and bullying in the workplace and to penalise them. Considering that nowadays only a few States have ratified Convention No. 190, the MLC, 2006 should refer to Convention No. 190, which is the key convention to struggle against harassment and bullying. Besides, Convention No. 190 should be amended to include a definition and a prohibition of sexual harassment.

11 (B) Compulsory prevention policy and public displaying of the definitions of harassment and bullying by the employer.

Companies should implement policies which can evolve depending on the cases that will be reported. An obligation for companies to implement policies of prevention against harassment – including sexual harassment – and bullying on board could then be proposed, so that the employers could get means towards efficient solutions. Therefore, the national laws of Member States would adapt to include the following obligations:

- .1 For the employers:
 - .1 to display the definitions of harassment, including sexual harassment, gender-based violence and bullying and the linked legislative content – including criminal penalties – in a visible area of the workplace;
 - .2 to take any necessary action to prevent moral and sexual harassment. In the event of harassment happening in the workplace, the employer and the master of the ship could be held responsible because they are compelled to ensure no harassment takes place (and the security and protection of mental and physical health of their employees);
 - .3 to impose a precautionary dismissal (with wages) of the author of the fault after a complaint is made. This dismissal is temporary and should allow to carry out investigations and to avoid any danger in

- the workplace (given the particularly difficult living and working conditions on board);
- .4 to create a complete disciplinary procedure which is held onshore, the content of which can relate to mechanisms and policies of the company (see part "Mechanisms and policies" below);
 - .5 to take an appropriate disciplinary sanction (after a disciplinary procedure); and
 - .6 to prohibit sexual contents in the workplace (i.e. no porn posters) in order to favour a safe workplace when everyone feels welcome and safe working conditions. Indeed, sexual contents imposed on other colleagues could be seen as a form of sexual harassment.
- .2 For the States:
- .1 after a reporting of harassment which is given by the victim or a witness, maritime or labour inspectors should be able to carry out an inspection on board the ship;
 - .2 the designation of a national point of contact for reporting harassment, bullying or violences; and
 - .3 onshore, seafarers' doctors should be able to receive a complaint and to offer mental health cure and supervision.

The MLC, 2006 and/or its Guidance could be amended to include these elements and make them compelling for the Member States.

12 (C) Amendments of the ITF and ICS Guidance on eliminating shipboard harassment and bullying, 2016.

France suggests that the ITF and ICS Guidance on eliminating shipboard harassment and bullying, 2016, which is mentioned by the MLC, 2006 should be amended by industry stakeholders. It should be written respecting the presumption of sincerity of the victims of harassment or bullying who make complaints. We would like to ensure that this Guidance will among other imperative measures struggling with harassment, contribute to free the speech of the victims. Thus, the Guidance may avoid blaming sentences towards the victims, such as "Complaints should be investigated promptly and objectively, recognising that seafarers do not normally make an accusation unless they feel seriously aggrieved"³. Because harassment and bullying are objective faults and constitute real damages, any victim should be able to complain without having to feel "seriously aggrieved". The employer would have a particular duty of protection of the victims.

Mechanisms and policies

13 (A) Mechanism of disciplinary procedure and sanctions

A possibility of sanction is allowed by Convention No. 190⁴ and should be developed as a good practice. Whereas Convention No. 190 mentions several aspects in article 10 to address the

³ See page 11 of the Guidance.

⁴ See Article 4, 2) of Convention No. 190.

complaints, it does not impose a disciplinary procedure, neither does it recommendation 206 nor the MLC, 2006. Then, besides the highlight a lack of a general disciplinary procedure within the workplace, not only on board ships but also in the workplace generally speaking, France recommends the implementation of a disciplinary procedure following any onboard complaint dealing with bullying, moral and sexual harassment or assault. The alleged facts should be defined as a fault. A disciplinary procedure should be read as a clear and fair inquiry, after a complaint denouncing a fault, by the authority in charge of dealing with the complaint. Such authority should have a power of deciding a sanction that should be graduated. For instance: a reprimand, a disciplinary and temporary dismissal without wages (from few days to a month or two depending on the importance of the fault), a forced transfer to another service, a downgrading, a firing, a removal of the entitlement to be a seafarer. The disciplinary procedure should not only depend on criminal inquiries or on an action before a court excepted if the materiality of the alleged facts is not proved (i.e. if the alleged bully does not acknowledge the alleged fault).

14 (B) Other mechanisms and policies

France identifies several matters that could be explored by Member States:

- .1 As far as internal company communication and policies are concerned:
 - .1 recommending employers to achieve an internal chart prohibiting harassment and assaults (including sexual ones), violence and bullying on board (such chart can be built with unions and with the employees to cement an internal culture of struggling against harassment and bullying); and
 - .2 inserting harassment (including sexual harassment), gender-based violence and bullying definitions alongside the criminal penalties within the rules of procedure of the company.
- .2 As far as risks evaluation is concerned: first, compelling companies to risks evaluation including harassment and bullying, taking into account aggravating factors given working conditions of seafarers (closed doors area, night work, family remoteness) and gender-based cultural and social characteristics of seafarers (very few women, virile culture which is taught right from seafarers' school). Second, recommending to the employers to take into account the harassments (both moral and sexual), sexual assaults and intimidations working risks within company agreements.
- .3 In order to protect complaints procedures and victims, we particularly stress the key role of both the manager and the shipmaster to deal with the complaints they receive. They should not prevent a complaint of harassment or bullying to be addressed, neither should they prevent the victim from making a complaint. They should particularly manage how to properly address the complaint dealing with the author. They obviously must not threaten directly the professional situation of the victim (by avoiding to renew the employment contract, by avoiding giving a promotion, by firing the victim etc.).
- .4 Finally, considering mechanisms of sanctions: the aggressor should first be considered to be transferred to another workplace – which would be a sanction – rather than the victim (which is often thought first to be transferred, and thus becomes the one who is sanctioned for a fault which it not his/hers).

And after a sanction is delivered, the employer should restore the working community, by publicly informing the employees of the sanctions and its motivations, by renewing awareness campaigns, etc.

The launching of awareness campaigns by relevant stakeholders

15 In France, since 2019 and after several cases publicly exploded a few years ago, the government identified the thematic of "harassment and bullying" as a priority for the attractiveness of the maritime sector. The collaboration of shipowners, trade unions, national and international associations and the national administration has been very relevant to promote appropriate measures to struggle against harassment and bullying. Shipowners have implemented campaigns to struggle against harassment, particularly sexual harassment, and bullying. They also implemented dedicated training courses for their employees, launched awareness campaigns and evaluated the impact of such campaigns and training courses among their employees. Unions and dedicated associations also played a key role to struggle for better working conditions and collaborate with companies to help victims and to trigger an evolution.

16 Besides, positive action in favour of female seafarers would be useful to improve their working conditions within the maritime sector, because they still remain a few among the majority of male seafarers. Such measures helping women will contribute to improving the attractivity of the maritime sector and working conditions. When they suffered from harassment or bullying, female seafarers should be supported by their employers and managers while their careers shouldn't be affected by such complaints.

17 France would also like to introduce communications about a presumption of sincerity of the victims and the witnesses of harassment or bullying who bring complaints in order to help protecting the victims who will then help prevent further harassment or bullying from happening thanks to their complaint and thanks to the appropriate sanction or measure which would be taken towards the offending seafarer.

A French example: a dedicated campaign by the High Council of the seafarers (CSGM)

18 The High Council of the seafarers (CSGM) is an instance which unites unions, shipowners, administrations and specialized medical services. A working group to specifically address harassment and bullying on ships was launched in 2022 with the aim to create good practices guide and a chart of good conduct for seafarers. Among their actions, these can be listed:

- .1 elaboration of guidelines, for instance of complaint procedure and how to react as a master or as a victim, a guide for interview;
- .2 raising awareness among employees;
- .3 providing definitions of violence types and tools to detect gender-based violence, harassment or bullying;
- .4 recommendation about an annual study on cases of harassment and bullying to analyse the conditions of occurrence and to adapt the next prevention campaigns; and
- .5 elaboration of communications tools for employers to help them raising awareness.

This is the result of several months of work between French administrations, French medical services, national trade unions and associations that has provided efficient results as far as prevention campaigns are concerned and are key to improve onboard harassment and bullying struggling policies.

19 The entire method and the final deliverables resulting from this work can be made available to IMO and ILO Member States and other partners. France is itself about to launch its national campaign which is intended to be of use on an international scale.

Action requested of the JTWG

20 The JTWG is invited to consider proposals in paragraphs 6 to 17 and take action as appropriate.
