

Gender-Based Violence and Harassment at Sea

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This Symposium contribution assesses the ability of international law to evolve to offer essential protections for workers in an increasingly globalized world. It focuses on protections for women seafarers, specifically around gender-based violence and harassment on board vessels. Even though it is the world's oldest transnational sector, seafaring remains overwhelmingly male-dominated. Consequently, international law was not initially conceived with women seafarers in mind. Now that women have broken into the maritime profession, they count on international law to evolve in kind. Notwithstanding, they continue to face sexist, if not violent, workplaces, and report high incidents of gender-based violence and harassment at sea.

The international organization responsible for adopting and supervising protections for workers, the International Labour Organization (ILO), has long prioritized the special needs of seafarers. Its Maritime Labor Convention, 2006, promised to ensure holistic protections for all women and men at sea and to quickly adapt with evolving sectoral challenges. A close look at the prevalence of gender-based violence and harassment at sea shows, however, that the ILO's bureaucratic pathologies and interinstitutional processes preclude it from accomplishing that mission. The ILO's failure to quickly respond to mounting evidence of that violence and harassment has broad implications for international law, which must absorb and respond to transnational work's dynamic and fluctuating demands to remain useful and relevant.

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I am alone in a world of men, so anything can happen out at sea, where I cannot shout for help.

- Anonymous female seafarer¹

Introduction

Imagine that when you prepare for work every day, you must choose between a uniform that hugs the curves of your body that you desperately hope to hide from your coworkers and a larger size that hangs awkwardly, threatening to catch on every loose nail and door frame at your work area. You step out of your bedroom door immediately onto the platform of your workplace, surrounded by unfamiliar men. Many do not speak your language. Almost all of them stare. You do not know whether they will prove loyal colleagues or dangerous predators. Regardless, you cannot leave. You are working on a vessel headed on a six-month-long voyage, far from your friends and family.

Whether we like it or not, seafaring remains a man's world.² Of the world's two million seafarers, only 24,000, or 1.3 percent, are women.³ Perhaps because of that gender disparity, women seafarers' abuses while working on board have received scant attention. Few know, for instance, that seafarer uniforms are cut for and provided in only one anatomical fit: to a man's body; that women seafarers' protections against gender-based violence and harassment⁴ are fractured,

1. See INT'L LAB. OFF., WOMEN SEAFARERS: GLOBAL EMPLOYMENT POLICIES AND PRACTICES 55 (2003) ([hereinafter WOMEN SEAFARERS]).

2. See Laura Carballo Piñeiro & Momoko Kitado, *Sexual Harassment and Women Seafarers: The Role of Laws and Policies to Ensure Occupational Safety and Health*, 117 MARINE POL'Y 1, 1 (2020) (“[W]omen seafarers are still a minority on board ships despite various international and national efforts devoted to promoting women seafarers in the last couple of decades.”).

3. See Joint Int'l Lab. Org. [ILO]/Int'l Mar. Org. [IMO] Working Group to Identify and Address Seafarers' Issues and the Human Element, 2nd Meeting, Agenda Item 3: Note by the ILO and IMO Secretariats on the 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, Background Information on Bullying and Harassment in the Maritime Sector, ILO/IMO Doc. JTWG-SIHE 2/INF.2 (Jan. 8 2024), at 6 [hereinafter ILO/IMO Background Paper].

4. 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.” ILO, Convention Concerning the Elimination of Violence and Harassment in the World of Work (No. 190) art. 1(b), June 21, 2019, 58 I.L.M. 1170 [hereinafter Convention No. 190].

weak, and often turn on the paltry laws of the vessel's flag State;⁵ or that studies show that most women seafarers have been victims of gender-based harassment and violence.⁶

This Symposium contribution highlights the conditions women seafarers face despite a robust regulatory framework for seafarers' workplace protections. The critical yet underexamined reality confronting thousands of women every day exposes the residual gaps between international law as designed and the protections required in evolving industries like maritime. It is a testimony to the inability of international law to respond to the nature of work in transnational sectors, including the special needs of new workforce entrants.

Gender-based violence at sea is deeply personal to me. As a former legal officer at the International Labour Organization (ILO), I spent nearly a decade educating governments, seafarers, and shipowners on international legal protections for women and men on board vessels. At that time, I assumed that an ILO convention—the Maritime Labor Convention, 2006 (“MLC”)—could solve the problems women and men face in global seafaring. I wasn't alone in my conviction. That Convention was considered the gold standard in international lawmaking.⁷ It harmonized the regulations and enforcement mechanisms across port, flag, and labor-supplying states, designed a new, bottom-up grievance process, and carved out a place for women seafarers by demanding that all new ships have sleeping and accommodations rooms for women workers on board.⁸ In a 2015 law review article I wrote just after departing the ILO, I pointed to an accelerated amendments process that the MLC introduced and heralded the Convention as a promise that had been “put into action.”⁹

In this contribution, nearly a decade after I wrote that article, I now realize that I was naïve to the many bureaucratic obstacles that continued to distance the law from the seafarers who counted on it to protect them. Despite the time that has elapsed between promise and action, the MLC continues to treat women seafarers as an oddity, rather than a staple of the maritime sector who deserve responsive legal protections. In 2006, the MLC's drafters had various reasons to exclude provisions explicitly prohibiting gender-based

5. See Piñeiro & Kitado, *supra* note 2, at 4 (arguing that “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.”).

6. See NOR. SEAFARERS' UNION, SURVEY ON BULLYING/HARASSMENT AND SEXUAL HARASSMENT FEBRUARY-MARCH 2023, at 32 (2023), <https://acrobat.adobe.com/id/urn:aaid:sc:EU:0c288666-acb0-4ec6-bcb5-3679e883c1ac> [<https://perma.cc/Y68X-7YJ4>] (also on file with author) (showing that 79 percent of women seafarer respondents reported that they had been victims of sexual harassment, and 56 percent reported incidents of physical, sexual violence.).

7. See, e.g., Moira L. McConnell, *The Maritime Labour Convention, 2006—Reflection on Challenges for Flag State Implementation*, 10 WMU J. MAR. AFFS. 127, 128 (2011) (“The Convention, comprising over 100 pages of text, elaborates a comprehensive code setting out rights and responsibilities as well as more technical minimum standards for working and living conditions for a diverse range of ocean workers (inclusively called ‘seafarers’).” (internal citations omitted)).

8. For a discussion of the lengthy debates around accommodation and sanitary facilities, see MOIRA L. MCCONNELL, DOMINICK DEVLIN, & CLEOPATRA DOUMBIA-HENRY, *THE MARITIME LABOUR CONVENTION, 2006: A LEGAL PRIMER TO AN EMERGING INTERNATIONAL REGIME* 376-78 (2011).

9. See Desirée LeClercq, *Sea Change: New Rulemaking Procedures at the International Labour Organization*, 22 ILSA J. INT'L & COMP. L. 1, 3 (2015).

violence and harassment at sea.¹⁰ Back then, women had just begun to enter the seafaring profession and it remained unclear whether their employment would prove sustainable. Perhaps owing to women's paltry representation at the maritime table, those familiar with the MLC's negotiations recounted that protections against gender-based violence at sea were excluded out of concern that it would prove too controversial to convince ILO members to adopt the Convention. Nevertheless, we all felt confident that an amendment to the MLC in future years would correct the omission.

Despite my (and their) optimism, as of 2024, the MLC has not been amended to protect women seafarers from gender-based harassment. That failure is disappointing, given the ILO's expertise and multiple opportunities to revise the MLC. In 2019, for instance, the ILO introduced the term "gender-based violence and harassment" in its Violence and Harassment Convention, 2019 ("Convention No. 190").¹¹ While the ILO was promoting Convention No. 190 worldwide, it was adopting numerous *other* amendments to the MLC that had nothing to do with gender-based violence and harassment.

The ILO's failure to amend the MLC to add protections against gender-based violence and harassment has real and significant effects on women and deserves widespread attention. Women seafarers are followed to their cabins, stalked, sexually abused, and raped.¹² In addition to physical encounters, women seafarers report experiencing verbal and non-verbal harassment, including enduring sexist jokes on board, experiencing men staring at their breasts, and having their underwear stolen.¹³ The MLC's grievance processes have not emboldened them to file claims; instead, many report experiencing retaliation for complaining, chilling recourse to legal authorities.

That failure also has grave implications for international law's ability to regulate transnational work. Governments increasingly grapple with regulating their global supply chains, including controlling labor conditions and competition across boundaries. As trade and production become more transnational in nature, traditional international law—which confers legal responsibilities onto governments to implement it within their borders upon ratification—struggles to keep up. The MLC was supposed to show that the ILO could execute its international mandate to protect global workers by offering the necessary flexibility and amendment mechanisms to adapt to swiftly-changing needs and demands. Instead, it shows how bureaucratic pathologies and interinstitutional deference stagnate progress in international organizations, obstructing their clear mandate to protect and regulate. If the MLC, with all its promise and

10. See Eric Stener Carlson, *The International Labour Organization's Innovative Approach to Ending Gender-Based Violence and Harassment: Toward a New International Framework for the World of Work*, 33 A.B.A. J. LAB. & EMP. L. 163, 164 (2018) (noting that, although later amendments to the MLC mention "bullying and harassment," those amendments failed to define the terms or include the term "gender-based violence and harassment").

11. See Convention No. 190, *supra* note 4, at art. 1(1)(b) ("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.").

12. See Piñeiro & Kitado, *supra* note 2, at 3.

13. *Id.* at 4.

accelerated procedures, cannot protect workers in the maritime sector, what does that say about the future and relevance of international law?

This contribution is organized as follows. Part I briefly describes the IMO and ILO's international legal regime for transnational seafarers, including the MLC, its accelerated amendment procedure, and the amendments to date. Notably absent from this Part are protections against gender-based violence and harassment. Part II discusses how gaps in legal protections for women hurt women seafarers. It explains how the (relative) increase in women seafarers constitutes a change in the maritime sector that warrants MLC amendments. Part III discusses additional intervening developments since the MLC's adoption that should have motivated amendments, including the ILO's adoption of Convention No. 190 on gender-based violence and harassment and numerous reports outlining the violence women seafarers endure on board vessels. Part IV considers the implications of the MLC's residual silence on gender-based violence and harassment for international law's ability to keep up with swiftly evolving changes in transnational work.

I. The Transnational Sector of Maritime Work

Over 80 percent of global trade is transported by sea,¹⁴ thus making the successful operation of merchant shipping a *sine qua non* factor of global supply chains.¹⁵ In that sense, the maritime sector is the paradigmatic example of transnational work. Merchant shipping crosses national boundaries, stopping at different national ports along the way and connecting goods and services that originate in one country and disembark at another. As a result of the relationship between ship practices, human life, the environment, and the transport of critical goods,¹⁶ the maritime industry has become "one of the most highly regulated industries in the world."¹⁷

Under a joint maritime mandate, the International Labor Organization (ILO) and the International Maritime Organization (IMO), two international organizations within the U.N. family, have improved the lives of seafarers. The organizations design complementary maritime instruments, reflecting each organization's unique mandates and objectives.¹⁸ Under a highly regulated¹⁹

14. U.N. CONF. TRADE & DEV. [UNCTAD], REVIEW OF MARITIME TRANSPORT 2020 at 20, U.N. Doc. UNCTAD/RMT/2020, U.N. Sales No. E.20.II.D.31 (2020) ("more than 80 per cent of world merchandise trade by volume is carried by sea . . .").

15. See G.P. PAMBORIDES, INTERNATIONAL SHIPPING LAW: LEGISLATION AND ENFORCEMENT XI (1999) (discussing the critical importance of merchant shipping to the world's economy).

16. See generally Jens-Uwe Schröder-Hinrichs, Erik Hollnagel & Michael Baldauf, *From Titanic to Costa Concordia—A Century of Lessons Not Learned*, 11 WMU J. MAR. AFFS. 151, 154-63 (2012) (discussing the human factors that contributed to the sinking of the Titanic, including the decision of the ship master "to prioritize performance over safety."); Georgios Exarchopoulou et al., *Seafarers' Welfare: A Critical Review of the Related Legal Issues Under the Maritime Labour Convention 2006*, 93 MARINE POL'Y 62, 63 (2018).

17. See Exarchopoulou et al., *supra* note 16, at 63.

18. See, e.g., McCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 6 (describing how the MLC "constitutes a further elaboration of the international maritime regulatory regime under [UNCLOS].").

19. See Exarchopoulou et al., *supra* note 16, at 63 (2018) ("The maritime industry is one of the most highly regulated industries in the world.").

system of conventions and regulations, both organizations have offered seafarers, shipowners, flag States, port States, and labor-supplying States a platform to keep up with transnational shipping.²⁰

While the IMO's instruments focus on vessel specifications and safety, warranting brief mention here, this contribution centers on the ILO because of the organization's unique mandate to regulate seafarers' living and working conditions. That is a challenging mandate. Nearly two million global seafarers²¹ manage ships critical to ensuring that goods, including necessary medical supplies, food, fuel, and consumer goods, arrive conveniently at our doorsteps.²² Seafarers come from diverse countries, languages, backgrounds, religions, nationalities, and cultures, raising unique challenges on board vessels. Ships passing through international waters often pass through multiple legal jurisdictions, each with unique maritime codes and port authorities.

Working with the IMO, the ILO's members adopted the Maritime Labor Convention, 2006 ("MLC") in 2006, which entered into effect on August 20, 2013,²³ and took a transnational approach to create a unified system of maritime regulations. The MLC thus harmonizes the various jurisdictions, addressing the *voyage* rather than any country's specific boundaries.²⁴ It also introduced novel legal protections for seafarers, including protections for seafarers' fundamental labor rights on board vessels and a new legal procedure to ensure that the MLC could be rapidly amended and updated.²⁵

Although the ILO and IMO partnership has ensured notable harmony across numerous legal grounds, the organizations' bureaucratic processes and integrated mandates obstruct the MLC's ability to respond to the needs of women seafarers. Before advancing that argument, this Part briefly describes each organization and its respective system of maritime law. It shows how

20. See Desirée LeClercq, *Outsourcing Enforcement*, 62 VA. J. INT'L L. 271, 280-89 (2022) (describing the IMO and ILO maritime framework).

21. See Cleopatra Doumbia-Henry, *Shipping and COVID-19: Protecting Seafarers as Frontline Workers*, 19 WMU J. MAR. AFF. 279, 280 (2020); ILO/IMO Background Paper, *supra* note 3, at 6 (placing the figure at 1.9 million).

22. See UNCTAD REVIEW OF MARITIME TRANSPORT 2020, *supra* note 14, at 49 (noting that seafarers transport "essential goods, such as medical supplies and food . . .").

23. See *Basic facts on the Maritime Labour Convention 2006*, INT'L LAB. ORG. (Aug. 13, 2013), <https://www.ilo.org/resource/basic-facts-maritime-labour-convention-2006> - :-:text=On August 20, 2013, the,after their ratifications were registered [https://perma.cc/G8NE-65V9]; MCCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 4 (explaining that the convention was "strategically designed to place minimum international labor and social standards for seafarers—the essential human element—on the same footing as the increasingly effective international regulatory regime to ensure ship safety, security and protection of the marine environment from ship-source pollution.").

24. The MLC also seeks to harmonize the division of responsibilities within governments. See MCCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 44 (noting the difficulty in regulating an area in which "shipping issues are dealt with by national ministries dealing with maritime matters or by maritime authorities, and labour matters by ministries of labour" leading to "problems of coordination and competence . . .").

25. See ILO, *Maritime Labour Convention art. XV*, Feb. 26, 2006, 2952 U.N.T.S. 3 (setting out the accelerated amendments process) [hereinafter MLC]; MCCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 238-40 (describing the background of the MLC's new amendments process); LeClercq, *supra* note 9, at 16-21 (describing the potential of the amendments process for international law more generally).

the ILO's MLC sought to regulate transnational work in the maritime sector through dialogue and consensus. Despite the promise of swift evolution, the MLC's bureaucratic processes have instead proven obstacles to resolving seafaring hazards.

A. The International Maritime Organization (IMO)

This section offers a brief background on the IMO, the first international organization to create an amendment process to keep up with a rapidly evolving transnational maritime sector. The IMO is the U.N. specialized agency mandated to preserve and protect “the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.”²⁶ It thus complements the ILO's mandate, discussed next, to regulate ships and vessels to protect seafarers.

The IMO's novel amendment process reflects the nature of the maritime industry. Shipping practices and health standards change constantly. To keep up with these shifts, the IMO needed a way to ensure its maritime safety and security conventions,²⁷ but its early amendment procedures proved prohibitively slow.²⁸ Consequently, its members introduced a new “tacit acceptance” process. That process deems amendments to be accepted within two years (or a different period fixed at the time of the adoption) unless a specific number of IMO members reject them within a specified period.²⁹

The IMO's amendment procedure was considered “enormous progress in international law,”³⁰ and the IMO's members have included it in most of their maritime instruments since 1970.³¹ Amendments under this procedure have notably entered into force just 18 or 24 months after adoption,³² and members have nearly always adopted them unanimously.³³ The ILO, discussed next, sought inspiration from the IMO and incorporated its amendments process into the MLC.

26. See *Introduction to IMO*, INT'L MAR. ORG., <https://www.imo.org/en/About/Pages/Default.aspx> [<https://perma.cc/X6RJ-JRE3>] (last accessed Dec. 31, 2024).

27. For a review of those conventions, see *List of IMO Conventions*, INT'L MAR. ORG., <https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx> [<https://perma.cc/FS7S-TPBK>] (last accessed Dec. 13, 2024).

28. See Lei Shi, *Successful use of the Tacit Acceptance Procedure to Effectuate Progress in International Maritime Law*, 11 U.S.F. MAR. L.J. 299, 300-304 (1999).

29. See, e.g., International Convention for the Safety of Life at Sea art. VIII, Nov. 1, 1974, 1184 U.N.T.S. 278 (specifically, disagreement is triggered if one-third of the member governments or governments whose combined merchant fleets represent not less than fifty percent of the world gross tonnage).

30. See MARKUS J. KACHEL, PARTICULARLY SENSITIVE SEA AREAS: THE IMO'S ROLE IN PROTECTING VULNERABLE MARINE AREAS 149-50 (2008); see also MCCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 39-40.

31. See *Frequently Asked Questions: Why does it sometimes take a long time for IMO measures to take effect?*, INT'L MAR. ORG., <http://imo.org/en/About/Pages/FAQs.aspx> [] (last visited Oct. 24, 2015).

32. See KACHEL, *supra* note 32, at 149.

33. See Olaf Merk, *The role of the International Maritime Organization*, in ORG. ECON. CO-OP. & DEV'T, INTERNATIONAL REGULATORY CO-OPERATION AND INTERNATIONAL ORGANISATIONS: THE CASES OF THE OECD AND THE IMO 85, 112 (2014).

B. The International Labour Organization (ILO)

The ILO is the U.N. specialized agency mandated to regulate international labor standards.³⁴ Uniquely, it comprises governments and representatives of workers and employers.³⁵ Under this “tripartite system,” the ILO has developed an intricate system of international labor instruments—consisting of binding conventions and nonbinding recommendations, guidelines, general surveys, and resolutions—to establish minimum conditions for work, including transnational work such as merchant shipping.³⁶

Since its founding, the ILO has held separate maritime committee sessions, which give special attention to seafarers’ living and working conditions.³⁷ The ILO’s maritime governance has succeeded, at least in part, because collective bargaining in merchant shipping is already incredibly well-organized.³⁸ The International Transport Workers’ Federation (ITF) has some 700 affiliated trade unions, representing approximately 20 million women and men in transport.³⁹ Shipowners are also well-organized under twin organizations, the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF).⁴⁰ The ISF, representing national shipowners at the ILO’s maritime meetings, has a close relationship with the ITF.⁴¹ The close cooperation and dialogue between international representatives of seafarers and shipowners create fruitful grounds for resolving their potentially thorny negotiations on the ILO’s international platform. For instance, both stakeholders unanimously voted to adopt the MLC—an instrument that revolutionized

34. See *About the ILO*, INT’L LAB. ORG., at <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> [<https://perma.cc/2QQP-3AMJ>] (describing the ILO as the “only tripartite U.N. agency . . .”) (last accessed Dec. 31, 2024).

35. INT’L LAB. OFF., *RULES OF THE GAME: A BRIEF INTRODUCTION TO INTERNATIONAL LABOUR STANDARDS* 11 (3d ed. 2014).

36. *Id.* at 7 (describing the ILO’s mandate to promote “opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity.”).

37. See McCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 16 (“Establishing minimum labour standards that are universally applied irrespective of the nationality of the seafarer, the ship, or the shipowner has been a preoccupation of the ILO since its earliest sessions.”). For instance, an early ILO convention regulating seafarers’ working conditions required the ratification of IMO conventions. *Id.* at 18, n 56 (referring to the ILO’s Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)); see also Int’l Labour Conf., *General Survey on the Labour Standards on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976*, ¶ 4 (1990), [https://webapps.ilo.org/public/libdoc/ilo/P/09661/09661\(1990-77-4B\).pdf](https://webapps.ilo.org/public/libdoc/ilo/P/09661/09661(1990-77-4B).pdf) [<https://perma.cc/JT6W-7NT7>].

38. See generally Nathan Lillie, *Global Collective Bargaining on Flag of Convenience Shipping*, 42 BRIT. J. INDUS. REL. 47 (2004) (describing the unique system of bargaining in merchant shipping).

39. See *Who We Are*, INT’L TRANSP. WORKERS’ FED., <https://www.itfglobal.org/en/about-us/who-we-are> [<https://perma.cc/UB87-RCEP>] (last visited Dec. 20, 2024).

40. See Roy Nersesian and Subrina Mahmood, *International Chamber of Shipping & International Shipping Federation*, in *HANDBOOK OF TRANSNATIONAL ECONOMIC GOVERNANCE REGIMES* 775 (Christian Tietje & Alan Brouder, eds., 2009) (describing the two international shipowner organizations).

41. *Id.* at 778.

transnational labor law at the ILO and added new regulations to seafarer work and safety.⁴²

Collaboration between the ILO and the IMO, supported by an active social partnership, resulted in significant changes to how the ILO's members design international legal instruments. At the same time, however, the bureaucracy within and between those international organizations requires lengthy, duplicative discussions and reports. While women endure abuse at sea, as this contribution will later explain, the ILO and IMO have been paralyzed in endless and repetitive committee discussions. Both organizations require multi-step consultations and discussions. These steps must occur before the ILO's committee members trigger the MLC's rapid amendment procedure. Although the MLC was supposed to mark an inflection point in the adaptability of international legal instruments, the ILO's failure to amend it to protect women seafarers from continuous abuses at sea suggests residual stagnation and ossification.

1. *The Maritime Labor Convention (MLC)*

The ILO's members designed the MLC to provide a human face for transnational seafaring in complement the IMO's safety and health conventions.⁴³ It consolidated (and updated, where necessary) some sixty-eight maritime instruments concerning seafarer employment, conditions of living (accommodations and recreational facilities), food and catering, health, medical care, welfare and social protection, and inspections.⁴⁴

The MLC has significantly improved conditions for women seafarers. Among other things, it expanded the scope of legal protections for all workers on board vessels. For instance, as discussed later, most women are hired on cruise ships and hold employment positions on vessels that fall outside traditional conceptions of a "seafarer." The MLC helpfully broadened the definition of seafarer to include "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies"⁴⁵ Doing so permits women working in any capacity to fall within the MLC's legal scope. The MLC similarly expanded the applicable "ship" scope by defining it through exclusion. Thus, the MLC applies to cruise ships and all other ships "other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply"⁴⁶

Although the MLC offers no protection for women against gender-based violence specifically, it contains provisions that help women indirectly. For example, it requires vessels created after a government ratifies the MLC to

42. See George P. Politakis, *Bringing the Human Element to the Forefront: The ILO's Maritime Labour Convention, 2006 Ready to Sail*, 2 *AEGEAN REV. L. SEA* 37, 39-40 (2013) (describing the initial efforts to create the MLC, which began during bilateral negotiations between seafarers and shipowners at the ILO in 2001).

43. See McConnell, *supra* note 7, at 130.

44. See generally MLC, *supra* note 26.

45. *Id.* at art. II(f).

46. *Id.* at art. II(i).

construct separate sleeping rooms⁴⁷ and sanitary facilities.⁴⁸ While those requirements may seem light given the struggles women seafarers endure on board, the ILO's maritime members did not adopt those provisions without controversy.⁴⁹ Several representatives of governments and shipowners complained that they would have to spend additional money under the MLC to construct separate accommodations "even if no women worked on board . . ." ⁵⁰ They proposed that the requirement should only be triggered "if necessary."⁵¹ Ultimately, the ILO's members adopted the provisions without the proposed caveat to prevent "further prejudice [to] the employment of women seafarers."⁵²

Furthermore, the MLC created an innovative, bottom-up reporting system. Under that system, all countries that have ratified the Convention must have an on board complaint procedure⁵³ and protections for whistleblowers.⁵⁴ All seafarers must receive a copy of the procedure and protections.⁵⁵ Should a woman suffer inappropriate behavior, she has the right to complain to the ship's master and external authorities if she deems it necessary.⁵⁶

2. *The MLC's Special Tripartite Committee (STC)*

The MLC's drafters wanted to ensure that the Convention benefitted from scrutiny and cooperation between maritime actors throughout its lifetime.⁵⁷ Accordingly, the MLC created a new ILO committee composed of two representatives of governments that have ratified the Convention and certain shipowner and seafarer representatives.⁵⁸ One of the STC's most important tasks is to adopt amendments to the MLC under the Convention's accelerated amendment procedure, which will be discussed next. Although government

47. *Id.* at Reg. 3.1 ¶ (9)(b) ("separate sleeping rooms shall be provided for men and for women.").

48. *Id.* at Stand. A3.1 ¶ 11(a) ("all seafarers shall have convenient access on the ship to sanitary facilities meeting minimum standards of health and hygiene and reasonable standards of comfort, with separate sanitary facilities being provided for men and for women.").

49. See MCCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 377-78 (repeating the discussion at the ILO around separate accommodation requirements in the then-draft MLC).

50. *Id.* (quoting testimony of the government representative of the Republic of Korea).

51. *Id.*

52. *Id.* at 378 (testimony of the government representative of Croatia).

53. See MLC, *supra* note 26, at Reg. 5.1.5, ¶ 1 ("Each Member shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).").

54. *Id.* ¶ 2 ("Each Member shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint.").

55. *Id.* at Stand. A5.1.5, ¶ 4 ("In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship.").

56. *Id.* at Stand. A5.1.5, ¶ 2 ("[I]n all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.").

57. See MCCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 236-37 (describing the conceptualization of the STC).

58. See MLC, *supra* note 26, at art. XIII. The seafarer and shipowner representatives are chosen by the ILO's Governing Body after consultation with the Joint Maritime Commission. *Id.* at art. XIII ¶ 2.

representatives of countries that have not ratified the MLC can participate in the meetings and discussions on amendments, they “have no right to vote on any matter dealt with” in the meetings.⁵⁹ Thus, while the United States actively participated in drafting the MLC,⁶⁰ Congress’ refusal to ratify it⁶¹ means that the U.S. government cannot vote on new amendments.⁶² This procedural limitation may be one of many reasons, discussed later, that efforts to amend the MLC to include protections against gender-based violence and harassment have lacked expediency.

3. *The MLC’s Accelerated Amendment Procedure*

Because the ILO’s traditional amendment procedure is slow and cumbersome,⁶³ the Organization took the opportunity the MLC provided to create a new, more exigent procedure.⁶⁴ It did so to satisfy its promise that the MLC would be a “forward-looking” instrument that “explicitly recognizes the increasingly rapid changes affecting working conditions in this sector”⁶⁵

The ILO designed the MLC’s amendment procedure by transposing the IMO’s tacit acceptance procedure.⁶⁶ It nonetheless had to respect its unique tripartite philosophy and constitutional requirements, ensuring that governments and representatives of workers and employers each play a role. Consequently, under the MLC’s accelerated process, the STC discusses and votes on amendments triggered by “the government of any Member of the

59. *Id.* at art. XIII, ¶ 3.

60. See generally McCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, for numerous accounts of interventions and drafting decisions by the delegation of the United States.

61. See LeClercq, *supra* note 20, at 285 (explaining that the United States has not ratified the MLC, in keeping with its practice of rarely ratifying ILO conventions).

62. For instance, two U.S. government representatives attended the STC in 2016 but took no vote on the amendments. See ILO, Special Tripartite Committee Established Under Article XIII of the Maritime Labour Convention, 2006, Final Rep., Second Meeting, ¶ 2, ILO Doc. STCMC/2016 (Mar. 14, 2016) (“Government representatives of Members which have not yet ratified the Convention may participate in the Committee without the right to vote on any matter dealt with in accordance with the Convention.”); *id.* at p. 73 (listing delegates in attendance).

63. See, e.g., ILO, Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards: First Meeting, ¶ 21, ILO Doc. STWGM/2002/1 (2002), https://webapps.ilo.org/public/libdoc/ilo/2002/102B09_144_engl.pdf [<https://perma.cc/GPH6-UCEM>] (noting that, under the typical ILO amendment procedure, several decades might be needed for full entry into force, referring to examples in which technical changes required more than 30 years to enter into force).

64. See McCONNELL, DEVLIN, & DOUMBIA-HENRY, *supra* note 8, at 39-40.

65. See Int’l. Lab. Conf., 94th Maritime Session, Report II, Rep. of the Director-General on Developments in the Maritime Sector ¶ 3 (2005), <http://www.ilo.org/public/english/standards/relm/ilc/ilc94/rep-ii.pdf> [<https://perma.cc/NMD5-MNPW>].

66. See ILO, Standing Orders of the Special Tripartite Committee, Amendments to the Code, Art. XV, ¶ 7 (2012) (“An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.”), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/meetingdocument/wcms_183944.pdf [<https://perma.cc/U4WF-6XAP>].

Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII.”⁶⁷

If the STC adopts the proposed amendments, it submits them to the ILO’s annual Conference for final approval. That streamlined process avoids what is often a lengthy discussion and debate over the phrasing of proposed amendments by requesting that the Conference attendees merely approve or reject the text. According to the ILO, that accelerated procedure enables changes “to come into effect, for all or almost all ratifying countries, within three to four years from when they are proposed.”⁶⁸ While three to four years hardly promises expeditious action, it is a far cry from the 30-year delay incurred under the traditional amendment process.

4. MLC Amendments

At the time of writing, the ILO’s members have not amended the MLC to include protections against gender-based violence and harassment at sea. They have, however, adopted numerous amendments in other areas. As of 2024, the STC had met four times and adopted four sets of amendments governing various issues from recruitment and placement to repatriation, recreational facilities, piracy and armed robbery, and wages.⁶⁹

In 2016, the STC adopted amendments to the MLC’s voluntary guidelines⁷⁰ on occupational accidents, injuries, and diseases to add “harassment and bullying” to the list of areas that the governmental authorities should consider.⁷¹ Neither the STC’s deliberations nor the text of the amendments mentioned gender-based violence and harassment. Nevertheless, the amendments expressly reference the *Guidance on eliminating shipboard harassment and bullying*, jointly published by the ICS and ITF.⁷² The Guidance includes

67. *Id.*, ¶ 2. To trigger the procedure, governments must have support from at least five governments that have ratified the MLC or from the group of seafarers or shipowners appointed to the STC. *Id.*

68. See INT’L LAB. ORG., MARITIME LABOUR CONVENTION, 2006 (MLC, 2006): FREQUENTLY ASKED QUESTIONS 14 (5th ed. 2019), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_765083.pdf [https://perma.cc/VF46-8T8G].

69. For an overview of all the MLC amendments, see *Special Tripartite Committee*, INT’L LAB. ORG., <https://www.ilo.org/international-labour-standards/maritime-labour-convention-2006-0/special-tripartite-committee> [https://perma.cc/RGS5-G4PT] (last visited Apr. 5, 2024).

70. Although the MLC’s Guideline is non-binding, at least two researchers argue that it “strongly insists on States taking due consideration of the guidelines when implementing standards.” See Piñeiro & Kitada, *supra* note 2, at 5 (emphasis added). Nevertheless, they concede that the incorporated guidelines “do not sufficiently name and shame a behaviour that is pervasive to all cultures.” *Id.* at 7.

71. See ILO, Proposal from the Group of Shipowner Representatives Appointed to the Special Tripartite Committee to Amend the Code of the Maritime Labour Convention, 2006 (MLC 2006), ILO Doc. NORME-150702-4 (July 28, 2015), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/genericdocument/wcms_386809.pdf [https://perma.cc/Q9T2-XZW7].

72. ILO, Amendments of 2016 to the Code of the Maritime Labour Convention, 2006, ILO Provisional Rec. 3-1A (June 7, 2016).

gender-based examples.⁷³ For instance, it identifies as offensive conduct: sexist jokes or remarks, comments about a person's physical appearance, making sexually aggressive communications, asking unwarranted or persistent questions about marital status or sexual interests or orientation, suggestions linking sexual favors to careers, and leering or inappropriate bodily contact.⁷⁴ However, neither the Guidance nor incorporating guidelines are mandatory (and therefore are not included in the list of mandatory inspection items), nor are they subject to the same reporting as the MLC's requirements.⁷⁵

The MLC's residual silence concerning gender-based violence and harassment (at least, as of 2024) stands starkly against the ILO's promise to take swift corrective action in maritime as well as its broader initiative to combat crimes against women in the workplace, the latter of which Part III addresses. Before doing so, Part II explains how the lack of protection for women working on board vessels affects them. Not only do the majority of women participants report experiencing gender-based violence and harassment, but they also report that their attempts to file complaints and grievances against their abusers sometimes result in retaliation against them, thereby chilling the use of the MLC's new enforcement procedures.

II. Gender-Based Violence and Harassment at Sea

The burgeoning field of transnational shipping is swiftly changing. While men, not women, were the traditional subjects of recruitment efforts,⁷⁶ women have begun to hold more prominent roles in the maritime sector. Recruitment began to include women in the early 1900s, focusing on "service roles such as children's nurses, stewardesses for women passengers traveling unaccompanied by men and as laundresses."⁷⁷ According to the ILO, women began to appear more regularly as crew members (mainly flight attendants, cooks, and radio officers) in the post-1945 period and as cadets in the late 1960s following a shortage of young male recruits in Europe.⁷⁸

The relatively low number of women in the maritime sector in the 1990s and early 2000s ignited research by academics, trade unions, and international

73. See INT'L CHAMBER OF SHIPPING & INT'L TRANSP. WORKERS' FED'N, GUIDANCE ON ELIMINATING SHIPBOARD HARASSMENT AND BULLYING (2016).

74. *Id.* at 7.

75. See MLC, *supra* note 26, app. A5-II (Declaration of Maritime Labour Compliance – Parts I-II). Bullying and harassment is included as a voluntary area of investigation. *Id.* at Guideline B4.3.5.2(g).

76. See Momoko Kitada, *Women Seafarers: An Analysis of Barriers to Their Employment*, in THE WORLD OF THE SEAFARER: QUALITATIVE ACCOUNTS OF WORKING IN THE GLOBAL SHIPPING INDUSTRY 65, 65 (Victor Oyaro Gekara & Helen Sampson, eds., 2021) ("Some efforts have been made to promote the recruitment of women seafarers in the last couple of decades but these have not had a significant impact on the overall numbers of women seafarers employed at sea.").

77. See WOMEN SEAFARERS, *supra* note 1, at 5.

78. *Id.* at 6.

organizations to determine the risk factors deterring female employment.⁷⁹ The IMO launched a gender strategy and hosted various conferences and events to energize the recruitment and employment of women,⁸⁰ and eventually amended its legal instruments to promote the participation of women in the industry through training and education initiatives.⁸¹ For its part, the ILO published books and research reports to generate greater knowledge and awareness of women seafarers' issues, recognizing the disparities in treatment across genders and the need for salient action.⁸²

These scholarly and interinstitutional efforts did not abolish the systemic biases in seafarer recruiting but did elicit marginal gains in recruiting and placing women seafarers. In a 2003 maritime survey, the ILO interviewed various shipping companies about their employment practices. A senior executive of one of the world's largest ship management companies told the ILO researchers:

Since the 1960s, seafaring has become a different job. Nowadays, you don't need so many muscles, you don't need to be like Arnold Schwarzenegger. You must have good brains, and women are usually better in this respect.⁸³

According to the ITF, the number of women seafarers increased by 46 percent between 2015 and 2020.⁸⁴ While that number relative to the number of male seafarers remains small (between 1.2 and 2 percent, depending on the source⁸⁵), it nevertheless suggests that women are finding entry points into the maritime profession, even without sufficient legal protections in place. This Part reviews the empirical literature surveying women seafarers about their experiences working on board vessels, which depicts a dismaying story of violence and harassment that lacks deeply needed oversight and enforcement.

79. See, e.g., ILO, *Resolution Concerning the Promotion of Opportunities for Women Seafarers*, (Feb. 22, 2006), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@normes/documents/sitestudiocontentelements/wcms_con_txt_ils_mar_res_en.pdf [<https://perma.cc/9T9D-GM6V>], (inviting the ILO's Governing Body "priority in the use of resources to examining measures which can further promote career opportunities and appropriate working and living conditions for women seafarers.")

80. See Kitada, *supra* note 79, at 67 (describing IMO initiatives); ILO/IMO Background Paper, *supra* note 3, at 30-31 (describing the IMO's "Women in Maritime" program targeting gender equality).

81. See IMO, Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, *Final Act*, attach. 3, Res. 14: Promotion of the Participation of Women in the Maritime Industry (July 7, 1995), <https://www.imorules.com/GUID-318D248D-738E-4A62-A271-B5DA1008C430.html> [<https://perma.cc/6Z8M-4BTX>].

82. See, e.g., WOMEN SEAFARERS, *supra* note 1, at 26-27 (describing various ILO initiatives to promote gender equality in the maritime sector).

83. See *id.* at 31.

84. See INT'L TRANSP. WORKERS' FED'N, WOMEN SEAFARERS: WOMEN SEAFARERS – YOUR INDUSTRY NEEDS YOU! LEARN HOW IT'S CHANGING 2, https://www.itfseafarers.org/sites/default/files/paragraph/issues-attachments/files/Women%20seafarers_0.pdf [<https://perma.cc/CS9A-ZDK8>], (last accessed July 12, 2024).

85. See Kitada, *supra* note 80, at 66 (noting that women in more professionally accredited roles, such as deck officers and engineers, constitute a mere 0.12% while the percentage of women working in areas such as hotel and catering reach around 1%). The ILO places this figure between 1-2% of the world's 1.25 million seafarers. See WOMEN SEAFARERS, *supra* note 1, at 9.

A. Discriminatory Treatment of Women Seafarers

This section briefly sketches women seafarers' working conditions based on qualitative and quantitative studies conducted by the ILO, IMO, ITF, and seafarer organizations. Those studies strongly suggest that, despite international efforts to promote access to employment for women seafarers, "gender-based power relations are sustained by rigid hierarchical structures in shipping, which increase the risk of abusive work practices and sexual assault and sexual harassment."⁸⁶

Historically, few women have had access to the education and skills training necessary to become seafarers.⁸⁷ Universities, for instance, tried to convince female nautical students to find a "backup" career.⁸⁸ Those who managed to get licensed faced hiring discrimination by transnational shipping companies.⁸⁹ Even under contemporary hiring and licensing practices, women often remained "assigned as the lone female to a vessel which typically accommodates 18 seafarers."⁹⁰

Currently, most women seafarers are employed on board passenger ships, including cruise vessels, working mainly in the hotel and catering sector.⁹¹ They are usually hired in low-skilled positions within these concentrations, while men are typically officers.⁹² According to an instructor at a maritime education and training institution:

Maritime engineering is not a proper subject for women. As engineers, you have to work down below in the engine room, where it is hot and dirty and women are more likely to get sexually abused.⁹³

Compared to their male counterparts, women seafarers are, on average, four years younger, seemingly confirming that employers prefer younger women in service sectors such as cruise ships.⁹⁴ The minority of women seafarers who work in traditional maritime jobs—those physically taxing jobs traditionally carried out by men—must hide their feminine characteristics. Women try to do so by wearing loose and baggy garments despite the safety issues associated with overly long and ill-fitting uniforms. They also refrain from showing their emotions at work.⁹⁵

Shipping companies rarely have specific policies regarding women seafarers.⁹⁶ Consequently, most do not offer protections for women facing

86. See ILO/IMO Background Paper, *supra* note 3, at 11 ("A lack of inclusive environment on ships contribute to placing seafarers, and particularly women, at risk.").

87. See Kitada, *supra* note 80, at 69.

88. *Id.*

89. *Id.* at 68 ("There are still some shipping companies which are reluctant to employ women seafarers and some which openly refuse to consider female applicants because of their gender.").

90. *Id.* at 65.

91. See WOMEN SEAFARERS, *supra* note 1, at 11.

92. *Id.* at 15. Notably, this ratio changes in the cruise industry, where women are increasingly hired in "key positions" including management and supervisory roles. *Id.* at 16.

93. *Id.* at 38.

94. *Id.* at 19-21.

95. See Kitada, *supra* note 80, at 70.

96. *Id.* at 29.

gender-based violence and harassment on board vessels.⁹⁷ Notwithstanding the lack of protections and residual cultural and gender biases on board, women tend to work on vessels for weeks, if not months, at a time.⁹⁸ Further, while on board, men and women work together in confined living and working spaces.⁹⁹ The ILO and IMO find that “[b]eing isolated on board a ship for a long period of time can be a significant risk factor contributing to harassment and bullying, including sexual assault and sexual harassment.”¹⁰⁰

To cope with the misconduct—or fear of misconduct—on vessels, women seafarers reportedly lock themselves in their cabins, refrain from social activities on board, and “de-feminize” their appearances.¹⁰¹ Lacking robust legal protections, women seafarers must essentially imprison themselves by socially isolating for months on end. As women try to stay safe by isolating in their cabins, many suffer from loneliness and work-related stress.¹⁰²

The transnational nature of merchant shipping means that women seafarers tend to work with men from various cultures and backgrounds.¹⁰³ Difficulty in communication between seafarers who speak different languages, coupled with varying cultural approaches to working conditions, can “contribute to risk factors for harassment and bullying, including sexual assault and sexual harassment.”¹⁰⁴ For instance, a woman seafarer explained to ILO researchers:

If I whisper, they think I'm making love. So I learned to speak very loudly, you know. I speak loudly to everyone. It became part of me—this very high frequency. You can hear my voice from the galley!¹⁰⁵

B. Gender-Based Violence and Harassment

Women seafarers are more vulnerable to gender-based violence and harassment than shore-based women.¹⁰⁶ In particular, “[s]exual assault and sexual harassment are widely reported and require specific and immediate attention.”¹⁰⁷ That may be because, as described above, women are underrepresented on board vessels and tend to be younger than their male counterparts,

97. *Id.* at 56 (“Inappropriate male behaviour is often, therefore, left unchallenged and unmodified and may, as a result, be frequently repeated.”).

98. See ILO/IMO Background Paper, *supra* note 3, at 7 (“Seafarers spend long periods, ranging from weeks to months, on board ships.”).

99. *Id.* at 11 (“Confined working and living conditions and isolation are also key factors contributing to risks of sexual assault and sexual harassment from fellow crew members and, in the case of the cruise subsector, this extends to the public on board.”)

100. *Id.*

101. See WOMEN SEAFARERS, *supra* note 1, at 54-55.

102. *Id.*

103. *Id.* at 8, 11.

104. *Id.*

105. See WOMEN SEAFARERS, *supra* note 1, at 52.

106. See ILO/IMO Background Paper, *supra* note 3, at 6 (“the male dominated nature of the sector, in addition to other cultural and working conditions associated with maritime work, put women and other groups of workers at particular risk of being victims of [violence and harassing] behaviours.”), 11 (“research suggests that women seafarers are more at risk of sexual assault and sexual harassment than shore-based women professionals.”).

107. *Id.* at p. 9.

hold subordinate positions,¹⁰⁸ and work on vessels that lack gender-specific rules and protections.¹⁰⁹

Given the transnational and fractured legal challenges on board vessels, the ILO and IMO recognize that—despite the lack of international instruments making this a requirement—the various national approaches to gender-based violence and harassment should be harmonized “throughout the maritime sector.”¹¹⁰ Without standardized protections, violence against women seafarers remains pervasive.¹¹¹ Women wake up to find their male counterparts masturbating on top of them. Their male counterparts molest and sexually assault them.¹¹² Shy of physical assault, women seafarers endure pestering, sexually charged jokes, inappropriate staring, public displays of sexual content on board vessels, and sexual coercion.¹¹³

The MLC created a complaints mechanism to ensure seafarers could report misconduct to superiors. Notwithstanding this mechanism, the minority of women who reported the abuse are sometimes fired.¹¹⁴ As one seafarer explained:

He was the bar manager. He put pressure on me to go to his cabin. He was my boss, you know. And he gave me a hard time because I didn't want to stay with him.¹¹⁵

III. International Protections against Gender-Based Violence and Harassment

The ILO is well-placed to protect women seafarers from gender-based violence and harassment. This Part catalogs the ILO's efforts outside the maritime context to codify protections for women and girls against gender-based violence and harassment. While the ILO has actively marketed Convention No. 190 to countries for ratification, it has failed to integrate that convention's express protections against gender-based violence and harassment into the MLC, leaving women seafarers vulnerable to abuse.

108. *Id.* at 12 (“women in lower-ranked positions are more likely to be subject to sexual assault or harassment.”).

109. *See, e.g.,* WOMEN SEAFARERS, *supra* note 1, at 56 (“Ashore, company policies on sexual harassment are increasingly common, but on board cargo ships they are virtually unheard of.”).

110. ILO/IMO Background Paper, *supra* note 3, at 11 (“The international nature of shipping means that workers are subject to different jurisdictions with different legal frameworks and different approaches to sexual assault and sexual harassment which can make it difficult to investigate cases and bring perpetrators to justice.”).

111. *See* WOMEN SEAFARERS, *supra* note 1, at 53-55 (describing reports from women on board ships of their experiences with sexual harassment and violence.); Kathryn Rose McCarty, Comment, *The Unsolved Issue of Sexual Assault and Harassment against Female Workers in the Maritime Industry*, 46 TUL. MAR. L.J. 189, 190 (2022) (“Female maritime workers continue to endure sexual harassment and assault without relief or promise of change from industry leaders within maritime.”).

112. *See* WOMEN SEAFARERS, *supra* note 1, at 53-55.

113. *See* ILO/IMO Background Paper, *supra* note 3, at 11.

114. *See* WOMEN SEAFARERS, *supra* note 1, at 57.

115. *Id.* at 54.

A. The ILO's Violence and Harassment Convention (Convention No. 190)

In 2019, the ILO celebrated its centennial anniversary by adopting its first instrument on “gender-based harassment” and offering the first international instrument to define “violence and harassment in the world of work.”¹¹⁶ It did so by creating the legally binding Convention No. 190, which defines gender-based violence and harassment as “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.”¹¹⁷

Although Convention No. 190 prohibits violence and harassment generally,¹¹⁸ its Preamble recognizes that “gender-based violence and harassment disproportionately affects women and girls” and consequently requires a “gender-responsive approach” to eradicating it.¹¹⁹ That approach must include “tackling underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations”¹²⁰

I could write volumes about the critical importance of Convention No. 190 to the world of work. With due regard to space, this section notes two areas of importance. First, the Convention is the first at the ILO to refer to the term “gender” and acknowledge the unique challenges confronting women and girls in all sectors and areas of work.¹²¹ Second, as did the MLC, Convention No. 190 has a broad scope and includes a wide array of workers in the globalized economy.

Convention No. 190 “applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.”¹²² Accordingly, it applies to work at sea.¹²³ However, like all ILO conventions, states are only bound to the Convention if they affirmatively ratify it. Consequently, seafarers can only benefit from the Convention’s protections and duties if the vessel’s flag state has ratified Convention No. 190. Unfortunately, only 45 of the ILO’s 187 members have ratified the Convention,¹²⁴ leaving many workers in the maritime sector unprotected. Furthermore, it is not clear whether governments that have ratified the MLC and Convention No. 190 are aware of their responsibilities to apply protections against gender-based

116. See Eric Stener Carlson & Shauna Olney, *A New Global Mandate to End Violence and Harassment in the World of Work: A Gender-Responsive Approach*, 35 A.B.A. J. LAB. & EMP. L. 493, 498 (2021) (describing the ILO’s new convention as “the first international instrument” to regulate gender-based violence and harassment in the world of work).

117. Convention No. 190, *supra* note 4, art. 1.1(b).

118. *Id.* art. 1.1.(a) (defining “violence and harassment” without reference to gender or sex).

119. *Id.* pmb1.

120. *Id.*

121. See Carlson & Olney, *supra* note 121, at 496 (“While issues underpinning gender equality in the world of work had been addressed previously in ILO Conventions, Convention No. 190 is the first ILO Convention to actually use the word ‘gender.’”).

122. Convention No. 190, *supra* note 4, art. 2.2.

123. Notably, the ILO’s documents try to raise awareness of this application. See ILO/IMO Background Paper, *supra* note 3, at 6 (noting that Convention No. 190 applies to work at sea).

124. See, *Ratifications of C190 - Violence and Harassment Convention, 2019 (No. 190)*, INT’L LAB. ORG., https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3999810 [https://perma.cc/VPW3-SLBF] (last visited Dec. 9, 2024).

violence and harassment to their maritime labor obligations. Some of those countries—including the Bahamas, China, Indonesia, the Marshall Islands, the Philippines, Saint Kitts and Nevis, Seychelles, Singapore, and Thailand—are significant maritime countries that likely have supplied women seafarers, facilitated port access for women seafarers, and registered the vessels that employ them. If those key maritime countries were adequately protecting women seafarers from gender-based violence and harassment, as Convention No. 190 requires, the reports of pervasive abuse described in Part II would look quite different. Without a maritime-dedicated commitment, ignoring the conditions confronting women far from shore has proven easy for countries otherwise (at least outwardly) committed to the cause.

B. Efforts to Amend the MLC to Protect Women Seafarers

The ILO's efforts to protect women against gender-based violence and harassment at sea span two decades, well before the Organization adopted the MLC and Convention No. 190, spurred by a 2001 report by an ILO Joint Maritime Commission on sexual harassment.¹²⁵ That report contains data about, and testimony by, women seafarers who suffered harrowing experiences at sea.¹²⁶ Also in 2001, an ILO tripartite working group on maritime standards launched the MLC's first preparatory discussions.¹²⁷ Despite the parallel bodies and discussions, the issue of gender-based violence and harassment did not cross-fertilize. As a result, despite the opportunity to craft a new legal instrument specifically tailored to the unique problems confronting seafarers, the ILO's members focused their attention elsewhere, leaving women unprotected.

Still, the ILO's failure to include protections against gender-based violence and harassment should have been resolved swiftly under the MLC's accelerated amendments process. And yet, as this section shows, despite consecutive amendments on other matters, no amendment on gender-based violence has gone through the STC process. The ILO's members cannot feign ignorance since the ILO has made information about gender-based violence and harassment both accessible and part of the maritime conversation since 2001. Instead, the ILO's failure to amend the MLC reflects far graver drawbacks in the ILO's legislative design: bureaucratic pathologies within the ILO and its interinstitutional relationship with the IMO.

Consider that – although the MLC offers women no concrete protections as of 2024 – in 2016, the issue of violence and harassment was on multiple radars. The STC adopted amendments to the MLC's guidelines to suggest that governments consider bullying and harassment an occupational safety and health issue. That year, the United States Department of Transportation published the results of an audit of the U.S. Merchant Marine Academy (USMMA),

125. See *WOMEN SEAFARERS*, *supra* note 1, at 27.

126. *Id.*

127. See ILO, High-level Tripartite Working Group on Maritime Labour Standards, Final Report 1, ILO Doc. TWGMLS/2001/10 (Dec. 2001), <https://webapps.ilo.org/public/english/standards/relm/gb/docs/gb283/pdf/twgmls-fr.pdf> [<https://perma.cc/H63S-EL27>].

the training base for U.S. merchant marine officers.¹²⁸ The audit revealed that 63 percent of women respondents experienced sexual harassment, and 17 percent had been sexually assaulted.¹²⁹

Despite those parallel activities in 2016, no government, shipowner, or seafarer representative raised the issue of gender-based violence and harassment at the STC. Instead, six years later, in 2022, the U.S. government raised the issue.¹³⁰ Recall that the United States has not ratified the MLC and, therefore, could not propose the issue at the STC as an amendment. Instead of spending energy trying to trigger the ILO's amendment procedure, the U.S. government turned to the IMO, where it holds participatory rights. That effort proved successful. The IMO's sub-committee on health and safety ultimately recommended that a joint IMO/ILO Tripartite Working Group ("JTWG") take up the issue of sexual assault and violence.¹³¹ However, its recommendation had to be endorsed by the IMO Council, the organization's highest body, which took an additional six months beginning in July 2022.¹³² It took the Council another year, until 2023, to invite the JTWG to "explore ways to facilitate the collection of data on bullying and harassment including sexual assault and sexual harassment."¹³³ The issue effectively bopped around IMO committees, leaving women without immediate protections in the meantime.

While the IMO committees and subcommittees continued meeting over gender-based violence and harassment, in 2022, the ILO's STC proposed a resolution on sexual assault and harassment in the maritime sector, thus injecting the topic into the ILO's purview.¹³⁴ The resolution also asked the ILO's Governing Body for permission for the JTWG to consider the matter further.¹³⁵

128. See DEP'T OF TRANSP., U.S. MERCHANT MARINE ACADEMY CULTURE AUDIT, DELIVERABLE 4, FINAL REPORT (Dec. 2016), <https://www.usmma.edu/sites/usmma.dot.gov/files/docs/USMMAReport%20508.pdf> [<https://perma.cc/A4VB-HKX6>].

128. *Id.* at iv.

129. *Id.*

130. That sub-committee was established to ensure that the IMO was sensitive to seafarers' "human element" of seafaring, particularly in the wake of COVID-19, and thus offered an opening to discuss issues affecting women. See IMO, Sub-Committee on Human Element, Training and Watchkeeping, 8th Sess., IMO Doc. HTW 8/WP1 (Feb. 2022), <https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/HTW-8th-session.aspx> [<https://perma.cc/L8LT-ZA69>]; IMO, Maritime Safety Committee, Human Element, Safety and Watchkeeping, Sexual Assault and Harassment 1, IMO Doc. MSC 105/16/3, (2022), https://safety4sea.com/wp-content/uploads/2022/04/MSC-Sexual-assault-and-harassment-2022_04.pdf [<https://perma.cc/82NY-H9PM>] ("At HTW 8, the United States stressed that sexual assault and harassment discussions should take place at a joint IMO/ILO working group on human element (HE) issues.") [hereinafter MSC 105].

131. See MSC 105, *supra* note 135, at 2.

132. See ILO/IMO Background Paper, *supra* note 3, at 5.

133. *Id.* (citing IMO document C 190/D, para. 4(a).4).

134. See ILO, Special Tripartite Committee of the MLC, 2006, Fourth Meeting (Part II) – 5 to 13 May 2022, Resolution on Harassment and Bullying, including Sexual Assault and Sexual Harassment, in the Maritime Sector, ILO Doc. STCMLC/Part II/2022 (May 13, 2022), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/genericdocument/wcms_845215.pdf [<https://perma.cc/5W5C-Z8F2>].

135. See *id.*

The ILO's Governing Body noted the STC's report in November 2022.¹³⁶ Like the IMO's Safety Committee, the ILO's Governing Body requested that the JTWG further study the issue of sexual violence and harassment.¹³⁷ And thus, the urgent issue of gender-based violence and harassment was, once more, kicked off to a working group for further thinking.

It took the JTWG an additional *two years*, until March 2024, to get the blessing of both the IMO and ILO to submit its report on sexual harassment and violence.¹³⁸ Based on those efforts, at its next meeting in April 2025, the STC will finally consider proposals to amend the MLC to incorporate Convention No. 190's specific language on gender-based violence and harassment.¹³⁹

That it would take the group that long to evaluate abuses reported and documented since 2001 is astounding. At the time of writing, the STC is still deliberating on the matter. What went wrong? The ILO failed to protect women in 2006 when it adopted the MLC. It designed an accelerated amendment process that can only be triggered by members that hail from ratifying countries, leaving countries like the United States little recourse to raise issues of regulatory concern. Of course, one could argue that countries should only have a seat at the table if they ratify the Convention. Still, it is difficult to justify that normative position given that countries like the United States are often precluded from ratifying international treaties owing to existential issues in domestic constitutional law rather than ideological opposition to the treaties themselves.

In addition to participatory hurdles, the MLC and its ability to adapt suffers from inter-institutional pathologies. The line between the IMO and ILO's regulatory jurisdictions blurred in 2006, raising obvious questions about whether countries like the United States should try to knock on the ILO's doors, ratification status notwithstanding, or whether they should focus on the IMO instead. The ILO's partnership with the IMO is great on paper but invites significant delays as different committees and sub-committees jockey for position while worrying about overstepping. Consider how multiple working groups and discussions between the ILO and IMO had to take place—for several years, beyond the promised three to four year period mentioned earlier—to trigger than STC's consideration in 2025.

136. See Int'l Lab. Org., Governing Body, 346th Sess., Legal Issues and International Labour Standards Section, GB.346/LILS/3= Draft decision (Oct. 7, 2022), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meetingdocument/wcms_857737.pdf [https://perma.cc/N857-GGJF].

137. *Id.*

138. See Joint ILO/IMO Tripartite Working Group to Identify and Address Seafarers' Issues and the Human Element, Report to the IMO Maritime Safety Committee and the ILO Governing Body, ILO/IMO Doc. JTWG-SIHE 2/6 (March 12, 2024), <https://www.ilo.org/resource/record-proceedings/iloimo-jtwg-sihe-26-report-second-meeting-joint-ilo-imo-tripartite-working-0> [https://perma.cc/GG3L-U2VL].

139. *Id.* ¶ 6.2.2.

IV. Implications for International Law

International law governing transnational work stands at a precipice. States designed international organizations like the ILO and IMO to adopt and supervise standards that regulate international law. However, global value chains, international trade, and the global production of goods and services evolve swiftly and demand flexibility and adaptability. Those demands place the utility and relevance of international law, with its diplomatic processes and bureaucratic pathologies, in question.

The maritime sector illustrates how international law must now consider overlapping jurisdictions, cross-border interactions, and legal protections throughout transnational voyages. The ILO's procedures—even its so-called “accelerated” procedures—are too cumbersome to implement the necessary and swift changes that the sector demands. While the ILO continues to operate as usual, with its seemingly endless deliberations and inter-organizational dialogue, women seafarers across the globe face inhumane and unacceptable conditions of work. They need less diplomacy, bureaucracy, and political compromise and more action.

If international law cannot keep up with transnational work, where does that leave transnational workers? The fluctuating conditions brought on by increased global demand for goods, an increase affecting seafarers, who transport goods to their destinations, and the workers who harvest, collect, and make those goods, are left waiting for suitable solutions. As transnational work becomes more complicated, not only geographically but also substantively, implicating overlapping legal regimes and jurisdictions, international law, as conceived initially, no longer appears as relevant or as helpful as it once did. The ILO and IMO's efforts to protect women seafarers suggest that workers may have to wait *longer* while all the international organizations with equity at stake exhaust their bureaucratic channels.

The atrocities that women seafarers face at sea should serve as a wake-up call to international organizations hoping to remain relevant in an increasingly transnational world. Those organizations must review their procedures to avoid parallel and duplicative discussions. Each meeting, debate, and research project delays the process of amendments, even when lives are at stake. International organizations like the ILO must be willing to hold immediate sessions, skip the middle agents, and adopt amendments and revisions within short time frames. Discussing, negotiating, and adopting exigent changes should take six weeks, not 23 years.

Perhaps the lessons from the maritime sector also show that international organizations cannot regulate transnational work alone. In their joint background report, the ILO and IMO noted the widespread initiatives undertaken by the ITF, ICS, and the International Seafarers Welfare and Assistance Network (ISWAN) to create guidelines, helplines, and other platforms for seafarers to raise complaints of violence and harassment.¹⁴⁰ The ITF and ICS created the guidelines on sexual violence and harassment at sea that the STC

140. See ILO/IMO Background Paper, *supra* note 3, at 31-34.

incorporated into the MLC. While those initiatives offer seafarers valuable assistance, the non-binding nature of civil society work does little to combat the fractured legal protections and lack of sanctions for perpetrators. International organizations should find ways to elevate the legal implications of those initiatives to ensure they are rooted in accountability and responsibility. For instance, the ILO's MLC could have incorporated the ITF and ICS guidelines on gender-based violence and harassment at sea in the mandatory sections of the MLC and required governments to report on their compliance with those guidelines.

International organizations like the ILO may prove incapable of making those structural and institutional changes. In that case, they will lose their relevance in the world of transnational work, leaving a regulatory gap that will surely be filled, perhaps by the same governments that once delegated such responsibilities to international organizations in the first place. After all, the IMO and ILO's committee records are replete with interventions from countries like Korea, Australia, and the United States, which sought to motivate those committees to act swiftly. Rather than wait on international organizations, those powerful governments could decide to use their market power and influence to drive change. For instance, in the maritime sector, they could allow vessels to access their ports only if those vessels show that they carry on board sexual violence harassment policies and dedicated mechanisms for gender-based complaints.

On the other hand, as other contributions to this Symposium undoubtedly suggest, state-led enforcement is no panacea for transnational workers. It is laden with power imbalances, self-interest, and geopolitics.¹⁴¹ During the pandemic, for example, the same states now championing new protections against gender-based violence at sea were complicit in their disregard for seafarers' fundamental rights in the name of national security.¹⁴² Governments face competing demands, leaving them unlikely champions of seafarers' broader transnational rights.

These drawbacks have led many (including myself) to call on international organizations to take back the reins and more capably administer legal protections, particularly for transnational workers.¹⁴³ Perhaps it will take competition from states and civil society, coupled with diminishing relevance, for international organizations like the ILO to overcome pathologies and implement swift and lasting change. Until then, women seafarers and vulnerable workers along global supply chains must continue to face harrowing conditions while waiting for international bureaucrats to act.

141. For a description of how states' relative power balances and interests affect their ability to deter violations of labor rights in trade relationships, see Desirée LeClercq, *A Worker-Centered Trade Policy*, 61 *COLUM. J. TRANSNAT'L L.* 733, 756-70 (2023).

142. See LeClercq, *supra* note 20, at 289-91.

143. *Id.* at 307-11 (proposing that the ILO's mandate permit it to make binding and mandatory adjudications).

Conclusion

Women seafarers deserve more robust legal protections from sexual violence and harassment than international law currently provides. The international organizations responsible for protecting them, the ILO and IMO, adopted new legal instruments to rapidly change their international legal instruments in pace with globalization. Those changes promised that the organizations and the international laws they promulgate could remain up to date with evolving needs and demands.

Despite those promises, international organizations and their laws remain bogged down in bureaucratic conversations, sluggish momentum, and political maneuvering. The residual violence that women face, notwithstanding pathbreaking legal instruments like the MLC and its accelerated amendment procedure, is a testament to a broader failure in international law. If the ILO cannot galvanize quick action in the maritime sector, despite benefitting from a technical understanding of gender-based violence and clear political support for adding new protections into its maritime law, how can it claim to champion the rights of transnational workers?

International organizations such as the ILO and IMO must design new processes that avoid overlapping reviews and other unnecessary formalities. The ILO proved in 2006 that it can adopt revolutionary instruments that transcend boundaries and establish new amendment procedures. Since then, it has become evident that further work is needed. The ILO must rise to the occasion or risk irrelevance in the transnational world of work, not to mention the residual and unnecessary gender-based violence and harassment at sea.