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# The ILO, EU and British Laws and Policies on Violence at Work

Jo Carby-Hall \*

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## 1. Introductory Remarks

The International Labour Organisation put it aptly when it stated that:

Long ignored, denied or considered to be a harsh reality which just has to be accepted as part of life, it is only recently that violence at work has started to receive the attention that it deserves as a serious safety and health hazard which has a high cost for victims and enterprise performance alike. While many people were of course aware of the existence of violence at work, few voiced their concern or considered it a specific workplace issue<sup>1</sup>

Thanks to this instigation, the violence at work phenomenon has received global attention and awareness in recent years. Violence at work has enormous cost implications on establishments, on individuals and on local and national economies.

It is disturbing to note that workplace violence is on the increase globally and has reached epidemic proportions in some countries. The ILO's publication entitled "Violence at work"<sup>2</sup> makes for some disturbing reading. The authors talk of "Bullying, harassment, mobbing and allied behaviors (*sic*)" being "as damaging as outright physical violence." They go on to say "Today, the instability of many types of jobs places huge pressures on workplaces, and we are seeing more of these forms of violence." Terrorism, according to the authors, has an important role to

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<sup>1</sup> ILO "Prevention of violence at work" 15 June 2009, [www.ilo.org/safework/info/WCMS\\_108511/lang-en/index.htm](http://www.ilo.org/safework/info/WCMS_108511/lang-en/index.htm) (accessed 12 February 2013)

See the ILO's first edition of its Report entitled *Violence at Work*, of 1998.

<sup>2</sup> 3<sup>rd</sup>. Edition 2006 authored by V. Di Martino and D. Chappell.

play in this field describing it as “one of the new faces of workplace violence contributing to the volatile mix of aggressive acts taking place on the job.” Furthermore, professions once regarded in both developed and under-developed countries<sup>3</sup> as safeguarded from violence at work are now exposed to such violence.

This workplace violence is much broader than physical violence. It includes any act in which a person is abused, threatened, assaulted or intimidated in his/her employment. It includes harassment<sup>4</sup>, physical attacks<sup>5</sup>, threatening behaviour<sup>6</sup>, verbal and written threats<sup>7</sup> and verbal abuse<sup>8</sup>. Other examples of workplace violence could include vandalism, damage to property, physical assault, creating rumours, pranks, arguments, sabotage, psychological trauma, anger-related incidents, arson, rape, manslaughter and murder.

Workplace violence is not limited to the workplace *per se*. Work-related violence may occur at functions held outside the workplace as, for example office dinners or lunches, exhibition sites, trade shows and conferences held away from the workplace; social functions, such as Christmas or birthday dinners or in customers’ private residences resulting from work.

Also accentuated is gender-based violence at work. On the occasion of the International Women’s Day 2013 event<sup>9</sup>, the ILO Director-General maintained that:

Violence at the world of work is deeply injurious to women and men and there are obvious consequences for their families and societies and communities. This is a human rights issue, as well as a health, education, legal and socio-economic problem. Women are often particularly vulnerable to violence-whether because of the nature of their jobs or their overall status in society [...] we are all united by the compelling moral imperative to put an end to gender-based violence. But there is also a strong business case for eliminating workplace violence. The costs to enterprises include absenteeism, increased turnover, lower job performance

<sup>3</sup> For example, health services, teaching in schools, local and central government social services, library services, care homes, sporting events social security and welfare offices and so on.

<sup>4</sup> Including behaviour which humiliates, embarrasses, demeans, annoys, alarms, verbally abuses a person, and is, or expected to be, unwelcome. It includes also gestures, offending words, bullying, intimidation and many other inappropriate activities.

<sup>5</sup> Kicking, shoving, pushing, and similar acts.

<sup>6</sup> Spitting, damaging or destroying property, shaking fists, rude gestures, throwing objects and so on.

<sup>7</sup> Any gesture or expression of an intent to inflict harm, damage, etc.

<sup>8</sup> Insults, swearing, or condescending language.

<sup>9</sup> Gender-based violence *STOP violence at work* held in Geneva on 8 March, 2013.

and productivity, negative public image, legal/litigation fees and related costs and rising insurance premiums. For workers, obviously such situations can lead to heightened stress, loss of motivation, increased accidents and disability, and even death. Integrated, gender-responsive occupational safety and health policies and a preventive culture make a positive difference and we must move forward on that basis”<sup>10</sup>

Gender-based violence, it should be carefully noticed, is clearly at odds with the concept of decent work. As a consequence of the global increase of violence at work, the ILO has adopted a number of measures on worker protection and dignity at work. One of these is the ILO Code of Practice on workplace violence in service sectors and measures to combat this phenomenon<sup>11</sup>. This Code addresses the extent and severity of violence at the workplace in the services industries. Furthermore, in partnership with the World Health Organisation, the International Council of Nurses and Public Services International, the ILO has published framework guidelines to combat violence at the workplace in the health services.

On the basis of these considerations, the present paper sets out to deal with a number of important issues which relate to the foregoing topics. First, it is proposed to define and analyse what the term “violence at work” means on the international, European and national stages. Secondly, the pattern of laws - both soft and hard laws - on violence, harassment, *etc* at the international, European and national levels will be analysed and evaluated. Thirdly, an evaluation will take place on occupational groups most exposed to violence including work-related factors which increase the risk of violence. Fourthly, some brief statistics relating to violence on the international, European and national platforms

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<sup>10</sup> ILO Conventions and Recommendations which relate to violence at work include the Convention on Equality in Employment and Occupation No. 111 as a tool to improve law and practice on sexual harassment; the Convention on Indigenous and Tribal Peoples No. 169 which treats special measures to ensure that indigenous/tribal people are protected from sexual harassment; the Domestic Workers Convention No. 189 which bans all forms of abuse, harassment and violence with regard to highly vulnerable and highly feminized group of workers and the HIV and AIDS Recommendation No. 200 which requires workplace measures to reduce the transmission of those diseases and alleviate its impact by actions to prevent and prohibit violence and harassment.

<sup>11</sup> Of 15 October, 2003. Published originally in 2004, the 3 edition was published in 2006. Its contents treat 1. Understanding violence at work; 2. Responding to violence at work; and 3. Future action. Therein will be found a range of aggressive acts such as homicide, a variety of assault types including sexual harassment, mobbing and bullying, verbal and other types of threats and a variety of abusive practices. Something on terrorism and mass murders will also be found in that publication.



will feature. Fifthly, an examination will be made of vulnerable people prone to violence and harassment, such as women. Finally, some concluding thoughts will follow.

## 2. Definition

Although organisations<sup>12</sup> and researchers<sup>13</sup> have made attempts at defining the term “violence at work” in *discreet* aspects of violence, there exists, so far, no single official definition which covers *adequately* and *universally* this expression. The reason for this phenomenon is that the expression itself, being generic in character<sup>14</sup>, is virtually impossible to define adequately and universally. This being the case, instead of attempting a universal definition which would, of necessity, prove inadequate, it is proposed to analyse the circumstances which fall within the realm of this expression. Such examination would give the reader a taste of the breadth of the term “violence at the workplace”<sup>15</sup>.

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<sup>12</sup> See for example, the ILO’s, the World Health Organisation’s (WHO) and International Council of Nurses’ (ICN) Framework Guidelines for addressing workplace violence in the health sector” 1 January 2005. Source: [www.ilo.org/safework/info/instr/WCMS\\_108542/lang-en/index.htm](http://www.ilo.org/safework/info/instr/WCMS_108542/lang-en/index.htm) (Accessed on 15 February, 2013). At the European level, see also *Workplace Violence and Harassment: A European Picture*, Luxembourg Publication Office of the EU, 2010, par. 1.3 *Definitions for violence and Harassment at Work*, at 16 to 22.

<sup>13</sup> See, for example, Carol Brodsky in her book on harassment at work which defines harassment as «repeated and persistent attempts by one person to torment, wear down, frustrate, or get a reaction from another. It is treatment which persistently provokes pressures, frightens, intimidates, or otherwise discomforts other people». C. Brodsky, *The Harassed Worker*, Lexington Books, D.C. Health, Toronto, Ontario, Canada, 1976.

<sup>14</sup> Violence at work covers a wide range and rich variety of violent behaviour ranging from homicide to physical and psychological violence, sexual and other kinds of harassment, bullying, mobbing and other workplace and work related acts away from the workplace.

<sup>15</sup> The reader should bear in mind the different modern meanings of the word “workplace.” Many workers are piece workers, home workers, teleworkers, peripatetic workers or workers working abroad for a British based company. The word “workplace” is thus endowed with a wide variety of sites at which violence, etc. could occur. Furthermore, such violence needs not occur at the workplace itself. It can be work-related and cover incidents which *relate to one’s work* and which could be committed away from the workplace. An example could include a grudge by an employee against the employer for not promoting him which manifests itself by an attack on the employer’s residence or when the employer is travelling to work or elsewhere.

*The International Stage*

On the international stage, the International Labour Organisation (ILO) considers that violence at work has many facets. It may include violence which is physical and /or psychological as well as repetitive actions<sup>16</sup>.

According to the ILO, mobbing and bullying belong to the same family of displeasing and unwanted behaviour<sup>17</sup> except that mobbing is perpetuated by a group against an employee whereas bullying is perpetuated by a single individual against an employee or a group of employees.

The ILO's Code of Practice<sup>18</sup> on workplace violence in the service sectors and measures to combat this phenomenon distinguishes between external and internal violence, classified them respectively as violence taking place between workers including managers and supervisors and any other person present at the workplace, and violence taking place in the workplace between workers themselves including managers and supervisors.

Scholars such as Mayhew<sup>19</sup> have refined that definition by describing external violence in circumstances where outsiders are involved, as for example an attack on a bank by armed robbers; violence by customers towards staff as for example violence towards a train ticket collector or social security office staff or again by a violent patient towards hospital staff<sup>20</sup>.

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<sup>16</sup> The term "repetitive actions" treats actions which are *per se* relatively minor in nature but because of their *cumulative* form qualify as violence. Examples include sexual harassment, mobbing or bullying all of which are repetitive.

<sup>17</sup> Such behaviour as intimidation, mocking, insulting, demeaning, false accusations, making up untrue stories, ridiculing, criticising, and so on. See the numerous examples cited in J.R. Carby-Hall, *The Treatment of Polish and Other A8 Economic Migrants in the European Union, Member States*, Bureau of the Commissioner for Civil Rights Protection, Warsaw, 2008, particularly at 205 -211.

<sup>18</sup> A Code of Practice is a non-legislative measure which needs to be distinguished from a legislative one which includes statutory or ministerial legislation. ILO Codes of Practice «set out practical guidelines for public authorities, employers, workers, enterprises and specialised occupational safety and health protection bodies. They are not legally binding instruments and are not intended to replace the provision of national laws and regulations or accepted standards».

<sup>19</sup> C. Meyhew, *Preventing Violence against Health Workers*, paper presented at the Worksafe Victoria Seminar, Australia, 2003.

<sup>20</sup> See, too, the three similar categories of violence suggested by the Californian Occupational Safety and Health Administration, namely Type I planned robbery where the assailant has no legitimate relationship to the workplace and whose aim is to steal; Type II customer, consumer, patient related violence against the affected workplace; and Type III, violence by one employee against another in the workplace.

The World Health Organisation (WHO) is another international body which defines workplace violence as “an intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community that either results in, or has a high likelihood of resulting in, injury, death, psychological harm, wrong development or deprivation.”<sup>21</sup>

A brief analysis of this definition shows that *all acts of violence* are included whether they are private or public, verbal<sup>22</sup> or physical acts<sup>23</sup>, with violence that must be *intentional*<sup>24</sup>. Thus unintentional violence is excluded. Physical *power* must feature, which includes intimidating innuendos and threats made by the perpetrator. The violence must result in the stated *health hazards*<sup>25</sup>, namely injury, death and other harms including psychological harm<sup>26</sup>.

### *The European Stage*

What has been said above also applies at European level, namely that there is no **single uniform** definition of the word “violence” apart from the fact that definitions have been attempted by individual researchers and

<sup>21</sup> Source: E. Krug, L. Dahlberg, J. Mercy, A. Zwi, R. Lazano (eds.), *World Report on Violence and Health*, WHO, Geneva, 2002  
[www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](http://www.who.int/violence_injury_prevention/violence/world_report/en/) (Accessed 4 March, 2013).

<sup>22</sup> As for example, verbal threats or aggressive behaviour where no physical violence occurs (spitting, threatening gestures, verbal hostility) irrespective of outcome as well as physical violence (punching, assaults, aggravated assaults, grievous bodily harm, homicide).

<sup>23</sup> For example, physical aggression (punching, assaults, aggravated assault, grievous bodily harm, homicide).

<sup>24</sup> See the definitions by scholars where *intent* to cause harm predominates. K. Björkqvist, K. Österman, K.M.J. Lagerspetz, *Sex Differences in Covert Aggression among Adults*, *Aggressive Behaviour*, 1994, 20, 27-33, who define harassment as «repeated activities with the *aim* of bringing mental (but sometimes also physical) pain and directed towards one or more individuals who, for one reason or another, are not able to defend themselves» (emphasis added).

<sup>25</sup> This is inevitable since the WHO is primarily concerned with health issues.

<sup>26</sup> Psychological illnesses constitute a new development in the British common law relating to the employer’s duty of care towards the employee. See J. Carby-Hall, *Mental Illnesses: The British Labour Law Experience*, in J. Wratny (ed.), *Pravo Pracy w Świetle Procesów Integracji Europejskiej Księga Jubileuszowa Profesor Marii Matey-Tyronicz*, Wolters Kluwer Warszawa, 2011, at 322-363, and J. Carby-Hall, *Employers’ Liability – From Physical to Psychiatric Illnesses*, in L. Bellardi, U. Carabelli, V. Leccese (eds.), *Liber Amicorum. Spunti di Diritto del Lavoro in Dialogo con Bruno Veneziani*, Cacucci Editore, Bari, 2012, at 85-90.

such organisations as health and safety international, European and national institutions.

In 1994 the EU Commission set up an expert meeting to examine the issue of violence at work which came up with the following definition: “Incidents where staff are abused, threatened or assaulted in circumstances related to their work, including commuting to and from work, involving an explicit or implicit challenge to their safety, well being and health”<sup>27</sup>. Such violence includes both its physical and psychological<sup>28</sup> elements.

Although this definition may not be a “single uniform definition”, it is nevertheless widely used by researchers, organisations and the EU Commission. A good example is the Framework Agreement on Harassment and Violence at Work<sup>29</sup>. This Agreement treats both violence and harassment at the workplace<sup>30</sup>. In the words of the Agreement, “harassment occurs when one or more workers or managers are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work”, whereas “violence occurs when one or more workers or managers are assaulted in circumstances relating to work”<sup>31</sup>. Furthermore, “harassment and violence may be carried out by one or more managers or workers for the purpose of violating a manager’s or worker’s dignity, affecting his/her health and/or creating a hostile work environment”<sup>32</sup>.

The Framework Agreement explains the different forms of harassment and violence which can affect the workplace. They include physical,

<sup>27</sup> R. Wynne, N. Clarkin, T. Cox, A. Griffiths, *Guidance of the Prevention of Violence at Work*, Brussels, European Commission DG-V, Ref. CE/VI-4/97, 1997.

<sup>28</sup> The word “implicit” which means something which is “expressed indirectly” or “absolute and unquestioning” or again “contained in, although not stated openly” (as defined by the Collins English Dictionary at 427) in the definition indicates that the psychological aspect is included.

<sup>29</sup> Entered into by BUSINESSEUROPE, UEAPM, CEEP, and the ETUC on 26 April, 2007.

<sup>30</sup> Framework Agreement *Ibid.* 1.Introduction. The EU laws referred to in that agreement include, *inter alia*, Directive 2000/43/EC of 29 June, 2000 (Art.2(3) relating to equal treatment between persons irrespective of racial or ethnic origins; Directive 2000/78/EC of 27 November, 2000 (Art. 2(3) establishing a general framework for equal treatment in employment and occupation; Directive 2002/73.EC of 2002 amending Council Directive 76/207/EEC of 9 February, 1976 on equal treatment for men and women regarding access to employment, vocational training and promotion and working conditions and Directive 89/391/EEC on encouraging improvements in the health and safety of workers at work.

<sup>31</sup> Framework agreement *Ibid.* par. 3 Description.

<sup>32</sup> Framework agreement *Ibid.* par. 3 Description.

psychological and/or sexual forms or a one-off incident or more systematic patterns of behaviour. Other forms of harassment and violence can occur amongst colleagues, between superiors and subordinates or third parties such as customers and clients, patients, pupils, students and so on. These forms may range from minor cases of disrespect to more serious acts including criminal offences<sup>33</sup>.

The expressions “harassment”<sup>34</sup>, “bullying” and “mobbing” have been defined variously, but again there is no **universal definition** for those terms. It is suggested by the European Agency for Safety and Health at Work<sup>35</sup> that the reasons for this phenomenon could be the fact that different countries use different expressions. Thus, expressions such as “bullying, mobbing, harassment, psychological harassment, abusive behaviour, emotional abuse and workplace aggression have been used. Sometimes these terms have been used interchangeably; sometimes they mean different things.” Furthermore, in “different countries terms other than bullying are used to indicate similar behaviour in the workplace, for example work or employee abuse, mistreatment, bossing, victimisation, intimidation, psychological terrorisation, psycho-terror, psychological violence, inappropriate treatment or unwanted behaviour.” The rich variety of meanings mentioned above do not help towards finding a universal definition for those expressions but they do give a general meaning and significance as to what is included in the terms harassment, bullying and mobbing.

As suggested by the European Agency for Safety and Health at Work, the expressions “workplace bullying or mobbing” and “workplace harassment” have been mostly defined by scholars such as Heinz Leymann, whose definition of mobbing is:

hostile and unethical communication which is directed in a systematic way by one or a few individuals mainly towards one individual who, due to mobbing, is pushed into a helpless and defenceless position, being held there by means of

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<sup>33</sup> Framework agreement par. 1. Introduction.

<sup>34</sup> *Cfr.* too Art. 2(2) of Council Directive 2002/73/EC which defines “harassment” as a situation «where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment». Sexual harassment occurs where any form of «unwanted verbal, non-verbal or physical conduct of a sexual nature occurs with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating and offensive environment».

<sup>35</sup> In their publication entitled *Workplace Violence and Harassment: A European Picture*, Luxembourg Publication Office of the EU, 2010, at 20.

mobbing activities. These actions occur on a very frequent basis<sup>36</sup> and over a long period of time<sup>37</sup>.

The European Agency mentions other scholars' and researchers' definitions. Ståle Einarsen<sup>38</sup> labels bullying as having "to occur repeatedly over a long period of time, and the person confronted has to have difficulties in defending him/herself. It is not bullying if two parties of approximately equal "strength" are in conflict or the incident is an isolated one"<sup>39</sup>. Hoel and Cooper<sup>40</sup> describe bullying as "a situation where one or several individuals persistently, over a period of time, perceive themselves to be on the receiving end of negative actions from one or several persons, in a situation where the target of bullying has difficulty in defending himself or herself against those actions. We will not refer to a one-off incident as bullying"<sup>41</sup>. Whereas Zapf<sup>42</sup> defines mobbing as "harassing, bullying, offending, socially excluding someone or assigning offending work tasks to someone. It is a process in the course of which the person confronted end (*sic*) up in an inferior position"<sup>43</sup>, Di Martino defines mobbing and bullying as "a form of psychological harassment consisting of persecution through vindictive, cruel or malicious attempts to humiliate or undermine an individual or groups of employees, including unjustified, constant negative remarks or criticisms, isolating a person from social contacts and gossiping or spreading false information"<sup>44</sup>. It is interesting to note that "enjoyment" by the bullying perpetrator is introduced in the definition by O'Moore *et al.*<sup>45</sup>, who state that "only inappropriate aggressive behaviour that is systematic and *enjoyed* is

<sup>36</sup> Footnote inserted in this quotation by the author. According to statistical information, obtained by Leymann, at least once a week.

<sup>37</sup> Footnote inserted in this quotation by the author. According to statistical information obtained by Leymann, at least six months.

<sup>38</sup> And other colleagues at the University of Bergen. S. Einarsen, A. Skagstad, *Bullying at Work: Epidemiological findings in public and private organisations*, in *European Journal of Work and Organisational Psychology*, 1996, 5, 185-201.

<sup>39</sup> Source: See footnote 12 above.

<sup>40</sup> From the United Kingdom. H. Hoel, C.L. Cooper, *Destructive Conflict and Bullying at Work*, Manchester School of Management, University of Manchester Institute of Science and Technology (UMIST), 2000.

<sup>41</sup> Source: See footnote 12 above.

<sup>42</sup> From Germany. D. Zapf, *Organisational, work group-related and personal causes of mobbing/bullying/at work*, in *International Journal of Manpower*, 1999, 20 (1/2), 70-85.

<sup>43</sup> Source: See footnote 12 above.

<sup>44</sup> Source: See footnote 12 above.

<sup>45</sup> A.M. O'Moore, E. Seigne, L. McGuire, M. Smith, *Victims of Bullying at Work in Ireland*, in *Journal of Occupational Health and Safety*, Australia N.Z., 1998, 14(6), 569-574.

regarded as bullying”<sup>46</sup>. Finally, “faceless bureaucracy” may be the perpetrator of bullying in situations where an individual is defenceless<sup>47</sup>. This variety of imaginative definitions by scholars in the fields of mobbing, bullying and harassment gives the reader a good insight into the European thinking on these expressions.

### *The British Stage*

On the British stage there exists an official definition which is both brief and skeletal. The Health and Safety Executive (HSE)<sup>48</sup> defines work-related violence as “Any incident in which a person is abused, threatened or assaulted in circumstances related to their work”<sup>49</sup>. However, meat is added to this skeletal structure through the HSE’s guidance to its enforcing officers. It explains that “the definition includes violence to employees at work by members of the public, whether inside the workplace or elsewhere when the violence arises out of the employees’ work activity”<sup>50</sup>. Verbal abuse and threats are also included in the definition since they lead to physical violence and contribute to the levels of stress experienced by people. The HSE adds to the definition by saying that “physical attacks are obviously dangerous, but serious and persistent verbal abuse or threats can also damage employees’ health through anxiety or stress.” Repeated verbal abuse, which constitutes the most common type of incident, can have the effect of lowering morale in the workplace, developing depression and increasing absences by reason of sickness. Organisations other than the HSE have added sinews to that meat. The DSS “Violence to staff”<sup>51</sup> report talks of

The application of force, severe threat or serious abuse by members of the public towards people arising out of the course of their work whether or not they are on duty. This includes severe verbal abuse or threat where this is judged likely to run into actual violence; serious or persistent harassment (including

<sup>46</sup> The italics in this definition are inserted by the author.

<sup>47</sup> H. Leymann, *Wuxenmobbing psvenska arbetsplatser (Adult bullying at Swedish workplaces)*, Delrapport 1 om frekvenser, Arbetarskyddstyrelsen, Stockholm, 1992.

<sup>48</sup> The Trades Union Congress (TUC) has adopted the HSE’s definition. Source: *Tackling Violence at Work*.

<sup>49</sup> Source: [www.hse.gov.uk/violence](http://www.hse.gov.uk/violence) (Accessed on 30 March, 2013).

<sup>50</sup> This would include violence to staff working in the community or who work alone, violence from pupils towards teachers or ancillary staff and hospital and care home staff from violent patients.

<sup>51</sup> Report of DSS Advisory Committee on Violence to Staff, 1988.

racial or sexual harassment); threat with a weapon; major or minor injuries; fatalities.

“Behaviour which produces damaging or hurtful effects, physically and emotionally, on people” is also added to the definition<sup>52</sup>. Somewhat unusually, the Crime Survey of England and Wales (CSEW) defines violence at work on the basis of the type of offence (assaults or threats); what the victim was doing at the time of the incident (at work or working); and the relationship between the victim and the offender (domestic violence is excluded<sup>53</sup>). Physical assaults include assaults with minor or no injury, wounding and robbery; threats include verbal threats made to or against the victim<sup>54</sup>. The word “violence” is used to refer to both assaults and threats.

Consequently, violence can emanate from people one knows as well as from strangers. Teachers can be threatened by their pupils and patients can attack their nurses and carers. Passengers on trains and buses without tickets can attack railway and bus staff or someone denied social security benefits can take it out on the civil servant concerned. Harassment and violence can be physical, psychological or sexual in nature, it can be a one-off incident or involve more systematic patterns of behaviour, it can be amongst colleagues, between superiors and subordinates, or by third parties such as clients, customers, patients and pupils. Violence may range from minor cases to more serious acts including such criminal offences as murder and manslaughter. Statistics in the UK<sup>55</sup> show that within the 22,000 shop workers reporting incidents of work-related violence, only one in five attacks were physical. Half of the reported incidents were incidents of verbal abuse and a third were threats of violence.

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<sup>52</sup> By the Association of Directors of Social Services in *Guidelines and Recommendations to Employers on Violence against Employees in the Personal Social Services*, 1987.

<sup>53</sup> Incidents in which there is a domestic relationship between the offender and the victim, such as current or former partners, relatives or household members, are all excluded because such cases are likely to be very different to cases of violence at work.

<sup>54</sup> The CSEW analysis is based on victims of working age in employment which includes men aged 16 to 64 and women aged 16 to 64 years of age who said they were in paid work. It is readily noticeable that the criteria are limited although the definition based on the sources is an interesting one.

<sup>55</sup> Source: British Retail Consortium crime survey for 2009.



### 3. Soft and Hard Laws Relevant to Violence at Work

The laws relating to violence at work – whether hard or soft ones – will be examined and evaluated by observing the previous divisions of the international, the European and the British patterns.

#### *The International Pattern*

It will be recalled that on the international stage the tool of the ILO to reduce workplace violence in the service sectors is its Code of Practice<sup>56</sup> which is a document which gives guidance to a variety of states and organisations<sup>57</sup> and is not a legally binding document. The Code of Practice is thus soft law which provides advice to those responsible<sup>58</sup> for addressing workplace violence in the services sectors<sup>59</sup>. The Code promotes a proactive approach to prevention based on occupational safety and health management systems.

Four guiding principles govern the Code<sup>60</sup>. These are (i) a healthy and safe work environment<sup>61</sup> which facilitates optimal physical and mental health at work which can help prevent workplace violence; (ii) social dialogue<sup>62</sup> as a key element in the successful implementation of anti-violence policies/programmes<sup>63</sup>; (iii) policy or action against workplace violence to be directed at promoting decent work and mutual respect and combating discrimination at the workplace<sup>64</sup>; and (iv) promoting gender equality to help reduce workplace violence.

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<sup>56</sup> Code of Practice on Workplace Violence in the Services Sectors and Measures to Combat this Phenomenon, October, 2003.

<sup>57</sup> Namely, policy makers in government agencies, employers' and workers' organisations, occupational and health organisations, human resources managers, trainers and workers. In the words of the ILO, it is «intended to promote dialogue, policies and initiatives “to repudiate violence and remove it from the workplace now”».

<sup>58</sup> Namely governments, employers and workers.

<sup>59</sup> It includes commerce, education, financial and professional services, health services, hotels, catering, tourism, the media and entertainment industries, public service, transport and utilities.

<sup>60</sup> Code of Practice par. 1.4.

<sup>61</sup> In accordance with the provisions of the Occupational Safety and Health Convention, 1981, No. 155.

<sup>62</sup> Between employers, workers, trade unions and if appropriate the competent authority (as for example in Great Britain the Health and Safety Executive) (HSE).

<sup>63</sup> Such dialogue is enshrined in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow up.

<sup>64</sup> In accordance with the Discrimination (Employment and Occupation) Convention, 1958, No. 111.

A *policy* against workforce violence should be put in place<sup>65</sup>. So far as it is reasonably practicable, the policy should promote workplace practices which help eliminate workplace violence. Such policy should address a definition of workplace violence; prepare a statement that no workplace violence would be tolerated<sup>66</sup>; an engagement to support any action targeted at creating an environment free from workplace violence; the provision of a fair complaints system; the provision of information, education, training and other relevant programmes; measures to prevent, control and eliminate workplace violence; measures relating to intervention and management of violent incidents; a commitment to effective communication of a policy; confidentiality.

The Code provides for the *allocation of responsibilities* to supervisors, managers and others to implement policies and practices which discourage workplace violence<sup>67</sup>. *Social dialogue* is emphasised in a number of fields<sup>68</sup>. Social dialogue on violence should engage at various levels<sup>69</sup>, in various forms<sup>70</sup> and ways<sup>71</sup>. Social dialogue on workplace violence should be developed on an ongoing basis and be aimed at the protection of safety and health at the workplace. The social partners should monitor and evaluate workplace violence.

A great deal is said in the Code on *organising*,<sup>72</sup> with roles and responsibilities imposed on governments<sup>73</sup>, employers<sup>74</sup>, workers<sup>75</sup>, and the general public, customers and clients<sup>76</sup>.

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<sup>65</sup> Code of Practice par. 2.1 to 2.3.

<sup>66</sup> Whether from within the workforce or from third parties such as clients and customers.

<sup>67</sup> Code of Practice par. 2.4.

<sup>68</sup> *Ibid.* par. 2.5.

<sup>69</sup> Namely national, sectoral, enterprise and workplace.

<sup>70</sup> Namely negotiation, consultation, and exchanges of information.

<sup>71</sup> For example formal and informal.

<sup>72</sup> Code of Practice par. 3.1 to 3.4.

<sup>73</sup> Governments should assume leadership in the development and application of preventative interventions in research, the offer of guidelines, legislation and regional and international collaboration (par. 3.1.1).

<sup>74</sup> Who should have policies and procedures to eliminate workplace violence, for example, risk reduction and management, the inclusion of violence prevention in national, sector and workplace/enterprise collective agreements, personnel policies to promote respect and dignity at work, and grievance and disciplinary procedures treating violence at the workplace (par. 3.1.2.1). Employers should initiate programmes which inform, educate and train workers on the prevention of workplace violence (par. 3.1.2.2.).

<sup>75</sup> Who should take all reasonable care to prevent, reduce and eliminate the risks associated with workplace violence by co-operation with employers (i) on occupational safety and health committees (in accordance with the Occupational Safety and Health

Much is also said in the Code on *competence, information and training*. The employer has a duty to train workers on a periodic or continuous basis as required and should initiate programmes which inform workers on the prevention of workplace violence<sup>77</sup>. There should be included training for managers and supervisors<sup>78</sup>.

*Information* features prominently in the Code. Information on workplace violence<sup>79</sup> should be made available by employers in collaboration with workers' representatives to workers, supervisors and managers.

Employers should establish, maintain and communicate workplace violence management system documentation<sup>80</sup> and communications between management and workers should be enhanced<sup>81</sup>.

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Recommendation, 1981 (No. 164); (ii) to develop risk assessment strategies and prevention policies; (iii) in implementing workplace violence prevention policies; (iv) in endeavouring to include provisions on the prevention of workplace violence in collective agreements; (v) in providing information on workplace violence prevention; (vi) in ensuring that factors which increase the risk of workplace violence are addressed by workers.; and (vii) report acts of violence at the workplace (par 3.1.3.)

<sup>76</sup> These being key stakeholders in the prevention of workplace violence, their representatives should take part in the development of policies and strategies to prevent workplace violence (par. 3.1.3.).

<sup>77</sup> Training could include the improvement of the ability to identify potential violent situations; improving the capacity of event appraisal; instilling interpersonal communication skills to defuse a potential violent situation; creating a supportive environment; assertiveness training and self-defence training (par. 3.2.1.).

<sup>78</sup> Such staff should receive training on the organisation's policy regarding violence; on identifying behaviour which may indicate a risk of workplace violence; improving methods to eliminate workplace violence; support recovering workers; keeping confidentiality in cases of violence; creating an environment based on mutual trust (par. 3.2.2.).

<sup>79</sup> To be included is (i) information on the nature and causes of workplace violence; (ii) information on the extent and areas of concentration of workplace violence; (iii) suggested measures to prevent workplace violence; (iv) information on gender, multicultural diversity and discrimination to develop sensitivity; (v) information on the laws and regulations covering violence; and (vi) information on the services available to assist victims of workplace violence (par. 3.2.3.).

<sup>80</sup> This should include (i) a health and safety policy on workplace violence; (ii) a system of recording patterns of different categories of workplace violence; (iii) arrangements, procedures and instructions in a way which is understood by those who have to use it; (iv) reasonable access to records relevant to workplace violence taking into account the issue of confidentiality; and (v) records which include categories of workers' exposures, results of monitoring and of acts of workplace violence (par. 3.3.).

<sup>81</sup> For example (i) by establishing communication channels on an ongoing basis for information sharing, (ii) by establishing special communication channels in periods of reform and organisational change; (iii) by providing feedback procedures; and (iv) by time being made available for dialogue, information sharing and problem-solving (par. 3.4.).

Much is said in the Code of Practice about *planning and implementation* as well. The organisation's existing violence management system should be reviewed<sup>82</sup>. Employers and workers or their representatives should jointly assess the current effects of violence in the workplace<sup>83</sup>. Risk assessment should be conducted with worker and employer participation.<sup>84</sup> Acts of violence at the workplace should be recorded<sup>85</sup>. At sector, national and international levels, a comprehensive approach involving governments, employers, workers and their representatives is required to collate and assess data from various sources on violence in the services sectors<sup>86</sup>.

In the *implementation* field, arrangements should be made for adequate implementation of a management system dealing with workplace violence and, where appropriate, response to workplace violence<sup>87</sup>.

The Code treats *control measures*<sup>88</sup> with strategies to prevent, reduce, manage and cope with violence. In developing policy and strategies on

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<sup>82</sup> *Code of Practice* par. 4.1.

<sup>83</sup> The following indicators should provide useful information for identifying the magnitude of the problem at a given workplace, namely (i) national and local surveys on the extent of violence in the community; (ii) surveys which have been carried out in similar workplaces; (iii) absenteeism; (iv) sick leave; (v) accident rates; (vi) personnel turnover; and (vii) opinions of supervisors, managers, workers and their representatives, safety personnel, occupational health and social services personnel (par. 4.1.1.).

<sup>84</sup> In conducting a risk assessment of workplace violence, account should be taken of the following possible signs. Namely (i) physically injuring or assaulting a person leading to actual harm; (ii) intense ongoing violent abuse such as verbal abuse, including swearing, insults or condescending language, aggressive body language indicating intimidation, contempt and disdain, harassment, including mobbing, bullying, racial and sexual harassment; (iii) expression of intent to cause harm, including threatening behaviour, verbal or written threats (par. 4.1.2.).

<sup>85</sup> Employers should review this experience in order to identify patterns and trends, including (i) identifying sources of workplace violence as being internal or external; (ii) categories of severity; (iii) incidence of violence in particular area/task categories; (iv) perpetrator and victim characteristics; (v) forms of violence; (vi) possible contributing factors, such as delays in service provision; (vii) situational contexts (home visits, "over – the – counter" services, conditions outside work premises); (viii) other risk factors such as time of day or night (par. 4.1.3.).

<sup>86</sup> (i) Subsectors and occupations at major risk of violence should be identified (ii) Standardisation of sub –categories used in recording procedures such as abuse, threat and assault should be pursued; (iii) statistics on work violence need to be collated by those working in the criminal justice system and integrated in those collated by the occupational safety and health authorities and harassment data from equality bodies, as well as human resources data from individual organisations; (iv) when substantial national data is available, governments should chart trends and evaluate the effectiveness of different prevention initiatives (par. 4.1.4.).

<sup>87</sup> *Code of Practice*, par. 4.2.

<sup>88</sup> *Ibid.* 4.3.

work violence, special consideration should be given to specific issues, namely that workplace violence is detrimental to the functioning of the workplace and the quality of services<sup>89</sup>. An analysis of the full range of causes which generate violence would be helpful in defining better prevention strategies. Where preventive measures have proved to be particularly effective, they should be given priority wherever possible. Short, medium and long-term objectives and strategies should be identified at the earliest stages in order to organise action towards realistically achievable goals within an agreed time frame. Action should be articulated in a series of fundamental steps which include workplace violence recognition, risk assessment, intervention, monitoring and evaluation<sup>90</sup>.

*Awareness-raising* and *cooperation* in combating workplace violence feature in the Code are important aspects, too<sup>91</sup>. The Code also provides for *organisational preventive measures* by means of communication<sup>92</sup> and work practices<sup>93</sup>. The *improvement of the work environment* is mentioned and treats the physical environment<sup>94</sup> and work security issues<sup>95</sup>. *Incident preparedness*<sup>96</sup>,

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<sup>89</sup> Action taken against such problems is an integral part of organisational development and the promotion of decent work.

<sup>90</sup> *Code of Practice*, par. 4.3.1.

<sup>91</sup> Governments, employers, workers and their representatives should be actively engaged in giving priority to the reduction in violence including measures aimed at (i) enhancing recognition of workplace violence as a major threat to health and safety, service efficiency, productivity, equal treatment and decent work; (ii) disseminating information on workplace violence; (iii) monitoring and examining workplace violence and providing opinions, proposals and considerations to governments, legislative institutions and the community. Furthermore governments, employers, workers and their representatives should pursue local, regional and international cooperation with the aim of reducing workplace violence (par. 4.3.2.).

<sup>92</sup> Suggestions are made concerning communication. Improved communication can reduce the risk of workplace violence. This should take the form of (i) timely and adequate information to the public and clients; (ii) opportunities given to the client to comment on the quality of service and consideration given to those comments; (iii) measures to deal with complaints (par. 4.4.1.).

<sup>93</sup> There are also suggestions made regarding work practices. Preventive measures concerning work practices should include consideration of (i) staff levels; (ii) service capacity and resources; (iii) workload; (iv) scheduling; (v) workplace location; (vi) security of the handling of valuables; (vii) proximity or contact possibility of isolated workers; (viii) specific needs of the service and expectations of the general public (par. 4.4.2.).

<sup>94</sup> The physical features of the workplace may be factors in defusing workplace violence and consideration should be given to noise, lighting and temperature levels (par. 4.5.1.).

<sup>95</sup> To minimise the risk of workplace violence the following should be taken into account. (i) the identification of areas at special risk and the level of risk; (ii) access to and from the workplace, including parking areas and transport facilities; (iii) the existence of

*response plans*<sup>97</sup> and *management support*<sup>98</sup> feature prominently in the Code. Focusing on the individual through medical and other interventions is also recommended. Interventions should be developed to reinforce the capacity of individuals to contribute to the prevention of workplace violence through *medical treatment*<sup>99</sup>, *support*<sup>100</sup>, *debriefing*<sup>101</sup> and *mitigation*<sup>102</sup>.

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security services; (iv) the elimination of impediments to a clear view at the workplace; (v) the identification of restricted areas; (vi) the installation of security systems in dangerous areas following consultation with workers and their representatives; (vii) the banning of weapons except as an inherent requirement of a specific job; (viii) restrictions on alcohol and drugs in the workplace; (ix) access control systems for workers and/or visitors, where appropriate (identification, reception desk(s), gates, etc.); (x) identity documents for workers, where appropriate; (xi) identification of visitors, where appropriate; and (xii) cooperation among enterprises on collective security.(par. 4.5.2).

<sup>96</sup> Violence prevention, preparedness and response arrangements should be established and maintained in all organisations. These arrangements should identify the potential for violent acts at the workplace. A response from the organisation to a violent incident should include a plan of response to the various manifestations within the organisation after a violent incident both in terms of physical and psychological outcomes as far as is reasonably practicable (par. 4.6.).

<sup>97</sup> Management plans for handling situations of workplace violence and associated problems should be set up. The helping of individuals affected by workplace violence should feature in those plans and facilities to deal with the after-effects of violent incidents both physically and emotionally should be available. These plans should include measures to prevent severe psychological and medical problems at the level of post traumatic stress disorder from developing (par. 4.6.1.).

<sup>98</sup> Management should provide support to all workers affected by workplace violence. In particular management should (i) deal with the immediate aftermath of violence and associated problems; (ii) minimise the impact of workplace violence by facilitating or advising on provision of leave where appropriate; (iii) provide information to the immediate families of the workers affected; and (iv) initiate a timely internal investigation where necessary (par. 4.6.2.).

<sup>99</sup> Appropriate medical treatment should be available to workers affected by workplace violence. Where an enterprise has a medical service facility the employer should refer workplace violence victims to that service if there is a competent person able to deal with this issue. Where no in-house medical service exists then workers should be referred to treatment outside the establishment (par 4.7.).

<sup>100</sup> Support to discuss concerns or other support initiatives in consultation with workers and their representatives, may prove beneficial to those affected by workplace violence. For example, counselling and psychological treatment, if appropriate (par. 4.7.2.).

<sup>101</sup> Debriefing as required should be made available by the employer in consultation with workers' representatives, to workers affected by workplace violence. It could include (i) sharing personal experiences with others to defuse the impact of violence; (ii) helping those affected by workplace violence to come to terms with the event and to understand; (iii) offering reassurance and support; focusing on the facts and giving information; and (iv) explaining the help available (par. 4.7.3.).

<sup>102</sup> Governments should promote care and support to victims of workplace violence through public health-care programmes, access to treatment, social security systems,

Regarding *grievance and disciplinary procedures* governments, employers, workers and their representatives should collaborate to develop grievance and disciplinary procedures to deal with complaints regarding workplace violence. The Code recommends that the “rules of natural justice”<sup>103</sup> be observed regarding *disciplinary and grievance procedures*. Furthermore, *privacy and confidentiality*<sup>104</sup> should be observed at all time. Finally, the Code treats the issues of *monitoring and review*. Periodic reviews should be conducted to determine the effectiveness of the workplace violence management system. Such reviews should be conducted by competent persons and the results communicated to the affected parties<sup>105</sup>. Monitoring and evaluation of workplace violence prevention policies should take place<sup>106</sup> and organisational learning on issues related to violence at work<sup>107</sup> should be devised.

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occupational health and safety systems, and other government initiatives. Rehabilitation should be made available to victims. The employer should provide support to victims of workplace violence during the entire period and allow all necessary time to recover, within reason. Workers should be encouraged to return to work, avoiding too much pressure at first, special working arrangements being made to facilitate reintegration (par.4.7.4.).

<sup>103</sup> Namely, (i) the procedures should be fair and equitable for the investigation and resolution of complaints.; (ii) the process should ensure that a worker who is the subject of a complaint is informed of the details of the allegation(s) made against him/her; (iii) has the opportunity to respond to the allegation(s); (iv) has the benefit of an impartial, independent and fair hearing by a decision-maker who has not prejudged the issue; (v) that victimisation is prevented; and (vi) that confidentiality and time limits are respected. Furthermore retaliation against victims and witnesses should not be tolerated. (par. 4.8.)

<sup>104</sup> Governments and employers should ensure that any information relating to grievance and disciplinary procedures, medical treatment, counselling and rehabilitation be kept confidential in accordance with national laws and regulations (par. 4.9.)

<sup>105</sup> *Code of Practice*, par. 5

<sup>106</sup> With the cooperation with workers and their representatives, the employer should evaluate the effectiveness of workplace violence prevention policies. This should include (i) regular monitoring of the results of measures introduced; (ii) developing criteria for evaluation and receiving regular feed back to check how well the policies and measures are working and to make the necessary modifications; (iii) the organising of periodic joint meetings of management and workers to discuss measures put in place; (iv) reviewing the management plan on a regular basis, including the assessment of policy implementation (par.5.1.).

<sup>107</sup> With the cooperation of workers and their representatives the employer should develop a strategic learning process on issues relating to workplace violence. The process should include (i) learning from the lessons gained from the design, implementation and evaluation of workplace policies; (ii) reassuring the workforce culture, work organisation and the quality of the work environment to respond effectively to workplace violence; (iii) activating a risk management cycle that makes the elimination of workplace violence and the improvement of the work environment an ongoing process within the

As one can readily notice, the ILO Code of Practice on workplace violence is complete, straightforward, easy to understand, well drafted and realistic in combating workplace violence. The Code meets admirably its objective in providing general guidance in addressing the problem of workplace violence in the service industries. It serves as a basic reference tool for stimulating the development of similar instruments at the regional, national, sector, enterprise, organisation and workplace levels specifically targeted at, and adapted to, different cultures, situations and needs. It is now proposed to evaluate workplace violence at the European Union level.

### *The European Pattern*

Violence, bullying and harassment have become increasingly common features of European workplaces, but the response from organisations and governments remains inadequate. The Director of the European Agency for Safety and Health at Work<sup>108</sup> posited:

Both violence and harassment represent serious but under-reported threats to the safety and wellbeing of workers in Europe. Violence, verbal aggression or threats that employees experience with customers or patients are critical health and safety issues. And the psychological issues are sometimes more dangerous than physical wounds. Workplace harassment can lead to stress, long-term sickness leave, and even suicide. Economic consequences are reduced productivity, increased sickness absence, higher turnover of staff and premature retirement due to disability at often early ages<sup>109</sup>.

The European social partners consider the Framework Agreement on Harassment and Violence at Work which they entered into to be of mutual concern of employers and workers to deal with the issue of harassment and violence at the workplace which can have serious social and economic consequences.<sup>110</sup> They recognise that “harassment and

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organisation. Such an approach would contribute to enhancing quality of service, productivity and decent work.

<sup>108</sup> The mission of this Agency (EU-OSHA) is to make Europe a safer, healthier and more productive place to work. The EU-OSHA was set up by the EU to help meet the information needs in the field of occupational safety and health

<sup>109</sup> Source: *Workplace violence and harassment on the increase in Europe*, Press release 3 January, 2011.

<sup>110</sup> Further reading on harassment and violence will be found at INRS France (*La violence au travail en Europe*) <http://analysedespratiques.com/wp-content/uploads/2011/03/La-violence-au-Travail.pdf>.



violence can potentially affect any workplace and any worker, irrespective of the size of the company<sup>111</sup>, field of activity or form of the employment contract or relationship”<sup>112</sup>. The report entitled “Workplace Violence and Harassment: A European Picture” states that

in many European countries there is still not enough recognition of workplace violence, with few specific initiatives dealing with the issue. At national level and among individual organisations there is a need to raise awareness, and put in place policies and procedures to tackle and prevent violence and harassment at work.

At European level, the Framework Agreement on Harassment and Violence at Work<sup>113</sup> provisions are similar, though by far not as detailed as those of the ILO Code of Practice. In its introduction, the Framework Agreement mentions the relevance of the four Directives<sup>114</sup> which define the employers’ duty to protect workers against harassment and violence in the workplace. Harassment and violence are issues of mutual concern to employers and workers for they can have serious social and economic consequences.

The aim of the Framework Agreement<sup>115</sup> is twofold; to increase the awareness and understanding of employers, workers and their representatives of workplace harassment and violence and to provide employers, workers and their representatives at all levels<sup>116</sup> with an action-orientated framework to identify, prevent and manage problems of harassment and violence at work.

The Framework Agreement states that “raising awareness and appropriate training of managers and workers can reduce the likelihood of harassment

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SPF Emploi Respect au Travail (*Violences au travail, harcèlement moral et sexuel*)  
<http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=5948>.

Dublin Foundation (*Preventing violence and harassment in the workplace*)  
<http://www.eurofound.europa.eu/pubdocs/2002/109/en/1/ef02109en.pdf>.

<sup>111</sup> Which includes small and medium size companies (Footnote inserted by the author).

<sup>112</sup> Source: *Framework Agreement on Harassment and Violence at Work*, part 1. *Introduction*.

<sup>113</sup> Concluded on 26 April 2007 by the ETUC/CES, BUSINESSEUROPE, UEAPME and CEEP (and the liaison committee EUROCADRES/CEC). European Social Dialogue.

<sup>114</sup> These Directives are referred to in footnote 30 *ante*. It should be emphasised that these four Directives do not constitute an exhaustive list.

<sup>115</sup> Source: *Framework Agreement on Harassment and Violence at Work*, part 2 *Aim*.

<sup>116</sup> It should be noted that these measures apply to everybody irrespective of the position held by a person in the establishment hierarchy.

and violence at work<sup>117</sup>. Enterprises need to have a clear statement that harassment and violence would not be tolerated therein. Such statement should specify procedures to be followed where harassment and violence cases arise. Procedures could include an informal stage in which a trusted neutral person acceptable to both management and workers is available to give advice and assistance. Such a person could be an internal colleague or an external adviser<sup>118</sup>. Preliminary procedures could be both suitable and useful when dealing with harassment and violence issues.

The Framework Agreement talks of procedures to be underpinned by, but not confined to<sup>119</sup>, certain matters. The first of these matters suggests that it is in the interest of the parties concerned to proceed with necessary discretion in order to protect the privacy and dignity of all concerned. In the second instance, it is suggested that no information should be disclosed to third parties not involved in the case. Thirdly, complaints should be investigated and dealt with without undue delay. Fourthly, the rules of natural justice<sup>120</sup> should be observed. Fifthly, complaints made should be supported by evidence and/or by other detailed information whether written or oral. In the sixth instance, any unjustified, false and malicious accusations made by a person should not be tolerated and could result in appropriate disciplinary action. The final matter is that third party assistance (whether external or internal) could prove useful.

Where it is established that harassment and violence have taken place, appropriate action – which could include disciplinary action such as dismissal – should be taken against the perpetrator(s). The establishment should give all the help and support necessary to the victim(s) who would be entitled to reintegration.

The Framework Agreement provides for the establishment, reviewing and monitoring of these procedures by the employer – in consultation with workers and/or their representatives – to ensure their effectiveness both in preventing the occurrence of harassment and violence and in dealing with these problems when they occur. It should be noted that the provisions of the Framework Agreement apply to harassment and violence by *third parties* who are external to the establishment. This agreement thus covers clients, customers, patients, and so on.

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<sup>117</sup> *Framework Agreement on Harassment and Violence at Work*, part 4 *Preventing, Identifying and Managing Problems of Harassment and Violence*.

<sup>118</sup> As for example an occupational psychologist.

<sup>119</sup> This means that the description consists of a non-exhaustive list of actions.

<sup>120</sup> For these rules the reader is referred to 13 and to footnote 103 *ante*.

Of particular importance is the fact that this agreement is of a *non-regression* nature and that therefore there can be no reduction in the general level of protection given to workers<sup>121</sup>. The Framework agreement states that:

in the context of Art. 139 of the Treaty, this autonomous European framework agreement commits the members of BUSINESS EUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) to implement in accordance with the procedures and practices specific to management and labour in the Member States and in the countries of the European Economic Area<sup>122</sup>.

There have been *Guidelines* agreed by the social partners in 2010<sup>123</sup> which treat violence and harassment by *third parties* such as customers, clients, patients, members of the public at large, service users, service providers, parents, pupils and so on. These guidelines provide for a variety of work-related actions taken by third parties relating to violence and harassment which include physical, psychological, verbal, written and sexual acts. There can be cyber bullying and harassment by means of a wide range of information and communication technologies. (ICT). Such work-related acts could occur at the workplace itself, in an open space such as a public park, or in an apartment, house or other private place. Such actions by third parties may range from cases of disrespect to common and aggravated assaults, grievous bodily harm and manslaughter or murder. The acts may constitute intentional or unintentional criminal offences which affect the victim's reputation by the use of slanderous and libellous remarks, or affects property rights, such as buildings, cars, *etc* belonging to the employer, customers and so on. Acts of violence and/or harassment

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<sup>121</sup> There have been a significant number of cases dealing with violence/harassment at work decided by the Court of Justice of the European Union (CJEU). Most of them deal with violence and harassment at work in relation to staff members of the European Union Institutions.

<sup>122</sup> The implementation of the agreement would be carried out within three years after its signing on 26 April, 2007 and member organisations would report on the implementation of the agreement to the Social Dialogue Committee (SDC). It will be recalled that the European Social Dialogue is an instrument for better governance in the European Union. Since the Treaty of Maastricht agreements negotiated by the social partners can be given legally binding effect through a decision made by the Council. The Social Dialogue Committee is given a role in the *implementation* and *follow-up procedures*. A yearly report has to be *drawn up* and *adopted* by the SDC. This offers a yearly opportunity to look at, and where necessary discuss, problems of implementation.

<sup>123</sup> The signatories were the EPSU, UNI europa, ETUCE, HOSPEEM, CEMR, EFEE, EuroCommerce and CoESS, July, 2010.

by third parties could result in the creation of psychological disorders such as personality changes or mental health problems.

Actions by third parties include one-off situations and also well-rehearsed, systematic and premeditated actions carried out by a single person or a group. The third party perpetrator(s) could be acting out of vengeance, for emotional reasons, personal dislikes and prejudices.

### *The British Pattern*

In the United Kingdom there are no *specific* laws relating to violence at work. However, the Health and Safety at Work Act, 1974 (as amended) imposes on the employer a general duty to protect the health and safety of employees<sup>124</sup>. This general duty, it is submitted, covers risks from violence and harassment. Furthermore, the Management of Health and Safety at Work Regulations of 1999<sup>125</sup> require employers to assess all foreseeable health and safety risks so as to identify measures to reduce them. Where the risk of violence or harassment is identified and is reasonably foreseeable, it must be eliminated or reduced to the lowest possible level. Employers also have a duty (a) to establish procedures to be followed in the event of serious or imminent danger and (b) provide information and training on health and safety risks which have been identified as well as control measures which have been put in place. Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations of 1995<sup>126</sup> employers have an obligation to report to the Health and Safety Executive (HSE) all instances involving physical violence on employees which result in death, major injury or absence from work for three or more days.<sup>127</sup> This includes any act of non-consensual physical violence done to a person at work.

Under the Safety Representatives and Safety Committees Regulations, 1977 and the Health and Safety (Consultation with Employees) Regulations, 1996, Health and Safety Representatives enjoy extensive legal rights which are wide enough to deal with cases of violence and harassment at work. These rights<sup>128</sup> include (a) the investigation of

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<sup>124</sup> Health and Safety at Work, *etc* Act, 1974 Ch. 12 ss. 2 to 9.

<sup>125</sup> Ch. 13.

<sup>126</sup> Ch.49. Known commonly as RIDDOR.

<sup>127</sup> The *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations* do not cover threats, verbal abuse and absences resulting from threats and verbal abuse.

<sup>128</sup> Emanating from the Safety Representatives and Safety Committees Regulations of 1977. It is also known as *The Brown Book*.

potential hazards and dangerous occurrences; (b) inspection of the workplace; (c) the taking up of members' complaints; (d) the receiving of information from the employer; (e) the inspection of health and safety documents; and (f) the enjoyment of paid time off to carry out those functions.

In addition, employers have a duty to consult employees and safety representatives in good time about their arrangements for health and safety, including the introduction of new measures affecting employees and the development and provision of any health and safety training.<sup>129</sup> This should include concerns about violence. Safety Committees may provide a useful channel for employees to report violent acts and threatening incidents which they may not wish to raise directly and personally, as individuals, with their employer.

Under the Corporate Manslaughter and Corporate Homicide Act 2007 an employer may be found guilty of corporate manslaughter in cases where the employee was killed at work due to the employer's failure to exercise his duty of care towards his employees and other workers<sup>130</sup>.

#### 4. Occupational Groups Most Exposed to Violence

Certain occupational groups have a tendency of being more at risk from workplace violence than others. These occupations include, *inter alia*, healthcare employees<sup>131</sup> such as hospital and care home workers<sup>132</sup>, correctional officers such as police and prison officers, school teachers, retail employees<sup>133</sup>, municipal housing inspectors, social services employees and those working in the public sector such as bus drivers, ticket inspectors in buses and trains and taxi drivers. Those working in

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<sup>129</sup> Under the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.

<sup>130</sup> For a distinction between the terms "employee" and "worker" the reader is referred to J. Carby-Hall, *New Frontiers of Labour Law: Dependent and Autonomous Workers*, in B. Veneziani, U. Carabelli (eds.), *Du Travail Salarié au Travail Indépendant: Permanences et Mutations*, (SOCRATES Programme), Cacucci Editore, Bari, 2003, at 163 to 308, especially 246 to 282).

<sup>131</sup> Those providing care to people who are ill, afraid, distressed in a panic or on medication.

<sup>132</sup> See the advice and guidance given in the British Health and Safety Executives (HSE) booklet entitled *Violence and Aggression to Staff in Health Services: Guidance on assessment and Management* (2 Edition), HSE Books, 1997.

<sup>133</sup> See the guidance given by the British HSE booklet entitled *Preventing Violence to Retail Staff*, HSE books HSG 133, 1995.

smaller businesses tend to be more exposed to violence<sup>134</sup>. Traffic wardens, shop and hotel workers, utility meter readers and school crossing patrols have been known to be exposed to violence. Those handling drugs or having access to them are also at risk of violence. Working with people (a) who have used violence to express themselves or achieve their needs or (b) who exercise power to restrict the freedom of individuals or (c) who have a great deal of anger, resentment or feelings of failure or (d) who have unrealistically high expectations of what the organisation can offer and who are seeking quick and easy solutions to long term and complex problems.

There are also certain **work-related** factors which increase the risk of violence. These include working during periods of intense organisational change such as individual and mass redundancies and industrial action as experienced during the Euro crisis in Greece, Spain, Italy, Ireland, Portugal and Cyprus; handling money such as bank and building society cashiers<sup>135</sup> or shop tills; working in pubs and other premises, such as food and beverages staff in restaurants or cafes where alcohol is served; working in community-based sites such as social workers, home visitors or peripatetic nurses; working with unstable or volatile persons such as in psychiatric hospitals; carrying out enforcement duties such as inspections of premises by government officials or health and safety inspectors; working alone<sup>136</sup> such as a lone store man or a real property agent employee; working in small groups; or working at isolated sites such as at Sonatrach in the Algeria desert oil installations or in isolated or low traffic areas such as public toilets and rest rooms, utility rooms and storage areas. Violence is more prone to occur in badly lit areas or in multi-occupied premises or again in working units which do not have a human image<sup>137</sup>. Working under pressure created by increased workloads, under-staffing and the absence of alternative support for the client is another work-related factor which increases the risk of violence.

Risks of violence may be greater at certain times of the day, night or year, such as deadline cut-off dates for utility bills, early in the morning or late at night when there are few workers around, holiday or festival periods,

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<sup>134</sup> See the guidance given by the British HSE entitled *Work-Related Violence: Case Studies – Managing the Risk in Smaller Businesses*, HSG 229 HSE Books, 2002.

<sup>135</sup> See advice and guidance given by the British HSE booklet entitled *Prevention of Violence to Staff in Banks and Building Societies*, HSG 100 HSE Books, 1993.

<sup>136</sup> See the Case Studies Health and Safety Laboratory/Report WIS/03/05a and guidance given by the HSE in its booklet entitled *Managing and Preventing Violence to Lone Workers*.

<sup>137</sup> As for example crowded, busy, uncomfortable workplaces lacking in facilities for the public such as toilets, refreshments, children's toys and telephones.

pay days and so on. Violence could occur where buildings are close to a risk-prone area such as a pub or a bank or where buildings are isolated. Violence can also occur as a result of frustration from otherwise normal customers. Examples include the lack of information<sup>138</sup>; a feeling of being unfairly penalised<sup>139</sup>; dissatisfaction over a service or product<sup>140</sup>; or disputes over the pricing of a commodity<sup>141</sup>.

## 5. Brief Statistics Relating to Violence

According to the ILO<sup>142</sup>, a 2000 survey of the original fifteen EU Member States indicated that bullying, harassment and intimidation were widespread. A 2002 study in Germany estimated that over 800,000 workers were victims of mobbing<sup>143</sup>. In Spain, approximately 22% of officials in public administration were victims of mobbing. In France acts of aggression against transport workers, including taxi drivers, rose from 3,051 in 2001 to 3,185 in 2002. In Japan, the number of cases brought before court counsellors totalled 625,572 between April 2002 and March 2003. Of these, 5.1%, or some 32,000 related to harassment and bullying whereas from April to September 2003 there were 51,444 consultations requests, 9.6% of which were connected to harassment and bullying.

In developing countries the most vulnerable workers were women, migrants and children. In Malaysia, 11,851 rape and molestation cases at the workplace were reported between 1997 and 2001. Widespread sexual harassment constituted major concerns, *inter alia*, in South Africa, Ukraine, Kuwait, Hong Kong and China.

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<sup>138</sup> For example, long waits to see a doctor in a hospital or surgery or delays on public transport such as trains, coaches and buses or again waiting for a friend to collect a person.

<sup>139</sup> Parking fines, speeding offences, being stopped by the police, visits from bailiffs and seizure of chattels, the refusal of a refund in a store because of an outdated or lost receipt and so on.

<sup>140</sup> Miss-selling in the financial services industry or wrongly described product or service in a restaurant, shop, internet site, etc.

<sup>141</sup> Where a shop charges a different price at the till compared with the price exhibited for that commodity on the shelves, or a dispute with a tradesman who over-charged the price of the work performed.

<sup>142</sup> Source: As reported by *Pre Employment Screening Services – Info Cubic*, in <http://preemploymentscreeningarticles.infocubic.net/index.php/ilo-workplace-violence-increasing-worldwide/> (Accessed on 8 March, 2013).

<sup>143</sup> Namely a group of workers targeted an individual for psychological harassment.

In South Africa workers in the health care sector are considered to be the most vulnerable in experiencing physical violence. Over a twelve month period 9% of those employed in the private health sector and about 17% working in the public health sector experienced physical violence.

On the other hand, instances of workplace violence have decreased in England and Wales<sup>144</sup> and the USA<sup>145</sup>.

On the occasion of the International Women's Day<sup>146</sup> the Director General of the ILO said that "Gender based violence is clearly at odds with the meaning of decent work, full and productive employment for women and men in conditions of freedom, equality, security and human dignity"<sup>147</sup>. In the European Union countries 40% to 50% of women experience unwanted sexual advances, physical contact or other forms of sexual harassment at the workplace. In Asia and the Pacific some 30% to 40% of women report some sort of verbal, physical or sexual harassment.

On the European platform, the Fourth European Survey on Working Conditions<sup>148</sup> indicates that 2% (10 million workers) are subjected to physical violence from persons belonging to their workforce; 4% (20 million workers) are subjected to physical violence from persons outside their workforce<sup>149</sup>; 2% (10 million workers) are subjected to sexual

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<sup>144</sup> By 1.3 million incidents of violence from a previous survey standing at 849,000 incidents of workplace violence in 2002-2003 of which 431,000 were incidents of physical assaults and 418,000 incidents of threats. It should be noticed that the above figures are not necessarily accurate because of the rise in the proportion of victims who experienced *more than one incident* of violence. Thus, there are fewer victims but a greater number of incidents. The UNISON trade union is calling for employers to "enforce better safety measures to stop the number of *repeat attacks* and for tougher legal action to be taken against attackers" (Italics inserted by the author). Source: *Rise in Workplace Violence Despite Fewer Victims*, in *Safety and Health Practitioner*, 24 January, 2011. According to the Trades Union Congress (TUC) there has been a 43% rise of victims who were *previously* assaulted or threatened.

<sup>145</sup> In the USA homicide is the third leading cause of death at work. In the last few years there has been a decline in both workplace murders and non-fatal assaults Women represent about 61% of all victimised workers because they tend to work in jobs which are considered high risk for assaults.

<sup>146</sup> On 8 March 2013.

<sup>147</sup> Source: [www.kuna.net.kw/ArticleDetails.aspx?id=2297148&language=en](http://www.kuna.net.kw/ArticleDetails.aspx?id=2297148&language=en) (Accessed on 8 March and 27 March 2013).

<sup>148</sup> Dated 23 June, 2009 and based on 30,000 face-to-face interviews with workers in 31 European countries.

<sup>149</sup> In the period 1995 to 2005, the level of physical violence increased by one third from 4% to 6%.



harassment<sup>150</sup> and 5% (25 million workers) are subjected to intimidation, harassment and bullying<sup>151</sup>.

As indicated above, on the English and Welsh platform the number of violent incidents at work shows a downward trend in the last eleven years and in the last five years violent incidents remained fairly constant<sup>152</sup>. According to the Crime Survey for England and Wales (CSEW) of 2011/12<sup>153</sup> there were 463,000 incidents of work-related violence during that period, comprising 324,000 assaults and 319,000 threats. There was a 2% drop in violence compared to the previous year, namely 2010/11 where 654,000 incidents occurred. Between the years 2001 and 2010 and 2011 and 2012 overall violence at work was reduced by 36% with assaults reduced by 23% and threats by 34% over that period<sup>154</sup>.

The risks of being a victim of work-related violence appear to remain low for both genders at 1.4%<sup>155</sup>. An estimated 58% of all victims subjected to assaults and threats at work were repeat victims. In the years 2011/12, 18% of the victims experienced two incidents whereas 24% experienced three or more incidents of workplace violence<sup>156</sup>.

The occupations experiencing the highest risks of work-related violence were those involved in the protective services, namely the police, prison officers and the fire brigade<sup>157</sup>, the health and social welfare services<sup>158</sup>, the

<sup>150</sup> Of the 2% of persons subjected to sexual harassment, it affects three times as many women as men. The highest exposures are to be found in the catering services (hotels and restaurants) with 4% among women with precarious employment status. 5% of women on temporary agency contracts are subjected to sexual harassment compared to 2% of women on fixed-term contracts.

<sup>151</sup> The highest exposure rates are in services (over 8% in the health sector and in hotels and restaurants, over 6% in education, in transport and communications). Female workers are more exposed than male workers with especially young women being affected. Over 8% of 15 to 29 year old women are subjected to bullying and harassment compared to 4% of men in the same age group.

<sup>152</sup> Source: <http://www.rmt.org.uk/news/publications/violence-at-work/>. See the graph entitled *Number Of Victims Of Violence At Work For Adults Of Working Age In Employment 2001/02 To 2011/12*, in Crime Survey for England and Wales, p. 5, figure 2.

<sup>153</sup> Source: P. Buckley, *Violence at Work. Findings from the Crime Survey for England and Wales 2011/12*, Health and Safety Executive and National Office of Statistics, 3, <http://www.rmt.org.uk/news/publications/violence-at-work/>.

<sup>154</sup> Source: *Ibid.*, p. 6, figure 3. See however footnote 144 above.

<sup>155</sup> The highest risk age group was 35 to 54 for men (1.6%) and 16 to 24 for women (1.8%).

<sup>156</sup> Source: P. Buckley, *op.cit.*, p. 9, figure 6.

<sup>157</sup> These groups had the highest estimated risk. 8% of that group experienced one or more incidents of actual or threatened violence at work. Source: P. Buckley, *op.cit.*, p. 9, table 1.

health professionals<sup>159</sup>, the teaching and research professionals<sup>160</sup> and transport and mobile machine drivers<sup>161</sup>. In 2011/12, 60% of the culprits were strangers to the victims of violence in the workplace while 40% were known<sup>162</sup> to the victim<sup>163</sup>. Alcohol and drugs were factors in numerous incidents<sup>164</sup>. Violence at work may result in both physical and emotional consequences for the victims which can affect their health. Although 59% of workplace assaults resulted in no injury in the period 2011 and 12, 41% resulted in physical injury<sup>165</sup>. The cases reported by the employer under the RIDDOR provisions<sup>166</sup> during the period 2011 and 12 were 5,493.

## 6. Concluding Thoughts

A striking feature relating to violence at work at international level is that the regulatory element is primarily based on *soft law*<sup>167</sup> with only a sprinkling of hard law<sup>168</sup> which garnishes its edges and gives the Code legislative legitimacy. It will be recalled that at the international level the main document which covers workplace violence is the ILO Code of Practice which is a legally non-binding document. Granted that this Code has been painstakingly drafted and is very complete, it serves only as a

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<sup>158</sup> Experienced 3.5% of all violence consisting of 1.8% in relation to assaults and 2% relation to threats. Source: *Ibid.*

<sup>159</sup> Experienced 2.9% of violence consisting of 0.6% assaults and 2.6% threats. Source: *Ibid.*

<sup>160</sup> Who experienced 2.3% of violence consisting of 1.4% assaults and 1% threats. Source: *Ibid.*

<sup>161</sup> Who experienced violence at 1.5% consisting of 0.7% of assaults and 0.8% threats. Source: *Ibid.*

<sup>162</sup> Fellow worker, colleague, client/customer or member of the public, young persons in the area.

<sup>163</sup> Source: P. Buckley, *op.cit.*, p. 10.

<sup>164</sup> 39% of the violence offenders were believed to be under the influence of alcohol whereas those thought to be on drugs was 22%. Source: P. Buckley, *op.cit.*, p. 10.

<sup>165</sup> The type of injury consisted of minor bruises and black eyes in 29% of the cases, severe bruising in 4%, (which resulted in heavier trauma at 12%), with scratches in 12%, cuts in 9% and 5% in other types of injuries. Source: P. Buckley, *op.cit.*, p. 11, figure 7.

<sup>166</sup> For the employer's duty to report under RIDDOR see 17 *ante*.

<sup>167</sup> Namely the ILO *Code of Practice*.

<sup>168</sup> For example the ILO Conventions No. 111, No. 169, No. 189 and No. 200, which deal with sexual harassment and violence at work. Other Conventions relevant to combating workplace violence are those which relate to Child Labour and to Occupational Safety and Health.

document which gives practical guidance to those responsible on the international stage for addressing workplace violence in the services.<sup>169</sup>

It is submitted that the existing soft law, peppered by three ILO Conventions and a Recommendation<sup>170</sup>, efficient as it has proved, is not sufficient to regulate effectively workplace violence particularly against women. This issue is poorly defined and not well understood under international law and industrial relations. The ILO needs to address the issues of sexual and other forms of harassment where there is a predominantly feminised workforce<sup>171</sup>.

What is needed at international, European and British levels is positive action to be taken by way of the enactment of proactive *hard* (rather than soft) labour laws and enforcement mechanisms.

Under the international umbrella, the ILO Director General, taking the lead, maintained that<sup>172</sup> “We are aware that much still needs to be done legally [...] There is still no explicit human rights treaty prohibition on violence against women and [...] the issue remains poorly defined and understood under international human rights law and often in labour and industrial relations”.

Although the Code of Conduct against violence in the services sector is thorough and complete and although the guidelines which treat violence in the workshop in the health sector are useful, both of which constitute soft law, much more is needed by way of hard law to tackle effectively workshop violence. The Director-General talked of the necessary action needed to tackle effectively this issue. He said<sup>173</sup> “Coherent and effective labour laws and enforcement mechanisms” were required “so that

<sup>169</sup> See the discussion which takes place at pp. 8 to 14 *infra*.

<sup>170</sup> Namely, the Convention on Equality in Employment and Occupation (No. 111) treating sexual harassment; the Convention on Indigenous and Tribal Peoples (No. 169) treating special measures protecting indigenous workers from sexual harassment; the Domestic Workers’ Convention (No. 189) dealing with vulnerable feminised workers and the HIV and AIDS Recommendation (No. 2000) on the reduction at the workplace of HIV through the prevention or prohibition of violence and harassment at work. The Occupational Safety and Health and Child Labour Conventions deal *in part* with the combating of violence at work.

<sup>171</sup> The IATA statistics (2007-2009) show that in civil aviation ground hostesses are exposed to “air rage” by discontented passengers which manifest themselves through verbal and psychological abuse, sexual and other forms of harassment as well as physical assaults.

<sup>172</sup> Source: *STOP Violence at Work*, 8 March, 2013, in [www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS\\_206371/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_206371/lang-en/index.htm) (Accessed 25 June 2014).

<sup>173</sup> Source: See footnote above.

proactive laws as well as individual complaint-based mechanisms discourage violence.” He added to his speech the need for (a) consistency between labour codes and criminal, civil and family laws and other bodies of law covering not only sanctions but also incentives to “buy into the fight against violence at work.” (b) The “removal of obstacles to women’s access to [...] labour justice” and the need of “a particular focus on the informal economy [...] because this is where so many women work, often hidden and unreported”.

Effective labour laws and enforcement mechanisms are also needed under the European and British umbrellas to tackle effectively violence at work. Under the European umbrella, violence at work is primarily governed by the social partners’ Framework Agreement on Harassment and Violence at Work<sup>174</sup> and the guidelines agreed by the social partners whereas under the British umbrella no *special* or *specific* laws exist on violence at work. The provisions of the Health and Safety at Work Act, 1974 (as amended) and related Regulations do however cover risks from violence and harassment<sup>175</sup>. Although violence at work in England and Wales is *officially* on the decrease<sup>176</sup> there have nevertheless been 643,000 cases of workplace violence in the past year. This is a relatively high number of incidents, the consequences of which may have physical and psychological effects on individuals. It will be recalled that this apparent decrease is due to the fact that numerous victims of violence at work experienced more than one incident of violence<sup>177</sup>. The fact that multiple acts of violence inflicted on one victim (which statistically count as one incident) often occur, indicates that there is a *rise* in workshop violence though fewer victims are affected. British employers need to enforce existing safety measures to stop the number of repeated attacks made against victims. Also required is tougher legal action to be taken against the attacker when needs to be made official government policy buttressed by appropriate hard law.

An issue which has not been addressed by international and European laws<sup>178</sup>, although touched upon by the British common law in the realm of violence at work is the concept of the employer’s *vicarious liability* towards

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<sup>174</sup> See the discussion which took place at pp. 14 to 17 *infra*.

<sup>175</sup> The British pattern has been treated at pp. 17 and 18 *infra*.

<sup>176</sup> See 20 *ante*.

<sup>177</sup> See footnote 144 above which analyses this phenomenon.

<sup>178</sup> Whether they be soft or hard laws.

his employees<sup>179</sup>. A British court has recently made mention of the employer being made liable *vicariously* for acts of violence caused to the victim employee by other employees at the workplace or by third parties. A brief explanation of the concept of *vicarious liability* is needed at the outset. First, the word “vicarious” originates from the Latin word “vicarious” which means “*substitute*.” Second, the modern meaning of the word “vicarious” is “acting or done for another”<sup>180</sup>. Third, the common legal concept of vicarious liability developed under the law of the tort of negligence and applied to employment law means that the employer is liable vicariously for any physical and (more recently) psychological injury suffered by his employee(s) which has been caused by a fellow employee, a group of fellow employees or a third party in the course of employment. Fourth, this common law liability of the employer applies only to his “employees” and not to “workers” who are not “employees”<sup>181</sup>. It is therefore essential to know what the status of the victim is before the employer becomes vicariously liable in tort.

Although the well rehearsed concept of vicarious liability has a long pedigree in British labour law, to the best of this author’s knowledge, it has never been applied to cases of violence at work. It is submitted that it is high time that violence at work cases be made subject to the British doctrine of vicarious liability where the victim is found to have the status of employee. Furthermore, the concept of vicarious liability should also be included among the international and European instruments<sup>182</sup> which govern violence at the workplace.

Violence and harassment at the workplace has its economic and/or personal consequences on both the individual employee/worker and the employer. Any physical and psychological injury inflicted on the employee/worker victim could lead to a period of sick leave. In the case of stress related illnesses such sick leave could be of long-term duration. A

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<sup>179</sup> It should be noted that this concept is well established in the British common law and originates from the tort of negligence. This common law concept has been applied over the centuries to numerous employment law cases but not, so far, to violence or threats of violence to employees by colleagues at the workplace and third parties, such as customers, clients, *etc* of the employer.

<sup>180</sup> Source: Compact Oxford English dictionary, 2 Edn., Oxford University Press, Oxford, 2002, at 1287.

<sup>181</sup> Hence one of the numerous reasons why it is important to establish whether a worker is working under a contract of employment or of service (where the worker is an employee) or under a contract for services (where the worker is an independent contractor).

<sup>182</sup> Namely hard and soft international and European laws.

victim of violence/harassment may suffer psychological problems<sup>183</sup>, loss of confidence or low morale<sup>184</sup>, stress resulting in depression, anxiety, withdrawal symptoms and other psychological problems. Violence/harassment can also have the effect of the victim being fearful to return to work after a period of absence. The impact that violence/harassment has on the employer could include, *inter alia*, financial losses in respect of sick leave taken by the victim employee or worker<sup>185</sup>, low productivity and profitability<sup>186</sup>, and low staff retention<sup>187</sup> and recruitment<sup>188</sup> problems. In the case of family firms and small employers, violence/harassment may have the effect of making the firm bankrupt and thus lose its members' livelihood. In these circumstances there would be the likelihood that alternative work may not be available<sup>189</sup>. Thus effective violence prevention and the advocated hard laws (suggested above) to buttress these preventative measures, are essential for the health of both employees/workers and employers<sup>190</sup>. Both the

<sup>183</sup> As for example complete or part blameworthiness for the act of violence which occurred or feel inadequate in the face of that violence.

<sup>184</sup> Which could affect the victim's ability to perform work, alternatively, although he/she retains that ability the victim is unable to work effectively.

<sup>185</sup> Sick leave may result as a consequence of a violent act causing workers/employees psychological (e.g. stress related illnesses) or physical ailments (e.g. broken bones, fractured pelvis, fractured skull) resulting from injuries received for the violence.

<sup>186</sup> Resulting from (a) short or extended sick leave of employees/workers; (b) breakdown in customer relations and/or loss of customers and public reputation and goodwill; (c) employees/workers not willing to perform particular types of work; (d) higher insurance premiums by reason of the employer being prone to violent attacks; (e) compensation claims by employee victims claiming that the employer has not exercised under British law a duty of care as is required of him at common law (This latter is incorporated automatically in the employee's contract of employment whether or not it is stated in that contract.) (f) additional retirement costs; (g) staff replacement costs; (h) reduced staff motivation/creativity/satisfaction; (i) possible litigation costs; (j) damage to the firm's image; (k) decrease in the quality of products and (l) increase of employees/workers unfit to work.

<sup>187</sup> Existing members of staff especially senior ones, finding the job unsafe or not being able to cope with or accept violent situations may decide to leave their employment.

<sup>188</sup> Bad publicity of a firm due to frequent violent acts may dissuade potential recruits from applying for a job.

<sup>189</sup> The reader is referred to *Consequences of Work-Related Violence*, published by the European Agency for Safety and Health at Work (European Risk Observatory Report No. 5). Therein will be found references to important research carried out by specialists in the field. The report treats both worker and employer consequences emanating from violence.

<sup>190</sup> In that (a) staff morale and confidence would be high in the knowledge that the employer is taking all the necessary measures to prevent violence from occurring; (b) staff turnover would not suffer; (c) violent incidents would either be eliminated or

employer and the employee have a vested interest in reducing or eliminating violence and harassment at work.

The learned nineteenth century American judge Oliver Wendell Holmes<sup>191</sup> posited “Wisdom has taught us to be calm and meek,

To take one blow, and turn the other cheek;

It is not written what a man shall do

If the rude caitiff smite the other too!”<sup>192</sup>

Prophylactic measures taken against violence by way of hard laws enacted at international, European and national levels is the answer to Oliver Wendell Holmes’ two last lines of his poem.

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reduced considerably; (d) the standard customer care service would be maintained and/or improved; (e) employees/workers in the establishment would feel supported and therefore valued; (f) the working relationship and communication in the establishment would improve; (g) there would be improved productivity and therefore profitability and (h) there will be contentment amongst employees/workers in their knowledge that they can perform their respective jobs in safety.

<sup>191</sup> 1809-1894.

<sup>192</sup> Quoted from *Non-Resistance*, 1861.







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