



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

ON THE

**CONSIDERATION OF THE NATIONAL ASSEMBLY SCRUTINY OF THE
PROPOSAL TO RATIFY THE PROTOCOL FOR THE INTERNATIONAL
CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE
SAFETY OF MARITIME NAVIGATION, SUPPLEMENTARY TO THE CONVENTION
ON THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION OF 1988**

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

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REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE CONSIDERATION OF THE NATIONAL ASSEMBLY SCRUTINY OF THE PROPOSAL TO RATIFY THE PROTOCOL FOR THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, SUPPLEMENTARY TO THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION 1988 (THE SUA CONVENTION) FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 Membership

The Committee consisted of: Dr M Malama, MP, (Chairperson); Ms A M Chisangano, MP (Vice Chairperson); Mr E J Muchima, MP; Brig Gen M Sitwala, (Rtd) MP; Mr A K Mbangweta, MP; Mr L Nyirenda, MP; Ms M Miti, MP; Dr F N'gambi, MP; Mr A B Malama, MP; and Ms M Lubezhi, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the consideration of the National Assembly scrutiny of the proposal to ratify the protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, for the Fourth Session of the Twelfth National Assembly.

2.0 Functions of the Committee

Pursuant to Article 63 of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia*, as amended by Act, No. 2 of 2016 and Section 5 of the *Ratification of International Agreements Act, No. 34 of 2016*, the National Assembly is reposed with the power to oversee the performance of Executive functions by, among other things, approving international agreements and treaties before they are acceded to or ratified. The Committee was mandated to scrutinise submissions and make recommendations to the House on the National Assembly approval of the proposal to ratify the Protocol for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

3.0 Meetings of the Committee

The Committee held nine meetings to consider the National Assembly scrutiny of the proposal to ratify the Protocol for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

4.0 Procedure adopted by the Committee

In order to acquaint itself with the provisions and ramifications of the international instrument under consideration, the Committee sought both written and oral submissions from stakeholders as listed at Appendix II.

5.0 Background to the Protocol for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

Maritime navigation is the process of directing the movement of watercraft from one point to another. The concern about unlawful acts which threaten the safety of ships and the security of their passengers and crew grew during the 1980s, with reports of crews being kidnapped, ships being hi-jacked, deliberately run aground or blown up by explosives. Passengers were threatened and sometimes killed. In November, 1985 the problem was considered by the International Maritime Organisation's (IMO) 14th Assembly and a proposal by the United States that measures to prevent such unlawful acts which threaten the safety of ships and the security of their passengers and crew developed by IMO should be adopted.

In November, 1986 the Governments of Austria, Egypt and Italy proposed that the IMO should prepare a convention on the subject of unlawful acts against the safety of maritime navigation to provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endangered human life, jeopardised the safety of persons and property and seriously affected the operation of maritime services. The Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention) was adopted by the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation at Rome on 10 March 1988. It came into force on 1 March, 1992 after it had been ratified by fifteen states. The Convention set the principle that a state party must either prosecute a person who committed unlawful acts against the safety of maritime navigation or extradite such a person to a state where a person was wanted for prosecution of the same offence.

Important amendments to the SUA Convention and its Protocol were adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from 10th to 14th October, 2005. The protocol added some provisions which strengthened the law criminalising all acts which endangered the safety of maritime navigation of both individuals and ships.

However, nothing in the convention affects the immunities of warships and other government ships operated for non-commercial purposes. The Protocol came into force on 28 July 2010 and as of February, 2016, forty states had ratified it. However, by June 2015, Zambia was among the twenty-nine countries that had not yet ratified the Protocol.

6.0 Objectives of the Convention

The main purpose of the Protocol was to ensure that appropriate action was taken against persons committing unlawful acts against ships. These included the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which were likely to destroy or damage it. The Convention also obliged contracting governments either to

prosecute a person who committed one of the offences or to send the individual to another state that requested his or her extradition for prosecution of the same crime.

The Convention set out interactive rules and processes that regulated the use of the seas/oceans. At Article 3, the Maritime Convention listed the offences that could be committed at sea, including the following:

- i. threatening with intent to compel another person to do or refrain from doing any act;
- ii. intimidating a population to compel a government or an international organisation to do or abstain from doing any act;
- iii. discharging explosives, radioactive material or biological, chemical or nuclear (BCN) weapon on a ship;
- iv. discharging from a ship oil, liquefied natural gas and other hazardous or noxious substances;
- v. illegally transporting on board a ship any explosive or radioactive material and equipment or software or related technology for BCN weapons;
- vi. knowingly transporting offenders of Article 3 of the Convention;
- vii. unlawfully and intentionally injuring or killing another person on board a ship,
- viii. participating as an accomplice in an offence against Article 3;
- ix. organising or directing others to commit an offence under this Article; and
- x. Contributing to the commission of one or more offences set forth in this Article.

7.0 Salient Provisions of the Convention

Article 1: Definitions

Article 1 of the SUA Convention dealt with definitions and only defines the word “Ship”. Article 1 of the SUA Convention was amended by Article 2 of the 2005 Protocols. In this regard, while the definition of “ship” is the same in both the SUA Convention and the 2005 Protocols, more words were defined and included transport, serious injury or damage, biological, chemical or nuclear (BCN) weapon, toxic chemical, precursor, and organisation.

Article 2: -Exceptions

Article 2 of the SUA Convention provided for places where the Convention did not apply. The Article provided that the Convention did not apply to warships, ships being owned or operated by a state when being used as a naval auxiliary or for customs or police purposes and ships withdrawn from navigation. This Article provided further exceptions to the application of the Convention, thereby updating the provisions of the SUA Convention.

Article 3: Offences

Article 3 of the SUA Convention provided for a number of acts constituting maritime offences. However, the Convention did not specify the law under which such acts became offences. Additionally, the offences had been drafted in a way that they were gender biased as was the case in Article 3 paragraph 6 of the SUA Convention. In this regard, Article 4 paragraph 2 of the 2005 Protocol amended Article 3 paragraph 6 by using gender neutral language. It further amended Article 3 paragraph 2 by specifying the law under which such offences were criminalised under the national law of the state.

Further, the 2005 Protocol amended Article 3, by the deletion of paragraph 1(g) of the SUA Convention. A new Article 3 introduced new offences. It was also observed that paragraphs 5-7 of Article 4 of the 2005 Protocol expanded the reach created by the SUA Convention by adding four new categories of offences under the Convention.

Article 4(5) of the 2005 Protocol added to the Convention, a new Article *3bis*. Article *3bis* (1) stated that a person committed an offence if he/she did any of the following:

- i. unlawfully and intentionally intimidated a population;
- ii. attempted to compel a Government or an international organisation to do or to abstain from doing any act;
- iii. used against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or biological (BCN) weapon in a manner that caused or was likely to cause death or serious injury or damage;
- iv. discharged from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration, that it caused or was likely to cause death or serious injury or damage; and
- v. threatened, with or without a condition, as was provided for under national law, to commit an offence.

Article *3bis* (2) provided exceptions to the offences stated in Article *3bis* (1) which provided that certain nuclear transport that would otherwise be an offence under Article *3bis*(1) (b) remained permissible, in order to preserve the right of a State Party to the Treaty on Non-Proliferation of Nuclear Weapons (the “NPT”) to engage in legitimate nuclear transport.

This provision, as read with the general provision in Article *2bis* (3) declaring that the Convention shall not affect the rights and obligations of States parties under the NPT, ensured that the Convention was consistent with the rights and obligations of the States Parties to the NPT. Specifically, Article *3bis* (2) provided that the Convention shall not require criminalisation of the transport to or from the territory of, or under the control of, an NPT State Party of source or special fissionable material, or of equipment or material especially designed or prepared for the processing, use or production of special fissionable material, as long as the resulting transfer or receipt of such items or materials was not contrary to the NPT obligations of the NPT State Party.

Paragraph 2 of Article *3bis* provided an exception to the “transport provision”.

Article 4 (6) of the 2005 Protocol added Article *3ter* to the Convention. *3ter* made it an offence for a person to unlawfully and intentionally transport another person on board of a ship, with the intent to assist that person to evade criminal prosecution. Transporting became an offence if the transporter did so knowing that the person being transported committed an act that constituted an offence covered by the amended SUA Convention or an offence set forth in one of the treaties listed in the Annex added by Article 7 of the 2005 SUA Protocol. Currently, there were nine treaties listed in the Annex.

Article 4 (7) of the 2005 Protocol added Article *3quater* to the Convention, which listed a number of actions that also constituted offences.

Article 4: Application

Article 4 of the SUA Convention had not been amended by the Protocol.

Article 5: Obligation on States Parties

Article 5 of the SUA Convention imposed an obligation on State Parties to make offences set out in Article 3 punishable, by imposing appropriate penalties. It had, further, been amended to place an obligation on State Parties to make the offences set forth in Articles, *3bis*, *3ter* and *3quater* punishable. The Article also allowed the State Parties to take into account the grave nature of offences when apportioning penalties.

The SUA Convention had also been amended by the introduction of a new Article *5bis*. The amendment obliged States parties to hold legal entities liable in criminal, civil and administrative law, in the event that a person responsible for management in that entity committed an offence. This Article had been introduced to provide for enforceability of the Convention on legal entities located in territories of State Parties. The new Article required Parties to take necessary measures to enable a legal entity to be made liable and to face sanctions when a person responsible for management of control of that legal entity committed an offence under the SUA Convention.

Article 6: Establishment of Jurisdiction

The *chapeau* of Article 6 of the SUA Convention had been replaced with a provision that imposed an obligation on a state party to take measures to establish its jurisdiction over all offences provided for in the Convention.

Article 6, paragraph 3, of the SUA Convention provided the procedure to be followed in the event that the state that established jurisdiction intended to rescind such jurisdiction. The Article required that a State Party that established jurisdiction to inform the Secretary- General of the International Maritime Organisation (who was also referred to as the Secretary-General). Article 6 Paragraph 3 of the SUA Convention has been amended by Article 6 paragraph 2 of the 2005 Protocol by the removal of the words “Secretary- General of the International Maritime Organisation” and replacing them with the words “Secretary- General”. This change has been necessitated because of the amendment in Article 1 paragraph (g) of the 2005 Protocol.

Additionally, Article 6 (4) of the SUA Convention imposed an obligation on a State Party to take necessary measures to establish jurisdiction on offences under Article 3 of the Convention in cases where the alleged offender was present in its territory and the State Party did not extradite him/her to any State Party that had already established jurisdiction. Additionally, the Article was not gender neutral. In this regard, Article 6 had been amended by replacing paragraph 4 of the SUA Convention with the provision in Article 6 Paragraph 4 of the 2005 protocol which recognised the new offences established in *3bis*, *3ter* and *3quater* of the 2005 Protocol. Apart from that, the amendment was couched in gender neutral language.

Article 7: Criminal and Extradition Proceedings

Article 7 of the SUA Convention provided for criminal or extradition proceedings to be followed and allowed a State Party to use such procedures in accordance with its national laws. The amendment introduced under Article 4, paragraph 6, of the 2005 Protocol, required a list of treaties in the annex. Therefore, Article 7 of the 2005 Protocol added an Annex to the SUA Convention, which related to a new offence established by Article 4(6) of the SUA Protocol.

Article 8: Master Ship State Obligations

Article 8 of the SUA Convention covered the responsibilities and roles of the master of the ship (Flag State) and Receiving State in delivering to the authorities of any State Party any person believed to have committed an offence under Article 3 the SUA Convention. This included the furnishing of evidence pertaining to the alleged offence. However, In this regard, Article 8 paragraph 1 of the SUA Convention had been amended by the introduction of Article 8 paragraph 1 of the 2005 Protocol so that the Article became gender neutral.

Article *8bis* in the Protocol covered co-operation and procedures to be followed if a State Party had reasonable grounds to suspect that the ship or a person on board the ship was, had been, or was about to be involved in the commission of an offence under the Convention.

A State Party may notify the Secretary-General that it would give authorisation to board and search a ship, its cargo and persons on board if there was no response from the Flag State within four hours. A State Party could also notify that it authorised a requesting Party to board and search the ship, its cargo and persons on board and to question the persons on board to determine if an offence had been, or is about to be, committed.

The use of force was to be avoided except when necessary to ensure the safety of officials and persons on board, or where the officials were obstructed in the execution of authorised actions. The use of force shall not exceed the minimum degree of force that was necessary and reasonable depending on the circumstances.

Article 10: Submission of Offender to Competent Authorities

Article 10 paragraph 1 of the SUA Convention obliged state Parties to submit an offender who had not been extradited to the competent authorities of that state without delay for purposes of having such an offender prosecuted. Additionally, Article 10 (2) of the SUA Convention provided that any person who was taken into custody or otherwise subjected to proceedings under the SUA Convention shall be guaranteed fair treatment, including all rights and guarantees under the law of the state in which that person was present. Article 9 of the 2005 SUA Protocol amended Article 10 (2) of the SUA Convention by adding specific reference to International Law including International Human Rights Law.

Article 11: Extraditable Offences

Article 11 of the SUA Convention dealt with the extradition and extradition procedures for extraditable offences set out in Article 3 of the SUA Convention. As a result of the creation of new offences in Articles *3bis*, *3ter* and *3quarter*, Article 10 of the 2005 Protocol amended Article 11 of the SUA Convention to include the new extraditable offences in Articles *3bis*, *3ter* and *3quarter*.

Further, Article (10) (2) of the 2005 Protocol added a new provision to the SUA Convention. Article 11*bis*, which stated that none of the offences set out in Articles 3, 3*bis*, 3*ter* and 3*quater* shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence. Thus, a state may not refuse a request for extradition or mutual legal assistance solely by claiming a political offence. Similarly, a state could not base its refusal on the grounds that the offence was connected to a political offence, or the offence was inspired by political motives. Article 11*bis*, thus, usefully restricted a state's ability to utilise the political offence exception in response to extradition requests pursuant to the SUA Convention.

Furthermore, Article 10 (3) of the 2005 SUA Protocol added Article 11*ter* to the SUA Convention, which provided that the SUA Convention did not impose an obligation to extradite or afford mutual legal assistance if the requested State Party had substantial grounds for believing that such a request for extradition or mutual legal assistance has been made for a group of potential purposes. These purposes included prosecuting and punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender.

Article 12: Obligations on State Parties

Article 12 of the SUA Convention imposed an obligation on State Parties to afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set out in Article 3. This assistance extended to the obtaining of evidence at their disposal and was necessary for the proceedings. Therefore, Article 11(1) of the 2005 SUA Protocol had been amended to encompass the category of new offences as prescribed under Article 3.

Article 11(2) of the SUA Protocol established a system to enhance the assistance that state parties may provide to each other in connection with offences under the SUA Convention. It provided for a new article, Article 12*bis*, to govern the transfer of individuals in the custody of one State Party to provide assistance to another State Party in connection with an investigation or prosecution for offences under the SUA Convention. To this end, Paragraph 1 of Article 12*bis* provided that a person who was being detained or was serving a sentence in the territory of one State Party whose presence in another State Party is requested for identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* may be transferred, if two conditions were met. Firstly, the person in custody must freely give informed consent to be transferred. Secondly, the competent authorities of both states must agree to the transfer, subject to such conditions as they may deem appropriate

Article 13: Co-operation between State Parties

Article 13 of the SUA Convention imposed an obligation on State Parties, to co-operate in the prevention of offences set forth in Articles 3, by taking all practicable measures to prevent preparation in their respective territories for the commission of such offences and by exchanging information and coordinating measures to prevent the commission of such offences. In this regard, Article 12 of the SUA Protocol amended the Convention by incorporating the new offences created in Articles 3*bis*, 3*ter*, and 3*quater*.

Article 14: Disclosure of Information between States Parties

This Article imposed an obligation on a State Party that may have reason to believe that an offence under Article 3 would be committed to, in accordance with its national law, furnish any relevant information it may have regarding the same offence to those States that may have established Jurisdiction in line with Article 6. Article 13 of the 2005 SUA Protocol amended Article 14 of the Convention by including the offences added under Article 3 to make those provisions consistent with the new articles.

Article 15: State Parties to Transmit Information to the Secretary-General

Article 15 of the SUA Convention imposed an obligation on a State Party to, as promptly as possible, provide the Secretary-General with any relevant information in its possession concerning the offence and the offender.

Article 15 Paragraph 3 of the SUA Convention stated that the information transmitted was to be communicated by the Secretary-General to all States Parties, to the Members of the International Maritime Organisation (also referred to as the Organisation), to the other States concerned and to appropriate international inter-governmental organisations. Therefore, Article 14 of the Protocol amends Article 15 (3) of the Convention to make those provisions consistent with the new articles added to the SUA Convention by the Protocol.

Further, Article 15 of the Protocol provided that the SUA and the Protocol shall be interpreted as a single instrument. It also provided that Articles 1 to 16 of the Protocol and annex shall constitute and be called together with the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 2005 (2005 SUA Convention).

Article 16: Dispute Resolution

Article 16 (1) of the SUA Convention provided for dispute resolution between State Parties. It provided that disputes shall be referred to arbitration and if the State Parties involved failed to agree on the organisation to arbitrate, they may refer the dispute to the International Court of Justice (ICJ). Article 16 paragraph 2 of the Convention allowed state parties to enter some reservations on any or all provisions of paragraph 1. Additionally, Article 16 (3) of the Protocol gave State Parties discretion to withdraw the reservation at any time by notifying the Secretary-General.

In addition, Article 16 of the Protocol added a new Article to the Convention called Article 16*bis*. Article 16*bis* provided that Articles 17 to 24 shall be the final clauses of the Convention for the Suppression of Unlawful Acts against the safety Maritime Navigation, 2005.

Article 17: Signatures and Accession of Convention

Article 17 of the Convention provided for the period and the place in which the Convention shall be open for signature to member states that participated in the international conference on the Suppression of Unlawful Acts against Maritime Navigation. It also provided that the Convention would be open for accession. Additionally, the Convention indicated ways in which State Parties could express their consent to be bound by the Convention.

Similarly, Article 17 of the Protocol provided for the period and the place in which the Protocol shall be open for signature. It also provided that the Convention shall be open for accession. Furthermore, the Convention made a provision to the effect that states may express their consent to be bound by the respective texts by signature without reservation, ratification, acceptance, approval or accession.

Article 18: Enforcement

Article 18 of the Convention stated that the Convention would enter into force ninety days following the date on which fifteen states had signed it without reservation as to ratification, acceptance or approval or had deposited an instrument of ratification, acceptance, approval or accession. Additionally, the Article also stated the time frame for entry into force after the conditions of ratification, acceptance, approval or accession for any state.

Article 19: Denunciation

Article 19 of the Convention outlined the procedure to be followed by a state which sought to denounce the Convention. This procedure had also been outlined under Article 19 of the Protocol which stated that state parties may denounce the Protocol by the deposit of an instrument of denunciation with the Secretary-General of the International Maritime Organisation. The denunciation took effect one year after the deposit of the instrument of denunciation, or on such longer period as may be specified in the instrument.

Article 20: Revision or Amendment

Under Article 20 of the Protocol, the Secretary-General of the International Maritime Organisation was required, at the request of one third of States Parties, or ten States Parties, whichever was higher, to convene a conference of State Parties to revise or amend the Protocol. The rule for the Protocol on Fixed Platforms was the same under Article 11 of that Protocol except that the threshold applied was one-third of State Parties, or five State Parties, whichever was the higher.

Article 21: Declarations

Article 21 of the Convention provided for the depository of the Convention. The Article further imposed obligations on the Secretary-General to inform all states which signed or acceded to the convention and all members of the organisation of each new signature, entry into force, denunciation and declarations made under the Convention. Additionally, other duties imposed on the Secretary-General included transmission of true copies of the Convention to all States which had signed the Convention or acceded to it. The Article further provided that upon entering into force, a certified true copy thereof was to be transmitted by the depository to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 21 of the 2005 Protocol outlined several permissible declarations with respect to the annex incorporating other counter-terrorism treaties into the Convention under *3ter*. Further, Article 21(3) allowed a state party to declare that it would apply the provisions of Article *3ter* in accordance with the principles of its criminal law concerning family exceptions of liability. This provision made allowance for some states that provided defences under domestic law from prosecution for family members who otherwise could be charged with harbouring fugitives.

Article 22: Procedure for Amending the Annex

Article 22 of the Protocol allowed additional relevant counter-terrorism treaties to be listed in the Annex to the Convention if proposed by a State Party and the treaty in question was open to the participation of all states, in force, and had been ratified by at least twelve State Parties to the Protocol on Maritime Navigation. The Secretary-General of the International Maritime Organisation (IMO) was then required to circulate that proposal to all State Parties. The consent of at least twelve State Parties was required for it to be adopted. However, in no case would a State Party be bound by the amendment to the Annex unless it deposited an instrument of ratification, acceptance, or approval for that amendment.

Article 22 of the SUA Protocol allowed for the addition of new treaties, but only if they-

- i. were open to the participation of all States;
- ii. had entered into force; and
- iii. had been ratified, accepted, approved, or acceded to.

Article 23: Depository

Article 23 designated the Secretary-General as the depository of the Protocol and any amendments adopted under Articles 20 and 22 of the Protocol.

Article 24: Language

Article 24 provided the six languages for the official texts of the 2005 SUA Protocol.

8.0 Summary of Submissions from Stakeholders

The *Ratification of International Agreements Act No.34 of 2016* (herein referred to as the Act), provided guidance on the parameters to look out for before an international agreement could be ratified or acceded to by Zambia, namely; that it should be in the best interest of the state.

Section 3(2) of the Act explained the considerations to have in mind when examining what would constitute ‘best interest of the state’ as follows:

“(2) The Minister referred to in subsection (1) shall, in determining whether it is in the best interests of the State to ratify an international agreement, consider—

- (a) the object (rationale) of the international agreement;*
- (b) whether existing legislation adequately addressed the object of the international agreement;*
- (c) the impact of implementing any measure specified in the international agreement;*
and
- (d) any legislative measures that may be required to give effect to the international agreement.”*

In analysing the views of stakeholders on the National Assembly approval of the proposal to ratify the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Committee kept these parameters in mind.

i. The Object of the International Agreement

Stakeholders informed the Committee that although Zambia had ratified the SUA Convention, it was among the UN member states that had not yet ratified the Protocol for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as at June, 2015. According to resolution 40/611 of the General Assembly of the United Nations, of which Zambia was a party, all states, unilateral and in co-operation with other states, are urged to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving violation of human rights that may give rise to international terrorism and may endanger international peace and security.

Stakeholders pointed out the fact that although Zambia was a land locked country, with no sea coast, it relied on neighbouring countries for access to the sea ports for international trade and commerce. In the midst of its trade and commerce activities, criminal elements maybe engaged in illegal practices that transcended national borders and may end up on to the high seas. It was, therefore, possible for Zambian nationals or residents in the country to be involved in maritime criminal activities either as perpetrators or as victims. This was especially so considering that most Zambian goods imported from the Middle and Far East came by sea. It was, therefore, likely that such businesses may fall victim to criminal activities on the high seas.

In this regard, stakeholders contended that there was need for Zambia to ratify the 2005 SUA Protocol in order to strengthen, update and introduce the new structure provided by the Protocol. The ratification would help to create a more effective regime to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction. They added that ratifying the protocol would also enable Zambia to promote and maintain international peace and security and friendly relations and co-operation with other states.

ii. Existing Legislation Addressing the Object of the International Agreement

Stakeholders contended that that currently there was no law in Zambia which specifically addressed the suppression of unlawful acts against the safety of maritime navigation. They added that the *Inland Waters Shipping Act, Chapter 466 of the Laws of Zambia* and the *Customs and Excise Act, Chapter 322 of the Laws of Zambia* which made provision for the survey, registration and safety of certain vessels used on the inland waters of Zambia did not cover the scope provided in the protocol

Stakeholders further expressed concern over the fact that although the Protocol was integral to Zambia's anti terrorism regime and its membership to the United Nations Financial Action Task Force, the Eastern and Southern Africa Anti Money Laundering Group and the African Union, there was no law in Zambia that addressed unlawful acts of violence against the safety of maritime navigation. The ratification of the Protocol was therefore, part of Zambia's international obligation as a member of these international Institutions, among others.

iii. The Impact of Implementing Measures Specified in the International Agreement

Stakeholders reasoned that Zambia was in the centre of the Southern Africa Region and therefore a transit centre for goods moving to and from the North, South, East and West. Most of the goods that passed through the country came from overseas crossing international waters and destined to various neighbouring countries. Transporters of goods and the goods themselves

may be subject to criminal activities on the high seas and may be found in Zambia at one moment.

Stakeholders pointed out the fact that Article 6 (1) of the Protocol stated that each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 3 and to take such measures as may be necessary to establish its jurisdiction where the alleged offender was present in its territory. Article 13 stated that State Parties shall cooperate in the prevention of the offences set forth in Article 3, by taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories.

The stakeholders contended that the offences set out in the Convention were extraditable and where there was no extradition treaty between member states, the Convention could be used as a treaty between those states. Further, State Parties were urged in Articles 12 and 13, to afford one another the greatest measures of assistance in connection to criminal proceedings brought in respect of the offences set forth in Article 3 and to cooperate in the prevention of the offences. Therefore, the spirit of the Convention was to benefit all State Parties, including Zambia.

While expressing their consternation over the delay in the ratification of the various international agreements, stakeholders supported the ratification of the Protocol for the Suppression of Unlawful Acts of Violence Against maritime Navigation, contending that this would place Zambia in good standing on the international scene and allow the country to share best practices with other states on various matters of a regional and global nature.

iv. Legislative Reforms required to give Effect to the International Agreement

The stakeholders were of the view that considering that currently Zambia did not have any laws that specifically and adequately addressed unlawful acts against maritime navigation, there was need to enact legislation to provide for maritime offences, as well as effect the necessary changes in the pieces of legislation set out below.

- a) *The Inland Waters Shipping Act, Chapter 466 of the Laws of Zambia;*
- b) *The Customs and Excise Act, Chapter 322 of the Laws of Zambia;*
- c) *The Penal Code, Chapter 87 of the Laws of Zambia;*
- d) *The Criminal Procedure Code, Chapter 88 of the Laws of Zambia; and*
- e) *The Anti-Terrorism and Non Proliferation Act, No. 8 of 2018.*

The stakeholders were of the view that the conditions for determining whether or not the international agreement was in the best interest of the nation, as set out in *The Ratification of International Agreements Act No.3, of 2016*, had been satisfied.

In this regard, the stakeholders unanimously supported the proposal to ratify the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

9.0 Committee's Observations and Recommendations

Having considered submissions from the stakeholders that appeared before it, the Committee makes observations and recommendations as presented hereunder.

i. The Object/Rationale of the International Agreement

The Committee observes that although Zambia has ratified the SUA Convention, it is among the UN member states that have not yet ratified the Protocol for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

The Committee notes, further, that according to resolution 40/611 of the General Assembly of the United Nations to which Zambia is a party, all states, unilateral and in co-operation with other states, are urged to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving violation of human rights that may give rise to international terrorism and may endanger international peace and security.

The Committee further observes that although Zambia is a land locked country with no sea coast, the country may be affected by criminal activities which may transcend national borders or even take place in the high seas, as it relies on neighbouring countries to access sea ports for trade and commerce. It is, therefore possible for Zambian nationals or residents in the country to be involved in maritime criminal activities either as perpetrators or as victims. This is especially so, considering the fact that most Zambian goods imported from the Middle and Far East are transported by sea.

In this regard, the Committee recommends the ratification of the 2005 SUA Protocol in order to strengthen, update and introduce the new legal structure provided by the Protocol. The ratification will help to create a more effective regime to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction. This will also enable Zambia to contribute to the promotion and maintenance international of peace and security and friendly relations and co-operation with other states.

ii. Existing Legislation Addressing the Object of the International Agreement

The Committee notes that currently, there is no law in Zambia which specifically and comprehensively addresses the suppression of unlawful acts against the safety of maritime navigation, although the Protocol is integral to Zambia's anti terrorism regime and its membership to the United Nations Financial Action Task Force, the Eastern and Southern Africa Anti-Money Laundering Group and the African Union. The Committee, in acknowledging the existence of the *Inland Waters Shipping Act, Chapter 466 of the Laws of Zambia* and the *Customs and Excise Act, Chapter 322 of the Laws of Zambia*, notes that these pieces of legislation only make provision for the survey, registration and safety of certain vessels used on the inland waters of Zambia and do not cover the scope provided in the protocol.

The Committee, therefore, views the ratification of the Protocol as part of Zambia's obligation as a member of the international community and consequently supports it.

iii. The Impact of Implementing Measures Specified in the International Agreement

The Committee agrees with the stakeholders who reasoned, that Zambia is the hub of the Southern Africa Region and, therefore, a transit centre for goods around the region. Further, most of the goods that pass through the country come from overseas, crossing international waters destined to various neighbouring countries. Transporters of goods and the goods themselves

may, therefore, be subject to criminal activities on high seas and may be found in Zambia at one time or the other.

The Committee notes that Article 6 (1) of the Protocol states that each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 3 and to take such measures as may be necessary to establish its jurisdiction where the alleged offender is present in its territory. Article 13 states that State Parties shall cooperate in the prevention of the offences set forth in Article 3, by taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories.

The Committee also notes that the offences set out in the Convention are largely extraditable and where there is no extradition treaty between Zambia and other member States, the Convention can be used as a treaty between Zambia and those states. This is more so because State Parties are required by Articles 12 and 13, to afford one another the greatest measures of assistance in connection to criminal proceedings brought in respect of the offences set forth in Article 3 and to cooperate in the prevention of the offences.

The Committee recommends that in order to be able to render and receive assistance from other State Parties, Zambia should ratify the Convention.

iv. Legislative Reforms Required to give Effect to the International Agreement

The Committee observes that currently Zambia does not have any laws that specifically and adequately address unlawful acts against maritime navigation.

In this regard the Committee recommends that the Government should enact legislation to provide for maritime offences set out in the Protocol as well as effect the necessary changes in the pieces of legislation set out below.

- a) *The Inland Waters Shipping Act, Chapter 466 of the Laws of Zambia;*
- b) *The Customs and Excise Act, Chapter 322 of the Laws of Zambia;*
- c) *The Penal Code, Chapter 87 of the Laws of Zambia;*
- d) *The Criminal Procedure Code Chapter 88 of the Laws of Zambia; and*
- e) *The Anti-Terrorism and Non Proliferation Act No. 8 of 2018.*

The Committee is satisfied that the conditions for determining whether or not the ratification of the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation is in the best interests of the nation, as set out in the *Ratification of International Agreements Act No.34 of 2016*, have been met.

In this regard, the Committee urges the House to approve the proposal to ratify the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, without reservations.

10.0 Conclusion

The Committee observed that generally Zambia took long to ratify international agreements. This had resulted into loss of benefits that accrued from being signatories, including job opportunities for Zambian nationals. The Committee attributed this to the absence of an overarching institution to superintend over the processes of ratification across the line ministries. In this regard, the Committee was of the view that such an institution should be put in place and be domiciled at Cabinet Office.

The Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions. The Committee wishes to thank you Mr Speaker, for affording it an opportunity to scrutinise the National Assembly approval of the proposal to ratify the *Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*. The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly.

We have the Honour to be, Sir, the Committee on National Security and Foreign Affairs, tasked to consider the the proposal to ratify the *Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime* for the Fourth Session of the Twelfth National Assembly.

Dr M Malama, MP,
(Chairperson)

Ms A M Chisangano, MP
(Vice Chairperson)

Mr E J Muchima, MP;
(Member)

Brig Gen M Sitwala, MP;
(Member)

Mr K Mbangweta, MP;
(Member)

Mr L Nyirenda, MP;
(Member)

Ms M Miti, MP;
(Member)

Dr F N'gambi, MP; and
(Member)

Mr A B Malama, MP.
(Member)

Ms M Lubezhi, MP
(Member)

February 2017
LUSAKA

Dr M Malama, MP
CHAIRPERSON

Appendix I
List of Witnesses

Ministry of Justice

Mrs F M Bwalya, Chief Parliamentary Counsel
Mr L Banda, Parliamentary Counsel

Ministry of Home Affairs

Dr C L Mulenga, Permanent Secretary
Mr G Sinyenga, Director-Human Resource Development
Mr A Mukisi, Parliamentary Liaison Officer
Mr P Choolwe, Assistant Director Research and Planning
Mr C Simwanza, Director National Anti-Terrorism Centre
Mr S M Kunda, Deputy Director, National Anti-Terrorism Centre
Mr G Malunga, Deputy Director, Zambia Police Service, Marine

National Airports Corporation

Mr F Mondoloka, Managing Director
Mr A Bvulani, Director- Airport Services
Mr F M Mulenga, Airport Manager

Ministry of Transport and Communications

Mr M Lungu, Permanent Secretary
Mr G Lesa, Director General
Mr S Mbewe, Director Planning
Mr Z Phiri, Director
Mr D Kafuli, Acting Director Transport
Mr S Kunda, Legal Counsel

National Anti-Terrorism Centre

Mr C Simwanza, Director
Mr A Mukisi, Parliamentary Liaison Officer
LT Col J Kajila, Chief of Operations
Mr K Lisuli, Anti-Terrorism Officer

Law Association of Zambia

Ms W Siwale, Council Member

Mahogany Air

Mr J Belemu, Chief Executive Officer

Ministry of Defence

Mr E L Zimba, Acting Permanent Secretary
Ms M Namwawa, Legal Officer
Mr F Mwansa, Principal Research and Public Relations Officer
Mr J C Makanta, Air Secretary

Maj G N Miyutu, Legal Officer

Zambia Air Service Training Institute

Mr B Shingalili, Principal

Mr B Mubita, Head of Training

Mr E Mwanza Quality Manager

Ministry of Foreign Affairs

Amb. C Lombe, Permanent Secretary

Mrs L Matapo, Legal Counsel

Mr S Mandanda, Director - Development and International Organisation

Mr H Banda, National Coordinator -International Conference of Great Lakes

Mr M B Milambo, Planning Officer.

Chartered Institute of Logistics and Transport

Mr P Chiyuwe, Chief Executive Officer

Mr K Simukanga, Honorary Secretary

Mr E Mwale inspector

Mr K Mwamba, Inspector

Ministry of Housing and Infrastructure Development

Eng. C Mushota, Permanent Secretary

Dr R Banda, Director-Planning

Mr A Banda, Director-Human Resource

Eng. D Mufuna, Director- Public Infrastructure

Appendix II
List of National Assembly Officials

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr S Chiwota, Senior Committee Clerk (SC)
Mr C Chishimba, Committee Clerk
Mrs G Chikwenya, Typist
Mr M Kantumoya, Parliamentary Messenger