



## EAST AFRICAN COMMUNITY

### EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

#### Official Report of the Proceedings of the East African Legislative Assembly

#### 64<sup>TH</sup> SITTING - SECOND ASSEMBLY: FIRST MEETING – THIRD SESSION

Wednesday, 5 August 2009

*The East African Legislative Assembly met at 2.30 p.m. in the Karimjee Hall in Dar-es-Salaam.*

#### PRAYER

*(The Speaker, Mr Abdi H. Abdirahin, in the Chair.)*

*(The Assembly was called to order.)*

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#### **BILL** **Second Reading**

The East African Civil Aviation Safety  
and Security Oversight Agency Bill,  
2008

*(Debate interrupted on Tuesday, 4  
August 2009 resumed)*

**The Speaker:** Honourable Mulengani.

**Mr Bernard Mulengani (Uganda):**  
Thank you very much, Mr Speaker.  
Yesterday just before the power  
interruption, I was referring to what  
hon. Msabaha had said that “*Uzee ni  
dawa*”. The reason I was raising this  
was to acknowledge the interface with  
the likes of the hon. Masha in terms of  
the institutional memory that they  
have, which is not only in books but is

also in our living memory. We are very  
privileged in our generation that before  
they really move out of politics, we are  
able to call upon them. *(Applause)*

Back to the Bill, I have various  
concerns, but I will begin on page 5,  
Clause 4(a), which talks about  
promoting safe, secure and efficient  
use and development of civil aviation  
within and outside the Partner States. I  
want to get clarification from the  
Committee whether they understood  
the issue of efficient use to mean  
harmonisation of rates in the region.  
As I talk, this Bill is at the centre of us  
dealing with issues like attaining a  
common market, because it involves  
facilitation of people to move at a  
harmonised rate within the region. I  
would like to narrow my example to  
the tourism activity in the region.

There is no doubt that because the rates of flying from Nairobi to Uganda are higher than the rates of flying from Nairobi to Mombasa, tourists would opt to visit Kenya and not Uganda. As we debate the joint marketing of tourism in the region, we need to harmonise the other laws that have something to do with movement, in order to help the tourism industry. If it is going to cost a person to fly from Nairobi to Entebbe three times more than flying to Mombasa, any tour company would opt to go the other way other than proceeding to the expensive areas. So, the clarification I am seeking on this particular clause is: does the term “efficient use” under the principle objective of the agency imply also the harmonisation of rates where the flights take the same time? Flying from Entebbe to Nairobi takes the same time as flying from Nairobi to Mombasa - it is about one hour - but the rates, as I said, are different.

The other point I want to make concerns those who shall be on the board, which is stated on page 7 of the Bill. In the interest of the stakeholders in civil aviation, I propose that even the operators should be represented on the board.

My other concern is on Clause 18(2) which states that “*The Annual Report shall be presented to the Council, which shall cause it to be laid before the East African Legislative Assembly within six months after receiving the Report.*” This is on page 15 of the Bill.

I have two issues under this: One; we would consider harmonising the period of laying this Report before the Assembly with the requirement for the audited accounts of the East African Community. It would only make sense if we can harmonise the requirements

in terms of time with that for the audited accounts of the Community.

Mr Speaker, I also have an issue with the term “*laid before the East African Legislative Assembly.*” To me that sounds subjective. Currently, the Treaty talks about laying our reports in our member states, but what happens thereafter? I propose that under this clause we should go further to define what we mean by “*laid before the East African Legislative Assembly.*” If it needs defining or if it is implied that we go further to debate this report, I would propose that we state it clearly.

About the report, I want to refer to page 3, paragraph 4.2(3), under “*General Observations*”, which states that “*The Committee noted that the Bill is silent on most of the issues in Article 92 of the Treaty; it would therefore be necessary to have a legislation that goes beyond the establishment of the agency, which would address the entire aviation industry.*”

I want to get clarification from the Committee as to whether the protocols are also silent on that area that they are referring to. This is because, as a House, I understand that we can still go ahead and legislate even in areas where protocols have been signed. If protocols are missing in that area, then I will urge the Council of Ministers to consider bringing up those particular issues that are missing from the Bill for implementation or inclusion in the protocol.

The other point I want to talk about is under the “*Specific observations on the Bill*”, and specifically, paragraph 4.2.1(iii), on the issues of financing. This is on page 4 of the Report. The House may wish to know that the observation of the Committee in this

area is quite correct. They say that if we are going to leave the contributions for this agency to come from civil aviation authorities of the Partner States, we are heading for a head-on collision. I would not want to give examples because it is very clear to all of us since we have traversed all the Partner States by air, and we know the kind of loads in the different airports in the region. It will be a disadvantage to some Partner States if we decide that they contribute a particular amount of money, which may be uniform like in the case of the contributions of Partner States to the Community. One source of collection of funds within the various authorities comes from landing, taking off, navigation and airport tax. If we are going to consider civil aviations contributing towards financing the Agency, and most likely a uniform fee, the agency will never take off.

I am proposing to this House that at an appropriate time we consider the option of a percentage on the collections from the various civil aviations to meet the financing of the Agency. It will solve a lot of things, including inability to pay and eventually causing other debates within the corridors. The Committee may wish to consider the option of the funds coming from contributions by the respective civil aviations, but within certain limits. It would therefore consider that member states also contribute, but I would just request that we tag this one to percentages. We tag it using a particular percentage on the revenue collected by the civil aviations.

The biggest challenge under this, again, is that just like the producers of commodities and edibles; the civil aviation is also doing this to people - transferring tax into fares. I seek the

indulgence of this House for this to be a model experiment on the functioning of the Customs Union in terms of central collection of taxes, and being able to contribute towards the Community using a percentage. If we cannot really implement some of these things using the small organisations that are coming together vis-à-vis the national states that have come together to see the applicability, then I think we are not doing justice to the integration process.

Lastly, I support the motion for the enactment of the Bill into law, but I have reservations in those particular areas I have requested the Minister and the Committee to clarify. I thank you very much, Mr Speaker. *(Applause)*

**Mr Leonce Ndarubagiye (Burundi):**

Thank you very much, Mr Speaker. I stand to raise one single question or to make one proposal. On page 5, and under Clause 4, the principle objectives of the agency are mentioned under sub-clauses (a), (b), (c). I would like to propose (d) to say: *“to contribute in promoting, enhancing and hastening the East African Community’s ultimate goal of integration.”*

I sincerely believe that whenever we enumerate the principle objectives of our Bills, we should repeat again and again the ultimate goal which we are striving to reach, which is the political federation. Like you all know, in our faiths, religions and other beliefs, our commitment is repeated again and again because we believe it. We have made the pledge and commitment, and we should not be shy to repeat it in every single Bill as long as it can fit. That is why I say that I will be very glad if this very small sentence is included under Clause 4. I will support

the motion if this is included. I thank you very much, sir. *(Applause)*

**The Speaker:** Hon. Leonce, you could do that in writing and give it to the Clerk.

**Mr Wandera Ogalo (Uganda):** Thank you, Mr Speaker, for the opportunity to contribute to the motion. I want to begin by thanking the Council of Ministers for bringing this Bill. It has been a long struggle to get to this point. This shows that we are making progress because originally we were not working through Bills. The Council of Ministers recognising the requirement for us to carry out our activities through a regulatory framework and actually embarking on it is, in my view, a very good development. I wish to thank the Council of Ministers for that. *(Applause)*

Secondly, I also wish to thank the Committee for producing this report that we are debating now. I have a few concerns, however, which I need to bring to the attention of the House. The first concern is on the way we do our work. I think there is a need for us to address the shortcomings shown here.

The First Reading of this Bill was on 23 May 2008, and the Committee was ready with the report on 10 August 2008. It beats my understanding as to why we have taken a whole year before debating this matter when everybody was ready. I think that there should be a faster way of churning out the work so that once a Bill is brought to the House, it is attended to and disposed of as quickly as possible. If we have a backlog of work, it could be seen as inefficiency on the part of the Assembly when actually the problem is elsewhere.

Mr Speaker, let me now turn to the report of the Committee. On page 3, paragraph 4.1(iii) the Committee states that: *“the Bill does not include all the provisions from the protocol as Members of the Committee would have liked. It was however explained that the proposed Bill is specific and limited to the oversight role.”* I think we are doing double work, Mr Speaker. If there are provisions in the Treaty, which should all be covered in the Bill, why do we have to choose only one area of only setting up a regulatory framework, and leave it at that? I think there is a danger of us failing to keep pace with the integration process. There are certain matters, which are supposed to be carried out by the civil aviation authority, and this would have been an opportune moment for us to include all that is in the Treaty.

I would like to refer to the EAC Strategic plan 2006-2010. At page 80, we have been given a guideline on what we should have done or what we should do in respect of civil aviation. This is a document which was arrived at by the Partner States themselves. They said they would do this in the area of civil aviation, just like all other areas. I would like to say that the strategic plan should actually be in line with the Treaty, but something is missing here. What we are considering is not in consonance with what the strategic plan says and what the Treaty says. The Committee has observed that there is a difference somewhere. If we are to pass a law which makes sense, then that law should be able to reflect what is in the strategic plan and what is in the Treaty.

Sir, let me quote a few examples of things that are in the strategic plan which are to be achieved between the years 2006 and 2010, which ordinarily

should have been in this Bill and they are not, and yet we are coming to the end of this strategic plan. The plan period is almost coming to an end, so when shall we do them?

On page 8 of the EAC Strategic Plan 2006-2010, under "Civil Aviation", there are the following:

- 1) Establish and operationalise the East African Civil Aviation Safety and Security Oversight Organisation.
- 2) Implement search and rescue agreement and establish the East African Community search and rescue administration.
- 3) Liberalise, fully, civil aviation activities.
- 4) Finalise the formulation of a common aviation policy by Partner States.
- 5) Establish and operationalise the East African Community Upper Airspace Administrative Centre.
- 6) Harmonise and implement civil aviation programmes, projects and regulations.

This is what we set ourselves to do in this project plan of 2006-2010. We sat and decided that we would do all these things within these years, and in doing this we are cognisant of what is in the Treaty. However, now we are considering a law which is in respect of only one of the six aims we set ourselves. Worse still, we set ourselves a time span within which to achieve all these six areas. We said that by June 2007, we should have covered all that is here, which is a reflection of what is in the Treaty. We are now enacting a law in 2009, which covers onesixth of what we set out to do! Definitely there is something not right there, Mr Speaker.

We are not moving the integration process as fast as we have set ourselves to do. Much as I congratulate the Council of Ministers for taking this first step, I think there should be a deliberate policy to marry the legislation with what we set ourselves to do in the strategic plan. Only then will we be able to achieve what we set ourselves to do and, therefore, be in tune with what we say about our integration process. The way it is now, we are leaving so much out that even the Committee is concerned. That is why the Committee is saying, "We would have liked to see more."

Mr Speaker, sometimes the problem we face in legislation is that when we make these suggestions of amendments, they are not welcomed by the Executive. I would like to plead with the Executive that when our committees propose amendments it is in good faith because we are all moving towards a common goal. *(Applause)* I therefore hope that the Council of Ministers will find a way of integrating the other five elements in this law.

The next point that I wish to bring out concerns financing. The Committee observes on page 4 that it is proposed that funding will come from the contributions of the civil aviation authorities. We all know that civil aviation authorities -like the Committee has ably pointed out- get their funding from the national treasuries. So, what are we saying here that is not there anyway? It comes down to one thing, and that is funding by the Partner States! We are simply trying to make it appear different when there is no difference. The civil aviation authorities will present their budgets to the relevant ministries in the respective Partner States and the relevant ministries will take the

budgets to their respective ministries for finance, which will eventually include that in their national budgets. What are we saying? What is different? It is the same thing! The Treaty provisions are sufficient, and that will be by equal contributions.

Mr Speaker, it seems to me that we are trying to create a body to make it appear like it has a different face from what it has in reality. What is done in reality is that the funding is going to come from the Partner States, which is already there anyway. In any case, we all know that because of financial limitations in our Partner States, the budgets are always reviewed and slashed down. So, the civil aviation authority budget will have to go through very many stages, and at almost every stage it will be slashed down. It may have budgeted for US \$10,000 as a contribution to the agency in Arusha, but that has to go through the respective parent ministry, through the finance ministry, through Parliament, and it is open to change and to being slashed.

Mr Speaker, this is a very unsure way of funding any agency because you are leaving it to the discretion of so many people in between. How are we sure that the money will even get where it is supposed to reach? Supposing the ministries in the Partner States decide not to fund civil aviation for a particular year, it would mean that in that financial year no money would come from civil aviation authorities to the agency. Now, are we really creating a body that will carry out its obligation considering that its funding is not certain? Mr Speaker, I think that this question of funding had been left to stand unresolved for too long.

Mr Speaker, I want to go back to the strategic plan. The strategic plan, as I

have said earlier, sets out our vision and how we want to do things. On page 59, it sets out the financing of the Community. This was done five years ago. The Partner States looked at the funding of the Community and they looked at all the options - I will not bother the House with the details of the options; they are all here. They came up with a recommendation that they thought was the only way to have sustainable funding for the Community. I will quote what they said on page 59: *“Recommended option: On the full consideration of the advantages and disadvantages of the financing options available, it is recommended that financing of the East African Community be pegged to 1.5 percent of the Partner States’ customs revenues”*.

On average, this would generate about US \$22 million, which would fully finance the budget of the Community. Almost five years ago, we as an Assembly said the same thing. If this recommendation was taken, we would not be depending on civil aviation authorities giving or not giving money, but have a sustainable way of getting money to fund the Community activities. Five years down the road, we have not implemented this.

I know for a fact that the Summit has pronounced itself on this matter of financing the Community. The Summit directed the Council of Ministers to come out with a report on this particular issue of financing. The information we have, if it is true, is unfortunate on the part of the Council. The information we have is that the Council referred this same problem back to the Partner States. Personally, I think that if there was a directive by the Summit for the Council to make a decision on the financing of the Community, the decision should come

out of the Council. For the Council to send it back to the Partner States is wrong. I think that asking the Partner States to reduce on their income is expecting too much from them.

Mr Speaker, I do argue that now is the time; we have been on this issue of unclear financing for a long time. It is now time for the Council of Ministers to make a decision one way or the other. I am hoping that they will make a decision on what was recommended by the Partner States themselves and then we will not have to stand here and start speculating on whether there will be money for this agency that we are creating. I humbly, and with respect, pray that the Council takes this up. That is how the whole integration process will be moved forward; by bold decisions.

I do not expect anything from the Partner States; it is now almost a year since that issue was referred to the Partner States. Nothing, of course, is coming from there, and I do not expect anything from there. I think the buck stops with the Council of Ministers on this. Let the Summit, which made the directive, make the final decision after the Council has made its recommendations. I think then we will avoid this idea of financing - *(Interruption)*

**Mr. Kidega (Uganda):** I thank hon. Ogalo for giving way. Mr Speaker, this wavering process of funding the integration process is making this Assembly go through very difficult situations. We have had very many bitter experiences with some development partners because of unclear processes on how funds can be raised for funding the integration process. Some development partners have taken advantage of the fact that we lack organised systems of

generating resources. We simply jump on board and drive their interests through our integration process. *(Applause)*

Mr Speaker, we must take this matter very seriously. There are saboteurs in the world systems that will look at loopholes and jump on our beautiful newly born baby called East African Community - *(Applause)* - and derail us from the process of integration because of lack of proper funding. Hon. Ogalo, drive the point home! Thank you. *(Applause)*

**Mr. Ogalo:** Thank you for this very good information. I think that the members have also seen it, because even the working of the Assembly itself has been brought to a halt because of this unclear funding method. That would not have happened if there was sustainable funding. So, Mr Speaker, my plea is to the Council: We expect a lot from all the organs of the Community to push the integration process. We should assist the organs, and one of the critical areas is in the area of a decision on funding. Since the ball is in the court of the Council of Ministers, I would plead with the Council to assist the Community by making a decision- *(Applause)*. The Council is backed in this by the strategic plan, which itself says that this is the best way to go.

Lastly, I want to comment on something on page 3 of the Committee's report. It is stated that the establishment of the proposed agency failed to indicate the clear mechanism between the agency and Partner State civil aviation authorities regarding regulatory powers and compliance in the aviation sector. This is an area that we also grapple with when we are enacting other regulations. We wish to create central authorities in Arusha,

and we do create them by law, but we do not give them power or authority. We just allow the Partner State civil aviation authorities to deal with the enforcement, the regulation and everything else! So what then is the use of creating this central authority?

Mr Speaker, you will remember that we had the same problem with the Customs Management Act. This House pleaded and called for a central body with power but our plea was rejected. We ended up creating a very weak institution at Arusha. All the powers still lie in the Partner States. The same thing happened with the Competition law. We are talking about competition - businessmen in the whole region competing - and we are leaving the enforcement and regulation and everything else with the Partner States and have a very weak institution at Arusha! Mr Speaker, at the end of the day, we will create these bodies but they will not serve the integration process. *(Applause)*

I know for a fact that there are some countries that have leased out their airports. So what will the relationship be if a Partner State had leased its airport for, say, ten years, and yet under this Bill the civil aviation authority is supposed to have some control, while at the same time the people in Arusha are saying that they have control? What control does Arusha have? What relationship do they have? I think we must clearly define and give the necessary power to the authority at Arusha to be effective because if you don't, at the end of the day you will have a body which is not doing any work. If I have leased Kilimanjaro Airport and it is mine for ten years, the civil aviation authority in Tanzania will relate to me but for somebody coming from Arusha, I do not know you. My agreement was with

the civil aviation authority of Tanzania, so why should I listen to Arusha?

I think that this question of creating supranational legal entities in Arusha and failing to give them sufficient power to do their work is not taking us far. In my view, I think that we should give sufficient authority in these laws to Arusha to be able to enforce standards. If you do not give it powers, then it is no work done. How can you talk about safety or security when Entebbe is doing its own thing, Kigali and Bujumbura are doing their own things, and you have no authority to ask them anyway?

So, Mr Speaker, much as I welcome the new way of having things done through a regulatory framework, I think we must be able to do this same work, taking into account what we have set ourselves to do in the strategic plan and also what is in the Treaty.

I will support the motion reluctantly, but I think there is a lot which we need to do. *(Applause)*

**Ms Dora Kanabahita Byamukama (Uganda):** Thank you, Mr Speaker, for giving me this opportunity to contribute to this very important Bill. Since this is my maiden speech in this meeting, I seek your indulgence to start by thanking the EALA members of the Tanzania chapter, led by hon. Masaburi, for all the work that they have done in order to make us comfortable. We also thank them for those invitations we have received, which we are yet to enjoy. Thank you very much. *(Applause)*

I would also like to bring greetings from the hinterland of the East African region, and specifically from the "Pearl of Africa". We are honoured and



privileged to be here in what was known as “*Bandari Salama*”, “the Port of Peace” which is now known as Dar-es-salaam - (*Applause*). Indeed, it has been a port of peace for all of us because as you know, this was an entry point for the Indian Ocean Trade, and we have linkages right from the Buganda Kingdom through the Banyamwezi. We have also studied the history of this great land, especially about Mirambo’s Kingdom. Therefore, we are gratified to be here. I will not go on and on, but allow me to give one particular point, which is very dear to my heart, and it is related to the facts of independence in 1961 which was led by none other than Mwalimu Julius Nyerere. (*Applause*) He had the farsightedness at one time to propose that we should delay the integration process until all the countries of East Africa had attained independence. (*Applause*) We are delighted to be here, and we thank the Government of the United Republic of Tanzania for all the work that it has done, and for keeping the fire burning since then till now.

Mr Speaker, I would also like to applaud you for your excellent leadership. We would not be here if you had not actively utilised the Treaty. By being here, I think we have been, to a large extent, able to widen and deepen the integration. We think we have made some mileage, if I can judge from the media reports of today. Thank you very much for your leadership, and we look forward to more wonderful things. (*Applause*)

Allow me to quickly go to the Bill. I have circulated some proposed amendments, and I will be very brief. My first comment is on the issue, which was raised by the Committee in respect to the cover page on the Bill. When you look at the “memorandum”,

the very first Article that is cited is Article 92 of the Treaty. However, when you look through the Bill, this Article is not cited, and more specifically, the objectives of the Agency do not make any reference to the Treaty. It seems that we prefer to abide by the Chicago Convention and its annexes rather than our own home grown Treaty. We have a pact as Partner States of the East African Community, and this pact is clearly articulated in our Treaty. Therefore, I would like to implore this House to support an amendment specifically to Article 92, which will capture some of the points as well as capture the Treaty in its totality. If the Partner States fail, it will be the Treaty which will ensure that these contributions are made.

My second point is on the issue of sanctions. I know this is an issue, which in most cases we do not want to refer to. However, if you have an agency and the agency cannot report, then this agency might as well be non-existent. This is why I would like to propose that this agency should also make progressive reports to the Council of Ministers so that the Council of Ministers is alerted to any potential hazards rather than wait to make an annual report, which may not be able to address some of these hazards. Knowing the aviation industry, some of these could be of an urgent nature.

I would not like to go on and on, but points have been made, especially in regard to operationalisation, in regard to financing, as well as the fact that this Assembly must consider and make this report paramount. As I have said before, I would like members’ support when I do move the amendments, which will ensure that these gaps identified by the Committee are

plugged so that we have a more effective and efficient agency.

I want to make one final contribution on the observation that this Bill does not comprehensively cover Article 92 of the Treaty. I would like to propose that in order not to only have a law creating an agency where we seem to be giving employment without really giving it the heart and crux of what it should do, we should ask the Council of Ministers, within a period of, say, six months, to table a comprehensive Bill on this issue.

When you look at Article 92, it talks about civil aviation and civil air transport, and it is very comprehensive. It talks about developing appropriate infrastructure, aeronautical skills and technology, as well as the role of aviation in support of other economic activities. It is difficult to anticipate how this agency will be able to work if it is not in a position to harmonise these policies because we have different skills and different policies. Therefore, I would like to implore the Council of Ministers to come up with a more comprehensive Bill, which will cover all these other areas as well as joint air services.

Sometimes when you are flying from Entebbe, for example, you have several alternatives, and if we are operating joint air services, we would have more efficient use of these services. Other than having all the ten planes coming to Dar-es-salaam at the same time, we could have one and then the others take the other routes. So, I would like to urge the Council of Ministers to take this very seriously.

Having said this, I want to thank you again and to thank the Council of Ministers. In particular, I want to thank the Committee, led by the distinguished hon. Kimura, for a job

well done. Thank you very much.  
(Applause)

**Dr Didas Masaburi (Tanzania):**

Thank you, Mr Speaker, for giving me this opportunity to also contribute to the report, which was prepared by the Communications, Trade and Investments Committee. I have two areas of concern in the report, which I would like to share with the House. The first one is to support what has been said by hon. Ogalo and hon. Dora Byamukama that if we do not create a body which has powers, we will end up with a body to which we can give responsibilities that it can not implement.

We have a body which has been given some functions to perform, and one of them is to perform an oversight role. That is a big responsibility, but for which we do not provide the requisite powers. To me this law is creating an improper utilisation of public funds. We are wasting money to create a body which is toothless! So, my suggestion is that we must have a paragraph which gives powers to the board of the agency; something which will not contravene whatever powers or functions are vested in them.

The second issue is on contradictions that are in the Bill itself. Under Clause 10(2)(a) of the Bill, the Secretariat of the Agency is given the function to coordinate all the activities within the scope of this Bill, and under Clause 10(2)(c), the Secretariat is supposed to “*prepare, for the approval of the Board, an annual programme of activities and budget for the Agency at least six months before the end of the financial year*”, and yet Clause 9 provides for the establishment of technical committees for the specific areas of the functions of the Agency!

It seems that there are many committees, but one of their duties, under Clause 9(3), is to implement and monitor the implementation of programmes. It seems to be a conflict of responsibilities between the committees and the secretariat. Also, on page 9, Clause 7(2) says that the Board will be considering the reports submitted to it by the Executive Director and the technical committees. So, there seems to be no relationship between the Secretariat and the Board itself.

If you go through paragraphs (d) and (e) of the same clause, it is implicitly indicated that the Board will be formulating, on recommendation of the Technical Committee - not "committees" - the civil aviation safety and security regulations for approval by the Partner States and use by the Partner States and the Agency. There is no mention of the Secretariat. So, the Technical Committee seems to report directly to the Board. Here there are no standing committees, yet have committees.

I do not know whether these committees are specifically responsible for that activity or not, but Clause 9 states that: *"The Board may establish technical committees as may be necessary for specific areas of the function of the Agency"*. Now, Clause 7(d) and (e) indicate only one committee, which committee will send some recommendations to the Board for approval on civil aviation safety and security, guided materials and procedures for use by the Partner States and the Agency. So, here it seems to me that there will be a conflict between the functions of the Secretariat, which is to coordinate all the activities within the scope of this Act, and the technical committees which will report directly to the Board.

In that respect, I would recommend that paragraph 9 (3) should be removed so that the Board, in accordance with paragraph 9(1), may establish technical committees as may be necessary for specific areas of the functions of the Agency. So, those functions will be determined by the Board and then be given to technical committees that should be established on an ad hoc basis.

Mr Speaker, I therefore propose the following four amendmendments to the Bill, in addition to the ones moved by the Committee:

In Clause 7(2) (a), we should also include the Secretariat to also submit a report to the Board. Therefore, Clause 7(2) (a) should read: *"Consider reports submitted to it by the Secretariat through the Executive Director and the technical committees"*. This is for purposes of making the Ssecretariat responsible to the board.

The second amendment I would like to suggest is to delete sub clauses 7(2) (d) and (e) so that we can harmonise the functions with Clause 9 which implies that there shall be several committees. The committees should be specified.

My third amendment is to delete Clause 9(3), for purposes of avoiding contradictions within the functions of the Secretariat and the Board. The fourth one is to insert an appropriate paragraph to give powers to the Board and to provide for the penalties which the Board might pose whenever the powers are violated. I thank you Mr. Speaker - (*Applause*).

**Ms Safina Kwekwe Tsungu (Kenya):**

I thank you, Mr Speaker, for giving me the Floor. Let me also start by extending my gratitude to the people of Tanzania, the leadership of Tanzania and the members of EALA from Tanzania for the great effort they have made to ensure that we are as comfortable as possible while here in Dar-es-salaam, and in Tanzania at large - (*Applause*). Sometimes it is very easy to highlight the faults and say less on the good things. So, I would like to go on record to say that indeed we have been treated well, and we hope we shall get opportunities to enjoy more of such hospitality in the near future.

Hon. Speaker, my take on the Bill is this: If it is to legalise the already existing body, the Civil Aviation Safety and Security Oversight Agency (CASSOA), then I think it is okay, but if it is to actualise Article 92 of the Treaty, then definitely a lot is wanting. This has been said by the Committee, and it has been said by the previous speakers, and I am also adding my voice to that.

Article 92(3) (i) states: *“Encourage the joint use of maintenance and overhaul facilities and other services for aircraft, ground handling equipment and other facilities”*;

Sub section (j) states: *“Agree to take common measures for the control and protection of the air space of the Community”*;

Sub section (l) states: *“Adopt common aircraft standards and technical specifications for the types of aircraft to be operated in the Community”*;

And sub-section (m) concludes by saying: *“Coordinate measures and co-operate in the maintenance of the high*

*security required in respect of air services operations, and operate joint search and rescue operations.”*

Mr Speaker, these are very noble provisions in the Treaty, which this Bill definitely does not take into account. Therefore, the need for a holistic legislative framework is a matter of urgency because these provisions are core to the safety and security of air transport.

Mr Speaker, if you were to travel to Mogadishu, in Somalia, which is a neighbour of this region, you would spend more time in East African airspace than in Somalian airspace. Moreover, if you were to go there by air, you would have only two options: either to go there as part of the air cargo or in a passenger aircraft that is fit to be a sauna. These are aircrafts that take off from East African airports, fly back and forth in East African airspace, but lack even the basic facilities that are required in any aircraft, and they still operate.

Mr Speaker, the East Africans who fly in these aircrafts are the East Africans who work as operators or as pilots in those aircrafts. So, my question is, does this Bill really look at the plight of such people who have to use such aircrafts? So, if we are just going to pass this Bill to give legitimacy and legality to bodies that are already there, then it will serve the purpose, but if it is to actualise Article 92, there is a lot to be desired.

Technical expertise has been mentioned in this Bill quite severally. If you look at Clause 5(h) of the Bill, which provides for the functions of the the Agency, it says: *“Plan and facilitate the sharing between Partner States, of technical expertise and facilities in civil aviation.”* Clause 7 (j)

of the same Bill also gives emphasis to this technical expertise, particularly where we are assessing and approving applications by Partner States other than the Partner States seeking technical assistance and expertise from the Agency.

Hon. Speaker, for me I understand technical expertise as being the sum of technology and the relevant human capability to apply the technology; that gives me technical expertise. So, I need a human being plus some technology, and when I add them together I get technical expertise. However, human expertise is built by people; it is developed by people and is built on by people, but there is no indication in this Bill that shows any relationship between CASSOA and the people. How will the people that should ensure the safety and security of civil aviation in East Africa be trained? What are the qualities in these people? I would like to see the relationship between the CASSOA and an already existing East African institution like the Inter-University Council for East Africa, because the IUCEA is in charge of developing human capacity. So who will build that capacity to ensure the safety and security of the East African Community airspace?

Hon. Speaker, in this industry of civil aviation, you will find symbiotic parallels. Let me take the example of Kenya where I come from. You have the Kenya Civil Aviation Authority (KCAA) and then you have the Kenya Airports Authority (KAA). Now, I would like to get clarification on how these two relate and how CASSOA will relate to these two, because we are talking about safety and security.

For example, on the ground if you are in Kenya, the person who will be in

charged will be the one who works with Kenya Airports Authority. It is Kenya Airports Authority which will ensure evacuation, for example, in the event of a mishap at a Kenyan airport. In case you crash-land, and God forbid, they are the ones to ensure that you have the facilities to land your aircraft safely and to evacuate passengers safely. And then there is the other organisation, which now sits on the Board of CASSOA, the Kenya Civil Aviation Authority. How do you oblige a board like Kenya Airports Authority to institute the relevant and necessary measures for you to be able to land safely, when they do not link directly with CASSOA? So, I would like to see the symbiotic relationships that exist between the already established bodies come into life, and see how CASSOA can relate to all these, because they are the ones in general who contribute to the safety and security of civil aviation in our Partner States.

Hon. Speaker, I would like to conclude by saying that civil aviation mishaps and air transport accidents are either through human error or due to faulty equipment, but this Civil Aviation Safety and Oversight Agency that we seek to establish in this Bill has no mandate anywhere on such matters. For example, how does it enforce a mechanism to punish human errors or the hazards because of human errors, such as anguish, anxieties, loss of life and property? There is no enforcement mechanism. How will I, for example, be punished if I operate an institution that purports to train pilots when in a real sense I cannot even train a bus driver because I am not fully equipped or I do not have the expertise to do that?

So, the issue of being a toothless agency, as has been mentioned by hon.

Dora Byamukama and hon. Masaburi really is a matter of concern because many a time, particularly in the history of East Africa, we have had air accidents, and most of the times we have lost everybody on board. In case of a bus accident, one may be able to save a few people, but the casualty rates for air accidents are usually very, very high. We therefore need to ensure that those people, who give services, either by way of air traffic control or in operating the aircrafts themselves, are reasonably punished when there is any error that can be tracked back to them.

Mr Speaker, I will support the enactment of this Bill if it just seeks to legalise the already existing agency, but if it is to operationalise Article 92 of the Treaty, definitely it falls short. I beg to support the motion very reluctantly. *Asante! (Applause)*

**Ms Janet Mmari (Tanzania):** Thank you, Mr Speaker, for allowing me to contribute to this very important Bill, but first, allow me to welcome you and the honourable members to Tanzania, and specifically, to the Harbour of Peace. *Karibuni sana, unawujifikia nyumbani. (Applause)*

Coming back to the Bill, let me state that I am a member of the Communications, Trade and Investments Committee, and for sure I support each and every recommendation that is in the report. However, I rise to specifically clarify some of the issues that have been coming out on the Floor.

I share a lot of those concerns that have been expressed by members, and I can assure the House that I was one of those members who felt at the very beginning that there was no point in establishing an agency that was not going to do anything. I thought it was

just a question of creating jobs for people. However, I am a change agent, and I definitely see a point in ensuring that this agency is started.

I have three reasons why I feel that we all need to support the enactment of this Bill. One of them is something that has been said very clearly by hon. Safina Kwekwe; the legitimatisation of the existence of CASSOA. As we sit here, it is important to realise that CASSOA has been in existence for over a year. It came into existence following a protocol, which was signed in 2007. Unfortunately, this protocol was not ratified until very recently. However, notwithstanding the delay in the ratification of the protocol -which would have given the Council the mandate to establish the agency- the Council directed the Secretariat to ensure that CASSOA is put in place. There were adverts in the papers, and people were recruited. If you look at the report that was tabled by the Chairperson of the Committee, she thanked the staff of CASSOA, and I know some of them, including the Chief Executive Officer, who is in the gallery as we speak.

Yes, what was done was wrong, but if we do not correct it, then we are not helping the institution. Why am I saying this? These people have been drawing funds, and I am sure the budget is not coming from the EAC but they have an office in the EAC, so they are using facilities of the EAC, which are not accounted for. They are getting funds from the Partner States. Maybe that is why the Bill was drafted to ensure that this agency continues drawing resources from the Partner States using the civil aviation authorities of the Partner States. I am glad that this is one of the the recommended corrections.

Mr Speaker, when you have an agency that is drawing funds and is not accountable to anybody, what does it mean? It means that it is just throwing away that money. So, if the Agency is legitimised, it will become part of the EAC, and then, as hon. Mulengani has put it, it becomes one of those institutions that will have to make progress reports, account for all the money that has been given and of course be checked by the Accounts Committee, which will also produce reports.

The other reason, apart from legitimising the Agency, is the question of checking for funding. We know that the protocol was signed in 2007 and it has been on the shelves for over a year. What does that mean? It means that when we met last year, funds were expended, and similarly this year, but there have been no results. The reason why there were no results at that time was because the protocol was not ratified, and we could not pass a Bill when we had a protocol that was pending ratification. But now that the protocol has been signed, I would urge members to support the motion knowing that we are just creating an agency to perform these duties.

Mr Speaker, if we do not give the Agency the proper mandate, it means these people will continue sitting in these offices and continue drawing money. There will not be a board or a structure to ensure that the board does what it is supposed to do. If you have a board, the board will be able to promulgate policies and do its job, but now they do not have a board. I know you are going to say that a board is going to be expensive, but staffs are going to be expensive too, because this Bill has not addressed Article 92.

We have to look at the constitution of the Board and know that these people cannot do anything unless they have the technical people that they require. How do they get the technical people? If you look at Clause 6, it says: "*The Agency shall have a board, which shall be the governing body of the Agency. It shall consist of: the chairperson, who will be appointed from among the members; the head of the civil aviation authorities from each Partner States...*" It means that we are getting the expertise, and this is the only way we are going to know what policies exist in each Partner State. That is the only way they can harmonise, because you will have the people who know what is happening. You will have one aviation expert from each Partner State, which means you are going to add up the number of experts. Instead of us sitting here or the Secretariat sitting somewhere in Arusha trying to come up with policies or writing a Bill like this one, you will have people who can give technical advice.

In our recommendation, we have suggested the inclusion of a person from the Business Council on this board, probably somebody who is in the aviation industry. In this case, we have people who can fast-track all the provisions that are provided for under Article 92 of the Treaty. It is another thing to say they have to do it. Probably when the Bill was being put together we did not have the expertise to look into all the issues that need to be harmonised. So, my humble plea is for us to allow this Agency to be given appropriate structures - they are already there, but they are not doing anything - and then hold them accountable for some of the things they have not done.

Mr Speaker, I concur with what hon. Ogalo shared when he was referring to

the development strategy. This also justifies the reason why we need to ensure that we have the Agency working. And after we have done that, we should urge the Council of Ministers to operationalise Article 92 in its entirety. As I said before, right from the very beginning I am one of those people who never believed that I would stand and urge members to actually put this institution in place.

Mr Speaker, with those few comments, I urge each and everybody to ensure that the Agency is in place because we needed to have Article 92 operationalised yesterday. Thank you. *(Applause)*

**The Counsel to the Community (Mr Wilbert Kaahwa):** Mr Speaker, I stand to support the motion on the Floor. In supporting the motion, I would like to make a few comments regarding some legal issues that have arisen in the course of the debate on this Motion.

Let me start by thanking the Committee on Communications, Trade and Investment for the well elaborated report on the CASSOA Bill, and, indeed, for pointing out, as is indicated in the schedule and Annex II to the report, the proposed amendments to the Bill. These amendments will improve the text of the Bill which the House is debating, and which eventually this august House will enact.

Mr Speaker, in the first instance, honourable members took issue with the enactment formula indicated in the Bill. The enactment formula appears between the long title and the short title of the Bill, and it reads: *“Enacted by the East African Community and assented to by the Heads of State”*. As this august House debates this Bill, I

would like to point out that the enactment formulae for legislation is determined on the basis of the provisions of different jurisdictions’ legislation. For the East African Community, we stand to be guided by the provisions of the current law on legislation that this august House enacts. That current instrument - *(Interruption)* - Mr Speaker, I crave your protection, sir - *(Laughter)*.

Mr Speaker, according to Article 62(3) of the Treaty for the Establishment of the East African Community, *“Every Bill that is submitted to the Heads of State under paragraph (2) of this Article shall contain the following words of enactment: “Enacted by the East African Community and assented to by the Heads of State”*. This requirement and formula of the current law of the Community has been translated into a specific statute which governs the enactment of legislation by this august House, which is *The Acts of the East African Community, Act Number 5 of 2003*. The formula is provided for in Part II, Sections 4 and 5 of this Act. It is equally so provided in *The Laws of the Community (Interpretation) Act 6 of 2003*, and specifically under section 10 of that Act. All these require this august House to conform to the enactment formula required by Article 62 of the Treaty.

Mr Speaker, whereas some of the Partner States may have an enactment formulae which emphasise the role of the national assemblies or parliaments of their states, for the time being this august House, and the Community, are bound by the existing enactment formula.

Another issue I would like to comment about, and which I am sure the Chairperson of the Council will debate



at length because it is a policy matter, regards coverage of the Bill as it is. It is true that Article 92 of the Treaty, whose import is on the co-operation of the Partner States in civil aviation and civil transport, covers a lot of areas of co-operation, this Bill has got a specific objective, and that is to address civil aviation safety and security in the context of the Chicago Convention on International Civil Aviation.

By relating to the Chicago Convention as a basis for the Bill, the Council of Ministers is not shifting from the provisions of the Treaty. Indeed, the Treaty requires that Partner States, in this area of co-operation, abide by the provisions of the Chicago Convention. So, arguably to some extent, the coverage of the Chicago Convention is part of our own Treaty. If I may remind this August House, in Article 92(3), the Treaty obliges the Partner States, in undertaking policy rationalisation and harmonisation in this area, to adopt common policies for the development of civil air transport in collaboration with other relevant international organisations, including the International Civil Aviation Organisation. The Treaty takes cognisance of the fact that the all the five Partner States are contracting parties to the Chicago Convention. So, it is pertinent that the Bill refers to the requirements of the Chicago Convention in this area of civil aviation safety and security.

Mr Speaker, the other issue I would like to refer to, which has got legal connotations – *(Interruption)*–

**Ms. Byamukama:** Mr Speaker, it is with great concern that I interrupt my learned friend's contribution to this august House. I am concerned because when you look at the memorandum

which justifies the presentation of this particular Bill to the House, the opening sentence says, "*the object of this Bill is to establish the East African Civil Aviation Safety Oversight Agency in accordance with Article 92 of the Treaty.*" It goes on and actually captures Article 92(1) of the Treaty, but skilfully omits Article 92(2) and 92(3), and finally it goes to the Chicago Convention.

My clarification is simple. All the East African Partner States are signatories to the convention on elimination of all forms of discrimination against women. We have not seen a Bill presented in this Assembly which makes reference to and goes past the Treaty. What gives the agency the mandate is the Treaty, and we as a legislative Assembly can only, according to the Treaty, legislate on matters which pertain to the East African region and its objectives. Therefore, when the learned Counsel prefers to cite the Chicago Convention as opposed to the Treaty, I am bereft of words. I need a clearer explanation as to why this trend is developing, and why it was not consistent in other areas.

**Mr Kaahwa:** Mr Speaker, I would like to thank my honourable friend for the intervention. I request this august House to consider the substantive content of this Bill. The memorandum of objects is an explanatory note referring this august House to the general basis for this Bill. Also, a little bit earlier on, I indicated that by citing the Chicago Convention, the Bill is only being pertinent to the fact that the matters being addressed in substantive parts reflect what is required of the Partner States' obligations under the Chicago Convention.

Mr Speaker, another issue was with regard to the question of abuse of the provisions of the ultimate law which will emerge out of this Bill. As we consider the proposed amendments that have emerged from the debate, I would like to request the honourable members to consider two things: First of all, is the extent of the Treaty in ensuring that the laws of the Community and the Treaty itself are not abused with impunity by the Partner States or any organ or institution of the Community. The Treaty addresses some of the concerns in this regard that honourable members have raised. I would like to note the role and composition and, therefore, extent of the powers of the Board of the Agency, and ask whether it is possible for the Agency to punish Partner States for the violation of any of the provisions of the Bill. Is it practically possible?

Mr Speaker, with those few points elaborating on the legal issues that arose during debate, I would like to support the motion with an indication that should there be no proposals for amendment of the Bill for purposes of improvement, then in accordance with Rule 7 of our Rules of Procedure, we shall be handling that under the Committee Stage of the Bill. *(Applause)*

**The Chairperson, Committee on Communications, Trade and Investment (Ms Catherine Kimura):**

Mr Speaker, I take this opportunity to thank all the Members who have contributed to this Motion. I believe some of the issues that have been raised have been very well explained by the Counsel to the Community. I have just one or two things that I need to clarify on one of the issues that was raised by hon. Masha, and that is the issue of whether we have defined who

will head this Agency. It is indeed defined that the Agency will be headed by a Board.

Mr Speaker, there are issues that have been raised, and members have made certain proposals. I think I want to agree with hon. Kaahwa that these issues should be taken on board during the Committee Stage. I want to emphasise to members that the Committee did grapple with the issue of whether this motion should be passed or whether the Committee really will support this Bill. However, after explanations from the technical staff and from the Council of Ministers, we did feel that indeed we could go ahead and pass it because the Bill is limited to creating this supranational body, and we do need to put it in place so that in case our civil aviation is audited on safety and security by the international organisations, we will not be found wanting because we have not put in place an agency to look at the issues of safety and security.

We do recognise that there are issues in Article 92 and even in the strategic plan - as explained by hon. Ogalo - that are not here in the Bill. It is for that reason that the Committee did urge the Council of Ministers to come up with a comprehensive Bill. I want to assure the House that this was an issue that was extensively discussed with the Council of Ministers. Whereas we did not feel that it was fair to give them a timeframe, the Council of Ministers did undertake to look into the issue and promised to look at this and bring out a comprehensive law.

There is the issue of enforcement. It is true there is no provision on enforcement, so we should take that on board. The other issue that we want the Council of Ministers to really take note

of is the issue of efficient use of our air space and the issue of tariffs that pertain to our region. This is of concern to members. We all experience it within the region: Our tariffs are very high when we cross from one Partner State to another, and even sometimes more than when you travel internationally. However, we do realise that this was not one of the objectives of this Bill, and that is why we feel that it will be necessary, some time very soon, to bring these issues to bear.

I take note of the concern that we may not have done justice to some of the issues that have been raised. However, I want to assure the honourable members that we did look at those issues, and you will see this from some of the amendments that we have proposed, like for example on the gender issue and on the issue of the appointing authority. Those amendments indicate that we were clear on the shortcomings of the Bill.

I want to talk briefly about the funding of the Agency, because it is critical. It has been said that funding of this Agency cannot be limited to funding by the civil aviation authorities or other institutions that draw resources from their respective treasuries. We know their limitations, we know they are bound by certain ceilings, and so long as they are operating within the ceilings, it becomes extremely difficult for one agency to be the one to fund another, which is what the Bill was proposing. We have therefore proposed an amendment that the Agency should be funded directly by the Partner States, and not through the civil aviation authorities.

Mr Speaker, with those few remarks I want to say that I am sure there are some amendments that have been

brought forward and they will be coming to you during the Committee Stage. I want to recognise the very elaborate submissions by all the members: Dr Masha, hon. Lotodo, hon. Tiperu, hon. Mulengani, hon. Leonce – *(Interruption)* -

**The Speaker:** Hon. Kimura, I think the Bill belongs to the Minister; he can acknowledge them later on.

**Ms Kimura:** As far as the Committee is concerned, we appreciate the comments that have come. Thank you, Mr Speaker. *(Applause)*

**The Minister for East African Co-operation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala):** Mr Speaker, first and foremost, I would like to recognise honourable members of this august House who have contributed during the debated on the motion on the Floor. I would like to start with hon. Catherine Kimura, the Chairperson of the Committee and all the members of the committee; Dr Fortunatus Masha, hon. Augustine Lotodo, hon. Nusura Tiperu, hon. Dr Aman Kabourou, hon. Bernard Mulengani, hon. Leonce Ndarubagiye, hon. Dan Ogalo, hon. Dora Byamukama, hon. Didas Masaburi, hon. Safina Kwekwe, hon. Janet Mmari, and the popular Counsel to the Community. *(Applause)*

Let me state from the outset that the honourable members are quite right in emphasising the importance of making sure that we seriously address Article 92 of the Treaty. When you look at Article 92 of the Treaty, most of those areas specified there need elaborate frameworks and appropriate legislation. The CASSOA Bill, which we are debating today, is specifically aiming at legalising or creating an

agency that will analyse and co-ordinate the Partner States' aviation safety and security.

On behalf of the Council, let me say that at an appropriate time, the Council will initiate the process of legislation in order to have a Bill which will take care of other areas of Article 92. That being the case, I am assuring you that the Council will not hesitate to initiate the Bill in order to make sure we address relevant issues. *(Applause)*

There is one issue, which was brought out by hon. Ogalo and other members, about the financing of the Agency. I would like to say that when we were discussing with the Committee, we agreed to substitute the words "civil aviation" with "partner states". This means that Partner States will now be required to contribute to the funding of the Agency, but more importantly, in the next financial budget we are looking forward to mainstreaming the financing of CASSOA into the EAC budget. *(Applause)*

Apart from that, the Heads of State have directed the Council of Ministers to find the best way of contributing to the EAC budget; whether we should continue as we are doing now, contributing equally, or if there is a possibility of coming up with another way of raising funds for the EAC, like contributing in terms of GDP or in terms of the revenue raised by each Partner State. So, as soon we come to the conclusion of that study, we shall be able to raise more funds for financing EAC activities, including the CASSOA and other EAC institutions.

Mr Speaker, let me emphasize or point out the achievements so far made by CASSOA. So far, CASSOA has been able to formulate regional aviation safety and regulations, which are quite

good. Secondly, CASSOA has been able to standardise methods of implementing the regulations. Thirdly, so far CASSOA has been able to formulate a plan for civil aviation authorities, which aims at pooling resources and making effective use of resources. Those three issues have been achieved by CASSOA and it is my hope and the Council's hope that this legislation will make CASSOA perform better than before.

Hon. Mulengani addressed the issue of the possibility of having air operators as members of the Board. However, given the fact that this agency is essentially for regulating activities, it might raise conflict of interest if we have people who are supposed to be regulated being members of the board. That is what we are thinking. It would be better to leave out these air operators so that they are not members of the Board. However, you can still, if you think it is a good idea, pursue that one, but the Council of Ministers would like to see air operators outside this Board because it is essentially a regulatory body. If you bring on board people who are supposed to be regulated, you might end up having problems one way or the other because of conflict of interest.

Hon. Ogalo, the Counsel to the Community gave me a wrong name; he advised me wrongly. So that is the problem of even being advised on names – *(Laughter)*.

On the relationship between CASSOA and Partner States, let me say that according to the Chicago Convention, the Partner States are contracting states obligated by the Chicago Convention to regulate and enforce civil aviation. That being the case, the Agency we are creating today will assist Partner States in meeting these obligations. So, it

supplements. Partner States will use this agency to strengthen an oversight institution in safety and security. That being the case, I would like to emphasise that the major role of the Agency that we are creating today is on safety and security regulations.

One issue was raised about strategic plans that include other areas beyond the Agency. For example, so far there is a study on the upper flight region information, which has been concluded. We are looking for funds now so that we can start implementing the same. So, apart from this agency, there are other issues which are related to the civil aviation industry, which are now in the process of implementation.

There was one issue which was raised on the head of the civil aviation. It has been stated by the Chairperson of the Committee that it is defined under Clause 2.

There is this issue on the question of decision making. If you look at the amendments we have agreed to with the Committee, the composition of the Board and the quorum will be on a simple majority, provided the three heads of the Partner State civil aviation authorities are present in the meeting, and provided all Partner States are represented in one way or another. So, that will solve the problem of consensus. A simple majority will ensure that the three members of the civil aviation bodies are there together with all the designated representatives so that the Board can continue functioning.

Regarding the functions of the Board as provided in Clause 7(2), it is important for the Council of Ministers, as a policy making body, to have a wide role to consider what the Board approves, for example, on annual

programmes, annual reports and annual accounts.

On the term of office of the Executive Director, under Clause 11(3) it is one term of five years. This is in conformity with the Community terms of service at executive level. However, the august House will note that this office will, under Cause 11(1), be filled on a competitive basis.

Mr Speaker, oversight and supervisory role is catered for under Clause 18(2). On sanctions on the servants of the agency from civil liability, Clause 19 covers such servants for actions done purely in the course and scope of research and official CASSOA activities.

Mr Speaker, I beg to move that the *East African Civil Aviation Safety and Security Agency Bill, 2008* be read a Second Time. I beg to move.

*(Question put and agreed to.)*

## THE ASSEMBLY IN COMMITTEE

(The Chairman, presiding)

### BILLS Committee Stage

The East Africa Civil Aviation Safety, Security Oversight Agency Bill 2008

Clause 1

**Ms Kimura:** Mr Chairman, I propose an amendment in Clause 1 to insert the word “Community” after the word “African”, and to substitute “Africa” with “African”. So the title will now be “*The East African Community Civil Aviation Safety and Security Oversight Agency Bill, 2008*”

**The Chairman:** Can you justify it? Give the reason for the amendment.

**Ms Kimura:** The reason is that the original title had the word “Africa” and it had omitted the word “Community”. It should be specified that it is the East African Community that we are talking about.

**Dr Kamala:** Mr Chairman, the Council agrees to the proposal, and there is no objection.

**Dr Masha:** Mr Chairman, I do not have a specific amendment to this particular clause, but I want to use this opportunity, if you allow me, to seek a commitment from the Council to bring in an amendment for the enactment formula so that it makes sense. Could I get that assurance?

**The Chairman:** Hon. Masha, maybe you can do that at the end when we talk about the short title.

*(Question on the amendment put and agreed to)*

*Clause 1, as amended, agreed to.*

Clause 2

**Ms Kimura:** Mr Chairman, the proposed amendment under Clause 2 is to insert the following new definition: “*Audit Commission means the audit commission established under Article 134 of the Treaty*”. It had not been defined in the Bill.

**The Chairman:** Hon. Kimura, maybe you could finish all the amendments to Clause 2 at a go?

**Ms Kimura:** Mr Chairman, under Clause 2, I want to define “*secretariat*” as “*the secretariat of the*

*Agency established under Clause 10(1) of the Bill.*”

**Dr Kamala:** Mr Chairman, the Council has no objection.

**Ms Byamukama:** Mr Chairman, I have a proposed amendment to Clause 2 in reference to the definition of the Chicago Convention to read: “*The Chicago Convention means the Convention on International Civil Aviation signed in Chicago on the 7<sup>th</sup> December in 1944.*”

This is because when you look at Clause 3 of the Bill, there is mention of its annexes, but in the definition the other annexes are omitted. So, I would like to move an amendment to include its annexes, and if this is not acceptable, then the annexes in Clause 4 should be dropped forthwith, if they do become part of the Chicago Convention.

**Mr Kaahwa:** Mr Chairman, the proper citation of the Chicago Convention is “The Chicago Convention on International Civil Aviation.” That citation takes into account the fact that annexes to the Convention are an integral part of that Convention – *(Interruption)* - Mr Chairman, may I be protected? It is sufficient to use the Chicago Convention with the meaning as reflected. With due respect to my honourable friend, it would be superfluous to add the date when it was signed, in view of the fact that it has annexes.

**Ms Byamukama:** Mr Chairman, with due respect, I do appreciate what the hon. Kaahwa has stated, but when you look at this particular convention, there have been numerous amendments over time and, therefore, this particular proposal was brought for clarity, consistency and certainty. Whereas in

the definition under Clause 2 no mention is made of the annexes, in Clause 4(b) there is mention of the annexes and, therefore, I think hon. Kaahwa owes us a duty to explain to us why in one instance the annexes are added and in another instance the Chicago Convention stands alone.

**Ms Patricia Hjabakiga (Rwanda):** Mr Chairman, if you also look in the Treaty, Article 92(3)(d) talks about harmonising civil aviation rules and regulations by implementing the provisions of the Chicago Convention on International Civil Aviation with particular reference to Annex 9 thereof.

**The Chairman:** Hon. Kaahwa, I do not know why you use it in one place and do not use it in the other. Can you clarify that?

**Mr Kaahwa:** Mr Chairman, as the Counsel of the Community, I would like to advise this august House that there is a method which is legally acceptable in citing legal instruments. When you cite a legal instrument, that citation is deemed to be catering for all its annexes, which are an integral part. When you cite the Chicago Convention on International Civil Aviation, you are deemed to be referring to that convention together with all its annexes. It is, with due respect, superfluous to go beyond the rules of citation of such instruments. I thank you, sir.

**Ms Byamukama:** Mr Chairman, with that explanation, I therefore seek the indulgence of this august House so that I can move an amendment to Clause 4 accordingly.

*(Question on amendments put and agreed to.)*

*Clause 2, as amended, agreed to.*

### Clause 3

**Ms Kimura:** Mr Chairman, the Committee wishes to amend Clause 3(3) by inserting immediately after the word “may” the words “in its corporate name”. Mr Chairman, let me take the next amendment together with this one because we propose to delete the words “in its corporate name” in Clause 3(3) (b). The amendments are proposed to simply make it easier to flow and incorporate the issue of corporate name at the beginning of that clause.

**Dr Kamala:** Mr Chairman, the Council of Ministers agrees with the proposals.

**The Chairman:** But the other ministers are asking what? *(Laughter)*

*(Question on the amendment put and agreed to.)*

*Clause 3, as amended, agreed to.*

### Clause 4

**Ms Byamukama:** Mr Chairman, I would like to move an amendment to Clause 4(a) so that Clause 4(a) reads as follows: “*The principles of the Agency are to develop policies on civil aviation, promote the development of safe, reliable, efficient economically viable civil aviation with a view to developing a proper infrastructure and aeronautical skills and technology, as well as the roles of aviation in support of other economic activities.*”

The justification for moving this amendment is that it is in conformity with the memorandum which sets the stage for the Bill, and in particular, this is the same language that is used in

Article 92(1) of the Treaty - *(Interjection)*. Mr Chairman, I beg to be protected, but mention of Article 92(1) in a memorandum is insufficient because as we all know, the memorandum eventually does not become part of the law, and this is the framework upon which this particular Bill has been drafted, as evidenced and as stated in the memorandum.

**Mr Kaahwa:** Mr Chairman, I would like to appreciate the explanation behind the proposed amendment to Clause 4 of the Bill and the proposed new sub-clause (a). However, I would like to observe and request the Committee to note that the matters which are proposed in the Bill go beyond the objects of the Bill. The object of the Bill is to empower the Civil Aviation Safety and Security Agency to discharge its obligations in aviation safety and security issues. The matters which are reflected in the Bill, including development of appropriate infrastructure, aeronautical skills and technology, are matters within the ambit of civil aviation policy.

Having said that, Mr Chairman, and with the permission of the chairperson of the Council, we are not agreeable to the proposed amendment of Clause 4.

**Mr Gervase Akhaabi (Kenya):** Thank you, Mr Chairman. I do not understand why the Counsel to the Community would take objection to another wise and very sound proposal from hon. Dora Byamukama. Though this may have escaped the attention of the Committee on which I also seat, I think that issues of infrastructure and civil aviation are technical issues in civil aviation, and are part and parcel of safety and security. These are not matters that should be ignored. If CASSOA is going to involve itself - and the Bill has this objective of

developing a proper infrastructure in civil aviation and developing skills, I think we should support this instead of trying to create a dichotomy and suggest that the Bill does cover it. I think it does not cover it. Thank you, Mr Chairman.

**Mr Kaahwa:** Mr Chairman, by way of further elucidation, I request this august House to go back and appreciate the status quo ante: In each of the five Partner States, first of all there is a civil aviation authority created with objectives under specific instruments. Now, CASSOA, which is an institution of the Community, has got a specific role, which is different from developing policies on civil aviation, which is an obligation of the Partner State civil aviation authorities, which CASSOA does not seek to replace. The Council's objection is therefore based on avoidance of an unnecessary dichotomy where CASSOA will be seen to usurp the functions of the civil aviation authorities, if this amendment is adopted.

**Ms Byamukama:** Mr Speaker, I do not appreciate what the honourable Counsel to the Community has said because the operative words in the proposed amendment are "to develop policies". The proposal is to promote the safe, secure and efficient use and development of civil aviation within and outside the Partner States. How do you do this if you do not have a policy framework?

Here we are, trying to put in place some apex body, I presume, like hon. Ogalo had said, which will have the capacity to sit down and clearly articulate policies, and at the same time we have the Counsel to the Community saying that this is a job for the different civil aviation authorities. I



do not believe this! After all, there is also the element of experts; we have provided for experts, therefore we expect the experts to take their time to sit down and to develop policies which will promote the safe, secure and efficient use of civil aviation.

Like hon. Akhaabi has also said, you cannot dichotomise the issue of development of safe, reliable, efficient and economically viable civil aviation without addressing the issues of infrastructure, aeronautical skills and technology. I would expect this particular agency, for example, to develop policies on the kind of infrastructure that we should have in the region. I would expect this agency to also consider the issue of aeronautical skills; of what kind of pilots do we have? What training do they have? How often do they go for medical check-ups? What kinds of planes are flown in this region? These are the issues which we are talking about, and it is nothing new because it is in the Treaty. I am actually surprised that utilisation of the language of the Treaty is being objected to by the Counsel to the Community. I think he should support this.

**Ms Nyirahabineza:** Mr Chairman, mine is just a point of information. I do recall that yesterday when we had consultations with the Council of Ministers, we came back to this very important and critical issue in regard to how this agency should eventually capacitate people, and the issue related to the development of infrastructure and all different aspects that have been put forward by hon. Dora Byamukama. We did agree upon this yesterday during the very short consultation we had with the Council of Ministers. Thank you.

**Mr Kaahwa:** Mr Chairman, after some in-depth consultations on policy related matters the Council of Ministers deems the proposed amendment to Clause 4 to be appropriate. *(Applause)* However, I would think this august House should be assisted in really reflecting what the House is seeking to do in the interest of the civil aviation agency.

I would propose that in adopting the amendment, the words with which the Council has serious objections be deleted so that the Clause reads: *“to develop policies and safe, reliable, efficient and economically viable civil aviation.”* The purpose for this wording is to avoid a situation where the law would be providing for policies generally on civil aviation. I thank you, Mr Chairman.

**Ms Byamukama:** Mr Chairman, as I said before, this is the language of the Treaty, but since the principle has been accepted, I would also take on that friendly amendment from the honourable Counsel to the Community. I think the principle remains. Thank you.

**The Chairman:** Hon. Dora Byamukama, you can continue. I think we can put the question once. Go ahead if you have another amendment. You have an amendment to Clause 4(b), don't you, or at least you said you have an amendment.

**Ms Byamukama:** Mr Chairman, I did give notice of an amendment to Clause 4 as a consequential amendment following what was discussed. I would like to propose that 4(b) reads as follows: *“The principle objective of the Agency is to assist the Partner States in meeting their safety and security oversight obligations and responsibilities under the Chicago*

*Convention.*” Thank you, Mr Chairman.

**Mr Kaahwa:** Mr Chairman, on behalf of the Council of Ministers, I accept the proposed amendment, taking into account what we agreed as far as the Chicago Convention is concerned.

**Mr Ndarubagiye:** Mr Chairman, I have an amendment on Clause 4 to add something small in brackets so to read: *“The principle objectives of the Agency are, among other things, to contribute in promoting, enhancing and hastening the East African Community’s ultimate work of political integration.”*

I say this because I think it is fit and necessary that we repeat, again and again, our commitment and our pledge to the final goal. It can be repeated even 1,000 times so that people are convinced and know where we are going to. Being a Roman Catholic, I know how many times I repeat “Amen”, “Amen”, “Amen”! So, I do not see why we should not. Some of us repeat to our families, “I love you” several times, so why can’t we say we love our region, our Community, several times? *(Applause)*

In fact I want to propose that every time that we are promoting the principle objectives of any Bill, we should always put in this important sentence. Thank you very much, I beg you to support my proposal. *(Applause)*

**The Chairman:** Council of Ministers, do you love your Bill? *(Laughter)*

**Mr Kaahwa:** Mr Chairman, while appreciating the proposed amendment, I would like to invite this august House to consider the following: First, the specific technical objects of this Bill.

The specific objects of this Bill, which can be read from the substantive provisions show that the question of ultimately establishing a political federation, which is the ultimate goal of the East African Community, is not contained within the context of the objects of the Bill.

Secondly, I would like to remind this august House that the ultimate aim of establishing a political federation, as stated under Articles 2 and 5 of the Treaty has been accorded appropriate policy treatment through relevant undertakings by the Partner States. For those two reasons, I am of the very humble but equally firm view, on behalf of the Council, that this amendment does not arise.

**Mr Ndarubagiye:** Well, although I was expressing the deep feelings of our region, I concede that maybe it does not fit this time. But whenever it fits, please put it in. *(Laughter)*.

*(Question put and agreed to.)*

*Clause 4, as amended, agreed to.*

Clause 5

**Ms Kimura:** Mr Chairman, the Committee proposes that Clause 5 be amended by deleting sub-clause (i) and substituting it with the following new paragraph: *“To provide policy direction, advisory services and other assistance as Partner States may require.”* You will see that under the functions of the Agency, the issue of policy was missing, and that is why we are proposing that particular amendment... - *(Interruption)* -

**The Chairman:** Honourable Member, as you organise yourself, maybe I can call upon hon. Masha to talk about sub-clause (c).

**Dr Masha:** Mr Chairman, I propose to introduce a new paragraph (c), and to renumber the other paragraphs accordingly. The new paragraph (c) should read: *“To harmonise the positions of civil aviation authorities of the Partner States and take the lead in their participation in the ICAO.”* The explanation for this is as follows:

I am aware that membership to ICAO is by states, and not by aviation authorities, and indeed that is why I used the word “participation” by these authorities in ICAO. In paragraphs 5 (c), (d) and (g), we are invoking functions to be carried out in relation to ICAO, and asking this agency to foster agreements on matters dealing with ICAO, and to liaise with ICAO to ensure that these Partner State aviation and safety authorities are in line with ICAO objectives.

We are also asking this Agency to monitor and provide input to the formulation of ICAO and SAPs, and we are asking this Agency to assist the Partner States to comply with ICAO and SAPs. We are asking them to do all this in respect to ICAO while these national civil aviation authorities of the Partner States have a direct relationship with ICAO.

What I am proposing here is to find a way to use this Agency to harmonise the positions of these authorities when they are participating in ICAO, and to provide this Agency the lead role on behalf of the civil aviation authorities of the Partner States.

Mr Chairman, there will be need for member states, in their participation in ICAO, to also harmonise their positions at the policy level in order not to have the ministers or the government authorities entangled in five positions, while this Agency

merely co-ordinates the functions of these technical bodies. I ask that this amendment be accepted.

**Dr Kamala:** Mr Chairman, I would like to draw the attention of this august House to the fact that so far EAC is not a member of ICAO. Probably in future when we reach the federation level, we can be able to become members of ICAO. So, what we are proposing is to harmonise the positions of the civil aviation authorities of the Partner States for their participation in ICAO. It is okay; it is a good thing and that is the spirit. So, we would like it to read as follows: *“harmonise the positions of the civil aviation authorities of the Partner States for their participation in ICAO”*.

**Dr Masha:** Mr Chairman, first I thank the hon. Minister for the concession so far to the amendment that I have proposed. However, I still have some difficulty with the wording. I would propose the use of the words “and take the lead” in their participation to avoid the sovereignty of the member states. I know that in original Bill we are asking this Agency to monitor and provide input for the formulations in ICAO and SAPs, so how will it do that if it does not take the lead or if at the same time the civil aviation authorities of member states individually do exactly the same thing?

Mr Speaker, how can we ask this agency to liaise with the ICAO when these national authorities are doing exactly that? How do we ask this agency to assist the Partner States to comply with ICAO, SAPs when the national authorities are doing exactly that? We would be setting up confusion. That is why I am suggesting that we allow this Agency to take the lead; not to take over the sovereignty. If we go by this, even when the

concession is given by the Minister, we will still have some confusion when this Agency interrelates with ICAO on behalf of the Partner States when its own national authorities are doing exactly the same.

**The Secretary-General, EAC (Mr Juma Volter Mwapachu):** Mr Chairman, I humbly beg the senior member of this House, *Mzee* Masha, to concede on this point. We are not creating an East African civil aviation authority; we are only creating an agency whose role is to coordinate and harmonise; and we are happy with the proposal about harmonisation. I think it really goes down to the efforts that have gone in to make the EAC what it is today. I know it is not a very satisfactory position because if you read the Treaty, it is the Partner States that are at the core and, therefore, the agencies, organs and authorities of the Partner States are the ones to take the lead. We provide the backstopping work.

I really do appeal to hon. Masha; we have conceded substantially to what we ought to. We have seen from the beginning that it is important for this agency to harmonise positions when our civil aviation authorities go to the ICAO meetings. However, I think if we are going to use the phraseology “to take the lead”, it may smack of the Agency now becoming a supra authority on our relationship with ICAO. I really urge hon. Masha to concede on this point.

**Ms Byamukama:** Mr Chairman, I just beg for more clarification because this august House did pass the East African Joint Trade Negotiations Act, and I presume that one of the areas where we would be obliged to work as an East African Community would be where we would be talking about goods and

services that may promote the safety and security of civil aviation in the region. So, I believe that even when this body is in place, if you go to it individually as separate Partner States and yet we already have some mode of bringing together all our policies, it would really be wastage of resources and time. So, in consonance with what we had already passed as a parliament, I propose that this amendment be supported.

**The Chairman:** We thought it was a clarification, hon. Dora.

**Ms Byamukama:** The point clarification is this: if we have already passed an East African Joint Trade Negotiations Bill whereby we are obliging all the Partner States to work together as a team on issues like negotiations and in respect to trade, then why is it next to impossible to have the civil aviation authorities taking the lead in the participation of these particular issues? So, I propose that we support the amendment that has been proposed.

**Mr Mwapachu:** Mr Chairman, I think we did make a revolutionary step, and this House really should be congratulated for coming up with a Private Members Bill that led to the enactment of the Trade Negotiations Act. However, we need to draw a clear distinction between that and going to an international body like ICAO where what is necessary is really to harmonise our positions and go with a collective voice.

For negotiations, it is rather a tricky issue and the Act does not extend to the subject matter that is before us. If it is felt necessary at some point that we want to replicate the Trade Negotiations Act to other areas of international negotiations, maybe we

can consider that. However, I want to underscore the fact that we are talking about an agency here. We are talking about an agency that is going to a stage where we are going to have a fully fledged civil aviation authority and then we may actually consider giving it the kind of powers that hon. Byamukama is talking about. However, at this stage I think we are in a transition situation, and this is why we have a limited scope of role and responsibility within this Bill.

**Dr Masha:** Mr Chairman, sometimes revolutionary steps may be worse, as he indeed concedes in the case of trade negotiations. I am not perfect in my English, but he says we are creating an agency, not an authority. I really do not know how different these are. My simple English tells me that we are creating an authority of sorts. Nonetheless, we can leave it as it is; perhaps the way the word “lead” appears seems to insert some authority from I do not know where. If we need another word, let us look for another word, as long as it does not ruin this concept of being at the front in relationship with the ICAO.

The Agency cannot do -and I emphasize cannot do- what we are asking it to do. In the other clauses, we are saying we want this agency to monitor and provide input with the formulation of ICAO. If it provides input, which is contradictory to the input of national authorities, what will happen? Who will they listen to? Indeed, what authoritative participation will this agency have in ICAO, unless it takes the lead? How can we ask this agency to liaise with ICAO when the national authorities are themselves doing that work? How can we ask this agency to assist Partner States to meet or comply with the ICAO requirements if we do not give it the lead? If we do

not give it the lead - or probably whatever word we can agree on- we will be asking for something they cannot do. However, if that is the wisdom of the House -I am not trying to concede, because it is so confusing; I find it very difficult to follow, Mr Chairman.

**Ms Mmari:** Mr Chairman, at first I said I support the establishment of this Agency but now, after listening to hon. Masha, the Counsel to the Community and the Secretary-General, I am getting even more confused. My confusion was going but now it is coming back - *(Laughter)*.

We are creating an institution, but all the things that it was going to do, it cannot do. Infact, one of the things that I thought this agency was going to do since it is going to be a supranational body is that it was going to reduce the kind of fees that are paid to all these institutions because we would be having only one institution paying the fees. That was my thought at the time I was talking. So, I really support what hon. Masha is saying that we should change that clause, even if it is at a transitional stage. We should look for means and ways of giving this institution some teeth.

**Mr Ogalo:** Mr Chairman, I want to briefly go to the Treaty, and I want to go to Article 92, which was also cited in the Bill. Article 92(3)(a) says: “*The Partner States shall in particular adopt common policies for the development of civil air transport in the Community in collaboration with other relevant international organisations, including...ICAO*”. Then it goes on in subsection 3(k) to say that “*the Partner States shall in particular apply the ICAO policies and guidelines in determining user charges and apply the same regulations*

*relating to scheduled air transport services among themselves*". Now, they are saying here "the partner states shall", and this is in the Treaty of the East African Community. If we give it the interpretation that these matters must remain within the Partner States, then what are they doing here in the Community?

My understanding is that when the five countries come together and say that Partner States shall do this, obviously it means that there must be an institution or somebody that will take a lead. It does not make sense to say that because you have signed a treaty for five countries, and because you say partner states shall do this, it means that you are saying Uganda go and do that, Kenya go and do that. Why do you put it here then? They are already doing it.

We cannot say that when it is said here that partner states shall, it therefore means that the Community is not going to have anything to do with it. Infact it is the contrary. I think the Treaty means that the five states together will do something, and that they will do that something through the agency that we are now talking about. To interpret it the other way means that Arusha can do nothing; that there is no need for the Community because throughout the whole Treaty it is the partner states!

To me, when you say "partner states" and you have created the Community, there must be power within that Community. You cannot create the Community and then say that the countries can do whatever they want to do. I would therefore support hon. Masha's proposed amendment.

**The Chairman:** The Secretary-General says I might be of assistance, but I was wondering whether the

contentious issues were movement of persons and right of establishment. There is no civil aviation among those. Let me see what hon. members are saying about the Bill before we can finalise.

**Mr Mulengani:** Thank you, Mr Chairman. I just rise to support the position of hon. Masha from the angle that all the institutions that have resulted from existing protocols and Acts of Parliament have taken the form of a supranational structure. Out of that, we have been convinced all through in areas that these institutions have been formed. Where they have failed to attain or implement their objectives, we are usually told it is because it is a process, and it will be attained over time. One of such Acts is the East African Community Tax Management Act, and also the Joint Requisitions Act.

To my surprise, today we are seemingly being convinced that this is an agency that is not going to perform the functions and achieve the objectives that we are setting for it. If we are to be consistent in whatever we are passing through this House, if our institutions and infrastructure are to attain the objectives of the integration and therefore the objectives of the Treaty, I would request the Executive to agree with hon. Masha's position. We shall only request them to put in issues like timeframes.

Since its inception, the Customs Union has not been fully attained. So, I just request that even in this circumstance, let us give powers to the Agency and then give it a timeframe as to when we wish to see it running as a full supranational agency. Thank you, Mr Chairman. *(Applause)*

**The Chairman:** Honourable Members, I think all of you are going in the same direction. Maybe I can call upon the minister because we are running out of time.

**Dr James Ndahiro (Rwanda):** Mr Chairman, I have a slightly different approach to this issue. We are setting up an agency that is going to co-ordinate the initiatives of the member states. It is like putting together a group of consultants and then you expect the consultants to take lead and negotiate on your behalf.

These members of the Agency will be useful to empower each member state, to provide authorities in the different member states if there is a need, and if they are called upon; unless this body is not one of the organs or institution of the Community. It is just a body corporate in its real sense that has the objective of coordinating the initiatives of the member states, and it is like we are putting together synergies from within our Community to give support to our different states so that they are strengthened, then we can harmonise. It is a process, but if we think that we can now give it power to oversee and also implement on behalf of the member states, I think then this is a step ahead, which was not envisaged when this Bill was brought to the House. That was my thinking.

**The Chairman:** Honourable Members, if you look at the Board of this agency - the people who make up this authority - I think all the heads of civil aviations are there. So, if the heads of civil aviations, the chairperson, the experts, the Executive Director are there, what are they doing in that agency? I think positions should be harmonised. What is the use of that agency if it cannot do anything? Hon.

Minister, maybe you can inform us on how we can move forward.

**The First Deputy Prime Minister and Minister for East African Community Affairs, Uganda (Mr Eriya Kategaya)(Ex-Officio):** Mr Chairman, integration is not something you can do by the stroke of a legislation. First of all, the present position is that each national civil aviation authority is acting independently of the other, and separately. Here we are saying this agency should now bring them together to harmonise -and I would even add the word "to co-ordinate"- the positions of civil aviation authorities of the partner states in matters of its special needs in ICAO. I think the most difficult part is taking the lead, but if you are harmonising and co-ordinating, somehow you are bringing them together. So, I do not think that we should maintain these words "to take the lead". I request hon. Masha, whom I respect very much and whom I know, that we all share the co-ordination and delete these words "take the lead" and just say "harmonise and co-ordinate". That is my submission.

**Mr Ogalo:** My understanding, which I especially want to share with the Minister, is that there has been a co-ordination committee and sectoral councils in this area before, and they have been coordinating and harmonising policies. However, we have not had anybody dealing with this sector of civil aviation before - *(Interruption)*-

**The Chairman:** Then how did they come up with an agency if there is no co-ordination committee or sectoral council on this issue?

**Mr Kategaya:** Mr Chairman, if I may clarify for hon. Ogalo, what has been

going on has really been ad hoc in the sense that it had no legal backing. It was just goodwill. Now we are making a law to make sure that these civil aviation authorities harmonise and co-ordinate as by law, but before it was a haphazard thing.

**The Chairman:** Hon. Masha, I guess you have the last word.

**Dr Masha:** Mr Chairman, I just want to thank the hon. Deputy Prime Minister Minister, Eriya Kategaya, for the wise amendment he is proposing. I have no problem accepting the word “co-ordinate” instead of “lead”. I only want to see whether the Council will accept this slight change in the language by saying: “...shall harmonise the positions of civil aviation authorities of partner states and shall co-ordinate their participation in ICAO”. If that is acceptable, I have no problem.

**Dr Kamala:** Mr Chairman, we have no objection to the proposal. (Applause)

**Ms Kimura:** Mr Chairman, I would like to move that Clause 5 be amended by deleting paragraph (a) and substituting it with the following new paragraph (a): “To provide policy direction, advisory services and any other assistance as the partner states may require”. Hon. Chairperson, you will see that under the functions of the Agency, the Bill did not provide for policy direction, and that is the amendment that the Committee would like to introduce.

The next amendment is to substitute the current paragraph (j) of Clause 5 with the following new paragraph: “To mobilise resources from development partners and other sources for the

*implementation of the projects of the Agency.”*

The reason for this is that we want to avoid connotations that come with the word “solicit” and at the same time have the Agency access funding from other sources other than from the civil aviation authorities as provided; to make the sources of funding larger. Also, the language must be consistent with what is in the Treaty as far as mobilisation of resources in concerned.

**Dr Kamala:** Mr Chairman, we do agree her proposals.

**The Chairman:** The proposals are for the whole committee, not the Chairperson.

*(Question put and agreed to)*

*Clause 5, as amended, agreed to.*

Clause 6

**Ms Kimura:** Mr Chairman, we propose that a new Clause 6 be inserted following Clause 5, on the “Organs of the Agency to read as follows:

*“The organs of the agency are:*

- (a) The Board;*
- (b) The Secretariat; and,*
- (c) Such other organs and offices as the Board may consider necessary.”*

The amendment is simply to list the various other organs of the Agency which had not been specified in the Bill.

In Clause 6, which would now be Clause 7, the Committee proposes to insert the following new sub-clause after the existent sub-clause (1) – (Interruption) -



**The Chairman:** Now that you have inserted a new clause, can we finish that one and then we go to the next one?

**Ms Kimura:** We have inserted a new clause after 5.

**The Chairman:** Yes, let us finish with that and then we go to the next one.

**Dr Kamala:** Mr Chairman, we do agree with the chairperson's proposal.

*(Question put and agreed to)*

*(New Clause 6 as proposed, agreed to)*

**Ms Kimura:** Mr Chairman, the existing Clause 5 will now be the new Clause 6. We propose to insert the following new sub-clause after the existing sub-clause (1): *"The Board shall be formally appointed by the Council for a term of three years and the names shall be published in the Gazette."*

There was no indication in the Bill as to who the appointing authority would be. Therefore, we want to introduce whoever should be the appointing authority after the various members of the Board have been nominated by their various institutions.

In the existing Clause 6(2), we propose to insert the following new paragraph (d) after (c), which will read: *"One representative from the private sector appointed on rotation basis by the East African Business Council"*.

Mr Speaker, in recognition of the fact that our Community should be private-sector led, and recognising that this agency will deal with a very critical area of the private sector, we do feel that there should be a private sector member on the Board, as well as others

who could be from our public institutions.

Still under Clause 6, we propose to insert the following new sub-clause (3) after the existing sub-clause (2) to read: *"In nominating members of the Board, partner states shall take into account gender balance."* We recognise that the Treaty has provisions for the mainstreaming of gender, as stated in Article 5(3) and in other articles, and that is why we feel that in creating institutions of the Community, gender balance should be taken into consideration.

Further under Clause 6, we propose to delete sub-clause (4) (a) and to substitute it with the following: *"Have experience at a senior position in the aviation industry"*. The original Bill says *"The aviation expert shall have a minimum experience of ten years at a senior position in the aviation industry."* In the view of the Committee, expecting our partner states to have this kind of experience of ten years may limit the pool from which our partner states will draw their experts. In our view, it is enough to have adequate experience at a senior position without specifying the number of years of experience.

**Dr Kamala:** Mr Chairman, the Council of Ministers agrees with the proposals tabled before you. *(Applause)*

*(Question put and agreed to)*

*Clause 6, as amended, agreed to.*

## Clause 7

**Dr Masaburi:** Mr Chairman, I am proposing to insert the word “secretariat” under Clause 7(2) (a) so that it reads: *“Consider reports submitted to it by the Secretariat, the Executive Director, and the technical committees.”*

I am also proposing to remove sub clauses (d) and (c) because they contradict with the functions of the Secretariat. There is a conflict in that aspect. I do not know whether I can propose the amendment here or under Clause 10.

**The Chairman:** Hon. Masaburi, let us finish with Clause 7(2) (a) and then we can go to the next one, please.

**Dr Masaburi:** I am proposing that the word “*secretariat*” be inserted between the words “*the*” and “*the executive*”.

**The Chairman:** So, how should it read?

**Dr Masaburi:** It should read: *“Consider reports submitted to it by the Secretariat through the Executive Director and the technical communities”*

**The Chairman:** Hon. Masaburi, when you say “through”, that is a process. What was your intention? What are you trying to do?

**Dr Masaburi:** What I want to do is to make the Secretariat superior to the committees because otherwise the committees will be reporting directly to the Board without passing through the Secretariat. That is why I am saying if we leave that as it is, it will imply that the technical committees will be reporting directly while at the

same time, the Secretariat is supposed to co-ordinate all activities in accordance with Clause 10.

**Mr Kaahwa:** Mr Chairman, I appreciate the proposed amendment, but I would like to point out to this august House that the Executive Director, under this Bill, heads the Secretariat. The Executive Director is not authorised to submit the Executive Director’s own reports. He heads the Secretariat. So, should you include the additional word “secretariat”, you will then practically create a situation giving rise to three reports, which is not the intention of the Bill.

In any case, if you look at the role of the Secretariat, it is to co-ordinate the reporting procedure. If you read through the wording of Clause 10, the Secretariat is defined to be an administrative arm of the Agency. Therefore, there is no likelihood of mischief where the Executive Director or the technical committees could submit reports other than through the Secretariat headed by the Executive Director. I am therefore saying that the mischief which my honourable friend is addressing by making that proposed amendment would not practically and in law, arise.

**Dr Masaburi:** Mr Chairman, my core problem is that there are teams reporting to the Board, namely; the technical committees, the Secretariat, and the Executive Director. What I want to do here is to remove that conflict between the technical committees and the Secretariat. Are they two teams reporting independently? Here we have the technical committee reporting and then we also have the Secretariat reporting; if that is the case, which is above the other?

If you also consider what hon. Kimura said, we have the organs in Clause 6, we have specified some organs, which do not include the technical committees, and now we have the technical committees reporting directly to the Board without going through the Secretariat. That is my concern.

**Ms Mmari:** Mr Chairman, I think I appreciate what hon. Masaburi is saying. However, I actually agree with the Counsel to the Community because when you look further at Clause 11(c) - that might probably move us away from where we are now, but we are saying that there shall be an executive director and the executive director shall submit, among other things, reports on the work of the Secretariat, as well as audited accounts, to the Council. So, the role of the Executive Director is actually, among other things, to be the chief executive officer, the boss, or the person in charge, and the accounting officer of the Agency. For that matter, he is the person who is going to submit the reports to the Board, and is also a member of the board. However, I think there was also a problem with respect to the technical committees. My thinking was that the technical committees could be composed of members of the Board, and of course members from anywhere else and it is normal to present those directly to the Board. That was my understanding as a member of the Committee.

**The Chairman:** I think he concedes. Do you concede?

**Dr Masaburi:** Mr Chairman, I was expecting a response.

**The Chairman:** What response? The response has already been given, and it has even been further clarified by the

Committee member. Do you agree or you don't agree?

**Dr Masaburi:** Maybe I should explain my concerns again. I am saying that the technical committee is going to report directly to the Board and at the same time the Secretariat is also going to report to the Board, which is normal. However, if the technical committee is also mandated to prepare the comprehensive implementation of programmes and at the same time the Secretariat is also mandated to prepare programmes and they are reporting separately to the Board, then they will all go to the Board with separate activities and programmes, and they are all going to be approved by the Board. Can't we see that there is a conflict of activities?

If we think that the two programmes will be approved at the same time without passing through the Secretariat, then I am not comfortable. However, if that is what is supposed to be done, then I have no objection.

**Mr. Mwapachu:** On the same subject that we are discussing here – *(Interruption)* -

**The Chairman:** Which clause are you talking about?

**Mr. Mwapachu:** I am talking about Clause 7, the one referring to the technical committees – Clause (7) (2) (a), (d), and (e). If you read those sub clauses, you will notice that we might be having a problem because they are assumed to be substantive technical committees and yet Clause 9(1) says the Board may establish its own committees. I think we may have to change Clause 9 if we are talking about technical committees not being like taskforces; that they are substantive committees.

I think under Clause 9(1) we should say, “*The board shall establish technical committees*”. That is the point that I wanted to explain. If you say “may” and then you are calling them substantive standing committees, then we will have a problem. I have just realised this.

**The Chairman:** Maybe we can make them standing committees.

**Mr Mwapachu:** Mr Chairman, they are standing in the sense of interpretation. When you say, “*without limiting the generality of sub-section (1), the Board shall consider reports submitted to it by the Executive Director and the technical committees*”, it means that you are considering those technical committees as substantive, as standing committees.

**The Chairman:** Maybe you can go to the East African Court of Justice for interpretation - (*Laughter*)

**The Chairperson:** The Counsel to the Community is in a problem because the Counsel and the Secretary-General are not agreeing - (*Laughter*). Hon. Ogalo, maybe you can help us. Right now if the Secretary-General has an amendment put in writing, then we can consider it. Now that it is not in writing, we consider hon. Masaburi’s while the Secretary General puts his together.

**Dr Masaburi:** I was only recommending another amendment to sub clause (d) and (e) to remove what has been said by the hon. Mwapachu that these functions should be removed from here and let the Board decide, otherwise these are standing committees. If they are standing committees, they should be established on an ad hoc basis, and that is why I recommend that we should remove (d)

and (e) and they should be sent to Clause 9, where the Board shall agree. Otherwise, they shall be standing committees in that respect.

**Mr Kaahwa:** Mr Chairman, I think the problem may be in the wording of Clause 7(2)(d) and (e) where we are referring to “technical committees”. When you refer to “the technical committee”, it means there is a specific technical committee. But if you go by the process of establishment of technical committees as provided in the Bill, you will find that the Board may, from time to time and as the need arises, establish “technical committees”. This is as provided under Clause 9(1). It says that “*the Board may establish technical committees as may be necessary for specific areas and functions of the Agency.*” That means that they are not standing committees; they are ad hoc committees, which serve specific purposes.

I think the mischief is from the use of the word “technical committee” in singular form in Clause 7(2) (d) and (e). In which case, Mr Chairman, in (d) this House should provide for the “*formulate on recommendation of technical committees*” and in (e) “*approve on recommendation of technical committees*”, which amendments would be in harmony with the clauses of the Bill establishing these committees.

**The Chairman:** I was actually going to recommend to Council that the Clerk be made the Counsel to the Community because he has given me that proposal. (*Laughter*) Hon. Masaburi, what do you think?

**Dr Masaburi:** Unless we agree that we are going to change Clause 9. This is because Clause 9(2) also reads: “*The*

*composition and functions of the technical committees shall be specified by the Board*” while we have already specified the functions here in (d) and (e). So, unless we have the standing committees and any other committees as shall be established by the Board, but we already have two, one dealing with safety and security regulations to be approved by the partner states and the other one dealing with civil aviation safety guidance materials, which will be recommended to the Board for approval.

Under Clause 9 we have technical committees - they are now many here - as shall be established by the Board on specific areas; not these ones. These ones have already been specified. Then we have other specific areas, and I do not know which areas those are. Sub clause (2) is telling us that the composition and functions will be specified by the Board. So, if we have those functions which will be specified by the Board, why do we have (d) and (e) since they will be specified later on? So, Clause 9 will be redundant unless we say that the other ones are standing and there will be other ad hoc committees. So, in addition to the safety regulations for materials, we will then have other technical committees which will be functioning according to the directives of the Board.

**Mr Kaahwa:** Mr Chairman, I have explained the need to amend Clause 7(2) (d) and (e). Now, with regard to Clause 7(2) (d) and (e), and sub clause (2) of Clause 9, the issue logically arises out of sub clause (1). When the Board establishes the necessary technical committees, then they shall logically specify the composition and functions of those technical committees. As far as Clause 7(2) is concerned, this one relates to the

recommendation for such standing committees, which may, from time to time, be established by the Board with a specified functions and specified terms of reference. I think that apart from what I explained as far as drafting is concerned with regard to use of the word “technical committees” in 7(2), the rest of the clauses are clear and in harmony.

**Ms Zziwa:** Mr Chairman, subsequently, let me seek some clarification. Initially I wanted to make a submission on this issue, considering that the most important function which is envisaged in (d) is to formulate civil aviation safety and security regulations. In effect, it is envisaged that the Agency will be able to do this in consultation with other technical committees. Even if we envisaged that the Board or the Agency would have these technical people, it cannot do it in isolation. We may not even need to specify it here. So, we may as well go ahead and delete, “...on recommendation of the technical committee” and remain with: “...to formulate civil aviation safety and security regulations”. That also goes with (e). If we delete “technical committee”, I think there will be no problem with Clause 7 as the committee is envisaged to properly feature in Clause 9.

**The Chairman:** For purposes of allowing the Council of Ministers to put their house in order and be able to come with a harmonised position, I would request the Chairperson of the Council of Ministers to move the motion to resume the House.

### MOTION FOR THE HOUSE TO RESUME

**The Minister for East African Cooperation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala) (Ex-Officio):** Mr Chairman, I beg to move that the House do now resume and the Committee of the Whole House reports thereto.

*(Question put and agreed to)*

*(The House resumed, the Speaker presiding.)*

### BILLS REPORT STAGE

The East Africa Civil Aviation Safety and Security Oversight Agency Bill, 2008

**The Minister for East African Cooperation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala) (Ex-Officio):** Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled “*The East Africa Civil Aviation Safety and Security Oversight Agency Bill, 2008*” and has amended as far as Clause 6. I do request that you postpone the session to give the Council of Ministers its experts more time to clean the Bill so that we can come with fresh energy and a better presentation – *(Laughter)*

**The Speaker:** Honourable Members, before I adjourn the House until tomorrow, I would like to make a few announcements.

First and foremost, I would like to announce that hon. Masaburi has invited the whole House, and I think you got the communication yesterday, to his residence for dinner this evening.

The buses will be leaving here after 10 minutes. I think you can have tea while we organise and all leave together for Kyanika.

Secondly, this weekend the Tanzania Chapter has organised a tour of Mikuni National Park; I think you got the notification as well. If you could please let us know by tomorrow morning whether you will be going or not so that we can make the necessary arrangements. Please read the letter that we all got so that you can decide whether you are going or not.

Lastly, I would like to tell the members of the House Business Committee that we have a short meeting tomorrow morning at 9.00 a.m.

### ADJOURNMENT

**The Chairman:** With those few remarks, I would now like to adjourn the House until tomorrow at 2.30 pm.

*(The Assembly rose at 6.02 p.m. and adjourned until Thursday, 6 August 2009 at 2.30 p.m.)*