



*Permanent Representative of Malaysia*  
*Geneva*

**Date:** 4 April 2012

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Special Rapporteur on the human rights of migrants

**Mr. Frank La Rue**

Special Rapporteur on the promotion and protection  
of the right to freedom of opinion and expression

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**04 APR 2012**

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**Mme. Margaret Sekaggya**

Special Rapporteur on the situation of human rights defenders

Copy to:

**Ms. Jane Connors**

~~Chief of Special Procedures Branch~~

Office of the High Commissioner for Human Rights (OHCHR)

Dear Sirs/Madam,

1 have the honour to refer to the Joint Communication: Allegation Letter AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (106-10) MYS 10/2011 dated 2 December 2011 (hereinafter known as "the Communication") concerning the Peaceful Assembly Bill 2011 (PAB 2011) which was tabled at the Parliament of Malaysia on 22 and 29 November 2011.

2. Without prejudging the accuracy or otherwise of the allegations summarized in the Communication, I wish to present herewith the response to the Joint Communication by the Government of Malaysia. In addition, please find attached herewith the matrix of responses on the issues raised pertaining to the PAB 2011.

3. The Government of Malaysia wishes to firstly reaffirm and emphasise its longstanding commitment to continue the reinforcement of democratic practices, institutions and values including the freedoms of expression, of assembly, and of association.

4. At the same time, the Government regrets that the allegations summarized in the Joint Communication were not entirely accurate.

## General

5. In terms of the applicable standards of international human rights law, the Government of Malaysia notes that Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) 1948 speak about the rights to freedom of opinion and expression and the right to freedom of peaceful assembly and association, respectively.

6. However, at the same time the UDHR also enshrines the notion of individual duties, limitations and restrictions which are placed on the exercise and enjoyment of human rights.

7. In particular, the Government wishes to highlight that UDHR Article 29(1) states that the individual "has duties toward the community in which alone, the free and full development of the human personality is possible".

8. Such clear reference to the importance of the community in the UDHR indicates the essential role which the community plays in society. Indeed, the role of the community could be likened to that of 'a pediment of the portico of a temple', as the community shelters underneath it the state, individuals, civil society and other stakeholders with all their respective rights and responsibilities. The scope of the permissible limitations to the exercise of such rights is further elaborated in UDHR Article 29(2).

9. The Government is also of the view that the linkage between individual duties and responsibilities taking into account the communal dimension of life is similarly reflected in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), specifically Article 18 of the Declaration which states that '[e]veryone has duties towards and within the community, in which alone the free and full development of his or her personality is possible'. The scope of permissible limitations is further elaborated in Article 17.

10. To reiterate, as demonstrated by Article 29(1) of the UDHR 1948, human rights could not be applied in a vacuum.

11. The Government wishes to draw to the attention of the mandate holders to the clear guarantees pertaining to the exercise of freedom of expression, freedom of peaceful assembly and of association in Malaysia as enshrined in Articles 10(1)(a), 10(1)(b) and 10(1)(c) of the Federal Constitution of Malaysia which is the supreme body of law in the country.

12. Consistent with the international standards of human rights law as briefly discussed above, the exercise of such rights and freedoms are similarly subject to limitations which are also enshrined in the Federal Constitution Malaysia.

13. These limitations have long been judicially endorsed domestically on the premise that there cannot be any such thing as absolute or uncontrolled liberty, wholly free from restraint; for that would lead to anarchy and disorder.

## **The Peaceful Assembly Bill 2011**

14. The PAB 2011 was promulgated to breathe life to Article 10 of the Federal Constitution by ensuring the proper regulation of the right to assemble peaceably as enshrined in the Federal Constitution. The PAB 2011 was also drafted to affirm the right of Malaysian citizens to assemble peaceably and without arms with reference to the relevant international and regional instrument including, inter alia, the UDHR. On this premise, the Government wishes to highlight the salient features of the PAB.

15. Firstly, the primary objective of the PAB 2011 is to introduce precision for citizens who seek to exercise their right to assemble peaceably and without arms under Article 10(1)(b) of the Federal Constitution without any ambiguity. In the exercise of this right, citizens are expected to comply with any regulations and conditions set forth in the PAB 2011 as these regulations and conditions were drafted in line with Article 10(2)(b) of the Federal Constitution.

16. In a plural society such as Malaysia, riots could easily take place if the people were absolutely free to incite racial feelings, conduct street demonstrations, go on strike all the time and indulge in other unwarranted activities which were supposedly the rights of people of a democratic country.

17. In this respect, the PAB 2011 must be understood in the light of the local setting, local history, local environment, local culture, local political system and the local conditions.

18. Whilst the parameters of the right to assemble peaceably and without arms, as defined in the PAB 2011, would not necessarily be apt for everybody else, we ought always to remember that it is a law that suits the Malaysian temperament.

19. Secondly, the PAB 2011 is meant to facilitate the exercise of the right to assemble peaceably and without arms. Under the PAB, the main duties of the Police are modified from previously policing assemblies without permits to facilitating the exercise of the right to assemble peaceably and without arms. The Police shall also maintain public order and security, public tranquility, facilitate the holding of peaceable assembly, whilst taking into consideration the rights and freedoms of other persons.

20. With the coming into force of the PAB 2011, section 27 of the Police Act 1967 [Act 344], which requires a license to be issued by the Police (Officer in Charge of a Police District - OCPD) in order to hold any assembly, meetings and processions, as well as other related sections including sections 27A, 27B and 27C of the same Act will be repealed. In their place, provisions are made in the PAB pertaining to the requirement of notification by the organizer to the relevant OCPD of an assembly which is intended to be held.

21. The Government is in the course of drafting a set of guidelines to provide for norms, standards, good principles and lessons learned and to ensure that these norms and standards are accessible for practitioners concerned with policing and the administration of justice in the form of a workable and easy-to-read document. These

guidelines will provide the framework within which the police can perform its tasks in accordance with democratic principles and the rule of law.

22. Thirdly, the Government notes with regret the erroneous statement and ignorance on the part of the Experts that sub-sections 4(1)(d), (1)(e) and (2)(d) of the PAB 2011 prohibit a person under twenty-one years of age to organize or participate in a peaceful assembly. Sub-section 4(1)(d) merely provides that a person below the age of twenty-one years shall not organize an assembly. This provision was formulated by the Government taking into account the responsibilities that accompany the organization of assemblies.

23. Fourthly, it was never the intention of the Government to impose restrictions upon the right to assembly peaceably and without arms to prevent human rights defenders and political activists from expressing altogether their dissenting views and exercising their legitimate rights. In the PAB 2011, the right to assemble peaceably and without arms is subject only to such restrictions and conditions deemed necessary or expedient in a democratic society in the interest of security, public order and protection of the rights and freedoms of other persons.

24. In this respect, the Government maintains that the rights accorded a citizen of democracy, including human rights defenders, entail not only individual liberties and the demands of one's special interest group, but also the duties and responsibilities to the community at large, as demonstrated by Article 29 of the UDHR. In sum, rights stand with, not against, democracy – and if the two do not progress together, they do not progress at all.

25. Finally, The Government wishes to emphasize that the Human Rights Commission (SUHAKAM), the Consultative Committee of the Review of Security Laws (which comprises former Chief Judges, representatives from the Malaysian Bar and prominent constitutional law scholars), Deans of Law Schools and the Malaysian Bar were consulted during the drafting of the PAB 2011.

26. While the Government took into consideration the views of the Consultative Committee of the Review of Security Laws, representatives from the Malaysian Bar and prominent constitutional law scholars, Deans of Law Schools and the Malaysian Bar in the final draft of the PAB 2011, which was tabled in Parliament, it is well to remember that in relation to such consultations, the views expressed by the aforementioned parties cannot be entirely adopted by the Government and reflected in the PAB 2011. In instances such as these, it is the Government who makes the final decision after careful consideration and scrutiny of all aspects concerned.

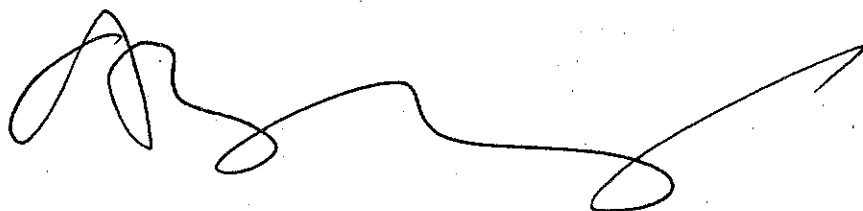
### **Conclusion**

27. The Government reiterates that the information contained in the Communication is not entirely accurate and not reflective of the provisions of the PAB 2011.

28. The Government reiterates that the provisions of the PAB 2011 are reflective of the international human rights order and remains committed to take necessary

steps and measures to continuously guarantee the right to freedom of assembly, subject to such restrictions as permitted by international norms and standards.

Please accept, Sirs/Madam, the assurances of my highest consideration.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**OTHMAN HASHIM**  
(Ambassador and Permanent Representative)

Matrix of responses on the issues raised pertaining to the Peaceful Assembly Bill

No.	Provisions of the Peaceful Assembly Bill	Response by the Government of Malaysia
1.	Ban on street protests	<p>1. The Government would highlight that the freedom to assemble is not an absolute right. Both the UDHR and the ICCPR recognize that lawful limits may be imposed upon the right to assemble for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, national security or public safety, public order (<i>ordre public</i>) and the general welfare in a democratic society.</p> <p>2. Following from the limitations permitted under international law, sub-section 4(1) of the PAB provides for the right to organize an assembly or participate in an assembly. The Government stresses that the Police will facilitate any assembly which is organized and participated in peacefully by citizens while assemblies which are not peaceful are prohibited.</p> <p>3. By prohibiting street protests under the PAB, the Government does not intend to prohibit all mass rallies which process from one point to another. The Government reiterates that it is committed to facilitating all such rallies granted it is peaceful and without arms. Street protests under the PAB are prohibited because of the negative message it carries, the disruption it causes and its threat to security, public order, peace and stability.</p> <p>4. The awareness and recognition of the fact that freedom of any kind has positive and negative effects, has always necessitated governments to provide for some form of restriction or limitation to such freedoms. In this regard, the restriction to the</p>

right to freedom of peaceful assembly is imposed by way of, inter alia, the prohibition on street protests in the interest of security, public order and, the rights and freedoms of others. Street protests as evidenced by the recent rally organized by the Coalition for Clean and Fair Elections (BERSIH) had greatly affected the business community in the vicinity of the area and also the right of others including tourists, to have access to Kuala Lumpur wherein the rally was conducted. It was reported by the Small and Medium Entrepreneurs Association that during the rally by BERSIH on 9 July 2011, 5,000 traders suffered losses amounting to Malaysian Ringgit 100 million.<sup>1</sup>

5. In other words, the prohibition on street protests was introduced vide the PAB to strike a balance between the exercise of the right to assemble peaceably and the "competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly."<sup>2</sup> It has never been the intention of the Government to curb the right to peaceful assembly. On the contrary, it was the intention of the Government to enhance the right to peaceful assembly guaranteed under the Federal Constitution subject to the restrictions as set forth in the Federal Constitution.

6. The Government would like to reiterate that it is committed to the protection of all its citizens alike, and to ensure that they enjoy the liberties conferred upon them in a manner which does not affect the peace and security of the nation. Towards this end, the Government will expect every citizen to ensure that he exercises his entrenched fundamental right without it being an impediment or

<sup>1</sup> <http://beritaharian.org/bersatuan-peniaga-dakwa-rugi-rm100-akibat-bersih.html>

<sup>2</sup> Organization for Security and Cooperation in Europe Guidelines on Freedom of Peaceful Assembly (2<sup>nd</sup> Edition 2010) prepared by the Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (ODIHR), para 80

		a threat to his fellow citizens, and/or the nation.
2.	Broad definition of "assembly" in Article 3	<p>1. On the alleged broad definition of an assembly, the Government would like to emphasize that the definition as found under section 3 of the PAB is derived from section 4 of Queensland's Peaceful Assembly Act 1992 and the Glossary of Terms as in Annexure C of the Organization for Security and Co-operation in Europe (OSCE) Guidelines on Freedom of Peaceful Assembly (OSCE Guidelines). Section 4 of Queensland's Peaceful Assembly Act 1992 defines public assemblies as –</p> <p><i>"an assembly held in a public place, whether or not the assembly is at a particular place or moving"</i></p> <p>Additionally, the OSCE Guidelines provides that:</p> <p><i>"The intentional and temporary presence of a number of individuals in an open-air public place for a common purpose."</i></p> <p>Taking into account the definitions of assembly, as reproduced above, the PAB, in section 3 provides that –</p> <p><i>"assembly means an intentional and temporary assembly of a number of persons in a public place, whether or not the assembly is at a particular place or moving;"</i></p> <p>2. The Government elected to refer to the OSCE Guidelines as it clearly illustrates the various legislative options available to regulate issues pertaining to the freedom of assembly and it is based on international and regional treaties and other documents relating to the practice, including judgments of domestic courts and domestic legislation, and also the general principles of law</p>



		recognized by other countries.
3.	Ban on non-citizens	<p>1. Insofar as the limitation imposed on non-citizens to assemble is concerned, the Government would like to bring the Experts' attention to Article 10(1)(b) of the Federal Constitution of Malaysia which expressly provides that all citizens have the right to assemble peaceably and without arms. Article 10(1)(b) states as follows:</p> <p><b><i>"Freedom of speech, assembly and association</i></b>  <b><i>10. (1) Subject to Clauses (2), (3) and (4) –</i></b>  <i>... (b) all citizens have the right to assemble peaceably and without arms;</i>  <i>... "</i></p> <p>2. The general right under Article 10(1)(b) is limited by another general provision under Article 10(2)(b) which provides that –</p> <p><b><i>"(2) Parliament may by law impose –</i></b>  <i>.... (b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;</i>  <i>... "</i></p> <p>3. The drafting of the PAB was done with the intent to introduce specificity for citizens who seek to exercise their general right under Article 10(1)(b) of the Federal Constitution without any ambiguity. In the exercise of this right, citizens are expected to comply with any regulations and conditions set forth in the PAB as these regulations and conditions were drafted in line with Article</p>

		<p>10(2)(b) of the Federal Constitution.</p> <p>4. At this juncture, the Government would emphasize that the conferment of the right to assemble peacefully under section 4 of the PAB was not granted to non-citizens to conform to the Federal Constitution. The Government is unable to legislate beyond the confines of the Federal Constitution as Article 4(1) of the Federal Constitution clearly provides that –</p> <p><b><i>"4. (1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day [Independence] which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void." [emphasis added]</i></b></p>
4.	Age limit	<p>1. The Government notes with regret the erroneous statement and ignorance on the part of the Experts that sub-sections 4(1)(d), (1)(e) and (2)(d) prohibits a person under twenty-one years of age to <b>organize</b> or participate in a peaceful assembly. Firstly, sub-section 4(1)(d) merely provides that a person below the age of twenty-one years shall not organize an assembly. This provision was formulated by the Government taking into account the responsibilities that accompany the organization of assemblies.</p> <p>2. Further to that, sub-section 4(1)(e) provides that only children below the age of fifteen years shall not participate in an assembly. The Government introduced the aforementioned provision to protect the welfare of children pursuant to section 31 of the Child Act 2001 [Act 611] taking cognizance of the fact that all assemblies have the potential to turn violent and that children could be utilized as human shields.</p> <p>3. Additionally, the age of fifteen years was decided in line with</p>

		<p>the evolving capacity of the child and the ability of the child to understand and comprehend the purpose and object of an assembly. The views of the child must be given proper consideration based on the age and maturity of the child. This age limit was also set taking into consideration the primary obligation of the State to protect the safety and the well-being of the child as provided in Article 3(2) of the CRC.</p> <p>4. The Government wishes to impress upon the Experts that it is not the intent of the Government to limit the right of children to assemble peaceably. In this regard, the Experts' attention is brought to the Second Schedule of the PAB which provides that any child may participate in the following assemblies:</p> <ul style="list-style-type: none"> <li>a. Religious assemblies;</li> <li>b. Funeral assemblies;</li> <li>c. Assemblies related to custom;</li> <li>d. Assemblies approved by the Minister.</li> </ul>
5.	Notification	<p>1. In relation to the condition under section 9 of the PAB, the Government would highlight to the Experts that an organizer is required to notify the OCPD of a proposed assembly ten (10) days prior to the date of the assembly and not thirty (30) days prior to the date of the assembly as alleged in the Communication. The UN Human Rights Committee has held that a requirement to give prior notice of an assembly is compatible with the permitted limitations laid down in Article 21 of the ICCPR. Similarly, the European Commission on Human Rights stated in <i>Rassemblement Jurassien v. Switzerland</i> (1979) that –</p> <p><i>"Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to</i></p>

	<p><i>ensure the peaceful nature of the meeting, and accordingly does not as such constitute interference with the exercise of the right."</i></p> <p>2. This requirement of notification is therefore in full compliance with the rule of law. The requirement for notification in this instance allows the Police to facilitate the lawful exercise of one's right to assemble peaceably.</p> <p>3. On the restrictions and conditions which the OCPD may impose on assemblies under section 15 of the PAB, the Government would emphasize that such restrictions and conditions may only be imposed for the purposes of security or public order, including the protection of the rights and freedoms of others. In this regard, the Experts have expressed concern on the inclusion of "the right to enjoy the natural environment" and "the right to freedom of movement" in the definition of "rights and freedoms of others". Section 3 of the PAB provides as follows:</p> <p><i>"rights and freedoms of other persons includes –</i></p> <ul style="list-style-type: none"> <li><i>(a) The right to peaceful enjoyment of one's possession;</i></li> <li><i>(b) The right to freedom of movement;</i></li> <li><i>(c) The right to enjoy the natural environment; and</i></li> <li><i>(d) The right to carry on business;"</i></li> </ul> <p>4. The Government would highlight to the Experts that the aforementioned definitions are derived from the OSCE Guidelines and Queensland's Peaceful Assembly Act 1992. Paragraph 83 of the OSCE Guidelines provide that –</p> <p><i>"Rights that might be claimed by non-participants affected by an assembly (although these need not be rights enumerated in the ICCPR or ECHR) potentially include: the right to privacy (protected</i></p>
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	<p>by Article 17 of the ICCPR and Article 8 of the ECHR) the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1 of the ECHR), the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR), <u>and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 of the ECHR).</u>"</p> <p>5. Further to that, sub-section 2(2) of Queensland's Peaceful Assembly Act 1992 states that:</p> <p>"(2) In subsection (1)(c)(iii), a reference to the rights of persons includes a reference to—  (a) <u>the rights of members of the public to enjoy the natural environment; and</u>  (b) <u>the rights of persons to carry on business.</u>"</p>
6. Restriction and conditions	<p>1. With regard to the form of the conditions and restrictions as provided for under sub-section 15(2) of the PAB, the Government would highlight that the provision was derived from sub-section 9(2) of Queensland's Peaceful Assembly Act 1992, the OSCE Guidelines and the jurisprudence of the Courts in the United States of America.<sup>3</sup> The Government notes that the OSCE Guidelines provides that the following limitations and restrictions may be imposed upon freedom of assembly: (i) public order; (ii) public safety; (iii) the protection of health; (iv) the protection of morals; (v) the protection of the rights and freedoms of others <u>and (vi) national</u></p>

<sup>3</sup> Clark v. Community for Creative Non-Violence et al. 468 US 288, 104 S.Ct. 3065 (1984); City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984); United States v. Grace, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983); Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45-46, 103 S.Ct. 948, 954-955, 74 L.Ed.2d 794 (1983); Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 647-648, 101 S.Ct. 2559, 2563-2564, 69 L.Ed.2d 298 (1981); Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976); Consolidated Edison Co. v. Public Service Comm'n of N.Y., 447 U.S. 530, 535, 100 S.Ct. 2326, 2332, 65 L.Ed.2d 319 (1980).

		<p>security. As the Government's intention is to facilitate the exercise of the right to assemble peaceably, the PAB provides that restrictions and conditions may be imposed only on the grounds of (i) public order; (ii) security; and (iii) the protection of the rights and freedoms of others.</p>
7.	Enforcement and the power to disperse	<p>1. The Government would impress upon the Experts that it has always been the intent of the Government to limit the role of the Police to one of facilitation of the right to assemble peaceably. The powers afforded to the Police under the PAB to impose restrictions and conditions, and to disperse an assembly is meant to ensure that assemblies are conducted peacefully and that the rights and freedoms of others are not adversely affected by an assembly. It is also emphasized that while the Police are vested with powers to impose restrictions and conditions, should an assembly appear to the Police to be peaceful in all aspects and in full compliance with the law, the Police will not in such cases, impose any restrictions and conditions.</p> <p>2. Additionally, the Government is in the midst of formulating a set of guidelines on the facilitation of peaceful assemblies which will form the framework within which the Police can perform its tasks in accordance with democratic principles and the rule of law.</p> <p>3. With regard to the Police using "all reasonable force" to disperse an assembly, the proposed guidelines will outline that while the use of force is often indispensable to proper policing, the Police will remain committed to the principle that the use of force is considered an exceptional measure, which must not be executed arbitrarily, but must be proportionate to the threat.</p>

8.	Recordings and media	<p>1. With regard to the disparity in sections 23 and 24 of the PAB which provide that the Police may make any form of recording at an assembly while the media is granted "reasonable access", the Government wishes to highlight to the Experts that in the drafting of this provision, reference was made to the OSCE Guidelines which provides in paragraph 169 that "photography and video recording (by both law-enforcement personnel and participants) should not be restricted".</p> <p>2. In relation to the "reasonable access" granted to members of the media, reference was made to the District of Colombia's First Amendment Assemblies Act wherein § 114(c) provides as follows:</p> <p><i>"(c)(1) The MPD [Metropolitan Police Department] shall allow media representatives reasonable access to all areas where a First Amendment assembly is occurring. At a minimum, the MPD shall allow media representatives no less access than that enjoyed by members of the general public and, consistent with public safety considerations, shall allow media representatives access to promote public knowledge of the assembly."</i></p>
9.	Prerogative of the Minister	<p>1. The prerogatives granted to the Minister in charge of home affairs is in line with the principles as laid down by the House of Lords in the case of the Council of Civil Service Unions and others (Appellants) v. Minister for the Civil Service (Respondent) [1985] AC 374 which held that:</p> <p><i>"The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the</i></p>

courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security. Authority for both these points is found in *The Zamora* [1916] 2 A.C. 77. The former point is dealt with in the well known passage from the advice of the Judicial Committee delivered by Lord Parker of Waddington, at p. 107:

"Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public." [emphasis added]