



**SINT EUSTATIUS  
CARIBISCH NEDERLAND**

Mr. R. Plasterk  
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Per e-mail: richard.zwol@minbzk.nl

Ref.: 069/17

April 25th, 2017

Subject: violation of United Nations Charter and resolutions by the Government of the Netherlands

Dear Mr. Plasterk,

We have taken note of your undated letter to the Chairman of the Executive Council with reference 2017-0000162923. In response to said letter, and with reference to previous decisions of the Island Council, as well as correspondence to you and Prime Minister Rutte (i.c. the letter of Island Council Member Clyde I. Van Putten to Mr. Rutte dated April 17th, 2017), we hereby care to inform you as follows from a general constitutional and legal perspective. We will respond to the content of said letter in a separate letter.

Recently, the Charter of the Kingdom of the Netherlands ("het Statuut") was tested against the Charter of the United Nations (UN Charter). This was done in light of the so-called "vrouwen van Srebrenica" ruling of the Dutch Supreme Court (Hoge Raad) of April 13th, 2012. In said ruling, the Supreme Court considered the following: "...moet worden vooropgesteld dat de VN onder de internationale organisaties een bijzondere plaats inneemt...".

The Supreme Court further considered: "...stelt het EHRM onder meer vast dat art. 103 Handvest VN naar de opvatting van het Internationaal Gerechtshof betekent dat de verplichtingen die ingevolge dit Handvest rusten op de leden van de VN voorrang hebben boven daarmee strijdige verplichtingen uit hoofde van een ander verdrag, ongeacht of dit werd gesloten voor of na het Handvest of slechts een regionale regeling behelst...".

Said ruling has given us cause to test the "Statuut", the WolBES, and other legislation and decisions of the Government of the Netherlands for compliance with article 73 of the UN Charter and UN resolutions 742 (VIII), 747 (VIII) of 1953, and 945(X) of December 15<sup>th</sup>, 1955.

Resolution 742 refers to "obligations" based on UN Charter article 73, while resolution 747, sub 3, states that the General Assembly (GA): "...Expresses to the Netherlands' Government its confidence that, as a result of the negotiations, a new status will be attained by the Netherlands Antilles and



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Suriname representing a full measure of self-government in fulfillment of the objectives set forth in Chapter XI of the Charter...".

From the latter resolution, it can be concluded that the purpose and objective of UN Charter chapter XI are a "full measure of self-government" for the non-self-governing territories based on established and accepted criteria. This in turn creates the obligation of the Government of The Netherlands to ensure that the right of Sint Eustatius to a "full measure of self-government" is exercised. It should further be noted that said right is unconditional ("ongecensureerd") and is not limited or tied to any particular form of political/constitutional status and/or association of a non-self-governing territory.

Resolution 945 states: "...bearing in mind the competence of the General Assembly to decide whether or not a Non-Self Governing Territory has attained the full measure of self-government referred to in Chapter XI of the Charter of the United Nations...".

The Uruguayan amendment which forms an integral part of resolution 945 was submitted because, according to the government of Uruguay, the Netherlands Antilles and Surinam were still not fully self-governing. As such, the amendment was intended to offer the peoples of the Netherlands Antilles and Surinam a safeguard, an opportunity of coming at a later date to knock at the door of the United Nations, should the need arise.

This implies that where the full measure of self-government of Sint Eustatius is concerned, and in accordance with resolution 945, the GA is the interlocutor of the Government of Sint Eustatius, and not the Government of the Netherlands. Also following from the UN Charter and the relevant resolutions is that the sole and highest authority charged with assessing matters related to the right to self-determination and self-government is the GA.

Article 73 further states that the interests of the inhabitants of non-self-governing territories are paramount, while resolution 742, sub 6, obligates the Government of The Netherlands to ensure that Sint Eustatius' association with The Netherlands is established on the basis of absolute equality. This is, mutatis mutandis, applicable to any chosen form of association, including integration, as is evident from the wording of resolution 747.

Based on the obligation of the Government of The Netherlands to treat the interests of the inhabitants of Sint Eustatius as paramount on the basis of absolute equality, the right of Sint Eustatius to a full measure of self-government, as well as the obligation of the Government of The Netherlands to refrain from repressive measures of all kinds as stipulated in UN resolution 1514 (XV), any and all provisions in the Statuut, WolBES, as well as any other (legal) measures imposed by the Government of The Netherlands on the Government and inhabitants of Sint Eustatius that constitute a violation of the UN Charter, the relevant UN resolutions and/or the international legal order, are non-enactable.

We are hereby informing you that the actions and decision-making process of the Executive Council of Sint Eustatius will be guided by the UN Charter and related resolutions henceforth, as we are committed and compelled to respect and abide by the peremptory rules of international law.





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We further urge the Government of The Netherlands to cease and desist from all interference in the autonomous affairs of Sint Eustatius, taking into account the 2001 International Law Commission (ILC) articles on the responsibility of States for internationally wrongful acts. As a non-State we have the right to pursue legal remedies for damages sustained due to violations of the abovementioned articles, and we will endeavor to do such if and when the paramount interests of the people of Sint Eustatius are jeopardized.

Notwithstanding the above, we will continue to work and dialogue with the Government of The Netherlands in order to seek solutions for the current issues and improve the relationship between The Netherlands and Sint Eustatius based on the principles of equality, mutual respect, and transparency. This process, which should ultimately result in a full measure of self-government for Sint Eustatius, should include an independent self-government assessment for Sint Eustatius, as was done for Curaçao in the recent past.

Our Commissioner of Constitutional Affairs and his delegation will be in The Netherlands during the week of May 8th, 2017, and we trust that you will extend the same hospitality and courtesies to the Commissioner and his delegation as representatives of your and other ministries enjoy when visiting Sint Eustatius.

The Commissioner's visit is an excellent opportunity to discuss these and other matters in person and initiate the process of dialogue as discussed and agreed upon during the two visits of your Secretary-General earlier this year.

Trusting to have informed you sufficiently, we remain,

Sincerely,

The Executive Council of Sint Eustatius,

Commissioner,

Mr. C.A. Woodley



Commissioner,

Mr. D. Simmons

The Island Secretary,

Mr. K.A. Kerkhoff