

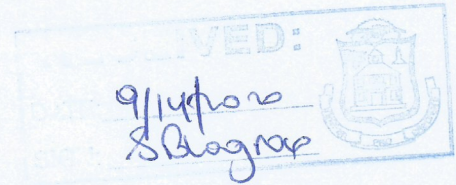


Mr. Mark Rutte
Prime Minister of the Netherlands
Den Haag, Netherlands

September 14, 2020

And

Sliveria Jacobs
Prime Minister of St. Maarten
Government Administration Bld.
Pond Island, Philipsburg PRESENT



Subject: Summons to comply with obligations under article 73a of the Charter of the United Nations

LS:

We remind you of the following discourse on the floor of the Dutch Second Chamber on October 13, 2016:

De heer Bosman (VVD):

Er dient een verplichting te zijn van Nederland. We vallen onder artikel 73, zo zegt de minister net zelf. We zijn dus niet gedekoloniseerd. We hebben de verplichting om te komen tot volledig zelfbestuur van de landen. Dat is een verplichting, een opdracht. Die moet er komen. We kunnen niet zeggen dat de landen niet willen. Dat is een keuze op het moment dat zij volledig onafhankelijk zijn. Dan kunnen zij de keuze maken of zij onafhankelijk blijven dan wel toetreden tot welk bestand dan ook.¹

The Minister he was referring to was Mr. Plasterk. From this discourse it is clear that St. Maarten still falls under article 73 of the UN Charter, and that the obligations, to which Mr. Bosman refers, apply to the Netherlands.

Obligations under the UN Charter:

Because of the UN Supremacy clause contained in article 103 of the UN Charter, obligations under the Charter have a peremptory character. The government of St. Maarten appreciates the overriding importance of obligations under the UN Charter as can be seen from its stance on this matter:

...De regering (van Sint Maarten) acht dit echter gerechtvaardigd, omdat het internationale verplichtingen betreft... die Sint Maarten wordt geacht integraal over te nemen. Er is geen sprake van beleidsvrijheid...²

And in the "Memorie van toelichting op de Sanctielandsverordening" the government repeats this formulation:

¹ Tweede Kamer, Begroting Koninkrijksrelaties (TK 12), 13 oktober 2016, p. 12-16-5
² Tweede Kamer, Begroting Koninkrijksrelaties (TK 12), 13 oktober 2016, p. 12-16-5



..Daar het de implementatie van internationale verplichtingen betreft is er geen sprake van enige beleidsruimte..Het niet onverwijd nakomen van een internationale verplichting ..beschouwt de regering als zo'n nadeel³..."

While the Raad van Advies of Country Sint Maarten advises government that:

Verder wordt gesteld dat het vaststellen van internationale en Europese verplichtingen geen beleidsruimte toekent aan lidstaten.⁴

In every formulation the word "verplichtingen" or "obligations" is prominent. They are to be complied with unconditionally.

The Government of the Netherlands has the same high regard for obligations under the UN Charter as it argued that:

...In dit verband betoogt de Staat terecht dat hij er een redelijk belang bij heeft dat de Nederlandse rechter geen vonnissen wijst die conflicteren met de aan de VN verleende immuniteit van jurisdictie....omdat in zo'n geval de Staat, ...zijn verplichtingen die voor hem uit die verdragen voortvloeien zou schenden.⁵

The government of the Netherlands pleaded that it did not wish to violate its obligations under the United Nations Charter.

The obligations pursuant to article 73 of the UN Charter

The first obligation of the Government of the Netherlands under article 73 of the UN Charter is the obligation to recognize the principle that "*the interests of the people of St. Maarten are paramount.*" It follows from this that the people of St. Maarten determine those interests, and it is the obligation of the Netherlands to respect those stated interests and put them ahead of any other proposal the government of the Netherlands might have envisioned.

Then there is the obligation, the "sacred trust", to ensure "*the economic and social progress of St. Maarten*" and to "*protect St. Maarten against abuse*", all while showing "*respect for the political aspirations of the people of St. Maarten.*"

Complying with the obligation to ensure the "economic and social progress of St. Maarten" is an obligation of the Dutch State. This obligation of the Dutch State creates a corresponding right of St. Maarten to "economic and social progress". The Dutch State is therefore the debtor in this relationship. Moreover, since this is not an ordinary obligation, but an obligation under the Charter, there is no room for negotiation (*geen sprake van enige beleidsruimte*). When summoned to perform its obligations under the Charter, the government of the Netherlands must do so promptly and unconditionally. The most that can be negotiated are the modalities and timing of compliance, and those are set by the creditor, in this case St. Maarten, not the party which has to comply, which is the Dutch State.

³ Ibid. MvT, p.2 en 4

⁴ Ibid. RvA no. SM/09-15-LV, p.2

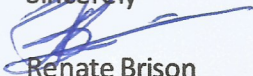
⁵ ECLI:NL:PHR:2012:BW1999, r.o. # 2.5

Summons:

The Dutch State is therefore hereby summoned to comply with its obligations under Article 73 of the UN Charter and dispense to St. Maarten the third tranche of the liquidity support. The details and amount are well known and therefore need no further elucidation; and furthermore to continue liquidity support to St. Maarten until such a time as the Government of St. Maarten no longer requires such support, all without any need for negotiations except for the modality and timing of the disbursement of the said liquidity support. The Government of St. Maarten is hereby summoned to cease and desist from any and all negotiations concerning liquidity support, and to respect the right of the people of St. Maarten to have their "economic and social progress ensured" as provided for under Article 73 of the UN Charter. Parties are hereby furthermore placed on notice of default if within seven days of the date of this letter they fail to comply with article 73 of the UN Charter. If the third tranche of liquidity support is not forthcoming, Pro Soualiga reserves the right to institute legal action against parties, including financial damages to Country St. Maarten, attributable to failure to comply with the rights and obligations under article 73 of the UN Charter.

Please take good notice of the above, and be guided accordingly,

Sincerely



Renate Brison
Secretary
Pro Soualiga Foundation

cc: Mr. R. Knops – Staatssecretaris BZK
RvA – SxM
Parliament SxM