ST. EUSTATIUS
CARIBISCH NEDERLAND

The Council of Ministers of the Kingdom of the Netherlands
Attn.: The Prime Minister, Hon. Mark Rutte
Binnenhof 19 | 2513 AA | The Hague
P.O. box 20001 | 2500 EA | The Hague
The Netherlands

Sint Eustatius, April 9th, 2017

Subject: conflict of legislation and measures of the Government of the Netherlands with articles 73 and 103 of the United Nations Charter, UN resolutions 742(VIII), 945, and 1514, and article 93 of the Constitution of the Netherlands

Excellency!

On January 4th, 2017, a letter with reference number 0001/17, was dispatched to you by the Executive Council of Sint Eustatius, including a copy of a related motion of the Island Council of Sint Eustatius of November 30th, 2016. Said letter contained a formal petition to stop the process of permanently embedding Sint Eustatius in the Dutch constitution.

As far as I have been informed, the Executive Council has not received any reply from you as yet. In a letter to the Executive Council dated February 27th, 2017, the minister of the Interior and Kingdom Relations did indicate that he expected to respond to the Executive Council's letter to you of January 4th, 2017, "within a few weeks". Since then, and without said answer having been received by the Executive Council, both you and the minister of the Interior and Kingdom Relations presented the draft legislation for said embedding of Sint Eustatius in the Dutch constitution to the newly elected Dutch Parliament on March 23rd, 2017. This appears to be a clear indication that the petition of January 4th, 2017 has been ignored.

The Dutch Parliament also requested you to inform them about the content of the Executive Council's letter, and your reply to it, no later than February 14th, 2017. As far as I have been able to determine, this information has not been provided to the Dutch Parliament.

Meanwhile, as proposed by the Executive Council in a letter dated March 14th, 2017, a process of dialogue between the Executive Council and the Government of the Netherlands is being

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prepared under the guidance of a committee of four "wise men" appointed jointly by the Governments of Sint Eustatius and the Netherlands. The objective of said dialogue is to come to lasting solutions for the differences of opinion between both Governments, including the manner in which the Government of the Netherlands has dealt with Sint Eustatius' right to self-determination and full internal self-government.

On April 4th, 2017, the Executive Council approved a draft constitional framework for an autonomous Sint Eustatius, i.e. Sint Eustatius having a full measure of self-government. This document was debated on that same day, and will be ratified by the Island Council on April 11th, 2017. Subsequently it will be presented to the Government of the Netherlands together with other documents relevant to Sint Eustatius' quest for full internal self-government during a visit of a delegation of the Commissioner of Constitutional Affairs to the Netherlands in the week of April 17th, 2017. The visit is in preparation of the mentioned dialogue, as was communicated to the minister of the Interior and Kingdom Relations in a letter of the Executive Council dated March 23rd, 2017.

Meanwhile, the following has recently been brought to my attention by a legal scholar specialized in constitutional law, who has been researching the captioned subject of this letter for the past few months:

On December 15th, 1955 resolution 945 was adopted by the United Nations General Assembly. The resolution contained two important amendments. The first was submitted by Uruguay, while the second was submitted by India. Uruguay explained that they had submitted their amendment because the Netherlands Antilles and Suriname were still not fully self-governing. The amendment was intended to offer the people of the Netherlands Antilles and Suriname *"a safeguard, an opportunity of coming at a later date to knock at the door of the United Nations should the need arise."*

The Indian representative explained that their amendment: *"intended to declare that the decisions of the General Assembly was only related to article 73e and that paragraphs a to d remained in force and could be invoked by the General Assembly at any time."*

The implications of these amendments have far-reaching consequences for relations within the Kingdom, and in particular for the relationship between the Government of the Netherlands and that of Sint Eustatius, as you can surely appreciate.

Article 103 of the UN Charter states: *"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present charter shall prevail."*

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I am of the opinion that the Kingdom Charter is an international agreement based on UN resolution 742 (VIII) of November 27th, 1953. The Kingdom Charter was submitted to the Secretary General of the United Nations on March 30th, 1955, by the Government of the Netherlands, and thus registered as a treaty in accordance with article 102 of the Charter.

Based on Sint Eustatius' right to a "full measure of self-government" as laid out in the UN Charter and relevant UN resolutions, certain planned and enacted legislation (e.g. the WolBES, and the draft legislation to permantently embed Sint Eustatius into the Dutch Constitution), as well as measures (e.g. the preliminary supervision and other types of unlawful interference of the minister of the Interior and Kingdom Relations in the internal affairs of Sint Eustatius) imposed on the Government and people of Sint Eustatius by the Government of the Netherlands as of October 10th, 2010, clearly manifest an intrinsic inconsistency or conflict with the UN Charter and relevant UN resolutions.

Because of this, the Government of Sint Eustatius has started to make use of the opportunity provided by the Uruguayan and Indian amendments to UN Resolution 945 as far back as 2011.

The Government of the Netherlands is well aware of this conflict, as it was the main topic of debate at the United Nations at the time, and the main reason why India and Uruguay submitted their amendments which were consequently approved by the General Assembly.

There can therefore be no discussion about the nullity of said planned and enacted legislation and actions by the Government of the Netherlands when they conflict with Sint Eustatius' right to a "full measure of self-government".

In such an event, article 103 of the Charter dictates that the obligations under the charter shall prevail, and article 93 of the Dutch constitution confirms such. Since this concerns the obligation of the Government of the Netherlands to ensure a "full measure of self-government", there is no room for discretion in this matter. Obligations under the UN Charter are peremptory.

In addition, UN resolution 742 contains the following under consideration # 6 "*....association with another State or group of States if this is done freely and on the basis of absolute equality.*"

The legislation enacted (and planned), and the measures imposed by the Government of the Netherlands since October 10th, 2010 are also in conflict with this resolution, as under "absolute equality" one party cannot submit the other to any measures, and any provision for same is *ipso facto* unenforceable. Measures such as those envisioned by said enacted (and planned) legislation and measures can have no place in a relationship of absolute equality. They, or any other provision which conflicts with Sint Eustatius' right to "a full measure of self-government"

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are unenforceable in any event, as attempting to enforce same automatically triggers the "supremacy clause" of the UN Charter.

Based on the above, I will request the Island Council of Sint Eustatius to instruct the Executive Counsel to seek immedeate legal counsel in order to have the mentioned intrinsic inconsistencies rectified, and act solely in accordance with the prevailing UN Charter in carrying out its duties. This includes enacting legislation in accordance with Sint Eustatius' right to full internal self-government.

Said enactment(s) will be done with full transparancy and in close consultations with the Government of the Netherlands in order to ensure that proper procedures and due dilligence are observed, seeing that the ultimate joint objective of our Governments should be adherence to-, and full compliance with the international legal order, specifically where it pertains to decolonization.

Trusting to have informed you sufficiently, I remain,

Sincerely,

Clyde I. van Putten
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