

Dear members of Parliament and of Government of Sint Eustatius
Dear ladies and gentlemen

Thank you very much for the invitation to speak to you at this meeting on an issue which is of great importance for the present and future development of your island. I am very honoured and appreciate this very much.

This is my third visit to St Eustatius and I am impressed again. You have a beautiful island and you are very fortunate to be able to live here. St Eustatius is a gem in the Caribbean. Please keep it this way.

I have listened very carefully to what the politicians said before. My speech will contain some answers to your questions. But I can also predict, that you will not always be happy with my opinions. But these are honest opinions from a constitutional professional.

I start with some history.

In 1981 a Round Table Conference took place between the Netherlands Antilles, the six islands of the Netherlands Antilles and the Netherlands. It was an important occasion. At this conference all participants unanimously recognized the right to self-determination of each individual island of the Netherlands Antilles. Besides the Netherlands Antilles as a whole, also every island would have the right to decide about its own political status.

This recognition of the right of self-determination of each individual island was necessary in order to give the island of Aruba the opportunity to step out of the Netherlands Antilles and to become an autonomous country within the Kingdom of the Netherlands. It was necessary because in the international doctrine the right to self-determination applies to an ex-colonial entity within its colonial boundaries as a whole. Secession is only allowed with the consent of all parties involved. This is what happened in 1981.

Wancho Evertsz, the then prime minister of the Netherlands Antilles, already predicted: 6 minus 1 makes zero. He appeared to have seen it right. The secession of Aruba marked the beginning of the final phase of the Netherlands Antilles as a country. We know what happened eventually. The Netherlands Antilles were dissolved as per 10-10-10. Curacao and Sint Maarten followed the choice of Aruba. The islands of Bonaire, Sint Eustatius and Saba constituted direct ties with the Netherlands and became part of the European part of the Kingdom.

As for Sint Eustatius, this status was actually the outcome of the choices the other 4 islands had made. In the referendum on 8 April 2005 76.6% of the people of Statia opted for "Becoming part of a restructured Netherlands Antillean constitutional order". 20.56% opted for direct ties with the Netherlands, 2.18% opted for becoming a part of the Netherlands, 0.64% opted for independence. In other words: three quarters of the population wanted to continue the Netherlands Antilles. But Sint Eustatius stood alone. No other of the islands wanted to stay aboard of the Netherlands Antilles. This brought Sint Eustatius in a difficult situation. In the beginning, consequently, Sint Eustatius refused to agree to the dissolution of the Netherlands Antilles. But in the end the Island Council acknowledged the outcome of the referendums on the other islands and declared its willingness to come to a mutual agreement on constitutional changes.

In the conference on the future of the BES islands the delegations of the BES islands and the Netherlands, including the delegation of the Sint Eustatius, agreed to the new status of the BES islands. These were to become public entities/bodies (openbare lichamen) in the sense of article 134 of the Grondwet, the Dutch constitution, and would be integrated into the Netherlands. The Island Council of Sint Eustatius agreed to the outcome of the conference in its resolution of 6 November 2006.

We all know the result of the process that followed:

- Sint Eustatius became part of the Netherlands on 10-10-10.
- There is a special act which regulates the constitutional position of Sint Eustatius together with the position of Saba and Bonaire: the Wet openbare lichamen BES
- This position can be compared with the constitutional position of local communities in the Netherlands.
- Not all legislation of the Netherlands will apply to the BES automatically: it will be a gradual and well-regulated process, recognizing the special position of the BES, for example in the field of taxes and social securities.
- After 5 years an evaluation will take place, which can result in an adaptation of the status of the BES, if there are reasons to do so.

So far so good.

What does self-determination mean?

UN-Resolution 1514 and both UN Human Rights Treaties state that: 'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.

There are several ways to reach paradise. UN-Resolution 2526 of 24 October 1970 declares that 'the establishment of a sovereign and independent State, the free association of integration with an independent State or any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

In other words: exercising self-determination is not restricted to the option of independence. Any status is acceptable, as long as exercising an option is the result of free choice.

This is an essential element in the UN doctrine and in the legal discussions. According to UN-Resolution 1541 choosing a status must be the result of 'a free and voluntary choice by the peoples of the territory concerned, expressed through informed and democratic processes'. A referendum can be part of this, and the UN has explicitly recognized a referendum as one of the means of achieving self-determination. But a referendum is not obligatory. Also other democratic means can be valid.

Important is also, that the right of self-determination is a unilateral right, only to be exercised by the former colonial entity and not by the former mother country.

This all applies to Sint Eustatius.

Did the process which led to your island becoming part of the Netherlands meet the UN-standard?

I refer to the critical opinion of Prof. Fred Soons and Charlotte Duijff in their booklet 'The right to self-determination and the dissolution of the Netherlands Antilles', published in 2011.

I cite.

First: 'Regardless of the question whether the referendum in St Eustatius was a suitable instrument to reflect the will of the people, the outcome was ignored by the people's representatives. International law does not seem to explicitly exclude a decision made by representatives as an instrument to determine the will of the people. Still, it is highly doubtful that in this case, the decision of the representatives can be qualified as being in compliance with the principles of free choice. Whatever instrument is chosen, it must reflect the free and genuine will of the people. It cannot be argued that a decision reflects the will of the people when it opposes the outcome of a previously organized referendum. At this point, it cannot be concluded that the people of St Eustatius have freely determined their status. Reginald Zaandam, representative of the Island Council of St Eustatius, came to the same conclusion in a meeting in April 2010 in the Dutch Second Chamber. He requested a referendum, to be held before 10 October 2010'.

Second: 'The majority of the voters were against closer ties with the Netherlands, but the people's representatives ultimately agreed to that very option. Popular unrest did not occur and therefore it might have been argued that the representatives had acted in conformity with the wishes of the population. However, the recent turmoil on the direct effects of the integration, inter alia, the imposition of controversial legislation regarding abortion, euthanasia and same-sex marriage, reveals the deficit in the integration process of the BES islands: both the people as well as the representatives of St Eustatius initially opposed the integration'.

Soons and Duijff are very strict in their judgment. Academically seen, they may be right. The circumstances under which St Eustatius has exercised its right to self-determination may be not been ideal. But theory and practice are often two different things. Sometimes you want something in your heart, but it is not feasible in practice. Also you always need two to tango. You can regret that and be angry, but you also can make the best out of the situation and exploit its advantages.

Admittedly: I also think it really would have been better, if the results of the negotiations with the Netherlands about the new status would have been put to a final referendum before 10-10-10. We would have known a lot more then. The outcome would have been more convincing if the people of St Eustatius would have had the opportunity to give their explicit judgment directly and on forehand.

But the referendum was not held. Unfortunately.

Still: did St Eustatius have a real alternative at that time? Every outcome would have been second best, because continuation of the Netherlands Antilles was not possible any more. Moreover: this option was out of the question.

What about an autonomous status for St Eustatius? In theory: yes, this would have been feasible/possible and still is. In practice: how do you want to realize that? Even for St Maarten this is difficult enough. Autonomy means that you can decide about your own money. But it also means that you basically have to earn your own money. At the moment the expenditures of the three BES islands on health care are \$90 million, of which only \$30 million are paid for by the citizens of the BES themselves. Just one example. An autonomous country pays for everything itself.

Independence? Yes, this is also possible. It is like autonomy, but without the protecting shed of the Kingdom and of course you would not be Dutch citizens and would not have a Dutch passport anymore.

And after all: is the present status really very different from the status St Eustatius opted for? Under Netherlands-Antillean law St Eustatius would have stayed an Island Territory, in combination with a central respectively federal level, which would have been responsible for functions such as justice, taxation and the legal framework for health care and education. The big difference now is that the central level is not based in Willemstad but in The Hague. Also now Statia is an island territory. It is true: The Hague has more power and competences than Willemstad. It is also true that Statia would have more influence on the central level as one of the five Island Territories of the Netherlands Antilles than nowadays as only one of the 400+ local communities of the Netherlands. But it is also true that the central level is functioning much smoother and better than the Netherlands-Antillean central level. That means 'unfortunately' that you are not only obliged to pay taxes, but that you also have to pay them in fact.

Considered all this, and realistically seen, the choice which has in the end been realized is in terms of self-determination not that bad. This choice in the end turns down to the question about the modalities of being part of the Netherlands. Don't understand me wrong: this is a very valid question, and as I understand it rightly from the media and from the conversations I had, a quite urgent question to be answered. For me it is clear that the way the present status of being part of the Netherlands has been given effect to, show some major deficits, which call for legal and practical action. And in terms of self-determination there is room for this, this is the good news. The present status of St Eustatius is not a given and eternal thing. The people of St Eustatius have the right to ask for changes if it wants so.

But I also would advise: be realistic. St Eustatius counts 4000 citizens. In the Netherlands we are more than 16 million, and still sometimes even this reservoir of talent is not enough in this complicated world. The construction you chose a few years ago offers a lot of advantages. It gives you protection and security. Be proud of it. Don't throw it away too easily. And again: it always takes two to tango.

Part of the agreement between the Netherlands and the BES-islands is, that after five years an evaluation of the new status will take place. This evaluation must be taken seriously and be prepared well. It is *the* chance for you to do proposals for change, if you feel the need. Your right to self-determination gives you the right to formulate your wishes, and it puts an obligation upon the Netherlands to listen to you and to try to realise these wishes together with you when feasible and realistic.

And also don't forget: it is sensible to be busy thinking of changing your status all the time? These kind of discussions cause a lot of unrest in society, as we know from Netherlands Antillean times. Give yourselves the time to give the present situation a try.

Although I am not a citizen of St Eustatius from my own profession I also see some needs for adaptations:

1. Every dialogue starts with knowledge. The channels of communication and information between The Hague, de island governments and the citizens of the islands should be more open and institutionalized. This prevents unnecessary distrust.
2. The level of representation of the islands on the central level must be improved. In fact there is no serious representation at the moment. You can participate in the election for the Second Chamber of the Staten-Generaal. But the amount of your votes is so small that you will never be able to influence the outcome of the election whatsoever under present conditions. This is one of the reasons that only 16% of the Statia citizens brought out their vote for the Second Chamber last year. This is not acceptable. The Executive Councils of the BES-islands have consultations with the Netherlands government in The Hague twice a year. But they have no formal legal competence to realize wishes. This democratic deficit of non-representation must be taken away. The BES-island do have a special status, because of their right to self-determination. This special status must be reflected, also when the choice has been: integration. I heard the suggestion to have a special state secretary for the BES-islands within the Dutch government. I think this is a good suggestion. But I think a fair representation is also necessary on the parliamentary level. One way or another. The citizens of the island must be able to feel involved in the functioning of the democratic system of the Netherlands. This is important in order to create loyalty and solidarity. You have to be there in order to be influential. We all know what happened with the legislation on abortion, same-sex marriage and euthanasia. Despite of government promises the Dutch parliament decided not to listen to the wishes of the BES-islands in this respect. A typical example of Dutch bluntness (botheid). We are not always like this, but one time can already be too much to give you the feeling not to feel home. Still: the dutch are not your enemies. Principally they are prepared to support you and to find common solutions. But you have to be able to come up for your own interests of course.
3. Every change is difficult. Not all consequences of changes can be foreseen. This is what we also have seen after 10-10-10. Think about the new tax system, think about the dollarization. Did we know how the new education system and the new health care system would work out? I think on the constitutional level there is need for a quick repair function, which can be initialized by the island governments and which can result in provisional measures, in waiting of legislative procedures bringing definitive solutions.

Certainly you will have your own ideas. And in the end you will want to give your consent to what is going to be your daily world. A referendum has to form part of it. But I think this will not be enough.

The problem of referendums is always that complicated choices and situations have to be brought back to simple questions. Therefore it is also important for the citizens to be able to let hear their voices during the *whole* process of evaluation and decision building. Of course the Island Council and the Executive council have a task to reflect the opinions of the citizens. But I would advise to give the citizens also direct influence during the process of evaluation itself too. Create a public forum, a think tank or whatsoever. Engage yourselves, get involved. You are 4000 people. This is an ideal situation to exercise direct democracy. It will not only empower yourselves but also strengthen the mandate of the Island council and of the Executive Council. In the end you will reach better results in upcoming negotiations. Tonight is a good beginning! It is your responsibility.

Thank you very much.