ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

2 April, 1980

Dear Prime Minister.

BILL FOR THE SEPARATION OF ANGUILLA FROM THE ASSOCIATED STATE OF ST KITTS

OD(80)32 was circulated to me. Members of the Committee should be aware that there are legal problems about the enactment of such a Bill, which were considered by the Law Officers of the two previous administrations.

The status of association is governed by the West Indies Act 1967, section 3 of which deals with the circumstances in which Parliament may legislate for an Associated State. Because of the terms of this section it can be argued that, in the absence of a request from St. Kitts, Parliament cannot legislate to separate Anguilla from the Associated State unless Parliament declares that it does so in the interests of the United Kingdom's responsibility for defence and external affairs. Such a declaration was made when Parliament last legislated for Anguilla in 1971, and if it were to be made in the new Bill no difficulties would arise under section 3.

Since, however, there is no mention in OD(80)32 of external affairs or defence grounds, I assume that they do not exist and that it may be intended to legislate by overriding the requirements of the 1967 Act, and making no declaration.

No United Kingdom court, in my opinion, would uphold a challenge to legislation in this form since they would regard Parliament as omnipotent. It does not follow that the courts of St. Kitts would take that attitude were the point ever to be raised before them; the question might then come to the Judicial Committee.

Bearing in mind the past history of United Kingdom legislation for Anguilla, the question of the legality and propriety of Parliament legislating without complying with the requirements of section 3 of the 1967 Act could, in theory at least, be raised in Parliament during the passage of the Bill.

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Although I do not consider that the doubts about the legal position are sufficient to be an obstacle to proceeding with the policy recommended by the Foreign and Commonwealth Secretary, there is a need to take them into account in the preparation and passage of the Bill.

I am sending a copy of this letter to members of the Committee.

Yours ever.
Michael.

The Rt Hon Margaret Thatcher MP
Prime Minister
No.10 Downing Street
London, S.W.1.