

## THE TELDERS INTERNATIONAL LAW MOOT COURT COMPETITION

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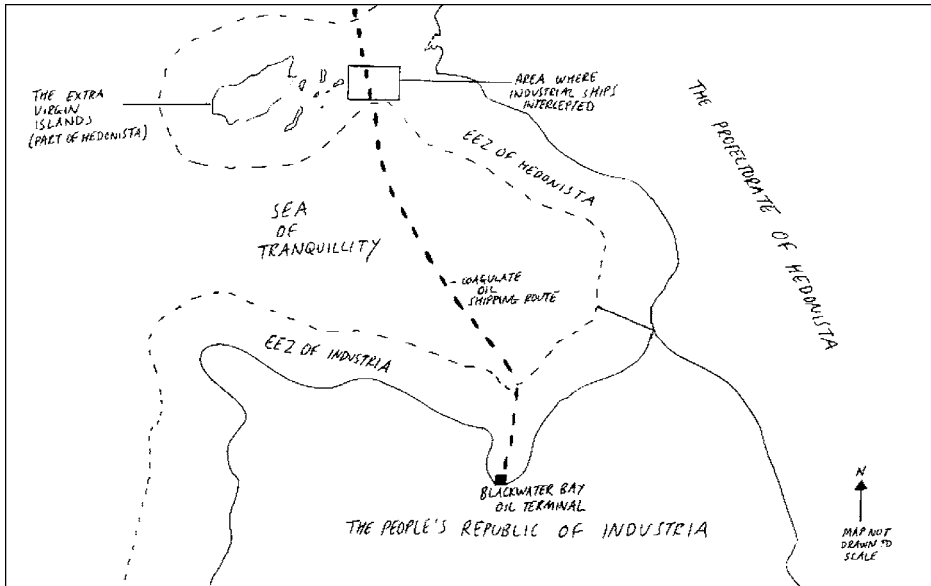
The first Telders Competition was organized in 1977 on the occasion of the 30th anniversary of the Telders International Law Students' Debating Society. Student teams from the universities of Bonn, Cologne, Strasbourg, and Leiden participated. It was so successful that the competition has been held annually ever since. Nowadays it is considered to be the most prestigious and important international moot court competition in Europe. Teams from more than 40 universities compete in the national rounds, with 22 to 25 teams from as many European countries participating in the international rounds held in the Peace Palace in The Hague.

Each year in the competition student teams are presented with a case involving a fictitious dispute between two states. This dispute is put before the United Nations' most important legal organ, the International Court of Justice. It is up to the student teams to represent the two states to the best of their ability. Each student team has to do so substantively, both in writing and through pleadings before so-called moot courts. Only the university winning the national rounds in each European country may participate in the international rounds. The students' memorials and pleadings are judged by legal experts. In the finals the students are judged by judges or former judges of the International Court of Justice and of the Iran–United States Claims Tribunal. Both the semi-finals, in which all teams participate, and the finals are held in the Peace Palace.

The aims of the competition breathe the legacy of Professor Telders. Through the competition students are educated in legal practice and such principles as the rule of law, civil society, and fair play. The competition also stimulates teamwork and European integration.

In 1931 Dr Benjamin Marius Telders became Professor of International Law at Leiden University – 'his' university. He was respected for his sharp mind and had the honour to represent the Netherlands frequently, including before the Permanent Court of International Justice. His approach to law was a practical one. Problems were meant to be solved, but not in contravention with important principles such as the rule of law and civil society. Telders stood and fought for those principles even in the most difficult of times during the Second World War, when four-and-a-half years of imprisonment did not break him morally or mentally. He continued to write about international law, using a small pencil and matchsticks. His fellow prisoners had great respect for his ability to put moral guidance and leadership into practice. Professor Telders died in Bergen-Belsen concentration camp in April 1945.

The 27th round of the competition will be held in the Peace Palace, The Hague, on 15–17 April 2004. The Telders Organizing Office is responsible for its organization, and for additional information please go to [www.telders.org](http://www.telders.org).



Map 1.

The Telders International Law Moot Court Case 2004: *Case Concerning Interdiction of Maritime Traffic in the Sea of Tranquillity (The People's Republic of Industria v. The Protectorate of Hedonista)\**

The case put before the teams this year combines international legal issues in the fields of jurisdiction, maritime law (UNCLOS), law of treaties and environmental law.

- 1 Hedonista and Industria are neighbouring states in central Asia, with coastlines abutting on to the Sea of Tranquillity. The Sea of Tranquillity is a semi-enclosed sea, which is ecologically diverse and rich in marine living resources.
- 2 Over the past 20 years tourism has grown to become the major contributor to the Hedonistic economy, largely because of the extensive beaches of fine white sand which stretch along most of its coastline together with world-class coral reefs, breeding grounds for several species of whales and dolphins and other marine and coastal wildlife.
- 3 Industria is a wealthy, industrialized country which possesses valuable mineral resources, including major oil and gas deposits. Hitherto, most of Industria's oil and gas has been delivered to its economically advanced eastern neighbours through overland pipelines.
- 4 Both Hedonista and Industria are members of the United Nations and parties to the Statute of the International Court of Justice. Both states are also parties to

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the 1982 United Nations Convention on the Law of the Sea (UNCLOS). When ratifying, each state opted for any dispute relating to UNCLOS to be referred to the International Court. Each state has declared an Exclusive Economic Zone (EEZ) of 200 nautical miles in breadth. Both states are members of the International Maritime Organization and parties to the International Convention on Prevention of Pollution from Ships 1973 (MARPOL) (as amended) and the Safety of Life at Sea Convention (SOLAS).

- 5 Additionally, Industria accompanied its instrument of ratification of UNCLOS with a declaration in the following terms:

The Industrial Republic does not interpret the provisions of Articles 122 and 123 of the Convention as imposing upon the Industrial Republic any obligation to any other State (including other States bordering on the Sea of Tranquillity) beyond the obligation on the Industrial Republic to publish in the Official Gazette of the Republic details of any decision or proposed activities of the Industrial Republic (or any person or vessel enjoying Industrial nationality) which may have an impact on the environment or natural resources of the Sea of Tranquillity or on any legitimate use of that sea.

- 6 In 1990, Hedonista and Industria entered into a bilateral Treaty on the Protection of the Marine Environment (TOPMEN). This treaty, which applies only to the parts of the Sea of Tranquillity lying within the EEZ of the signatory States (the 'Marine Area') imposed on each state a range of obligations. Article 11 of TOPMEN provides:

Without prejudice to the general principles of international law, each High Contracting Party shall take all steps which are necessary to prevent, reduce and control pollution of the environment of the Marine Area from vessels flying its flag.

- 7 Article 15 of the Treaty provides:

Each High Contracting Party shall in the exercise of its sovereign rights to pursue its own environmental policies have regard to the interests of the other High Contracting Party relating to the Marine Area.

- 8 Article 23 of the Treaty provides:

(1) Any dispute which may arise between the High Contracting Parties relating to the interpretation or implementation of this Treaty shall be determined by peaceful means of their own choice.

(2) Where any such dispute is not resolved by recourse to such means as are referred to in paragraph (1) of this Article or where the High Contracting Parties fail to agree on the means of resolving the dispute, the dispute shall be referred to arbitration before a tribunal to be established under this paragraph. The tribunal shall consist of one member appointed by each of the High Contracting Parties and a third member, who shall be the President of the Tribunal, to be appointed by the Executive Director for the time being of the United Nations Environment Programme.

- 9 Over the last few years, oil companies in Industria have been evaluating the market for exporting heavy fuel oils which are manufactured from the residues

of the refined petroleum products which hitherto have formed the bulk of Industrial oil exports. There is, however, no market for heavy fuel oil among Industria's present trading partners to the east and the oils manufactured from the residues are too viscous to transport by pipeline. In 1999, Coagulate Oil Corporation, an Industrial company which is the commercial arm of the Ministry of Energy and Mines, proposed to ship the heavy fuel oils in tankers through the Sea of Tranquillity to customers in western Asia. Coagulate Oil made an application to the Ministry of Physical and Economic Industrial Planning for the construction of an oil loading terminal at Blackwater Bay. An Environmental Impact Assessment was prepared by Coagulate and submitted to the Ministry, which conducted a public consultation exercise as required by the Industrial Environmental Planning Law. That Law did not expressly require consultation of persons in other countries whose interest might be affected and, in fact, no non-Industrial persons were consulted or participated in the statutory public hearings into the proposal. Consent for the terminal was subsequently granted by the Minister and a notification to that effect duly appeared in the Official Gazette, a copy of which was sent to Hedonista as a matter of course.

- 10 In December 2001, the first tanker loaded at the Blackwater Bay terminal and sailed through the Sea of Tranquillity. Thereafter, several ships each week have followed the same route. This traffic has given rise to intense anxiety in Hedonista, in view of the potentially devastating effects of a major spill of heavy fuel oil on the marine environment and wildlife which are major tourist attractions. Indeed, in November 2002, there was a major spillage of oil products in the Sea of Tranquillity when one of the Coagulate Oil tankers, the *Victoria Beckham*, was involved in an accident on the High Sea. On that occasion, the Ministry of the Environment of Industria organized a swift and effective clean-up operation, resulting in minimal damage to the marine environment.
- 11 On 2 January 2003, in an attempt to prevent any further damage, Hedonista issued Presidential Decree Number 23 of 2003, by which Hedonista banned from its EEZ all vessels carrying heavy fuel oil regardless of their flag. Hedonista instituted a naval patrol in its EEZ. Several oil tankers carrying heavy fuel (including vessels flying the Industrial flag) were intercepted at various points between 12 and 150 nautical miles off the Hedonist coast and were forced to leave Hedonist waters, returning to Industrial ports. The parties agree that all the Industrial vessels intercepted complied in all respects with the constructional requirements set out in MARPOL for tankers carrying oil cargoes and with the various constructional and safety requirements applicable to such vessels under SOLAS. Insofar as it is relevant, the parties also agree that the conduct of Coagulate Oil is attributable to Industria.
- 12 Industria brought an application against Hedonista before the Court on 29 September 2003. Hearings are scheduled for 15–17 April 2004.

13 In its application, Industria asks the Court to adjudge and declare:

that the Court has jurisdiction to entertain the dispute pursuant to Article 287(1)(b) of UNCLOS; and

that Hedonista violated its obligations under UNCLOS and the customary international law in restricting the exercise by Industrial vessels of their freedom of navigation as reflected in Article 87 of UNCLOS.

14 On the other hand, Hedonista asks the Court to adjudge and declare:

that, in view of the fact that the 1990 Treaty imposes on the High Contracting Parties thereto a binding obligation to refer any disputes arising in relation to the marine environment in the Marine Area to a tribunal to be established under Article 23 of the Treaty and that jurisdiction is an exclusive jurisdiction, the Court has no jurisdiction to address the dispute; and, in the event that the Court finds it has jurisdiction:

that Industria was in breach of its obligations under the UNCLOS, in particular Chapters IX and XII of the 1990 Treaty, and under customary international law.