

# The Telders International Law Moot Court Competition, 1977–2007

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The first Telders Competition was organized thirty years ago 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 organized annually ever since. Nowadays it is considered to be the most prestigious and important international moot court competition in Europe. Teams from over 40 universities compete in the national rounds, with up to 26 teams from as many European countries participating in the international rounds held in the Peace Palace in The Hague.

The main objective of the Competition is to stimulate students to excel in international law. By taking part students are educated in legal practice and principles such as the rule of law, civil society, and fair play. It is a unique opportunity for many different reasons: a chance to show ability, enhance personal skills, and encourage teamwork and European integration, to name but a few.

In the Telders International Law Moot Court Competition student teams are presented with a fictitious case involving a dispute between two states. This dispute is put before the United Nations' most important legal organ, the International Court of Justice (ICJ). It is the teams' responsibility to present the case in a substantial manner, meaning both in writing and through pleadings before moot courts. Each European country may be represented by one university only. In the event of a national preselection round, only the university winning the national round may participate in the international round in The Hague.

The students' memorials and pleadings are judged by legal experts including judges from the International Court of Justice and the Iran–United States Claims Tribunal. Having such highly qualified professionals presiding over our Competition guarantees that a high standard is maintained.

Dr Benjamin Marius Telders, after whom the Competition is famously named, became a professor of international law at Leiden University – 'his' university – in 1931. He was respected for his sharp mind and had the honour to represent The Netherlands frequently, including before the Permanent Court of International Justice (PCIJ). His approach to law was a practical one. Problems were meant to be solved, but not in contravention of important legal principles such as the rule of law and civil society. Professor Telders stood and fought for those principles even in the most difficult of times during the Second World War. Even four and a half years' imprisonment did not break him morally or mentally, but made him more determined. 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 30th round of the Competition will be held at the Peace Palace on 12–14 April 2007. The Telders Organizing Office is responsible for the organization of the Competition, and as long as we have teams taking part and continue to organize this brilliant event we can keep Professor Telders's legacy alive.

If you require any additional information please check our website at [www.telders.leidenuniv.ne](http://www.telders.leidenuniv.ne).

## **The Telders International Law Moot Court Case 2007: *The AIDS Medication Case (Allegria v. Amargura)*\***

The case put before the teams this year combines legal issues in various fields of international law including international health law.

1. Allegria and Amargura are neighbouring states that gained their independence in the 1960s. During the last thirty years Allegria has managed to achieve significant economic growth to become widely regarded as a 'textbook case' of successful (although hardly sustainable) economic development. Many say that Allegria's growth is not surprising. It is a country with rich natural resources, good farmlands, and natural beauty, with great potential for tourism. Allegria was also quick to embrace the doctrines of liberal economics and perform the necessary structural adjustments to allow for economic stability, often to the detriment of labour rights and the protection of the environment. Regular elections and stable democratic government characterize its political system. All these factors have helped Allegria to become an important exporter of goods and services both regionally and globally.
2. Prominent among Allegria's industries is the pharmaceutical sector and, in particular, the state-owned pharmaceutical giant PuraVida. The laboratories of PuraVida acquired a worldwide reputation in the 1990s for their cutting-edge research in the field of anti-retroviral medication for the treatment of people living with HIV/AIDS. In 1997 PuraVida had a major breakthrough when it developed and patented X-66, an anti-retroviral drug that was quickly acclaimed as one of the best in the world for the treatment of HIV/AIDS. Large quantities of X-66 have been produced in Allegria since 1997 and exported to the rest of the world. Allegria's economy has profited greatly from the export of the drug, which was made available to the international market at a high price. Allegria has attracted some of the best scientists in the world to its laboratories, often by means of aggressive hiring policies. Many of those scientists come from Amargura. Because of these policies Allegria has been accused of causing a brain drain from Amargura and from the rest of the region.

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3. Amargura has not been as lucky as Allegria. Its transition to independence was troubled and led to a long period of political instability. Many say that the former colonial power is responsible for much of the country's plight – not only did the colonial power handle the transition process to independence irresponsibly, it is also alleged to have supported some of the military coups that dominated Amarguran politics in the 1970s. Successive changes of government, many of which brought totalitarian regimes to power, created a climate of political instability, corruption, and fear. Amargura adopted its present constitution in 1966, stipulating many rights and liberties for its citizens in conformity with international human rights standards. Article 28 of the Constitution states that 'The state shall guarantee for everyone, as provided in more detail by law, adequate social, health, and medical services and promote the health of the population.' Today Amargura is a constitutional democracy. The current government was elected by a national election in 2003 for a term of four years.
  
4. Amargura has plenty of natural resources. The exploitation of some of these resources, notably tropical timber, is conceded by agreement to foreign companies and, in return, a percentage of the profit is given to the state. Amargura has mismanaged a large part of the profit generated this way or spent it on rebuilding the country in the wake of internal conflict. Frequent changes of government have brought about contradictory economic policies, which have discouraged foreign investment and large-scale industrial development. For the last three decades the economy has been based on farming, fishing, and small-scale manufacturing. The state apparatus is under-resourced and, in many cases, corrupt. Basic infrastructure, such as schools, hospitals, police, local authorities, and so on, are lacking or under-functioning in large parts of its territory. The situation is made worse by the fact that parts of the territory of Amargura are relatively inaccessible. Tropical rainforest and mountainous terrain, combined with the absence of a strong state apparatus, have isolated significant parts of the population from the control of the government. Some regions in the country, such as the Southern Province, enjoy only minimal presence of state institutions.
  
5. Like many other states, Amargura had its first large-scale encounter with HIV/AIDS towards the end of the 1970s. Also like many other states, Amargura did little about HIV/AIDS for many years. There are many reasons that could explain this inaction. Lack of expertise among government officials, prejudice, preoccupation with political crises, lack of medical infrastructure, lack of economic resources, cultural inhibition in talking about sexual behaviour, are some of the reasons. The fact remains that public health was never at the top of the agenda. It is hard to imagine what the situation would be like today had the state devoted more resources to the cause earlier. It is clear, however, that the spread of HIV continued relatively unabated throughout the 1980s. During the 1990s HIV/AIDS acquired – for the first time – very serious proportions. Reliable statistics published in 1996 by foreign non-governmental organizations (NGOs) indicated that 5 per cent of the population was HIV-positive; the percentage was

much higher in urban centres. It was estimated that, out of a total population of 10 million, nearly 500,000 Amargurans were HIV-positive in 1996.

6. The government took some systematic action against HIV/AIDS in 1997. The Ministry of Health launched a public information campaign about HIV/AIDS, which focused on large urban centres and high schools all over the country. Large posters in cities encouraged people to practise ‘safe sex’, and millions of free prophylactics were made available in hospitals and medical centres, wherever the latter existed. Seminars were organized to educate doctors across the country and booklets were distributed, explaining the nature of the virus and instructing doctors on how to handle HIV-positive patients on the basis of the resources available to them.
7. Amargura also sought Allegría’s help in combating the disease. In 1997 Allegría and Amargura signed a bilateral treaty of Friendship, Commerce and Navigation, known as the 1997 FCN Treaty, consolidating their good relations, which contained the following provision:

Article 30

Allegría (the Licensor) hereby authorizes Amargura (the Licensee) to produce in a suitable and duly designated facility within Amarguran territory the antiretroviral medicine X-66 under the following terms and conditions:

- a. Production shall not exceed 10,000 therapeutic units per annum (1 therapeutic unit equals the dose necessary for the treatment of one patient for one year, as determined by the World Health Organization).
  - b. The Licensee shall reimburse the Licensor for the use of the licence. The licence fee shall be calculated on the basis of the export price of a single therapeutic unit of X-66 reduced by 80 per cent and multiplied by 10,000.
  - c. The Licensee undertakes in good faith the production, distribution, and use of X-66 only for the treatment of people living with HIV/AIDS. The Licensee shall not export X-66 produced in its territory.
  - d. The Licensee shall bear the expenses relating to the production of the medication in its territory and shall have the unimpeded right to set the price for sale therein.
8. The situation, however, continued to be acute. Parts of the population, especially in Amargura’s Southern Province, had limited or no access to hospitals and were barely reached by the publicity campaign. In the Southern Province, free HIV tests were available only in the few medical centres of the region. People did not want to be tested or were not tested regularly. In addition, the tests had to be kept in refrigerators, which were not available in most villages. There was no electricity in most of the Southern Province. Doctors refused to operate on HIV/AIDS patients because of fear of contracting the disease. The rate of infant and adult mortality increased dramatically, leading to the conclusion that HIV/AIDS was becoming consolidated in the Southern Province. X-66 was available only in some medical centres in the rest of the country – mostly in the capital city and other urban centres. No hospitals in Amargura had the capacity to screen

blood supplies for HIV/AIDS or other diseases caused by viruses, bacteria, or other micro-organisms, or for the presence of antibodies produced against these agents. Given the limited amount of medication available, Amargura established a Committee of Experts to decide which patients should receive X-66. The Committee was based in the capital city of Amargura and patients had to appear before the Committee in person to be examined and interviewed.

9. Pablo Moreno is a national of Allegria and a popular singer of salsa music. In summer 1998 he visited the capital city of Amargura for a concert. On his way back to his hotel, Moreno had a serious traffic accident and was taken to the National Hospital of Amargura where he had a blood transfusion. A few months later, when back in Allegria, Moreno was diagnosed with HIV/AIDS. He made a public statement blaming the National Hospital of Amargura for transfusing HIV-infected blood into his system. He started receiving treatment with X-66. In 1999 Moreno decided to devote his life to the fight against AIDS. He toured the world raising awareness about the disease and wrote a song, 'SIDA, todo en la vida se paga' (AIDS, everything in life has a price), which immediately became a global hit. In 1999 Moreno also brought a case before Amarguran courts against the National Hospital and the State of Amargura. He accused the former of medical malpractice and both of breaching Article 28 of the Constitution of Amargura. Moreno exhausted all local remedies, but in 2000 the Amarguran courts found no proof of malpractice or omission on behalf of the hospital or the state authorities.
10. In 2002 Allegria decided to exercise diplomatic protection on behalf of Pablo Moreno, filing an application against Amargura before the International Court of Justice, for failure to protect Moreno's right to health. Both states had accepted the compulsory jurisdiction of the Court since the early 1970s with no reservations, so that there was no question of jurisdiction. On the question of evidence, Allegria pointed to the lack of blood screening mechanisms in Amarguran hospitals in 1998 and the absence of other preventive infrastructure and policies or a national AIDS strategy. Allegria claimed that these factors, combined with the severity of the general HIV/AIDS situation in Amargura, and the temporal proximity between Moreno's blood transfusion and his illness, left no doubt that Amargura had failed to fulfil its obligations under international law in the case of Moreno. Amargura replied that there was insufficient factual evidence in support of Allegria's allegations. In Amargura's view, there was no evidence that HIV-infected blood was transfused to Moreno; there was no link between his illness and an act or omission attributable to Amargura under international law; and, in any case, Allegria had failed to demonstrate such a link. In 2003, in the *Case Concerning Pablo Moreno*, the Court found that there was inconclusive factual evidence linking Amargura to Moreno's illness. The Court did not discuss the specific international law obligations of Amargura on the matter. The Court stated in an *obiter dictum* that Amargura had done 'all it could within its means to tackle the spread of HIV/AIDS within its territory'.

11. Between 2000 and 2006 the HIV/AIDS situation in Amargura got out of hand, and many spoke of an AIDS epidemic. During these years there was a rise of 7 per cent in the HIV-positive population. It was estimated that in 2004, 12 per cent of the population was HIV-positive, the percentage rising by the day. The spread of the virus, as was to be expected, had tremendous social consequences. Among other things, it affected state governance structures (with HIV/AIDS among soldiers and police forces) as well as the economy, as a large part of the productive force of the country was ill. International organizations became aware of the matter, primarily due to the persistence of international NGOs, which went as far as to send letters to the Secretary-General of the United Nations, asking the UN not to accept appointed Amarguran representatives, on account of Amargura's gross negligence in handling the situation and for not having a national AIDS strategy. NGOs also asked the UN Security Council not to recognize the legitimacy of the government of Amargura. Allegria made statements before the Security Council, claiming that the health situation in Amargura threatened international security, and gained the support of many members of the Security Council. NGOs, with the support of Allegria, managed to raise global awareness of the problem and major international news networks gave it extensive coverage. Under pressure by the international community, in September 2004 the UN Security Council adopted a resolution recognizing that 'the fight against HIV/AIDS in Amargura is a matter of concern to the international community as a whole. Failure to exhaust available means to combat HIV/AIDS shall be tantamount to a gross violation of human rights that shocks the conscience of mankind.'
12. In 2005 Moreno sadly died of AIDS. The death of this cult figure and the aggravation of the AIDS situation in Amargura inspired journalists to take a closer look. In October 2005, newspapers revealed that the government had since the beginning of the 1990s been informed about the 'dying villages' of the Southern Province (villages entirely affected by HIV/AIDS). According to the reports the state had known since 1995 that the lack of screening equipment in hospitals (including the National Hospital) and the lack of other preventive policies had regularly resulted in the transfusion of HIV-infected blood to individuals. Newspapers also claimed that the Committee of Experts was instructed by the government to discriminate in favour of pregnant women and working men in urban areas, in order to ensure the vitality of the working force and the demographics of the country. This policy denied access to thousands of other individuals who were living with HIV/AIDS and in need of the medicine.
13. Faced with incontrovertible evidence, the Minister of Health accepted the allegations of prior knowledge and corruption and resigned. In her resignation speech, she expressed her deep sorrow and explained to the people of Amargura that the economic means of the state limited its capacity to effectively deal with HIV/AIDS. In the aftermath of the scandal, the government had no choice but to take decisive action. It announced a National AIDS Strategy for the years to

come and increased its budget for medical infrastructure by 50 per cent. On 25 August 2006, the Prime Minister stated to the nation that ‘The HIV/AIDS situation has now become a national emergency. The government has no choice left but to increase the production of X-66 in its laboratories.’ Indeed, on 26 August 2006, production of X-66 had increased tenfold, thereby greatly exceeding the quantities stipulated in the 1997 FCN Treaty.

14. Under pressure from the pharmaceutical companies and public opinion at large, Allegria decided to bring another case against Amargura before the International Court of Justice on 1 September 2006. Allegria asked the Court to
  - (a) revise its Judgment on the *Case Concerning Pablo Moreno* on the basis of the new facts that had emerged;
  - (b) find Amargura responsible under international law for the breach of the 1997 FCN Treaty;
  - (c) find Amargura responsible under international law for the death of Pablo Moreno; and
  - (d) find Amargura responsible under international law for the death of all other individuals of any nationality who died in Amargura of HIV/AIDS.
  
15. Amargura asked the Court to adjudge and declare
  - (a) that the request for revision of Judgment in the *Case Concerning Pablo Moreno* is inadmissible;
  - (b) that Amargura is not responsible under international law for the breach of the 1997 FCN Treaty or, alternatively, that any wrongfulness of Amargura is precluded;
  - (c) that Amargura is not responsible under international law for the death of Pablo Moreno;
  - (d) that Allegria’s fourth submission is inadmissible because Allegria has no *locus standi* and, alternatively, if the submission is found admissible, that Amargura is not responsible under international law for the death of other victims of HIV/AIDS.
  
16. As stated in Paragraph 10 above, Allegria and Amargura have accepted the compulsory jurisdiction of the ICJ with no reservations. Both states are members of the United Nations and voted in favour of General Assembly Resolution A/RES/S-26/2 (Declaration of Commitment on HIV/AIDS). Allegria and Amargura are neither parties to the General Agreement on Tariffs and Trade (GATT) nor members of the World Trade Organization (WTO). Both Allegria and Amargura have signed and ratified the 1969 Vienna Convention on the Law of Treaties. Both states are members of the World Health Organization (WHO) and parties to the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. No other treaties are in force between the parties.
  
17. It has been agreed that the deadline for the submission of the written memorials for both Allegria and Amargura will be 9 January 2007. The oral pleadings will take place on 12, 13, and 14 April 2007 in the Peace Palace, The Hague.