

MOOT PROPOSITION

(*Questions Relating to Intellectual Property Rights, Compulsory Licensing, and
International Humanitarian Obligations)

(State of Innovatia v. Republic of Elixia)

//NOTIFICATION\\

The Hague,

24th January 2025

On behalf of the International Court of Justice (ICJ), and in accordance with Article 40 of the ICJ Statute, the Registrar acknowledges receipt of the joint notification dated 5 January 2025. The case concerning Questions Relating to Intellectual Property Rights, Compulsory Licensing, and International Humanitarian Obligations has been entered into the General List as Case No. 045-2025. The written submissions shall consist of memorials to be filed by 13th March, 2025 with oral proceedings scheduled for 22nd March, 2025.

/s/

Registrar

International Court of Justice

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//JOINT NOTIFICATION\\

21st March, 2025

On behalf of the State of Innovatia and the Republic of Elixia, and pursuant to Article 40(1) of the Statute of the International Court of Justice, we have the honor to submit an original copy of the agreement for submission of disputes concerning intellectual property rights and humanitarian obligations to the ICJ, signed on 6th March, 2025 in Geneva, Switzerland.

For the State of Innovatia
Minister of Foreign Affairs

For the Republic of Elixia:
Minister of Foreign Affairs



FACTUAL BACKGROUND

1. State of Innovatia is a highly industrialized nation having leading global pharmaceutical industries which account for nearly 30% of the country's exports with significant subsidies and protections provided by the Innovatian Government. Innovatia's intellectual property (IP) laws are stringent which offers extensive protections to patent holders which as per the government is essential to incentivize innovation.
2. Republic of Elixia, is a developing country in the Global South, grappling with widespread poverty and weak health-care infrastructure. The country has faced recurrent public health crises, with the most recent outbreak of Zyvonian Fever, a viral disease with a high mortality rate which emerged in May 2022, affecting over 40% of its population. Republic of Elixia which already lacks domestic pharmaceutical manufacturing capacity and relies mainly on imported medicines further strain the Elixia's healthcare system.
3. The antiviral drug VitaCure, patented by Innovatian pharmaceutical giant M/s Pharma Globe proved to be the only effective treatment for Zyvonian Fever as per the medical research. However, the price arrived by M/s Pharma Globe for sell of VitaCure drug is \$1,000 per dose which is far beyond the reach of most of the citizens of Elixia.
4. Despite negotiations between Elixia and M/s Pharma Globe for months, M/s Pharma Globe refused to accept the proposed price which was significantly low keeping the overall expenditure incurred by M/s Pharma Globe towards developing this anti-viral drug. Further, M/s Pharma Globe refuses to offer voluntary licenses for generic production.
5. In early 2023, Republic of Elixia invoked Article 31 of the Trade- Related Aspects of Intellectual Property Rights (TRIPS) agreement for issuing Compulsory Licenses (CL's) to domestic manufacturers for producing generic versions of Vita-Cure.
6. State of Innovatia and M/s PharmaGlobe claimed that Republic of Elixia failed to engage in good-faith negotiations before issuing the Compulsory Licenses which is in violation of the TRIPS agreement.
7. Elixia defended its action of issuing the Compulsory Licenses by placing reliance upon the Doha Declaration on TRIPS citing public health emergency and insufficient domestic capacity to meet the demand.

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8. Elixian manufacturers produced more generic VitaCure doses than required for its domestic consumption and started exporting surplus doses to neighbouring countries which were facing similar outbreaks.
9. Innovatia alleges that export of generic VitaCure by Elixian manufacturers breached the provisions of TRIPS which permit compulsory licensing only for domestic use except under certain specific conditions which Elixia does not fulfil.
10. Innovatia imposed severe trade sanctions on Elixia whereby restricting access to critical goods, freezing Elixian government assets, and suspending development aid.
11. PharmaGlobe filed lawsuits in Innovatia to block Elixian patents and sought injunctions against the use of its patented technology.
12. Elixia accused Innovatia of economic coercion and violating the right to health enshrined under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).
13. Elixia filed a complaint before the WTO Dispute Settlement Body (DSB) in mid-2023 against the sanctions imposed by Innovatia.
14. The DSB issued an interim ruling in favor of Elixia's by taking into account public health rationale however, criticized Elixia for procedural lapses in following the process for compulsory licensing.
15. Innovatia rejected the interim ruling arguing that it undermined the sanctity of patent rights and the incentives for innovation.
16. A coalition of developing nations and public health advocacy groups rallied behind Elixia, emphasizing the need for equitable access to life-saving medicines.
17. High-income nations and pharmaceutical lobbies supported Innovatia, warning of potential harm to global innovation systems if compulsory licensing practices were relaxed.
18. In late 2024, Innovatia announced plans to enforce intellectual property rights aggressively, targeting Elixian assets held abroad.
19. Elixia filed counterclaims, alleging violations of the Doha Declaration, ICESCR, and customary international law principles prioritizing public health over profit.
20. Diplomatic relations between the two nations deteriorated, with no resolution in sight.

QUESTIONS SUBMITTED TO THE ICJ

1. Whether Elixia's issuance of compulsory licenses for VitaCure complies with international law, particularly the TRIPS Agreement and Article 31bis.
2. Whether Innovatia's trade sanctions and enforcement actions against Elixian patents violate international obligations under the ICESCR, the WTO framework, and the principles of international humanitarian law.
3. To what extent can states prioritize public health over intellectual property protections in light of jus cogens norms and international human rights law?
4. Whether Elixia's exportation of surplus generics constitutes a breach of international intellectual property rights, and if so, the legal remedies available.
5. What obligations, if any, do Innovatia and its pharmaceutical corporations have towards equitable access to essential medicines under customary international law?

*Parties for both the sides have liberty to frame other substantial question of laws.

*The issues provided above are tentative. The teams are at liberty to frame additional issues or frame new issues by themselves altogether, for the purpose of both, the Oral Proceedings and Written Submissions.

PROCEDURE

The ICJ shall decide this case based on the principles of International Law, treaties (TRIPS Agreement, ICESCR, and related declarations), and customary international law.

The ICJ judgment shall be binding, and both parties shall comply with its terms in good faith.

Annexure I:

AGREEMENT

BETWEEN

THE STATE OF INNOVATIA

and

THE REPUBLIC OF ELIXIA

FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE

PREAMBLE

The State of Innovatia and the Republic of Elixia (hereinafter referred to as "the Parties"):

Acknowledging their respective obligations under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),

Recognizing the importance of safeguarding intellectual property rights to incentivize innovation while ensuring equitable access to life-saving treatments in times of public health crises,

Noting the ongoing disputes concerning the issuance of compulsory licenses by Elixia and Innovatia's subsequent imposition of trade sanctions,

Affirming their commitment to the principles of international law, including those enshrined in the Doha Declaration on TRIPS and Public Health, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and customary international law,

Mindful of their responsibility to uphold international peace and cooperation,

Have agreed to submit their differences to the International Court of Justice (ICJ) for resolution based on the following terms:

ARTICLE I: SUBMISSION OF DISPUTES

1. The Parties hereby submit the disputes described in this Agreement to the ICJ for final resolution under Article 40 of the ICJ Statute.

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2. Both Parties agree that the ICJ has jurisdiction to hear this case and shall not dispute the Court's jurisdiction during the proceedings.

ARTICLE II: STATEMENT OF DISPUTES

The disputes to be resolved include:

1. Whether the Republic of Elixia's issuance of compulsory licenses for the production of VitaCure complies with the TRIPS Agreement, particularly Articles 31 and 31bis.
2. Whether Innovatia's imposition of trade sanctions on Elixia violates international law, including obligations under the ICESCR, TRIPS, and customary international law.
3. Whether Elixia's exportation of surplus generic VitaCure doses to third countries constitutes a breach of TRIPS.
4. Whether Innovatia's pharmaceutical companies violated human rights principles by refusing equitable access to life-saving medicines.
5. The extent to which jus cogens norms, such as the right to health, override intellectual property protections under international law.
6. The ICJ shall also decide on the legal consequences of any violations identified, including potential reparations, enforcement mechanisms, and obligations for future conduct.

ARTICLE III: LEGAL BASIS

The ICJ shall decide the case based on:

Treaties and conventions to which both Parties are signatories, including:

1. The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
2. The International Covenant on Economic, Social, and Cultural Rights (ICESCR).
3. The Vienna Convention on the Law of Treaties.
4. Customary international law principles, including those concerning the right to health and access to essential medicines.
5. Relevant international declarations and instruments, including the Doha Declaration on TRIPS and Public Health.
6. Any other applicable rules and principles of general international law.

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ARTICLE IV: PROCEDURE

1. The proceedings shall consist of written pleadings and oral arguments.
2. The ICJ shall decide the case based on the jointly agreed Statement of Facts annexed to this Agreement and submissions of the Parties.

ARTICLE V: COMMITMENT TO FINALITY

1. Both Parties agree to accept the judgment of the ICJ as final and binding.
2. The Parties shall take immediate steps to comply with the judgment in good faith, including entering negotiations to determine practical modalities for enforcement.

ARTICLE VI: GOOD FAITH AND COOPERATION

1. The Parties shall refrain from any actions that could aggravate the dispute while proceedings are pending before the ICJ.
2. Both Parties commit to cooperating with the ICJ and any other entities necessary for resolving the dispute.

ARTICLE VII: ENTRY INTO FORCE

This Agreement shall enter into force upon signature by authorized representatives of both Parties.

SIGNED at Geneva, Switzerland, on 6th March, 2025.

For the State of Innovatia:

Minister of Foreign Affairs

For the Republic of Elixia:

Minister of Foreign Affairs