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STATEMENT OF JURISDICTION

In accordance with Article 40(1) of the Statute of the International Court of Justice, the Republic of Turingia and the Republic of Babbage have submitted a special agreement to this Court for the settlement of all differences arising from the regulation of access to the Internet. Pursuant to Article 36(1) of the Statute, this court has jurisdiction over such disputes referred to it by the parties. The parties have agreed to waive objections to the jurisdiction of this Court.

QUESTIONS PRESENTED

1. Does domestic legislation that places excessive restrictions on access to Internet resources violate the international right to the freedom of expression? Do these restrictions, which deny access to important medical, scientific, historic and cultural information, violate international law?
2. Is the application of Babbage's Internet restrictions to TOL, a foreign corporation located outside the territory of Babbage, contrary to international law because it is impermissibly extraterritorial?
3. Does state responsibility attach to Babbage for the hacking activities of the IBCP, in light of Babbage's actions subsequent to the hacking? Is there a breach of the international duty to refrain from supporting and to prevent the commission of terrorist acts within a State's territory?
4. Does state responsibility attach to Turingia for the cyber-hacking acts of David Gabrius, a private individual? Are there any legitimate exculpatory defenses applicable?
5. Is a State that lures the national of another State into its territory, and then breaches its promise by arresting and prosecuting him, in violation of international law and obligated to release and repatriate him?

SUMMARY OF THE FACTS

In September 1999 the President of the Republic of Babbage (“Babbage”) issued Presidential Declaration 901 (“Presidential Declaration”), a decree interpreting Section 117 of the Babbage Criminal Code (“BCC § 117”), restricting the lawful operations of local and multinational Internet Service Providers (ISPs) in Babbage. To enforce its heavy-handed policy, the government demanded that ISPs install blocking software capable of barring local users from accessing a range of websites it deemed inappropriate. Ostensibly issued in response to fears that its citizens were accessing “indecent” materials online, the new policy had the effect of restricting access to a number of beneficial sites including websites featuring medical and historical content.

One of the companies affected by the decree was Turingia OnLine (TOL) and its wholly owned local subsidiary, Babbage OnLine (BOL). TOL is a corporate citizen of the Republic of Turingia (“Turingia”). TOL had succeeded in establishing a major presence within the Babbagian ISP market, and by 1999 was providing Internet access to 60 percent of the country’s Internet users. TOL objected to the Babbage government’s crack-down on ISPs on the grounds that the policy denied its customers access to a “wide variety of useful, non-offensive sites” and constituted an assault on basic tenets of free speech and freedom of expression.

On 20 November 1999, after TOL and BOL did not comply with the government’s ultimatum to install blocking software, the Babbagian Ministry of Justice brought charges against the companies. After a weeklong trial held in early December, the Babbage courts passed a judgment against TOL and BOL. TOL refused to participate in the government’s trial as it does not conduct any business in Babbage. In order to protect its investments from unlawful seizure, BOL removed its assets from the country.

On 24 December 1999 a gang calling itself the International Babbagian Cyber-Patrol (IBCP) illegally hacked into TOL's computer system, destroying data and severely disrupting TOL's global Internet service business. The hackers sabotaged the computers of TOL users with a virus displaying a message describing its illegal acts as an effort to "punish" the company. TOL's customers were without Internet service for three days, and the company suffered US\$50 million in losses resulting from the attack. The President of Babbage publicly endorsed the attack on TOL, declaring the hackers "heroes" and promising amnesty for IBCP members.

On 10 January 2000, David Gabrius ("Gabrius"), a prominent Turingian computer programmer and political activist, gained access to the computer system of the Babbage Rail Transit Authority (BRTA) and indirectly caused a train accident. Gabrius apparently intended his acts as a harmless voice of protest against Babbage's policy of supporting international cyber-crime. In a tragic accident, two BRTA trains collided while traversing a crowded mountain pass, resulting in significant loss of life.

After the Government of Turingia declared that it would not prosecute Gabrius, on the grounds that he had not violated Turingian law, officials of the Government of Babbage invited Gabrius to Babbage to assist in rebuilding the BRTA's computer system. In a letter signed by the Babbagian Minister of Justice, Babbage pledged that Gabrius would "not face prosecution or come to any harm" while in Babbage. Convinced of the Government of Babbage's sincerity, Gabrius flew to Babbage on a government chartered aircraft. Upon his arrival in Babbage on 1 February 2000, he was arrested and charged with murder.

The Ambassador of Turingia to Babbage immediately submitted a letter of complaint to the Government of Babbage, vigorously protesting the luring of Gabrius under false pretenses to Babbage. The Government of Babbage ignored Turingia's protests and put Gabrius on trial. On

31 July 2001, a Babbagian court found Gabrius guilty of murder. The Babbage high court rejected Gabrius's argument that he had been lured under false pretenses in direct violation of international law, and Gabrius was sentenced to 20 years in prison.

In September 2001, Babbage and Turingia agreed to bring their dispute before the International Court of Justice and agreed to accept the decision of the Court as binding between them. On 1 November 2001 the Ambassadors of the Republic of Babbage and the Republic of Turingia at The Hague transmitted to the Registrar of the Court a joint Compromis agreeing to the stipulated facts of the dispute and confirming the Court's jurisdiction pursuant to Article 40 of the Statute.

SUMMARY OF PLEADINGS

First, the Republic of Turingia argues that BCC § 117 and Presidential Declaration 901 violate international law because they impose excessive restrictions on the fundamental human right of freedom of expression. Freedom of expression, including the right to seek and receive information, is part of customary international law. Under international law, restrictions on the freedom of expression are permissible only to the extent that they are necessary for the protection of the public interest. The restrictions imposed by Babbage deny access to medical, scientific, historic and cultural information, and therefore amount to excessive restrictions upon freedom of expression, offending important social and cultural rights that Babbage must respect.

Babbage's restrictions on the access to the Internet also violate international law because of their extraterritorial application. Babbage does not have the prescriptive capacity to regulate over TOL, a corporation located in Turingia and of Turingian nationality. There is no basis for applying the territoriality principle as both TOL and the activity subject to regulation are located outside Babbage. In addition, Babbage submits that the "effects" doctrine of jurisdiction is not a permissible basis of jurisdiction under international law. As a result, Babbage's extraterritorial legislation over TOL cannot be justified on any purported effects the regulated materials have within Babbage. No other relevant basis of jurisdiction can be claimed. Finally, it is suggested that if this Court were to allow Babbage to regulate TOL, it would cause uncertainty in application of national laws to the inevitably transnational, pervasive character of the Internet.

Turingia further argues that the Babbage has committed an internationally wrongful act against it and that payment is due Turingia in the amount of \$50 Million. Turingia has exercised diplomatic protection over Turingia OnLine (TOL), its corporate citizen, allowing TOL's claim to come before this Court. The attack by the IBCP is attributable to Babbage based on

Babbage's ex-post ratification of the acts of the IBCP through the conferral of the Babbage Order of Merit on the IBCP and President Revuluri's statements. Likewise, the acts of the IBCP are attributable because the IBCP was acting on behalf of the Babbage. In addition, state responsibility attaches to Babbage for supporting or failing to prevent terrorist activities from arising within its territory.

The Republic of Turingia further argues that it is not responsible for any harm done to the Babbage rail transport network. State responsibility does not attach for the acts of private individuals, in the absence of some form of attribution. First, Turingia did not exercise control over Gabrius. Likewise, Turingia did not endorse and adopt the acts of Gabrius as Babbage adopted the acts of the IBCP. Nor was Gabrius acting on behalf of Turingia in the absence of governmental authority. In addition, state responsibility does not attach to Turingia because the acts of Gabrius cannot be considered terrorist, nor was there any breach of any internationally recognized duty by Turingia in relation to these activities. Finally, and in the alternative, Turingia was entitled to exercise its inherent right to self-defense and legitimate countermeasures against Babbage due to the attack on TOL.

Last, the Republic of Turingia argues that the luring, arrest and trial of Turingian national David Gabrius violate international law. The luring is indistinguishable from cross-border abduction and violated Turingian sovereignty by breaching both the territorial integrity and exclusive enforcement jurisdiction of Turingia. International law also precludes the exercise of jurisdiction over persons whose presence was secured in violation of international law. Furthermore, both general principles of international law and binding human rights law prohibited the arrest and trial of Gabrius. In reparation for its illegal actions, Babbage is obligated to release and repatriate Gabrius.

PLEADINGS

I. **BABBAGE'S BROAD RESTRICTIONS ON ACCESS TO INTERNET-AVAILABLE RESOURCES VIOLATE INTERNATIONAL LAW.**

A. **This Court May Decide Whether Babbage's Restrictions Violate International Law.**

It is a general principle of international law, applicable to this case under article 38(1)(c) of this Court's statute, that an interpretation of domestic law by a tribunal of that State is binding upon an international tribunal.¹ The question before this Court, however, is whether BCC § 117 and Presidential Declaration 901, as interpreted by Babbagian courts, violate international law. As the highest body charged with the interpretation and application of international law, this Court may determine whether, in the application of those provisions, Babbage is acting in conformity with its obligations under international law.²

B. **Turingia Has The Locus Standi to Challenge The Application of Babbage's Internet Restrictions to BOL**

As a general matter, only the State of the corporation's nationality may present a claim before an international tribunal on its behalf.³ However, this right of diplomatic protection also extends to the State of the shareholders in that corporation (as TOL is the full equity owner of BOL) where the nationality of the injuring State and the injured corporation coincide, as is the case with Babbage and BOL.⁴ The purpose of this rule is to prevent abuse by allowing a State such as Babbage to take advantage of a de facto immunity against wrongful acts it may take against a corporation with foreign shareholders. As such, Turingia is entitled to challenge the

¹ See, e.g., Serbian Loans, PCIJ Reports, Series A, Nos. 20–21, at 46 (1929).

² See Questions of Interpretation and Application of 1971 Montreal Convention Arising from Aerial Incident at Lockerbie, 1992 I.C.J. 114, Dissenting Opinion of Judge Weeramantry.

³ See Barcelona Traction, (Belg. v. Spain), 1970 I.C.J. 3, at 42.

⁴ Id. Separate Opinion of Judge Fitzmaurice, at 72-4, Separate Opinion of Judge Tanaka 134, Separate Opinion of Judge Jessup, at 191-3.

application of Babbage's Internet restrictions to BOL, notwithstanding the fact that it is of Babbage nationality.

C. Babbage's Restrictions Violate International Law Because They Are Excessive.

1. Access to Internet Resources Implicates Inter Alia Freedom of Expression.

The right to freedom of expression, as expressed in several international instruments, includes the right to seek and receive information and ideas "through any media and regardless of frontiers."⁵ The Internet is a global and inter-connected network of computers that allows the public to transcend traditional frontiers to access and exchange information. By its very nature, the Internet does not exist in any particular jurisdiction, and there is no comprehensive international legal regime purporting to regulate activity on the Internet.⁶ In most instances, the source of that information is in a State or States other than that in which any given user is located, rendering the Internet a truly "borderless" phenomenon.⁷ Access to and use of the Internet necessarily involves the freedom to search for and receive information from others. As a fundamental human right, this freedom of expression is subject only to certain limitations,

⁵ Universal Declaration on Human Rights, U.N. Doc. A/810 (1948), at art. 19 [hereinafter UDHR]. See also International Covenant on Civil and Political Rights, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1976), at art. 19(2) [hereinafter ICCPR]; European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, E.T.S. 5, as amended by Protocol No. 11, E.T.S. 155 (1998), at art. 10(1) (entry into force Nov. 21 1970) [hereinafter ECHR]; American Convention on Human Rights, 1144 U.N.T.S. 123, at art. 13 [hereinafter ACHR] (entry into force July 18 1978); African Charter on Human and Peoples' Rights, June 27 1981, 21 I.L.M. 58 (1982), at art. 9 [hereinafter ACHPR] (entry into force Oct. 21, 1986).

⁶ See, e.g., Lyombe Eko, "Many Spiders, One Worldwide Web: Towards a Typology of Internet Regulation," 6 COMM. L. & POL'Y 445.

⁷ See, e.g., Sanjay S. Mody, "National Cyberspace Regulation: Unbundling the Concept of Jurisdiction," 37 STAN. J. INT'L L. 365.

imposed primarily for the protection of the rights and reputations of others, national security, public order, or public health or morals.⁸

2. Babbage is Obligated to Respect the Right to Freedom of Expression.

a) *Freedom of expression is a part of customary international law.*

The rule that a State is obliged not to unreasonably infringe upon the freedom of expression is a matter of customary international law. In order for a rule to become customary international law, it must have the support of significant state practice and *opinio juris*, or the general recognition on the part of States that a legal obligation is involved when they undertake such practice.⁹ As a matter of state practice, the freedom of expression is enshrined in virtually all of the Constitutions in the world, included in the Universal Declaration of Human Rights (“UDHR”), adopted by the General Assembly in 1948, and included in the International Covenant on Civil and Political Rights (“ICCPR”), together with the three principal regional conventions, that have the effect of imposing binding obligations upon 157 States Parties to ensure the protection of the right to freedom of expression. Freedom of expression, including the freedom to seek and receive information, is therefore a part of customary international law, which is binding upon all States, including Babbage.¹⁰

⁸ See UDHR, supra note 5 at art. 29(2); ICCPR, supra note 5, at art. 19(3); ECHR, supra note 5, at art. 10(2); ACHR, supra note 5, at art. 13(2); ACHPR, supra note 5, at art. 27(2); Sunday Times v. United Kingdom, 30 Eur. Ct. H.R. (ser. A) (1979) at 41.

⁹ North Sea Continental Shelf (W. Ger. v. Den., W. Ger. v. Neth.) 1969 I.C.J. 3 (Judgment of Feb. 20)

¹⁰ See generally Thomas Cochrane, “The Law of Nations in Cyberspace: Fashioning a Cause of Action for the Suppression of Human Rights Reports on the Internet,” 4 MICH. TELECOMM. & TECH. L. REV. 157, 173–76.

- b) *Even if freedom of expression is not customary international law, Babbage must refrain from actions that would infringe upon the exercise of the right.*

A State is bound only by those treaties to which it is a Party,¹¹ and under the ICCPR, States express consent to be bound by the provisions of the treaty through ratification.¹² Although Babbage has not yet ratified the ICCPR, it is a Party to the Vienna Convention on the Law of Treaties (“Vienna Convention”).¹³ Under the Vienna Convention, Babbage is “obliged to refrain from acts that would defeat the object and purpose” of treaties that it has signed.¹⁴ Actions that would unreasonably infringe upon the exercise of the right to freedom of expression as enunciated in the ICCPR defeat the object and purpose of that treaty, namely “to promote universal respect for, and observance of, human rights and freedoms.”¹⁵

3. Domestic legislation excessively restricting access to resources and information violates international human rights norms.

BCC § 117 and Presidential Declaration 901 place excessive restrictions on the ability of persons located in Babbage to access information via the Internet, and therefore violate their right to freedom of expression.¹⁶ Applying the principle of proportionality, the customary norm authorizing restraints on the freedom of expression limits permissible restrictions “to the extent necessary” to accomplish the stated aim of the protection of the rights or interests of others or of

¹¹ See Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969), at art. 34 [hereinafter Vienna Convention].

¹² See ICCPR, *supra* note 5, at art. 48(2); Vienna Convention, *supra* note 11, at art. 14(1)(a).

¹³ Compromis at ¶ 31.

¹⁴ Vienna Convention, *supra* note 11, at art. 18.

¹⁵ ICCPR, *supra* note 5, at Preamble.

¹⁶ See Compromis at ¶¶ 4, 6.

the State.¹⁷ The restrictions placed on Internet access by Babbage violate international law since they exceed their legitimate scope by preventing access to websites containing medical and physiological information, sites discussing the history of the Hortari and other groups subjected to persecution, and other sites that Babbage has expressly recognized “are neither pornographic nor defamatory in intent.”¹⁸ Moreover, Babbage’s restrictions also offend other human rights implicated in access to Internet resources, namely the rights to education, culture, and enjoyment of scientific progress and its applications, as expressed in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).¹⁹ As a signatory to the ICESCR, which requires States “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant,”²⁰ Babbage is equally obligated to refrain from actions that defeat the object and purpose of that treaty.²¹ The promulgation and application of § 117 and the Presidential Declaration therefore violate its international obligations.

¹⁷ ACHR, supra note 5, at art. 13(2). See also ICCPR, supra note 55, at art. 19(3); Handyside v. United Kingdom, 24 Eur. Ct. H.R. (ser. A) (1976) at 49.

¹⁸ Compromis at ¶ 7.

¹⁹ See International Covenant on Economic, Social and Cultural Rights, U.N. Doc. A/6316, 993 U.N.T.S. 3 (1976), at arts. 13(1), 15(1)(b), 15(2) [hereinafter ICESCR]. See also UDHR, supra note 5, at art. 22; ACHR, supra note 5, at art. 26; ACHPR, supra note 5, at arts. 16, 17.

²⁰ ICESCR, supra note 19, at art. 3.

²¹ See supra, text accompanying notes 11-14.

D. Babbage's Restrictions Violate International Law Because of Their Extraterritorial Application.

1. Babbage Sought to Prosecute the National of Another State.

As an entity incorporated and based in Turingia, TOL is considered a national of Turingia.²²

Babbage sought to prosecute TOL for the failure to “eliminate any access by [its] users to materials the publication or distribution of which would violate BCC § 117.”²³

2. Babbage Lacked Jurisdiction Over TOL.

International law recognizes three types of jurisdiction: prescriptive, or the capacity to legislate; adjudicative, or the capacity to judge; and enforcement.²⁴ In order to exercise legitimate adjudicative and enforcement jurisdiction over the national of another State in a domestic prosecution, Babbage must invoke a recognized basis for criminal jurisdiction. None of the accepted principles of jurisdiction applies.

a) The territoriality principle does not apply.

Neither the subjective nor the objective approach to territorial jurisdiction applies to the facts of this case. Under subjective territoriality, jurisdiction may be exercised over crimes that commence within the State, even if they are completed or consummated abroad.²⁵ Under objective territoriality as recognized in the Lotus Case, jurisdiction is legitimate when an essential constituent element of the crime occurs within the State.²⁶ All actions undertaken by

²² See Barcelona Traction, *supra* note 3, at 42.

²³ *Compromis* at ¶ 6.

²⁴ See generally IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 301 (1998).

²⁵ See generally Harvard Research Draft Convention on Jurisdiction with Respect to Crime, 29 AM. J. INT'L L. 484–87 [hereinafter Harvard Research Draft]; MARTIN DIXON, *TEXTBOOK ON INTERNATIONAL LAW* 129 (1996); BROWNLIE, *supra* note 24, at 303–04.

²⁶ See Lotus Case, P.C.I.J., Series A, No. 10 (1927), at 23 [hereinafter Lotus Case]; DIXON, *supra* note 25, at 129; BROWNLIE, *supra* note 24, at 303–04.

TOL, however, including the refusal to install blocking software, occurred on Turingian territory. All servers and other equipment containing content were located within Turingia, and no TOL content was hosted on any computer system physically located in Babbage.²⁷ Although the websites were accessible within Babbage, this is an exceptionally weak basis for territorial jurisdiction that would entail over-expansive, chaotic, and conflicting national regulation over the Internet.²⁸

b) *The effects doctrine is not a recognized principle of international law.*

The practice of certain courts, primarily those in the United States, has given rise to a principle called the “effects doctrine,” whereby a State may exert jurisdiction over any activity abroad that has or is intended to have substantial consequences in the forum State.²⁹ This is a controversial basis for jurisdiction, employed by only a few States, and its use has generally been restricted to anti-trust matters.³⁰ The effects doctrine is neither recognized in nor supported by widespread state practice, and is therefore neither custom nor a general principle of law that may be applied by this Court. Any other approach would be contrary to the customary rule requiring a significant connection between the activities of the defendant, the subject matter of the case, and the forum state,³¹ and would leave ISP’s unable to predict which States may legally exercise jurisdiction over their activities. This would create an undesirable precedent that, if followed,

²⁷ Clarifications to the Compromis at ¶¶ 8, 9 [hereinafter Clarifications].

²⁸ See David Johnson and David Post, “Law and Borders – The Rise of Law in Cyberspace”, 48 STAN. L. REV. 1367 (1996).

²⁹ See, e.g., RESTATEMENT 3D. OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, § 402(1)(c).

³⁰ See, e.g., BROWNIE, *supra* note 24, at 311–12.

³¹ See, e.g., Case Concerning the Application of The Convention of 1902 Governing the Guardianship of Infants, (Neth. v. Swe.), 1958 I.C.J. 109, 135–36, 145, 155.

will engender uncertainty and unpredictability in the application of national regulation and places an unreasonable burden on ISP's and the growth of the Internet itself.

c) *No other accepted basis of jurisdiction applies.*

There is no other principle that Babbage may invoke to ground its attempt to exercise jurisdiction over TOL. The nationality principle, whereby a State may exercise jurisdiction over its own nationals, does not apply to Babbage's attempt to exercise jurisdiction over TOL, a Turingian national.³² The protective principle, under which States may exert jurisdiction over acts that have adverse effects upon the welfare or security of the State, is inapposite because neither the welfare nor the security of Babbage *as a State* was affected by the actions of TOL.³³ The controversial passive personality principle does not apply, because the alleged crimes of TOL did not have any Babbagian nationals as victims.³⁴ The universality principle is inapplicable, because the actions of TOL did not violate international law, nor was their prosecution justified as a matter of international public policy.³⁵

³² See Greek National Military Service Case, 73 I.L.R. 606 (1986); DIXON, supra note 25, at 130.

³³ See Harvard Research Draft, supra note 25, at 543–63; DIXON, supra note 25, at 132.

³⁴ See Harvard Research Draft, supra note 25, at 445, 579; BROWNLIE, supra note 24, at 306–07.

³⁵ See Universal Jurisdiction (Austria) Case, 28 ILR 341; BROWNLIE, supra note 24, at 307–08; DIXON, supra note 25, at 130–31.

II. THE REPUBLIC OF BABBAGE IS LIABLE FOR THE ECONOMIC LOSSES INCURRED BY TURINGIA ONLINE (TOL) AND PAYMENT MUST BE MADE IN THE AMOUNT OF \$50 MILLION.

A. The Acts of the International Babbagian Cyber Patrol (IBCP) Are Attributable to the Republic of Babbage.

1. The Republic of Babbage Assumed Liability for the Acts of the IBCP Through Ex Post Ratification of Those Acts.

The International Law Commission Draft Articles on State Responsibility (“ILC Draft Articles”), adopted in November 2001, are of probative value before this court pursuant to Article 38(1)(d) of the ICJ Statute as the writings of distinguished publicists and as a codification of international law. According to Article 11 of the Draft Articles, “Conduct...shall be considered an act of state under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.”³⁶ After the IBCP publicly acknowledged responsibility for the attack on TOL, President Revuluri formally conferred upon the IBCP the Babbage Order of Merit, describing the IBCP as “heroes of a just and decent world.”³⁷ By conferring the Babbage Order of Merit on the IBCP, President Revuluri adopted the acts as those of the Republic of Babbage. This formal proclamation by the President of Babbage, along with a grant of amnesty for the crimes committed by the IBCP, is a clear and unequivocal adoption of the acts of the IBCP by the Republic of Babbage. As upheld by this Court in the Diplomatic and Consular Staff in Tehran case (“Iran Case”), such action constitutes a “seal of official government approval” and goes beyond mere support or endorsement.³⁸ It thereby creates liability in the Republic of Babbage for the acts of the IBCP.

³⁶ INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts (November 2001), at art. 11 [hereinafter ILC Draft Articles 2001].

³⁷ Clarifications at ¶13, Compromis at ¶ 18.

³⁸ United States Diplomatic and Consular Staff in Tehran, [hereinafter Iran Case] 1980 ICJ

The Iran Case provides strong precedent for the attribution of the acts of the IBCP to the Republic of Babbage based on ex post ratification. In that case, the Ayatollah Khomeini publicly endorsed the seizure of the US embassy and its personnel by the Revolutionary Guard and took steps to maintain that situation. The statement by President Revuluri serves as an adoption similar to that of the Ayatollah Khomeini. President Revuluri's statement that the IBCP deserves the "thanks of the people of Babbage" and his promise of a full amnesty.³⁹ In contrast to the situation in South Africa, where amnesty was granted when the conduct in question was actually disapproved of, the amnesty granted in the present case was coupled unqualified approval and the conferral of an Order of Merit.⁴⁰ This highlights the fact that when the circumstances of the present case are *taken as a whole*, they are exceptionally unique and support the claim that Babbage has endorsed, promoted, maintained such actions. In similar circumstances, the Iran Court held:

"The result of the policy [of endorsing and maintaining the acts of the Revolutionary Guard] was fundamentally to transform the legal nature of the situation created by the occupation of the embassy....The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated...occupation of the embassy into acts of that state."⁴¹

Babbage is therefore liable for the acts of the IBCP as it fundamentally transformed the acts from a private nature to an act of state, as in the Iran case.

Rep., p. 3.

³⁹ Compromis at ¶ 18.

⁴⁰ See generally William Burke-White, "Reframing Impunity: Applying Liberal International Law Theory to An Analysis of Amnesty Legislation", 42 HARV. INT'L. 467, (2001).

⁴¹ Iran Case (ICJ), supra note 38, at 35.

2. Babbage is Liable For the Acts of the IBCP as the IBCP Was Acting on Its Behalf.

It is principle of state responsibility that if a private individual or group exercises governmental authority in default of the government, then the acts of those individuals may be attributed to the state. For example, in Yeager the Tribunal found “sufficient evidence ... to establish a presumption that the revolutionary guards” which had detained the claimant, “were acting on behalf of the new Government, or at least exercised elements of official authorities.”⁴² The evidence in Yeager was that the Revolutionary Guards were “organized” and that the “Ayatollah Khomeini stood behind them.”⁴³ Likewise, the IBCP is an organized group and President Revuluri stood behind it in his statement of 29 December 1999.⁴⁴

Article 9 of the ILC Draft Articles provides a useful test for this method of attribution. It provides, “The conduct of a person or group of persons shall be considered an act of a State...if the person or group of persons is in fact exercising elements of governmental authority in the absence or default of the official authorities.”⁴⁵ This article is intended to cover *levée en masse* or “the self defense of the citizenry in the absence of regular forces.”⁴⁶

The circumstances of the IBCP attack on Turingia meets the three-part test for *levée en masse*. First, the IBCP was performing governmental functions on behalf of the Republic of Babbage. When President Revuluri appointed Tara Elis the new Minister of Justice of Babbage he stated that TOL would not “escape responsibility for its violation of Babbagian Law,” yet the

⁴² Yeager v. Iran, US v. Iran (1987), 17 Iran-U.S.C.T.R. 92 at ¶ 43 [hereinafter Yeager].

⁴³ Id. at ¶ 39.

⁴⁴ Compromis at ¶ 18.

⁴⁵ ILC Draft Articles 2001, supra note 36, at art. 9.

⁴⁶ INTERNATIONAL LAW COMMISSION, Commentary on the Draft Articles on Responsibility of States for Internationally Wrongful Acts (November 2001) [hereinafter ILC Commentaries 2001], at 109.

government of Babbage took no further action. The attack on TOL was thus undertaken as a governmental function in direct response to the President's demand that TOL not escape responsibility. Second, the attack was undertaken "in the absence or default of governmental authority." The government of Babbage appears to have been unable to take further action after its unsuccessful attempted seizure of TOL assets.⁴⁷ Finally, the attack was undertaken in circumstances that "called for the exercise of some elements of the governmental authority by private persons."⁴⁸ The supposed violation of Babbagian law by TOL along with President Revuluri's statement called for the exercise of governmental authority, but the government failed to do so, calling for action by private persons. Attribution is therefore appropriate.

B. State Responsibility Attaches as Babbage Colluded With IBCP, a Terrorist Organization.

The definition of terrorism has been put forth as "anxiety-inspiring method of repeated...action, employed by (semi) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby—in contrast to assassination—the direct targets of violence are not the main targets."⁴⁹ Therefore, the acts of the IBCP fall within this definition as (i) the acts were perpetrated by semi-clandestine action; (ii) the targets of the attack were innocent people and businesses; (iii) the attacks caused anxiety and fear to the victims; and (iv) there was a clear political and criminal motive underlying the attack.

State responsibility in respect of terrorism is established when States either fail to take appropriate measures to prevent terrorism or adopt and transform terrorist acts of individuals to

⁴⁷ Compromis at ¶ 12.

⁴⁸ ILC Commentaries 2001, *supra* note 46, at 111.

⁴⁹ Alex P. Schmid, "The Response Problem as a Definition Problem," in ALEX P. SCHMID AND RONALD D. CRELINTEN, EDS., WESTERN RESPONSES TO TERRORISM 8 (1993)

acts of State.⁵⁰ This reflects the well-established rule of international law that a State may not permit its territory to be used to cause injury to another State.⁵¹ This is confirmed by the recent state practice in Afghanistan and in Libya and Sudan in the 1990s that indicate state responsibility follows where the state colludes or merges with terrorist groups.⁵² The conferral of Babbage Order of Merit constituted support of the IBCP terrorist acts and erased any distinction between the IBCP and Babbage. Babbage is therefore liable for the acts of the IBCP just as the Taliban regime is responsible for the acts of Al Qaeda.

C. Turingia Exercises Diplomatic Protection on Behalf of TOL.

International law is traditionally the realm of states alone. However, Turingia is entitled to exercise diplomatic protection over TOL, a corporate citizen of Turingia, and adopt TOL's claim as its own. As the PCIJ held in the Mavromatis Palestine Concessions case, "it is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts

⁵⁰ See G.A. Res. 39/159, U.N. GAOR 39th Sess., U.N. Doc. A/RES/39/159 (1984); G.A. Res. 53/108, U.N. GAOR, 53rd Sess., U.N. Doc. A/RES/53/108 (1999); G.A. Res. 54/110, UN GAOR, 54th Sess., U.N. Doc. A/Res/54/110 (2000); S.C. Res. 1269, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1269 (1999); Hague Convention for the Suppression for the Unlawful Seizure of Aircrafts, art. 6, 22 U.S.T. at 1645-46; Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, art. 6, 24 U.S.T. at 570; Convention Against the Taking of Hostages, art. 6, 18 I.L.M. at 1458. See also European Convention on the Suppression of Terrorism, opened for signature Jan. 27, 1977, 4 E.T.S. 41, reprinted in 15 I.L.M. 1272-76 (1976); International Convention for the Suppression of Terrorist Bombings, reprinted in 37 I.L.M. 251 (1998).

⁵¹ See generally Corfu Channel (Merits) (UK v. Alb.), 1949 I.C.J. 4 (1949); Trail Smelter Arbitration (U.S. v. Canada), 3 R.I.A.A. 1905, 1965 (1941).

⁵² S.C. Res. 748, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/748 (1992); S.C. Res. 1054, U.N. SCOR, 51th Sess., U.N. Doc. S/RES/1054 (1996).

contrary to international law committed by another state.”⁵³ Through the Compromis, Turingia has made TOL’s claim its own and in the “eyes of [the tribunal] the State is the sole claimant.”⁵⁴

D. The Republic of Babbage must compensate Turingia for damages caused by the acts of the IBCP in the amount of \$50 Million.

1. Babbage is Liable For Damages Caused By Acts Attributable to It.

It has already been established that acts of the IBCP are attributable to Babbage. Babbage is internationally responsible for the acts of the IBCP and must “compensat[e] for the damage caused by the act.”⁵⁵ As established by this Court’s predecessor in the Chorzów Factory case, Babbage should restore the situation that existed prior to the attack by the IBCP. As Babbage cannot return to the status quo before the attack, monetary compensation is the appropriate remedy.⁵⁶

2. The Republic of Turingia Has Been Damaged in the Amount of \$50 Million.

The parties have agreed that the attack by the IBCP caused TOL to “reimburse its subscribers some US\$50 Million.”⁵⁷ As Babbage is liable for the attack and must pay monetary compensation, this Court should order Babbage to pay Turingia compensation in the amount of US\$50 Million.

⁵³ Mavromatis Palestine Concessions, (Gr. v. UK) (1924), PCIJ Series A, No.2, at 12.

⁵⁴ Id.

⁵⁵ ILC Draft Articles (1996) at 44; see also Chorzów Factory Case, PCIJ Reports, Series A, No. 17 (1928) at 46-48.

⁵⁶ See Chorzów Factory Case, *supra* note 55

⁵⁷ Compromis at ¶ 15.

III. TURINGIA IS NOT RESPONSIBLE EITHER FOR THE DAMAGE CAUSED TO THE BABBAGE RAIL TRANSIT AUTHORITY (BRTA) NOR FOR ANY HARM RESULTING FROM SUCH DAMAGE.

A. The acts of Gabrius are not attributable to the Republic of Turingia

1. Turingia Did Not Exercise Control over Gabrius.

There is no evidence in the *Compromis* to suggest that Turingia had “effective control” over Gabrius.⁵⁸ The most that can be claimed is that Turingia may have had some general influence over Gabrius as a citizen of Turingia. Such minor influence is, however, insufficient to give rise to legal responsibility. In *Nicaragua*, “United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras” was insufficient “for the purpose of attributing to the United States.”⁵⁹ The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has taken a similar approach, noting that “the requirement of international law for the attribution to States of acts performed by private individuals is that the state exercises control over the individuals.”⁶⁰ Again, there is no evidence to suggest that Turingia in any way “financed”, “equipped”, “planned” and “supervised” Gabrius’ acts.⁶¹

2. Turingia Did Not Ratify the Acts of Gabrius.

As argued above, a state can become liable for the acts of individuals when it ratifies those acts after the fact. However, that ratification must take place subsequent to the act in question.

⁵⁸ *Military and Paramilitary Activities in and against Nicaragua, (Merits) (Nicar. v. U.S.)*, 86 I.C.J. 14at ¶ 115.[hereinafter *Nicaragua Case*]

⁵⁹ *Id.*

⁶⁰ *Prosecutor v. Tadic*, Case No. IT-94-1 (Judgment of 15 July 1999), reprinted in 38 ILM 1518, at ¶ 117.

⁶¹ *Id.* at ¶ 145.

The language of the Iran decision is clear: the state must “approve” and “endorse” the act.⁶² The logic behind the requirement of ex post endorsement is that the state must be fully aware of the act in question and then decide to make that act an act of state. Distinguished international publicists agree that there must be “subsequent approval” by the state in question.⁶³ Babbage’s conferral of the order of merit, on one hand, constitutes a clear and unequivocal ex post adoption of the acts of the IBCP. Turingia, on the other hand, did not make any ex post ratification of Gabrius’ acts, as its governmental statement was made prior to the act.⁶⁴ There are only limited circumstances where a State can be liable if it endorses them in advance. A State can be liable when it exercises subsequent control over the acts of individuals,⁶⁵ or when it has specific knowledge of those acts and fails to prevent them.⁶⁶ However, neither of these applies to Turingia.

An additional requirement of the ex post ratification doctrine is that the state must take action or statements such that “the conduct is acknowledged by the state as, in effect, its own.”⁶⁷ Mere acknowledgement “of the factual existence of conduct or express[ions] of its verbal approval” is insufficient to generate responsibility.⁶⁸ The statements by the Turingian Minister of Justice, did not in any way tie Turingia to the actual deeds of Gabrius. Minister Shidle merely stated that

⁶² Iran Case (ICJ), *supra* note 38, at 3.

⁶³ MALCOLM SHAW, *INTERNATIONAL LAW* 551 (1997).

⁶⁴ *Compromis* at ¶ 19.

⁶⁵ See generally Nicaragua Case, *supra* note 58, at ¶ 114-16.

⁶⁶ See generally Corfu Channel (Merits) (UK v. Alb.), 1949 I.C.J. 4 (1949).

⁶⁷ ILC Commentaries 2001, *supra* note 46, at 122.

⁶⁸ *Id.* at 121.

“Turingia is without jurisdiction...since no crime has been committed on Turingian soil.”⁶⁹

These statements did not endorse the acts of Gabrius in any way. They merely “acknowledged the factual existence of conduct”⁷⁰ and indicated Turingia’s view as to whether it had jurisdiction over that conduct. A jurisdictional decision does not meet the test set forth in the Iran case and articulated by the International Law Commission for attribution through ex post adoption of conduct.

3. Gabrius Was Not Exercising Governmental Authority.

For attribution under this principle, the government itself must have failed to act and circumstances must call for the exercise of governmental authority.⁷¹ Turingia has not failed to act in this matter. A clear decision was made by Turingia, as announced by the Minister of Justice, that “no Turingian government action was planned.”⁷² This decision represents action by the Turingian government in the form of a decision not to pursue this issue. These are not circumstances where there is no legitimate government such as was the case in Yeager⁷³ or the government is incapable of acting, as appears to be the case with respect to Babbage.

4. Turingia Is Under No Liability Under a Duty to Prevent Terrorism

State responsibility only attaches when a government and the terrorists on its soil are indistinguishable. In Afghanistan, for example, the Taliban government and Al Qaeda became one entity after statements by the Taliban government to that effect.⁷⁴ Gabrius, as a private

⁶⁹ Compromis at ¶ 22.

⁷⁰ ILC Commentaries 2001, supra note 46, at 121.

⁷¹ Id. at 110.

⁷² Compromis at ¶ 19.

⁷³ Yeager Case, supra note 42, at ¶ 39.

⁷⁴ Id.

individual whose acts have not even been condoned by Turingia is distinguishable from Turingia. Turingia's refusal to prosecute is insufficient to merge the state with Gabrius. In addition, there is no state responsibility for state-sponsored terrorism or for failure to take measures to prevent terrorism as Turingia: (i) had no prior specific knowledge of the acts of Gabrius; (ii) provided no material support, finance, or assistance to Gabrius; and (iii) have discharged their duties with diligence in the past, having arrested Gabrius in relation to his hacking activities on two separate occasions.⁷⁵

B. Even if Gabrius' Acts Are Attributable to Turingia, Turingia's Exercise of the Right to Self-Defense and Countermeasures Preclude Wrongfulness.

Even if the acts can be attributed, wrongfulness is precluded by (i) the exercise of the inherent right to self-defense; and (ii) the exercise of countermeasures. The right of self-defense exists concurrently under Article 51 of the UN Charter and under customary international law.⁷⁶ Although historically entangled with traditional "armed attacks", the right to self-defense is also applicable in response to modern threats against the security of a State which include both terrorist attacks and "computer network attacks".⁷⁷ Further, there is also support for the view that the right of self-defense under customary international law is broader in scope than under Article 51.⁷⁸ Therefore, the attack by David Gabrius can be regarded as a legitimate exercise of Turingia's right to self-defense under customary international law to protect itself from the

⁷⁵ Clarifications at ¶5.

⁷⁶ *Caroline Case*, 29 BFSP 1137 (1837); *Nicaragua*, *supra* note 58, at p. 14, 94; Article 21 of ILC Draft Articles (2001).

⁷⁷ Michael Schmitt, "Computer Network Attack and the Use of Force in International Law", 37 COLUM. J. TRANSNAT'L L. 885 (1999).

⁷⁸ D. W. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 185-6 (1958), JAMES LESLIE BRIERLY, THE LAW OF NATIONS: AN INTRODUCTION TO THE LAW OF PEACE 417-418 (1963); SHAW, *supra* note 83, at 788.

cyber-terrorism attack launched within Babbage. Further, and in the alternative, Gabrius's actions may also be justified as a legitimate countermeasure as Babbage, by virtue of its collusion with IBCP, has committed a previous internationally wrongful act against Turingia.⁷⁹ Under both self-defense and countermeasures, the act must be proportional to the original harm done. In respect of this requirement, (i) the deaths of the 200 Babbage citizens was not specifically intended by Gabrius or in any way condoned by Turingia; (ii) Turingia's statement was only in respect to "non-violent technological means"; and (iii) proportionality is not be solely judged by the quantitative consequences of the act but also the quality of the interest protected.⁸⁰ In light of the above, the acts attributed to Turingia conform to the international law relating to self-defense and countermeasures.

IV. BABBAGE'S LURING AND TRIAL OF DAVID GABRIUS VIOLATED INTERNATIONAL LAW; AS REPARATION, HE SHOULD BE RELEASED AND RETURNED TO TURINGIA.

A. Luring is Contrary to International Law.

1. International Law Prohibits the Securing of Jurisdiction By Abduction.

As a corollary to the fundamental principle of territorial sovereignty, it is a general principle of international law that States have exclusive enforcement jurisdiction within their own territory.⁸¹ All activities undertaken in the enforcement of national laws, including the police actions of arrest, capture and detention, are exercises of a State's enforcement jurisdiction.⁸² State-sanctioned cross-border abduction—the entry into another State for the purposes of

⁷⁹ ILC Draft Articles 2001, supra note 36, at art. 22; Gabcikovo-Nagymaros Project Case, (Hungary v. Slovakia), 1997 I.C.J. 7, 55 at ¶ 83.

⁸⁰ ILC Draft Commentaries, at p. 344.

⁸¹ Lotus Case, supra note 26, at 18.

⁸² See BROWNIE, supra note 24, at 310–11.

obtaining custody of a person present on its territory, without the consent of that person or that State—is contrary to international law because it violates both the territorial integrity of the State and its legitimate monopoly of enforcement jurisdiction.⁸³

2. Luring is Essentially Abduction By Fraud.

a) *No functional distinction exists between abduction and luring in this case.*

There are three reasons for which there is no functional distinction between fraudulent luring and forcible abduction in this case. First, the entry into Turingian territory under the auspices of the Babbagian government was made for the express purpose of obtaining custody of David Gabrius.⁸⁴ Second, the purpose and passenger of the chartered flight was intentionally concealed from the Turingian authorities; the extraction of Gabrius from Turingia was therefore accomplished without the consent of the territorial State.⁸⁵ Third, Babbage disregarded customary rendition procedures in its capture of Gabrius, because it made no request for extradition.⁸⁶

b) *None of the exceptions to the prohibition against abduction applies.*

While there are certain circumstances in which an exercise of police power in another State does not violate international law, none of those exceptions apply to this case. The luring of Gabrius occurred without the consent of Turingia, the territorial State, and custody of Gabrius

⁸³ See UN CHARTER, at art. 2(4); Nicaragua Case, *supra* note 58, at ¶ 174; Int'l Law Comm'n, Draft Articles on State Responsibility (1979), 2 Y.B. INT'L L. COMM'N 91, 111; HERBERT W. BRIGGS, THE LAW OF NATIONS 312 (1952).

⁸⁴ See Compromis at ¶ 24; Clarifications at ¶ 15.

⁸⁵ Clarifications at ¶ 15.

⁸⁶ See Stoche v. Germany, Eur. Ct. H. R. (ser. A.) at 839 (1991), Annex, Opinion of the Commission, at ¶ 167.

was not obtained pursuant to a resolution of the Security Council, a prior existing agreement of the territorial State, or in self-defense.⁸⁷

3. International Law Precludes Jurisdiction over Persons Lured into the Forum State.

- a) *If a State lacks legitimate enforcement jurisdiction, its courts may not exercise adjudicative jurisdiction.*

Under international law, States are responsible for the acts of all their officials, including the judiciary.⁸⁸ As such, domestic courts must enforce the legal obligations of their State.⁸⁹ Where a State violates international law by abducting or luring a defendant, it incurs a legal obligation to cease the continuing violation created by the detention of that person.⁹⁰ The exercise of adjudicative jurisdiction is inconsistent with that international obligation, in turn giving rise to another violation of international law for which the forum State is responsible.⁹¹ This rule is supported by the general principle of international law of *ex injuria non oritur jus*, namely that no benefit may be received from an illegal act.⁹²

⁸⁷ See Michael Scharf, “The Tools for Enforcing International Criminal Justice in the New Millennium: Lessons from the Yugoslavia Tribunal,” 49 DEPAUL L. REV. 925, 966–67. Cf. *Prosecutor v. Dokmanovic*, Case No. IT-95-13a-PT, Int’l Crim. Trib. F. Yugo., Decision on the Motion for Release by the Accused Slavko Dokmanovic (Oct. 22, 1997).

⁸⁸ See ILC Draft Articles 2001, *supra* note 87, at art. 4; Eduardo Jimenez de Arechaga, “International Responsibility of States for Acts of the Judiciary,” in WOLFGANG FRIEDMANN ET AL. (eds.), TRANSNATIONAL LAW IN A CHANGING SOCIETY 171 (1972).

⁸⁹ See Paul Michell, “English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction after *Alvarez-Machain*,” 29 CORNELL INT’L L.J. 383, 434–35.

⁹⁰ ILC Draft Articles 2001, *supra* note 36, at arts. 14(2), 30(a).

⁹¹ See Edwin D. Dickinson, “Jurisdiction Following Seizure or Arrest in Violation of International Law,” 28 AM. J. INT’L L. 231, 244 (1934).

⁹² See, e.g., Lauterpacht, “Régles Generales du Droit de la Paix”, 62 Hague *Recueil* (1937, IV), at 287-96; Guggenheim, “La Validité et la Nullité des les Juridiques Internationaux”, 74 Hague *Recueil* (1949, I), 195-268; Bassiouni, “Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition,” 7 VAND. J. OF TRANSNAT’L L. 25, at 45 (1973).

b) *Male captus bene detentus* is not an accepted principle of international law.

Anglo-American legal tradition historically recognized the principle of *male captus bene detentus*, whereby the manner in which personal jurisdiction over a defendant was obtained was irrelevant to the exercise of that jurisdiction. Under this principle, a person abducted or lured into the jurisdiction of the forum State may still be tried by the courts of that State, even if the abduction or luring violated the legal obligations of the forum State.⁹³

Currently, however, the United States is the only State where courts continue to exercise criminal jurisdiction regardless of how personal jurisdiction was obtained.⁹⁴ Contemporary state practice—including that of Australia,⁹⁵ Canada,⁹⁶ Costa Rica,⁹⁷ France,⁹⁸ South Africa,⁹⁹ Switzerland,¹⁰⁰ the United Kingdom,¹⁰¹ and Zimbabwe¹⁰²—deems that (1) an inquiry into the circumstances of the defendant’s apprehension is necessary before jurisdiction may be exercised;

⁹³ See Michell, *supra* note 89, at 383, 393.

⁹⁴ See, e.g., United States v. Alvarez-Machain, 504 U.S. 655 (1992).

⁹⁵ Levinge v. Director of Custodial Services [1987] 9 NSWLR 546.

⁹⁶ See generally Brief for the Government of Canada as Amicus Curiae in Support of Respondent in *United States v. Alvarez-Machain*, 31 I.L.M. 919 (1992).

⁹⁷ Costa Rican Supreme Court, Plenary Session of June 25, 1992, in SECRETARIA DE RELACIONES EXTERIORES (Mexico), 2 LIMITS TO NATIONAL JURISDICTION: DOCUMENTS AND JUDICIAL RESOLUTIONS ON THE *Alvarez-Machain* CASE 7 (1993), at 81-82.

⁹⁸ In re Jolis, [1933-1934] 7 Ann. Dig. 191 (1933) (Trib. Correctionnel d’Avesnes).

⁹⁹ State v. Ebrahim [SC] [1988] 1 SALR 991, 31 ILM 888 (1991).

¹⁰⁰ X, Belgian Citizen v Swiss Justice & Police Department, [1983] *Europäische Grundrechte-Zeitschrift* 435.

¹⁰¹ Regina v. Horseferry Rd. Magis. Ct. (ex parte Bennett), [1993] 3 All ER 138.

¹⁰² Beahan v. State [1992] 1 SACR 295.

and (2) even where the laws of a State grant jurisdiction, it should not be exercised when the defendant's presence was secured in violation of international law.

B. Even if Luring Did Not Violate International Law, Babbage May Not Arrest or Prosecute Gabrius.

1. General Principles of International Law Prohibit Gabrius' Arrest and Prosecution.

Even if the luring was not an international wrong committed against Turingia, Babbage is subject to a duty of good faith and is estopped from reneging on its promise not to arrest or prosecute Gabrius. Both good faith and estoppel are recognized as general principles of international law.¹⁰³ The doctrine of estoppel operates to prevent contrary state action where three criteria are met: (1) the promised action or inaction was expressed in a clear and unambiguous statement, (2) the statement is voluntary, unconditional and authorized, and (3) the other party, in reliance in good faith upon the statement, detrimentally changes its position or suffers harm.¹⁰⁴ Through its Minister of Justice, Babbage promised Gabrius that "you will not face prosecution or come to any harm while you are in our country," an authorized, voluntary and unconditional promise upon which Gabrius relied in going to Babbage.¹⁰⁵ Babbage was therefore estopped from arresting and prosecuting Gabrius.

¹⁰³ See Vienna Convention, *supra* note 11, at Preamble; The Temple Of Preah Vihear (Merits) (Cambodia v. Thailand) 1962 I.C.J. 6, 39–51, 61–65 (Judgment of 15 June).

¹⁰⁴ See North Sea Continental Shelf (W. Ger. v. Den., W. Ger. v. Neth.) 1969 I.C.J. 3, 26 (Judgment of Feb. 20).

¹⁰⁵ Compromis at ¶¶ 23, 24; Clarifications at ¶ c.

2. Binding International Human Rights Law Prohibits Gabrius' Arrest and Prosecution.

All persons have the fundamental human right to personal liberty and security; as a corollary, all persons also have to the right to be free from arbitrary arrest and detention.¹⁰⁶ These rights are part of customary international law, and all States are therefore obliged to respect them and ensure their protection.¹⁰⁷ There are two reasons for which Gabrius' arrest and detention violate his human rights.

First, included in the customary norm against arbitrary arrest and detention is the right to be deprived of liberty only "in accordance with such procedures as are established by law."¹⁰⁸ As decided by the European Court of Human Rights in Stocké v Germany,¹⁰⁹ an illegal luring accomplished without the consent of the State of the individual concerned and performed against the will of the individual amounts to a violation of both the right to liberty and security of the person and the prohibition against arbitrary arrest. Second, as argued above, Babbage did not have legitimate personal jurisdiction over Gabrius. In the absence of legitimate enforcement and adjudicative jurisdiction, Gabrius' trial and consequent imprisonment were not valid, and his detention was therefore contrary to international law.

C. As Restitution, Turingia Demands the Release and Return of Gabrius.

Under the doctrine of state responsibility, damages arise as the consequence of a breach of duty. Babbage has violated its obligations under international law, and is obligated to make

¹⁰⁶ See UDHR, supra note 5, at art. 3; ICCPR, supra note 5, at art. 9(1); ECHR, supra note 5, at art. 5; ACHR, supra note 5, at art. 7; ACHPR, supra note 5, at art. 6.

¹⁰⁷ See International Law Association, Report of the Sixty-Sixth Conference 525, 544-49 (1994).

¹⁰⁸ ICCPR, supra note 5, at art. 9(1); ECHR, supra note 5, at art. 5; ACHR, supra note 5, at art. 7(2).

¹⁰⁹ Walter Stocké v Germany, Eur. Ct. H. R., 13 EHRR 126 (1991)

restitution.¹¹⁰ Turingia has protested Babbage's illegal action and demanded the release and return of Gabrius. Under customary international law, Babbage is obligated to return Gabrius to Turingia.¹¹¹

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Applicant, the Republic of Turingia, respectfully requests this Honorable Court to find, adjudge, and declare as follows:

1. That Babbage's broad restrictions on access to Internet-available resources violate international law.
2. That the Republic of Babbage is liable for the economic losses incurred by TOL, and must pay US\$50 million as reparations.
3. That Turingia is responsible neither for the damage caused to the BRTA, nor for any harm resulting from such damage.
4. That Babbage's luring, arrest, trial, and conviction of Gabrius violated international law, and that Babbage must release and repatriate him.

Respectfully submitted,

Agents for the Applicant

¹¹⁰ See, e.g., Chorzów Factory Case, *supra* note 55, at 46–48.

¹¹¹ See Lawler Incident (1860), 1 McNair 78; Savarkar Case (Fr. v. UK), XI UNRIAA 243 (1911); Michell, *supra* note 89, at 424–27.

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**BEST MEMORIAL – INTERNATIONAL ROUNDS
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