

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE REPUBLIC OF TURINGIA (APPLICANT)
AND THE REPUBLIC OF BABBAGE (RESPONDENT)
ON THE DIFFERENCES BETWEEN THEM
CONCERNING REGULATION OF ACCESS TO THE INTERNET**

jointly notified to the Court on 1 November 2001

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE LA RÉPUBLIQUE DE TURINGIA (REQUÉRANT) ET
LA RÉPUBLIQUE DE BABBAGE (RÉPONDANT) VISANT À
SOUMETTRE
À LA COUR INTERNATIONALE DE JUSTICE
LES CONTESTATIONS QUI LES OPPOSES
CONCERNANT LA RÉGULATION D'ACCÈS À L'INTERNET**

notifié conjointement à la Cour le 1 novembre 2001

**JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 1 November 2001

On behalf of the Republic of Turingia and the Republic of Babbage, in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Special Agreement for Submission to the International Court of Justice of the Differences between the Republic of Turingia and the Republic of Babbage Concerning Regulation of Access to the Internet, signed in Washington, D.C., on 15 October 2001.

Ambassador of the Republic of Turingia
to the Kingdom of The Netherlands

Ambassador of the Republic of Babbage
to the Kingdom of The Netherlands

**SPECIAL AGREEMENT
BETWEEN THE REPUBLIC OF TURINGIA AND THE REPUBLIC OF BABBAGE
FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE
OF THE DIFFERENCES BETWEEN THEM CONCERNING
REGULATION OF ACCESS TO THE INTERNET**

Turingia and Babbage,

Considering that differences have arisen between them concerning the regulation of access to the Internet and other matters;

Recognizing that the Parties concerned have been unable to settle these differences by negotiation;

Desiring further to define the issues to be submitted to the International Court of Justice;

Therefore, Turingia and Babbage have concluded the following Special Agreement:

Article 1

The Parties submit the questions contained in the Compromis (together with Clarifications to follow) to the International Court of Justice pursuant to Article 40(1) of the Statute of the Court.

Article 2

(a) The Court is requested to decide the Case on the basis of the rules and principles of general international law, as well as any applicable treaties.

(b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its judgment on the questions presented in the Case.

Article 3

(a) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 2002 Philip C. Jessup International Law Moot Court Competition.

(b) The Parties request the Court to order that the written proceedings should consist

of memorials presented by each of the parties not later than 14 January 2002.

Article 4

(a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

(b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorized to do so, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in Washington, D.C., this 15th day of October 2001, in triplicate in the English language.

Ambassador of the Republic of Turingia
to the Kingdom of The Netherlands

Ambassador of the Republic of Babbage
to the Kingdom of The Netherlands

THE 2002 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

****COMPROMIS****

THE REPUBLIC OF TURINGIA V. THE REPUBLIC OF BABBAGE

THE CASE CONCERNING REGULATION OF ACCESS TO THE INTERNET

1. Applicant, the Republic of Turingia, is a large, free-market, developed state with a population of over 200 million. One of the early pioneers of the global Internet and the World-Wide Web, Turingia has a highly educated, technologically literate population. Internet-linked computers are available in nearly all public schools and universities, and are pervasive in the workplace.

2. Respondent, the Republic of Babbage, is a developing state with a population of 10 million. Babbage is landlocked, and is located on a different continent from Turingia. Approximately 20% of Babbage's people are adherents to the ancient Hortari religion, which has been practiced for over two thousand years. The history of the area includes cycles of Hortari domination and subjugation, including a dark period in the last two decades of the 19th Century in which approximately five hundred thousand Hortari were victims of mass killings committed during a bid for independence by members of the Shendi ethnic group. The Republic of Babbage received its independence from a colonial power (not Turingia) in 1945, and has spent much of the past fifty years in civil war. This internal unrest has long precluded Babbage from making any widespread investment in infrastructure, including technology.

3. The current government of Babbage, a coalition including Hortaris and others, was elected to office in 1993. The head of the government, President Sendhil Revuluri, is also a Hortari cleric. Since coming to power, the Revuluri government has invested significant capital in the updating of transportation and information infrastructures throughout Babbage. Improvements have included the installation of digital telephone lines to facilitate government and citizen access to the Internet, and establishment of the Babbage Rail Transit Authority (BRTA), a network of railroad scheduling and switching computers located in and around major freight and passenger transit centers in Babbage, which monitor and direct traffic on Babbage's domestic railroad lines.

4. In 1994, the Parliament of Babbage adopted and the government promulgated a new criminal code. Among other provisions, the code provides:

Section 117. Publication of Indecent Material.

(a) It shall be a Class I felony, punishable by a fine of up to 100,000 Grantas [US\$10,000] and up to ten years imprisonment, for any person to publish, other than for purely private use, Indecent Material.

(b) For purposes of this Section, "Indecent Material" means the following:
(1) Any text or picture which is offensive in nature to the public morals of Babbage;

...
(4) Any text or picture, which:
(i) is likely, in reasonably foreseeable circumstances, to offend, insult, humiliate, or intimidate another person or group of people; and
(ii) has been published because of the race, colour, or national or ethnic origin of the other person or of some or all of the people in the group.

(c) Liability for publication under this Section shall extend to the publisher and any distributor of Indecent Material.

(d) In addition to any other penalty under this Section, all publishers of Indecent Material for profit shall be subject to revocation of their licenses to do business in the Republic of Babbage, and to forfeiture of any property materially related to the publication of Indecent Material.

(e) For the purposes of subsection (a), publication of Indecent Material shall not be taken to have been for purely private use if it:

(1) causes words, sounds, images, or writing to be communicated to the public; or

(2) is done in a public place; or

(3) is done in the sight or hearing of people who are in a public place, including any place to which the public have access as of right or by invitation, whether express or implied, and whether or not a charge is made for admission to the place.

5. Beginning in 1998, private citizens of Babbage began gaining access to the Internet, usually through the World-Wide Web accessed through private domestic or multinational Internet service providers (ISPs). A number of companies have been founded in Babbage over the last two years to meet the demand for Internet access, but the dominant ISP in Babbage is Babbage OnLine (BOL), a local subsidiary of a Turingia-based company, Turingia OnLine, Inc. (TOL). TOL is the sole owner of BOL. BOL is the only totally foreign-owned ISP in Babbage, and in 1999, 60% of Internet users in Babbage used BOL as their sole source of Internet access.

6. On September 25, 1999, alarmed by the increasing amount of material available from overseas on the World-Wide Web that his government considered to be pornographic, and the escalating number of websites dedicated to hate speech directed against members of the Hortari religion, President Revuluri issued Presidential Declaration 901, "On the Proliferation of Indecent Material on the Internet." In Babbage, Presidential Declarations interpreting Acts of Parliament have the force of law. Presidential Declaration 901 stated, in relevant part:

Section 117 of the Babbage Criminal Code is hereby extended to apply to Indecent Material which is published or distributed on the Internet, and made available to citizens or residents of Babbage.

...

All Internet Service Providers operating in Babbage are hereby ordered immediately to eliminate any access by their users to materials the publication or distribution of which

would violate BCC Section 117. Failure to abide by this Declaration shall subject violators to revocation of their licenses to do business in the entire territory of Babbage, pursuant to Section 117(d), as well as to any applicable criminal proceedings.

7. Within two weeks of the Presidential Declaration, all of the ISPs operating in Babbage installed "blocking software" on their servers, except BOL. The purpose of this blocking software was to prevent users from accessing World-Wide Web sites that potentially violated BCC Section 117. The blocking software did not allow users to access any site or page that contained pornographic images, language suggestive of pornography, or language which tended to insult or defame members of the Hortari religion. This approach also had the effect of blocking users from accessing certain other sites, such as medical and physiological information sites containing explicit prose descriptions and pictures of medical procedures, sites discussing the history of the Hortari and other groups subjected to historical persecution, and certain other sites that all parties agree are neither pornographic nor defamatory in intent.

8. On October 1, 1999, the Chief Executive Officer of TOL (who according to the corporate bylaws has complete operational control over BOL) announced that his group of companies would not comply with the Presidential Declaration. He issued the following announcement at a press conference in Turingia:

It is impossible for Babbage OnLine to impose narrow restrictions on so-called 'indecent' material without eliminating access for our subscribers to a wide variety of useful, non-offensive sites. Furthermore, it is the position of TOL, and its subsidiary, BOL, that information knows no national boundaries, that all information should be free and accessible to all citizens of the planet Earth, and that the international right to freedom of expression cannot be denied. The policies of the government of Babbage are not consistent with world opinion or with the needs and desires of its own citizens.

This statement was widely reported in various media, including newspapers and electronic media in Babbage, and was published on the TOL home page. The TOL home page is the first web page that all BOL users in Babbage see when they log onto the World-Wide Web. The home page is hosted on a computer physically located in Turingia.

9. Following the announcement by TOL, in October and November of 1999, approximately 40% of those Internet users in Babbage who were not already BOL subscribers switched ISPs to BOL, presumably to avoid the broad blocking software on other ISPs.

10. On November 20, 1999, the Babbage Ministry of Justice brought charges against BOL and TOL, under Section 117 as interpreted by the Presidential Declaration. The bill of particulars alleged in part that:

BOL has taken no steps to block its customers from accessing Indecent Material through its ISP, and is therefore a 'distributor of Indecent Material,' punishable under BCC Section 117 and Presidential Declaration 901.

11. In a one-week trial in early December 1999, BOL appeared through counsel, basing its defense on challenges to the validity of Section 117 and the Presidential Declaration, as well as the fact that it was neither the author nor an active distributor of the material apparently found

offensive by the Babbage authorities. TOL declined to enter an appearance or to participate directly in the defense, contending that it did not do business in Babbage and therefore was not subject to Babbage domestic law. The trial court rejected the defendants' arguments, finding both BOL and TOL guilty of the violations alleged. It imposed on BOL and TOL jointly and severally a fine of 100,000 Grantas, revoked TOL's business license, and ordered that all of its computer equipment be confiscated, pursuant to BCC Section 117(d). This decision was upheld by Babbage's highest court.

12. When Babbage Justice Ministry officers arrived at BOL's headquarters on December 18, 1999 to enforce the confiscation, they discovered that the building had been completely vacated. All computer equipment, furniture, and office files had been removed. Inquiries of the property manager revealed that in order to avoid forfeiture of its property, employees of BOL had hastily closed its operations in Babbage. In addition, during the trial, BOL had apparently transferred its cash assets previously held in Babbage to a bank account in Turingia. As a result, the Justice Ministry was (and remains, to this date) unable to confiscate any equipment or to collect payment of the fine.

13. On December 19, 2001, the day after the unsuccessful confiscation attempt, President Revuluri announced that he had dismissed the Minister of Justice in connection with his failure to secure BOL's property prior to the judgment. He appointed Ms. Tara Elis as the new Minister. He also criticized TOL for attempting to "avoid the consequences of its actions," stating that Babbage would not permit TOL "to escape responsibility for its violation of Babbagian law."

14. On December 24, 1999, an anonymous computer programmer illegally "hacked," or gained access to, TOL's computer system, and erased the data which comprised TOL's publicly available websites. In addition, the hacker erased the system programs that controlled TOL's worldwide network. The effect of this attack was that TOL's websites were not available for public viewing, and no TOL customer anywhere was able to access the Internet via TOL.

15. On December 27, 1999, working from archived data, TOL programmers were able to restore their website and their access services. Nevertheless, TOL was required to reimburse its subscribers some US\$50 million for the loss of email and other services during the period of interruption caused by the hacker.

16. When the TOL website was restored, a hidden computer virus was activated, apparently planted by the same hacker who launched the December 24 attack. This virus initiated an automatic screensaver image, a well-known watercolor of Hortari massacred in 1889. The screensaver was programmed to randomly interrupt normal operation of the computer, requiring the user to shut it down and restart it, thereby losing any unsaved data. The virus also permanently deleted all files containing any of a long list of words commonly used in hate speech. It sent an electronic mail to all TOL subscribers that read: "THE MISDEEDS OF TURINGIA ONLINE HAVE BEEN PUNISHED! DO NOT ALLOW THE CANCER OF HATE AND SOCIAL DEGRADATION TO SPREAD!" The virus spread itself to the computers of TOL subscribers.

17. TOL immediately removed the new message and the computer virus, and again restored its website. TOL investigators, in cooperation with agents from the Turingian government,

traced the attack and the virus to a group of hackers calling themselves the International Babbagian Cyber-Patrol (IBCP). Although their individual identities and locations are still unknown, INTERPOL and the Turingian authorities believe this group to be behind a number of virus and hacking attacks over the last seven years, always against online disseminators of what they consider to be hate speech and/or pornography.

18. On December 29, 1999, President Revuluri issued a Proclamation conferring on the anonymous IBCP hackers the honor of membership in the Babbage Order of Merit. The Proclamation called them “heroes of a just and decent world,” stating that “these unknown soldiers are due the thanks of the people of Babbage.” President Revuluri also promised the IBCP hackers a full amnesty from prosecution in Babbagian courts.

19. Also on December 29, the Minister of Justice of Turingia, Josephine Shidle, formally denounced the attack, blaming the Government of Babbage and President Revuluri in particular for the damage and losses that it caused. She announced that a number of officials of the Turingian government had accessed the TOL website, and their computers had become infected by the virus. She said that although there was some damage to data on official government computers, none of it was significant or caused any negative effect on government operations. In answer to a question from a journalist as to whether any retaliatory measures were being contemplated, Minister Shidle stated that no Turingian government action was planned, but concluded (according to the official transcript of her remarks):

The actions of the IBCP constitute an intentional attack on a Turingian business, on Turingian soil, and have caused damage to our government and our citizens. If any citizen of Turingia sees fit to inconvenience the government of Babbage similarly through non-violent, technological means, it is my opinion that we would have no jurisdiction to prosecute.

Widely-published international legal commentators interpreted this statement to be a promise of amnesty for any computer programmer who “hacked” into Babbagian computer networks and caused mischief. Substantial editorial commentary around the world, including all of the leading independent newspapers in Turingia, denounced this statement as “irresponsible.”

20. On January 10, 2000, David Gabrius, a Turingian citizen and a world-famous computer hacker and political activist, successfully hacked into BRTA’s rail traffic control network and deleted its operating system. The effect of this attack was to eliminate all automated rail traffic control functions in Babbage for two days, while BRTA officials restored the network from archived tapes. During this time, rail traffic control in Babbage was reduced to radio contact among individual trains and switching stations.

21. Twenty minutes after the attack, and before senior BRTA management understood why their computers were not responding, two Babbage National Railway passenger trains, traveling in opposite directions on a heavily-used route through a mountain pass, crashed into one another. The crews and more than 100 passengers aboard each train were killed. BRTA officials, assisted by investigators from the International Railway Safety Agency, determined that the cause of the crash was the confusion at the sudden loss of BRTA network scheduling and routing orders.

22. President Revuluri publicly denounced the attack on the BRTA computer system, and blamed the remarks of the Turingian Justice Minister for the deaths of the crews and passengers. He called upon her immediately to detain and prosecute Mr. Gabrius. Minister Shidle publicly replied, "As I have stated before, I believe that Turingia is without jurisdiction to prosecute in this matter, since no crime has been committed on Turingian soil. In any event, we have no intention of prosecuting, and this matter is closed."

23. Although BRTA officials were able to restore the network, on January 15, 2000, the Chief Administrator of BRTA sent an open letter to Mr. Gabrius, which was also published on the Internet and in a number of newspapers with international distribution. The letter invited Mr. Gabrius to come to Babbage to assist the BRTA in its repair of its network, stating:

You have made your point. Whether you intended it or not, your mischief has caused the deaths of hundreds of people. This is not a game. The people of Babbage need to have their rail system restored. Only you know how to completely undo the damage you have caused to our computers. Therefore, and in order to avoid further loss of life and devastation of our economy, if you are willing to come to Babbage to assist us in fixing our network, you have our word and the word of the President Revuluri's Government that you will not face prosecution or come to any harm while you are in our country.

The letter was signed by both the Chief Administrator of BRTA and Minister of Justice of Babbage Tara Elis.

24. Gabrius contacted the BRTA Administrator and announced his willingness to help the BRTA repair efforts, on the understanding that he had been promised immunity from prosecution. The Government of Babbage chartered a private plane the next day, and Gabrius arrived in the capital of Babbage on February 1, 2000. Upon his arrival at Babbage International Airport, he was met by officers of the National Police and arrested.

25. The Ambassador of Turingia to Babbage immediately delivered a written protest to the Babbage Minister of Justice, stating, "Luring Mr. Gabrius to Babbage under false pretenses violated both the sovereignty of Turingia and Mr. Gabrius's internationally-recognized human rights. We protest this duplicitous action in the strongest terms, and insist that our citizen be repatriated to Turingia forthwith."

26. Despite the protests, which went unanswered, Gabrius was charged with murder under Babbage law. A yearlong, widely publicized jury trial followed, and Gabrius was convicted on July 31, 2001 of the murder of the over 200 victims of the January 10, 2000 rail crash and was sentenced to 20 years in prison. Babbage's high court subsequently upheld the conviction, specifically rejecting Gabrius's argument that Babbage's "luring" violated his rights. While Turingia reserves its objection to the assertion by the Babbage court of personal jurisdiction over Gabrius in the circumstances, the parties stipulate that the conduct of the trial itself was consistent with relevant international law.

27. In fact, Gabrius's help was not needed to fix the BRTA network. The parties stipulate that the request from the BRTA Administrator was, in fact, a ploy of his own creation, intended to lure Gabrius to Babbage territory, so that he could be arrested and tried.

28. From January 2000 to September 2001, government negotiators from Babbage and Turingia held several rounds of discussions concerning the two countries' grievances arising from events described in this Compromis. However, shortly after the denial of Gabrius's appeal by the Babbage high court, the two sides determined that further discussions would be fruitless and terminated the negotiations.

29. The United Nations Security Council, during its regular meeting in September 2001, discussed the ongoing disputes between Turingia and Babbage in light of the failure of peaceful resolution through negotiations. Several Security Council member states had been directly affected by the dispute, either by virtue of the TOL virus or because of the cancellation and re-routing of flights around Babbage. As a result, and fearing the escalation of retaliation between the two countries, the Security Council adopted a resolution calling on the parties to submit their differences to the International Court of Justice for resolution.

30. Turingia and Babbage have now agreed to bring the matter before the Court, agreeing to the statement of facts set out in this Compromis. Both parties expressly waive any objection to the Court's jurisdiction. They have also agreed to accept any judgment of the Court as final and binding upon them, and to execute it in its entirety and in good faith.

31. Both Turingia and Babbage have been members of the United Nations since 1945, are parties to the Statute of the International Court of Justice, and have signed and ratified the Vienna Convention on the Law of Treaties. Turingia is party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; Babbage is a signatory to both Covenants, but has not yet ratified either. Neither country is a party or signatory to any other treaty relevant to this case. In particular, there is no bilateral extradition treaty between them.

32. Turingia and Babbage have each reviewed the damages claimed by the other, and there is no dispute as to the accuracy of the damages calculations.

33. **TURINGIA** requests that the Court:

(a) declare that Babbage's broad restrictions on access to Internet-available resources violate international law;

(b) determine that the Republic of Babbage is liable for the economic losses incurred by Turingia OnLine (TOL), and order payment of reparations, in the amount of US\$50 million, for such losses;

(c) conclude that Turingia is responsible neither for the damage caused to the Babbage Rail Transit Authority (BRTA), nor for any harm resulting from such damage (including specifically the train collision and resulting loss of life); and

(d) declare that Babbage's luring, arrest, trial, and conviction of Turingian citizen David Gabrius violated international law, and order his release and repatriation.

34. **BABBAGE**, in turn, requests that the Court reject the claims of Turingia, and:

(a) find that Babbage's criminal code provisions regarding forbidden publications, their extension to the Internet, and their application to Turingia OnLine and Babbage OnLine as described in this Compromis, are consistent with international law;

(b) declare that Babbage is not liable under international law for any injury caused to Turingia OnLine (TOL) by the anonymous hacking or by the electronic mail "virus";

(c) declare that Turingia is responsible for the attack on the Babbage Rail Transit Authority (BRTA), including the damage to property and the loss of life resulting from the collision, and order Turingia to make reparations for those injuries; and

(d) determine that Turingia's actions concerning the arrest, trial, and conviction of David Gabrius were consistent with international law.