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Chairman: Mr. José María RUDA (Argentina).

AGENDA ITEM 71

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/5470 and Add.1 and 2, A/C.6/L.528, A/C.6/L.530, A/C.6/L.531 and Corr.1, A/C.6/L.535, A/C.6/L.537) (continued)

1. Mr. CHHIM KHET (Cambodia) said that the profoundly peace-loving Cambodian people had always favoured the progressive development of international law, which they considered to be the only means of promoting friendly and peaceful relations among States. In order to help in making international law effective, Cambodia had always complied scrupulously with the agreements and treaties it had signed; indeed, respect for positive law was essential if international relations and co-operation were to be improved. Cambodia needed peace in order to devote its full attention to its economic development, and had made peaceful coexistence the basis of its foreign policy; for example, it had taken an active part in the Conference of African and Asian States, held at Bandung in 1955.

2. In his delegation's view General Assembly resolution 1815 (XVII) made it very clear what the Committee's terms of reference were and how it should act on them. It should not deviate from that well-chartered course to linger over sporadic suggestions. His delegation believed that it was necessary to work out general principles of law which met the requirements of the modern world. It was not a question of declaring obsolete the provisions of the Charter, which in some degree represented the constitutional law of the United Nations, but rather of clarifying some of them where they were open to divergent interpretations—often contrary to the spirit of the Charter of the United Nations—and of filling the gaps inevitably left by the Charter; for since the United Nations Conference on International Organization held in San Francisco in 1945, the world had been much altered by scientific progress, economic and social changes, and the emergence of new States. His delegation therefore considered that the rules of law should follow the changing times and that the general principles of law should be codified in accordance with General Assembly resolution 1815 (XVII) and Article 13, paragraph 1 a, of the Charter.

3. With regard to the four principles under study, and in particular the principle prohibiting the threat or use of force, he considered that the word "threat" should be given a broad interpretation and that the notion of economic coercion—the commonest form of modern imperialism—should be introduced. The use of force should be severely penalized by international law. The existence of large stockpiles of nuclear weapons still held over mankind the threat of total destruction, but it must be acknowledged that encouraging efforts had been made to reach an agreement on general and complete disarmament.

4. As to the second principle, which called for the settlement of international disputes by peaceful means, his delegation thought that existing international institutions, and in particular the International Court of Justice, had a part to play in its application but that in urgent cases the parties to a dispute should first resort to direct negotiation.

5. The question of non-intervention in the affairs of a State deserved very careful study, for intervention was one of the main causes of tension in international relations. However, his delegation would prefer to use the expression "foreign interference", as being more specific and more appropriate. Such interference could take many and subtle forms, the commonest being economic colonialism, which prevented the States subjected to it from following a policy dictated by their wishes and interests.

6. The principle of the sovereign equality of States placed all States on an equal footing in international relations, irrespective of their population, economic importance or political system. It was essential that a State should be free to choose its own institutions and to pursue the policy of its choice, so long as that policy was not a threat to world peace.

7. His delegation might have occasion to make further comments on the principles at a later stage.

8. Mr. NACHABE (Syria) said that the Committee was taking up its task in more favourable circumstances than those which had attended the adoption of resolution 1815 (XVII), at a time when the Caribbean crisis had burdened friendly relations and co-operation among States. Now that man possessed weapons of mass destruction which threatened his existence and his achievements, he could not do better than to develop the rules which should govern the international community and give them the mastery over the physical power at his disposal.

9. The task to be undertaken was clearly defined in resolution 1815 (XVII), in which the General Assembly invited the Committee to study four principles of international law concerning friendly relations and co-operation among States, with a view to their codification and more effective application, and then to decide what other principles were to be given further consideration at subsequent session, and the order of their

priority. At the present stage of the discussion, his delegation would merely make some general observations on those four principles, and might return to the question later on. To dispel some doubts which had been expressed as to whether the Committee should undertake that task at the present time and whether it could perform that task effectively, his delegation wished to indicate what in its view the Committee had to do. First, it must be borne in mind that since the Charter of the United Nations had been drawn up great changes had taken place in the international community. If its work was to be useful, the Committee should therefore develop the principles of the Charter and infer from them the corollaries which were needed to take account of those changes. In doing so it would clarify the provisions of the Charter and establish principles of international law which would foster friendly relations and co-operation among States irrespective of their political system, economic and social system and degree of development. Moreover, that view of the matter corresponded to that taken by the drafters of the Charter, as was clear from the discussions of Commission I of the San Francisco Conference, whose task had been to draft the Preamble to the Charter. In his statement to the Commission, the Rapporteur of its Committee had said: "... the Committee held that the Charter cannot be amplified to include all major purposes and principles that cover international behaviour, but should include only the basic ones, which, by virtue of their being basic, can and shall make it possible for the Organization and its members to draw from them, whenever necessary, their corollaries and implications."[1/]

10. Those considerations guided his delegation in its approach to the four principles under study. The principle enjoining States to refrain from the threat or use of force, which was set out in Article 2, paragraph 4, of the Charter, with the exception stated in Article 51, already appeared in The Hague Conventions for the Pacific Settlement of International Disputes, 1899 and 1907, but became a real principle of international law only in the Briand-Kellogg Pact[2/] (article 1); it had since been restated in several international instruments, including the Dumbarton Oaks Proposals[3/] (principle 4), the Pact of the League of Arab States (article 5), the Charter of the Organization of American States[4/] (article 18), the Declaration contained in the final communiqué of the Bandung Conference of African and Asian States (principle 7), and the Declaration of the Heads of States or Government of the Non-aligned Countries, issued on the occasion of the Belgrade Conference. His delegation felt that the word "force" should not be construed in the narrow sense to mean only "armed force"; it should encompass all forms of pressure, avowed or unavowed, direct or indirect, against the territorial integrity or political independence of a State. Furthermore Article 2, paragraph 4, of the Charter provided that the Members of the Organization should also refrain from acting "in any other manner inconsistent with the Purposes of the United Nations". For a comprehensive statement of that principle, the Committee might draw on instruments to which many Member States had acceded, namely the Declaration of Bandung (principle 6, para. (b)) and the Charter of the Organization of American States (article 16).

11. The principle of the settlement of international disputes by peaceful means, which was set out in Article 2, paragraph 3, had been established in international law side by side with the preceding principle. It was proclaimed in The Hague Conventions of 1899 and 1907, in article 2 of the Briand-Kellogg Pact, in the Dumbarton Oaks Proposals (principle 3), in the Declaration of Bandung (principle 8), in the Declaration of Belgrade, in the Charter of the Organization of African Unity (article III) and in the Charter of the Organization of American States (article 20). In his delegation's view the Committee, in codifying that principle, should stress that the foundation for the peaceful settlement of international disputes was the notion of justice, whose importance had been recognized by the Charter in Article 1, paragraph 1, and in Article 2, paragraph 3. Moreover, in selecting the means of pacific settlement, it was essential to take into account the nature of the dispute. The idea put forward by the Netherlands representative at the 803rd meeting for the establishment of a fact-finding body to investigate international disputes was worthy of attention.

12. The principle of non-intervention in matters within the domestic jurisdiction of a State was the very basis of peaceful coexistence between States with different political, economic and social systems, and had assumed even greater importance with recent developments in the international community. His delegation interpreted the word "intervention" to mean any form of subversive activity and any direct or indirect interference, on any pretext whatever, in the internal or external affairs of another State. He would not try to define the legal content of the expression "domestic jurisdiction"; the meaning attached to that expression in traditional international law was well known. The principle of non-intervention, which was set out in Article 2, paragraph 7, of the United Nations Charter was restated in the Pact of the League of Arab States (article 8), in the Declaration of Bandung (principle 4), in the Declaration of Belgrade, in the Vienna Convention on Diplomatic Relations[5/] and the Vienna Convention on Consular Relations,[6/] in the Charter of the Organization of African Unity (article III), and in the Charter of the Organization of American States (article 15). In connexion with the last-mentioned instrument, a tribute was due to the Latin American jurists for their efforts in that direction.

13. The principle of sovereign equality was closely bound up with the principle of non-intervention and with the right of peoples to self-determination. It had gained acceptance now that the subordination and subjection of one State to another had been rules out of international relations. In the era of peaceful coexistence, States had equal duties and equal rights in their capacity as subjects of international law and as equal members of the international community. That principle, which was set out in Article 2, paragraph 1, of the Charter, also appeared in the Declaration of Bandung (principle 3), in chapter II of the Dumbarton Oaks proposals (principle 1) in article III of the Charter of the Organization of African Unity (principle 1), and in article 6 of the Charter of the Organization of American States. The expression "sovereign equality"

1/ *United Nations Conference on International Organization*, Commission I, 15 June 1945, vol. 6, p. 18.

2/ General Treaty of Renunciation of War as an Instrument of National Policy, signed at Paris, 27 August 1928 (League of Nations, Treaty Series, vol. XCIV, 1929, No. 2137).

3/ United Nations Conference on International Organization, vol. 3, document 1, G/1.

4/ United Nations, Treaty Series, vol. 119 (1952) No. 1609.

5/ United Nations publication, Sales No.: 62.X.1.

6/ United Nations publication, Sales No.: 63.X.2.

was defined in the records of Commission I of the San Francisco Conference.[7] His delegation considered that, when the principle of sovereign equality or its corollary principle of non-intervention was under examination, two rights should be stated: namely, the right of every State freely to choose its political or constitutional status and its economic and social system and to control its own foreign policy, and the right of every State to use its natural wealth and resources as it saw fit.

14. As to the other principles of international law concerning peaceful coexistence which were to be given further consideration at subsequent sessions, his delegation considered that the principles stated in operative paragraph 1 (d), (e) and (g), of resolution 1815 (XVII) should be selected for study and that priority consideration should be given to the principle of co-operation, as a sequel to the United Nations Conference on Trade and Development, and the principle of equal rights and self-determination of peoples, the codification of which was a necessity in the era of decolonization.

15. His delegation favoured the adoption of a declaration containing all the principles likely to promote friendly relations and co-operation among States; such a declaration would give those principles greater weight. It also favoured the establishment of a working group to codify those principles. It congratulated the Czechoslovak representative on his admirable work, which would certainly make the Committee's task easier. Furthermore it heeded the appeal for caution made by the Swedish representative at the 806th meeting; it agreed with him that the Committee should make haste, but with due caution.

16. Mr. TOURE (Mali) said that he would limit himself to some preliminary remarks; his Government might wish to make more detailed observations at a later date. The Government of Mali would in due course send the Secretariat a document containing all such comments and suggestions as it might wish to make.

17. In resolution 1815 (XVII), the General Assembly had resolved to undertake a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application. In the same resolution, the General Assembly had enumerated the four principles which the Sixth Committee was to consider at the current session. That recommendation by the General Assembly was in accordance with Article 13 of the Charter and faithfully reflected the idea of the authors of the Charter that competent organs such as the Sixth Committee should reaffirm the principles stated in Article 2 of the Charter, taking into account any changes which had taken place. The principles enumerated in resolution 1815 (XVII), of which Mali had been a sponsor, were in keeping with the Malian Government's policy, which was based on the principles of the United Nations and on respect for the equality, sovereignty and territorial integrity of all States, large or small, irrespective of their social system and level of development. It was plain that without principles of law, and without co-operation, international peace and security would be seriously threatened. It was wise to undertake the codification and development of the principles of international law, for the great political, economic and social changes which had taken place since the adoption of the Charter had constantly re-emphasized the importance of the Purposes and Principles stated in it. In order to make their application consistent with contemporary conditions, it was therefore essential to make a serious study of the principles of international law concerning friendly relations and co-operation among States. On joining the United Nations, the Malian Government had subscribed to the four principles now under consideration by the Sixth Committee. It had reaffirmed them on becoming a party to the Declaration of Belgrade and on helping to draft the Charter of the Organization of African Unity, article III of which proclaimed the principles of the sovereign equality of all Member States; non-interference in the internal affairs of States; respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence; and peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration. His delegation considered that respect for those principles, which were embodied in the Charter of the United Nations, was a moral obligation for all States Members of that Organization.

18. The principle that States should refrain in their international relations from the threat or use of force was of fundamental importance. His delegation appealed to the great Powers to put an end to the arms race and to come to an agreement on general and complete disarmament under international control. There was always a danger that any State which possessed arms of any kind whatsoever might be tempted to use them to settle a dispute. In order to apply the principle in question effectively, it was essential to eliminate armaments altogether. The international community should at last be convinced that failure to comply with that principle might plunge the world into a war which would lead to its destruction.

19. The principle of the pacific settlement of disputes, which was a corollary of the foregoing principle, could not be applied in the absence of co-operation among States. There could be no peace without co-operation, and the principle of peaceful co-existence did not mean merely that States should agree to live as good neighbours: it also meant that they should develop their co-operation in the political, economic and cultural fields. The recent statements by Heads of State at the eighteenth session of the General Assembly, and the conclusion at Moscow of the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, seemed to indicate that the great Powers now recognize peaceful co-existence as the first prerequisite for the maintenance of international peace, security and justice. The Malian Government approved of the opportunity given to States in Article 33 of the Charter to select a peaceful means by which to settle any disputes to which they were parties. The Republic of Mali had recently shown its fidelity to the principle of pacific settlement of disputes by clearing up the misunderstandings which had divided it from Senegal and Mauritania.

20. The principle of non-intervention in matters within the domestic jurisdiction of any State was of particular importance to all the new States. That principle, like the three others before the Committee, was part of general international law, and all States without exception were therefore under an obligation to uphold it. In the Charter of the Organization of

[7] United Nations Conference on International Organization, Commission I, 1 June 1945, vol. 6, p. 717.

African Unity, the Heads of African States had unreservedly condemned political assassination as well as subversive activities on the part of neighbouring States or any other State. President Modibo Keita had told the African delegations at the Summit Conference of Independent African States, held at Addis Ababa that African States must renounce territorial claims unless they wished to see what might be called black imperialism established in Africa. Imperialism, he had said, was not peculiar to one country, one continent or one bloc, but was the manifestation of the will of one man, or one society, or one people, to dominate another—the will to impose on others, at any cost, a certain way of thought, of life, of political and economic development. African unity required that every African State should respect in toto the heritage it had received from the colonial system: in other words, that the various States should maintain their existing frontiers.

21. The principle of the sovereign equality of States was beyond question the basis of friendly relations and co-operation among States. That principle was stated in Article 2, paragraph 1, of the Charter. In his delegation's view, the expression "sovereign equality" meant that all States had equal rights and equal duties: in other words, that all States were equal before the law; that they enjoyed all the rights deriving from their sovereignty; that the personality of a State, its territorial integrity and its political independence must be respected; and that a State must faithfully discharge its international obligations and duties. The development of that principle would make it possible to improve friendly relations and co-operation among States, including their co-operation with international organizations. The development of law in such a way as to strengthen international peace based on freedom, equality and social justice would be comparable in importance to the Universal Declaration of Human Rights.

22. Mr. COOMARASWAMY (Ceylon), in the exercise of his right of reply, wished to refute certain statements made by the United States representative at the 805th meeting. The delegation of Ceylon categorically rejected the accusation made by the United States representative that the Ceylonese Government had not acted in accordance with international law as regarded compensation to foreigners whose property had been expropriated. In section 47 of the Ceylon Petroleum Corporation Act No. 28 of 1961, Ceylon had provided that compensation should be paid in accordance with Western international law. Thus, the obligation to pay adequate compensation in accordance with that law, and appropriate compensation, as stated in resolution 1803 (XVII) had been fulfilled. The real dispute between the Ceylonese Government and the oil companies had to do with their request for compensation for loss of customers and future losses, which the Ceylonese Government had categorically rejected and which had likewise been rejected in a number of international law decisions as nebulous and highly speculative.

23. The Ceylonese delegation also denied that there had been any unreasonable delay in the payment of compensation. Only eighteen months had elapsed since the expropriation. In Western practice of international law, the shortest period for the payment of compensation had been eighteen months and the longest nine years. When a matter had to be referred to a national tribunal in case of dispute concerning the amount of compensation, certain preliminary formalities of valuation and examination of claims could not be avoided. That procedure could not be regarded as causing an unreasonable delay in payment. Resolution 1803 (XVII) clearly stated in paragraph 4 that in cases where the question of compensation gave rise to a controversy, the national jurisdiction of the State should be exhausted. His delegation wished to stress that Ceylon had thus acted precisely in accordance with Western international law and with the provisions of resolution 1803 (XVII), although according to modern international law, developing countries were entitled to nationalize in the interest of their national development and to arrange for compensation on their own terms. His delegation emphatically denied that Ceylon had taken foreign property without compensation, as the United States representative had charged. There was a vital difference between taking property without compensation and providing for compensation to be paid after proper assessment had been made according to law, where the amount was in dispute.

24. The question of the nature and repercussions of foreign aid received and the question of how and where foreign investors obtained the capital they invested were too complex to discuss and he would only do so if the necessity should arise.

25. Judging from the comments on his statement at the 805th meeting concerning the International Court of Justice made by the French representative at the 810th meeting it would appear that the latter had misunderstood him. The Ceylonese delegation had never questioned the impartiality of the members of the International Court. It had complained that they were influenced by considerations of the law and not by factors outside the law, but that those considerations were notions derived from one of the ideological systems. It had meant simply that the members of the International Court were consciously or unconsciously influenced by the legal notions of the society which had fashioned their mental attitudes; it had not referred to any other form of influence or any element of partiality. It had given two instances in support of its argument.

26. Mr. SCHWEBEL (United States of America), in the exercise of his right of reply, recalled that at the 805th meeting, the representative of Ceylon had maintained that, in a statement before the Governing Council of the Special Fund, the United States representative had misrepresented the facts, At the 805th meeting, the representative of the United States had maintained that the charge was without foundation. The error committed by the Ceylonese representative arose in part from the fact that he had based his argument on the provisional summary record of that particular meeting of the Special Fund which contained an error: the representative of the United States had not referred to "United States holdings". The error had been corrected in the final mimeographed summary record, which read:

> "Mr. BINGHAM (United States of America) stated that his Government had reservations with regard to the Ceylonese project in view of the fact that the Government of Ceylon had not yet made arrangements for payment of prompt, adequate and effective compensation in accordance with international law and equity for certain American-owned oil properties expropriated in 1962. Therefore the United States Government could not approve the project under consideration." (SF/SR.51).

27. He wished to make certain comments concerning the views of the Ceylonese Government respecting compensation. He had been pleased by the fact that the Ceylonese Government had once again asserted its

intention of paying compensation. But Ceylon had not as yet paid compensation as required by international law, though the United States remained hopeful that it would. The rule of exhaustion of local remedies was sound, but it applied only where such remedies actually existed. Ceylon itself had proposed an unsatisfactory resolution of the matter in avoidance of the local remedies provided for by the relevant legislation, which remedies in any case had not proved effective to date. As to the claims of the oil companies, they sought no more than the fair market value of their properties, which surely was in accordance with international law.

28. The Ceylonese representative had said that his Government had even acted in accordance with "Western" international law. That would not be true, in the opinion of the United States, as long as it had not paid the compensation due. Besides, there was no "Western", "Eastern" or any other peculiar international law; there was only one international law. He therefore took issue with the Ceylonese representative's opinion that Ceylon was entitled, under another kind of international law, to treat foreign property as it pleased. That opinion had been put forward more than once in the Second Committee at the seventeenth session of the General Assembly during the discussion of permanent sovereignty over natural resources, but had been rejected by the majority. To illustrate the point, he cited an amendment, submitted by a certain delegation to a Second Committee draft resolution during the seventeenth session, under which the General Assembly would have confirmed "the inalienable right of peoples and nations to be unobstructed execution of nationalization, expropriation and other essential measures aimed at protecting and strengthening their sovereignty over natural wealth and resources". [8] The amendment had been rejected by the Second Committee and later by the General Assembly in plenary session.

29. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the amendment cited by the United States representative had been submitted by the USSR delegation. It was to be regretted that the General Assembly had not retained an amendment which was just. But rejection by the Assembly was not an absolute criterion of the validity of a proposal and the Assembly might some day reverse its decision.

30. The United States representative did not seem to realize that for decades the colonized countries had been subjected to what amounted to pillage. It was natural that in his effort to defend the interests of certain monopolies, he should adduce the argument he had put forward, but he could not represent that argument as the position of the United Nations or as a recognized principle of internationl law. Indeed, many countries, and in particular those of Asia, Africa and Latin America, did not share his view. The right of a State to the unobstructed execution of nationalization was nothing more than the consequence of the sovereign right of each State to dispose of its wealth and natural resources, which had been recognized by General Assembly resolutions 1515 (XV) and 1803 (XVII).

31. Mr. YASSEEN (Iraq) did not agree with the United States representative on the question of compensation. In the contemporary world, it was beyond question, that States were entitled to carry out nationalization. As for compensation, many States claimed that it was not a matter subject to international law, but came within the jurisdiction of the State carrying out the nationalization. Moreover, the General Assembly's vote on the USSR amendment at the seventeenth session had not been as decisive as the United States representative seemed to imply. It had been rejected by a very slim majority, which reflected profound differences of opinion arising from divergent interests. A General Assembly decision adopted by a majority of a few votes could not be interpreted as the recognition or establishment of a rule of international law.

32. The CHAIRMAN said that although he was aware of the practice in the Sixth Committee for the Chairman never to limit the right to speak and even less the right of reply, he felt compelled, in view of the turn which the debate had taken, to refer to paragraphs 49 and 50 of the report of the Ad Hoc Committee on the Improvement of the Methods of Work of the General Assembly (A/5423), which the General Assembly had adopted unanimously during the current session (resolution 1898 (XVIII)). According to those paragraphs, only delegations which had been attacked or criticized either by direct reference or by imputation or which legitimately felt the need for a clarifying statement because of comments with respect to the attitude or policy of their countries were entitled to exercise the right of reply.

33. He asked the members of the Committee not to enter into polemics on the question of nationalization and to confine their comments to the discussion of the legal principles concerning friendly relations and cooperation among States.

34. Mr. SCHWEBEL (United States of America) rejected the Soviet representative's portrayal of the activities of United States companies in foreign lands. It was generally recognized that investments served the interests of the countries in which capital was invested as well as the interest of the investors. The debates in the Second Committee at the seventeenth Session confirmed that view.

35. In reply to the comments of the Iraqi representative, he explained that he was not denying that every State had a right to nationalize property, provided that it did so in accordance with international law, and provided there were no treaty or contractual obligations to the contrary. The General Assembly had rejected the USSR amendment in question by 48 votes to 34, with 21 abstentions. Resolution 1803 (XVII), which had been adopted the same day, provided that in cases of nationalization, expropriation or requisitioning, the owner should be paid appropriate compensation in accordance with the rules in force in the State taking such measures in exercise of its sovereignty and "in accordance with international law". It had emphasized the binding character of foreign investment agreements. Moreover, when the Second Committee had discussed the question of permanent sovereignty over natural resources, it had decided at the seventeenth session not to take a decision on the question of investments in colonial territories which subsequently attained independence, an extremely complicated question which was under study by the International Law Commission within the purview of State responsibility and the succession of States and Governments.

36. The United States representative considered that the position of his Government was in conformity with the great weight of customary international law, treaties and cases, and with the opinion of most

[8] Official Records of the General assembly, Seventeenth Session, Annexes, agenda items 12, 34, 35, 36, 37, 39 and 84, document A/L.414.

authors. The United States Government was prepared, if necessary, to test its case in international adjudication.

37. Mr. TABIBI (Afghanistan) said that, as the representative of a small developing country, resolution 1803 (XVII) had been a compromise text. Like the representatives of Ceylon, Iraq and the Soviet Union, he felt that the time had long passed when the interests of a country could be subordinated to foreign interests. Henceforth, the right of nationalization was an inalienable right of sovereign States and the question of compensation came within the national jurisdiction of States. Economic self-determination went hand with political self-determination. That fact had been recognized by the Third Committee in its draft Covenant on economic, social and cultural rights.

38. The great problem of the developing countries however was the economic problem. In order to solve it, they needed the help of investors and should, so far as possible, avoid creating a climate which might discourage foreign investment. In their desire to establish legal principles, they should not give the impression that one day they might carry out nationalizations without compensation.

39. The CHAIRMAN expressed regret that his appeal had not been heeded.

The meeting rose at 12.45 p.m.

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