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GENERAL DISCUSSION OF
INTERNATIONAL ECONOMIC AND
SOCIAL POLICY, INCLUDING
REGIONAL AND SECTORAL
DEVELOPMENTS

Implementation of the Charter of Economic Rights and
Duties of States

Report of the Secretary-General

SUMMARY

1. The General Assembly, in its resolution 40/182, requested the Secretary-General "to submit to the General Assembly at its forty-fourth session, through the Economic and Social Council at its second regular session of 1989, a comprehensive and analytical report, in order to ensure systematic and comprehensive consideration of the implementation of the Charter of Economic Rights and Duties of States in accordance with the provisions of article 34 thereof". In decision 41/440, adopted on 5 December 1986, the General Assembly requested the Secretary-General, in order to facilitate elaboration of the report, to circulate to all States a questionnaire which should inter alia, seek information regarding: (a) their assessment of the implementation of the provisions of the articles of the Charter; (b) all steps taken, including legal and economic regulations aimed at implementing the Charter; and (c) all national programmes and measures aimed at a broader implementation of the provisions of the Charter.

2. The present report contains three parts and an annex. The first part discusses previous reviews of the Charter. The second part contains the current review of the implementation of the Charter while the third consists of the conclusions of the Secretary-General. The annex contains summaries of the replies of the three Member States that responded to the questionnaire distributed to all

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States by the Secretariat. The conclusions of the Secretary-General are that the Charter remains for the most part unimplemented. However, progress has been recorded in some specific areas and there are grounds for measured optimism. The significance of the Charter lies in the concerns that it expresses and in the validity of the basic principles that underly its approach.

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I. PREVIOUS REVIEWS OF THE IMPLEMENTATION OF THE CHARTER

1. The Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)) was adopted on 12 December 1974. Article 34 of the Charter stipulated that an item on the Charter should be included on the agenda of the General Assembly at its thirtieth session, and thereafter on the agenda of every fifth session. Article 34 further states:

"In this way a systematic and comprehensive consideration of the implementation of the Charter, covering both progress achieved and any improvements and additions which might become necessary, would be carried out and appropriate measures recommended. Such consideration should take into account the evolution of all the economic, social, legal and other factors related to the principles upon which the present Charter is based and on its purpose."

2. Since the adoption of the Charter in 1974, there have been several major review exercises for which the Secretary-General has prepared reports. At the thirty-ninth session of the General Assembly, on the occasion of the tenth anniversary of the adoption of the Charter, the Assembly carried out a comprehensive review of the implementation of the Charter. The Secretary-General prepared a report (A/39/532 and Add.1) to assist the Assembly in its review. Member States, intergovernmental organizations and specialized agencies and bodies of the United Nations system were invited to provide the Secretary-General with relevant information to be used in the preparation of the report. In a summary of the views of Governments, in paragraph 69 of the report, it is stated that

"In their replies, Governments offered interpretations regarding the significance and scope of the Charter. In this respect, the opinions proffered by individual Governments were quite similar in their emphasis on the importance and far-reaching implications of the Charter. The replies also reflected uniformly and clearly the view that the Charter remained largely unimplemented."

3. The review of the implementation of the Charter at the thirty-ninth session of the General Assembly resulted in the establishment of an Ad Hoc Committee of the Whole to Review the Implementation of the Charter of Economic Rights and Duties of States. In its resolution 39/163 of 17 December 1984, the Assembly set out the functions of the Ad Hoc Committee:

"To undertake a thorough and systematic review of the implementation of the Charter of Economic Rights and Duties of States, taking into account the evolution of all the economic, social, legal and other factors related to the principles upon which the Charter is based and on its purpose, in order to identify the most appropriate actions for the implementation of the Charter that would lead to lasting solutions to the grave economic problems of developing countries within the framework of the United Nations."

4. The Secretary-General was requested to submit a report on the implementation of the Charter to the Ad Hoc Committee. In the conclusions to that report (A/AC.226/2, p. 11), it was stated:

"There has been and there will be controversy over the Charter. There have been and there will be problems in its implementation, especially during critical periods, as the present one. The Charter is surely far-reaching in its conception and scope of application. But, in a general sense, the objectives and principles of the Charter remain as valid and as important today as they were when they were formulated. Each national Government, as well as the international community, will continue to find in the Charter a source of inspiration to advance the causes of development and international political and economic co-operation among sovereign States."

5. The Ad Hoc Committee to Review the Implementation of the Charter of Economic Rights and Duties of States presented its report to the General Assembly at its fortieth session in 1985. 1/ The report contained no agreed conclusions.

II. IMPLEMENTATION OF THE CHARTER

6. The previous reports of the Secretary-General on the implementation of the Charter, while noting that certain steps had been taken in the direction of implementation, came to the conclusion that the Charter as a whole remained largely unimplemented.

7. That conclusion remains, for the most part, valid today. The past four years have, however, witnessed certain developments that make this a less pessimistic and discouraging conclusion than might be assumed.

8. Any review of the implementation of the Charter must begin with an assessment of its importance and significance. The Charter seeks to establish generally accepted principles and norms to govern international economic relations. The principles and norms are to be based on equity, sovereignty, equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems. The Charter consists of: a preamble which sets forth the purposes and goals of the Charter; chapter I, which enumerates principles that should govern economic as well as political and other relations among States; chapter II, which contains 28 articles enumerating economic rights and duties; chapter III, which relates to common responsibilities towards the international community; and chapter IV, which consists of final provisions, including modalities for the review of implementation of the Charter.

9. The scope of the Charter is extremely broad and its implications potentially far-reaching. The Charter must be seen within the context of the efforts made during the 1970s to create, through the United Nations, the new international economic order. Along with resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 on the Declaration and the Programme of Action on the Establishment of a New International Economic Order, adopted by the General Assembly at its sixth special

session in 1974, and resolution 3362 (S-VII) of 16 September 1975 on development and international economic co-operation, adopted at the seventh special session in 1975, the Charter can be seen as part of the foundation of the new international economic order.

10. This programme was an effort, initiated by developing countries, to restructure international economic relations on the basis of agreed rules and principles. The programme is composed of various economic objectives and policy measures designed to achieve them. As was noted in a report on legal aspects of the new international economic order prepared for the General Assembly in 1984 (A/39/504/Add.1, p. 33),

"The measures are either of an economic-legal content (such as the integrated commodity programme, the generalized preference scheme, the fixing of targets for public aid, the codes of conduct for multinationals and the transfer of technology) or of a political-legal nature aiming at strengthening the weight of less developed countries in the international economic system, such as the reaffirmation and extension of the principle of permanent sovereignty over natural wealth and resources and the claim for full and effective participation in international economic decision-making, etc."

In the same report, it is stated that "the NIEO presupposes, and would inevitably secrete, if followed, a set of organizing legal principles (and norms)" (*ibid.*, p. 33).

11. These legal principles and norms, in effect, the orientation for the legal underpinning of the new international economic order, were to be provided by the Charter. It is precisely this aspect that has made the Charter controversial. The other resolutions that were to constitute the foundations of the new international economic order were adopted by the General Assembly without a vote. It was possible, generally speaking, for Member States to agree upon certain broad fundamental political and economic objectives.

12. The Charter, however, was adopted on a divided vote following a lengthy debate. As has been noted, the Charter continues to arouse controversy, although it should be borne in mind that a great deal of it is generally acceptable and does not generate any particular contention. Those articles of the Charter which seek to establish innovative legal principles have been and continue to be the main object of controversy.

13. The attempt to define, with some specificity, legal and other principles to govern international economic relations did not of course begin with the adoption of the Charter of Economic Rights and Duties of States in 1974. The Charter of the United Nations, more particularly in its Preamble and in Articles 55 and 56, contains broad and generally accepted principles to govern the conduct of international economic relations.

14. Following the coming into force of the Charter of the United Nations, there have been continual efforts to refine these principles and to make them more

specific, so as to have greater relevance to evolving economic conditions. These past attempts, none of which have been completely successful, include the Havana Charter of 1948, the draft Declaration on International Economic Co-operation considered by the Economic and Social Council in 1961 and the General and Special Principles to govern international trade relations and trade policies conducive to development recommended by the United Nations Conference on Trade and Development (UNCTAD) in its Final Act in 1964. In addition to these efforts to formulate general principles, there have been intensive discussions to devise legal régimes to govern the activities of transnational corporations and the transfer of technology, as well as efforts to establish legal régimes for parts of the global commons.

15. One aspect of the significance of the Charter is that it expresses the view of the vast majority of Member States that there is an urgent need for international co-operation to promote economic and social development. In 1974, there was genuine concern that the economic, political and legal régimes in place were not conducive to the development of the developing countries. There was concern with the persistence of poverty in the developing world and the growing disparities in living standards between the developed and developing parts of the world.

16. The concerns that motivated Member States to adopt the Charter in 1974 have not receded in importance in the intervening 15 years. Indeed, these concerns are perhaps even more keenly felt today. In the present decade, many developing countries have made progress but, as stated in a report presenting a perspective of the world economy to the year 2000, "for the majority of developing countries, the 1980s have been years of falling per capita incomes and standards of living" (A/43/554, para. 6 (a)). Furthermore, according to the same report: "The gap between the richest and the poorest countries in the world has widened, and so have the differences among the developing countries" (*ibid.*). Today, as in the past, there are grave doubts as to the adequacy of the existing institutional régimes for trade, money and finance.

17. The severe economic dislocations and problems afflicting many developing countries and the lack of progress in realizing the goals of the new international economic order, of which the Charter is a part, have led to pessimism. Indeed, four years ago, the disappointing experience of the Ad Hoc Committee to Review the Implementation of the Charter of Economic Rights and Duties of States did lead to a somewhat sobering prognosis for the future likelihood of the implementation of the Charter.

18. It has also been noted that "the fate and pace of development of the principles and norms of international law relating to the NIEO is a function of the progress towardr the establishment of the NIEO, because these principles and norms can be fully operational and self-contained as normative propositions, i.e. as legal regulation, only if the subject matter which they purport to regulate is itself settled and generally accepted" (A/39/504/Add.1, p. 103).

19. Four years ago, the crisis of multilateralism cast further doubts on future prospects for the implementation of the Charter. The crisis of multilateralism was

reflected not only in the stalemate in the North-South dialogue, but also in the questioning of the basic efficacy of multilateral solutions and approaches to international economic and social problems.

20. In contrast, at the present time, there is growing recognition of the imperatives of multilateralism. There has been a shift in perception of the nature of the problems confronting the international community. The logic of interdependence and the strength of the forces that are transforming the world economy underline the necessity of international co-operation. Furthermore, few would dispute that such international co-operation must be based on generally accepted rules and principles.

21. The process of elaborating rules and principles that are appropriate to the circumstances of the present is a long and difficult one. This process "is usually a piece-meal, hence a cumulative process, in which new law emerges from practice, precedents, negotiations and pronouncements which are frequently registered in instruments of ambiguous legal nature, in the sense that they do not by themselves confer on their contents the quality of law" (A/39/504/Add.1, pp. 102-103).

22. The two previous reports of the Secretary-General on the implementation of the Charter described in some detail the large body of documentation produced within the United Nations system on some of the key issues raised in the Charter. The diverse reports, studies, analyses and surveys prepared by the United Nations provide information on the extent to which the Charter has been implemented and at the same time assist Governments in reaching agreements that contribute to its further implementation. The forums provided by the United Nations and its system of organizations provide opportunities for Member States to engage in dialogue, discussion and negotiation concerning international economic and social problems. In the past four years, the United Nations system has continued to provide documentation relevant to the implementation of the provisions of the Charter and United Nations forums have been actively utilized by Member States.

23. The slow pace of this process, in a period in which many developing countries are confronted with an economic crisis, has understandably led to frustration. But, as has been indicated (see General Assembly resolution 43/162 of 9 December 1988), the creation of generally accepted norms and principles is by its very nature an incremental process in which the United Nations plays an important role.

24. It is also a process that is directly affected by the prevailing economic and political environment. As noted above, there has been in recent years an important easing of tensions in international relations. While most evident in the political arena, a new spirit of co-operation and a new willingness to seek mutually acceptable accords is also evident in the economic and social spheres.

25. The Final Act of the seventh session of UNCTAD, adopted by consensus, contains the following statement:

"The Conference emphasized that the Charter of the United Nations

provided a basis for the conduct of relations among States in a manner that would promote the shared objectives of revitalizing development, growth and international trade in a more predictable and supportive environment through multilateral co-operation and thus also promote peace, security and stability. In a climate of greater security there would be increased opportunities for diverting resources from expenditures on armaments towards more socially productive uses, including development finance."

"The Conference agreed that mutual benefit, common interest, equality, non-discrimination and collective responsibility, as well as recognition of the diversity of national paths to development, could be the basis of a constructive and action-oriented dialogue which would instil new strength into multilateral co-operation for development." 2/

26. This statement is consistent with the purposes and principles enumerated in the preamble and chapter I of the Charter. Furthermore, in numerous separate areas, where agreement had proven elusive in the past, consensus is beginning to emerge as to the nature of the problems and the types of international responses that are appropriate.

27. In no field are these new trends more evident than in the environment. article 30 of the Charter states that "the protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States", and that "all States should co-operate in evolving international norms and regulations in the field of the environment." In the past few years, Governments have taken environmental concerns much more seriously. More significantly, they have concluded international agreements covering such areas as depletion of the ozone layer and the exportation of hazardous waste. Further forward-looking steps can be envisaged. With regard to this article of the Charter, it can be said that progress toward implementation has been recorded.

28. Regarding other articles of the Charter, the movement in the direction of implementation is perhaps not as dramatic. Nevertheless, some encouraging developments can be noted.

29. The Charter devotes great attention to trade. Articles 4 to 6, 14, 18 to 21, 23 and 26 to 28 relate to different aspects of trade. While it cannot be said in a specific sense that there has been significant further implementation of these articles, there is growing awareness of the seriousness of the threats to the trading system and the kinds of corrective actions that are required. In the Final Act of the seventh session of UNCTAD, it was noted:

"The international trading system is under a severe strain. Protectionist pressures and measures have proliferated and tendencies towards managed trade have intensified. International trade has been affected by restrictive trade policies and restrictive business practices. This is undermining the functioning of the international trading system and retarding the process of structural adjustment. These factors are having a serious impact on trade and particularly on the trade and development of developing countries.

"Although the generalized system of preferences has played an important role in expanding the exports by developing countries, its objectives are not fully achieved.

"The successful conclusion, within the agreed time-frame of the Uruguay Round of multilateral trade negotiations, is important for bringing about further liberalization and expansion in trade, for creating an improved multilateral framework for trade and for strengthening the effectiveness of GATT." 3/

The successful conclusion of the Uruguay Round would indeed constitute measurable progress towards implementation of the Charter.

30. With regard to other articles of the Charter, since the last review of its implementation, important developments have transpired. Article 15 concerns general and complete disarmament and the utilization of resources thus released for developmental purposes. The achievement of general and complete disarmament remains a goal but the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles and intensified disarmament negotiations in various forums are important first steps.

31. Similarly, the further work that has taken place in elaborating a legal régime for the sea-bed, carrying out the United Nations Convention on the Law of the Sea, is relevant to article 29 of the Charter. The process of reform initiated in the United Nations Secretariat, as well as the wide-ranging discussions that have taken place both within and outside of the United Nations on reform of the United Nations system as a whole, indicate that Governments are conscious of the need to improve the efficiency of international organizations and to adapt them to the changing needs of international economic co-operation, as stipulated in article 11 of the Charter.

32. Finally, article 17 of the Charter specifies that international co-operation for development is a shared goal and common duty of all States. There are now many manifestations of the recognition by States that problems of a certain magnitude must be the shared responsibility of the international community. The debt problem, on which there has recently been welcome movement towards more equitable sharing of the burden, is but one example. The adoption by the General Assembly of the United Nations Programme of Action for African Economic Recovery, 1986-1990 (resolution S-13/2 of 1 June 1986) is evidence that States realize that the development prospects of an entire continent can be greatly enhanced by concerted international action. The intense questioning of the efficacy of existing structural adjustment programmes and conditionality is also relevant to the stipulation in article 17 that assistance to States should be "free of any conditions derogating from their sovereignty".

III. CONCLUSIONS

33. The conclusion of this report, as well as of the two previous reports of the Secretary-General, is that the Charter remains unimplemented. However, in contrast to the situation four years ago, when the last review of implementation was carried out, there are today grounds for cautious optimism.

34. With regard to certain articles of the Charter, there have been positive developments in the direction of implementation. Moreover, the easing of international tensions has created a climate in which further progress can be foreseen. Specifically, there has been a renewal of interest in multilateral approaches and a welcome, if belated, recognition of the usefulness and indispensability of the United Nations.

35. The overriding purpose of the Charter is to codify certain principles that will facilitate the achievement of goals shared by all. As has been noted, under the best of circumstances, this would be a long and arduous process in which implementation itself is difficult to define, let alone measure, with precision. Many of the articles of the Charter are cast in quite general terms. Many in fact are statements of general goals rather than the specific actions that would be required to attain those goals. This being the case, evaluations as to the extent to which the Charter has been implemented must also inevitably be cast in general terms. This is reflected in the replies of Governments which have been received and which are summarized in the annex to this report.

36. It is no derogation of the significance of the Charter to state that, if it were being drafted today, some of its specific provisions would undoubtedly be somewhat different. This would be the case with any document of this nature. The true significance of a document such as the Charter lies not so much in its precise formulations as in its intent and its overall conception of the movement of history.

37. Seen from this perspective, the Charter can be seen to have been remarkably prescient. The rapid transitions in economic and social conditions and relationships resulting from technological change will lead to still greater interdependency and integration of the world economy. Such a world economy cannot function well without generally accepted norms and principles. In the emerging complex and interdependent world of the future, new levels of global co-operation will be required to safeguard the security of the planet. The design and management of the régimes and institutions that will be devised for the management of interdependence must involve the participation of the developing world, which constitutes a majority of the world's peoples and nations. The Charter clearly foresaw the need for all of these elements and the principles and goals of the Charter will remain a source of inspiration as future challenges are confronted.

Notes

1/ Official Records of the General Assembly, Fortieth Session Supplement No. 52 (A/40/52).

2/ TD/351, p. 15.

3/ Ibid., p. 31.

ANNEX

Summary of replies received from Governments

1. Cuba, in its reply, indicated that it considers the Charter of Economic Rights and Duties of States to be a fundamental instrument for implementing the new international economic order and for the restructuring of international economic relations. The goal of such restructuring is to eliminate negative trends and to facilitate the development of the developing countries. Cuba has always sought to abide strictly by the principles of the Charter.
2. For developing countries to achieve sustained economic and social growth, international economic co-operation is urgently needed. It is vital to have a body of laws that will systematize and codify the principles and norms to govern international economic relations among States. This is precisely the role of the Charter.
3. A serious and universal dialogue, which is conducive to the emergence of rational and equitable international economic relations and the achievement of structural changes, is necessary. The economic gap between the developed and developing countries is growing deeper. This is due to the crisis of the industrialized capitalist countries, the effects of which have been felt primarily in the developing world. The external debt of the developing countries has become an intolerable burden and it is essential that the creditor countries tackle the phenomenon openly and with flexibility. Protectionism and related problems of trade are becoming increasingly prevalent and the technological gap is growing wider, creating an atmosphere of hopelessness. The continuing failure to implement the provisions of the Charter contributes to this.
4. The absence of international discussions to devise solutions to the main problems of the world economy and the lack of political will demonstrated by a number of developed capitalist countries and the disregard of the new international economic order are flagrant violations of the provisions of the Charter. It is impermissible that a small group of powerful States should frustrate the legitimate aspirations of the international community.
5. The Charter stipulates that no State shall be the object of discrimination based on differences in political, economic and social systems. The blockade that the United States of America has imposed on Cuba for nearly 30 years is a violation of the provisions of the Charter. This is further evidence of the need to implement the Charter for the attainment of international relations that are just and peaceful.
6. In conclusion, Cuba feels that, since the last review of the implementation of the Charter, some further progress has been made. Unfortunately there has also been disturbing retrogression that is reflected in the steadily deteriorating economic situation of the developing countries. Cuba will continue to seek to implement the Charter, which it considers to be an international instrument that remains fully valid and relevant.

7. Czechoslovakia stated in its reply that, since the last review of the implementation of the Charter of Economic Rights and Duties of States, certain developments, some of them positive, could be noted. The generally positive development of the international political situation could also be observed in some aspects of international economic co-operation. The intensification of official contacts between the Council for Mutual Economic Assistance (CMEA) and the countries of the European Economic Community at the multilateral and bilateral levels was a reflection of the improved political and economic environment.

8. The intensifying Soviet-American dialogue, as well as the settlement of regional conflicts, could positively influence the further development of international economic co-operation in the spirit of the Charter. The tendency of some States to continue to interfere in the internal affairs of other States must however be seen as a negative development.

9. Certain specific practices constitute persisting obstacles and constraints to the implementation of the provisions and aims of the Charter. Among these would be restrictions on the exchange of goods based on military-political concerns and the ever-exacerbating debt problem, which cannot be resolved by current approaches.

10. Czechoslovakia continues to be guided by the principles of the Charter. This has been given concrete expression by the ever fuller opening of the Czechoslovak economy to the outside world and by the creation of economic and political conditions to support international economic, as well as scientific and technological co-operation. Approved rules of economic reform are being adopted to create more favourable conditions for co-operation in the environment and in other fields. New economic legislation has been instrumental in the establishment of joint ventures and has allowed individual economic organizations and enterprises to make wider use of direct contacts with trading partners outside of Czechoslovakia.

11. Czechoslovakia, in observance of the provisions of articles 1 and 2 of the Charter especially, will continue to contribute to the trend of creating favourable conditions for broader international co-operation. More extensive international economic co-operation depends upon the global political and economic climate. The Czechoslovak Government is optimistic about further positive developments in this field.

12. In its reply, the Union of Soviet Socialist Republics stated that the real significance of the Charter of Economic Rights and Duties of States lies in the fact that it embodies principles of international economic relations which, at a time of growing interdependence, provide guidelines for developing multilateral economic co-operation, for co-ordinating the democratization of economic life at the national and international levels and for solving global problems, including the problem of development.

13. The provisions of the Charter still have contemporary importance even if there has been negligible progress in realizing the goals contained in the Charter. The worsening of international economic and social problems underscores the relevance of various provisions of the articles of the Charter.

14. The international community currently has an unco-ordinated approach to the interrelated problems of development. The United Nations and organizations of the United Nations system have a special role to play in developing a concerted multilateral approach to various aspects of international economic relations, to the co-ordination of macro-economic policy and to the formulation of consensus agreements balancing the interests of all States.
15. The concept of international economic security is intended to promote multilateral dialogue to reach consensus on ways of creating conditions for predictable, stable and reliable development of the world economy. Recent events show that a realistic, consensus-oriented approach sets the stage for specific solutions to many of the problems impeding world economic development.
16. The easing of international tensions, as exemplified by disarmament agreements and movement towards the ending of regional conflicts, is directly related to the implementation of the provisions of the Charter regarding disarmament, peaceful coexistence, peaceful settlement of disputes, respect for human rights and international co-operation.
17. Many of the matters of concern to mankind today were foreshadowed in the Charter, but their scope and complexity have increased immeasurably in the past 15 years. This is particularly the case regarding foreign debt. The intensive dialogue on this issue should be helpful in the search for solutions.
18. There is today heightened awareness of the environmental crisis. There is recognition of the need, as emphasized in the Charter, to make the activities of international economic organizations more universal and effective. Consensus is gradually emerging on ways and means of implementing the provisions of the Charter relating to the freedom of every State to choose its economic system, non-discrimination in economic matters and the prohibition of the use of coercive economic measures. There is also a measure of consensus on specific aspects of United Nations activities relating to transnational corporations.
19. The recent successes achieved in the development of common approaches to international economic issues should be built upon in the negotiations for formulating the international development strategy for the United Nations fourth development decade and during the special session of the General Assembly devoted to international economic co-operation, to be convened in 1990. Special attention should be given to enhancing the effectiveness of international organizations as instruments for constructive multilateral dialogue and to furthering negotiations to balance the interests of all participants in world economic relations.
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