

# ETHNO-RELIGIOUS AND POLITICAL DYNAMICS IN THE APPLICATION OF REFUGEE LAWS

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## **Abstract**

*Since its emergence in international law, the United Nations Organization's 1951 Convention Governing Refugee Status (hereafter refers to as 1951 Geneva Convention) has acted as type genus of the international protection law because it is the earliest document which defines and describes refugee in pure legal environment. The refugee is a legal concept in international law, where states are enjoined to comply with certain obligations, but it was established under strong humanitarian principle. Its legality, however, does not diminish states' right to sovereignty and protection of territorial integrity. Notwithstanding, states have often found relief or escape from the obligations of international protection law especially when local dynamics prevent wholesome adherence to the principles of international protection law. It is common place to witness the interference of religion, politics, sectarianism et al, in refugee asylum administrations. This work highlights some of these instances with the hope that subsequent studies will sniff out more areas of these dynamics.*

**Keywords:** *Refugee Laws, Politics, Religious, Ethnicity, Applications*

## INTRODUCTION

Since its emergence in international law, the United Nations Organization's 1951 Convention Governing Refugee Status (hereafter refers to as 1951 Geneva Convention) has acted as type genus of the international protection law because it is the earliest document which defines and describes refugee in pure legal environment. The refugee is a legal concept in international law, where states are enjoined to comply with certain obligations, but it was established under strong humanitarian principle. Its legality, however, does not diminish states' right to sovereignty and protection of territorial integrity. However, a certain constraint was discovered by 1967 when it was observed that the January 1, 1951 dateline of its operation must be abolished to give vent and widen its competence in relation to refugee incidents which occurred after 1951. The 1967 Refugee Protocol ensconced equal refugee status to all, irrespective of the January 1, 1951 dateline. Notwithstanding the abolition of the dateline and the treatment of other defects, the 1951 Geneva Convention still has proven inadequate in addressing all refugee and asylum contraventions, Soon, states quipped on its optional framework and started to decline obligations under the refugee convention. States' unwillingness to accept the intervention of the refugee convention in their immigration practices stemmed from the legal approach which the convention introduced to the system of movements across states' frontiers. The convention's stance is anathema to states border control rights and it was perhaps the earliest limitation on states' rights to border control measures like closure and rejection of admission of undocumented migrants. Hitherto, admission of migrants had been seen as a purely humanitarian act where migrants had little or no recourse to law for rights revocations.

## Literature Review

Academics in the study of refugee laws seem to have agreed that the international protection law has acquired the status of customary international law, that is, a "jus cogens" (Hathaway, 2005: 5) which is accepted and recognized by the international community as a norm for which no derogation is permitted. This provision has ignited a serial avoidance of the 1951 Geneva Convention by states since they are not prepared to be answerable to its legal limits and interpretations. Some other states accept the jurisdiction of the international protection law but have found ways to subject it to local interpretation showing the peculiar trajectory of their migration challenges. There are other views about the international protection law, many of which suggest major discomfort with its frames. This concern informs either its disavowal, endorsement, or factorial interjections, being the general direction of this study.

## Methodology

The study is both observatory and exploratory as attempt is made to establish some interruptions in the application of refugee and migration laws. Refugee legal instruments and texts are content analyzed to tease out relevant information for the study. Newspapers and other media reportage are explored for good measure. Informal interviews and generally discussions are of great relevance to this work and secondary works are content analyzed.

## The International Protection Law and Specific Regional Refugee Challenges

Two years after the Geneva Protocol of 1967, the refugee convention started to witness subtle legal and political queries (not outright formal objection) from some states that felt that in spite of the protocol which was meant to address the shortcomings of its 1951 parent, the international protection law was yet to attend to their peculiar refugee issues.

The recognition of the AU Refugee Convention that refugee matters need humanitarian approach is an African presage by addressing the colonial vestiges which produced refugees in a manner not captured by the 1951 Geneva Convention. The humanitarian approach of the AU convention sets it apart from the primary sources of refugee protection laws. In the years preceding the formation of the OAU in 1963, many African people, were trying to achieve liberation from European colonial powers. The struggles against colonialism presented its refugee challenges as about one and half million people had been displaced outside their home countries (Onyango 1991:3). At this time, most African refugees were product of anti-colonial struggles. The basis of the 1969 OAU Convention was to attend to specific and regional refuge problems in Africa but as Paul Weis observed, the drafting of the 1951 convention did not have specific restrictions in mind when the terminology 'refugee' was used, it was expression of legal term which was supposed to be used generally (Weis, P. 1978 :1).Notwithstanding, the 1969 OAU Convention sets a basis for refugee jurisprudence and practice in Africa to attend to African refugee crisis. The convention incorporated both substantively and in mandating wholesome collaboration with the machinery of enforcement to accommodate victims of colonial struggles.

Going by the standards of the UN refugee convention, African refugee cases could be easily excluded from official recognition and benefits, because the perspective of the UN Convention was that refugee is a one-time problem which required one-time solution., The UN refugee document had little relevance to African refugee situation (Onyango, 1991:4). In 1969, the sixth session of the OAU adopted its own protocol for refugees. The OAU Refugee Convention incorporated the 1951 UN Convention on Refugees, but expanded the definition of refugee. The Convention however regards the UN 1951 Refugee Convention and the 1967 Protocol as primary sources of refugee laws, its expansion notwithstanding.

For South America, long after the 1951 Refugee Convention came into operation, states in Latin America started to witness influx of refugees who flee as a result of states coordinated violence and extreme violation of human rights. In the early 1980s the admission of refugee became seriously politicized in Latin American states when some states began to disallow their citizens from seeking asylum even in the face of obvious persecution and human rights violations. Thus, refugee admission or rejection in Latin America became submerged under political undercurrents of states in the region. This

situation necessitated the 1984 Cartagena Declaration on Refugees, or just Cartagena Declaration which became an instrument for the protection of refugees and was adopted by delegates from 10 Latin-American countries, namely: Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela. The Declaration has since been incorporated into the national laws and state practices of 14 states in the region. The declaration is the result of the "Colloquium on International Protection for Refugees and Displaced Persons in Central America, Mexico and Panama" (Cartagena Declaration on Refugees, 1984)., which was held in Cartagena, Colombia from 19 to 22 November 1984.

The Cartagena Refugee Declaration obviates the politicization of the asylum system and the international protection law which some states in the region had allowed to severely intervene in refugee administrations. Despotic regimes in the region, especially Venezuela, often closed its borders to refugees who are escaping from human rights violations in their home countries. Such regimes also usually accuse other refugee receiving nations, like Brazil, of instigating unrest and civil disobedience in their country. The Cartagena declaration clears member states from such wild allegations provided the refugees from the despotic states are equipped with petitions seeking admission in other states (Cartagena Declaration on Refugees, 1984).

The AU Refugee Convention does not create a vertical space free of political flavours for African refugees as the Cartagena declaration does in South America. The AU Convention did not anticipate political interests in refugee admissions while drafting the convention and when these started to mark political relations amongst states in Africa, little was done to lessen its impact. The application of refugee laws in Africa is a political phenomenon, just as the study of refugee in the continent can be viewed from political context. African refugee crisis started in the 1960s and growing the years afterwards, this period coincided with the time when most African nations became independent states. Decolonization and process of transfer of power created socio-economic eruptions which laid the foundation for political strife and refugee producing phenomenon, the first twenty years (1965 – 1985) of African's application of refugee laws had been those of obedience to the laws (Horn of African summit April 9 1992). Partly because the continent saw refugees as victims of colonial oppression, and as such, their protection was a duty onto African liberation and service to mankind. Again, the relative economic buoyancy which some states in the continent experienced was another reason for the early African states' adherence to application of refugee laws.

Thus, in the Great lakes' region where political and ethnic conflicts between the Hutu and Tutsi tribes traversed states border lines of Burundi, the Democratic Republic of Congo and Rwanda and this generated millions of refugees. Reception or rejection of refugees by such states as Uganda, Kenya and Tanzania also reflected ethnic bias in refugee administrations in that region.

In the Horn of Africa, Ethiopia, Eritrea, Somalis and Sudan are major refugee producing nations, most of the refugees found protection within countries in that region, Egypt and Kenya. The Southern Africa region today has produced fewer refugees comparatively. In the past the struggle against colonialism racism and apartheid especially in Angola and Mozambique really exacerbated the refugee situation in that region. Lately however, the economic depression and unpalatable political situation in Zimbabwe is recreating upsurge in refugee production in that region and creating diplomatic tension between that country and South Africa which play host to most of the refugees.

The West African sub-region also has its own refugee challenges. Nigeria had played host to thousands of refugees from Ghana between 1960- 1985, these Ghanaians were victims of unbridled fiscal indiscipline of the leaders of that country thus leading to harsh economic condition. The governments of Chad and Niger have not demonstrated the capacity to solve the perennial economic problems of their nations. That lack of capacity vibrates in the socio-economic challenge, which Nigeria government has to contend with. But the civil wars in Liberia and Sierra Leone are clearly sources of refugees in West Africa sub-region. Nigeria and Guinea are two countries that host majority of the refugees from Sierra Leone and Liberia. Guinea because of her geographical proximity to both countries, for instance only a tiny river divides her from Sierra Leone. Nigeria got entangled in the refugee management web from these countries, first because of her role in the formation of ECOMOG and relative to that was because of her economic and political influence within the sub-region. Nigeria is currently a refugee producing state because the perennial insurgents' challenges in the Northern part of the country.

The above is a summary of how Africa countries allow political considerations interfere with the application of refugee conventions, but beyond this there had been cases of utter disregard for the basic rights of refugee within the continent. While conventional breaches are direct government policy option or instigated by it, disregard for the basic rights of refugees is largely the function of the citizens of the host country against the refugees. But government indictment can be identified when the government of the host country refused to give adequate protection to the refugees. Protection of refugees from armed bandits is the responsibility of the government of the host country, especially when refugee camps are located close to the border of source of refugees. There is a thin line between incapacity to provide protection and refusal to do so, because acceptance of hosting refugees suggests the ability to tackle all the problems emanating from it. It has been discovered again that neighboring states around troubled nations show genuine interest in finding solution to the political crisis in that nation, just to escape the possible burden sharing of the political crisis in that country as refugee influx from it is a possibility. Many efforts by South African Government under the leadership of Jacob Zuma on the

Zimbabwean political crisis come to mind easily here. South Africa is the direct recipient of refugees from troubled Zimbabwe, so South Africa's effort in finding solution to the political crisis in that country is a political calculation to avoid further influx of refugees from Zimbabwe to her country and to prepare the ground for possible repatriation for those already within, but to a safe country.

### **Migration Laws and Dynamics of Politics**

Across Europe, United States and other developed countries, the international protection law has come under severe political influence to a degree where its mutation holds irredentist appeal to those who seek victory at the polls. This blitz follows the refugee and migrant crisis which flowed from series of political upheavals in the Arab World which began in late 2010. The Arab Spring, with respect to demographic shattering, is only equaled by the refugee crisis in Europe after the Russian Industrial Revolution of the 1930s. Politicians exploited the influx of refugees knowing full well the potentials in using that as basis of reclamation of their states from strangers who have come to make them home. The situation becomes dire for those in authority who have obligations to international protection treaties that they have signed to. Many of them had to contend with oppositions who run their campaign on nationalist emotions targeted at dismantling national obligations to international asylum laws.

Denmark which had an outstanding record in refugee protection, suddenly in 2012, became one of the countries in Europe which treated refugees together with the international protection law with disdain. Before then, Denmark accommodated the largest refugees from the Arab Spring crisis, when calculated in proportion to her population and demography (euro news: Denmark: 2021/06/03). But by 2013, Denmark acquiesced, under demographic, economic and political pressures to a systemic disruption of her obligations under international protection law. The Danish Parliament first went off the beaten path, when at the close of 2012, called for the review of the Danish Refugee obligations. Few months later, the government announced closure of her borders to certain categories of refugees especially those from Syria. Denmark started flagrant disobedience to certain provisions of the 1951 Geneva Convention. In clear contempt of the Convention's principle of non-refoulement, many refugees were returned without examination of their cases. The government went further to enact a law which criminalized rendering of assistance to refugees and accommodating them. Under this law many Danish citizens were prosecuted. The United Nations Commissioner for Refugees (UNHCR) cautioned that "such practices undermine the rights of those seeking safety and protection, demonize and punish them and may put their lives at risk". In spite of the UN agency warning, some Danes were recorded to have been prosecuted, this event brought Lisbeth Zornig and other almost 300 Danes to global consciousness as they were taken to court for giving asylum seekers lifts around the country or to neighboring Sweden demography (euro news: Denmark: 2021/06/03). Since 2013, politicians in Denmark have used the international protection laws as major campaign instruments.

The refugee crisis occasioned by the Arab spring opened a new vista in European political development to the extent that it acted as a stimulus which generated domestic political responses on one hand and stimulated foreign policy and diplomatic relations of the region, on the other hand. The interplay of these processed Europe into a continent with a high caliber politicization of refugee laws. For instance, in Germany, in spite of the opposition by politicians, Angela Merkel was able to take in 1,404,55 refugees and migrants between 2015-2017 making Germany the highest refugee receiver state in Europe. Germany's obligation to the international protection law was heavily criticized by other European states, especially those contiguous to her who accused Germany of flooding Europe with refugees who eventually would seek further asylum in third states. Countries like Hungary, Denmark and Switzerland were especially critical of Germany, and Hungary in particular, sought the intervention of the European Union on this.

France perhaps projects immigration as a major interjection in her politics and policy more than any other European state. Long before the demographic ruction occasioned by the Arab Spring and the Syrian refugee crisis, France had refugees and migrants influx from 1999 to about 2001, comprising of the Kurds who escaped from persecutions in some Middle-East States (Van Mol, Christof; de Valk, Helga , 2016). This incidence was later to cause diplomatic tension between France and Britain where the latter accused that France was turning into a transit state like Italy. This was just an instance where immigration issues generated tension between France and her neighbours Within France, immigration had been a popular slogan on the lips of politicians because they know its electoral utility and its schismatic value in mobilization. For instance, during the 2017, general elections, Marine Le Pen used anti-immigration rhetoric as connecting idiom with which she touched base with nationalist elements of France. Emmanuel Macron on the other hand relied on the preponderance of migrants in France and developed pro-immigration programme which worked for him and improved his pre-May 2017 rating.

From policy point of view, France has shown that migrants have profound influence in some of her reforms and policies. This is because the migrants' population in France had risen from 5.6 percent in 1999 to 9.7 in 2018 and that figure is not negligible in the entire population of France. In France, there had been a number of legislative reforms where laws were passed in 1980, 1984, 1987, 1989, 1993, 1997, 1998 etc. to accommodate migrant challenges. In fact, it has been recorded that France is the only country to have witnessed a large-scale migrant social movement since the 1970s: the rent strikes in the 1970s, the "second generation" movement in the 1980s, and the *sans papiers* (those without documents) mobilization in the 1990s. All of these events serve as engineers of France's immigration laws (Van Mol, Christof; de Valk, Helga, 2016).

The emergency of Donald Trump as president of the United States provided anti migrant framework for western politicians who were essentially right-wing ideologues. Trump's "America First" was a rallying slogan for all conservatives who saw in it, a plausible rejection of migrants and other non-American elements. The rise of Barak Obama as the 42<sup>nd</sup> president of the United States showed the fluidity of American political system which was capable of throwing up a leadership permeable by migrants. The first casualty of Trump's irredentist leadership was the immigration policy of the United States, and during his many campaigns he promised to build a substantial wall on the United States–Mexico border and to force Mexico to pay for the wall. Trump has also expressed support for a variety of "limits on legal immigration and guest-worker visas", including a "pause" on granting green cards, which Trump says he would "allow record immigration levels to subside to more moderate historical averages" (The New York Times: Oct. 1, 2020). He proposed a birthright citizenship which was a clear prevention of migrants' political development. Trump also attacked the very foundation of Obama's migrants' support when he abrogated the Deferred Action for Childhood Arrivals (DACA) Executive Order of 2012 which enabled an estimated 800,000 young adults ("Dreamers") brought illegally into the U.S. as children to work legally without fear of deportation. President Trump announced in September 2017 that he was cancelling this Executive Order with effect from six months and he called for legislation to be enacted before the protection phased out in March 2018 (The New York Times. September 5, 2017). Immigration was signature issue throughout the life of Trump's administration and he appeared to have some phobia for migrants' political value. Trump sees migrants as embroiders of unpopular candidates in US elections and he ascribed the victory of Obama to the support of migrants while he believed that the natural winner of 2012 general election was Mitt Romney whom he said lost to the interference of the Latino and Asians in the United States. Trump's immigration rascality enjoyed some internationalization as some leaders copied his matrix and they processed anti-migrant idioms which they used to gain victories at the polls. Others, like Angela Merkel of Germany who opposed such electoral measures were attacked and called weak leaders (Ainsley, Julia; Soboroff, Jacob, February 24, 2021).

Angela Merkel's entrance as German's Chancellor over straitened the appeal to anti-immigration as electoral catch-phrase. Immigration, for Germany, became a huge challenge after the Syrian crisis, Merkel and her party, the Christian Democratic Union (CDU) did not need to appeal to it as early as 2005. However, when it mattered, the CDU stood firmly in favour of anti-immigration while Angela Merkel herself deviated from her political party stance on the issue. In August 2015, Chancellor Merkel announced that Germany would also process asylum applications from Syrian refugees if they had come to Germany through other EU countries. That year, nearly 1.1 million asylum seekers entered Germany. But, leader of the Christian Social Union (CSU), the Bavarian version of the CDU, attacked Merkel's policies. Seehofer criticised Merkel's decision to allow in migrants, saying that "[they were] in a state of mind without rules, without system and without order because of a German decision.". Perhaps, Horst Seehofer is oblivious of the fact that Germany is a signatory to the UN Refugee Convention and Protocol. The right to asylum in Germany is codified in article 16a of the German Basic Law. In its law, it is constitutional to protect human dignity. There are general rules and norms for admission of refugees and handling refugee claims, these are codified in the Asylum and Residence Act of the Federal Republic of Germany. The Asylum Acts, states the process and consequences of granting and denying asylum whereas the Residence Act provides rules concerning the entry, stay, exit and employment of foreigners in Germany (The New York Times, Oct. 22, 2021).

Immigration will be at the front burners of the campaigns in the forthcoming elections in Germany which would see to the replacement of Merkel as new Chancellor will emerge. Although the Christian Democratic Union would want to personalize the pro-immigration policy to Merkel as a person, the right-wing parties hope to increase their electoral tallies on the strength that the influx of migrants to Germany, especially those from Syria, is a threat to Christians and German culture.

### **Religious Interjections in Immigration Policy**

International law generally has been seen by some Islamic countries as the conspiracy of western and Christian nations. To them, international law is a settlement which took its sources from the Peace Treaty of Westphalia of 1648 – an event which settled the Christian crisis between the Roman Catholic Church and The Protestants. In consequence, Islamic nations have vigorously claimed that they did not take part in the making of the principles of international law in spite of its gaining wider usage. This background provides the explanation of most Islamic states to international law especially when it is of superficial relevance to their goals. The international protection law suffers the same fate as almost all Arab and other Islamic states are not signatories to the 1951 Geneva Refugee Convention.

The reasons adduced for Islamic states' rejection of the Refugee Convention were more religious than any other explanation. Ahmed Abu Al-Wafa, a Cairo University law Professor and Dean of faculty of Law has opined that Islamic states need not the Refugee Convention's guide for treatment of Refugees since the Shari'ah has clearly stated how refugees should be treated. According to Al-Wafa (2009) in his work titled "The Right to Asylum Between Islamic Shari'ah and Refugee Law: A Comparative Study", all the principles embodied in modern international refugee law are to be found in the Shari'ah and protection of refugees, their property and families, the *non-refoulement* principle, the civilian character of asylum, voluntary repatriation – all are referred to in the Holy Qur'an (Al-Wafa 2009:45). Professor Abou Al-Wafa goes further to say that:

All these values are part of Arab tradition and culture...and they describe how Islam respect refugees including non-Muslims, forbids forcing them to change their beliefs: avoids compromising their rights, seeks to reunite families and guarantees the protection of their laws and properties (Al-Wafa, 2009:51).

Islamic states' refusal to work under the principle of the 1951 Refugee Convention has not prevented their contributions to combating major crisis confronting mankind and the United Nations High Commissioner for Refugee (UNHCR) has found a way to include the Islamic states in its work without requesting any obligations relating to the Refugee Convention. For instance, the Organisation of Islamic Conference (OIC) adopted in 1990, a Declaration on Human Rights in Islam stipulating that every human being fleeing persecution has the right to seek asylum and receive protection in another country (Al-Wafa, 2009:87). Essentially while it is correct to say that Islamic States are not a signatories to the UN Refugee Convention and Protocol, the countries have some degree of mechanisms that they use to respond to refugee crisis.

The sectarian and schism-based religious competition in the gulf also has some impact on religious interjections of general asylum system in the Arab world, even as they are not signatories to the refugee convention. For example, Saudi's response to refugees from Syria reflect the sectarian dichotomy between the two states even though they are both Islamic. According to Michael Stephens, the Saudi authorities sensed a deep alliance between *Al Bashir* of Syria and the Iranian government and with that lens, Saudi's response to refugees from Syria could not be freed from the prejudice between Sunni and the Shiite. In addition to this is the fear that terrorists would infiltrate the ranks of genuine refugees. This concern was exacerbated by the Islamic State bombing of Saudi mosques in May and August 2015. According to Michael Stephens:

Many Sunni areas in Syria have served as base for the Islamic state, which the Saudi and UAE air forces are helping to bomb. Islamic State is hostile to the Saudi regime, and it's important to them whether the refugees are fleeing Islamic State or the bombing (Michael Stephens, 2020).

The administration of asylum system in Saudi Arabia has opened yet another vista in refugee studies. Saudi response to refugee shows that in the application of national policy, states are often prejudiced in determination of who benefits from refugee scheme and it shows again, that notwithstanding the ground rules about refugee, national interests are superimposed on humanitarian considerations.

The refugee crisis in Syria has shown how refugee and asylum administrations can suffer religious contaminations because many states that admit refugees from Syria do so under some religious and sectarian considerations. Turkey has been accused of selective refugee admission based on religious consideration as many non-Muslim Syrians have been denied admission. Although, the Turkish home affairs Minister has denied this, evidence has shown that Christian Syrians have been referred to other European states to seek asylum rather than in Turkey. Slovakia is the direct opposite of Turkey in religious based refugee acceptance. Although Slovakia is not exactly a choice destination for refugees, it has played some roles in admission of refugees from Syria. The country is predominantly a Christian country and it prefers to admit refugees who are Christians because according to the authorities there, Muslims cannot be fully integrated in Slovakia because "we don't have any mosques in Slovakia, so how can Muslims be integrated if they are not going to like it here?".

## Conclusion

Many of the contours on the ways of application of the international protection law are developing into a conundrum where suspicions have been raised about effectiveness of the international protection law. What exacerbates this concern is that compliance with international law obligations is only operational when a state maintains a genial perspective toward it. From its inception, international law has been colligated along primary objectives of a state because generally no state has made it an essential part of its foreign policy goals. Compliance or otherwise with international law has always been a matter of convenience for states where critical goals override its consideration. For instance, in the League of Nations, determining whom to protect was a selective political process as it was clear that only a fraction of refugees enjoyed legal protection (Goodwin & McAdam, 2007: 116). The League appeared to be doing the bindings of the members of the League Council. The fact that Mussolini and Hitler were influential members of the Council prevented extension of protection to refugees from Italy and Germany because the League was avoiding the provocation of these two super members (Goodwin & McAdam, 2007: 116). The High Commissioner in 1936 identified only 150,000 people from eight national categories in analogous circumstances to Russian and Armenian refugees; 130 Assyrians and a small number of Marteregrin in France; 19,000 Assyro-Chaldeans in the Caucasus and Greece, 9,000 Ruthenes in Austria and Czechoslovakia; 100,000 refugees in central Europe, 16,000 Jews in Romania and 130 Turks in Greece (Goodwin & McAdam, 2007: 117). These political flakes resulted in protection gaps when refugee definitions became divorced from events, as such, Germany, Italy and Spain were not identified as refugee producing nations in spite of the political upheavals in these countries (Meron, 1989:17).

From the above, it shows that international protection law has never been free from ethno-religious and political dynamics even from its spring. Recent events, as highlighted in the work, show that states relate with international law from the point of view of their national interest, herein refers to as dynamics. But all of this has left refugees and migrants clearly in a limbo because on the long run, international law alone is not a sufficient instrument to attend to their disconsolateness.

## NOTES

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