

SUBMISSION TO THE UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS.

FIFTH SESSION, AUGUST 3 - 7, 1987 GENEVA, SWITZERLAND

STATEMENT ON REVIEW OF DEVELOPMENTS SINCE THE FOURTH SESSION

METIS NATIONAL COUNCIL

Madame Chairman, members of the Working Group:

Since the last session of the Working Group, the Metis National Council, the sole representative of the Metis Nation of what is now Western Canada, has continued to be actively involved in the Canadian government and Aboriginal Peoples' constitutional process which was entered into in 1983, with the first Constitutional Conference.

Unfortunately, as you witnessed Madame Chairman, the fourth and last legally guaranteed First Ministers Conference on Aboriginal Constitutional Issues ended in the failure to arrive at an agreement by virtue of the government's refusal to recognize the inherent right of the Aboriginal Peoples to be self-governing, albeit within the sovereignty and territorial integrity of the Canadian State. On a more positive note, the Aboriginal delegates to the FMC came out with their dignity intact and a form of solidarity, required to continue the struggle.

Coupled with this form of continued rejection of the right of self-government, the federal government continues to deny the existence of the Metis Peoples' Aboriginal right to land. The government continues to falsely maintain that the unilateral action of the federal parliament in the late 1800s and early 1900s has, by a legal concept they call the Supremacy of Parliament, extinguished the Aboriginal title of the Metis. This federal government action witnessed the division of Metis lands through the allotment of a specified number of acres in fee simple, outright ownership to individual members of the Metis People. There was no negotiation. There was no consent obtained, informed or otherwise and we maintain that our land rights are still intact, and in any event, that such a right is inalienable.

Through wide-spread speculation and fraud, the whiteman that colonized western Canada benefited from that governmental scheme. It is now time that our people benefited. However, we continue to be excluded from the Federal governments Comprehensive Claims Policy.

In the province of Alberta, in the 1930s, the Metis people and their organization were able to secure about one million acres of land. Since then, some of it has been retaken by the province when oil was discovered. Today the Metis of that province are seeking additional land, along with the constitutional protection of their existing land base.

In the province of Manitoba, the Manitoba Metis Federation has initiated court action against both the federal and provincial governments for violating the land rights of the Metis of that province and those descendants of the Metis of 1870 who now live outside the province. The land rights of those Metis had been constitutionally protected by the Manitoba Act of 1870. Although the MMF has initiated this court action, they remain willing to arrive at an out of court negotiated settlement.

Coupled with this continued refusal to recognize our right to a land base and self-government, is the continuing denial by both levels of government, federal and provincial, as to which government has the constitutional jurisdiction to deal with us. We maintain that it is the Federal government which has the constitutional jurisdiction and responsibility to interact with our Nation.

As well, one would have thought that the involvement of the provincial governments, along with the open and televised talks would have made a significant change in the attitude of non-Aboriginal peoples. That this is not so can be seen from remarks made by the Premier of Saskatchewan in May of this year that "if AIDS got into the Aboriginal community, it would be hell on wheels". His office later stated that the Premier saw no need to apologize to the Aboriginal community. The general public also did not make an issue of such a racist attack on the integrity of the Aboriginal community.

Since the April talks, the member organizations of the Metis National Council have actively continued pursuing the re- opening of the constitutional talks, along with a process of tri-partite negotiations with the federal government and the respective provincial governments. From a pragmatic perspective, the Metis must continue seeking a dialogue with the governments of Canada. While pursuing political/ constitutional rights, we must continue negotiating services and developing policies which may help address the serious socio-economic problems encountered on a daily basis by our people.

We took note yesterday of the Canadian delegations remarks with respect to the Metis. While it is true that we are seeking the continuation of tri-partite discussions, it may be premature to state that they have been formally re- established, although the potential for resumption has been looking favourable.

Reference was also made to discussions geared towards obtaining a

constitutional accommodation for the concerns of the province of Quebec. Here is a case where the same governments who refused to recognize Aboriginal Peoples' rights for constitutional entrenchment because they didn't know what it meant, several weeks later were prepared to accept conditions for Quebec's inclusion, although they didn't know what the consequences would be. For Quebec, it is sign, then define; for the Aboriginal Peoples it is define, then sign.

Perhaps this recent experience will be an example for First Ministers when next we meet. Where once they have found the political will, they may be able to find it again. In the meantime, we are continuing our efforts to convince the federal government through their hearings on the Meech Lake Accord vis-a-vis Quebec, and with similar hearings in the province of Manitoba that any new amendments to the Canadian Constitution, must as a minimum, constitutionally guarantee a process of negotiations leading to the recognition and protection of our rights.

Madame Chairman, we call upon the members of the United Nations and representatives of Indigenous Peoples and Nations to support our efforts.

BACKGROUND NOTES ON HISTORICAL METIS LAND RIGHTS

METIS NATIONAL COUNCIL NOVEMBER, 1986

I. THE IMPORTANCE OF LAND FOR ABORIGINAL PEOPLES

To the aboriginal or indigenous peoples of the world, the centre of life revolves around the land. Land is believed to have been provided to the collectivities of aboriginal peoples for their spiritual guidance and physical well-being. The land determined how aboriginal societies would develop and operate, based on the environment and natural resources available. Socialization and governance flowed from this intimate relationship with the land. For aboriginal peoples or nations to continue existing, land is a prerequisite.

By virtue of this intimate inter-relationship between the native inhabitants and the land, the land is rendered inalienable. It is a natural right; a right essential for the continued vitality of the physical, spiritual, socio-economic and political life and survival of the indigenous peoples for generations to come.

II. LANDS HISTORICALLY OCCUPIED BY THE METIS

The Metis, descendants primarily of the Cree and Ojibwa Nations, are geographically located in western Canada. The Metis developed into a

distinct nation, with close ties to, but separate from the Cree and Ojibwa, with whom the Metis co-existed. The Metis National Council, except for the Metis in the Northwest Territories, represents the historic Metis who live within or have moved from the area currently known as Northwestern Ontario, the three Prairie Provinces, Northeastern British Columbia and the Northwest Territories.

The central activity around which this distinct community of people developed was the fur trade. As a consequence, established communities appeared along the fur trade on freighting routes in the Northwest, as far north as the Mckenzie River.

In the early years, the Metis developed economic, social, political and religious institutions in their communities. After 1750, the Metis became a dominant force in the economic system and in the social and political life in the Northwest. By the late 1790's it is estimated that there may have been as many as 10,000 Metis.

By the late 1700's a small number of Metis were settled on river lots along the Red River. After 1821, a steady stream of Metis arrived at the Red River from all parts of the Northwest. As a consequence, the Red River became the economic, cultural and educational center for the Metis Nation.

With plans for the transfer by Great Britain and the Hudson Bay Company of Rupertsland and the Northwest Territories to Canada in 1869, the Metis people expressed their sense of nationhood and rights as an aboriginal people to their lands.

III. SUMMARY OF THE RECOGNITION OF METIS LANDS

1. IN MANITOBA

With the setting up in 1869 of the provisional government of the Red River, the Metis people expressed their inherent and national rights to their land and government.

As a result, the federal government of Canada was persuaded to negotiate, along with the delegates from the Red River, the terms of the Metis Nation's entry into Confederation. The result of these negotiations led to the Manitoba Act, 1870 which provided for the admission of Manitoba as a province into Confederation. This agreement and Act has been viewed by the Metis as a solemn and binding Treaty with the Canadian government. However, the provisions of the Manitoba Act did not deal with the Metis Nation outside of the old province of Manitoba. This area was subsequently partially dealt with through the Dominion

Lands Act.

Although the Metis wanted to retain the continued ownership and control of their public lands, the delegates were convinced that the dominion required the ownership in order to generate the financing and resourcing necessary for the opening of the west for settlement and commerce. The delegates were assured that a portion of the land to be included in the new province would be left in Metis ownership.

The result was Section 31 of the Manitoba Act which provided for 1.4 million acres of land to be set aside for the Metis towards the extinguishment of their Indian title, which 1.4 million acres was to be distributed to the children of the Metis (Half breed) heads of families. It also provided that the Governor-General in Council grant the lands to the children in "such mode and on such conditions as to settlement" as may be determined from time to time.

S.31 And whereas, it is expedient, towards the extinguishment of the Indian title to the lands in the province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor-General in Council, the Lieutenant- Governor shall select such lots or tracts in such parts of the province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor-General in Council may from time to time determine.

The delegates were assured that this provision had the same effect as the agreement arrived at with respect to the Metis retaining ownership of some of the public lands to be included within the new province.

In addition to S.31, Section 32 provided that the people currently holding freehold or less than freehold lands would have their ownership confirmed. This meant that the Metis, who made up approximately 85% of the population in Manitoba, would have their river lot ownership guaranteed. Section 32 also made similar provision with respect to occupancy and peaceable possession of lands.

Because of uncertainty and in order to deal with the constitutional ability of Canada to create new provinces out of the newly acquired territory, Prime Minister MacDonald asked the British Parliament to confirm that they could, along with their ratification of the Manitoba Act. The British Parliament enacted the B.N.A. Act, 1871 which confirmed the Manitoba Act, 1870 and by Section 6 provided that neither Parliament nor the

provincial government of Manitoba could unilaterally make amendments to the Act, thereby protecting the land rights of the Metis recognized therein.

2. IN THE NORTHWEST TERRITORIES

With the major dispersal of the Metis from Manitoba after 1870 to existing Metis communities in other parts of the Northwest, a series of petitions emerged from the Metis population outside Manitoba requesting the government to recognize their rights.

As a result of this political activity by the Metis and the desire by the government to populate the West with non- aboriginal people, the government responded by including a provision in the Dominion Lands Act, 1879 which provided for the granting of lands to the Metis in extinguishment of their Indian title.

S.125 The following powers are hereby delegated to the Governor in Council:

...

e. To satisfy any claims existing in connection with the extinguishment of the Indian title preferred by half-breeds resident in the Northwest Territories outside of the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions as may be deemed expedient;

No action was taken with respect to this provision and in 1883 the section was amended to extend the recognition of the right to Metis living outside Manitoba "previous" to July 15, 1870 as opposed to "on" the 15th day of July, 1870.

S.81 The following powers are hereby delegated to the Governor in Council:

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Again no immediate action was undertaken with respect to the Metis land

rights provision. In any event, these two sections clearly recognized the Indian title rights of the Metis. Action on these provisions finally materialized after the Metis in 1885 engaged in an armed resistance against the loss of their rights and lands.

Although there was clear recognition of the Metis right to land, the federal government had no intention to safeguard or protect the land rights of the Metis. The federal government in fact acted in a manner which insured the divesting of the Metis of their land, although they had a fiduciary obligation to protect the Metis interest by virtue of the Royal Proclamation of 1763, Sections 91(24) and 146 of the B.N.A. Act, 1867 and Section 31 of the Manitoba Act, 1870.

3. IN NORTHWESTERN ONTARIO

Just as in what is now the prairie provinces, beginning with Treaty One, the Metis were given a choice to join Treaty or participate in the land grants and scrip process. In Northwestern Ontario the Metis (Halfbreeds) of Rainy River opted for Treaty through an adherence to Treaty 3 in 1875. By virtue of this adherence to Treaty, their right to land was implemented through the Reserve system.

IV. SUMMARY OF THE METHODS OF ALLOCATION OF METIS LANDS

1. IN MANITOBA

Basically, the Manitoba Act provided for three kinds of land grants:

- a) The "half-breed" reserves for children;
- b) Title for the "half-breeds" to river lots and other lands of which they were in possession and on which they resided, and;
- c) The settlement of common land rights.

Based on the recognition of the rights in the Manitoba Act, government officials began the process of analyzing the sections which resulted in both federal and provincial legislation setting out the implementation process based on their interpretations, not that of the Metis. The legislation, regulations and orders-in-council reflected the government's hidden agenda, which included the scheme of divesting the Metis of their lands as fast as possible.

It was quickly decided that the only persons capable of participating in the 1.4 million acres were Metis children under 21 years of age on July 15, 1870. Because of this interpretation, the federal government passed subsequent legislation providing for the allocation of scrip to halfbreed

heads of families who were thus excluded.

It was also decided that rather than setting the lands aside in large tracts and made inalienable (until at least the third generation) as requested by the Metis, the government policy was to issue the land in fee simple, individual ownership. This was done although the government knew that this meant the immediate loss of the lands by the Metis.

In order to distribute the land a census was taken in 1871 and as a result it was determined that each allottee would be eligible for 190 acres. However, in 1874, a change of government occurred and the process started all over again.

A new census determined that each child would be eligible for 240 acres. Land allotments then commenced around existing parishes and after another change of government in 1878, the remaining allotments were made by the issuance of scrip. Money scrip was issued in \$20 denominations which were redeemable by the bearer for any open dominion lands in Manitoba.

With respect to the S.32 river lots, before the land patents could be issued, the lots had to be surveyed. However, government policy allowed surveys to cut across the river lot system to conform with the federal survey system. As a result, many Metis lost parts of their lots or had them divided and re-allocated to others.

With reference to common lands, which were the two miles behind the river lots, government policy was to reject this right of the Metis and the encouragement of settlers to take possession. After a commission examined this issue, it was recommended that scrip for 5160 be issued to the occupants of the adjacent river lots for the loss of the common lands. These lands were used primarily for haying and as a source of firewood.

2. IN THE NORTHWEST

Through legislation and subsequent regulations and orders-in-council, the federal government embarked on a unilateral course of action which involved the issuing of scrip to the Metis. This unilateral activity ignored all constitutional rights and equitable procedures and principles which were meant to govern Canada's dealings with the aboriginal peoples, including the provisions contained in the Royal Proclamation of 1763 and Section 146 of the B.N.A. Act, 1867.

Based on the Manitoba experience, the federal government decided to avoid the use of land reserves in distributing land to the Metis. This was done even though some Metis petitions specifically requested such a course of action. Throughout the Northwest, scrip became the preferred

method of land distribution. Based on this, the initial orders-in- council provided for the 1885 scrip issue to be in the form of money scrip. This was basically a bearer bond which specified a set amount of money exchangeable only for the purchase of open dominion Crown Land. At that time, Crown land would be worth \$1.00 an acre. This method, of course, was popular with the land speculators, as it ensured a quick method of passing Metis land entitlement to other persons.

The Metis in the Qu'Appelle Lakes area, however, refused to accept the money scrip. As a result the O.C. was amended to provide a choice of land scrip or money scrip. There then followed several hundred O.C.'s which dealt with provisions as to the issuance of scrip, the setting up of halfbreed commissions, dealing with individual cases, special classes of cases and providing for regulations governing the process for issuing scrip and its use.

The major O.C.'s were in 1885, 1898, 1900, 1904, 1906 and 1921 providing for the issuance of scrip in areas where Treaties had been entered into with the Indian Nations, or were about to be entered into.

The method of distributing the scrip was through appointed Commissioners who dealt solely with the Metis, however, starting with Treaty 8, the Commissioners dealt with the Metis and Indian Nations at the same time.

V. SUMMARY OF THE HISTORY OF METIS LANDS

1. IN MANITOBA

The Metis lands were quickly lost as a result of the influx of settlers which had been part of the hidden agenda of the federal government as they negotiated the entry of the Metis into Canada. This joining of Confederation as a province by the Metis, perhaps the only aboriginal peoples to have entered into this kind of arrangement on a Nation to Nation basis, was based on what is now known as non-ethnic government. The Metis felt comfortable with this kind of arrangement as they made up about 85% of the population.

Shortly after the terms of the Union as reflected in the Manitoba Act became operational and legally binding, the federal government sent troops to Manitoba. Ostensibly this was for the added protection and security of the new province, however, as it turned out, it was an occupation force used for the purpose of facilitating Canada's goal of dispossessing the Metis of their land and government.

A virtual state of lawlessness developed, coupled with physical and psychological terrorism, including incidents of rape, beatings and at least

one killing. As a consequence, many Metis who were seasonal inhabitants left for different parts of the Northwest. In addition, the government's decision that all lands, other than the river lots, were open to settlement saw the dispossession of many Metis. The racism encountered, coupled with adverse government rulings prompted many other Metis to leave Manitoba and their lands behind. These Metis also headed west where they were able to maintain their lifestyle and be among friends and relatives.

Speculation also played a prominent role in the loss of Metis lands. By and large, speculators bought the Metis land entitlement very cheaply. In addition, fraud was used in obtaining scrip in the name of persons who had long since left the Red River. Other irregularities in land distribution and registration took place. These actions all occurred with the active cooperation of federal land agents and officials. The final result of the government's application of the Manitoba Act was the dispersal of the members of a thriving community from their homes and land.

2. IN THE NORTHWEST

Before the Government of Canada attempted to exercise its control over land in the Northwest Territories, a number of Metis communities had been established and tracts of land were claimed and settled. The best known of these is Batoche. Although the Metis for some years lobbied for legal recognition of the lands they occupied, their claims were ignored until 1884. At that time the government sent a land agent "Pearce" to investigate these claims. His report stated that in his view, 87% of the residents had no legal claim, having supposedly been dealt with under the provisions of the Manitoba Act. It was this position that eventually led to the Northwest Resistance, the object of which was the protection of their lands despite being faced with an overwhelming military force sent to the area by the government. In the process they sacrificed a considerable number of wounded and dead, plus the loss of crops, livestock and homes. A number of leaders were jailed and others went into exile, with their leader being executed.

The eventual outcome was that Metis lands were lost primarily through the scrip system. As the area was geographically large, as opposed to the original postage- stamp province of Manitoba, the government had to adopt other tactics. Although it still promoted settlement, large numbers of settlers were required to help facilitate this objective, thus the government encouraged the creation of land colonization companies.

In any event, the scrip system was the vehicle by which the government dispossessed the Metis of their lands and stripped them of their rights of self-government. The Metis became an occupied people/Nation and the prime lands of the Metis were quickly lost once the scrip system was

implemented.

In northern areas where scrip was not redeemable, the Metis suffered the same kinds of fraud, however, they remained in their communities and traditional areas enjoying their lifestyles and livelihood until government regulations and laws around the mid-1900's began to adversely affect their right to land use, as well as hunting, trapping and fishing rights. Today, gathering rights have also been seriously impaired. As a result of this scrip process imposed through a unilateral decision by the federal government the Metis people became the only people in British North America to be totally dispossessed of land and in the opinion of government, of any other rights which flow from Indian title.

VI. WHAT IS MEANT BY A METIS LAND BASE?

Quite simply, the indigenous peoples the world over had their own territorial lands and resources prior to their dispossession. This dispossession has taken place in every corner of the earth, however, some indigenous peoples have had success in regaining their "land base" and some form of self-government or autonomy.

When we talk about a "Metis land base" we are basically addressing the need for the return to the Metis of sufficient amounts of land and natural resources which will enable our people to continue our survival as a distinct people, thereby retaining our culture, tradition, customs, livelihood, languages and dignity. It is our heritage. It is our inalienable, natural right to possess land and to be self-determining on that land.

Examples of this can be found in other parts of the world. In Panama, Central America, the Cuna Indians have been successful in getting their land, mostly islands, recognized as a "Commarca" or special territory. In 1953, the Panamanian government accepted the traditional political powers of the Cuna leaders, along with their internal Constitution.

In Greenland, the Inuit, who form 80% of the population, began to exercise home rule in 1979, although they still form part of Denmark. Under home rule the Greenlandic people have a wider range of jurisdiction, although Denmark retains jurisdiction over defence, foreign affairs and currency.

The fisheries are under Greenland home rule jurisdiction, while ownership of other natural resources has not been decided upon. However, no non-renewable resource development can take place without the joint agreement of Denmark and Greenland and royalties are paid to the government of Greenland.

In Australia, two regional land councils were established in the Northern

Territory through 1975 national legislation. By virtue of this, aboriginals control over 32% of the Northern Territory. While the ownership of the subsurface remains with the government, the land councils determine whether subsurface development will take place and they, not the state, receive the royalties.

Even though we maintain that we as indigenous peoples have the right to self-determination under international law, we can also take advantage of the lesser rights accorded to minorities and/or human rights.

In this context, Article 27 of the International Covenant on Civil and Political Rights has been used.

Art. 27 In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

In the preliminary report of the Sami Rights Committee established by the government of Norway to investigate the situation of the indigenous Sami people, it was concluded that, when Article 27 was applied to the Sami people, it required a recognition of the traditional land base, because the land was the material foundation of Sami culture.

In the case of Sandra Lovelace, an Indian woman who lost her rights upon marriage to a non-Indian, the Human Rights Committee was of the view that Canada was in violation of Article 27 because by barring Lovelace from living on the Reserve, Canada was denying her the right to enjoy her culture and language which were connected to the land (Reserve).

In this sense, Article 27 instructs governments to respect and allow minorities to enjoy their culture by group. In the case of indigenous peoples, including the Metis, this means as a minimum the securing of a land base upon which culture is inextricably tied. Land and culture go hand in hand. The denial of a Metis land base is a continuing violation of International law.

VII. WHY DO THE METIS PRESS FOR A LAND BASE?

The primary purpose of a land base is to enable the Metis people/communities to continue existing as an aboriginal people on lands which are legitimately theirs and utilizing the resources which are necessary to sustain a continuing livelihood and traditional way of life. Essentially it is a place for our people to live and prosper according to our

own ways.

To best describe this need for a land base an excerpt from a presentation made to the Metis National Council General Assembly in September, 1986 by representatives from Metis communities in Northern Saskatchewan will be used.

"For over two hundred years now, the Metis of Northern Saskatchewan have lived in harmony with our land and its resources. We have made use of the land, the trees, the wild plants, the waters, the fish and the game - taking what we needed for our livelihood. During this time we built strong values, strong families and strong communities.

These communities, communities such as Ile a la Crosse, were not just a small patch of land defined by some bureaucrat who defined a set of village boundaries. No, until recently Ile a la Crosse was much more than that - it was much more than a few square miles of land. Ile a la Crosse was, and still is, all those things which go to make up a Northern Metis community - it includes the trap lines of our families - it includes the lakes and the fish which support our people - it includes the wild game which feeds our people - it includes the wild fruits which we harvest - it includes the wild rice which we harvest both commercially and for our own use - it includes the trees which we use to build our homes and which we also harvest commercially - and, most important, it includes the people and that spirit of the Metis community that can't really be described in words we learn in school.

The spirit, the community soul, that probably can only really be described in Cree (---) This is not past. It is true that in recent years the soul of Ile a La Crosse has been dimmed and the spirit of some of our people has been covered over - covered, but not lost.

We are fortunate, you see, because we have not been removed from our traditions for several generations - as has happened to many of our people who have lived in the cities of the south for several generations. Many of us, who live in Northern Metis communities, still make our living in the traditional ways - and almost all of us remember the days when we had control of our own lives, the days when we used our resources for our needs and processed these resources in our own communities. Today most of us remember, today we understand.

But in two or three generations who will understand - if we don't regain control over our own lives? What will become of our people and our way of life, if governments are allowed to continue to take control of our traditional sources of livelihood, then give control of these resources to the big companies - the government power companies, the timber companies and the mining companies?

What am I trying to tell you about Ile a la Crosse and other Metis communities of Northern Saskatchewan? I guess the most important thing I am trying to help you understand is that we are still Metis communities - Metis communities with strong and deep roots in the Metis traditions and our way of life. We have not lost our roots and our goals must be seen as a continuation of our long-standing, traditional way of life.

In short, when the people of Northern Metis communities talk about our goals for the Constitutional negotiations we are not talking about fine-tuning a few government programs. What we are talking about is obtaining an agreement that fully respects our right to self-determination - our right to maintain a way of life which has served our people and communities well for many generations, though we expect that we may make adjustments to the economic base of our community - our right to make our own decisions, within our own community, about those matters which affect our daily lives - in a few words, the right to control our own futures, our own destiny."

This expression for the need of a land base holds equally true for Metis peoples and communities in all parts of the Metis Homeland and received wholehearted agreement and support by all representatives at the Assembly who represented such Metis communities and interests.

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