

# Effective Trans-boundary Movement of Equipment and Personnel during Oil Spill Response



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## SUMMARY

Among others, the Convention on Oil Spill Preparedness Response and Co-operation (OPRC 90) and the Cartagena Convention and the Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, promote co-operation between countries to respond to spills threatening the shores of neighboring states. The suggested means to accomplish this co-operation is through the development of bi- and multilateral agreements.

Although conceptually simple, this co-operation at the practical level- often has several hurdles to overcome, most notably the trans-boundary movement of personnel and equipment from one country to another. ARPEL the Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean- with the support of relevant regional and international organizations has been assisting in the implementation of bilateral co-operation agreements through joint government/industry work. In spearheading these efforts, some experience has been gained with regards to the major issues to be considered in the trans-boundary movement of equipment and personnel.

*The challenges to cross-border assistance have been recognized by most organizations involved in fostering the implementation of bilateral and multilateral co-operation agreements.*

Operational procedures of any co-operation agreement have to address the conditions to have equipment and personnel from one country enter into the other's territory. These procedures should be developed in conjunction with the customs and immigration government authorities, based on the legislative framework of the countries, keeping always in mind the ultimate purpose of these procedures, namely, to provide immediate and efficient access to external resources.

This report provides a first approach to the issues to be considered (i.e., best practices) when devising an appropriate legislative, regulatory and procedural framework for the trans-boundary movement of equipment and personnel during oil spill response, while developing/optimizing a bilateral co-operation agreement, and is based on the experience gathered regionally and worldwide. These issues include customs, immigration, insurance, responder liabilities, mobilisation issues, rates for equipment rental, financial risks, health and safety, security and Tier 3 Centres involvement.





## INTRODUCTION

Article 7 of the OPRC 90 Convention, Article 6 of the Cartagena Convention and Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region and Article 11 of the Southeast Pacific Regional Co-operation Agreement to Combat Pollution from Oil and other Noxious Substances during Emergencies promote co-operation between countries to respond to spills threatening the shores of neighboring states. The suggested means to accomplish this co-operation is through the development of bi- and multilateral agreements.

Basically, these conventions require governments to conclude bilateral or multilateral agreements for oil pollution preparedness and response and to take necessary legal or administrative measures to facilitate the arrival and utilization in and departure from- its territory of ships, aircraft, and other modes of transport engaged in responding to an oil pollution incident of transporting personnel, cargoes, materials, and equipment required to deal with such an incident; and the expeditious movement into, through, and out of its territory of personnel, cargoes, materials, and equipment. The Caribbean OPRC Plan and the International Maritime Organization have only provided non-specific guidance for states to follow to obtain the assistance and supervision necessary to expedite the response process to trans-boundary oil pollution incidents (see Appendices A & B).

The challenges to cross-border assistance have been recognized by most organizations involved in fostering the implementation of bilateral and multilateral co-operation agreements. These challenges appear to have been generally consistent over time, and refer to:

- ▶ The trans-boundary movement of personnel. Concerns here touch on work rules for contractors operating outside their own borders, as well as workers' compensation and liability issues, appropriate required health and safety training for workers, appropriate training for and use of volunteers, and of course- always the questions of reciprocity.
- ▶ The trans-boundary movement of equipment. Concerns here include the type of equipment that can move across a border in an emergency, and how long it can be used in a response in another country. Also, can a consistent definition of emergency be derived where the movement of equipment is concerned?

This means it cannot be taken for granted that close co-operation in responding to a trans-boundary spill is automatically triggered, even if adjoining nations are good friends and have similar legal systems. This report collects the experience gathered regionally and worldwide during the development and optimization of mutual co-operation agreements to combat and control oil spills. In particular, this report compiles the major issues to be addressed and the best practices identified when addressing the trans-boundary movement of resources involved as a part of a bilateral agreement, illustrating the kinds of impediments that should be removed in advance, if an effective joint response is to be launched when a spill happens.

Figure 1 describes the steps to accomplish increasing levels of commitment during co-operation. In particular, this report draws the attention to the step highlighted in yellow.



Figure 1 - Stages of increasing commitment to implement bilateral co-operation agreements for oil spill response - ARPEL regionalization approach





## KEY CONCERNS AND HOW TO ADDRESS THEM

When a partner provides its services in a foreign country, it needs to consider the unique circumstances under which it will be working such as local safety procedures and standards, the need to comply with local laws, legal issues, customs, immigration, foreign work environments, availability of skilled or trained labour, and equipment compatibility. To the extent possible, it is advisable that agreements and procedures be developed in advance of a spill incident that a partner can refer to when providing assistance to another partner. These procedures and agreements should specify the terms and conditions of equipment and personnel loans, by describing the equipment on loan, the types of services provided and the duration of the assistance, by identifying the responsible party for safety, security, liability for pollution during the assistance and effectiveness of the response, and by outlining the terms of payment and contract termination. This is very important to ensure that this cooperative exchange process is transparent and will continue once implemented. The risks and concerns -typically faced by the lender- have been summarized in the chapters below along with some possible preventive measures. They are based on lessons learned internationally.

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### Customs and Immigration Issues

Arrangements should be made for customs and immigration clearance of personnel and equipment in order to expedite delivery, to facilitate entry and to avoid import duties on response equipment. The potential co-operating partners could approach the relevant authorities jointly, inquire about the necessary procedures for priority customs handling and propose an agreement that would facilitate the entry of equipment and personnel into the requesting country.

These arrangements should be jointly developed by the competent government authorities of the partners entering into an agreement. They consist of taking the necessary steps to obtain pre-established forms that the lending partner must complete to be delivered to the regional customs and immigration administrations in the border of the requesting country, which will allow for the timely entry of authorized personnel and equipment, authorized by the government of the requesting country. This will ensure an efficient response, obviating the regular customs and immigration bureaucracy. Also, the agreement should specify which partner will be responsible for customs handling charges, duty and import taxes if any.

Usually, immigration regulations covering employment authorization require that consent be obtained for all foreign nationals to work in a country. For purposes of immigration and customs and excise rules, special emergency procedures should be legislated that could be invoked by government authorities in the event of a spill in which a foreign response organization's services were needed.

There exists a language barrier in the Region among Latin American and Caribbean countries. Consequently, there needs to be in place a team of interpreters who will facilitate effective communication amongst responders. Possible sources of these personnel include Embassies and Universities.





## Insurance

This chapter outlines the concerns and risks that partners face when lending and borrowing spill response resources and highlights important points to be considered when developing procedures regarding the insurance of personnel and equipment while on loan in a requesting country.

Some relevant issues considered by organizations such as the Clean Caribbean & Americas (CCA) and Oil Spill Response Limited (OSRL) include the use of a third party agreement whereby the full responsibility of hired resources is placed on the requesting party (who - usually - has to be a member of the cooperative). A contract with the borrower is prepared, which clearly defines the items and personnel hired out, the hire rates, the estimated period of hire and the destination, and outlines the terms and conditions of the loan or hire. Some key points of this contract include an obligation for the borrower to have proper insurance in place, and refer to the responsibility of the lending or hiring party regarding the performance of equipment.<sup>1</sup>

In order to ensure that funds are paid, the cooperative can request that the borrower post a guarantee prior to the mobilization of equipment and staff. The amount of guarantee requested includes the replacement cost of equipment and any reasonable costs associated with transportation, shipping, packing, crating, maintenance, and other cost incurred by the lender associated with the loan of equipment.

Based on this analysis, parties entering into an agreement may wish to consider the following measures to insure equipment and minimize the risk of damage and loss:

- *Insurance:* Either the lender or the borrower can assume the responsibility for equipment damage and loss. In either case, the responsible party obtains liability coverage and insurance. If suitable insurance cannot be obtained by either party, then another means of guarantee should be requested. The most secure means of insuring the replacement of damaged or lost equipment is to request that a bond be placed with a financial institution in the value of the loaned equipment.
- *Maintenance, decontamination, and transportation:* The responsibility for these tasks should be assumed by the borrower.

***Partners should establish a documented procedure that defines the costs associated with mobilising equipment and resources, and include it in their respective National Contingency Plans.***



## Equipment and Materials' Mobilization Issues

Inventories of equipment and materials resources for responding to oil spills should be available by partners entering into an agreement. Also, the procedures for loaning/borrowing such equipment must be equally -well-defined in the national contingency plans of both countries. To solve this situation, the partners should establish a documented procedure that defines the costs associated with mobilizing equipment and resources, and include it in their respective National Contingency Plans.

<sup>1</sup> CCA and OSRL are Tier 3 Centres, organizations -established by the oil industry- with oil spill equipment stockpiles at a number of strategic sites and that offer specialized equipment and expertise to their member companies and, conditionally, to other users such as governments and tanker owners, reducing the need to establish national stockpiles. Their equipment is useful for major (Tier 3) marine spills. Since there are differences in the operation of Tier 3 Centres regarding the leasing/lending or selling of equipment, we suggest checking their approaches at their web sites: [www.cleancaribbean.org](http://www.cleancaribbean.org) and [www.oilspillresponse.com](http://www.oilspillresponse.com)



Some important issues to be considered will include a specified minimum quantity of equipment and resources that should be retained so that the spill response capability of the country loaning the resources is not compromised. The country loaning the resources should stipulate that loaned equipment is either Operational or Stand-by (for charging fees purposes). In order to determine the Daily Operational Rate the equipment could be divided into the following categories: Non-durable Equipment, Semi-durable Equipment and Durable Equipment.

Other considerations include a cap on rates charged for equipment at e.g. 115% of estimated replacement cost plus repairs, decontamination and other reasonable incurred expenses. Also, some marine vessels can incur a surcharge for Marine Services Fees or other service fees that will be passed on to the requesting country, if applicable. Furthermore, items that are consumed (e.g., rope mops, hoses) should be charged at 115% of replacement cost.

### Health and Safety

Workers' medical and health claims could become an issue because they would have to be funneled through the national or private health care systems of the country receiving the assistance. The agreement should explicitly state which partner will be liable for the safety of local laborers and requested spill response personnel.

The health and safety of personnel from the lending partner can be ensured by applying standard health, safety and environment protocols and providing the necessary means to ensure worker safety at the spill site (e.g. personal protective equipment, shelter, food, medical facilities, and evacuation measures). It is -thus- advisable to obtain emergency medical insurance for employees working abroad. The cost of providing these safety measures can be factored into the charge-out rate for personnel.

### Legal/Regulatory Framework

A number of hurdles and deficiencies exist that at a minimum will impede, and may prevent, the use of resources in a spill response involving foreign waters. The most critical issue involves the potential liability and financial risks that could attach to a responder involved in response activities in a foreign country or foreign waters. In this regard, an awareness - by the lending partner- of environmental laws in the country where services will be provided is advised to avoid any possible liability issues (e.g.: fines for causing secondary pollution and property damage, dispute regarding the success and termination of a clean-up operations, waste disposal regulations, etc.).

When preparing the protocols of the mutual agreement, government delegates of the parties entering into an agreement may wish to seek legal advice regarding local labor laws, environmental laws, customs and immigration, tax considerations and commercial activities between the two countries and provide recommendations regarding the selection of a suitable law, which would apply to the agreement. This approach would grant a better support for claims presented to the International Oil Pollution Compensation fund in case of tanker spills or international settlement in related cases. In doing this, it is advisable to select a norm that can be applied to several aspects of oil spill response (e.g. maritime law) as well as to international commercial activities.

***The most critical issue involves the potential liability and financial risks that could attach to a responder involved in response activities in a foreign country or foreign waters.***





As a reference, parties entering an agreement could consider, for example, the “Responder Immunity” provision found in USA's 1990 Oil Pollution Act (OPA 90), which exempts persons from liability for removal costs and damages for actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by USA's federal officials. Several oil spill response organizations consider responder immunity a prerequisite to undertaking response operations.

It is -also- worth noting that the standard of laws in various countries is not uniform. Some countries may operate with pollution control rules that are still in a draft format. Furthermore, although some countries may be a signatory to various international conventions and treaties that constitute international law; many of these may have not been incorporated into their legislative system. These laws are therefore not applicable in the judicial system of the country.

### Payment

Some considerations should be taken into account to make effective the payment of services and equipment provided. As indicated above, insurance schemes should be put in place in the agreement to ensure payment of funds. However these schemes should be implemented during an actual emergency if it is desired that the co-operation agreement remain sustainable in future spill incidents.

The careful documentation of operational activities and their associated costs during a spill response can assist in resolving disputes over cost recovery and in the preparation of claims for compensation. In the event of loss or damage to the equipment, insurance claims will need to be substantiated by supporting documentation. It is important to designate and train personnel to carry out the task keeping a log of spill-related activities. Daily records should be maintained documenting:

- ▶ *Equipment*: date mobilized, duration of use, location, initial condition, condition at the time the damage occurred, operators on duty, consumables used and replacement cost.
- ▶ *Personnel*: date mobilized, number of workers on site, hours worked, attendance.

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In this regard, some clauses of the mutual co-operation agreement may provide for the designation of insurance representatives with accounting expertise from both partners to document, control and audit expenses. Another clause may include the responsibility for technical, operational and financial reporting on the partner responsible for operations. These reports are to be prepared for cost recovery purposes.

For spills governed by the mutual co-operation agreement, the number of days (e.g., 60 days) within which the reimbursement of all expenses obtained by a partner will be provided by the other partner -after presenting an invoice- should be clearly established. If it is likely that the response will be carried out over a long period, then interim payments (in the form of a bond or funds in trust) might be considered.



### Other Issues

Other issues that would assist in the effective trans-boundary movement of equipment and personnel during an emergency, and that should be addressed in advance are the following:

- ▶ The agreement should indicate conditions under which termination of the assistance -without prejudice- can be undertaken. For example, circumstances beyond the lender's control may prevent completion of the assistance. If resources are limited, the lender's priorities should be stated in the agreement and a procedure for measuring the severity of an incident agreed upon. The priority could be based on the severity of the incident, degree of environmental risk, accessibility to other resources, etc. Other conditions for termination might include the non-payment of interim invoices or the inability to produce a form of guarantee agreeable to the lender.
- ▶ As a preventive measure when hiring personnel and equipment, the agreement should include a clause addressing security issues. Consideration needs to be paid to the stringent airline security measures that are in place nowadays, which pose restrictions on the items that are allowed on aircrafts. To ensure that there is no delay in the movement of equipment, custom and immigration policies need to be clearly communicated to the relevant stakeholders. Where customs and immigration policies are non-existent or unclear, stakeholders are encouraged to work closely with the appropriate government authorities. Also, the provision of site security after hours, when the site is unmanned, can help prevent equipment loss or damage due to theft and sabotage. The agreement should state which partner, the lender or the borrower, will be responsible for site security. It is possible that site security will be a condition imposed by the equipment insurers.
- ▶ The inventories of equipment should be kept up to date and should include equipment, specifications, methods of transport, delivery times, costs involved and names and numbers of contact points. The procedures for loaning/borrowing such equipment should be well defined and included in the National Contingency Plan. Keeping an updated record of available experts in different fields of oil spill response would also be useful.
- ▶ Clearly delineated country maritime boundaries are essential if this approach is to be successful. This will prevent any possible confusion regarding in which country the pollution incident has occurred.
- ▶ Give due consideration to airport landing facilities. Parties should analyze which runways are capable of handling large cargo planes for bringing in equipment from other points.



Last, but not least, it is advisable that the protocols be periodically evaluated by the partners while developing joint exercises to test the co-operation agreement. This will reveal the satisfactoriness of the procedures in place and the need for efficiently addressing the issues involved in an effective trans-boundary movement of equipment and personnel during oil spill response while implementing the co-operation agreement.



## CONCLUSIONS

The purpose of this report is to highlight the relevant aspects of effective trans-boundary movement of equipment and personnel during an emergency, focusing on the experience gained regionally and worldwide while implementing and optimizing mutual co-operation agreements. It was not the intention to describe all the details an agreement of this kind should address.

Although the best practices described -and to be implemented during the continuous improvement of any co-operation agreement- are applicable to country-country agreements, they might as well be considered when developing agreements between companies operating in different countries. Some of the issues should also be considered if a government/company wishes to call for the services of Tier 3 Centers or cooperatives.

This report will -hopefully- assist in the development, implementation and optimization of bilateral co-operation agreements when utilized as a reference in existing or future co-operation initiatives being pursued in Latin America and the Caribbean, most of them fostered through international and sub-regional conventions.





## Appendix A

### Trans-boundary Movement of Equipment and Personnel as presented in the Caribbean Island OPRC Plan

#### 1. Procedure for Inter-country Movement of Personnel and Equipment

- 1.1. If after an assessment of the oil spill casualty by the affected Island State or Territory it is decided that assistance is required from a neighboring State or Territory; a CARIBPOLREP message shall be issued. The responding State or Territory will respond with an acknowledgement that equipment and operating personnel can or cannot be provided.

#### 2. Personnel

- 2.1. To expedite the entry of emergency personnel into the requesting State or Territory, the acknowledgement message to the requesting State or Territory shall list all personnel by name and pertinent passport information. The message shall also include the mode of transportation such as flight numbers, vessel name, port of entry and estimated time of arrival. The requesting State or Territory, upon receipt of the information, shall make all arrangements for entry of the emergency responding personnel with the National Immigration Department. Arriving personnel will report to the On-Scene Commander and, until released, shall follow his directions and strategies. Each Member State or Territory shall have designated personnel who can be spared to assist the other member States or Territories in case of emergency situations. Passports and other travel documents of these designated personnel shall be kept up-to-date and ready at all times.

#### 3. Equipment

- 3.1. The requesting Island State or Territory shall itemize the equipment that it desires to be

transferred to the spill site or port of entry by referencing the type, name, size, etc., from the information available in the Equipment Section of the Caribbean Plan. The responding State or Territory will contact the owner of the equipment and determine the availability of the equipment and so advise the requesting State or Territory.

- 3.2. When the equipment has been assembled for shipment, the responding State or Territory will notify the requesting State or Territory of the mode of transportation and the estimated time of arrival at the spill site or port of entry. Ownership of all equipment will be clearly identified by labels indicating owners name and address.
- 3.3. The requesting State or Territory, upon receipt of the information that the equipment is ready for shipment, shall notify the national customs department for entry of the equipment without assessment, duty payments or unnecessary delays.
- 3.4. When the requesting country has finished with the equipment, it will clean each piece of equipment and make any necessary repairs to ensure that the equipment is returned to the responding country in good working order. The equipment will be inventoried against the shipping documents, noting any missing or excessively damaged equipment. After the equipment has been returned, the Lead Agency will arrange for the equipment to be returned to the owner. The owner will make a final inspection of the equipment and promptly notify the Lead Agency of any discrepancies.





## Appendix B

### IMO (1997) Resolution A.869(20) Adopted on 27 November 1997 - Guidelines for Facilitation of Response to an Oil Pollution Incident Pursuant to Article 7 and Annex of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

1. If a State needs assistance in the event of an oil pollution incident, it may ask for assistance from other States, indicating the scope and type of assistance required. A State to which a request for assistance is directed should promptly decide and inform the requesting State whether it is in a position to render the assistance required and indicate the scope and terms of the assistance that might be rendered.
2. The States concerned should co-operate to facilitate the prompt provision of assistance agreed to under paragraph 1 of these Guidelines, including, where appropriate, action to minimize the consequences and effects of the oil pollution incident, and to provide general assistance. Where States do not have bilateral or multilateral agreements which cover their arrangements for providing mutual assistance, the assistance should be rendered in accordance with the following provisions, unless the States agree otherwise.
3. The requesting State is responsible for overall supervision, control and co-ordination of the response to the incident and of the assistance supplied. Personnel sent by the assisting State are normally in charge of the immediate operational supervision of its personnel and equipment. The personnel involved in the assisting operation should act in accordance with the relevant laws of the requesting State, which should endeavour to inform the assisting State of the relevant laws. The appropriate authorities of the requesting State shall co-operate with the authority designated by the assisting State.
4. The requesting State should, to the extent of its capabilities, provide local facilities and services for the proper and effective administration of the assistance, including decontamination activities, and **should** ensure the protection and return of personnel, equipment and materials brought into its territory by, or on behalf of, the assisting State for such a purpose.
5. The requesting State **should** use its best efforts to afford to the assisting State and persons acting on its behalf the privileges, immunities or facilities necessary for the expeditious performance of their assistance function. The requesting State **should** not be required to apply this provision to its own nationals or permanent residents or to afford them the privileges and immunities referred to above.
6. A State **should**, at the request of the requesting or assisting State, endeavour to facilitate the transit through its territory of duly notified personnel, equipment and property involved in the assistance to and from the requesting State.
7. The requesting State **should** facilitate the entry into, stay in and departure from its national territory of duly notified personnel and of equipment and property involved in the assistance.
8. With regard to actions resulting directly from the assistance provided, the requesting State should reimburse the assisting State for the loss or any damage to equipment or other property belonging to the assisting State. The requesting State should also reimburse the assisting State for expenses involved in such assistance arising from the death of, or injury to, persons, or the loss or damage to property, incurred by personnel acting on behalf of the assisting State. This would not prevent the requesting State from seeking reimbursement as part of its claim under the appropriate compensation convention.
9. The States concerned should co-operate closely in order to facilitate the settlement of legal proceedings and claims which could result from assistance operations.
10. The affected or requesting State may at any time, after appropriate consultations and by notification, request the termination of assistance received or provided under this Convention. Once such a request has been made, the States concerned should **consult one another with a view to making arrangements for the proper termination for the assistance**.
11. As the assistance should not be delayed for administrative or other reasons, the necessary legislation should be adopted during the preparedness phase, i.e. before the incident which would require assistance. This is particularly relevant to paragraphs 4 to 8 above.
12. Similar facilitation should be implemented by States concerned when personnel or equipment are provided on behalf of a shipowner, a cargo owner or other relevant entities.
13. In some oil pollution incidents, a shipowner, cargo owner or other private entity may be best placed to call upon dedicated equipment, materials and trained operators to assist with the clean-up response. In order to benefit from the availability of such resources and to ensure their rapid deployment, the State requesting or being offered assistance should facilitate the entry, clearance and subsequent return of the persons, materials and equipment provided. Public authorities should, in so far as it is possible, waive customs and excise duties and other taxes on any equipment and materials provided on a temporary basis for the purpose of assisting in the response to an oil pollution incident.



## FURTHER READING

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**The Objectives of the ARPEL Emergency Response Planning Working Group are:**

- To develop appropriate strategies to support industry's efforts to ensure a cost-effective response to emergencies both at the local and regional level.
- To promote the development of bilateral and regional cooperative agreements on emergency planning through joint government/industry cooperation.
- To provide guidance to assist industry's efforts in being proactive in the prevention of oil spills.

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## ARPEL

### Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean

Established in 1965, ARPEL is an association of 30 state owned and private oil and gas companies and institutions with operations in Latin America and the Caribbean, which represent more than 90 percent of the Region's upstream and downstream operations. Since 1976, ARPEL holds formal UN-ECOSOC special consultative status.

ARPEL works together with its members -through its various Committees and Working Groups- on issues that contribute to sustainable development in the Region:

- *Economic issues:* regional energy integration, pipelines and terminals, downstream and fuels
- *Environmental issues:* climate change, atmospheric emissions, oil spill contingency plans and best practices in environment and occupational health and safety management.
- *Social issues:* corporate social responsibility and relations with indigenous peoples

ARPEL develops a proactive attitude on issues of interest to the industry and produces documents representing the views of its members. It also promotes interaction among its members and with governments building alliances and establishing agreements with international organizations with the aim of presenting and developing a regional perspective. To accomplish its objectives, ARPEL organizes regional workshops and symposia to share information and best practices and develops technical documentation for capacity building and information exchange on the issues of interest to its members. To support its management ARPEL has an interactive Portal in which all documents developed by ARPEL Technical Committees and Working Groups are available for its Members. This tool also facilitates the virtual interaction within the ARPEL community and with those stakeholders that interrelate with it.



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