

# Extreme Accusations II: The Genocide Accusation

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## Abstract

Following up earlier work on accusations, we proceed with a detailed investigation of a particular class of extreme accusations called genocide accusations. We focus on real time accusations of episodal genocide, meant to bring the target behaviour of the accusee to an end, or to contribute to its termination. We derive conditions under which issuing such accusations may be justified.

## 1 Introduction

In Bergstra & Düwell [7] we introduced extreme accusations as a class of straight accusations (using the terminology of [6]) and we mentioned the accusations of commitment of genocide as instances of extreme accusations.

We consider accusations in a conceptual framework which we refer to as accusation theory. Accusation theory was developed in [4] on the basis of promise theory as developed by Mark Burgess and as presented in Bergstra and Burgess [3]. In Bergstra and Düwell [5] a case study of accusation theory in the context of computer programming is

developed. Here much attention is paid to the justification of accusations, which is not the same as their validation. In Bergstra and Düwell [6] the notion of special accusation types is discussed, in contrast with straight accusations, which are the normal case so to say.

We refer to the papers just mentioned [4, 5] and [6] for a discussion of accusations and references to other work.

As in [7] we focus on accusations about past or current behaviour of an agent or collective of agents, which means that we will consider cases where an accusation is made regarding an aspect of past or current behaviour,  $P$ , of an accusee. We say that the accusation is about such behaviour, which, using the terminology of [6], is referred to as the target behaviour of the accusation. In the terminology of [6] these are so-called straight accusations. In [7] we have given a definition of extreme accusations which we will not repeat here. The contribution of the present paper is to discuss, in detail, one particular type of extreme accusation, the so-called genocide accusation. A genocide accusation is a straight accusation with (allegedly) genocidal target behaviour.

## 1.1 Flash genocide versus episodal genocide

With flash genocide we denote an instance of genocide which takes place in a brief period, such that there is not even time for agents external to the event to make up their mind and to contemplate ways of bringing the genocidal process to a halt. Nuclear weapons enable a flash genocide. With episodal genocide we denote an instance of genocide which takes place in an extended episode or a consecutive series of episodes. The Holocaust during the National Socialist regime in Germany took the form of an episodal genocide.

Upon contemplating the concept of an episodal genocide, committed by  $B$ , one finds that, after some time in the initial episode or episodes of the process, the threshold for genocide is passed. This state of affairs may or may not be noticed by external observers, and it may or may not be the case that some external observers notice that  $B$  risks being involved in committing genocide. If an episodal genocide continues or even intensifies, after having become a genocidal pattern of activities of  $B$ , the genocide gets worse. Thus with the notion of an episodal genocide comes the intuition of intensity of episodes and of severity of the entire process.

For an investigation of genocide accusations the relevance of the distinction between flash genocides and episodal genocides is significant. Whereas a genocide accusation about a flash genocide (or an episodal process claimed to be a flash genocide) is based on an assessment in hindsight, without any objective to bring the allegedly genocidal process to a halt, a genocide accusation about an episodal genocide may either take the form of an accusation in hindsight or an accusation in real-time, that is, during the process in focus (i.e. the target behaviour). A real time genocide accusation may be issued with the

accuser's intention to bring the process in focus (claimed to be genocidal by the accuser) to a halt. The latter is not an option for a genocide accusation about a flash genocide. Below we focus attention on episodal genocides, which have been by far the most common case in history thus far.

A retrospective genocide accusation is a genocide accusation about a past episode or series of episodes which is not anymore ongoing, such that there is no risk for the series of episodes being continued (as subsequent phases in the target behaviour of the accusation). A real-time genocide accusation is an episodal genocide accusation made during the process making up the target behaviour of the genocide accusation. Evidently only a real-time genocide accusation may be helpful for bringing the target behaviour of the accusation (claimed to be an episodal genocide) to an end. Below we focus more specifically on real-time episodal genocide accusations.

## **1.2 Focus on accusation theory as a vehicle of theoretical analysis**

The aim of this paper is to discuss genocide, and the genocide accusation in particular, from the perspective of accusation theory. We aim to obtain conclusions which are rather independent of the definition of genocide which is adopted. We assume that genocide is understood as a serious episodal human rights violation and that the following objectives are reasonable:

- (i) To prevent the occurrence of genocide,
- (ii) To strive to bring an episodal instance of genocide to a halt by all permissible and adequate means, and
- (iii) To hold those accountable who may be blamed (that is, accused with a subsequently validated genocide accusation).

In order to secure the focus on the application as well as the further development of accusation theory, we refrain from analysing or commenting on the existing range of definitions for genocide, as well as on its historical development, a topic for which many useful sources can be found.

## **2 Views of genocide, a multi-dimensional space**

Conceptual complications with the genocide accusation, listed as dimensions of variance, thereby constructing a multidimensional space of views of genocide:

1. *Definition variance*: There are different definitions of genocide which are far from being mutually co-extensive. These definitions have varying status, ranging from international standardization on behalf of the UN to scholarly acceptance in (a part of) a specialist community of genocide scholars, and from biased national perspectives to opposing national perspectives from other nations.

- For instance the systematic use of cochlear implants is, by some, qualified as genocide (although merely cultural genocide), because ending deafness would bring to an end a vivid world-wide culture maintained by deaf individuals.
- The demarcation between war crimes and genocide is controversial.

2. *Validation variance*: It is not obvious to what extent, given a general definition of genocide, a specific accusation of genocide (that is an accusation instantiated with all relevant parameters) can be validated.

- *Scholarly validation option*: Is the presence of genocide a matter that can be decided without the action of a court, for example by scholarly means only?
- *Legal validation option*: Symmetrically, to what extent can the validity of a genocide accusation be decided in court by legal means.
- *Hybrid validation option*: Is there some (non-obvious) superposition of scholarly validation and validation in court?
- *(Multi)national validation option*: A state or a combination of states may decide to confirm (consider to be validated) a genocide accusation. This form of validation may (but need not) take the form of a UN resolution, and it is plausible that only a subset of the confirming states serve as accusers. It is plausible that various legal, scholarly or hybrid validation efforts serve as inputs to a (multi)national validation. Nevertheless a (multi)national validation may be controversial, as other states may have different views on the matter.

As the accusee of a genocide accusation may well be a state, rather than its political or military leaders (a condition which the ICJ may take into account), (multi)national validation may be a critical precondition for success. Legal validation of an accusation by the ICJ automatically creates multinational validation as an intended side effect, at least in principle.

3. *Disagreement resolution variance*: What if scholars and/or judges disagree, or if different courts disagree? A range of different options for conflict resolution is on offer.

4. *Validation timing variance*: Assuming that some process for the validation of a genocide accusation has been defined, at least in principle. It is then nevertheless unclear whether or not (on whose initiative) and if so in which timeframe such decisions, legal or otherwise, can be taken. Validation of a genocide accusation may be instrumental in bringing the genocide to an end.

- *Delay tolerance variation*: Some will, but others may not, keep silent or inactive during the validation process.
- *Validation forecasting propensity variance*: Some may be inclined to forecast the validation outcome and act in conformance with their forecast. Others may not.

## **2.1 Complications with legal validation and with scholarly validation**

Conceptualizing variation of options for legal variation and options for scholarly variation, merely as comprehensively listing a range of options, may underestimate the depth of the issues at hand.

### **2.1.1 Legal validation**

In case of legal validation, it may be difficult to find an unbiased court able to produce an unbiased assessment of the accusee's target behavior, in view of the massive political pressures which may be imposed from different sides of the conflict. Moreover, we assume that legal validation can hardly exist in the absence of publicly visible (that is, published) and scientifically validated (that is, thoroughly reviewed) scholarly validation, a marked difference with ordinary criminal cases, where forensic science merely determines methods and procedures, while the outcome of specific criminal investigations are unlikely to be incorporated, in detail, in the body of forensic science.

### **2.1.2 Scholarly validation**

Having emphasized the relevance of scholarly validation of genocide accusations, above, one is left with the question as to what extent obtaining a scholarly validation of a genocide accusation is feasible. Scholars may feel the pressure (emotionally from within, or from external forces) to "see" the genocidal quality of the accusee's target behaviour and they may even be susceptible to what we will call the genocide accusation paradox.

However, if scholarly validation is to be of any relevance for the legal validation of genocide accusations, scholars must feel absolutely free to make their own assessments,

and guarantees of such freedom must be first of all created by the scholarly (often academic) environment in which they are working.

We have the impression that those, in academic circles, who protest against alleged genocide, may not always understand the fundamental importance (for the scholarly and thereby also for the legal assessment of genocide) of true academic freedom for those who do not, or do not yet, share their views concerning a particular case.

## 2.2 Weaker versions of the genocide accusation

Let  $X$  be the accusation by  $A$  (with scope  $S$ ) that  $B$  is committing genocide in context  $C$ .

We consider weaker accusations which are not extreme, and which in a later stage (once validation has been obtained) might be extended to a genocide accusation:

$X'$ : the accusation by  $A$  (with scope  $S$ ) that  $B$  runs the risk of committing genocide (which may be validated upon due scrutiny) in context  $C$ .

$X''$ : the accusation by  $A$  (with scope  $S$ ) that  $B$  applies (or is responsible for the application of) disproportionate violence in context  $C$ .

## 3 Simplified perspectives on genocide

We will consider in more detail three simplified perspectives on genocide which emerge from the above listing.

*Legal professional's perspective:* For judges in a court who are to validate or reject a particular genocide accusation only definition variance and disagreement resolution variance matter. For them validation variance has already been resolved in favor of a preference for validation in court. Validation timing variance has been resolved for individual judges by the very fact that they will not speak out before the judges as a team have agreed to do so.

*Autonomous political activist's perspective:* For politicians or for political activists who are involved in issuing genocide accusations the picture is more complicated. On the one hand the picture has been simplified because they have in practice chosen against validation of their genocide accusation in court in advance of issuing the accusation.

However, they may still admit priority of legal validation on matters of genocide assessment in principle and at the same time claim low delay tolerance in combination with strong forecasting propensity.

In the later case they may or may not have a prepared policy on dealing with the eventuality that a court decides (later in time) in a different way about the validity of the genocide accusation made.

*Restrained political activist's perspective:* Some politicians and activists may adopt the view that only a court may validate a genocide accusation, irrespective of their private views on the matter, and for that reason they will issue weaker accusations only (options for weaker accusations were mentioned above in 2.2). They may adopt high delay tolerance, while resisting the urge to forecast the outcome of court proceedings.

### 3.1 Genocide accusation paradox I

We find a paradoxical situation which applies to extreme accusations in general, here instantiated for genocide accusations. If the following four conditions are met:

(i) Agent A is of the opinion that agent B is in the process of committing episodal genocide in context C (that is: B's behaviour of the episodes that have occurred thus far qualifies for being genocidal according to A), and

(ii) Agent A is of the opinion that by accusing B, with scope S, of committing genocide, the probability increases that B's (claimed to be genocidal) behaviour in context C will come to an end (that is, it will not persist in a genocidal manner in subsequent episodes), and

(iii) Agent A is of the opinion that validating a genocide accusation may only be done by legal means in court, (and in particular A themselves is unable to validate any self-made genocide accusation), and

(iv) Agent A holds that going to court and awaiting (as expected by A) a verdict that B is guilty of genocidal behaviour, will take far too long,

then, in spite of (iii): Agent A finds ample, if not compelling, justification for issuing a genocide accusation towards B, with scope S.

We notice that the notion of justification for an accusation is in line with our analysis of justification in [6]. Justification is different (by being a weaker condition) from validation as it does not require the body of the accusation to be confirmed, but merely requires a belief by the accuser that the body will be confirmed upon closer investigation. In this case the justification is strong, given the assumed relevance of issuing the accusation in a timely manner.

The issue is a matter of timing, and is primarily due to the episodal character of the alleged genocide. A comparable issue may arise with non-extreme accusations, for instance the suspected occurrence of systematic fraud (as perceived by A and as committed by B) in certain circumstances which may constitute an incentive for A to publicly accuse B of fraud, thereby accepting the risk that B will successfully retaliate by accusing A of defamation.

## 3.2 Genocide accusation paradox II

If the following three conditions are met:

(i) Agent A is of the opinion that is in the process of committing genocide in context C without A having any specific definition of genocide in mind which might be the basis for legal validation, and

(ii) Agent A is of the opinion that by accusing B, with scope S, of committing genocide, the probability increases, be it hardly in a noticeable manner, that B's (claimed to be genocidal) behaviour in context C will come to an end (that is, it will not persist in a genocidal manner as perceived by A), and

(iii) Agent A is of the opinion that validating a genocide accusation may only be done by legal means in court, (and in particular A themselves is unable to validate any self made genocide accusation), and

(iv) There will be no penalty for A if, in due time, the validation of their genocide accusation in court fails,

Then, in spite of the potentially defeasible basis for (i): Agent A finds sufficient, if not compelling, justification for issuing a genocide accusation towards B, with scope S.

## 3.3 Commenting on both paradoxes

What we consider paradoxical about these accusations is that the accuser in both cases knows very well that it is simply not up to them to validate their accusation. And remarkably, they could not care less, so it seems.

Both seemingly paradoxical situations may occur in practice, once agent A has become convinced that B is committing genocide, and may well carry on in a similar fashion unless interrupted by external pressure or force. The second case may fit a supporter A' of A who trusts the judgment of A, and who repeats and thereby reinforces the accusation A made against B.

Another observation that arises from the above considerations is that for an agent A, who holds that the only validation of a genocide accusation can be provided by legal means in court, it must be the case that, at least in principle, an even more serious accusation (than the mere genocide accusation) can be imagined under circumstances as specified in the body of the following accusation:

Agent A accuses B of committing ongoing episodal genocide, where B knows (as claimed by A) that, after initial episodes, the genocide accusation had been issued and an adequate court has validated the accusation, so that now B is consciously committing a prolonged genocide. We reformulate the above observation as follows:

### **3.4 Stronger versions of the genocide accusation**

Suppose that (i) B has been accused by A of committing genocide in case of an episodal activity and in addition (ii) A has obtained legal validation in court for its accusation, and (iii) B continues with follow-up episodes similar to the episodes which brought about said legal judgment, then A may accuse B of committing continued episodal genocide even after having been notified that B's activities qualify as genocidal in court. The latter accusation is stronger than a mere genocide accusation.

### **3.5 Forensic science**

Forensic science increasingly turns the assessment of behaviour of persons and groups into the application of validated scientific method. One may imagine a situation where the claim that a person B committed homicide can be validated just as a medical hypothesis by means of scientifically grounded evaluation of trustworthy evidence.

For  $P =$  homicide, scientifically grounded evidence validating the accusation (say  $X$ ) that B committed  $P$  is conceivable. Legal procedures and the verdict of judges are then a mere decoration. Is the same true for genocide? This is not clear at all.

In the case of murder, even when evidence exists that B has murdered victim  $V$ , unless B has been convicted in trial for murder on  $V$ , if A accuses B of having committed a murder (assuming that A is not the prosecutor in a trial devoted to precisely that matter) then B may, in response to the accusation of A, accuse A of defamation. B may go to court with the latter case and request compensation from A etc.

We hold that some correspondence between the situation just mentioned and the genocide can be found as follows: suppose that

- (i) Agent A issues a genocide accusation to B, with audience  $S$ , which audience is sufficiently large to eventually reach a large audience and,
- (ii) Agent A has no legal confirmation by an adequate court of said accusation, and
- (iii) Agent A has scholarly backing that B shows genocidal behaviour (comparable with forensic science based evidence in a murder case) then:

A's accusation may be considered offensive by B and some form of seeking compensation by B must in principle be available to B if it turns out that legal validation eventually fails.

## **4 The genocide accusation as oral violence**

We now try to draw consequences from the conclusion of Paragraph 3.5 in combination with both genocide accusation paradoxes, both of which indicate that issuing a genocide

accusation requires the crossing of an unexpectedly low threshold. We will contemplate rules of engagement for an agent intending to issue a genocide accusation in a stage that said accusation has not yet been legally confirmed in court. By suggesting such rules of engagement, we confirm that, in our view, in some cases, an accuser is justified in issuing a genocide accusation in the absence of legal validation.

## **4.1 Oral violence**

If A issues a legally unconfirmed genocide accusation against B, with a scope S, that may create a problem for B, then in principle this action may be considered oral violence against B. Apart from options as mentioned in 3.4, above, A's accusation ranks among the most serious accusations which can be made.

The idea is that the genocide accusation is so serious that simply taking notice of a genocide accusation and subsequently carrying on as if nothing had happened, renders a member of the audience of the accusation (that is, a member of S) complicit in the production and circulation of the genocide accusation. In other words issuing a genocide accusation has a non-trivial side-effect on agents in scope of the accusation.

This side-effect must in principle be taken into account by all agents involved. How to take side-effects for agents in scope is another matter. We will formulate some rules of engagement which may be helpful to that end.

## **4.2 Options for rules of engagement**

Now we propose that such accusations will be somehow constrained. Here is a listing of constraints or rules of engagement for A who intends to issue a genocide accusation against B.

(i) Agent A and supporters or co-accusers must guarantee that those who intend to defend B have ample and workable opportunity to do so, and to do so with comparable public visibility.

(ii) Agent A must engage in a political debate with B or with supporters or representatives of B, and must in a credible manner take notice of the arguments put forward by B. That A complies with this requirement must be checked by an independent body.

(iii) It must be obvious that A will not take their accusation lightly and A ought to be clear about how and when consequences for A will be in place in case the genocide accusation will not be validated (in a later stage). These consequences are to be somehow proportional to the damage inflicted on B when wrongly being accused of genocidal behaviour, and proportionality in these matters must be checked by an independent body.

(iv) As consequences for A, whose genocide accusation against B is rejected, in the course of a legal procedure in court, we can imagine the following:

- (a) A predetermined financial compensation to B or to a cause supportive of B,
- (b) A pre-determined public statement of regret about having seriously mis-accused B,
- (c) Being open for negotiation with B on what form of compensation to B might be in order,

(d) Doing (or in any case supporting) adequate theoretical work which may help future potential accusers contemplating a genocide accusation to understand what went wrong with A's accusation against B.

## 5 Methodological aspects

In this section we discuss, in more detail, the relation between the development of the present paper and previous work on promises and accusations. To begin with a key aspect of promise theory is the notion of an assessment. Given a promise  $\pi$  (with promiser A and promisee B) and an agent  $C$  in scope of  $\pi$ , at an instant of time,  $T$ , at time  $T$ , an agent say  $C$  may provide various assessments of  $\pi$ , for instance:

- (i) To what extent has promise  $\pi$  been kept,
- (ii) Has the promiser of  $\pi$  achieved their objectives with promising  $\pi$ ,
- (iii) Has the promisee of  $\pi$  profited from having been made the promise,
- (iv) Has the promiser been trusted by the promisee (and or by agents in scope of the promise),

(v) Has the promiser been trustworthy. For each of these versions of assessment there is no such thing as an objective reality, instead different agents make different assessments which in addition may vary in time.

### 5.1 Assessments of accusations

For accusations similar assessments may be contemplated. Given accusation  $X$  an agent may engage in various assessments, for instance:

- (i) Has the accusation been validated,
- (ii) Is the accusation justified,
- (iii) Has the accusation been effective (that is, has the accuser achieved their objectives by issuing the accusation),

(iv) If not yet effective, is the accuser likely to achieve their objectives with issuing accusation  $P$ .

For a real time genocide accusation  $X$ , about an alleged episodal genocide  $Q$ , these various assessments constitute an essential part of the analysis. We summarize critical considerations which may come into play:

(a) Accusation  $X$  may be justified without having been validated at the time of issuing the accusation.

Above we have sketched, in some detail, which forms of assessment of accusation validity are available for a genocide accusation. But the significance of the genocide accusation paradoxes (as presented in 3.1 and 3.2 above) is that these indicate justification of a genocide accusation may prevail in advance of any validation of  $i$  (however, the rules of engagement ought to be respected).

(b) Justification of the accusation may take at least two patterns: (a) The expectation that validation of  $X$  will take place in due course, (b) The expectation that by issuing  $X$  the target behaviour  $Q$  will be interrupted or even terminated. Above we have discussed the notion of episodal target behaviour (and more specifically episodal genocide) which is helpful for explaining the second form of justification.

(c) An accusation may have been effective (and be assessed as such) even without validation or justification (with forms (a) or (b) as mentioned in (ii) above) if the target behaviour  $Q$  has come to an end or has been modified so as to be less effective.

(d) From a logical point of view one must also take into account the possibility that the accuser was and remains unconvinced of their own genocide accusation right from the start, while being convinced of the validity a weaker accusation (e.g. ethnic cleansing) and that the accuser is satisfied if the target behaviour stops and considers their manifestly invalid accusation as a legitimate tool for their objective of terminating the target behaviour. Again respecting the rules of engagement as listed in 4.2 above matters a lot in such cases.

## 5.2 Assessments may be controversial

Suppose accuser  $A$  has issued a genocide accusation about episodal target behaviour by  $B$  and thereafter the target behaviours becomes less problematic. Now  $B$  may claim justification for their accusation solely on the basis of the effectiveness, gauged on the basis of the accusers intentions and preferences. But  $B$  may dispute this justification, claiming that the extreme accusation, made by  $A$ , was an instance of over accusing, while  $A$  could and should have limited its accusation to specific war crimes. This situation might be dealt with rules of engagement as suggested in 4.2 above.

We find that there is (or may be) a difficult situation, particular in cases of extreme accusation: on the one hand it must be possible that  $C$  can articulate their accusation in public since they have at least reasons to assume that a very serious harm is going on. On the other hand is  $C$  running the danger of issuing an invalid accusation, which in cases of

extreme accusations may have very serious drawbacks for C and for their relationship, to other parties involved. Therefore, we feel that there should be a way of communicating an extreme accusation in ways that do justice to the status of an accusation that is not yet validated.

### **5.3 The assessment feature helps avoiding circularity**

Suppose agent C contemplates accusation X with accuser A and accuser B and C makes the assessment that accusation X has not been validated. Now one might claim that this state of affairs materially implies that C accuses A of issuing an invalid accusation, even if the qualification of the assessment as an accusation is not made explicit by C. With such a claim in mind, an invalid accusation creates a potentially infinite chain of counter-accusations, which comes close to a circularity of the theory. We wish to avoid that accusation theory is circular or involves an infinite regress in order to avoid circularity, minimally by stating that a negative assessment will not necessarily amount to an accusation.

We develop this suggestion with some additional detail. So assume, once more, that agent C contemplates accusation X with accuser A and accuser B and that C makes the assessment that accusation X has not been validated.

Now the situation is merely that C notices that (as far as C is concerned) the accusation made by A has not yet been validated. The latter state of affairs is not at all surprising and in a legal process it is even in a certain phase of the process the expected state of affairs. The prosecutor will issue an accusation and only thereafter provide substantiation thereof, to determine whether or not substantiation amounts to validation is then up to the judge (or up to the jury).

Secondly C may arrive at the assessment that they do or do not believe that the accusation is justified. Different agents may come to different assessments and it is certainly possible that the accuser C considers justification of their accusation to be sufficient.

Again we intend to avoid saying that C accuses A of having made an unjustified accusation. Instead one may merely claim that C disagrees with A about justification of the accusation. Either (if justification pattern (a) is used, C may not believe that validation will follow), or (if justification pattern (b) is used), C may not agree that issuing the accusation is likely to promote termination of the target behaviour at hand.

Finally it may be that agent C, when assessing accusation X, finds the accusation invalid, unjustified (or rather C disagrees with the justification of X as given by A), and the accusation is, nevertheless, effective.

We believe that the terminology and methodology of accusation theory allows the analysis and understanding of genocide accusations, with a high conceptual resolution, and that this will prove useful in practice.

## 5.4 Is the genocide accusation an extreme accusation?

Remarkably the classification of genocide accusations as extreme accusations may be disputed. A well-know case in point is the suggestion that efforts to administer cochlear implants to young deaf children would amount to (socio-) cultural genocide (see [13] for more information on this matter).

Without entering into the debate on whether or not usage of the notion of genocide is at all appropriate in activism for the deaf, we hold that cultural genocide (if a meaningful notion at all) should not be regarded as an extreme accusation. It follows that classifying a genocide accusation as an extreme accusation must be done within ample care and that some but not all genocide accusations are instances of extreme accusations. However, we believe that the majority of uses of genocide accusations may be classified as extreme (as defined in [7]).

## 6 Concluding remarks

We have discussed genocide accusations in a specific, but highly relevant, special case of extreme accusations as defined in [7]. Intentionally we do not discuss specific instances of the genocide accusation, in order to avoid being prematurely involved in controversial judgments. We intend our analysis to be quite general and to allow for application in a wide range of cases. Obviously, working out such applications in material detail will be a challenge which will require extensive subsequent research.

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