

Protection of Human Rights through Human Rights Council: An Appraisal

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Abstract : The Present world frequently observe blatant violation of Human Rights all over the world, mostly in developing countries and underdeveloped countries. It is a multidimensional problem which has been addressed by the international community and that has given birth to a number of international organizations. However, from historical development it is vivid that these organisations often failed to promote human rights throughout the world. Therefore, they have failed to achieve their expected goals and to comply with the changing demands of time. Nevertheless, it should be admitted that these organizations have been able to make the countries accountable to carry out Human Rights obligations to a greater extent. The latest attempt of the United Nations to control violation of Human Right within the states is the establishment of the Human Rights Council (HRC). It was established by the United Nations General Assembly on 15 March 2006 by resolution 60/251. Unlike its predecessors, the Council firstly adopted its Institution-building package to guide its work and set up its procedures and mechanisms, For example- the Universal Periodic Review Mechanism which serves to assess the human rights situations in all the United Nations Member States. Though a number of changes have been made, now it is necessary to examine the success rate of HRC in comparison with its predecessor on the basis of these changes and find out the rationale behind the establishment of this new organization to protect Human Right around the globe.

Introduction : The Human Rights Council (HRC) was established in 2006 by the United Nations General Assembly addressing the shortcomings and failures of its predecessors (UNGA Resolution No 60/251). It emerged with an objective of strengthening the International Human Rights (HR) mechanism to promote and protect Human Rights. It also aimed to deal with International HR offenders. There was a long discussion at that period evaluating the past experiences of the work of UNCHR and its inefficiency of it to deal with Human Rights. Therefore some proposals were made to reform the functions and structure of UNCHR. On the other hand, some proposals were made to establish a new organisation like Human Rights Council replacing the UNCHR. Ironically after the establishment of HRC there was huge criticism saying that the changes took place by the replacement was more procedure than pragmatic and substantial. It was claimed that there was nothing newer in it than previous UNCHR. Now after 7 years of launching of HRC this is

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high time to observe whether HRC is doing its function more efficiently than the previous UNCHR or still it retains its predecessor's position and faces the same image crisis. In this article, an attempt has been made to evaluate the function of HRC since its establishment. In doing so the functions of UNCHR are mainly compared with HRC to show that whether HRC retains the previous position or any new thing has come through it.

Therefore the major objectives of the present study are as follows:

1. To find out the structural changes in HRC leading to functional changes.
2. To analyze functional changes in HRC through different mechanisms.
3. To determine the impact of such changes that provides for the rationale behind the establishment of HRC.

Establishment of UNCHR and HRC

The United Nations Commission on Human Rights (UNCHR) was formally established on 10 December 1948 at the first meeting of ECOSOC. Previously it was a functional commission within the overall framework of the United Nations from 1946. It was a body established under Article 68 of the United Nations Charter. All the UN member states were signatories of this organization (En.wikipedia.org/wiki/United_Nations_Commission_on_Human_Rights). It was also being assisted in its work by the Office of the United Nations High Commissioner for Human Rights (UNCHR). It was the UN's most important mechanism and international forum concerned with the promotion and protection of Human Rights. In performing its functions it followed different strategies, which include strict observance of the sovereignty principle, where it used to follow the policy of absenteeism. The policy of absenteeism means that the commission would concentrate on promoting human rights and helping states elaborate treaties, but not on investigating or condemning violators. This policy was followed up to 1967. In 1967, the commission adopted interventionism as its policy (En.wikipedia.org/wiki/United_Nations_Commission_on_Human_Rights). This new policy meant that the commission would also investigate and produce reports on violations. In the 1980s theme-oriented workgroups were created which would specialize in specific types of abuses. None of these measures, however, were able to make the commission as effective as desired, mainly because of the following reasons:

Firstly, the commission had failed to achieve its goal because of the politicization of the body itself and also for giving political advantage to the politically influenced countries. For example- in 2003 after the annual session of UNCHR, a number of NGOs especially, Amnesty International and Human Rights Watch condemned the Commission for failing to discuss the issue of Human Rights violations by notorious Human Rights violators like Iran and China. These violators of Human Rights politicized as well as weakened the commission by forming voting blocs within the Commission (www.ngo-monitor.org/article/amnesty_international_and_human_rights_watch_criticize_the_un_hcr_for_growing_politicization).

Secondly, the Commission was repeatedly criticized for the presence of human right violators as its member, for example- several of its member countries themselves had dubious human rights records, including states for example- Libya whose representatives had been elected to chair the commission (The Shame of the United Nations, 2006)

Thirdly, the commission was repeatedly criticized because it never engaged itself in constructive discussion of human rights issues; rather it was a medium for political selective indictment and criticism (The Shame of the United Nations, 2006).

Fourthly, the commission was criticized by the United States for its unwillingness to address real Human Rights concerns (www.anneapplebaum.com/2003/04/16/the-uns-human-rights-riyuals/).

Finally, the Commission was also criticized for bias to Israel. In 2002 Anne Bayefsky, a professor of International Law at York University in Toronto, wrote, "*commission members seek to avoid directly criticizing states with human rights problems, frequently by focusing on Israel, a state that, according to analysis of summary records, has for over 30 years occupied 15 percent of commission time and has been the subject of a third of country-specific resolutions*" (Ending Bias in the Human Rights System, 2002).

During the following years until its extinction, the UNCHR became increasingly discredited among activists and governments similarly. Therefore the Commission held its final meeting in Geneva on March, 2006 and was replaced by the United Nations Human Rights Council in the same year.

The United Nations Human Rights Council assumed all the responsibilities of its predecessor when it replaced the Commission on Human Rights. It emerged as an inter-governmental body within the United Nations system and after emergence as a new organization for

promoting and protecting Human Right among the member states it performed following functions:

The *first* function of the Human Rights Commission (HRC) is protecting and scrutinizing Human Rights Laws by taking complaints of violations. It also reviewed incidents where human rights may have been violated.

The *second* function of the HRC is expanding awareness of rights by educating residents, agencies and leaders of the member countries about the Human Rights laws protecting Human Rights. It also provides for the measures to file the complaints.

The *third* function of the HRC is to connect disparate sectors. For this very reason HRC facilitates meetings to bring together individuals, groups, and agencies that may have new or ongoing conflict or may have had past concerns around the Human Rights laws.

The *fourth* function of the HRC is to build, support, and participate in Community building and addressing situations of human rights violations and make recommendations on them.

The final function of the Human Rights Commission is to help in increasing participation of residents on the commission as commissioners and volunteers.

Overall performance of HRC: An evaluation Structural changes

The change of the number of members in previous UNCHR was very common. Its past membership expanded from 1947 to 2006 on the basis of geographical representation i.e. 18 in 1946, 21 in 1962, 32 in 1967, 43 in 1980 and 53 in 1992. The former Secretary General in 2005 advocated for the change of the size of the HRC to 15 members which will be more accountable and more specific for ensuring accountability. However, the report of high level panel in December 2004 recommended for the body of universal membership. They showed in favour of their argument that all members of United Nations as per UN charter are committed to protect, promote and encourage respect for human rights (Article 1 of the UN Charter). This universal membership might focus back on the substantial issues of human right concern than to debate or vote (GA Report 59/565, 2004). However, on the General Assembly Resolution the HRC was formed of 47 representatives on the argument of geographical representation, avoiding the concept of universal membership or small group membership (www.ohchr.org/EN/HRBodies/HRC/Pages/memberships.aspx).

Impact of this change

During the 7 year life time of HRC there is hardly any impact that is visible due to this change of number of membership on the activities of HRC. Present number of 47 members (The commission had 53 members) as mentioned earlier is based on geographical representation and it ultimately ends in the HRC having the same fate as the former UNCHR. Evidence shows that a number of countries having the allegation of huge human right violations were elected as members of the council unlike UNCHR for example- Azerbaijan, China, Cuba, Russia, and Saudi Arabia. Geographical allotment is considered eliminating the criteria of meaningful competitiveness and comparative scrutiny for becoming candidates (<http://www.hrw.org/news/2010/02/16/egypt-pledge-serious-human-rights-reform>). As a result the countries like Saudi Arabia, Egypt, Cuba, against whom violation of Human Rights are frequent, still become candidates and become elected as members in this 47 members body. Major criticism of the UNCHR was the country with poor human rights record became the members of it. Now this is apparent that the same criticism is still running and under new system human rights violators like Egypt become the representative of the committee which ultimately hits the organisational accountability and credibility (Election of Egypt, 2007). So we can say that no new leadership or representative selection policy comes by this change which can contribute to the image crisis of this organisation.

Election of membership criteria

Through the resolution in 2006 election criteria of members has been set up. And accordingly the members of HRC shall be elected by direct or indirect majority vote of the members of the General Assembly (it requires 96 votes to be elected) instead of two third majorities of votes. The eligibility requirement to be a member is that the states have to have a good human rights record; full co-operation with the council, contribution of candidates for protection and promotion of Human Rights (Election of Egypt, 2007). The Human Rights conduct of the candidates will be reviewed by the council's universal periodic review mechanism. This is highly likely more stricter and more elaborate criteria than the previous criteria of becoming member in Commission. But the success of these new criteria depends whether it abstains the violator of Human Rights from becoming elected in the body.

Impact of this change

In the first election this can be said as success of HRC in comparison with UNCHR, member having allegation of gross violation did not

contest in election. The council's condemnation of the human rights situations in Darfur, Myanmar, and the Democratic Republic of Congo was also appreciated (http://www.freedomhouse.org/article/troubles-plague-un-human-rights-council#.U_rq61ei8rg). But subsequently the picture had changed and some countries of gross human rights violation record became the members of the council. We can recall the memory of criticism of UNCHR for the membership of Sudan. Though Sudan was accused of gross violation of Human Rights in Darfur, it continued its membership in the Commission till 2005 (www.un.org/News/dh/infocus/sudan/fact_sheet.pdf). The UNCHR was that also criticised for the chairpersonship of Libya in the commission. Unfortunately, the HRC is criticised in the same way for election of its membership. The council elected Egypt as the member (<http://www.hrw.org/news/2010/02/16/egypt-pledge-serious-human-rights-reform>) though a great allegation of violation of human rights through torturing the political opponents by the state mechanism was against her. Moreover, the membership of Azerbaijan, China, Cuba, Russia, and Saudi Arabia in HRC has been highly criticised by various concerns. Steve Crawshaw, UN advocacy director at Human Rights Watch said that “*these 5 countries were the Human Rights violator in 2006, still do these today, in spite of their different promises*” (<http://www.hrw.org/news/2009/04/21/un-elect-rights-respecting-states-human-rights-council>). During this continuous ineffectiveness to the election of members, one example can be given of responsible attitude of General Assembly and that is to suspend Libya from the HRC for its Human Rights violation (<http://www.un.org/News/Press/docs/2011/ga11050.doc.htm>). But one single example is not sufficient to draw a positive conclusion. So, on the basis of the above discussion it can be said that the last 7 years' record of election of members has proven that this was in the same hole like the previous one in respect of selection criteria of members.

Changes of meeting time

The General Assembly Resolution changed the time of meeting of HRC so that it shall meet regularly throughout the year and schedule no fewer than three sessions per year. These three sessions includes a main session, for a total duration of not less than ten weeks, and The HRC shall be able to hold special sessions too. Special session can be held when needed, at the request of a member of the Council with the support of one- third of the membership of the Council (www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx). This change of meeting time was done so that the committee can address the human rights situation regularly by taking resolution in the session. Therefore the success of

HRC depends on how effectively and promptly the council can address the burning human rights issues.

Outcome of the change

During the first 2 years of the establishment of HRC, they could not make any considerable changes in their work in comparison with previous UNCHR as they failed to address the important human rights issues in their resolution. This was alleged that HRC showed partial attitude like previous one because 27 resolutions were taken during the 4 sessions condemning Israel but hardly any result was found till today. Besides some countries like UK, USA repeatedly keeps supporting Israel. Other human rights issues were not focussed so much on those sessions. In 2nd Session they condemned another country Burma for its long term activities (News of Human Rights watch over Anti Israel Resolution at HRC, 2004). In this regard Brett Scafer said "*in the first 4 regular sessions and 4 special sessions the Council failed to draw attention to the ongoing violation of human rights in Belarous , China , Cuba ,Zimbabwe and in many other countries* (Brett Schaefer, 2007). However, this will be unjust to judge the success of HRC only for the disproportionate attitude towards Israel. The regular sessions of their meeting also addressed some burning issues and this was also welcomed by international community. In 19th Session, it has analysed the reports of every state over important issues for example- issues of Libya, Burma, human rights situation of Iran and many other issues (19th Session, 2012). In the 18th Session, the report of HRC shows that in particular human rights issues (right to safe drinking water, prevention of matrimonial death and others) particular recommendations were addressed and decisions were taken. Lastly, through this analysis it can be concluded that this addressing of burning human rights issues through regular session can relieve HRC from the criticism of being partial and at the same time it shows significant success of HRC in comparison with UNCHR.

Universal periodic review

The Universal periodic review is a great innovation of the HRC and in accordance with the General Assembly's decision, in the council's 5th Session it adopted more elaborate provision to set up review mechanism (Human Rights Council resolution 5/1, 2007). This is not at all in resemblance with the periodic reporting system of Commission taken in 1956 (Commission on Human Rights resolution 1 of 1956). The previous one has no authority to criticise the countries. But this new review committee has the authority to do that and this has been performing

accordingly. During the last 7 years of council almost every state admits this review mechanism as an effective mechanism to ensure monitoring on an equal and vulnerable basis. The member states also admit that the success of this mechanism depends on them (<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10370&LangID=E>). During the 12 sessions of review from 2008 to 2011, about 150 countries have produced their report; even the countries like Iran, Zimbabwe, Sri Lanka etc. During the regular sessions HRC evaluates those reports of Governments in comparison with the reports of NGOs and make recommendations (<http://www2.ohchr.org/english/bodies/hrcouncil/>). It is said that the effectiveness of these reports remains to be seen on the review of big players like USA and China. It shows that this mechanism is successfully working to bring these countries within the ambit. The USA also submitted their report where they assured their commitment not only on Civil and political rights, but also on Economic, social and cultural rights (education, health and housing) (<http://www.state.gov/documents/organization/146379.pdf>). In case of UK, this country admitted the recommendations made by council and in 13th Session for Universal Periodic report they responded according to the recommendations. As a result of that they have started to bring significant changes in overcrowded prison, child right and others (http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/UKmid_term_report2010.pdf). But still there are some criticisms on its functions. Paula Schriefer, director of advocacy at Freedom House, a U.S.-based non-profit research institute said that “*the countries with poor human rights record can easily ignore the recommendation*” (www.anneapplebaum.com/2003/04/16/the-uns-human-rights-riyuals/). Therefore it cannot be agreed to assess the success of HRC on this method, because this mechanism was framed not as a judicial mechanism to make the countries bound by this review. In fact, the success and effectiveness of HRC lies on its notion of assessing the Human Rights situations of all the countries. Finally, on perusal of the review system, this can be said that in comparison with UNCHR, the function of HRC through universal periodic review shows its success as a universal supervisory mechanism which can generate more accountability among states.

Special Procedure Mechanism

The commission previously set up Special Procedure Mechanism which could examine, monitor or publish report on the human rights situation of specific country or on any particular human rights issue. Subsequently, HRC succeeded this mechanism with the direction from General

Assembly to review the mechanism where necessary (Para 5 of GA Resolution 60/251). However, the Council during these 7 years established 5 new thematic mandates and extended other 28 mandates established by Commission. Currently there are about 33 thematic mandates and 8 country mandates ([http://www2.ohchr.org/english/bodies/chr/special/index .htm](http://www2.ohchr.org/english/bodies/chr/special/index.htm)). However after long discussion regarding appointment of mandate holder, development comes that the exclusion of individuals from the body that have decision making power in the government holder will be finalised by the council. It was decided that the selection of mandate holder will be also finalised by the council (Meghna Abraham, 2007). Subsequently the code of conduct has been established which emphasised on the independence, neutrality, non-influential character from the stake holder (A/HRC/5/L.3/Rev. 1, 2007). Therefore after this change of mechanism, the HRC started its journey and its functions have been described as follows:

- a. Most SPM receives information on allegation of specific violation of human rights and sends urgent application or letter of allegation to the governments for clarification. In 2010, 604 communications was made to the governments of 110 countries (<http://www2.ohchr.org/english/bodies/chr/special/index.htm>). It shows that SPM creates an implied obligation or pressure on these states about that particular issue.
- b. SP mandate holders carry out country visit at national level to see the human rights situation and this is done by them when the country accepts their request of visit. However many countries have issued extended invitation so that the mandate holders have the authority to visit the country at any time and till September 2011, 89 countries have issued standing invitation (<http://www2.ohchr.org/english/bodies/chr/special/index.htm>). This actually reflects the countries confidence and commitment of their standard of Human Rights. One of the major criticisms of the commission was that they only focussed on the Human Rights situation of the developing countries. But during the course of time of the council it extended its supervision and monitoring of human right situation on developed powerful countries also. For example- according to report in 2009, special rapporteurs visited USA, UK, Australia, and Italy. In USA Special Rapporteur on extra-judicial, summary or arbitrary executions and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited USA in 2008. They recommended for ensuring due process in death penalty cases, publishing reports and

investigation on the death in immigration detention, tracking and responding to killing by law enforcement officials, enhancing transparency in military justice system and in other relevant cases (<http://www2.ohchr.org/english/bodies/chr/special/docs/2009Compilation.pdf> page 171). So, in comparison with Commission, the Council's success lies on taking the powerful developed countries within the ambit of monitoring. Thus it creates more confidence on the developing countries which reflects by the standing invitation of 89 countries for visit.

- c. In comparison with Commission all thematic mandates were extended and new thematic mandates were established. For example- thematic mandate on contemporary forms of slavery (2007), on access to safe drinking water and sanitation (2008), on cultural rights (2009), on the rights to freedom of peaceful assembly and of association (2010) (www.ohchr.org/en/HRBodies/SP/Pages/Introduction.aspx). All these thematic mandates extended the council's focus on these particular Human Rights issues. However this is a good point of argument that if the commission would run it would also extend as according to its previous record. But in order to determine the success of HRC on its running the fact to be considered is the mission of extending the ambit of issues.
- d. Moreover, the report of 19th Session shows the response of the alleged human rights violating countries like Myanmar (realise a political prisoner after 21 year), Republic of Korea (Govt withdraw appeal against an innocent person), Syria (development in health sector). On the other hand, the response of China (concerning right to food) and Brazil (regarding cultural right) in development are appreciable according to the recommendations of the Special Rapporteur (<http://www2.ohchr.org/english/bodies/chr/special/docs/NineteenthIssueOctober-December2010.pdf>). These shows success of HRC in comparison with UNCHR.
- e. Finally this paper points out the success of HRC on triggering the burning issues. In this regard it can be mentioned here that very recently during the political repression in Syria; the special procedure in the 18th Session of HRC condemned this widespread gross, systematic human rights violation by 37 to 4 vote and urged to stop this (http://www2.ohchr.org/english/bodies/hrcouncil/docs/specialsession/SpecialProcedures_MsFaridaShah_eed.pdf). Human Rights Watch welcomed that step of the

Council and proposed for suspension of Syria from two committee of ECOSOC. In response of that 26 nations including USA, UK backed to spell Syria from the committee. Moreover in case of Libya for situation of human right violation, Libya Independent Commission for Inquiry was established by council and by oral update it addressed violence in Libya in the 18th session and final report was presented in March 2012. Then for the commitment of Libyan transitional Government, council unanimously recommended to GA to restore the membership of Libya in council. So, from these examples we can find the council's vigilance on all the triggering issues of violence all over the world. These also reflect the less biasness of the council in comparison with its predecessor.

New Complaint procedure

The new complaint procedure of Council was the successor of the complaint procedure of commission established by ECOSOC Resolution no 1503 in 1970 and previously adopted another by Resolution no 1235. Former procedure was neither designed to protect individual nor acted as mechanism to repress the victim. Previous mechanism was non-accusatorial, confidential and non advertorial in deliberation (Para 4(b) of Sub-Commission Resolution 1 (XXIV)). So, the outcome of it became more political than human rights concern for example- the communication to Argentina during military regime in 1980 and deliberation to Government of Fujimori in 1998 reflects this political biasness (http://icj.org/download/database/complaint_final_paper.pdf). Moreover during 1974 to 1998 there were communications with 78 countries but measures were taken only in small groups of countries (http://icj.org/download/database/complaint_final_paper .pdf). By Resolution No 5/1, the new Complaint Procedure mechanism was established to address consistent pattern of gross and reliably attested violation of human rights and fundamental freedom in any part of the world. After establishment it started its function by two working group namely working group on communication and working group on situation (<http://www2.ohchr.org/english/bodies/chr/complaints.htm>). However through the filtering process by this two working groups the complain made by individuals is referred to council and council then decides either to keep it under review or ask the state for more information or to send Special Rapporteur to observe the situation and report back to Council (<http://vivatinternational.org/resources/hr-complaints-procedure/>). After receiving the reply from Government, expert may order for inquiry or put forward recommendations. Criticism

goes still that this retains the same position of non accusatory, confidential and non adversarial like UNCHR. But if we look back to the outcome of the procedure, the success rate is more than the previous one set out by 1503 procedure. However to examine the evaluation of this individual complain proceeding, for example- from 16 November 2009 to 17 November 2010, the Working Group on arbitration transmitted 102 urgent appeals to 56 Governments concerning 844 individuals (involving 2,774 men, 50 women, 2 boys). Governments and sources reported that 23 persons were released (16th Session of HRC, Agenda no 3). Moreover the working group of forced disappearance transmitted 105 individual cases from 22 countries and most countries responded by that communication (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/104/45/PDF/G1110445.pdf?OpenElement>). So lastly it can be said that in comparison with UNCHR, the complaint procedure of HRC is more successful and during last 7 years no gross allegation came regarding political biasness.

Conclusion

The Commission on Human Rights established 30 special procedures or mechanisms with the intention to examine, monitor and publicly report on human rights situations in specific countries or territories as well as on major phenomena of human rights violations worldwide. On the other hand the Human Right Council tried to comply with Human Rights laws by taking complaints of violations and reviewing incidents when and where Human Rights may have been violated. HRC also provides for creating awareness of rights, connecting disparate sectors and participate in community building. In respond to address their challenges the council often claims that no state parties honestly treats all of their citizens equally under the law of the land. On the other hand the defenders of the states claims that their national sovereignty is not being respected by outsiders and that the principle of non-interference in the internal affairs is not adhered to by certain states and organizations. Again critics of the HRC always claim against the organization for favouring political parties by playing political biasness. Therefore with all the discussion it is proved that the changing of number of members and election criteria of members make less contribution to this organisation to differentiate it from UNCHR. Whereas the functions through changing of meeting time, functions of UPR, SP mechanism and Individual Complain mechanism of the last 7 years reflect the success of this organization i.e. to cover up Hunan Rights issues at present there are 38 thematic and 14 country mandates (www.ohchr.org/en/HRBodies/SP/Pages/Welcompage.aspx). Therefore it is evident that HRC

endeavors to establish more accountability, keep neutrality, free from political biasness in comparison with UNHRC which was previously affected for lack of these criteria. So this will be unjust and unfair to evaluate this organization as the old wine in a new bottle. But at the same time this is true that this is too ambitious to think for such an organization free of non-political image in the world of international political polarization of states. It is not possible to keep its neutral image where states are the main actors as well as main players of it because they are not neutral and in a position of conflict of interest themselves. So to come out of this problem, the membership of HRC can be based on quality instead of geographical representation and for this reason competitive nature of election process can be introduced. Mandate holders of Special Procedure should pay more attention while cooperating and consulting with concerned state parties. More importantly as referred in the Berlin Conference, the role of the President of the HRC should be strengthened in order to facilitate the communication of HRC with its sub-organs. Again, there should be a mechanism which would follow-up current and past recommendations of different bodies of HRC and also consider the situations involving denial and failure of cooperation by governments including the violators of Human Rights. Besides, the HRC should establish a fund for the protection of victims of Human Rights violations and also to increase the budget of the different mandate holders. In spite of all this, the future success of HRC depends on the commitment of states towards Human Rights to keep this forum as a place of accountability and responsibility to examine its commitment.

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