Global Initiative for Economic, Social & Cultural Rights

SERIES

INTERNATIONAL LAW AT THE UN TAX CONVENTION

3

Comparative Legal Insights for the Second Protocol on the Prevention and Resolution of Tax Disputes

Fiscal Policies

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Introduction

This is an issue of a three-part series titled International Law at the UN Tax Convention. This series illustrates technical legal insights drawn from an analysis of international law instruments will be illustrated to better inform the ongoing for a United Nations Framework Convention on International Tax Cooperation (UN Tax Convention) and two early protocols. The subject of the first protocol (First Protocol) is taxation of income derived from the provision of cross-border services, and the subject of the second protocol (Second Protocol) is tax dispute prevention and resolution.[1] The negotiations stem from the December 2023 UN General Assembly Resolution 78/230, which mandates the establishment of an inclusive and effective tax cooperation framework that aligns with international human rights obligations. The UN Tax Convention will introduce general commitments, governance mechanisms, and specific protocols addressing pressing tax matters such as digital taxation and dispute resolution. The objective of this series is to provide States with the legal tools and insights to help shape effective negotiation strategies by drawing on international legal precedents and past multilateral treaty experiences.

The need for this legal analysis arises from the recognition that framework conventions, when accompanied by protocols, offer a structure capable of addressing contentious issues incrementally. In doing so, they must carefully balance the trade-off between broad ratifiability (often achievable through vague or general obligations) and substantive commitments (which may attract fewer States but offer stronger legal clarity).

As cross-border tax disputes grow in frequency and complexity, the need for a robust dispute prevention and resolution mechanism under the UN Tax Convention becomes increasingly urgent. This specific publication within the series explores the legal and institutional design of such a mechanism, against the background of ongoing negotiations for the Second Protocol.

To guide this design, we examine human rights treaties' compliance mechanisms, the World Trade Organization's Dispute Settlement Understanding (WTO DSU) and the United States–Mexico–Canada Agreement (USMCA) dispute resolution system. While trade and economic agreements are the most directly relevant models for tax disputes given their economic common denominator, human rights treaties also provide insights that can be extrapolated from and applied to a multilateral tax treaty guided by human rights principles.

This issue is divided into four parts. Part I provides background on the Second Protocol on dispute prevention and resolution. Part II examines the strengths and weaknesses of compliance and dispute resolution mechanisms in human rights treaties, while Part III analyses trade treaties generally, with a specific focus on the WTO DSU and the USMCA dispute resolution mechanisms, and it provides suggestions for designing an effective tax dispute settlement protocol. While human rights treaties do not follow a particular pattern with dispute settlement provisions, some trade treaties have specialised frameworks like the WTO DSU and the USMCA. Specifically, compliance mechanisms in core human rights treaties, such as establishing a treaty body for regular reporting and monitoring as well as with the capacity to initiate inquiries into potential treaty violations, can help foster transparency and dialogue, while the strengths of the trade treaty dispute settlement mechanisms point toward establishing a multi-tiered dispute resolution process with binding decisions, an appellate mechanism limited to legal errors, and strong enforcement tools such as penalties, transparency measures, and suspension of treaty benefits. Such a structured dispute resolution mechanism should also incorporate clear timelines, a pre-established roster of experts, and procedures to prevent delays and political interference, as well as financial and technical assistance for Global South countries.

This issue proceeds in four parts. Part I introduces the rationale and context for a Second Protocol on dispute resolution. Part II analyses compliance and oversight mechanisms in human rights treaties. Part III evaluates trade dispute frameworks, focusing on the WTO DSU and USMCA, and draws out design recommendations for international tax. Finally, Part IV concludes by proposing a hybrid model tailored to the UN Tax Convention featuring a multi-tiered dispute approach, binding decisions with enforceability and sanctions, a treaty body for continuous oversight and support for Global South participation. Ultimately, we argue that a well-designed Second Protocol must blend the strengths of human rights compliance mechanisms with the efficiency and enforcement power of trade dispute systems—creating a fair, accessible, and effective dispute architecture for global tax governance.

Background on the Dispute Prevention and Resolution Protocol

The need for the Second Protocol dealing with tax dispute prevention and resolution emerged from the need to promote fairness between the Global North and Global South, where conflicts regarding cross-border taxation have increased in both frequency and complexity.[2] This is especially important for the Global South that may not have the systems in place to resolve disputes efficiently and effectively, leading to delays, expensive litigation, and a loss in tax revenues.[3] Issues are seen in examples such as Double Taxation Agreement Mutual Agreement Procedures and mandatory bilateral arbitration, both of which may be underutilised due to barriers such as high costs, weak enforceability, and a lack of tax-specialised arbitrators, leading claimants to turn to tax-related investor-State dispute settlement for more favourable outcomes instead.[4] As such, a Second Protocol setting forth a comprehensive, fair, and effective dispute resolution system could help overcome the current challenges in tax-related dispute resolution, while working in tandem with preexisting national and bilateral frameworks.[5]

Overview of Dispute Settlement Mechanisms in Human Rights Treaties

According to the Center of International Law (CIL) at the National University of Singapore, which analysed dispute settlement mechanisms of 236 major multilateral treaties, 79% of multilateral treaties include provisions for compulsory third-party settlement, with arbitration and the International Court of Justice (ICJ) being the most common mechanisms.[6] The study examines treaties on human rights, trade, and development.[7] It analysed seventeen human rights treaties, including three optional protocols, that have dispute settlement and/or compliance provisions that were concluded between 1948 and 2006.[8] Overall, it found there is no clear pattern for the form dispute settlement provisions take in human rights treaties, which can range from no dispute settlement provisions, voluntary and mandatory referral to the ICJ, compulsory referral to arbitration of disputes unable to be resolved by negotiations, or a combination of mechanisms.[9] Nonetheless, most human rights conventions considered therein have sophisticated compliance mechanisms.[10] Indeed, those conventions that do not have any dispute settlement mechanism, which were six of the seventeen human rights treaties, instead have sophisticated compliance mechanisms that allow State Parties to opt into inter-state communication or state-to-state complaints mechanisms, and either with or without an ad hoc conciliation commission.[11] Most conventions include additional mechanisms, such as "regular reporting to a specific treaty body, inter-state communication, individual complaints procedures, inquiry procedure, observation by the organs of the United Nations or specialised agencies, meeting of state parties, in-country visit, international assistance, and special funds."[12] Overall, a sophisticated compliance mechanism may compensate for a lack of adequate dispute settlement provisions in human rights treaties.

With respect to state-to-state disputes, most human rights conventions have a three-stage complaint system involving a written explanation by the respondent State within three months. If unresolved after six months, either the applicant or respondent State may file a complaint with the treaty's committee. Last is a consideration by the committee, which prepares a report within twelve months that includes the facts and either the solution if resolved or the parties' positions if unresolved.[13] While the interstate mechanism is likely most relevant for our purposes of constructing a tax dispute resolution mechanism, there is also a mechanism for individual complaints in a number of human rights treaties.[14] Lastly, several human rights treaties allow for committees to initiate inquiries based on evidence that grave or systematic violations of guaranteed rights have taken place, which the committee may appoint a member to investigate the inquiry and report on the findings or authorise a member to visit the state, share findings, and offer recommendations.[15] Within six months, the State must respond to the committee with their observations and, potentially, also measures that it has undertaken to remedy the issues.[16]

Enforcement of human rights by regional human rights courts has been overlooked in some studies examining international human rights conventions due to their focus on enforcing regional, rather than international, human rights standards, and given that they have diverse practices.[17] Moreover, while all core human rights conventions include dispute-settlement provisions granting jurisdiction to the ICJ,[18] there is a lack of research on its ability to enforce human rights conventions obligations specifically, as its role encompasses resolving human rights disputes more broadly. Still, with a declining number of States accepting ICJ jurisdiction and thus a growing threat of "rule of lawlessness," in 2023, the UN Secretary-General António Guterres emphasised the need for all states to accept ICJ jurisdiction and to participate in and comply with its rulings to strengthen international dispute resolution.[19]

While scholarly debate[20] continues regarding the overall effectiveness of compliance mechanisms in international law, particularly in the human rights domain, a growing body of affirmative research suggests that well-designed compliance structures can enhance treaty implementation

and enforcement. Rather than dismissing mechanisms like report-and-review processes as ineffectual[21], recent studies demonstrate that participation in such mechanisms correlates with measurable improvements in compliance outcomes.[22] This indicates that institutionalized follow-up processes may positively influence state behavior over time, particularly when backed by sustained international attention and domestic accountability mechanisms.

Empirical research on UN human rights treaty bodies, for instance, has revealed compliance rates with adverse decisions ranging between 19% and 39% over a forty-year period, a figure that is higher than the 14% compliance observed under the Inter-American Court of Human Rights and approaching the 50-60% range reported in the European human rights system.[23] These comparative findings suggest that treaty bodies—even with limited enforcement powers—can exert a normative and procedural influence on States. Importantly, the research underscores that non-compliance is often due to managerial or logistical obstacles rather than an outright lack of political will.[24] For example, unclear implementation directives or insufficient institutional capacity may delay or block compliance, whereas strong public administration sectors and active civil societies have been shown to enhance compliance across diverse regions, including Europe, Latin America, and Africa. This implies that improving institutional clarity, capacity-building, and civic engagement could amplify the effectiveness of compliance mechanisms.[25]

Therefore, when analyzing treaties for effective compliance design, mechanisms that integrate clear guidance, regular reporting, civil society participation, and technical support can help overcome existing barriers and promote sustained adherence. The evidence points to a promising conclusion: compliance mechanisms—if tailored to administrative realities and reinforced through systemic supports—can indeed play a decisive role in strengthening implementation and enforcement.

Studies in the human rights field suggest that compliance is often also influenced not through reciprocity, but through pressure exerted by powerful States, especially via conditionalities tied to foreign aid or diplomatic incentives. Analogously, in the tax

context, the design of compliance mechanisms might benefit from soft power incentives, such as linking adherence to dispute procedures with access to international development financing, capacity-building assistance, or favorable treaty terms.

Furthermore, research shows that civil society actors and public opinion—particularly when mobilized through NGO advocacy, treaty body reports, or "naming and shaming"—can pressure States into improved compliance. Even in the absence of coercive enforcement, normative and reputational pressures can play a powerful role. Integrating civil society reporting mechanisms into tax treaty implementation—either formally or informally—may help encourage transparency and deter bad-faith practices, especially around issues like tax evasion and illicit financial flows.

Provided tax obligations must be consistent with States' obligations under international human rights laws, there is potential for enforcement to be sought under these varied human rights mechanisms to the extent they are violated. For the purposes of constructing a dispute settlement mechanism through the successes and failures of these mechanisms, it could potentially be helpful, at minimum, to have a committee and reporting obligations in monitoring and implementing tax objectives as well as continuing conversations about how impactful the convention and protocols have been internally, thus fostering transparency and dialogue. Moreover, given that treaty body decisions could potentially be seen as impactful by some studies, having a multi-phase resolution in tax disputes, starting with negotiation, then institutional review, and finally with the issuance of a report, could be useful to allow States for mediation of an issue earlier in the process to the extent possible. Non-compliance often stems from managerial capacity, not political unwillingness, which suggests that clear guidelines and technical assistance can improve tax dispute compliance, too. While financial compensation for issues such as rectifying illicit tax and taxation of high-net-worth individuals may not be useful, supporting the Global South's ability to comply with directives, such as those promoting transparency, would be useful. Having penalties or high violation costs could also serve as a deterrent. Lastly, efforts by committees and NGOs can mobilise public and international pressure

and support implementation without formal sanctions, thus demonstrating the influence that treaty bodies and civil society organisations can potentially have on implementation outside of traditional dispute settlement mechanisms.

Overview of Dispute Settlement Mechanisms in Trade Treaties

While examining human rights dispute settlement mechanisms can provide important insights, examining trade treaties may be more useful in the actual construction of the Second Protocol, as they offer concrete, tested models of resolving complex, interstate economic disputes in ways that could be adapted for resolving tax disputes. The CIL similarly analysed twenty international trade and development treaties from 1947 to 2010, with no treaty providing for compulsory referral of disputes to the ICJ, no mechanism for disputes regarding the interpretation and application of the treaty, only two treaties providing for compulsory referral to arbitration, and only one treaty setting forth compliance procedures (the 1947 General Agreement on Tariffs and Trade (GATT)).[26] The primary reason for a lack of such provisions is that most treaties analysed thereunder had the unique purpose of establishing regional banks with rules and obligations applying to the bank rather than the State party.[27]

However, the CIL study lacks information on the World Trade Organisation, which replaced GATT, and the United States–Mexico–Canada Agreement, both of which contain dispute settlement mechanisms relating to trade, which are analysed below. The study also does not contain other US Free Trade Agreements (FTAs), which are not analysed herein but are mentioned for reference.

World Trade Dispute Settlement Understanding (WTO DSU)

World Trade Dispute Settlement Understanding was established in 1995 and provides a forum to settle disputes in connection with any WTO agreements effectively and expeditiously.[28] The creation of the DSU responded to GATT member concerns that the dispute settlement mechanism under GATT was ineffective

due to a lack of fixed timetables and the ability of disputing parties to block disputes, thus leading to a lack of resolution.[29] Strengths of the system include strict deadlines and facilitating the ease of establishing panels, adopting panel reports, and authorising retaliation for non-compliance.[30] Its core objectives include "[preserving] the rights and obligations of Members under the covered agreements, and [clarifying] the existing provisions of those agreements in accordance with customary rules of interpretation of public international law."[31] Overall, the dispute settlement occurs in the Dispute Settlement Body (DSB), commencing with bilateral consultations between the parties to the dispute with hopes of reaching a solution, but if that fails, the complainant applies for an independent dispute settlement body (a panel comprised of three, and exceptionally five, experts selected on an ad hoc basis), which will meet and produce a final report after six months, setting forth binding recommendations to be adopted by the DSB.[32] There is an opportunity for a party to appeal, wherein the Appellate Body will review the panel's decision for legal issues and present a report within 60 days to be adopted by the DSB.[33] If the losing party does not comply with the recommendations, the winning party may negotiate compensation or impose trade sanctions with DSB authorisation.[34] Compared to the GATT mechanism, this process is more structured and formal, with clear stages and strict timetables to resolve trade disputes efficiently and provide for essentially automatic adoption of panel rulings, which can only be blocked if all members of the WTO are on board.[35]

In evaluating the WTO DSU, weaknesses include potential delays despite deadlines and the time-consuming nature of a full dispute settlement procedure, during which the complainant (if ultimately in the right) may potentially experience continued economic harm given the lack of interim relief during the procedure, with a successful claimant not receiving additional compensation for that continued harm, and they also do not receive reimbursement for legal expenses as the prevailing party.[36] Lastly, not all Members have the equal ability to suspend obligations in cases of non-implementation, and while suspension is usually effective, there are rare exceptions.[37] Nonetheless, the strengths of the DSU may include that it is much more effective than the dispute settlement system under GATT 1947, its quasi-judicial and quasi-automatic nature

enables it to handle more complex cases, and there are greater guarantees for Members who want to assert their rights. Lastly, compared to other multilateral dispute resolution systems in international law, the mandatory nature and enforcement mechanism contribute to its success.

Nevertheless, effectiveness may be considered through additional metrics such as the efficiency of dispute settlement and inclusiveness of the dispute settlement process, i.e., with respect to Global South States.[38] The system's overall effectiveness declined after 1998, with an increasing number of unresolved disputes.[39] While it successfully curtailed unilateral trade actions, one concern has been judicial activism and rulings extending beyond the mandate of the WTO.[40] Another major and relevant concern is that using the DSU for the WTO system continues to be too costly and complex for Global South countries to use effectively, with Africa largely being absent from WTO disputes, reflecting unequal access to justice.[41]

Based on the strengths and weaknesses of the WTO DSU, a dispute settlement mechanism for the UN Tax Convention should balance efficiency, fairness, and accessibility. It may include a multi-tiered process, beginning with mandatory consultations and mediation to encourage early resolution, followed by an independent panel of tax experts selected on an ad hoc basis, issuing binding decisions within strict time limits to prevent delays. An appellate mechanism may also be available but limited to legal errors to prevent judicial overreach. A key consideration will be promoting accessibility and inclusivity for Global South nations, which can potentially be aided by the system providing interim relief, such as temporary compensation to mitigate economic harm caused by prolonged disputes, and/or a fund to help lower-income nations access otherwise costly legal expertise. Funds can be generated through member State contributions as a percentage of tax revenues, similar to how the WTO derives income from member State contributions.[42] Such a fund could also potentially be generated through monetary penalties for non-compliance or delayed implementation of rulings, thus serving as both a deterrent and a financial resource. Enforcement should extend beyond traditional retaliation by incorporating monetary penalties, public transparency mechanisms, and potential sanctions, such as suspension of treaty benefits for

non-compliance. To ensure legitimacy, the dispute resolution body's mandate must be clearly defined, preventing excessive judicial activism while maintaining an impartial and rules-based approach to international tax disputes.

United States-Mexico-Canada Agreement (USMCA) Dispute Settlement

The USMCA has three primary forms of dispute settlement: State-to-State dispute settlement, which allows a State party to invoke an ad hoc arbitral panel to adjudicate its claim that another State violated a provision of the agreement; a binational panel review of antidumping and countervailing duty determinations, which applies domestic administrative law; and investor-State dispute settlement (ISDS), with International Centre for Settlement of Investment Disputes (ICSID) or New York Convention rules applicable.[43] The most relevant form for the UN Tax Convention is likely the State-to-State dispute settlement, as the mechanism would likely be used to resolve disputes between member States, and for now, it remains unclear whether individual parties themselves would be able to bring tax claims. The USMCA improved State-to-State dispute settlement by addressing the panel blockage issue that plagued NAFTA, where parties could indefinitely delay disputes by refusing to appoint panellists. The USMCA mandates the establishment of a roster of panellists, ensuring disputes can proceed even without full consensus.[44] This increased use of State-to-State dispute settlement under USMCA, as compared with under NAFTA, may also reflect concerns over the WTO's uncertain future, with the United States signalling support for controlled, impartial dispute resolution in a setting where it has greater influence over adjudicators and no appellate review.[45]

As compared with the WTO, there are fewer resources assessing the effectiveness of the USMCA dispute resolution mechanism. One source claims that, compared to the WTO, the USMCA at the very least offers a process that works, given that its panel reports are binding, and panel decisions are not affected by domestic political pressures.[46] Nonetheless, Mexico has experienced some difficulties with using it; however, Mexico's use of this system demonstrates it considers it to be an effective instrument to defend its interests.[47] For example, concerning auto-part manufacturing in North America, Canada and

Mexico requested the establishment of a panel to settle their differences with the United States regarding the interpretation of the methodology to determine the regional value content of such parts, and despite ruling in favour of Mexico, interest in enforcement seemed lacking.[48] Indeed, a lack of enforcement and compliance with panel decisions may erode confidence in the USMCA dispute settlement mechanism as well as the overall agreement.[49] Overall, it appears all governments have used the dispute settlement mechanisms, but questions of implementation and compliance remain.[50]

Outside of these metrics, it has been suggested that indicators of success can include using the auto dispute to show how Canada and Mexico can come together with a panel that produced a short, concise, clear, and cohesive panel ruling interpreting the automotive issues, avoiding overreach. While compliance has been unclear, the USMCA does not just allow for compliance as the only outcome; compensation may also be an alternative, but the more likely phenomenon occurring here is some political strategizing, with Mexico agreeing to waive compliance, for example, in exchange for the United States not putting together a panel to discuss violations by the Mexican government prior to a major election.[51] However, this is not unique to USMCA.[52] Instead, a domestic dialogue in all three countries between the government and the industries involved could allow the industries to realise the benefits of dispute settlement by ensuring the US complies with the rules of origin, which it has not done yet, despite the industries devoting a lot of time, energy, and resources into the matter.[53] As such, the positive aspect of the mechanism is that it is working; however, the trade culture must shift to allow trade benefits to be realised by the industries and not become a part of a political agenda.[54]

Drawing from the analysis of the USMCA system, a dispute settlement mechanism for the UN Tax Convention would benefit from incorporating its key strengths while addressing its weaknesses, ensuring efficiency, enforcement, and compliance. The procedural ease of creating panels and issuing clear and concise panel reports is a strength that can be replicated. As such, the system may adopt a mandatory State-to-State dispute settlement mechanism with a pre-established roster of tax and legal experts to prevent procedural blockages,

ensuring disputes proceed without undue delay. However, given concerns about a lack of compliance under USMCA, enforcement mechanisms should include binding rulings with clear timelines for implementation, along with alternative remedies, including but not limited to compensation for affected States. To ensure the legitimacy of rulings and prevent disputes from becoming overly politicised, the mechanism should emphasise clear legal standards, an independent appellate function for legal consistency, and strict limits on political strategizing that could undermine fair tax dispute resolution and prevent industries and citizens from realising the benefits of the agreements. Overall, the user-friendly and accessible nature of the USMCA system is worth replicating, but the UN Tax Convention system must also have clear enforcement and compliance mechanisms, perhaps combining trade dispute resolution mechanisms with the sophisticated compliance mechanisms set forth in human rights treaties.

Conclusion

Overall, the case studies highlight that executing a successful UN Tax Convention, particularly one that considers and prioritises human rights, must be embedded within a broader institutional design that includes clear and effective dispute resolution mechanisms. Dispute settlement processes will be critical in maintaining the integrity of the treaty and ensuring fairness and compliance.

The dispute settlement mechanism in the form of the Second Protocol to the UN Tax Convention should promote efficiency, fairness, accessibility, and enforcement by drawing from the strengths—and addressing the shortcomings—of human rights compliance mechanisms, the WTO DSU and the USMCA dispute resolution system. A multi-tiered approach beginning with mandatory consultations and mediation, followed by the establishment of an independent panel of tax experts empowered to issue clear and binding decisions within strict timelines, would enhance both fairness and efficiency. Inspired by human rights treaties, the protocol could incorporate institutional review and reporting, promoting early resolution, while addressing managerial barriers to compliance through technical assistance, public accountability, and capacity building, especially for Global South countries.

To further strengthen the system, appellate mechanisms could be introduced to ensure legal coherence and prevent judicial overreach, while limitations on political interference would protect the integrity of the process. The inclusion of interim relief and financial support mechanisms for lower-income States would make the process more accessible and equitable. A treaty body, complemented by a committee-led reporting, review, and inquiry process, would foster transparency, continuous dialogue, and long-term implementation, even beyond formal adjudication.

In an era where cross-border tax disputes are growing in complexity and disproportionately burden Global South

countries—often constrained by limited institutional capacity—the urgency of establishing a fair, accessible, and enforceable global tax dispute resolution mechanism is clear. The Second Protocol to the UN Tax Convention offers a unique opportunity to move beyond the fragmented, costly, underutilized and exclusionary mechanisms of the past, such as bilateral arbitration and Mutual Agreement Procedures under Double Taxation Agreements.

By integrating the most effective elements from human rights treaties, the WTO DSU and the procedural innovations of the USMCA, the Second Protocol can build a multi-tiered system that prioritizes early dispute resolution, equitable access and binding enforcement. Crucially, it must also include built-in support for capacity building, transparency, and meaningful participation—especially from Global South countries whose perspectives have long been sidelined in international tax governance.

The UN Tax Convention presents the chance to fundamentally reshape the global tax order to reflect today's geopolitical and economic realities. Doing so will require moving beyond lowest-common-denominator diplomacy to embrace enforceable legal standards, inclusive institutional design, and a renewed social contract between States—one that links taxation, transparency, and human rights. The goal must not only be to curb tax avoidance and stop revenue loss but to democratize globalization itself—redistributing fiscal power in ways that support sustainable development and reduce inequality.

To succeed, negotiators must draw on the lessons of past regimes while correcting their failures. Embedding principles of justice, accountability, and equitable representation into the dispute resolution architecture of the Convention therefore becomes essential. Only then can global tax rules serve all countries—not just the most powerful—and become a tool for global equity, not merely global compliance.

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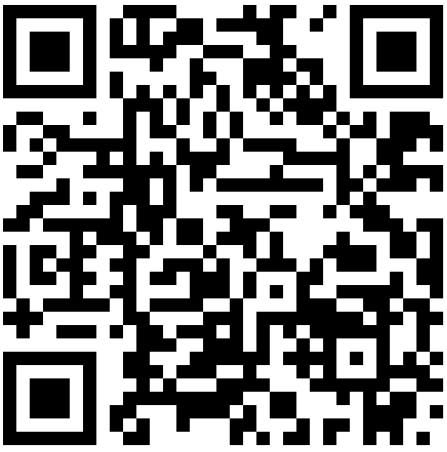

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