

Study the principles and concepts of International Environmental Law with a view to sustainable development

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Abstract

Almost all principles of international environmental law are used in order to prove the concept of sustainable development: Sovereignty principle over natural resources, principle of commitment to collaboration, informing and assistance in environmental emergency situations, The principle of protection and preserving of the environment, principle of obligation to pay compensation by polluting the environment, Precautionary principle and the principle of prevention. Although they have different degrees of binding, but this principle must be viewed in a single set because each principle completes the other principles. Of course the concept of sustainable development is seen, directly and explicitly, among concepts of international environmental law more than principles. This research examines the principles besides the concepts related to sustainable development in international environmental law.

Keywords: Principles of international environmental law, sustainable development, environmental protection

Introduction

Environmental Law is an important tool for monitoring and management of sustainable development. This law is useful in establishing Policies and environmental protection measures and rational and sustainable use of natural resources, As it is emphasized in documents and important international declarations about environment, in a long and difficult process of human evolution on earth, there is a stage that human by rapid development of science and technology with different method and in an unpredictable scales, has reached the power to change their environment. This situation, not only faced current generation of human with serious threat, but also seriously endangered human survival.

One of the most reliable resources to deal with these risks and threats and regulate the behavior of international law is International Environmental Law. Today, sustainable development is the key to solving many environmental issues and is considered as the most fundamental issues of international environmental law, So that, it can be named as main goal of development and codification of international environmental law. To the extent that the importance of sustainable development in international law and environmental causes that the world will be witness to the evolution of this legal branch and sustainable development of international law.

The Rio and Stockholm declaration, announce that protection of environment is a require to achieve sustainable development and Agenda 21, by integration of these two concepts, in addition to the proposal of the Commission on Sustainable Development, demanding the orientation of international legal environment in line with the concept of sustainable development. It should be mentioned that the Commission has made a remarkable help to promote the concept of sustainable development.

In this paper, in order to better understand the concept of sustainable development, we mentioned the principles and concepts of International Environmental Law in relation to it.

Principles of International Environmental Law related to sustainable development

- Principle of sovereignty over natural resources

Governments have exclusive sovereignty over its natural resources, but the exercise of this right shall not cause damage to the environment of other States or areas outside the jurisdiction of state.

Sovereignty and exclusive jurisdiction of the state over its territory means that only they can expand Policies and rights to natural resources and environment of their land. scope of sovereignty over natural resources is consist of:

1- The land within the borders of the underlying soil

2- Domestic water such as lakes, rivers and streams

3- Space above the territory, internal waters and territorial sea as far as the legal system of the upper atmosphere begins. Also states have more limited rule of law, include adjacent areas, close to the territorial sea, bed and under the bed and Exclusive – economic area. Apart from the above case, there are areas that are not dominated by any country; these areas are sometimes interpreted as a global commons, are included the high seas and the seabed and sub-seabed, outer space and Antarctica. Sovereignty over natural resources, has been interpreted as the origin of a series of assignments: such as, prudent and sustainable use of natural resources, Conservation of Biodiversity, and elimination or reduction of soil erosion, Deforestation, overfishing and pollution. Stockholm Declaration (1972) was among the first documents that declared:

Principle of sovereignty over natural resources must be applied in a responsible credible way and it is explicitly stated in Article 21 of the Stockholm Declaration that "States under the Charter of the United Nations and principles of International Law have the sovereign right to exploit their own resources pursuant to their own environmental policies. It Is added that Article 21 of the Stockholm Declaration come fully in Article 3 of the Convention on Biological Diversity (1992) and the first paragraph of t first article of Forest (1992).

Then, the second principle of the Rio Declaration (1992), with minor but useful changes, will repeat this subject and adds the terms "environmental policy and "environmental and development". This article has also come in introduction of the Climate Change Convention (1992).

After mentioning Article 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration as a as evidence used at the international level, Court of Justice's introduce commitment to the principles as part of international environmental law.

The fact is that environmental degradation, even when it occurs completely outside the borders of country may cause global damage. Such damage consists of (Destruction of the ozone layer, global warming, climate change, Soil erosion, and desertification).

Using article 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration that has common root, States can be led toward accepting total commitment for environmental protection and eventually implementing sustainable development. Declaration New Delhi, India, (2 to 6 April 2002), also in the second paragraph of first article requires governments to manage natural resources under the jurisdiction of the territorial or national in a wisely and sustainable manner, With regard to development of nations , and by special attention to the rights of indigenous people, and conservation and sustainable use of natural resources and protection of the environment, including ecosystems. In continue, it state that governments should consider the wishes and needs of future generations. All related factors (including governments, related industries, and other components of civil society) are required to prevent wasteful use of natural resources.

Also the third paragraph of Article I of the Declaration states that:

Preserving, Protecting and Reinforcement of the natural environment, especially correct management of climate system, biodiversity, fauna and flora, are common issues for humanity. Outer sources and outer celestial and resources in seas and ocean floor and subsoil that are under the limits of national jurisdiction are common heritage of mankind.

- Principle of commitment to cooperation, informing and assistance in environmental emergency

In the field of environmental protection, international Cooperation for Environmental Protection is an essential principle, especially for governments to exercise territorial jurisdiction in outer space of their territories and borders such as High seas, Antarctic region or elsewhere, this cooperation is essential.

According to this principle, governments are obliged that in all conditions and in good faith, cooperate with each other. In this regard, they should inform other countries from probability of environmental risks before environmental disaster and cooperate with them with the aim of preventing its expansion and reducing the destructive impact of these events on the environment and also help to countries at risk. Principle of commitment to cooperation with all countries about environmental protection was cited in many international documents, including the Stockholm Declaration, the Rio Declaration, the General Assembly of the United Nations resolutions and international judicial tribunals. So based on this principle, the court reviewed the case of Hungary and Slovakia announce that Slovakia due to "lack of

cooperation of Goodwill" violated his obligations under international rights: which consist of, commitment to cooperation, extensive range of partnerships, form supplies of resources and technology and holding training courses to exchange information and advice and assistance during an environmental emergencies. Principle 22 of the Stockholm Declaration, determine scope and cooperation issues and after that, poses Government commitment to enable international organizations as the greatest symbol of cooperation between governments on environmental matters. Also article 24 of the Declaration proposed guidelines for international cooperation such as: (Concluding bilateral or multilateral contracts), However, cooperation is not confined only to this unique ways. And in the following, appropriate ways which is put by discretion of the states has been noted.

In this context, Stockholm Declaration merely stated some general related to trend of international cooperation with limited titles and do not have any arrangement about international cooperation in order to exchange information about new activities or events within the limits of national jurisdiction which dangerous for the environmental outside these scopes.

But the Rio Declaration fill the gap that and provides principles for the government's commitment to give information, and public commitment to cooperate was a basis for many other obligations, including the obligation to exchange information, consultation, negotiation and informing. In the following we mention some of the principles of the Rio Declaration on this article.

Principle 5 of the Declaration of Rio, require all the States and all people to cooperate with each other to eliminate exclusions an it is known as a Binding condition for sustainable development. principle 9 of the Declaration of Rio asked for Sustainable development or modification and improve understanding or exchange of scientific information and accurate knowledge of technology and development (Consistent with each other) and develop and inform it .Also, the International Court of Justice has announced In the Corfu Channel that, Governments are required to inform other states about risk in their lands. Paragraph 1 of Article 4 of the Convention on Climate Change is also a good example in this regard. "All countries should cooperate completely, openly in exchange of information on scientific, technical, economic, social and related rights. And accordance with paragraph 4 of this convention, Developed countries should take all necessary measures to promote, facilitate and finance, transfer, or access to knowledge and complete and reasonable environmental

technology to other Members, especially the developing countries to improve their capability. We must also support from development and promotion of technology and capabilities of the developing countries.

In line with international investment and financial aid in relations between developed countries with developing countries, Paragraph 20 of the Convention on Biological Diversity is a good example, according which, the developed countries should provide new and additional financial resources, and developing countries can provide total cost of the in addition to agreed one in case of necessary measures, in accordance with obligations under this Convention.

So, cooperation principle, is one of the most important principles of international environmental law and most of the principles and rules of international environmental law, cannot be enforced without the cooperation among governments.

- The principle of the protection and preserving of the environment

However, in all international instruments on the protection of the environment, the purpose revolve on section and Sector specific issues, But setting general principle based on existence all the requirements in a general principle, is an exception. One of the texts on this principle, is article 192 of the UN Convention on the Law of the Seas that says:" Governments are committed to protect and support the marine environment". Of course, It should be noted that this requirement relates only to one part of the environment. However, it is consistent with the significant general principle based on inclusion of all marine areas, including that part of the territorial sea of the coastal state which is in exclusive jurisdiction of the coastal state and it is consist of common areas such as high seas or even the common heritage of mankind such as seabed mineral resources.

Convention on Biological Diversity (1992) as well as on biodiversity in Article 6,, is included a list of the general steps that should be taken for the conservation and reasonable use of biological resources. For example, it applies sensible development strategies in completing projects or programs as far as is possible and appropriate, in order to promote and rational use of biodiversity in Plans, programs and Section and introspection policies. In other areas of 1992 Framework Convention on Climate Change in paragraph 1 of Article 3 of stated that: members must consider the climate system for the benefit of current and future generations of

human. Similarly, in Article 4, it determine detailed obligations for the parties to a given treaty.

There is no official definition of the term protection and maintenance. But both are used in Article 192 of the Law of the Sea convention that clearly their means is different. whatever can be get from the word protection, contains a general principle that includes both of these interpretations, Including avoiding harmful actions and accepting positive measures to protect the environment to the extent that do not lead to damage to environment. In general concept, protection is consist of ecological comprehensive plan and management related to it, including basic laws, procedure and relevant organizations on a national scale.

Whatever associate with the term maintenance is longer protection by considering interests and rights of future generations and for whom the natural resources should be protected.

The term of preserving is consist of limited scope, but it is also included the title of protection. The term is normally used in the field of the vital resources and based on present statue and is more demanding for improving current situation and makes it Possible to continue to provide a vital source. World Conservation Strategy which was established in 1980 by the International Union for the Conservation of Nature and Natural Resources, recommends an action plan to governments, and pose establishment of protected principle which have the following goals:

- Survival of the ecological cycle and support of life systems;
- Maintaining genetic diversity;
- Achieving sustainable use of species and ecosystems

When the ways for exploitation of life species such as animal and plant life, was adopted in regulations, the term "protection" was actually widespread that imply " optimum level of sustainable products" which based on it, the exploitation of natural resources should be done in such a way that, to the permitted extent, renewing that source, do not cause damage and also provide causes for sustainable natural resources. In recent text, with reference to the principle of origin, protection is replace with "Sustainable Development" which follow the production issues from natural resources exploitation and protection of all species of plants and animals in a more reassuring way. The recent concept which is relatively being used increasingly in this area is "optimum protection state" which is not based on Exploitation and Production but It is based on ensuring the protection of vital resources.

Principle of prevention

Term and regulations of environmental must have predict the causes of environmental degradation and prevent them. When there are threats of serious or irreversible damage, Failure to fully recognize the threats most not be a reason to postpone the agreement to prevent environmental degradation.

Experiences and opinions of scientific experts prove that, the principle to avoid the environmental, both ecologically and economically is considered as a "Golden Rule", because it is often impossible to compensate for damage to the environment. This The irreparable damage are consist of:

Extinction of plant and animal species, soil erosion or even discharge of enduring contaminants materials into the sea, which cause irreversible condition. Even if the damage is recoverable, the cost of restoration is expensive.

Almost every document of international environmental law, made real the principle of prevention of environmental degradation as a fact which most of them are about sea pollution, domestic water, weather and living resources conservation, and only a small number of international instruments consider other ways of protecting the environment such as traditional principles of state responsibility for working directly with victims of environment.

Principle of prevention requires the use of special techniques such as risk analysis, and then evaluates the left outcomes of the activities which carried out.

Assessing environmental impacts before starting or the plan that may bring considerable harmful environmental effects, this environmental effects must be evaluated which is achieved by implementing the project, that the development have minimum lateral losses and guarantee the stability. So environmental evaluation helps in implementing projects and develops solutions to reduce secondary losses resulting from the implementing project and in total will increase the points of implementing project.

According to article 206 of the Convention on the Law of the Sea, Whenever governments have logic reason which state that the activities that are planned under their jurisdiction or supervision, cause pollution of the marine environment or cause fundamental or harmful changes, we should evaluate potential effects of these activities on the environment to the extent that is possible and reports about the results of these assessments are sent to members. In fact, article 17 of the Rio Declaration, provided definition of an environmental impact

assessment. The principle of prevention assigns that each state in applying regulations should try to act fairly and properly based on public order and activities of the private sector under the jurisdiction and supervision of that state would not be harmful on the environment. The principle of lack of abuse as an absolute duty, has emphasis on prevention of losses, but the obligation on states to ban the activities are when the activities cause severe damage to the environment. For example, the discharge of toxic waste into an International lake, based on loss imported should be minimized by result of authorized activity. For example, applying limitations on the discharge of sulfur dioxide in the air is effective.

- Principle of precaution

In order to achieve sustainable development, Policies should be established based on the principle of precautionary action. While still the principle of prevention do not put its effect on general provisions on environmental protection, Principle of precaution was considered and it was developed. This principle can be considered as one of the most important initiatives of the Rio declaration. For example, in Article 15 of the Rio Declaration it is stated that: In order to preserve the environment, States should use a precautionary criteria and terms based on their ability. Referring to the government, shows the universal implementation principle and attention to ability of each states, shows common but different responsibilities of states. In paragraph 3 of Article 3 of the Convention on Climate Change, Complex process of negotiations is reflected. It is better that parties of treaties, provide precautionary regulations to anticipate, prevent or minimize climate change and reducing undesirable effect that these criteria should be to the benefit of all humanity by the least possible cost.

Introduction to the Convention on Biological Diversity points out that "Lack of full scientific certainty should not be used a reason for Suspending the rules to avoid or minimizing important treat In order to reduce biodiversity, without proactive reference to a A precautionary approach.

The question which was asked during the negotiations on of the Vienna Convention on the Protection of the Ozone Layer and the Convention on Climate Change about this principle was that What kind of risk is necessary to produce a responsibility to prevent harm? Answers to these questions can reduce the ambiguity of the concept of preventive action. First, it seems that, this loss should be related to future and be foreseeable but not be current and imminent, because only foreseeable risk of future is preventable. Second, the danger which is going to

occur occurs, should be important. So "reasonable predictability" and "The importance of risk" are two components that, applying the precautionary principle must be considered. A consequence of this principle is that Governments can do a work when they show that action do not cause unacceptable harm to the environment. However, the interpretation and conclusions of the discussed principle, is for limiting the sovereignty of states, however, the World Bank has practically followed it, for the evaluation of various schemes in order to give loan. Similarly, this principle cannot be proved even in the case of environmental damage. Similarly, from this principle even for improvable environmental damage (Such as a gap in the ozone layer) we can demand compensatory measures by citing the importance of risk and put the burden of proving the safety of the activity on the other party (defendant). For example, in the problem of acid rain in North America, When Canada proposed that the United States do countervailing measures in accordance with international law, United States Government used "lack of scientific diagnosis" and disposal of pollution emissions as a reason for denying the Canada's request.

- The principle of obligation to pay compensation by polluter of the environment

According to on this principle, Decontamination costs must be paid by the polluter. This principle in one hand, recognizes others right to a healthy environment and on the other hand, is considered as a recautionary measures to prevent environmental degradation. The obligation to pay compensation on the behalf of paying compensation for damages for polluting the environment was first proposed by organization for economic cooperation and development. Today, the principle has been cited in treaties and other international important documents and precedent and has become the international norm.

Principle 16 of Rio Declaration, by emphasizing on the public interest and pointing out to the issues that practically, environmental polluters should pay for the costs of removal, asked the states to pay attention to aforementioned principle. In Chapter 20 of Agenda 21, The government has been asked that in their domestic policy, especially in connection with hazardous waste, must have attention to this issue.

The principle, during the scheme of civil liability of people in international treaties on nuclear and oil accidents has civil responsibility, against activities that lead to environmental degradation and entered into international environmental law. However, before that, it was cited in the decision of the International Court. Accordingly, the Court of Arbitration Asmltr,

recognize Canada responsible for environmental pollution of America and announce that, the country should pay compensation for damage to the environment of America. It should be noted that in the latter case, Canada's responsibility, is a responsibility of the risk that is due to activities that are not prohibited in international law and not liability arising from errors which is the result of a breach of an international binding obligation. However, today this kind of responsibility has become a rule of international customary.

In implementation of this principle, the UN Security Council as a competent authority in maintaining international peace and security, blamed Iraq's invasion of Kuwait for environmental degradation and require Iraq to pay compensation for damages to the environment in Kuwait and other neighboring countries, including Iran. Accordingly, the amount of damage to the environment in the affected countries was assessed by effected countries and the Security Council of Compensation Committee was informed. The committee has also paid part of the relevant compensation.

Seant, (the famous German jurist) believes that, Due to the large share of developing countries in global environmental degradation by the pollution caused by industrial activities, Acceptance of the principle of polluter responsibility help developing countries, to have a legal basis " Debt to Nature" for the claim and strengthen the principle of historical responsibility of northern states.

- Concepts of international environmental law relating to the sustainable development

. The concept of common heritage of mankind

Common heritage of mankind is a concept that has recently been formulated and Its history goes back to the 1960s. The concept of common heritage of mankind has broader concept of common property sense and the concept of common property in international law refers to areas outside the national territory, such as the open sea and untouched spaces that cannot be accessible, and it belongs to the United Nations, however, the available resources can be used by anyone. Since the common heritage is in relation to public humanity, it must be supported by a special legal regime. In certain areas, this right has been accepted, such as, Antarctica, the moon, celestial bodies, space, similarly, regions and locations and monuments are considered as Antiquities in department of Cultural Affairs and the common heritage of mankind.

These areas cannot be held in exclusive sovereignty of states, but it must be protected and exploitation of them must be in a way that meets the interests of all humanity without any discrimination.

The concept of common heritage of mankind is consisting of 5 basic concepts. Lack of allocation, common international management, Share interests (Particularly to the benefit developing countries), Condition for peaceful purposes and Protection of humankind.

It should be mentioned that, convention for the Protection of the World Cultural and Natural Heritage (1972) is the key conventions that used to the concept of the common heritage.

Also, the Convention on Biological Diversity, transfers the conservation and sustainable use of biodiversity under the jurisdiction of any State to States Parties to this Convention (Articles 6 to 10). In the introduction to the Convention on Biological Diversity: "Biodiversity conservation is an issue for all humanity". Also it pose that "States Parties are responsible for maintaining the biological diversity and the sustainable use of their biological resources ... In the interests of present and future generations".

This concept in global environmental issues, especially issues such as the gap in the ozone layer, deforestation, global warming and ... is more reasonable and more acceptable, because a number of natural resources (such as the atmosphere) cannot be divided and being owned and meanwhile has been used for all humanity.

According to this principle, all states are required to protect the environmental zone under the common heritage of mankind to refrain from destroying or polluting it, so everyone can enjoy the benefits.

- The concept to the rights of future generations

In international environmental law, Human rights of future generations to enjoy the appropriate conditions for life on earth has been and identified and considered. Accordingly, environmental degradation, due to its negative consequences, are considered violations of the rights of future generations should be avoided. Protect the rights of future generations is one of the fundamental concepts of international instruments in the field of environment. It is also considered seriously in Stockholm and Rio declarations. For acceptable definition of these rights we can say that, it is a right which according that, interest of one generation based on

development of natural heritage is inherited from previous generations, and is transferred to the next generation. According to this right, conservation of Renewable Natural Resources and also ecosystem protection and life strengthening flow and further support the human knowledge and culture and arts is regarded as a necessity and calls for avoiding harmful activities and irreparable effects on the natural and cultural heritage.

The Stockholm Declaration, which is regarded as the first founder of principle, says in first principle" human have the solemn responsibility to protect and improve the human environment for present and future generations. Also the same principle is repeated in various treaties and other international instruments, especially in Paragraph 1 of Article 3 of the Framework Convention on Climate Change, it stated that: members should support climate system for the benefit of current and future generations of mankind on the basis of equity and in accordance with common but differentiated responsibilities and their ability.

Article 3 of the Rio Declaration on Environment and Development considers human rights of future generations with right to development and whereby says" The right to development must be provided that The future and current needs of the generation must be fairly observed according to the Environment and Development.

- The principle of common but differentiated responsibilities

This principle was first stated in the introduction of the Stockholm Declaration. The Stockholm Declaration which summarize the today's world situation, forecast different functions for each of the developed and developing countries which despite the difference leads to the same result that is protection of the environment and because of environmental considerations in the development process, it can be said that the ultimate goal of The Stockholm Declaration is leading Northern states and southern states by two different ways to sustainable development.

According to this principle, all governments in the world are jointly responsible to Prevent environmental degradation and support and preserve it. Despite this, and despite the sovereign equality of States, Countries responsibilities must be consistent with features and capabilities of them and be equal to the role that they have in destroying the environment.

To solve the environmental problems in this principal, we are faced with two kinds of responsibilities, Which the first is the responsibility of the developed countries which is mainly based on its historic role in the environmental pollutions. And the second is

Responsibility of Developing Countries which in recent years is accompanied by environmental degradation by country. Of course, this responsibility is different from the other aspect. Due to the difference between developed and developing countries, technical standards that should be adopted to achieve sustainable development, are different. Principle 7 of the Rio Declaration, Principle 11 of the Declaration is telling the same story that "Environmental standards should reflect the environmental and developmental context to which is related to it".

This principle which is originated from equity and fairness principles in international law, is based on the what principle of fairness verdict, that developed countries which have largest role in the pollution and environmental degradation, and enjoys more facilities and capabilities than developing countries, should have more responsibility for protecting it. Accordingly, and also developing countries in Proportion to their less role in environmental destruction of earth, have less responsibility and needs and conditions of these communities must also be considered. Here due to the principle of common but differentiated responsibilities, article 7 of the Rio Declaration is fully described:

Countries must work together in a spirit of global partnership to conserve protect and "restore ecosystem integrity and health of the planet. Countries, with a looking to varying share in global environmental degradation have common but different responsibility. The responsibility of developed countries takes the responsibility in the international pursuit of sustainable development, Due to the pressures of their communities on environmental globalization and technology and their resources.

According to this principle it is illuminated that the advanced countries must help developing countries in two aspects: Financing and technology transfer necessary for achieving sustainable development.

Although, aforementioned principles is expressed in all document of International Environment conference and Development, but, it seems that arrangements for the Convention on Climate Change is more accurate and more detailed. Convention on Climate Change made distinctions among the general obligations and specific commitments of all Parties that is the only developed countries.

First category, is developed countries that should take important step in the fight against climate change and its adverse effects (Pursuant to paragraph 1 of Article 3 of the

Convention). To do this, this group of countries must provide new and additional funding to pay for agreed cost to developing countries, which incurring heavy costs on developing countries is recognized as their accepted commitments (Paragraph 3 of Article 4). Developed countries help developing countries in paying costs of compliance with the adverse effects which are vulnerable against the adverse effects of climate change. (Paragraph 4 of Article 4). They should facilitate safe technological transfer for the environment and knowledge related to it for developing countries (Paragraph 5 of Article 4). They should also provide necessary information in the framework of convention applicable regulations which shall be taken at various meetings.

In the second group, the former communist countries of Eastern Europe are considered. These countries are moving; from transition process to a market economy and Considerations must be done, to be able to meet its commitments to tackle climate change (Paragraph 6 of Article 4).

- third group, are developing countries that must receive financial assistance and benefit from technology transfer. They should accept arrangement that in Convention Regulatory Framework, spent most of their time with member states which are on the list of developing countries. In the end, it is hoped that these solutions will help reduce destruction of the global environment.

Of course, It is important that sustainability be proposed as a concept in international law of the environment. Because, after the end of 1980s, The key for solving these issues was in the field of environmental protection (The principle of sustainable development). And during the Negotiations of Conference on Environment and Development, Group 77 and developing countries could managed by consensus, include the right to development in Article 3 of the Rio Declaration, which says, The right to development must be applied in a way that meet, equally the needs of the current generation and future generations in the field of development and environmental protection. But, instead, developed countries were able to gain consensus on Principle 4. It should be mentioned that Principle 4 state: In order to achieve sustainable development, Development process should be coordinated with the Environmental Protection and cannot be considered apart from it. These two principles are at the heart of the Rio Declaration and necessarily have to be considered together. Principle 3 is very similar to the definition of sustainable development in the Commission of Brantland. Also, article 4 consider environment as an integral part of development.

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