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LEGAL ASPECTS OF REPARATION FOR DAMAGE CAUSED TO AZERBAIJAN AS A RESULT OF ARMENIAN AGGRESSION

ONE OF THE IMPORTANT ASPECTS OF A JUST AND COMPREHENSIVE SETTLEMENT OF THE ARMENIAN-AZERBAIJANI NAGORNO-KARABAKH CONFLICT IS THE RESOLUTION OF THE PROBLEM OF DEFINING THE INTERNATIONAL LEGAL RESPONSIBILITY OF ARMENIA FOR AGGRESSION AND OCCUPATION OF AZERBAIJANI LANDS AND THE RELATED SET OF QUESTIONS AIMED AT REPARATION FOR MATERIAL AND MORAL DAMAGE TO AZERBAIJAN.





From the point of view of international law, the international legal responsibility of Armenia causes no doubt. The Republic of Armenia grossly violated the norms and main principles of international law and the UN Charter and not only unleashed a war of aggression, which is a crime against peace and entails the aggressor's serious responsibility under international law, but also ignored the prohibition of the threat or use of force against the territorial integrity and inviolability of another state and occupied 20% of the territory of Azerbaijan. This fact was reflected in 4 relevant resolutions of the UN Security Council. [1; 2; 3; 4] The resolutions explicitly confirm the belonging of the Nagorno-Karabakh region to Azerbaijan, and this circumstance was also mentioned in

international legal literature. [5.44;6] The phrase "the Nagorno-Karabakh region of the Azerbaijan Republic" is also contained in the resolutions of the United Nations General Assembly (GA), for example, in the UN General Assembly resolution "Cooperation between the United Nations and the Organization for Security and Cooperation in Europe" dated 16 January 1998, UN General Assembly resolutions of 9 February 2000, 2 March 2001, 14 February 2002 and 6 February 2003. [7]

The UNGA resolution adopted at the 62nd session of 14 March 2008 explicitly states continued respect and support for the sovereignty and territorial integrity of the Azerbaijan Republic within its internationally-recognized borders and demands the immediate, complete and unconditional

withdrawal of all Armenian forces from all the occupied territories of Azerbaijan. The document also confirms the inalienable right of the population expelled from the occupied territories of the Azerbaijan Republic to return to their homes and emphasizes the need to create appropriate conditions for such return, including the comprehensive rehabilitation of conflict-affected areas, while recognizing the need to provide normal, secure and equal living conditions for the Armenian and Azerbaijani communities of the Nagorno-Karabakh region of the Azerbaijan Republic, which will allow for an effective democratic system of government in the region within the Azerbaijan Republic, and emphasizing that no state shall recognize as lawful the situation resulting from the occupation of

the Azerbaijani territories and shall promote or assist in maintaining this situation. [8]

Concerning the Armenian-Azerbaijani Nagorno-Karabakh conflict, the Parliamentary Assembly of the Council of Europe (PACE) also refers in its decisions to the abovementioned UN Security Council resolution and calls for the withdrawal of military forces from all the occupied territories.

On the basis of a report by Special Rapporteur Atkinson, PACE adopted Resolution 1416 (2005) "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", which notes the occupation of large parts of Azerbaijan, as well as "the annexation

of the territory of the Nagorno-Karabakh region to another state". At the 1996 Lisbon summit of the OSCE, the statement of the OSCE chairman-in-office to the final document of the OSCE summit sets out the main principles for the settlement of the conflict over Nagorno-Karabakh. The statement indicated that 53 OSCE member states support the territorial integrity of Azerbaijan and the granting of a high degree of self-government to Nagorno-Karabakh within Azerbaijan. [9]

Armenia, waging a war of aggression against Azerbaijan and occupying more than 20% of the territory of the Azerbaijan Republic, ignores the UN Security Council resolutions and other international

legal acts and violates Article 25 of the UN Charter, continuing to hold the occupied territories.

Thus, it should be noted that the aggressive war and the occupation of part of the territory of another state by Armenia testifies to the fact that the Republic of Armenia grossly violates the universally recognized norms and principles of contemporary international law, which contain a clear pattern of behavior of states and stipulate abstinence from any actions aimed at dismembering the territorial integrity of another state. This fact is shown in PACE Resolution 1416, in which "the Assembly reiterates that the occupation of foreign territory by a member state constitutes a grave

Agdam. Destroyed city





Agdam. A city in ruins

violation of that state's obligations as a member of the Council of Europe". [10] The Organization of the Islamic Conference has consistently condemned the Armenian aggression against Azerbaijan. [11]

In connection with the Armenian-Azerbaijani Nagorno-Karabakh conflict, in terms of international law, the international legal responsibility of Armenia can be divided into two kinds of responsibility:

1. Armenia's responsibility to the world community of states.

Each state has certain obligations in relation to the international community of states, which were recognized in the decision of the International Court of Justice in the case concerning "Barcelona Traction", which indicated the existence of a special category of obligations - obligations to the international community as a whole.

Such acts as aggression, genocide, ethnic cleansing, apartheid, racial discrimination, humanitarian tragedy and the like are aimed at violating the UN Charter and other important international instruments such as the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and are qualified by the international community of states as international crimes. The obligation not to commit such actions represents a special category of obligations to the international community as a whole – the erga omnes obligation (between all). Since all states have a legal interest, they must hold to account a state that has violated the erga omnes obligation. Unlike the past, when relations of responsibility had a purely bilateral nature between

the violator country and the victim country, this is a reflection in modern international law of the concept of

Nazli Allahverdova and her children in a home ruined by Armenian artillery





Shusha. Moments of vandalism

the collective opposition of states against international crimes that affect the interests of the entire community of states as a whole. For example, comments on articles on the responsibility of states say: "Each state, by virtue of its membership in the international community, has a legal interest in protecting certain fundamental rights and fulfilling certain essential duties."

Armenia's responsibility to the world community of states generates first of all the need to end the aggression of Armenia against Azerbaijan and withdraw all the occupying forces from the occupied territories, eliminate the consequences of the aggression, hold those responsible for the outbreak of the aggressive war and the Khojali genocide against the civilian population criminally liable, as well as ensure Armenia's official apology to the Azerbaijani people.

2. Armenia's responsibility to Azerbaijan for specific economic damage. As is well known, as a result of the Armenian aggression against Azerbaijan, 20% of Azerbaijani lands were occupied and more than a million people became refugees and internally displaced people, and great economic and moral damage was caused to the Azerbaijani population, territory, economy, ecology, flora and fauna.

The scale of the damage is really immense. The occupied districts of Azerbaijan, including 10 administrative districts of Azerbaijan - Khojavend, Khojali, Shusha, Lachin, Kalbajar, (most of) Agdam, Jabrayil, Fizuli (partly), Gubadli and Zangilan - were subjected to total looting and destruction. The direct economic damage to the administrative districts of Azerbaijan bordering on Armenia, districts adjacent to the front line, as well as districts of the

Nakhchivan Autonomous Republic is huge. Many population centers in districts bordering on Armenia were completely destroyed, while civilians were forced to leave their homes.

In total, about 900 Azerbaijani villages were looted and destroyed. More than 20,000 Azerbaijanis were killed, and more than 50,000 Azerbaijanis were wounded or injured and became permanently disabled and crippled. Several thousand people are still missing. In the occupied territories, mass executions of Azerbaijanis without trial, beatings, torture and cruel, inhuman treatment of prisoners and civilians, the forced use of the Azerbaijani population in the most difficult jobs in Armenia and in the occupied territories of Azerbaijan were a normal occurrence. In general, as a result of the Armenian aggression against Azerbaijan, more than 20% of Azerbaijan, i.e. more

than 17,000 sq.km were occupied.

The scale of humanitarian, cultural and historical damage from Armenian occupation is also huge. With great sophistication and cynicism, Armenian aggressors destroyed objects of Azerbaijani cultural heritage. For example, the Armenian barbarians devastated and set fire to 22 museums and 4 art galleries in the occupied territories. Forty thousand museum exhibits and artifacts, most of which had a unique historical and cultural value, gold and silver, jewelry with rare and precious stones, carpets and other products of manual and applied nature were looted. In the 927 libraries that were looted and burned, 4.6 million copies of books and priceless manuscripts were destroyed. The damage caused by the Armenian aggressors to national shrines of Azerbaijani culture in the Nagorno-Karabakh region cannot be estimated because the plundered and destroyed items are priceless examples of culture not only for Azerbaijan but also for the entire world civilization. Cultural and historical monuments were put out of action, destroyed and looted: 31 mosques, 9 historical palaces (sarays), 6 state theaters and concert organizations, 368 clubs, 927 libraries and 85 music schools. 464 historical monuments and museums were destroyed and looted. The Armenian armed forces and separatists captured 200 paleontological and geological monuments, and as an example, we can cite the famous Azikh cave located in occupied Fizuli District. The scale of the ecological disaster that occurred as a result of the Armenian occupation is enormous. During the fighting and subsequent occupation, irreparable harm was done to the nature of Azerbaijan. In the occupied territories of Azerbaijan,

the flora, which is the natural habitat of the fauna, is being destroyed. For example, alpine meadows have changed beyond recognition in the lands occupied by the Armenian armed forces. This is done in order for land in the occupied territories to deteriorate over time and become susceptible to erosion. The irrigation and water supply system of the entire region and areas near the occupied territories has been disrupted, which had a negative effect on the state of the soil and vegetation. For example, in the Garagol State Nature Reserve in Lachin, the intensive use of water from the Garagol Lake and the negligent attitude to it have led to pollution and decreased its level. From the Sarsang reservoir, which was built for the irrigation of dryland in Tartar and Barda and is located in the Armenian-controlled territory, the Armenians release water in winter, which floods lands, destroys roads and causes torrents. In the summer season when people and agricultural production need water, they close it. Transboundary rivers flowing through the territory of Azerbaijan are intentionally contaminated

with toxic substances by Armenia, not to mention industrial emissions and sewage effluent. Among these rivers we can name the Agstafachay, Aras, etc. We have to bear in mind that almost 70% of the river water resources of Azerbaijan are formed by transboundary rivers. Many regional agreements to combat river water pollution directly say that the significant contamination of river waters that flow into the territory of another state, causing considerable damage to the latter, is a violation of international law.

The Armenian armed forces and separatists also seized 250 million hectares of forest land. In all the occupied territories, the Armenian aggressors carried out a policy of "scorched earth and ethnic cleansing". In the occupied districts, they looted and took out of the Azerbaijan Republic 244 thousand heads of sheep and 69,000 heads of cattle. 70% of the summer pastures of Azerbaijan remain in the occupied area.

It is especially necessary to dwell on the problem of fires. Many

Agdam. Mere vandalism





A house in the village of Garmechatag in Nakhchivan destroyed as a result of Armenian artillery strikes

agreements between countries on the state border contain provisions stipulating that in case of fire near the border, the party in whose territory the fire breaks out is obliged to take all possible steps to extinguish the fire as well as to prevent its spread across the border. However, the opposite occurs. The Armenian side deliberately starts fires in the occupied territories of Azerbaijan. It is likely that the arson perpetrated by the Armenians all over the front line has military implications. Perhaps they want to clear the area for clear monitoring of all the movements of the Azerbaijani army and its actions. These deliberate fires also caused extensive damage to territories under the control of Azerbaijan. As a result of the fires, land is eroded, and the unique flora and fauna of these areas is under threat of destruction. Enormous damage has been caused to the flora and fauna of these areas. 47 plant species, including 19 species of trees, were completely destroyed. In Fizuli and Jabrayil districts, the fire destroyed pastures covering 10,000 hectares. In Tartar District, the fire damaged more than 550 hectares

of land. In Khojavend, the fires affected unique natural areas such as "Garachukha" and "Nargiztepe", and as a result, more than 15 rare species of flora and fauna were destroyed.

As a result of the Armenian aggression, 280,000 hectares of forests (25% of the total forested area of Azerbaijan), 2 national parks and 4 national nature reserves, as well as more than 200 fossil, fauna and geological monuments of nature remain under occupation. The Armenian aggressors are carrying out a systematic policy of ecocide against the nature of Azerbaijan. Due to the deforestation and destruction of forests in the occupied territories of Azerbaijan, wood production is booming in Armenia. In 1993 alone, 206,600 cubic meters of precious types of timber were taken to Armenia from the occupied territories. Irreparable damage has been done to the fauna of the occupied region. The biological diversity of the region is under threat, as the uncontrolled destruction of fauna, many species of which are listed as endangered, is under way. Armenia is ruthlessly

exploiting the natural resources in the occupied lands. For example, in the occupied Lachin region, the Lachin State Nature Reserve is being destroyed. Most of the rare animals that used to be protected on the territory of the reserve in their time are periodically exterminated by the Armenians, so that they have all almost disappeared. Moreover, in the Hajishamli forest located on the territory of the above reserve, the Armenians are engaged in cutting and harvesting the red oak for further sale and for the manufacture of expensive furniture and barrels for storing cognac alcohol. At the same time, they are destroying for sale to foreign countries forests of the deciduous oak, which is essential in the manufacture of decorative furniture and flooring, as well as plane trees and walnut trees that grow in the Besitchay reserve. The Garagol State Nature Reserve is also facing extinction. Its total area is 240 hectares, and 68 species of plants from 27 families used to grow here. The Garagol Lake itself is a relic source of water resembling the crater of an extinct volcano. Its length is 1,950 meters, maximum width – 1,250 meters and depth – 7.8 meters. Forests in another occupied region of Azerbaijan – Gubadli, where the area of forests totaled 13,160 hectares – have also been almost completely destroyed. Many of the species of plants growing in the area are listed in the Red Book of Azerbaijan. Trees that had been declared natural monuments, as well as all oak trees, have been cut down. The thing is that the red oak is used to make barrels for cognac, which are shipped to France. Walnut tree trunks are used to make expensive furniture. At the expense of the occupied Azerbaijani territories, Armenia annually sells

Agdam. A destroyed temple



70,000 cubic meters of timber and 150,000 cubic meters of working material to foreign countries, and in the last 12 years the Armenians have extracted 720,000 cubic meters of timber from the occupied territory. In the occupied territories, the Armenian invaders are conducting a policy of barbaric exploitation and destruction of the region's mineral resources. Mineral resources of the occupied regions extracted at 2 gold, 4 mercury, 2 chromite, 1 lead-zinc, 1 copper and 1 antimony deposit are sent to concentrating enterprises in Armenia, which is the reason for Armenia cynical claims that it has become one of the world's leading exporters of precious, rare and nonferrous metals. An example of the illegal policy pursued by Armenia in the occupied territories of Azerbaijan is the conclusion of a

contract with the Canadian company First Dynasty Mines on the joint

development and exploitation of the Soyudlu gold deposit located

Agdam. Destroyed quarters





in the occupied Kalbajar District of Azerbaijan. Armenia receives up to 13 tons of gold a year from this field. This field is located on the border between Azerbaijan and Armenia and the Azerbaijani side of it contains around 112 tonnes of gold. The Armenians are also developing the Vejneli and Gizil Bulag fields located on the territory of the occupied Zangilan and Kalbajar districts. Essentially, an undisguised plunder of the national wealth of Azerbaijan is under way. The extraction of construction materials and facing stones has caused a construction boom in Armenia in recent years and is a significant export item for Armenia through the sale of facing stones abroad. For example, in 1999 Armenia exported 200,000 tons of perlite through the mediation of the U.S. company Dicalite. Every year, tens of millions of bottles of natural

mineral water extracted from Isti-Su and other sources are taken out of the occupied territories of Azerbaijan.

About 6,000 industrial, agricultural and other facilities, 150,000 houses and apartments with a total area of 9.1 million square meters, 4,366 socio-cultural and 7,000 public buildings, 693 schools, 855 pre-school institutions, four health-medical complexes, 695 hospitals and other medical facilities have been destroyed in the occupied territories.

800 km of railway communications and roads, as well as electric and gas lines with a length of 15 kilometers have been put out of action and destroyed. The 1,203-kilometer irrigation infrastructure and the system of water communications, which included five reservoirs with a total capacity of 674 million cubic meters,

7,296 hydraulic installations, 36 pumping stations and 26 irrigation systems have been completely destroyed. Irrigation equipment has been partially taken to Armenia and the rest is out of order. As a result of the destruction of the irrigation system in the Nagorno-Karabakh region, which was part of the single irrigation infrastructure of Azerbaijan, 120 hectares of land in 5 regions of Azerbaijan outside the occupied territories were left without irrigation and practically withdrawn from economic circulation. In total, more than 1 million hectares of agricultural land, including 127,700 hectares of irrigated land and 34,600 hectares of vineyards and orchards, have been withdrawn from circulation and fallen into decay.

In the territories occupied by Armenians, automatic telephone stations for 35,000 subscribers, 2,500

transformers and 14,500 kilometers of power lines have been dismantled and taken away. 160 bridges with a total length of 3,834 meters have been blown up and put out of action. 800 km of roads have fallen into disrepair. 2,300 km of water pipes, 2,000 km of gas pipelines and 35 gas distribution stations, as well as 240 km of sewers have been completely destroyed.

According to some reports, the total cost of material and moral damage caused as a result of the Armenian aggression against Azerbaijan, according to preliminary data that have not yet been fully established in current prices, is tens of billions of dollars. [12, 13]

It should be noted that the norms of international law governing the responsibility of states have basically a common origin, although there are attempts to codify them. The UN International Law Commission began work on the codification of the norms of the responsibility of states in 1956, and in 2001, it adopted draft articles on the "Responsibility of States for Internationally Wrongful Acts." On 12 December 2001, the UN

General Assembly considered the draft submitted by the International Law Commission and adopted a resolution that highlights the "enormous importance of the theme of responsibility in relations between states". Articles of the draft were taken into account, included as an appendix to the resolution and offered "to the attention of governments without touching on the question of their future adoption or another appropriate action".

Armenia's responsibility to Azerbaijan for concrete material and moral damage necessitates reparation in full. For example, under international law, a responsible state shall pay full reparation for the harm caused by its lawless behavior. It should be noted that the obligation of full reparation is a general principle of law, which applies to international law and the national legal systems of individual states. In international law, the principle was established in the early 20th century. We can specify the decision of the Permanent Court of International Justice on the case of a factory in Chorzow in 1927, which stated that "the principle of

international law is that a breach of an obligation entails the obligation to pay reparation in an adequate form". And further: "The compensation shall, so far as possible, eliminate all the consequences of the illegal act and restore the situation, which, in all probability, would exist if this act had not been committed." [14, 21, 47]

In line with contemporary international law, reparation for the damage caused by the wrongful act of a state may take the form of restitution, compensation and satisfaction.

Restitution means the restoration to the extent possible of the situation which existed before the wrongful act. Restitution may take the form of restoration of destroyed property or return of property or territory. Restitution is carried out to the extent to which it is not materially impossible. That's to say restitution may be partial and accompanied by compensation. In the case of the Armenian-Azerbaijani Nagorno-Karabakh conflict, reparation for the damage caused to Azerbaijan by

Shusha. Emptied city quarters





Agdam. Vandalism scenes

the wrongful act of Armenia in the form of restitution largely means the return of all the occupied Azerbaijani lands. Sometimes restitution in other forms is difficult or even impossible. For example, if a museum and its exhibits are destroyed, restitution actually becomes impossible. Due to the fact that the occupation of Azerbaijani territories was carried out almost two decades ago, the return of seized property (with the exception of the remaining items of historical and cultural value) must be replaced by compensation.

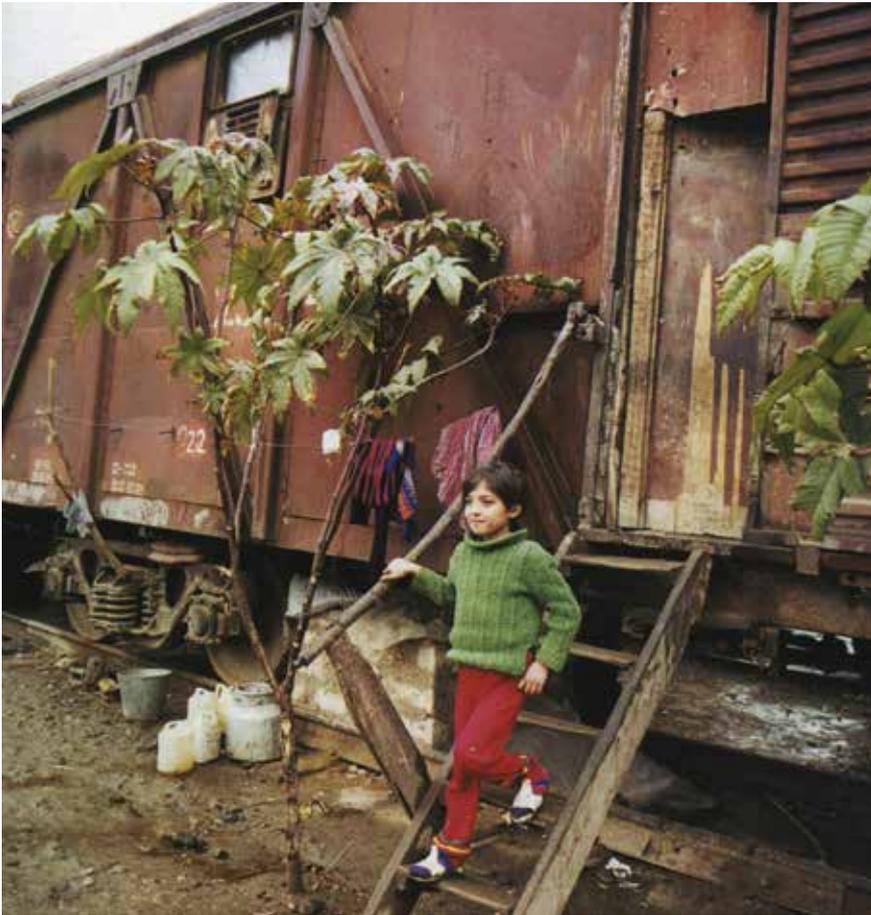
Compensation is the payment of damages, including of lost profits. A state bearing international legal liability is obliged to compensate the damage caused by the wrongful act of the state to the extent to which it is not reimbursed by restitution. Thus, the UN International Court of Justice, in its ruling on the Gabcikovo

- Nagymaros case, determined that: "There is a well-established rule of international law under which the victim state is entitled to receive compensation for the damage from the state that committed an internationally wrongful act." [15, 81] Compensation is designed to provide a full refund. This provision of international law was confirmed by the existing international legal practice of the Permanent Court of International Justice before the existence of the UN International Court of Justice. (See, for example, the decision of the Permanent Court of International Justice on the factory in Chorzow 1928 / PCIJ, 1928 / Ser.A. No. 17. P. 47.). Calculated in financial terms, the damage means damage both to the state and its citizens, organizations and businesses. The state also has the right to demand compensation

for the damage caused to the health of its citizens. It is important to note that compensation is not only for direct financial losses, but also for moral damage such as loss of loved ones, pain and suffering, humiliation, as well as moral damages for the unlawful retention of the civilian population in captivity, torture, physical injuries, rape, etc.

Satisfaction is another form of reparation that the responsible state must provide pursuant to obligations on full reparation. We are talking about reparation that is resistant to financial evaluation, i.e. intangible damage. For example, it refers to the damage to the dignity of the state and an insult to the state, for example, an insult to the flag of the state, attacks on its officials, breach of diplomatic immunity. Often the damage arises from the very violation of the obligation regardless

Life in railroad cars – these are the conditions in which Armenian occupation put Azerbaijani refugees. Photo by Yavuz Atalan



of the material consequences. Forms of satisfaction are different. This is an admission of a violation, expression of regret, an official apology and assurances of non-repetition. In the Armenian-Azerbaijani Nagorno-Karabakh conflict, satisfaction may be in the form of recognition of the aggression against Azerbaijan and the occupation of its lands, recognition of the genocide in Khojali and an official apology to the Azerbaijani people.

As an example of reparation for damages incurred as a result of aggression, it is possible to indicate the Iraqi aggression against Kuwait. As is known, originally Kuwait demanded 177 billion dollars in compensation for the material damage suffered as a result of Iraq's aggression against Kuwait. The UN appointed an amount of

approximately 41.8 billion dollars in compensation for the occupation of Kuwait by Iraq, and of this sum 17.5 billion dollars have been paid so far.

Thus, we can conclude that solving the problem of reparation for material and moral damage caused to Azerbaijan is one of the most important aspects of a comprehensive settlement of the Armenian-Azerbaijani Nagorno-Karabakh conflict and the elimination of the aftermath of the Armenian aggression and the occupation of Azerbaijani lands by Armenia. ✪

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