



The Subtle Line that Differentiates between Ethnic Cleansing and Genocide

(Case Study on The Bosnian Genocide year 1992-1995)

Farras Audia Raihany^{1}, Yulian Bernard², Hidajaty³*

¹ Faculty of Law, Universitas Andalas, Limau Manis, Padang, 25163, Indonesia

² Regional Secretariat of Pasaman Regency, Pauah, Lubuk Sikaping, 26318, Indonesia

³ West Sumatra High Prosecutor's Office, Flamboyan Baru, Padang, 25114, Indonesia

* Corresponding author's e-mail: faraudiaras@gmail.com

ARTICLE INFO	ABSTRACT
<p>Keywords : <i>Bosnian Genocide, Ethnic Cleansing, Rome Statute, International Criminal Court (ICC).</i></p> <p>Submitted: 2023-09-27</p> <p>Last revised: 2023-12-07</p> <p>Accepted: 2023-12-09</p> <p>DOI : <i>10.25077/alj.v8i2.57</i></p>	<p>The Bosnian genocide refers to the Srebrenica massacre and other acts of ethnic cleansing during the Bosnian War of 1992–1995. This study was conducted using normative-empirical methods combining juridical and sociological elements that focused on implying the elements in the body of Article 6 of Rome Statute 1998 with the actual events that occurred in the Bosnian Genocide cases. The study aimed to analyze the distinction between ethnic cleansing and genocide based on its execution and planning, particularly in relation to the Rome Statute of 1998, which established the International Criminal Court (ICC). The study found that ethnic cleansing seeks to expel a group from a specific area, while genocide aims to physically destroy entire racial, ethnic, or religious groups. Ethnic cleansing focuses on achieving ethnic homogeneity, while genocide seeks the complete annihilation of a group. After the establishment of the ICC in 2002, ethnic cleansing became explicitly covered under international law, alongside genocide, crimes against humanity, and war crimes.</p>
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1. Introduction

The Bosnian genocide stands as one of the most severe instances of ethnic cleansing in Europe following World War II. Following the disintegration of Yugoslavia, armed conflicts rapidly erupted, starting with Slovenia and Croatia and eventually spreading to Bosnia. Among the various parties affected by the conflicts, Bosnian Muslims suffered the most significant losses. Merely a month after the Bosnian Declaration of Independence in March 1992, a paramilitary group based in Serbia launched an assault on Bijeljina, resulting in the massacre of between 48 and 78 non-Serb civilians in a single day. This event marked the beginning of a four-year period characterized by killings, persecution, and sexual violence. Subsequently, other towns along the Serbian border experienced similar fates, with the city of Prijedor witnessing the massacre of over 3,100 non-Serb civilians, predominantly Muslims, between May and August 1992. As massacres began unfolding in other border cities, it became evident that the ultimate objective was to ethnically cleanse the region by targeting the Muslim population.¹

The Bosnian Genocide serves as a haunting reminder of the critical importance of distinguishing between ethnic cleansing and genocide. While both involve grave violations of human rights, understanding the subtle line that separates them is crucial for legal accountability, historical accuracy, and the prevention of such atrocities in the future. This paper focuses on the Bosnian Genocide that took place from 1992 to 1995, seeking to shed light on the distinctions between ethnic cleansing and genocide within this specific case study. In order to navigate this complex topic, it is essential to draw upon credible sources and authoritative research. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has been a significant institution in documenting and adjudicating crimes committed during the Bosnian Genocide. The landmark judgment in the case of Prosecutor v. Radislav Krstić offers valuable insights into the intent, scale, and systematic nature of the genocide². By examining the ICTY's findings, we can gain a deeper understanding of the legal parameters that define genocide, such as the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. According to the genocide convention, in order for an act to be classified as genocide, it is necessary to establish that the perpetrators possess a demonstrable intention to physically annihilate a national, ethnic, racial, or religious group. Mere cultural devastation or a mere intention to disperse a group is insufficient to meet the criteria for genocide.³ Ethnic cleansing, on the other hand, encompasses a range of violent acts aimed at the removal or displacement of a particular ethnic or religious group from a

¹ Al Jazeera English, 09 October 2018, Ethnic Cleansing of Bosnian Muslim –explained [Video], *YouTube*, <https://www.youtube.com/watch?v=gMuk3t3NoTU&pp=ygUQYm9zbmlhbiBnZW5vY2lkZQ%3D%3D>, visited on Thursday 29 June 2023 8.45 PM.

² Prosecutor v. Radislav Krstić, Judgment, Case No. IT-98-33-A, International Criminal Tribunal for the former Yugoslavia, 19 April 2004.

³ United Nation: Office on Genocide Prevention and The Responsibility to Protect, *"Atrocity Crime: Genocide"*, <https://www.un.org/en/genocideprevention/genocide.shtml>, visited on Thursday 29 June 2023 8.20 PM.

specific territory. There is an important role of nationalism as a driving force behind ethnic cleansing, and examines the interplay between the destruction of tradition and the perpetration of violence. Ethnic cleansing has not only resulted in the physical removal of populations but also the deliberate destruction of cultural heritage and traditions.⁴

The Convention on the Prevention and Punishment of the Crime of Genocide, established by the United Nations (U.N.), formally introduced the term "genocide." In contrast, "ethnic cleansing" does not hold recognition as a crime under international law, according to the United Nations Office on Genocide Prevention and the Responsibility to Protect. While the distinction between ethnic cleansing and genocide can become blurred, it is crucial to understand this difference when it comes to international efforts to intervene in such crimes. While ethnic cleansing often precedes or accompanies genocidal acts, the distinct characteristic of genocide lies in the intent to physically, psychologically, and culturally obliterate a targeted group. Ethnic cleansing, on the other hand, pertains solely to the forced removal of a group from a specific area. While ethnic cleansing is considered a crime against humanity, it lacks explicit inclusion in any U.N. treaty, which consequently means that Member States are not obligated to protect individuals who have become victims of ethnic cleansing.⁵

2. Method

This study was carried out by using normative-empirical methods with a combined approach between juridical and sociological elements. Normative-empirical legal research, also known as applied law research, focuses on examining how normative legal provisions (such as codification, laws, or contracts) are enforced and implemented in specific legal situations within society. The actual implementation of these provisions is an empirical reality that serves a purpose in attaining pre-established objectives. The effectiveness of this implementation relies on the clarity, precision, and comprehensiveness of the formulated normative legal provisions.⁶ The process of normative-empirical legal research, or applied research, commences with the utilization of written legal provisions (legislation) in real legal scenarios within society. This type of research encompasses two distinct stages: the initial stage involves the study of normative law (legislation) or relevant contracts, while the subsequent stage encompasses an empirical legal study where these provisions are applied to concrete legal events in order to accomplish predetermined goals.⁷ The approach focused on

⁴ Cathie Carmichael, "Ethnic Cleansing in the Balkans: Nationalism and the Destruction of Tradition", *Journal of Contemporary History* 33, No. 4, 1998, page 600.

⁵ The Borgen Project, "The Difference Between Ethnic Cleansing and Genocide", <https://borgenproject.org/difference-ethnic-cleansing-and-genocide/>, visited on Thursday 29 June 2023 09.05 PM.

⁶ Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung, page 53.

⁷ Muhaimin, 2020, *Metode Penelitian Hukum*, Mataram University Press, Mataram, page 116.

implying the elements in the body of Article 6 of Rome Statute 1998 with the actual events that occurred in Bosnian Genocide cases.

3. Result and Discussion

3.1. Case Position

After the breakup of Yugoslavia, military conflicts erupted swiftly, starting with Slovenia and Croatia and eventually escalating to Bosnia. Despite losses on all sides, Bosnian Muslims bore the greatest burden. Just a month after the Bosnian Declaration of Independence in March 1992, a paramilitary group based in Serbia launched a devastating attack on the city of Bijeljina, resulting in the massacre of between 48 and 78 non-Serb civilians in a single day. This marked the beginning of a four-year period characterized by killings, persecution, and rape. Subsequently, other towns along the Serbian border suffered a similar fate.

Between May and August 1992, over 3,100 non-Serb civilians, mostly Muslims were massacred in the city of Prijedor. As the massacres spread to other cities along the Serbian border, it became evident that the objective was to ethnically cleanse the region of its Muslim population. In the city of Visegrad, from April to August of the same year, an additional 3,000 Bosnian Muslims were killed, with 70 of them being locked up and burned alive in a local house. Concentration camps began to emerge, including a hotel near the city that served as a brothel camp where women and girls, some as young as seven, were subjected to continuous rape for prolonged periods. By the end of 1992, the cities of Zvornik, Vlasenica, and Tuzla witnessed the deaths of nearly 3,000 more victims. The massacres in the city of Foca, where 2,074 Muslim victims were killed, set the stage for the events that would ultimately unfold in Srebrenica in 1995.

Srebrenica, designated as a UN Safe Zone, became the final target in eastern Bosnia, from which the Muslim population was forcibly expelled. The mass murder of over 8,300 people in Srebrenica, along with the ongoing killings in Markale and Sarajevo, prompted international forces to intervene and initiate the peace process. By the end of the war, approximately 64,000 Bosnian Muslims had lost their lives, with half of them being civilians. Around 50,000 women and girls experienced rape, while thousands were forcibly displaced from their homes, with most of them never able to return. The 2013 population census revealed a significant decline in the Muslim population, ranging from 50% to 100%, in the eastern and northern parts of Bosnia. The peace treaty signed in Dayton in 1995 marked the end of the war but also led to the creation of Republika Srpska, whose borders were drawn around the sites of mass killings.

The International Court of Justice classified the Srebrenica massacre as genocide. However, the systematic slaughter of the Muslim population in Bosnia has not been

given the same classification. Many of those responsible for the murders and rapes of Bosnian Muslims have evaded prosecution, and the Bosnian Muslim community continues to demand justice.

3.2. Regulation of Genocide in the Statue of Rome

The term used to describe the Srebrenica genocide is “ethnic cleansing.” “Ethnic cleansing” refers to the deliberate removal, through deportation, displacement, or even mass killing, of members of an undesired ethnic group in order to establish a geographically homogeneous area. The term “ethnic cleansing” lacks a clear and universally agreed-upon definition in international law. However, the International Court of Justice (ICJ) has characterized it as the use of force or intimidation to make an area ethnically homogeneous by removing people from specific groups. The United Nations (UN) has associated ethnic cleansing with forced movement and displacement. In a 1992 resolution on Bosnia and Herzegovina, the UN General Assembly connected ethnic cleansing with the use of force to acquire territory. Furthermore, the Assembly identified the “violence aimed at forcing individuals to leave their homes” as a violation committed by Bosnian Serbs in relation to ethnic cleansing. In 1997, the UN Commission on Human Rights described ethnic cleansing as a type of “forced population transfer” involving the dispersal of minorities or ethnic populations from their homeland and the resettlement of settlers. Ethnic cleansing typically results in both internal displacement and the movement of refugees across international borders.⁸

Ethnic cleansing is a systematic and deliberate process that exclusively targets a particular group based on their nationality or ethnicity. Its primary objective is the permanent eradication of this group from its current geographical location. The authority to determine the composition of the targeted group rests with the governing state or relevant institutions responsible for executing the large-scale expulsion. Typically, individuals or communities subjected to ethnic cleansing are deprived of the opportunity to assert an alternate ethnic identity or resist their forced displacement. This phenomenon is characterized by its highly organized nature, necessitating the presence of efficient administrative structures. Multiple actors are involved in this process, employing violence, orchestrating evictions, coordinating mass transportation, and implementing measures to impede the return of those considered undesirable. Importantly, ethnic cleansing is a contemporary administrative practice driven by rational planning and top-down control, setting it apart from spontaneous outbreaks of inter-communal violence. Moreover, a significant aspect of ethnic cleansing is its spatial dimension, as it commonly spans vast territories and involves considerable distances. The removal of the targeted group is closely tied to a specific conceptualization of the

⁸ US Committee for Refugees and Immigrants, “*Ethnic Cleansing or Genocide? Either Way, the World Must Act to Prevent Further Atrocities in Tigray*”, USCRI Paper, August 2021, page 1-2.

territory to which they can be relocated, often depicting it as an external or "true" national homeland⁹.

Ethnic cleansing differs from genocide in that its primary aim is the expulsion of a group from a particular region rather than the complete physical destruction of that group. Although similar methods such as murder, rape, torture, and forced displacement may be employed, the main objective of ethnic cleansing is to achieve ethnic homogeneity, which does not necessarily involve mass killings but can be accomplished through other means.

One way to differentiate ethnic cleansing from genocide is by considering the geographical aspect. Genocide tends to occur directly at the location without the possibility of deporting the targeted group to another territory. In contrast, ethnic cleansing involves the primary objective of removing a specific group from a particular area. Another distinguishing factor is the underlying intent. Ethnic cleansing aims at the expulsion of a group from a defined territory, while genocide seeks the destruction of an entire nation. However, recent literature on the 1948 UN Convention on Genocide has blurred this distinction. There has been a trend in the 1990s to broaden the scope of the term and the convention itself. If this trend continues, it may lead to the classification of almost every modern war and many instances of inter-communal violence as having genocidal dimensions. However, it is important to note that acknowledging such distinctions is a normative objective rather than a strictly scientific one, and it may ultimately lead to the dilution of the gravity of the Holocaust. From an analytical perspective, it is preferable to differentiate between different crimes and atrocities. Genocide and ethnic cleansing, even if they escalate to mass killings, result in distinct forms of victimization with varying numbers and proportions of casualties.¹⁰

Another crucial element of ethnic cleansing is the deliberate effort to replace the displaced population with new settlers, thereby homogenizing the population to achieve desired ethnic purity. Considering the reciprocal nature of homogenization practices allows us to go beyond the immediate focus on the removal of people, which is often seen as the endpoint in studies of ethnic cleansing. Furthermore, it is possible to identify different variants of ethnic cleansing. If it occurs across existing or newly established state borders, it is often referred to as "expulsion," while if it takes place within state borders, it is termed "deportation." While most cases of ethnic cleansing have been based on international agreements, instances have also been observed during wars or as a means to establish a *fait accompli* in anticipation of future contractual solutions.¹¹

⁹ Philipp Ther, *"A Brief History of Ethnic Cleansing in Modern Europe"*, University of Barcelona: SO- CLOSE, Vol. 1, page 10.

¹⁰ *Ibid.*, page 11.

¹¹ *Ibid.*

Meanwhile, the term "genocide" was coined by Raphael Lemkin in 1944, combining the Greek word "genos" for "race" or "kind" and the Latin word "cidere" meaning "kill." In 1948, the United Nations General Assembly adopted the term and provided a definition in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). According to the CPPCG, genocide includes acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. These acts encompass killing members of the group, causing serious harm to them, inflicting conditions of life calculated to bring about their physical destruction, imposing measures to prevent births, and forcibly transferring children of the group to another.

In order to establish the occurrence of genocide, it is necessary to demonstrate three key factors. Firstly, the perpetrators must have committed one or more of the acts associated with genocide. Secondly, these acts must have been directed against a national, ethnic, racial, or religious group. Lastly, it must be proven that the intent of the perpetrators was to destroy the group as a whole rather than targeting specific individuals within the group. The most challenging aspect to establish is the intent, as stated by the UN Office of Genocide Prevention. The intent must be proven to be a deliberate physical destruction of the group rather than solely aiming to eradicate their culture or displace the group. The International Court of Justice (ICJ) determined in the case of *Croatia v. Serbia* that although genocidal intent can sometimes be inferred from a pattern of behavior, a finding of genocide can only be made when genocidal intent is "the only reasonable inference" drawn from the acts in question. Therefore, while providing evidence for the "acts" component of genocide may be relatively straightforward, demonstrating the required level of intent poses a significant challenge.¹²

Subsequently, genocide was designated as one of the international crimes under the Rome Statute of the International Criminal Court (ICC). The Rome Statute, adopted in 1998 and effective from July 1, 2002, specifically regulates genocide. Article 6 of the Rome Statute defines genocide as the aforementioned acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

Both genocide and ethnic cleansing involve the planned and systematic elimination of an entire group of people based on discrimination against them. The ICC has linked ethnic cleansing more specifically to genocide, "crimes against humanity," and "war crimes," asserting that ethnic cleansing could constitute all three offenses falling under its jurisdiction. Therefore, ethnic cleansing is now explicitly covered by international law, although efforts to prevent and punish such acts are still being developed.

¹² *Op.cit.*, US Committee for Refugees and Immigrants.

3.3. Analyzing The Bosnian “Genocide” with the norm on The Statue of Rome as Prosecutor

Initially, the invasion launched by the Republika Srpska, composed of Bosnian-Serbs, could be classified as an ethnic cleansing campaign, as its objective was to expel a specific undesired group from a particular geographic area. The primary delineation between ethnic cleansing and genocide resides in the dimension of intent. A notable judicial ruling regarding the atrocities committed in the former Yugoslavia highlighted those deliberations during the formulation of the Genocide Convention involved contemplating the inclusion of "measures intended to compel individuals of a particular group to abandon their residences" as constituting acts of genocide. However, it was ultimately determined that such measures should be excluded because genocide necessitates an intent to annihilate rather than solely coercing people to relocate. While forced removals within the context of ethnic cleansing can sporadically fulfill the criteria for genocide, ethnic cleansing can also encompass forced displacements or evictions that lack the intention to effectuate the destruction of the group. Moreover, even if forced displacement culminates in fatalities or the devastation of a group, if the perpetrators' sole objective is to relocate the group to an alternate location, the act cannot be classified as genocide.

However, this movement evolved into a genocide targeting a specific religious group known as Bosniaks or Bosnian Muslims. Since the ratification of Rome State in 1998, we can see the resemblance of Bosnian ethnic cleansing filling up the characteristics of Genocide as regulated in Article 6 of The Rome Statue. Article 6 of The Rome Statue stated that genocide is “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transfer children from the group to another group.”¹³

3.4. Recent cases of ethnic cleansing in the modern world

3.4.1. The Rohingya Crisis

In August 2017, Myanmar's military carried out a violent crackdown on Rohingya Muslims, resulting in a mass exodus of hundreds of thousands who fled to neighboring

¹³ Rome Statute of the International Criminal Court, Art. 6.

Bangladesh. These individuals took immense risks, undertaking perilous journeys by sea or on foot, in order to escape a military offensive that was later characterized by the United Nations as a clear example of ethnic cleansing.

In January 2020, the highest court of the United Nations issued an order for the predominantly Buddhist country to take measures to safeguard the Rohingya community from acts of genocide. However, Myanmar's military, also known as Burma, maintains that it was engaged in combat with Rohingya militants and denies any deliberate targeting of civilians. Aung San Suu Kyi, the leader of the country who was once regarded as a symbol of human rights, has consistently denied allegations of genocide.¹⁴

Clashes in Rakhine broke out in August 2017 after a militant group known as the Arakan Rohingya Salvation Army (ARSA) claimed responsibility for attacks on police and army posts. The government designated ARSA as a terrorist organization, leading to a brutal military campaign that resulted in the destruction of numerous Rohingya villages and the displacement of nearly 700,000 Rohingya from Myanmar. According to Doctors Without Borders, at least 6,700 Rohingya were killed within the first month of the attacks between August 25 and September 24, 2017. Myanmar's security forces allegedly targeted civilians as they fled and placed landmines near border crossings used by Rohingya seeking refuge in Bangladesh.

The violence has been described by UN Secretary-General Antonio Guterres as ethnic cleansing, with a catastrophic humanitarian situation unfolding. Human rights organizations and UN leaders suspect that acts of genocide have taken place. In September 2018, a UN fact-finding panel released a report stating that the Myanmar government demonstrated "genocidal intent" towards the Rohingya. The panel's chair noted systematic abuses by the military, including the deliberate targeting of civilians, sexual violence, dissemination of discriminatory rhetoric against minorities, and the establishment of an atmosphere of impunity for security forces.

Since early 2018, reports have emerged of Myanmar authorities clearing abandoned Rohingya villages and farmlands to make way for housing, security installations, and infrastructure development. While the government claims this is part of preparations for the repatriation of refugees, concerns have been raised by human rights activists that these actions may aim to accommodate populations other than the Rohingya in Rakhine.

Moreover, doubts have been raised about the government's claims that its tactics were solely in response to ARSA attacks, as evidence suggests that military policies were

¹⁴ BBC News, "Myanmar Rohingya: What you need to know about the crisis", <https://www.bbc.com/news/world-asia-41566561>, visited on Saturday 1 July 2023 4.13 PM.

implemented nearly a year before the ARSA's activities. Rakhine State has a history of sectarian violence, with previous security campaigns in 2012 and 2016 leading to the displacement of tens of thousands of Rohingya from their homes.¹⁵

3.4.2. The Tension between different ethnic groups in Borneo Island of Indonesia

Long-simmering tensions between indigenous Dayaks and immigrant Madurese suddenly exploded in the town of Sampit, Central Kalimantan, in the middle of February 2001. Initially, the clashes led to isolated killings but quickly escalated into a one-sided massacre of Madurese by enraged Dayaks, resulting in the flight of nearly the entire Madurese population from the province. This incident resembled similar events in the Sambas district of West Kalimantan in previous years, raising concerns about the potential spread of violence to other regions.

The violence in Central Kalimantan was preceded by decades of dislocation among the Dayak community, caused by the Soeharto government's transmigration program and the influx of migrants seeking economic opportunities. The granting of forest concessions to logging companies further disrupted the lives of forest-dwelling Dayaks. Additionally, the Dayaks felt marginalized and looked down upon by other communities.

The violence primarily targeted the Madurese community, despite them being a minority compared to the Dayaks and other migrant groups. The reasons behind this selective targeting remain unclear. Stereotypes and perceptions played a role, with Dayaks viewing Madurese as arrogant and prone to violence, while Dayaks themselves were portrayed as barbarian warriors in some accounts. The origins of the violence are disputed, with both sides offering different narratives.

The security forces were widely criticized for their failure to prevent the conflict and their inadequate response. Police negligence and corruption were reported, and cooperation with the military was not without challenges. However, they managed to minimize the spread of violence to other areas due to the mass exodus of Madurese from the province.

The Indonesian government and courts face the challenge of pursuing accountability without further exacerbating tensions. Convictions for ethnic violence are crucial for upholding the rule of law, but they should be pursued while considering the underlying causes of the conflict and the potential consequences. Reconciliation efforts and addressing the legitimate grievances of the Dayaks are essential for improving security and creating conditions for the return of refugees. The recommendations provided in

¹⁵ Council on Foreign Relations, "Backgrounder: The Rohingya Crisis", <https://www.cfr.org/backgrounder/rohingya-crisis>, visited on Saturday 1 July 2023 4.20 PM.

the paragraph focus on addressing the specific situation in Central Kalimantan, but they also hold relevance for other regions in Indonesia.¹⁶

4. Conclusion

Based on the discussions above, the events in the Bosnian War, specifically the Srebrenica massacre, meet the criteria for genocide under international law. The deliberate killings, systematic extermination, and widespread violence against Bosnian Muslims align with the acts outlined in Article 6 of the Rome Statute. The invasion and targeting of Bosnian Muslims in Srebrenica, including the massacre of over 8,000 unarmed men and boys, along with rape and displacement of women, indicate a systematic effort to destroy the Bosniak population. These actions violate international humanitarian and customary law. The classification of the Srebrenica massacre as genocide by the ICTY and other international bodies reflects a thorough examination of evidence and historical context. The scale, systematic nature, targeted violence, and intent to destroy the Bosnian Muslim population support this classification. However, it's important to note that the systematic slaughter of Muslims in Bosnia as a whole has not received the same classification. Many responsible individuals have evaded prosecution, and justice is still sought by the Bosnian Muslim community. In conclusion, the evidence supports classifying the events in the Bosnian War, especially the Srebrenica massacre, as genocide under international law. Recognizing these acts as genocide acknowledges the gravity of the crimes, seeks justice for the victims, and helps prevent future genocides.

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