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Japanese Whaling and International Politics

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Japanese Whaling and International Politics

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Abstract

This paper lists some of the major international political issues related to Japan's whaling, describes the position of anti-whaling members of the International Whaling Commission (IWC) and that of those members supporting the sustainable use of all marine resources, including whales. This provides a context for examining the role of anti-whaling NGOs in a failed process that was aimed at resolving the bipolar and dysfunctional nature of the IWC. The process, called "The Future of the IWC", was intended to elicit compromises from both sides that would produce a fair and balanced interim arrangement, put aside the irreconcilable positions, remove the ill-will and acrimony from the institutional discourse, build trust, and, during the interim period, address the major issues faced by the Commission.

During the negotiations Japan had offered substantial compromises, including a more than 50% reduction of its Antarctic whaling. However, because of pressure from NGOs, no compromises were offered by anti-whaling members of the IWC, so no consensus was possible. This is because a successful outcome, which would have brought all whaling under the Commission's authority with substantially reduced catches, particularly in the southern ocean would have undermined the fund-raising objectives and economic interests of the anti-whaling NGOs.

The unsuccessful end to the "Future of the IWC" process, brought about by the influence of anti-whaling NGOs on member governments, means that whaling other than

“aboriginal subsistence whaling” will remain outside of the control of the IWC. Rejection of the *status quo* as unacceptable by all members of the IWC was the reason for initiating the “Future of the IWC” process. However, its failure only preserves the *status quo*.

1. Introduction

For more than three decades from the mid 1970s, international politics related to Japanese whaling has primarily been anti-whaling, and driven largely by the increasing wealth and political power of large NGOs. From a broad perspective it has been about treaty interpretation and implementation, and the ‘greening’ of foreign policy. More narrowly, some of the more high profile international politics related to Japanese whaling have been about:

- a bipolar and dysfunctional IWC¹;
- listing and maintaining some species of whales on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), although they do not meet the CITES listing criteria²;
- certification of Japan under the US Pelly Amendment to the Fishermen’s Protective Act of 1967, on the grounds that Japan’s research whaling undermines the conservation program of the IWC;
- US Congress and Senate anti-whaling resolutions;
- UK Labor MP Tony Banks’ public statement in 1992 that “If indeed these people want something exotic to eat, they should try eating each other rather than eating whales”;
- a 2002 letter from US President Clinton to Prime Minister Mori of Japan urging reconsideration of its whale research program;
- the coming together of 13 Central and South American anti-whaling IWC member countries, called the “Buenos Aires Group”;
- an anti-whaling EU Common position binding on all EU IWC members (except for Denmark in respect of Greenland), beginning in 2008;
- Australia filing a case at the International Court of Justice (ICJ) in 2010 against Japan for its research whaling, to fulfill an election promise by the former Prime Minister Rudd³;
- the announcement in December 2010 that New Zealand will intervene in Australia’s case at the ICJ against Japan⁴;
- the failure at the 2010 Annual Meeting of the IWC of three years of negotiation in a process called “the Future of IWC” and;
- the violent and criminal activities of the Sea Shepherd Conservation Society aided and abetted by the actions of the Governments of the Netherlands, New Zealand, and Australia, notwithstanding an IWC resolution agreed by consensus condemning such action⁵.

On the other hand, at least some of the international politics related to Japanese

whaling have been about the increasing support for the principles of sustainable use of resources and science-based management of resources, highlighted by the adoption, in 2006, of the “St. Kitts and Nevis Declaration”⁶). The resolution emphasizes that the use of cetaceans in many parts of the world contributes to sustainable coastal communities, sustainable livelihoods, food security, and poverty reduction, and that placing the use of whales outside the context of the globally accepted norm of science-based management and rule-making for emotional reasons sets a bad precedent that risks our use of fisheries and other renewable resources. The resolution also expresses the concern of Commissioners that the IWC has failed to meet its obligations under the terms of the International Convention for the Regulation of Whaling (ICRW).

Within this broader context of international politics related to Japanese whaling, the purpose of this paper is to focus on the role of anti-whaling NGOs in the failure at the 2010 Annual Meeting of the IWC of three years of negotiation in the process called “the future of the IWC” (Goodman 2011).

The positions of anti-whaling members in the IWC are a political “freebie” with almost no cost except a dysfunctional international organization and the risk that the politics that made the IWC dysfunctional will spread to other international organizations. Anti-whaling members of the IWC have traded this cost and risk for domestic political green votes because whales have been made an icon of the “environmental movement (Kalland 1994). Notwithstanding this, there was an opportunity for international politics to fix the IWC. At its 59th Annual Meeting, in 2007, the IWC initiated a process called the “Future of the IWC”, which aimed at eliciting compromises from both pro-whaling and anti-whaling members to resolve the bipolar, conflictual and dysfunctional nature of the organization⁷.

The following describes how the process came to an unsuccessful end at the 62nd Annual Meeting, in 2010 by analyzing the positions of a majority of the Commission’s membership and the role of anti-whaling NGOs. Evidence is provided to show that these NGOs had a strong influence on the positions of anti-whaling members, and suggest that a successful outcome, which would have brought all whaling under the Commission’s authority with substantially reduced catches particularly in the southern ocean, would have been counter to their fund-raising objectives and economic interests.

2. The Pro-whaling Position

Pro-whaling IWC members assert that whales should be managed just like other marine living resources. They argue that opposition to whaling, that is, maintaining the moratorium, irrespective of the status of whale stocks is contrary to the ICRW, the purpose of which is expressed in the last paragraph of the preamble, that is, “to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry”⁸).

Pro-whaling IWC members note that the moratorium was adopted in 1982⁹) in the absence of advice of the Scientific Committee that a moratorium was an appropriate management measure, and that the Southern Ocean Sanctuary was adopted in 1994¹⁰

without a recommendation from the Scientific Committee that such measure was required for conservation purposes. As such, they argue that these measures violate Article V 2 B of the ICRW that requires the regulations *inter alia* to be “based on scientific findings.” Maintaining a moratorium that is not required for conservation purposes is also a flagrant assault on those for whom whales and whaling have strong cultural significance. As noted above, these positions were elaborated in the St. Kitts and Nevis Declaration, adopted by the Commission in 2006.

Pro-whaling members believe that IWC members who use the organization to protect all whales and prohibit all whaling are ignoring their legal obligation under the Vienna Convention on the Law of Treaties to interpret the ICRW “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose”.¹¹⁾

3. The Anti-whaling Position

Anti-whaling members of the Commission, including the so-called “Buenos Aires” group of 13 countries from Central and South America, 26 EU member countries, Australia, New Zealand, and the USA, are opposed to the resumption of any commercial whaling irrespective of the purpose of the ICRW or the status of whale stocks. They are also opposed to lethal research, declaring that it is not required for management purposes. Their position is that the ICRW needs “modernization” to, among other things, remove Article VIII that allows members to unilaterally issue special permits to kill whales for research purposes¹²⁾ by which Japan legally undertakes whale research programs in the Antarctic and the Western North Pacific¹³⁾.

Anti-whaling members also seek to remove the part of Article V that allows members to “file an objection” and thereby not be bound legally by changes adopted by the IWC to its regulations. This is the provision that allows Norway legally to carry out its whaling in the North Atlantic¹⁴⁾. Anti-whaling members also want to prohibit “reservations” to specific parts of the Convention, as was done by Iceland¹⁵⁾. They demand a greater emphasis on protection of whales, establishment of additional sanctuaries, and a focus on whale-watching and non-lethal research on environmental threats to whale stocks. In this regard, it is interesting to note here that all of the IWC’s anti-whaling members support the principles of sustainable use and science-based management of resources, but whales are a political exception for some.

The position of EU member countries is demonstrably political within the EU itself, because since 2008, EU member countries of the IWC have been bound by a “common position” requiring that they all vote and speak in the same manner at meetings of the IWC. (Denmark has an exception to this as it relates to Greenland.) This means that some of the EU countries that argued against the adoption of a common policy for the EU and who formerly expressed some support for sustainable whaling (Sweden, Finland, and Denmark), can no longer do so.

4. The Future of IWC Process

This was the context for the start of “the Future of the IWC process”. The idea was to put aside the irreconcilable positions for an interim period, remove the ill-will and acrimony from the institutional discourse, build trust, and, during the interim period, address the major issues faced by the Commission. It was not intended that these major issues would be addressed at the outset.

So on April 22, 2010¹⁶⁾, based on three years of negotiations involving outside experts in dispute resolution, diplomatic exchanges, high level consultations and numerous small group meetings, the Chair and Vice-chair submitted their “Proposed Consensus Decision to Improve the Conservation of Whales”¹⁷⁾ to the Commission. The proposal was put forward to facilitate the necessary further discussions leading up to IWC’s 62nd Annual Meeting in Agadir, Morocco, and was intended to provide for the establishment of a 10-year interim period of stability within which intensive dialog would focus on the major long-term issues at the IWC. The “Proposed Consensus Decision” which included a vision statement¹⁸⁾ combined the following comprehensive set of fundamental components¹⁹⁾:

- retain the moratorium on commercial whaling;
- suspend immediately for the 10-year period unilaterally-determined whaling under special permit, objections, and reservations;
- bring all whaling authorized by member governments under the control of the IWC;
- limit whaling to those members that currently take whales;
- ensure that no new non-indigenous whaling takes place on whale species or populations not currently hunted;
- establish caps for the next ten years that are significantly less than current catches and within sustainable levels, determined using the best available scientific advice;
- introduce modern, effective IWC monitoring, control and surveillance measures for non-indigenous whaling operations;
- create a South Atlantic Sanctuary;
- recognize the non-lethal value and uses of whales, such as whale watching, as a management option for coastal states and address related scientific, conservation and management issues of such uses;
- provide a mechanism for enterprise and capacity-building for developing countries;
- focus on the recovery of depleted whale stocks and take actions on key conservation issues, including by-catch, climate change, and other environmental threats;
- set a decisive direction to the future work of the IWC including measures to reform the governance of the Commission; and
- establish a timetable and mechanism for addressing the fundamental differences

of view among member governments to enable the effective, long-term functioning of the Commission

Again, the idea was to develop a fair and balanced interim arrangement, remove the ill-will and acrimony from the institutional discourse, build trust, and, during the interim period, address the major issues faced by the Commission. It was not intended that the major issues would be addressed at the outset.

During negotiations leading up to the 62nd Annual Meeting in Agadir, Japan had offered numerous and substantial compromises. These included: a reduction of more than 50% in the lethal research catch in the Southern Ocean, acceptance of international observers on whaling vessels, deployment of a satellite based real-time vessel monitoring system, and the acceptance of a number of conservation programs within the IWC. Also included among Japan's compromises was the assurance that its effective DNA-based register and market monitoring programs would continue and that Japan would allow IWC auditing of these. Japan emphasized that it was willing to offer these compromises and assurances in order for the IWC to manage whaling, provided that compromises came from all member countries to produce a fair and balanced outcome²⁰.

5. The Outcome

Unfortunately at Agadir no flexibility was shown and no substantive compromises were offered by the anti-whaling countries. Instead of compromise, the "Buenos Aires Group" referred to the document as presenting "imbalances that make it inappropriate to constitute the basis for consensus". They insisted that an agreement include a permanent prohibition on whaling by the end of the interim period²¹). In a similar fashion, the "common position" of the EU member countries was that all whaling in the Southern Ocean Sanctuary must be phased out within a specified time²²). The only flexibility in their position on this was the timing. And the position of Australia was that scientific whaling and whaling under objection or reservation must be brought to an immediate end²³). All of these countries came to Agadir with demands rather than concessions, seemingly having conveniently forgotten that the objective was not to resolve these substantive matters, but rather to establish a framework within which this could be done. Japan therefore found itself at Agadir without sufficient negotiating partners to enable a consensus to be reached.

Of the anti-whaling members, only the USA, which stated "we... will continue to work with other delegations here to try to find a compromise that we can all support"²⁴) and New Zealand which said "we urge all delegates to the IWC 62 to make their utmost efforts to bridge the gaps that currently exist..."²⁵) and perhaps South Africa seemed, at least on the face of it, willing to actually have a substantive negotiation. The US statement was, however, blatantly disingenuous as their position (and that of the EU members of IWC as well) included a ban on international trade, which they raised at a very late stage of the negotiations and which they knew was a "deal breaker" for Iceland, since it would mean the end of their catching of fin whales in the North Atlantic. The

USA, whose primary interest in the process was about securing their quota of bowhead whales (67 per year) for the next 10 years, began the process with a flexible position and strong commitment aimed at achieving compromise. However, their position was transformed toward the end of the process, as a result of pressure from NGOs .

Japan's support for the "Future of the IWC Process" was based on a firm belief "that the IWC should be a fully functional international organization for the conservation and management of whales"²⁶⁾ under which whaling would be properly regulated, and because of its desire to achieve a quota for its small-type coastal whaling communities²⁷⁾. The claim that Japan was to blame for failure of the talks, widely promulgated by NGOs, was dismissed by Sir Geoffrey Palmer, New Zealand's Commissioner, who said: "I was in the middle of this, and I think that's absolutely false." Sir Geoffrey added, "The luxury about NGO positions is they don't actually know what is going on."²⁸⁾

6. The Role of Anti-whaling NGOs

Anti-whaling NGOs take credit for the adoption of the moratorium on commercial whaling, in 1982, the adoption of the Southern Ocean Sanctuary, in 1994, and now for the defeat of the Proposed Consensus Decision and the demise of the "Future of the IWC" process. Some of these NGOs are very large organizations with considerable political influence and international lobbying capabilities. Most use whales as symbols for environmentalism and saving whales, even if they have already been saved, remains a powerful fund-raising tool.

The current influence of anti-whaling NGOs on IWC member governments was noted by the US Deputy Assistant Secretary of State for Oceans and Fisheries, David Balton, in his May 6, 2010 testimony to a US Congressional Committee. He said; "As the process comes to a head, it will be more difficult for IWC member governments to continue to be flexible in these discussions. Indeed, some members (including the United States) are under increasing political pressure and criticism from constituents who believe that the Chairs' proposal would effectively capitulate to those members who want to engage in commercial whaling."²⁹⁾ Balton is a diplomat but a translation of his statement to plain English would read something like: "Anti-whaling NGOs are insisting that governments go to the IWC meeting in Agadir with no compromises and an intransigent position against the Chair and Vice-chair's proposal." And, that is exactly what happened. Governments of the EU member countries, the Buenos Aires Group, Australia and the USA responded positively to the demands of their anti-whaling NGOs.

In order to gain public support for their position, anti-whaling NGOs referred to the "Future of the IWC" process as negotiations conducted in "closed-door" meetings in which they were unable to participate³⁰⁾, and mischaracterized the proposed interim arrangement as legitimizing commercial whaling and sanctioning lethal research³¹⁾. They demanded changes to the Chair and Vice-chair's proposal, knowing that these would be unhelpful in producing a consensus outcome thereby ensuring the unsuccessful end to the "Future of the IWC" process³²⁾.

7. Conclusions

The unsuccessful end to the “Future of the IWC” process brought about by the influence of anti-whaling NGOs on member governments means that whaling other than “aboriginal subsistence whaling” will remain outside the control of the IWC. Japan will continue to set unilaterally the catch limits for its research whaling, Norway will continue to set its own quotas for its commercial whaling under its “objection” to the moratorium, and Iceland will continue to set its own quotas for its commercial whaling under its “reservation” to the moratorium. Although unnecessary from a conservation perspective, the very significant reduction in total catches that would have resulted from a successful outcome of the negotiations will now not occur. As the Commissioner from Denmark noted in an intervention to the plenary: “Those NGOs and Governments that are opposed to the Chair and Vice-chair’s proposal should be called the whalers.”³³

It could be argued that the unsuccessful outcome of the “Future of the IWC” process was not a bad outcome in the sense that given the continuation of the current situation all participants get some but not all of what they want. Whalers are catching some whales, anti-whaling nations maintain their moratorium and sanctuaries, and NGOs continue to raise funds. However, the current dysfunctional nature of the IWC is an example of bad governance that sets a bad precedent for much needed cooperation in other resource management and environmental issues.

The behavior of “environmental” NGOs in the IWC and elsewhere includes demands for “stakeholder involvement”, false claims that they represent civil society, constant promotion of “disaster scenarios” of species extinction, pollution, and health hazards, and the abuse and misuse of science to influence public policy and promote an anti-use agenda that includes unnecessary anti-use bans and restrictions on international trade. Environmental NGOs raise huge sums of money to conduct their activities, and while some may have a legitimate role in education and as a watchdog over governments and science, once they become advocates for a position because it raises funds then their activities need to be scrutinized³⁴. In this context, it is easy to suggest that anti-whaling NGOs opposed the Chair and Vice-chair’s proposal because a solution to the conflict in the IWC is counter to their fund-raising objectives and economic interests. How could these organizations continue to raise hundreds of millions of dollars were there peace within the IWC?

And, although most members of the IWC view the *status quo* as unacceptable, it appears that the economic interests of the anti-whaling NGOs will ensure that the international and domestic politics of whaling will continue as they have since the adoption of the moratorium, in 1982.

Notes

- 1) The IWC is termed “dysfunctional” because neither the anti-whaling nor pro-whaling members can achieve the required three-quarters majority vote to adopt regulations for the management of whaling, which is the IWC’s primary function. Except for quotas for aboriginal/subsistence

- whaling, only one regulation for the management of whaling has been adopted since the 1982 moratorium; that is, the establishment of the Southern Ocean Sanctuary in 1994.
- 2) CITES Resolution Conf. 9.24 (Rev. CoP15) Annex 1 Biological Criteria for Appendix 1 <http://www.cites.org/eng/res/all/09/E09-24R15.pdf>
 - 3) 28 May 2010 Government of Australia Joint media release: Stephen Smith MP, Minister for Foreign Affairs, Peter Garrett MP, Minister for Environment Protection, Heritage and the Arts, Robert McClelland MP, Attorney-General. Government initiates legal action against Japanese whaling.
 - 4) <http://www.voxy.co.nz/politics/nz-not-joining-whaling-court-action/5/75884>
 - 5) IWC Resolution 2007–2 Resolution on Safety at sea and Protection of the Environment. <http://www.iwcoffice.org/meetings/resolutions/resolution2007.htm#res2>
 - 6) IWC Resolution 22006–1 St. Kitts and Nevis Declaration. <http://www.iwcoffice.org/meetings/resolutions/resolution2006.htm#1>
 - 7) A chronological overview of the “Future of the IWC” process with links to related IWC documents is available at: <http://www.iwcoffice.org/commission/future.htm>
 - 8) International Convention for the Regulation of Whaling, with Schedule of Whaling Regulations, pmbL., 2 December 1946, 62 Stat. 1717, F.I.A.S. No. 1849, 161 U.N.T.S. 76.
 - 9) Paragraph 10(e) of the Schedule. http://www.iwcoffice.org/_documents/commission/schedule.pdf
 - 10) Paragraph 7(b) of the Schedule. http://www.iwcoffice.org/_documents/commission/schedule.pdf
 - 11) Article 31, Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331.
 - 12) Article VIII of the ICRW allows members to unilaterally issue special permits for the killing of whales for research purposes is “Notwithstanding anything contained in this Convention...”, and makes the killing of whales so authorized “exempt from the operation of this Convention.”
 - 13) Details of these research programs and the scientific review of research results are available at: <http://www.icrwhale.org/eng-index.htm>
 - 14) See Article V 3 of the ICRW http://www.iwcoffice.org/_documents/commission/convention.htm The Governments of Japan, Norway, Peru, and the Union of Soviet Socialist Republics lodged objections to the moratorium (paragraph 10(e)). Except for Norway and the Russian Federation these were subsequently withdrawn. Japan also used the provisions of Article V 3 to object to the Southern Ocean Sanctuary, paragraph 7(b) of the Schedule to the extent that it applies to the Antarctic minke whale stocks.
 - 15) Iceland’s instrument of adherence to the Convention deposited on October 10, 2002 included a reservation to paragraph 10(e). Their current commercial whaling operations in the North Atlantic are therefore also legal.
 - 16) In order to meet the 60 days notice required for proposals to amend the IWC’s regulations: IWC Rules of Procedure and Financial Regulations. <http://www.iwcoffice.org/commission/procedure.htm>
 - 17) IWC/62/7rev. <http://www.iwcoffice.org/documents/commission/IWC62docs/62-7rev.pdf>
 - 18) VISION STATEMENT: The International Whaling Commission will work cooperatively to improve the conservation and management of whale populations and stocks on a scientific basis and through agreed policy measures. By improving our knowledge of whales, their environment, and the multiple threats that can affect their welfare, the Commission will strive

to ensure that whale populations are healthy and resilient components of the marine environment.

- 19) Appendices A through E of the Chair and Vic-Chair's proposal, which were amendments to regulations, a workplan for the Scientific Committee, establishment of new governance structures (committees), amendments to the Rules of Debate and NGO code of conduct and an IWC Co-operation program (enterprise and capacity building) together with a table showing catch limits for those species and areas where catches were to be permitted from 2011 through 2020.
- 20) IWC/62/OS Japan http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 21) IWC/62/OS Argentina, Brazil, Chile, Costa Rica, Ecuador, Mexico, Panama, Peru, Uruguay. http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 22) IWC/62/OS Spain (on behalf of the EU and its member states). http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 23) IWC/62/OS Australia http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 24) IWC/62/OS United States http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 25) IWC/62/OS New Zealand http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 26) IWC/62/OS Japan http://iwcoffice.org/_documents/commission/IWC62docs/62-OS%20GO.pdf
- 27) Japan has been requesting a quota for its small-type coastal whaling communities for more than 20 years. It has provided the IWC with many papers documenting the social, cultural, and religious needs of these communities. Japan proposed that its research take in the North Pacific would be reduced by the amount of any such quota, so that the overall take would not be increased.
- 28) Quoted by Richard Black, BBC News. June 26, 2010. <http://www.bbc.co.uk/news/10422957>
- 29) Statement of David A. Balton, Deputy Assistant Secretary of State, Oceans and Fisheries Bureau of Oceans and International Environmental and Scientific Affairs to the US Congressional Committee on House Foreign Affairs' Subcommittee on International Organizations, Human Rights, and Oversight May 6, 2010.
- 30) See for example, the International Fund for Animal Welfare press release dated 23 June 2010. http://www.ifaw.org/ifaw_united_states/media_center/press_releases/6_23_2010_61989.php
- 31) http://www.ifaw.org/ifaw_united_states/media_center/press_releases/04_22_2010_61406.php
- 32) See for example the joint statement by Greenpeace International, The Pew Environmental Group and WWF International and the statement by IFAW dated 22 April 2010.
- 33) Verbatim record IWC 62. Available from the IWC Secretariat.
- 34) The total revenue for 2011 of the World Wildlife Fund was US\$233,521,686 as reported in their financial statements: <http://www.worldwildlife.org/who/financialinfo/WWFBinaryitem26530.pdf>
 The total revenue for 2010 of the International Fund for Animal Welfare was US\$92,195,000 as reported in their financial statements: http://www.ifaw.org/sites/default/files/105854_GG%20IFAW%20FINAL_SC.pdf
 The total income for 2010 of Greenpeace (worldwide) was 230,557,000 Euros as reported in

their financial statements. http://www.greenpeace.org/international/Global/international/publications/greenpeace/2011/GPI_Annual_Report_2010.pdf

The total support and revenue for the year ending Dec. 31, 2011 for the U.S. Humane Society was US\$167,091,718 as reported in their financial statements. http://www.humanesociety.org/assets/pdfs/publications/2011_annual_report/14_financials.pdf

It is not possible from the financial statements referenced above to determine the portion of total revenues derived from the organizations' anti-whaling campaigns.

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