

Document:-  
**A/CN.4/SR.774**

**Summary record of the 774th meeting**

Topic:  
**Other topics**

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70. Mr. BARTOŠ, Special Rapporteur, suggested that the word "authority" should be replaced by the words "full powers".

*It was so agreed.*

*Paragraph 5) was adopted as amended.*

*Paragraph 6)*

71. The CHAIRMAN suggested that, for the sake of consistency, the expression "extent of the authority" should be substituted for "limits of the authority".

*Paragraph 6) was adopted as so amended.*

*Paragraph 7)*

72. The CHAIRMAN thought it inaccurate to speak of the *substitut* of a head of a special mission.

73. Mr. BARTOŠ, Special Rapporteur, said that *suppléant* would be preferable.

*Paragraph 7) was adopted as amended.*

*Paragraph 8)*

74. The CHAIRMAN suggested that the passage in the last sentence dealing with the status of alternate and deputy head should be replaced by some such words as "the Commission placed the two kinds of deputy on the same footing".

*It was so agreed.*

*Paragraph 8) was adopted as amended.*

*Paragraph 9)*

*Paragraph 9) was adopted without comment.*

*Paragraph 10)*

75. The CHAIRMAN suggested that the words "acting deputy" in the last sentence should be replaced by the words "deputy administrator".

*Paragraph 10) was adopted as so amended.*

*Paragraphs 11) and 12)*

*Paragraphs 11) and 12) were adopted without comment.*

The meeting rose at 1 p.m.

## 774th MEETING

Friday, 24 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

### Draft Report of the Commission on the Work of its Sixteenth Session (A/CN.4/L.106 and addenda) (continued)

#### CHAPTER III: Special missions (A/CN.4/L.106/Add.11)

1. The CHAIRMAN invited the Commission to continue its consideration of the commentary on the draft articles concerning special missions.

*Commentary on article 11 (Commencement of the functions of the special mission)*

*Paragraphs 1) and 2)*

2. The CHAIRMAN said it had been agreed during earlier discussion that the word *fonction* should be replaced by *fonctions* throughout the text of the draft articles and commentary.

*With that amendment, paragraphs 1) and 2) were adopted.*

*Paragraph 3)*

3. Mr. de LUNA said he doubted that there were special customary rules having the force of law on the subject. He suggested that the words "usage" should be substituted for "customary rules" in the first sentence.

*It was so agreed.*

4. The CHAIRMAN suggested that wherever possible the words "the functions of the special mission begin" should be replaced by the words "the mission enters upon its functions".

*It was so agreed.*

*Paragraph 3) was adopted as amended and subject to drafting changes.*

*Paragraph 4)*

5. The CHAIRMAN suggested that the second sentence should read: "There are even fewer rules regarding audiences by Heads of States for the presentation of letters of credence". In the third sentence, the words "and the functions commence immediately" should be replaced by the words "and the mission enters upon its functions immediately". In the fourth sentence, the word "custom" should be replaced by the word "usage".

*It was so agreed.*

*Paragraph 4) was adopted as amended.*

*Paragraph 5)*

*Paragraph 5) was adopted without comment.*

*Paragraph 6)*

6. The CHAIRMAN suggested that the words *les parties* should be substituted for *les partenaires* in the second sentence of the French text. The expression "his opposite number" in the third sentence should be replaced by "the person".

*Paragraph 6) was adopted as so amended.*

*Paragraph 7)*

7. The CHAIRMAN suggested that the word "necessarily" in the penultimate sentence should be replaced by the word "always".

*It was so agreed.*

*Paragraph 7) was adopted as amended.*

*Paragraph 8)*

*Paragraph 8) was adopted subject to the replacement of the word "subsidiaries" by the word "supplétifs".*

*Paragraphs 9) to 11)*

*Paragraphs 9) to 11) were adopted without comment.*

*Paragraph 12)*

8. Mr. de LUNA suggested that, in the third sentence, the word "considers" should be substituted for the word "believes".

9. After further discussion, the CHAIRMAN said that the following changes would be made in the text of paragraph 12): the words "they consider that" would be inserted between the words "whether" and "an appropriate rule" in the third sentence; the penultimate sentence would be altered to read "... differences in treatment are due to differences in relations between States"; and the last sentence would be deleted.

*Paragraph 12) was adopted as so amended.*

*Commentary on article 12 (End of the functions of the special mission)*

*Paragraphs 1) to 3)*

*Paragraphs 1) to 3) were adopted subject to drafting changes.*

*Paragraph 4)*

10. The CHAIRMAN suggested that the second sentence should be altered to read "A resumption of negotiations would then be regarded as the commencement of the functions of another mission."

*Paragraph 4) was adopted as so amended.*

*Commentary on article 13 (Seat of the special mission)*

*Paragraph 1)*

11. The CHAIRMAN suggested that, in the fourth sentence, the words "Furthermore" and "forming a part of its own organization" should be deleted.

*Paragraph 1) was adopted as so amended.*

*Paragraphs 2) and 3)*

*Paragraphs 2) and 3) were adopted subject to drafting changes.*

*Paragraph 4)*

12. The CHAIRMAN said that the words "to impose" in the fourth sentence were inappropriate and should be replaced by the words "to require".

*Paragraph 4) was adopted as so amended.*

*Paragraph 5)*

*Paragraph 5) was adopted without comment.*

*Commentary on article 14 (Nationality of the head and the members of the special mission or the members of its staff)*

*Paragraphs 1) and 2)*

*Paragraphs 1) and 2) were adopted without comment.*

*Paragraph 3)*

13. The CHAIRMAN pointed out that the words "nationals of a country" should read "nationals of the receiving State".

*Paragraphs 3) was adopted as so amended.*

*Paragraph 4)*

*Paragraph 4) was adopted without comment.*

*Paragraph 5)*

14. Mr. ROSENNE said that the value judgement in the second sentence should be removed, and he therefore proposed the deletion of the words "although it is not very desirable at the present time that they should do so".

15. Mr. BARTOŠ, Special Rapporteur, suggested that the words "some members of the Commission believed" should be inserted before "it is not very desirable".

16. Combining amendments suggested by Mr. BARTOŠ, Mr. PESSOU and Mr. TSURUOKA, the CHAIRMAN suggested that the second sentence should end after the words "in 1960" and the third sentence should begin: "Recent practice has been". A further sentence would read: "Some members of the Commission believed that this practice was not very desirable at the present time". The word "also" should be inserted before "arises" in the first sentence.

*It was so agreed.*

17. Mr. BARTOŠ, Special Rapporteur, said that the problem of employing refugees on special missions was not one that arose solely at the present time when there were so many political refugees all over the world. Difficulties had arisen between countries of immigration and countries of emigration in the past too; it was a long-standing problem, only the causes of which had changed.

*Paragraph 5) was adopted as amended.*

*Paragraph 6)*

18. Mr. ROSENNE said that the first sentence was too categorical since article 14 could be read as implicitly dealing with the problem of dual nationality. Perhaps the word "deliberately" should be omitted and the word "specific" inserted before the word "reference".

19. Mr. BARTOŠ, Special Rapporteur, said that the Commission had discussed that matter only incidentally, as was implied in the last sentence of the paragraph.

20. The CHAIRMAN suggested that the paragraph might open: "The Commission has not specifically referred in the text to the possibility...". In the second sentence it would be clearer to say: "in the case of a person possessing two nationalities, one of which is that of the receiving State, that State has the right...". Further on, the word "exclusively" might be substituted for the passage "without concerning itself with his nationality or nationalities".

*Paragraph 6) was adopted as so amended.*

*Paragraph 7)*

21. Mr. ROSENNE proposed that paragraph 7) as a whole be deleted. The substance would, in effect, be covered by paragraph 6) if a reference were inserted there to refugees. Personally he was unable to understand fully what was meant by the difficult concept of a "regular refugee" which had been introduced in paragraph 7) and had not been discussed by the Commission.

22. Mr. BARTOS, Special Rapporteur, said that a distinction should be made between stateless persons and refugees. Although he would be prepared to agree to shorten the paragraph, he considered that the question of the employment of refugees on special missions should be mentioned.

23. Mr. PESSOU suggested that it might be preferable not to mention the subject in the commentary and that Governments should be left free to settle among themselves any questions that might arise in connexion with the employment of refugees on special missions.

24. The CHAIRMAN suggested that only the essential passage be kept and that the latter part of the paragraph, dealing with the employment of refugees because of their special skills on special missions of some States, should be deleted.

25. Mr. ROSENNE said that, if the problem was as complex and important as the Special Rapporteur had implied, it should have formed the subject of a special article and commentary that could have been discussed by the Commission.

*It was agreed to delete the four sentences in paragraph 7)*

*Paragraph 8)*

26. The CHAIRMAN asked the Special Rapporteur whether the commentary should really speak of a State's sovereign right to maintain civic discipline.

27. Mr. BARTOS, Special Rapporteur, replied that to avoid any political implications, he would prefer to drop the sentences dealing with the receiving State's restriction on the sending State's freedom of choice in recruiting members of a mission. Consequently, the relevant passage should be deleted and the last sentence would come immediately after the first, after the words "domestic law of the receiving State".

*Paragraph 8) was adopted as so amended.*

*Paragraph 9)*

28. Mr. TSURUOKA said that the paragraph should preferably begin: "Nor did the Commission take any decision on [instead of: "consider"] the question whether...".

29. The CHAIRMAN asked whether aliens and stateless persons should be treated on a par in the context.

30. Mr. BARTOS, Special Rapporteur, replied that they should, for there might be cases in which a State refused to allow an alien permanently resident in its territory to be a member of a mission. There was also the case of so-called privileged aliens in some African countries. He accepted Mr. Tsuruoka's amendment.

*Paragraph 9) was adopted as amended.*

*Commentary on article 15 (Right of special missions to use the flag and emblem of the sending State)*

*Paragraphs 1), 2) and 3)*

*Paragraphs 1), 2) and 3) were adopted subject to drafting changes.*

*Paragraph 4)*

31. The CHAIRMAN suggested that in the last sentence the word *manifestations* should be substituted for *fonctions* and "when the mission considers that circumstances warrant it" for "circumstances which warrant it, in the judgement of the mission itself".

*It was so agreed.*

*Paragraph 4) was adopted as so amended.*

*Paragraph 5)*

*Paragraph 5) was adopted without comment.*

*Paragraph 6)*

32. Mr. TSURUOKA proposed that the words "some States object to this practice" should be substituted for "this practice is objected to in some quarters".

*It was so agreed.*

33. Mr. ROSENNE said that some reference should be made in paragraph 6) to the fact that it dealt with a matter that might touch upon the sphere of State responsibility.

34. Mr. BARTOS, Special Rapporteur, explained that he had not mentioned that problem because circumstances mitigating or aggravating the responsibility, as the case might be, might very often be involved. He had preferred not to go into detail. He agreed with Mr. Rosenne, however, that the problem touched in substance upon the sphere of State responsibility, but it should preferably not be raised at that point.

35. The CHAIRMAN agreed that the point was a very delicate one and it would be wiser to leave it aside.

*Paragraph 6) was adopted as amended.*

*Commentary on article 16 (Activities of special missions in the territory of a third state)*

*Paragraphs 1) and 2)*

*Paragraphs 1) and 2) were adopted without comment.*

*Paragraph 3)*

36. The CHAIRMAN suggested the substitution of "the parties" for "the two parties concerned" in the last sentence.

*Paragraph 3) was adopted as so amended.*

*Paragraphs 4), 5) and 6)*

*Paragraphs 4), 5) and 6) were adopted subject to drafting changes.*

*Paragraph 7)*

37. Mr. BARTOS, Special Rapporteur, asked that in the second sentence the word "legal" should be deleted before "writers".

38. The CHAIRMAN suggested that in the same sentence the word "exceptional" should be substituted for "irregular".

*It was so agreed.*

*Paragraph 7) was adopted as amended.*

*Paragraph 8)*

39. Mr. ROSENNE said that the first sentence went too far and should be deleted. The words "Should the

third State withdraw its hospitality" should be substituted for the words "In such cases" in the second sentence.

40. Mr. BARTOŠ, Special Rapporteur, replied that the problem was whether a State had the right to withdraw its hospitality.

41. Mr. ROSENNE agreed, but pointed out that if the third State had reached an agreement with the sending States, to that extent, it might have restricted its freedom of action to withdraw its hospitality.

42. Mr. BARTOŠ, Special Rapporteur, explained that the doctrine concerning that point was quite clear. The consent granted for the sending of permanent missions might be withdrawn at any time. The same applied *a fortiori*, according to the authorities, to special missions.

43. Mr. ROSENNE said that the first sentence did not accurately reflect the provision as it appeared in the article as adopted.

44. Mr. BARTOŠ, Special Rapporteur, said it had been agreed that the point should be mentioned in the commentary, not in the body of the article.

45. Mr. TSURUOKA proposed that in the third sentence the words "as a whole" and "any of" should be deleted.

46. Mr. de LUNA said that the text should preferably be left as it stood.

47. The CHAIRMAN suggested drafting changes to cover those points and that in the penultimate sentence the text should read: "this is simply the revocation of the third State's consent".

*Paragraph 8) was adopted as amended.*

*Paragraph 9)*

48. The CHAIRMAN said that, in his opinion, the paragraph dealt too summarily with a delicate problem. He suggested that it might be omitted.

*It was so agreed.*

CHAPTER II: Law of treaties  
(A/CN.4/L.106/Add.12 and 14)

49. The CHAIRMAN invited the Commission to resume its consideration of the commentary on the draft articles concerning the law of treaties.

*Commentary on article 69 A (Modification of a treaty by a subsequent treaty, by subsequent practice or by customary law)*

*Paragraph 1)*

*There was no comment.*

*Paragraph 2)*

*At the suggestion of Sir Humphrey Waldock, Special Rapporteur, it was agreed to delete the words "the natural and" in the fourth sentence.*

*Paragraph 3)*

*There was no comment.*

*Commentary on articles 70 (General rule, 71 (Recourse to further means of interpretation) and 72 (Terms having a special meaning)*

50. Mr. TSURUOKA suggested that the title of article 70 be made more explicit.

*At the suggestion of Sir Humphrey Waldock, Special Rapporteur, it was agreed that the title of article 70 should be amended to read "General rule of interpretation".*

51. Sir Humphrey WALDOCK, Special Rapporteur, said that the earlier title of article 71 ("Cases where the meaning of a provision is in doubt")<sup>1</sup> was no longer appropriate because the article had been considerably reshaped. He suggested that it might be simplified to read "Further means of interpretation".

*It was so agreed.*

*Paragraph 1)*

*There was no comment.*

*Paragraph 2)*

*At Rosenne's suggestion it was agreed to substitute the word "adopted" for the words "drew up" in the third sentence.*

*Paragraphs 3), 4) and 5)*

*There was no comment.*

*Paragraph 6)*

52. Sir Humphrey WALDOCK, Special Rapporteur, said that he would like to omit paragraph 6), which dealt with methods of interpretation, as the matter was already covered in paragraph 3).

*It was so agreed.*

*Paragraph 7)*

*At the Special Rapporteur's suggestion it was agreed to substitute the word "general" for the words "strictly legal" in the second sentence.*

*Paragraph 8)*

53. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the drafting might be improved if the words "for the purpose of formulating general rules of interpretation" were added after the word "but" in the fourth sentence.

*It was so agreed.*

54. Mr. ROSENNE proposed that a cross-reference to paragraph 15) should be added to draw attention to the reservation concerning the constituent instruments of international organizations.

*It was so agreed.*

*Paragraph 9)*

*At the Special Rapporteur's suggestion it was agreed to substitute the word "general" for the words "true legal" in the fifth sentence.*

<sup>1</sup> See summary record of the 769th meeting.

*Commentary on article 70**Paragraphs 10), 11), 12), 13), 14) and 15)**There was no comment.**Commentary on article 71**Paragraphs 1) and 2)**There was no comment.**Paragraph 3)*

55. The CHAIRMAN did not think it appropriate to describe *travaux préparatoires* as a secondary, supplementary means of interpretation and suggested that the first sentence should state simply that they were not, as such, an authentic means of interpretation.

*It was so agreed.**Commentary on article 72**There was no comment.*

*Commentary on articles 74 (Treaties drawn up in two or more languages) and 75 (Interpretation of treaties having two or more texts or versions)*

*Paragraph 1)*

56. Mr. ROSENNE said that a footnote should be added to indicate that the Secretariat had been asked to make information available concerning the methods of preparing plurilingual texts at international conferences.

*It was so agreed.**Paragraphs 2), 3), 4), 5), 6), 7), 8) and 9)**There was no comment.*

57. Sir Humphrey WALDOCK, Special Rapporteur, said that the paragraphs of the commentary on articles 71-75 would be renumbered to follow consecutively those on the previous articles.

CHAPTER V : Relations between States  
and inter-governmental organizations  
(A/CN.4/L.106/Add.13)

58. The CHAIRMAN invited the Commission to consider the text of two additional paragraphs to be inserted at the beginning of chapter V (Relations between States and inter-governmental organizations) of the draft report.

*Those paragraphs were approved with a drafting change in the last sentence ("Members expressed various other views and suggestions which will be the basis for the preparation..." amended to read: "Other suggestions made by members will be considered in the preparation of a second report by the Special Rapporteur").*

CHAPTER I : Organization of the session  
(A/CN.4/L.106/Add.1/Rev.1)

59. The CHAIRMAN invited the Commission to consider the revised version of chapter I of the draft report.

*Paragraphs 1) and 2)**There were no comments on paragraphs 1) and 2).**Paragraph 3)*

60. Mr. BARTOS proposed that the nationality of Mr. Gros and that of Mr. Padilla Nervo should be indicated in the usual way by adding "France" and "Mexico" in brackets after their names.

*It was so agreed.**Paragraphs 4), 5) and 6)**There were no comments on paragraphs 4), 5) and 6).**Paragraph 7)*

61. The CHAIRMAN proposed that the middle part of the first sentence should be amended so as to replace the words: "*de l'importance et de l'urgence de la tâche de la Commission...*" by "*...de l'importance et l'urgence qu'aurait à l'avenir la tâche de la Commission...*".

*It was so agreed.**Paragraphs 8), 9), 10) and 11)**There were no comments on these paragraphs.*

CHAPTER IV : Programme of work and  
organization of future sessions  
(A/CN.4/L.106/Add.2/Rev.1)

62. The CHAIRMAN invited the Commission to consider the revised version of chapter IV of the draft report.

*Paragraph 1)**There were no comment on paragraph 1).**Paragraph 2)*

63. Sir Humphrey WALDOCK proposed that, in the first sentence, the words "but also the study of a more limited topic, such as special missions" should be replaced by "but also the study of special missions".

64. He proposed further that, in the second sentence, the words "in conformity" should be replaced by "in the light of", and that the word "Moreover" which appeared at the beginning of the last sentence of the paragraph, should be deleted.

*It was so agreed.**Paragraph 3)*

65. Sir Humphrey WALDOCK proposed that, in the first sentence, the word "desire" should be replaced by "need" and that the words "before 1966" should be replaced by "before the end of 1966". In the last sentence, he proposed that the words "in view of the heavy programme of work it has to complete" should be replaced by "for the completion of the heavy programme of work it has in hand".

*It was so agreed.**Paragraph 4)*

66. Sir Humphrey WALDOCK proposed the deletion from the first sentence of the words in brackets "the

section on termination of treaties cannot be reviewed without considering the comments of Governments on the third part, which relates to the revision of treaties". He also proposed the deletion from the third sentence of the words "the second part, and the third part of", which appeared before "its draft".

67. Mr. EL-ERIAN proposed the insertion, at the end of the second sentence, of the words "and the topic of relations between States and inter-governmental organizations". He also proposed the insertion in the fourth sentence, after the words "the Commission will also", of the words "continue its study of relations between States and inter-governmental organizations".

68. The CHAIRMAN said that, if there was no objection, he would consider the Commission agreed to the changes proposed by Sir Humphrey Waldock and Mr. El-Erian.

*It was so agreed.*

*Paragraph 5)*

69. Mr. BRIGGS proposed that, in the second part of the first sentence, the words "the third part of the draft on the law of treaties" should be qualified by adding "completed in 1964 by the Commission", so that the general reader could readily understand the reference.

70. Mr. TSURUOKA proposed that the concluding words of the first sentence should be amended so as to replace the concluding words "the end of 1966" by "the end of its 1966 session".

71. The CHAIRMAN said that, if there was no objection, he would consider that the Commission agreed to adopt the changes proposed by Mr. Briggs and Mr. Tsuruoka.

*It was so agreed.*

72. Sir Humphrey WALDOCK suggested that, for the next session, the Secretariat should prepare a single document containing, if possible in the three languages in three separate columns, the texts of all the draft articles on the law of treaties. Such a document would be of great use to the members of the Commission in their work.

73. The CHAIRMAN said that the Secretariat would attend to that request.

*The Commission's draft report on its sixteenth session was adopted as a whole, as amended and subject to drafting changes.*

**Closure of the Session**

74. The CHAIRMAN expressed his thanks to the members of the Commission for their co-operation. In particular, he thanked the Vice-Chairmen, the Rapporteur and the Special Rapporteurs for their valuable contributions to the work of the session. He expressed the Commission's appreciation for the excellent services provided by the Secretariat of the Commission and by the European Office of the United Nations.

75. Mr. BRIGGS paid a tribute to the skilful manner in which the Chairman had conducted the Commission's proceedings and thanked him especially for his valuable contributions to the improvement of the draft articles which he had had the opportunity to submit to the Commission as Chairman of the Drafting Committee.

76. Sir Humphrey WALDOCK associated himself most sincerely with the tribute paid to the Chairman and thanked the Secretariat for its devoted work in the preparation of documents.

77. Mr. ROSENNE associated himself with those tributes.

78. Mr. EL-ERIAN paid a tribute to the Chairman, the Rapporteur and the Special Rapporteurs on the law of treaties and special missions for their remarkable work.

79. Since he had been absent from Geneva at the time when the Commission had paid a tribute to Mr. Liang, its retiring Secretary, he wished to place on record his warm appreciation for all his devoted work.

80. He was gratified to report to the Commission that two of its members, Mr. Elias and himself, had taken part in the work of the Committee of Experts which had prepared the draft Protocol of the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity, and in the deliberations of the Cairo meeting of heads of African States which had adopted that important international instrument for the pacific settlement of disputes.

81. The CHAIRMAN expressed his appreciation for the work performed by Mr. Elias and Mr. El-Erian at the Cairo Conference and also for the latter's work as Special Rapporteur on the topic of relations between States and inter-governmental organizations.

82. Mr. TABIBI associated himself with the tributes paid to the Chairman, the Vice-Chairmen, the Rapporteur and the three Special Rapporteurs.

83. Mr. YASSEEN paid a tribute to the Chairman's distinguished conduct of the debates and to the outstanding reports by the Special Rapporteurs on the topics of the law of treaties and special missions. As Rapporteur, he also thanked the Secretariat for the services placed at the Commission's disposal.

84. Mr. de LUNA associated himself with the tributes paid to the Chairman, the Rapporteur and the Special Rapporteurs, and thanked the Secretariat for its services.

85. Mr. RUDA associated himself with the tributes paid to the officers of the Commission and the Secretariat. In joining the other members who had paid a tribute to the skilful manner in which the Chairman had presided over the session, he wished to render homage to the Latin spirit of which Professor Ago was so distinguished a representative and to recall the strong human links between his own country, Argentina, and the Chairman's.

86. Mr. TSURUOKA associated himself with the tributes addressed to the Chairman, officers and Special Rapporteurs of the Commission, and thanked the Secretariat for the services provided.

87. Mr. BARTOŠ thanked his colleagues for their kind words and associated himself with the tributes paid to the Chairman, officers and Rapporteurs of the Commission as well as to the Secretariat.

88. Mr. PESSOU associated himself with those tributes.

89. Mr. LIANG, Secretary to the Commission, said that it was not customary for a Secretary to express thanks on occasions like the present but perhaps he would be forgiven for breaking with precedent, in order to express the appreciation of all members of the Secre-

tariat for the kind words of the members of the Commission with regard to their work. He had been particularly gratified to hear that the Commission had noted a remarkable improvement in the technical services provided. He did not wish to conclude those remarks without expressing his satisfaction to the members of his Division. In addition he wished to recall the dedicated work done from 1949 to 1961 by Mr. Sandberg, who for those long years had worked as his deputy and who had devoted a considerable part of his life to his work in the Secretariat of the United Nations.

90. The CHAIRMAN, after thanking the members of the Commission for their kind words, declared the sixteenth session of the International Law Commission closed.

The meeting rose at 12.40 p.m.

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