



Why 2 UN global Water Conventions? *Key provisions, similarities, differences & complementarities of both global legal frameworks for consideration by Zambia*

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WATER
CONVENTION

Momentum for UN Global Water Conventions: Time to act now!



Ms. Amina J. Mohammed

Deputy Secretary General of the United Nations
Chair of the United Nations Sustainable Development Group

Africa Water Week, 19 November 2021

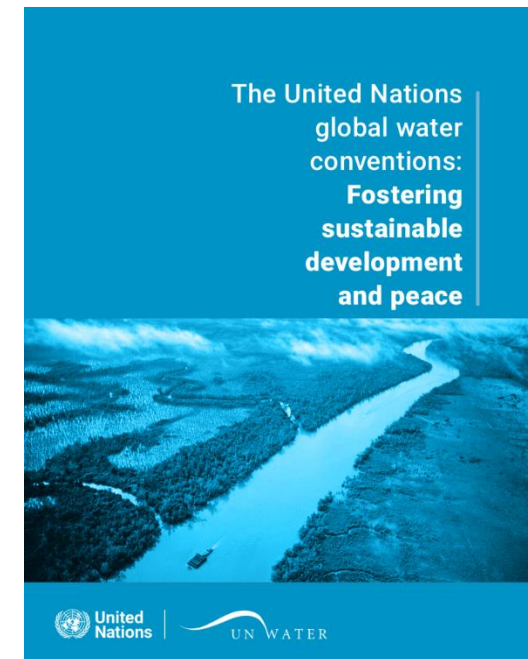


“The world will not achieve the sustainable development goals without urgent progress on access to water, sanitation and hygiene services [...]

I see 3 priorities for action.

First, we must promote water security for all. This includes transboundary water cooperation, which can help build peace and prevent conflicts.

To achieve this, **I encourage all governments to accede, implement and comply with the 2 UN global water conventions.**”



WATER
CONVENTION

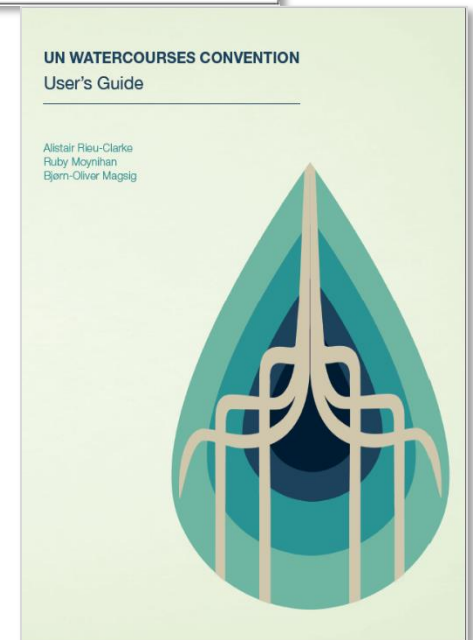
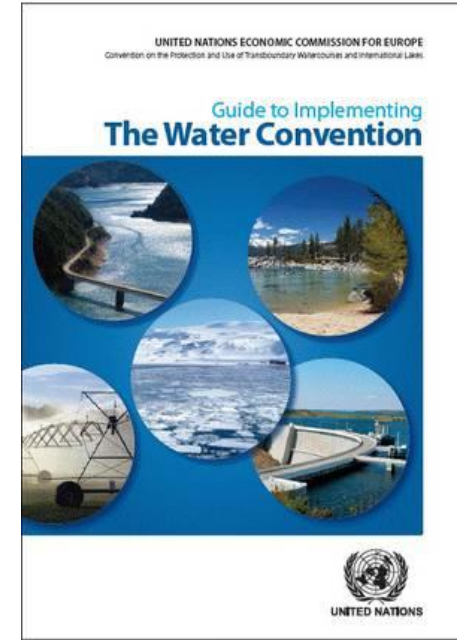
The United Nations global water conventions: in support of transboundary water cooperation

- **1992** Convention on the Protection and Use of Transboundary Watercourses and International Lakes (**Water Convention**)

- *Global opening in 2016*

- **1997** Convention on the Law of the Non-navigational Uses of International Watercourses (**Watercourses Convention**)

- *Entry into force in 2014*



Global legal framework for shared rivers, lakes & aquifers

1. Not all basin states and/or river sections (mainstream v. tributaries) and/or uses are included in agreements

2. Weak and/or lack of governance institutions and/or mechanisms to implement the agreement & resolve disputes

3. Key legal principles and/or processes are missing and/or weak in agreement

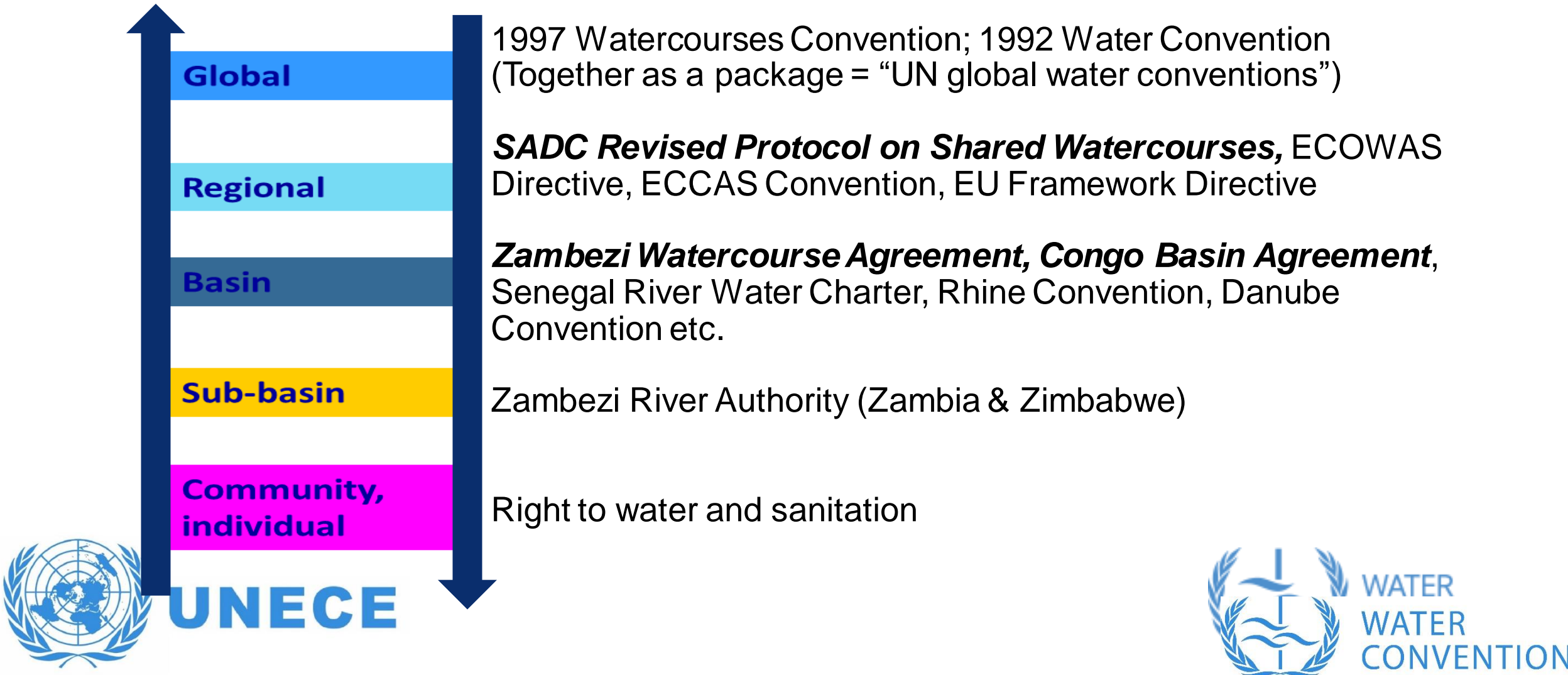


**OVERALL LEGAL ARCHITECTURE
= FRAGMENTED, WITH KEY GAPS**



International water law: collective solutions to the problems of shared water management

A multilevel, integrated architecture of laws => different solutions for different scales & contexts



Why the need for global framework instruments? (1)

- Codify legal foundations for international water law & supports basic fundamental principles and procedures for shared waters in situations where:
 - no specific legal and institutional arrangement exists at the basin level, i.e. in more than 60% of all basins
 - weak legal and institutional arrangements exist at the basin level, e.g. many agreements to not provide for regular data-sharing, contain dispute settlement provisions etc.
 - not all basin states are party to a basin agreement, ie in more than 80% of basins



Why the need for global framework instruments? (2)

- Support ≠ replace
 - Both do not substitute existing obligations; **instead clarify, reinforce or fill gaps at different levels**
- Fosters harmonisation of laws and applying principles between countries, basins & regions
- Consolidates, clarifies & develops customary international law that applies in any case
- Strengthen implementation, e.g. via a platform for sharing experiences and good practice
- Strengthens profile of 'transboundary water cooperation' at the global level, and fosters synergies with other global initiatives, eg climate change



Water Convention: from global vision to global application

Originally developed at a regional level but with future global implementation in mind, it has been global since 2016

History of the Water Convention

- **Negotiated in 1990-1992** through an intergovernmental process under the auspices of the UNECE, based largely on the ILC Draft Articles process
- **1996:** Entry into force of the Convention
- **2003:** Adoption of amendments allowing accession to the Convention by all UN Member States
- **1 March 2016: Operationalization of amendments: All UN Member States can accede to the Convention**

Why the global amendment?

- Build upon success achieved since 1992
- Apply principles and provisions worldwide
- Share experiences of Convention
- Learn from other regions
- Broaden political support for transboundary cooperation
- Jointly develop solutions to common challenges



Watercourses Convention: global framework, without an institution



Evolution & Status

- Negotiated, developed as a global framework
 - Adopted on 27 May 1997 by UN General Assembly
 - **Entered into force on 17 August 2014**
- Push for ratifications in the 2000s led to entry into force
 - Workshops, training & advocacy on UNWC role/utility
 - More TB water issues globally = heightened awareness
 - **Vietnam was the 35th ratification = entry into force**
- **Mirrored by other frameworks, ie SADC Revised Protocol**

UNWC: A LONG TIME IN THE MAKING
“Following 20 years work, and 15 reports by eminent international jurists, acting as Special Rapporteurs, the [Draft Articles on the Law of the Non-navigational Uses of International Watercourses](#) (1994 ILC Draft Articles) were adopted.”

GLOBAL ORIGINS & CUSTOMARY LAW

The UNWC was developed, negotiated & adopted as a framework agreement under the mandate of the UN General Assembly. It is broadly recognised as a codification of customary international law on international watercourses.

Legal alignment & synergies: Scope, Substantive & Procedural Provisions

LEGAL PRINCIPLES (3 Core Principles of International Water Law Highlighted Below)	1997 Watercourses Convention	1992 Water Convention	SADC Revised Protocol on Shared Watercourses 2000
Equitable & Reasonable Utilisation	Arts.5, 6	Art.2(2) (c)	Art. 3 (7) (8)
Prevention of transboundary harm	Art.7	Art. 2(1)	Art. 3 (10)
Cooperation	Art.8	Art. 2(6)	Art. 3 (5)
Environment/Ecosystems	Arts. 20-23	Art. 2 (d)	Art. 3
Notification/Consult/negotiate	Art.11-19	Art.10	Art. 4
Exchange information & data	Art. 8	Arts 6, 9(2)(c), 9(2)(h), 9(2)(i), Art. 13)	Art. 3 (6)
Dispute Settlement	Arts.30-33	Art.22	Art. 7 (Spec.)

Synergies – scope & substantive norms

1992 Water Convention

- Scope: Surface water or groundwater (Art 1(1))
- Equitable and reasonable utilisation (Art 2(c))
- Obligation to take all appropriate measures to prevent, control and reduce any transboundary impact (Art 2)
- Conservation and restoration of ecosystems (Art 2 (d))

1997 Watercourses Convention

- Scope: Surface water and connected groundwater (Art 2(a))
- Obligation to utilise an international watercourse in an equitable and reasonable manner (Art 5)
- Take all appropriate measures not to cause significant harm (Art 7)
- Protect ecosystems of an international watercourse (Art 20)



The Water Convention obligations

Obligations for *all Parties* (Part I)

= apply to all states

- Licensing of waste-water discharges and monitoring of authorized discharges
- Setting emission limits based on BAT
- Application of best environmental practices
- Minimization of the risk of accidental pollution
- Application of EIA and other assessments
- Exchange of information

Obligations for *Riparian Parties* (Part II)

= only applies between states sharing a transboundary watercourse or international lake

- ***Conclusion of bilateral and multilateral agreements and creation of joint bodies***
- Joint monitoring and assessment
- Common research and development
- Exchange of information between Riparian Parties
- Consultation
- Warning and alarm systems
- Mutual assistance
- Public information

Global Water Conventions: complementarities & differences



Both instruments are framework instruments: aim to clarify, support & reinforce existing/future agreements, NOT replace them. Respects the right of states to agree treaties over shared waters.



Both derive from extensive consultations with diverse groups of nations to develop basic principles & standards that can be applied as a global baseline and elaborated in all contexts



Similarity is good, differences are even better! Variations between them are complementary by making up for gaps, generalities or weaknesses in one another eg planned measures



International law equipped to address their differences: different provisions dealing with the same subject matter should, as far as possible, be interpreted in a complementary manner



Numerous research & guidance documents exist dealing with both Conventions, overwhelming in support of their mutually reinforcing implementation (2 guides on implementation).

Many benefits of acceding to the UN global water conventions

SPECIFIC BENEFITS include:

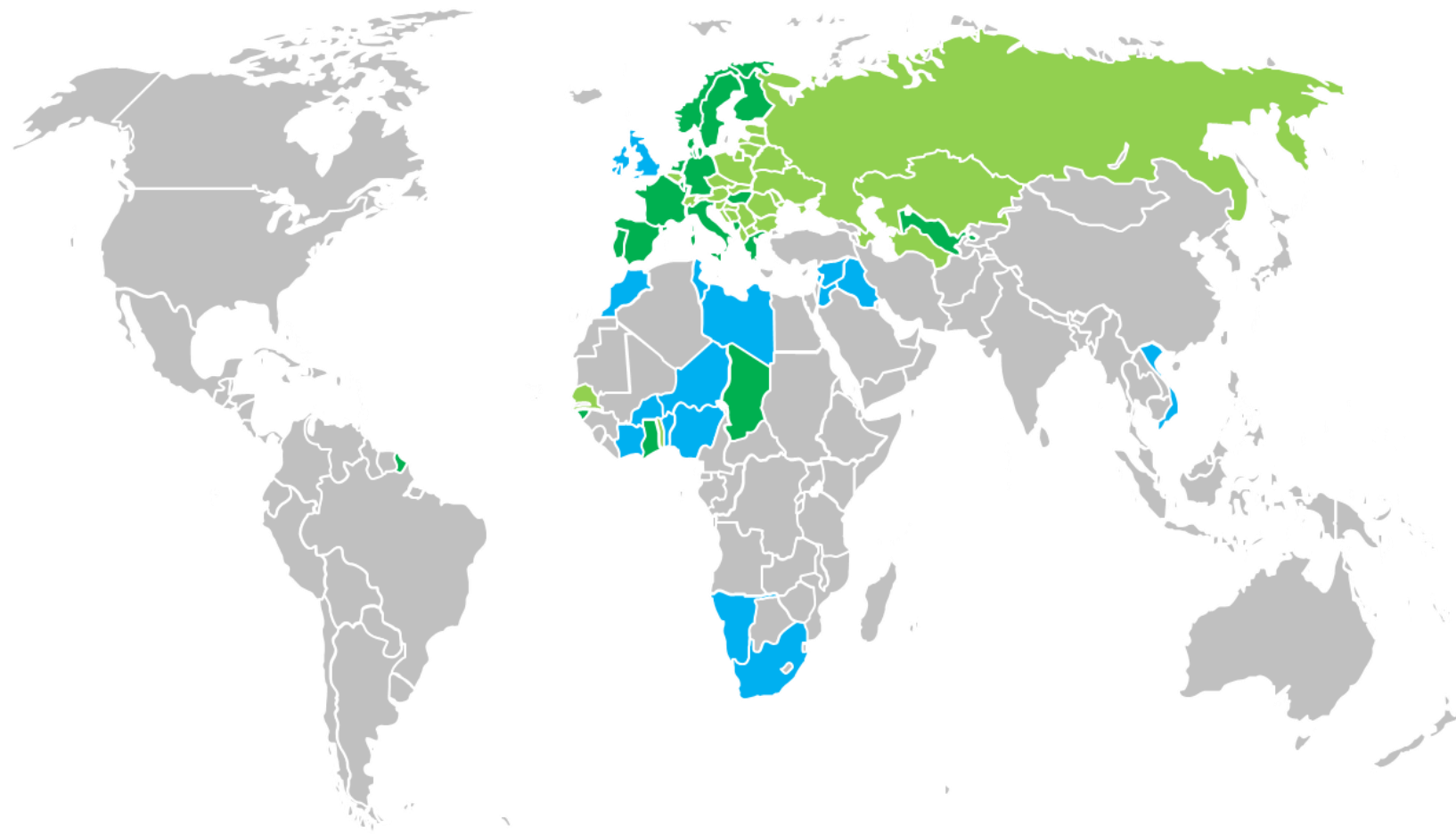
- 1) Having a legal binding framework by which a state can conduct its activities related to transboundary rivers, lakes and aquifers which provides for predictability and transparency.
- 2) Legal frameworks help create an enabling stable environment for encouraging investments.

ADDITIONAL BENEFITS of acceding to both, irrespective of whether neighbours are parties:

- 1) Being a Party sends a clear signal to non-Parties of the type of legal commitments that a country is willing enter into.
- 2) Recognition by countries and the international community of a country's long-term commitment to transboundary water cooperation.
- 3) Stronger water management at the national level linking to transboundary management.
- 4) Accession process offers a means by which to strengthen national awareness and capacity on transboundary water issues amongst key stakeholders across sectors.



Accession to UN global water conventions



Party to Water Convention (1992) – 46

Party to Watercourses Convention (1997) – 37

Party to both Conventions – 18



*“The global opening of the Water Convention, the accession of the first countries from outside the UNECE region -- namely Chad and Senegal - - and the momentum in support of the Convention are promising developments. Along with the Convention on the Law of the Non-Navigational Uses of International Watercourses, the world has the ability to strengthen the rule of law in transboundary cooperation worldwide. **I call on Member States to join both Conventions and to strive for their full implementation.**”*





THANK YOU

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