

CHALLENGES IN COMBATING CRIMES AGAINST HUMANITY

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Key words: war crimes, humanistic values, information war, human rights.

Abstract. On February 24, 2022 Russian Federation started a full-scale invasion of Ukraine. It was shooting at dwellings, kindergartens, orphanages and ambulances by Russian invaders. As a result, a huge number of Ukrainians have already been killed. Damages have been caused to the Ukrainian economy, property and culture as well.

The best way to deal with crimes against humanity and war crimes as well is the integration and unity of the international community in combating these crimes. Information technologies can be used both to commit criminal offenses, including those related to terrorism and war propaganda, and to combat crime. In particular, the relevant instruments to combat crimes were developed by European legislation.

Moreover, it is proposed to provide additional guarantees for the implementation of decisions of international institutions against the aggressor state, to improve the mechanism for imposing sanctions on a state that has violated international agreements.

Finally the human rights standards should comply with people who have committed and been involved in crimes against humanity. The civilized world should respond and ensure security with civilized methods.

INTRODUCTION

In 2015, world leaders agreed to 17 Sustainable Development Goals. One of these goals is peace, justice and strong institutions (goal No 16). According to Sustainable development goals armed violence and insecurity have a destructive impact on a country's development, affecting economic growth, and often resulting in grievances that last for generations. Sexual violence, crime, exploitation and torture are also prevalent where there is conflict, or no rule of law, and countries must take measures to protect those who are most at risk. The SDGs aim to significantly reduce all forms of violence, and work with governments and communities to end conflict and insecurity. Promoting the rule of law and human rights are keys to this process, as is reducing the flow of illicit arms and strengthening the participation of developing countries in the institutions of global governance (Sustainable Development Goals, 2015).

On February 24, 2022 Russian Federation started a full-scale invasion of Ukraine. As a result, a huge number of Ukrainians have already been killed. Damages have been caused to the Ukrainian economy, property and culture as well. According to the information of the Office of the United Na-

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tions (UN) High Commissioner for Human Rights, civilian casualties from February 24, 2022, when Russia started the war against Ukraine, to 24:00 on March 12, 2022, amounted to 1,663 civilians, including 596 dead. More than 3 million refugees are fleeing from Ukraine.

Hugo Grotius, in his fundamental work «On the Law of War and Peace», raised the question of whether war could be just and what kind of war would be just. The statement about a just war causes controversial feelings and reactions. World is destroying in particular because of wars so that wars could not be fair.

Some aspects of this issue have already been studied by many scientists and scholars. In particular, M.V. Piddubna studied war crimes in national criminal law and the implementation of international norms in this area (Piddubna, 2020). The concept and characteristics of war crimes were studied by V.M. Repetsky and V.M. Lysyk (Repetsky, Lysyk, 2009). M.M. Gnatovsky studied the qualification of international armed conflicts in the practice of international judicial institutions (Gnatovsky, 2009). O.V. Senatorova investigated the issue of human rights in the conditions of armed conflicts (Senatorova, 2018). V.O. Tulyakov investigated the problems of victims in war and peculiarities of the principle of legality in the practice of the European court of human rights. At the same time, given the modern changes and challenges, the topic remains relevant.

The purpose and objectives of the research

The purpose of the article is to bring the national criminal legislation closer to international standards in the context of combating crimes against humanity.

To achieve the goal, the following tasks were set:

1. To establish the inadmissibility of violations of fundamental human rights and freedoms, which are provided for in international instruments.
2. To clarify the need for integration and unity of the international community in combating crimes against humanity and war crimes.
3. To justify the need for additional guarantees of implementation of decisions of international institutions against the aggressor state.
4. To establish the need to adhere to human rights standards in the prosecution of perpetrators of crimes against humanity and those involved in their commit.
5. To establish the importance of information technologies in war and combating war crimes.

The international community has adopted plenty of documents aimed at protecting universal values. In particular, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 26 March 1999, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction January 13, 1993. It was adopted to attract attention to crucial things for everyone after World War II. These fundamental human rights and freedoms are common for all people all over the world. It is extremely important to follow the international standards of human rights.

1. INFORMATION WARFARE AND ITS IMPACT

In the 6th century BC, the famous Chinese philosopher and theoretician of wars, Sun Tzu, was the first who summarized the experience of informational influence on the enemy. The philosopher explained the importance of possessing information and disinformation techniques for manipulating the actions of the enemy: «If I show the enemy some form, and I do not have this form, I will preserve integrity, and the enemy will be divided into parts» (Sun Tzu, 1955, 2018). The concept of information warfare was first established in the directive of the United States Department of Defence DOD S 3600.1 (December 21, 1992), where it was used in a narrow sense and considered as a type of electronic warfare. Then, in the report of the American corporation “Rend” MR-661-OSD “Strategic Information Warfare. A new face of War” (1996) was the first time the term appeared – “strategic information war (information warfare)”. It was defined as a war with the use of the state’s global information space and infrastructure to conduct strategic military operations and strengthen influence over its own information resource.

The manipulation of information is crucial in this war as well. Political leaders of the Russian Federation distort information to their side from the point of view of defending against Ukraine. In particular, the Minister of Foreign Affairs of the Russian Federation S.V. Lavrov told journalists in Turkey that “Russia did not attack Ukraine”. The Russian Federation sent troops into the territory of Ukraine. Russian military is killing the civilian population. According to Russian point of view it is called “defence”.

The brutal crimes were committed in Bucha. For instance, the rape and torture of citizens. On April 13, 2022, the International Criminal Court (ICC) prosecutor visited Bucha as a place of war crimes. But the Russian government insisted that all corpses in Bucha were a staging of the United States.

In the “century of information technologies”, information and communication systems are integral components of state management systems, economy, finance and defence. Their implementation leads to the creation of a single world information space, which requires high scientific, technical and industrial potential, as well as the corresponding cultural and educational level of society. If one of the parties to the conflict has more powerful information capabilities, it will achieve its goal more efficiently and sooner. At the same time, countries outside the informatization process may find themselves in conditions of social and economic instability. This situation mostly leads to confrontation between developed countries and the rest of the world. That is why leading foreign countries use information warfare technologies to achieve world domination (Brzezinski, 1998).

Zenger H. von. said that “the instructions for waging information warfare said that there are following among them crush everything good that is in your adversary’s country; involve prominent figures of the enemy in criminal activities; undermine the prestige of the adversary’s leadership and expose it to public shame at the right moment; obstruct in every possible way the normal supply of troops and the maintenance of order in them; do all you can to devalue the traditions of your enemies and undermine their faith in their own gods; be generous with offers and gifts for buying information and associates. The given information clearly shows that information wars have been going on in the world for at least the last two and a half thousand years” (Zenger, 2004).

Such distortion of information and creation of a reality convenient for the authorities was already described by J. Orwell. According to behaviour Russian politicians and diplomats, this country manipulates information, facts, people and neglects agreements and principles of international law. J. Orwell described very similar politic system in his "1984". Specifically, "the Ministry of Truth, which dealt with lies and manipulation, the Ministry of Love, which dealt with torture, and the Ministry of Peace, which dealt with war". In particular, it is concerns the introduction of changes in texts, Big Brother's speeches, achievements of the Ministry of Economy. For instance, the text of old speeches, in which predictions or promises of the government did not come true, was simply corrected. All copies of old newspapers were destroyed and new ones were printed. Current situation showed approximately the same manipulation of information on the part of the Russian Federation.

According to Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 ("Freedom of Expression") everyone has the right to freedom of expression. This right includes freedom to hold opinions, receive and impart information and ideas without interference from public authorities and regardless of frontiers. This article does not prevent states from requiring the licensing of radio broadcasting, television or cinematographic enterprises. The exercise of these freedoms, as it is associated with duties and responsibilities, may be subject to such formalities, conditions, restrictions or sanctions as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, to prevent disturbances or crimes, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential information, or to maintain the authority and impartiality of the court.

Features of the information age are related to the simplification of recording and transmission of information, and therefore the expression of views. Many "bloggers" began to illustrate their views by posting photos and videos of the movements of the Armed Forces of Ukraine, the work of air defence measures, explosions, etc. These are dangers for society and the state.

According to Law No. 2160-IX March, 24, 2022, the Criminal Code of Ukraine was supplemented by Article 114-2 "Unauthorized dissemination of information on the dispatch, transfer of weapons, armaments and military supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other military forces formed in accordance with the laws of Ukraine formations, committed under conditions of war or state of emergency".

Cooperation with the Russian Federation, communication in Russian social networks and channels, highlighting photos and videos about rocket attacks, providing the information about relevant locations, energetic objects, the situation in the city are form of correction the enemy actions. Such actions do not help the state and law enforcement agencies.

Such actions could be committed both carelessly, without fully realizing the danger of such actions and their possible consequences (Part 1 of Article 114-2 of the Criminal Code of Ukraine), and with direct intent (Part 3 of Article 114-2 of the Criminal Code of Ukraine), which is connected with the commission of such actions based on a prior conspiracy by a group of persons or for selfish motives, or for the purpose of providing such information to the state carrying out armed aggression against Ukraine, or by illegal armed formations. If such actions caused serious consequences (Part 3

of Article 114-2 of the Criminal Code of Ukraine), then the actions themselves could be committed both intentionally and negligently.

To sum up, information technologies can be used both to commit criminal offenses, including those related to terrorism and war propaganda, and to combat crime. In particular, the relevant instruments were developed by European legislation.

2. THE DEFINITION OF WAR CRIMES DUE TO INTERNATIONAL DOCUMENTS

According to Article 8 of the Rome Statute of the International Criminal Court (ICC) of 17 July 1998, war crimes mean: i) intentional attacks on the civilian population as such or individual civilians who do not take direct part in military operations; ii) deliberate attacks on civilian objects, i.e. objects that are military targets; iii) Deliberately targeting personnel, facilities, materials, units or vehicles engaged in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, so long as they do not have the right to protection enjoyed by civilians persons or civilian objects international law of armed conflicts; iv) Deliberately committing an attack when it is known that such an attack will cause accidental death or maiming of civilians or damage to civilian objects or extensive, long-term and serious damage to the surrounding natural environment, which would be manifestly incompatible with a specific and immediately anticipated overall military advantage; v) attack on defenceless and non-military targets of cities, villages, houses or buildings or attack them using any means; vii) improper use of the flag of parliament, the flag or military insignia and uniform of the enemy or the United Nations, as well as the distinctive emblems established by the Geneva Conventions, resulting in death or personal injury; ix) Deliberate targeting of buildings intended for purposes of religion, education, art, science or charity, historical monuments, hospitals and places of concentration of the sick and wounded, provided that they are not military goals (Rome Statute, 1998).

In particular, such actions are carried out in Ukraine. For instance, Kharkiv, its architectural and cultural heritage was irreparably destroyed. Citizens of the Kharkiv forced to live in the subway for a long time. On April 11, 2022, information regarding the use of chemical weapons in Mariupol was confirmed. On April 23, 2022, on the eve of Easter, rockets were fired at Odesa, one of which hit a residential building. As a result, 9 civilians died, including a three-month-old baby, and citizens' apartments were destroyed. On April 24, 2022, on Easter, there were also shelling of Donetsk and Luhansk regions, shelling of churches. None of the attacks is recognized by the aggressor. On May 9, 2022, a rocket hit the Trade Center in Odesa. Because of the curfew, there were only security guards on the territory who were injured. In the houses, near the shopping centre, windows were broken and also, significant destruction was caused. This is not an exhaustive list of what Russian Federation is doing against the civilian population.

It is significant that the Rome Statute includes rape, sexual slavery, enforced prostitution, forced pregnancy or "any other form of sexual violence of comparable gravity" as a crime against humanity when it is committed in a widespread or systematic way. Rape during the war has a genocidal context because of the connection with discouraging women from reproducing in the future; the

intention to terrorize the population, destroy communities and change the ethnic make-up of the next generation. Moreover, it is also used to deliberately infect women with HIV or other dangerous diseases. The issue of rape is especially acute in connection with the aggression of the Russian Federation against Ukraine (Timofieieva, 2022).

So, investigators of Ukraine should be careful with qualifying these crimes. It is not just rape as a crime against sexual freedom but as a war crime.

It might be a bit challenging at first because law enforcement officials haven't had such practice. But it is crucial for realization the principle of certainty in qualification, because it another object and other law consequences for criminals.

Participants in hostilities in Ukraine have to strictly follow the current norms of international humanitarian law, especially in the context of treatment of the captives. What Ukrainians should not do is commit war crimes against captives. The principle of humanism is expressed in the fact that a person, who commits a crime including a war crime or a crime against humanity, is still a human with their rights and freedoms. The state has to react to illegal action. However, such "reaction" must not turn into a crime.

According to social media, Ukrainians show dissatisfaction with inhumane treatment of captives, their feeding, etc. If Ukraine treated them cruelly, the state would also violate international norms, especially Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. The following acts are prohibited and continue to be committed against the above-mentioned persons. It includes violence against life and person, including all forms of murder, mutilation, ill-treatment and torture; hostage-taking; abuse of human dignity.

3. THE INTERNATIONAL MECHANISM OF INVESTIGATION.

Ukraine has not ratified the Rome Statute yet (August 26, 2022). Although the issue has been raised for a long time, at least since 2014 it has become quite vital. Therefore, no international tribunal has jurisdiction to investigate and prosecute the crime of aggression in the situation of the occupation of the territory of Ukraine by the Russian Federation, in contrast to potential genocide, crimes against humanity and war crimes, which the ICC can and has begun to investigate.

But on February 28, 2022 the ICC prosecutor started an investigation of the situation in Ukraine.. On March 7, 2022, the International Court of Justice (The Hague) began a public hearing.

On March 16, 2022, the order of the International Court of Justice in the dispute over the interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide was announced. First of all, the Russian Federation refused to close the case; an armed attack cannot be conditioned and justified by the accusations of the victim of aggression in genocide; the court did not find any evidence to support Russia's allegations of genocide in Ukraine; the court orders the Russia to take the following temporary measures: to immediately suspend military operations launched on February 24, 2022, on the territory of Ukraine.

Having the aim to prevent such actions Ukraine should ratify the Rome Statute as soon as it possible.

3.1 Integration

War united the countries all over the world, which supported Ukraine in whatever way they could. For instance, they help with financial support, weapons, an informational attack on the criminal actions of the Russian Federation, and solidarity. Countries accepted refugees from Ukraine, supported families who agreed to accept them, offered to accept Ukraine into the European Union (EU). There are Lithuania, Poland, Moldova, Romania, Great Britain, England, Germany and others. EU countries agreed to disconnect the Russian Federation from Society for Worldwide Interbank Financial Telecommunications (SWIFT), imposed financial sanctions on the Russian Federation, seized funds in banks, many brands refused to work in the Russian Federation.

On June 23, 2022, the European Council announced its opinion on the candidate status for Ukraine. The implementation of the Association Agreement and the possibility of maintaining the status of an EU candidate requires changes in Ukrainian legislation, including criminal legislation. But now this step has become closer.

On July 22, 2022 in Istanbul, Ukraine, Turkey and the UN signed an agreement concerning the unblocking of ports and the export of Ukrainian grain. Russia also signed a mirror agreement with Turkey and the UN. On July 23, the Russians attacked the Odesa Sea Trade Port with Kalibr cruise missiles. It contained grain that was to be sent for export. Once again it confirms the falsehood of the Russian Federation.

On July 29, 2022, ambassadors of the G7 countries arrived to Odesa to support the implementation of the concluded agreement on the export of grain from Ukraine. The US representative in Ukraine, Bridget Brink, noted that the United States, like the rest of the world, will monitor how Russia fulfils its part of the agreement.

The system coordinator of the United Nations in Ukraine Osnat Lubrani said “The United Nations has pledged to remain fully involved so that the parties effectively comply with the agreement. And this agreement is important not only for Ukraine and the Ukrainian economy, it is important for the world because it will help prevent a global food crisis”. The first ship “Razoni” with unblocked Ukrainian grain left on August 1 from the Odesa port to the Lebanese port of Tripoli. 26,000 tons of Ukrainian corns are on board the dry cargo truck that will move through the security corridor.

On June 22, 2022, Ukraine received the status of a participating partner of “Three Seas”. The “Three Seas Initiative” summit decided to grant Ukraine the status of participating partner. The “Three Seas Initiative” unites 12 countries of the European Union that have access to the Adriatic, Baltic and Black seas. This union currently includes Austria, Bulgaria, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Croatia, the Czech Republic and Estonia.

On May 9, 2022 the President of the USA J. Biden signed an agreement on “Lend Lease” for weapons in support of Ukraine. Lend Lease can significantly improve Ukraine’s situation in this war. And active fighting continues, in particular in Kyiv, Kharkiv, Mariupol, Mykolaiv, and Melitopol. Attacks on peaceful settlements are becoming more and more active, in particular in Vinnytsia (July 14, 2022 – a hotel in the city center), Kramatorsk (April 8, 2022 – railway station), Kremenchug (shopping center), Odesa (April 23, 2022 – a residential building in Odesa, July 1, 2022 – residential building

and recreation center in Sergiyivka, Odesa region) and others. More and more countries of the world identify Russia as a terrorist state because of such actions.

On July 22, 2022, Latvia submitted to the Secretariat of the International Court of Justice (ICJ) an application to join the case regarding the accusations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). On July 2022, Lithuania, and New Zealand have sought to intervene before the International Court of Justice in Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), leading a potential avalanche of interventions in this ongoing case. The court determined its jurisdiction in another Genocide Convention case, the Gambia v. Myanmar, in which other states have already indicated their intent to intervene.

According to Article 63 of the Statute of the Court, when it comes to the interpretation of a convention to which states other than those participating in the case are parties, each of these states has the right to enter the process. In this case, the interpretation provided by the Court's decision will be equally binding on them.

The Government of Latvia stated that “[a]s a party to the Genocide Convention, Latvia has a direct interest in the interpretation that may be included in this agreement in the judgment of the Court during the review”. It was also stated that Latvia wishes to submit its explanations regarding the interpretation of the Convention, both in terms of substance and jurisdiction. The governments of Ukraine and the Russian Federation were invited to provide written comments on Latvia's statement (Article 83 of the Statute).

A substantial number of countries confirmed that this problem did not concern a single country, but the whole of humanity. In this situation, after the aggression against Ukraine, there is a threat to the security of other countries of the world. In addition, wars and conflicts continue in different parts of the world, in particular, with Russian Federation. For example, the war in Syria, the conflict between Serbia and Kosovo, Israel and Palestine, China and Taiwan. These conflicts were escalated in 2022.

So it is one of the biggest upsides that countries united against war and understand the strength of joint efforts. But Ukraine should adopt national legislation with European norms to be a part of the EU.

4. INFORMATION TECHNOLOGY AS A MEANS OF COMBATING CRIME

Ukraine's use of the techniques of information warfare as well. For instance use messengers account has success on that front. In a textbook example of a hybrid warfare – warfare fought in domains other than the physical battlefield – Ukraine has transformed successes on the information battleground into an effective defence of its homeland from Russian aggression. The West has massively increased its support of the country through weapons shipments, intelligence sharing and other aid. Questions remain about the long-term viability of this strategy. By definition, the information war obscures and distorts reality in order to change the perception of the conflict in favour of the country. Paraphrasing an age-old adage, the war between Russia and Ukraine is a reminder that the first battle in contemporary wars may be for the truth (Butler, 2022).

After the start of the full-scale war in Ukraine, other changes were made to the Criminal Code of Ukraine in the context of ensuring information security.

In particular, Law No. 2149-IX of March 24, 2022, "On Amendments to the Criminal Code of Ukraine on Increasing the Effectiveness of Combating Cybercrime in the Conditions of Martial Law", amended the reduction of Article 361 of the Criminal Code "Unauthorized interference in the operation of information (automated), electronic communication, information and communication systems, electronic communication networks", as well as Art. 361-1 of the Criminal Code of Ukraine.

The convention not only declares the need to protect human rights, but also establishes a mechanism to ensure such protection. The European mechanism for the protection of human rights is specific. One of the principles on which the conventional protection of human rights is based is the principle of "non-illusory rights". It means that the state cannot hide violations of human rights according to official formulations. For the realization of rights and freedoms, bodies are created that ensure such realization. In particular, the "European Committee for the Prevention of Torture" was created to prevent torture. In addition, activities aimed at combating crime are carried out by Europol, Interpol, etc. Many actions are aimed at prevention.

The EU's activities are also related to assistance in identifying persons involved in terrorism, including foreign terrorists. Harmonization of national legislation on effective exchange of information with other countries, in particular on suspects and persons who have committed criminal offences, is necessary.

In September 2018, the Council of the EU and the European Parliament adopted two pieces of legislation, the Regulation establishing the European Information and Authorization System (ETIAS) and an amendment to the Europol Regulation regarding the purpose of establishing ETIAS. ETIAS will be a centralized EU information system that will allow pre-screening of visa-free third country nationals travelling to the Schengen area to identify potential security, illegal immigration and health risks. (Newsletter, 2020). In March 2018, the Commission published a "Recommendation on measures to effectively work and combat illegal content on the Internet", including terrorist propaganda on the internet. Online service providers are required to retain the content they remove. This functions as protection against accidental deletion and ensures that potential evidence is not lost for the purpose of preventing, detecting, investigating and prosecuting terrorist criminals.

In addition, the use of information technologies as sanctions in modern conditions can be considered as a sufficiently effective measure. In particular, the activity of the "Anonymous" hackers, bloggers, should be noted. But it is also necessary to formulate norms that such organizations have the opportunity to help the state on the "information front" and are not exposed to the risks of criminal prosecution. These conditions also require specification.

The isolation as a sanction against the aggressor is also effective. Large companies, internet sites and social networks refuse to work from Russian Federation. The greatest dissatisfaction of Russians began due to the restriction of using Instagram, since many of them have businesses on this platform. These are the consequences of time changes. Sanctions must be painful for a person (punishment) and also exert a preventive influence.

CONCLUSION

The human rights standards should comply with people who have committed and been involved in crimes against humanity. The numbers of crimes committed by Russian Federation are increasing significantly. The more crimes committed, the more aggression to Ukrainians and to all who support Ukraine. However government should focus their attention to legality of criminal law measures. It is crucial for European direction and to stay human being. The civilized world must respond and ensure the security by civilized methods.

Russia's invasion of Ukraine is encroachment on the territorial integrity of Ukraine and on European values in general. The use of weapons of mass destruction, missiles and guns against civilians are forms of war crimes according to Rome Statute. The concept of war crimes, genocide, murder, rape, theft is clearly provided in international treaties, national legislation, both Ukraine and the Russian Federation. Therefore, every soldier who pulls the trigger, who uses weapons of mass destruction in apartment buildings, every commander who gives the appropriate order, must be held criminally liable.

The best way to deal with crimes against humanity and war crimes as well is the integration and unity of the international community in combating these crimes. It is extremely important that countries united against war and understand the strength of joint efforts. But Ukraine should adopt national legislation with European norms to be part of EU. It is proposed to provide additional guarantees for the implementation of decisions of international institutions against the aggressor state, to improve the mechanism of imposing sanctions on a state that has violated international agreements.

Finally, information technologies can be used both to commit criminal offenses, including those related to terrorism and war propaganda, and to combat crimes. In particular, the relevant instruments were developed by European legislation. These instruments may violate some human rights, in particular, this applies to Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. However, in this situation, concessions in freedom are an acceptable price for ensuring security.

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