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MEASURES FOR EFFECTIVELY COMBATING RACIAL DISCRIMINATION
 AND THE POLICIES OF APARTHEID AND SEGREGATION IN
 SOUTHERN AFRICA

Report of the Secretary-General

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I. INTRODUCTION

1. At its 1829th plenary meeting on 11 December 1969 and at its 1834th plenary meeting on 15 December 1969, the General Assembly adopted resolutions 2547 A (XXIV) and 2547 B (XXIV), respectively, entitled "Measures for effectively combating racial discrimination and the policies of apartheid and segregation in southern Africa".
2. Under operative paragraphs 17 and 18 of resolution 2547 A (XXIV) and paragraphs 16 and 17 of resolution 2547 B (XXIV), the Secretary-General was requested to report to the General Assembly at its twenty-fifth session as follows: (a) on the implementation of resolution 2547 A (XXIV) by the Governments of South Africa, Portugal and the United Kingdom of Great Britain and Northern Ireland; (b) on the action taken by the United Nations and its organs regarding operative paragraphs 9 to 16 of resolution 2547 A (XXIV), (c) on the implementation of resolution 2547 B (XXIV) and in particular on the actions taken by the Government of the Republic of South Africa and the Government of the United Kingdom to give effect to paragraphs 2, 6 and 7 of that resolution; and (d) on the implementation of paragraph 11 of resolution 2547 B (XXIV).
3. The present report contains an account of the action taken in the implementation of parts A and B of resolution 2547 (XXIV).

II. ACTION TAKEN BY THE GOVERNMENT OF SOUTH AFRICA TO GIVE
EFFECT TO PARAGRAPH 7 OF RESOLUTION 2547 A (XXIV) AND
PARAGRAPHS 2 AND 6 OF RESOLUTION 2547 B (XXIV)

4. Paragraph 7 of General Assembly resolution 2547 A (XXIV) calls upon the Government of South Africa to observe the terms of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.
5. Paragraphs 2 and 6 of General Assembly resolution 2547 B (XXIV) call upon the Government of South Africa to repeal various discriminatory laws cited in paragraph 529 of the Special Rapporteur's report (E/CN.4/979/Add.5), to assist the United Nations in restoring the human rights of the inhabitants of Namibia by immediately putting an end to its illegal occupation of Namibia and to rescind the "banning orders" issued under the Suppression of Communism Act against the opponents of apartheid.
6. The Secretary-General, by a note verbale of 1 April 1970, requested the Government of South Africa to inform him of the action taken by it to give effect to the above-mentioned paragraphs of the resolution.
7. The Secretary-General has not as yet received a reply from the Government of South Africa to his note verbale.

III. ACTION TAKEN BY THE GOVERNMENT OF PORTUGAL IN IMPLEMENTATION
OF PARAGRAPH 8 OF RESOLUTION 2547 A (XXIV)

8. Paragraph 8 of resolution 2547 A (XXIV) calls upon the Government of Portugal to observe the terms of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.
9. The Secretary-General, by a note verbale of 1 April 1970, requested the Government of Portugal to inform him of the action taken by it to give effect to paragraph 8 of that resolution.
10. The Secretary-General has not as yet received a reply from the Government of Portugal.

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IV. ACTION TAKEN BY THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND TO GIVE EFFECT
TO PARAGRAPH 6 OF RESOLUTION 2547 A (XXIV) AND
PARAGRAPH 7 OF RESOLUTION 2547 B (XXIV)

11. Paragraph 6 of resolution 2547 A (XXIV) calls upon the Government of the United Kingdom, the administering Power, to reconsider its refusal to intervene in Southern Rhodesia by force and to restore the human rights and fundamental freedoms of the people of Zimbabwe, and in this manner, inter alia, automatically ameliorate the conditions of political prisoners, detainees and captured freedom-fighters in Southern Rhodesia, as well as to ensure the application of the relevant Geneva Conventions of 1949 to the situation prevailing in Southern Rhodesia.

12. Paragraph 7 of part B of the resolution calls upon the Government of the United Kingdom, the administering Power in Southern Rhodesia, to repeal the illegal legislation referred to in paragraph 529 of the Special Rapporteur's report (E/CN.4/979/Add.5) and enacted by the illegal régime in Southern Rhodesia.

13. The Secretary-General by a note verbale of 1 April 1970, requested the Government of the United Kingdom to inform him of the action taken by it to give effect to the appropriate paragraphs of the resolution.

14. The reply of the Government of the United Kingdom reads as follows:

"As regards the suggestion in paragraph 6 of General Assembly resolution 2547 A (XXIV) about the use of force in Southern Rhodesia, the Government of the United Kingdom has nothing to add to the statements already made by their representatives in the organs of the United Nations on this subject. As regards paragraph 7 of General Assembly resolution 2547 B (XXIV) calling upon the Government of the United Kingdom to repeal the illegal legislation enacted by the régime, there appears to be a basic misconception. Consequent upon the enactment of the Southern Rhodesia Act, 1965 and the Southern Rhodesia Constitution Order, 1965, there is nobody in Southern Rhodesia which has authority to enact legislation. Accordingly the régime's purported legislation since the illegal declaration of independence has no legal validity and the question of repeal does not arise."

V. ACTION TAKEN BY THE UNITED NATIONS AND ITS ORGANS REGARDING
PARAGRAPHS 9 TO 16 OF RESOLUTION 2547 A (XXIV)

15. Paragraphs 9 to 11 of resolution 2547 A (XXIV) concerning action to be taken by the United Nations Council for Namibia have been brought to the attention of the Council. The Council has begun consideration of the matters raised in those paragraphs and may be expected to include in its report to the twenty-fifth session of the General Assembly an account of the action it has taken with regard to them.

16. Paragraph 12 of resolution 2547 A (XXIV) requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in discharging the tasks entrusted to it by the General Assembly, in particular with respect to those Territories in southern Africa with which it was concerned, to take fully into account the relevant provisions of the resolution. The paragraph was brought to the attention of the Special Committee in February 1970 and the Special Committee may be expected to include in its report to the twenty-fifth session of the General Assembly an account of the action it has taken with regard to it.

17. Paragraph 13 of the resolution requested the Secretary-General to establish, maintain and publicize an up-to-date register of persons subjected to imprisonment, detention, banishment and other restrictions, and of persons who had been victims of brutality, for their opposition to apartheid and racial discrimination, as well as of captured freedom-fighters held in South Africa, Namibia, Southern Rhodesia, and the African territories under Portuguese administration.

18. The Section for African Questions of the Department of Political and Security Council Affairs will continue to maintain, in accordance with General Assembly resolution 2396 (XXIII), a register of prisoners etc., in South Africa. This information has appeared periodically in the publication "Notes and documents", produced by the Unit on Apartheid, which is circulated to the press as well as to non-governmental organizations.

19. The Department of Trusteeship and Non-Self-Governing Territories is preparing a similar register for Namibia, Southern Rhodesia, and the Portuguese Territories. The Office of Public Information plans to publish the names of prisoners and detainees in these Territories in a forthcoming issue of its publication Objective: Justice. Twenty thousand copies of each issue of the

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aforementioned publication are distributed by the United Nations Headquarters and the fifty United Nations Information Centres throughout the world.

20. Paragraphs 14 and 15 of resolution 2547 A (XXIV) concerning the question of enlarging the scope of the United Nations Trust Fund for South Africa were brought to the attention of the Committee of Trustees of the Fund. It is expected that a report will be prepared in consultation with the Committee of Trustees for submission to the Assembly at its twenty-fifth session.

21. Paragraph 16 of the resolution addressed an appeal to all Governments to contribute more generously to the United Nations Trust Fund for South Africa and also to voluntary organizations active in providing relief and assistance to the victims of apartheid and racial discrimination in southern Africa. In the light of this and other relevant resolutions of the General Assembly, the Secretary-General, in a note verbale dated 18 February 1970, conveyed an appeal to all Governments for generous contributions.

VI. ACTION TAKEN BY THE SECRETARY-GENERAL, PURSUANT TO
PARAGRAPH 11 OF RESOLUTION 2547 B (XXIV), TO SET
UP A UNIT OF UNITED NATIONS RADIO IN AFRICA

22. Under paragraph 11 of resolution 2547 B (XXIV) the Secretary-General is requested to set up a unit of United Nations Radio in Africa to produce and broadcast radio programmes to the peoples of southern Africa.

23. The United Nations continues to provide material to Member States willing to provide facilities on their national broadcasting stations for programmes on apartheid.

24. While no further action is being taken at this time to set up a unit of United Nations Radio in Africa, the General Assembly may wish to consider a recommendation of the Organization for African Unity that the United Nations provide financial assistance to that organization which would enable it to undertake regular broadcasts on apartheid to southern Africa.

VII. ACTION TAKEN BY THE SECRETARY-GENERAL, PURSUANT TO PARAGRAPH 14 OF RESOLUTION 2547 B (XXIV), TO GIVE THE WIDEST POSSIBLE PUBLICITY TO THE EVILS OF THE POLICIES OF APARTHEID AND SEGREGATION IN SOUTHERN AFRICA

25. Paragraph 14 of resolution 2547 B (XXIV) requests the Secretary-General to take steps to give the widest possible publicity to the evils of these policies and to the actions of the racist Government of South Africa, of the illegal racist régime established in Namibia and of the illegal racist minority régime in Southern Rhodesia, through the non-governmental organizations, trade unions, religious institutions and student and other organizations as well as libraries and schools.

26. In accordance with this paragraph and with resolutions of the Commission on Human Rights, the Office of Public Information has made special efforts to give the widest possible distribution of its publications, articles, press releases, radio broadcasts and films dealing with apartheid and other aspects of the situation in southern Africa.

27. The first meeting in Africa of a regional conference of non-governmental organizations was convened by the Office of Public Information at the headquarters of the Economic Commission for Africa in Addis Ababa from 17 to 21 February 1970.

28. United Nations information material, including the publication Objective: Justice and information provided by the Unit on Apartheid of the Department of Political and Security Council Affairs, was distributed to all participants.

29. Reports from non-governmental organizations, including religious, student and other organizations active in the field of human rights, indicate that they are continuing and in many cases intensifying their efforts to combat apartheid, racial discrimination and colonialism in southern Africa. Efforts are continuing to keep non-governmental organizations fully informed of the actions of United Nations organs on these questions. Copies of all relevant documents, as well as press releases and other literature produced by the Office of Public Information and the Unit on Apartheid, are provided to these organizations.

30. Special arrangements have been made by the Briefing Service of the External Relations Division to ensure the maximum dissemination throughout United Nations information centres and services of certain specific information material on these issues.

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31. For a number of Member States, particularly in Africa, where no United Nations information centre exists, special arrangements have been made with Resident Representatives of the United Nations Development Programme for the local dissemination of information material relating to United Nations activities in these fields.

VIII. PROPOSAL TO ESTABLISH A JUDICIAL COMMITTEE FOR NAMIBIA
AND THE VIEWS OF MEMBER STATES ON THE ESTABLISHMENT OF
SUCH A COMMITTEE

32. Paragraph 12 of resolution 2547 B (XXIV) requested the Secretary-General to bring to the knowledge of competent organs of the United Nations the proposal to establish a judicial committee for Namibia. The proposal has been brought to the attention of the Council for Namibia and it is expected that the Council will in due course consider it.

33. In paragraph 13 of the resolution, the Secretary-General is requested to seek and circulate the views of Member States on the establishment of a judicial committee for Namibia. The Secretary-General accordingly sent a note verbale to Member States, dated 10 April 1970, requesting their views on the subject. As of 24 August 1970, the Secretary-General had received the replies which are reproduced in the annex below. Any further replies received will be circulated as addenda to the present document.

ANNEX

REPLIES RECEIVED FROM GOVERNMENTS

AFGHANISTAN

[Original: English]
11 June 1970

The Government of Afghanistan supports in general terms the proposal to establish a judicial committee for Namibia as referred to by the Secretary-General in his note.

AUSTRIA

[Original: English]
30 June 1970

According to the report of Prof. Ganji, Special Rapporteur of the Human Rights Commission (E/CN.4/979/Add.3), the function of the judicial committee consists, in correspondence to the pattern of the French criminal procedure, in carrying out preliminary investigations against certain persons. A positive sentence passed by the committee in the course of these investigations shall have the effect that the incriminated persons who thereafter will not submit to the jurisdiction of the United Nations shall be regarded as "internationally 'wanted men'": All States could arrest and surrender such persons to a criminal court set up under the auspices of the United Nations. In this sense the activity of the judicial committee only seems to be a preliminary stage of a criminal procedure carried out under the auspices of the United Nations and can therefore only be considered in the light of the modalities of such a procedure.

Therefore, Austria would like to reserve its comments regarding this project of a judicial committee for Namibia pending more concrete conceptions with regard to the continuation of the procedure initiated by it before a criminal court held under the auspices of the United Nations.

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CEYLON

[Original: English]
5 August 1970

The Government of Ceylon supports the proposal to establish a judicial committee for Namibia on the lines set out by the report of the Special Rapporteur.

CUBA

[Original: Spanish]
29 June 1970

The Revolutionary Government of Cuba, through its representatives to the various sessions of the General Assembly, has expressed its immutable principle that only measures which contribute effectively to the national emancipation and militant solidarity of the subjugated peoples can succeed in eliminating the policies of apartheid and segregation which hold sway in southern Africa.

The Revolutionary Government of Cuba therefore considers that the establishment of a special committee for Namibia would, in practice, merely help to delay the liberation of the Namibian people.

ICELAND

[Original: English]
28 April 1970

Concerning apartheid in South Africa and the contents of resolution 2547 (XXIV), the Permanent Mission of Iceland to the United Nations informs the Secretariat of the United Nations that the Government of Iceland has not taken any stand on this issue and does not expect to be concerned with it.

JAMAICA

[Original: English]
27 May 1970

The Government of Jamaica supports in general the idea of setting up a judicial committee for Namibia. The Government of Jamaica suggests that the matter could properly be passed to the Sixth Committee for full and careful

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consideration with a view to making concrete recommendations to the General Assembly regarding the judicial committee's proposed terms of reference and its relationship with the Council of Namibia.

JAPAN

[Original: English]
7 July 1970

The Government of Japan considers that human rights and fundamental freedoms should be respected in all parts of the world, naturally in Namibia as well. However, the Government of Japan cannot make any comment on the proposal made by the Commission's Special Rapporteur as it is rather difficult to judge from the proposal alone whether the establishment of the judicial committee is an appropriate means for the promotion of respect for human rights of the inhabitants in Namibia.

United Nations primary responsibility for the administration over the Territory of Namibia rests on the Council for Namibia. In this connexion, the Government of Japan is of the opinion that the Council should take measures to report on the actual present situation, its analysis and problems to solve in the field of human rights and welfare of the natives, as well as submitting its comment on the present proposal.

It might be generally said that the consideration of this question should be carried out in close co-operation with the Council for Namibia.

KUWAIT

[Original: English]
22 June 1970

The competent authorities in Kuwait are in favour of the establishment of a judicial committee for Namibia.

LAOS

[Original: French]
28 April 1970

The Royal Government of Laos has no objection to the establishment of a judicial committee for Namibia with a view to effectively combating racial discrimination and the policies of apartheid and segregation in southern Africa.

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MADAGASCAR

[Original: French]
9 June 1970

Madagascar would favour the establishment of a judicial committee for Namibia in so far as that body would be able to take practical action.

In the present circumstances, however, it seems that the activities of such a body might well be expensive, without making any new contribution to the solution of the Namibian problem.

MALDIVES

[Original: English]
11 June 1970

In the view of the Maldivian Government, the establishment of a judicial committee for Namibia is highly desirable.

NETHERLANDS

[Original: English]
16 June 1970

The establishment of a judicial committee for Namibia, proposed by the Special Rapporteur on the Study of Apartheid and Racial Discrimination in southern Africa, does not appear to serve its purpose, because the proper functioning of a body of this kind is dependent on the existence of certain factual preconditions, which are not present in the prevailing circumstances.

An essential follow-up to the preliminary judicial investigation, which would have to be undertaken by the judicial committee, would be the trial in the country itself of persons who have committed certain crimes there. The facts of the present situation make such a follow-up impossible and, therefore, the comparison made by the Special Rapporteur with the United Nations War Crimes Commission and the Committee for the Investigation and Prosecution of Major War Criminals is invalid, because in those cases there was a follow-up.

However much the further development of international criminal law deserves support, the establishment of judicial bodies which are unable to exercise authority and are consequently ineffective would be more likely to damage than further the cause of international criminal law.

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NIGERIA

[Original: English]
19 August 1970

The Nigerian Government does not consider the establishment of a judicial committee for Namibia outside the framework of the United Nations Council for Namibia necessary at this time. The Nigerian Government will of course favour the establishment of a committee of lawyers charged with the responsibilities for defending Namibian citizens who might be charged under the apartheid laws. Such a committee would operate under the aegis of the United Nations Council for Namibia.

PANAMA

[Original: Spanish]
12 May 1970

The National Government of the Republic of Panama considers that any measure which helps to combat racial discrimination and to protect human rights is consistent with the fundamental principles of our Constitution and the laws of the Republic of Panama. It therefore fully supports the measures taken by the United Nations pursuant to the resolutions adopted for that purpose.

TOGO

[Original: French]
16 May 1970

Within the context of General Assembly resolution 2547 (XXIV) on measures for effectively combating racial discrimination and the policies of apartheid and segregation in southern Africa, adopted on 11 December 1969, the Togolese Government agrees to the establishment of a judicial committee for Namibia, provided that this does not entail additional expenses for Member States.

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UNITED STATES OF AMERICA

[Original: English]
11 August 1970

The United States Government strongly supports the responsibility of the United Nations for Namibia and the Namibian people. It is actively committed to the eradication of racial discrimination at home and abroad, and has long been on record as to the fundamental inhumanity of apartheid and its inconsistency with legal obligations under the United Nations Charter. Thus, the United States has taken an active part, in the United Nations and through bilateral diplomacy, to bring about recognition by South Africa of its obligations to the United Nations and the people of Namibia, to withdraw from its illegal occupation, and at all times to respect the rights of the Namibian people. It has helped focus world public opinion on violations of the rights of Namibians inherent in continued South African occupation and in the application to Namibia of legislation such as the Terrorism Act and the Homelands Act. The United States recently reaffirmed its arms embargo against South Africa, has recently announced new steps aimed at discouraging private investment in Namibia, voted in favour of the two resolutions on Namibia adopted by the Security Council in July, and is ready to consider further practical measures that might lead to the end of South Africa's violations of the rights of the people of Namibia.

It has been in this vein that the United States has undertaken a study of the report of the distinguished Special Rapporteur of the Commission on Human Rights, Mr. Manouchehr Ganji, concerning the establishment of a judicial committee on Namibia. The conduct of South African administration and the compatibility of that conduct with South Africa's obligations towards the inhabitants of Namibia is properly of international concern, and we understand and appreciate that the work of the Special Rapporteur has been carried out in this same spirit of concern for the rights of the people of Namibia.

Nevertheless, the United States has the following reservations on the report which preclude our support for the establishment of a judicial committee for Namibia as envisaged therein:

1. Despite assurances in the report, there is genuine doubt that any "defendants" before the judicial committee could in fact be accorded their full rights. It is virtually certain that persons accused of an international crime

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could not appear or be personally represented before the committee, and the proceedings would thus be ex parte. Consequently, there is no basis for the assertion in the report that "Charges would rest on the findings of judicially held investigations in which all parties would have had a fair opportunity to be heard and in which their rights would be protected by procedural safeguards" (E/CN.4/979/Add.3, page 10). Although the report seeks to find precedent in civil law proceedings, it must be borne in mind that, in civil law countries, trial would immediately follow the investigative stage. In the present context, trial, if ever held, would take place at some unspecified time in the future. Similarly, grand jury proceedings in the United States do not offer a precedent; such proceedings are held in secret with a view towards imminent indictment and prompt public trial. In the proposal of the Special Rapporteur, on the contrary, there would be no prospect of a trial promptly following an investigation. Moreover, the report's claim that "in common law jurisdictions, pre-trial proceedings do not require the presence of the accused" (at page 18) is confusing. In the United States, the accused is present at most pre-trial proceedings, but whether or not present, is entitled, according to a recent decision of the Supreme Court, to adequate legal representation in all phases of pre-trial proceedings.

The report nevertheless contends that if the provisions of the Universal Declaration of Human Rights, Article 16 of the Charter and Judgment of the International Military Tribunal, and article 38 of the International Law Commission's 1951 draft statute for an international criminal court are applied, then the rights of individuals in proceedings before the judicial committee would be guaranteed. But the relevant provisions of these documents apply solely in a trial situation, and it is not realistic to expect them to be applied to the proposed proceedings of the judicial committee. For example, article 38(2) of the draft statute for the international criminal court provides:

The accused shall have a fair trial and, in particular: (a) the right to be present at all stages of the proceedings; (b) the right to conduct his own defence or to be defended by counsel of his own choice, and to have counsel present at all stages of the proceedings....

2. The report does not take into consideration the possibility of South African officials acting in violation of South African law and regulations in force for Namibia, for example with respect to torture of prisoners. Nor does the report explore the problem of distinguishing reasonable from unacceptable elements of South African law as applied to Namibia. For example, the application of the Terrorism Act to Namibia is unacceptable whereas some elements of the South African laws for the protection of persons and property such as the laws governing robbery and assault might be reasonable and in accord with the rule of law. The report also fails to consider the concomitant problem of determining the consequences of such reasonableness or unacceptability. And beyond this, the report does not adequately analyse what international law is to be considered applicable.

3. The report lacks specificity as to what persons would be liable before the judicial committee. At page 5, it refers merely to "the law-breaking individuals and officials of the Government of South Africa". Does this mean all South African Government officials, those in the foreign ministry, or those having responsibility for the administration of Namibia? Would only policy-making officials be covered?

4. The report expresses the hope that the investigation proceedings it proposes may actually deter South African officials from imposing death sentences and taking other irreversible measures in violation of international law against Namibians. The United States sees the deterrent potential in investigating and reporting violations. It does not believe that a case is made that the addition of elements suggestive of indictment or trial, given the difficulties just pointed out, could add to such deterrence.

5. The report further states that the initiation of judicial proceedings would help prevent the erosion of the authority of General Assembly and Security Council resolutions on the question of Namibia (at page 8). Ex parte proceedings of the type proposed would, in our opinion, be more likely to erode the prestige and authority of the United Nations and of its efforts in Namibia.

Lastly, the United States believes Mr. Ganji has performed a useful function in focusing attention on violations of the rights of the people of Namibia.

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The United Nations must continue to be alert to such violations, and the United States hopes that the United Nations will continue to investigate and report evidence of such violations. Such action would be consistent with the concern of the Security Council in establishing an ad hoc sub-committee to report on practical measures to discharge the United Nations' responsibility to Namibia. The United States supported the creation of this sub-committee and its purposes and continues to believe that its efforts deserve the attention of the United Nations at this time. In this connexion if the Council, its sub-committee, or others put forward proposals for the investigation, analysis, and reporting of violations of the rights of the inhabitants of Namibia and their implications under international law, the United States will join in a careful consideration of these suggestions.

VENEZUELA

[Original: Spanish]
24 June 1970

The Government of Venezuela approves of the idea of establishing a judicial committee for Namibia.

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