



Vivekananda
International
Foundation

VIF Brief | June 2023

Border Disputes with China : An Update



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Published in 2023 by
Vivekananda International Foundation
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Introduction

At present, troops from India and China are face to face along the Line of Actual Control (LAC). As per one estimate, more than 50,000 troops stand mobilised from both sides¹, in addition to staging forward several aircraft, long-range vectors and other warlike stores. All hopes to make some tangible success vanished during the 16th round of the Corps Commander level meet on 17 July 22² as the talks ended in a stalemate despite more than a 12-hour marathon meeting. This happened even when the dates of the meeting were announced within days of the foreign ministers of both countries meeting each other in Bali on 07 Jul 22³. As it was inadequate, the appearance of fully functional villages close to Doklam⁴ and the planned construction of highway G695⁵ quite close to the LAC linking certain counties in Tibet with Xinjiang, have raised the possibility of an enhanced conflict scenario. Though some progress on disengagement did happen prior to SCO meet but substantial issues still remain.

India became independent on 15 Aug 1947 while the Communist party gained power in China on 01 Oct 1949 - two years later than India. Tibet was a near-independent country⁶ and this status continued till the time it was forcefully occupied by China. There was a window of opportunity for India to sign a border agreement with the then Tibetan government provided the Tibetan authorities accepted India's viewpoint and its own need for a secure border. There was an apparent lack of willingness on the part of Tibet to enter into a mutual agreement with India⁷. Continuation of the Indo-Pak war of 1947-48, emphasis on civil administration vis-a-vis national security issues, a difficult and high-altitude terrain along

the border, sparse population and other factors probably prevented India from focusing on the border issue in the early years of independence. The country then had to grapple with multiple internal challenges, especially consolidating various princely states into the Union of India.

Having forcibly occupied Tibet in 1951⁸, China began strengthening the infrastructure and other sovereignty markers in the region. One of the main activities included the construction and operationalisation of highway G219⁹ connecting Hotan in Xinjiang to Lhasa in Tibet. While India was busy focusing on the slogan of 'Hindi-Chini Bhai Bhai' and the Panchsheel Agreement, news of this highway construction was kept hidden by the Chinese from their Indian counterparts. India came to know about this construction in 1957 (possibly earlier) along with the confirmation that the highway passed through the Aksai Chin area claimed by India. Once the details were known, some interaction started between India and China on the boundary issue. Disputes thereafter emerged not only in the Ladakh area but also in Himachal Pradesh (HP), Uttarakhand (UK), Sikkim and Arunachal Pradesh (ALP). In addition to India, China also had land disputes with Nepal and Bhutan but it did not focus much on these countries and galvanised its efforts only against India.

In fact, construction of this Highway through Aksai Chin area was reported by a Chinese newspaper in Oct 1957 stating that the Sinkiang-Tibet highway had been completed¹⁰. Alignment of the highway through Aksai Chin was such that it passed through the Indian side of the Johnson Line, which is the India's claimed borderline between India and Tibet/ Tibet occupied by China. This was followed by both countries trying seek resolution but no meeting ground could be reached. China offered a counter-proposal in 1959 but that fell short of legitimate Indian expectations. Indian reaction of moving troops into the disputed border areas to counter such moves by China provided the perfect justification

for the latter to initiate a war of aggression in 1962¹¹. China succeeded in capturing large areas even beyond its 1959 claim line but announced a unilateral withdrawal thereafter. Since China tricked India by initiating a war of aggression, Indian political, military and citizenry developed a huge degree of mistrust against the communist nation. The atmosphere of mutual cooperation was vitiated thus despite the 1954 Panchsheel Agreement.

A major shift took place in 1988¹² when the then Indian Prime Minister (PM) Rajiv Gandhi visited China from 19 to 23 December. This visit was the first by an Indian PM to China after 34 years, and 26 years after the 1962 war. The visit opened new avenues of hope and forward-looking deliberations on various wide-ranging issues of mutual interest while simultaneously working on peaceful resolutions of the boundary issue, at a time when a large quantum of Indian-claimed territories was under the possession of China at various locations on the border/LAC. The development of bilateral relations between India and China had two neighbouring countries move ahead despite serious differences on the border issue. While there have been various high-level visits between representatives of both countries, substantial efforts have been made to progress the border resolution issue through institutionalised mechanisms.

This paper will examine the following three aspects to look at the various agreements for the resolution of the border issue, progress made so far and the latest Chinese impediments in the form of the Land Border Law¹³ applicable from 01 Jan 2022:-

- Part 1. Agreements for Border Management .
- Part 2. Progress through the Border Resolution Mechanisms.
- Part 3. China's Land Border Laws and Major Implications for India.

Part 1: Agreements over Border Management

It is important to mention some of the background events before highlighting the details of the agreements between the two countries to maintain peace and tranquility on the borders/LAC till any final resolution is reached. When the Aksai Chin highway was detected, India was shocked as it had throughout provided exceptional support to China. It was amongst the first countries outside the communist block to grant recognition to the People's Republic of China (PRC)¹⁴. India also supported PRC in various international organisations. It tried to maintain friendly, peaceful relations with China. It never thought that China will behave in the aforesaid manner. It also had hoped that China will adopt a more flexible approach once Indian objections regarding the resolution of the boundary were raised.

It was in 1959 that Zhou Enlai offered a proposal for the resolution of the border issue. In this proposal, the concept of LAC was mooted for the first time. Zhou Enlai, the then Chinese Premier also visited India from 19-25 April 1960¹⁵. The issue related to the border was discussed in detail. Wide-ranging discussions on local, bilateral and geopolitical issues took place. Both sides also looked at disengagement, de-escalation, package settlement and exchange of maps in addition to a host of other issues¹⁶. China was inclined at this stage to accept the McMahon line as the border for ALP but sought Indian acceptance of Aksai Chin being part of the PRC, with minor adjustments in the Middle sector. India continued its claim based on the Johnson line in Ladakh, thus claiming the entire Aksai Chin, in addition to expecting China to accept the McMahon line in ALP. China was more inclined in the package deal to resolve the issue, but no meaningful progress took place. With the passage of time, on one hand, China insists on the 1959 claim in Ladakh but, on the other, disputes the status of ALP, claiming it was part of Southern Tibet. The stance of

this country keeps deceptively changing from time to time, reducing the possibility of a mutually acceptable solution in the near time frame.

The relations between both countries deteriorated after the 1962 war. It was immediately followed by Pakistan handing over the Shaksgam valley of Pakistan-occupied Kashmir (PoK) to China in 1963. The supportive approach of China towards Pakistan in wars with India in 1965 and 1971 also precluded any serious bilateral engagement between the two nations. Some skirmishes occurred in the late 1960s, where a visible Indian edge in 1967 during the Nathu La and Cho La incidents recovered a semblance of psychological riposte over the Chinese. The 1971 victory thereafter put India on a different pedestal not only in the region but in the world. It was closely followed by the Shimla agreement between India and Pakistan in 1972, to resolve all the outstanding issues mutually. This was followed by Sikkim becoming the 22nd state of India on 16 May 1975¹⁷.

Improving Comprehensive National Power (CNP) gave India's national confidence a much-needed boost, resulting in multiple actions. Ambassadorial relations were restored in 1976¹⁸. This was followed by the visit of the Indian Foreign Minister (FM) to China in 1979 whereas the Chinese FM visited India in 1981. It was from 1981 onwards when border talks commenced and eight rounds were held in 1988. While these talks did not result in any border resolution issue, they were instrumental in putting forth the Chinese methodology of conducting business - all other fields of mutual cooperation could be progressed despite border differences. It is this very approach that China insists upon during the LAC standoff in Eastern Ladakh, but it is for the first time that India has made it clear that bilateral relations cannot be normal unless China reverts to the positions *status quo ante* of April 2020.

Having started the border talks, India's response during the Sumdorong Chu incident in 1987 and completion of eight rounds till 1988 saw the

Indian PM visiting China which was followed by the Chinese Premier visiting India in 1992 and the Indian President visiting China in the same year. A Joint Working Group (JWG) was also set up in 1988. This group was instrumental in evolving the contours of the first major border agreement between both countries i.e., Border Peace and Tranquillity Agreement of 1993¹⁹. Some important aspects of this agreement are as under:-

- The document is named 'Agreement on the Maintenance of Peace and Tranquility' along the LAC in the India-China border areas and was signed on 7 September 1993 in Beijing, China.
- It has eight articles for implementation, while the ninth indicates its operationalisation from the date of signing this agreement viz 07 September 1993.
- It focuses on maintaining peace along the LAC and prohibits the use of force against each other. Both sides are expected to pull back when notified by the other being on the other side of LAC. A better understanding was expected on the areas of differing perceptions related to alignment of LAC.
- The agreement expects both sides to reduce force levels based on mutual consultation. It is besides the point that the issue could not be fully operationalised.
- It talks of initiating Confidence Building Measures (CBMs), a detailed agreement on which was signed later.
- It illustrates the broad contours of conflict resolution mechanisms based on mutual consultations.
- It articulates issues of handling land-based as well as aerial intrusions. It is also an issue with China which has still not honoured this in letter and spirit.

- It also talks of appointing JWG in both countries and gave it the broad guideline of functioning to facilitate peace and tranquility on the LAC. Of course, the alignment of the LAC did not have any effect on either country's claims on the border claims.

The 1993 agreement was a major agreement between both nations. It was also needed by India as there was an emergent need of consolidating the economy after the balance-of-debts crisis in 1990-91. More than two decades had elapsed since the 1962 debacle for India and now it was in a position to handle its border and related diplomatic challenges better. Though this agreement was a progressive one on all counts, given that it was the first agreement to maintain peace and tranquility, it fell short on account of not factoring in *military infrastructure*, as well as not being clear on *minimum force levels* and *mutual security* which have now become major areas of confrontation between the two countries.

JWG in both countries continued working, resulting in the signing of another important agreement known as 'Confidence Building Measures' in the military field along the LAC in the India-China Border Areas. It was signed on 29 November 1996 in New Delhi²⁰. This document was a follow up of Agreement of 1993 and had 12 articles. Some of its important aspects as under:-

- It focuses on mutual consultation and coordination but covers more details being an agreement related to CBMs in the military domain.
- Number of operative paras were to be quantified later with mutual consultations.
- It focuses on how to avoid land and air based intrusions and to prevent escalation.

- It specified brigade size forces to conduct exercises close to LAC but with proper information to the other side.
- It prevented blasts and other such activities within two kilometres of the LAC. If the same was still needed, the other country would be informed. More important, both sides agreed not to open fire within two kilometres of the LAC.
- It expected high caliber weapons to be reduced and such a reduction was expected at the troop level as well. It was not limited to the military, but also for all other border guarding troops.

While China has been violating the articles of the 1996 agreement, more so in the recent past, the agreement on CBM was a positive step towards mutual cooperation. This was a kind of no-war agreement in some sense. It recognised the existence of areas of differing perception and talked of the exchange of maps as a step towards finalising the LAC towards the step of border resolution²¹. After initial exchanges in the Central Sector, China did not show any interest towards this after 2002 as it took this as an avenue to project enhanced claims on the border and in the process reduced the possibility of border resolution.

Even before the first major agreement on maintaining peace and tranquility was signed in 1993, the agreement on the resumption of the border trade was signed on 13 December 1991, followed by the signing of the Protocol on entry and exit procedures for border trade on 1 July 1992²². Substantial calm prevailed between both countries on the LAC except for some minor issues from 1993 onwards, and the trade gained prominence in mutual relations, probably being the national interest of both nations. This resulted in documents getting signed on 23 June 2003 during the visit of the then-Indian PM Atal Bihari Vajpayee. The focus of this agreement was on trade as well as cooperation between various ministry representatives. It

did not focus on border management in real terms, except for the indirect advantage of the recognition of the Nathu La pass as part of India.

Both governments were concerned about finding a resolution to the border issue. This resulted in both governments signing an agreement on 11th April 2005 related to political parameters and guiding principles for the settlement of the India–China boundary question in New Delhi²³. Though the border issue has not moved towards settlement even after this, the agreement was the first of its kind addressing the *border issue*, whereas earlier ones were related to the *LAC*. Some important aspects are as under:-

- With 11 articles being part of this agreement, it also refers to the Panchsheel agreement, as has been done in all other agreements.
- It talks of mutually acceptable adjustments, package deals and settling of the entire border.
- Border drawn is intended to address the concerns of both nations with respect to strategic and security concerns.
- It expresses the need for the border to be along well-defined geographical features besides factoring national settlements, as well as the actual state of border areas. China has attempted to change this in the recent past.
- A special Article (Article 7) has been included, which talks about safeguarding the due interest of the *settled population*²⁴. While it could be advantageous to negate the Chinese claims in the Tawang area, it could be disadvantageous for India as well for not being able to put human footprints in the form of a settled population in entire ALP and some reverse migration in Uttarakhand could be problematic. China wants to leverage this agreement and therefore is settling its people in the 624 Xiaokang villages on or close to the LAC²⁵.

- It also talks of the use of modern cartographic tools as wide lines drawn on the map have also added to the current-day alignment issues with respect to the LAC. It continues to focus on the sanctity of LAC till the time the border issue is resolved.

Since this agreement of 2005 was meant for the resolution of the border issue, another agreement was signed between both countries exclusively on the establishment of a working mechanism for consultation and coordination on Indo-China border affairs. This was signed on 17 January 2012²⁶ at New Delhi and dealt with the constitution of the team and methodology of working, highlighting all previous agreements, and was spread into eight articles. During the next year, both countries moved to a different level of border defence cooperation signing an agreement on 23 October 2013 containing 10 articles²⁷. The document was signed in Beijing. Some important aspects of this agreement are as under:-

- It has been signed in continuance of all previous agreements with effect from 1993 and gives their reference.
- While it continues to focus on maintaining peace and tranquility on the border/LAC, it has enlarged the scope to include the smuggling of arms, wildlife, wildlife articles and other contraband items.
- This also lays down some guidelines to avoid confrontation between patrols while moving in the areas of differing perceptions besides avoidance of following up each other's patrols.
- Article 3 also highlighted the issue of flag meetings or border personnel meetings (BPMs) and interactions. BPMs have now been established at five locations including Moldo - Chushul, Kibithu, Bum La, Nathu La and DBO-TWD.

This agreement on border cooperation was the last agreement between both nations. With Xi Jinping assuming power in 2013 and Narendra Modi in 2014, though general political guidelines have been given through Wuhan and Mamallapuram meetings, no agreement related to the border has been signed between both countries. While the agreement of 2013 should have enhanced mutual understanding, due to various factors, relations became strained as China did not honour any of these agreements. Its unilateral and expansionist approach resulted in the 2017 Doklam conflict, April-May 2020 Eastern Ladakh conflict which is still continuing and another impending conflict at Doklam which may emerge in times to come. Its infrastructure creep in disputed areas, forward deployment and creation of model villages will continue to escalate conflict in the days ahead.

Important Mechanisms

While the details of various agreements between both the countries post-1962 war have been covered above, some mechanisms instituted are as under:-

Border Talks. These commenced between both countries in 1981 and continued till 1987 spanning over seven years and eight meetings. This was replaced with JWG, constituted in 1988.

India China JWG. Formed on 23 December 1988 in Beijing²⁸, it has held its regular yearly meeting from 1989 till 2005 with the exception of no meetings being held in 1998, 2003 and 2004 while two meetings were held in 1992. A total of 15 meetings have been held with the last one being held in 2005.

Special Representative Mechanism. This mechanism was instituted in 2003 on the basis of the 'Declaration on Principles for Relations and Comprehensive Cooperation'. Mooted initially in 1979 by the then FM

Atal Bihari Vajpayee, it was operationalized in 2003²⁹. It adopted the three-step formula for the settlement of the border issue. While the first step was completed in the 2005 agreement, the balance of the two steps is yet to be progressed. Regular yearly meetings have been held except for the exclusion of 2011, while it has been held twice in 2005 and 2006 and thrice in 2004 and 2007.

Military Level Talks. While the provision of BPMs, tele-exchanges, flag meetings, and participation in each other country's exercises and visits has accorded a sense of engagement, a new mechanism has emerged in the form of the Corps Commander level talks between both countries in the light of the latest Chinese incursions on the LAC in Eastern Ladakh. The 17th round of such talks has been held, though the two main issues of incursions at Demchok and Depsang Plains remain unresolved. Some of these talks have also included a representative from the Ministry of External Affairs (MEA).

Part 2: Progress of Border Resolution Mechanism

Given India's support to China in validating the communist rule and extending all possible support, India was hopeful that China will be more accommodative on the border issue. While India lacked any knowledge of the construction of the highway passing through Aksai Chin for almost a decade (1947-1957) and became sensitive towards the border issue only post-1957, even at that stage, it was hopeful that China will look at Indian concerns with a more than a sympathetic ear. Whether it was China's India war³⁰ or India's China war³¹, India never imagined that China will attack India. This political overconfidence also appears to have contributed towards the 1962 war. The package deal offered by China in 1959-60 had some positive contours but did not offer major concessions to India in the Aksai Chin area. The Indian side also continued to stick to the Johnson

Line disregarding the McDonald Line and a middle path attempt was not put forward.

The 1962 war affected the Indian nation-state in a big way. It picked up threads of resurgence slowly but steadily and came into full bloom in 1971 transgressing positively through the 1967 conflict with China. While the Indian diplomats and politicians have done well to progress bilateral relations from 1976 onwards, *China has been successful in its hidden agenda of utilising the Indian market for its trade expansion resulting in a huge trade imbalance in China's favour and not moving constructively in resolving the border dispute. It's rare in the world scene where two countries have fought an intense battle as has happened between India and China and yet India still chooses to play into China's hands.* India could have adopted alternate mechanisms to address its economic concerns but fell into the Chinese trap like the USA and other countries of the world.

Though the agreements of 1993,1996,2003,2005,2012 and 2013 did provide the hope of a stable LAC and resolving the border issue, on the ground nothing much has changed. China has continued with its expansionist agenda, salami slicing, infrastructure creep, enhancing footprints in the areas of differing perceptions and changing its stance even on the documented claim line. China has also attempted to alter the ground position in several locations including intrusion on the LAC in Eastern Ladakh which is still continuing to date. As done earlier in the past, it has no respect for Indian concerns even now. China is attempting to persuade India once again to keep the LAC issues off to one side and continue improving bilateral relations, a ploy in which it succeeded despite the bloody battles of 1962.

It has been made very clear by India that the reversion of the status quo ante of April 2020 will be a pre-condition to normalising bilateral relations. This was re-stated by the Indian External Affairs Minister

(EAM) on 25 Mar 22 when the Chinese foreign minister (FM) landed in India³². The same position was re-stated again on 07 Jul 22 when both of them met in Bali³³. The 16th round of Corps Commander Level Meet resulting in a statement and enhanced military and air activities in Ladakh are indications of future events to come³⁴. Though some agreement came through prior to SCO meet but lot of major issues still need to be resolved. These have already been intensified by creating villages near Doklam and the proposed construction of Highway G 695 passing through Indian-claimed areas.

There is a high probability of conflict escalation given the current situation unless political intervention is crafted between the premiers of both countries. There is an urgent need to revisit the entire issue of LAC and border conflict. It will be important that India interacts at the appropriate level in the spirit of the Panchsheel agreement of 1954 which has been explicitly quoted in all the agreements from 1993 onwards. This interaction should result in a fresh agreement on all the bilateral issues including the resolution of LAC and border issues. *Some give and take may not be needed on the LAC issue but the same is inescapable if the border issue has to be resolved. Some lessons could be taken from China's border wars³⁵ to draw deductions to propose and hold a meaningful dialogue between both countries.* How can India leverage HH Dalai Lama and Tibetan Government in exile in India, is a matter of detail. A changing geo-political landscape in the world provides India with much better options as compared to earlier times though infrastructure and force development will continue to remain an inescapable necessity.

Part 3: China's Land Boundary Laws and Implications for India

China has been consistently undermining Indian positions. Despite making inroads across the LAC and disregarding all bilateral agreements,

it has attempted to use its lawfare strategy against India. China has been using this approach on the regular basis. Invariably, China establishes the legal justification as a prelude to military conflict. A *casus belli* was established in various conflicts including the Korean war, the 1962 India war, the 1979 Vietnam war and the 1969 China-Russia skirmishes. China has also been using domestic laws to strengthen its position against external conflicts. The 1992 Territorial Sea Laws in the South China Sea and the 2005 anti-secession law in relation to Taiwan (or Hong Kong) are definite pointers towards that³⁶. China's land boundary law implemented with effect from 01 Jan 22 is also meant to progressing and justification of conflict escalation with India as China has already resolved its borders with 12 of 14 countries³⁷ and balance countries are India and Bhutan, both having Indian stakes. The law, therefore, is exclusively meant to provide justification for conflict escalation with India without any doubt. On the face, it appears like any other routine law, its real face emerges once its timing of passage and intent are analyzed. Covered in seven chapters, it brings substantial changes in the way a country looks at its borders. It allocates substantial responsibilities to the civilians besides habitat creation for them close to the LAC all along the Indian and Bhutanese borders. Intent analysis and timing of passage of this law is important to be analysed:-

Intent. China stated its intent for the next 60 years as emerged in an article in 2013 highlighting the integration of Taiwan as its first priority, the East China sea as its second priority and Indian borders as the third priority. South China sea and Russia were relegated to the fourth and fifth spots³⁸. Despite Taiwan integration being its first agenda, it allowed itself to get geo-stretched far and wide focusing on Eastern Ladakh against India. This is an area where it already has a bulk of its claimed area of Aksai Chin under its physical occupation. The *Chinese Land Boundary Law is therefore intended to seek justification for the conflict escalation with India* which is also

becoming apparent with current events.

Timing. The LAC incursion was done during Apr-May 2020 period which was followed by Corps Commander Level meeting on 06 Jun 20, the Galwan clash on 15 Jun 20 and the 10th Corps Commander level talks on 20 Feb 21 wherein both the countries carried out re-appraisal of the ground situation on North and South of Pangong Tso lake. Since China had already succeeded in making India vacate the Southern positions of Pangong Tso lake on the Kailash range offering some concession on the Northern Bank of the lake, it moved swiftly to work on this law whose first draft was moved in March 21. The 13th Corps Commander level talks were held on 10 Oct 21, immediately after which this law was introduced in the 31st meeting of the standing committee of the 13th National People's Congress on 23 Oct 21 and passed. It became effective on 01 Jan 22. *China held no bilateral meeting to resolve the outstanding border issue between getting this law passed (23 Oct 21) and getting this law implemented (01 Jan 22).* Corps Commander level meetings were held prior to 23 Oct 21 (10 Oct 21) and after 01 Jan 22 (10 Jan 22) and thus a legal framework is ready for conflict escalation and conduct of war against India. This is a visible trend in China since it gained its independence on 01 Oct 1949.

China having made this Law, India has to be deliberately ready with likely implications some of which are as under:-

- Border dispute resolution on preferred terms by China.
- Patrol officers are authorized to use weapons against intruders which can be used in the areas of differing perception as per Chinese interpretation.
- The enhanced role of Chinese citizens and civil institutions, thus conflict scope is enlarged.

- State support for the construction of border towns which will result in border villages being established and all future deliberations focused only on the LAC and not on the border.
- China outlines the need for permission for construction activities - vague wordings may include either side.
- Infrastructure race between China and India. China has already launched a new bridge on Pangong Tso and plans to develop highway G 695 passing through Aksai Chin in the Indian-claimed area³⁹.
- Land version of ‘salami slicing’ adopted by China in maritime domain.
- China has been turning the territorial dispute into a sovereignty dispute thus making future negotiations very difficult and rigid.
- In some way, majority of earlier agreements became irrelevant. If the activities of China are analysed along with the naming of 15 locations in Arunachal Pradesh and this Law, future direction of bilateral relations takes us to the conflict escalation zone. India needs to be prepared for an appropriate response in the capability domain as the intentions of the adversary can change anytime.

Summary

China has been a difficult country in its conduct of domestic, bilateral and international relations. It swiftly moved on its expansionist agenda immediately after gaining the present form of Government and defeating the Republic of China (ROC) forces which is now ruling the self-governing island of Taiwan. It disregarded Indian concerns and initiated a humiliating war on it despite the fraudulent bonhomie of the “Hindi Chini Bhai Bhai”

slogan. It has created a façade of maintaining peace and tranquility on the LAC and its desire to resolve the border issue, and behind its garb exploited Indian market for furthering its economic agenda.

China is continuing on the same path through the LAC intrusions. A careful approach in mission mode is needed to enhance India's defence infrastructure and capacity building for its defence forces in a substantial manner. Diplomatic options must be used to leverage its benefits for the national good to the extent possible.

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