

## **Regional strategies** *The Pacific islands and Japan*

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### **Introduction**

When Epeli Hau'ofa launched this lecture series some weeks back, he also launched as a theme of this series the idea of the ocean as a uniting force. As a region we are joined together and bound together by the ocean. I remember thinking, while listening to Epeli's lecture, that this applies not just the waters of the ocean, but also what they hold; in particular I thought of the tuna that swim from one end of the Pacific to the other. And thinking in these terms, I wondered to myself, where do the boundaries of this ocean region begin and end?

The country I focus on tonight, Japan, is an island country bordering the Pacific ocean and having a fish eating tradition. It is a country that in modern times has been the biggest fishing nation in the Pacific (and in the world) and it continues to be the largest market for the region's fresh tuna. Because of this role, and because of the interaction of tuna stocks in the north and south Pacific and across national boundaries, Japan can also claim to be a custodian of the resource.

But Japan is not normally regarded as part of the Oceania that Epeli referred to. In the history of Japan's relations with the Pacific island countries, the ocean has in fact been a *contested* area. And ownership of the Pacific's tuna—so valuable to both Japan and the island states—continues to be a highly contentious issue.

What I will argue in this paper is that for most of the postwar era, Japan had virtually unchallenged access to the region's fishing grounds. Even after independence came and the era of 200-mile Exclusive Economic Zones dawned in the 1970s, Japan managed, through its aid policy and its sheer economic weight in the region, to continue to enjoy cheap, unimpeded access. The corollary to this was that the Pacific island countries saw very little economic returns on what for many was their only resource of consequence.

But this situation began to change—and I date that change to a point ten years ago. What I see is a shift in the balance of power in favour of the Pacific island countries in their dealings with Japan. This shift has meant that the region is now, to a much greater extent, calling the shots, and what I want to consider later in this lecture is how far regional strategies and collective action by the Pacific island countries are resulting in greater economic benefits to them from Japan's fishing activities in the region.

### ***Why is this important?***

The question of the balance of power and who gets what economic benefits is important for at least two reasons. In the first place, it points to the value of regional or collective diplomacy for the Pacific island states, at a time when some states are beginning to perhaps question its utility. I think Pacific island states have long held mixed feelings about the value of regionalism: at the last South Pacific Forum meeting in the Marshall Islands the theme was 'Regional Solidarity for the Common Good?' (emphasis on the question mark). It is no longer being taken for granted or assumed that regionalism is of value in its own right.

Secondly, and at risk of sounding over-dramatic, the stakes in the area of fisheries diplomacy are enormous. What is at stake is the future of the tuna resource (recognised as the world's last remaining undepleted stocks of commercial tuna). This also represents our future livelihood. Managing this resource is a huge responsibility but it is not something we can do on our own—either individually or as a group of island countries. We need to work together with the fishing powers like Japan. And therein lies the challenge: Japan is not recognised as part of 'our' Oceania. But in the future it may be necessary to treat it as such. This of course raises many questions and concerns.

## **Background**

My interest in Japan–Pacific island fisheries relations began with my doctoral research on Japan’s aid to the Pacific islands. As Japan is the largest donor of aid to the island countries (besides Australia), I was interested in exploring what drives Japan’s aid policies; what were its motives and how have these changed over time? I was surprised by what I found. Rather than a consistent and coherent set of policy goals, Japan’s aid program to the region has been driven by a complex and increasingly conflicting range of objectives. This in turn has hampered the realisation of good policies. Japan’s aid to the region has essentially evolved from being a relatively straightforward tool of its fisheries diplomacy, to encompassing a multiple range of interests and agendas.

It was to fisheries that my attention turned, since this is where the story of Japan’s aid to the region began. In the late 60s and early 70s the Pacific islands region was simultaneously transformed by two international trends. One was the end of colonialism and the other was the introduction in international law of the sea of the 200-mile exclusive economic zone (EEZ) concept. This would eventually see about 200 million sq km of ocean come under the jurisdiction of the new political entities in the Pacific (30 million sq km if the French and American territories are included). This area enclosed some of Japan’s, and the world’s, most productive tuna fishing grounds.

Japan was the leading opponent at the international level of the 200-mile EEZ concept. Being the world’s leading fishing nation, with fleets spread out around the oceans of the world, Japan perhaps had most to lose from the recognition in international law of extended coastal state jurisdiction. It thus fought hard at the international law of the sea conferences for the principle of freedom of the seas beyond the territorial sea, which under customary laws extended 3 miles. In 1973, while this debate was gathering momentum internationally, the Japanese government introduced a special category of grant aid, known as fisheries grant aid. The aid was initially designed to entice developing countries to support the principle of freedom of the seas.

When it became apparent by the mid-1970s that the concept of EEZs would become part of the new law of the sea, Japan shifted its priority from one of opposing EEZs to one of securing favourable terms of access to its

traditional fishing grounds. Fisheries grant aid now became integral to this new strategy.

The Japanese government had also set up in 1973 an organisation to channel government funds to support private sector fisheries cooperation. Known as the Overseas Fisheries Cooperation Foundation (OFCF), its initial role was to provide soft loans to finance joint ventures between Japanese fisheries companies and the coastal states. It later extended its activities to other areas such as providing technical cooperation and fisheries equipment.

The first Japanese aid to the Pacific island countries was provided in 1975—a fisheries grant to PNG. This was soon followed by fisheries grants to other Pacific island countries that had attained independence. In the first ten years of Japan's aid program to the region, the share of fisheries grants in Japan's overall grant aid to the region was 70 per cent. For some individual countries that share was 100 per cent.

In the same period, Japan negotiated fisheries access agreements with seven Pacific island countries (not including the French territories). The access fees were generally between 1 and 2 per cent of the catch value. This was seen as inadequate by most countries and frequently agreements were suspended in an effort to increase the rate of return, but invariably with little success. For one thing, Japan was the dominant fishing nation at the time. In 1981, for example, 90 per cent of foreign access fees received by the region was paid by Japanese vessel owners. For some countries the revenue provided by Japan was critical to their foreign exchange earnings. Pacific island countries, in other words, had little leverage in negotiating with the Japanese fleets.

Fisheries grant aid played a crucial role, however, in attempting to ameliorate island dissatisfaction. It was offered as an indirect top-up to the access fees but also used as a bargaining tool. Countries faced the prospect of losing out on this aid if they did not conclude access agreements with Japan.<sup>1</sup> This tactic proved quite controversial, however, and in the early 1980s the South Pacific Forum came out strongly 'deploring the practice of linking aid with the receipt of fisheries access'.

An underlying problem for the region in dealing with Japan stemmed from competition among themselves for access revenue and a lack of any real scarcity value to the licences purchased. They also lacked the means to ensure compliance with the terms and conditions of the access agreements.

Crucial to this was ways of verifying the data provided by fishing operators, since this data determined the amount received in fees (calculated as a rate of return of the reported catch). There was a big problem of under-reporting and non-reporting of catch. In addition, the Pacific island states had little alternative but to rely on the distant water fishing operators to exploit the tuna in their EEZs. This was because most countries lacked the fishing fleets and processing capacity to harvest the resource themselves.

Regional machinery was set up in the late 1970s and early 1980s to be the basis for coordinating fisheries policies and to counter some of these weaknesses. They included the Forum Fisheries (FFA), set up in 1979, and the Parties to the Nauru Agreement (PNA) formed in 1981. The latter is a subregional grouping made up of countries with the largest and most productive fishing grounds. The PNA gave rise to two management mechanisms: the Minimum Terms and Conditions of Access (MTCs) to apply to all agreements; and the Regional Register, which served as an information data base on foreign fishing vessels. Although these mechanisms provided the basis for strengthening the region's negotiating position, they did not actually succeed in significantly improving the situation for the island countries, for reasons I have already mentioned. What provided the turning point was the changing interests of one other major fishing power in the region, the US.

## **The shifting balance of power**

### *US policy (and the Kuranari Doctrine)*

The mid-1980s witnessed one of those curious ironies that are not usually apparent except with the benefit of hindsight. It was a turbulent time in the fisheries relations between the US and the Pacific island states. American tuna boats routinely violated the EEZs of the region, protected by US legislation that would impose sanctions on any country that arrested these vessels—legislation that rested on a particular interpretation of the law of the sea governing ownership of tuna.

Geopolitical concerns then intervened and caused a shift in US government policy. The conclusion of access agreements between two Pacific island countries and the Soviet Union spurred the US government into agreeing to a multilateral fisheries access agreement with the region, in

the process agreeing to pay (through direct government subsidy) an unprecedented rate of return of around 10 per cent. The treaty would also provide the region (the FFA) with the most comprehensive catch and effort data so far received and thus the means to verify the data provided by other distant water fishing nations. The treaty was signed by the region and the US exactly 10 years ago, in April 1987.

At the signing ceremony in Port Moresby, the idea of pursuing a similar arrangement with Japan was mooted by the leaders gathered there. This was endorsed at the South Pacific Forum meeting in May. What gave impetus to these moves was not just the American agreement and the expected benefits that would accrue to the region, but the fact that some months earlier, in January 1987 to precise, the Japanese Foreign Minister had visited the region and announced for the first time a special set of principles governing Japan's relations with the Pacific islands. This was elevated to the status of Doctrine (named the Kuranari Doctrine after the Foreign Minister who delivered the speech in Suva). This speech included, amongst other things, a commitment to a dramatic increase in aid to the region and was part of Japan's own response to the Soviet Union's perceived advances.

Some Pacific island governments interpreted this initiative as a sign that Japan would perhaps be willing to address regional concerns in the fisheries area. It was actually argued by some governments that if Japan was really sincere in its declaration of support for the region, it would act to improve its fisheries agreements. But the Kuranari Doctrine was an initiative of the Ministry of Foreign Affairs and fisheries policy was *not* included within its ambit: fisheries policy was the concern of the Japan Fisheries Agency, who had no interest in following the direction set by the US.

Therein lies the irony. US policy, designed to counter the Soviet Union, had created a precedent that would change forever the nature of fisheries agreements in the region. But the policy had most impact on Japan, and was seen as posing a grave threat to Japanese fishing interests. Such was the angst caused by this treaty that fisheries policy makers in Japan saw their main threat and enemy to be the US and not the Soviet Union.

The immediate effects of the US treaty were twofold: to raise expectations for similar arrangements with other distant water fishing nations (namely Japan); and to raise expectations for improvement in bilateral fisheries agreements. Countries had greater confidence in dealing

with Japan and in pushing for higher access fees, and there was far greater instability in Japan's fishing agreements as a consequence. The most significant casualty of the US multilateral agreement was Japan's access agreement with PNG. This had been Japan's most important fishing partner in the region until 1987 when the agreement lapsed and protracted negotiations failed to resolve differences over the rate of return. Despite threats and inducements (relating to fisheries grant aid) the PNG government stood firm on its position that it would not accept less than a 6 per cent rate of return.<sup>2</sup>

If Japanese fisheries policy makers had cause to resent US policy on the multilateral access agreement, they had even more cause to resent US policy a few years later when the issue of driftnetting swept through the region. The Pacific island countries were successful in securing an end to large-scale driftnetting in the high seas of the south Pacific. The targets of the campaign were Japan, South Korea and Taiwan. But crucial to putting an end to this fishing practice was US pressure on Japan, due to its own campaign against north Pacific driftnetting, and the threat of trade sanctions invoked by US legislation. Japan's diplomatic isolation was also a significant factor (its only allies were other driftnetting nations, none of whom carried much clout). The Japanese government was forced to sacrifice the driftnetting industry, in the interests of 'international cooperation'.

The US has also put pressure on Japan (and other distant water fishing nations) since the late 1980s to curtail tuna fishing where there is a level of interaction with dolphin. This resulted from US government policies of 'dolphin-safe tuna' This has led to bans on tuna purse seining in the eastern tropical Pacific and contributed to the influx of tuna purse seiners into the central western pacific.

### ***Increased competition for access***

This leads to discussion of another factor that has caused a shift in the balance of power between Pacific island coastal states and Japan: the increased competition among distant water fishing nations for access to the region's fishing grounds. The trend in recent years has been increasing demand and shrinking supply. Gone are the days when Japanese fleets dominated the fishing grounds of the region. Although Japan still dominates the pole and line fishery and the frozen long line fishery, China and Taiwan

dominate the fresh long line fishery while in the purse seine fishery, the fleets of the US, Taiwan and Korea all compete with Japan. This growing competition has in some cases led to open conflict between the fleets of various countries. For example, there have been allegations that Chinese long liners are cutting the lines of Japanese vessels.

Competition for access has put upward pressure on access fees. Japan has been forced to address the fact that all other distant water fishing nations are paying a higher rate of return than Japanese fleets. While some of these other countries (Taiwan and Korea) might cheat more and thus in reality pay less, they do at least agree to pay around a 6 per cent rate of return. Japan has argued in the past that a 4 percent rate of return was the maximum its industry could afford. In recent years it has shifted this break-even point to 5 per cent. Given the economic difficulties most Japanese fleets face, they probably could not afford much more than between 6 and 8 per cent. Further, given the lack of substantial political support for the industry in Japan, it is unlikely that they would receive a direct government subsidy, the kind the US tuna industry receives from the US government. This has caused the fishing industry to rely on indirect subsidies, mainly fisheries aid.

Japan introduced more innovative forms of fisheries aid (OFCF aid and small scale fisheries grant aid). It also agreed to comply with various regional management mechanisms in the region, which previously it has resisted. This leads to the third main area of change that has affected Pacific island relations with Japan: shifts in international norms on conservation and management of fisheries, in favour of coastal states.

### ***Issues of conservation and management***

The issue of driftnetting was, in a way, a prelude to a move by a number of large coastal states (e.g. Canada) to attempt to extend control over high seas areas, adjacent to the EEZs, in an effort to protect their own resources from over-fishing. In fact, the reason Japan had objected so strongly to the ban on driftnetting in the South Pacific was that it did not want to allow a precedent under which coastal states control fishing activities on the high seas. It was also against allowing the imposition of moratoria on fishing activities (regarding them as being based on emotional factors rather than scientific evidence). It saw this ban on driftnetting as perhaps presaging more broad based moratoria, which could threaten supplies of tuna and cause prices to spiral upwards.



Beyond these concerns was an even more contentious issue: the question of the rights of fishing nations versus coastal states, especially in the management of such highly migratory species as tuna. Japan has always maintained that under the Law of Sea Convention, all states must cooperate in the management of the resource. This implies that they must join together in management organisations. Japan for a long time refused to recognise or deal with the FFA because it included only Pacific island states (and Australia and NZ).

Pacific island countries, on the other hand, claimed sovereign rights to the tuna within their EEZs and did not see any obligation under the law of the sea to join in a broad based management regime with Japan. For the most part this was because they distrusted Japan's motives and felt that their interests were not compatible with those of Japan and other distant water fishing nations. It is also true, however, that under the law of the sea, provisions relating to the management of highly migratory stocks were ambiguous.

At the 1992 UNCED Conference in Rio it was agreed by the international community that action needed to be taken to elaborate and strengthen those parts of the law of the sea relating to highly migratory fish stocks (e.g. tuna) and straddling fish stocks. This presented an opportunity for both Japan and the Pacific island states to press their respective positions and to influence international law in their favour. A conference was convened at the UN in 1993 and lasted until 1995. (It was chaired by Fiji's diplomat and leading law of the sea expert, Satya Nandan.)

In the lead-up to this conference Pacific island countries teamed up with other so-called 'like minded states', forming coalitions to help push their positions on the law of the sea. These coalitions included other powerful coastal states (Canada and the US). It is important to note once again the role of the US as an ally of the Pacific island states against Japan. It supported the codification in international law of the '*precautionary approach*'. This is what the ban on driftnetting has been based on. It states that 'where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation'. The burden of proof that fishing is not harming the resource lies with the fishing nation, not the coastal state.

The US also supported the elaboration in international law of greater flag state responsibility. Fishing nations had to be more vigilant in ensuring that their vessels abided by responsible fishing practices. If they were unable, or failed, to ensure this then other countries could step in and take action against an offending vessel. (In fact, in 1994 the US government and the FFA had entered into an agreement relating to fisheries monitoring and surveillance in the central and western Pacific. This allows for exchange of information and intelligence regarding fishing vessel activities in the region. It also allows for the US to take action, according to its own laws, against vessels found to be in violation of regional conservation laws.)

But the new agreement of Straddling Fish Stocks and Highly Migratory Fish Stocks, which opened for signature at the UN in December 1995, also calls on coastal states to cooperate more substantially with distant water fishing nations in regional fisheries arrangements. Now that the Law of the Sea Convention has been formally ratified (in November 1994) states are obligated to abide by its provisions. To a certain extent this legitimises Japan's long-standing call for a broad based fisheries organisation in the region.

Recognising these obligations, the Pacific island countries are now embarking on the complex and difficult task of resolving (together with the fishing nations of the region) exactly where their rights begin and end: how to balance their rights to manage the tuna within their EEZs with the requirement that there be cooperation among all states 'with a real interest in the fishery' in the management of the resource. In June [1997], in the Marshall Islands, a pivotal meeting will take place between the Pacific island states and fishing nations to try to resolve precisely this issue. This is not expected to be conclusive: rather, it is part of a long, ongoing process.

### **Regional strategies**

In this final section of the paper I want to assess regional strategies that have worked in the interests of the region in dealing with Japan on fisheries matters.

First, the situation in the mid-1990s. There seems to be a marked improvement in the relationship between Japan and the region. There have been incremental increases in access fees (on average 5 per cent), more innovative types of fisheries aid (including small-scale fisheries grants, OFCF aid and aid for environmental conservation) and greater compliance

with regional management and conservation measures, including recognition of the FFA. There are still problems, of course. Access agreements still get suspended because of disagreements over the access fee. There are still major differences over future management and conservation measures in the region. But we have come a long way.

What has worked in Pacific island countries' favour are three broad trends: US interests changed; the balance of supply and demand changed; and international norms changed.

Pacific island countries, through a combination of foresight, opportunism and coincidence, have taken advantage of these changes and successfully utilised a number of regional strategies. The following are the ones that I believe have had most impact on relations with Japan:

*Using US pressure on Japan, both directly and indirectly.* It is well known that Japan often takes action (that is does not want to take) only when it is pressured to do so. The term 'reactive state' was coined to explain this phenomenon. And the principal source of influence on Japan has long been the US. US policy on the multilateral access agreement was an indirect source of pressure on Japan. *It compelled Japan to improve bilateral access agreements*, partly as a way of countering moves for a similar multilateral agreement between Japan and the region. In 1992 the Pacific islands and the US governments agreed to an extension of the multilateral access agreement for a further 10 years, on improved terms and conditions. US policy on driftnetting and on management and conservation measures in general has been a much more direct source of pressure on Japan.

*Playing off the competing interests of the distant water fishing nations for access to the region's tuna.* There has been a turning of the tables, so to speak, in that previously it was the fishing nations (especially Japan) who played off the competing interests of the island states and thus managed to keep fees low. In recent years the region has exploited this increased demand by putting in place various limited licensing arrangements. The most important are the Palau Arrangement and the Federated States of Micronesia Agreement. Both came into force in 1995. Under the Palau Arrangement there will be a 10 per cent reduction in the number of foreign purse seine licences issued, starting in 1997. And in licensing foreign vessels, priority will be given to those that demonstrate compliance with

Minimum Terms and Conditions of Access (MTCs) as well as supporting tuna industry development in the region.

*Forging coalitions at the international level with other 'like-minded states'* to put in place, or to codify in international law, norms and principles that promote more responsible fishing practices. This in turn has been crucial to legitimising (and thereby ensuring Japanese compliance with) various regional arrangements that have been adopted in order to increase the benefits of foreign licensing agreements and enhance conservation measures. These include the MTCs, which were strengthened in 1992, the Regional Register and the regional Vessel Monitoring System. The MTCs require, among other things, that foreign vessel owners carry (and pay costs of) observers, refrain from transshipping their catch at sea (including on the high seas), and include high seas catch data when fishing trips involved both in-zone and high-seas fishing.

*Strengthening regional institutions and regimes* might seem somewhat obvious, but a key to the success of the region's fisheries diplomacy rests on the laying of different regional arrangements, which in turn reinforce and strengthen each other. This makes it more difficult for fishing nations to ignore or water-down management measures. This may even accomplish what would be impossible or unlikely because of conflicting national interests among island states.

The failure to conclude a multilateral access agreement with Japan illustrates this point. The attempts to conclude such a multilateral agreement were unsuccessful partly because of strong opposition by Japan and partly also because of a marked preference on the part of some island states for existing bilateral arrangements. But the 1990s have seen a flurry of regional diplomacy and the conclusion of various agreements among FFA and PNA member countries relating to surveillance, conservation and management. These have been imposed on Japan, as a condition of access, and have achieved, to some extent, the goals of a multilateral access agreement with Japan.<sup>3</sup> The issue that remain outstanding is the rate of return.

### ***What has been the driving force of this regionalism?***

Two factors can be identified as driving this regionalism.

1 There has been a recognition of *common interests* and the will to pursue these collectively has emerged. This does not exist across the board when it comes to dealing with Japan, as the experience with a multilateral access agreement demonstrated. Regional diplomacy is still largely driven by pragmatic considerations.

2 The *proactive role of the FFA* has been crucial to the regional strategies that have been used in dealing with Japan. But this highlights a number of dilemmas, most notably the question of the extent to which it is national governments or the regional organisations that should take the lead, but also the question of who in these organisations is shaping regional policies. The membership of FFA includes Australia and New Zealand. It is no secret that these two countries are very influential in that organisation and this is one factor that has influenced Japan's antipathy in the past towards of FFA.

### **A not-so-dispassionate conclusion**

The achievements of regionalism in the past in helping to turn the tables on Japan should not be allowed to lead to complacency when it comes to regional fisheries matters. If anything, we are entering a period of even greater trial and uncertainty.

On the one hand, we need to ensure that future negotiations on fisheries management arrangements in the region are conducted from a position of strength, and this requires regional solidarity. While all states (coastal and fishing) have a common interest in ensuring the sustainable use of the resource, we do not share common views with the fishing nations (particularly Japan) on how this could be achieved. Island countries, therefore, need to ensure they do not lose ground in these negotiations.

On the other hand, there is the ongoing issue of how to maximise economic benefits for the people of the Pacific from their tuna resource. Some island countries think this is best achieved by going it alone (i.e. that their economic returns are greater from bilateral fisheries agreements and associated joint ventures/aid programmes). To the extent that this is so, it should also be recognised that what has helped make bilateral arrangements more profitable and worthwhile is the *combined* political clout of the region, acting collectively.

Moreover, the only way to ensure that these economic returns continue in the future is by putting in place the management regimes that will protect our rights to the resources and protect our heritage. In other words, national self-interests and regional interests are two sides of the same coin.

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## Notes

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1 It should be noted that although the Japanese government did not directly subsidise the access fees of the Japanese industry, fisheries grant aid was a form of indirect subsidy. In addition, the OFCF (which was an organisation promoting private sector cooperation) did give aid, known as goods and services, to the island states as part of the cost of access. Normally this amounted to about 10 per cent of the access fee. Island governments would have preferred to receive all the fee in cash, but they did not have much say in the matter. The only country that did manage to exclude this goods and services component from the access fee was PNG. But then PNG, being much less dependent on the revenue from licence fees and fisheries grant aid, was in a much stronger position than other Pacific island countries.

2 The negotiations that took place between 1987 and 1990 between PNG and Japan are interesting for a number of reasons, not least because they revealed differences between Japanese policy makers (namely between Fisheries Agency policy makers and those from the Foreign Ministry) especially relating to interpretations of fisheries grant aid policy. There were also differences between fisheries policy makers and representatives of industry. The latter were more willing to make a deal, but had to go along with the government policy makers, who were more interested in making an example of, punishing, PNG.

3 Some countries (e.g. FSM and Kiribati) have indicated their preference for existing bilateral arrangements. These are Japan's most important fishing partners and they benefit from a concentration of Japanese fishing effort in their waters. A multilateral agreement (whatever form it takes) would inevitably open up more EEZs to Japanese fleets and probably lead to a redistribution of fishing effort by Japan; leading perhaps to a reduction in access fees received by these countries. This is what had happened when the US multilateral treaty was put into effect and interestingly enough, the main beneficiary of that treaty was PNG (who has also been the leading proponent among Pacific island countries of a multilateral access agreement with Japan). It appears that the FFA has shelved, for now, the idea of a multilateral access agreement with Japan.

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