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FROM: C D KYLE
CDK/23667/93/AL

already in circulation covering the legal aspects of the use of lethal force and it was expected that a third paper would be produced shortly covering post-incident procedures. He added that papers contributed by other interested groups, such as SACR and the Irish, had also been taken into account by the interdepartmental group. Mr Marsh assured that they would have an update in due course. In response Mr O'Donovan regarding a time frame for the deliberations, Mr Marsh replied that it was difficult to give a precise indication but it was possible that the work might be completed by the summer. It had to be remembered that the important these very complex issues were addressed in a way as to get the right answers.

- cc Mr Ledlie - B
- Mr Thomas - B
- Mr Williams - B
- Mr Steele - B
- Mr Bell - B
- Mr Lyon - B
- Mr Shannon - B
- Mr Dodds - B
- Mr Marsh - B
- Mr Cooke - B
- Mr Leach - B
- Mr White - B
- Mr Lavery - B
- Dr Power - B
- Mr Whysall - B
- Mr Maitland - B
- Mr Perry - B
- Ms Lodge - B
- Mr McKervill - B
- Mr Archer RID - B

NOTE FOR THE RECORD

CONFIDENCE ISSUES: STOCKTAKE MEETING BETWEEN BRITISH AND IRISH OFFICIALS 12 MAY 1993

British and Irish Officials met at Maryfield on 12 May to exchange views on confidence issues. The British side was represented by Mr Ledlie, Mr Williams, Mr Marsh, Mr Lavery, Mr Dodds, Mr Maitland and myself. The Irish side representatives were Mr O'Donovan, Mr Mellett, Mr Farrell, Mr Hennessy, Mr Kelleher, and Mr Feeley. In his opening remarks Mr O'Donovan thanked the British side for the opportunity to discuss the confidence issues and said that the discussion would help to prepare the ground for the forthcoming Intergovernmental Conference.

HRASSMENT

LETHAL FORCE

Mr O'Donovan opened this discussion by recalling references at a interdepartmental review on the use of lethal force. Mr Marsh reminded the meeting that this was a Home Office led review involving a number of departments and covering very complex issues

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which needed to be looked at with great care. Two papers were already in circulation covering the legal and operational aspects of the use of lethal force and it was expected that a third paper would be produced shortly covering post-incident procedures. He added that papers contributed by other interested groups, such as SACHR and the Irish, had also been taken into account by the interdepartmental group. Mr Marsh assured the Irish that they would have an update in due course. In response to a point from Mr O'Donovan regarding a time frame for the group's deliberations, Mr Marsh replied that it was difficult to give a precise indication but it was possible that the work might be concluded by the summer; it had to be remembered that the important thing was to ensure that these very complex issues were addressed in such a way as to get the right answers.

3. Mr Mellett enquired about a review of the procedures governing inquests and in reply Mr Marsh explained this matter was being looked at separately with the Lord Chancellor's Department in the lead. Mr O'Donovan recalled a recent decision by the Belfast Coroner when he had ruled on the admissibility of a Public Interest Immunity Certificate; he noted that these certificates were a subject on which the Irish side hoped to get a briefing in the near future. Mr Marsh confirmed that the MOD were seeking a judicial review on the coroner's ruling and confirmed that it was planned to give the Irish a briefing on the subject. In regard to a time frame for the review of the arrangements for inquests Mr Marsh said it might be shorter than the review for the use of lethal force, but again it was an area in which there were many interests and sensitivities. Mr Ledlie reminded the meeting that in the cases of lethal force and the arrangements for inquests there were complex matters of law and procedures to be addressed.

HARASSMENT

4. Mr Hennessy opened this discussion by recalling references at a recent Intergovernmental Conference meeting to the value of looking at regional variations in the level of confidence in the security forces; the subject had also been touched upon again at the last

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meeting of the Confidence Issues Steering Group. He suggested that consideration might be given as to how this could be taken forward. There were a number of elements to be considered such as the disposition of the security forces, the records of certain units - some were perceived to have been better than others, the use of specialist units of the RUC such as the Divisional Mobile Support Units and CID, the attitudes and approach of individual commanders; factors such as training, operational practices and levels of accompaniment also impinged on the issue.

5. Mr Ledlie said this was a matter which Mr O hUiginn had suggested might be given some thought and he pointed out that it was self evident that it was easier to increase confidence in the security forces in some areas than it was in others. There were many factors which influenced this, some of which fell outside the security dimension such as political, social, and economic interests which could have a benevolent or malevolent effect. He recalled that the topic had been mentioned at a recent IGC, but he questioned whether a decision had been taken to proceed down a particular road, and he suggested that the Irish side might put some ideas on the table which the British side could consider. After consideration of the Irish ideas a view could be taken as to whether or not it would be feasible, or fruitful, to have an extensive discussion on all the angles. Mr Ledlie went on to say that he would be interested to know how the Irish would like to take the issue forward; perhaps they could identify areas which they thought were relevant in terms of either being helpful, or detrimental, to relationships between the local community and the security forces. Mr Hennessy said that the pattern of relationships, as influenced by security force activity, might vary from area to area but it would be useful to consider how operational activities influenced such results, although he acknowledged there were other elements to be considered as well.

6. Mr O'Donovan advised that the Irish side would prepare a paper giving background views on the subject which the British side could then respond to. He went on to say that they might then look at a couple of areas to see how these differences applied. Mr Ledlie

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Mr. Ledlie again reminded the meeting that he did not share the Irish side's view that the Secretary of State had agreed to this way of taking the matter forward. It had been acknowledged that the issue was on the table, but he would not want to commit himself to any particular course of action at this stage. Mr Hennessy responded that the Irish side view was that the Secretary of State had agreed. Mr Ledlie reaffirmed that he would wish to reserve his position in giving a response and deciding how to take the matter forward.

7. Mr Ledlie went on to say that the British side took very seriously the matter of confidence in the security forces but they had to be sensitive to the question of going too deeply into operational areas. Mr O'Donovan said there was a question over each side's interpretation of the word 'operational'. Mr Kelleher referred to issues like the individual approach of a Divisional Commander, the relationships between the Army and the RUC in certain areas, and also mentioned activities such as the alleged misbehaviour by units at the end of their tour as having an 'operational' dimension to them. Mr Ledlie pointed out that on the allegation of misbehaviour it was recognised that known trouble makers would take the opportunity of seeking to settle scores at the end of a tour of a particular army unit.

8. In relation to alleged harassment Mr O'Donovan invited Mr Kelleher to give a quick run over the Irish perception of how security measures were affecting relationships in certain parts of Northern Ireland. In West Belfast the Queens Own Highlanders appeared to have made great efforts to develop relationships and certainly the experience on the ground for the first few months was that they had been received well. However, the final period of their tour had resulted in a number of allegations and complaints. In North Belfast there were no general problems and there was a perception that the army was now patrolling in 'hard loyalist' streets; this was seen by many nationalist as being much more even-handed. In Londonderry, where there was a degree of political consensus, the issue of the Rosemount tower, and house searches, continued to be an irritant. In East Tyrone there had been very clear evidence of an RUC policy to improve matters since the

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accident last May involving paratroopers, but there was concern in the Pomeroy area that following the recent murder of a Protestant some politicians had tarnished the local nationalist population as being members of the IRA. In the South Armagh region Newry was an area where there continued to be complaints about harassment by the RUC and the army, and there was the problem of the new checkpoint in Bessbrook. Summing up Mr O'Donovan said that the Irish side would prepare a 'guiding points' paper to give to the British side and Mr Hennessy said that the objective would be to discuss and highlight good practices as well as identifying practices which might be improved upon.

BESSBROOK PVCP

9. Mr Marsh outlined the background to the decision to locate a permanent vehicle checkpoint on the Chapel Road. In the aftermath of the mortar attack on the local police station the RUC had given a lot of thought to the problems of protecting the station and they had done their best to consult with local people. Mr Mates had met with the three Bessbrook councillors to explain the situation and the security forces were seeking to operate the new checkpoint in as sensitive a manner as possible with a view to keeping inconvenience to a minimum. Mr Kelleher said that there had been complaints of delays for parishioners attending the local Catholic church and because the PVCP was positioned outside that chapel it was perceived that the RUC were hiding behind the protection of the church. Mr Marsh said he understood there had been consultation with the local Catholic clergy, as well as local councillors, on the issue and that the PVCP had to be positioned where it was because of the range of the mortars which could be fired from the site of the church carpark.

10. Mr O'Donovan said that a sensitive point in the eyes of the local people was that the PVCP was seen to present a barrier between the church and its members and he believed that the establishment of the checkpoint was more by way of a presentational reaction to the incident of the mortar attack. Mr Ledlie disagreed very strongly and said that terrorist attacks had to be treated seriously, noting

that there had been recent mortar attacks on other police stations; decisions on security measures were not taken lightly. Mr O'Donovan questioned whether the siting of the PVCP was of any value in view of the distance from which mortars could be fired; he pressed instead for more active mobile patrolling. Mr Marsh said it would never be possible to satisfy every eventuality and there was no such thing as a complete ring of steel; there were balances to be struck.

EMERGENCY PROVISION ACT/PREVENTION OF TERRORISM ACT ISSUES

11. Mr O'Donovan recounted that the Independent Commissioner for Holding Centres had lunched recently at Maryfield and that the subject of appointing a deputy had been touched upon. Mr Ledlie explained that this was a matter currently under consideration by the NIO; Mr O'Donovan said that it was interesting to hear with the Sir Louis Blom-Cooper express an interest in having someone from the Republic of Ireland, especially if their background was that of a clinical psychologist. Mr O'Donovan went on to say that the Irish side were very concerned to hear Sir Louis' comments about lawyers, and also his references to the fact that most of the 1700 or so people who passed through the holding centres each year were so familiar with their legal position that there was a question over the need for legal advice to be available at that point. Sir Louis' suggestion that some lawyers were being used for the purpose of passing information from detainees to the outside world was a matter the Irish believed should be taken up with the Law Society, or, as they had suggested at the lunch, through SACHR. They were fearful that Sir Louis' comments, if said publicly, could cause controversy and lead to targetting of certain solicitors by paramilitaries; additionally such controversy could make his job as Independent Commissioner more difficult. This was an area which needed to be handled very carefully.

12. Mr Ledlie said the British side were aware of a number of reports from lawyers' groups about the allegations against solicitors; he was also conscious that there was less reflection of the RUC's concerns that certain lawyers might pass on information from detainees. He believed that it would be helpful if more light could be shed on the matter, adding that the NIO had sought to

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Address the issue with the Bar Council and the Law Society but to no avail. It was expected that Lord Colville might have something to say on the issue in his forthcoming report.

13. Mr O'Donovan said that Mr Hewitt, the recently appointed Assessor for Military Complaints, had also attended Maryfield for lunch; he appeared diligent and keen to get on with his work. They had encouraged him to approach his terms of reference in a flexible manner and to avoid becoming paperbound; perhaps he should get out on the ground and see what actually happened at locations such as checkpoints.

14. In relation to Codes of Practice under the Emergency Provisions Act Mr Hennessy recalled that there had been a meeting with the British side when it had been explained that consultations with the RUC were still ongoing; Mr Marsh confirmed that this was still the case. Mr Hennessy also expressed some concern that no decision had been taken to draft Codes of Practice regarding the exercise of powers by the Army; Mr Marsh explained that this was a matter which would be looked at but so far no decision had been taken. Mr Marsh went on to express gratitude for the input given by the Irish side and he hoped that the Codes of Practice of the RUC might be finalised some time in June. Mr Hennessy added that they would urge the British side to cross reference the Codes of Practice with references to the Commissioner for Holding Centres and the Assessor for Military Complaints.

15. In a brief discussion on the availability of EPA and PTA statistics it was noted that these were being worked on at the moment by British officials and that it was hoped that the Irish side would have all the outstanding 1992 figures very shortly, hopefully by the end of May.

REMAND TIMES

16. Mr Ledlie explained that the British side would be evaluating the first year's experience of the measures announced by the Secretary of State last year. As that 12 month period would

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conclude at the end of June it was hoped that by the end of the summer period officials would be in a better position to discuss how far the very challenging targets had been met; a public announcement about the outcome of the first year's review was something which could be decided upon later. In regard to a statutory scheme Mr Ledlie said that Ministers would not want such an arrangement if it created the real risk of dangerous people being released; this was an issue which had not yet been decided upon. Mr Hennessy asked if there was any indication of where the main obstacles lay in reducing the length of remand times. Mr Ledlie said that the appointment of an additional High Court Judge should make some difference but for its part the NIO was focusing on problems prior to the arraignment of a prisoner; thus areas such as the RUC, Forensic Science and the DPP were being looked at. He pointed out that in these areas the NIO had more scope to influence resources, whereas beyond arraignment it was much more a matter for the Courts.

ACCOMPANIMENT

17. In response to a point from Mr O'Donovan, Mr Ledlie said that the accompaniment statistics for the 6 month period covering October to March should be available by the end of June. Mr Kelleher said that the Tanaiste continued to receive questions in the Dail on the issue of accompaniment and he noted that despite a small increase in the percentage of accompanied patrols in the last return there were still some 25,000 unaccompanied patrols; he wondered if there was any indication of the current trend. Mr Ledlie pointed out that operational activity on the ground was the foremost determining factor. A security situation which needed more mobile or foot patrols on the ground could affect the figures; Mr O'Donovan expressed the hope that no serious regression would be reflected in the last 6 month figures. Mr Ledlie said there was no political or policy significance to any regression there might be in the figures, but it was important to note that a serious security situation invariably had a very direct effect on the level of accompaniment. Mr O'Donovan reiterated the Irish position that the necessary resources should be made available to ensure 100% accompaniment.

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Mr Ledlie responded that the British side continued to treat the matter as a very important policy objective, they concentrated on sensitive areas and security force commanders were fully aware of the significance of accompaniment.

PARADES

18. Mr O'Donovan noted it might be too early to have a substantive discussion about the issue, and Mr Hennessy explained it was hoped that it might be possible for Ministers to say something at the forthcoming IGC when the routes of parades, and the venues, were still being discussed and local arrangements had not yet been finalised. Mr Ledlie reminded the meeting that it was normal practice for a substantive discussion on the issue to take place in the second half of June. Mr Kelleher made the general point that under the Public Order Order there were two main areas of consideration in that parades could be re-routed, not only on the basis of public order considerations, but also on considerations of disruption to the local community. Mr O'Donovan agreed that the situation in relation to parades was getting better; he hoped that it might be possible for the Chief Constable, or a Minister, to make a statement similar to what had been voiced in the past saying that marchers should not parade in areas where they were not welcome.

CROSS BORDER ROADS

19. Mr O'Donovan said that the issue of closed cross border roads raised serious problems for local people and was a consideration in the enhancement and improvement of north/south co-operation in areas like tourism and economic development. He explained that in some areas of the Republic of Ireland the Garda had come under local criticism for providing cover for road closure activity, and other security operations on the northern side of the border, without appearing to achieve anything in return in terms of roads re-opened. The Irish side believed that it would be helpful to look at the economic and social issues of closed border roads in an objective manner and in their view the last IGC had given the Anglo-Irish Secretariat a clear instruction to take this matter

forward. Since that time the Irish side perceived that there had been a change of view and a number of elements now seemed to be more open ended, such as the use of independent consultants in the exercise and the time frame in which the study was to be carried out. At the last IGC the Irish side had understood Mr Mates to talk in terms of 2 months; it now appeared that a much longer time scale envisaged with 2 or 3 months being allowed for a scoping study alone. Mr O'Donovan said the Irish side believed it should be a co-operative effort, looked at from both sides of the border, with the Irish doing the work in the south or, with both sides agreeing to a firm of independent consultants to do the work.

20. In response Mr Ledlie questioned whether the Irish understanding of the discussion at the IGC was correct and said that at the Conference Mr Mates had outlined how the British side were thinking of taking the issue of a review forward. They considered that this was a very important matter and hence the discussion which had taken place at the Secretariat before Easter when, after discussion with colleagues on professional sides of the office, the idea of a scoping study had been explained and the British side had sought to establish how they could arrange for the appropriate people in Belfast and Dublin to be in touch, therefore making it a joint exercise. Mr Ledlie did not believe that any timescale had been determined. The British side did not wish to delay but at the same time they wanted to do the job properly and on the basis of advice from professional colleagues the idea had developed of taking this review forward through the medium of a scoping study. Issues such as the extent of the study, a focus on particular geographical areas, how the review would be carried out, who would do it, and how the actual field work would be implemented were all matters which had to be addressed. The British side were now seeking to flesh out what Ministers had initially touched upon at the IGC. Mr Ledlie said that the next stage was to prepare terms of reference and show these to the Irish side for their comments. It was agreed that it would be useful to have an official level meeting to discuss the terms of reference.

work. Mr Mates confirmed that the work was virtually finished although it had overrun somewhat; he also added that no-one wanted

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21. Mr Hennessy expressed his worry that a recent note, from the British side, had suggested that the exercise would not be carried out in a manner similar to other north/south co-operative ventures. Mr Maitland said that the British side remained very anxious to follow up on the matter since the initial discussions at the IGC and he would be keen to have a note reflecting Irish views. Mr O'Donovan said the Irish side were reassured with the gist of the discussion; they had some terms of reference in preparation and would pass these to the British side. He also suggested that an official level meeting should take place as soon as possible after the next IGC.

22. In discussion on the question of the re-opening of Border Crossing Point 108 Mr O'Donovan wondered if the issue was now closed. Mr Ledlie said that there had been no agreement between the Chief Constable and the Garda Commissioner as to how to proceed and the Irish side's inability to meet certain security requirements had been unfortunate. Mr Ledlie rejected very firmly Mr O'Donovan's suggestions that the RUC requirement for the visible Garda presence on the southern side was more one of political reassurance rather than a security necessity. In response to a point from Mr Mellett, Mr Ledlie advised that if the Garda Commissioner could provide arrangements satisfactory to the RUC then he would be very surprised if Ministers would not agree to the re-opening of BCP 108. They remained very keen in principle to re-open the road, but it was security conditions which would determine whether or not the road could be re-opened.

SECURITY INSTALLATIONS

23. Mr Hennessy touched upon the difficulties associated with the new security tower at Rosemount RUC station in Londonderry saying that considerable distress had been caused by its installation. The Irish side had received reports that the local Chief Inspector had been very helpful in seeking to resolve some of the problems and he went on to enquire if there was a time frame for completion of the work. Mr Marsh confirmed that the work was virtually finished although it had overrun somewhat; he also added that no-one wanted

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such towers but that the security situation dictated that they were necessary for protection. In response to a point from Mr Hennessy Mr Marsh advised that it had not been finally decided how the base would function in the future but it was envisaged that it would feature as a centre for neighbourhood policing in the area.

24. In relation to the PVCs around the border the Irish side enquired about difficulties which had arisen from the use of the rising bollards. Mr Maitland explained the background to the installation of these protective measures saying that they had had their origins in the use of human bombs against a number of checkpoints. There had been a number of teething troubles which had been of concern to both the Northern Ireland Office and the military; the equipment had been looked at and improved training had been introduced to offset the risk of human error. In addition revamped road signs and markings had been installed to ease the passage of vehicles through the patrol bases, and it was clear that the number of incidents involving the rising bollards had dropped considerably. Mr Hennessy said it would be helpful if the British side could give details on the number of complaints, and compensation paid out, in recent months in respect of problems with the rising bollards.

INDEPENDENT COMMISSION FOR POLICE COMPLAINTS FIFTH ANNUAL REPORT

25. Mr Farrell referred to the 1992 Annual Report of the ICPC and in particular to comments made by the Commission expressing their disappointment that a number of the recommendations arising from the Triennial Review had not been accepted. Mr Ledlie pointed out that the majority of recommendations had been accepted and he rejected any idea that those not accepted would have made the Commission independent. The Commission was independent and acceptance of the points which had been rejected would simply have enhanced its powers. Mr Lavery reminded the meeting that the next Triennial Review was only about one year away and he then touched on the 3 recommendations which the Secretary of State had considered, but which he had decided not to accept.

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6. Firstly, on the issue of mandatory supervision the Secretary of State had agreed that the Commission should be granted discretion to discontinue supervision of a case where it became apparent that supervision was not warranted. However, the Secretary of State believed that the ICPC should continue to supervise complaints where a serious injury was alleged. Secondly, in regard to the recommendations to restructure disciplinary tribunals Mr Lavery explained that this was now overshadowed by the general debate which was taking place on ^{the} police disciplinary ^{Procedure} affairs and he reminded the meeting that the Home Secretary had published a consultation paper to England and Wales. The Secretary of State planned to publish a consultation paper for Northern Ireland and this would address the interface with the ICPC; it was hoped that the paper would be published some time in June. Thirdly, in relation to the idea that the Commission should be given a reserve power to 'call in' matters for supervision in the public interest the Secretary of State did not feel that it was possible to accept this suggestion; he considered that the existing powers were wide and properly reflected in his own powers, as well as those of the Chief Constable and the Police Authority, to refer cases to the ICPC. The ICPC had also raised the issue of resources and Mr Lavery confirmed that the Secretary of State had undertaken to look sympathetically at requests for additional resources in terms of members for the Commission and staff support. ^{Vice-C 2 days}

27. Mr Kelleher referred to the particular case of Pearse Jordan who had been shot dead in West Belfast last year and said that there was a perception there that it had taken some time to refer the case to the ICPC. Mr Ledlie disputed that there had been any real delay, particularly as the incident had happened in late afternoon and the decision to refer to the ICPC had been taken the following day. Mr Lavery added that the ICPC were conscious that if they were to act precipitately then subsequent developments could lead to some embarrassment and they had recognised a need for preliminary investigations to take place. In concluding Mr Hennessy suggested that, as the police complaints system did not command widespread support, an amendment to the statutory powers to allow for a discontinuation of cases would not sit easy beside the Commission's

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desire to increase their powers; it could give rise to a perception of weakening, rather than strengthening, the ICPC's role. Mr Lavery reminded the meeting that it had been the Commission that asked for the power to be able to discontinue supervision of a case when it became apparent that supervision was not warranted. *Moreover the Govt had accepted 6 out of the 9 recommendations contained in the ICPC's Annual Report. ~~Review Report~~ f-12*

INTIMIDATION OF DEFENCE LAWYERS

28. Mr Kelleher referred to the recent report by New York lawyers which reflected strong international concern regarding the position of defence lawyers who dealt with suspects detained in holding centres. He also asked if there was any substance to a reference in the report that the Stevens' team would be following up with further investigations following the recent Panorama programme on the Nelson case. Mr Ledlie said he was aware that the RUC had made a statement saying that there would be further investigation into some of the claims made in the programme but he could not recall whether this would fall to the Stevens' team or to the DPP; he agreed that the NIO would check out this point.

COMMITTEE ON THE SECURITY FORCES IN THE COMMUNITY

29. Mr Mellett pointed out that the last briefing which the Irish side had received had been back in December and Mr Marsh noted that a number of reports were outstanding; officials were addressing the backlog at present. Mr O'Donovan said it would be his hope that they could have a short monthly meeting between the two sides to discuss the business of CSFC. Mr Mellett enquired if any decision had been taken on the composition of the committee and Mr Marsh explained that this was a matter which was being looked at but that there were no specific proposals at present.

CARLINGFORD LOUGH

30. Mr O'Donovan said that as the sailing season had started this would be a good opportunity to remind naval patrols of the guidance governing their operational activities on the Lough. Mr Ledlie said that he could recall that the Irish had certain difficulties with

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his particular guidance. In response to further points from Mr Hennessey it was agreed that a meeting should take place in the near future to discuss various aspects of the issue.

[Signed]

C D KYLE

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