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Jurisdictional Conflicts and Solutions in Bribery Cases of Multinational Corporations

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Abstract: Commercial bribery by multinational corporations is hampering global economic development and threatening the legal authority of states. In dealing with such cases, countries often form violent conflicts of jurisdiction in cases due to differences in legislation, law enforcement and judicial systems, among other reasons. Such conflicts not only affect the efficiency of handling cases, but may also lead to a waste of law enforcement resources and the evasion of legal responsibility by multinational corporations. By introducing the basic types of jurisdiction in cases of multinational corporations, this paper points out the reasons for the formation of conflicts of jurisdiction among countries. Then this paper systematically analyzes some representative domestic acts and international conventions, and finds that most countries and international organizations are actively working on legislation. In many years of judicial practice, the world has achieved remarkable results in combating transnational commercial bribery. However, there are still many shortcomings in these existing legal mechanisms and implementation methods. This paper aims to propose a more efficient solution to the existing dilemma, and suggests that the mechanism for determining jurisdiction in bribery cases of multinational corporations should be further improved by strengthening the international cooperation mechanism and establishing a global anti-bribery body.

Keywords: Multinational corporation, Bribery, jurisdiction, International cooperation.

1. Introduction

Multinational corporations have been more frequently seen in economic activities and developing faster in recent years due to the intensifying economic globalization. Multinational corporations now hold a significant role in international commercial operations. As a result of globalization, multinational corporations have not only been able to promote worldwide resource allocation and technical innovation, but they have also significantly boosted global trade, which has contributed to advancing global economic development. However, the accompanying problem of corruption has also become increasingly serious, becoming a huge obstacle to economic growth and a major threat to the public interest. According to World Bank and United Nations studies, corruption costs the global economy an estimated $2.6 trillion annually [1]. Among these, multinational companies' corruption--particularly their commercial bribery--is an important component of global corruption. According to reports from the Organization for Economic Cooperation and Development (OECD),

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multinational corporations have paid bribes to obtain access to commercial contracts and markets in public procurement and infrastructure projects throughout numerous countries [2]. This has resulted in a substantial amount of lost revenue due to multinational corporations taking advantage of intricate corporate structures and international legal loopholes [2]. In addition, commercial bribery by multinational corporations is characterized by diversified forms and multiple cases.

The commercial bribery behavior of multinational corporations not only disrupts the market environment of international trade but also undermines the integrity systems of various countries, exerting a negative impact on the international economic and legal order. From an international economic perspective, bribery undermines fair market competition, infringes on the legitimate rights and interests of consumers and other enterprises, and leads to the waste and loss of national resources [3]. Ultimately, this reduces overall economic efficiency. From the standpoint of the international legal order, widespread bribery by multinational corporations severely weakens the authority of national laws, diminishes government credibility, tarnishes the country's image, and is likely to trigger international trade frictions and disputes.

In the process of dealing with cases of commercial bribery of multinational corporations, the first task is to determine the attribution of jurisdiction in the case. This process involves determining which country has the authority to investigate, prosecute and adjudicate bribery cases. However, due to the cross-border nature of multinational corporations and the differences in the relevant legal provisions of each country, there is a strong conflict of jurisdiction between countries. Multinational corporations often have operations in multiple countries and operate in multiple legal jurisdictions, which makes determining the sole jurisdictional attribution extremely complex.

2. Conflicts of Jurisdiction in Cases of Bribery of Multinational Corporations

Three sets of concepts comprise the fundamental framework of a multinational corporation: home and host country, parent company and subsidiary, and headquarters and branch office. In multinational corporation bribery cases, jurisdictional issues usually relate to the legal powers of the home and host states, as well as to the legal relationships between parent and subsidiary companies and between head office and branches. First, the term "home state" refers to the state in which the multinational corporation was first incorporated, where the company's main location is situated, and where it normally possesses the legal power to regulate and prosecute its business. Conversely, the "host state" refers to the nation where a multinational corporation has extended its operations and holds the authority to impose legal restrictions on companies engaged in commercial endeavors within its borders. Second, there are complex legal relations in judicial practice between parent and subsidiary corporations as well as between the headquarters and branches. As a result, bribery cases often face conflicts of jurisdiction in different national legal systems, with jurisdictional disputes between home and host states being the most prominent. The legal application and law enforcement cooperation issues involved in such cases have become difficult problems to be solved by international tribunals and relevant international organizations.

2.1. Types of Jurisdiction

In international law, the precise delimitation of jurisdiction between countries over certain issues is an important issue for the preservation of the independence and sovereign equality of states. The concept of jurisdiction covered a number of aspects, including personal jurisdiction, territorial jurisdiction, protective jurisdiction and universal jurisdiction. Specifically, the jurisdictions involved in cases relating to multinational corporations are divided into those possessed by the host state and those possessed by the home state.

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2.1.1. Territorial and Personal Jurisdiction of the Host State

Territorial jurisdiction is the jurisdiction of a state over all persons (except those enjoying diplomatic immunity), things and events occurring within its territory. Subsidiaries in foreign countries, as legal persons of the host state, are subject to the territorial jurisdiction of the state in which the bribery took place, which is the territorial jurisdiction of the host state. The host state exercises jurisdiction over persons or companies within its territory, including subsidiaries or branches of foreign companies in the host state.

Personal jurisdiction is the power of states to exercise jurisdiction over citizens who have their own nationality. Subsidiaries are subject to local personal jurisdiction, which is the personal jurisdiction of the host state.

2.1.2. Personal Jurisdiction of the Home State

The personal jurisdiction of the home state means that the state of the parent company has authority ratione personae over a critical manager of a foreign subsidiary who has the nationality of the home state when he or she has committed a bribery offence abroad. Normally, personal jurisdiction is often complementary to territorial jurisdiction, in accordance with the principle of the primacy of territoriality. However, because of the complexity of the reality, the type of jurisdiction to be applied often needs to be analyzed on a case-by-case basis.

2.2. Causes of Jurisdictional Conflicts

Multinational corporations, unlike ordinary domestic corporations, are inherently characterized by dual nationality and are often in a real situation of dual regulation. Both home and host states act as managers of multinational corporations, and both of them want to hold jurisdiction over multinational corporations. Therefore, such a context creates a dramatic conflict of jurisdiction between different states. The three causes of the conflict are as follows.

Firstly, the main reason is the different legal regulation in different countries. Countries have developed methods of determining jurisdiction based on the principle of sovereignty, applying their own specific legal provisions to corporate anti-bribery cases. However, national and economic regulations were not entirely consistent, and there was no guarantee that the legislation would avoid conflicts with the jurisdiction of other countries. This overlapping of legal frameworks allows multiple countries to claim jurisdiction over the same case, resulting in conflicts in the application of the law. This situation can even lead to parallel or even multiple prosecutions of multinational corporations [4]. At the same time, legal inconsistencies have led to significant differences in the legal standards and procedures relied upon by countries when dealing with bribery cases. For example, some countries may have stricter anti-bribery laws, while the relevant laws in other countries may be relatively lax, and these differences lead to different legal evaluations and outcomes of the same case, thus triggering jurisdictional disputes.

Secondly, the defence of national interests by sovereign states. Nowadays, both host and home countries are aware that multinational corporations contribute to the development of the national economy, and that multinational corporation disputes often involve significant national interests, both political and economic. From the perspective of the home state, a lack of management and control over overseas subsidiaries may affect the country's business strategy and economic effectiveness. Home countries usually wish to protect the legitimate interests of their companies abroad and ensure that they can compete on a level international playing field. From the host state's perspective, as overseas investment increases, how to better develop multinational corporations and regulate their compliance regimes has also become a focus of attention for the host state. Through strict legal regulation and jurisdiction, host countries hope to ensure that multinational corporations operating in

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their territories comply with local laws and prevent the loss of their own resources and interests. Each country asserts jurisdiction over bribery cases in its territory or involving its nationals based on the defence of its national interests and sovereignty and endeavors to exclude interference by the jurisdiction of other countries.

Thirdly, the policy of extraterritorial application of economic regulations. Some countries have adopted a policy of extraterritorial application of economic regulations in order to safeguard their economic interests and the principle of the rule of law [5]. The United States and European countries, in particular, have often extended their legal jurisdiction overseas through their own laws, such as the United States Foreign Corrupt Practices Act (FCPA) and the European Union's antitrust statutes. This further exacerbates jurisdictional conflicts and application challenges in multinational corporation cases.

3. Current Legislation and Shortcomings

Currently, the provisions of domestic law are the main basis for determining the jurisdiction of multinational corporations, as well as other controls. As early as the 1980s, the United Nations began discussing the development of an international instrument on norms of conduct for multinational corporations, taking into account the differences in domestic laws. In order to solve many dispute-prone problems by means of uniform norms, the Drafting Group submitted the " Code of Conduct for Transnational Corporations (Draft)" in 1982, but due to the differences among UN member states on the contents of this bill, this bill has not yet been adopted. This means that this bill has not yet become a formal international legal document, nor has it been generally recognized and implemented in the international community. Therefore, on the issue of attribution of jurisdiction in cases of bribery of multinational corporations, countries still mainly rely on domestic laws and some international conventions.

3.1. Relevant Domestic Law

3.1.1. US Foreign Corrupt Practices Act (FCPA)

The U.S. FCPA, passed in 1977, is the world's first law specifically designed to address multinational commercial bribery and consists primarily of anti-bribery and accounting provisions. The law applies to a wide range of subjects, including companies registered with the U.S. Securities and Exchange Commission (SEC) or publicly traded on U.S. stock exchanges, U.S. citizens, nationals, and residents, as well as foreign corporations and individuals engaged in bribery in the United States [6].

The FCPA has been amended several times on issues related to the jurisdiction of multinational corporations, continuously interpreting and expanding the scope of application and jurisdiction of this law. One of the most significant of these amendments, the 1998 amendments, expanded the jurisdictional scope of the anti-bribery provisions [7]. The amendments include bribery committed outside of the United States by issuers and any United States person who is an officer, agent or employee of those issuers acting on the issuers' behalf [7]. This is the case "irrespective of whether such issuer or agent makes use of the mails or any means or instrumentality of interstate commerce in furtherance of" the corrupt payment [7]. These provisions expand the ability of U.S. regulators to enforce the FCPA's anti-bribery provisions against foreign companies and their agents, broaden the extraterritorial application of the FCPA, and make clear that the FCPA applies to foreign companies and foreign persons.

Over the years of judicial practice, the U.S. Department of Justice (DOJ) and the SEC have aggressively investigated and prosecuted multinational corporations for bribery. Although FCPA enforcement data has declined significantly since 2019 due to factors such as the post-pandemic era and geopolitics, the all-encompassing implementation of the FCPA demonstrates the U.S.

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government's determination to combat international corruption. The U.S. has clear jurisdiction to pursue bribery cases against relevant multinational corporations, but also resolves conflicts, conducts joint investigations, and coordinates management by cooperating with the anti-corruption agencies of other countries when encountering jurisdictional conflicts. Specific manifestations are: multinational law enforcement cooperation, sharing of information resources, non-prosecution agreements and deferred prosecution agreements, double retrospective immunity, transfer of cases and extradition, and so on. Through these measures, the United States has achieved outstanding success in resolving jurisdictional conflicts.

3.1.2. UK Bribery Act 2010 (Bribery Act 2010)

The UK Bribery Act, or Bribery Act 2010, came into force on July 1, 2011 and has been described as the toughest anti-corruption law in the world. The scope of application of the UKBA is broader than the FCPA and covers all forms of bribery, including bribery of the private sector.

In terms of jurisdiction, the UKBA has a very broad scope, covering not only bribery that takes place in the UK, but also bribery that takes place outside the UK and has a "close connection" to the UK, extending its jurisdiction to individuals and organizations, wherever they may be, that have a specific connection to the UK. The definition of "close connection" is multi-faceted and includes, but is not limited to, companies doing business with the UK, entities registered or operating in the UK, and UK-related activities undertaken by UK citizens or residents [8]. This helps the UK to combat and prevent bribery by multinational corporations globally.

The UKBA has broad international applicability and has successfully handled a number of high-profile cases since its implementation, reflecting the remarkable success of the UKBA in combating transnational bribery. Judging from the results of existing cases, when faced with jurisdictional conflicts in transnational cases, UK law enforcement agencies, such as the Serious Fraud Office (SFO), tend to investigate transnational cases by cooperating and jointly investigating with anti-corruption agencies in other countries [3]. In addition, the UK also avoids or mitigates jurisdictional conflicts through the establishment of mutual legal assistance agreements, the adoption of compliance programs and settlement agreements, and compliance with international standards, while at the same time enhancing the guidance and supervision of corporate compliance building.

3.2. Relevant International Conventions

3.2.1. the United Nations Convention against Corruption (UNCAC)

The United Nations Convention against Corruption, which entered into force on December 14, 2005, is the first legally binding international convention against corruption on a global scale. It has now been signed and ratified by the majority of countries around the globe, with the number of states parties amounting to 187 countries and territories, making it a widely participatory international legal document.

On issues related to jurisdiction, the Convention contains a number of explicit provisions. First, the principle of national sovereignty is one of the basic principles of international cooperation in the fight against corruption, and UNCAC explicitly recognizes the sovereign rights of states parties, respecting the autonomy of each State in its domestic legal system, which is reflected in article 4 of the Convention, which specifically reaffirms the provisions on the protection of sovereignty. However, this is not an absolute view of State sovereignty, but rather a "ceded" view of sovereignty with a certain element of compromise [9]. International cooperation against corruption is based on the voluntary "cession" of national sovereignty by states parties, which emphasizes the voluntary and limited cession of sovereignty by states while retaining their sovereignty through participation in international cooperation against corruption. Secondly, article 42 of UNCAC clearly stipulates that

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states parties should establish jurisdiction over crimes committed in their territories, crimes committed by their nationals and crimes affecting the interests of the State [10]. At the same time, the Convention encourages states parties to resolve jurisdictional issues through legal agreements, mutual consultation, such as bilateral or multilateral agreements. The convention also encourages the cooperation of states in the investigation, prosecution and extradition of corruption cases. The setting of this provision is conducive to reducing conflict of laws and promoting international cooperation and coordination.

3.2.2. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted by the OECD and entered into force in 1999. The Convention requires states parties to have jurisdiction over acts of bribery within their territories as well as acts of bribery committed by their nationals outside their territories, and in particular provides that states parties shall ensure that they are able to investigate and prosecute acts of bribery committed by their nationals outside their territories, which has important implications for the management and employees of multinational corporations. The Convention encourages cooperation between states parties in anti-bribery cases, even if certain acts are not criminalized in the State party's own country, as long as they are criminalized in the place where they are committed. In addition, the OECD now allows a small number of motivated countries, notably the United States and the United Kingdom, to be strong enforcers, making the Convention highly effective in enforcing anti-bribery laws [11].

3.3. Shortcomings and Dilemmas

As can be seen from the above analysis, the relevant Acts and Conventions encourage the resolution of jurisdictional conflicts of multinational corporations through, international cooperation. Through the application of relevant laws, certain achievements have been made internationally in combating bribery of multinational corporations, but in actual implementation, most OECD member countries and states parties to the UNCAC are still making slow progress in prosecuting foreign bribery, and legal regulation, law enforcement differences between countries and national realities are still the key factors contributing to the complexity and inefficiency of international anti-bribery cooperation. Currently, the relevant legal and conventional provisions remain deficient and jurisdictional disputes are still in dilemma in international judicial practice.

First, the lack of international cooperation mechanisms and the problem of unilateral jurisdiction are prominent. Although the FCPA has been actively applied within the United States and other laws have been used as the main tool for combating commercial bribery by countries with strong law enforcement, there are still many differences in international anti-bribery cooperation due to the lack of firmness and severity of law enforcement in most developing countries. Moreover, law enforcement agencies of developed countries, such as the U.S. Department of Justice, often play the role of "global enforcers", and their broad jurisdiction is not limited, which is prone to the danger of unilateral jurisdiction [11]. Such a situation could easily lead to dissatisfaction and non-cooperation from other countries, as the regulators do not treat everyone equally, but rather take more account of their own national interests. Secondly, there is uncertainty about the provisions of laws and conventions. In specific cases, there may be ambiguities as to the criteria and scope of the application of jurisdiction, and the question of the determination of jurisdiction remains a matter of dispute. Thirdly, the rule against double jeopardy remains unclear. This rule, which is widely supported by domestic law and international conventions, was established to prevent a person from being tried

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twice for the same crime. However, because of the principle of dual sovereignty, some multinational corporations still face the dilemma of being investigated and prosecuted repeatedly.

4. Solutions

The three dilemmas mentioned above are cross-cutting and complex in nature and cannot be fundamentally resolved by targeting certain strategies. In order to effectively resolve the current dilemmas, the world needs to look at them from an international perspective and coordinate countries' attempts to come up with bolder, more innovative ideas and methods that are in line with national conditions. This paper proposes the following strategies, which aim to alleviate and solve the current difficulties fundamentally. Although the proposed strategies do not correspond to each of the difficulties mentioned above, each approach contributes to a comprehensive approach to the challenges mentioned above.

4.1. Improving International Anti-Bribery Cooperation Mechanisms

International anti-bribery cooperation is the most important way to resolve conflicts of jurisdiction. At present, the progress of cooperation among countries is constrained by a number of factors, and the world should be based on the actual situation of international judicial practice and further improve and perfect the existing system in order to promote more efficient cooperation.

4.1.1. Establishing Uniform Criteria for the Identification of Bribery Cases and Procedures for Recognizing Jurisdiction

On the basis of existing international conventions, a global standard for identifying cases of bribery of multinational corporations should be established and a uniform procedure for attribution of jurisdiction should be set up. To achieve this goal, the United Nations and other international organizations should, through international anti-corruption awareness-raising efforts, advocate that all countries, whether developed or developing, actively combat bribery and take the initiative to investigate and prosecute cases of commercial corruption. It is only through such thought leadership that countries can be led to agree and support the establishment of uniform standards for transnational bribery cases, and in this way ensure that all countries have the same principle of assigning jurisdiction over transnational bribery cases.

Specific jurisdiction confirmation procedures can refer to the following principles and steps. Jurisdiction should be harmonized to the greatest extent possible in determining jurisdiction, that is to say, taking into account the factors of priority of territorial jurisdiction, complementarity of jurisdiction ratione personae, judicial fairness and strengthening of international cooperation [3]. At the same time, consideration could be given to resolving conflicts of jurisdiction by adopting the principle of "priority of the court first seized". In short, the determination of the way to maximize the interests of the purpose, to ensure that the final choice of jurisdiction is the most conducive to the investigation of the facts of the case, the effective investigation and punishment of crime.

4.1.2. Promoting Countries to Reach Bilateral and Multilateral Anti-Bribery Agreements

The implementation of two international conventions, UNCAC and the OECD Anti-Bribery Convention, has demonstrated that the fight against transnational bribery can be strengthened through multilateral cooperation mechanisms and contribute to global anti-corruption efforts. However, the limitations of only a few conventions do not allow for all-encompassing coverage of all jurisdictions, and there are still many countries that do not participate in the relevant conventions. Therefore, the next step globally should be to promote bilateral and multilateral agreements among states, especially

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when states face conflicts or dilemmas in dealing with cases of bribery by multinational corporations, and the option of an agreement is a better way to resolve difficulties.

Specifically, in pursuing bilateral and multilateral agreements, the world should first pilot the recognition of jurisdiction under multilateral agreements in some of the major regions where multinational corporations operate (e.g., the European Union, North America, Asia-Pacific, etc.). Then, in the explicit provisions, through clarifying the scope of jurisdiction and prioritization of countries in transnational bribery cases, provide for a specific case allocation mechanism, so as to reduce the disputes over jurisdiction. Finally, after the agreement mechanism has matured, it will be gradually extended to the global level.

4.1.3. Encouraging Countries to Coordinate the Handling of Cases

The jurisdictional issue of bribery cases of multinational corporations involves international criminal judicial cooperation, which includes aspects such as extradition, exchange of information, mutual legal assistance, joint investigations and transfer of proceedings [12]. Countries should further establish a case information sharing platform, create a global anti-bribery database, and develop a joint investigation system. It is worth noting that, due to the different scientific and technological levels, hardware facilities and other conditions for handling cases in different countries, the world should encourage countries with advanced technology to actively drive and help other countries to develop joint case management platforms.

4.2. Establishing a Global Anti-Bribery Body

Considering the harmful effects of transnational bribery and the cross-border nature of multinational corporation cases, some innovative and effective globalization concepts are necessary. The world urgently needs to establish some specialized bodies on an international scale to deal with these cases of international bribery in a comprehensive manner.

4.2.1. Setting up An International Tribunal against Bribery

The idea of establishing an international tribunal on anti-bribery is undoubtedly a bold and innovative one, which is difficult to implement, requires more resources, and must be carried out on the basis of a certain level of international cooperation and relative harmonization of relevant standards and procedures, as mentioned above.

The preliminary work should make use of the existing framework of international organizations, such as the United Nations, to ensure that the tribunal to be established is international and authoritative. At the same time, the tribunal should be composed of legal experts selected by member states to deal with matters such as jurisdictional disputes in transnational bribery cases. Such an approach would ensure equal voice for all participating countries, avoid the problem of unilateral jurisdiction and ensure the fairness of the case.

In the specific case of jurisdictional confirmation, the tribunal, as an independent international judicial body, can efficiently resolve disputes among states. It is because whether based on territoriality, personal jurisdiction or other principles, there is no doubt that the tribunal can take unified jurisdiction. In other words, multinational corporations, their subsidiaries, branches and even individuals involved in a case, regardless of their different nationalities or places of residence, can be trialed before the tribunal, and transparent and fair hearings can be conducted by the legal representatives of all the countries concerned together.

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4.2.2. Building A Global Reconciliation Body

In judicial practice, settlements continue to be an effective way of mitigating jurisdictional conflicts, whether they are reached between law enforcement agencies and corporations or between states, and help to resolve the problem of forum shopping by multinational corporations. One of the more common applications is the deferred prosecution agreement system, which is a system whereby law enforcement agencies defer or terminate criminal prosecution of a company involved in a case if the company accepts and fulfills specific conditions, and is a system whereby settlements are reached between State agencies and companies [13]. The system was initially established to avoid repeated prosecutions and promote corporate compliance building, but with the practical application, his potential risks are exposed, such as the inability to completely eliminate the risk of repeated prosecutions, the inclusion of undue expansion of extraterritorial jurisdiction, and so on.

Therefore, this paper encourages the continued development of this system globally, and the establishment of international conciliation agencies in relevant areas. It is recommended that the national reconciliation body be utilized to systematically regulate the reconciliation process and monitoring system between law enforcement agencies and companies, and between the states. The implementation of this scheme ensures the openness and transparency of the reconciliation process as well as the impartiality and comprehensiveness of the monitoring system.

5. Conclusion

Jurisdictional conflicts in bribery cases involving multinational corporations are still an international issue that deserves attention. Currently, the FCPA and UKBA are committed to fighting for case jurisdiction and cracking down on bribery, and the UN and OECD are also working hard to promote international coordination and cooperation. However, due to the limited effectiveness of domestic acts and the limitations of international conventions, jurisdictional conflicts have not been effectively resolved, and problems such as unilateral jurisdiction and double prosecution have arisen.

With more and more countries joining in the fight against transnational commercial bribery, the world should summarize the successful experience of existing laws and jointly seek better solutions. Therefore, this paper believes that the world should continue to play a positive role in the existing laws, make use of the resources of international organizations, and improve the international cooperation mechanism. At the same time, the international community should take into account the reality and try to build some global anti-bribery bodies as possible, such as international anti-bribery tribunals, reconciliation bodies and so on. Every country should respond positively to the international call to crack down on bribery and work together to create a healthy transnational business environment.

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