

Sir Creek Dispute between India and Pakistan: A Case of Compromise Driven By Common Interests

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Abstract

The India-Pakistan dispute over Sir Creek can be traced back to the pre-independence time frame, to around 1908, when a contention resulted between the leaders of Kutch and Sind over responsibility for a heap of kindling lying on the banks of a creek situated between the two principalities. The dispute was taken up by the Government of Bombay (GOB) state, which in 1914 gave a decision, upheld by Map Number B44 and in this manner B74. Nothing huge occurred as far as conflict or negotiations in the following not many a long time until a fight reemerged in the wake of the 1965 war and the resulting settlement by an international tribunal of the India-Pakistan boundary dispute in the Rann of Kutch.

Keywords: Western Terminus, Thalweg, Non-paper, Navigable Channel, Resolution Map, Halifax Track Two Group.

Introduction

This article deals with the Sir Creek dispute between India and Pakistan in the Kutch region, situated in the western most piece of India lining with Sind in Pakistan. The Sir Creek issue additionally has an immediate bearing on the at this point limitless maritime boundary between India and Pakistan in light of the fact that the meaning of the land boundary in the Sir Creek region will thus figure out where the maritime boundary converges the coast.

Aim of the Study

The reader will find in this monograph a systematic analysis of the Sir Creek dispute that has ended up being a territorial-cum-resources dispute. It in any case presents a concise investigation of the historical background of the dispute, the progression in negotiations, and the probability of its resolution sooner rather than later.

Main Text of The Study

Genesis of the Sir Creek

Sir Creek is a fluctuating sixty-mile-long estuary in the swamps of the Rann of Kutch, a region whose boundaries were contested by India and Pakistan in a dispute settled through arbitration in 1968. Sir Creek is the last tributary of the Sind River, which originates in India and flows into the Arabian Sea after passing through Pakistan. The Rann is situated between Gujarat (India) and Sind (Pakistan).

Following military conflict between India and Pakistan in 1965, Pakistan claimed jurisdiction over half the Rann along the twenty-fourth parallel. India rejected this claim, saying the boundary passed along the northern edge of the Rann, which therefore was India's. The Rann spans an area of 7,500 square miles, 3,500 of which was in dispute, a matter referred to an international tribunal for arbitration. The tribunal produced the 900-page "India-Pakistan Western Boundary Case Tribunal's Award." Announced on February 19, 1968, establishing India's claim over 90 percent of the disputed territory, and ceding approximately 10 percent of the Rann (300 square miles) to Pakistan. The Sir Creek dispute emerged where the dispute settlement over the Rann of Kutch ended.

Before resorting to the tribunal both India and Pakistan had agreed to confine their dispute over the boundary in the north of the Rann, as both were in agreement that the boundary in the south began at the head of Sir Creek and proceeded for a short distance eastward along the twenty-fourth parallel. The tribunal excluded the Sir Creek portion from the demarcation, saying it was out of the purview. The subsequent dispute hinged on the demarcation of the boundary from "the mouth of Sir Creek to the top of Sir Creek" and from "the top of the Sir Creek eastwards to a point (on land) designated as the Western Terminus".

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In 1968 the boundary in the Rann sector was thereafter fixed, as described above. A.G. Noorani explains the tribunal's position and the contention of the parties:

That the short agreed border from the head of Sir Creek eastward was excluded from the tribunal's consideration was understandable. Unfortunately, the parties agreed also to exclude the boundary from the head of Sir Creek downward to the west, right up to the mouth of the creek on the Arabian Sea; in short, the Indo-Pak boundary along Sir Creek.¹

According to a former Pakistani foreign secretary, "The adjudicators in 1968 did not discuss the Sir Creek because in the pre-partition documents the creek was clearly indicated as in Sind that is now in Pakistan".² India rejected this claim saying that the tribunal's decision to keep the Sir Creek area out of its consideration did not imply Pakistan's control over it. The tribunal had noted, "In view of the aforesaid agreement, the question concerning the Sir Creek part of the boundary is left out of consideration."³ The determination of the boundary in the creek area now remains disputed because of conflicting claims over whether the creek falls under the "Thalweg" principle of boundary demarcation, which provides for making the mid-channel of a given watercourse a boundary. India has argued that Sir Creek is a navigable channel and therefore falls within the category of "Thalweg" principle, an argument Pakistan has repeatedly rejected. Instead Pakistan has claimed that it is not a navigable channel and that the boundary runs on the eastern side, thereby placing the creek in Pakistani jurisdiction.

Both sides have cited passed resolutions and provisions by the GOB and the governor of Sind to back their respective claims pertaining to the navigability of the creek and have also claimed that a compromise had been reached between the rulers of Kutch and Sind. In support of its argument Pakistan has claimed that the map attached to the Bombay Government Resolution of February 24, 1914, showed the boundary running on the eastern bank of the creek, but in its note of May 19, 1958, stated that the map was just an annexure to the resolution, implying that it was the resolution that was authoritative, not the map itself.⁴

The dispute has another interesting dimension that both impedes as well as enhances the prospect of a compromise resolution. The prospect of finding natural gas in the vicinity spurred both parties to attempt to settle the Sir Creek boundary dispute on their own terms so as to enlarge their respective EEZ by 250square miles, which makes it a territorial-cum-resources dispute. This prospect has acted both as a positive and negative factor. The desire for a larger EEZ has pushed the parties to harden their stance, but at the same time also encouraged them to explore a mutually beneficial settlement.

Pakistan has insisted that the boundary in the creek first be delimited in order to establish the point on the land from which a sea boundary can be delimited based on "land toward sea approach". India argues in favour of delimiting the maritime boundary first and then moving toward the land based on the "sea towards land approach". Both approaches are technically possible and legal but only one can be followed, for which a compromise has to be reached between the two sides. In recent years both sides have shown the utmost urgency in settling the matter to avert a United Nations Convention on the Law of the Sea III (UNCLOS) clause passed in 1982 and entered into force in 1994, that would declare the entire disputed zone as international waters should the two sides failed to determine their claims for respective maritime zones by the May 2009 deadline passed, no definite indications have come from the UN as to whether or not the area has been declared international waters. If the UN deadline is observed then the disputed region may well be international waters, de facto. At present there is no word from India, Pakistan, or the UN on the jurisdictional status of the region, possibly because of the progress made by India and Pakistan in terms of getting the joint survey of the maritime boundary completed in March 2007.

Negotiations on the Sir Creek

India and Pakistan have held negotiations since 1989 to settle their differences, and by the close of talks in May 2007 had achieved considerable breakthrough on some key aspects of the dispute During the first round of talks, held in Islamabad on June 2, 1989, the Indian and Pakistani delegations were led by their surveyor generals, Major General S.M. Chadha and Major General Anis Ali Syed, respectively. These talks turned out to be generic in nature, sans any substantial

breakthrough on any aspect. The second and third rounds of talks, in 1990 and 1991, also ended inconclusively without substantial progress. On October 28-29, 1991 the fourth round of talks was held in Rawalpindi led by Inder Pal Khosla from the Indian Ministry of External Affairs and Salim Jilani, Pakistan's defence secretary, each accompanied by their surveyor generals.

Although, during the talks the political desirability of coming to terms on the boundary delineation was apparent, the surveyor general of Pakistan remained adamant about technical considerations and the linking of the delineation of the maritime boundary with the demarcation of the Sir Creek boundary. These difficulties were compounded by a theoretical debate on what factors could govern the determination of the creek's mid-channel, which shifted quite often depending on the tides. Both delegations also engaged in passionate discussion over the concept of "equidistance" and "equity" in demarcating the maritime boundary from the mouth of the creek toward the open seas.⁵ The talks eventually failed to achieve any agreement or a compromise.

The fifth round of talks was held in New Delhi, on November 5-6, 1992, headed by the additional secretary in the Indian ministry of External Affairs, Nareshwar Dayal, and the additional secretary in the Pakistan Ministry of foreign Affairs, Khalid Saleem. Technical experts from the Indian navy were also part of the talks on this occasion. Although the Indian navy, on its part, had done some research on the possible methods of defining a maritime boundary from the sea (the starting point of which was undetermined) toward land, the issue unfortunately did not figure during the talks.⁶ In 1994, an Indian technical delegation presented a "non-paper" to Pakistan, proposing that the delineation of the maritime boundary in the territorial sea be governed by the "median"/"equidistant" principle, using the low water lines and low-tide elevations of both countries. Beyond the territorial sea the maritime boundary could be governed by "equidistant" as well as "equitable" principles.⁷

No immediate response was received from Pakistan on this suggestion, but two years later on October 29, 1996, Pakistan made a declaration that baselines should be drawn straight, consisting of a series of nine straight lines. India, which at that time was yet to draw its baselines, rejected the declaration on the basis that these lines were not in accordance with Article 7 (2) of UNCLOS III and that its Point K lay off the eastern bank of Sir Creek.⁸ Both sides were in agreement, however, on the horizontal sector of the land boundary and agreed to delimitation of a boundary line by employing existing boundary pillars along the horizontal line by employing existing boundary pillars along the horizontal line and by placing intermediary in the same line.⁹

The sixth round of talks was shelved and the next round resumed as a part of the CDP at the foreign-secretary level in June 1997 and then again in September 1998. In these talks India and Pakistan agreed to create separate working groups (baskets) for several pending boundary disputes, including the Sir Creek dispute and each was to be taken up simultaneously by its particular working group. The talks on Sir Creek were held on November 8, 1998, in New Delhi, led by the surveyor general of India, Lieutenant General A.K. Ahuja, and Rear Admiral M. Jameel Akhter of Pakistan. Now the talks were driven within the framework of the CDP and gained more seriousness and structured attention to seek not only their resolution but also to build mutual trust and confidence between the two sides. India presented a proposal for the finalization of the boundaries along the following four steps:

1. Allocation: A decision on the basis of which the settlement would be made.
2. Delimitation: This specified the general criteria for the location of the boundary line and for its description. This description would or would not be accompanied by illustrative maps.
3. Demarcation: This procedure involved the precise actual relaying of the criteria of delimitation to demarcation teams on the ground.
4. Administration: This called for regulating the demarcated boundary and exercising administrative control.

The Indian side asserted that in the Sir Creek area allocation and delimitation were done vide Paragraphs 9 and 10 of the 1914 Resolution illustrated on an accompanying map (B-44). In the map the internal boundary of Sind was depicted

by a thin red line proceeding across the western bank of the creek, and the Kutch internal boundary line is shown in yellow along the eastern bank of Kori Creek. The boundary lines agreed upon by the Maharao of Kutch and the Governor of Sind are shown in green and magenta respectively. Demarcation and administration had already been completed in 1925.

Since then, the boundary in Sir Creek had been depicted in the mid-channel by a proper boundary symbol and there was no need to erect pillars in the middle of the creek, since it formed a natural, flowing boundary. The administration of this territory remained with Kutch and was therefore inherited by the governments of India and Pakistan.¹⁰

In 1998 the Indian delegation pointed out that Pakistan, while emphasizing the 1914 map, was overlooking the basis on which several such maps had been made. There is no ambiguity therefore over that fact that both sides had agreed to the blue dotted line as the boundary between Kutch and Sind, and regarding the boundary from the mouth to the top of Sir Creek (depicted in green), the Commissioner of Sind had urged rectification that was mentioned and agreed upon by the GOI by its inclusion in Paragraph 10.¹¹ The GOB resolution of 1913, which resolved the dispute on Sir Creek between the Maharao of Kutch and the rulers of Sind was the basis for making several sequential maps. This ruling was subsequently endorsed as a resolution by the GOI in 1914.¹²

In this context India's suggestion to Pakistan was that the issue should be addressed incorporating the overall perspective so that this boundary, which is already settled and in respect of which all four steps relating to boundary demarcation have already been completed, is formalized.¹³

Indian journalist Bharat Bhushan wrote that India proposed the median, or the equidistant, method where the demarcation of the maritime boundary adopts the seaward approach. This method entails determining a point at 200 nautical miles distance from the India-Pakistan coasts and then proceeding toward the coast drawing an equidistant line up to an agreed point. This would help determine the respective EEZs of India and Pakistan.¹⁴ The issue had gained some urgency in view of the continental shelf claims that were to be submitted by 2004 to the United Nations by the concerned countries.¹⁵ The Pakistani response was that maritime boundary could be demarcated only after the determination of the land boundary in the Sir Creek area and that both these issues should not be delinked and separated and needed to be addressed in one package. India alleged that Pakistan's attitude reflected its desire to seek an absolute resolution from the map to the exclusion of internationally accepted cartographic procedures while disregarding historical developments.¹⁶

Given the commercial importance of the area, Pakistan is insisting on defining the extremity of its land frontier in the Sir Creek area in a manner that gives it control over a larger EEZ. In the case of India accepting the green line showing Sir Creek's eastern bank as the land boundary for the purpose of drawing maritime frontiers, the Pakistani EEZ would be enlarged by approximately 250 square miles. To this end Pakistan has rejected the mid-channel principle as proposed by India, pointing out that this principle applies only to a "navigable channel" and asserting that Sir Creek is not navigable.¹⁷ Responding sharply to Pakistan's claims, chief Indian hydrographer Rear Admiral K.R. Srinivasan said, "The mid-channel principle on Sir Creek was endorsed by the 'Para nine and Para ten' of the 1914 Resolution. This was represented in the final map of 1925 by the proper boundary symbols".¹⁸

Also rejecting Pakistani claims that the creek was non-navigable and not conducive for commercial use, Indian officials asserted that the channel could be used for navigation during the entire year, especially during high tides. It was pointed out by Pakistani officials that Pakistan required more time to complete a hydrographic survey of the area between Gujarat and Sind.²⁹ In these talks India took special exception to Pakistan's efforts – which amounted to internationalising the Sir Creek issue – reiterating that all differences between New Delhi and Islamabad, after the Simla Accord, had to be resolved bilaterally. Pakistan was of the view that India should agree to its proposal to take the dispute to an international tribunal if they were unable to resolve it bilaterally. Vivek Katju, joint secretary for Iran, Pakistan, and Afghanistan in the Indian Ministry of External

Affairs said in response, "There is no place at all for any third party intervention in the Indo-Pakistani matters following the Simla accord."²⁰

The level of alienation and mistrust had run so high that even the July 2001 summit meeting in Agra between Atal Behari Vajpayee and General Pervez Musharraf failed to resuscitate the ties. Following the revival of the peace process in 2003, the first round of talks was held on August 6-7, 2004, led by Indian surveyor general Prithvish Nag and Pakistan's additional secretary of defence Admiral Ahsan-ul-Haq Chaudhry, to apprise each other of the ground situation and share ideas on how to resolve the matter, although the press labelled the talks as meaningless and futile.²¹

In pursuance of the foreign ministers' talks, the Indo-Pak delegation, led by Surveyor General Brigadier Girish Kumar Major General Jamil-ur-Rehman Afridi, respectively, met in Rawalpindi on December 14-15 to discuss the modalities of a joint survey of the boundary pillars in the horizontal segment (as indicated by the blue line) in Sir Creek. In the talks both parties agreed on January 3, 2005, as the date of commencement of the joint survey.²² The follow-up meeting to take stock of the progress was held on May 28-29 in Rawalpindi, led by Rear Admiral Ahsan-ul-Haq Chaudhry from the Pakistan Ministry of Defence and Major General M. Gopal Rao, additional surveyor general of India. No concrete proposal or agreement emerged from the talks apart from both delegations expressing their satisfaction over the progress in the matter.²³

Pakistan insisted that the boundary in Sir Creek should start with the eastern bank in accordance with the 1914 Resolution Map; this stand was rejected by India, underlining the basic point of contention between the two parties.²⁴ On October 3-4, 2005, the foreign ministers again held talks in Islamabad under the CDP framework, and in accordance with their discussions follow-up talks were held in New Delhi on December 20-21, 2005. These talks were led by Brigadier Girish Kumar, deputy surveyor general of India, and Major General Jamil-ur-Rehman Afridi, surveyor general of Pakistan, to formulate terms of reference for carrying out the joint survey.²⁵ Technical level talks were held on December 22-23, 2006, in Rawalpindi, led by Rear Admiral B.R. Rao, chief hydrographer, and Major General Jamil-ur-Rehman Afridi to determine the coordinates of the joint survey and also to discuss the demarcation of the Indo-Pak maritime boundary.²⁶

The press notably mentioned that judging by the second set of maps that had emerged following the joint survey, a sense of commonality and convergence characterized the approach of the two sides. The press also highlighted that the Sir Creek matter, unlike the Siachen dispute, had more promise of resolution since both parties had shown positive and conciliatory intentions to devise a mutually agreed solution.²⁷

Ripeness of the Sir Creek

Some ripeness for negotiations on the Sir Creek dispute had developed by 1989 for two reasons. First, Benazir Bhutto had come to power, establishing democracy in Pakistan after twelve years and her government was keen to achieve peace with India. Second, there was considerable momentum in peace talks from the previous regime of General Zia, under whom the talks on Siachen had been initiated in 1986, and both Bhutto and Rajiv Gandhi did not want to lose the momentum, which was a strong possibility given the turn of events around that time. It must be acknowledged that, as opposed to other pending disputes such as Kashmir and Siachen, the dispute over Sir Creek evoked little interest and urgency until both sides began to realize that resolution of the problem could accrue some economic dividends as well.

The fact that even before the CDP was envisaged India and Pakistan had held several rounds of talks on Sir Creek—exchanging maps and documents and giving substantial attention to various modes of demarcation of the boundary—suggested willingness on both sides to negotiate in all earnest. As previously argued, the change in regimes and leadership in India had not in any way reduced its political will for resolving the dispute. Even while hostilities were continuing on various fronts—during the Zia-Rajiv, Rajiv-Benazir, Gujral-Sharif, Musharraf-Vajpayee, and Musharraf-Manmohan Periods—resulting in the suspension of the peace process on several occasions, the awareness of the indispensability of the peace process in resolving pending disputes was never lost by either side. In 1991 Pakistani foreign secretary Shaharyar Khan claimed, "Both

the disputes (Wular Barrage and Sir Creek) can be resolved if there is a desire to do so.²⁸ In reply, Indian high commissioner J.N. Dixit, in Islamabad, observed:

A process for peace has been continuing for the last two years. The talks are a step in the right direction and in response to the real needs and aspirations of the peoples of India and Pakistan.²⁹

Such a desire unquestionably had always been there in the Sir Creek dispute, which made it ripe for negotiations. Yet there were and still persist profound technical differences pertaining to the linking of the Sir Creek boundary demarcation with the maritime boundary demarcation, differences that until the latest round of talks in May 2007 hindered progress. The linkage between the maritime boundary and the limits of the EEZ of the respective sides and of the continental shelves was underpinned by speculation concerning the presence, in this zone, of oil and gas fields under the seabed, and this prospect increased the stakes of the dispute.

Strategically speaking, Sir Creek is of little significance to either side, but the possibility of energy resources in the region has led to unrelenting attitudes on both sides. India and Pakistan have locked their horns due to differences in their approaches (seaward or landward) to determining both the Sir Creek and maritime boundary demarcations. There was a stage when Pakistan called for a third-party role to settle the conflict, which proved to be a nonstarter in New Delhi. When both sides realized that, as per the UNCLOS, their maritime area would be declared international waters in the event of failure to fix the dispute by the 2009 deadline, a sense of urgency and purpose characterized their subsequent negotiations.

One positive and immediate effect of this renewed political will was the 2004 agreement to conduct the joint survey of the boundary pillars in the Sir Creek area, completed in mid-March 2007. This goes to show that the dispute that appeared ripe only for negotiations for a long period had begun to exhibit ripeness for resolution, or agreement, as well. This transformation was the result of both sides reaching the conclusion that in the absence of a settlement both would be worse off. The present dispute hinges on India's insisting that the boundary runs on the eastern bank of the creek. It is hoped that after the drawing of a second set of maps, following the joint survey of the boundary pillars, both sides would have a better understanding of the ground situation and the cartographic facts.

Given the progress in the dispute –largely due to the compromising and accommodating approaches of both India and Pakistan—a possible early resolution is indicated. Both parties seek a mutually agreed solution, which makes their stances on Sir Creek quite distinct from their stances on other pending disputes. Both believe the continuation of the dispute would hurt them equally, and both seem focused on converging their conflicting approaches into a common strategy and devising mechanisms to fix their land and maritime boundaries.

Prerenegotiation

The conflict-resolution exercise of 1913-14 has played a key role in pinning down differences on many related aspects of boundary disputes (in that area), if not on Sir Creek perse. This 1914 ruling was also instrumental in settling the conflict in the Rann of Kutch by the tribunal that in 1968 upheld India's claim over 90 percent of the disputed area, largely correlating with what the GOB had long-maintained. The dispute over Sir Creek lay dormant until the 1980s, when the prospects of hydrocarbons emerged and UNCLOS III was approved to define the use and exploitations of the sea by various states and claims over their respective territorial waters. In the late 1980s when India and Pakistan began discussing the Sir Creek dispute; the past rulings, documents, maps, communiqués, notes, and other related pieces of information were exchanged extensively. Throughout the 1990s both sides have extensively exchanged these documents and information at every meeting; this has allowed them to identify the problem, focus on problem areas, and also define the nature of the dispute.

In this way, they had made their views and standpoints categorically clear to each other, and as a result were able to develop a common understanding and move forward in their discussions. Whatever piece of information existed in the records was available to both sides. The only sticking point turned out to be the approach that was to be adopted in determining the maritime and land boundaries. The purview of the 1968 tribunal award ended at the top of Sir Creek, leaving the area

below there in Sir Creek untouched, which led to India and Pakistan conducting the joint survey to determine the boundary pillars on the land according to the tribunal award.

The linkage of the land and maritime boundary remains at the heart of the present dispute along with questions regarding the type of approach that should be followed to delimit and demarcate the boundaries. Together, the technical experts from both sides have extensively explored various techniques and have also discussed the authenticity of various maps and documents. Admiral Vohra has revealed that the "Halifax Track Two Group," consisting of retired naval officers from India and Pakistan, has at length discussed all relevant aspects of the dispute and its feasible settlement, doing so in a free, fair, and amicable spirit, much to the amazement of foreign sponsors and participants, who normally associate tension and heated arguments with the India-Pakistan engagement.³⁰

Agreement

India's and Pakistan's successes in the dispute so far, and the general feeling of optimism prevailing in strategic, academic and media circles outside the government indicate closure of the dispute sometime soon. There remains no ambiguity on either side over the prospect that an agreement will be a win-win outcome for both sides, due primarily to the economic dividends it will yield to both. The clear and present possibility of losing their maritime zones for international use as "international waters" is also a catalyst for a mutually agreed solution.

All facts and figures have been discussed, and numerous maps have been exchanged and redrawn based on new discoveries of facts. The only impediment remains in the fixing of their maritime and land boundary and, whatever approach is adopted, both sides must recognise that either approach is feasible and that the resulting demarcation would not be much off the mark.

Conclusion

The international tribunal that in 1968 resolved the Rann of Kutch dispute excluded from its purview the border from the mouth of Sir Creek to the top of the creek eastward—a boundary that was in principle agreed upon by both India and Pakistan. With growing speculation regarding large reserves of hydrocarbons in the area, both sides turned their attention to this demarcated border with the purpose of fixing the boundary on land and sea (maritime boundary) to determine their respective EEZs.

A basic technical disagreement has persisted over linking the Sir Creek land boundary demarcation with the maritime boundary demarcation, yet this dispute is an apt example of how shared interests in the resolution of a conflict can encourage disputants to adopt an accommodating approach. Ripeness for negotiations became evident around 1989, following the ascent to power of Benazir Bhutto, who was keen to achieve peace with India. In addition, Bhutto and Rajiv Gandhi wished to capitalise on negotiation momentum over Siachen, underway since 1984. Unlike the Kashmir and Siachen disputes, Sir Creek had evoked little interest and urgency until both sides recognised the enormous economic dividends that its resolution promised.

Realising that, as per the UNCLOS, their disputed maritime zone would be declared as international waters should they fail to resolve the disagreement, a sense of urgency and purpose became discernible in their deliberations. One positive outcome of this renewed willingness was the 2004 agreement to conduct the joint survey of the boundary pillars in the Sir Creek area, which was completed in 2007. This indicated that the dispute was fast becoming ripe for resolution. The lone remaining credible challenge hinges on solving whether the boundary lies in the middle of the Sir Creek (the Indian position) or that it runs on the eastern bank (the Pakistani position). Encouragingly, after the drawing of the second set of maps following the joint survey, both sides will have a much clearer understanding of the topographical and cartographic facts. In sum, the dispute has shown that India-Pakistan has the capability to make compromises and bring about changes, even in their hardened official positions, to reach a compromise for a win-win outcome.

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