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## The Sanctions on Iraq: Some Issues for an Inquest

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### Abstract

### Endnotes

## Introduction

Responding to Iraq's invasion of Kuwait in August 1990, the United Nations Security Council, in SC Resolution 661 (August 6, 1990), imposed economic sanctions on Iraq and established a sanctions committee to oversee them.[1] The sanctions exempted medical supplies, food and other humanitarian items, but the embargo on Iraq's exports, primarily oil, naturally affected Iraq's ability to purchase such goods. Following the air and ground campaign against Iraq in early 1991, the sanctions continued under SC Resolution 687 (April 3, 1991). They were tied to the Iraqi Government complying with the obligation to disarm its programs for the production of weapons of mass destruction and of certain ballistic missiles, and to implement a monitoring scheme to block any resumption of production. Iraqi compliance would be reviewed periodically, but the sanctions would stay in place barring a positive decision to remove them. The probable expectation was that the sanctions would be removed reasonably soon, as the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA) — the two agencies mandated under the Resolution — carried out their tasks. This, of course, has not been the case.

SC Resolution 712 of September 19, 1991, allowed a partial lifting of the ban on Iraqi oil exports, but it was not until SC Resolution 986 (April 14, 1995) and a subsequent agreement with Iraq on May 20, 1996, that shipments were allowed under the "Oil for Food" program. The first shipment arrived on March 20, 1997. The sanctions have continued in force since then, although the amount of oil which Iraq is permitted to sell has been revised upwards.[2] This relief continued, despite the Anglo-American air strikes on Iraq in December 1998, and the withdrawal of UNSCOM and the IAEA. A revised inspection system was created under SC Resolution 1284 (December 17, 1999) but it is yet to be accepted or implemented by Iraq.

As the prospect of war in the Gulf grew in the Fall of 1990, several voices for peace called for giving the economic sanctions "time to work." For many, this most likely meant "anything, for however long, but the use of force." Sanctions were clearly viewed as an alternative to force, although they could also have better been viewed as merely one set of rungs on a ladder of escalation. As in the story of "The Monkey's Paw," proponents of sanctions have generally received what they sought — in the most terrible way. Sanctions, it turns out, may be bloodless but deadly in ways that armed force is not. While some herald sanctions as an alternative to fighting, many now condemn them as potent "weapons of mass destruction."

Opponents of the sanctions demand that they be lifted, pointing to the tremendous suffering of the Iraqi people under the sanctions as justification for their position. Various studies, including those conducted by the United Nations and its

agencies, have focused on the impact of the sanctions on the Iraqi population,[3] and senior U.N. officials dealing with humanitarian relief have resigned in protest.[4] Pressure has been mounting steadily, and has most recently led to a study of the United Nations' use of sanctions by the International Peace Academy.[5] While SC Resolution 1284 extensively addresses the economic sanctions, it provides for the suspension of the sanctions (on adequate assurance of Iraqi compliance and for renewable periods of 120 days), rather than for their removal.[6] The sanctions continue in force since Iraq refuses to accept the terms of the Resolution.

This article briefly notes some general issues raised by the sanctions regime: the complex relationship among law, morality and politics; its objectives, targets, and effect; and alternatives to the current sanctions regime. Some conclusions are tentatively derived which suggest, in part, a reworking of the sanctions regime. However, opponents of the current economic sanctions should be uncomfortable with both the reasoning behind, and the potential implications of, this suggestion since these will undoubtedly depart significantly from, and pose challenges to, their own thinking. There is more than a small degree of *schadenfreude* in the line of argument developed here.

In the discussion which follows, neither UNSCOM nor any successor disarmament and monitoring regime is discussed. For the purpose of the article, it is taken as a given that Iraq is indeed in significant non-compliance with SC Resolution 687.[7] The objective of disarming Iraq and then monitoring its activities in the areas of weapons of mass destruction and in the production of ballistic missiles is assumed, and is taken as the sole authorized purpose of the economic sanctions, under the terms of SC Resolution 687. While the sanctions regime may serve other policy objectives as well, these, it is argued, may be precisely a problem for the sanctions regime.

### **Law, Morality and Politics**

Various snares and diversions await attempts to consider policy issues in terms of the interplay of law, morality and politics. One of these is to treat the political issues raised by the sanctions in isolation from the moral and legal issues. One potent moral basis for calls for the removal of the sanctions is the suffering of the Iraqi people. Whether genuine or simply a shield for other, less altruistic purposes, the political appeal and the implications of this concern cannot be doubted. Although the economic sanctions are instruments of policy, to discuss them in the absence of questions of law and morality could prejudice their legitimacy, with obvious political consequences.

However, to focus exclusively on law and morality in isolation from issues of high policy could fairly invite the comment made by former United States Secretary of State Dean Acheson at a panel on the legal aspects of the Cuban Missile Crisis. The topic, he said, reminded him of the story of two people discussing the quiz show scandals. One remarked that the scandals presented serious moral issues, to which the other replied "And I always say that moral issues are more important than real issues." [8] Acheson's audience, the American Society of International Law, was understandably and properly aghast at this remark, but it is not without its point. Moral and legal analysis may help to sharpen our understanding of the nature and implications of policy issues. However, discussions of "morality" easily become mere cathartic occasions where we establish our moral credentials and the wickedness of our opponents, with little or no reference to the hard problems of applying moral principles in real circumstances. Similarly, an attention to legal issues might degenerate into a sterile formalism equally divorced from reality. In both cases, the moralizer and the "legalizer" are apt to be ignored by the policy-maker. [9]

The sanctions on Iraq need to be examined in their own right, but the political issues and problems surrounding their application and impact must also be kept in mind. If the policies adopted by states *vis-à-vis* Iraq are ill-conceived, in what sense and to what degree could the economic sanctions regime be meaningfully accepted in law and morality as well as politically? If the political objectives served by the sanctions are themselves acceptable, significant and pressing, how much

concern for the niceties of law, and how much suffering of innocents (often inherent in sanctions) will be acceptable? If the general policy of states towards Iraq is sound, but the current sanctions regime is still unacceptable, or even both ineffective and damaging, what modifications or alternatives are possible?[10]

## Some Specific Issues

### Objectives

The objectives of the economic sanctions under SC Resolution 687 are clear and significant, but also limited: they are to support measures for the identification and destruction of certain Iraqi weapons capabilities, and the subsequent monitoring of Iraq. Once an on-going monitoring system was in place to ensure that these programs were not being restarted, the sanctions were to be removed. There are significant operational issues and legal questions that arise.

It is not clear how effective sanctions have been or can be, for example in comparison to the continued threat and sporadic use of force. They may initially have been a factor in Iraqi compliance, together with the shock of vast and swift military defeat. Rolf Ekeus, former head of UNSCOM, has argued their necessity. [11] It is possible that, absent the sanctions, there would have been less Iraqi compliance. The question is: are they effective now, or has the Iraqi regime simply adjusted to them? The Iraqi Government's slow, grudging yielding to UNSCOM, the need for sporadic threats and actual use of force, and the lack of progress since the withdrawal of UNSCOM, do not suggest that the sanctions in and of themselves are now effective in bringing pressure to bear on the Iraqi Government.

There are concerns that, without the sanctions, monitoring activities would shortly be ended. Yet, under the terms of SC Resolution 687, the sanctions are to be lifted once the disarmament phase is completed and the monitoring phase is fully implemented. It is not clear that SC Resolution 1284 changes this. If Iraq complied with the disarmament and verification provisions, and the sanctions were accordingly removed, the basic technical knowledge would still exist, as would opportunities for circumventing technological embargoes and the monitoring system. The basic technologies for the production of weapons of mass destruction, and for some delivery systems, are fundamentally mature technologies, increasingly within the grasp of several moderately developed states.[12] Thus, while sanctions may have some role in the disarmament process, they have a more limited relation to long-term concerns about Iraqi weapons capability.

It is also unclear how much verification is enough. As much assurance as possible is certainly desirable. However, while 100 percent assurance of compliance may be a politically popular position, it is logical nonsense: one cannot absolutely confirm a negative. Indeed, the observation that "anything which has been successfully hidden has never been found" would tend to rule out "absolute" assurance as impossible.[13] If absolutely complete assurance is impossible, even under the best of conditions, is 95 percent assurance sufficient? This is further complicated, of course, by Iraq's record of non-compliance: how would we know even 95 percent if we saw it? The regime has destroyed its own credibility through its conduct to date: it has engaged in systematic and persistent deception and obstruction; it has admitted only to what it thought was already known; it has tried to erode in detail any obligations it has agreed to in general; and it has demanded the benefit of an assumption of good faith when its bad faith has been self-evident. If the removal of sanctions is linked to credible compliance, then the Government of Iraq has damaged its own cause by its conduct. This might also be reflected in the suspension approach of SC Resolution 1284.

If the operational linkage between the sanctions on the one hand and their technical objectives on the other may now be questioned, their legal purpose may be subject to politically-damaging strains. American activities in general have made it clear that the removal of the current Iraqi Government is one US objective and that the sanctions are viewed as an instrument in support of this end.[14] Under the terms of SC Resolution 687, a positive decision was needed for removing the sanctions. Under SC Resolution 1284, a positive decision (in the sense of a

favorable report from UNMOVIC) would seem necessary for the renewal of their suspension; lacking this, the suspension would automatically terminate. American statements support the belief that the continuation of the sanctions could be disconnected from their ostensible purpose, and that they could continue regardless of compliance issues, which would be reduced to mere justifications. [15] The variation between the apparent American purpose for the sanctions and their ostensible purpose under the resolutions increases the political vulnerability of the sanctions regime.

## Targets

Economic sanctions may be used primarily to mollify one's own population to respond innocuously to demands that one "do something." They may be more or less symbolic expressions of displeasure with a foreign government. If they are meant to be meaningful, sanctions could be aimed both directly and indirectly at the target government. Indirect targeting applies the sanctions to groups which might then influence that government. We are familiar with the United States targeting steel imports from Canada in retaliation for our recent magazine bill. It is no coincidence that the Minister of Canadian Heritage riding is in Hamilton: this is very precise but indirect targeting. Indirect targeting may of course backfire if shared suffering builds morale or leads to increased support for the target government rather than to increased blame placed on the target government for the plight of those in the "line of fire". It may also fail if the groups affected are incapable of exercising significant influence on the target government.

Indirect economic sanctions seem to be failing in Iraq, but at great cost to the population. This is due in part to the nature of the ultimate target as well as to the nature of the sanctions. Prospects for indirect targeting diminish as the target government is less responsive to domestic pressures. Iraq is a dictatorship, with a particularly bad human rights record and an effective internal control apparatus. The Iraqi regime values its own survival highly, even at the expense of its own population. Prospects for a sanctions-stimulated change of regime appear slim to a casual observer. Thus, there is a major disconnection in one important process through which we expect sanctions to have an impact. If this is the case, the utility, as well as the morality, of continuing the sanctions may be questioned.

An alternative could be to focus sanctions more directly on the government or its activities of concern. More direct targeting might be employed, but the efficacy of this would be a concern. Confining sanctions merely to weapons-intended technologies would not guarantee anything more than an inconvenience to the Iraqi Government, given the overlaps between the relevant weapons technologies and civilian capabilities. On the other hand, including dual-use technologies in the sanctions could radically extend the scope of sanctions: for example, if you can make vaccines, you can make the central component of biological weapons, and verifying non-production could be an extremely difficult task. [16] While it would be both possible and prudent to continue controls on weapons-usable technologies, a sweeping definition of these may lead to little marginal gain on the control side while clearly exacerbating the problems of humanitarian relief on the other, and thus contribute significantly to the political difficulties of the sanctions regime. Other sorts of sanctions, more precisely focused on the government in terms of assets, travel, etcetera, might at best have a harassing or symbolic quality.

## Effects

The effectiveness of economic sanctions as an instrument of policy is a matter of considerable debate. [17] Recent allegations about sanctions-busting in Angola illustrate the problems of making U.N. sanctions "leak-proof" when states are apparently unwilling to fulfill their obligations under the Charter. [18] Some estimates of the leakage of Iraqi oil run as high as 100,000 barrels per day. [19]

Leaving aside these particular issues, there is the question of the effects of the sanctions on the Iraqi population. Former Secretary-General Boutros Boutros-Ghali has argued that sanctions are intended to modify behavior, "not to punish or otherwise exact retribution." [20] It might be argued that economic sanctions in

general need not involve the punishment of innocents. However, a combination of both indirect targeting and the sweeping nature of the economic sanctions against Iraq makes damage to innocents both intentional and significant. There is a considerable irony here, of which proponents of sanctions as an alternative to the use of force are now more fully aware. It is worth recalling that the League of Nations' interest in sanctions as an instrument of policy to be used prior to any forceful means was linked to the effect of the Allied blockade on Germany in World War I—a blockade that, indirectly, may have contributed to tens, if not hundreds, of thousands of civilian deaths. Sanctions that are not meant as a domestic sop, a mere symbol of displeasure, or a mere inconvenience, are meant to hurt. By their frequent indirect nature, they are meant to hurt the innocent.

In this particular case, it seems rather clear that the sanctions have had a very damaging effect on the Iraqi population.[21] Whether the gain from sanctions is worth the cost is precisely the issue presented by opponents of the sanctions, at least when they acknowledge the possible gain (but here, also, the problem of the specific objectives of the United States arises to confuse and divert attention). Specific estimates concerning infant and child mortality and other effects may be disputed in some cases. Lopez and Cortwright, for example, note claims that 567,000 children have died, but they point out the difficulties of these estimates—including dependence on Iraqi Government data by the Food and Agriculture Organization and the World Health Organization. They nonetheless characterize the effects as "an appalling tragedy," even if on the scale of 200,000 deaths of all ages.[22]

Some more technical issues arise concerning these effects, specifically concerning the operations of the Sanctions Committee (the 661 Committee) and the "Oil for Food" program on the one hand, and the responsibilities of the Government of Iraq on the other. Both have been the target of recommendations in the Secretary-General's recent report, S/2000/208. On the one hand, the Sanctions Committee, specifically Britain and the United States, have delayed approvals of about 1000 contracts. On the other hand, the Iraqi Government is also remiss. Problems within Iraq are clearly one set of factors, and raise charges that they are in fact deliberate. It is worth recalling that it took considerable time before an "Oil for Food" program acceptable to the Iraqi Government was negotiated and implemented: to what extent do estimates of hardship reflect this very considerable delay? Why does Iraq occasionally reportedly either disrupt or threaten to disrupt the movement of supplies, or delay agreement to expand oil sales?[23] There are other concerns about the role of the Iraqi Government in the relief effort, including charges of profiteering on smuggling, shifting expenditures away from food and health programs as the "Oil for Food" program has developed, and using distribution systems as a tool of political control, and grain exports.[24]

There are also reports that the lowest level of success in the "Oil for Food" program has been in areas of Iraq controlled by the Iraqi Government, though some of this may be due to demographics.[25] The American Government has pointed to this and other data to argue that the sanctions in fact do permit adequate relief, but that the Iraqi Government is the primary cause of the Iraqi people's unnecessary suffering. Others dispute placing all the blame on the Government of Iraq.[26]

### **Alternatives to the Current Sanctions Regime**

Given the problems associated with the current sanctions regime as applied to Iraq, and with sanctions as instruments of policy more generally, what possible lines of response might be considered? These could include the following: first, retaining the basic sanctions regime but remedying its apparent defects; second, reducing or removing the current sanctions but with some other possible coercive apparatus retained; third, development, for this case and for the future, of an enhanced, better-targeted and less indiscriminate legal and operational sanctions method; and fourth, simply ending all coercive efforts directed at the Iraqi Government. This last, of course, would be more a question of high policy regarding the objectives which the sanctions serve rather than simply of the sanctions themselves.

The first three sets of measures face a general problem: if sanctions are meant to be punitive and a deterrent, and if they function in significant part through the indirect generation of pressure on a target government, how much can they be reduced, targeted, and permitted effective humanitarian exceptions without ultimately undermining their policy effectiveness, debatable as this might already be? This is a basic difficulty. A broad legal and operational model for sanctions which compromised their effectiveness would probably be disregarded, thus bringing both the model and international law into disrepute. If applied and found ineffective, such a model would either reduce the enforcement capacity of international law or see enforcement efforts switch to other coercive instruments, including the military. Opponents of the economic sanctions on Iraq, and those who are moved more generally to define such sanctions as "weapons of mass destruction," unless they can convincingly argue that Iraq is in substantial compliance with SC Resolution 687, ignore this at their peril.

The first general line of response is to ameliorate the humanitarian effects of the current sanctions regime. It might be possible to streamline the processes related to the supply of humanitarian aid, to ensure the speedier, more effective and less political delivery of relief, and to ensure the more effective mobilization and direction of both international and national relief capabilities, for example along the lines recommended in S/2000/208. However, if the focus is on ameliorating the effects of the sanctions, this has certain implications. First, it accepts the sanctions as a useful—even if limited—policy instrument for the disarming and monitoring of Iraq. Some problems in this connection have been noted above. Second, insofar as some of the defects in the operation of the sanctions regime can be traced to the Iraqi Government, and not simply to the United Nations mechanisms, the Iraqi Government must face its responsibility for this consequence and it should accordingly be made a target of efforts to modify its behavior. But how can this be done?

The second general line of response would be to "ratchet down" the current sanctions as a reward for compliance and as an incentive for further compliance. The ratchet possibility is interesting but while it rewards compliance, it may not address the problems of assessing the state of compliance. The suspension approach of SC Resolution 1284 may give some leverage here, but Iraq has yet to accept it. Further, while positive incentives might generate further compliance, they might also simply reduce the effectiveness of sanctions in remaining areas of difficulty. It might therefore be necessary to retain a credible capability and willingness to ratchet sanctions upward as needed, and/or to supplement or replace them by other coercive means. However, it is not at all clear that the level of coercion could easily be ratcheted upwards once it is initially lowered or removed altogether. It is not so clear that the suspension approach can avoid this, in political if not legal terms.

These problems with ratchets are also implicit in the approach suggested by retired Canadian General Lewis MacKenzie in February 1998. Advocating the removal of all sanctions as a humanitarian gesture, General Mackenzie said:

Having shown compassion for the Iraqi people on the one hand, and having removed one of Mr. Hussein's primary objections to the U.N. inspection program on the other, the international community would be on a much firmer moral footing if the Iraqi leader were to interfere in future. If, for example, he were subsequently to block U.N. inspection teams, I would have no qualms in supporting the methodical elimination of his military capability by allied forces with Canadian participation.[27]

It is unclear that such an attack would receive support from the U.N. Security Council; failing this, these sorts of measures would probably fall under the same legal arguments as the Anglo-American air campaign of 1998.[28]

Third, over the longer term, one could support the development of a more articulate law and a set of international policy mechanisms to govern sanctions. Development of a more detailed mechanism which could fit more coherently into existing

structures of international law, while permitting effective action without extensive undesired "collateral damage," would, however, be a complex, difficult and time-consuming project. As well, whether or not feasible or desirable in the longer term, it would not present any immediate relief to the population of Iraq. However desirable as a more general long-term legal objective, then, it is irrelevant to the current topic.

So are some other possible lines of response. One might wish for a longer term solution to the entire problem of weapons of mass destruction in the Middle East. This would presumably recognize that Iraq, as well as other countries in the region, has legitimate security concerns that a stable solution would either have to solve or repress. Such a project, however, would still not constitute an immediate response to the sanctions problem. It would be long term at best, and a distraction or a counsel of perfection at worst. It would face numerous uncertainties in its own right. At the least, policies to control the situation for the interim would be needed. Arguments in this vein are not a real alternative to facing the sanctions issue.

### **Some Conclusions**

This brief foray into the complexities of the economic sanctions imposed on Iraq suggests some initial, first order approximations for some conclusions. Their basic premise is the validity of concern about a continuing interest by the Iraqi Government in the production and acquisition of weapons of mass destruction and of ballistic missiles and other delivery systems. These conclusions are not based on any other policy objectives (such as the removal of the current Iraqi Government), and thus might not be sustainable from the perspective of these other objectives. The initial conclusions, as one might surmise from the discussion above, tend to favour the opponents of the current sanctions regime. However, their rejoicing would be premature.

The following seem *prima facie* reasonable assumptions and arguments:

1. There is a disconnection between the population of Iraq and the Government of Iraq in the sense that pressures on the population in general seem unlikely to result in successful pressures on the government to modify its behavior. The sanctions in essence are hitting the wrong people, in that their direct target is relatively incapable of bringing effective pressure to bear on their ultimate target.
2. More specifically targeted sanctions, for example, closing air links, freezing assets of leaders, etcetera, could be devised, as could other measures such as selective export embargoes on certain sensitive items. However, these would likely have only a limited effect.
3. There also appears now to be a disconnection between the objective of the sanctions under Resolution 687 and the current situation. The sanctions no longer seem able to serve that objective. The Government of Iraq seems to have adapted to them, and indeed reaps a political profit from them.
4. It is without a doubt true that the Iraqi Government has been largely responsible for its own misfortunes and for the misfortunes of its people. This is true in general and in the specific case of sanctions. If the sanctions regime was to be retained but ameliorated, very specific issues about the performance of the Iraqi Government would have to be addressed.
5. However, if one accepts the two disconnections argued above, the responsibility of the Iraqi Government is irrelevant to any consideration of whether or not the current sanctions should continue. The issue is not responsibility, but effectiveness. The Government of Iraq is not significantly punished for its responsibility

through any continuation of the current sanctions. It is not clear to what degree it is inconvenienced. Indeed, its ability to manipulate the mechanisms of the sanctions may strengthen its position *vis-à-vis* its population.

6. Therefore, the existing sanctions should be removed, not merely ameliorated.

This is a strong line to take, one which would be welcomed by opponents of the current sanctions regime. The details required for implementing even a modest version of it are considerable and pose numerous difficulties. However, let it stand for the moment. For opponents of the sanctions, given our assumption of substantial Iraqi noncompliance, the real problem lies in:

7. But something else is needed to fulfill the stated objectives of the sanctions regime.

Ending the current sanctions regime would undoubtedly be presented by the Iraqi Government as a victory. However, this should not affect these conclusions. It could be made clear that the removal of these sanctions was purely for humanitarian reasons and did not imply any "clearing" of Iraq with respect to compliance with the terms of Resolution 687. That point could be driven home by the retention or institution of other, more precise sanctions targeted directly at the Iraqi Government. These would have some hindrance value but they would also perform a symbolic function of maintaining the principle of sanctions. Removal of the current sanctions could help to reduce any spill-over of sympathy for the plight of the Iraqi population to the government, would reduce the distraction from the issue of Iraqi noncompliance, and could possibly result in stronger support for a different package of actions to obtain or enforce compliance.

If we accept for the sake of argument that keeping the current sanctions will not likely generate additional Iraqi compliance with Resolution 687, neither will their removal address the compliance problem. Any desire to remedy the humanitarian situation should not lead us merely to ignore the weapons problem. If the irrelevance of the sanctions to that problem is precisely why they should be removed, it is also why alternative measures are needed to deal with the weapons problem.

What could be included in such measures? Export controls to cover sensitive knowledge, technologies, equipment and materials would be needed. So too, would continued, significant surveillance of Iraqi Government activities. Extensive interstate cooperation and information-sharing would be needed to cope with the clear possibility of smuggling and other measures designed to defeat efforts to control the spread of weapons of mass destruction. Such broad multilateral mechanisms already exist in partial form in various export control regimes (Wassenaar for conventional weapons, the Nuclear Suppliers Group for nuclear and related dual-use technologies, the Missile Technology Control Regime, the Australia Group for chemical and biological weapons-related technologies and materials, and efforts to deal with nuclear smuggling). The Iraqi situation would thus have to serve as a stimulus and proving-ground for the further development of such mechanisms.

However, a conclusion unpalatable to many must follow. Given the nature of the technologies to be controlled, the inherent difficulties of control and surveillance in this area, the level of personnel and financial resources available to the Iraqi Government, and its demonstrated resourcefulness in obtaining foreign inputs and combining these with its domestic capabilities, these various measures give no guarantee of success, whether alone or in combination. Given this, one might reasonably anticipate one final, also fallible, control measure: the sporadic application of force to Iraqi Government assets and to specific suspicious facilities when evidence of its weapons-related activities seems strong. Whether we like it or not, this remedy will occur to others.



Facing the likely real consequences of substantial modification of the sanctions regime, as opposed to some idealized situation which refuses to address the reasons why they were embodied in SC Resolution 687, opponents of the current economic sanctions against Iraq must now face a cruel dilemma: do they really want the reasonably foreseeable consequences of what they profess to want? Moral choices, in real terms, may be hard choices.

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