

International Military Manuals as Sources of Law or Guidance for Best Practice in Military Operations

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1. Introduction

The decades between 1970 and 2010 were a fertile period for the development of international humanitarian law ('IHL') by way of negotiating and adopting treaties. The 1977 Additional Protocols to the Geneva Conventions of 1949 are probably the best known and the most influential. The 1980 Convention on Certain Conventional Weapons is also well known. Up until the 2008 Convention on Cluster Munitions, a number of separate treaties covering various kinds of weaponry were adopted and additional protocols to existing conventions saw the light of the day, such as the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. Since 2008, no such treaties have been adopted.¹ There seems to be a certain 'treaty fatigue' among nations.

In contrast, there has been a remarkable growth in international military manuals coinciding with the decline in treaty production. The present brief gives an overview of this development, the reasons for it, as well as some insights on how such manuals are developed and their influence.

National military manuals also have a place in this discussion. But this brief cannot dive deeply into this theme. Readers may instead refer to the third edition (2023) of *National Military Manuals on the Law of Armed Conflict*, edited by Nobuo Hayashi.²

The present author has participated in the development of several international manuals, and much of what is said below is, therefore, based on his own recollections.

2. The Beginning – Naval Warfare

The International Institute of International Law adopted a Manual on the Laws of Naval War in 1913.³ In 73 articles, it summarized relevant treaty and customary law seen to apply then. As novel weapons were fielded and tactics developed, new treaties were adopted and old manuals became outmoded.

In 1988, after a preliminary conference in San Remo in 1987, the International Institute of Humanitarian Law at San Remo ('IIHL') decided to launch a process to develop a new manual, which became the San Remo Manual on Naval Warfare, completed in 1994 and published with

commentary in the following year.⁴ A plan of action was adopted at a meeting in Madrid and a structure for the work developed fairly quickly.

Members of the Institute, persons attending conferences by the Institute on a regular basis, as well as other resource persons were among those invited to join a quite open project. The Manual lists 57 participants and 95 associated experts and observers. In practice, there was a core group of about a dozen persons, while others attended depending on the main theme of each particular session and by which institution it was hosted.

How was the work organized? The basis of the work was yearly meetings of the group of experts from 1989 until 1994, chaired by the IIHL President (then Professor Jovica Patrnogić), and prepared by papers produced by one or more selected rapporteurs distributed among the experts for comment. The comments were then considered by 'mini-rapporteurs' (typically one per chapter in the report) who summarized them and proposed adjustments to rules proposed by the main rapporteur. This work was organized in an excellent manner by Louise Doswald-Beck of the International Committee of the Red Cross ('ICRC').

The so-called black-letter rules were accompanied by an 'explanation' or comment prepared by a group of eight persons, originally named the 'harmonization group'. One might expect that when work was made by a large number of people over several years, a formulation at one end of the document did not match another at the other end. If such harmonization was ever found to be necessary, I did not notice it.

Was the ambition to merely restate existing law, or was there an element of progressive development? A foreword to the 2005 re-issue stated that the Manual is a "contemporary restatement of the law, together with some progressive development, which takes into account recent State practice, technological developments and the effect of related areas of the law".⁵ Of technological developments, anti-ship missiles which could hit beyond visual range, can be mentioned. Of related law, the 1982 Law of the Sea Convention was important.

At the time, a general feeling of progress and development of IHL prevailed. The 1977 Additional Protocols had been ratified by a high number of States, and it was believed by many that they would ultimately be adopted by more or less all. Additional Protocol I introduced certain general principles, such as the 'principle of proportionality' – more precisely a prohibition against wilfully causing excessive and foreseeable incidental effects on civilian persons and property when attacking a lawful target. The concepts of 'military objective' and 'military advantage' were also developed in Additional Protocol I. It was taken for granted that such general rules and principles could be applied beyond the scope

¹ The Treaty on the Prohibition of Nuclear Weapons of 7 July 2017 (<https://www.legal-tools.org/doc/904f7b/>) could be considered an exception. It concerns, however, a highly political issue and there is currently not much hope for accession by nuclear powers. The Arms Trade Treaty of 2 April 2013 (<https://www.legal-tools.org/doc/98bf89/>) could also be mentioned, but it concerns disarmament rather than IHL proper.

² Nobuo Hayashi is Associate Professor (Docent) and Senior Lecturer at the Department of International and Operational Law, Swedish Defence University. See Nobuo Hayashi (ed.), *National Military Manuals on the Law of Armed Conflict*, 3rd ed., Torkel Opsahl Academic EPublisher, Brussels, 2023 (<https://www.toaep.org/ps-pdf/2-hayashi-third/>).

³ Institute of International Law, *Oxford Manual on the Laws of Naval War Governing the Relations between Belligerents*, 9 August 1913 (<https://www.legal-tools.org/doc/h2pkp45q/>).

⁴ See IIHL, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 12 June 1994 (<https://www.legal-tools.org/doc/118957/>). For commentary, see Louise Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge University Press, 1995.

⁵ Ambassador Hector Gros Espiell, "Foreword", in Louise Doswald-Beck (ed.), 1995, p. ix, see *supra* note 4.

of Additional Protocol I, strictly read, but this has, in some instances, been contested.

In terms of project costs, many participants had their expenses covered by their employers, but some academics needed financial support (and expenses for meeting facilities, dinners, local transport *et cetera* needed to be covered somehow). The 1991 meeting took place in Norway and the funding was very much *ad hoc*. Entities such as the Norwegian Red Cross Society and the Norwegian Shipowners' Association contributed, and the host (Haakonsværn Naval Base) provided services in kind.

In the end, the project was successful. The final product was widely accepted, its provisions adopted in many national manuals. Later on, criticism and disagreements have naturally surfaced, as discussed below.

3. Later Developments

3.1. The 2005 Customary Law Study of the ICRC

The ICRC Customary Law Study is not exactly a military manual, but it has clear similarities. It contains 161 rules, mostly on IHL, each followed by a comment. Some of the rules are about war crimes and the duty to prosecute. It does not include rules on naval warfare, which was considered adequately covered by the 1994 San Remo Manual.⁶

A substantial number of experts participated, particularly in providing information on State practice from their respective home jurisdictions and in consultations.

Later manuals could lean on the Study to a considerable extent, but, unfortunately, it was not met with universal approval. Some critical comments were symptoms of an 'Atlantic gap' which had widened since the United States of America decided not to ratify the 1977 Additional Protocols or the 1998 Rome Statute of the International Criminal Court.⁷

3.2. The 2006 San Remo Manual on the Law of Non-International Armed Conflict

In 1998, on the initiative of Dr. Dieter Fleck, work was initiated at the IIHL in San Remo to develop a manual for non-international armed conflict ('NIAC').⁸ Treaty law on NIAC was (and still is) mostly limited to common Article 3 of the 1949 Geneva Conventions and their 1977 Additional Protocol II.⁹ Some developments of customary international law could be seen, and the 1998 ICC Statute included certain war crimes that could be committed in NIAC, thus presupposing corresponding rules in IHL.

NIACs are, however, more complicated from a legal point of view than warfare between States. The status of the armed opposition fighter is one thing, the role of human rights law another. Such fundamental issues delayed the work to develop concrete rules, and the project ran out of funds. A time frame of three-four years had been indicated to the Norwegian Ministry of Foreign Affairs (the main funder), but, following three expert meetings, it was evident that more time and funds would be needed. The IIHL appointed a small drafting committee who finalized the work, producing a workable manual. Although its rules are not necessarily controversial, it does not benefit from the broad support and approval of a substantial number of experts that could have adopted it, granting it a status similar to the 1994 Manual.

3.3. The 2009 Air and Missile Warfare Manual of Harvard's Humanitarian Policy and Conflict Research

A commission of jurists developed the Hague Rules on Air Warfare in

⁶ See Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law Volume I: Rules*, Cambridge University Press, 2009 (<https://www.legal-tools.org/doc/78a250/>).

⁷ See, for instance, Michael N. Schmitt and Jelena Pejić (eds.), *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein*, Martinus Nijhoff Publishers, 2007.

⁸ Michael N. Schmitt, Charles H.B. Garraway and Yoram Dinstein, *The Manual on the Law of Non-International Armed Conflict with Commentary*, International Institute of Humanitarian Law, San Remo, 2006 (<https://www.legal-tools.org/doc/ccf497/>).

⁹ It should be mentioned that several treaty prohibitions on certain weapons have attained customary law status and are binding also in NIACs. And the Second Protocol to the Hague Convention on Cultural Property of 26 March 1999 (<https://www.legal-tools.org/doc/7d8622/>) provides explicitly that the Protocol shall apply in NIACs (Article 22).

1923.¹⁰ The commission was appointed by the Washington Conference of 1922 on the Limitation of Armaments which, incidentally, led to a treaty with considerable importance for the size and number of warships. The Hague Rules were not adopted in treaty form, but became highly influential in the development of customary law.

Eighty years later, in 2003, it was time to have a fresh look at the law. A project was initiated under the umbrella of Humanitarian Policy and Conflict Research ('HPCR') at Harvard, funded by Switzerland. The project to develop a manual for air and missile warfare was connected to the 'Alabama process', a series of consultations between interested governments with a view to strengthening IHL. The initiator and academic leader was late Professor Yoram Dinstein (Tel Aviv University), and Claude Bruderlein of the HPCR served as project manager. A group of 37 experts were invited to participate and, in contrast to the 1994 San Remo project, the group was fairly stable. The preparations were not quite so elaborate, consisting of reports that were discussed in plenary meetings (without the 'mini-rapporteurs' as an intermediate layer).

In its general structure, the HPCR Air and Missile Warfare Manual was to resemble the 1994 San Remo Manual, consisting of black-letter rules, each followed by a comment. The comments were, however, more systematic by indicating the source of the language, whether it was considered customary law, any disagreements among the experts, explanations of various terms used, and, at the request of governments in the 'Alabama process', indication of whether the rule was applicable in NIACs. Examples could also be provided. Like the 1994 San Remo Manual, it also integrated related parts of international law, in particular, the 1944 Chicago Convention on International Civil Aviation, from which certain definitions and rules were taken. The Manual was completed with commentary in 2010.¹¹

3.4. The 2013 Tallinn Manual on the International Law Applicable to Cyber Operations

In 2007, Estonia fell victim to malicious cyber operations. This led to the establishment of the Cooperative Cyber Defence Centre of Excellence of the North Atlantic Treaty Organization (NATO-CCD-COE) in Tallinn. A few years later, a project on developing an international manual on the law of cyber operations was initiated under the leadership of Professor Michael N. Schmitt (United States Naval War College and University of Exeter). Some 18 experts, four observers and a number of peer reviewers were involved, resulting in a manual in 2013.¹²

The Manual follows the pattern established by the San Remo and HPCR manuals in that it consists of a number (95) of black-letter rules with a comment on each rule.

In 2017, an expanded version, the Tallinn Manual 2.0, was issued.¹³ It expands on the first edition by covering the international law governing cyber warfare to peacetime legal regimes. A roughly similar number of experts and observers were involved. This expansion is important, since cyber 'attacks' can be an important component of so-called 'hybrid warfare' – a term which originally referred to operations that could straddle the threshold of armed conflict, having some elements that were part of an armed conflict proper, while other elements could be below that threshold. Today, the term usually refers to operations that typically are below the threshold.

3.5. The 2017 Leuven Manual on International Peace Operations

United Nations peacekeeping operations have been known since the United Nations Emergency Force was established along the border between Egypt and Israel after the Suez crisis in 1956. Between 1960 and 1964, the United Nations Operation in the Congo was in operation and, since 1964, there has been a peacekeeping force in Cyprus (UNFICYP). Well-known is also the United Nations Interim Force in Lebanon (UNI-

¹⁰ See the Rules of Air Warfare, 19 February 1923 (<https://www.legal-tools.org/doc/4e3279/>).

¹¹ See Program on Humanitarian Policy and Conflict Research at Harvard University, *HPCR Manual on International Law Applicable to Air and Missile Warfare*, Cambridge University Press, 2013.

¹² See Michael N. Schmitt (ed.), *Tallinn Manual on the International Law Applicable to Cyber Warfare*, Cambridge University Press, 2013.

¹³ See Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, 2017.

FIL) in Southern Lebanon, established in 1978. After the end of the ‘cold war’, several additional international peace operations were launched, in particular in the former Yugoslavia. These could have an enhanced mandate, authorizing use of force beyond situations of individual or unit self-defence.

The Leuven Manual was developed on the initiative of the International Society for Military Law and the Law of War by a group of 29 experts and observers, work beginning in 2012 and completed in 2017.¹⁴ It is organized in a manner similar to the above-mentioned manuals, with black-letter rules followed by a comment on each rule. Below the threshold of armed conflict, IHL does not apply. Human rights law has, on the other hand, a more prominent place in such circumstances than in armed conflict. The Manual contains also a section on the mandates of operations, which could be seen as a parallel to *jus ad bellum*.

3.6. The 2020 Oslo Manual on Select Topics of the Law of Armed Conflict

In the years immediately following its publication, the HPCR Air and Missile Warfare Manual was disseminated through several courses held by a team of persons closely connected to the drafting committee of the Manual. After a few years, some issues had surfaced as inadequately treated in the Manual. One was space warfare, which had been omitted by request of a government represented in the Alabama process. Another was rules pertaining certain unmanned systems, and a third was the responsibility of commanders. In the end, it was decided to pick up a number of other ‘loose ends’ that were not necessarily related to the HPCR Air and Missile Warfare Manual.

The Oslo Manual was generally financed by the Norwegian government. Fifteen experts participated in their personal capacity, the first meeting taking place late 2015. In contrast to the HPCR Manual and the 1994 San Remo Manual, governments were not represented. For this reason, it was found necessary to consult certain governments; consultations took place in Washington, D.C., and The Hague towards the end of 2017, and the results were taken into account when the Manual was finalized.¹⁵

3.7. The 2023 Newport Manual on the Law of Naval Warfare

This Manual differs from the others in that it is organized more like a textbook than a manual.¹⁶ It has special interest as an alternative to the 1994 San Remo Manual, containing a number of references to that Manual on points of disagreement. It took less time to prepare (not much more than a couple of years) than many other manuals.¹⁷ One disagreement relates to Rule 102 on blockades, where the San Remo Manual asserts that a blockade is prohibited if it results in excessive damage to the civilian population.¹⁸ This could (in the San Remo Manual) be seen as the application of a general principle underlying Additional Protocol I, beyond the scope of the Protocol strictly read. Another is on protection of the environment, where the Newport Manual says that the San Remo Manual asserts two rules *lex ferenda* on protection of the marine environment (paragraphs 11 and 44) that are aspirational and do not reflect treaty or customary international law.¹⁹

The Newport Manual had nine authors, eight peer reviewers and two observers. It had a reasonably broad base of experts, but not quite as many persons involved as the San Remo Manual and some of the other manuals. A second edition of the Newport Manual was published in 2025.²⁰

¹⁴ See Terry Gill, Dieter Fleck, William H. Boothby and Alfons Vanheusden, *Leuven Manual on the International Law Applicable to Peace Operations*, Cambridge University Press, 2017.

¹⁵ See Yoram Dinstein and Arne Willy Dahl, *Oslo Manual on Select Topics of the Law of Armed Conflict: Rules and Commentary*, Springer Open, 2020.

¹⁶ James Kraska et al. (eds.), *Newport Manual on the Law of Naval Warfare*, Stockton Center for International Law, 2023.

¹⁷ About six years for the 1994 San Remo Manual and the 2009 HPCR Manual, and five years for the 2017 Leuven Manual.

¹⁸ Kraska et al. (eds.), 2023, p. 122, see *supra* note 16.

¹⁹ *Ibid.*, p. 102.

²⁰ James Kraska et al. (eds.), *Newport Manual on the Law of Naval Warfare*, 2nd ed., Stockton Center for International Law, 2025.

3.8. The 2024 Woomera Manual on the International Law of Military Space Operations

Work on a manual on the international law of military space operations began before the Covid-19 pandemic and resulted in a product published on 7 May 2024.²¹ It was prepared through several workshops, included 28 core and five associate experts, 17 peer reviewers, and resulted in 48 rules and an associated commentary.

The Manual was co-sponsored by four universities, including the University of Nebraska College of Law (home of Professor Jack Beard, the editor-in-chief), the University of Adelaide (with Professor Dale Stephens on the editorial board), the University of New South Wales, and the University of Exeter. The name ‘Woomera’ was chosen in recognition of the small town of Woomera in South Australia, the site of the country’s first space missions, and in acknowledgement of the Aboriginal word for a remarkable spear-throwing device that enables greater accuracy and distance.

3.9. The 2024 Virginia-Georgetown Manual Concerning the Use of Force Under International Law

The Virginia-Georgetown Manual is in a class of its own by not being about *jus in bello*, but *jus ad bellum*.²² The target group is not military commanders and legal advisers in the field, but decision-makers and advisers at the highest levels of government.

The work was initiated in 2018 and initially led by Professors John Norton Moore and Yoram Dinstein. The first two meetings of the group of 12 experts took place in 2019, ending with the constitution of a drafting committee which subsequently prepared a first draft by early 2020. Unfortunately, subsequent sessions were delayed by two years due to the Covid-19 pandemic. Later, like the 2006 San Remo Manual project, the Virginia-Georgetown Manual project ran out of funds and the project was restructured. The Manual draft was then completed by the drafting committee, being informed by multiple rounds of written inputs from experts to circulated drafts, peer reviews, and consultations with some government and organizational representatives.²³ The final text of the Manual consists of 56 black-letter rules with an associated commentary.

3.10. The San Remo Update Project

A process to update the 1994 San Remo Manual was initiated in 2019, but interrupted by the pandemic in 2020 and lack of funds in 2023. A new source of funding was found *via* the Norwegian Red Cross Society, and the ICRC has assumed a leading role in the project. A substantial number of experts are involved, and there is reason to believe that the end-product will be of high quality. It remains to be seen how it will position itself *vis-à-vis* the original 1994 San Remo Manual, and its more recent competitor, the 2023 Newport Manual.

4. International Military Manuals as Sources of Law

Article 38(1)(d) of the Statute of the International Court of Justice provides that the Court shall apply “the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law”. Other jurists will, for natural reasons, apply the same principles as the Court when establishing legal positions, both in terms of primary sources and subsidiary means.

When a substantial number of experts agree on the formulation of a legal rule, it will necessarily be listened to, certainly if no dissenting voices are heard. In this sense, international military manuals can serve as (subsidiary) sources of law. Even if some rules of a particular manual might be based on somewhat shaky foundations, it could result in the development of customary law if the rules are generally accepted in State practice and reflected in national military manuals.²⁴

Until about 2015–2020, the field was divided between a few international manuals covering naval warfare, air and missile warfare, and

²¹ See Jack Beard and Dale Stephens (eds.), *The Woomera Manual on the International Law of Military Space Operations*, Oxford University Press, 2024.

²² See John Norton Moore et al., *The Virginia-Georgetown Manual Concerning the Use of Force Under International Law: Rules and Commentaries on Jus Ad Bellum*, West Point Press, 2024.

²³ See, for more details, David E. Graham, “The Virginia-Georgetown Manual Concerning the Use of Force Under International Law: Rules and Commentaries on Jus Ad Bellum”, in *Articles of War*, 4 November 2024.

²⁴ See Hayashi (ed.), 2023, pp. 5–12, see *supra* note 2.

cyber operations. With a few marginal exceptions, they did not overlap or contradict each other. In a sense, the international community of IHL experts spoke with one voice. This situation has now changed, in particular after the publication of the 2023 Newport Manual, which, as we have seen above, is in open confrontation on several issues with the 1994 San Remo Manual.

5. International Military Manuals as Guidance for Practice

An academic can ponder questions of international law by consulting treaties, court cases and State practice, as it is found in, for example, historical works, public reports and contemporary national military manuals. For the practitioner, who will have to make a decision or give advice on short notice, it is not practical to go to libraries or other places where information can be found – even in the age of the Internet. The practitioner needs a user-friendly handbook where the relevant sources are integrated into a comprehensive guide.

Such guides are also useful for lecturers at military academies, and other persons involved in training officers of various services. When the general attitude is one of respect for international law, easily accessible information as to the contents of that law will facilitate its observance. Whether and to which extent this reasoning holds true in practice, could be the theme of a research project of its own. Some personal observations can, however, be offered.

At a recent event on the law of naval warfare, the present writer was informed by a senior lecturer at the Norwegian Naval Academy that the 1994 San Remo Manual was used as the basis for the training of cadets. On another occasion, an officer who had served at the air operations centre during the 2011 Libya campaign was asked whether the recently published HPCR Air and Missile Warfare Manual had been helpful: “It was our bible”, he answered.

6. National Military Manuals

International military manuals are useful tools to get an overview of applicable law, but they cannot cover all national peculiarities.²⁵ True, the HPCR Air and Missile Warfare Manual, when relevant, specifies in the commentary which rule applies to parties to this or that convention, but such distinctions are not found in, for instance, the 1994 San Remo Manual. After the opening of the ‘Atlantic gap’, obligations under the international law of armed conflict have to some extent been individualized between States, particularly in the field of the law on weaponry.²⁶

Even if States are parties to the same treaty, national positions may have to be taken on certain issues of interpretation. Take, for example, a matter that was discussed in the Norwegian media some years ago – medical personnel manning machine guns. Is that lawful? Is that wise? The First Geneva Convention stipulates that medical personnel do not lose protection by carrying light personal weapons, or by using them in self-defence or in defence of their patients. But should this provision be read *a contrario*, with regard to other weapons? This could be disputed. What is needed is a document which not only provides scholarly advice but also practical guidance for officers and soldiers on how to implement this law effectively.

National military manuals have advantages other than adapting the rules to national obligations or preferences. The ordinary soldier or officer at lower levels may perceive an international manual as the opinion

²⁵ See Hayashi (ed.), 2023, pp. 18–21, see *supra* note 2.

²⁶ Take, for example, the Anti-Personnel Land Mines Convention, 18 October 1997 (<https://www.legal-tools.org/doc/79f43b/>) and the Cluster Munitions Convention, 30 May 2008 (<https://www.legal-tools.org/doc/7600a8/>). The ICRC’s web site offers an overview of which States are parties to which treaties in the field of IHL.

of some academics far away in Geneva or at some universities, while a national military manual is more like an order from his or her superior commander.²⁷ In other words, it carries another form of authority. Take the above-example of manning a machine gun. A legal adviser could say that, lawful or not, it would be unwise to man heavy weapons with medical personnel. But it takes a military decision to give an order prohibiting such practice.

7. Common Problems²⁸ and Five Conclusions

Both international and national military manuals refer to treaties and other authoritative texts. Should such texts be cited verbatim or should the manual be written in simpler and more easily-accessible language? The latter may be tempting, but has the disadvantage that the understanding of the rule might be distorted. Differing language might also result in uncertainty as to whether a difference in substance is intended. A similar problem could be encountered when an existing, but outmoded, manual is being updated. If the wording is changed, does that mean a change in the substance of the rule, or merely a linguistic modernization? Such matters, if relevant, would have to be explained in the commentary.

In conclusion, I offer these five general observations: (a) International military manuals can serve as subsidiary sources of law to the extent that they are considered collective “teachings of the most highly qualified publicists of the various nations”; (b) such manuals can develop the law if any innovative provisions are accepted and reflected in State practice and *opinio juris*, thus leading to new customary law; (c) military manuals, international as well as national, can be helpful for the practitioner by integrating various sources of law in a single document giving authoritative advice on decisions to be made in the field; (d) national military manuals carry more authority, as seen from the perspective of the soldier, and are therefore likely to be more influential locally than international ones; and (e) manuals should not distort the meaning or create uncertainty by adopting new language when reiterating existing rules.

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²⁷ See also, Hayashi (ed.), 2023, pp. 20–21, see *supra* note 2.

²⁸ See also, *ibid.*, pp. 23 ff., for a detailed checklist highlighting issues relevant for those considering producing a new (national) manual.



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