

THE VALIDITY OF TURKEY-LIBYA AGREEMENT ON MARITIME BOUNDARY IN INTERNATIONAL LAW

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ABSTRACT

The conflicts between Turkey and Greece have been going on for a long time. There are several conflicts that caused tension between Turkey and Greece such as the territory of Aegean, Cyprus, and other problems. The tension increased because bilateral agreements between Turkey and Libya on the maritime boundary of the eastern Mediterranean which signed in 2019, was opposed by Greece because the Agreement did not take into account the existence of the island owned by Greece. The Agreement between Turkey and Libya made Greece furious because Greece considered that the action violated Greece's sovereignty. The research aims to find out further about the validity of the agreement between Turkey and Libya on the maritime boundary which threatened Greece's sovereignty. By using normative legal research, the research emphasizes the bilateral agreement between Turkey and Libya which invalid since it against the international law principles: sovereignty of states, good faith and good neighborhood and Treaty of Amity and Cooperation.

Keywords: bilateral agreement, maritime boundaries, sovereignty

ABSTRAK

Konflik yang terjadi antara Turki dan Yunani telah berlangsung lama. Ketegangan tersebut dipicu oleh beberapa konflik, seperti permasalahan wilayah Aegean, Siprus, dan masalah lainnya. Ketegangan tersebut memanaskan sejak perjanjian bilateral antara Turki dan Libya mengenai batas laut Mediterania Timur yang ditandatangani pada 2019, ditentang oleh Yunani karena perjanjian tersebut tidak mempertimbangkan keberadaan pulau milik Yunani. Permasalahan ini membuat Yunani terusik, karena Yunani berasumsi bahwa perjanjian tersebut mengancam kedaulatan Yunani. Penelitian ini bertujuan untuk mengetahui validitas perjanjian antara Turki dan Libya tentang batas laut yang diperdebatkan oleh Yunani. Sebagai penelitian hukum normatif, penelitian ini menekankan bahwa perjanjian bilateral antara Turki dan Libya adalah perjanjian yang tidak valid karena bertentangan dengan prinsip-

prinsip hukum internasional, seperti kedaulatan negara, iktikad baik, dan bertetangga baik, serta melanggar Perjanjian Persahabatan dan Kerjasama.

Kata kunci: perjanjian bilateral, batas laut, kedaulatan negara

I. INTRODUCTION

A. Background

State borders have an important position in terms of geographical, legal, and economic aspects because territorial borders are used to determine the extent of the country's sovereignty. The state can regulate or apply its own law without interference from other countries and apply the jurisdiction, only in the areas under the state's sovereignty. Therefore, the border must be protected to keep the right of state to manage the state.

The conflict between Greece and Turkey has happened a long time ago; the two countries have been at odds over a number of issues such as the Aegean issue, the island of Cyprus, and other problems.¹ The conflict of Aegean Sea is a set of controversial issues between Greece and Turkey related to sovereignty and rights on the area of the Aegean Sea which had a large effect on Greek-Turkish relations since the 1970s. Thus, the case invited the attention of political and military leaders at the international level to comment and give some views regarding the conflict, many scholars called the case as "the Cold War that never ends"²³

¹ Alexis Heraclides. 2019. *The Essence of The Greek-Turkish Rivalry*. European: Publisher: London School Political Science. p. 3.

² Petros Siousiouras and Georgios Chrysochou. 2014. The Aegean Dispute in The Context of Contemporary Judicial Decisions on Maritime Delimitation. Department of Shipping, Trade and Transport, University of the Aegean. *Publisher Laws*. Vol. 3. p. 13.

³ Georg Koukoudakis. 2015. Explaining the Endurance of Greek-Turkish Rapprochement Process. *Uluslararası İlişkiler. European: Publisher International Relations Council of Turkey (UİK-IRCT)*. Vol.11. p. 82.

Tensions between Greece and Turkey continue in some cases that became a threat for the peace, stability in the Balkans and the Eastern Mediterranean region, also the integrity of Western political and military alliances.⁴ From domestic and international policies, various solutions or efforts have been given to reduce tensions between the two countries but in fact, the tension between the two countries has not subsided.

The Greece and Turkey was expected to end the long-running territorial disputes which have suffered in recent years. Yet, the case continued when Turkish helicopters provocatively flew around the military base near Ro Island in Greece. Then, Greece gave warning shots which fired by border guard soldiers and caused the death of a Greece fighter pilot after stop the Turkish plane from entering the country's airspace. After the conflict, the tensions between Turkey and Greece still exist until know.

On November 2019, Turkey and Libya made an agreement, named “Memorandum of Understanding between The Government of The Republic of Turkey and The Government of National Accord-State of Libya on Delimitation of The Maritime Jurisdiction Areas in The Mediterranean” (which hereinafter will be known as the agreement between Turkey and Libya on maritime boundary). The Agreement was claimed by Greece, by saying the Agreement harmed Greece as a neighboring country. Turkey and Libya are considered to ignore the existence of the island of Crete under Greece sovereignty, where the island is adjacent to the line that drawn as an Exclusive Economic Zone by Turkey and Libya. Therefore, the problem is "is the Agreement valid according to

⁴ Dimitris Tsarouhas. 2009. The Political Economy of Greek-Turkey Relations. *Journal of Southeast European and Black Sea Studies*. Publisher Routledge. Vol. 9. 2009. p. 42.

international law or not?" because the validity of an agreement not only concern to procedural aspects, but also concern to the content that should be accordance with applicable norms or values in international law.

B. Research Question

How is the perspective of international law on the validity of the Agreement between Turkey-Libya on the maritime boundary?

C. Research Method

The research is normative legal research that using literature review which focused on studying the application of rules or norms. From the method, the research is included in qualitative research. The authors used data collection techniques by reading, studying, making notes of books, and journals which related to problems from the object of research. The data analysis technique that used by the authors in the research is a logical, systematic, descriptive, and qualitative analysis method. Also, the aim of such method is to obtain a full understanding of the intended research materials.

II. DISCUSSION

A. Bilateral Agreement

An international agreement is defined as an agreement made by the subject of international law that will give some rights and obligations that must be fulfilled by the parties who made the agreement. Thus, the international agreement, as one of the sources of international law, can regulates various kinds of interactions of international subjects in the international sphere.⁵ Also, the agreement must follow not only the national value of the state, but also the

⁵ David Kennedy. 1987. The Sources of International Law, *American University International Law Review*. Vol 2. No. 1 (1987): 1-96.

general principle of international law. International agreements made by international legal subjects which recognized under the international law, namely a sovereign state and international organization, but the paper will focus to the agreement that was made by the state, since state is the most important subject that has full capacity to make an international agreement which becomes one of the requirements of state establishment.

Based on the number of parties that bound by the agreement, international agreements can be classified into two types, namely bilateral agreement and multilateral agreement.⁶ Bilateral agreement is an agreement that made by two parties which be the subject of international law, while multilateral agreements are agreement that made by many states or parties.

Yet, bilateral agreements may be made by more than two countries or several countries. It might happen when a group of countries joined and united and makes a bilateral agreement with another group of countries. The example is an agreement between Switzerland and the European Union that was made by 17 parties and divided into two groups, Switzerland in one part, and the EU members in another.

An international agreement can be valid if the agreement fulfills the legal requirements under the international law. The legal requirements regulate about the subject who can enter into the agreement and required a consent from both parties. It means the agreement needs the availability from the parties to comply all provisions that contained in the agreement, and the availability from the

⁶ James Crawford, SC, FBA. 2012. *Brownlie's Principles of Public International Law*. Oxford University Press, Oxford. p.373.

parties to bear all the consequences that may occur from the agreement. When all these conditions are fulfilled by the parties, the agreement will be valid.

There are several reasons that make an international agreement can be declared invalid or rejected, such as an agreement which contains *ultra vires* jurisdiction, misunderstanding content, fraud, corruption, and coercion policy, also the agreement that contradicts with the norms that should be obeyed. The further explanation of several factors that could be the cause of the non-effectiveness of an international agreement:

1. *Ultra Vires* Agreement

The agreement can be declared as *ultra vires* agreement if the jurisdiction of agreement is beyond the capacity of state or the agreement is signed by a representative who does not have the power or authority to enter into the agreement. If the agreement is signed by a representative who does not have authority and capability, then the agreement cannot be protected by international law. Thus, the *ultra vires* agreement does not have legal certainty under the international law and the agreement will not be recognized by international sphere.⁷

2. Misunderstanding, Fraud, Corruption, and Coercion

The approval of agreement from leaders can be canceled if there is a misunderstanding of facts or provisions that contained in the agreement and it can not be canceled with the exception of verifiable truth. Also, an agreement which contains a false statement, will be annulled if the

⁷ Article 3. Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001.

agreement was made to support a corruption or give coercion to other parties in order to approve the agreement.

3. Contrary to Peremptory Norms

An agreement can be null and void if the agreement contrary to the peremptory norms. The norms that adhered here have been recognized by the entire international community and it cannot be changed by anything even by international treaties, such as the use of aggression, genocide, and crimes against humanity.⁸ In Article 53 of the Vienna Convention on the Law of Treaties, it stated that *“A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”*

B. Exclusive Economic Zone

Exclusive Economic Zone is a zone that measured from 200 miles of the coastline.⁹ In the zone, the state has a right to manage everything under the state jurisdiction, such as utilize the natural resources in the territory. All matters relating to the Exclusive Economic Zones are regulated in part V of United Nations Convention on the Law of the Sea (UNCLOS).

⁸ Michael M. Wood and Arnold A. Pronto. 2011. *The International Law Commission 1999-2009*. Vol. IV: Treaties. Final Draft Articles and Other Materials. p.78-86.

⁹ William R. Slomanson. 2006. *Fundamental Perspectives on International Law*. 6th edn. Belmont, CA: Thomson-Wadsworth. Suzanne Jeans, p.294.

Article 55 UNCLOS defines the Exclusive Economic Zone as a zone that adjacent and outside of the territorial sea.¹⁰ The article also explains the ⁸rights, jurisdiction, and freedom of the state in the Exclusive Economic Zone, that must be obeyed by coastal countries as well as other countries.

In addition, Article 59 of UNCLOS explains about the resolution of conflicts that might occur because of the determination of the Exclusive Economic Zone. If there is a conflict between a coastal country and another country regarding an Exclusive Economic Zone, then the conflict must be resolved based on equity and in the light of all the relevant circumstances, and take into account the interests of the international community as a whole.¹¹

C. Turkey-Libya Agreement on Maritime Border

Recently, the conflict between Turkey and Greece arises because the Libyan and Turkish governments have signed an bilateral agreement on maritime boundaries in the Mediterranean Sea and the agreement on expanding security and military cooperation.¹² Currently, Turkey sent the the United Nations for registration and UN approval. The Turkey's action resulted an objections from Greece because the Agreement was detrimental to Greece. Greece claimed that the Agreement disturbed the Greece's sovereignty because Turkey and Libya ignore the existence of an island which owned by Greece in the Mediterranean sea, namely the island of Crete. Also, the agreement violates international law since it does not reflect the neighborhood principle in the nearest country or neighboring country.

¹⁰ Article 55. United Nations Convention on The Law of The Sea 1982.

¹¹ Article 59. *Ibid.*

¹² Dare Butler. *Turkey Sign Maritime Boundaries Deal with Libya Amid Exploration Row*. Available online at: <https://www.reuters.com> [Accessed on January, 1 2020 at 5.04 pm]

Turkish President, Recep Tayyip Erdogan, emphasized that he would continue to explore hydrocarbon resources in the Eastern Mediterranean. The statement was made at a press conference in Ankara, after his meeting with Ersin Tatar, Prime Minister of the Turkish Republic of Northern Cyprus. Turkey said the agreement was made in order to protect its rights and allows Turkey and Libya to conduct exploration and operations in the region. With the fact, Greece expelled the Libyan ambassador from Athens and submitted the objections to the United Nations by saying the agreement violated international law.

D. Is The Turkey-Libya Agreement Valid?

To know whether the Agreement can be enforced by the parties or not, the Agreement must be valid based on international law. Not only consider the procedure in making the Agreement, but also consider the content of the Agreement. The content must not against the norm that applied ¹⁵ in international law and domestic law. In the agreement between Turkey-Libya on Maritime Border, Turkey and Libya against several principle, namely:

1. Sovereignty of State

State is a place for a group of people who occupy a certain territory and are organized by a legitimate state government, which generally has sovereignty. There are several requirements of state establishment that we must know and it stated in the Article 1 of 1993 Montevideo Convention, namely; (a) a permanent population; (b) a defined territory; (c) government; and (d) the capacity to enter into relations with the other states.¹³ All requirements can be explained as;

¹³ Article 1. Montevideo Convention 1993.

First, the state must have people. People are a community who lives in the state and regulated under the state jurisdiction. As a legitimate state, the state has a duty to protect the community. *Second*, the state must have a territory, because the territory is a place for the government to apply the law for the people. Also, under the territory, the government can apply the jurisdiction, such as, ruled over the area with the aid of bureaucracy, have a professional army, and the power to collect taxes¹⁴ Since the requirements are recognized by international law, the states must respect the sovereignty of territory which owned by others. *Third*, the state must have a government. The government has a duty to protect and prosper the people wherever and whenever. Also, government has authority to make the rules and run the state for the people. Thus, without government, the state cannot be said as a legitimate state. *Last*, state has the capacity to enter into relations with the other states. It means as the international subject, only a sovereign state that are able to make an agreemen with other states.

Since the line that drawn as the maritime border disturb the territory of Crete which owned by Greece, then the Agreement on the maritime boundary between Turkey- Libya, does not respect the sovereignty of Greece. Also, Turkey and Libya realize that, in the area, there is a territory of Greece, but both states were not inviting Greece in the Agreement as a state that also gets the impact of the Agreement. Thus, the Agreement can be assumed as an agreement which does not respect one of the fundamental and basic norm in international law, namely the sovereignty of state.

¹⁴ Herz, J. H. 1957. Rise and Demise of The Territorial State. *World Politics*. 473-493. Vol.9. p. 475.

2. Good Faith

One of the basic principles in the making of an international agreement is good faith. An agreement must be defined or an agreement must be implemented with the basis of good faith.¹⁵ Good faith must be applied before the agreement was made, when the agreement was made, and after the agreement was made. Good faith is one of the agreement principles that uphold the value of honesty, selflessness, and does not violate national applicable norms, also international applicable norms.¹⁶ But in fact, there are many differences in interpreting the principle which affect how the states implement the good faith principle in the agreement. With the aim of reducing the number of different interpretations of good faith, the principle of good faith is explained in the 1969 Vienna Convention¹⁷:

- a) ⁸ Article 26: regarding *Pacta sunt servanda*, it stated that “*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*” Based on the *article*, the parties are bound to bear rights and obligations that arise from the agreement, and the content must be implemented with a good faith.
- b) Article 31: regarding the general rule of interpretation, it stated that “*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in the context and in the light of its object and purpose.*” The article means no matter in what

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¹⁵ Zimmernann, R., Whittaker, S., & Bussani, M. (Eds.). 2000. *Good Faith in European Contract Law*. Cambridge University Press. p. 18.

¹⁶ R. Kolb. 2006. Principles as Sources of International Law (With Special Reference to Good Faith). *Netherlands International Law Review*. 53(1). Vol. 53. p. 14.

¹⁷ Vienna Convention on the Law of Treaties 1969.

situation, the purpose of making the agreement must interpreted with
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good faith.

- c) Article 46: about provisions of internal law regarding competence to conclude treaties, stated that *"A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."* Thus, if the state does not put the good faith principle in the making international agreement or treaty, then the agreement is not valid.
- d) Article 69: about consequences of the invalidity of a treaty, stated that *"Acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty."* means if the state creates a treaty with good faith before the agreement was declared invalid, the parties cannot get a punishment.

So according to the Vienna Convention 1969, good faith becomes a very important norm that must exist in the agreement. If the state does not perform the good faith principle in the process of creating the international agreement, then the agreement is invalid. From the explanation, in the case of Turkey-Libya's agreement of the maritime border, both states do not have good faith in the process of making the agreement.

Turkey-Libya did not invite Greece to enter into the Agreement even though both states know that the Agreement will affect the territory of Greece and only concerned with the benefit for parties, also do not concern about what is the impact on another state. In addition, both parties know there is an island which owned by Greece around the line, it means Turkey

and Libya also know that there will be a conflict if they ignore the existence of Crete. Hence, the Agreement between Turkey and Libya on the maritime border is not valid because they do not perform good faith principle.

3. The Absence of the Good Neighborhood Principle

⁴ As a member of the United Nations, we have to obey the regulations of the United States in order to respect international law. One of the ways in realizing the value of the United Nations, the state must put any norms or value that stated in the UN's Charter, such as "good neighborhood" principle in the agreement. By using the principle, states also can realize one of the purposes of the United Nations, namely, maintain world peace.¹⁸

In a simple way, good neighborhood principles is a principle that required states to avoid any action that will harm the neighbor, in order to keep the international relations among states. The principle is already mentioned in the preamble of the United Nations Charter, namely "*to practice tolerance and live together in peace with one another as good neighbors*". The preamble has an interpretative function, which means it should be accepted by the members of UN and all purposes in the preamble can be used at a later stage, such as in convention, treaty, constitution, etc. The statement is clear, but the practice is still hard to be implemented since every state has its own interest to be realized. Thus, as the nations of the world, states just started to learn about ³ how to live in peace with one another as good neighbors. Also, in the Declaration of the Principles of International Law concerning Friendly Relations and Cooperation among States under the

¹⁸ Hans Kelsen. 2003. *Principle of International Law*. The Lawbook Exchange. Ltd. New Jersey. p. 279.

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Charter of the United Nations, there are several principles that becomes a fundamental principle in international law, namely:¹⁹

- a) Keep the international relations from any threat against the territorial integrity or political independence which is not in line with the purpose of the United Nations.
- b) Solve international disputes in a peaceful way in order to avoid international peace, justice, and security to be endangered.
- c) Not interfere with the domestic jurisdiction of any states based on the Charter.
- d) Respect equal rights and self-determination of people.
- e) Respect the sovereign equality of States principle.
- f) Fulfill the obligation with good faith.

There are two important points in the “good neighborhood” principle.

First, state needs to protect its neighborhood relations, especially if the

neighboring states share common resources, such as minerals, water-courses and the resources of the sea.²⁰ It means neighbors may share common

benefits and common dangers, including windfalls and natural calamities.

Hence, cooperation among neighbor is important for the life of all states in

international matters. *Second*, the concept of neighborhood is not limited to

geographical closeness. It means the principle of good-neighborhood also

applies to countries that may be separated by a wide expanse of water, such

as the ocean, and the implementation of a principle of good-neighborhood is

¹⁹ *Ibid.*

²⁰ Duško Dimitrijević. 2010. The Principle of Good Neighborliness in International Law. *Lingua-Culture Contextual Studies in Ethnic Conflicts of The World, Research Institute for World Languages*. Osaka University. Japan. Vol. 11. p. 1.

³ not restricted to frontier regions. Thus, the practice of good-neighborhood should extend far beyond border areas.²¹

In Turkey-Libya Agreement on Maritime Border, Libya said that the purpose of making the agreement is to claim what is supposed owned by Libya, namely the island of Crete because if they drew the maritime border, the island of Crete belongs to Libya, but Libya don't discuss the problem with Greece who actually the owner of the island. Instead of discussing the problem with Greece, Turkey and Libya made an agreement that only concerns to the advantages for the borth parties without considering the effects and harms for the interest of the neighboring states, namely Greece. Thus, the Agreement destroys the international relations among them as the nearest states and it against the international law, specifically at the preamble of the UN Charter regarding ³ practice tolerance and live together in peace with one another as good neighbors.

4. Against The Treaty of Amity and Cooperation

Treaty of Amity and Cooperation agreement (TAC) is a treaty that concern about peace, which was formulated in Bali on February 24, 1976, by the president or prime minister of several ASEAN member countries namely Lee Kuan Yew (Singapore), Ferdinand Marcos (Philippines), Datuk Hussein Onn (Malaysia), Kukrit Pramoj (Thailand), and Suharto (Indonesia). TAC contains several agreements that govern the relations between countries and the diplomatic instruments for solving problems in

²¹ Sompong Sucharitkul. 1996. The Principles of Good-Neighborliness in International Law. Publications. Paper 559. p. 9.

the ASEAN region.²² Initially, the treaty¹² only applies to the ASEAN member countries, but after there was an amendment in the form of a protocol on December 15, 1987, the treaty was opened for accession by countries outside ASEAN and now there are 28 states that signed the treaty, including Turkey and Greece (as a member of European Union).

In article 1 chapter 1 of TAC, stated that the purpose of the agreement is *"to promote perpetual peace, everlasting amity, and cooperation among their peoples which would contribute to their strength, solidarity, and closer relationship."*²³ In the relations with one another, the High Contracting Parties shall be guided by the following fundamental principles, namely;²⁴

- a) mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations
- b) the right of every State to lead its national existence free from external interference, subversion or coercion
- c) non-interference in the internal affairs of one another
- d) settlement of differences or disputes by peaceful means
- e) renunciation of the threat or use of force
- f) effective co-operation among themselves

In accordance with the objectives and principles contained in the TAC, the Agreement should be obeyed by the participating countries in terms of developing and strengthening the friendly relations, culture, and history of

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²² Daniel Seah. 2012. The Treaty of Amity and Cooperation in Southeast Asia: The Issue of Non-Intervention and Its Accession by Australia and The USA. *Chinese Journal of International Law*. Vol. 11. p. 785-822.

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²³ John R Crook. 2009. United States Accedes to ASEAN Amity Treaty as Sole Executive Agreement. *The American Journal of International Law*. Washington. Vol. 103. Iss. 4. p. 741-743.

²⁴ Mark E. Manyin. 2019. U.S Accession to The Association of Southeast Asian Nations' Treaty of Amity and Cooperation (TAC). Congressional Research Service. p. 8.

good neighbors, based on the principles of good faith. By participating in the treaty, states are obliged to encourage and facilitate the relations between the people of the state that participating in the treaty. However, in its development from 1976 to the present, the Agreement faces so many issues especially in terms of national borders.

¹⁵ In the case of Agreement on the Maritime Boundary between Turkey and Libya, it against the first principle of TAC, namely “mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations.” Since Greece and Turkey are participating states in TAC and both states have to implement the principle of the Agreement. Even though Libya is not participating in TAC, Turkey has to consider the principle of TAC in the Agreement that made by Turkey and Libya, because both parties know the Agreement will affect Greece which also is the participating state in TAC.

III. CONCLUSION

Procedurally, “Memorandum of Understanding between The Government of The Republic of Turkey and The Government of National Accord-State of Libya on Delimitation of The Maritime Jurisdiction Areas in the Mediterranean” is already classified as a valid agreement, but obviously, the Agreement ignores the principle of sovereignty of state, good faith principle, good neighborhood principle, and violates the first principle of TAC, especially in the area of ¹² mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations, in this case, is Greece. Thus, based on the international principle, the Agreement should be an invalid Agreement.

In order to respect the international law and maintain the relationship between Turkey, Libya, and Greece as neighboring states, the agreement must be participated by three parties, because the agreement gives an effect on all of the countries. Since the agreement is now in a process of registration in the United Nations Secretariat, so UN has to decide that the agreement should be annulled and declared as an invalid agreement, because it against some fundamental principle in international law.

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