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THE LAW OF BLOCKADE.

Classed with the most ancient and well ascertained operations of war is the blockade. Sir Robert Phillimore, the eminent English jurist, in his comprehensive work on International Law, (Vol. III, page 473, 3rd ed.), observes that, "Among the rights of belligerents there is none more clear and incontrovertible, or more just and necessary in the application, than that which gives rise to the law of blockade." For this he especially relies upon our own great commentator, Chancellor Kent.

It is a curious fact that during the last half century, perhaps since the Declaration of Paris of 1856, this right has played no important part in the wars of Europe. She has had no great naval wars. On the other hand, the blockade of the southern coast, undertaken by the United States in its war with the Confederacy, was the most extensive blockade known to history, and that of the ports of Cuba and Porto Rico during the recent Spanish-American war, was an important and extensive operation of its kind.

In the Napoleonic wars, the Emperor Napoleon, by various decrees, and the authorities of Great Britain by orders in council, attempted on the one hand to impose the conditions of a blockade by mere declaration, not accompanied by the presence of an adequate force shutting off communication with the blockaded coast, and on the other hand, to meet these declarations by severe and unprecedented condemnations. These so-called "paper" blockades were strongly disapproved, and finally, by the Declaration of Paris

of 1856, most of the leading civilized nations of the world declared that a blockade, to be obligatory, must be effective, that is to say, "maintained by a sufficient force to shut out the access of the enemy's ships, and other vessels," in reality. Thirty-eight states acceded to this, but our own country was not among the number. However, that declaration may be accepted as making an end to the so-called "paper" blockades. (Lawrence's *Wheaton*, 2nd Ed., page 637, and notes.) And although the United States refused to be a party to it, yet our Supreme Court (*The Peterhoff*, 5 Wall. 28, at page 50) declared in 1886:

"It must be premised that no paper or constructive blockade is allowed by International Law. When such blockades have been attempted by other nations, the United States have ever protested against them and denied their validity. Their illegality is now confessed on all hands. It was solemnly proclaimed in the Declaration of Paris of 1856, to which most of the civilized nations of the world have since adhered; and this principle is nowhere more fully recognized than in our own country, though not a party to that declaration."

Chief Justice Fuller, speaking for the court in *The Olinde Rodrigues*, 174 U. S. 510, observes:

"This is now the settled doctrine of the English and American courts and publicists, and it is embodied in the second of the instructions issued by the Secretary of the Navy, June 20, 1898, General Order No. 492: 'A blockade to be effective and binding, must be maintained by a force sufficient to render ingress to or egress from the port dangerous.'"

A blockade declared but not maintained with adequate force may operate, it seems, to modify the rights of shippers and the duties of carriers, though not to give the right of capture and condemnation. Thus in an action by *Lechartier* against *La Compagnie Transatlantique Francaise* for non-delivery of goods shipped to Porto-Plata (Hait), by which were not unshipped there on account of an alleged blockade of the port, but were left at Port-au-Prince, the "*Tribunal de Commerce du Havre*" decreed in 1889 that if a blockade had not been established in conformity with the convention of Paris, that is to say, with adequate force, it is enough, that it has been declared by one of the belligerents, to discharge a master, charged with the unloading of the goods in the blockaded port, from all responsibility for non-performance of his contract. He is equally

exonerated when in accordance with the directions of the bill of lading, he has deposited the goods in the port nearest to the blockaded port. (*Calvo, Le Droit International Théorique et Pratique*, Tome 6, (Supplement Général) Section 446; *Journal du droit international privé*, 1892, p. 183.

The right of a belligerent in time of war is to invest a port or coast of the enemy, and to interdict all merchant vessels from approaching or dealing with the blockaded district. The vessels of neutrals are affected, and this right of a belligerent is universally admitted.

The leading principles, as announced in Phillimore (Vol. III, page 495) are: "a—That where there has been a formal notification of the blockade, a reasonable time must be allowed for it to take effect. b—That where there has been no formal notification, the knowledge of the party must be proved."

"That after a certain time it lies *prima facie* upon the party to show that he was not apprised of the fact of the blockade."

In the first place, a blockade must be established by competent authority. It may be by ministerial notice, or by an officer pursuant to authority confided to him, or by a naval commander on a distant station without express authority; but in the latter case, to affect neutrals, this action must be ratified by the commander's government. (*Walker's International Law*, page 520; *The Rolla*, 6 C. Rob. 364.) Thus, as a recent example of a blockade proclaimed by the government, we have that proclaimed by the United States government with reference to the south coast of Cuba and San Juan in Porto Rico, the proclamation for which is partially set out in *The Olinde Rodrigues*, 174 U. S. 510; and as an example of a blockade established by a naval officer, the blockade of Guantanamo, declared by the late Admiral Sampson, which was passed upon by the same great tribunal in *The Adula*, 176 U. S. 361, and was held to be within the power of a naval commander. The court distinguishes "a simple or actual blockade," from "a public or presidential blockade," holding that the former is "constituted merely by the fact of an investment, without any necessity of a public notification," and that it ceases with the investment.

By custom the blockading belligerent in case of public blockade issues formal notice to neutrals of the institution of the blockade. This practice differs, but "according to the Anglo-American rule, a public notification given by the belligerent to a neutral government is ordinarily sufficient to convict all subjects of that govern-

ment of the requisite guilty intent, provided that the statements of the notice are fully borne out by the facts of the actual blockade." (Walker's International Law, page 520; *Northcote v. Douglas, The Franciska*, 10 Moore P. C. C. 59.)

In case of a blockade *de facto* by a naval commander without special powers from his government, the existence of the blockade must be brought to the knowledge of the blockade runner, and warning must be given to vessels seeking to enter the forbidden port. Even in case of blockade by proclamation, a reasonable time must be given for the neutral government to advise its subjects. Several of the continental countries of Europe assert a more lenient rule than that adhered to by Great Britain and the United States. Thus France, Italy, Spain and Sweden require direct and individual notice of the blockade by one of the blockading squadron to the neutral master before seizure. Such warning when given, is endorsed on the ship's register. Prussia and Denmark follow the Anglo-American practice. (Hall's International Law, page 698; Walker's International Law, page 521.)

It was lately urgently contended, on the authority of a French treatise on International Law by Pistoye and Duverdy, that since the Declaration of Paris this Anglo-American doctrine had been abandoned. But the Supreme Court (*The Adula*, 176 U. S. 361) re-affirmed it in all its rigor, and there declared that "the opinions of foreign writers on International Law cannot be accepted as overruling in any particular prior decisions of the Supreme Court of the United States."

Mr. Walker (International Law, page 517) shows that "the powers of the First Armed Neutrality required for the establishment of a valid blockade of any port that the belligerents, 'by a disposition of vessels, anchored and sufficiently near, make the attempt to enter manifestly dangerous.'" That like provision was made by the Neutral League of 1800. In the Convention of 1801, Russia substituted the word "*or*" for "*and*," making it read, "anchored *or* sufficiently near." The Declaration of Paris in 1856 declared that "blockades in order to be binding must be effective, that is to say, maintained by force sufficient really to prevent access to the coast of the enemy."

It is interesting to find that under this doctrine, which, as we have seen, has been fully adopted by the civilized world and declared by our own Supreme Court to be a part of International Law, a blockade maintained by a single vessel has been held so "effective," (see *The Olinde Rodrigues*, 174 U. S. 510), where the

blockade of the port of San Juan in Porto Rico was held to be complete and effective though one modern cruiser only was stationed before the port. The court considered the speed of the vessel, the range of her guns, and her searchlight, and reached the conclusion that her effective service in preventing entrance to the port was greater than that of several cruisers of the old type, and that the blockade must be held valid and complete. The court however relies on two English cases which had already held that under special circumstances a blockade might be effective though maintained by but one vessel.

This is in strong contrast with the view of the majority of continental writers as to what constitutes an efficient blockade. These views are summarized as follows: "The immediate entrance to a port must be guarded by stationary vessels, in such number as either to render entrance impossible, or at least to expose any ships running in to a cross fire from the guns of two of them." (Hall's International Law, p. 706, showing the rule as given by Calvo, Heffter, Gessner, Ortolan, Hautefeuille, and Pistoye and Duverdy.)

A blockade having been once established is not discontinued by the circumstance that stress of weather compels the blockading squadron to temporarily withdraw. (III Phillimore, International Law, page 484; *The Columbia*, 1 C. Rob. Adm. Rep. page 156.) (And in commenting upon this, that learned writer points out that on this and every other point of the law of blockade, the English and the United States decisions are in perfect harmony.)

Nor is the blockade suspended if the guarding squadron is drawn away for a reasonable distance in pursuit of a suspected blockade runner. (Walker's International Law, page 519.) In 1861, *The Niagara*, blockading Charleston, had been sent away to intercept a cargo of arms expected at another part of the coast, and the harbor was unguarded for at least five days. Lord Lyons assumed that this was an interruption of the blockade, but the United States in view of the effect of its general notification, refused to admit that any cessation had occurred. (Wharton's Digest International Law, Section 361; Hall's International Law, page 705.) Walker expresses the belief, however, that Mr. Seward's contention was "more in harmony with the spirit of the age of paper blockades than with that of a period wherein blockades to be binding must be effectively maintained." (Walker, International Law, page 519.)

The distance at which the blockading force is stationed seems immaterial, so long as it commands the approaches of the invested

port. "Thus Buenos Ayres has been considered to be effectually blockaded by vessels stationed in the neighborhood of Monte Video; and during the Russian War in 1854, the blockade of Riga was maintained at a distance of one hundred and twenty miles from the town by a ship in the Lyser Ort, a channel three miles wide, which forms the only navigable entrance to the gulf." (Hall's International Law, page 704.)

The blockade must be uniform, and exclude all vessels not privileged by law. As Vattel puts it, "*Tout commerce est absolument défendu avec une ville assiégée,*" (Vattel, L. III, c. VII, s. 117; III Phillimore, p. 493.)

Where goods are carried to a neutral port with the ultimate purpose of transporting them by land to a prohibited port, there is no breach of blockade. This was held as to merchandise shipped from London to Matamoras, Mexico, close to the borders of our Confederate States, even though the goods were intended to be supplied to the Texas market from Matamoras, so long as this was not by sea. (*The Peterhoff*, 5 Wall. 28.) Nor if the goods are carried to the blockaded port by inland canal does this constitute a breach. (*The Ocean*, 3 C. Rob. 297.)

If some vessels are allowed to pass contrary to the rule of uniformity, others are warranted in treating the blockade as at an end. (III Phillimore, p. 486.)

Where a blockade is commenced *de facto* by giving notice on the spot to ships arriving from a distance, vessels seeking to enter are entitled to notice before they are liable for the attempted breach. But the vessels in the port are presumed to know the circumstances, and are entitled to no such notice. Actual knowledge by the master binds the ship, and it may be inferred from general notoriety of the fact. (III Phillimore, p. 494.) And notice of a blockade to a charterer of the vessel who was on board was held notice to the vessel. (*The Adula*, 176 U. S. 361.)

The legal presumption which arises from the vessel entering a blockaded port is that it was for the purpose of delivering her cargo. And this is not wholly rebutted though she depart without such discharge. (III Phillimore, p. 496.)

If a ship approach a port blockaded *de facto*, for the purpose of inquiry, this may be entirely justifiable. But she may not anchor where she could easily break the blockade. Such an act raises a presumption *de jure* of such an intent. If the blockade is not one merely *de facto*, but is one by notification, such approach is wholly unjustifiable. (III Phillimore, p. 497.) Enquiry by ships from a

distance may, however, be justified. During the French war, Lord Stowell so held as to American ships. But Phillimore points out that with the improved means of rapid communication this principle must be limited greatly. (III Phillimore, p. 498.) Such inquiry is never held legal at the mouth of the blockaded waters, or if made directly from the ships on guard. It should be made at ports on the way where there is opportunity to get information, but where there is no opportunity for fraud. (III Phillimore, p. 498; *The Betsey*, 1 C. Rob. Adm. R. 334.) However, the innocence of the suspected ship has sometimes been established under special facts, even when the enquiry was at the very mouth of the forbidden port. (III Phillimore, p. 499; *The Little William*, 1 Acton's Rep. 151.)

Phillimore mentions that a Dutch ordinance which Bynkershoek approved, declared in 1630 that vessels bound to the blockaded ports of Flanders were liable to confiscation, though found at a distance from those ports, unless they had voluntarily altered the voyage before coming in sight of the ports; that the English courts hold that to sail for a blockaded port, knowing it to be such, is an attempt at a breach, no matter what the distance, (*The Columbia*, 1 C. Rob. Adm. Rep. 156); that, after doubting this, the United States Courts fully concurred in this in *The Nereid*, 9 Cranch 440, holding further that if the ship, through stress of weather, were driven into a different direction, yet her hostile intent remains. (III Phillimore, p. 501.) And Walker, page 524, affirms this as the Anglo-American practice, although not the continental doctrine, since that requires direct notice to each master from the blockading vessels. The Anglo-American doctrine was very fully re-affirmed in *The Adula*, 176 U. S. 361, in 1899, and it was intimated that it would be adhered to by the Federal courts until it was modified by Congress. The vessel is held liable from the moment she sails with a premeditated intent to violate the blockade. This liability continues, by the Anglo-American rule, during the entire voyage, if the blockade continues so long. Many continental powers of Europe holds otherwise, and that a blockade runner, upon her return voyage, after she has escaped the pursuit of the blockading squadron, is no longer liable for the breach. (Walker's International Law, 526.)

There may be a breach of blockade by egress, and a ship coming from a blockaded port may always be seized, and must clearly prove her innocence. But egress is allowed in certain cases. A ship which has entered before the blockade may retire in ballast. (*The Juno*, 2 C. Rob. Adm. Rep. 119; III Phillimore, 503.) She may carry a cargo

loaded before blockade, the goods being actually on the ship or lighter before the blockade. If the vessel is not stopped in her egress by the blockading squadron, but is later stopped by a vessel not on blockading duty, she has been discharged on the double grounds of defects of the blockade, and that the vessel stopping her had no such duty. (*The Christina Margaretha*, 6 C. Rob. Adm. Rep. 63; III Phillimore 504.)

The proclamation announcing a blockade now commonly names a certain time allowed ships in the interdicted ports for egress. Thus in the blockades in the war of the Crimea, France and England allowed fifteen days; and our own country allowed the same time in her blockade of the Confederate ports. However, in her blockade of the Cuban ports, she doubled the time, allowing thirty days. (Hall's International Law, Section 262; Am. & Eng. Encyc. Law, 2nd ed. Vol. 16, p. 182.)

The cargo of a ship guilty of breach of blockade is subject to confiscation, as well as the ship, unless the cargo does not belong to the owner of the ship. In such latter case the cargo is not confiscated unless the owner was, or ought to have been, apprised of the blockade when he shipped the goods, or unless the act of the master binds him. (III Phillimore 507.)

An interesting and humane exception has been recently allowed by our own highest court in the case of fishing boats. (See *The Paquette Habana, The Lola*, 175 U. S. 677.) After holding that the works of jurists and commentators on the subject of International Law are resorted to by judicial tribunals not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is, the majority of the court concludes that coast fishing vessels, with their implements, appliances, cargoes and crews, when unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, and not employed for a warlike purpose, or in such way as to give aid or information to the enemy, are exempt from capture as prize of war, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act; that prize courts administering the law of nations are bound to take notice judicially of and give effect to this rule. That a vessel of thirty-five tons burden, with a crew of six men, with a catch of live fish amounting to about ten thousand pounds, is to be regarded as engaged in the coast fishery, and not in a commercial venture, and therefore exempt within the above rule. The opinion is rendered by Mr. Justice Gray, and evidences his customary learning and re-

search, exhausting the authorities upon the subject. Mr. Chief Justice Fuller filed a brief dissenting opinion, in which Justices Harlan and McKenna concurred, but the array of authorities offered in support of the dissent seems very slight and inconclusive as contrasted with that which supports the opinion of the court. The cases arose in connection with the blockade of Havana which was the port where these vessels sold their fish, but the decision is strictly as to the law of prize and not of blockade.

Even after the period for the withdrawal of neutral private vessels, at any time during the blockade, men-of-war of neutral nations are, as a matter of courtesy, permitted to communicate with the blockaded port, and to maintain a correspondence of their own or other neutral powers, with their respective representatives. (Walker's International Law, 523.) So Mr. Seward instructed Mr. Webb, our minister to Brazil in 1868, that the United States was entitled under the law of nations to send without molestation from the Brazilian blockading squadron, an armed cruiser up the river Parana to Paraguay, then at war with Brazil, the object being to bring home the minister of the United States at Paraguay, (3 Wharton's Digest International Law, Section 361); and Mr. Seward notified the representative of Prussia in 1861 with reference to the blockade of the southern ports, "That armed vessels of neutral states will have the right to enter and depart from the interdicted ports." (3 Wharton's Digest International Law, Sec. 361.) This right must not be the cover of any illegitimate dealings. In 1863, Mr. M'Gee, the acting British consul at Mobile, placed on H. M. ship Vesuvius a large amount of money, the property of the State of Alabama, to be conveyed to Havana, and thence to London for the payment there of interest due from the State on her bonds to British holders. For this irregularity, Mr. M'Gee was dismissed from the British service, and Lord Lyons was directed to apologize to the United States for the conduct of a British civil servant at variance with the duties of an agent of a neutral power. (Walker's International Law, 523; Diplomatic Correspondence of the United States, 1863, p. 460.) The right of foreign ships of war, as above indicated, is permissive, and cannot be claimed absolutely.

Entry into the interdicted port under circumstances of unavoidable necessity will be excused, but in the case of merchantmen it is closely scrutinized. (Walker's International Law, p. 523.)

The older writers approved of the corporal punishment of the blockade runner. (Grotius, *De Jure Belli et Pacis*, Vol. 3, Ch. 1, Sec. V; Vattel, Vol. 3, p. 717; Walker's International Law, p. 525.)

The passage from Grotius relied on by Walker seems the following in the paraphrase of Dr. Whewell: "When the Romans carried provisions to the enemies of the Carthaginians, they were sometimes taken prisoners by the Carthaginians, and then given up by the Carthaginians to the Romans being demanded. When Demetrius held Attica, with an army, and had taken Eleusis and Rhamnus neighboring towns, intending to reduce Athens by famine, and when a ship attempted to introduce corn into the city he hung the captain and the pilot of the ship, and thus deterring others, became master of the city." This is now wholly obsolete, and a confiscation of the ship, and by the rule of infection, of any cargo belonging to the ship owner, and of any portion of the cargo belonging to an owner cognizant of the blockade, or who makes the master his agent, is the sole punishment. (Walker's International Law, p. 525.)

It has been decided that a violation of blockade is not an offense against the municipal laws of England. (III Phillimore, p. 515; *The Helen*, L. R. 1 Adm. & Eccl. 1; *Ex parte Chavasse re Grazebrook*, 11 Jurist, N. S. 400.)

The recent blockade of the ports of Venezuela by the naval forces of Great Britain and Germany was at first assumed an instance of a pacific blockade. Later incidents in the investment of those ports certainly made the blockade a warlike one, and Mr. Balfour, prime minister of Great Britain, admitted in the House of Commons at an early date that a state of war existed. That a blockade may be pacific seems to be admitted. One of the most complete discussions of pacific blockade is found in Hall on International Law, 3rd ed. Sec. 121. He points out that there is a liability of strong powers to exercise this right against weak powers, but that it must not be forgotten that weak countries sometimes presume upon their weakness, and that the possibility of taking measures against them less severe than war may be as much to their advantage as to that of the injured powers. He collects, in a learned note, the opinions of many publicists favoring such blockades, provided the property of third powers is not affected, and he gives the Declaration of the *Institut de Droit International*, adopted in 1887, limiting its application and maintenance. He points out that in the nineteenth century such blockades were not infrequent. The first occurred in 1827, when the coast of Greece was blockaded by England, France and Russia, although these three nations professed still to be at peace with Turkey. The Tagus was blockaded by France in 1831; New Grenada by England in

1836; Mexico by France in 1838; La Plata by France in 1838-40, and by France and England from 1845 to 1848, and the Greek ports by England in 1850. That subsequently to the last date there was no fresh instance until 1884, when France blockaded a part of the coast of Formosa, and finally, in 1886, Greece was blockaded by Great Britain, Austria, Germany, Italy and Russia. (See Hall's *International Law*, p. 369, 3rd ed.; Rivier's *Cours de Droit de Gens*, p. 152.) Hall shows that these blockades have been variously conducted. In some cases ships of the blockaded power and of third powers were alike brought in for condemnation, as in the blockade of Mexico. In others all ships were sequestered, to be restored at the termination of the blockade. In the later blockades of this character, ships of the blockaded power only were sequestered. Under the French blockade of Formosa, the right to capture neutral vessels and to condemn them was claimed, but it was denied by Lord Granville.

The position of England seems to have been misunderstood, and M. F. de Martens in his *Traité de Droit Int.* iii. 174, makes the extraordinary allegation that England confiscates the vessels not only of the blockaded power, but of neutrals as well. Hall says, "The statement is totally destitute of foundation." (Hall's *International Law*, Section 121.)

Discussing the blockade of the Venezuelan ports, Professor Theodore S. Woolsey, in the *Independent* for December 18, 1902, while pronouncing the blockade pacific, says that a pacific blockade is a contradiction in terms. "Blockade is a war measure." He shows that if it is pacific it can apply only to Venezuelan commerce, and not to that of neutral powers. So Rivier lays down the rule as to "*Blocus pacifique*": "*Les navires de pavillon étranger peuvent entrer librement malgré le blocus.*" (*Cours de Droit Des Gens*, p. 152.)

It will be observed that a formal notice of this blockade was issued, to begin upon a day certain, but with a liberal allowance of days of grace for vessels already at sea. American vessels detained by the allied ships, as appears by newspaper report, have already made complaint to Secretary Hay for illegal interference by the blockading cruisers.

In conclusion it may be observed that the complete harmony of Great Britain and the United States in all decisions concerning the law of blockade, together with the widely extended possessions of those powers, their large participation in maritime trade, and their important position as naval powers, tend to make the Anglo-

American practice predominate in this branch of International Law. That this tendency is perhaps strengthened by the fact that, as we have seen, the greatest blockade known to history was maintained by our country as against the Confederacy and that by far the most important blockade since then was the blockade maintained by our country during the Spanish war.

The experience of the Civil War seemed to prove that steam was a more efficient agency for the evasion of blockades than for their maintenance, and that it was therefore "unwise to shackle the belligerents with too severe restrictions." (Hall's International Law, Section 260.)

The decisions arising from the Spanish war, while re-affirming many well established rules, are notable particularly for the refusal of our court to modify our rules as to blockade in accordance with those stated by continental writers on International Law. (See *The Adula*, 176 U. S. 361.) For the re-affirmation of the Anglo-American rule that a ship sailing with intent to violate a blockade is subject to capture from the moment she leaves port, see *The Adula*, *supra*.

For the decision to the effect that a blockade may be maintained by a single armed cruiser, where her powers and equipment are adequate to effectively protect the entrance to the blockaded harbor, see *The Olinde Rodrigues*, 174 U. S. 510. This is not wholly new, but the discussion as considering the power of a modern cruiser is highly interesting.

For the enlightened and humane decision, that coast fishing vessels, with their supplies and crews, when unarmed and honestly pursuing their peaceful calling, are exempt from capture, according to the rules of International Law, see *The Paquette Habana*, *The Lola*, 175 U. S. 677. It is believed also that these decisions display a disposition to somewhat modify the harsher rules of war, and to give a liberal interpretation both to facts and rules of law for the protection of commerce, as in holding that the forfeiture of a vessel for attempting to run a blockade should not be made on evidence consisting of suspicious circumstances merely. (*The Newfoundland*, 176 U. S. 97; and see *The Buena Ventura v. U. S.*, 175 U. S. 384.) This enlightened tendency of our highest courts will be welcomed by all students of International Law, which is so essentially pacific and which from the time of Grotius has so steadily and nobly modified the asperities of war.

It is too early to say what decisions may be rendered necessary

by the course pursued by Great Britain and Germany upon the coast of Venezuela. It is hoped that all difficulties there are now in the way of peaceful adjustment. The right of blockade, which Phillimore called "one of the simplest and most universal operations of war in all ages and civilized countries," has certainly for two generations found greater exemplification in the practice and judicial decisions of our peace loving Republic than in those of any other country, and therefore it has seemed of interest to submit this brief statement of the general principles and practices governing the exercise of the right with especial mention of the modifications arising from our late war with Spain.

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