Private Security Trends and Challenges in Latin America [Student's Paper Series]

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European University Institute

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Private Security Trends and Challenges in Latin America

Antoine Perret
Ph. D. Candidate
European University Institute

August 2011

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The views expressed in this research paper are those of the author and do not necessarily reflect the official policy or position of the US Government, Department of Defense, US Southern Command or Florida International University.
EXECUTIVE SUMMARY

The use of Private Military and Security Companies (PMSC) is a growing phenomenon in Latin America and globally.\(^1\) Within the Western Hemisphere, PMSCs assist International Organizations during humanitarian operations, as in Haiti after the massive earthquake. Simultaneously, these companies provide intelligence, logistic and training to support the Colombian Army. Contractors are also working for other private enterprises providing security services in risky situations all around the region. The privatization of security activities produces binary effects: it exacerbates tensions between international interventions and the local population as well as erodes State control over security issues.

The growing use of PMSCs by the extractive industry in Latin America has negatively impacted relations between multinational companies and the local population. As a byproduct, the privatization of humanitarian aid militarizes security provision in the public sphere and can create tensions between international actors and the local population.\(^2\) Also, PMSCs reduce State control over security issues, particularly in conflict situations like Colombia, where PMSCs are active in the fight against drug trafficking. In both situations, more control over PMSC’s activities is needed. There are several international initiatives that aim to improve the regulation of PMSCs activities and that could be used to improve local control. Finally, the U.S. as the major hiring and provider of contracted PMSC, has an interest and important responsibility in the regulation of

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these companies working in Latin America – or contracting Latin American employees for missions elsewhere.
INTRODUCTION

The massive earthquake that rocked Haiti on 12 January 2010 created a tremendous demand for humanitarian assistance. The chaos resulting from the complete destruction of the infrastructures in Port-au-Prince and the huge number of victims complicated the relief efforts enormously. Private military and security companies (PMSCs) saw in this situation the possibility to offer their services to States or international organizations in order to facilitate the humanitarian aid efforts. While Haiti offers a recent example of the use of private security, PMSCs also work in radically different contexts, as for instance in Peru where a local company provides security to international extractive industry.

PMSC can be defined as “corporations offering security, defence and/or military services to States, international organizations, nongovernmental organizations, and private companies and/or armed groups. These services include armed guarding and protection of persons and objects or buildings, maintenance and operation of weapons systems, prisoner detention and interrogation, intelligence, risk assessment and military research analysis, as well as advice to or training of local forces and security personnel.”

PMSC are present throughout Latin America. In 2009, more than 20 United States (U.S.) companies were providing intelligence, logistic or training in Colombia. DynCorp, for instance, has been active in Colombia since the beginning of the 1990s. PMSCs also work in Peru, Bolivia or Mexico in the war against narco-trafficking. Additionally, Chileans and other Latin-American contractors are recruited by U.S.

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PMSCs to work in other countries, such as Iraq and Afghanistan.

All these international security tasks were once provided by the host country public armed forces. This privatization of security results in the presence of a non-State actor conducting law enforcement in contexts where once only States had jurisdiction.

In the first part of the paper, we will examine how the growing use of PMSCs by the extractive industry in Latin America has a negative effect on the relations between multinational companies and local population. Additionally, the privatization of humanitarian interventions results in the militarization of public security in a way that has created tensions between international organizations and the local populations.

In a second part, the lessened control by States on security issues will be analyzed, particularly in the context of conflict. For instance, the use of PMSCs by the government of the U.S. in the Colombian is especially relevant. Even when the U.S. Congress prohibits U.S. direct participation in the conflict, in some situations the PMSCs have engaged in direct confrontations with Colombian subversive groups. In both their domestic and international, more control over PMSC’s activities is necessary.

The third part of the paper will provide an overview of the different international initiatives that aim to improve the regulation of PMSCs activities and should be used to improve domestic oversight. Finally, we will analyze the role of the U.S. As the major hiring and home to a significant amount of contracted PMSCs, the U.S. has both an important responsibility and an interest in the regulation of these
companies working in Latin America – or contracting Latin American employees for missions elsewhere.

PMSCS EXACERBATE TENSIONS

The increase in the privatization of security in Latin America and the lack of oversight for PMSC activities during peacetime or humanitarian interventions complicates relations between local population and international actors.

PMSC AND THE EX extructive INDUSTRY

The emerging trend of PMSCs protecting multinational extractive corporations in Latin America has been accompanied by harmful consequences for human rights among local populations, which then harms the image of multinational corporations in the region. The increased use of PMSCs by multinational extractive corporations in complex environments in Latin America has triggered increased mobilization against those same corporations by local activists and decreased the legitimacy of their governments. One of the biggest challenges for these corporations is to interact with the local culture in order to be able to provide security for their employees while abiding by respect for human right obligations. These obligations have been defined by the United Nations (UN) Special Representative, Professor John Ruggie, Special Representative of the UN Secretary General on human rights and transnational corporations and other business enterprises in a UN framework titled, “Protect, Respect and Remedy”.⁴

⁴ All the information about the work of the Special Representative of the United Nations Secretary-General on business & human rights, John Ruggie is available at the portal http://www.business-humanrights.org/SpecialRepPortal/Home.
In order to fulfill the first task, several corporations contract international or local PMSCs. PMSC managers are, in most of cases, ex-militaries or ex-police officers and are very well connected with the public sector and law enforcement. Their primary function is to provide information for multinational extractive corporations in order to help their installation in the country. Only a few PMSCs have the capacity to collect field information. In most of the cases PMSCs employees’ connections guarantee excellent access to the intelligence of the country that they work in.

Problems appear most often when PMSCs provide protection for the installation of the extractive corporation. According to F. Cafferata, contracting police officers is the main problem “due to the fact that police forces throughout Latin America face poor working conditions. This problem contributes to a blurring of the frontiers between public and private security.”

PMSCs also contract former militaries and who are often predisposed to apply the same methods used in their previous work. The use of military methods for security in the public sphere during peacetime creates conditions ripe for human rights infractions by security providers. The example of the PMSC Forza in Peru illustrates these challenges well. Forza was created in 1991 by a group of marine officers to offer services of corporative security. They operate at the national level and specialize in the extractive and industrial sector. On August 2006, during a protest, two environmental rights

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5 We can mention as local example the Peruvian PMSC Forza or as international example the British PMSC Team Savant working in Colombia.
7 La República, December 6, 2006, p. 3.
defenders were killed by the Yanacocha mine’s security forces. The investigation reveals that the perpetrators were three police officers who served on their days off as private security guards in Forza.8 The Non-Governmental Organization (NGO) Education and Action for Sustainable Development Group (GRIFUDES – in Spanish), founded by Father Marco Arana, is active in the region of the Yanacocha mine. This NGO and other community leaders in Cajamarca (Peru) have been subject to serious intimidation and surveillance by the PMSC Forza. The National Human Rights Coordinator (CNDDHH in Spanish) has recorded 20 incidents, which occurred between August and November 2006 against personnel of GRUFIDES, and at the moment the authorities have not conducted a full investigation.9

Other cases should also be mentioned. For instance, a Chilean PMSC contracted by a forestry corporation was involved in incidents against the Mapuche indigenous community in the South of the country.10 In Ecuador, the Copper Mesa Mining Corporation used private forces to attack and try to dislocate the Junín community.11 In

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9 For more information on the case and the answer of the corporation implicated, visit the webpage of Business and Human Rights Resource Center at http://www.business-humanrights.org; see also United Nations, Report of the Working Group on the Use of Mercenaries, Mission to Peru, document, A/HRC/7/7/Add.2.
11 For more information see the webpage of Business and Human Rights Resource Center at http://www.business-humanrights.org; see also the webpage of the Ecuadorian NGO Decoinhttp://www.decoin.org/ and the
Guatemala, a similar case implicated the Canadian mining company Goldcorp in a violation of human rights against the local population.\textsuperscript{12} The use of PMSC by multinational extractive corporations aggravates the complicated relationship between multinational corporations (MNCs) and local populations. To avoid this effect, MNCs need to monitor the adherence to human rights standards by security forces to protect their image both domestically and internationally.

**PMSC USE IN PEACEKEEPING OPERATIONS**

Ten years ago, UN Secretary General Kofi Annan suggested that the world was not ready to privatize peace;\textsuperscript{13} however PMSCs are now active in the majority of peacekeeping operations and humanitarian interventions, mostly because states are reluctant to send their soldiers for extended periods of time. For instance PMSCs were contracted in Haiti to provide security services for the protection of different organizations working in the country. But as authors A. Buzatu and B. Buckland argue,

> Humanitarian organizations often require additional security in order to perform their missions. While most private security companies hired by humanitarian organizations are unarmed, in some exceptional cases armed security is provided. It is clear that this is a growing trend, with more and

\footnote{\textsuperscript{12} For more information see the webpage of Business and Human Rights Resource Center at \url{http://www.business-humanrights.org}.}

\footnote{\textsuperscript{13} Kofi Annan, 35th Ditchley Foundation Lecture, 26 June 1998, UN Press Release SG/SM/6613.
more organizations in the field hiring mostly local private security guards.”  

As it is the case of PMSC used by multinational corporations, the presence of ex-militaries providing public security as a form of humanitarian assistance without adequate accountability is not always helpful in complex environments. This can harm the relation between the international intervention and the local population. According to Du Plessis, “there is also a risk of severe reputational damage arising from an incident, undermining the agency’s credibility and reducing its access to the local population and its ability to perform humanitarian missions.”

### Headquarters Location of Companies in Peacekeeping Operations

<table>
<thead>
<tr>
<th>Location</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>47.6 %</td>
</tr>
<tr>
<td>European Union</td>
<td>38.1 %</td>
</tr>
<tr>
<td>Cyprus</td>
<td>9.5 %</td>
</tr>
<tr>
<td>France</td>
<td>4.7 %</td>
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<tr>
<td>Hungary</td>
<td>4.7 %</td>
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<tr>
<td>Italy</td>
<td>4.7 %</td>
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<tr>
<td>Spain</td>
<td>4.7 %</td>
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<tr>
<td>Sweden</td>
<td>4.7 %</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>4.7 %</td>
</tr>
<tr>
<td>Others</td>
<td>14.3 %</td>
</tr>
</tbody>
</table>


In Latin America, the case of Haiti exemplifies these challenges. The massive earthquake that rocked Haiti on 12 January 2010 created a tremendous demand for humanitarian assistance. The chaos resulting from the complete destruction of the infrastructure in Port-au-Prince and the huge number of victims complicated the relief efforts enormously. In this context some PMSCs were contracted by States or international organizations to provide security or other services to help Haitian people to rebuild the country. For instance, the PMSC Triple Canopy \textsuperscript{16} oversaw a refugee camp; \textsuperscript{17} The PMSC Raidon Tactics \textsuperscript{18} has at least 30 former soldiers of U.S. special operations in Haiti who have been guarding aid convoys and providing security for news agencies. \textsuperscript{19}

At the moment, there is no real complaint against PMSCs in the Haitian case, but criticism has been made regarding the contribution of these companies. The previous presence of United Nations forces on the field and the fact that the population remained very calm despite the situation, limit the need for external security interventions. \textsuperscript{20} However, concerns exist because in the case of company misconduct, the questions of who bears their responsibility remain unclear, and in spite of “these concerns, suggestions have been made for the expanded use of PMSCs, such as employing them as

\textsuperscript{16}http://www.triplecanopy.com/triplecanopy/en/home/.
\textsuperscript{18}http://www.raidonactics.com/.
\textsuperscript{20}UNHCR protection officer by phone,(A. Perret, Interviewer) February13, 2011,Port-au-Prince, Haiti.
UN Blue Helmets or even as UN-mandated or UN-led troops carrying out military operations.”

**EROSION OF STATE CONTROL OVER SECURITY FORCES**

The second most important effect of the privatization is the erosion of the capacity of the State to control public security or military issues. This is evident in the current war on drugs in Mexico and Central America, but also in the specific context of Colombia.

**DRUG WAR IN MEXICO**

The Mexican Drug War is taking place among rival drug cartels and Mexican forces for regional control. The violence has escalated dramatically in the last few years and in 2010 more than 12,000 people were killed. The U.S. is supporting the Mexican government in its fight against drug cartels, and part of the support is privatized: PMSCs provide training to Mexican police. Other U.S. PMSCs are active in Mexico, offering different services linked to “risk management” contracts sought by individuals and multinational companies. In both uses of the PMSCs, State control the security situation is decreasing while not showing improvements.

According to the U.S. Department of State, “the U.S. Congress has appropriated $1.5 billion since the Mérida

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Initiative began in fiscal year 2008” and “the United States is supporting Mexico’s implementation of comprehensive justice sector reforms through the training of justice sector personnel including police, prosecutors, and defenders, correction systems development, judicial exchanges, and partnerships between Mexican and U.S. law schools.”

However, part of the U.S. support has been privatized and some journalists have accused employees of PMSCs’ of training Mexican police in torture techniques.

Considering that the lack of trust of the Mexican population in law enforcement is one of the important problems at hand, the use of PMSCs – which are by nature less controlled than public law enforcement – is counterproductive. U.S. PMSCs are also active in Mexico providing kidnapping resolution and ransom negotiation services. These companies are working for individuals or multinational corporations, and they are “generally cooperative with U.S. law enforcement […] [they] tend to maneuver as discreetly as possible in Mexico, usually avoiding contact with authorities who may not be trustworthy.”

This reinforces the

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25 “One of the videos, obtained by the newspaper El Heraldo de León, shows police appearing to squirt water up a man’s nose, a torture technique once notorious among Mexican police. They then dunk his head in a hole that an unidentified voice on the video says is full of excrement and rats. In another video, an unidentified English-speaking trainer asks a police agent to roll in his own vomit. The English-speaking man belonged to a private U.S. security company hired to help train the agents.” In Fox News, Report Mexico cop in torture case fired, July 19, 2008, available at http://www.foxnews.com/printer_friendly_wires/2008Jul19/0,4675,MexicoPoliceTorture,00.html.
conclusion of the previous section; the presence of PMSCs in Mexican territory does not contribute to the reinforcement of the credibility of the Mexican public forces.

**PMSC IN CONFLICT**

The use of PMSCs by the U.S. government in the Colombian conflict is particularly relevant to the argument made here regarding the sovereign control by States on security issues. Since 2002, with the beginning of the *Plan Colombia*, the U.S. State and Defense Departments have contracted PMSCs in order to carry out activities related to U.S. military and police aid to Colombia.\(^{28}\) This use of PMSCs has some effects contrary to the objective of *Plan Colombia* which has had limited success, especially in combating drug trafficking.\(^{29}\) The use of PMSCs has helped with fortifying the technical capacity of Colombian law enforcement and public security and provides assistance in the difficult task of rebuilding the Colombian State’s legitimacy. However, if foreign PMSCs are allowed to operate with absolute immunity for their employees and engage directly with the population during operations it is likely to harm the mission of *Plan Colombia*.\(^{30}\)

The loss of State control is primarily evident concerning the circumvention of the limitation on direct U.S. participation in operations in Colombia: the U.S. Congress prohibits all activities that involve direct participation of the U.S. in


combat hostilities. Moreover, the U.S. law limits the outsourcing of “inherently governmental functions,”31 in other words PMSCs are not authorized to perform functions in an area of combat operations.32 In spite of this prohibition, it is possible to note direct participation of certain US PMSCs in the Colombian conflict.33 For instance DynCorp34 holds a contract with the U.S. State Department to fumigate illegal cultivation, but also “training, air transport, aircraft maintenance, reconnaissance, and search and rescue operations”35 which are focused on locating and shutting down aircrafts or hostile actions taken by drug producers or traffickers.”36 During the operations of fumigations, two or three combat helicopters accompany the planes37 that drop the glyphosate, because aircraft attacks are frequent.38

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33 A. Perret, “Las Compañías Militares y/o de Seguridad Privadas en Colombia: ¿Una nueva forma de mercenarismo?”
34 http://www.dyn-intl.com/.
38 Between 2001 and 2002, around ten attacks per month took place, increasing in 2003 to reach a peak of 73 attacks per month. These
The helicopters “have a mixed crew composed of both contractors and members of the National Police,” which are armed and ready to fire on the aggressors. Even if the Colombian National Police is supposed to assume responsibility for helicopter gunships, there is no effective control of contractors’ activities. The absence of effective control has been corroborated by an anonymous U.S. Embassy employee that stated, “The U.S. Embassy, which is supposed to be in charge of the following of all the contracts, does not effectively oversee DynCorp’s activities. The PMSC is in charge of hiring the employees, and providing the necessary material - the U.S. government is interested only in outcomes.”

The Intelligence Authorization Act of November 2003 expands the use of PMSC participation in the Colombian conflict because intelligence services can be used not only in the fight against drug trafficking but also in the fight against terrorism. This means funds can be used to fight irregular groups.

numbers have since decreased and now the average is 26 attacks per month. Ibid. p. 1.


41 In its 313th section “use of funds for counterdrug and counterterrorism activities for Colombia” the act authorizes the use of intelligence funds used in counterdrug activities to be used in counterterrorism activities against FARC, ELN, and AUC, with the objective of protecting health and human life in emergency situations, including rescue operations. Senate of the United States of America, FY2004 Intelligence Authorization Act. Report, 2003, p108-163.

42 Defined as a conflict by the Colombian government in the law “on victims” voted by the parliament on May 2011, see: Semana, Ley de Victimas, Edición 1517, May 28, 2011.

The consequences of this lack of control can be dramatic considering that US PMSCs’ employees are granted immunity from Colombian jurisdiction by U.S. agreement. Such is the case in two incidences of the rape of minors involving PMSCs’ employees. One of them occurred on a military base and is under investigation but the justice system has its hands tied because of PMSC immunity,\textsuperscript{44} the other case was not investigated.\textsuperscript{45}

**IMPROVING CONTROL: INTERNATIONAL INITIATIVES AND NATIONAL RESPONSIBILITY**

This lack of control and accountability of PMSCs has come under attack from various sides. During the past five years, different international initiatives have emerged and provide a starting point to regulate and control PMSCs activities. At the international level, in 2005 the United Nations created the UN Working Group on Mercenaries to investigate mercenaries and their role in violating human rights and impeding the exercise of the right of peoples to self-determination. In September 2010, the UN Working Group on Mercenaries presented the first draft of a convention to the General Assembly. In parallel, another initiative, led by Switzerland, has produced two international documents: the Montreux Document and the International Code of Conduct (ICoC). These two initiatives have very different objectives: the UN document would become a binding instrument of international law, while the so-called “Swiss Initiative” may be considered soft-law (Montreux Document) and voluntary regulation (ICoC).

\textsuperscript{44} “Investigan a dos militares de E.U. por violación de niña de 12 años en Comando Aéreo de Melgar.”\textit{El Tiempo}, October 7, 2007, p 1.
The first draft convention presented in 2010 at the United Nations is the beginning of a new long process. It reaffirms the States’ responsibility of legitimate use of force and includes interesting elements on limitation of outsourcing, defining inherently States functions. It aims to regulate PMSC activities in all types of contexts, not only in conflict situations. Nevertheless, the draft convention is currently under discussion and its application could still take a long time. Therefore, at the moment, the only international document that could provide guidance to States and common standards to control multinational PMSCs activities is the Montreux Document. The United States has participated actively in the negotiation of the Montreux Document and is part of the 17 nations that have first endorsed the document. For these reasons, it is recommended here that the U.S. should take the lead to establish accountability and accept responsibility for the respect of human rights by U.S.PMSCs.

The application of the Montreux Document is restricted to conflict situations and refers mainly to international humanitarian law. It is composed of two main parts, the first on pertinent legal obligations regarding PMSCs – ‘hard’ laws binding under custom or treaty – and the second on good practices regarding PMSC – ‘soft standards’–. By being part of this document, the U.S. abides by and recognizes the constraints of immunity in regards to contractors and the enforcement of human rights and humanitarian law rules. The second part of the Montreux Document recommends States to select PMSCs carefully, with transparent processes according to criteria that account for the past services, background, resources, and personnel policies of firms.\textsuperscript{46}

The selection of PMSC employees is fundamental, “in the Iraqi context, […] US officials and PMSCs alike often

\textsuperscript{46} Montreux Document, part 2, para 2 - 9.
encountered difficulties in vetting individuals hired from countries in Africa, South America, and elsewhere.”

This problem also concerns Latin America and international collaboration is needed. For instance “there was an outcry in Chile as well as in the international press when it was revealed that several Chilean subcontractors working in Iraq were Pinochet-era commandos who had been forced to retire from the military for their role in the crimes of that regime.”

On a parallel basis, the Swiss Federal Department of Foreign Affairs has prepared a PMSC industry follow-up initiative to the Montreux Document: the International Code of Conduct (ICoC). This code articulates principles for PMSC to operate in accordance with international humanitarian law and international human rights standards and was signed by nearly 60 companies in Geneva on 9 November 2010. A group of stakeholders composed by civil society and industry representatives are now preparing external independent mechanisms for an effective governance and oversight of the ICoC.

Meritorious international initiatives often confront difficulties when being implemented and may have different impact on the ground. The current base for implementation is invariably rooted at the national level. In a world of sovereign States, multilateral commitments are only effective when given concrete expression in national legislation and institutions. Thus, States have the final responsibility to

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regulate and improve control over PMSC. For this to be effective, the States must integrate the context of the international initiatives into their own domestic legislation.

**CONCLUSION**

The current privatization of the security in Latin America entails a risk for the progress of human rights and democratic values. As discussed above, the privatization of humanitarian interventions and the use of private military and security companies (PMSC) by Multinational Corporation tend to militarize civilian tasks and complicate relations between international organizations and the local population. Consequences are negative for local people – who suffer human rights violations – and for the companies or international organizations that hire these PMSCs – which suffer reputational and credibility damage. The privatization of military tasks also has implications for the States. During armed conflict or drug war, the use of PMSC implies the presence of a non-State actor allowed to use force in contexts where once only States were allowed to do so.

All of the cases mentioned here demonstrate the need for more control and different international initiatives. The UN draft convention and the Swiss Initiative composed by the Montreux Document and the International Code of Conduct (ICoC) aim to provide international standards to help States to confront these challenges. The three documents are complementary but the UN draft convention is still under discussion and will probably take time to arrive to its final version. Taking into account that the U.S. has already endorsed the Montreux Document on PMSCs and is the major provider of private security services and personnel in the region, it should promote abiding by the human rights standards included in the ICoC. Also, it should only contract
signatory PMSCs’ – and include the code of conduct in the contract. The US should also integrate the code into its domestic law and require all the U.S. PMSCs to sign it.
WORKS CITED


La República, December 6, 2006, p. 3.


The Merida Initiative,  


ABOUT THE AUTHOR

Antoine Perret is a PhD candidate in law at the European University Institute. He holds a Masters in International Affairs at the University of Externado de Colombia in Bogotá in cooperation with SIPA – Columbia University, New York, USA -, and CERI – Sciences Politiques, Paris - France) and a license from the Graduate Institute of International and Development Studies in Geneva (Switzerland). He has been a lecturer at the University Externado de Colombia and an independent expert for the UN’s working group on mercenaries. He has also worked at the Geneva Center for Democratic Control of the Armed Forces (DCAF) and is a member of the Colombian Academic Group on the use of private military and security companies.
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