

THE USE OF MODALS IN MARITIME LEGAL TEXTS AND THEIR CROATIAN TRANSLATIONS

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Abstract

Modals play a crucial role in legal discourse by contributing significantly to the realization of speech acts that establish a legal text's pragmatic force and validity. In legal language, modals serve various functions such as expressing probability, inclination, obligation, and performativity. They are categorized into epistemic and deontic modality, reflecting different types of modality in legal communication. For instance, the modal auxiliary "shall" is particularly significant in legal English, and often used to convey obligations and permissions. Legal language relies on modality to ensure precision, clarity, and the formal expression of legal concepts, making it a key element in legal communication. Thus, the paper investigates the roles modals perform in maritime legal texts in English and the various ways in which they are translated into Croatian language.

Keywords: *modals in legal discourse, maritime legal texts, corpus linguistic tools, modal verb shall, modal verb may, modal verb should*

1. INTRODUCTION

Translation of legal texts requires not only the knowledge of the language being translated, but also the knowledge of how the language of the law works. In other words, legal translation is not only the result of linguistic endeavors, but also involves legal responsibility, thus the translators of legal texts must also be well acquainted with the nature of the law. The primary purpose of legislative writing is to establish obligations and grant rights. Legal texts must simultaneously exhibit the qualities of clarity, precision, and unambiguity, while also being all-inclusive (Bhatia 1993). Pritchard (2011) defines maritime legal texts as written legal documents that confer certain rights or establish and govern contractual relations in the maritime industry. Maritime legal texts refer to a distinct collection of legal instruments and documents that possess legislative authority within national law and are legally enforceable in the realm of international maritime law. Maritime legal texts of an institutional type, such as international conventions, rules, codes, national legal acts, treaties, contracts, directives, etc., are meticulously structured written documents that possess legal or otherwise enforceable authority. The primary characteristics of legal texts, which are commonly seen in all legal documents across various legal (sub)genres, include formulaic and predictable textual and discursive patterns, highly intricate grammar, and specialized vocabulary. In addition to intricate syntactic structures, the grammar of such texts exhibits a restricted utilization of tenses, frequent employment of affixal negation, distinctive usage of modal verbs, complex prepositional phrases, etc. (Varo & Hughes 2002; Bhatia 1993, 1998). The research presented in this paper will not deal with all the above-mentioned characteristics of legal texts but will specifically examine the frequency and function of modal verbs in a specific genre of legal documents, i.e., in maritime legal texts in English and ways in which they are translated into the Croatian language. This work builds upon prior research conducted by Krapivkina (2017), Boginskaya (2020), Famina & Osminkin (2022).

2. AIM AND METHODOLOGY

In order to determine which modal verbs most frequently appear in maritime legal texts and which functions they perform, a parallel corpus of maritime legal texts originally written in English and aligned with their Croatian translations was drawn up. The corpus comprises four documents: two conventions, one code and one set of regulations. The documents are as follows: United Nations Convention on the Law of the Sea, Maritime Labour Convention, International Code for the Security of Ships and Port

Facilities and International Regulations for avoiding Collisions at Sea. The English texts and their Croatian translations were aligned in .xlsx format and analysed using the *Sketch Engine* corpus tool. The corpus of texts in English has 176,681 tokens, 151,217 words and 6,143 sentences. First, a quantitative analysis of modal verbs was carried out, after which concordances of all recorded examples were extracted and qualitatively analysed to determine their functions and ways in which they are translated into Croatian.

3. RESULTS AND DISCUSSION

According to the quantitative results obtained in the *Sketch Engine*, the modal verbs appear with the overall absolute frequency of 4025 and the normalized relative frequency of 22,781 parts per million. The relative frequency shows the ratio of the absolute frequency (actual number of recorded examples in the corpus) to the total size of the corpus and is calculated using the following formula: $REL = ABS/N \times 1000000$, where REL is the relative frequency, ABS is the absolute frequency and N is the corpus size expressed by the total number of tokens. The ratio of the absolute frequency to the total number of occurrences is multiplied by 1000000 in order to obtain an estimate of the probability of a particular element (e.g. word, phrase, etc.) occurring in a language per million words and to allow a comparison of the frequency in texts and corpora of different sizes. According to the results of the analysis, shown in Table 1., the most frequent modal verb found in the corpus of maritime legal texts is the verb *shall*, which appears in 2217 instances and amounts to 55% of all recorded modals, followed by the verb *should* (18,5%), *may* (17,75%), and *can* (2,7%). The modals verbs *will*, *could*, *must*, *would* and *might* each amount to less than 2% of the total number of recorded modals.

Word	Frequency ? ↓
1 shall	2,217 ...
2 should	747 ...
3 may	715 ...
4 can	112 ...
5 will	84 ...
6 could	46 ...
7 must	41 ...
8 would	38 ...
9 might	25 ...

Table 1. The absolute frequency of modal verbs in the corpus of maritime legal texts obtained in *Sketch Engine*

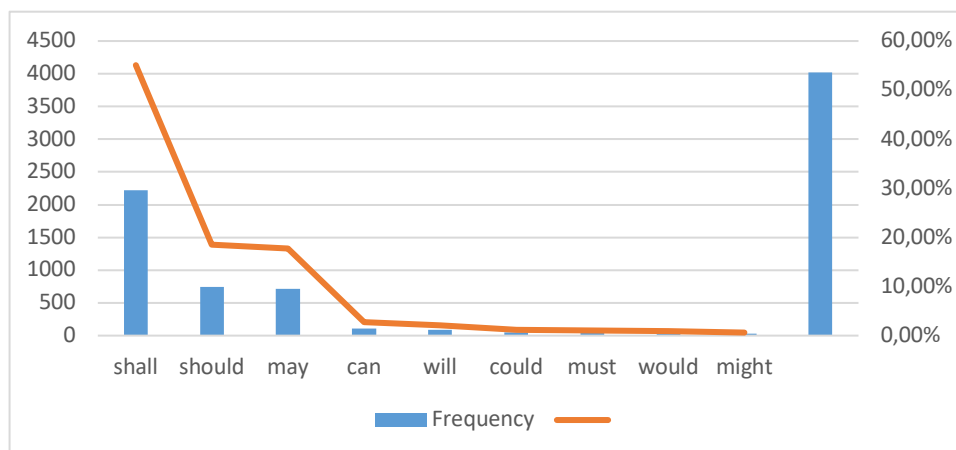


Fig. 1. Modal verbs in the corpus of maritime legal texts

According to Quirk et. al. (1985), “modality may be defined as the manner in which the meaning of a clause is qualified as to reflect the speaker’s judgement of the likelihood of the proposition it expresses being true.” (Quirk et. al., p. 219). Additionally, the modals can express different meanings that can be divided into two categories:

- Those expressing permission, obligation, and volition, which imply some kind of intrinsic human control over events, and
- Those such as possibility, necessity, and prediction, which do not primarily involve human judgement of what is or is not likely to happen. (Ibid, p. 219)

In the following paragraphs, examples will be given for the three the most frequent modal verbs found in the corpus of maritime legal texts accompanied by the analysis of their functions and translations into Croatian. The qualitative analysis of examples is based on concordances generated in *Sketch Engine*, as shown in Figures 2. and 3.

Left context			KWIC	Right context		
1	doc#0	urity level 1 means the level for which minimum appropriate protective security measures	shall	be maintained at all times.</s><s>.10 Security level 2 means the level for which appropri		
2	doc#0	urity level 2 means the level for which appropriate additional protective security measures	shall	be maintained for a period of time as a result of heightened risk of a security incident. .11		
3	doc#0	1 Security level 3 means the level for which further specific protective security measures	shall	be maintained for a limited period of time when a security incident is probable or imminent		
4	doc#0	ides a reference to the Designated Authority. 2.4 Terms not otherwise defined in this part	shall	have the same meaning as the meaning attributed to them in chapters I and XI-2. 3 APPI		
5	doc#0	as.</s><s>3.2 Notwithstanding the provisions of section 3.1.2, Contracting Governments	shall	decide the extent of application of this Part of the Code to those port facilities within their		
6	doc#0	re ships arriving or departing on an international voyage. 3.2.1 Contracting Governments	shall	base their decisions, under section 3.2, on a port facility security assessment carried out		
7	doc#0	he Code. 3.2.2 Any decision which a Contracting Government makes, under section 3.2,	shall	not compromise the level of security intended to be achieved by chapter XI-2 or by this P		
8	doc#0	his part apply to port facilities as specified in regulation XI-2/10. 3.6 Nothing in this Code	shall	prejudice the rights or obligations of States under international law. 4 RESPONSIBILITIES		
9	doc#0	S 4.1 Subject to the provisions of regulation XI-2/3 and XI-2/7, Contracting Governments	shall	set security levels and provide guidance for protection from security incidents.</s><s>Hi		
10	doc#0	a security incident.</s><s>4.2 Contracting Governments, when they set security level 3,	shall	issue, as necessary, appropriate instructions and shall provide security related informatio		
11	doc#0	ts, when they set security level 3, shall issue, as necessary, appropriate instructions and	shall	provide security related information to the ships and port facilities that may be affected. 4		
12	doc#0	ring the requirements for a Declaration of Security.</s><s>4.4 Contracting Governments	shall	, to the extent they consider appropriate, test the effectiveness of the Ship or the Port Fai		
13	doc#0	pproved on their behalf. 5 DECLARATION OF SECURITY 5.1 Contracting Governments	shall	determine when a Declaration of Security is required by assessing the risk the ship/port i		
14	doc#0	urity plan. 5.3 Requests for the completion of a Declaration of Security, under this section,	shall	be acknowledged by the applicable port facility or ship. 5.4 The Declaration of Security sl		
15	doc#0	ll be acknowledged by the applicable port facility or ship. 5.4 The Declaration of Security	shall	be completed by: .1 the master or the ship security officer on behalf of the ship(s); and, if		
16	doc#0	r shore-side security, on behalf of the port facility.</s><s>5.5 The Declaration of Security	shall	address the security requirements that could be shared between a port facility and a ship		

Fig. 2. Concordances for modal verb *shall*

The screenshot shows a parallel concordance tool interface. At the top, it indicates 'simple shall • 2,217' and 'translations located 12,548.04 per million tokens • 1.3%'. The interface is divided into two main columns for text comparison. The left column contains English text excerpts, and the right column contains their Croatian translations. The text is color-coded to highlight specific words and phrases. The tool includes various navigation and search icons on the left and top right, and a sidebar on the left with icons for different document views.

<s> .8 Port facility security officer means the person designated as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers. .9 Security level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times. </s> ① doc#0	<s> 8. </s><s> Osoba odgovorna za sigurnost lučkog prostora je osoba određena za izradu, primjenu, preispitivanje i održavanje plana sigurnosti lučkog prostora i za vezu sa časnicima odgovornim za sigurnost broda i osobama odgovornim za sigurnost u društvu. 9. </s><s> Stupanj sigurnosti 1 je stupanj na kojem se cijelo vrijeme primjenjuje minimalni skup odgovarajućih zaštitnih mjera sigurnosti. </s>
<s> .10 Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident. .11 Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target. </s> ① doc#0	<s> 10. </s><s> Stupanj sigurnosti 2 je stupanj tijekom kojega se primjenjuju odgovarajuće dodatne mjere sigurnosti u nekom vremenskom razdoblju kao posljedica povećane opasnosti od nastupanja događaja koji ugrožava sigurnost. 11. </s><s> Stupanj sigurnosti 3 je stupanj tijekom kojega se primjenjuju daljnje posebne zaštitne mjere sigurnosti u ograničenom vremenskom razdoblju kada je događaj koji ugrožava sigurnost vjerojatan ili neminovan premda nije nužno moguće utvrditi poseban cilj. </s>
<s> .10 Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident. .11 Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target. </s> ① doc#0	<s> 10. </s><s> Stupanj sigurnosti 2 je stupanj tijekom kojega se primjenjuju odgovarajuće dodatne mjere sigurnosti u nekom vremenskom razdoblju kao posljedica povećane opasnosti od nastupanja događaja koji ugrožava sigurnost. 11. </s><s> Stupanj sigurnosti 3 je stupanj tijekom kojega se primjenjuju daljnje posebne zaštitne mjere sigurnosti u ograničenom vremenskom razdoblju kada je događaj koji ugrožava sigurnost vjerojatan ili neminovan premda nije nužno moguće utvrditi poseban cilj. </s>
<s> 2.2 The term ship, when used in this Code, includes mobile offshore drilling units and high-speed craft as defined in regulation XI-2/1. 2.3 The term Contracting Government in connection with any reference to a port facility, when used in sections 14 to 18, includes a reference to the Designated Authority. 2.4 Terms not otherwise defined in this part shall have the same meaning as the meaning attributed to them in section 1 and XI-2.3. APPLICATION </s> ① doc#0	<s> 2.2 Izraz brod kad se koristi u ovom Kodeksu obuhvaća i pokretne jedinice za bušenje na pučini i plovila velikih brzina kako su utvrđena u pravilu XI-2/1. 2.3 Izraz vlada ugovornica koja se spominje u vezi s lučkim prostorom kada se koristi u odsjecima 14. - 18. obuhvaća i pojam određena vlast. 2.4 Izrazi koji nisu drukčije utvrđeni u ovom dijelu imaju isto značenje kao izrazi u </s>

Fig. 3. Parallel concordances for modal verb *shall*

Although in general English the verb *shall* is quite rare, it is excessively used in legal texts. In general English it is only used (both with a 1st person subject) to express prediction and volition (Quirk et. al., pp. 229–230). However, the main function of the verb *shall* in legal language is to impose a legal duty or obligation. Such as in the example [1] extracted from the corpus. The verb *shall* in this example is translated into Croatian with the verb ‘morati’ (example [1a]), which is the equivalent of the English modal verb *must*. The use of the Croatian verb ‘morati’ additionally reinforces the concept of duty or obligation.

[1] *Each ship shall carry on board a ship security plan approved by the Administration.*

[1a] *Svaki brod mora imati plan sigurnosti broda koji je odobrila Uprava.*

The verb *shall* also appears in the negative form in the corpus to convey prohibition or deny permission, such as in the example [2]. The negative form of the verb *shall* is translated into Croatian as the negative form of the verb ‘smjeti’ (engl. to be allowed to)

[2] *Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.*

[2a] *Pomorci ne smiju raditi na brodu ako nije utvrđeno da su zdravstveno sposobni obavljati svoje dužnosti.*

Another function of both positive and negative forms of the verb *shall* is declarative, especially in cases where it serves to define or limit the legal scope of provisions, such as in the examples [3] and [4] and their Croatian translations in [3a] and [4a]. Both in [3a] and [4a] the modal verb *shall* + full verb (affect, prejudice) is translated in Croatian as ‘dirati’ (Engl. to touch, to encroach) in negative form and in present tense.

[3] *Amendments adopted by the Review Conference pursuant to this article shall not affect rights acquired under existing contracts.*

[3a] *Izmjene koje revizijska konferencija usvoji u skladu s ovim člankom ne diraju u prava stečena na temelju postojećih ugovora*

[4] *Nothing in this Code shall prejudice the rights or obligations of States under international law.*

[4a] *Ništa u ovom Kodeksu ne dira u prava i obveze država po međunarodnom pravu.*

Shall is also used to confer rights and give permissions, as can be seen in examples [5] and [6] and their Croatian translations [5a] and [6a]. In [5a] *shall* + full verb *exercise* is translated into Croatian with verb ‘vršiti’ (engl. practice, exert, perform) in the present tense. In [6a] *shall* + full verb *determine* is translated into Croatian as ‘odrediti’ (engl. determine) in future tense.

[5] *Every State **shall** effectively **exercise** its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*

[5a] *Svaka država djelotvorno **vrši** svoju jurisdikciju i nadzor and brodovima koji vijore njezinu zastavu glede upravnih, tehničkih i socijalnih pitanja.*

[6] *Contracting Governments **shall determine** when a Declaration of Security is required by assessing the risk the ship/port interface or ship to ship activity poses to persons, property or the environment.*

[6a] *Vlade ugovornice **će odrediti** kada je potrebna Deklaracija o sigurnosti broda na temelju procjene opasnosti koju odnos brod/luka ili brod/brod kao djelatnosti predstavljaju osobama, imovini ili okolišu.*

The verb *shall* in the corpus of maritime legal texts is also frequently used to give directions or instructions, such as in the example [7] and its Croatian translation with the verb ‘morati’ (engl. must) shown in [7a].

[7] *The International Ship Security Certificate **shall be drawn up** in a form corresponding to the model given in the appendix to this Code*

[7a] *Međunarodna svjedodžba o sigurnosti broda **mora biti sastavljena u obliku** koji odgovara obrascu koji je dan u Dodatku ovog Kodeksa.*

The verb *shall* can also be used to express a condition precedent [8] and a condition subsequent [9]. The verb *shall* in [8a] is translated in Croatian as ‘podlijezati’ (engl. to be subject to) in present tense, and as ‘morati skrenuti pažnju’ (engl. must bring attention to).

[8] *The proposed amendment **shall be subject** to approval by the Assembly following its approval by the Council.*

[8a] *Nakon što ju je odobrilo Vijeće, predložena izmjena **podliježe** odobrenju Skupštine.*

[9] *In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer **shall bring** the deficiencies **to the attention** of the appropriate seafarers' and shipowners' organizations in the Member in which the inspection is carried out.*

[9a] *U slučaju da takve nedostatke ovlašteni službenik smatra značajnim ili ako se oni odnose na prigovor podniet u skladu sa točkom 3. ovog standarda, ovlašteni službenik **mora** o tim nedostacima **skrenuti pažnju** odgovarajućim organizacijama pomoraca i brodovlasnika u članici u kojoj je inspekcija provedena.*

Finally, the modal verb *shall* can also be used to express future, such as in example [10] and its Croatian translation [10a].

[10] *When the renewal inspection is completed more than three months before the expiry date of the existing maritime labour certificate, the new maritime labour certificate **shall be valid** for a period not exceeding five years starting from the date of completion of the renewal inspection.*

[10a] *Ako je obnovna inspekcija dovršena više od tri mjeseca prije datuma isteka postojeće svjedodžbe o radu pomoraca, nova svjedodžba **će vrijediti** za razdoblje ne dulje od pet godina, koje počinje od datuma dovršetka obnovne inspekcije*

An examination of the different applications of the verb *shall* in a corpus of marine legal documents has revealed that it serves a wide range of purposes, such as establishing obligations or prohibitions, granting rights, or refusing permission. The wide range of meanings associated with the verb *shall* does not seem to enhance the primary goals of legal texts, which are clarity, precision, and lack of ambiguity. For instance, occasional ambiguity encountered in the corpus of maritime texts made it unclear whether certain provisions indicated by the word *shall* were obligatory and required, or just permissive or advisory.

The verb *shall* is typically translated into Croatian as ‘morati’. However, it is also quite often translated without using the modal verb at all, i.e., by only using the full verb in the present form, such as in the examples 3a, 4a, 5a and 8a. Examples of *shall* being translated in Croatian as ‘smjeti’ (be allowed to) and ‘trebati’ (should) were also found in the corpus but to a much lesser extent.

The second most frequent modal verb found in the corpus of maritime legal texts is *should*. It appears 747 times and amounts to 18,5% of the total number of recorded modals. According to Quirk et al. (1985), the English modal verb *should* is usually used to convey meanings on the scale between noncommitted necessity and obligation. Thus, the verb *should* can be used to express both epistemic and deontic modality. Within the epistemic domain, *should*, according to Palmer (1990), functions as a tentative marker of epistemic necessity as it indicates a high degree of probability. As an expression of deontic modality, the modal verb *should* signifies a weaker obligation. Quirk et al. (1985) refer to the verb *should* and its synonym *ought to* as marginal auxiliaries which, although different from *must* and *have (got) to*, display the same basic modalities of necessity and obligation. However, they differ because they do not express the full confidence of the speaker in the probability of an event happening or a condition being achieved, i.e. their epistemic component weakens the statement. When it expresses an obligation, the verb *should*, such as the verb *must*, implies the authority of the speaker, but does not imply the author's complete conviction that it will be acted as stated in the proposition. In legal provisions, the verb *should* indicates a certain degree of obligation, but to a lesser extent than in the case of the modal verb *must*, so it is mostly used to express recommendations. Therefore, *should* implies that the proposition within its scope is desirable or advisable, as can be seen in example [11] and its translation into Croatian [11a], in which the modal verb *should* is translated into Croatian with corresponding modal verb “trebati”.

[11] *Those unwilling or unable to establish their identity and/or to confirm the purpose of their visit when requested to do so **should be denied** access to the ship and their attempt to obtain access **should be reported**, as appropriate to the SSOs, the CSOs, the Port Facility Security Officer (PFSO) and to the national or local authorities with security responsibilities.*

[11a] *Onima koji ne žele ili ne mogu potvrditi svoj identitet i/ili svrhu svog posjeta kad se to od njih zahtijeva **treba zabraniti** pristup na brod, a o njihovom pokušaju pristupa na brod **treba izvijestiti**, već prema prilikama, časnika za sigurnost broda, osobu odgovornu za sigurnost u društvu, osobu odgovornu za sigurnost lučkog prostora i nacionalne ili lokalne vlasti odgovorne za sigurnost.*

Unlike the verbs *shall* and *must*, the verb *should* expresses an escapable obligation (Williams 2007) and is most often used in legal texts to express guidelines or principles with a prominent moral or ethical dimension. On the other hand, instead of expressing explicit prohibition, the negative form of the verb *should* marks a warning against behavior that is undesirable (ibid 2007), as shown in the example [12] and its Croatian translation [12a], in which undesirable behavior is referred to with the negative form of the verb “smjeti” (be allowed to) in passive form.

[12] *Unless there are clear security grounds for doing so, members of the ship's personnel **should not be required** to search their colleagues or their personal effects.*

[12a] *Od članova brodskog osoblja **ne smije se zahtijevati** da pretražuju svoje kolege ili njihove osobne stvari osim ako postoji osnovana sigurnosna sumnja da to treba učiniti*

The third most common modal verb found in our corpus is the modal verb *may*. It appears 715 times and amounts to 17,7% of all recorded modals. *May* can express either possibility or permission and is considered a more formal substitute for *can* and favoured by the prescriptive tradition, which leads to its substantial use in official documents and notices (Quirk et al., 1985). As can be seen in the examples below, the auxiliary negation is used to refuse permission or state prohibition (*may not be established*), which is corroborated by it being translated into Croatian with the verb phrase *ne smiju se postavljati*, which is the equivalent of *not allowed* or *must not be* or *shall not be*. The other *may* in the sentence is used to express possibility and it is thus translated into Croatian with the modal verb ‘moći’ (can).

*Artificial islands, installations and structures and the safety zones around them **may not be established** where interference **may be caused** to the use of recognized sea lanes essential to international navigation*

*Umjetni otoci, uređaji, naprave i sigurnosne zone oko njih **ne smiju se postavljati** tamo gdje **moгу ometati** upotrebu priznatih plovidbenih putova bitnih za međunarodnu plovidbu*

4. CONCLUSION

The purpose of this paper was to classify and compare the use of modal verbs in a distinct (sub)genre of legal texts, i.e., maritime legal texts originally written in English and investigate the possible ways in which they can be translated into Croatian. The modal verbs were observed in the context of legal language as a variety of specialized English. The parallel corpus on which the research was conducted encompassed a selection of maritime legal texts in English and their translations into Croatian. The use of *Sketch Engine* corpus linguistic tool enabled the investigation into semantic variations of various modal verbs found in the corpus of maritime legal texts. This type of contextual environment has been found to possess a very high frequency of deontic meaning, especially deontic *shall*. Finally, the summary of the uses of the most frequent modal verbs in maritime legal documents could hopefully provide interesting insights that may be useful to translators and interpreters of maritime legal texts and also to various stakeholders in the maritime industry whose activities are regulated by these documents.

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