

RESEARCH PROPOSAL

**“ANALYZING THE EFFECTIVENESS OF INTERNATIONAL
CRIMINAL TRIBUNALS IN PROSECUTING WAR CRIMES”**

SUBMITTED BY:

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TABLE OF CONTENTS

1) INTRODUCTION	3
2) LITERATURE REVIEW	5
3) PROBLEM STATEMENT	9
4) HYPOTHESIS STATEMENT	10
5) AIMS AND OBJECTIVES	10
6) RESEARCH QUESTIONS	11
7) RESEARCH METHODOLOGY	11
8) LIMITATIONS	12
9) SIGNIFICANCE OF RESEARCH STUDY	13
10) PROPOSED STRUCTURE OF THESIS	14
11) PROPOSED TIMELINE OF THE RESEARCH (GANTT CHART)	15
12) REFERENCES	16
13) BIBLIOGRAPHY	20

THE EFFECTIVENESS OF INTERNATIONAL CRIMINAL TRIBUNALS IN PROSECUTING WAR CRIMES AND GENOCIDE

The presence of a court is essential in upholding fairness and legality, which are crucial components for the establishment of peace and order.

(*Benjamin B. Ferencz*)

1) INTRODUCTION:

In the absence of mechanisms for each country to halt international crimes, there is a requirement for a legal body to address severe violations of humanitarian law across different areas of the globe.¹ The absence of an International criminal court and laws for criminals has led to a lack of belief in proposed legal measures by the global community.²

Specialised courts known as International Criminal Court (ICC) tribunals are established to address cases of international law violations. Serious crimes such as genocide, war crimes, and crimes against humanity fall under the jurisdiction of these courts, along with other international offences.³ These tribunals are categorised into permanent and temporary (ad-hoc) sections. The ICC is the singular court that remains steadfast in prosecuting criminals. All other temporary tribunals have been limited in their jurisdiction, only able to prosecute crimes in specific regions and for a specific duration.⁴

¹ Kleinberger , T. R. (1993). The Iraqi Conflict: An Assessment Of Possible War Crimes And The Call For Adoption Of An International Criminal Code And Permanent International Criminal Tribunal. *The New York Law School Journal of International and Comparative Law* .

² Gordon, M. (1996). Justice On Trial: The Efficacy Of The International Criminal Tribunal For Rwanda. *ILSA Journal of International & Comparative Law: Vol. 1*, 222-224.

³ Scheffer, D. J. (1999). The United States and International Criminal Court. *The American Journal of International Law, Vol. 93, No. 1*, 12-15.

⁴ Bergsmo, M., & Webb, P. (n.d.). International Criminal Courts and Tribunals, Complementarity and Jurisdiction. *Max Planck Encyclopedia of Public International Law*, 2-5.

The Genocide Convention, signed by the United Nations in 1948,⁵ marked the first international agreement on human rights. Genocide is now considered a criminal offence by international law, regardless of the circumstances. This played a crucial role in laying the groundwork for today's human rights and criminal laws.⁶ Countries are obligated under Article IV of the convention to establish legislation to prevent and prosecute the offence of genocide. This involves holding accountable anyone at fault, such as leaders, government employees, or individuals in the private sector.

During the 1990s, there was a major leap forward in international humanitarian law for aiding individuals in crisis, representing the most substantial progress since the end of the Second World War.⁷ Special tribunals (ad-hoc) were set up by the United Nations to handle crimes committed in Yugoslavia and Rwanda. They also established courts that blend both national and international laws for Sierra Leone, East Timor, Bosnia, Kosovo, Cambodia, and Lebanon.⁸ In 1993 and 1994, the United Nations set up two judicial bodies, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), to apprehend and try individuals involved in war crimes in Yugoslavia and Rwanda. The ICTY is only authorized to punish those who have committed grave crimes in the former Yugoslavia since 1991.⁹ The ICTR can bring charges against those who committed crimes in Rwanda in 1994,¹⁰ and also Rwandans who have committed offences in neighbouring countries. The hybrid courts adhere to a uniform set

⁵ Convention on the Prevention and Punishment of the Crime of Genocide. (1948). available at: <https://www.un.org/en/genocideprevention>

⁶ Schiffbauer, B. (2018). The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention . *Genocide Studies and Prevention: An International Journal (GSP)* , 83-86.

⁷ Charney, J. I. (1999). Progress in International Criminal Law? *The American Journal of International Law*, 452-456.

⁸ Wet, E. d. (2008). The relationship between the International Criminal Court and ad hoc criminal tribunals: competition or symbiosis? *Berliner Wissenschafts-Verlag*, 33-57.

⁹ Secretary-General, UN. (1993). *Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808*. New York: United Nation Digital Library.

¹⁰ Council, U. S. (1994). *Resolution 955 (1994) / adopted by the Security Council at its 3453rd meeting, on 8 November 1994*. New York: United Nation Digital Library.

of criteria for deciding on the types of cases within their jurisdiction.¹¹ For International criminal tribunals for criminals to be effective, it requires the support and capability of the member nations. Power is essential for ensuring people's adherence to criminal laws.¹²

The ICC officially began functioning on 1 July 2002, coinciding with the implementation of the Rome Statute. According to Article 17 of the Rome Statute, the ICC is unable to intervene in cases that are already being investigated or prosecuted by a country's courts, unless the country is incapable of conducting a fair investigation or prosecution. The same principle is valid when a country has control over crimes that fall within the ICC's jurisdiction, as demonstrated by Canada's Crimes Against Humanity and War Crimes Act.¹³

International courts typically handle crimes that are associated with large-scale public safety concerns, which sets them apart from domestic criminal cases.¹⁴ Understanding how an international court operates can complicate efforts to prevent crime and maintain peace within a society. To determine if a court is effective in preventing bad things from happening, we must consider its impact on public safety and its ability to prevent negative outcomes.

2) LITERATURE REVIEW:

Two types of international criminal tribunals exist; a permanent tribunal and ad hoc tribunals. The ICC is the solitary permanent court with the authority to address criminal cases worldwide. It represents a major stride towards achieving international justice. The ICC is a permanent judicial body that addresses significant crimes taking place between countries and ensures that those responsible are held accountable, irrespective of their

¹¹ Geib, R., & Bulinckx, N. (2006). International and internationalized criminal tribunals: a synopsis. *International Review of the red cross*, 50-52.

¹² Scheffer, D. J. (1999). The United States and International Criminal Court. *The American Journal of International Law*, Vol. 93, No. 1, 12-15.

¹³ Marler, M. K. (1999). The International Criminal Court: Assessing The Jurisdictional Loopholes In The Rome Statute. *Duke Law Journal*, Vol. 49, No. 3., 829

¹⁴ Rome Statute of the International Criminal Court. (1998). International Criminal Court. available at: <https://www.icc-cpi.int/sites>

nationality.¹⁵ Alternatively, the ICTY and ICTR stand out as two significant ad-hoc international criminal courts. They were established to address the atrocities that occurred during the wars in the Balkans and Rwanda. These temporary courts played a crucial role in holding individuals accountable for their actions and ensuring justice for victims of heinous crimes.¹⁶

The primary purpose of the ICC, established in 2002, is to prosecute individuals who have committed egregious crimes. Individuals who emerge victorious in legal proceedings claim that it serves as a deterrent for individuals to engage in criminal activities during conflicts, bolsters the authority of the legal system, and provides restitution for victims of serious crimes.¹⁷ Under international law, the court has the authority to penalize four different types of crimes: genocide, war crimes, crimes against humanity, and crimes of aggression. These offences involve actions such as murdering individuals based on their ethnicity, abusing captives in times of conflict, engaging in attacks on non-combatants, and employing aggressive tactics against another nation.¹⁸ Investigations into potential crimes can be initiated in three ways by the court: a member country can request an investigation within its jurisdiction, the UN Security Council can request an inquiry, or the prosecutor can independently launch an investigation into a member country.

The International Committee of the Red Cross (ICRC), as the guardian of international humanitarian law, strives to hold accountable those who engage in serious offences like genocide and war crimes. They urge nations to establish regulations to punish

¹⁵ Mutyaba, R. (2012). An Analysis of the Cooperation Regime of the International Criminal Court and its Effectiveness in the Court's Objective in Securing Suspects in its Ongoing Investigations and Prosecutions. *International Criminal Law Review*, 937-962.

¹⁶ Mundis, D. A. (2005). The Judicial Effects of the "Completion Strategies" on the Ad Hoc International Criminal Tribunals. *The American Journal of International Law*, 142-158.

¹⁷ Bergsmo, M., & Webb, P. (2011). International Criminal Courts and Tribunals, Complementarity and Jurisdiction. *Max Planck Encyclopedia of Public International Law*, 2-5.

¹⁸ International Committee of the Red Cross. (2008). *Analysis of the punishments applicable to international crimes (war crimes, crimes against humanity and genocide) in domestic law and practice*. Hague: International Review of the red cross .

those perpetrators and also endorse the concept that individuals can be held responsible for these crimes on an international scale.¹⁹ Having the Court alone does not imply that egregious human rights violations will come to a halt. The Court and the parties to the cases must continue their partnership to prevent human rights violations and uphold the Court's efficiency. According to Ian Hurd, the ICC was founded on the same principles as the Nuremberg Tribunals in 1946 to prevent individuals from escaping justice.²⁰

While state referrals appear to be less problematic with Court cooperation, some critics point to the existence of loopholes which are likely to impact negatively the effectiveness of the Court. El Zeidy in his article talks about Uganda seeking support to prosecute individuals accountable for war crimes carried out by the Lord Resistance Army (LRA).²¹ The collaboration between Uganda and the Court on the LRA matter is strong, but Mohamed is uncertain about whether the LRA's offences in Uganda occurred within the specified time frame of Article 11(1) of the Statute. According to the Rome Statute, the Court is only allowed to hear cases that occurred after the inception of the Statute in 2002. Zeidy also brings up the point that Uganda is both where the crime occurred and the individual's country of citizenship. The lack of clarity in the law about the interaction between these two elements will only serve to make the case more intricate. The decision to initiate an investigation lies with the Prosecutor, and this can hinder the efficiency of the Court.²²

Most recently, in 2022, the court launched an investigation into Russia's invasion of Ukraine after receiving a referral from more than forty member states. Though neither Ukraine nor Russia are ICC members, Kyiv accepted the court's jurisdiction for alleged crimes on its territory going back to late 2013 and early 2014, when Russia

¹⁹ Akhavan, P., Goldman, R. K., Meron, T., & Parks, W. H. (1998). The Contribution of the Ad Hoc Tribunals to International Humanitarian Law. *American University International Law Review*, 1511-1513.

²⁰ Hurd, I. (2011). *International Organizations: Politics, Law, Practice*. New York: Cambridge University Press, 217.

²¹ Mohamed M, E. Z. (2005). The Ugandan Government Triggers The First Test Of The Complementarity. *International Criminal Law*, 83-119.

²² Chingono , M. (2014). The Effectiveness of the International Criminal Court and the Impact of the Initiating Entities. *CUNY Academic Works* , 10-12.

annexed Crimea. In March 2023, the ICC issued an arrest warrant for Russian President Vladimir Putin on charges of forcibly deporting Ukrainian children.²³

The ICC has jurisdiction over the crime of aggression to halt the illegal initiation of wars and unlawful use of force. In this situation, the Court's power could potentially reach all corners of the world. The ICC is currently restricted to handling and pursuing select cases of aggression between countries that have given their consent to comply with its guidelines.²⁴ If the UN Security Council requests it, they can also investigate and sanction the crime of aggression, even if the country in question does not consent. Although the Security Council can propose measures, it is not always exercised as permanent members, have the authority to reject the suggestion, as they have veto power.²⁵ The purpose of the ICC is to assist national courts rather than replace them.

From the start of the modern international system, international courts have been used to settle conflicts between various countries and international groups. After World War II, the Nuremberg trials were notable for being the first occasion that courts were created to address serious offences such as genocide, war crimes, and crimes against humanity.²⁶ Such courts are commonly known as ad hoc tribunals. The following are some notorious ad-hoc international criminal tribunals:²⁷

²³ Staff, A. J. (2023). *ICC issues Putin arrest warrant on Ukraine war crime allegations*. Al Jazeera.

²⁴ UN General Assembly. Rome Statute of the International Criminal Court (last amended 2010). 17 July 1998. Available at: <https://guide-humanitarian-law.org/content/article/3/international-criminal-court-icc/>

²⁵ Aloisi, R. (2013, January). A Tale of Two Institutions: The United Nations Security Council and the International Criminal Court. *International Criminal Law Review*, 147-156.

²⁶ *Nuremberg Trials*. (2019, June 7). Retrieved from History. Available at: <https://www.history.com/topics/world-war-ii/nuremberg-trials>

²⁷ Wet, E. d. (2008). The relationship between the International Criminal Court and ad hoc criminal tribunals: competition or symbiosis? *Berliner Wissenschafts-Verlag*, 33-57.

- In 1945, the Nuremberg Military Tribunals were created to bring to justice individuals who committed atrocities during World War II.
- The Tokyo War Crimes Tribunal began its proceedings in May 1946.
- The International Criminal Tribunal for Yugoslavia was established in 1993 to hold individuals accountable for their actions during the Balkan wars. The ICTY's jurisdiction was limited to prosecuting individuals for very serious crimes, such as breaching the Geneva Conventions, engaging in genocide, and committing heinous acts against others. ICRC legal experts view tribunals such as the one established for the former Yugoslavia as a significant development in the utilization of international humanitarian law.
- In 1994, the International Criminal Tribunal for Rwanda was put in place to prosecute those responsible for the crimes committed during the Rwanda Genocide. The ICTR was the pioneering global tribunal to issue judgments on genocide, and the first to interpret the definition of genocide in the 1948 Geneva Conventions.
- The establishment of the Special Court for Sierra Leone in 1996 aimed to hold accountable individuals responsible for committing grave offences during the Civil War in Sierra Leone.
- The Extraordinary Chambers in the Courts of Cambodia (ECCC), formed in 2003 with United Nations assistance, is responsible for holding trials for the Khmer Rouge's crimes in Cambodia between 1975 and 1979. The Cambodian government desired for the court to have Cambodian staff and judges rather than individuals from other nations. The United Nations is involved in improving the Cambodian legal system to effectively prosecute individuals for global crimes.

3) PROBLEM STATEMENT:

The ICC and other special courts were formed to prosecute individuals guilty of war crimes and genocide. Even with the implementation of these courts, there is still unease about their capacity to ensure that individuals are held responsible for their actions and that justice is served worldwide. This study will investigate the effectiveness of these tribunals in holding individuals accountable for war crimes and genocide, such as:

- i. The main challenge facing International Criminal Tribunals is determining who has the ultimate authority to make decisions. Crimes can only be prosecuted within the jurisdiction if they are committed by individuals from member states or within the territory of the member state.
- ii. International courts are also confronted with the problem of political interference, where powerful countries use their sway to defend their citizens from punishment.
- iii. Despite the issuance of arrest warrants by international courts, apprehending individuals can be a daunting task. The reason why criminals can evade arrest is often the result of poor cooperation among law enforcement agencies and other authorities, as well as the absence of extradition arrangements between different states.

4) HYPOTHESIS STATEMENT:

After examining the foregoing literature, we have generated the following hypothesis;

“International Criminal Tribunals utilize their legal systems, investigations, and court proceedings to bring justice to those implicated in war crimes and genocide. They show their effectiveness through their ability to accumulate substantial evidence and conclusively prove someone's guilt, as well as their efforts to prevent future wrongdoing by emphasizing that wrongdoers will face punishment. Additionally, their support for international laws and essential values like justice, accountability, and human rights around the world further highlights their effectiveness.”

5) AIMS AND OBJECTIVES:

The research has the following objectives;

- i. To examine the laws and regulations that impact the prosecution of war crimes by international courts.
- ii. To examine the role of political influences and power dynamics in shaping the operations and outcomes of international court tribunals, including instances of interference and non-cooperation from state actors.

- iii. To analyze how the cooperation or hostility between nations influences the punishment of individuals for war crimes.
- iv. To investigate the obstacles international courts encounter when seeking evidence and ensuring fairness in war crimes trials.
- v. To explore strategies to enhance the effectiveness and swiftness of international court trials.

6) RESEARCH QUESTIONS:

By considering the aims and objectives of the study, the following are the key research questions that will aid in evaluating the ability of International Court Tribunals to prosecute war crimes and genocide:

1. How do the legal frameworks and statutes of the International Criminal Court (ICC) and other international tribunals impact the prosecution of war crimes?
2. What role do political influences play in shaping the operations and outcomes of international court tribunals, and how does this impact the pursuit of justice and accountability?
3. What actions are taken by International Court Tribunals to ensure that those responsible for war crimes are held accountable and that the victims receive justice?
4. What are the significant obstacles international courts face with their cases, and how do they complicate the process of delivering justice?
5. What are the advantages and disadvantages of the approach taken by international courts in prosecuting individuals for war crimes?

7) RESEARCH METHODOLOGY:

The research will employ the Doctrinal legal research methodology to collect the data for my research. This type of research is also known as Black Letter or Library research.

The doctrinal research methodology involves analysing legal principles, statutes and previous court decisions, and using reasoning to comprehend them.²⁸

When employing this method, the researcher will meticulously analyze and portray the critical data discovered in books and articles. They will find specific laws that relate to the research problem.

7.1) Sources of Data Collection to be employed:

For data collection, the following sources will be utilised;

- i. Texts of the various statutes such as ICC statute, ICTY statute, ICTR statute and all other ad hoc tribunal statutes.
- ii. Decisions have been made by various international courts and tribunals, including the ICC, ICTY, ICTR, SCSL, and the Nuremberg Trials, as well as by national courts.
- iii. Commentaries and the literature available on the research topic under study, for instance; Books by various authorities and eminent jurists and legal scholars, Academic Journals Articles, news articles, other media coverage, legal frameworks, relevant articles from websites, etc.

8) LIMITATIONS OF RESEARCH:

The following are the limitations of the instant research;

1. The primary focus of this study is on evaluating the ability of international courts to prosecute individuals who have committed crimes during wartime on a global scale.
2. While the research study will analyse various challenges and factors influencing the effectiveness of International Criminal Tribunals, it will not include a comprehensive comparative analysis of tribunals or legal systems.

²⁸ Khanal, D. R. (2019). Doctrinal Legal Research. *Innovative Technology Transfer and Commercialization of University Researchbased Knowledge*, 1-2.

3. The researcher is not inclined to investigate the victim's outlook and experiences of war crimes. Instead, the researcher will concentrate on the mechanisms and challenges encountered by international criminal courts.
4. The study will examine the regulations governing international criminal courts, but it will not emphasize particular legal debates in international criminal law.
5. The study will not delve into potential amendments or advancements to international criminal court laws, as that would necessitate a separate evaluation of the legal processes and political dynamics that are beyond the scope of this research.

9) VALUE AND SIGNIFICANCE OF RESEARCH STUDY:

The value and significance of this research lie in its potential to address pressing issues and contribute to important advancements in the field of international criminal law. There are few transgressions as severe as war crimes and genocide, which represent grave violations of human rights and international humanitarian law. The study will offer us novel concepts, perspectives, and practical evidence that can contribute to our knowledge of academic discourse and scholarly debates.

By identifying critical issues and advocating evidence-based solutions, research can assist government officials, policymakers and international organizations in making better decisions about how to promote fairness and responsibility.

By achieving the five-fold aims mentioned above, this study seeks to make a meaningful contribution to the research on the ability of international criminal courts to effectively penalize those responsible for war crimes and genocide.

By examining case studies, legal frameworks, and operational challenges, the study will equip legal professionals with the knowledge and tools needed to navigate complex legal issues and contribute to the effective prosecution of war crimes and genocide.

10) PROPOSED STRUCTURE OF THESIS:

CHAPTER I	Introduction
CHAPTER II	Literature Review
CHAPTER III	Research Methodology
CHAPTER IV	Brief History Of Modern International Criminal Tribunals
CHAPTER V	Criminal Jurisdiction and Judicial Mechanism of International Criminal Tribunals
CHAPTER VI	Assessment of the overall impact of International Criminal tribunals on accountability for war crimes and genocide
CHAPTER VII	Analysis of strengths and weaknesses of the International Criminal Court tribunals' procedures and mechanisms
CHAPTER VIII	Conclusion
CHAPTER IX	References

11) PROPOSED TIMELINE OF THE RESEARCH (GANTT CHART)

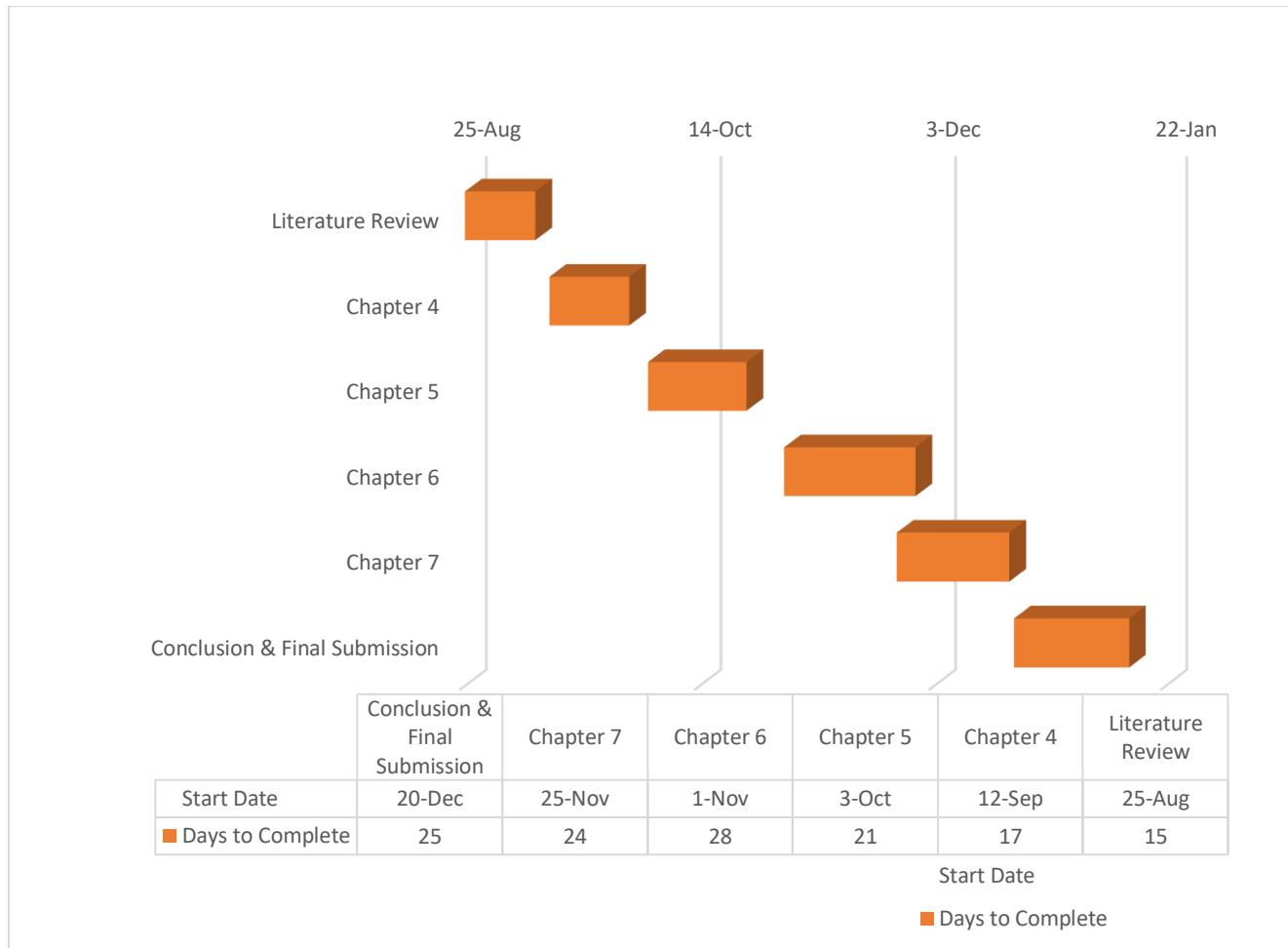


Fig.1 Graphical Representation by Hasnain Hyder Shah

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