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## **CULTURE AND CONFLICT RESOLUTION: INTERCULTURAL COMPETENCE IN MEDIATION**

### **1 Introduction**

This paper is a brief introductory to the role of culture in mediating intercultural conflicts. Intercultural conflicts take place between family members, communities, and colleagues. As Bercovitch states (1996, 1) the world is literally covered with conflicts that are caused by ethnic, religious, territorial or nationalist problems. In the endeavour to reach resolution between disputing parties at any level, whether in international or interpersonal conflicts, mediation plays a crucial role. As Charlton (2000, 13) states mediation is applicable whether the subject is a commercial dispute, family mediation or community conflict.

Culture's influence on conflicts can be seen in our daily lives, not necessarily referring to the major international conflicts covered by the media – we can see cultural values clash in our own society, observe racist behaviour, and hear comments and opinions based on prejudices and fears. Cross-cultural mediation is not necessarily merely a task of diplomats, but the task of anyone of us willing to help others. This paper focuses on the essential intercultural competence areas in cross-cultural conflict mediation. It does not concentrate on the mediation process itself.

The objective of interculturally competent mediation is to create a dialogue between adversaries and by doing this ease the situation and remove stumbling blocks such as cultural clashes that may lay on the way to resolving the causes of conflicts. The basic supposition is that the parties are willing to reach resolution and sit around the same table and that they participate in the mediation process voluntarily. In other words, they are willing to resolve the conflict and are prepared to put aside cultural, historical and religious prejudices against the other party. According to Charlton (2000, 14) five basic philosophies of mediation are confidentiality, voluntariness, empowerment meaning parties capability to reach their own resolution, neutrality, and a unique solution, which refers to the use of creativity in the mediation process due to the freedom from legal precedents and community rules and norms.

This paper also attempts to provide an insight into the culturally biased western-dominated mediation and how it influences its role as one of the alternative dispute resolution methods. Brigg (2003, 298) states that in order to ethically appreciate cultural differences in mediation there is a need to understand the predominance of western culture – thus it is important to value non-western views as well and therefore respect other worldviews and ways of life. Culturally competent mediator is able to adjust the process in recognition of non-western approach to conflict and its resolution.

## 2 Mediation

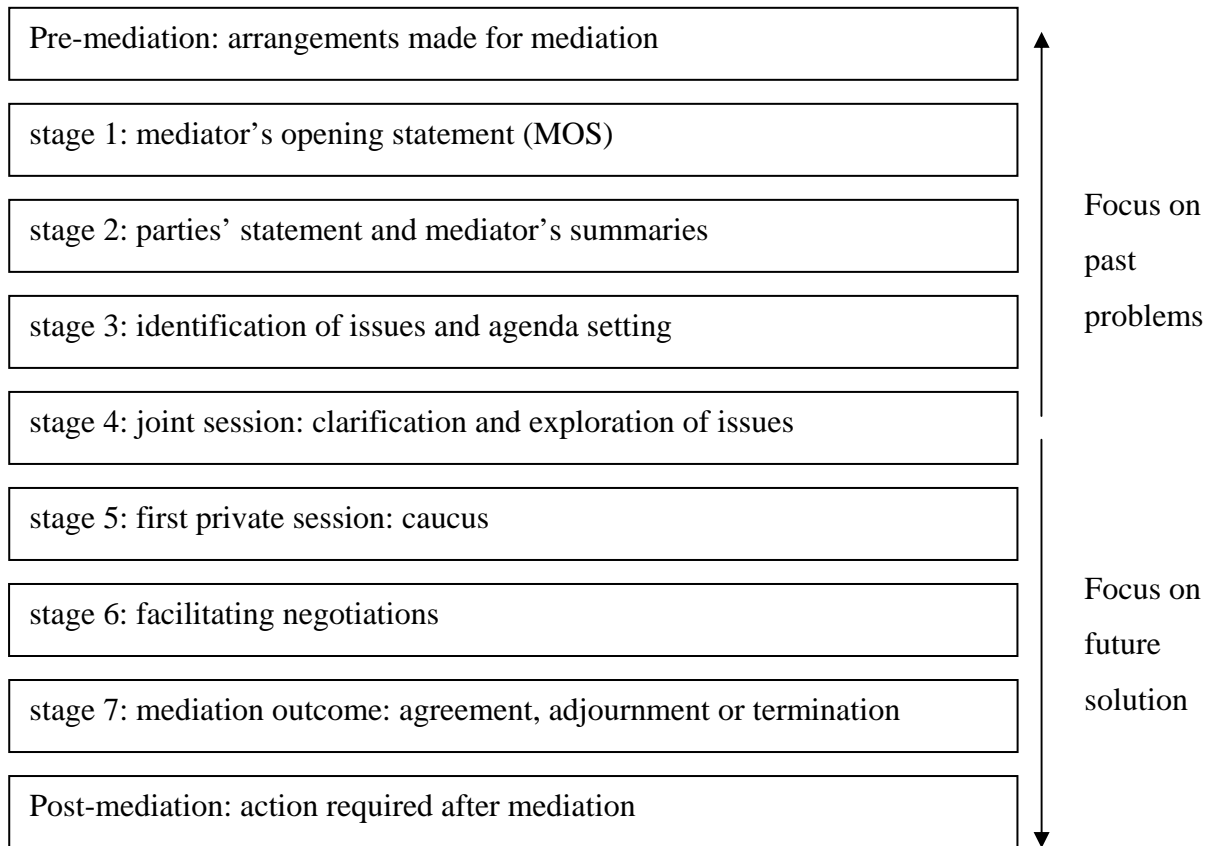


Figure 1 Stages of mediation (Charlton and Dewdney 2004, 7).

According to Burgess and Burgess (1997, 178), mediation refers to the intervention of a neutral third-party mediator in the negotiation process. As Bercovitch (1996, 4) states “the inclusion of a mediator, in any arena, turns a dyadic conflict into a triadic relationship”. According to Bercovitch (1996, 3) mediation is a continuation of parties’ own attempt to resolve the conflict, which is done by a mediator, an individual, organisation, group, or a state. Mediator’s role is to assist in achieving a reciprocally satisfactory solution by negotiating collaboratively, not in adversarial way (Noone 1996, 5). Unlike arbitrators, mediators do not have decision-making power. Their role is merely to lend a hand to the disputants to find out the potential terms of settlement by themselves. Mediators do this by improving communication between parties, assisting parties in analysing the causes of conflict, and finally creating a solution that both parties accept. Bercovitch (1996, 3) divides mediator’s influencing methods into persuasion, application of logic and information, and use of effective social strategies. Mediation should not be considered advocacy or therapy, but rather assisted negotiation. Usually impartiality is required from the mediator. He/she should not have connections to either party or have a stake in the outcome of the mediation process.

Noone (1996, 31) defines mediation as follows: “Mediation is a process in which an impartial third party called a mediator is invited to facilitate the resolution of a dispute by the self-determined agreement of the disputants. The mediator facilitates communication, promotes understanding, focuses the parties on their interests and uses creative problem-solving techniques to enable the parties to reach their own agreement.”

In order to be able to efficiently define the concept of mediation, it is essential to cover the basic principles of conflict resolution. This also helps in understanding the role intercultural competence plays in mediation. Mediation is one of the alternative dispute resolution (ADR) techniques; others are mini-trial, neutral fact-finding, neutral experts and private judging. ADR was developed in the 1970s with the purpose of making conflict resolution a private process that does not require public court proceedings. ADR techniques usually look into the future and usually leave parties with better sustained relationships than other conflict resolution techniques. (Halpern 1992, 89).

Liebmann (2000, 10) defines mediation as a non-confrontational method of resolving conflict with the help of third party. She points out the fact that mediation focuses on future, rather than past behaviour. In order to avoid confusing the term mediation with other conflict resolution methods, it is important to understand the differences. The least interventionist action in conflict is obviously avoidance. The following step towards interventionism is negotiation, which refers to the process in which disputants find the solution to the conflict themselves. According to Liebmann (2000, 10) in arbitration impartial third party makes a binding decision after hearing both parties. In mediation, the disputants make the decision, not the mediator. The most interventionist action in conflict resolution is litigation, which means that the dispute is taken to court and is solved according to legal statutes and advocates present evidence for the party they represent. As a result of the litigation process the judge adjudicates in favour of one other party.

Noone (1996, 7) defines the principles of mediation – according to him mediation should be first of all accessible for conflicting parties. Mediation is relatively quick to arrange in different locations where parties are in comfort. Mediation can also be organised in a formal or informal way depending on the will of parties and the nature of the conflict. The mediator should be able to observe the situation and assist determining on these issues. Secondly, mediation should always be voluntary. The conflicting parties must be able to choose freely whether they want to participate in the process, whether they are satisfied with the selection of the mediator, and whether they want to meet the terms of the agreement. Parties must have the right to withdraw from the process without presenting any rationale. Thirdly, confidentiality is essential. This aspect is dealt with in the chapter Benefits and Limitations of Mediation. Finally, as stated earlier, mediation should always be a facilitative process, interest-based and not position-based.

Mediation is especially useful for minority and disadvantaged groups due to the problems with the law and procedures faced by cultural minority groups – flexibility of mediation has increased mediation's importance in cross-cultural disputes, in which one or both groups consider the formal justice system problematic (Astor et al. 2002, 40). On the other hand it should be taken into consideration that mediation and other ADR methods are not free of cultural assumptions favouring the dominant culture.

### **3 Mediator's competence**

The mediator has to adapt to the mix of cultures present in the negotiation table. The mediator's fundamental task is to facilitate the exchange of ideas. This facilitative task requires intervention, which in turn should be conducted in a culturally sensitive manner. The mediator should take the needs of the disputants into consideration at all stages in order to achieve disputants' trust on him/her and on the mediation process. (Blackstock 2001, 18). It is important to understand the significance of intercultural competence in mediation. As Boule (2001, 116) states, cultural factors may be the less perceptible, even unconscious part of parties' behaviour. Each side criticises and

evaluates the other through their cultural realities, which may result in severe communication breakdown.

Goodpaster (1997, 252) states that using mediators in cross-cultural disputes is based on the idea that mediators are intercultural liaisons and buffers against face-injuring communication as well as bargain makers. Parties representing the same culture in the negotiation table communicate within similar framework, or frame of reference, that consists of mutual principles and connotations. In negotiation between parties from different cultures there is a risk of failure in communication due to the potential of misunderstanding.

Barsky (2003, 8) states that increased self-awareness enhances the constructive nature of interaction between people. People belonging to a majority cultural group are usually not as aware of their culture and individual exceptionality. On the other hand, being a member of a minority cultural group people tend to be very aware and sensitive of it. In case of cross-cultural mediation between members of the dominant culture and members of the minority culture, the dominant culture's representative usually takes the stance of trying to find the problem of the 'other' person. Barsky repeats what has been stated earlier in the study: we do not have to learn about other people's cultures to promote cultural understanding, but instead we have to be more aware of our own culture. Interacting with other cultures provides us with a mirror that we can reflect ourselves.

The challenge with mediation and culture is whether there is a mediation practice that fits all. Barsky (2003, 8) quotes Lederach by saying that one-size-fits-all type mediation can be used if the participants are from the same segment of the community, but otherwise mediation has to be built-up with the help of the disputants or conflicting communities. This could be called the grass-root approach, which is build from the foundations upwards. This way the communities give their suggestions about what might work and what they would like. This building process could include introducing people to mediation models and trying various mediation methods or finding out the past successes in mediation in the particular culture. As Barsky states occasionally mediation is needed within groups or communities before moving on to cross-community mediation. Members of a certain groups may feel threatened and insecure and therefore cannot deal with other cultural groups. The primary starting point for mediation is that the individuals or groups feel secure and confident with themselves and thus can act in a non-defensive and self-assured way with participants of the same group. This way they can shift the focus from themselves to the conflict with others. (Barsky 2003, 8-9).

The mediator's task is to regenerate trust among disputants, educate people in cultural awareness, and ensure open communication (Blackstock 2001, 21). Additionally the mediator is ought to be aware of his/her communication style, identify his/her responses to conflict and emotions, and understand the difference between showing professional warmth and empathy but not emotions or feelings (A Framework for ADR Practitioners 2001, 103-104). The basic principle in mediation is that none of the participants would lose their face, in mediation context, in some cultures any compromising on principles may result in loss of face, whereas some other cultures may not regard it as a very sensitive issue (Boulle 2001, 52).

In order to be able to function effectively in intercultural context, the mediator should understand the deep-structure of culture in order to be able to explain behaviour and objective setting of a group – competent mediator is able to search for the meaning beneath visible behaviour (Schneider and Barsoux 2003, 22). With the help of intercultural competence, active listening, reframing skills and cultural education the mediator is able to reconstruct disputants' cultural frame of references in his/her mind, help parties understand their own cultural framework and also assist them to

understand the cultural frame of reference of the opposing party. By helping disputants gain knowledge of the true interests for fighting they are able to undress their fears and regenerate trust. Furthermore, mediators require motivation, knowledge and skills (adapted from Spitzberg 1997, 380) – if they lack motivation, they may not be considered competent in their communication efforts, if they lack knowledge, they cannot perform in the desired way because they have insufficient awareness of how to communicate in a specific context and finally skills refer to the execution of both knowledge and motivation.

Cohen (1997, 111-112) names three cross-cultural roles for the mediator – first of all, the mediator should be an interpreter, decoder, and explainer of the disputant's culturally coded messages. With the help of these three factors the mediator is able to assist parties to communicate efficiently. Secondly, the mediator should be a buffer protecting both parties face, especially of those from cultures of high avoidance of face-loss. Thirdly, the mediator should be the coordinator of the incongruous negotiation methods and principles the parties bring to the negotiation table. Finally, it is essential to understand that the parties have to negotiate with each other as peoples and cultures, not as stereotypes (Sloan 1999 qtd. in Blackstock 2001, 16).

Boulle (2001, 6) names various cultural factors that have an effect on mediation. First of all communication, verbal and non-verbal, is affected by the cultural background of participants. Secondly, approach to time, negotiation, and problem solving differ from culture to culture. Thirdly, disputants from different cultures may have conflicting attitudes towards privacy issues and the involvement of the third party, the mediator. Moreover, mediation participants may view roles of lawyers, assistants and other advisors differently. Fourthly, people may have diverse mind-sets about personal boundaries and physical space, and fifthly they may view and accept compromising and concession differently. Additionally, relationship values are seen differently in different cultures. Interculturally competent mediator should pay attention to the factors mentioned in the figure in order to ensure smooth flow of mediation.

There are certain embedded sets of values in mediation that are crucial to understand. These help in comprehending and characterizing the decisive intercultural competence areas. First of all the mediator should have excellent listening skills. He/she should listen to facts and also feelings of disputants and therefore be able to go below the surface. Secondly, the mediator should possess good co-operation skills due to the nature of the task and he/she should appreciate each participant's contributions. This motivates participants and ensures that nobody feels unappreciated. Thirdly, good mediator should look for common ground instead of differences. (Liebmann 2000, 12).

Liebmann (2000, 13) states that in mediation it is fundamental to separate the problem from people. The mediator should be able to see the problem, not the people presenting it. At the same time, the mediator should try to understand participants' viewpoints and speak for oneself instead of accusing others. It is also a necessity to affirm oneself and others about the success of the mediation. After the listening phase the mediator should imply inventive resolution-solving approach and take every option into account before deciding on one to suggest and let disputants work with. As stated earlier, it is crucial for the mediator to bear in mind that mediation focuses on the future – the mediator should not blame the past of the parties, but instead find what people want from their future. As a consequence of this process, both parties should reach a satisfying solution, a win-win situation.

Boulle (2001, 118) states that all conflict resolution methods rely on good information. The role of the mediator is to enhance communication, assist gaining new information and helping in using this information in the most useful way. Both the context of the mediation and the good reframing of apt

questions improve communication. The mediator may face disputants that have a strong mind-set that hinders the resolution process. In these cases the mediator should reframe the mind-set (frame of reference) so that both parties can discuss the conflict constructively. The change of deep-seated mind-set can be obtained by shifting the focus from past to the future and from searching for revenge to problem-solving. Cultural symbols may be useful in the reframing process by supporting forgiveness and concentrating on the future. The challenge is to recognise the situations requiring reframing and also the cultural symbols that may assist the process. (Chia et al. 2001, 68)

#### **4 Examples of culture's role in mediation**

Examples presented in this chapter give an idea of conflicting cultural frames of reference. The following examples are presented only to give an idea of the diversity of issues to be taken into account in intercultural mediation. Various examples are generalisations and may not be applicable to every situation. Their purpose is merely to create the appetite for further discussions. The examples are seen from the mediators' or the adversaries' perspectives respectively.

Cohen (1997, 107-108) brings an interesting comparison to the daylight. According to him North American mediators assist communication and search for alternative resolution models in an impartial and professional way. This approach is instilled in the Christian morality according to which "blessed are the peacemakers", whereas in the Middle-East the mediator, who is selected from a group of local distinguished people, is expected to bring the resolution by protecting parties honour and favouring the weaker party's claims. Contrary to the western mediation practice, Middle Eastern mediators' priority is not ethics, but the benefit of the community. Culture defines the roles of the dispute, creates norms and determines meaning, but does *not* encode our specific behaviour. (Cohen 1997, 108).

Participants of the mediation process should also understand that the mediation has his/her own cultural assumptions. These cultural assumptions may not always be appropriate for particular cultures in conflict. Mediator neutrality is one of the cultural assumptions that may not be accepted by both parties. For instance, mediation providers for Australian Aboriginal people should ensure that they offer what the minority group wants in the way they want it rather than what and how Anglo-Australian dominant culture thinks they should receive it. The non-Aboriginal methods of mediation may be adversative to the needs and interests of Aboriginal communities. As an example Kalowski (qtd. in Astor et al. 2001, 171) states that Aboriginal mediation engages in converting a person or people who have committed an offence against social norms of the community, whereas in non-Aboriginal mediation the objective is to reach an agreement on the given issue. The disparity is that Anglo-Australians seek for settlement on issues, whereas Aboriginals try to settle relationships.

Chia et al. (2001, 57) state that the Chinese-Malaysian mediation practices concentrate on resolving the conflict in a way that harmony can be restored and future disputes can be prevented from arising. The principal objective is to reach harmony among the disputant's network of friends and family with the goal in harmonising the community. The actual agreement is not considered as important in communalistic cultures – the significance is placed on restoration of relationships. Parties may be asked to compromise for the common good of the community and parties may settle with reasonable solutions rather than optimizing achievements. LeResche (1992, qtd. in Chia et al. 2001, 58) states that in cultures aiming at interpersonal harmony the objective of mediation is to preserve present relationships, save one another's face, reiterate appropriate code of conduct in an

interdependent manner. In these cultures conflict is usually placed in wider context, such as the community. Thus the mediator's task is to be a promoter of community values and interests.

In contrary, in western mediation practices the mediator is expected to focus on maintaining parties' independence and sovereignty in reaching the resolution. Parties are given freedom to address their interests and conflicting matters. The mediator's task in maintaining the existing relationships does not go further than what is necessary for the parties to be able to negotiate and state their concerns in a constructive manner. Disputants can decide themselves whether they place value on preserving the relationships or not. (Chia et al. 2001, 58).

In western individualistic cultures the mediator's role is limited to the borders set by the disputants, whereas in collectivistic cultures the conflict is seen in a wider perspective – its effects are reflected through the community. The mediator, who is considered the guardian of proper social conduct, thus has the responsibility to resolve the conflict from the community's point of view. This collectivistic approach therefore affects the mediation process remarkably. As Trompenaars (1993, qtd. in Chia et al. 2001, 64) defines, collectivistic cultures place emphasis on demands and signals from outside when deciding one's responses and actions due to the outer-directed nature of the culture. Collectivistic cultures integrate details into relationship patterns that cover the broader context. Additionally Triandis, McCusker and Hui (qtd. in Bhawuk & Triandis 1996, 21) have found out that members of individualistic cultures perceive their in-group more heterogeneous than the out-groups, whereas the opposite takes place with collectivistic cultures. In other words, collectivists focus on values increasing their in-group's wellbeing and have closer social behaviour toward the in-group members than toward the out-group members. Individualists concentrate more on individual goals.

According to Chia et al. (2001, 58-59) western mediators facilitate the process without determining the faulty party or actions, whereas Chinese-Malaysian mediators for instance make a distinction between parties' right and wrong behaviour and actions. The approach is that both parties' conduct is faulty, because otherwise there would not be a conflict. The non-western attitude towards conflict is that it does not arise unless inappropriate conduct in human relationships. At times the other conflicting party may want to use mediation as a graceful way to back down without losing face. This may happen if the other party is not willing to admit being wrong in the fear of losing face. (Chia et al 2001, 58-59).

Compromising is considered in Chinese cultures a sign of weakness, which results in loss of face. In Chinese culture the disputants use the mediator as a façade that assists them in admitting the wrong-doing without causing them to lose their face. The mediator defends both parties by ensuring that each other has their own logic. (Chia 2001, 59). Additionally, the Chinese favour termination of conflict to resolution of conflict. When problem is distinguished, it is usually dissipated in preventative manner so that the conflict does not escalate and expand to a severe conflict. Due to the collectivistic nature of the Chinese culture, Chinese consider conflicts messy, because they are communal, not personal. As stated previously, collectivists are more interested in social harmony than individual rights. Due to the previously mentioned facts, litigation as a conflict resolution method would be against the search for harmony and would cause anxiety at direct disagreement. Therefore, if the conflict is unavoidable, mediation is the most suitable method of conflict resolution. Litigation would also run counter to the Confucian spirit of self-criticism, according to which the best way to resolve a conflict is by making it possible for both parties to save their face. If parties insisted on rights by demanding a law case, losing face would be inevitable for the loser party. According to the Confucianism the social structure determines each individual's place in the society and if people obey the rules set for their rank, there will be peace. Mediation process fits the

ideology well; because in the process individuals can be reminded of their place in the society. Therefore, mediation is culturally ideal for the Chinese culture aiming at harmony, collectivistic good, and face-saving. (Bee Chen Goh qtd. in Boulle 2001, 7).

In the preliminary phases of negotiations, the importance of the background of the conflict is seen differently by different cultures. Africans, Japanese, Indians and Iranians are highly interested in the history of the dispute and thus want to dedicate more time for this procedure than the Americans, who are more future-oriented. (Leeds 1989, qtd. in Halpern 1992, 83). For instance the British and the Chinese are past-oriented cultures, which in conflicting situation would look back to see how things are done in the past. The Chinese have a saying “Consider the past and you will know the present”. Latin Americans and Filipinos are examples of present-oriented cultures. In conflicting situation present-oriented cultures could be considered inefficient, due to the nature of their culture – present-oriented cultures are not very eager to plan things that they consider are out of their control. On the other hand, American and Scandinavian cultures, for example, are future-oriented cultures, that in conflicting situation look further beyond the agreement and want to achieve objectives as soon as possible, so that they can move on to next objectives. (Samovar et al. 1998, 168-169).

Brigg (2003, 287) questions the western way of approaching mediation – according to him western mediation practices lack recognition and awareness of different ways of selfhood. By this he refers to the western approach according to which conflict is destructive way of being and should be avoided. This perspective does not leave space for the non-western perception of conflicts being constructive and productive. According to Nadel (qtd. in Brigg 2003, 289) western cultural background fosters attachment to harmony models and thus conflict is to be avoided. In western cultures conflict needs explanation and is therefore bad, whereas behaviour that does not need to be explained is valued. Western cultures that have given rise to the movement of mediation consider maintaining and achieving peace problematic, whereas some cultures see no problem at it whatsoever. Nadel (qtd. in Brigg 2003, 289-290) argues that among Melanesian and Australian Aboriginal cultures, for instance, conflicts are tolerated and can even be considered entertaining and enjoyable. Attitudes toward conflicts are related to interpersonal relationships and the formation of political communities. According to Angell (1965 qtd. in Brigg 2003, 290) in case people are not hesitant about their social unity, they are more willing to get involved with conflicts. For instance, some Papua New Guinean cultures regard conflicts as one of many methods of creating and maintaining groups – therefore conflicts are considered constructive, whereas in western societies groups give rise to violent confrontations.

As seen in the previous examples, cultural differences create various challenges to cross-cultural mediation. The objective of cultural learning is to develop a more integrated world view so that disputants are more competent to cope with cultural differences and are therefore able to dig into the true reasons and interests causing the conflict. As Taylor (1994, 390) states this more integrated perspective is a result of a learning process including personal experiences, certain actions and practices. According to Mezirow (qtd. in Taylor 1994, 390) learning is the creation of meanings to an experience that is seen through one’s meaning perspective (or world view or frame of reference). Therefore, when a person is confronted with experiences that do not fit his/her frame of reference he/she has to revise this framework in order to survive and reach the objectives.



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