

Legal aspects of ecotourism: towards creating an international legislative framework

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Abstract

Purpose – This study aims to highlight the most important preventive measures that should be proposed by policymakers and adopted by (inter)national legislative bodies by changing existing or adopting new legal documents. The implementation of these measures should be performed by state bodies responsible for ecotourism, natural and cultural resources protection and ecotourism services users.

Design/methodology/approach – The theoretical legal approach was applied, based on a systematic review of international legally binding and non-binding documents related to ecotourism, adopted by relevant international organizations. Analysis of norms for preventive protection of natural and cultural values was done and followed by law-reform research in the form of recommendations that should be adopted as binding.

Findings – International legal documents relevant to ecotourism analysed in this paper are divided into two groups. The first regulates exclusively ecotourism issues, whereas the second deals with sustainable development and indirectly refers to ecotourism, as one of its segments. Analysed international legal documents require unambiguous norms regulating preventive protective measures in ecotourism by prescribing actual obligations and prohibitions for relevant subjects. Given recommendations are grouped into five types according to the subjects they are addressing (ecotourism experts, policymakers, legislators, natural and cultural conservationists, local communities, educators).

Originality/value – This study is the first that points to the need to amending international legal documents related to ecotourism through recommendations regarding natural and cultural values' preventive protection.

Keywords Prevention, Environment protection, Sustainable development, Ecotourism Legal provisions

Paper type Viewpoint

关于从生态旅游法律角度对建立国际立法框架的看法

目的：这项研究旨在通过改变现有法律文件或建立新的法律文件，强调决策者应提出并由(国际)国家立法机构通过最重要的预防措施。这些措施应由负责旅游、自然和文化资源保护的国家机构以及生态旅游服务用户来实施。

设计/方法论/方法：在系统审查相关国际组织采用的与生态旅游有关的具有法律约束力和非法律约束力的文件的基础上，采用理论的法律方法对自然和文化价值的预防性保护规范进行分析，然后以建议的形式进行了法律改革研究，这些建议应被采纳为具有约束力的法律条文。

研究结果：本文将与生态旅游相关的国际法律文件分为两组。第一组专门规范生态旅游的问题，第二组则涉及可持续发展，而生态旅游也将作为部分内容在这一组进行阐述分析。经过分析的国际法律文件要求明确规范生态旅游的预防性保护措施，规定有关主题的实际义务和禁止事项。根据所提出的主题(生态旅游专家、政策制定者、立法者、自然和文化保护主义者、当地社区、教育工作者)，这些建议会被分为五类进行阐述和分析。

独创性/价值：本论文首次提出了通过修改与生态旅游有关的国际法律文件对自然和文化价值的预防性保护的必要性。

关键词：生态旅游 法律规定 预防 可持续发展 环境保护

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Aspectos legales del ecoturismo: hacia la creación de un marco legislativo internacional

Objetivo : *El presente estudio tiene como objetivo destacar las medidas preventivas más importantes que deberían proponer los formuladores de políticas y adoptar los órganos legislativos (inter)nacionales mediante la modificación de los documentos legales existentes o la adopción de nuevos. La implementación de estas medidas debe ser realizada por los organismos gubernamentales responsables del ecoturismo, la protección de los recursos naturales y culturales y los usuarios de los servicios de ecoturismo.*

Diseño/metodología/enfoque : *Se ha aplicado un enfoque jurídico teórico, basado en la revisión sistemática de documentos internacionales legalmente vinculantes y no vinculantes relacionados con el ecoturismo, adoptados por las organizaciones internacionales pertinentes. Se ha realizado un análisis de las normas para la protección preventiva de los valores naturales y culturales, seguido de una investigación sobre la reforma legal en forma de recomendaciones que deberían adoptarse como vinculantes.*

Hallazgos : *Los documentos legales internacionales relevantes para el ecoturismo analizados en este documento se dividen en dos grupos. El primero regula exclusivamente los temas de ecoturismo, mientras que el segundo se ocupa del desarrollo sostenible y se refiere al ecoturismo indirectamente, como uno de sus segmentos. Los documentos legales internacionales analizados requieren normas inequívocas que regulen las medidas de protección preventiva en el ecoturismo estableciendo obligaciones y prohibiciones reales para los temas relevantes. Las recomendaciones dadas se clasifican en cinco tipos según los temas que abordan (expertos en ecoturismo, formuladores de políticas, legisladores, conservacionistas naturales y culturales, comunidades locales, educadores).*

Originalidad/valor : *Este estudio es el primero que apunta a la necesidad de modificar los documentos legales internacionales relacionados con el ecoturismo a través de recomendaciones sobre la protección preventiva de los valores naturales y culturales.*

Palabras clave : *Ecoturismo, Disposiciones legales, Prevención, Desarrollo sostenible, Protección del medio ambiente*

1. Introduction

Most ecotourism case studies involve protected areas, representing aggregations of natural and cultural values (Lawton, 2001; Li, 2004; Petrosillo *et al.*, 2006; Ormsby and Manle, 2006; Lacitignola *et al.*, 2007; Rozzi *et al.*, 2010; Self *et al.*, 2010; Farrelly, 2011; Cobbinah *et al.*, 2015; Masud *et al.*, 2017). Although ecotourism embraces sustainable tourism principles (the Québec Declaration on Ecotourism, 2002; Tsaur *et al.*, 2006; Mowforth and Munt, 2008; Wearing and Neil, 2009; Jaini *et al.*, 2012; Bhuiyan *et al.*, 2012; Bricker *et al.*, 2013; Eriksson and Lidström, 2013; Doley, 2014; Boley and Green, 2016; Masud *et al.*, 2017), it is more narrow and could represent its subtype (Weaver, 2001; Fennell, 2003; Donohoe and Needham, 2006; Self *et al.*, 2010; Chiutsi *et al.*, 2011; Nistoreanu *et al.*, 2011; Kiper, 2013; Cobbinah, 2015).

Ecotourism activities are conducted within the areas protected by environmental law and should comply with its rules (Yang and Percival, 2009) and ethical/legal responsibilities regarding the conservation of natural and human-made values. Amending some of the international legal documents regulating ecotourism is necessary due to:

- the negative impacts of ecotourism and the worldwide violation of its principles (Orams, 2001; Li, 2004; Rozzi *et al.*, 2010; Self *et al.*, 2010; Chiutsi *et al.*, 2011; Jaini *et al.*, 2012; Fletcher and Neves, 2012; Coria and Calfucura, 2012);
- lack of legal obligations for companies to publish environmental policy statements or verify them by independent third parties (Ramus and Montiel, 2005; personal observation);
- potential negative impacts of interactions between tourists and local communities on the lifestyle of locals (Carrier and Macleod, 2005; Coria and Calfucura, 2012; Chandell and Mishra, 2016; Jeong, 2018), who do not experience most of ecotourism's economic benefits (Yfantidou and Matarazzo, 2017);

- slower development of policies and regulations controlling the ecotourism industry, compared to ecotourism services (Fennell, 2001); and
- strong need for tourism planning (Costa, 2019).

2. Gaps in international law and necessary preventive measures

Ecotourism is defined in many ways (for example: Ceballos-Lascurain (1987), Buckley (1994), Honey (1999), Blamey (2001), International Ecotourism Society (2015), Chandel and Mishra (2016)), most of which imply that it must be nature-based, sustainably-managed, conservation-supporting and environmentally-educated (Buckley, 1994; Blamey, 2001; Fennell, 2001). This, traditional ecotourism, compared to ecotourism in modified spaces (Lawton and Weaver, 2001; Wu *et al.*, 2010) is discussed in this paper.

This paper's theoretical contributions are based on the standpoint that prevention is the most effective means of environmental protection from potential risks and pressures caused by ecotourism. This is supported by the fact that "a clear preventative approach must be embedded into current tourism policies and strategies at all levels" (Yfantidou and Matarazzo, 2017). Such a viewpoint is derived from the estimation that preventive measures are the most efficient and economically beneficial (United Nations and World Bank, 2018). Integration of preventive measures in tourism development plans is not sufficiently examined (Fennell and Ebert, 2004; Fennell, 2015) and this paper's findings indicate a strong need to improve preventive protection in ecotourism.

The main international law gap (Kelsen, 2003; Ross, 2006) includes the insufficient number of norms (Shapiro and Shapiro, 2011) devoted to preventive protection of resources on which ecotourism depends. The purpose of this research is to highlight the most important areas of preventive activities related to ecotourism that should be regulated by international legal provisions (according to the objects of protection to which they refer to and the bodies responsible for their implementation). Another contribution of the paper is emphasizing mandatory adoption of sanctions for their violations, which would ensure the implementation of already recognized regulations (Von Glahn and Taulbee, 2015; Batanjski *et al.*, 2016; Framework Convention on Tourism Ethics, 2017).

Improved quality and efficiency of decision-making related to preventive protection in ecotourism are expected (Adams, 2006). Its ultimate goal is to indicate the need and deliver guidelines for creating or changing international legislative frameworks to guarantee a balance between environmental quality improvements and ecotourism services.

3. Materials and methods

The paper is based on a systematic review of international legal documents related to ecotourism (listed in Table 1). The bodies that created and adopted them are enumerated within the list of references. Documents were selected based on their global significance, regardless of the regional characteristics of the areas they protect.

This paper uses a normative theoretical legal approach based upon the study of legal texts. It is grounded on the analysis of the validity of legal sources and their hierarchy. Its purpose is to facilitate future changes in the law. It determines the law in the sense of rules that should be enforced collectively (Chynoweth, 2008; Hoecke, 2011). The analysis of norms of international legal documents related to ecotourism, providing preventive protection of natural and cultural values was combined with interdisciplinary research findings and critical analysis.

Highlighting the flaws of the existing legislative framework has led to the proposal of changes to the international law related to ecotourism. Law-reform research (Dobinson and Johns, 2007) was applied to avoid indeterminacy in policy judgements and strengthen the implementation of regulations (Hoecke, 2011).

Table 1 Existing preventive measures prescribed by international legal documents related to ecotourism

<i>Prescribed preventive measures</i>	<i>International legal documents</i>	<i>Groups of preventive measures</i>
Role of local communities and indigenous people in the preservation of destination values	<ol style="list-style-type: none"> 1. <i>The World Charter for Sustainable Tourism + 20</i> 2. <i>Framework Convention on Tourism Ethics</i> 3. <i>Promotion of sustainable tourism</i> 4. <i>Québec Declaration on Ecotourism</i> 	Obligatory cooperation of experts and local communities
Cooperation among relevant stakeholders and interdisciplinary partnership for experience exchanges	<ol style="list-style-type: none"> 1. <i>World Heritage Convention</i> 2. <i>Charter for Sustainable Tourism</i> 3. <i>Québec Declaration on Ecotourism</i> 4. <i>Davos Declaration</i> 5. <i>The World Charter for Sustainable Tourism + 20</i> 6. <i>Framework Convention on Tourism Ethics</i> 7. <i>Promotion of sustainable tourism</i> 	
Adequate preliminary planning and management and integrated planning development	<ol style="list-style-type: none"> 1. <i>Recommendation for Landscapes and Sites</i> 2. <i>The Hague Declaration on Tourism</i> 3. <i>Charter for Sustainable Tourism</i> 4. <i>Québec Declaration on Ecotourism</i> 	
Supervision bodies have a crucial role in the preventive protective measures for natural and cultural goods	<ol style="list-style-type: none"> 1. <i>Recommendation for Landscapes and Sites</i> 	Duties of local authorities
Precautionary action through the establishment of an environmental impact assessment	<ol style="list-style-type: none"> 1. <i>Convention on Biological Diversity</i> 2. <i>The Berlin Declaration</i> 3. <i>Québec Declaration on Ecotourism</i> 	
Use of the best available technologies and sustainable energy sources	<ol style="list-style-type: none"> 1. <i>World Charter for Nature</i> 2. <i>Davos Declaration</i> 3. <i>The World Charter for Sustainable Tourism + 20</i> 	
Encourage tourists to choose more environmentally-friendly activities (such as reduced-carbon footprint-activities) and sustainable products and services	<ol style="list-style-type: none"> 1. <i>Davos Declaration</i> 2. <i>The World Charter for Sustainable Tourism + 20</i> 	
Need to further mainstream sustainable development	<ol style="list-style-type: none"> 1. <i>Convention on Biological Diversity</i> 2. <i>Agenda 21</i> 3. <i>Agenda 21 for the Travel and Tourism Industry</i> 4. <i>Charter for Sustainable Tourism</i> 5. <i>The Berlin Declaration</i> 6. <i>Future we want</i> 	
Given special protection to unique areas, habitats of rare and endangered species or environmentally and culturally vulnerable spaces	<ol style="list-style-type: none"> 1. <i>World Charter for Nature</i> 2. <i>Charter for Sustainable Tourism</i> 3. <i>Framework Convention on Tourism Ethics</i> 	Protection of natural and cultural values
Implementation of zoning, land-use planning and sensitive site design (zoning, especially in sensitive areas)	<ol style="list-style-type: none"> 1. <i>Recommendation for Landscapes and Sites</i> 2. <i>Québec Declaration on Ecotourism</i> 	
Maintenance on a permanent basis of conservation of monuments (architectural features and of objects)	<ol style="list-style-type: none"> 1. <i>The Venice Charter</i> 	
Restrict and where necessary prevent tourism, at least at certain periods or seasons	<ol style="list-style-type: none"> 1. <i>The Hague Declaration on Tourism</i> 2. <i>The Berlin Declaration</i> 	
Raise the level of preventive protection in ecotourism by strengthening legislative and policy frameworks	<ol style="list-style-type: none"> 1. <i>The World Charter for Sustainable Tourism + 20</i> 2. <i>Framework Convention on Tourism Ethics</i> 	Hierarchy of legal regulations
Education and training programme for all stakeholders	<ol style="list-style-type: none"> 1. <i>The Berlin Declaration</i> 2. <i>Convention on Biological Diversity</i> 3. <i>Promotion of sustainable tourism</i> 	Increase of knowledge and awareness

4. Results

Analysed documents are divided into two groups. The first deals exclusively with ecotourism issues, while the second deals with sustainable development and indirectly refers to ecotourism, as one of its segments.

The first group includes documents relevant for preventive protection in ecotourism. These documents protect the natural and cultural values that ecotourism activities might affect:

- [Recommendation concerning the Safeguarding of Beauty and Character of Landscapes and Sites \(1962\)](#) (Recommendation for Landscapes and Sites);
- [International Charter for the Conservation and Restoration of Monuments and Sites \(1965\)](#) (The Venice Charter);
- [Convention Concerning the Protection of the World Cultural and Natural Heritage \(1972\)](#) (World Heritage Convention);
- [World Charter for Nature \(1982\)](#);
- [The Hague Declaration on Tourism \(1989\)](#);
- [Convention on Biological Diversity \(1992\)](#); and
- [Agenda 21 \(1992\)](#).

The second group includes documents setting preventive principles in sustainable tourism. As a segment of sustainable tourism, ecotourism should comply with them. This group includes:

- [Holden \(1995\)](#);
- [Agenda 21 \(1996\)](#) for the Travel and Tourism Industry – Towards Environmentally Sustainable Development (1996);
- [The Berlin Declaration on Biological Diversity and Sustainable Tourism \(1997\)](#) (The Berlin Declaration);
- [Québec Declaration on Ecotourism \(2002\)](#);
- [Climate Change and Tourism: Responding to Global Challenges \(2007\)](#) (Davos Declaration),
- [Future We Want \(2012\)](#);
- [The World Charter for Sustainable Tourism + 20 \(2015\)](#);
- [Framework Convention on Tourism Ethics \(2017\)](#); and
- [Promotion of sustainable tourism, including ecotourism, for poverty eradication and environment protection \(2018\)](#) (Promotion of sustainable tourism).

As a result of the theoretical legal approach, provisions referring to preventive activities were extracted from the analysed legal documents ([Table 1](#)). Results of the law-reform research comprise the suggestions designed to improve current normative frameworks regulating the prevention of negative impacts of ecotourism ([Table 2](#)).

The analysis shows that most of these documents lack preventive measures. Legal documents related to sustainable tourism prescribe more preventive measures than those related to ecotourism in the narrow sense ([Table 1](#)).

Most of the analysed documents prescribe the conditions facilitating local populations to feel the economic benefits of ecotourism. Nevertheless, “it is still necessary to set development standards that are approved in coordination with local stakeholders, particularly representatives of local communities” ([Wood, 2002](#)) and those standards must be raised to the international level.

Theoretical legal analysis suggests that the majority of the above-mentioned documents insist on uniform standards and overcoming the gap between the interests of the local communities and tourism companies, through various forms of cooperation. Analysis has revealed that these documents lack legal provisions obliging ecotourism entities to provide

Table 2 Recommended measures, suggested improving preventive protection of resources in ecotourism

<i>Groups of preventive measures</i>	<i>Recommended measures</i>	<i>Responsible bodies</i>	<i>Expected benefits</i>
Obligatory cooperation of experts and local communities	Establishing development standards in coordination with local communities Ensuring economic benefits for the locals from ecotourism Mandatory involving experts from multiple fields in planning Interdisciplinary partnership for knowledge and experience exchange with local communities Local population's mandatory participation in the decision-making process Linking physical and economic planning and management implications Decentralized local areas management Including and translating into practice the conceptualization of a non-anthropocentric approach	Expert professionals and local communities representatives	Economic benefits for the local population Security in resource conservation
Duties of local authorities	More authority for supervision bodies Changing the mix of incentives by increasing policing and accountability Timely including general public and experts in the legislative process Mandatory publishing transparent environmental policy statements Obligatory stimulating clean technologies use in the tourism sector, through various incentives (tax reliefs, subventions) Prioritising sustainable ecotourism development goals in strategies Raising public awareness on ecotourism benefits Adequately stimulating tourism industry to indicate carbon footprint in its offers Monitoring new ecotourism trends, while strictly preserving ecotourism resource values Keeping a balance between the interests of ecotourists and environmental protection	Local authorities' representatives	More efficient work of responsible persons, Unambiguity in responsibilities, Greater reputation of ecotourism sector
Protection of natural and cultural values	Striving for a status of international importance Mandatory special protection of unique areas Including more precise provisions in The Venice Charter to protect monuments and sites from the negative ecotourism activities; and those banning or limiting activities that might endanger or damage monuments Making strategies toward positive heritage management Gaining an ecology and environmental protection certificate Financial enhancements such as more convenient prices and more intensive ecotourism arrangements marketing Promoting the value of integrating sustainability criteria into quality-rating standards Strategic recruiting like-minded people by certified ecotourism business owners who will convey the environmental ethics and values to their customers	Conservationists and representatives of bodies in charge of natural and cultural values protection	Stronger protection of ecotourism values
Hierarchy of legal regulations	Converting legally non-binding documents into internationally legally binding acts, with the awareness of the inherent limitations of international public law for sovereignty and territorial integrity of states Prescribing sanctions in international legal documents	International organizations	Increasing the quality of ecotourism offer
Increase of knowledge and awareness	Accentuating possible negative effects of ecotourism on valuable resources via campaigns in the media and on social networks Disseminating the knowledge about the methods and analysis techniques of sustainable tourism and climate change policy	Educators	More people will be interested in ecotourism

mandatory transparency, do not provide an efficient system of penalties, which limits their practical application (Table 2).

According to the nature of activities, recommendations are divided into five groups:

1. obligatory cooperation between experts and local communities;
2. duties of local authorities;
3. protection of awareness and cultural values;
4. legal regulations hierarchy; and

5. knowledge and awareness-raising. There are additional recommendations, discussed in the next section.

5. Recommendations and discussion

Measures linked to obligatory cooperation between experts and local communities (Table 2) include an establishment of development standards (Wood, 2002) that must be raised to an international legal level to ensure: cooperation among relevant stakeholders, economic benefits for the locals from ecotourism, linkage of physical and economic planning and management implications (Costa, 2019). These recommendations comply with Goals 1, 11 and 17 of The UN Sustainable Development Goals (2015). Decentralized local areas management and inclusion of a non-anthropocentric approach into the decision-making process and practice (Bertella, 2019) is needed.

There are no legal provisions obliging ecotourism entities (such as tourist companies) to publish environmental policy statements. The second group of measures includes the adoption of norms regulating policy statements' mandatory transparency and publication to avoid malpractices. Article 8 of the Framework Convention on Tourism Ethics could serve as a model. Such transparency would reduce greenwashing in ecotourism. Another efficient measure for reducing greenwashing could be changing the mix of incentives by increasing policing and accountability (Cherry, 2013). Next could be the threat of exposure of the ecotourism stakeholders, which would require a more stringent and enforced formal regulation of greenwashing (Delmas and Burbano, 2011). A focus on organizational and institutional factors intensifying the scrutiny and expectations of transparency is necessary, as it would foster mobilization of the civil society (Marquis *et al.*, 2016). Detailed recommendations on dealing with greenwashing are given by Aggarwal and Kadyan (2014) and could be applied in ecotourism.

The third group of measures includes: advocating for protected areas to obtain international protection status, strategies towards positive heritage management (Chong and Balasingam, 2019) and integrating sustainability criteria into quality-rating standards (Spenceley, 2019). Another measure would include prescribing sanctions by international conventions (Batanjski *et al.*, 2016) (such as restitution and community service (Pearce, 2013)) for criminal acts or civil infringement. This would include international penalty provisions, corresponding national normative solutions and a supranational body in charge of their imposition (Von Glahn and Taulbee, 2015). The importance of sanctions is recognized by the Framework Convention on Tourism Ethics (Article 4). Other international legal documents relevant to ecotourism should follow this example, but taking into consideration each state's sovereignty guaranteed by its constitution and international law.

A certificate in ecology and environmental protection and official permission to access vulnerable areas should be obligatory for ecotourists to ensure their behaviour is in accordance with the ecological criteria. Tour operators, agencies, guides and hosts should obtain a special ecotourism licence (Stanković *et al.*, 2015) that would convey environmental ethics and values to their customers (Bowles and Ruhanen, 2018). Ecological virtue and literacy are key elements in this process (Holden, 2019) because a stronger environmental identity leads to greater interest in ecotourism (Teeroovengadum, 2019). Research on course design is needed.

Measures related to the legal regulations hierarchy would raise the level of preventive protection in ecotourism legislation by converting influential, but non-binding international documents into legally binding. This would reinforce the obligation to implement the prescribed measures at the national and local levels (Zengerling, 2013). Organizations in the multiple sectors of ecotourism would put more emphasis on preventive protection and align future decisions with it. A conversion of Global Code of Ethics for Tourism (1999) into a legally binding treaty – the Framework Convention on Tourism Ethics (2017) should be observed as a role model and applied to similar documents (such as guidelines, strategies, recommendations).

Highlighting ecotourism's negative effects on valuable resources belongs to the fifth group of measures. It should be implemented through education and training programmes for stakeholders, including sustainable tourism and climate change policy methods and techniques (Ruhanen *et al.*, 2019).

Additional recommendations would enhance preventive protection. International legal documents related to ecotourism should be committed to auditing studies as environmental legal provisions are often violated for the short-term financial benefit (for example: Ramus and Montiel (2005), Yfantidou and Matarazzo (2017)), without considering the sustainability of resources. An auditing study should be made for each tourist activity that is considered in ecotourism. Rules and regulations for environmental and cultural heritage protection should be clear, unambiguous and strict to prevent misuse. Knowing the crucial role of tour operators in ensuring the sustainability of policies in ecotourism (Buckley, 1994; Welford *et al.*, 1999), their stimulation should be internationally defined. Incentives for eco-tour operators should be considered in future research. Introducing the term "ecotourist" in current international legislation and prescribing regulations for this type of visitor could protect vulnerable sites. Ecotourism can be defined in many ways (Wight, 2001; Weaver and Lawton, 2007), but its legal definition should include a visitor with special permission confirming that he/she has sufficient knowledge of the values and is aware of the importance of their protection.

These recommendations should be incorporated as amendments into the existing international legal documents closely related to ecotourism. Another way of strengthening legal provisions would include adopting these recommendations as new international legal documents. According to legal practices, the former is easier. Appropriate sanctions should be incorporated into international law. Effective techniques and strategies should be developed to make ecotourism work in practice (Orams, 2001).

6. Conclusion

Analysis of norms for preventive protection of natural and cultural values included in international legal documents related to ecotourism implies a need for improvement. Derived recommendations are classified into five groups, according to their nature. Recommendations affecting legal provisions should be incorporated as amendments into the existing international legal documents closely related to ecotourism or adopted as new international legal documents. Sanctions should be incorporated into legally binding international legal documents to strengthen preventive protection.

Legislative activities should be directed towards the development of preventive measures and monitoring, together with cooperation between relevant stakeholders and awareness-raising about the potentially devastating environmental consequences of ecotourism.

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