

Preventive diplomatic activities as a modified way of peaceful settlement of disputes at the beginning of the crisis in Yugoslavia

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Abstract This paper will highlight, among other things, the most significant features of the peaceful settlement of disputes in international legal practice. In order to point out the connection between peaceful dispute resolution and preventive diplomacy, it will be necessary to point to certain theoretical views. Nevertheless, the early institutionalization of the holders of these activities, as well as the prominent role of internal organs for maintaining international relations, in these or similar situations, over time, there have been certain changes caused primarily by the spread of influence in addition to the state, and to other entities of international law. It is the emergence of international organizations that modifies both the holders and the activities available to them, all with a view to preventing conflict. Using a comparative and historical method, we will try to point out, on a specific example, analyzing the crisis in the former Yugoslavia, that some of the traditional peace-diplomatic means have been transformed into preventive diplomatic activities and what peculiarities did they contain. A particular example will point out their weaknesses as well as the consequences they have caused for the legal, and economic and other systems of the former Yugoslavia.

Introduction

No matter what period of state development and law we are talking about, there were always individuals or institutions whose intention was to try to resolve disputes without resorting to the use of force. Development of international law and the adoption of numerous documents of universal and regional character, primarily: The United Nations Charter of 1945; The European Convention on the Peaceful Settlement of Disputes in the Council of Europe in 1957, the Convention on the Law of Treaties and 1969 and the fifth principle in the 1975 Helsinki Final Act, the ban on the use of force has become a cogent norm. The content of these documents was also influenced by

the fact that the two World Wars produced such far-reaching consequences that any use of force and recourse to war was considered in theory and practice as a general threat to peace.

Depending on the extent to which the opposing parties were equal, the possibility of resorting to this method was increasingly certain. Reinforcing the institutions of the state, the advent of the principle of good neighborly relations, peaceful settlement of disputes is gaining increasing importance in documents of regional and international character.

Regardless of the different theoretical classification of means for resolving disputes, we must conclude that between large number of them there is formally and little substantive difference, keeping in mind especially their origin, duration and the objectives to be achieved. On the other hand, while the leaders of these activities were mostly distinguished individuals or representatives of internal bodies for maintaining international relations, it has to be noticed that by institutionalizing international organizations and their representatives, based on the founding documents of these organizations, they also played a significant role in this process. The subject of our analysis in this paper will also be the specific conditionality of all the above factors who, through the available means of peaceful settlement of disputes, have tried to act preventively in the face of the coming crisis in Yugoslavia. This crisis, as we have unfortunately seen, caused major disturbances in the Balkan Peninsula and whose consequences are still formally and truly lasting today.

On the other hand, preventive diplomatic activities were, in a specific way, governed by customary and moral norms that have always been present in relations between countries. Particular emphasis was placed on their application between one or more warring parties undertaken as an initiative of one of them or as "good third-country services". In order to make it clearer in terms of how the implementation of these activities came about shortly before the larger scale of the conflicts in Yugoslavia, it is necessary to first point out the theoretical foundations for the peaceful settlement of disputes. One has to bear in mind that in the preventive diplomatic activities there are several elements of the very definition of the means for peaceful settlement of disputes that international law recognizes today in its theory and practice.

Peaceful settlement of disputes as a basis for preventive diplomacy

The need to overcome disputes or conflicts between one or more states using peaceful means is recorded very early in the external relations of most states. Nevertheless, when discussing the differences in theory between conflict and dispute, without going into further elaboration, we consider it necessary to point out here that "in conflict, the feeling of hostility is almost inevitable and continues after the dispute has been resolved" (Collier, Lower, 1999, pp. 1–5). Regardless of which of these manifested forms of conflict were involved, both concepts are connected by the fact that, from their first occurrence, sending envoys with messages of peace was the customary norm, which will only later experience its legal codification. Unfortunately, the forces of customary norms and the practice of wars in the first centuries of the development of human society have often left attempts at peaceful settlement of disputes to no greater effect, since these conflicts aimed at the uncompromising destruction and enslavement of the invading state or territory.

No matter how disputes are defined or divided, according to H. Lauterpacht and L. Oppenheim, there are three main types of disputes:

- legal,
- political,
- those that we in some way relate to some of the conflicts of interest.

According to the opinion of these distinguished theorists of international law, this division is also regarded as “part of positive international law” (Oppenheim, Lauterpacht, 1948, pp. 4–24).

At the end of the XIX century, the first of the conventions to deal with the process of peaceful settlement of disputes was adopted, which put focus more heavily on this often-current issue in relations between states. The place of origin of this convention – the Hague and Europe – is not accidental. It was the European continent whose soil is probably driven by the largest number of wars between states that have emerged throughout history. For all these reasons, “Europe has had to endeavor to end centuries-old confrontation and, in the light of the lessons of the past, to permanently ensure peace and stature as the most important and sensitive issue in the history of the international community” (Barić-Punda, 2005).

Over the time, the means of resolving such disputes will receive further classification, although many will be very similar in origin and duration. Numerous authors, referring to the involvement of the League of Nations and the United Nations, gave their views on these significant instruments for overcoming conflicts in relations between entities of international law. Their first distinction concerns a strict division, into peaceful and forced ones. As in most international documents, the threat of using force is reduced to only extreme cases, the subject of our further analysis will be precisely this second category. The latter were established in the formation of international organizations of a universal character and with the same purpose as the peaceful means which is preservation of peace. They are linked to various organized forms at the international level that place the issue of collective security at the center of their activities.

According to the aforementioned, Professor Kreća believes that “peaceful means of dispute resolution are usually diplomatic and judicial. The difference between them lies in the process, the choice of sources for adjudication, and finally the extent to which the parties to the dispute are obliged to accept the decisions arising from the process” (Kreća, 2012, p. 730). The most important types of diplomatic means to resolve disputes like this jurisprudence ranks: good services, mediation, direct character diplomatic negotiations, conciliation and various types of inquiry committees. On the other hand, litigation is considered to be proceedings before international courts and several types of arbitration. It is important to emphasize that „the means of peaceful settlement of disputes that have emerged under international law are only made available to the parties to the dispute, but they are not obliged to use them, since the will of the parties themselves is necessary for their usage” (Andrassy, 1971, p. 461).

The intertwining of the definitions of the means for the peaceful settlement of disputes points to the great similarities they have with the work of preventing diplomacy. Thus, direct diplomatic negotiations are, by their legal nature, an independent means of dispute resolution. Which, in addition to their flexibility, also form an integral part of all other means, such as good services and mediation. In relation to the said, good services and mediation are considered by many to be synonymous. However, it is necessary to emphasize that the essence of good services is the involvement of a third party as to bring the conflicting parties to the negotiating table, but it

is clearly emphasized that such negotiations do not involve the party that brought the conflicting parties together. On the other hand, reconciliation represents the ability of the opposing parties to approach an individual or a commission who, entering into the facts of the dispute but also the legal facts, drafts a proposal for a solution. "Within the reconciliation, elected commissions can call witnesses and take certain measures for the purpose of investigation, in which these commissions approach the proceedings of the courts, but get away from it by submitting only ordinary motions that can be imbued with fairness and seek a conciliatory solution beyond dispute" (Le Fir, 2010, p. 378). This proposal is essentially non-binding in nature, which is also the basic difference between conciliation and arbitration.

Bearing in mind the above, it follows that in addition to the characteristics of good services, mediation¹ is characterized by the active involvement of a third party whose proposals in the negotiation process do not in any way bind the parties to the dispute.

Finally, the commission of inquiry, as its name implies in their structure, would have, in addition to the above, the identification of some of the factors or facts that are the subject of the dispute, which, among other things, is defined by the agreement of the parties, in addition to the composition of the committee and its work. In theory of international law, we often find that there is an equivalence between good services and mediation. If, for the purposes of this paper, mediation and preventive diplomatic activities are put into relationship and viewed as a means of achieving the same goal, the legal basis for the use of both of these means could be found in the Hague Convention on the Peaceful Settlement of Disputes². It does not really distinguish between good services and mediation. Although we must state that the Convention itself is not completely clear, which opens the possibility for other theories that view them as two phases of the same procedure. And in this way, the aforementioned means again achieve the same goal, only in this case not one or the other, but one after the other. The American Treaty on the Peaceful Settlement of Disputes of 1948 also defines good services and explains them as: "An attempt by one or more non-party U.S. Governments, or by one or more prominent citizens of any non-party U.S. State, to bring the parties to the dispute into contact so as to enable them to reach an adequate solution"³. By way of comparison, The Hague Convention on the Peaceful Settlement of Disputes of 1907 defines mediation by Article 4 in the sense that it is a procedure consisting of reconciling conflicting claims and appeasing the feelings of resentment that may arise between the parties to the dispute.

¹ History records the first manifestation of mediation that was declared at the 1856 Paris Congress, further formulations of the notion of mediation were elaborated at the Hague conferences to take their final form through the League of Nations and the UN.

² Those documents are: Briand-Kellogg Pact of 1928, as well as the members of the First Hague Conference of 1899, as well as later in the Manila Declaration of 1982 on the Peaceful Settlement of Disputes, and the 1991 UN General Assembly Declaration of Principles on International Relations of the Peace and Security, the Millennium Declaration of 2000, etc.

³ See more about this contract in: U.N.T.S., Vol. 30, p. 55.

Shaping the concept of preventive diplomacy

By analyzing good services and mediation, it can be concluded that there is a more active role of the third party trying to mediate in mediation. In addition to the aforementioned Hague Convention, the legal basis for other forms of preventive action can be found in other provisions of relevant international instruments. Of all the conflicts that have erupted since 1989, none have posed as serious challenge to the international community as the conflict in former Yugoslavia. Therefore, a number of ways have been developed to address it. Individuals, former officials, individual states, groups of states and international organizations have all tried some sort of mediation – unfortunately, without much success (Bercovitch, 1996, pp. 7–8). Our field of interest will be especially preventive diplomatic activities undertaken by individual International Organization and individuals, regardless of whether the representatives of these IO or internal bodies are in charge of maintaining international relations. In order to better understand this specific preventive diplomatic action in this case, the theoretical foundations of preventive diplomacy should be briefly looked at.

The development of the idea of preventive diplomacy activities

In relation to multiple attempts to define terms related to preventive diplomacy, the one that came up under the auspices of the UN seems most appropriate. With the endorsement of the UN Secretary-General, Boutros Boutros-Ghali, at the end of the twentieth century, through the document “Program for Peace” the aforementioned definition is reached and it says: “Preventive diplomacy is an action to prevent the outbreak of disputes between the parties, to prevent existing disputes from growing into conflict, and to limit the spread of these consequences when they already occur” (Lotovinov, Morozov, 2000). From this definition of preventive diplomacy, the most important elements could be extracted, such as: conflict recognition, conflict prevention, conflict resolution, peacekeeping and normalization of post-conflict relations. For each of these elements to be achievable in the theory of preventive diplomacy, various instruments have been formulated, ranging from political, legal and military to economic and those considered by the theory to be backward. In this section, which summarizes the essence of the theoretical concept, it is considered important to note that the elements and instruments of preventive diplomacy have another important feature, namely that they are largely dependent on the choice of subjects to work on their identification and implementation. As the most important categories of subjects of preventive diplomacy, the theory knows precisely the most important subjects of public international law, namely the states and international organizations. However, it should be noted that in addition to them, subjects in certain conflicts can be considered: individuals, national minorities, ethnic groups and even entire nations.

The theoretical concept defined in this way and in its implementation should be closely followed with the activities of UN Secretary-General, Boutros Boutros-Ghali. It should be noted that he based his position partly on the idea of another UN Secretary-General, Dag Hammarskjöld⁴.

⁴ He interpreted the term in the context of the possible role that the UN could play in the then system of relations in the international community, which were divided on a bipolar basis.

Although it must be clarified that the very concept of preventive diplomacy is a mode of action not provided for in the UN Charter, but has emerged in its comprehensive practice as one of the most significant IOs. From the proclaimed Hammarskjöld approach, “The United Nations, starting with the Middle East crises of 1956, the Laos crisis of 1959, the Congolese crisis of 1960, etc. to this day, have intervened in a number of situations around the world, setting up observation and other peacekeeping missions, often involving very numerous and powerfully armed formations under the UN flag and leadership” (Rakić, 2009, p. 74).

The question is: what led Secretary-General Boutros Boutros-Ghali to become interested in such possible UN action? These could certainly be new types of conflict that arose after the end of the Cold War. “The end of the Cold War created a new geopolitical environment, and spawned many new types of internal conflicts, that outnumbered conventional wars between states” (Sahadžić, 2009). In relation to such wars, which differed significantly in character from those waged to the beginning or during the Cold War, the theory was to provide a framework for dealing with them. Legal writers and theorists “have faced the need to develop new knowledge and to seek ways to manage such conflicts before they develop into a high level of violence. Because once it is manifested, it becomes much more difficult for members of the international community – the UN, regional organizations, individual states to effectively resolve the conflict and establish peace” (George, 1999, p. 10). What is special about this period after the end of the Cold War is that the number of conflicts was steadily increasing and that they had both ethnic and national problems for its cause. In this context, B.W. Jentleson points out that examples are also given by “Croatia, Bosnia, Somalia, Rwanda, Nagorno-Karabakh, Chechnya, Tajikistan, Kurdistan – the list continues and includes over 90 armed conflicts since the fall of the Berlin Wall, out of which most were ethnic conflicts” (Jentleson, 1996, p. 18).

With the collapse of the bipolar structure, preventive diplomacy is gaining new contours in its development and acting as a means of attempting to peacefully resolve conflicts with, as we have seen, an active third-party mediation role, whether we mean the state, the IO or an individual. In 1992, as previously emphasized, the UN issued a document called the Peace Program⁵ which gave the definition⁶ and the concept of a new preventive diplomatic policy to the UN. This program was highly respected in international circles and offered new hope for the peaceful settlement of disputes that had been announced, and was possibly as an opportunity to prevent the spread of conflicts that had already arisen. “After the United Nations Secretary-General, Boutros Boutros-Ghali, came before the UN Security Council in 1992, preventive diplomacy from a political idea was transformed into a political agenda of global society” (Vitrović, 2003, p. 34). According to some authors, such as V.Y. Ghebali, the concept of preventive diplomacy is in close connection with concepts such as “peacemaking, peacekeeping, peacebuilding and peacemaking” (Ghebali, 1998).

Summarizing the purpose of preventive diplomatic activity, it seems most appropriate for us to agree with George’s comment that “the essence of preventive diplomacy in the future is not only the need to achieve early warning at the outset of conflict, but also to respond quickly and effectively to prevent conflict, and to prevent high degree of violence” (George, 1999, p. 10).

⁵ See more: <http://www.cfr.org/peacekeeping/report-un-secretary-general-agenda-peace/p23439>.

⁶ The UN Peace Program defines preventive diplomacy as the action of preventing disagreements between the parties and preventing those same disagreements from becoming conflicts and allowing others to spread as they arise.

International organizations as carriers of preventive diplomatic activities in Yugoslavia

The UN, acting on the basis of the UN Charter, namely Article 2, indents 3 and 4, then indirectly on the basis of Chapter VII, certainly tried to take preventive measures on the territory of the former Yugoslavia. "It can be concluded from the large number of cases in which the international community has had the opportunity to act by preventive diplomacy, to limit, if not prevent, conflicts, it turned out that the attempts have been shown to be inappropriate, wrong or completely absent" (Sahadžić, 2009, p. 127). The first major failure in the implementation of preventive diplomatic activities was experienced by the UN together with the OSCE in the area of the former Yugoslavia. Their attempts to keep peace between the warring parties have not had much success. Notwithstanding well-established theoretical views, it has been shown that the UN Mission: with unclear mandate, insufficient technical and military equipment, with a shortage of forces present on the ground and with a significant lack of permanent political support from major UN bodies – could not have produced a better result.

On the other hand, if we interpret the resolutions that dealt with the Yugoslav crisis and the need to resolve the conflict peacefully, we can emphasize that greater efforts have been made. The number of resolutions adopted for this purpose (2 in 1992, 23 in 1993 and 16 in 1995) concerning the Yugoslav crisis, unfortunately, did not help much in defining more precisely the mandate of the UN forces which were located in the area affected by the conflict. The specificity of the determination on the Yugoslav crisis was that it was brought under Title VII of the UN Charter, which opened the door for the direct application of violent and not just political measures, also in the text of these resolutions there "is a noticeable oscillation of the positions of the Security Council regarding the Yugoslav crisis. The US and other forces have approached the crisis in a controversial way, which has also been highlighted in addressing resolutions" (Vasić, 2010, p. 200).

The task set to be carried out by UN Special Representatives, Cyrus Vance and Lord Peter Carrington, did not produce major results, and there was also disagreement about ending the crisis within certain European countries. In addition, it must be emphasized that individual countries such as Germany and the Vatican, despite the consensus decision of all warring parties, amongst the first, recognized the independence of illegal secession of Croatia and Slovenia. S. Touval also gives a good explanation that supports our views, stating what caused the UN mission to fail in the former Yugoslavia. According to her, "this was primarily because the international community did not have clear goals, its messages were unclear, vague and ambiguous; efforts lacked credibility; mediation failed because the West lacked effective levers to resolve the crisis" (Touval, 1996, pp. 403–417).

KEBS/OSCE had more success. It based its activities on the 1992 Hague Document. The measures it applied were fully in line with the purpose and measure of preventive diplomatic activity. At a meeting of the KEBS Ministerial Council in 1991, a decision was made to support the preservation of the unity of Yugoslavia. However, the intertwined system of relations between the EC Member States and the largely overlapping KEBS has led to the tacit recognition of secession.

The EU also had little success resolving the Yugoslav crisis for slightly different reasons. In addition to the changes already made to the policy towards the SFRY after the breakup

of the Warsaw Pact, this failure was also limited by other factors. The EU felt that the conflict would not widen and would resolve itself, especially if the separated members of the Yugoslav Federation were swiftly acknowledged, which proved to be the misjudgment. In addition, EU's attention was more drawn to the unification of Germany than the collapse of Yugoslavia, where the Maastricht negotiations and the "tidying up of its own yard" further distracted it from greater and more successful engagement.

Individual carriers of preventive diplomatic activity in the Yugoslav crisis

The first action that can be considered as preventive diplomatic activity has been entrusted to individuals as subjects and the holders of these activities was the visit of the most responsible people of the European Community, Jacques Delors and Jacques Santer, in Belgrade at the end of May 1991. The visit was intended to persuade "the leaders of the republics of that time to reach a political agreement which would have been financially supported by Brussels". There were two things to the content of this arrangement:

1. A political decision to declare Yugoslavia an associated member of the EC, outside the ordinary procedure.
2. 5.5 billion dollars program envisaged as a financial injection of the implementation of the Ante Marković government program (Štavljanin, 2008).

According to Dizadrević, the reason why it was not adopted was Tudjman's statement that "a historic moment has arisen to restore Croatian statehood after a thousand years and that he will not enter into such talks disregarding multibillion offer. On the other hand, Milosević refused, saying that he wanted nothing less than a modern and solid federation, governed by Belgrade. The second reason was that the offer was late. The process that led to the already inevitable disintegration of Yugoslavia had gone so far that, realistically, it was impossible to come to an agreement of this kind and to get hold of that anchor of saving Yugoslavia" (Touval, 1996, pp. 403–417).

The next in this series of preventative activities was connected to Foreign Ministers De Mikelis-Poos and van den Broek to solve the Yugoslav crisis. We link their engagement to 28th June 1991, when the EC summit decided that they, as foreign ministers, should be sent and try to act preventively and stop the conflict from spreading. The meeting at Brioni convened on their initiative followed shortly after the unilateral declaration of independence of Croatia and Slovenia on 25th June 1991 and after 27th June, when the armed conflict began in Slovenia. The epilogue to this meeting was adopting a joint declaration on the peaceful resolution of the crisis and an agreement on a three-month moratorium on decisions on the separation of Slovenia and Croatia (Carević, 2003, p. 250). Although this was a principled decision also confirmed by the European Parliament on 9th July 1991, it should be noted that shortly thereafter there was a breach of these documents and the final failure of this preventive ad hoc EC activity, primarily due to the meritorious change in the German course, as well as decisions of other European countries, i.e. Austria, Hungary and the Vatican, who failed to respect on agreed policies and directives.

It should be noted that both Croatia and Slovenia failed to comply with given words in the Brioni meeting. The EC plainly observed these events and wrongly concluded that Slovenia did not

significantly exceed its commitments, which added additional energy to the Slovenian parliament to declare independence on 8th October, in the wake of tacit support from the EC. In addition to these activities, the EU has, with the “full authority of the OSCE, created ad hoc institutions, including the Conference on Yugoslavia, which began in The Hague and continued at Brioni, London and Geneva, and the Arbitration Commission within the Conference” (Kasagić, 2014, p. 119). In support of the above, prof. Rakić states in the context of the EU’s activities that: “after the beginning of the Yugoslav crisis, the EU very quickly opened the sides with the Yugoslav republics who carried out violent secession, thus also occupying a hostile attitude towards Serbia and Montenegro, which sought to preserve Yugoslavia. The vast majority of Western states take a similar stance, while the circle of countries showing an understanding of Serbia’s position remains small and not sufficiently influential” (Rakić, 2015, p. 11).

The impact of all IOs on resolving the crisis in the SFRY cannot be judged successful by measuring the results that preventive diplomacy needs to achieve. Untimely action, combined with unclear goals and indecisive political support, with the insincerity of individual states members of multiple IOs, such as Germany, caused the war to flare up to the point of being characterized as the most tragic post-World War II conflict in Europe.

Consequences of the breakup of the Yugoslavia as a result of failed preventive diplomatic activities

The breakup of Yugoslavia was manifested by numerous consequences and the creation of additional problems and changes. All of the above can be considered as a result of the failure of preventive diplomatic activities. These changes, as noted, have left an indelible mark on the state of mind of the inhabitants of the former Yugoslav republics, causing great mental and physical consequences. Wars, the development of a market economy, the stratification of society, growing consumerism, new forms of aggressive marketing and various types of media control and manipulation have succeeded in completely changing the social and cultural landscape of the entire region⁷. These consequences can be classified on the basis of several factors, which would lead to different results. Regardless of which criterion to choose, the following results would be observed: the dissolution of the Yugoslavia led to the formation of six independent and sovereign states that exist today. This process after the secession itself looked somewhat different, i.e. three different groups of states were formed in their creation, “the secessionist states, the states that formed the new state, the newly formed states” (Kuzmanović, 2002, p. 297). The first group would include Croatia, Slovenia and Macedonia, the second – Federal Republic of Yugoslavia, formed by voluntary association after the declaration of independence of Serbia and Montenegro, and in the third group, we would classify BiH as a sui generis state made up of two equal and state-owned entities of Republic of Srpska and Federation of Bosnia and Herzegovina. Only by a thorough analysis of the aforementioned consequences, it is noted that it is a great pity that the holders of preventive diplomatic activities, due to all the shortcomings previously mentioned, failed to accomplish their tasks.

⁷ The consequences of the breakup of Yugoslavia, <http://www.seecult.org/vest/posledice-raspada-jugoslavije>.

Conclusion

In conflicts of one or more states, whether legal or political, a large number of dispute resolution means can be applied. If those coercive means are excluded, which use in the event of a threat to peace is essentially authorized only by the UN Security Council, in accordance with Chapter VII of the UN Charter, we must state that today peaceful means still represent the greatest alternative to launching large-scale hostilities. Article 2 of the UN Charter itself moves us away from the threat of use of force, except when we have emphasized threats to peace and security at the international level, and this view from the most important UN document provided for itself the character of a peremptory norm. With all of the above in mind, it is concluded that no matter which of the peaceful means of dispute resolution is approached, their effect is certainly greater for both the parties to the dispute and the international community itself. However, by encouraging the end of the bipolar structure and the relationship of constant tension between NATO and the Warsaw Pact, and by creating various factors from the geopolitical environment at the regional and world levels, a new type of conflict developed that required specific methods of overcoming. Such conflicts, drawing on all the positive features of peaceful dispute resolution, have fostered the development of the concept of preventive diplomacy as a political agenda of a global society, which should be activated not only in an adequate period but also with significant UN support. From the example of the former Yugoslavia, it could be observed that although the holders of preventive diplomatic activities were different subjects: international organizations and prominent individuals, nevertheless, there was no presumed success. It is expected that international organizations, as one of the most frequent subjects of preventive diplomatic activities, drawing on the example of the former SFRY, have drawn adequate conclusions and that future preventive diplomatic activities will, individually or in synthesis, with peaceful means of dispute resolution give greater results. The consequences of repeating the same mistakes in the implementation of preventive diplomatic instruments and available peaceful means were extremely disastrous for the economic, scientific, sociological and the most important in the segment of the protection of fundamental human rights, emphasizing the right to life as a true and inalienable right.

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