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OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
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Agenda item 29

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QUORUM AT ASSEMBLY SESSIONS

Note by the Director

Summary:	The Director draws attention to the risk that the 1992 Fund Assembly may at some time in the future be unable to achieve a quorum, with the result that the 1992 Fund would be unable to operate. Two options to overcome these difficulties are discussed, namely delegation by the Assembly of its authority to the Executive Committee or the establishment by the Assembly of a body corresponding to the 1971 Fund Administrative Council composed of all 1992 Fund Member States but without any quorum requirement.
Action to be taken:	To consider whether measures should be taken to ensure that the 1992 Fund could continue to operate if the Assembly were unable to achieve a quorum and, if so, to consider the two options referred to above.

1 Introduction

- 1.1 Under Article 20 of the 1992 Fund Convention, which is identical to Article 20 of the 1971 Fund Convention, a majority of the Members of the Assembly shall constitute a quorum.
- 1.2 Although the 1992 Fund Assembly has so far not encountered any difficulties in obtaining a quorum, there is in the Director's view a considerable risk that when the number of Member States increases significantly, problems may arise in this regard.
- 1.3 In October 2003, ie at the time of the 8th session of the 1992 Fund Assembly, the 1992 Fund will have at least 81 Member States. It is also expected that during the next 12 months further States will ratify the 1992 Fund Convention. With the number of Member States approaching or exceeding 90, there is a considerable risk that the Assembly will not achieve a quorum.
- 1.4 At the 6th session of the Assembly, held in October 2001, the Director drew attention to this risk (document 92FUND/A.6/26). The Assembly decided to postpone consideration of this issue to its 7th session. It was agreed that the matter could also be referred to the intersessional Working Group established by the Assembly to consider the need to improve the compensation regime

provided by the 1992 Civil Liability Convention and the 1992 Fund Convention (document 92FUND/A.6/28, paragraph 29).

- 1.5 The Working Group agreed at its fourth meeting, held in April/May 2002, to retain this issue for consideration at a later stage on the basis of written proposals (document 92FUND/A.7/4, paragraph 10.3). The Director is concerned, however, that problems may arise before the Working Group has considered the issue. The Assembly may therefore wish to discuss as to whether any measures should be taken at this stage to ensure that the 1992 Fund could continue to operate if the Assembly were unable to achieve a quorum.

2 Solution adopted within the 1971 Fund

- 2.1 The same issue was considered within the 1971 Fund in 1998.
- 2.2 Even before the denunciation of the 1971 Fund Convention by a significant number of Member States, the 1971 Fund Assembly had experienced difficulties in achieving a quorum. In some cases a quorum was obtained in the 1971 Fund Assembly with only a very slight margin, and only after strenuous efforts by the Secretariat to convince Member States of the importance of attending sessions of the Assembly. Even at the time when the 1971 Fund had 76 Members, the number of States attending sessions of the 1971 Fund Assembly was only around 40.
- 2.3 When in early 1998 it became clear that it was unlikely that the 1971 Fund Assembly would in future achieve a quorum, the Assembly adopted a Resolution (1971 Fund Resolution N°13) at its 4th extraordinary session delegating certain functions to the Executive Committee with effect from the first session of the Assembly at which it became unable to achieve a quorum. Resolution N°13 further provided that if the Executive Committee was also unable to achieve a quorum, the functions of the Assembly would be assumed by a newly-created body, the Administrative Council, without any quorum requirement. This Resolution, the operative paragraph 7(a) of which was amended by the Administrative Council (acting on behalf of the Assembly) at its 7th session held in April/May 2002, is reproduced at Annex I.

3 Director's analysis

- 3.1 Whilst the Director will continue to draw the attention of Member States to the importance of their being represented at the Assembly sessions, experience within the 1971 Fund shows that a quorum could not be guaranteed. If the Assembly were unable to achieve a quorum the 1992 Fund would not be able to operate. It would not be possible *inter alia* to adopt a budget, to approve the accounts, to elect members of the Executive Committee, to appoint External Auditors and to appoint a Director.
- 3.2 The drafters of the 1992 Fund Convention did not foresee the difficulties which might arise if the 1992 Fund could not achieve a quorum in the Assembly, and for this reason the Convention does not contain any provisions dealing with such a situation. In the Director's view it is crucial that – in the interests of victims of oil pollution damage – measures are taken to enable the compensation system established under the 1992 Fund Convention to continue to function even in the absence of a quorum in the Assembly. Under Article 18.14 of the 1992 Fund Convention, the Assembly, as the supreme organ of the 1992 Fund, has the general obligation to ensure the proper operation of the Organisation. For this reason the Director considers that it is the Assembly's responsibility to take the necessary steps to avoid the 1992 Fund becoming inoperative.
- 3.3 Pursuant to Article 18.9 of the 1992 Fund Convention, the 1992 Fund Assembly is authorised to establish any temporary or permanent subsidiary body, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it. In the Director's view, there are two options open to overcoming the problems which would arise if the Assembly were not to achieve a quorum.

- 3.4 One option would be for the functions of the Assembly to be delegated to the Executive Committee in respect of any session of the Assembly at which a quorum is not achieved. It appears that there is no risk of the 1992 Fund Executive Committee not achieving a quorum, unless a significant number of States were to denounce the 1992 Fund Convention. Under the Resolution establishing the Committee (1992 Fund Resolution N°5) reproduced at Annex II, the members of the Executive Committee are elected for the period up to the end of the next regular session of the Assembly. Since the period of election for the 1992 Fund Executive Committee is laid down in an Assembly Resolution (and not, as was the case for the 1971 Fund Executive Committee, in the Convention itself), the Assembly could modify the Resolution if it is considered appropriate. The Assembly may wish to consider whether, if it does not achieve a quorum at one of its regular sessions, the members of the Executive Committee should continue in office until the end of the next regular session of the Assembly at which a quorum is achieved. Alternatively, the Executive Committee could be authorised to elect members of the Committee once a year, so as to ensure a rotation of membership, until the Assembly again achieves a quorum.
- 3.5 If the Assembly were to decide to delegate functions to the Executive Committee, it is proposed that this could be done by means of a Resolution. A draft Resolution to this effect is set out in Annex III.
- 3.6 Another option would be to establish a body similar to the 1971 Fund Administrative Council composed of all 1992 Fund Member States without any quorum requirement. The decisions by such a 1992 Fund body could be taken by majority vote of all 1992 Fund Member States present and voting, except with regard to decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority of the 1992 Fund Member States present (cf Article 32 (c) and (d)).
- 3.7 The Director favours the latter option, ie the creation of an Administrative Council. This solution has worked well within the 1971 Fund and would have the advantage that all 1992 Fund Member States would be able to take part in the decision making.
- 3.8 Should the Assembly adopt a solution along the lines set out in paragraph 3.6, it is suggested that the Assembly should adopt a Resolution creating such an Administrative Council. A draft Resolution to this effect is at Annex IV. The draft has been inspired by 1971 Fund Resolution N°13 in its original version.

4 Action to be taken by the Assembly

The Assembly is invited:

- (a) to consider the information contained in this document; and
- (b) to decide whether measures should be taken to ensure that the 1992 Fund could continue to operate if the Assembly were unable to achieve a quorum, and if so, to consider the Director's proposals outlined in paragraphs 3.4-3.8

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ANNEX I

1971 Fund Resolution N°13

Operation of the 1971 Fund from 16 May 1998

Adopted by the 1971 Fund Assembly at its 4th extraordinary session, held in May 1998

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND),

NOTING that there are 76 States Parties to the 1971 Fund Convention;

AWARE that 24 of these States will cease to be Members of the 1971 Fund from 16 May 1998 and that a number of other States will in the near future also cease to be Members of the 1971 Fund,

RECOGNISING that, as a result of these States leaving the 1971 Fund, it is likely, despite considerable efforts to be made by the Director, that the Assembly of the Organisation will no longer be able to achieve a quorum and that the same may in the near future apply to its Executive Committee,

ACKNOWLEDGING that this would result in the 1971 Fund's being unable to operate in a normal way,

MINDFUL that the 1971 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1971 Fund Convention, to perform such functions as are necessary for the proper operation of the 1971 Fund,

AWARE that the Assembly may allocate functions to the Executive Committee in accordance with Article 26.1(c) of the 1971 Fund Convention,

NOTING that, under Article 44.2, the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

CONSCIOUS of the need to establish a structure which will permit the 1971 Fund to operate from 16 May 1998 until such time as it is wound up,

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1971 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

CONSIDERING that it is important to ensure that the interests of States which remain Members of the 1971 Fund are protected,

RECALLING Resolution N°11 of the 1971 Fund on co-operation between the 1971 Fund and its former Member States, in which it is recognised that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1971 Fund once every calendar year, and in the invitations to urge States to make every effort to be represented at the meeting, and to draw attention to the consequences of a quorum not being achieved.

- 2 **RESOLVES** that, in addition to those functions which are allocated to the Executive Committee pursuant to Article 26.1 of the 1971 Fund Convention, the following functions of the Assembly shall be delegated to the Executive Committee with effect from the first session of the Assembly at which the latter is unable to achieve a quorum, on the condition that if the Assembly were to achieve a quorum at a later session or sessions, the Assembly would resume the functions previously allocated to the Committee:
- (a) to adopt the annual budget and fix the annual contributions;
 - (b) to appoint auditors and approve the accounts of the 1971 Fund;
 - (c) to supervise the proper execution of the 1971 Fund Convention and of its own decisions;
 - (d) to perform such other functions as are otherwise necessary for the proper operation of the 1971 Fund;
 - (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund;
- 3 **RESOLVES ALSO** that, whenever the Executive Committee fails to achieve a quorum, all functions undertaken by the Committee (ie those allocated by the Assembly and those allocated in accordance with the 1971 Fund Convention) shall revert to the Assembly;
- 4 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
- (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
 - (b) to establish a subsidiary body to consider the settlement of claims;
 - (c) to give instructions to the Director concerning the administration of the 1971 Fund;
 - (d) to supervise the proper execution of the Convention and of its own decisions;
 - (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;
- 5 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee in accordance with paragraph 2 have reverted to the Assembly pursuant to paragraph 3, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 6 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
- (a) 1971 Fund Member States;
 - (b) former 1971 Fund Member States;
 - (c) other States which would be invited to attend sessions of the 1971 Fund Assembly as observers; and
 - (d) intergovernmental organisations and international non-governmental organisations which have observer status with the 1971 Fund; and
- 7 **FURTHER DECIDES**:
- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right

- to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State;
- (b) that there shall be no quorum requirement for the Administrative Council;
 - (c) that the Administrative Council shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either at his own initiative or at the request of its Chairman;
 - (d) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
 - (e) that the States invited to a session of the Administrative Council shall inform the Director of the person or persons who will attend; and
 - (f) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise;
- 8 **FURTHER RESOLVES** that the Director of the 1971 Fund shall *ex officio* be the person who holds the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agrees thereto and that the Director of the 1992 Fund agrees to carry out the functions of the Director of the 1971 Fund also, or, if these conditions are not met, that the Director shall be appointed by the Executive Committee in accordance with paragraph 2 above, or by the Administrative Council in accordance with paragraph 4 above.

Operative paragraph 7(a) of the Resolution was amended by the Administrative Council at its 7th session (acting on behalf of the Assembly's 9th extraordinary session) held in April/May 2002 to read with effect from 24 May 2002 (document 71FUND/AC.7/A/ES.9/14, paragraph 6.11 and Annex II.):

that decisions of the Administrative Council shall be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting, provided that, in respect of issues relating to incidents, States shall have the right to vote only as regards incidents which occurred when the State in question was a Member of the 1971 Fund;

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ANNEX II

1992 Fund Resolution N°5

Establishment of the Executive Committee

Adopted by the 1992 Fund Assembly at its 2nd session, held in October 1997

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 Fund),

NOTING that the Assembly may, in accordance with Article 18.9 of the 1992 Fund Convention, establish any temporary or permanent subsidiary body it considers to be necessary, define its terms of reference and give it the authority needed to perform the functions entrusted to it,

NOTING FURTHER that, in accordance with that Article, the Assembly shall, when appointing the members of such a subsidiary body, endeavour to secure an equitable geographical distribution of members and to ensure that the Member States, in respect of which the largest quantities of contributing oil are received, are appropriately represented,

RECALLING the decision of the Assembly at its 1st session that the 1992 Fund should have a claims subsidiary body to deal with claims for compensation and the decision by the Assembly at its 1st extraordinary session that this body should be known as the Executive Committee,

HEREBY CREATES an Executive Committee which shall be established at the first session of the Assembly after the number of 1992 Fund Member States has reached 25,

DECIDES that the Executive Committee shall be composed of 15 Member States elected by the Assembly to hold office until the end of the next regular session of the Assembly, and that a member may not serve on the Executive Committee for more than two consecutive terms, except to the extent necessary to comply with the eligibility requirements,

FURTHER DECIDES that the election of the Executive Committee should be governed in the following provisions:

- (a) Seven Executive Committee members shall first be elected from among the eleven Member States in the territory of which the largest quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year.
- (b) Eight members shall then be elected from among the other Member States.
- (c) A Member State which was eligible but was not elected under sub-paragraph (a) shall not be eligible for any remaining seat on the Committee.
- (d) The Assembly shall, when electing the members of the Committee, secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets. The Assembly may also take into account the extent to which a particular State has fulfilled its obligation to submit reports on receipts of contributing oil, in accordance with Article 15 of the 1992 Fund Convention.
- (e) Members of the Executive Committee shall hold office until the end of the next regular session of the Assembly.

- (f) Except to the extent that may be necessary to comply with the requirement set out under (a) above, no State may serve on the Executive Committee for more than two consecutive terms. However, if a State eligible under (a) declares before the election that it might not be able to attend the Committee's sessions, the Assembly may elect in its place another State from among the eleven States eligible under (a), even if the latter State has served for two consecutive terms.

ADOPTS the following mandate for the Executive Committee:

The functions of the Executive Committee shall be:

- 1 to take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation referred to it by the Director;
- 2 to consider new issues of principle and general policy questions relating to claims for compensation as they arise (and not in the abstract) and procedures for handling incidents involving the 1992 Fund;
- 3 to extend, to the extent it considers appropriate, the Director's authority to make final settlement of claims arising out of a given incident beyond that vested in him in accordance with the Internal Regulations;
- 4 to give the Director such instructions in respect of the handling of claims for compensation as may be required; and
- 5 to make such recommendations to the Assembly, for example on questions of principle of great importance, as the Executive Committee may deem appropriate.

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ANNEX III

Draft **1992 Fund Resolution N° [7]**

Adopted by the 1992 Fund Assembly at its 7th session, held in October 2002

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 FUND),

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 10 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions;

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the sessions, and to draw attention to the consequences of a quorum not being achieved.
- 2 **RESOLVES** that, in addition to those functions which are allocated to the Executive Committee pursuant to 1992 Fund Resolution N°5, the following functions of the Assembly shall be delegated to the Executive Committee with effect from the first session of the Assembly at which the latter is unable to achieve a quorum, on the condition that if the Assembly were to achieve a quorum at a later session or sessions, the Assembly would resume these functions:
 - (a) to adopt the annual budget and fix the contributions;
 - (b) to appoint auditors and approve the accounts of the 1992 Fund;

- (c) to give instructions to the Director concerning the administration of the 1992 Fund;
- (d) to supervise the proper execution of the 1992 Fund Convention and of its own decisions;
- (e) to perform such other functions as are otherwise necessary for the proper operation of the 1992 Fund;

Alternative A

- 3 **FURTHER RESOLVES** that, if the Assembly were to fail to achieve a quorum at a regular session, the members of the Executive Committee shall, notwithstanding paragraph (e) of the operative part of 1992 Fund Resolution N°5, continue to hold office until the end of the next regular session of the Assembly at which it achieves a quorum.

Alternative B

- 3 **FURTHER RESOLVES** that, if the Assembly were to fail to achieve a quorum at a regular session, notwithstanding 1992 Fund Resolution N°5 the Executive Committee shall elect its members to hold office until the end of the next regular session of the Assembly and that when electing the members the Committee should to the extent possible apply paragraphs (a), (b), (c), (d) and (f) of 1992 Fund Resolution N°5.

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ANNEX IV

Draft **1992 Fund Resolution N° [7]**

Adopted by the 1992 Fund Assembly at its 7th session, held in October 2002

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 FUND),

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 10 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will in the near future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions;

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1992 Fund once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved.
- 2 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
 - (a) to perform such functions as are allocated to the Assembly under the 1992 Fund Convention or which are otherwise necessary for the proper operation of the 1992 Fund;
 - (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;
 - (c) to give instructions to the Director concerning the administration of the 1992 Fund;

- (d) to supervise the proper execution of the Convention and of its own decisions;
- 3 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 4 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
- (a) 1992 Fund Member States;
 - (b) other States which would be invited to attend sessions of the Assembly as observers; and
 - (c) intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and
- 5 **FURTHER DECIDES**:
- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;
 - (b) that there shall be no quorum requirement for the Administrative Council;
 - (c) that the Administrative Council shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either at his own initiative or at the request of its Chairman;
 - (d) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
 - (e) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and
 - (f) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.
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