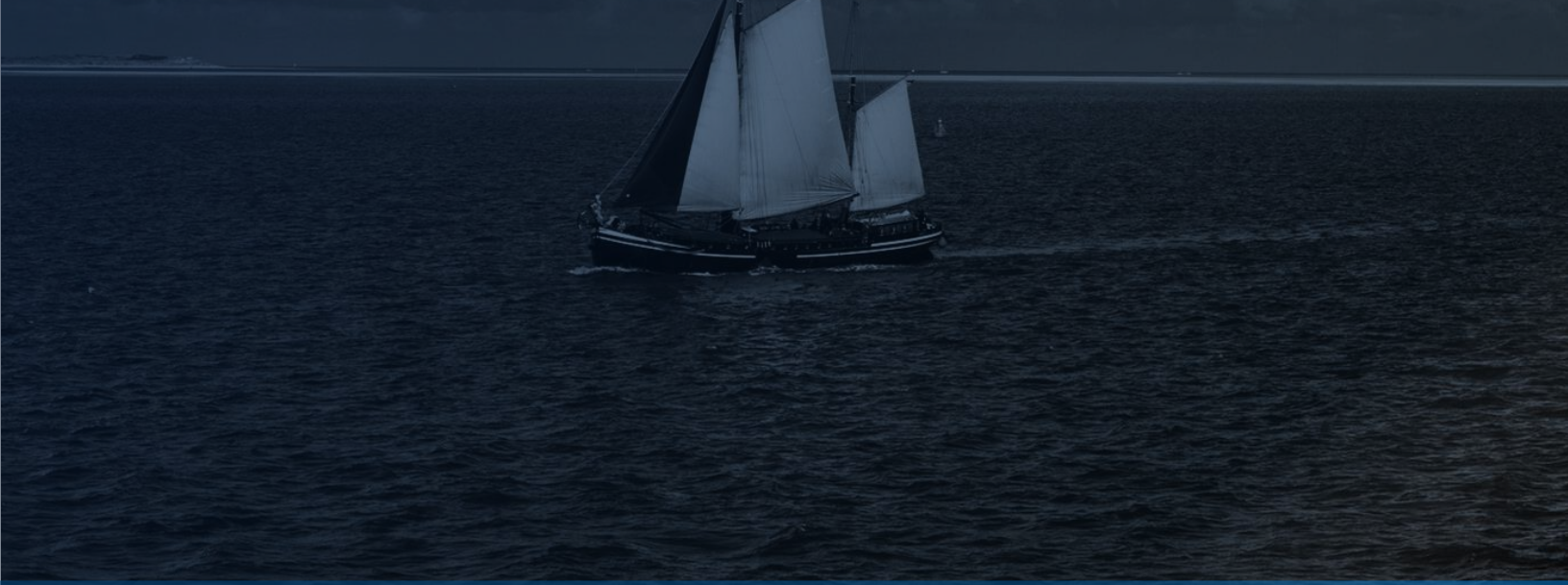




Mitigating the Risk of Piracy in the Gulf of Guinea: A Guide For Shipping Companies and P&I Clubs



Introduction

Piracy in the Gulf of Guinea has emerged as a significant threat to global maritime security, affecting shipping companies, shipowners, and insurers alike. The region accounts for the highest number of piracy incidents worldwide, particularly involving kidnapping for ransom, armed robbery, and hijacking of vessels.¹ In 2023, the International Maritime Bureau (“IMB”) reported a slight increase in incidents compared to 2022, with the region accounting for three of the four globally reported hijackings, all 14 crew kidnappings, 75% of reported crew hostages, and two injured crew members. Although the number of piracy incidents dropped from 14 in 2023 to 10 in the first half of 2024, the threat to crew safety and wellbeing remains a critical concern. The Gulf of Guinea continues to be the epicentre of global crew kidnappings, accounting for all 11 crew members kidnapped in the first half of 2024 across two separate incidents, and 21 crew members taken hostage in a single incident.²

Given the severity of this risk, it is essential for shipping companies and Protection and Indemnity (P&I) clubs to adopt proactive measures, including seeking legal advice to manage and mitigate the threat of piracy. Engaging experienced legal professionals is crucial for stakeholders to navigate the complex landscape of international maritime laws and regulations, ensuring they are adequately prepared to address potential piracy-related claims and liabilities. This article explores the key areas of legal assistance available to stakeholders, including risk assessment and management, drafting security and contractual agreements, ensuring insurance coverage, and adhering to international conventions. This article also aims to equip shipping companies and P&I clubs with the necessary tools to reduce their vulnerability to piracy, while ensuring that they are prepared for any legal and operational challenges that may arise.

¹Central European Journal of International and Security Studies: ‘The Role of the UN Security Council in the Fight Against Piracy in the Gulf of Guinea’, <https://cejss.org/the-role-of-the-un-security-council-in-the-fight-against-piracy-in-the-gulf-of-guinea> accessed on 8th October 2024.
²International Maritime Bureau, Piracy and Armed Robbery Against Ships: Annual Report 2023, available at <https://www.icc-ccs.org> accessed on 27th September 2024.

Risk Assessment and Management

In piracy-prone regions like the Gulf of Guinea, conducting detailed risk assessments is essential for shipping companies to safeguard their vessels, cargo, and crew. These assessments help identify potential threats, prioritize safer routes, and implement preventive measures that minimize exposure to piracy. Risk assessments are not only vital for operational security but are also mandatory under international frameworks. For instance, Clause 1.2.2 of the International Safety Management Code 2010 ("**ISM Code**"), mandates that shipping companies assess all identified risks to their ships, personnel and the environment, and establish appropriate safeguards.³ Likewise, industry guidelines such as the BMP West Africa- Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa including the Gulf of Guinea ("**BMP-WA**"), make it a fundamental requirement for shipping companies to conduct risk assessment and identify ship protection measures.⁴

Effective risk management strategies reduce the likelihood of piracy incidents through collaboration between maritime security experts and legal professionals. These plans often focus on strengthening vessel security, optimizing crew safety protocols, and ensuring compliance with international and regional regulations such as the United Nations

Convention on the Law of the Sea (UNCLOS) and the ISM Code. As threats evolve, these strategies must adapt, with ongoing legal guidance ensuring companies remain compliant with regulatory changes, maintain operational safety, and reduce litigation risks. In the event of piracy, legal contingencies provide a structured framework for notifying local or international authorities like the International Maritime Bureau (IMB) or Lagos Regional Maritime Rescue Coordination Centre, ensuring insurance compliance, and fulfilling regulatory reporting obligations. Legal professionals play a critical role in both pre-incident preparations and post-incident legal actions, ensuring companies maintain operational efficiency and legal compliance across jurisdictions.

³ Revised ISM Code 2015 available at https://www.classnk.or.jp/hp/pdf/activities/statutory/ism/ISM_Cd/ISM-Code-e.pdf accessed on 27th September, 2024.

⁴ Maritime Global Security, 'BMP West Africa, Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa including the Gulf of Guinea' available at <https://www.maritimelglobalsecurity.org/media/zyawjjj/bmp-wa-hi-res.pdf> accessed on 27th September, 2024.

Contractual Agreements

When embarking on a voyage to any region that is prone to piracy, shipping companies need to pay careful attention to the terms of their charterparty as well as the bills of lading if the cargo owners are different from the charterers. This is because if the charterparty, as well as the bill of lading where necessary, is not well drafted to include for example, the required privacy-specific war risk clause and a proper general average clause that sufficiently covers the risk associated with piracy or other related acts in the Gulf of Guinea, the shipping companies may be forced to bear the liability that would have ordinarily passed to the charterers or bill of lading holders in case of any incident. In *Herculito Maritime Ltd v Gunvor International BV (the Polar)* [2024] UKSC 2, the Supreme Court of the United Kingdom found that cargo interests were liable for a general average (GA) contribution relating to a ransom payment made to pirates following the vessel's hijacking in the Gulf of Aden in 2010. This was only possible because the Supreme Court found that even though general average is regulated by contract, it is a legal right under common law. For the shipowner to have given up this valuable right in relation to well-known kidnap and ransom risks, there must be a clear intention to that effect. So, shipping companies need to pay careful attention to their contracts of carriage or bills of lading because common law principles may not always be available to rescue them if the terms of the contract of carriage or bills of lading where necessary are

not well drafted.

Additionally, shipping companies are increasingly relying on Private Maritime Security Companies (PMSCs) and Security Escort Vehicles (SEV) to safeguard their vessels.⁵ A well-drafted security contract is essential for defining the roles and responsibilities of these PMSCs, particularly concerning the scope of services, communication protocols, compliance with international regulations, and protecting the shipowners and their P & I clubs against liability. To standardize these agreements, The Baltic and International Maritime Council (BIMCO) has developed GUARDCON, a widely adopted contract template to assist the industry and, in particular, shipowners and their P&I Clubs, by providing a clearly worded and comprehensive standard contract on which they can conclude agreements for security services.⁶ GUARDCON ensures that key elements, such as insurance coverage, permits, rules of engagement, and the use of force are integrated into the contracts, helping to raise industry standards and mitigate risk. Additionally, BIMCO introduced SEV-GUARDCON, a new contract for Security Escort Vessels (SEVs), which mirrors GUARDCON's structure and provisions but is specifically designed for SEVs accompanying merchant ships across Exclusive Economic Zones (EEZ) or territorial waters of multiple states.⁷

⁵ Section 5 of the BMP West Africa – Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa including the Gulf of Guinea” (BMP WA) does not recommend or endorse the use of a PMSC OR SEV. Its use is a decision taken by individual ship operators after carrying out a thorough risk assessment and with permissions from the ship's Flag State, the hull and cargo insurance, P&I club and any other littoral states.

⁶ BIMCO, "GUARDCON" available at <https://www.bimco.org/contracts-and-clauses/bimco-contracts/guardcon#> accessed on 27th September 2024.

⁷ BIMCO, "SEV- GUARDCON" available at <https://www.bimco.org/contracts-and-clauses/bimco-contracts/sev-guardcon> accessed on 27th September 2024.

Although BIMCO's GUARDCON and SEV-GUARDCON contracts provide a solid framework for maritime security agreements, they are not substitute for thorough due diligence, which is crucial for shipowners as failure to do so can cause exposure to legal disputes. Therefore, it is important for contracts with PMCS to clearly define

the qualifications, licensing, and insurance coverage of the providers to ensure that only well-equipped companies are engaged. Additionally, they should establish strict rules of engagement and acceptable use of force to mitigate the risk of liabilities. These contracts must comply with laws such as UNCLOS and BMP-WA

Insurance Guidance

Understanding and securing appropriate insurance coverage is vital in mitigating piracy-related risks. Securing the right insurance coverage is critical for shipping companies operating in piracy-prone regions. Various types of insurance — such as hull and machinery insurance, war risk policies, and kidnap and ransom (K&R) coverage—can provide financial protection against piracy-related

losses, including ransom payments, cargo loss, and legal liabilities. When assessing the necessary coverage, shipping companies should ensure that their contractual arrangements accurately reflect how the parties intend to allocate risks for piracy losses, considering specific voyage risks and obligations in the charter party and bill of lading agreements.

Compliance with Regulations

Compliance with international and national regulations is essential for mitigating piracy risks and avoiding significant legal liabilities. The UNCLOS serves as a cornerstone of the international legal framework addressing piracy, outlining the rights and obligations of states regarding ocean use. Articles 100–107 of UNCLOS mandate that states implement measures to prevent and suppress piracy, necessitating that shipping companies adhere to these regulations and collaborate with global enforcement efforts. Complementing UNCLOS is the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of

Maritime Navigation (SUA), which establishes a legal framework for addressing unlawful acts against ships, such as forceful seizures and violence against passengers. Together, UNCLOS and the SUA Convention define piracy, outline the universal jurisdiction of states to combat it, and detail the responsibilities of nations in apprehending and prosecuting offenders, ensuring that maritime operations adhere to international legal standards.

In Nigeria, the Suppression of Piracy and Other Maritime Offences (SPOMO) Act of 2019 reflects the country's commitment to combating piracy

² Federal Bureau of Investigations, White-Collar Crimes, <https://www.fbi.gov/investigate/white-collar-crime>, Accessed August 24th, 2024

³ 'The Global Challenge of Cross-Border Financial Crimes: Strategies for International Cooperation and Enforcement' Accessed on 24th August, 2024.

⁴ Former Finance Minister of Mozambique Convicted of \$2B Fraud and Money Laundering Scheme. Accessed on 7th October, 2024

and other maritime security threats. This Act effectively domesticates international conventions, including both the SUA and UNCLOS, and applies to ships, aircraft, and fixed and floating platforms, extending jurisdiction to all individuals aboard these vessels, whether within Nigerian territorial waters or those of other signatory nations. Prior to the SPOMO Act, prosecuting suspected piracy offenders in Nigeria faced challenges due to a lack of explicit legislation. The legal principle of "no punishment without law" complicated the prosecution process. The Act now clearly defines piracy and establishes legal obligations for various stakeholders, including shipowners and P&I clubs. The Act mandates that individuals with knowledge of piracy incidents—such as the ship's master, owners, crew representatives, and insurers—report these incidents immediately to the relevant authorities.⁸ Non-compliance can

lead to significant penalties, highlighting the importance of adhering to these reporting requirements. These individuals or entities must report piracy incidents without delay, and in a prescribed format. Failure to disclose critical information that could assist in preventing piracy or prosecuting offenders is an offence and can be liable, on conviction, to a fine of at least N5,000,000 (Five Million Naira).⁹ Given the legal complexities surrounding piracy incidents, it is crucial to have legal professionals available to provide guidance and ensure compliance with international laws like UNCLOS and the SUA Convention, as well as national laws such as the SPOMO Act. Legal experts can help safeguard the company's interests, fulfil legal obligations, and facilitate appropriate responses to piracy incidents, ultimately contributing to enhanced maritime security.

Incident Response Planning

Shipping companies operating in the Gulf of Guinea must develop detailed incident response plans that incorporate both local and international legal requirements to address piracy attacks. Legal professionals are crucial in helping companies create these frameworks, which ensure swift and compliant responses to piracy incidents. Key elements include emergency action protocols, real-time communication systems, and clear guidelines for managing crew safety and coordinating with maritime security. Additionally, companies must understand their legal responsibilities under international maritime laws to avoid escalating situations or

breaching conduct standards.

These response plans must also address the specific reporting obligations required after piracy incidents, including notifying the IMB and relevant local authorities like the Lagos Regional Maritime Rescue Coordination Centre. Immediate communication with insurers, especially P&I clubs, is essential to initiate claims for ransom payments, cargo losses, or damages. A well-prepared legal framework helps companies minimize liability and ensures they meet all legal and insurance-related requirements, reducing the risks and complications associated with piracy.

⁸ Section 16 SPOMO Act.

⁹ Section 16(5) SPOMO Act.

Negotiation and Mediation

In the event of a vessel hijacking or crew kidnapping, negotiation and mediation are often necessary to secure their release. When all other attempts to prevent the hijacking of the ships have failed, negotiations are the last resort.¹⁰ Legal professionals play a vital role in these delicate situations, ensuring that negotiations are conducted within the bounds of the law and avoiding legal and financial pitfalls. For instance, international sanctions may restrict ransom payments, and legal counsel can help shipping companies navigate these regulations to avoid potential violations. When a vessel is hijacked, the urgency of the situation often leads to rapid negotiations for the crew's release. However, these negotiations must be conducted within the framework of international and national law. In the 2020 **MV ELOBEY VI Case**, ransom demand and negotiation was held to be illegal, although, ransom payment can be the only way out.¹¹ Navigating this path requires careful precautions so as not to be found guilty under maritime laws.

In 2017, the hijacking of the oil tanker *Aris 13* off the coast of Somalia required negotiations for the crew's release.¹² Legal experts were crucial in guiding the shipping company through the intricacies of negotiations, considering applicable sanctions imposed by various countries. The European Union, for instance, had

sanctions that could complicate direct payments to pirates, which could have resulted in severe legal repercussions for the shipping company.

According to statistics, hijack targets of modern pirates mainly focus on product tankers, bulk carriers, container ships, general cargo ships and crude oil tankers.¹³ Once the ship is hijacked, shipowner, shipper and insurance company tend to suffer significant losses. Legal support becomes crucial in mediation processes when shipping companies are dealing with insurance claims, disputes with charterers, or any other contractual disagreements that may arise from piracy incidents. For example, mediation can facilitate settlements in cases where an insurer disputes coverage for damages incurred during a hijacking.

¹⁰ Centre for International Maritime Security, 'How to Negotiate with Pirates' available at <https://cimsec.org/how-to-negotiate-with-pirates/> accessed on 3rd October 2024.

¹¹ Okafor-Yanwood, J. M., & Onuoha, F. C. (2023). Whose security is it? Elifism and the global approach to maritime security in Africa. *Third World Quarterly*, 44(5), 946–966. Available at <https://doi.org/10.1080/01436597.2023.2167706> accessed on 3rd October, 2024.

¹² The Guardian, 'Somali pirates release oil tanker and crew after first hijack for five years' available at <https://www.theguardian.com/world/2017/mar/16/somali-pirates-release-oil-tanker-and-crew-after-first-hijack-for-five-years> accessed on 3rd October, 2024.

¹³ Qiong Xi, 'Ransom negotiation with Somali Pirates based on bargaining' (2013) World Maritime University, available at https://commons.wmu.se/cgi/viewcontent.cgi?article=2653&context=all_dissertations accessed on 3rd October, 2024.

Training and Awareness

Legal professionals are essential in providing training and raising awareness among shipping companies and their crews regarding piracy risks and legal obligations. These training sessions can cover various topics, including the legal rights and responsibilities of crew members during piracy incidents, appropriate reporting protocols, and self-defence measures.¹⁴ Given the complexities of the legal and institutional frameworks that regulate the maritime sector, stakeholders must understand these frameworks to better navigate their dealings when it comes to pirates and their attacks.¹⁵

Legal professionals can educate shipping crews about the relevant international laws governing piracy, such as the UNCLOS and other applicable treaties. This knowledge is vital for understanding the legal definitions of piracy and the jurisdictional issues that may arise in international waters. Shipping companies have a duty of care to their employees. Under the Maritime Labour Convention, of 2006,¹⁶ shipowners are to have adequate measures in place that ensure seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment. Legal professionals can outline the responsibilities of companies in terms of providing adequate training, resources, and support during piracy incidents, including evacuation protocols and communication strategies.

Training should cover the legal rights of crew members when faced with piracy, including the right to self-defence and the right to receive assistance from their employer. Legal professionals can clarify how these rights apply in high-pressure situations. Crew members must be trained on how to collect and preserve evidence following a piracy incident, which is critical for legal proceedings. This includes documenting the incident, securing physical evidence, and gathering witness statements.

By educating crews on relevant legal frameworks, including the SPOMO Act, UNCLOS, and SUA Convention, shipping companies can ensure that their staff are fully informed about how to handle piracy situations in a manner that complies with the law and minimizes risk. Legal professionals can also assist in designing these training programs to focus on both preventive measures and post-incident legal protocols.

¹⁴ Arnold and Itkin, 'What to Do in the Event of a Pirate Attack' available at <https://www.offshoreinjuryfirm.com/blog/maritime-law/what-to-do-in-the-event-of-a-pirate-attack/> accessed on 4th October 2024.

¹⁵ International Maritime Organisation, 'Piracy and Armed Robbery Against Ships' available at <https://www.imo.org/en/OurWork/Security/Pages/PiracyArmedRobberydefault.aspx> accessed 5th October 2024.

¹⁶ Nigeria is a party to this Convention

Litigation Support

Legal disputes often arise from piracy incidents, especially concerning insurance claims, recovery of damages, and asset recovery. Given the region's status as a piracy hotspot, legal expertise is vital for navigating the complex interplay of national and international laws.

Legal professionals provide invaluable litigation support in these instances, representing shipping companies in Court or arbitration. For example, disputes over whether a piracy

incident falls under the definition of force majeure in charter party agreements often lead to complex litigation, where expert legal representation is crucial. In cases where piracy results in litigation—whether against pirates or in disputes over insurance claims—legal professionals represent affected parties. Their expertise is critical in navigating complex maritime law and ensuring that claims are effectively pursued in court.

Collaboration with Authorities

Collaborating with regional and local authorities, such as the Nigerian Maritime Administration and Safety Agency ("**NIMASA**") and the Nigerian Navy, is critical for enhancing security measures in the Gulf of Guinea. Effective collaboration allows for real-time intelligence sharing regarding pirate activities. This proactive approach can help prevent attacks before they occur, as seen in initiatives like the Maritime Domain Awareness for Trade – Gulf of Guinea, which encourages vessels to report suspicious activities.¹⁷ **Section 17(5) (a-d) of the SPOMO Act** enjoins law enforcement agencies to investigate, execute search warrants, arrest, and provide evidence for the prosecution of pirates in Nigeria. Collaboration is key in the discharge of the investigatory responsibilities contained in the law.¹⁸

In terms of facilitating communication between Shipping companies, P & I clubs and relevant maritime authorities, legal assistance can be important where there is a need for an intermediary, to negotiate contracts with maritime authorities, including agreements for naval escorts or joint exercises, legal experts ensure that terms are favourable and legally binding. Legal professionals can facilitate this collaboration by ensuring that shipping companies and P&I clubs are complying with legal reporting obligations and cooperating effectively with local law enforcement. This cooperation not only helps to resolve piracy incidents more quickly but also fosters long-term relationships with key stakeholders, enhancing the security environment for all parties involved.

¹⁷ International Maritime Organisation, 'IMO Calls for Further Action to Address Gulf of Guinea Piracy' available at <https://www.imo.org/en/MediaCentre/PressBriefings/pages/GulfOfGuineaMay2021.aspx> accessed on 5th October 2024

¹⁸ Aaron Ologe & Humphrey Ejorwo Eboh, 'An Analysis of Piracy Provisions Under Nigeria's 2019 Suppression of Piracy Act' (2023) Journal of Refugee Law and International Criminal Justice, 2(1) 27 available at https://www.researchgate.net/publication/383491747_An_Analysis_of_Piracy_Provisions_Under_Nigeria's_2019_Suppression_of_Piracy_Act accessed on 5th October, 2024.

Policy Advocacy

Policy advocacy is crucial in influencing government actions and ensuring that stronger anti-piracy measures are implemented at both the national and international levels. Legal professionals play an instrumental role in advocacy by representing the interests of shipping companies, P&I clubs, and other stakeholders in discussions with policymakers. Legal advocacy was instrumental in the enactment of Nigeria's SPOMO Act, which has significantly bolstered the country's ability to prosecute piracy. Legal

advocacy helped establish a robust legal framework for addressing piracy. Legal professionals continue to engage in policy advocacy to push for stronger maritime security laws, improved enforcement mechanisms, and greater international cooperation in combating piracy. The active involvement of legal professionals in this area ensures that stakeholders' voices including Shipping companies and P & I clubs are heard, helping shape policy decisions that directly impact the safety and security of the maritime industry.

Conclusion

Piracy in the Gulf of Guinea remains a persistent threat, posing significant risks to shipping companies, shipowners, and P&I clubs. To mitigate these challenges, comprehensive legal strategies are essential, covering areas such as risk assessment, security contracts, regulatory compliance, and incident response planning. Legal professionals play a crucial role in helping companies navigate the complex landscape of international maritime laws and regional regulations, ensuring that stakeholders are prepared to address piracy-related claims, liabilities, and operational risks. The IMB has

reiterated the importance of a robust regional and international naval presence to combat piracy in the Gulf of Guinea. By implementing proactive legal frameworks and fostering collaboration with local authorities, shipping companies can reduce their vulnerability to piracy, enhance crew safety, and safeguard their financial interests. Continuous vigilance, coupled with expert legal guidance, is key to maintaining secure maritime operations in this high-risk region.

² Federal Bureau of Investigations, White-Collar Crimes, <https://www.fbi.gov/investigate/white-collar-crime>, Accessed August 24th, 2024

³ 'The Global Challenge of Cross-Border Financial Crimes: Strategies for International Cooperation and Enforcement' Accessed on 24th August, 2024.

⁴ Former Finance Minister of Mozambique Convicted of \$2B Fraud and Money Laundering Scheme. Accessed on 7th October, 2024

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