THE SHARED HOMELAND PARADIGM

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A Land for All

Background Paper for
The Shared Homeland Paradigm Project:

Transnational Free Movement Regimes

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Introduction

Although immigration policy is often regarded as one of the last bastions of state sovereignty (e.g. Dauvergne 2014), states have a long history of negotiating agreements facilitating the mobility of their citizens. In Europe, industrializing states such as France, Germany, Switzerland and Belgium signed agreements with labor-exporting neighbors (e.g., Italy, Austria-Hungary, Poland) to regulate seasonal or temporary workers as early as the 1860s. Within multiethnic empires like Austro-Hungary or the German Empire, internal mobility was generally liberalized. It is only from the first World War onwards that systematic controls over border crossings and immigration were introduced (Torpey 2000) and most of these agreements were discontinued.

After World War II, mobility agreements have developed at different scales, scopes and with different motives. Broadly speaking, mobility agreements differ in their geographic scale – from two states to regional blocs; their substantive scope – from full to more limited modes of mobility; their institutional scope – from supranational enforcement to state responsibility; and their motive – from retaining to creating stronger mobility.

This background paper introduces a novel typology of mobility arrangements between sovereign states distinguishing between their scale, scope and motives and examines selected cases with regard to their legal basis (conditions for cross-border mobility and corresponding entry/residence/economic-social-cultural-political rights as provided in the treaties or national legislation), institutional framework (institutions in charge of regulating, implementing, enforcing cross-border mobility regimes), and evidence on their (dis)functioning in practice. The last section reflects on the applicability of these different regimes to the Israel-Palestine context in view of a future two-state solution.

Typology of mobility regimes

Migration is not a stronghold of international cooperation, and this is mirrored in a relative scarcity of scholarly literature on the topic (Lahav and Lavenex 2012). Existing research has tended to focus on multilateral institutions such as the international refugee regime or relevant UN organizations (e.g. Betts 2011; Geiger and Pécoud 2010) or well-known regional examples, such as the EU or, with some delay, Mercosur in South America or Ecowas in West Africa. Only recently, scholars have started to look comparatively at these regional mobility regimes (Geddes 2021; Lavenex et al. 2016; Nita et al. 2017) and their interaction with international structures (Lavenex 2019). Interestingly, research on bilateral labour agreements has developed in separate fields, and it is only with the important proliferation of such schemes over the last decades that the topic has received more attention by international relations scholars (Chilton

and Posner 2018; Chilton and Woda 2022; Peters 2019). Mobility provisions in trade agreements, finally, are a more recent topic of research and is equally linked to the proliferation of such arrangements especially after the conclusion of the General Agreement on Trade in Services of the WTO in 1995 (Lavenex et al. 2024).

So-far these literatures have developed with little connection to each other, there is no authoritative overview and even less a systematic assessment of existing inter-state arrangements facilitating the mobility of natural persons. Drawing on these different strands of literature, and based on the analysis of pertinent treaties/arrangements and institutional frameworks, I propose a typology of mobility arrangements distinguishing between their geographic scale (minilateral or plurilateral/regional), substantive (limited economic vs full mobility) and institutional (sovereign or supranational) scope, and motive.

At the 'liberal' end of the continuum, historically and geographically close neighbours and members of ambitious regional integration projects have opened up for full mobility arrangements allowing their citizens to reside, study and/or work on each partner's territory, under specific conditions. At a more limited level, mobility arrangements have proliferated via Bilateral Labour Agreements covering temporary stays linked to work, arrangements on (temporary) labour mobility as part of regional market integration efforts, and, finally, the facilitation of temporary labor mobility in bilateral Preferential Trade Agreements. While "full mobility" arrangements grant a broadly comparable set of rights, at least on paper, and often provide for an implementation agenda spanning several decades, "limited" mobility regimes are more diverse.

Next to these regulatory aspects, mobility agreements differ strongly with regard to the institutional frameworks set in place to govern their implementation. Broadly, one can distinguish between three types of institutional frameworks. The most legalized ones are embedded in supranational institutions with independent monitoring and enforcement mechanisms. In these systems state compliance is overseen by an independent organization and infringements can be adjudicated by an independent court (indicated in the table below with the value [3]). More common are intergovernmental institutions which do not have an independent monitoring system but where enforcement works via a state-to-state dispute settlement system (value [2]). A third category are mobility arrangements that are legally binding but lack an enforcement mechanism (value [1]). Finally, there are also arrangements that are not legally binding and just based on states' political commitment (value [0]).

The fourth dimension of our typology refers to the motives driving the adoption of these mobility schemes. This is a complex historical and political question that in most cases cannot be reduced to one simple motive. Nevertheless, an analogy to Afred

Stepan's (1999) classic work on federalism allows distinguishing two broad motives: "coming together" mobility regimes, targeting greater integration between previously independent units voluntarily joining together; and "holding together" regimes, created to maintain existing societal ties after secession or rupture of earlier mobility schemes. Table one applies this tentative classification marking "coming together" arrangements in green and "holding together" ones in blue.[1] All examples listed in the table are briefly discussed in the subsequent sections of this paper.

Table 1 Typology of mobility regimes with a non-comprehensive sample of cases

	Economic mobility	Full mobility
Minilateral	Bilateral labour agreements [1-2][2] mobility provisions in preferential trade agreements [2]	Australia-New Zealand Trans-Tasman Travel Arrangement [1] Common Travel Area UK-Ireland [1] Nordic Passport Union [1]
Regional	ASEAN [1] NAFTA/USMCA [2]	ECOWAS Protocol on Free Movement of Persons [2] Mercosur Residency Agreement [1] EU and European Economic Community (EEA) freedom of movement [3] EU/EEA-Switzerland freedom of movement [1]

[1] Stepan identifies a third type of federalism that he labels "putting together" federalism. This denotes a system that is imposed from outside or by a dominant power on other parties. While this notion may to some extent characterize the current Israeli Palestinian context (see Conclusion), it falls beyond the types of voluntary mobility regimes between sovereign states addressed in this note.

[2] According to Chilton and Woda (2022, 30) roughly 20% of all Bilateral Labor Agreements have a dispute settlement mechanism [2], whereas the majority just foresee regular intergovernmental meetings or no conflict resolution at all [1].

Full mobility regimes

Full mobility regimes exist bilaterally and in several ambitious regional integration frameworks. In this section we review selected cases with regard to their substantive scope, institutional framework, and evidence on their (dis)functioning in practice.

Minilateral full mobility regimes

The **UK-Ireland Common Travel Area** (CTA) followed to British colonial rule over Ireland, it dates back to 1923 but was formally recognized in 1952 and reaffirmed after Brexit. Based on administrative arrangements (the latest being a 2019 Memorandum of Understanding), the CTA grants British and Irish citizens free movement and residence, the right to work, study, access health, social welfare, and voting in local and national parliamentary elections elections[3] in either jurisdiction. To my knowledge, there is no dedicated institutional framework charged with overseeing the arrangements, commitments are soft law and implemented in national law.

The **Nordic Passport Union** between Denmark, Finland, Iceland, Norway and Sweden was concluded in 1954 and allows citizens to reside and work in the participating countries without residence or work permit requirements. In 1957, the abolition of internal border controls was decided. The 1962 Helsinki Agreement provided for equal treatment of Nordic citizens across all Nordic states, providing them with social and economic rights comparable across the region. In institutional terms, the Nordic Council provides a framework in which states can exchange on the workings of the Agreement and issue recommendations on policy implementation. Legally speaking, the agreement is not binding, but its implementation is ensured through the domestic policies of the member states.

The **Trans-Tasman Travel Arrangement** (TTTA) between Australia and New Zealand too is not a legally binding treaty but, similar to the CTA, a series of coordinated immigration arrangements and domestic laws. It is supported by the Trans-Tasman Travel Arrangement itself of 1973, but many of its parts are implemented via domestic legislation in form of special category visas with minimal administrative barriers. TTTA lets citizens of Australia and New Zealand move to the other country and reside and work indefinitely, share social and economic rights, subject to some limited restrictions (national security, public service). Coordination on the mutual recognition of qualifications exists.

In institutional terms there is no supranational arrangements, implementation is subject to national law.

[3] Other electoral rights (like EU or state referendums/presidential votes) depend on national or EU eligibility rules rather than the CTA itself.

These three minilateral full mobility arrangements have in common that they have long-standing historical roots of free movement among the parties and that they are based on political will and soft law without formal enforcement mechanisms. In terms of our analogy with Stepan's models of federalism, we can speak in these cases as "holding-together" mobility, designed to maintain open borders among formally sovereign countries.

Regional full mobility regimes

In the **European Union**[4] the free movement of workers (later 'people') was included from the start (1957 Treaty of Rome establishing the European Economic Community) as a fundamental freedom of the European single market (Art. 18 EC). The 1987 Single European Act extended freedom of movement to all EU citizens, also the economically inactive. The 1985/1990 Schengen agreements facilitated freedom of movement by abolishing controls at the internal borders of participating states. The 1992 Maastricht Treaty introduced EU citizenship. Alongside this process, EU Member States have coordinated social security systems and established a framework for mutually recognising qualifications.

The 1992 Treaty on the European Economic Area EEA extends the Schengen and free movement regime to three countries of the European Free Trade Association EFTA (Iceland, Liechtenstein, Norway). Since the Swiss population rejected the EEA in a popular referendum, Switzerland negotiated bilateral agreements on free movement and Schengen association with the EU and the three EFTA/EEA countries in 1999.

EU law is supranational (direct effect and precedence over national law), implementation is monitored by the European Commission, which is independent from the member states, and enforcement operates via the Court of Justice of the EU, which can be seized also by EU institutions and, after exhaustion of national means, individuals. EEA/EFTA countries are subject to the jurisdiction of the EFTA court, which however follows the EU court. Pending conclusion of a new institutional framework agreement, the Swiss bilateral agreements are not subject to judicial control and rely on good faith for implementation.

Although freedom of movement has become more politicized in EU member states, the strong degree of legalization in supranational institutions ensures its

[4] Participating countries are all EU Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden); the non-EU countries adhering to the European Economic Area (Iceland, Liechtenstein, Norway); and Switzerland by way of a bilateral agreement.

implementation. Brexit can be read as consequence of the UK's incapacity to negotiate partial opt-outs from this strict legal framework.

In terms of motive, EU-centered freedom of movement can be characterized as a "coming together" mobility, based on the free will of states desiring to pool this aspect of sovereignty.

The founding Treaty of the Economic Community of West African States **ECOWAS**[5], the Treaty of Lagos (1975) provided for full freedom of movement to be realized in three phases (Deacon et al. 2011): first visa-free entry (with valid travel document, health certificate) and stay up to 90 days, and, following the Protocol Relating to Free Movement of Persons and the Right of Residence and Establishment of 1979 (Adepoju 2011), in phases 2 and 3, rights to residence and to establish a business. Cross-border transit was facilitated through a common identity travel card introduced in 1987 and the ECOWAS passport (IOM 2007). Regarding labour rights, in 1993 the Social and Cultural Affairs Commission of ECOWAS adopted the General Convention on Social Security to ensure equal treatment of cross-border workers and the preservation of their rights while living abroad.

In institutional terms, all 15 ECOWAS members have ratified the 1979 Free Movement Protocol, which becomes directly applicable in national law. The ECOWAS Court of Justice (ECJ) has juridical power to enforce compliance with the Revised Treaty and all other subsidiary legal instruments adopted by Community and it has issued several rulings concerning the implementation of the freedom of movement (Open Society 2013). Nevertheless, numerous official and inofficial obstacles are reported that limit implementation in practice (Awumbila et al. 2014). Among the main impediments reported are some states' objection to fully opening their labour markets, excessive demands of documentation, corruption and many citizens' unawareness of their rights. Ecowas has an independent supranational court that has addressed freedom of movement cases from the perspective of human rights.

The motive for the liberalization of mobility in the ECOWAS region is shaped by existing freedom of movement prior to colonialization, which corresponds to "holding-together" mobility, but, with the creation of independent states, re-liberalization takes features of "coming-together" mobility.

[5] Participating countries are the Ecowas Member States (Benin, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo). Burkina Faso, Mali and Niger officially left Ecowas in 2025.

Similar to the EU, the Southern Common Market **MERCOSUR**[6] first addressed limited labour mobility in relation to economic integration in the founding Treaty of Asunción (1991). This was subsequently widened towards fully fledged free movement under the 2002 Residency Agreement. As Acosta (2016) notes, this liberal stance resonated with a constitutional tradition known as "derecho de gentes" (law of nations) established with Latin American countries' acquisition of independence beginning of the nineteenth century.[7] The decision to open up the borders in 2002 symbolised departure from the restrictive migration systems established under the dictatorial regimes of the twentieth century. The 2002 Residency Agreement grants the nationals of MERCOSUR Member States (Argentina, Brazil, Paraguay, Uruguay and Bolivia) and associated Member States (Chile, Colombia, Ecuador and Peru) the right to reside and work for a period of two years (transformable into permanent residency) in another Member/Associated State – conditional on citizenship and a clean criminal record. The Agreement also provides a number of rights, including the right to equal working conditions, family reunification, access to education for the children of migrants (Acosta and Geddes 2014), and more generally migrant workers' equal civil, social, cultural and economic rights as compared to nationals (Art. 9). Such rights have also been promoted within MERCOSUR through the 1998 Social-Labour Declaration which basically takes over the provisions of the 1990 UN Migrant Workers Convention. In parallel, the mobility of workers has been liberalized as part of MERCOSUR's 1998 Protocol of Montevideo on Trade in Services. While building on the framework of the WTO General Agreement on Trade in Services (GATS) (Lavenex and Jurje 2015), these provisions go beyond by including more categories of service providers and facilitated access.

A particularity of Mercosur is that although its primary and secondary legislation is legally binding, the extent and type of political support for the integration agenda is correlated to the frequent changes of political orientation and the swings between socialist, pro-mobility and social rights oriented presidents and right-wing, more protectionist contenders. The regional court is generally seen as ineffective as only member states are authorized to initiate a case against another member state, and the court has limited jurisdiction.

The motives for free movement in South America are multiple. The adoption of the 2002 Residency Agreement is mainly explained with the will of political leaders to

[6] Participating countries are the Mercosur Member States (Argentina, Bolivia, Brazil, Paraguay, Uruguay - Venezuela was admitted in 2012 but has been suspended since 2016) as well as associated countries Chile, Colombia, Ecuador, Guyana, Peru, and Suriname.

[7] The principles of the law of nations treated foreigners as entitled to broad civil rights, encouraged immigration and settlement, recognized freedom of movement and residence across borders, and promoted regional openness among the new republics.

regularize the important presence of irregular migrants from the region in the participating countries. This irregular migration has been facilitated by the strong cultural and linguistic ties in South America, reflected also in the national constitutions (Acosta 2016). Therefore, the integration agenda can be characterized as combining the motives of "holding-together" with "coming-together".

Limited economic mobility regimes

Arrangements providing for limited economic mobility exist both at the bilateral level and in regional agreements. Some of these are based on the 1995 General Agreement on Trade in Services adopted with the WTO in 1995 which liberalizes temporary labor mobility in connection with trade in services for certain categories of persons (Lavenex and Jurje 2015). While differing in their institutional properties, these regimes have in common that they promote limited "coming-together" mobility and do not challenge state sovereignty.

Bilateral limited economic mobility regimes

The classic instrument of bilateral labor migration cooperation are **Bilateral Labour Agreements** (BLAs). In an article presenting a database of BLAs Chilton and Woda (2022) report the existence of 1219 BLA signed after 1945 worldwide. According to them, "roughly, as many BLAs were signed in the twenty years from 2000 to 2020 as were signed in the fifty-five years from 1945-2000" (ibid.: 4). Although these agreements come in many forms, they typically set the conditions under which a given quota of workers usually from a specific sector are sent to another country for a determined period of time. BLAs also set the procedures guiding this exchange and sometimes include social and economic rights protecting the migrant workers. In terms of institutional framework, some BLA have an implementation committee attached and in the minority of cases also a dispute settlement mechanism. In fact, the majority of BLAs is not legally binding but based on Memoranda of Understanding. A good overview of the diversity of BLAs is given by Chilton and Woda (2022).

A relatively new instrument facilitating the mobility of workers are **Preferential Trade Agreements** (PTAs). While regional integration frameworks targeting a single market have included the mobility of workers as part of their economic freedoms, relevant provisions also figure in bilateral PTAs. Many of these expand the liberalization of mobility in the context of trade in services based on the 1995 GATS. This liberalization is limited to natural persons that retain their work contract in their home country but move to another country for a defined period of time as a contractual service supplier (below 1 year), an intra-corporate transferee or trainee moving within a multinational company (usually up to 5 years), as a business visitor (usually below 4 months). These persons still need a work permit, but benefit from facilitated immigration procedures such as exemptions from economic needs test, immigration

quotas, or qualification requirements. Less frequently, PTAs also facilitate the mobility of independent professionals (Alvarado et al. 2025; Lavenex et al. 2024). In contrast to most BLAs, PTAs are legally binding and enforcement is usually provided for in a dispute settlement procedure.

Regional limited economic mobility regimes

A number of regional agreements adopt a limited economic mobility approach akin to that found in bilateral PTAs. This is the case of ASEAN and NAFTA/USMCA.

The 1967 founding document of the **Association of South East Asian Nations** (ASEAN)[8] did not touch on migration. Limited provisions on labour mobility were included in its 1995 Framework Agreement on Services, later recapitulated in the 2012 Agreement on Movement of Natural Persons. These provisions are linked to investment and business flows to facilitate the temporary movement of highly skilled professionals, and are backed by a number of Mutual Recognition Arrangements for professional qualifications. Travelling within the region for up to one month is visa-free for ASEAN nationals, but work visas remain subject to domestic regulations (Jurje and Lavenex 2015).

Migrant workers' rights are addressed in the regional Declaration on 'Protection and Promotion of the Rights of Migrant Workers' signed in 2007 and renewed in 2022 by ASEAN leaders (Rother and Piper 2015). Legally non-binding, the document is also substantively weak because it proposes safeguarding the rights of migrants and their families in accordance with national laws and regulations and contains only general calls for appropriate employment protection, wages, and living conditions; as well as for coordination on anti-trafficking policies.

Legalisation is thus low; most provisions are not binding, and no independent body monitoring/enforcement provisions exist (Nikomborirak and Jitdumrong 2013). Implementation is reported to be generally weak, with strong disparities of economic development and wealth among the ASEAN members acting as political barriers. In contrast to formal legal instruments, informal consultation mechanisms have been set-up to foster cooperation, such as the ASEAN Forum on Migrant Labour under the leadership of the International Labour Organization (ILO), and through bottom-up civil society organisations (Rother and Piper 2015).

Migration cooperation in the **US-Mexico-Canada Agreement** USMCA (ex NAFTA) is limited and mirrors U.S. interests. It comprises limited temporary mobility provisions linked to trade and investment within USMCA. The treaty establishes criteria and procedures for the temporary entry of businesspeople, covering business visitors;

[8] Participating countries are the ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam).

traders and investors; intra-company transferees; and professionals in specific sectors. The U.S. has also introduced a special non-immigrant visa category – Treaty NAFTA/USMCA (TN) for temporary stays of professionals from Mexico and Canada who possess a certification of employment. For certain professions (i.e. accountancy, architecture and engineering), the parties have concluded Mutual Recognition Agreements.

Social rights and labour issues within USMCA/NAFTA are covered in a side agreement, the North American Agreement on Labour Cooperation (NAALC), which also applies to migrant workers (Annex 1 principle 11). The agreement establishes sanctioning mechanisms if a labour right complaint is accepted by the appropriate domestic labour office (Russo 2010).

In institutional terms, commitments under USMCA are binding for Member States and subject to dispute settlement mechanisms. The Treaty has also established a Working Group on Temporary Entry meeting once a year to monitor implementation.

Reflection on the applicability to the Israeli-Palestinian context and conclusion

The starting point of this reflection is whether the motivation for mobility provisions in a two-state solution between Israel and Palestine could be compared to a "holding-together" regime or whether it resembles a "coming-together" approach. As shown, minilateral "holding-together" regimes such as in Europe or Australasia have been based on a long history of friendly and integrative relations among the parties. This fundament explains both the wide scope and the informality of free movement provisions adopted among these countries. Although a two-state solution would amount to a minilateral regime, these conditions seem not to hold in the case of Israel and Palestine.

Under the British Mandate (1920-1948) Arabs, Jews and others could move freely within the single administrative unit of Mandatory Palestine. Following Israel's establishment and the 1948 war, and until 1967, movement between Israel, the West Bank and Gaza was completely cut off. The situation changed after the Six-Day War and Israeli occupation. Until the early 1990s, Palestinians could travel, work and trade relatively freely between the Westbank, Gaza and East Jerusalem, and also Israel. But this was based on informal practice, subject to political discretion, and not on formal entitlements. Israel started imposing curfews, closures and check points during the First Intifada (1987-1993) and in 1991 introduced a comprehensive permit and checkpoint system that was kept after the 1993-1995 Oslo Accords.

This system is based on emergency regulations and military rule and is controlled by Israeli military, intelligence, and civil administrative bodies, and has

become deeply anchored in bureaucratic practices (Berda 2017; Peteet 2017). It differs from all solutions discussed above also in the fact that it is an asymmetric system imposed by one of the two parties. While Israeli citizens (including settlers) move freely within the West Bank and Israel, Palestinians are subject to a multiple layers of permits (for work, business, medical treatment, etc.), involving a combination of military orders, checkpoints, permits, and border controls. There is no mutual agreement and the number of permits and eligibility conditions are determined unilaterally by Israel. The arrangements differ significantly between the West Bank (and the three areas defined in the Oslo Accords) and Gaza (for which any outward movement has been suspended since October 7, 2023). In theory, Palestinian workers are entitled to Israeli labor protections (minimum wage, insurance, etc.) but in practice, the International Labor Organization and other sources report frequent cases of wage exploitation, broker fees, poor working conditions and lack of enforcement.

In other words, in the current context, Israeli control over Palestinian mobility functions as a governing technology that actively structures citizenship, rights, labor relations, and inequality (Berda 2017). Palestinian mobility is exploited as a system of managed dependency rather than on the basis of cultural, economic or societal gains. The legacy of war and domination suggests that a "holding together" approach risks perpetuating engrained structures of inequality rather than dismantle them. This speaks in favor of a "coming together" approach premised on the two states' mutual recognition of their sovereignty and entailing a fundamental transformation of the current legal and bureaucratic structures.

Such a two-state solution would benefit from formal institutional structures that are capable of safeguarding the rule of law in the absence of a fundament of trust typical of non-formalized minilateral mobility regimes. That is, the arrangements should be mutually negotiated, as reciprocal as possible, legally binding, bureaucratically consolidated, and benefit from robust enforcement mechanisms that enjoy judicial independence in order to shield the rules from political influence. Ideally, a supranational court could be established that can be seized by the respective states, but also by a supervisory monitoring unit that is independent from the respective governments, as well as by Israeli and Palestinian citizens, companies and civil society organizations.

Apart from safeguarding the rights to work and live in the respective territories, the requirement of strong legalization and enforcement mechanisms also applies to social and economic rights of migrant workers and their families. The review above has shown that the codification of such rights is a central element in both encompassing and more limited free movement regimes. Their formalization and enforcement is however particularly important in constellations characterized by strong disparities of

wealth and living conditions among the partner countries in order to prevent the abuse of the economically weaker parties.

Finally, a particular feature of the Israel-Palestinian case is the relatively tiny territorial space, which allows for more fluid and circular mobility solutions than in more expansive regional frameworks. That is, mobility schemes should consider both opportunities to work and live across state territories but also solutions where Palestinians or Israeli work in the other state but live in their home country, as well as possibilities to transform temporary permits into permanent ones. This implies that border crossings should be based on clear rules, be implemented in a predictable manner, and as fluid as possible.

To conclude, in a two-states solution, the legal and administrative arrangements would have to be flexible enough to accommodate different types of mobility, economic, social, short- and long-term, and solid enough to ensure the rights and dignity of those who move.

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