

BBNJ Treaty Negotiations 2019

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Panel 1 - Context

COLP Conference WMU Malmö 15 May 2019

Outline

- Unpacking BBNJ
- Timeline
- Unasked Questions



UNPACKING BBNJ

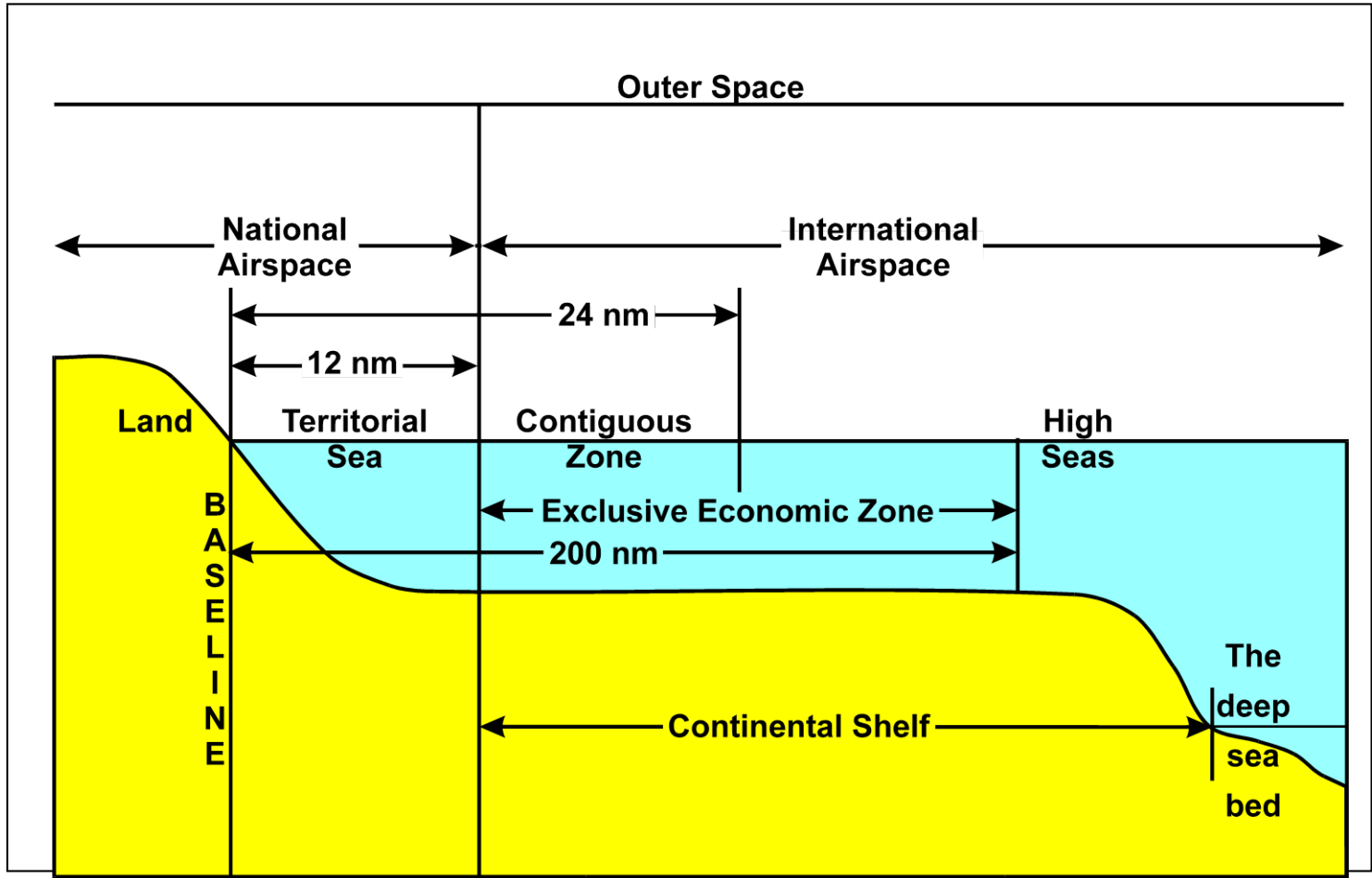
Scope of BBNJ Negotiations

- UN General Assembly in A/RES/72/249, December 2017, convened an
- intergovernmental conference
- on an **internationally legally binding instrument**
- **under** the UN Convention on the Law of the Sea
- on the **conservation and sustainable use**
- of **marine biological diversity**
- of **areas beyond national jurisdiction (ABNJ)**

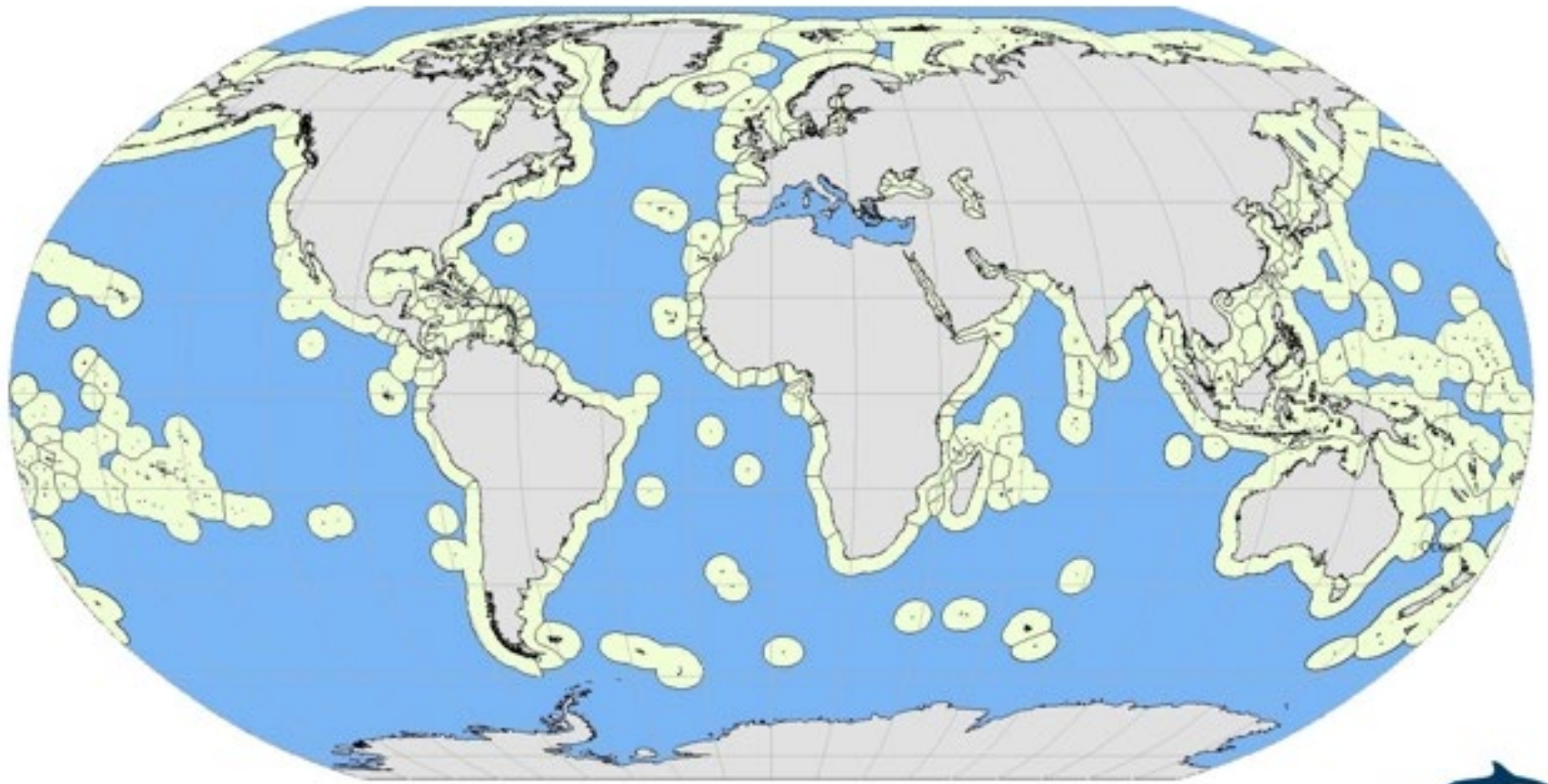
Areas Beyond National Jurisdiction

- ABNJ understood to be:
- High Seas – seaward of outer limits of EEZ
 - 200 M (nm) from baselines from which the breadth of the territorial sea is measured
 - LOS Convention article 57
- The Area – seaward of outer limits of continental shelves
 - 200 M, or more (ECS) if criteria of article 76(4) is met

Legal Boundaries of the Oceans and Airspace



96-CD603

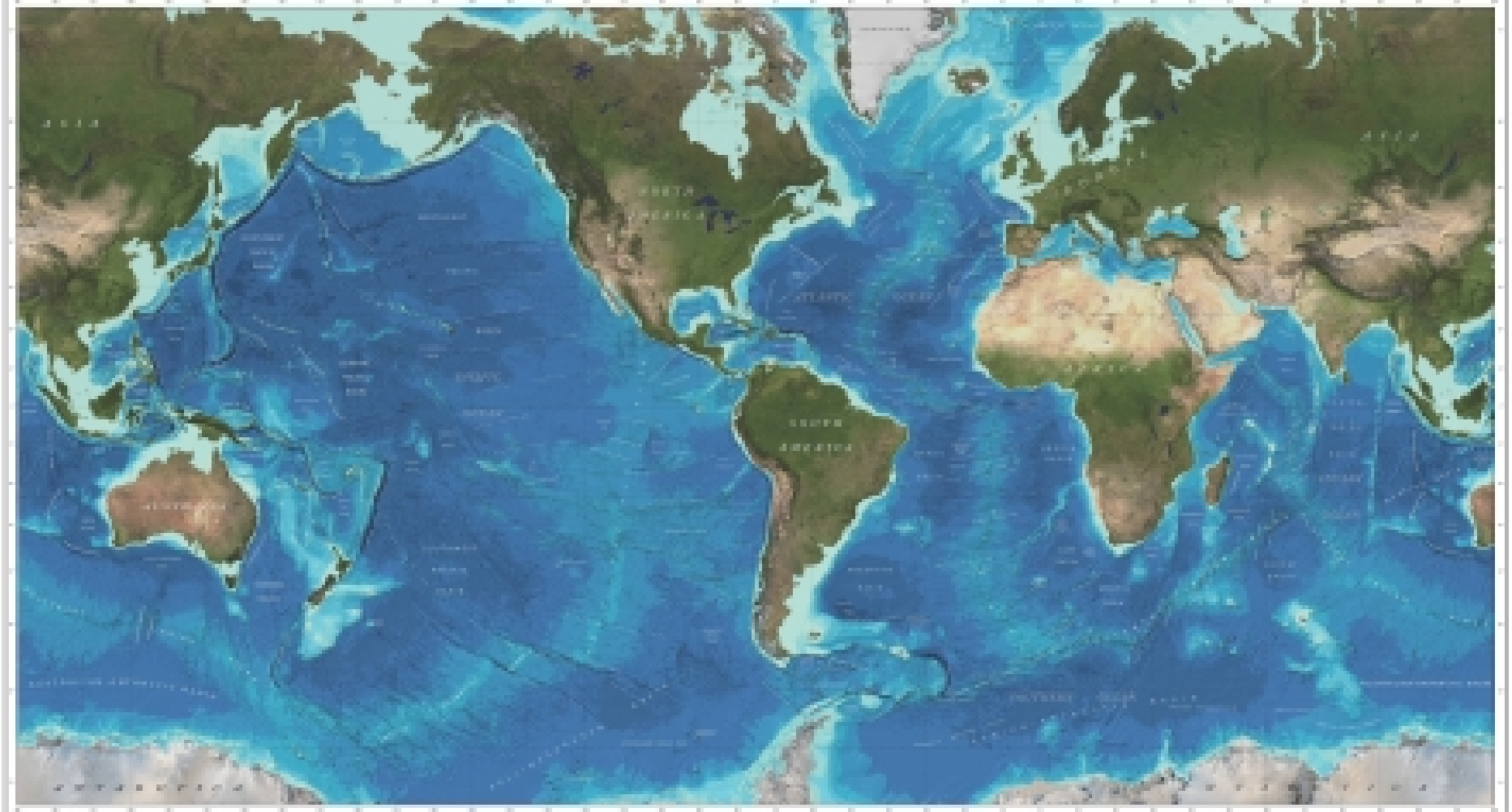


High Seas
Exclusive Economic Zones

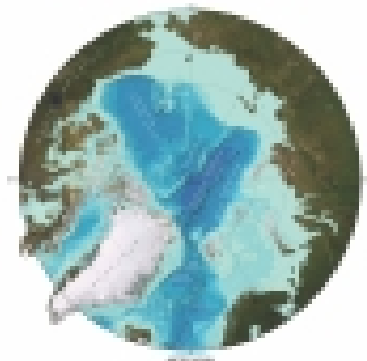
Global High Seas



EEZ Data: VLIZ (2014), Maritime Boundaries Database, version 8.
<http://www.marinegions.org> Consulted on 2014-03-28.
Coordinate System: World Robinson, Central Meridian: 0°00'



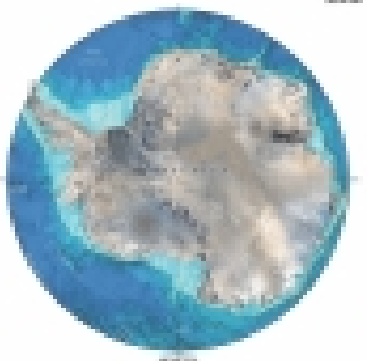
GENERAL BATHYMETRIC CHART OF THE OCEANS (SIBCO)
 WORLD OCEAN BATHYMETRY



Depth (m)	Color
0 - 200	Lightest Blue
200 - 1000	Light Blue
1000 - 2000	Medium Light Blue
2000 - 3000	Medium Blue
3000 - 4000	Dark Blue
4000 - 5000	Very Dark Blue
5000 - 6000	Black



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TIMELINE

Legal and Policy Framework

- In the last 15 years, questions have been raised whether the current LOS framework sufficiently addresses the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.
- In 2004, the General Assembly established the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (the Working Group).
- The Working Group met 9 times between 2006 and 2015.

Preparatory Committee

- Established by UNGA resolution 69/292, 19 June 2015
- PrepCom met four times, twice in 2016 and twice in 2017

Report of PrepCom to GA 71

- Summarized results of four preparatory committee meetings in 2016 and 2017
- Adopted on 21 July 2017 with two recommendations
- Elements in sections A and B be considered with a view to the development of ILBI neither of which reflect consensus
 - Section A reflects non-exclusive elements that generated convergence among most delegations
 - Section B highlights some main issues with a divergence of views
 - Both sections w/o prejudice to positions of States
- Decide ASAP on convening of DipCon
- Document A/AC.287/2017/PC.4/2 on DOALOS website

Decision to Convene DipCon

- A/RES/72/249, 29 December 2017
- Decided to develop an internationally legally binding instrument (ILBI) **under the LOS Convention**
- -- on the conservation and sustainable use of
- -- marine biological diversity of
- -- areas beyond national jurisdiction, i.e. high seas and the Area

UNGA: Issues for DipCon

- Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ)
- In particular, together and as a whole [i.e. the 2011 package deal]
- -- Marine genetic resources (MGR), including sharing of benefits (i.e. asset and benefit sharing)
- -- Area-based management tools, including marine protected areas (MPAs)
- -- Environmental impact assessments (EIAs)
- -- Capacity-building and transfer of marine technology

UNGA: Dates for DipCon

- First substantive session of conference held 4-17 September 2018 at UN Headquarters in New York
- Preceded by an organizational meeting 16-18 April 2018 to discuss organizational matters, including the process for preparation of the zero draft of the instrument
- Second substantive session held 25 March-5 April 2019
- Third session to be held 19-30 August 2019
- Fourth session in the first half of 2020
- Additional sessions not precluded but if needed require new UNGA decision

UNGA: DipCon Limitations

- Work and results of DipCon to be fully consistent with LOS Convention
- Not undermine existing relevant legal instruments and frameworks, and relevant global, regional and sectoral bodies
- Exhaust every effort in good faith to reach agreement on substantive matters by consensus
- Otherwise decisions by 2/3rds majority
- Other rules of procedure of UNGA apply

Other Provisions A/72/249

- Non-parties to LOS Convention may participate
- DOALOS to be DipCon secretariat
- All same provisions in A/RES/69/292 convening PrepCom
- New: UNGA President to nominate President-designate of the DipCon

DipCon Organizational Meeting

- First meeting of DipCon was an organizational meeting 16-18 April 2018
- Agenda at <https://www.un.org/bbnj/node/313>
- Results of organizational meeting
 - Ms Rena Lee, Singapore AGC, elected President
 - Vice Presidents
 - Credentials committee
 - Organization of first substantive session
 - Preparing zero draft of ILBI
- President's closing statement
<<http://undocs.org/en/a/conf.232/2018/2>>

First Substantive Session

- Held 14-17 September 2018
- Preceded by the President's Aid to Discussions,
<<http://undocs.org/en/A/CONF.232/2018/3>>
- President's Statement at Conclusion of First Substantive Session
<<http://undocs.org/en/A/CONF.232/2018/7>>

President's Aid to Negotiations

- As promised at close of September 2018 session, President's provided her 64-page Aid to Negotiations on 3 December 2018,
<http://undocs.org/A/CONF.232/2019/1*>
- Document based on statements previously made at PrepCom and earlier DipCon sessions
- Provided a series of options, often including a “no text” option, arranged along lines of the four main elements plus cross cutting issues

Outline of Aid – Elements

- The order elements were taken up in informal working groups at IGC-2 :
- Marine Genetic Resources, including questions of sharing of benefits
- Measures such as Area-Based Management Tools, including marine protected areas
- Environmental Impact Assessments
- Capacity-building and Transfer of Marine Technology

Outline of Aid – Cross-Cutting Issues

- II. General Elements
 - 1. Use of Terms
 - 2. Scope of Application
 - 3. Objectives
 - 4. Relationship to Convention and other instrument and frameworks and relevant global, regional and sectoral bodies
- III. Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction
 - 1. General Principles and Objectives
 - 2. International Cooperation

More Cross-cutting Issues

- IV. Institutional Arrangements
 - 1. Decision-making body/forum
 - 2. Scientific/technical body
 - 3. Other subsidiary bodies
 - 4. Secretariat
- V. Clearing-house Mechanism
- VI. Review

Facilitators

- Marine Genetic Resources, including the Sharing of Benefits:
 - Ambassador Janine Elizabeth Coye-Felson (Belize)
- Area-based Management Tools, including Marine Protected Areas:
 - Ms Alice Revell (New Zealand)
- Environmental Impact Assessments:
 - Mr René Lefeber (The Netherlands)
- Capacity-building and Transfer of Marine Technology:
 - Ambassador Ngedikes Olai Uludong (Palau)
- Cross-cutting Issues:
 - Ambassador Rena Lee

Second Substantive Session

- Held 25 March-5 April 2019
- President's Aid to Negotiations was basis of work
- Facilitators each used two days to lead delegations to provide positions on each of the four main elements plus cross-cutting issues
- On last day, each facilitator provided an oral summary of the results of the work during each informal working session
- President's report on the second session
 - advance and unedited version in English only now posted, with the facilitators reports appended
 - https://www.un.org/bbnj/sites/www.un.org.bbnj/files/bbnj_-_igc2_-_presidents_closing_statement_-_advance_unedited_version.pdf
 - will be made available in all 6 UN languages

Third Substantive Session

- To be held last two weeks of August 2019
- To be first text-based negotiations
- Based on zero draft to be provided by President before 25 July 2019
- Methodology of work to be outlined before IGC-3
- Anticipate some “informal-informals” for delegations only in smaller rooms
- Promised no more than two groups meeting at same time



UNASKED QUESTIONS

Diplomatic Conference

- What is the meaning/scope of these terms used in UN General Assembly in A/RES/72/249, December 2017, that convened an
- intergovernmental conference
- on an **internationally legally binding instrument**
- **under** the UN Convention on the Law of the Sea
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ABNJ

- Waters of EEZ and above CS are national waters
- Unresolved question: What if claimed outer limit of ECS is not resolved at time project is proposed?
 - 60 (of 83) submissions to CLCS not “adopted” as of 12 April 2019
 - 47 preliminary informations to CLCS as of December 2017

Consensus

- No agreed UN definition of “consensus”
- Will it be defined in BBNJ?
 - Absence of formal objection to specific articles
 - Absence of formal objection to package deal – to adoption of whole text
 - Widespread consensus to ratify package deal
- Consensus will be hard to achieve, but essential
- Not achieved at PrepCom
- Russia and USA expressed their concerns on adoption of the DipCon resolution at failure at PrepCom to achieve consensus
- Negotiations at UNCLOS III (168 parties) vs. Fish Stocks (90 parties)



Thank you for your attention

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