Environmental assessments in the marine Arctic: current legal status and processes to address gaps globally and regionally

Environmental impact assessment (EIA) and Strategic environmental assessment (SEA) are procedural instrument which role is to bring information on the impacts of proposed developments to the table of decision-makers before decisions are made. Their application and further developments into related instruments have proliferated. However, most of the attention and practice is from land. With increased uses of the oceans, including the Arctic Ocean, there is a need to develop such instruments also in the marine areas.

Requirements for impact assessments are found in all sources of international law, including global treaties like the Law of the Sea (LOS) Convention and the Convention on Biodiversity. These sources have been reviewed in order to determine what is the legal status of EIA and SEA in the Arctic Ocean: What are the obligations to assess, and how specific are the international requirements for process and content of assessments? One conclusion is that most treaties are rather unspecific, leaving large discretion up to national implementation on what to assess and how to undertake assessments. The only specialized international legislation on assessments which is relevant for the Arctic Ocean is the Espoo convention on EIA and its protocol on SEA. However, these are not signed by all the Arctic coastal states and also have low inclusion of marine activities. There are also gaps in geographic coverage of treaty obligations and uneven coverage of assessment obligations for different maritime activities.

The UN General Assembly has decided to start a preparatory process for a new implementation agreement under the LOS Convention. It will focus on biodiversity in areas beyond national jurisdiction, and EIA is a part of the mandate. Regionally, the Arctic Council has started a process for exploring the options for a regional seas organization or other types of instruments for the Arctic Ocean. EIA and SEA should have a natural place in these discussions. This situation is a good opportunity to reflect on the merits of both EIA, SEA and a wider set of related assessment tools. Experience from research on the effectiveness of assessments is should be an important input to these processes.