



**Environmental assessments in the Arctic  
Ocean: International legal obligations and gaps  
in existing instruments**

*By*

*Gunnar Sander*

*Small Master's Thesis*

*Masters of Laws in Law of the Sea*

*University of Tromsø*

*Faculty of Law*

*Fall 2009*



# Table of contents

Table of contents

Abbreviations and expressions

1	Introduction	1
1.1	Expanding activities in the Arctic Ocean (AO)	1
1.2	Arctic governance under pressure	2
1.2.1	Governance mechanisms for the AO	2
1.2.2	Gaps in Arctic marine governance	3
1.3	Research questions, delimitations and sources	5
2	Environmental assessments (EAs) – an overview	7
2.1	Some main types of EAs	7
2.2	Some roles of EA	9
2.3	The process and content of EA	11
2.4	Does EA make a difference?	13
3	EA obligations with Arctic relevance in international law	14
3.1	Domestic and transboundary EAs	15
3.2	General principles supporting EA	16
3.3	EA provisions in international treaties	20
3.3.1	Specialized EA instruments	20
3.3.2	The 1992 UN Convention on the Law of the Sea (LOSC)	27
3.3.3	The 1992 OSPAR Convention	28
3.3.4	Biodiversity-related conventions	29
3.3.5	The 1992 UN Climate convention	31
3.3.6	Sectoral instruments	32
3.3.7	Other relevant agreements	37
3.4	EA in international judicial decisions and customary law	39
4	The legal status of EA in the AO	40
4.1	Where and when are EAs required in the AO?	41
4.1.1	Geographical coverage	41
4.1.2	Screening: Threshold and values	42
4.2	Process and content of EAs	43
4.2.1	Relationship between treaties	43

4.2.2	EA as a special legal term	44
4.2.3	Conclusions on EIA	45
4.2.4	Conclusions on SEA	46
5	Gaps and options	47
5.1	Identified gaps	47
5.1.1	Accession to existing conventions and instruments	47
5.1.2	Geographic/jurisdictional coverage	47
5.1.3	Gaps in sectoral coverage	49
5.1.4	Unelaborated and overlapping assessment obligations	50
5.1.5	The legal status of SEA versus assessment needs	50
5.1.6	Specific steps in EA procedure	52
5.2	Approaches to addressing gaps	54
5.2.1	To treaty or not to treaty	54
5.2.2	Two approaches to treaty solutions	55
6	Conclusions	57

## Bibliography

### List of instruments

### Appendix: Participation in treaties with provisions on environmental assessments

## Abbreviations and explanation of expressions

The list contains abbreviations used in the main text. There are also short explanations of some terms that may be technical for some readers, without trying to provide authoritative definitions.

ABNJ: Areas beyond national jurisdiction. In the AO, it comprises a central area of high seas and the deep seabed.

AC: Arctic Council.

AEPS: Arctic environmental protection strategy. This is the Arctic collaboration process that started in 1991 and was brought further by the AC.

Affected state: Used in transboundary assessments about a state that is affected by activities in another state (the state of origin).

AO: Arctic Ocean

Arctic relevant states: Used in this discussion about states (+European Commission) that have signalled an interest towards Arctic issues by some affiliation to AC (membership, observatory status or application for observatory status). See appendix 1.

Arctic states: Members of Arctic Council

(The) “Area”: The deep seabed as defined by LOSC art 1(1)(1)

AWNJ: Areas within national jurisdiction In the AO proper, it consists of the maritime zones of the coastal states. Under other circumstances than the limitations in the discussion here (Arctic Ocean), it will of course also include the land territories of states.

COP: Conference of the parties to a convention

CEE: Comprehensive environmental evaluation. This is the most comprehensive type of EIA under the Madrid protocol to the Antarctic treaty.

CMS: Convention on Migratory Species

EA: Environmental assessment

ECE: See UNECE

Effect: This is used synonymous with impacts (explained below) and consequences

EIA: Environmental impact assessment

EIS: Environmental impact statement: The term used for the EIA report in the NEPA and some other jurisdictions.

ICJ: International Court of Justice

IEE: Initial Environmental Evaluation. This is the “middle type” of EIA under the Madrid protocol to the Antarctic treaty.

IMO: International Maritime Organization

ISA: International Seabed Authority (“The Authority” in LOSC art 156)

ITLOS: International Tribunal for the Law of the Sea

Impacts: This is used synonymous with effects and consequences. A more technical definition is the difference between the future development *with* a proposed development (PPPP) and *without* the same (not the situation today). This implies a need to determine a 0-alternative.

LOSC: UN Convention on the Law of the Seas. LOSC is used as abbreviation not to confuse with the negotiation process, UNCLOS.

MEA: Multilateral environmental agreement

NEAFC: The Convention on Future Multilateral Co-operation in the North-East Atlantic Fisheries. NEAFC really is the name of the commission established, but is used as a short-hand term also for the convention

NEPA: The National Environmental Policy Act of the United States

OSPAR: Convention on the Protection of the Marine Environment of the North-East Atlantic (1992). OSPAR really is the name of the commission established, but is used as a short-hand term also for the convention

PA: Preliminary Assessment. This is the least onerous type of EIA under the Madrid protocol to the Antarctic treaty.

PPPP: Policy, plan, programme, project

RFB: Regional fisheries bodies. RFBs include fisheries related organizations with different mandates, including management of fisheries (RFMOs), scientific investigations and advice or development of the fisheries industry.

RFMO: Regional fisheries management organization. RFBs that manage fisheries

Scoping: The determination of the content in an EA study in an early stage of the process

Screening: The determination of whether a development (policy, plan, programme or project) is subject to SEA or EIA

SEA: Strategic environmental assessment

State of origin: Used in transboundary assessments about the state in which a proposed activity is to be located (ref also “affected state”).

TEA: Transboundary environmental assessment. This is a common term for transboundary SEA and EIA

TEIA: Transboundary environmental impact assessment

Transboundary: extraterritorial, beyond the border

Transnational: across all borders, universal

UN: United Nations

UNECE: UN Economic commission for Europe

UNEP: United Nations Environmental Programme

UNFCCC: UN Framework Convention on Climate Change

UNFSA: United Nations Fish Stock agreement (1995 implementation agreement to LOSC)

UNGA: UN General Assembly

US: United States of America