An Evaluation of Oil Pollution Prevention Strategies in the Arctic

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Outline

Research Question and Rationale

Argument

Methods

Analysis and Findings

Discussion

Rationale

Much of the Arctic regime literature treats the region as a cohesive whole, when, in fact, it is a very diverse region

Investigating the diversity of Arctic regimes through the lens of oil pollution prevention schemes in two similar Arctic states

Research Questions

What is the cause of regime diversity in the Arctic?

How does the harmonization of Arctic standards interact with the diverse micro-regions in the Arctic?

Definition of Terms

Harmonization: the adjustment of differences and inconsistencies among measurements, methods, specifications and/or systems in favor of uniformity or mutual compatibility

CDEM: Construction, design, equipment, and manning

- Typically mandated by regulations and standards in the shipping industry

GAIS: Generally accepted international standards

- Components of international law that are widely accepted by the international community; customary international law
- Assumption: GAIS represents lowest common denominator between states

Arguments

Regime diversity is caused by a number of national factors…

The harmonization of standards (in the Arctic) beyond CDEM is not an effective use of international instruments to address the threat of oil pollution in the Arctic.

States that opt to implement their own standards and regulations beyond GAIS are more likely to enact more stringent laws that prioritize prevention over response.

Methods

Sector: Oil Pollution Prevention and Response

Case studies: Northwest Passage (Canada) and Bering Strait (USA)

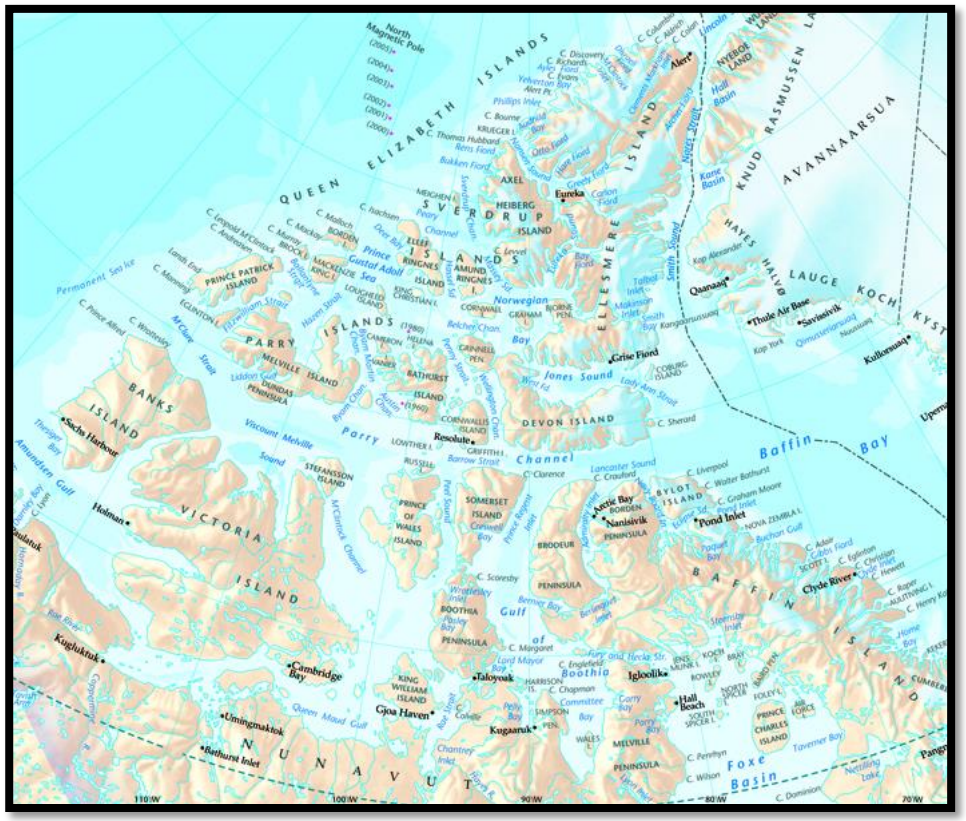
Most similar case comparison

Factors contributing to oil pollution regime

- Political climate at the time of legislation adoption
- Response to current events (major spills)
- National policy on the Arctic
- Legal status of the waterway

Cases

CANADA: THE NORTHWEST PASSAGE



UNITED STATES: THE BERING STRAIT

Primary Sources of Information

International Instruments

- Arctic Council Agreement on Oil Pollution, 2013
- IMO Polar Code, 2014 (draft)
- MARPOL, 1973
- SOLAS, 1978
- UN Law of the Sea Convention, 1982

National Instruments

- Canada
  - Arctic Waters Pollution Prevention Act and associated regulations, 1970
  - Canada Shipping Act and associated regulations, 2001
  - Canada's Northern Strategy, 2009
- United States
  - Oil Pollution Act, 1990
  - Coast Guard Maritime Navigation Act, 2012
  - U.S. Policy in the Arctic and Implementation Plan, 2012/13

Oil Pollution Prevention and Response

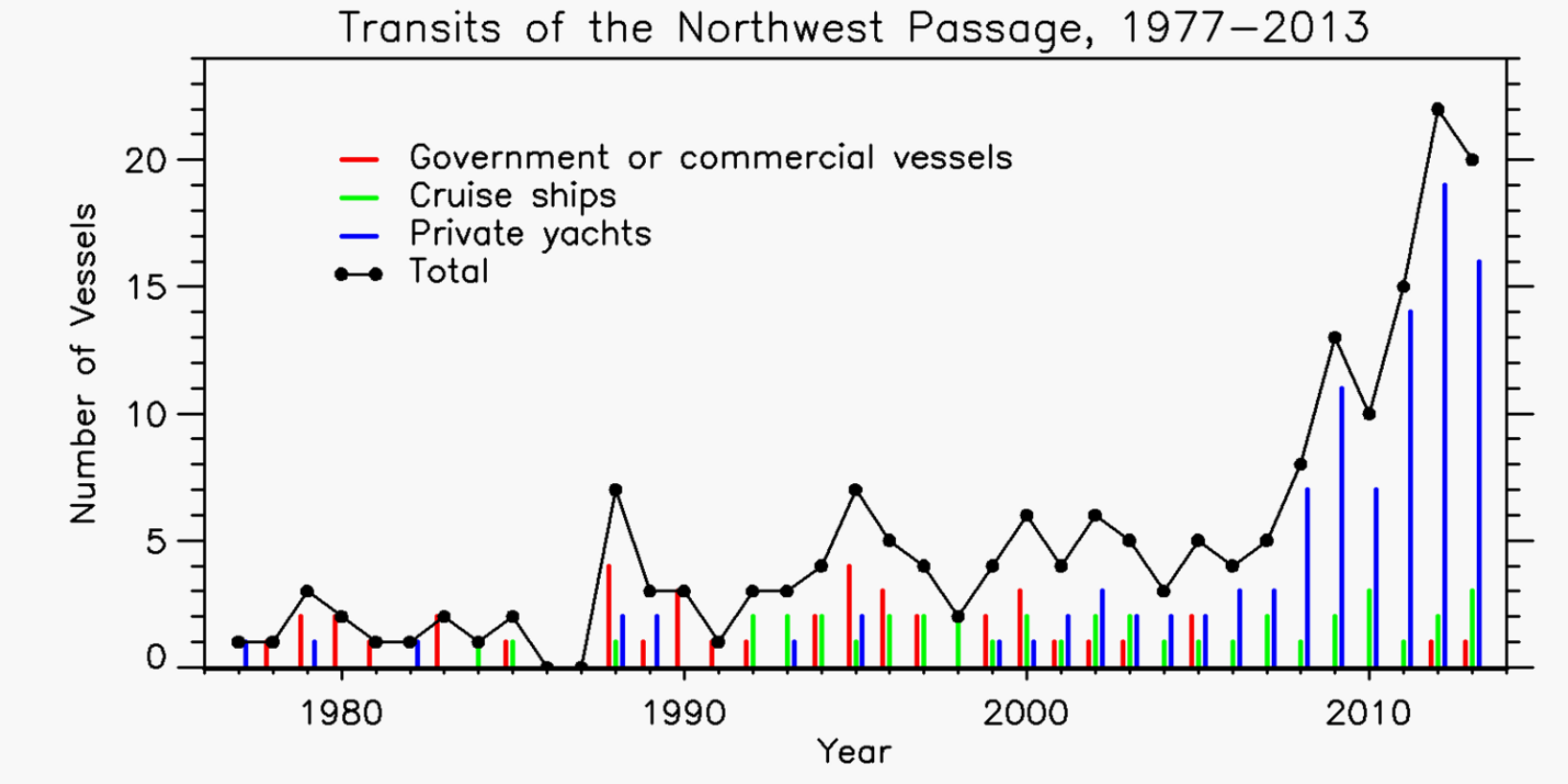
Two components of regulating oil pollution from ships: prevention and response

In the Arctic, pollution prevention must be prioritized, since response mechanisms and capabilities are largely lacking

Precautionary approach enshrined in international pollution prevention instruments

- "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." – Rio Declaration, 1992

The Northwest Passage



Harry Stern, UW Polar Science Center. Courtesy of Tom Leschine, UW

Pollution-related legislation:

- AWPPA
- Canada Shipping Act

Threats associated with increased shipping in the NWP:

- Narrow and shallow channels
  - Smaller vessels only
- Unpredictable weather
- Unreliable instruments: AIS, GPS, compass

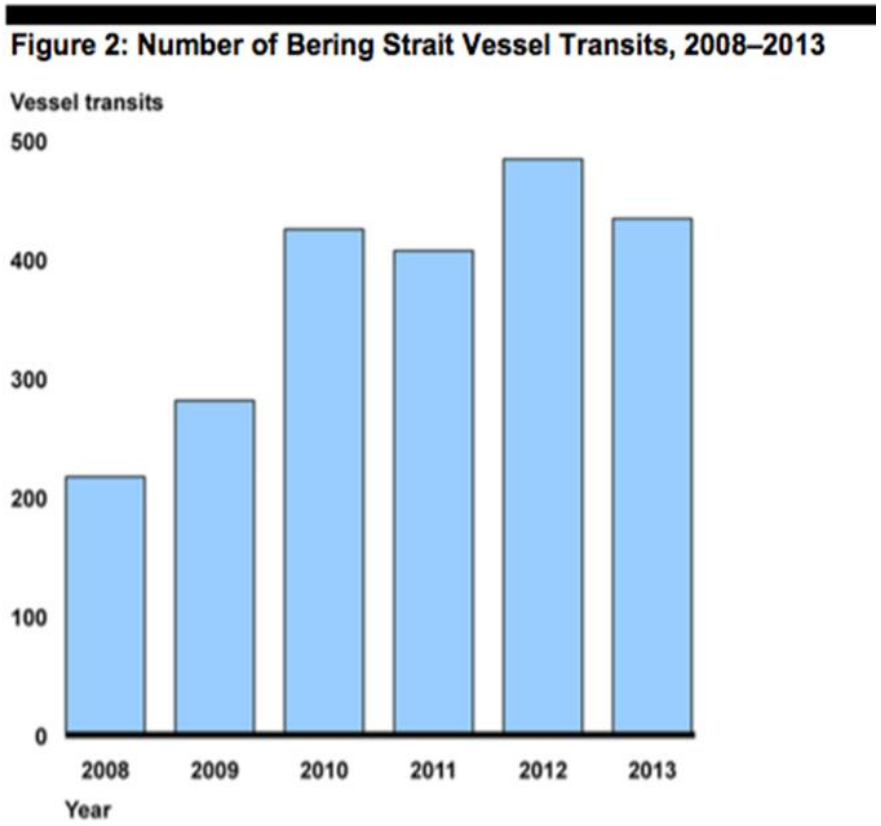
Analysis: Canada

Arctic Waters Pollution Prevention Act and Canada Shipping Act prioritize the prevention of oil spills in the Arctic

Legal status of NWP, while disputed, allows Canada to implement prevention legislation that applies to foreign flagged vessels beyond what is mandated by international standards

National identity of Canada is closely tied to the Arctic; exhibited in domestic Arctic policies and foreign policy behavior

The Bering Strait



US GAO. *Maritime Infrastructure in US Arctic: Key Issues over the Next Decade.* March 2014. Courtesy of Tom Leschine, UW

Pollution-related legislation

- Oil Pollution Act & CG Maritime Navigation Act
- International instruments

Threats associated with increased shipping in the Bering Strait

- No traffic separation scheme
- Quick moving ice
- Unreliable instruments in some areas
- Relatively high traffic for the Arctic
  - Vessel size

Analysis: United States

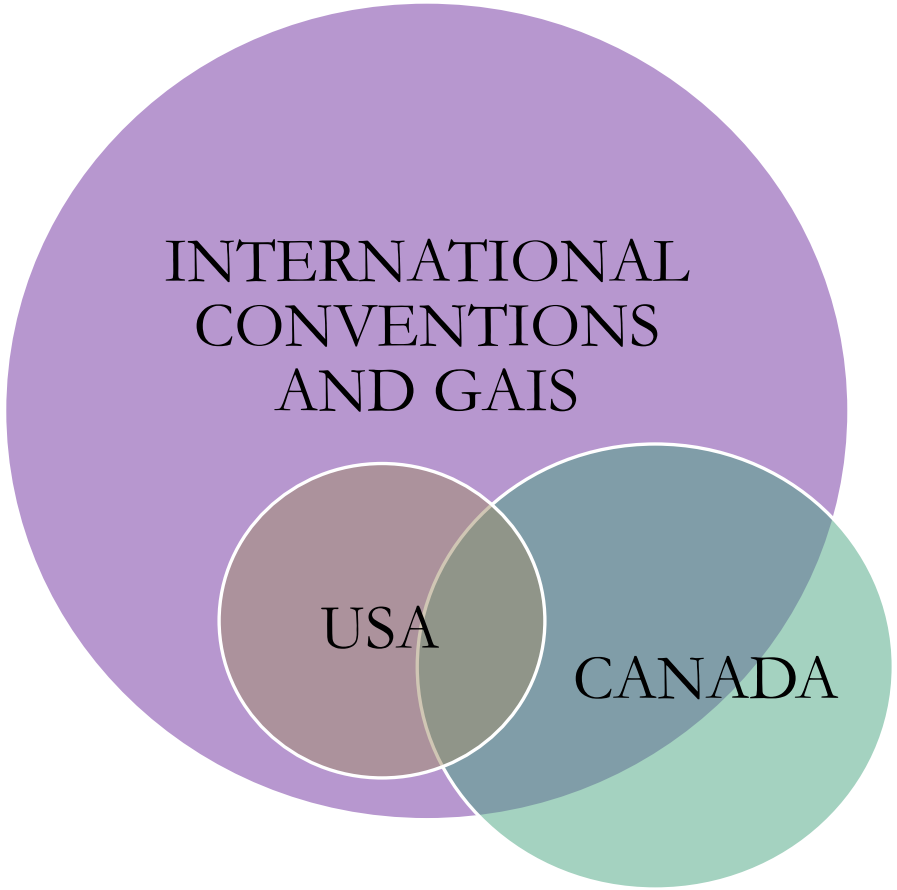
Oil Pollution Act and Coast Guard Act prioritize response mechanisms and liability for oil spills

U.S. Joint Contingency Plan with Russia in the Bering Strait also prioritizes response

Legal status of Bering Strait makes it more difficult to regulate; requires cooperative scheme between U.S. and Russia to be submitted to the IMO

The U.S. tends not to exceed GAIS, especially in environmental regulation

Regime Interaction



The Polar Code

An example of standard harmonization in the Arctic

Addresses CDEM characteristics, which states legally cannot dictate to foreign flagged vessels

Represents the lowest common denominator among states

Harmonizing Standards in the Arctic

Harmonization does not reflect geographic diversity and does not represent national interests of coastal states beyond international consensus

May discourage states from adopting more stringent measures and may lead to less preventative regimes

Components of pollution prevention, such as navigation schemes and communication requirements should be encouraged among coastal states

Findings

States with greater legal authority and sovereign rights are able to exceed GAIS and offer a more preventative framework

Arctic wide regulations do not take into account the geographic threats to transiting vessels in distinct regions of the Arctic

Harmonization may discourage states from adopting more stringent or preventative standards than GAIS

Discussion

Ownership, stewardship and national identity

- The differences between the U.S. and Canada's regime in the Arctic

How can we go about treating the arctic as both a cohesive region and also a diverse region? What does that look like?