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Article

Fragmentation or Effective Governance? The Regime Complex of Counter-Piracy in Asia

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Abstract

Asian waters have been particularly affected by a high number of piracy incidents during the last three decades. Against the backdrop of established international legal frameworks to combat piracy, states have created additional regional fora of cooperation. Existing theoretical contributions on the regime complex of counter-piracy consider this institutional framework to be highly fragmented and regard it as an impediment to effective cooperation, but empirical evidence is yet lacking. To systematically analyze the development of piracy incidents in Asia, I draw on incident data from 2001 to 2021. Results show that the effect of counter-piracy cooperation is indeed not as negative as hypothesized by the regime complex literature. However, a positive effect cannot easily be quantified either. Discussing possible explanations for this finding, I suggest that instead of unorganized fragmentation, counter-piracy governance in Asia may rather be characterized by a functional differentiation between regional cooperation mechanisms, which can be expected to be more conducive to effective cooperation.

Keywords

Asia; institutional effectiveness; maritime crime governance; piracy; regime complexes

Issue

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1. Introduction

Maritime crimes—such as piracy and armed robbery—endanger the marine environment, the security of people, and ships at sea as well as international trade (Bueger, 2015). Since maritime crimes often involve the crossing of borders or take place on the high seas, international cooperation is vital for effective containment, but also a challenge to states seeking to maintain territorial sovereignty. Indeed, the combat of maritime crimes, and particularly piracy, is a complex process that is governed by a variety of international treaties, institutions, states, and non-state actors (Bueger, 2013a).

To analytically grasp the structures and dynamics of counter-piracy governance, scholars increasingly use the concept of a regime complex, which is defined as “an array of partially overlapping and nonhierarchical institutions governing a particular issue-area” (Raustiala

& Victor, 2004, p. 279). To combat piracy, states participate in a large number of international institutions which touch upon piracy, yet there is no single overarching international institution which specifically deals with maritime piracy (Nance & Struett, 2013, pp. 125–126). Overall, these governance structures “have a significant degree of complexity, form anything but a well-ordered coherent whole, and are characterized by...multiplicity, overlap, contradictions, and incoherencies” (Bueger, 2013b, p. 299).

Despite a general consensus in the literature that regime complexity has consequences, there is discord on the actual implications of institutional complexity for the effectiveness of cooperation (Alter & Meunier, 2009; Orsini et al., 2013). In fact, although the institutional density of the regime complex of counter-piracy is increasing, as new regional mechanisms to combat piracy have been established in recent years to supplement international

legal frameworks (Bueger, 2013a), systematic analyses of the impact of institutional complexity on counter-piracy cooperation between states are yet scarce. Thus, the question arises: How does institutional complexity influence the effectiveness of state cooperation in the combat of piracy?

Understanding effectiveness as the extent to which state cooperation contributes to solving the cooperation problem at hand, I take counter-piracy governance in Asia as a case in point. As a region with a longstanding history of piracy activities, Asia was faced with a particular increase in piracy attacks at the end of the 1990s. Following international pressure to control the rampant incident numbers, several regional cooperation mechanisms between littoral states have been established in 2004, adding complexity to already existing legal frameworks for counter-piracy. Following the Asian example, similar cooperation mechanisms have since been set up in other world regions (Menzel, 2018).

Several scholars have discussed questions of counter-piracy governance and state cooperation (e.g., Bueger, 2013a; Kraska, 2011; Liss & Biggs, 2016). However, there is discord on the consequences of institutional complexity for the effectiveness of counter-piracy governance. While some argue that the institutional landscape of counter-piracy is highly fragmented and thus ineffective (Struett et al., 2013), regional cooperation mechanisms are nevertheless often considered a success story in the fight against piracy (Hribernik, 2013; Parameswaran, 2016). Yet, there is a lack of research that systematically scrutinizes the effect of cooperation on the actual numbers of piracy attacks in Asia.

This article proceeds as follows: I introduce the literature on regime complex effectiveness as the theoretical framework of analysis, lay out the methodology, and introduce the international legal frameworks and regional cooperation mechanisms constituting the regime complex of counter-piracy in Asia. Following, I evaluate the effect of state cooperation on the development of piracy incident numbers in Asia. Results suggest that the theorized negative impact of institutional complexity on the effectiveness of counter-piracy cooperation cannot be confirmed, but that a positive impact of regional cooperation mechanisms cannot be easily quantified either. I discuss possible explanations for this finding before closing with an outlook on further research possibilities.

2. The Effectiveness of Regime Complexes

A vast strand of scholarly research covers the effects of causal relationships between institutions and issue areas, also termed “effectiveness” of international institutions (Mitchell, 2009; Underdal & Young, 2004; Young, 2011). Effectiveness generally describes the extent to which an institution contributes to solving the problems which motivated states to create it. Institutions can contribute to solving cooperation problems by prescribing norms

that lead to observable, desired changes in the behavior of states and other actors relevant to the problem at hand (Raustiala, 2000, p. 394). However, as states may create various institutions that overlap in their scope and subject instead of constructing a single institution governing one issue area, studying the effects of a cluster of institutions differs from studying the effects of individual institutions.

Regime complexes can generate both opportunities and obstacles for cooperation. A substantial part of the literature focuses on fragmentation and its negative implications for the effectiveness of regime complexes. Here, norm divergence is central and can be observed when norms prescribed by one institution diverge from or contradict norms prescribed by other institutions. Norm divergence is presumed to reduce the clarity of legal obligation by introducing overlapping sets of legal rules and jurisdictions governing an issue. As a consequence, regime complexity provides actors with the opportunity to select the fora which prescribe norms that suit their interests best. It is argued that strategies such as regime shifting (Helfer, 2004) and forum shopping between institutional alternatives (Jupille et al., 2013) result in competition over resources or governance functions and undermine accountability as well as effective governance outcomes (Alter & Meunier, 2009, pp. 19–20). Actors may also strategically add to fragmentation by creating strategic inconsistencies or by establishing new cooperation fora which they can use in their best interest (Raustiala & Victor, 2004, p. 301). This can lead to fragmented actor constellations in which relevant actors remain outside of key institutions or even support different institutions (Biermann et al., 2009, pp. 19–20). Overall, it is assumed that the more fragmented a regime complex, the more dysfunctional its policy outcomes (Keohane & Victor, 2011, p. 19).

Another strand of literature focuses on the potential positive impacts of regime complexity on governance outcomes. Instead of understanding fragmentation as generally impeding effective cooperation, it is argued that institutional overlap and norm divergence are not per se negative, but that management of this interface is crucial for policy outcomes (Kreuder-Sonnen & Zürn, 2020, pp. 250–251; Oberthür & Stokke, 2011, p. 6). From this perspective, specialization within a regime complex can be conducive to its problem-solving capacity. Specialized institutions may be more promising to address an issue effectively than institutions with large scope and membership which are likely to be unwieldy as a result of political compromise (Keohane & Victor, 2011, p. 16). Moreover, fragmentation facilitates flexibility over issues, because it allows states to adapt the norms to distinctively different conditions, or with different coalitions of states in a different forum, which may be especially important if an existing problem has been blocked in one or more institutional settings within the regime complex before, or if new cooperation problems emerge (Keohane & Victor, 2011, p. 14). As a result,

fragmentation may result in a division of labor (Gehring & Faude, 2014) or functional differentiation (Henning & Pratt, 2020) between institutions, and permanent patterns of institutional co-governance may emerge. Even more so, institutional complexity may facilitate inter-institutional collaboration, in which information or expertise can be shared between institutions within a regime complex (Eilstrup-Sangiovanni & Westerwinter, 2022, p. 250).

Questions of fragmentation are particularly important for the institutional complexity that characterizes counter-piracy governance. International legal frameworks to counter-piracy have existed for decades, while several regional institutional answers have been set up more recently. The institutions of the regime complex prescribe distinct definitions of piracy, different degrees of legal obligation and diverging rules on how to combat piracy (Nance & Struett, 2013). The institutions are also characterized by a considerable variation in membership. Following the argument put forward by the existing literature on institutional complexity and piracy governance (Struett et al., 2013), this high degree of fragmentation would lead to the overall low effectiveness of the regime complex.

3. Methodology

To test the hypothesized causal mechanism, I focus on state cooperation in counter-piracy in Asia, which is the region currently most affected by piracy. In 2021, almost 45% of all globally reported incidents took place in Asian waters (International Chamber of Commerce's International Maritime Bureau [ICC IMB], 2001–2021). Asia is also the region where regional cooperation mechanisms to combat piracy were first established (Menzel, 2018). Operating for over 15 years, I expect the effects of these regional cooperation mechanisms to be more observable than comparable mechanisms set up more recently in East and West Africa. Finally, as the Asian cooperation arrangements are often considered to be largely successful by the public (Ho, 2009; Parameswaran, 2016), my research aims at scrutinizing this widely made assumption.

The main body of information drawn on for analyzing the effectiveness of counter-piracy governance is incident data on piracy and armed robbery put together by the ICC IMB's Piracy Reporting Centre (ICC IMB, 2001–2021). To obtain incident data for Asia, I utilize incidents recorded in the categories "Southeast Asia," "East Asia," and "Indian Subcontinent" in the ICC IMB reports. Although comparable data is also provided by other bodies, most notably the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) Information Sharing Center, the overall numbers largely conform with the ICC IMB data, which also covers the longest time frame and is therefore selected. My analysis focuses on the period from 2001 to 2021, allowing for a comparison of incident num-

bers before and after regional cooperation mechanisms have been established. While the data provides extensive information, concerns about underreporting have to be considered (Coggins, 2012). In addition to incident data, I draw on several semi-structured, anonymized expert interviews. The interviews concerning the effectiveness of regional mechanisms governing piracy as well as their potential shortcomings were conducted with decision-makers of regional counter-piracy institutions in 2016 and 2017.

4. The Regime Complex of Counter-Piracy in Asia

I scrutinize the degree of fragmentation of the counter-piracy regime complex in Asia by introducing the scope and membership of key institutions as well as the norms they prescribe for the combat of piracy for their member states. In Asia, these key institutions include the United Nations Convention on the Law of the Sea (UNCLOS), the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), the ReCAAP, and the Malacca Straits Patrols (MSP). While it could be argued that other cooperative mechanisms such as the Information Fusion Centre based in Singapore or the Contact Group on Maritime Crime in the Sulu and Celebes Sea are also part of the regime complex of counter-piracy, I am specifically interested in the effects of norm divergence and thus focus only on the institutions that prescribe specific norms on the combat of piracy for their member states.

4.1. Key Institutions

UNCLOS is the most important comprehensive multilateral treaty regulating the international use of the ocean. Concluded in 1982, its membership is almost comprehensive: 167 states are parties to the convention. Several additional states have signed the agreement but have not ratified it. Altogether, there are only 15 UN member or observer states that are not in some way connected to UNCLOS, and none of these states is directly affected by piracy in Asia (United Nations, 2022). As a focal point for counter-piracy governance, the legally binding UNCLOS defines maritime piracy as a criminal act only taking place on the high seas, between two ships and for private gains (UNCLOS, 1982, Article 101). If such an incident takes place, any state can exercise jurisdiction by referring to the doctrine of universal jurisdiction. UNCLOS lays down a duty to cooperate in the repression of piracy. When witnessing a piracy incident, every state may thus seize a pirate ship or a ship under the control of pirates and arrest the persons on board (UNCLOS, 1982, Article 105). It is however important to note that these provisions do not apply to states' territorial waters (Beckman & Page, 2014, p. 235).

The legally binding SUA convention was adopted in 1988. 166 states are parties to the convention. 29 UN member states have not yet signed the agreement. Citing

concerns over their territorial sovereignty, Indonesia and Malaysia are the most notable non-member states. As they constitute two of the most piracy-prone states, they are key actors in regard to the governance of piracy in Asia (Nance & Struett, 2013, p. 138). SUA criminalizes behavior which endangers the safety of maritime navigation. Although SUA does not explicitly mention maritime piracy, most of the acts it criminalizes correspond in whole or in part to actions committed by pirates or armed robbers (Treves, 2013, p. 147). The convention generally applies to international waters (SUA, 1988, Article 4.1). However, it de facto extends its application to the territorial waters of all member states (SUA, 1988, Article 4.2; Nance & Struett, 2013, pp. 134–135). SUA also does not contain the UNCLOS requirements of piracy having to be motivated by private ends, or two ships having to be necessarily involved (Sittnick, 2005, p. 760). Furthermore, SUA endorses the so-called “hot pursuit,” meaning that suspicious vessels can be prosecuted across maritime boundaries into foreign member state territories (Beckman, 2002, p. 330). In contrast to UNCLOS, which is considered customary law, SUA only applies to its signatories (SUA, 1988, Article 5). Member states are also required to establish jurisdiction over such crimes when committed by or against one of their nationals or against a ship registered under their flag (SUA, 1988, Article 6).

ReCAAP is a legally binding regional agreement established in 2004 to foster data collection on piracy and facilitate capacity-building efforts in Asia. ReCAAP’s membership is open to all interested state parties. Thus far, 21 states are contracting parties to the legally binding agreement, including 14 Asian littorals, the United States, Australia, and several European states. Due to concerns over extra-regional involvement, Indonesia and

Malaysia are the only littoral states affected by piracy that chose not to ratify ReCAAP in 2006, although they were involved in the drafting process (Hribernik, 2013, p. 4). ReCAAP adopts the definition of piracy taking place on the high seas from UNCLOS but adds the description of armed robbery against ships (ReCAAP, 2004, Article 1.2a). Thus, it extends the definition of criminal acts to member states’ territorial waters, but nevertheless adopts the two-ships requirement of UNCLOS (Win et al., 2016, p. 174). Hence, ReCAAP defines piracy and armed robbery as offenses on both the high seas and territorial waters and obliges member states to legally prosecute offenders (ReCAAP, 2004, Article 3.1) but only in their own territory (ReCAAP, 2004, Article 2.5).

The MSP is a cooperative mechanism specifically for the Strait of Malacca, comprising naval patrols, air patrols, and information sharing structures to combat piracy. It was established in 2004 by the littoral states Indonesia, Malaysia, and Singapore. Thailand joined in 2008. The state parties regularly conduct joint exercises to enhance security in the Strait. Due to sensitivities over sovereignty issues, the patrols are not joint, and each state patrols its own waters and air space, however in a coordinated manner institutionalized in Standard Operating Procedures, which are not legally binding (Storey, 2009, p. 41). Since the patrols only aim at securing the waters of the Strait of Malacca, the criminal activity they are concerned with is armed robbery in the territorial waters of littoral states. The MSP’s Standard Operating Procedures allow for cross-boundary hot pursuit up to five nautical miles into a neighboring state’s territorial waters (Raymond, 2007, p. 74) and three nautical miles into its air space (Osman, 2005). Nevertheless, the MSP also provides for a “hands-off mechanism” regarding cross-boundary enforcement (Beckman, 2013, p. 20),

Table 1. Membership and norms of key counter-piracy institutions.

	UNCLOS	SUA	ReCAAP	MSP
Membership	Open 167 members	Open 166 members	Open 21 members	Restricted 4 members
Scope	International law of the sea	Unlawful acts against the safety of maritime navigation	Piracy and armed robbery in Asia of Malacca	Criminal maritime activities in the Strait
Criminalizes unlawful acts in...	International waters	International and territorial waters of member states	International and territorial waters of member states	Territorial waters of member states
Obligations	Legally binding Duty to cooperate	Legally binding Duty to prosecute, also in other member states’ territorial waters (“hot pursuit”)	Legally binding Duty to prosecute in international and own territorial waters	Legally non-binding Commitment to prosecute in own territorial waters, and conditionally in other parties’ territorial waters

meaning that hot pursuit cannot be carried out without a prior arrangement between the littorals. Although such agreements on hot pursuit exist, states are reluctant to prosecute pirates over borders due to sovereignty concerns (Song, 2009, p. 135).

4.2. Diverging Norms and Memberships

The review of key counter-piracy institutions shows that the regime complex of counter-piracy consists of various international treaties and regional initiatives governing the combat of piracy, some of which are rejected by key actors Indonesia and Malaysia. The specificity of the counter-piracy provisions prescribed by these institutions as well as their degree of legal obligation differ substantially (Table 1). As a result, fragmentation of the regime complex is high.

The existing literature linking regime complexity to piracy governance would expect this fragmentation to hinder the effectiveness of counter-piracy cooperation, as conflicting definitions of piracy and the non-membership of key states are seen as detrimental to effective governance in Asia. This particularly applies to a crucial chokepoint—the Strait of Malacca—where passing vessels are never outside any state’s territorial waters, meaning that the UNCLOS provisions for combating piracy do not apply (Nance & Struett, 2013, p. 138). Since Malaysia and Indonesia are not parties to SUA nor ReCAAP, their obligations do not apply either, which is expected to further reduce effectiveness. In the following section, I put this argumentation to the empirical test.

5. Piracy in Asia From 2001 to 2021

To assess the effectiveness of the regime complex of counter-piracy, I evaluate the number of piracy incidents in Asia before and after the establishment of regional institutions. Due to data limitations, I cannot compare the period before and after UNCLOS and SUA were estab-

lished. Consequently, I focus on the impact of ReCAAP and the MSP. As important components of institutional complexity of counter-piracy governance, the role of UNCLOS and SUA is nevertheless considered throughout. Following the definition of institutional effectiveness as the extent to which an institution or a system of institutions contribute to solving the underlying cooperation problem (Underdal, 2008, p. 54), I consider the regime complex to be effective if the total number of incidents in Asia declined after regional cooperation mechanisms to govern piracy were established in 2004. I regard it not to be effective if the numbers rose or stagnated. As the problem-solving impact may only materialize after a certain time span, considering a time lag is crucial. Membership may also be a key variable here. Assuming only member states benefit from the added value of cooperation measures such as information sharing and capacity building, I also consider single cooperation mechanisms to be effective if I observe a lower number of incidents in member states’ territories compared to non-member states, which I will test for ReCAAP membership.

5.1. Total Number of Piracy Incidents

Figure 1 depicts the total numbers of attempted and actual incidents of piracy and armed robbery which took place in Asia as reported by the ICC IMB Piracy Reporting Centre (2001–2021). After a temporary peak in 2003, a general downwards trend in attacks can be observed from 2004 onwards, which coincided with the establishment of ReCAAP and MSP. This trend continued until 2008, which may speak for the effectiveness of these cooperation mechanisms. In 2009, the first impact of the Great Recession was observable, leading to a steady increase in numbers between 2010 and 2015. In 2016, a 50% drop in incidents could be observed. Since then, the numbers fluctuate at a lower level than in the years before. While it could be argued that the decline starting

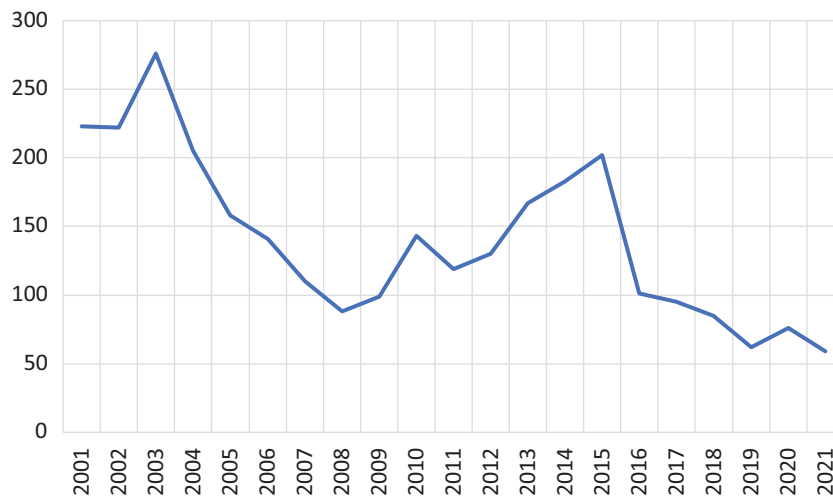


Figure 1. Total number of annual incidents in Asia.

in 2016 is a late success of counter-piracy cooperation, 10 years seems a long-time lag for cooperation effects to materialize. Instead, it is conceivable that external factors have also played a role in the sudden decline. They are scrutinized in Section 6.

5.2. Piracy Incidents by Membership

Disaggregating the data to the state level and distinguishing between ReCAAP member and non-member states provides additional insights. When excluding non-members Indonesia and Malaysia, the Strait of Malacca and the Strait of Singapore are crucial categories, as these have extra entries in the ICC IMB Piracy Reporting Centre data. I count both as non-member territories because the Strait of Malacca mostly consists of Indonesian and Malaysian territories (Kraska, 2011, p. 42) and the Strait of Singapore is located between Singapore and Indonesia, which is a non-member state. However, when treating the Strait of Singapore as member territory, the overall trend stays the same.

Figure 2 shows the numbers of actual and attempted incidents for ReCAAP member states, contrasted with the incident numbers for non-member states. It is noticeable that when incident numbers saw an interim peak in 2009, a significant decline from 2010 onwards can be observed only for ReCAAP member states. In 2016, both groups converge, but in recent years the gap increases again. However, the relation between the two graphs has to be treated with caution, as the group of Asian ReCAAP members consist of 14 states, while the non-member group is only made up of Malaysia and Indonesia, including the Straits of Malacca and Singapore. It also has to be noted that a large part of incidents in the analysis period has taken place in Indonesian waters. Thus, only one state, even though not a member of ReCAAP, makes up for the majority of reported incidents. The particular role of Indonesia in counter-piracy governance in Asia is discussed in the next section. In summary, there is an indication that ReCAAP membership does make a differ-

ence in the capacity to combat piracy effectively, but the extent of this influence remains unclear.

6. Discussion

Although the data suggests that there is a general downwards trend in incident numbers in Asia, particularly in ReCAAP member states, with several outlier years, the analysis provides an ambiguous picture: While a clear causal link between the development of incident numbers and the establishment of regional cooperation mechanisms cannot be established, the hypothesized negative impact of fragmentation of the regime complex on counter-piracy efforts cannot be confirmed either. Alternative explanations may provide additional insights into these results.

6.1. Alternative Explanations

Several factors can be identified which may reduce the explanatory power of regional cooperation mechanisms for the development of incident numbers in the analysis period. First, the 2004 Indian Ocean earthquake may explain why incident numbers dropped significantly thereafter. The resulting tsunami destroyed vast areas of Indonesia's province Aceh, then known as a notorious pirate hideout (Amirell, 2006, p. 54), and temporarily weakened their base. Second, Indonesian domestic politics may have influenced the conduct of the piracy business. In 2005, the settlement of a long-lasting civil war between the government and the Free Aceh Movement was reached. As piracy incidents were associated with increased rebel activity in Aceh beforehand (Daxecker & Prins, 2016), the end of the civil war may have been one of the reasons for a decline in numbers during that time. Third, after Lloyd's Market Association had declared the Strait of Malacca a "war risk zone" in 2005 due to rampant piracy numbers, the commission of private maritime security companies in the Strait increased but was highly disputed due to territorial concerns of

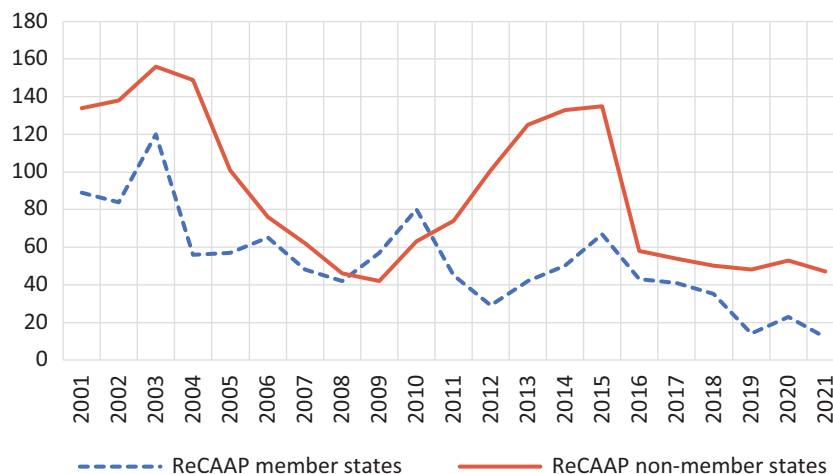


Figure 2. Total number of annual incidents: ReCAAP member and non-member states.

littoral states (Liss, 2012). Although data on the de-facto deployment of private maritime security companies in this period is lacking (Liss, 2011, p. 329), their services may have nevertheless contributed to a decrease in numbers. Fourth, strengthening of national enforcement agencies of key states may have also played an important role in the decline of incidents. The establishment of the Malaysian Maritime Enforcement Agency in 2004 is noteworthy, as Malaysia previously did not have a national coastguard, but the task was divided between several agencies (Ooi, 2007, p. 74). Similarly, initiatives such as the 2015 Rapid Reaction Force by Indonesian and Malaysian navies and the 2017 Trilateral Patrols in the Sulu Sea between Indonesia, Malaysia, and the Philippines may have contributed to a more recent decline in attacks in Asia (Parameswaran, 2017).

However, there are also several factors which may conceal a positive effect of counter-piracy cooperation. First, not knowing the extent of underreporting poses a methodological challenge. Although the establishment of ReCAAP's and MSP's information-sharing structures in 2006 as well as technological advances have led to an improved reporting system, underreporting very likely still masks the real rate of incidents and thus the impact of cooperation. Second, maritime traffic in the region has increased significantly. In 2004, about 64,000 vessels passed through the Strait of Malacca. In 2017, this number rose to about 85,000 vessels per year (Hand, 2018). This is an increase of almost 25% in potential targets for pirates, while incident numbers have not risen accordingly. Third, economic crises may press individuals into engaging in illicit maritime activities to compensate for personal economic losses. The Great Recession is a case in point: From 2007 to 2010, incident numbers in Asia almost doubled, which may have covered a potential effect of counter-piracy governance. The impact of the Covid-19 pandemic remains to be seen, although incident numbers only slightly increased in 2020.

Overall, the numbers of piracy incidents in Asia are influenced by an interplay of different factors. While it is not possible to precisely establish the extent to which the alternative explanations account for constancy of or change in incident numbers, they nevertheless have to be kept in mind when assessing the effectiveness of the regime complex of counter-piracy.

6.2. Revisiting the Theoretical Argument

Although the regime complex of counter-piracy governance is characterized by a high degree of legal fragmentation, and its effectiveness is likely to be restricted by the non-membership of key states Indonesia and Malaysia to both ReCAAP and SUA, the empirical findings do not support the hypothesized negative effect of fragmentation on the overall combat of piracy. While the data does not provide an unambiguous picture of the impact of institutional complexity on the effectiveness of counter-piracy in the region, a decrease in incident num-

bers coinciding with the establishment of counter-piracy institutions can be observed particularly from 2004 to 2008, as well as a general slight downwards trend in recent years. Instead of the suspected hampering effect of regime complexity, institutional complexity may have offered flexibility for states to choose different fora for cooperation, which has not been unfavorable to effectively combat piracy.

Going back to the theoretical assumptions of the regime complex literature, another theoretical explanation might therefore be more sensible. While regime complexity creates legal inconsistencies, it may also strengthen problem-solving capacities: If an issue is blocked in one forum, complexity facilitates flexibility over issues, because it allows states to cooperate under different conditions, or with different coalitions of states (Keohane & Victor, 2011, p. 14). Indeed, as Indonesia and Malaysia refused to ratify ReCAAP due to sovereignty concerns, while cooperation with all states affected by piracy in Asia through SUA was also blocked by the non-accession of Indonesia and Malaysia, a parallel cooperation forum was established simultaneously. As such, the MSP allows for cooperation in a different coalition under distinct conditions, and at least includes the littoral states of the Strait of Malacca. Therefore, it could be argued that as a consequence of fragmentation, functional differentiation (Henning & Pratt, 2020) has emerged: While ReCAAP mainly focuses on information sharing and capacity building, the MSP offers a strong operational role and coordinates patrols of member states in the Strait of Malacca. As a result, all states affected by piracy in Asia are involved in its combat to some extent, although in different fora.

Interestingly, despite not being formal members, Indonesia and Malaysia cooperate with ReCAAP on a more informal level. They share selected information with ReCAAP and have repeatedly participated in capacity building workshops (ReCAAP, 2018). Interviews with decision-makers of regional counter-piracy institutions underline the importance of informal cooperation in contrast to formal membership and thus support the importance of informal complexity management within regime complexes (Kreuder-Sonnen & Zürn, 2020). One interviewee expressed the personal view that although being an official part of an agreement mattered, the most crucial thing for a state would be to assist the cooperation and coordinate counter-piracy activities with each other (interview, May 6, 2016). Similarly, another interviewee pointed out that the non-membership of Indonesia and Malaysia to ReCAAP might not be as vital for the combat of piracy in Asia as widely assumed: The agreement should rather be understood as a reference point, since it was more important for states to actually work together than having a binding code (interview, May 10, 2016). According to practitioners, the effects of the non-ratification of ReCAAP by Malaysia and Indonesia may hence not be as severe as expected by observers, as long as other, less formalized cooperation

opportunities such as the MSP but also bilateral cooperation are available.

7. Conclusion

Drawing on the literature on institutional effectiveness and regime complexity, and focusing on counter-piracy governance in Asia, this article tested the widely made assumption that a fragmented regime complex hampers effective cooperation on the governance issue at hand. Although the regime complex of counter-piracy is characterized by a variety of diverging norms prescribed by individual institutions in the combat of piracy, the empirical analysis for the years from 2001 to 2021 could not establish the hypothesized negative effect on counter-piracy governance. However, an overall causal effect between state cooperation and piracy incident numbers could also not be demonstrated. These results equally question assessments which consider the regime complex of counter-piracy too fragmented to work effectively, and which perceive regional cooperation mechanisms to be a particularly successful instrument in the fight against piracy. Instead, my analysis has underlined the importance of considering a variety of external factors which influence the effectiveness of counter-piracy cooperation in Asia.

My findings hold important implications for future research on the effectiveness of institutionalized cooperation to counter maritime crimes. First, they highlight the importance of accounting for contextual factors which may vary in different world regions. Second, they underline the need to further consider and theorize the role of formal and informal membership in the effectiveness of maritime crime cooperation. While my analysis suggests that membership may indeed have an impact, practitioners have instead highlighted the importance of low-key cooperation and information sharing between member and non-member states for the success of counter-piracy cooperation. It will thus be interesting to see if the accession or non-accession of key states makes a difference in the effectiveness of other regional cooperation mechanisms to combat maritime crimes. Third, they suggest revisiting commonly made assumptions about the role of institutional complexity. While so far, the scholarly focus has mostly laid on the negative consequences of fragmentation, this article has underlined that institutional complexity also holds opportunities for effective cooperation through functional differentiation between key institutions. Future research should thus shed further light on the mechanisms and effects of managing institutional complexity beyond piracy governance.

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Conflict of Interests

The author declares no conflict of interests.

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