
INTERNATIONAL LAW STUDIES

Published Since 1895

Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula

Raul (Pete) Pedrozo

103 INT'L L. STUD. 49 (2024)

Volume 103



2024

Published by the Stockton Center for International Law

ISSN 2375-2831

Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula

*Raul (Pete) Pedrozo**

CONTENTS

I.	Introduction.....	50
II.	Maritime Incidents.....	50
	A. Attacks in the Red Sea.....	50
	B. Attacks in Other Waterways.....	57
III.	U.S. Intervention.....	58
	A. Counter-Piracy Operations.....	58
	B. Self-Defense.....	61
IV.	Right of Self-Help.....	66
V.	Conclusion.....	70

* Captain Raul (Pete) Pedrozo, JAGC, U.S. Navy (Ret.), is the Howard S. Levie Professor of the Law of Armed Conflict at the Stockton Center for International Law, U.S. Naval War College. After retirement from the U.S. Navy, he was a Professor of International Law at the Naval War College and Principal Deputy Staff Judge Advocate, U.S. Indo-Pacific Command. On active duty, he served in senior positions in the Department of Defense, including Staff Judge Advocate, U.S. Pacific Command, and Special Assistant to the Under Secretary of Defense for Policy. An abbreviated version of this article was posted in *Articles of War* on December 8, 2023, at <https://lieber.westpoint.edu/securing-maritime-domain-red-sea/>.

The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

I. INTRODUCTION

On October 27, 2023, the Israeli Defense Force launched a large-scale military operation into Gaza in response to the Hamas-led massacre of over 1,300 innocent Israeli citizens.¹ Since the initial Hamas attack on October 7, Iranian-backed Houthi rebels in Yemen have increased their attacks on commercial shipping and foreign warships in the Red Sea and the Gulf of Aden. A statement issued by the Iranian-backed rebels warned that they would target Israeli ships and interests in the region until Israel's "aggression against Gaza stops."² The rebels further advised that "any military units providing protection to Israeli ships" would be considered legitimate targets.³

This article reviews recent maritime incidents involving Houthi missile and drone attacks on commercial shipping and foreign warships and discusses the legality of the U.S. response to those incidents. The article will first discuss U.S. counter-piracy operations, followed by a discussion on the right of unit and collective self-defense. The article will also suggest that the United States should consider conducting land-based attacks on Houthi missile and drone sites in Yemen under the principle of self-help to preempt further attacks on U.S. and foreign-flagged ships operating in the region.

II. MARITIME INCIDENTS

A. Attacks in the Red Sea

On October 19, 2023, USS *Carney* (DDG 64) successfully intercepted three missiles and fifteen unmanned aerial vehicles (drones) in international airspace over a period of nine hours as the ship sailed north along the Red Sea. The projectiles were likely launched by Houthi rebels to attack targets in Israel.⁴ The missiles and drones were shot down by the U.S. guided-missile

1. James Mackenzie & Maayan Lubell, *Israel Launches Gaza War's Second Phase with Ground Operation, Netanyahu Says*, REUTERS (Oct. 28, 2023), <https://www.reuters.com/world/middle-east/eu-calls-humanitarian-pauses-gaza-aid-israel-raids-enclave-2023-10-26/>.

2. Haley Britzky, *Missiles Fired from Yemen Toward US Warship That Responded to Attack on Commercial Tanker*, CNN (Nov. 27, 2023, 3:39 PM), <https://www.cnn.com/2023/11/27/politics/us-destroyer-missiles-distress-call-tanker-intl-hnk/index.html>.

3. *Id.*

4. Oren Liebermann, *Incident Involving US Warship Intercepting Missiles Near Yemen Lasted 9 Hours*, CNN (Oct. 20, 2023), <https://www.cnn.com/2023/10/20/politics/us-warship-intercept-missiles-near-yemen/index.html>.

destroyer with SM-2 surface-to-air missiles. There is no evidence that the rebels were targeting the U.S. warship or any other U.S. asset in the area. Nonetheless, the U.S. action was purportedly based on the right of collective self-defense. A Pentagon spokesperson stated that the “action was a demonstration of the integrated air and missile defense architecture that we built in the Middle East and that we are prepared to utilize whenever necessary to protect our partners and our interests in this important region.”⁵

Several weeks later, USS *Hudner* (DDG 116) engaged a drone in international airspace over the Red Sea that had been launched from Yemen. *Hudner* engaged the drone in self-defense as it headed towards the U.S. warship “to ensure the safety of U.S. personnel.”⁶ A week later, *Hudner* destroyed several more “one-way attack drones” in international airspace over the Red Sea that originated from Houthi-controlled areas in Yemen.⁷

On November 19, 2023, Houthi rebels conducted an unprecedented helicopter assault on the M/V *Galaxy Leader* while the Bahamian-flagged merchant ship was transiting the Red Sea. The vehicle carrier is British-owned and Japanese-operated (NYK line), but the British owners are associated with Ray Car Carriers, a company founded by a wealthy Israeli businessman. The ship and its twenty-five-member crew are still being held hostage in Yemen following the piratical attack. Japan condemned the act of piracy as “a flagrant violation of international law” and demanded the immediate release of the ship and crew.⁸

A second pirate attack occurred a week later when an armed group of men seized the M/V *Central Park* thirty-five miles off the coast of Yemen. USS *Mason* (DDG 87) responded to the Liberian-flagged tanker’s distress call and demanded that the pirates immediately release the ship and its twenty-two crew members. The pirates attempted to flee the scene but were

5. *US Warship Shoots Down Missiles and Drones Over the Red Sea*, MARITIME EXECUTIVE (Oct. 19, 2023), <https://maritime-executive.com/article/us-warship-shoots-down-missiles-and-drones-over-the-red-sea>.

6. *U.S. Navy Destroyer Shoots Down Drone Over the Red Sea*, MARITIME EXECUTIVE (Nov. 15, 2023), <https://maritime-executive.com/article/u-s-navy-destroyer-shoots-down-drone-over-the-red-sea>.

7. *U.S. Navy Destroyer Shoots Down Multiple Drones Over the Red Sea*, MARITIME EXECUTIVE (Nov. 22, 2023), <https://maritime-executive.com/article/u-s-navy-destroyer-shoots-down-multiple-drones-over-red-sea>.

8. Howard Altman, *Houthi Helicopter Raid On Ship In Red Sea Seen In New Video*, THE WAR ZONE (Nov. 20, 2023), <https://www.thedrive.com/the-war-zone/houthi-helicopter-raid-on-ship-in-red-sea-seen-in-new-video>.

apprehended by the U.S. destroyer. Initial reports indicate that the five pirates are Somali. As *Mason* was responding to the attack, two ballistic missiles fired by Houthi rebels impacted about ten nautical miles from the U.S. warship. The *Central Park* is operated by the London-based Zodiac Maritime, a subsidiary of the Israeli Zodiac Group. The Yemeni government denounced the attack as an act of piracy.⁹

On November 29, 2023, USS *Carney* again engaged an Iranian-produced KAS-04 drone in international airspace over the Red Sea near the Bab al-Mandeb Strait. The U.S. destroyer was escorting the USNS *Supply* (T-AOE-6), a fast combat support ship, and a U.S.-flagged and crewed merchant vessel transporting U.S. military equipment when it observed the drone approaching the ships.¹⁰ A Pentagon spokesperson indicated that the captain exercised his obligation of unit self-defense because he believed the drone, which had originated in Houthi-controlled Yemen, constituted a threat to his ship.¹¹

Four days later, USS *Carney* was once again called into action, responding to distress calls from three separate merchant vessels after Houthi rebels attacked them in the southern Red Sea.¹² Houthi rebels fired two missiles at the M/V *Unity Explorer*. The first missile landed near the Bahamian-flagged, British-owned bulk carrier, but the second hit the vessel resulting in minor damage. Following these attacks, *Carney* detected and engaged a Houthi drone in self-defense that was headed toward the warship. Thereafter, while assisting the bulk carrier in assessing its damage, the U.S. destroyer engaged a second inbound Houthi drone. Later in the day, a Houthi missile struck the M/V *Number 9*, a Panamanian-flagged, Bermuda/British-owned and operated bulk carrier, while the vessel was operating in an international shipping lane in the Red Sea. An hour later, a Panamanian-flagged bulk carrier—

9. Jon Gambrell, *US Navy Seizes Attackers Who Held Israel-Linked Tanker*, ASSOCIATED PRESS (Nov. 26, 2023, 11:44 PM), <https://apnews.com/article/israel-palestinians-hamas-war-yemen-ship-attack-526842504dc9f6bb7ca6e1d5104f77a3>; Britzky, *supra* note 2.

10. Lolita Baldor, *USS Carney Shoots Down Drone Launched From Yemen*, NAVY TIMES (Nov. 29, 2023, 9:05 PM), <https://www.navytimes.com/news/your-navy/2023/11/29/uss-carney-shoots-down-drone-launched-from-yemen-official-says/>.

11. Heather Mongilio, *USS Carney Shot Down an Iranian KAS-04 Drone, Says CENTCOM*, USNI NEWS (Nov. 30, 2023), <https://news.usni.org/2023/11/30/uss-carney-shot-down-an-iranian-kas-04-drone-says-centcom>.

12. Danielle Wallace et al., *US Warship Shoots Down 3 Houthi Drones Targeting Commercial Vessels in Red Sea: CENTCOM*, FOX NEWS (Dec. 3, 2023, 5:43 PM), <https://www.foxnews.com/world/us-warship-shoots-down-three-houthi-drones-targeting-commercial-vessels-red-sea-centcom>.

M/V *Sophie II*—was also hit by a Houthi missile. While responding to the *Sophie II*'s distress call, the U.S. warship engaged a third Houthi drone in self-defense that was headed in its direction. Neither *Unity Explorer* nor *Number 9* have links to Israel.¹³

On December 6, USS *Mason* shot down an inbound drone in international airspace over the Red Sea. The drone was purportedly launched from a Houthi-controlled area in Yemen and was operating in international airspace when it was engaged in self-defense. U.S. officials described the recent attacks on shipping as “a direct threat to international commerce and maritime security” and indicated that the “United States will consider all appropriate responses in full coordination with its international allies and partners.”¹⁴

Five days later, a French guided-missile frigate on patrol in the Red Sea was targeted by two drones launched from Houthi-controlled Yemen. FS *Languedoc* (653) fired Aster 15 missiles in self-defense to protect the ship and its crew, successfully downing the two drones in international airspace.¹⁵

The following day, the Houthi rebels expanded the scope of their operations by attacking the M/V *Strinda* as it was transiting the Red Sea sixty miles north of the Bab al-Mandeb Strait and fifteen nautical miles west of Mocha, Yemen. The vessel was damaged, but the crew was unharmed. The Norwegian-flagged, -owned, and -operated oil and chemical tanker, which was en route from Malaysia to Italy with a cargo of palm oil, has no direct links to Israel. The tanker was, however, scheduled to make a port call in Ashdod, Israel, on January 4, 2024. FS *Languedoc* reportedly shot down a Houthi armed drone that was threatening the tanker after the missile strike

13. Aziz El Yaakoubi & Idrees Ali, *Multiple Commercial Vessels Attacked in Red Sea*, REUTERS (Dec. 3, 2023), <https://www.reuters.com/world/britains-maritime-agency-reports-potential-explosion-red-sea-2023-12-03/>.

14. Diana Stancy Correll, *USS Mason Shoots Down Another Air Drone in the Red Sea*, NAVY TIMES (Dec. 6, 2023), <https://www.navytimes.com/news/your-navy/2023/12/06/uss-mason-shoots-down-another-air-drone-in-the-red-sea/>; Sam LaGrone, *Guided-missile Destroyer USS Mason Shoots Down Drone in Red Sea*, USNI NEWS (Dec. 6, 2023), <https://news.usni.org/2023/12/06/guided-missile-destroyer-uss-mason-shoots-downs-drone-in-red-sea>.

15. Ministère des Armées, Armée française—Opérations militaires (@EtatMajorFR), TWITTER (Dec. 9, 2023), <https://twitter.com/EtatMajorFR/status/1733633508344574091> (Interception du Yémen par la FREMM Languedoc en mer Rouge); Heather Mongilio & Sam LaGrone, *Lethal Drones from Yemen Attacked French Frigate in Red Sea, Say Officials*, USNI NEWS (Dec. 11, 2023), <https://news.usni.org/2023/12/11/lethal-drones-from-yemen-attacked-french-frigate-in-red-sea-say-officials>.

and positioned itself to prevent any attempt to hijack the vessel. The USS *Mason* also responded to *Strinda's* distress call and remained in the area to deter further attacks. A Houthi spokesperson indicated that the vessel was attacked because it “rejected all warning calls.”¹⁶ He additionally warned that Houthi rebels would continue to attack ships heading to Israeli ports regardless of their nationality until Israel allows humanitarian aid (food and medicine) into Gaza. Although the current operation in the Red Sea is not a NATO mission, a U.S. spokesperson indicated that the United States would assist French warships if asked.¹⁷

A second tanker was attacked that same day near the Bab al-Mandeb Strait. Two Houthi missiles fired at the M/V *Ardmore Encounter* missed their mark. A private security detachment on board the Marshall Islands-flagged tanker additionally engaged (and turned away) several skiffs loaded with armed men who were attempting to board the vessel. USS *Mason* was also in the vicinity and shot down a Houthi drone in self-defense in international airspace that was approaching the U.S. warship. The tanker, which (like *Strinda*) has no apparent link to Israel, was carrying jet fuel manufactured in India and was sailing north toward the Suez Canal en route to Rotterdam.¹⁸

On December 14, 2023, Houthi rebels fired a ballistic missile that fell harmlessly into the international shipping lane north of the Bab al-Mandeb Strait. Following the attack, Houthi rebels hailed the Hong Kong-flagged

16. Jon Gambell, *A Missile Fired by Yemen's Houthi Rebels Strikes a Norwegian-flagged Tanker in the Red Sea*, ASSOCIATED PRESS (Dec. 12, 2023, 8:46 PM), <https://apnews.com/article/yemen-ship-attack-houthi-rebels-red-sea-946b40e6393af6216c0b6ef734311be9>; Michael Dorgan, *Yemen's Houthis Claim Responsibility for Striking Norwegian Tanker Strand [sic] in Latest Attack*, FOX NEWS (Dec. 12, 2023), <https://www.foxnews.com/world/yemens-houthis-claim-responsibility-striking-norwegian-tanker-strinda-latest-attack>; Geoff Ziezulewicz, *Navy Destroyer Mason Aids Commercial Ship Struck by Missile in Red Sea*, ASSOCIATED PRESS (Dec. 12, 2023), <https://www.navytimes.com/news/your-navy/2023/12/12/navy-destroyer-mason-aids-commercial-ship-struck-by-missile-in-red-sea/>.

17. Heather Mongilio & Sam LaGrone, *Houthis Hit Tanker with Missile in Red Sea, French Frigate Downs Drones*, USNI NEWS (Dec. 12, 2023), <https://news.usni.org/2023/12/12/houthis-hit-tanker-with-missile-in-red-sea-french-frigate-downs-drones>; Ministère des Armées, Armée française—Opérations militaires (@EtatMajorFR), TWITTER (Dec. 12, 2023), https://twitter.com/EtatMajorFR/status/1734555052600140260??oref=newsletters_dbrief (“Protection des voies maritimes | La nuit dernière, la FREMM Languedoc, patrouillant au large du Yémen, est intervenue suite à l’attaque aérienne complexe subie par le pétrolier Strinda. Engagement d’un drone et escorte du pétrolier touché en dehors de la zone de danger.”).

18. Jon Gambrell, *Missiles From Rebel-held Yemen Miss a Ship Loaded with Jet Fuel Near the Key Bab el-Mandeb Strait*, ASSOCIATED PRESS (Dec. 13, 2023, 8:18 AM), <https://apnews.com/article/yemen-houthi-rebels-ship-attacks-us-navy-1727df3d95e548c6e4d20b51f096268f>.

M/V *Maersk Gibraltar* and threatened further attacks against the container ship.¹⁹ *Maersk Gibraltar* was sailing from Salalah, Oman, travelling to Jeddah, Saudi Arabia.²⁰

The next day, however, two merchant ships—the *MSC Palatium III* and *Al Jasrah*—were hit by ballistic missiles fired from a Houthi-controlled area in Yemen. After the attacks, both Maersk and Hapag-Lloyd informed all their vessels planning to transit through the Bab al-Mandeb Strait and Red Sea to pause their voyages under further notice.²¹ Tracking data showed that the Liberian-flagged *MSC Palatium III* had turned around and was headed south after a fire broke out on the ship because of the missile strike. Prior to the attack, another Switzerland-based Mediterranean Shipping Company (MSC) ship—*MSC Alanya*—had been threatened by Houthi rebels. MSC has cooperated with Israel in the past. The Liberian-flagged M/V *Al Jasrah* was en route to Singapore from Egypt and is operated by the German-based shipper Hapag-Lloyd, which also has offices in the Israeli ports of Ashdod, Haifa, and Tel Aviv.²²

Another encounter occurred on December 16, 2023, when USS *Carney* successfully engaged fourteen one-way attack drones launched by Houthi rebels in Yemen.²³ A Royal Navy destroyer—HMS *Diamond* (D34)—also shot down a Houthi drone that was targeting a commercial ship with a Sea Viper missile. A Houthi spokesperson indicated that the rebel group would continue to target Israeli-linked merchant shipping “until the aggression

19. U.S. Central Command, CENTCOM Statement of the Attack on the M/V Maersk Gibraltar (Dec. 14, 2023), <https://www.centcom.mil/MEDIA/STATEMENTS/Statements-View/Article/3618401/centcom-statement-of-the-attack-on-the-mv-maersk-gibraltar/>.

20. Heather Mongilio, *Houthis Claim to Launch Missile at Merchant Ship as Red Sea Attacks Continue*, USNI NEWS (Dec. 15, 2023, 2:09 PM), <https://news.usni.org/2023/12/14/houthis-claim-missile-attack-on-merchant-ship-as-red-sea-attacks-continue>.

21. Jon Gambrell, *2 Attacks Launched by Yemen’s Houthi Rebels Strike Container Ships in Vital Red Sea Corridor*, ASSOCIATED PRESS (Dec. 15, 2023, 11:54 AM), <https://apnews.com/article/yemen-houthi-ship-attack-israel-amas-69289146266b9042b5896aa4679605ef>.

22. *Id.*; Heather Mongilio, *Liberian-flagged Container Ship Catches Fire After Being Hit By Projectile in Red Sea*, USNI NEWS (Dec. 15, 2023, 2:09 PM), <https://news.usni.org/2023/12/15/liberian-flagged-container-ship-catches-fire-after-being-hit-by-projectile-in-red-sea>.

23. Geoff Ziezulewicz, *USS Carney Takes Out Drone Swarm in the Red Sea*, NAVY TIMES (Dec. 16, 2023), <https://www.navytimes.com/news/your-navy/2023/12/16/uss-carney-takes-out-drone-swarm-in-the-red-sea/>.

stops and the siege of Gaza is lifted.”²⁴ Houthi rebels attacked two more merchant ships operating in the Red Sea off the coast of Yemen on December 18, 2023. The Panamanian-flagged *MSC Clara* and the Norwegian-owned *Swan Atlantic* (which has no apparent ties to Israel) were struck by suicide drones after they failed to respond to queries from Houthi rebels. There were no reported injuries on either vessel.²⁵

On December 23, 2023, the M/V *Saibaba* and M/V *Blaamanen* were attacked by Houthi anti-ship ballistic missiles and one-way attack drones in the Red Sea. The Gabon-owned, Indian-flagged *Saibaba* was hit by one of the drones. The Norwegian-flagged *Blaamanen* escaped unharmed. USS *Laboon* (DDG 58) responded to the ships’ distress calls, shooting down four Houthi drones in self-defense over the Red Sea.²⁶ Three days later, USS *Laboon* and F/A-18E Super Hornets from the USS *Dwight D. Eisenhower* (CVN 69) interdicted twelve Houthi attack drones, three anti-ship ballistic missiles, and two land-attack cruise missiles over the Red Sea over a period of twelve hours.²⁷ During the encounter, the Swiss-based Mediterranean Shipping Company container ship *MSC United VIII* came under attack while en route from Saudi Arabia to Pakistan.²⁸

On December 31, 2023, a Houthi missile hit the *Maersk Hangzhou* while the Singapore-flagged, Denmark-owned and operated vessel was transiting the Red Sea. USS *Gravelly* (DDG 107) and USS *Laboon* responded to the ship’s distress call and shot down two additional Houthi missiles that were fired at

24. Jill Lawless, *US and Britain Say Their Navies Shot Down 15 Attack Drones Over the Red Sea*, MILITARY.COM (Dec. 16, 2023), <https://www.military.com/daily-news/2023/12/16/us-and-britain-say-their-navies-shot-down-15-attack-drones-over-red-sea.html>.

25. Ahmed Elimam, Phil Stewart & Terje Solsvik, *Vessel Attacked in Red Sea off Yemen Coast, US Blames Houthis*, REUTERS (Dec. 18, 2023), <https://www.reuters.com/world/middle-east/ukmto-ambrey-report-possible-explosion-south-yemens-port-mokha-2023-12-18/>.

26. Diana Stancy Correll, *USS Laboon Shoots Down Four Drones in Red Sea*, NAVY TIMES (Dec. 23, 2023), <https://www.navytimes.com/news/your-navy/2023/12/24/uss-laboon-shoots-down-four-drones-in-red-sea/>; Sam Lagrone, *Houthis Fired Ballistic Missiles into Red Sea, Iranian Drone Strikes Merchant Ship Off India, Says Pentagon*, USNI NEWS (Dec. 24, 2023, 11:26 PM), <https://news.usni.org/2023/12/23/houthis-fired-ballistic-missiles-more-drone-s-at-merchant-ships-in-red-sea-says-centcom>.

27. Sam Lagrone, *U.S. Destroyer, Super Hornets Splash Red Sea Attack Drones and Missiles*, USNI NEWS (Dec. 26, 2023), <https://news.usni.org/2023/12/26/u-s-destroyer-super-hornets-splash-red-sea-attack-drones-and-missiles>.

28. Louis Casiano & Jennifer Griffin, *Navy Shoots Down Ballistic Missiles Launched by Iran-Backed Houthis in Red Sea*, FOX NEWS (Dec. 27, 2023, 6:27 AM), <https://www.foxnews.com/world/navy-uses-anti-ship-ballistic-missiles-engage-iran-backed-houthis-red-sea>.

the ship. The container ship issued a second distress call less than twenty hours later after it was attacked by four small boats operated by Houthi rebels. A private security team on board the vessel returned fire after the rebels fired crew served and small arms weapons at, and attempted to board, the container ship. Helicopters from the USS *Eisenhower* and USS *Gravelly* responded to the request for assistance and, after being fired upon by the Houthi boats, returned fire in self-defense, thwarting the pirate attack. Three of the Houthi small boats were destroyed, killing all crew members on board. The fourth boat escaped and returned to Yemen.²⁹

B. Attacks in Other Waterways

Drone and missile attacks on commercial shipping have not been limited to the Red Sea. On November 24, 2023, for example, the Maltese-flagged M/V *CMA CGM Symi* was attacked by a suspected Iranian Shahed-136 drone in the Indian Ocean. The container ship suffered minor damage, but there were no injuries to the crew. The vessel, which is affiliated with Eastern Pacific Shipping and is owned by an Israeli billionaire, apparently had switched off its automatic identification system because it believed it was being targeted. Iranian officials refused to comment on the incident.³⁰

A second incident was reported on December 13, 2023, by the United Kingdom Trade Operations. The master of a merchant vessel transiting ninety nautical miles south of the Port of Duqm, Oman, reported that it was followed by five to six small boats for about ninety minutes. Each boat had

29. *US Destroyer Shoots Down Ballistic Missiles Fired From Yemen*, DEFENSE POST (Jan. 2, 2024), <https://www.thedefensepost.com/2024/01/02/us-destroyer-down-missiles/>; U.S. Central Command (@CENTCOM), TWITTER (Dec. 31, 2023), <https://twitter.com/CENTCOM/status/1741381969936834951> (“Iranian-backed Houthi small boats attack merchant vessel and U.S. Navy helicopters in Southern Red Sea”); David Sanger, Eric Schmitt & Vivek Shankar, *U.S. Helicopters Sink 3 Houthi Boats in Red Sea, Pentagon Says*, NEW YORK TIMES (Dec. 31, 2023), <https://www.nytimes.com/2023/12/31/world/middleeast/us-houthi-clash.html>.

30. Jon Gambrella, *An Israeli-Owned Ship Was Targeted in Suspected Iranian Attack in Indian Ocean, US official Tells AP*, ASSOCIATED PRESS (Nov. 25, 2023, 12:32 PM), <https://apnews.com/article/israel-palestinians-hamas-ship-drone-attack-symi-39929cae42a191b2f242896a053123a7>.

a machine gun mounted on the bow with a crew of three personnel dressed in grey uniforms. The boats came within six to eight cables³¹ of the vessel.³²

Two days later, the Maltese-flagged M/V *Ruen* was hijacked by unknown assailants 380 nautical miles east of the Yemeni island of Socotra in the Arabian Sea as it sailed from Singapore to Turkey. The bulk carrier has a crew of eighteen and is owned by the Bulgarian shipping company Navigation Maritime Bulgare JSC. An Iranian-flagged fishing vessel was in the vicinity when the incident occurred.³³

An Iranian one-way attack drone struck the M/V *Chem Pluto* on December 23, 2023, causing a fire and structural damage to the chemical tanker. The attack occurred about two hundred nautical miles south-west of the city of Veraval in India's Gujarat state in the Indian Ocean while the Liberian-flagged, Japanese-owned, Netherlands-operated vessel apparently had links to Israel and was en route to India from Saudi Arabia.³⁴

III. U.S. INTERVENTION

A. Counter-Piracy Operations

The seizures of the M/V *Galaxy Leader* on November 19 and M/V *Central Park* on November 27 were clearly acts of piracy that violated international law. Similarly, the seizure of the M/V *Ruen* on December 15 and the attack on the M/V *Maersk Hangzhou* on December 31 were acts of piracy. Under the contemporary law of the sea, piracy includes “illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship . . . , and directed . . . on the high seas, against another ship . . . , or against persons or property on board such

31. A “cable” is a nautical unit of length equivalent to 720 feet (219 meters) in the U.S. Navy and 608 feet (185 meters) in the British Navy.

32. United Kingdom Trade Operations, UKMTO Warning 006/DEC/2023—Update 001 (Dec. 13, 2023), https://www.ukmto.org/-/media/ukmto/warnings/indian-ocean/2023/dec/ukmto-warning-006-dec-2023---update-001.pdf?rev=64b61d38d6d34714bbe11d7ed480d43a&oref=newsletters_dbrief.

33. *Bulgaria's “Ruen” Ship Seized in Arabian Sea: Crew Safety a Top Priority*, NOVINITE.COM (Dec. 15, 2023), <https://www.novinite.com/articles/223007/Bulgarian+Navy%27s+%27Ruen%27+Ship+Seized+in+Arabian+Sea%3A+Crew+Safety+a+Top+Priority>.

34. Phelan Chatterjee, *Tanker Hit off India Coast by Drone From Iran, Says US*, BBC NEWS (Dec. 24, 2023), <https://www.bbc.com/news/world-asia-india-67811929>.

ship.”³⁵ Since piracy is considered a universal crime, all States have a duty to “cooperate to the fullest possible extent in the repression of piracy on the high seas.”³⁶

On the high seas, any State may seize a pirate ship or a ship under the control of pirates and arrest the persons and seize the property on board.³⁷ Seizure of pirates, however, “may only be carried out by warships . . . or other ships . . . clearly marked and identifiable as being on government service and authorized to that effect.”³⁸ Note that all of the counter-piracy provisions of the United Nations Convention on the Law of the Sea apply equally in the contiguous zone and exclusive economic zone.³⁹

As indicated in Article 100, to constitute the crime of piracy, the illegal act must be committed for “private ends”—that is, not acting as authorized agents of a government.⁴⁰ Acts committed on behalf of a State or sanctioned or approved by a State are therefore not considered piracy.⁴¹ This requirement is often mistakenly interpreted to include only those acts that fulfill a personal economic interest in financial gain, thus exempting politically motivated crimes. The distinction between “private ends” and “public purposes,” however, is not one of economic or political motivations. Rather, the distinction reflects the ban on privateering in the Declaration of Paris in 1856.⁴² Because privateers acted on behalf of or under the license of the State, they were not considered pirates historically. Thus, under contemporary international law, the political motivations or lack of personal financial gain of the act of piracy are irrelevant to the analysis of whether the “private ends” element of the offense is fulfilled. While a “private end” can involve a

35. United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

36. *Id.* art. 100.

37. *Id.* art. 105.

38. *Id.* art. 107.

39. *Id.* arts. 58(2), 86.

40. For example, Congress has the power to grant letters of marque and reprisal. U.S. CONST. art. I, § 8, cl. 11. A letter of marque issued by Congress authorizes a private ship to conduct hostilities at sea against enemy-flagged merchant vessels.

41. U.S. NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, NWP 1-14M/MCTP 11-10B/COMDTPUB P5800.7A, THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS ¶ 3.5.2.4 (2022) [hereinafter NWP 1-14M]; JAMES KRASKA, CONTEMPORARY MARITIME PIRACY: INTERNATIONAL LAW, STRATEGY, AND DIPLOMACY AT SEA 7 (2011).

42. Paris Declaration Respecting Maritime Law art. 1, Apr. 16, 1856, 115 C.T.S. 1 (“Privateering is, and remains, abolished”).

profit motive or desire for monetary gain, it can also be driven by revenge, hatred, or other personal or political reasons.⁴³

The contemporary U.S. position on this matter was articulated by the U.S. Court of Appeals for the Ninth Circuit in 2013. The court held that Sea Shepherd Conservation Society, a private environmental group, was motivated by “private ends” and committed acts of piracy when it attacked Japanese whaling ships even though the Society did not act for personal financial gain. The appellate court dismissed the district court’s analysis on an erroneous interpretation of “private ends.”

You don’t need a peg leg or an eye patch. When you ram ships; hurl glass containers of acid; drag metal-reinforced ropes in the water to damage propellers and rudders; launch smoke bombs and flares with hooks; and point high-powered lasers at other ships, you are, without a doubt, a pirate, no matter how high-minded you believe your purpose to be.

....

... The district court construed “private ends” as limited to those pursued for “financial enrichment.” But the common understanding of “private” is far broader. The term is normally used as an antonym to “public” (e.g., private attorney general) and often refers to matters of a personal nature that are not necessarily connected to finance (e.g., private property, private entrance, private understanding and invasion of privacy). See *Webster’s New Int’l Dictionary* 1969 (2d. ed. 1939) (defining “private” to mean “[b]elonging to, or concerning, an individual person, company, or interest”).⁴⁴

Acts of piracy are acts committed without the sanction or approval or on behalf of the State and, therefore, constitute private ends, regardless of the personal or financial benefit of the actor.

Given that the attacks on the *Galaxy Leader*, *Central Park*, and *Maersk Hangzhou* were clearly acts of piracy, the intervention by USS *Mason* and hel-

43. NWP 1-14M, *supra* note 41, ¶ 3.5.2.4.

44. Institute of Cetacean Research v. Sea Shepherd Conservation Society, 708 F.3d 1099, 1101 (9th Cir. 2013).

icopters from the USS *Eisenhower* and USS *Gravelly* were justified under international law and U.S. law. Under domestic laws⁴⁵ and regulations,⁴⁶ U.S. warships have a duty to repress piracy beyond foreign territorial seas directed against any vessel or aircraft, whether U.S. or foreign flagged. Moreover, for commanders repressing acts of piracy, the right and obligation of unit self-defense extend to the persons, vessels, or aircraft being assisted.⁴⁷

B. Self-Defense

Under customary international law, all States retain the inherent right of individual and collective self-defense reflected in Article 51 of the UN Charter.⁴⁸ Despite the language of Article 51 (“if an armed attack occurs”), this

45. See 18 U.S.C. § 1651 (“Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life”); 33 U.S.C. § 381 (“The President is authorized to employ so many of the public armed vessels as in his judgment the service may require, with suitable instructions to the commanders thereof, in protecting the merchant vessels of the United States and their crews from piratical aggressions and depredations”); 33 U.S.C. § 382 (“The President is authorized to instruct the commanders of the public armed vessels of the United States to subdue, seize, take, and send into any port of the United States, any armed vessel or boat, or any vessel or boat, the crew whereof shall be armed, and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel of the United States, or of the citizens thereof, or upon any other vessel; and also to retake any vessel of the United States, or its citizens, which may have been unlawfully captured upon the high seas”).

46. NWP-14M, *supra* note 41, ¶ 3.5.3; Chairman, Joint Chiefs of Staff, Instruction 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces, encl. A, ¶ 4(d) (June 13, 2005) [hereinafter CJCSI 3121.01B]; CHAIRMAN, JOINT CHIEFS OF STAFF, JOINT PUBLICATION 3-32, JOINT MARITIME OPERATIONS, at IV-22 to -23 (Sept. 20, 2021).

47. CJCSI 3121.01B, *supra* note 46, encl. A, ¶ 4(d).

48. U.N. Charter art. 51 (“[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”); OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF DEFENSE, LAW OF WAR MANUAL § 1.11.5 (rev. ed. July 2023) [hereinafter DOD LAW OF WAR MANUAL] (“The Charter of the United Nations was not intended to supersede a State’s inherent right of individual or collective self-defense in customary international law”); NWP-14M, *supra* note 41, ¶ 4.4.1; *see also* Abraham D. Sofaer, *Terrorism, the Law, and the National Defense*, 126 MILITARY LAW REVIEW 89, 94 (1989).

includes the right to exercise self-defense in response to an imminent attack.⁴⁹ In other words, there is no requirement that the threatened State absorb an aggressor's first strike before taking self-defense measures necessary to thwart an imminent attack.⁵⁰ However, to constitute legitimate self-defense under customary international law, the measures taken by a State in self-defense must be necessary⁵¹ and proportionate⁵² to the threat being addressed.⁵³

The International Court of Justice has held that, when exercising the right of self-defense, States must draw a distinction between "armed attacks" and other lesser uses of force that do not authorize States to use force in self-defense.⁵⁴ These lesser forms of the use of force may breach the principle of non-use of force and constitute an intervention in the internal affairs

49. DOD LAW OF WAR MANUAL, *supra* note 48, § 1.11.5.1; NWP-14M, *supra* note 41, ¶ 4.4.1; *see also* Lord Peter Henry Goldsmith, Attorney General, United Kingdom, Oral Answers to Questions in the House of Commons, 660 H.C. Deb §§ 370–71 (Apr. 21, 2004) ("It is argued by some that the language of Article 51 provides for a right of self-defence only in response to an actual armed attack. However, it has been the consistent position of successive United Kingdom Governments . . . that the right of self-defence under international law includes the right to use force where an armed attack is imminent. . . . Article 51 was not intended to create a new right of self-defence. Article 51 recognises the inherent right of self-defence that states enjoy under international law. . . . The charter did not therefore affect the scope of the right of self-defence existing at that time in customary international law, which included the right to use force in anticipation of an imminent armed attack.").

50. NWP-14M, *supra* note 41, ¶ 4.4.1.

51. "Necessity means the use of force is required under the circumstances—there is no other effective means to counter the hostile act or demonstrated hostile intent." *Id.*; CJCSI 3121.01B, *supra* note 46, encl. A, ¶ 4(a)(2).

52. "Proportionality requires the nature, intensity, scope, and duration of force used in self-defense not exceed what is required to respond decisively to hostile acts or demonstrations of hostile intent. Proportionality does not require the force used in response be of the same kind as used in the attack." NWP-14M, *supra* note 41, ¶ 4.4.1; *see also* CJCSI 3121.01B, *supra* note 46, encl. A, ¶ 4(a)(3) ("The use of force in self-defense should be sufficient to respond decisively to hostile acts or demonstrations of hostile intent. Such use of force may exceed the means and intensity of the hostile act or hostile intent, but the nature, duration and scope of force used should not exceed what is required.").

53. DOD LAW OF WAR MANUAL, *supra* note 48, § 1.11.5; William H. Taft IV, *Self-Defense and the Oil Platforms Decision*, 29 YALE JOURNAL OF INTERNATIONAL LAW 295, 304 (2004).

54. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 191 (June 27) ("As regards certain . . . aspects of the principle . . . [of self-defense], it will be necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms"); *id.* ¶ 247 ("So far as

of a State, “which is certainly wrongful, but is of lesser gravity than an armed attack.”⁵⁵ Nevertheless, the United States does not subscribe to the “gap theory” articulated by the Court. The United States construes the term “armed attack” consistent with the “customary practice that enables any State effectively to protect itself . . . from every illegal use of force aimed at the State.”⁵⁶

U.S. commanders have the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. This right includes the defense of other U.S. military forces in the vicinity.⁵⁷ When authorized by the President or Secretary of Defense, U.S. commanders may also defend designated non-U.S. military forces and/or designated foreign nationals and their property from a hostile act or demonstrated hostile intent.⁵⁸

A hostile act is defined as an attack or other use of force against the United States, U.S. forces, or other designated persons or property (e.g., launching a missile).⁵⁹ Hostile intent is defined as the threat of imminent use of force against the United States, U.S. forces, or other designated persons or property.⁶⁰ Imminent does not necessarily mean immediate or instantaneous. When determining whether the use of force is imminent, U.S. forces will assess all the facts and circumstances known at the time.⁶¹ This determination can be made at any level. When responding to a hostile act or demonstration of hostile intent, U.S. forces may use all necessary means available and all appropriate action to respond decisively to the hostile act or hostile intent.⁶²

In the past, U.S. naval forces have used warning zones to help ascertain whether an unidentified contact—ship or aircraft—poses an imminent

regards the allegations of supply of arms by Nicaragua to the armed opposition in El Salvador, the Court has indicated that while the concept of an armed attack includes the despatch by one State of armed bands into the territory of another State, the supply of arms and other support to such bands cannot be equated with armed attack. Nevertheless, such activities may well constitute a breach of the principle of the non-use of force and an intervention in the internal affairs of a State, that is, a form of conduct which is certainly wrongful, but is of lesser gravity than an armed attack.”).

55. *Id.* ¶ 247.

56. DOD LAW OF WAR MANUAL, *supra* note 48, § 1.11.5.2; Sofaer, *supra* note 48, 92–94.

57. CJCSI 3121.01B, *supra* note 46, encl. A, ¶ 3(a).

58. *Id.* encl. A, ¶ 3(c).

59. *Id.* encl. A, ¶ 3(e); NWP-14M, *supra* note 41, ¶ 4.4.1.

60. CJCSI 3121.01B, *supra* note 46, encl. A, ¶ 3(f); NWP-14M, *supra* note 41, ¶ 4.4.1.

61. CJCSI 3121.01B, *supra* note 46, encl. A, ¶ 3(g).

62. *Id.* encl. A, ¶ 4(a).

threat. Take, for example, the international notice to airmen (NOTAM) promulgated by U.S. forces operating in the Persian Gulf, Strait of Hormuz, Gulf of Oman, and North Arabian Sea after the Iraqi attack on the USS *Stark* (FFG 31) in May 1987 during the Iran-Iraq War.⁶³ The NOTAM warned that, given the continuing terrorist threat in the region, U.S. naval vessels would take “additional defensive precautions” and requested that aircraft “approaching U.S. naval forces establish and maintain radio contact” with U.S. forces.⁶⁴ The NOTAM further indicated that “unidentified aircraft whose intentions are unclear or who are approaching U.S. naval vessels may be requested to identify themselves and state their intentions.”⁶⁵ Additionally, to avoid an inadvertent confrontation, all aircraft “may be requested to remain well clear of U.S. vessels” and that “failure to respond to requests for identification and intention, or to warnings, and operating in a threatening manner, could place the aircraft at risk by U.S. defensive measures.”⁶⁶

These warning zones do not create a free-fire zone or kill box. An unidentified contact does not become a lawful target simply because it enters the zone. The contact may only be engaged if it commits a hostile act, demonstrates hostile intent, or has been declared a hostile force by an appropriate U.S. authority. A recent incident involving an Iranian drone illustrates this point. In late November 2023, the United States issued a NOTAM advising the international community that USS *Dwight D. Eisenhower* (CVN 69) would be conducting flight operations in the Persian Gulf. The NOTAM directed that manned and unmanned aircraft remain at least ten nautical miles from the carrier “to ensure safe flights of military and civilian aircraft.”⁶⁷ The *Eisenhower* was conducting flight operations in the Persian Gulf when it was approached by a suspected Iranian drone. Despite the NOTAM and multiple warnings, the drone approached *Eisenhower* and flew over the

63. HYDROPAC 870/87 (62), Persian Gulf—Strait of Hormuz—Gulf of Oman—North Arabian Sea (Aug. 3, 1987), reprinted in MARITIME OPERATIONAL ZONES, at C-28 (Dennis Mandsager et al. eds., rev. ed. 2013), <https://usnwc.edu/Research-and-Wargaming/Research-Centers/Stockton-Center-for-International-Law> (under “Downloads & Publications” select “Maritime Operational Zones”).

64. *Id.*

65. *Id.*

66. *Id.*

67. Ellen Mitchell, *US Warns Iran Over “Unsafe and Unprofessional” Drone Behavior in Gulf*, THE HILL (Nov. 29, 2023), <https://thehill.com/policy/defense/4334120-us-warns-iran-over-unsafe-and-unprofessional-drone-behavior-in-gulf/>.

U.S. warship, coming within 1,500 yards.⁶⁸ Even though the drone was being tracked by an armed Navy helicopter, it was not engaged.⁶⁹ U.S. Central Command did, however, issue a statement condemning the “unsafe, unprofessional, and irresponsible behavior by Iran.”⁷⁰

Nonetheless, the presence of an unknown, non-responsive contact that is closing on U.S. forces may be probative in assessing its intentions. In all the situations discussed above, U.S. forces legally acted in self-defense in shooting down the Houthi drones. Houthi rebels repeatedly threatened to target all commercial shipping associated with Israel and any warships providing protection to these ships. Several merchant vessels were attacked with ballistic missiles and drones launched from Houthi-controlled areas in Yemen. The type of drone used by the rebels—one-way attack drones—clearly posed an immediate threat to all ships in the region. Moreover, the drones failed to maintain radio contact and failed to heed warnings after closing within ten nautical miles of U.S. forces. Based on the totality of the circumstances, each U.S. commander correctly assessed that the incoming drones posed an imminent threat to their unit, as well as other U.S. forces and commercial shipping in the vicinity, and lawfully exercised their right of self-defense.

U.S. forces also acted legally in protecting foreign-flagged merchant ships that were under attack. In peacetime, ships operating beyond the territorial sea of another nation are (except in exceptional cases provided for in international treaties) under the exclusive jurisdiction of the flag State.⁷¹ Nonetheless, although the flag State is normally responsible for providing protection to vessels flying its flag on the high seas, the doctrines of self-defense and protection of nationals provide U.S. forces the authority to use proportionate force necessary to protect U.S.-flagged vessels and U.S. nationals and their property against unlawful acts of violence beyond foreign territorial seas.⁷² Similarly, the doctrine of collective self-defense authorizes U.S. forces to use proportionate force necessary to protect foreign-flagged

68. Heather Mongilio, *CENTCOM: Iranian Drone Made Unsafe Pass by USS Dwight D. Eisenhower, USS Carney Downs Houthi Missile*, USNI NEWS (Nov. 29, 2023), <https://news.usni.org/2023/11/29/iranian-drone-flew-near-uss-dwight-d-eisenhower-in-unsafe-manner-centcom-says>.

69. Randy DeSoto, *Iranian Aircraft Intrudes on USS Eisenhower, But Photo Shows What Was Right Behind It*, WESTERN JOURNAL (Dec. 5, 2023), <https://www.westernjournal.com/iranian-aircraft-intrudes-uss-eisenhower-photo-shows-right-behind/>.

70. Mongilio, *supra* note 68.

71. UNCLOS, *supra* note 35, art. 92.

72. NWP 1-14M, *supra* note 41, § 3.10.1.

vessels and foreign nationals and their property from unlawful violence (including terrorist and piratical attacks) at sea when requested by the flag State, as well as in cases where the necessity to act immediately to save human life does not allow time to obtain flag State consent.⁷³

IV. RIGHT OF SELF-HELP

To date, the United States has not conducted defensive strikes into Yemen to eliminate the launch sites being used by the Houthi rebels to attack shipping in the Red Sea. Houthi leader Abdul-Malik al-Houthi threatened to attack any U.S. asset that conducts offensive strikes in Yemen.

We will not stand idly by if the Americans are tempted to escalate further and commit foolishness by targeting our country or waging war against it. Any American targeting of our country will be targeted by us, and we will make American battleships, interests, and navigation a target for our missiles, drones, and military operations. As long as the Americans want to enter into a direct war with us, they should know that we are not those who fear them, and that they are facing an entire people.⁷⁴

Despite these threats and the possibility of escalating the Israeli-Hamas conflict, the question is whether the United States should consider such strikes from a self-defense and an economy of force perspective. Each SM-2 and Aster-15 missile used by U.S. and French warships to down a Houthi drone costs about \$2 million.⁷⁵ The KAS-04 drone costs around \$20,000.⁷⁶ Taking out one drone or missile at a time, therefore, may not be the best course of action. These individual actions in self-defense are reactive rather than proactive and give the rebels a tactical advantage. Moreover, the missiles being used by U.S. warships to intercept Houthi drones and missiles cannot

73. *Id.* § 3.10.2.

74. *Houthi Leader Threatens to Attack US Warships If Washington Targets Yemen*, REUTERS (Dec. 20, 2023), <https://www.reuters.com/world/middle-east/houthi-leader-threatens-attack-us-warships-if-washington-targets-yemen-2023-12-20/>; Howard Altman, *Red Sea Task Force Grows, How It Actually Will Work Remains Unclear*, THE WAR ZONE (Dec. 21, 2023), <https://www.thedrive.com/the-war-zone/red-sea-task-force-grows-how-it-actually-will-work-remains-unclear>.

75. *Missile Interceptors by Cost*, MISSILE DEFENSE ADVOCACY ALLIANCE (Nov. 2022), <https://missiledefenseadvocacy.org/missile-defense-systems-2/missile-defense-systems/missile-interceptors-by-cost/>.

76. Chris Gordon, *Cheap UAVs Exact High Costs*, AIR & SPACE FORCES MAGAZINE (Jan. 20, 2023), <https://www.airandspaceforces.com/article/cheap-uavs-exact-high-costs/>.

be replenished at sea—the ship must pull into a friendly port to restock, which is a time-consuming and costly evolution.⁷⁷

Generally, military action may only be taken in the territory of another State with the consent or at the invitation of that State.⁷⁸ It is also equally well settled under international law that States have an obligation “to control persons within their borders to ensure that they do not utilize their territory as a base for criminal activity.”⁷⁹ Both domestic courts and international tribunals have acknowledged this obligation. In 1887, for example, the U.S. Supreme Court held that “[t]he law of nations requires every national government to use ‘due diligence’ to prevent a wrong being done within its own dominion to another nation with which it is at peace.”⁸⁰ Similarly, the International Court of Justice has determined that every State has an “obligation not to allow knowingly its territory to be used for acts contrary to the rights

77. Anna Gordon, *What to Know About the U.S. Coalition Force in the Red Sea*, TIME (Dec. 19, 2023), <https://time.com/6549112/u-s-coalition-force-red-sea/>.

78. DOD LAW OF WAR MANUAL, *supra* note 48, § 1.11.4.3; *see also* Permanent Rep. of the United States to the U.N., Letter dated Nov. 24, 1964 from the Permanent Rep. of the United States of America to the United Nations addressed to the President of the Security Council, U.N. Doc. S/6062 (Nov. 24, 1964) (advising the Security Council that U.S. and Belgian forces had landed in Stanleyville “with the authorization of the Government of the Congo”); Letter from Davis R. Robinson, Legal Adviser, Department of State, to Professor Edward Gordon, Chairman of the Committee on Grenada Section on International Law and Practice American Bar Association on The Legal Position of the United States on the Action Taken in Grenada (Feb. 10, 1984), *reprinted in* 18 THE INTERNATIONAL LAWYER 381 (1984) (stating that the legal basis for the U.S. intervention in Grenada was based on three principles of international law, including “the lawful governmental authorities of a State may invite the assistance in its territory of military forces of other states or collective organizations in dealing with internal disorder as well as external threats”) *id.* at 382; Strategic Framework Agreement for a Relationship of Friendship and Cooperation, Iraq-U.S., Nov. 17, 2008, T.I.A.S. 09-101.1 (At the conclusion of the Second Gulf War in 2008, U.S. combat forces remained in Iraq for an additional three years with the consent of the Government of Iraq. Article 1(3) of the Strategic Framework Agreement provides that “the temporary presence of U.S. forces in Iraq is at the request and invitation of the sovereign Government of Iraq and with full respect for the sovereignty of Iraq.” Article 4 of the agreement specifically provided that “the Government of Iraq requests the temporary assistance of the United States Forces for the purposes of supporting Iraq in its efforts to maintain security and stability in Iraq, including cooperation in the conduct of operations against al-Qaeda and other terrorist groups, outlaw groups, and remnants of the former regime.”); Security and Defense Cooperation Agreement, with Annexes, Afg.-U.S., Sept. 30, 2014, T.I.A.S. 15-101 (U.S. forces also remained in Afghanistan with the consent of the host government until their withdrawal in 2021).

79. Sofaer, *supra* note 48, at 106.

80. U.S. v. Arizona, 120 U.S. 479, 484 (1887).

of other States.”⁸¹ If a State is unwilling or unable to stop armed groups from using its territory as a base of operations from which to launch attacks against another State, the aggrieved State may exercise its right of self-help and target armed groups within the territory of the unwilling State.⁸²

There are broad swathes of territory bordering the Red Sea that are not under the control of the legitimate government of Yemen or accessible to Yemeni security forces.⁸³ As a result, Yemen has been unable or unwilling to prevent the use of this territory by Houthi rebels to conduct attacks against international shipping in the Red Sea and beyond. Under these circumstances, the United States would be legally justified in using force in self-defense against Houthi launch sites in Yemen to prevent future attacks from rebel-controlled territory. A growing number of States support such self-help measures.⁸⁴

This would not be the first time U.S. forces strike land-based targets in Yemen. In October 2016, for example, Houthi rebels fired three missiles at USS *Mason* while the guided-missile destroyer was conducting a routine patrol in the Red Sea off the coast of Yemen. Although *Mason* successfully responded with appropriate countermeasures, a Pentagon statement following the attacks indicated that “USS *Mason* will continue its operations. Those who threaten our forces should know that U.S. commanders retain the right to defend their ships, and we will respond to this threat at the appropriate

81. *Corfu Channel (U.K. v. Alb.)*, Judgment, 1949 I.C.J. 4, 22 (Apr. 9).

82. Sofaer, *supra* note 48, at 108; *see also* Harold Hongju Koh, Legal Adviser, U.S. Department of State, Remarks at the Annual Meeting of the American Society of International Law: The Obama Administration and International Law (Mar. 25, 2010), <https://2009-2017.state.gov/s/l/releases/remarks/139119.htm> (“Whether a particular individual will be targeted in a particular location will depend upon considerations specific to each case, including those related to the imminence of the threat, the sovereignty of the other states involved, and the willingness and ability of those states to suppress the threat the target poses”).

83. *Mapping Territorial Control in Yemen*, THE ARMED CONFLICT LOCATION & EVENT DATA PROJECT, <https://acleddata.com/mapping-territorial-control-in-yemen/> (last visited Jan. 3, 2024).

84. A study conducted in 2016 reflects that ten States explicitly endorse the concept (United States, United Kingdom, Germany, Netherlands, Czech Republic, Canada, Australia, Russia, Turkey, and Israel); three States implicitly endorse the concept (Belgium, Iran, and South Africa); and thirteen States have used force in another State without clearly articulating their legal basis (France, Denmark, Norway, Portugal, Egypt, Iraq, Jordan, Lebanon, Colombia, Uganda, Rwanda, Ethiopia, and India). Elena Chachko & Ashley Deeks, *Which States Support the “Unwilling and Unable” Test?*, LAWFARE (Oct. 10, 2016), <https://www.lawfaremedia.org/article/which-states-support-unwilling-and-unable-test>.

time and in the appropriate manner.”⁸⁵ A few days later, a U.S. strike with Tomahawk cruise missiles destroyed the three Houthi radar sites that were used to attack Mason.⁸⁶ The U.S. strike was followed up by a statement reinforcing the right of self-defense, indicating that U.S. forces “will continue to defend freedom of navigation in this critical waterway, and we will take all necessary steps to respond to threats and defend our personnel and ships.”⁸⁷

There are growing indications that the U.S.-led coalition may be preparing to conduct strikes in Yemen against Houthi land-based targets. On January 3, 2024, the United States, joined by Australia, Bahrain, Belgium, Canada, Denmark, Germany, Italy, Japan, Netherlands, Singapore, New Zealand, and the United Kingdom, warned that the coalition would respond appropriately if the rebel group continued its illegal attacks against shipping off the Arabian Peninsula:

Ongoing Houthi attacks in the Red Sea are illegal, unacceptable, and profoundly destabilizing. There is no lawful justification for intentionally targeting civilian shipping and naval vessels. Attacks on vessels, including commercial vessels, using unmanned aerial vehicles, small boats, and missiles, including the first use of anti-ship ballistic missiles against such vessels, are a direct threat to the freedom of navigation that serves as the bedrock of global trade in one of the world’s most critical waterways.

....

Let our message now be clear: we call for the immediate end of these illegal attacks and release of unlawfully detained vessels and crews. The Houthis will bear the responsibility of the consequences should they continue to threaten lives, the global economy, and free flow of commerce in the region’s critical waterways. We remain committed to the international rules-based order and are determined to hold malign actors accountable for unlawful seizures and attacks.⁸⁸

85. U.S. DEP’T OF DEFENSE, *USS Mason Responds to Missile Threat Off Yemen’s Coast*, DOD NEWS (Oct. 12, 2016), <https://www.defense.gov/News/News-Stories/Article/Article/971904/uss-mason-responds-to-missile-threat-off-yemens-coast/>.

86. *Yemen Conflict: US Strikes Radar Sites After Missile Attack on Ship*, BBC NEWS (Oct. 13, 2016), <https://www.bbc.com/news/world-middle-east-37639565>.

87. *USS Mason Fires Missiles at Possible Missile Attack*, ABC NEWS (Oct. 15, 2016), <https://abcnews.go.com/International/missiles-fired-us-ship-off-yemen/story?id=42832766>.

88. Joint Statement from the Governments of the United States, Australia, Bahrain, Belgium, Canada, Denmark, Germany, Italy, Japan, Netherlands, New Zealand, Singapore, and the United Kingdom, WHITE HOUSE (Jan. 3, 2024), <https://www.whitehouse.gov/>

V. CONCLUSION

The Red Sea and Bab al-Mandeb Strait are two of the busiest and most strategic sea lanes in the world. Nearly eight million barrels of crude oil and fuel shipments transit the strait each day. This includes 12 percent of global seaborne-traded oil, 8 percent of liquefied natural gas,⁸⁹ and 40 percent of all Asia-Europe trade.⁹⁰ As of December 19, Houthi rebels “have launched at least 100 attacks with one-way drones and ballistic missiles, targeting 10 merchant vessels that represent more than 35 different nations.”⁹¹ Continued Houthi attacks on commercial shipping in the Red Sea “represent a direct threat to international commerce and maritime security.”⁹² These assaults also jeopardize “the lives of international crews representing multiple countries around the world”⁹³ and “pose a significant threat to the safety and security of seafarers.”⁹⁴

A joint statement issued by the United States, the European Union, NATO member States, and a group representing forty-four Allies and partner nations condemns

Houthi interference with navigational rights and freedoms in the waters around the Arabian Peninsula The numerous attacks originating from

briefing-room/statements-releases/2024/01/03/a-joint-statement-from-the-governments-of-the-united-states-australia-bahrain-belgium-canada-denmark-germany-italy-japan-netherlands-new-zealand-and-the-united-kingdom.

89. Ahmad Ghaddar, *Bab al-Mandab Shipping Lane Becomes Target as Israel Fights Hamas*, REUTERS (Dec. 18, 2023), <https://www.reuters.com/world/bab-al-mandab-shipping-lane-target-israel-fights-hamas-2023-12-12/>.

90. Courtney Bonnell, *Houthi Attacks on Commercial Ships Have Upended Global Trade in Vital Red Sea Corridor*, ASSOCIATED PRESS (Dec. 18, 2023, 2:34 PM), <https://apnews.com/article/red-sea-ship-attacks-bp-yemen-houthis-dcece18717aa59648ff9a6b04fbc798c>.

91. Megan Eckstein, Andrew Chuter & Rudy Ruitenber, *US Unveils International Force to Defend Red Sea. Here's What We Know*, DEFENSE NEWS (Dec. 19, 2023), <https://www.defensenews.com/naval/2023/12/19/us-unveils-international-force-to-defend-red-sea-heres-what-we-know/>.

92. Press Release, U.S. Central Command, *Houthi Attacks on Commercial Shipping in International Water Continue* (Dec. 3, 2023), <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3605010/houthi-attacks-on-commercial-ship-ping-in-international-water-continue/>.

93. *Id.*

94. Heather Mongilio, U.K., *American Warships Shoot Down Houthi-Launched Drones in Red Sea*, USNI NEWS (Dec. 18, 2023, 10:42 AM), <https://news.usni.org/2023/12/16/u-k-american-warships-shoot-down-houthi-launched-drones-in-red-sea>.

Houthi-controlled territories in Yemen . . . threaten international commerce and maritime security. The Houthi-led seizure of the *Galaxy Leader* on November 19 and the detention of its 25-member international crew—who remain unjustly detained—is appalling. Such behavior also threatens the movement of food, fuel, humanitarian assistance, and other essential commodities to destinations and populations all over the world. . . . There is no justification for these attacks, which affect many countries beyond the flags these ships sail under. We again call on the Houthis to release the *Galaxy Leader* crew and ship immediately and to cease additional attacks on commercial vessels in the region’s vital waterways.⁹⁵

The United States and like-minded States are considering appropriate responses to counter this growing threat to protect the free flow of global trade in waters off the Arabian Peninsula.

The shipping industry is also employing protective measures to address the threat. The world’s second largest shipping company, A.P. Moller-Maersk, paused all container ship traffic through the Red Sea until further notice following the attack on the *Maersk Gibraltar* on December 14, 2023.⁹⁶ French CMA CGM Group, the third largest shipping company in the world, Hapag-Lloyd, based in Germany, and Switzerland-based MSC, the world’s largest shipping company, followed suit the next day after Houthi missiles struck *MSC Palatium III* and *Al Jasrah*.⁹⁷ Smaller companies like Taiwan’s Yang Ming Marine Transport Corporation and Norway-based oil tanker group Frontline will also be avoiding the Red Sea.⁹⁸

95. *Joint Statement on Houthi Attacks in the Red Sea*, U.S. DEP’T OF STATE (Dec. 19, 2023), <https://www.state.gov/joint-statement-on-houthi-attacks-in-the-red-sea/>.

96. Jacob Gronholt-Pedersen, *Maersk to Pause All Container Ship Traffic Through the Red Sea*, REUTERS (Dec. 15, 2023), https://www.reuters.com/world/maersk-pause-all-container-shipments-through-red-sea-2023-12-15/?oref=newsletters_dbrief; Spencer Kimball, *Maersk Halts Red Sea Shipping Until Further Notice After Houthi Militant Attack*, CNBC.COM (Jan. 2, 2024, 12:25 PM), <https://www.cnbc.com/2024/01/02/maersk-halts-red-sea-ship-ping-until-further-notice-after-houthi-militant-attack.html>.

97. Jill Lawless, *US and Britain Say Their Navies Shot Down 15 Attack Drones Over the Red Sea*, MILITARY.COM (Dec. 16, 2023), <https://www.military.com/daily-news/2023/12/16/us-and-britain-say-their-navies-shot-down-15-attack-drones-over-red-sea.html>.

98. Ahmed Elimam, Phil Stewart & Terje Solsvik, *Vessel Attacked in Red Sea off Yemen Coast, US Blames Houthis*, REUTERS (Dec. 18, 2023), <https://www.reuters.com/world/middle-east/ukmto-ambrey-report-possible-explosion-south-yemens-port-mokha-2023-12-18/>.

MSC indicated its ships were being re-routed via the Cape of Good Hope.⁹⁹ On average, re-routing a ship via the Cape of Good Hope will extend the voyage by seven to ten days¹⁰⁰ and add about \$1 million in extra costs to a round-trip voyage from Asia to Europe.¹⁰¹ If oil tankers are diverted for an extended period of time, the price of spot crude oil could go up \$3 to \$4 per barrel.¹⁰² The attacks have additionally resulted in an increase in insurance premiums with war risk premiums rising about 0.5 to 0.7 percent of the value of the ship. Lloyd's Joint War Committee also expanded the high-risk zone in the Red Sea from 15° north to 18° north.¹⁰³ These added expenses will be passed on to consumers and could affect the global supply chain.

To address the growing threat, the United States announced on December 18, 2023, that a coalition of nations is creating a new multinational security initiative—Operation Prosperity Guardian—under the auspices of Combined Task Force 153 to protect international shipping in the Red Sea.¹⁰⁴ Participating nations include the United States, United Kingdom, Bahrain, Canada, France, Italy, Netherlands, Norway, Seychelles, and Spain, as well as other States that prefer not to be publicly named. Some members of the new task force will conduct joint patrols in the Red Sea and Gulf of Aden

99. *More Big Shipping Firms Stop Red Sea Routes After Attacks*, BBC (Dec. 16, 2023), https://www.bbc.com/news/world-middle-east-67738792?ref=newsletters_dbrief.

100. Anders Schulze et al., *Global Ocean Carriers Halt Red Sea Transits—What to Expect*, FLEXPORT (Jan. 2, 2024), <https://www.flexport.com/blog/global-ocean-carriers-halt-red-sea-transits-what-to-expect/>.

101. Peter Eavis, *Red Sea Attacks Add Another Snarl to Global Shipping*, NEW YORK TIMES (Dec. 19, 2023), <https://www.nytimes.com/2023/12/19/business/red-sea-suez-canal-ship-ping.html>.

102. Florence Tan & Lisa Barrington, *Shippers Mask Positions, Weigh Options Amid Red Sea Attacks*, REUTERS (Dec. 19, 2023), <https://www.reuters.com/world/middle-east/shippers-mask-positions-weigh-options-amid-red-sea-attacks-2023-12-19/>.

103. Joint War Committee, Lloyd's Market Assoc., Joint Committee Circular JWLA-032, JWC Listed Areas: Hull War, Piracy, Terrorism and Related Perils (Dec. 18, 2023), <https://maritimecyprus.com/wp-content/uploads/2023/12/JWLA-032-Guyana.pdf>; Jonathan Saul, *London Marine Insurers Widen High Risk Zone in Red Sea as Attacks Surge*, REUTERS (Dec. 18, 2023), <https://www.reuters.com/markets/commodities/london-marine-insurers-widen-high-risk-zone-red-sea-attacks-surge-2023-12-18/>.

104. Tara Copp & Lolita Baldor, *Pentagon Announces International Mission to Counter Attacks in Red Sea*, MILITARYTIMES (Dec. 18, 2023), <https://www.militarytimes.com/news/pentagon-congress/2023/12/18/pentagon-announces-international-mission-to-counter-attacks-in-red-sea/>.

while others will provide intelligence support.¹⁰⁵ Greece and Australia announced they would also support Operation Prosperity Guardian.¹⁰⁶ The mission of the task force is to ensure “freedom of navigation for all countries” and bolster “regional security and prosperity.”¹⁰⁷ Despite the establishment of the new coalition force, Houthi rebels remain defiant. Shortly after the U.S. announcement, a senior Houthi official issued a statement indicating that “[t]he Houthi escalation in the Red Sea will stop, when the Israeli war on the people of Gaza stops.”¹⁰⁸

The United States has requested that the UN Security Council act against the Houthi rebels under Chapter VII of the Charter. The letter from U.S. Ambassador Linda Thomas-Greenfield indicates that Houthi attacks on commercial shipping transiting international waterways threaten “navigational rights and freedoms, international maritime security, and international commerce.” To date, no action has been taken by the Security Council.¹⁰⁹ Pending a decision by the Council, actions taken by the new task force to defend coalition warships and commercial shipping threatened by attack by Houthi rebels are considered lawful and necessary uses of force to protect international commerce and restore the rules-based order in the regional maritime environment.

105. *Id.*

106. *Greece to Send a Frigate to Red Sea to Protect Shipping*, REUTERS (Dec. 21, 2023), <https://www.reuters.com/world/greece-send-frigate-red-sea-protect-shipping-2023-12-21/>; Rod McGuirk, *Australia to Send Military Personnel to Help Protect Red Sea Shipping But No Warship*, ASSOCIATED PRESS (Dec. 21, 2023, 5:10 AM), <https://apnews.com/article/red-sea-australia-international-security-force-5acf692653367a0679538ad3eae0444e>.

107. Hashem Osseiran & Camille Bas-Wohlert, *US Announces 10-Nation Coalition to Combat Houthi Attacks in Red Sea*, AGENCE FRANCE-PRESSE (Dec. 18, 2023), <https://news.yahoo.com/yemen-rebels-attack-red-sea-153625638.html>.

108. Vivian Nereim & Shuaib Almosawa, *Amid Gaza War and Red Sea Attacks, Yemen's Houthis Refuse to Back Down*, NEW YORK TIMES (Dec. 20, 2023), <https://www.nytimes.com/2023/12/20/world/middleeast/israel-hamas-war-yemen-houthis.html>.

109. Copp & Baldor, *supra* note 104.