

Houthis in Cahoots With State Actors: Accounting for Violations of Maritime Trade and International Peace and Security

(A WORK-IN-PROGRESS)

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I. INTRODUCTION

Soon after the onset of the Gaza crisis in October 2023, the Houthis in Yemeni started using force targeting vessels in the Red Sea, “one of the most important arteries in the global shipping system, with one-third of all container traffic flowing through it.”¹ While the United States and its allies established “Operation Prosperity Guardian...to protect international shipping in the Red Sea,”² there is need for a legal response that ensures a more-enduring solution to the problem. The article will explore the legality of the response to Houthi attacks on international shipping in the Red sea and argue that what while the use of force³ response can remove such threats on a provisional basis, there is need to explore ways of international accountability for the non-state actors and their sponsors at appropriate forums, including the International Tribunal of the Law of the Sea and national courts. The article will explore the legality of international responses in light of existing norms of international law on use of force, international humanitarian law, and law of the sea, among others.

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¹ Council on Foreign Relations, *How Houthi Attacks in the Red Sea Threaten Global Shipping*, available at <https://www.cfr.org/in-brief/how-houthi-attacks-red-sea-threaten-global-shipping> (last visited on Jul. 10, 2024)(noting also that “[f]earing attacks, major shippers ... announced plans to avoid the Red Sea and the Suez Canal—diverting some \$200 billion in trade” and that “[a]ny sustained disruption in trade there could send a ripple effect of higher costs throughout the world economy.”). *See also*, Center for Preventive Action, *War in Yemen*, available at <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>, (last visited on Aug. 12, 2024) (reporting that “major shipping companies have stopped using the Red Sea—through which almost 15 percent of global seaborne trade passes—and have rerouted to take longer and costlier journeys around Southern Africa instead. The situation has resulted in heightened shipping and insurance costs, stoking fears of a renewed cost-of-living crisis.”).

² Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 72 (2024).

³ It is possible to invoke the norms of use of force in relation to non-state actors—assuming the Houthis—are merely state actors. *See e.g.*, United Nations Security Council Resolution S/RES/1368 (2001) (recognizing “the inherent right of individual or collective self-defence in accordance with the Charter” and condemning “terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and regards such acts, like any act of international terrorism, as a threat to international peace and security”), available at <https://ofac.treasury.gov/media/5651/download?inline>, (last visited on Aug. 8, 2024). *See also*, United Nations Security Council S/RES/1373 (2001) (recognizing that “such acts, like any act of international terrorism, constitute a threat to international peace and security”), available at https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf, (last visited on Aug. 8, 2024).

The seriousness of this topic is underscored by the fact that even the United Nations Security Council, which is often deadlocked, adopted resolution⁴ condemning the attacks in the Red Sea, particularly those directed at its vulnerable maritime choke points of Bab-el-Mandeb strait and the Gulf of Aden, which connect it to the Mediterranean Sea and Indian Sea, respectively. The violence against commercial shipping and warships in the Red Sea has been described as “resilient” and “likely to pose a significant security challenge for the foreseeable future,”⁵ the Houthis having “attacked commercial vessels at least 53 times while threatening naval vessels in dozens of additional incidents” between October 17, 2023, and the start of May, 2024.⁶ There is need to find a more enduring solution and accountability mechanisms for the actions of the Houthis and their enablers, because the international military response, which has consisted in patrolling the Red Sea to disrupt Iranian smuggling of weapons to Houthi movement or stopping Houthi attacks from reaching their targets is at best tentative and, in any event, “essential military resources are in short supply.”⁷ The article is divided into several parts. Part II of the article will present the background to the conflict in Yemeni which the Houthis appear to have dominated, even as international recognition remains elusive for the movement. This will have implication for the movement’s accountability under international law. Part III will explore the impact of Houthi Red Sea attacks on maritime trade and the accountability of the Houthi actors as well as actors who allegedly aid and abet those attacks. Part IV will discuss the impact of the Houthi Red Sea attacks on international peace and security. Part V will deal with how to ensure accountability for the violations of international law. Lastly, Part VI will present recommendations and conclusion.

II. BACKGROUND TO THE HOUTHİ CONFLICT

Houthi attacks on maritime vessels must be discussed against the backdrop of the conflict in Yemeni specifically, and the Middle East more broadly. The current civil conflict in Yemen began in 2015,⁸ and can be traced to “the Houthi movement ... in northern region of Yemen.”⁹ Because the conflict can be characterized as both internal and international, it is necessary to begin with the causes of the conflict in the domestic context. Prior to the unified modern

⁴ United Nations Security Council, Resolution S/RES/2722(2024).

⁵ Dan Lamothe and Missy Ryan, *U.S. attempts to stop arms smuggling to Yemen with limited resources*, (Mar. 16, 2024), WASH. POST, available at <https://www.washingtonpost.com/national-security/2024/03/16/houthis-weapons-smuggling-yemen-iran/>, (last visited on Jul. 17, 2024).

⁶ Cameron Manley, *Russia may arm Houthi rebels with advanced anti-ship missiles, report says*, BUSINESS INSIDER, Jul. 20, 2024, available at <https://www.businessinsider.com/russia-may-arm-houthi-rebels-anti-ship-missiles-us-intel-2024-7>, (last visited on Jul. 20, 2024).

⁷ Dan Lamothe and Missy Ryan, *U.S. attempts to stop arms smuggling to Yemen with limited resources*, (Mar. 16, 2024), WASH. POST, available at <https://www.washingtonpost.com/national-security/2024/03/16/houthis-weapons-smuggling-yemen-iran/>, (last visited on Jul. 17, 2024).

⁸ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 5 (2019).

⁹ Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yemen: Causes and Implications*, 26 J. POL. STUD. 295, 298 (2019).

Republic of Yemen,¹⁰ Yemen was divided along tribal and religious lines,¹¹ which acted as catalysts for the regional “Saudi-Iranian geopolitical competition”¹² and the internationalized

¹⁰ Prior to the unification, Yemeni consisted of South and North Yemeni. Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yeman: Causes and Implications*, 26 J. POL. STUD. 295, 297 (2019). *See also*, Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 156 (2016) (stating that “[t]he history of modern Yemen begins in May 1990, when the Yemen Arab Republic (North Yemen) and the People's Democratic Republic of Yemen (South Yemen) united as the Republic of Yemen under President Ali Abdullah Saleh. Sanaa, formerly the northern capital, became the capital of united Yemen, while Aden, the former southern capital, became the country's economic pulse.”).

¹¹ Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yeman: Causes and Implications*, 26 J. POL. STUD. 295, 295 (2019) (noting that Yemen has “[t]wo major sects are Sunnis ... and. ... the Shias make up 45 percent of the total population, while Sunnis are 53 percent.”). By other estimates, “the Shia-Sunni divide is a reality in Yemen-an estimated 65 percent of the population is Sunni, contrasting with 35 percent Shias.” Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 156 (2016). Opponents of Iran view its support for Houthis as “as part of the comprehensive Shia agenda led by the Iranian regime. ...reviving the ancient glory of the Persian Empire or promoting a revolutionary Shia ideology.” Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 160 (2016). It is said that “because of Iranian isolation-stemming from its history, ethnic composition, religion, and politics-Tehran tries to expand its influence in the region by befriending compliant and cooperative actors.” Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 160 (2016). Meanwhile, the Saudis view the “battle against the Houthis in their own backyard as part of their struggle against Iranian expansionism and the Shias in the region.” Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 164 (2016). Indeed, when the “Houthis took control of Sanaa, Ali Reza Zakani, an Iranian member of parliament, boasted that Tehran was now in control of four Arab capitals: Baghdad, Beirut, Damascus, and Sanaa.” Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 164 (2016). Tehrani followed up with training and some level of material and weapons support for the Houthis. Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 165 (2016). The Houthis, “similar to Hamas: they receive varying degrees of resources and support from Iran.” Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 166 (2016). Moreover, “Hezbollah helped train the Houthis in the art of guerrilla warfare” and Hezbollah is Iran’s closest Lebanon proxy. Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 165 (2016). From an international relations standpoint, the Houthis movement presented itself as distinctly anti-American and Anti-Jewish as they “publicly raised the chants of "Allahu akbar, Death to America, death to Israel, curse upon the Jews, victory to Islam."” Keyhan Barzegar & Seyyed Morteza Kazemi Dinan, *Iran's Political Stance toward Yemen's Ansar Allah Movement: A Constructivist-Based Study*, 9 J. POL. & L. 77, 78 (2016). Therefore, it is unsurprising that “analysts...see Yemen as a proxy war battleground between Saudi Arabia and Iran, with the Houthis fighting on behalf of Iran,” and, by extension, against Iran’s avowed enemies—the West and Israel. Keyhan Barzegar & Seyyed Morteza Kazemi Dinan, *Iran's Political Stance toward Yemen's Ansar Allah Movement: A Constructivist-Based Study*, 9 J. POL. & L. 77, 78 (2016). It is important to note that, the “Islamic Republic of Iran as a Shiite Islamic state with Islamic ideology, claim the leadership of the Shia world and in its upstream documents and the constitution there is also special emphasis on the need to support the liberation movements and protests of oppressed nations including Shia.” Keyhan Barzegar & Seyyed Morteza Kazemi Dinan, *Iran's Political Stance toward Yemen's Ansar Allah Movement: A Constructivist-Based Study*, 9 J. POL. & L. 77, 79 (2016). In fact, “Ayatollah Ali Khamenei, the leader of

conflict.¹³ The Houthis are “part of Yemen’s Zaydi community...[who] reside in some of the harshest mountainous terrain of Northern Yemen, which has historically prevented penetration and control by any Yemeni state.”¹⁴ The Houthis are a “predominantly Zaydi Shi’a Islamic religious-political-armed movement founded in the late 1990s in the northwestern province of Sa’ada by Hussein Badreddin Al-Houthi.”¹⁵ In 2011, the Arab Spring spread to Yemeni, but former President Saley resisted the popular call for him to step aside and bring his 30-year rule to an end. When the protests turned violent, he stepped aside for his vice President, Rabbu Mansour

Iran...[likened] the invasion of Saudi Arabia to Yemen to the Israeli crimes in Palestine.” Keyhan Barzegar & Seyyed Morteza Kazemi Dinan, *Iran's Political Stance toward Yemen's Ansar Allah Movement: A Constructivist-Based Study*, 9 J. POL. & L. 77, 79 (2016). See, “Iran, where most citizens are ethnically Persian and not Arab, is the largest Shi’i country in the world, with over 90 percent of its residents identifying as such.... Iran finds itself in a unique position...whereby it can use its Shi’i character to advance its foreign policy goals. Perhaps ...Arab Shi’i communities can be considered ‘natural allies’ to Iran.” Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 140 (2016). It is also important to note the close nexus between the Shia version of Islam and political identity because in “Iran's history, particularly under the Safavid Empire (1501-1736) ... Shi’a Islam was the state religion.... Since the 1979 Revolution in Iran, the country's government has been based on guidance of Shi’i clerics.... [who] advocated for an active role of the clerics in politics.... [and the] desire to export the revolution and bring justice through Islam to all.” Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 141 (2016). Meanwhile, “[a]s more students of Shi’a jurisprudence were drawn to Iran, it grew in influence among the Arab Shi’a educated elites as well as the masses, since both groups were inspired by the perceived glory of the Iranian Revolution As Shi’a connections to Iran grew ... the Iranian state fostered (and continues to foster) these connections through civil, military, political, and education pro- grams, which can provide aid to Shi’a populations.” Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 141 (2016).

¹² Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yemen: Causes and Implications*, 26 J. POL. STUD. 295, 295 (2019).

¹³ See, Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yemen: Causes and Implications*, 26 J. POL. STUD. 295, 296 (2019) (noting that there is “an international dimension because the US, European Union and Russia are also involved.”). A non-international armed conflict (NIAC) exists where there is “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” *Prosecutor v. Tadić*, Case No. IT-94-1-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction 70 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995). On the other hand, the International Criminal Tribunal for the Former Yugoslavia stated that “an armed conflict is international if it takes place between two or more States. In addition, in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.” See, *Prosecutor v. Tadić*, Case No. IT-94-1 (Appeals Chamber), July 15, 1999, ¶ 84, <https://cld.irmct.org/assets/filings/Judgement-Tadic.pdf> (last visited on Jul. 15, 2024).

¹⁴ Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 148 (2016). There was a NIAC between the Yemen government and Houthi rebels as well as between the Saudi-led coalition and the Houthi rebels. Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 57(2019).

¹⁵ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 5 (2019).

Hadi, who promised a government of national unity, including Yemen opposition.¹⁶ But the Houthis movement, long-running insurgency,¹⁷ claimed that “political exclusion and marginalization”¹⁸ of the Houthis persisted, despite those political changes. Then the “Houthis stormed government offices in Sanaa”¹⁹ in 2014, taking advantage of the new government’s weakness,²⁰ and “ousting President Hadi to the southern port city of Aden.”²¹ In 2015, President Hadi resigned, but later rescinded his resignation.²² Regardless, the “Houthis established control over much of the north and other large population centres, while the internationally recognised government based itself in the port city of Aden.”²³ President Hadi then “requested assistance

¹⁶ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT’L SEC. J. 1, 5-6 (2019).

¹⁷ Named after their leader, al-Huthi, the Houthis had been waging a low-intensity insurgency against the Yemeni government since 2004. Fabiana Wells, Aiding and Abetting War Crimes in the Yemeni Civil War: U.S. Involvement, 10 J. GLOB. RTS. & ORG. 104, 108 (2019-2020).

¹⁸ Tom Ruys & Luca Ferro, Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen, 65 INT’L & COMP. L.Q. 61, 63-64 (2016). It is noteworthy that “[s]ince the founding of the Islamic Republic in 1979, many Arab Shi’a populations have found themselves in conflict with the governments in their own countries over a lack of rights and political representation and have found an Iran that is willing to back them in their resistance.” See, Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran’s Influence in the Arab World*, 39 WASHINGTON Q. 139, 141 (2016). In the case of Yemeni, during the political transition, “Hadi (as the uncontested, consensus candidate) was elected President by popular vote, winning 99.8% of votes on a 65% voter turnout and formed a government of national unity. The Houthis, however, were included neither in the establishment of the transitional process nor in the government and hence rejected the government, claiming that it was not representative of the entire Yemeni people.” Benjamin Nussberger, *Military Strikes in Yemen in 2015: Intervention by Invitation and Self-Defence in the Course of Yemen’s Model Transitional Process*, 4 J. ON USE FORCE & INT’L L. 90, 92 (2017) (internal references omitted). The Houthis responded by military action, which led to the occupation of significant territory in Northwest Yemeni, including the capital, Sana’a, even though the UN Security Council demanded that the Houthis withdraw from the occupied territory and recognized the exiled Hadi government as the legitimate Yemeni authority. Benjamin Nussberger, *Military Strikes in Yemen in 2015: Intervention by Invitation and Self-Defence in the Course of Yemen’s Model Transitional Process*, 4 J. ON USE FORCE & INT’L L. 90, 93-94 (2017). The internationally recognized Hadi resigned in 2022, “to make way for a new seven-member presidential council more representative of Yemen’s political factions.” Center for Preventive Action, *War in Yemen*, available at <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>, (last visited on Aug. 12, 2024).

¹⁹ Muhammad Tehsin, Asif Ali & Ghulam Qumber, Crimes in Yeman: Causes and Implications, 26 J. POL. STUD. 295, 303-304 (2019).

²⁰ Fabiana Wells, Aiding and Abetting War Crimes in the Yemeni Civil War: U.S. Involvement, 10 J. GLOB. RTS. & ORG. 104, 108 (2019-2020).

²¹ Fabiana Wells, Aiding and Abetting War Crimes in the Yemeni Civil War: U.S. Involvement, 10 J. GLOB. RTS. & ORG. 104, 108 (2019-2020).

²² Tom Ruys & Luca Ferro, Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen, 65 INT’L & COMP. L.Q. 61, 64 (2016).

²³ Maha El Dahan, Who are Yemen’s Houthis and why are they attacking ships in Red Sea?, REUTERS, available at <https://www.reuters.com/world/middle-east/who-are-yemens-houthis-why-are-they-under-attack-2024-01-12/>, (last visited on Jul. 10, 2024). President Hadi fled to Riyadh, Saudi Arabia, but ultimately never gave up power, instead called for international intervention—specifically, from members of the Gulf Cooperation Council and the League of Arab States—using all means necessary to support Yemeni against the Houthi aggression. The United Nations Security Council recognized the legitimacy of

from the Saudi-led coalition in the form of air support....This alliance allowed Hadi's government to retake Aden and other Sunni areas in Yemen."²⁴ The Saudi-led coalition carried out an aerial campaign aimed at supporting the recognized Yemeni government,²⁵ but whose apparent purpose was to "defend Sunnis and to stop Iranian expansion,"²⁶ through their proxies—the Houthis. The Saudi-led coalition was successful in Aden and other traditionally Sunni areas in southern Yemen,²⁷ but the civil war and political nightmare in Yemeni persisted. In fact, "[t]he internationally-recognised government - the Presidential Leadership Council [currently led by Rashad Muhammad al-Alimi] - is now based in Riyadh, Saudi Arabia."²⁸ Thus, the Houthis essentially established a "state within a state,"²⁹ threatening the territorial integrity of

Hadi's presidency. See, Tushar Behl & Medha Patil, *Bearing the Impetus of War in Yemen: Analysing the Saudi-Led Intervention and Its International Legal Justification*, 8 GNLU L. REV. 141, 145-146 (2021). See also, United Nations Security Council, Resolution S/RES/2216(2015), available at <https://main.un.org/securitycouncil/en/s/res/2216-%282015%29-0>, (last visited on Jul. 11, 2024).

President Hadi could legally invite foreign intervention because his government still exercised effective control over the State's territory and enjoyed international recognition. See, Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 81 (2016). Even though Hadi's government controlled only a portion of Yemeni, "it is argued that a minimum of effectiveness can be sufficient.... where the authorities retain control over a sufficiently representative part of the State territory." See, Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 82 (2016) (internal references omitted). Also, it is the case that "in a situation of grave internal turmoil between a rebel faction and the de jure regime, resulting in the latter's loss of effective control over a large part of the territory, international law maintains a presumption in favour of the established government." See, Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 82 (2016)

²⁴ Fabiana Wells, *Aiding and Abetting War Crimes in the Yemeni Civil War: U.S. Involvement*, 10 J. GLOB. RTS. & ORG. 104, 108 (2019-2020).

²⁵ Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yemen: Causes and Implications*, 26 J. POL. STUD. 295, 303-304 (2019).

²⁶ Muhammad Tehsin, Asif Ali & Ghulam Qumber, *Crimes in Yemen: Causes and Implications*, 26 J. POL. STUD. 295, 298 (2019). See also, Jill Ricotta, *The Arab Shi'a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 150 (2016) (noting that as the Houthis feel increasingly excluded from the political process, "they will turn to an outside patron to advance their cause. Iran is a clear choice, since often these groups have connections to Iran through a long history of inter- Shi'a relations" and that "Iran also has created a certain narrative... championing the oppressed of the world.").

²⁷ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT'L SEC. J. 1, 7(2019).

²⁸ BBC News, *Yemen Country Profile*, available at <https://www.bbc.com/news/world-middle-east-14704852>, (last visited on Jul. 15, 2024).

²⁹ Tushar Behl & Medha Patil, *Bearing the Impetus of War in Yemen: Analysing the Saudi-Led Intervention and Its International Legal Justification*, 8 GNLU L. REV. 141, 143 (2021). In this case, "President Hadi still asserted control over parts of Yemen, particularly in the south and east of the country. He enjoyed the support of sections of the armed forces, several governorate and tribal authorities, and the so-called popular resistance committees." Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 84 (2016). Moreover, "in spite of the significant loss of effective control, Hadi remained the undisputed legitimate president of Yemen in the eyes of the international community." Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military*

Yemeni,³⁰ but also with significant ramifications for international maritime trade, specifically, and international peace and security, more broadly.

The role of the Iranian state needs to be briefly explored. While the Houthis accused the Saudis of supporting the Yemeni government,³¹ there is “evidence...that Iran is supporting the opposing Huthi movement by providing the group with weapons.”³² It is said that “Iranian support for the Houthis seems to have increased since the group has been able to take more territory and governing responsibilities, most notably taking Sanaa, the capital, in September of 2014 and advancing towards Aden in March of 2015.”³³ Iran finds common cause with the Shia Houthis, politically, religiously, and culturally.³⁴ Acting through a third party intermediary helps Iran avoid direct confrontation or appear to be retaliating against its nemesis –the United States.³⁵ According to former Yemen President Saleh, the Iranians support the Houthis because

Intervention in Yemen, 65 INT’L & COMP. L.Q. 61, 85 (2016). While it is the case that the principles of non-intervention and self-determination “exclude military intervention by invitation in civil war,” to the extent there was a third party intervening on behalf of the Houthis, allies of Hadi could claim the right to intervene based on collective self-defense. *See generally*, Tom Ruys & Luca Ferro, Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen, 65 INT’L & COMP. L.Q. 61, 88-94 (2016).

²⁹ Tushar Behl & Medha Patil, Bearing the Impetus of War in Yemen: Analysing the Saudi-Led Intervention and Its International Legal Justification, 8 GNLU L. REV. 141, 143 (2021).

³⁰ Tushar Behl & Medha Patil, *Bearing the Impetus of War in Yemen: Analysing the Saudi-Led Intervention and Its International Legal Justification*, 8 GNLU L. REV. 141, 146 (2021) (noting that “a secessionist movement was on the rise.”).

³¹ Muhammad Tehsin, Asif Ali & Ghulam Qumber, Crimes in Yemen: Causes and Implications, 26 J. POL. STUD. 295, 303 (2019).

³² Fabiana Wells, Aiding and Abetting War Crimes in the Yemeni Civil War: U.S. Involvement, 10 J. GLOB. RTS. & ORG. 104, 110 (2019-2020).

³³ Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran’s Influence in the Arab World*, 39 WASHINGTON Q. 139, 149 (2016)

³⁴ *See*, Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran’s Influence in the Arab World*, 39 WASHINGTON Q. 139, 140 (2016) (noting that “[t]he original break between the two groups [Shia and Sunni] revolved around the question of succession after the death of the prophet Mohammed in 632 AD. Since that dispute, these two communities have lived the past 1400 years as distinct groups, creating their own schools of jurisprudence, symbols, narratives of the life of the prophet and his companions, holidays and days of mourning, and even different ways of performing prayer. This split has created two distinct cultures based in the same religion of Islam. Therefore, Shi’a from Iran can relate to their counterparts in Iraq or Bahrain more explicitly than Arab Sunnis in the same country.”). The Houthi Shi’a believe that there are only five legitimate successors (Imams) of Prophet Mohammed. *See*, Jill Ricotta, *The Arab Shi’a Nexus: Understanding Iran’s Influence in the Arab World*, 39 WASHINGTON Q. 139, 148 (2016).

³⁵ Nedim Hovic, The International Law and Politics of the Trump Administration’s Iran Policy, 10 PENN ST. J.L. & INT’L AFF. 59, 105 (2021) (noting that “Trump[administration] did authorize the targeted killing of General Qassim Soleimani, commander of the IRGC’s Quds force.”). This link is not far-fetched because when Hamas attacked Israel in October 2023, “Iran’s Islamic Revolutionary Guard Corps said ... that the Hamas terror group’s devastating attack on Israel was in revenge for the 2020 assassination of IRGC Quds Force head Qassem Soleimani in a US drone strike.” *See*, Iran: Oct. 7 attack was revenge for killing of Soleimani in 2020; Hamas: No it wasn’t, THE TIMES OF ISRAEL, Dec. 27, 2023, available at <https://www.timesofisrael.com/irans-guard-corps-hamas-oct-7-attack-was-revenge-for-killing-of-soleimani-in-2020/>, (last visited on Jul. 20, 2024).

“Iran cannot reach the USA so they settle scores with the USA in other countries, whether in Arab nations like Yemen, or otherwise.”³⁶ Iran presents itself as “the counterweight to the U.S.-backed allies that are seen as ... anti-Shi’a.”³⁷ Geopolitically, it is significant that Saudi Arabia, which opposes the Iranian-backed Houthis, is “a close ally and strategic partner of the United States, whereas Iran ... [has] close ties with Russia.”³⁸ While the United States was not part of the Saudi-led coalition, it is important to note that the U.S. offered support to those efforts.³⁹ Against that backdrop, Houthi attacks on United States or its allies are a direct extension of Iranian antagonism with the United States and its allies. Unsurprisingly, the Houthi forces have persistently “launched anti-ship cruise missile against U.S. Navy ships patrolling off the coast of Yemen.”⁴⁰ For example, “in October 2016, following the ... bombing of a funeral in Sana’a that killed 140 people ... [there were] retaliatory missile attacks by Houthi-Saleh forces against U.S. ships.”⁴¹ In the view of the Houthis, “United States, by supporting the Saudi-led coalition, could be described as a co-belligerent in the conflict.”⁴² Indeed, “the United States ... provided billions of dollar in arms sales to participating in the Saudi-led coalition that is fighting a war in

³⁶Jill Ricotta, *The Arab Shi'a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 149 (2016).

³⁷ Jill Ricotta, *The Arab Shi'a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 151 (2016).

³⁸ Valeri Modebadze, The Battle for Regional Dominance between the Kingdom of Saudi Arabia and the Islamic Republic of Iran, 4 J. LIBERTY & INT'L AFF. 66, 67 (2018).

³⁹ See, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 14(2019) (noting that “the United States announced that it would provide “logistical and intelligence support” to the Saudi-led coalition forces against the Houthis.... U.S. military assistance...[was] in the form of weapons sales and mid-air refueling.”). See also, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 13(2019) (noting that “a team of U.S. Green Berets, operating from Saudi Arabia's side of the border with Yemen in December 2017, had helped locate and destroy several ballistic missile stockpiles and launch sites belonging to the Houthis.”). Because the Saudi-led coalition conducted its intervention at the invitation of the legitimate government of Yemen, the U.S. could legally support that coalition’s efforts. *But see*, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 62(2019) (arguing that “[w]hether the provision of support implicates

Article 2(4) thus turns (again) on the scope of Yemen's consent. ... President Hadi's request to the Saudi-led coalition asked that it use “all necessary means” to combat the Houthi-Saleh alliance, a request that arguably includes the use of U.S. military assistance.... as long as U.S. actions are channeled through the states to which Yemen granted consent”). This view is supported by the fact that “in August 2017, Yemen's ambassador to the United States said, “We need the U.S. government to continue to lend its political and logistical support to the legitimate government and the Arab coalition.” Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 62(2019)

⁴⁰ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 13(2019).

⁴¹ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 15(2019).

⁴² Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 30(2019).

Yemen.”⁴³ The Saudi-led Operation Decisive Storm was “backed by logistical and intelligence support from the United States and the United Kingdom,”⁴⁴ and was supported by other Western countries,⁴⁵ although it was opposed Houthis’ supporters such as Iran and Russia.⁴⁶ Acting against the backdrop of that role of the United States and its allies, Houthis sprang into action by trying to prevent maritime vessels designated for Israel or by direct attacks on Israeli territory,⁴⁷ while trying to legitimize their actions by characterizing them as part of the collective armed response of Hamas and its allies, on the one hand, and Israel and its allies, on the other. Vessels of other allies of the United States were also targeted.⁴⁸ The Houthi attacks have not been directed exclusively at interests of the United States and its allies, because there have been cases of indiscriminate attacks on vessels flagged to nations that are not remotely aligned with the United States or its allies.⁴⁹ Thus, the Houthi-dominated conflict in Yemeni has evolved and become an internationalized use of force, targeting not just the United States and its allies, but virtually every other seafaring nation’s vessels traversing the Red Sea.

⁴³ Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 31(2019).

⁴⁴ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 62 (2016).

⁴⁵ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 67-68 (2016) (noting the support of France and Canada).

⁴⁶ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 68-69 (2016) (noting the condemnation of Operation Decisive Storm by Iran and Russia’s claim that the operation was contrary to international law.). It is to be noted, however, that the “Saudi-led coalition strikes against Yemen were portrayed as part of a proxy war between the two regional rivals”—Iran and Saudi Arabia. *See*, Dina Esfandiary & Ariane Tabatabai, *Yemen: An Opportunity for Iran-Saudi Dialogue?*, 39 WASHINGTON Q. 155, 155 (2016).

⁴⁷ The Washington Post, *Houthis fire missile from Yemen into central Israel, warn of more strikes*, (reporting that “Yemen’s Houthi militia claimed responsibility for a surface-to-surface missile attack targeting central Israel on Sunday morning, marking a continued escalation between the Iranian-backed group and Israel.”), available at <https://www.washingtonpost.com/world/2024/09/15/israel-gaza-yemen-missile-houthis/>, (last visited on Sep. 17, 2024).

⁴⁸ CBS News, *Ship hit by suspected Houthi missiles in Red Sea, leaving vessel "not under command," U.K. military says*, (reporting that “The first ship sunk by a Houthi attack was a British-owned vessel struck.”), available at <https://www.cbsnews.com/news/houthi-missile-attack-red-sea-yemen-vessel-not-under-command-uk-military-says/> (last visited on Sep. 17, 2024).

⁴⁹ *See e.g.*, Jon Gambrell, *A missile strike from Yemen’s Houthi rebels sets a cargo ship on fire in Gulf of Aden*, ASSOCIATED PRESS (reporting that “[t]he Houthis have launched more than 50 attacks on shipping,” including on the “the Verbena... a Palauan-flagged, Ukrainian-owned and Polish-operated bulk cargo carrier that had docked in Malaysia and was on its way to Italy carrying wood.”), available at <https://apnews.com/article/yemen-houthi-rebels-attack-shipping-israel-hamas-war-c1d09506a359d15da43f0144ba52e856>, (last visited on Sep. 17, 2024).

III. IMPACT ON INTERNATIONAL MARITIME TRADE

A. RESPONSIBILITY OF HOUTHİ ACTORS AND YEMENİ

Houthi actors are sympathetic to the Palestinian Hamas movement—another Iranian proxy.⁵⁰ Accordingly, the Houthis claimed common cause with Hamas when “[o]n 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.”⁵¹ Allying themselves with the Hamas cause, Houthi actors attacked commercial vessels and warships—including those flagged to the United States—in the Red Sea,⁵² as well as targets in Israel.⁵³ Ships of other nationalities that were also indiscriminately targeted even if they had no “links to Israel,”⁵⁴ even though the purported objective of the Houthis was to target “Israeli-linked merchant shipping “until the aggression” stops and the siege of Gaza is lifted.”⁵⁵ It is important to note that “the port city of Aden is the entry point to the Red Sea which is an essential route for any trade in which Saudi is a part of.”⁵⁶ Unsurprisingly, those attacks have had a staggering impact on international maritime trade.⁵⁷ From the perspective of international law, it is important to identify probable bases of liability for such attacks.

⁵⁰ It is noteworthy that the Yemeni and the Hamas are just a few examples of cases that “fall under Iran’s regional network of proxy forces opposed to Israel and the U.S. military presence in the Middle East.” See, Dan Lamothe and Missy Ryan, *U.S. attempts to stop arms smuggling to Yemen with limited resources*, (Mar. 16, 2024), WASH. POST, available at <https://www.washingtonpost.com/national-security/2024/03/16/houthis-weapons-smuggling-yemen-iran/>, (last visited on Jul. 17, 2024).

⁵¹ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 50 (2024).

⁵² See e.g., Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 50-51 (2024) (noting that “[o]n 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)”).

⁵³ See, Wafaa Shurafa, Ahmed Al-Haj and Jack Jeffery, Israeli military says it has struck Houthi targets in Yemen in response to attacks, ASSOCIATED PRESS, (Jul. 20, 2024), available at <https://apnews.com/article/israel-palestinians-gaza-baby-strike-survive-786ff10ee4c3534024833ebbf586fad6>, (last visited on Jul.20, 2024)(Israeli government stating that “[t]he Houthis attacked us over 200 times.”).

⁵⁴ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 55-56 (2024) (internal references omitted).

⁵⁵ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 50-53 (2024)

⁵⁶ Arpit Agrawal, Saudi Arabia and Yemen Conflict: A Humanitarian Crisis, 2 JUS CORPUS L.J. 860, 862 (2022).

⁵⁷ Jon Gambrell, US military acknowledges Yemen’s Houthi rebels shot down 2 MQ-9 Reaper drones, ASSOCIATED PRESS, available at <https://apnews.com/article/yemen-houthi-rebels-american-mq9-reaper-drones-2ca2dc1c5316ca5473c3843d97780b2b>, (last visited on Sep. 17, 2024) (noting that Houthis were continuing “campaign to target ships traveling through the Red Sea as U.S.-led airstrikes pound their positions in Yemen. That’s imperiled a waterway that typically sees \$1 trillion of trade pass through it.”).

One basis of international liability for the Houthi attacks might be maritime terrorism.⁵⁸ Maritime security is governed by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA).⁵⁹ SUA obliges states party to prosecute or extradite suspects of maritime violence,⁶⁰ which includes “hijacking, attacking ships or committing other types of violence that endanger navigation.”⁶¹ In particular, SUA provides that “[a]ny person commits an offence if that person unlawfully and intentionally: seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship.”⁶² However, neither Iran nor Yemen are signatories of SUA.⁶³ Moreover, SUA, like the United Nations Convention on the Law of the Sea (UNCLOS), adheres to the principle of exclusive jurisdiction of the flag state,⁶⁴ and it does not provide universal jurisdiction,⁶⁵ which could provide a remedial measure where the coastal states—such as Yemen—have weak governance.⁶⁶

Under international law, all “coastal states must ensure that foreign vessels can safely enjoy freedom of navigation within their waters. Failure to suppress maritime terrorism would thus constitute a breach of the coastal state's international obligations.”⁶⁷ In *Corfu Channel* case

⁵⁸ U.S. Department of State, Houthi Attacks on International Shipping, available at <https://www.state.gov/houthi-attacks-on-international-shipping/#:~:text=The%20Houthis'%20attacks%20are%20driving,places%20where%20it's%20needed%20most> (last visited on Jul. 20, 2024) (noting that “Houthis are behaving like a terrorist organization – attacking civilians, civilian shipping, and innocent mariners.”).

⁵⁹ Maritime security is governed by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, S. Treaty Doc. No. 101-1, 1678 U.N.T.S. 222.

⁶⁰ Maritime security is governed by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, S. Treaty Doc. No. 101-1, 1678 U.N.T.S. 222, arts. 3-5.

⁶¹ Cian Moran, Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation, 15 EUR. J. LEGAL STUD. 9, 19 (2023).

⁶² Maritime security is governed by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, S. Treaty Doc. No. 101-1, 1678 U.N.T.S. 222, art. 3(1)(a) & (b).

⁶³ United Nations, <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800b9bd7>, last visited on Jul. 10, 2024.

⁶⁴ Maritime security is governed by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, S. Treaty Doc. No. 101-1, 1678 U.N.T.S. 222, art 6(1) (providing that “[e]ach State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed: against or on board a ship flying the flag of the State at the time the offence is committed.”).

⁶⁵ Cian Moran, Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation, 15 EUR. J. LEGAL STUD. 9, 21 (2023).

⁶⁶ Cian Moran, Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation, 15 EUR. J. LEGAL STUD. 9, 24 (2023).

⁶⁷ Cian Moran, Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation, 15 EUR. J. LEGAL STUD. 9, 16 (2023). It is important to note that the UNCLOS “definition of piracy excludes terrorism, as terrorism is politically motivated.... pirates and maritime terrorists have a key difference, in that pirates are motivated by profit while terrorists have ideological goals.” Cian Moran, Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation, 15 EUR. J. LEGAL STUD. 9, 18 (2023).

the United Kingdom alleged that Albania had violated the right of innocent passage of its warships by mining the Corfu Channel and threatening to fire at them from the coast. The ICJ recognized that

[I]n accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.⁶⁸

Another potential basis of liability would be for aiding and abetting maritime piracy. The Houthis appear to be working in cahoots with pirates, potentially aiding and assisting the commission of piratical acts. In one instance, pirates boarded a commercial ship in the Red sea, and then the rescuing U.S. warship came under attack by a missile, purportedly from the Houthis.⁶⁹ Under UNCLOS, “[e]very State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.”⁷⁰ Freedom of navigation is the foundation of maritime trade.⁷¹ When navigation is impeded, it can be very costly for international trade.⁷² However, freedom of navigation can be threatened by piracy and/or any act of state that impedes the rightful exercise of the right. Maritime trade can be impeded by piracy; but it can also be impeded by actors who attack merchant vessels for other motives.

Piracy is defined *inter alia* as

⁶⁸ *Corfu Channel* (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgment of April 9th, 1949: I.C.J. Reports 1949, P. 4, 28.

⁶⁹ Jake Epstein, *A US Navy captain was in disbelief when his destroyer came under fire from missiles never before seen in combat while dealing with pirates*, BUSINESS INSIDER, available at <https://www.businessinsider.com/us-warship-saved-tanker-crew-pirate-attack-under-missile-threat-2024-7>, (last visited on Jul. 16, 2024).

⁷⁰ United Nations Convention on the Law of the Sea, Dec. 10, 1982
1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 90.

⁷¹ Cian Moran, *Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation*, 15 EUR. J. LEGAL STUD. 9, 11 (2023) (noting that “[s]eafaring is a major industry, comprising for over 90% of global trade.... Freedom of navigation is key in making this global trade possible”).

⁷² See e.g. Cian Moran, *Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation*, 15 EUR. J. LEGAL STUD. 9, 14 (2023) (observing that “[t]he importance of freedom of navigation for global trade is evidenced by the *Ever Given*’s grounding in the Suez Canal in March 2021, which cost an estimated \$9.6bn a day, with every further week of closure reducing annual global trade growth by 0.2-0.4%.”) (internal references omitted). See also, Brendan Cole, *Russian Support of Houthis Backfires on Putin’s Fleet*, NEWSWEEK, available at https://www.newsbreak.com/share/3497740520602-russian-support-of-houthis-backfires-on-putin-s-fleet?_f=app_share&s=i0&pd=0IPWxa6T&lang=en_US&send_time=1718888309&trans_data=%7B%22platform%22%3A0%2C%22cv%22%3A%2224.24.0.46%22%2C%22languages%22%3A%22en%22%7D&sep=ns_foryou_blend_exp_24q3-v1%2Cns_foryou_model_exp_24q3-v6, last visited on Jul. 10, 2024 (reporting that “[m]any shipping firms have responded to the assaults by diverting vessels from the Suez Canal to the longer route around Africa, disrupting global trade with delayed deliveries and higher costs.”).

[A]ny 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 or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.⁷³

The crime of piracy is punished universally because it is an “offence against the law of nations...an offence against the universal law of society, a pirate being deemed an enemy of the human race.”⁷⁴ Indeed, under UNCLOS, “[a]ll States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”⁷⁵ U.S. courts, for example, have recognized that “[f]or centuries, pirates have been universally condemned as *hostis humani generis*—enemies of all mankind—because they attack vessels on the high seas, and thus outside of any nation's territorial jurisdiction, without pretense of state authority, irrespective of the target vessel’s nationality, and with devastating effect to global commerce and navigation.”⁷⁶ To the extent that Houthis are the de facto authorities in Yemeni, they trigger international liability for Yemeni. Yemeni is a state party to UNCLOS.⁷⁷ However, it is noteworthy that one of the elements⁷⁸ of piracy is that it must be committed for ‘private ends,’ in other words, “that is, not acting as authorized agents of a government.”⁷⁹

⁷³ United Nations Convention on the Law of the Sea, Dec. 10, 1982
1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 101(a).

⁷⁴ *United States v. Smith*, 18 U.S. 153, 161, 5 L. Ed. 57 (1820). See also, *Inst. of Cetacean Resch. v. Sea Shepherd Conservation Soc'y*, 153 F. Supp. 3d 1291, 1308 (W.D. Wash. 2015) (holding that “the international norm against financing piracy and unsafe navigation is sufficiently specific; universal, and obligatory to sustain a cause of action” under the Alien Tort Statute.

⁷⁵ United Nations Convention on the Law of the Sea, Dec. 10, 1982
1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 100. The reason for making the crime of piracy subject to universal jurisdiction is that “the depredations of pirates operating in areas and circumstances ...[make] their strict control almost impossible.” See, Douglas Grant Sherlock, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 17 (1968).

⁷⁶ *United States v. Hasan*, 747 F. Supp. 2d 599, 602 (E.D. Va. 2010), *aff'd sub nom. United States v. Dire*, 680 F.3d 446 (4th Cir. 2012)

⁷⁷ United Nations Treaty Collection, Status of Treaties, available at https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en, last visited on Jul. 8, 2024.

⁷⁸ International Law Commission, Draft Articles on States Responsibility, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, (last visited on Jul. 8, 2024), art. 9 (providing that “[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.”). See also, *Kenneth P. Yeager v. The Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 17, at p. 104¶ 43. (1987) (holding that in the absence of official authorities, the Revolutionary Guards or “Komitehs” “at least exercised elements of governmental authority in the absence of official authorities, in operations of which the new Government must have had knowledge and to which it did not specifically object.”).

⁷⁹ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 59 (2024).

Private ends do not necessarily have to be financial, but can be “revenge, hatred, or other personal or political reasons.”⁸⁰ Still, Yemeni and Houthi actors could be liable as aiders and abettors of the actions of real pirates, who in this case appear to be Somali by nationality.

There is evidence that Houthi actors and Yemeni could be said to be aiding and abetting piracy. For example, “[o]n 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 ship and its twenty-five-member crew ...[were] held hostage in Yemen following the piratical attack. A second pirate attack occurred a week later.”⁸¹ The ships that are the target of attacks usually operate in “international shipping lane in the Red Sea.”⁸²

B. RESPONSIBILITY OF HOUTHAI AIDERS AND ABETTORS

It may not be just the Houthis who may be liable for attacks on maritime vessels, but their aiders and abettors as well, particularly the Iranian state. Iran signed UNCLOS and, as a minimum, it would be obligated not to defeat its object and purpose.⁸³ To establish the potential liability for the Iranian state, it is imperative to distinguish two which have been developed in international jurisprudence: the effective control and overall control tests. In the *Nicaragua* case,⁸⁴ the ICJ had to determine whether the violations of human rights and humanitarian law were attributable to the United States. The sub-issue was whether “whether or not the relationship of the *contras* to the United States Government was so much one of dependence on the one side and control on the other that it would be right to equate the *contras*, for legal purposes, with an organ of the United States Government, or as acting on behalf of that Government.”⁸⁵ The ICJ enunciated the ‘effective control’ test, stating,

“[E]ven the general control by the respondent State over a force with a high degree of dependency on it, would not ... mean, without further evidence, that the United States directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant State. Such acts could well be committed by members of the *contras* without the control of the United States. For this conduct to give rise to legal responsibility of the United States, it would in principle have to

⁸⁰ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 60 (2024).

⁸¹ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 51 (2024).

⁸² Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 52 (2024).

⁸³ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force Jan. 27, 1980, art. 18.

⁸⁴ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, p. 14.

⁸⁵ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 109.

be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed.”⁸⁶

To reach the conclusion that the U.S had no effective control of the *contras*, the ICJ reasoned that the

United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the *contras*, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself, on the basis of the evidence in the possession of the Court, for the purpose of attributing to the United States the acts committed by the *contras* in the course of their military or paramilitary operations in Nicaragua.⁸⁷

The overriding criterion of the effective control test is “the necessity of detailed direction.”⁸⁸

In the *Tadić* decision,⁸⁹ however, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) found the ‘effective control’ test to be unpersuasive because it was inconsistent with the logic of state responsibility⁹⁰ which, in imputing conduct to the State, makes distinctions with respect to acts of private individuals, unorganized group of individuals, and organized -hierarchically structured private groups. According to the ICTY, “[the requirement of international law for the attribution to States of acts performed by private individuals is that the State exercises control over the individuals.”⁹¹ However, the ICTY indicated that the degree of control depends on the circumstances of each case,⁹² and “generic authority over the individual would not be sufficient to engage the international responsibility of the State.”⁹³ According to the ICTY, for private individuals and unorganized groups of private individuals, it is necessary to prove that the “State exercised some measure of authority over those individuals but also that it issued specific instructions to them concerning the performance of the acts at issue.”⁹⁴ Thus, in some cases, such as where a state engaged an individual to carry

⁸⁶ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986*, p. 14, ¶ 115.

⁸⁷ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986*, p. 14, ¶ 115.

⁸⁸ Robert Heinsch, Conflict Classification in Ukraine: The Return of the "Proxy War"?, 91 Int'l L. Stud. Ser. US Naval War Col. 323, 343 (2015).

⁸⁹ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999) [hereinafter *Tadić* decision], available at <https://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>, (last visited on Jul. 6, 2024).

⁹⁰ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 116.

⁹¹ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 117.

⁹² *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 117.

⁹³ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 118.

⁹⁴ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999),

out certain illegal activities in the territory of another state, it may be necessary to establish that the state issued “specific instructions” to the individual or retroactive approval.⁹⁵ According to the ICTY, “[a] similar situation may come about when an unorganised group of individuals commits acts contrary to international law.”⁹⁶ The effective control test is most effective with respect to private individuals and unorganized groups of individuals because it is “control that extends to the issuance of specific instructions concerning the various activities of the individuals in question.”⁹⁷ Under the ICTY’s overall control test,

The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group.⁹⁸

The ICTY was of the view that the overall control test applied to organized - hierarchically structured private groups. According to the ICTY,

One should distinguish the situation of individuals acting on behalf of a State without specific instructions, from that of individuals making up *an organised and hierarchically structured group*, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels. Plainly, an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority. Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group. Consequently, for the attribution to a State of acts of these groups it is sufficient to require that the group as a whole be under the overall control of the State.⁹⁹

The ICTY explained why the overall control is necessary in the case of an organised and hierarchically structured group, saying,

“[T]he situation of an organised group is different from that of a single private individual performing a specific act on behalf of a State. In the case of an organised group, the group normally engages in a series of activities. If it is under the overall control of a State, it must perforce engage the responsibility of that State for its

⁹⁵ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 118.

⁹⁶ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 118.

⁹⁷ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 125. See also, Robert Heinsch, *Conflict Classification in Ukraine: The Return of the "Proxy War"?*, 91 Int'l L. Stud. Ser. US Naval War Col. 323, 342 (2015).

⁹⁸ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 137.

⁹⁹ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int'l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 120.

activities, whether or not each of them was specifically imposed, requested or directed by the State.¹⁰⁰

In the *Kenneth P. Yeager* case,¹⁰¹ the Iran-United States Claims Tribunal (“Iran Claims Tribunal”) held that the illegal acts of the Iranian “revolutionary guards” or “revolutionary Komitehs” were attributable to Iran, simply because, although the guards were private hierarchically organized groups, they were *de facto* organs of the state,¹⁰² and it didn’t matter that Iran had not issued any specific instructions to the Guards.¹⁰³ It is important to note that “[a]lthough still controversial in some ways, the overall control test nevertheless has become the accepted standard in international courts and tribunals when it comes to the classification of armed conflicts.”¹⁰⁴

Thus, it could be argued that the Houthis, as an organized group, could be under the overall control of the Iranian state.

The question remains, however, as to whether the provision of arms—without more—could be the basis of liability. The ICJ indicated in one case that it did not “believe that the concept of “armed attack” includes ... also assistance to rebels in the form of the provision of weapons or logistical or other support.”¹⁰⁵ But in that case, the ICJ was using the effective control test. Iran could be liable alongside with the Houthi actors, if the overall control test is used, if Iran provides support that is ‘essential’ to the group’s ability to commit an armed attack.¹⁰⁶ Iran could be liable for a form of indirect armed aggression. For example, “[o]n November 29, 2023, USS Carney again engaged an Iranian-produced KAS-04 drone in international airspace over the Red Sea ... [the U.S.] believed the drone, ... originated in Houthi-controlled Yemen.”¹⁰⁷ If evidence of substantial involvement¹⁰⁸ of Iran in the attacks in the Red

¹⁰⁰ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int’l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶122.

¹⁰¹ *Kenneth P. Yeager v. Islamic Republic of Iran*, 17 Iran-U.S. Claims Tribunal Reports, 1987, vol. IV, p. 92).

¹⁰² *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int’l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶126.

¹⁰³ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int’l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶127.

¹⁰⁴ Robert Heinsch, Conflict Classification in Ukraine: The Return of the “Proxy War”?, 91 Int’l L. Stud. Ser. US Naval War Col. 323, 344 (2015).

¹⁰⁵ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 196.

¹⁰⁶ Tushar Behl & Medha Patil, Bearing the Impetus of War in Yemen: Analysing the Saudi-Led Intervention and Its International Legal Justification, 8 GNLU L. REV. 141, 151(2021). *See also*, Tom Ruys & Luca Ferro, Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen, 65 INT’L & COMP. L.Q. 61, 75 (2016) (noting that “[i]t has been argued that foreign support must be essential in the armed group’s ability to commit (what could be qualified as) an armed attack, for the right to self-defense to be triggered.”

¹⁰⁷ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 52 (2024).

¹⁰⁸ The ICJ seems to accept self-defense in the context of “substantial involvement” by a third state. *See*, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 195. *See also*, International Law Commission (ILC), Draft

Sea can be proved, then that would trigger the right to use collective self-defense even against Iran, as well as liability for acts of the Houthis which are attributable to Iran.¹⁰⁹ That means that Iran must have a role in “role in organizing, coordinating or planning the military actions of the Houthis, in addition to purely material and operational support.”¹¹⁰ It would have to be proved that the Iranians also knew and specifically intended that their support for the Houthis would lead to violation of international law.¹¹¹ As the ICJ indicated,

[T]he question arises whether complicity presupposes that the accomplice shares the specific intent (*dolus specialis*) of the principal perpetrator. But whatever the reply to this question, there is no doubt that the conduct of an organ or a person furnishing aid or assistance to a perpetrator of the crime of genocide cannot be treated as complicity in genocide unless at the least that organ or person acted knowingly, that is to say, in particular, was aware of the specific intent (*dolus specialis*) of the principal perpetrator. If that condition is not fulfilled, that is sufficient to exclude categorization as complicity.¹¹²

Articles on State Responsibility, art. 16, cmt.5, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, (last visited on Jul. 16, 2024) (stating, that “[t]here is no requirement that the aid or assistance should have been essential to the performance of the internationally wrongful act; it is sufficient if it contributed significantly to that act.”). See also, Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR), ¶ 8.6.4, available at <http://www.etan.org/etanpdf/2006/CAVR/08-Annexe1-Responsibility-and-Accountability.pdf> (last visited on Jul. 17, 2024) (stating that “the support given by the United States to Indonesia was crucial to the invasion and continued occupation of Timor-Leste. This was so not only because weapons and equipment purchased from the United States played a significant role in Indonesian military operations in Timor, but also because it never used its unique position of power and influence to counsel its Indonesian ally against embarking on an illegal course of action.”).

¹⁰⁹ International Law Commission (ILC), Draft Articles on State Responsibility, art. 8, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, (last visited on Jul. 16, 2024) (providing that “[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”). In *Military and Paramilitary Activities in and against Nicaragua*, the ICJ held that the United States was liable for “United States was responsible for the “planning, direction and support” given to the *contras*. *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 86. Even without giving direction, Iran could be liable under the ‘overall control’ test. *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, T 84 (Int’l Criminal Tribunal for the former Yugoslavia July 15, 1999), ¶ 137.

¹¹⁰ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 77 (2016).

¹¹¹ International Law Commission (ILC), Draft Articles on State Responsibility, art. 16 cmt.4, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, (last visited on Jul. 16, 2024) (maintaining that “[i]f the assisting or aiding State is unaware of the circumstances in which its aid or assistance is intended to be used by the other State, it bears no international responsibility.”).

¹¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, ¶ 421.

Whether Iran knew that its support would be used in furtherance of the attacks can be gathered from the surrounding circumstances.¹¹³ The United States Department of Defense compiled a report which shows significant weapons support to the Houthi rebels.¹¹⁴

IV. IMPACT ON INTERNATIONAL PEACE AND SECURITY

Apart from liability for violations of maritime law, Yemeni, Houthi actors and their aiders and abettors could also be liable under the law of use of force and international humanitarian law. The Yemeni conflict has not only had an impact on international peace and security in an already highly volatile Middle East, it is also threatening to become a truly global, as opposed to just regional, conflict.¹¹⁵ The United States has engaged drones and missiles fired by Houthis in the direction of Israel, “purportedly based on the right of collective self-defense.”¹¹⁶ While the Houthi actors and their aiders and abettors claim that they are acting in self-defense or collective defense of Palestine,¹¹⁷ they could in fact be said to be engaged in armed attacks on other states.

¹¹³ Corfu Channel case, Judgment of April 9th, 1949: I.C.J Reports 1949, P. 4 ¶¶ 1 & 2 (concluding that that the Albanian government “must have known” about the illegal act because “[t]he laying of a minefield in these waters could hardly fail to have been observed by the Albanian coastal defences.”).

¹¹⁴ United States Department of Defense, Seized At Sea: Iranian Weapons Smuggled to the Houthis, available at https://www.dia.mil/Portals/110/Documents/News/Military_Power_Publications/Seized_at_Sea.pdf, (last visited on Jul. 17, 2024)(indicating that “[b]etween 2015 and 2024, the United States and its partners have interdicted at least 20 Iranian smuggling vessels, seizing ballistic, cruise, and surface-to-air missile (SAM) components, antitank guided missiles (ATGMs), unmanned aerial vehicles (UAVs), and thousands of assault rifles, rocket components, and other illicit weapons destined for the Houthis” and that “[a]s of 30 April 2024, the Houthis... [had] used Iran-supplied ballistic and cruise missiles to conduct ... at least 56 attacks targeting ships in the Red Sea and Gulf of Aden.”). It is important to note, however, that “[w]hen Houthi fighters seized Yemen’s capital, Sanaa, in 2014, they inherited an array of weaponry, including North Korean and Soviet-era scud missiles, Soviet-era surface-to-air missiles, and Chinese anti-ship missiles.” Lamothe and Missy Ryan, *U.S. attempts to stop arms smuggling to Yemen with limited resources*, (Mar. 16, 2024), WASH. POST, available at <https://www.washingtonpost.com/national-security/2024/03/16/houthis-weapons-smuggling-yemen-iran/>, (last visited on Jul. 17, 2024).

¹¹⁵ Jon Gambrell, US military acknowledges Yemen’s Houthi rebels shot down 2 MQ-9 Reaper drones, ASSOCIATED PRESS, available at <https://apnews.com/article/yemen-houthi-rebels-american-mq9-reaper-drones-2ca2dc1c5316ca5473c3843d97780b2b>, (last visited on Sep. 17, 2024) (noting that the Houthis “shot down two American MQ-9 Reaper drones in under a week, ... further highlighting the regional spread of the Israel-Hamas war.”)

¹¹⁶ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 51 (2024).

¹¹⁷ According to the ICJ, collective self-defense requires that there is an armed attack, and that the victim State calls for military support. See, *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*. *Merits, Judgment*. I.C.J. Reports 1986, p. 14, ¶¶ 195 and 199. Moreover, it is necessary that the target of the attack must immediately report the attack to the UNSC. In this case, those requirements appear to be met because the Houthis did not only launch armed attacks internally, they continued to attack other countries and President “Hadi expressly declared that his country was the victim of ‘aggression’ and specifically requested military assistance.”). Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 72 (2016).

This is because each vessel on the high seas constitutes an territorial extension of its flag state and is subject to its exclusive jurisdiction.¹¹⁸ Each flag state “assume jurisdiction under its internal law over each ship flying its flag.”¹¹⁹ Self-defense is an exception to freedom of the high seas,¹²⁰ as well as the right of hot pursuit.¹²¹ With respect to armed attacks, states could justify their response as individual self-defense or collective defense.¹²² With respect to Iran, Iran might invoke the ICJ’s refusal to hold that “in customary international law, the provision of arms to the opposition in another State constitutes an armed attack on that State.”¹²³ But the Houthis are not an opposition groups in the states to which the vessels are registered. The ICJ holds that “the concept of an armed attack includes the despatch by one State of armed bands into the territory

¹¹⁸ United Nations Convention on the Law of the Sea, Dec. 10, 1982

1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 92(1) (providing that “Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.” See also, Douglas Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 23 (1968) (stating that “[a]ny visitation, molestation, or detention of vessels bearing the flag of a friendly State by force, or by the exhibition of force, is in derogation of the sovereignty of that State.”)

¹¹⁹ United Nations Convention on the Law of the Sea, Dec. 10, 1982

1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 94(2)(b).

¹²⁰ Douglas Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 21 (1968) (noting that “right of self-defensive action upon the high seas, and even within the territory of a foreign power, undoubtedly exists; but it will also be seen that its exercise is limited to cases of grave and sudden emergency.”) (internal citation omitted).

¹²¹ Douglas Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 16 (1968). Self-defense is an exception to the prohibition of hot pursuit into a sovereign territory. See, Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 97 (1968) (maintaining that hot pursuit is permissible where a “State either cannot because of strength or geographical remoteness, or will not for political reasons, prevent or stop its territory being used as a haven to facilitate private persons making raids on and committing depredations” and that the “right of Hot Pursuit by which a state justifies the transgression of the boundaries of a neighbouring state in pursuit of marauders who have committed crimes within its territory is based upon the right of self-defence.”). In those circumstances, “a State suffering the attacks of armed bands from across its borders is left with only the measure of pursuing such forces to destruction within the neighbour State’s territories in order to end the menace.” Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 103 (1968). The justification in such cases is that the “State might not be justified in protesting since the violation of its borders by pursuers could best have been avoided had its sovereign power been adequate.” Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 97 (1968). Thus, “this doctrine would permit preventive action where an armed band is mounting an attack from territory in immediate proximity to that of the intended victim. The State against which action is taken must have failed or be unable to use its legal powers to restrain the attack in preparation, and the acts of self-defence must have the limited object of prevention and be reasonably proportionate to the dangers presented by the situation.” Grant Sherlok, *The Doctrine of Hot Pursuit in International Law*, 7 MIL. L. & L. WAR REV. 7, 98 (1968).

¹²² Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945, art. 51 (providing that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense 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.”).

¹²³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 230.

of another State.”¹²⁴ The ICJ distinguishes between “the most grave forms of the use of force (those constituting an armed attack) from other less grave form,”¹²⁵ with the later potentially constituting a violation of the principle of non-interference in the internal affairs of a state.¹²⁶

Whether the self-defense response is legal under international law also depends on whether the response was necessary (to protect the state’s essential security interests) and proportionate,¹²⁷ that is, the state invoking self-defense must use only measures which are proportional to the armed attack and necessary to respond to it.”¹²⁸ In this case, U.S. forces “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.”¹²⁹ With respect to foreign-flagged vessels, the

[D]octrine of collective self-defense authorizes U.S. [and other] forces to use proportionate force necessary to protect foreign-flagged 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.¹³⁰

To the extent that the Houthis have effective control of a significant portion of Yemeni territory, Yemeni’s international obligations are triggered, particularly the “obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”¹³¹ At the time when Yemen was unable to carry out its domestic and international responsibilities,¹³² actions

¹²⁴ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 247.

¹²⁵ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 191.

¹²⁶ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945, art.2(7); Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 54.

¹²⁷ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 194 (holding that “whether the response to the attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence.”)

¹²⁸ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 176.

¹²⁹ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 65 (2024).

¹³⁰ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 65 (2024).

¹³¹ *Corfu Channel* (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgment of April 9th, 1949: I.C.J. Reports 1949, P. 4, 22.

¹³² See, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT'L SEC. J. 1, 4 (2019) (noting that “[a] January 26, 2018, report by the United Nations Panel of Experts on Yemen declared that “[a]fter nearly three years of conflict, Yemen, as a State, has all but ceased to exist.”)

taken under Operation Prosperity Guardian conducted by U.S. and its allies can be considered to be a “lawful and necessary uses of force to protect international commerce,”¹³³ and thus justified individual or collective self-defense.¹³⁴ Operation Prosperity Guardian may not have had the sanction of the United Nations Security Council, but there is emerging practice of the UNSC of implicitly retroactively acquiescing in regional operations where the UNSC as in the case of Kosovo and Saudi Arabia.¹³⁵ Similarly, it is arguable that Operative Decisive Storm, which lasted

¹³³ Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 73 (2024).

¹³⁴ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945, art. 51. *See also*, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT'L SEC. J. 1, 62 (2019) (noting with respect to the “[t]he one direct use of force by the United States against the Houthis [which] took place after the Houthis fired on U.S. Navy ships in 2016... use of force was justified as an act of self-defense.”)

¹³⁵ After the Saudi Arabia-led Operation Decisive Storm was launched on March 26, 2015, to restore the legitimate Yemen government, the UNSC adopted resolution S/RES/2216 (2015) on April 14, 2015, in which it reiterated its “support for the efforts of the Gulf Cooperation Council” and deplored the attempt by the “Houthis to take actions that are within the authority of the legitimate Government of Yemen.” *See* United Nations Resolution, Resolution S/RES/2216 (2015) available at <https://documents.un.org/doc/undoc/gen/n15/103/72/pdf/n1510372.pdf?token=WJ0fmKSBDd9gau0stZ&fe=true>, (last visited on Jul.12, 2024). Similarly, even though NATO acted without prior authorization of the UN Security Council for its action in Kosovo, when it came to setting up the vote on resolution S/RES/1244(1999)— setting up the United Nations Interim Administration Mission in Kosovo (UNMIK) as a transitional international civil and military presence--the vote was 14-0, with China abstaining. United Nations Security Council Resolution, available at [https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1244\(1999\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1244(1999)&Language=E&DeviceType=Desktop&LangRequested=False), (last visited on Jul. 12, 2024). *See also*, Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 61 (2016) (noting the acquiescence of the United Nations Security Council). *See also*, Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 69(2016) (noting that Operation Decisive Storm was “only addressed at the level of the UN Security Council on 14 April 2015, i.e., almost three weeks after it was launched.... [without] any explicit or implicit criticism of the operation.”).

until April 22, 2015,¹³⁶ was a case of intervention by invitation¹³⁷ or collective defense,¹³⁸ given that the legitimate Yemeni government had been overthrown but it had not been successfully replaced by another government, and yet the Gulf Cooperation Council and the deposed government took efforts to get a resolution from the United Nations.¹³⁹ Regardless, the Houthis appear to have established de facto control and that may have triggered international obligations of the state of Yemeni, making it liable, once again, for any violations of the use of force and international humanitarian law. Any actions in response to actions by the United States and its allies must therefore be consistent with those norms. Those actions, just like actions of the United States and its allies undertaken as self-defense against Yemeni-under-Houthi-control and its backers, particularly Iran, must be necessary and proportionate.¹⁴⁰ It is likely that the United

¹³⁶ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 65 (2016).

¹³⁷ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 80 (2016) (stating that the “general rule, whereby States can request foreign military assistance without violating Article 2(4) of the UN Charter, is commonly referred to as the ‘intervention by invitation’ doctrine.”). *See also*, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, ¶ 246 (stating that “it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is *already allowable at the request of the government of a State*, were also to be allowed at the request of the opposition.”) (italicization added). It is important to note, however, that “[t]he consent exception has some additional qualifiers that are important in the Yemen context. Consent is limited to particular conduct by another State...to the extent that the conduct remains within the limits of the consent given. Hence an intervening state can only carry out those acts consented to by the recipient of the intervention.” Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 60 (2019). In the case of Yemen and consent to intervention, “[i]t does not appear that the government withdrew consent for air operations,” although it may have withdrawn its consent with respect to ground operations if carried out after February 7, 2017. Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 60-61 (2019).

¹³⁸ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945, art. 51 (providing that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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.”).

¹³⁹ See United Nations Resolution, Resolution S/RES/2216 (2015) available at <https://documents.un.org/doc/undoc/gen/n15/103/72/pdf/n1510372.pdf?token=WJ0fmKSBDd9gau0stZ&fe=true>, (last visited on Jul. 12, 2024) (acknowledging the letter from the President of Yemeni which informed the Council that he had requested the Gulf Cooperation Council and the League of Arab States to protect Yemen by all measures necessary, including military intervention, from the continuing aggression of the Houthis.).

¹⁴⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 176 (underlining that “self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law.”). To establish necessity, it must be shown that “the act undertaken seeks solely to halt or repel the armed attack, and when there are no peaceful alternatives, such as diplomatic efforts, available.” *See*, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, *Yemen: Is the U.S. Breaking the Law*, 10 HARV. NAT’L SEC. J. 1, 34 (2019). With regard to proportionality, force used in self-defense is legal “only to the extent that it is required to repel the armed attack and to restore the security of the party attacked.” Oona A. Hathaway,

States and its allies would be successful in their invocation of self-defense whether actual or anticipatory.¹⁴¹ To the extent that acts of piracy or armed attacks have been conducted by Houthi agents—with Houthis exercising elements of governmental authority—or by Iran through Houthis,¹⁴² as their proxies,¹⁴³ any state can respond to enforce international law.¹⁴⁴ Indeed, invoking self-defense and collective self-defense,¹⁴⁵ U.S. or countries, have targeted Houthi radar sites in Yemeni which have been used to target vessels in the Red Sea,¹⁴⁶ on the ground that they impeded freedom of navigation and/or where used to launch armed attacks on U.S. or other foreign-flagged vessels in the Red Sea. By contrast, it is unlikely that Yemeni-under-Houthi-control and its aiders and abettors would be successful in their invocation of the right of self-defense or collective self-defense, given that the Hamas attacks have largely been seen as unprovoked, unnecessary and disproportionate.

Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 34, fn. 159(2019) (internal references omitted). *See also*, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I. C.J. Reports 2003, p. 161, ¶76 (holding that “there is no evidence that the United States complained to Iran of the military activities of the platforms, in the same way as it complained repeatedly of minelaying and attacks on neutral shipping, which does not suggest that the targeting of the platforms was seen as a necessary act.”). With respect to proportionality, courts look at the scale of the self-defense force used in relation to the act against which it is used. *See*, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I. C.J. Reports 2003, p. 161, ¶77(holding that there was lack of proportionality given the “scale of the whole operation...[a]s a response to the mining, by an unidentified agency, of a single United States warship, which was severely damaged but not sunk, and without loss of life.”).

¹⁴¹ Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61,78 (2016) (noting that “states have increasingly embraced the view that Article 51 UN Charter allows for anticipatory self-defence against 'imminent' threats of attack.”).

¹⁴² The ICJ seems to accept self-defense in the context of “substantial involvement” by a third state. *See*, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* Merits, Judgment. I.C.J. Reports 1986, p. 14, ¶ 195.

¹⁴³ Jill Ricotta, *The Arab Shi'a Nexus: Understanding Iran's Influence in the Arab World*, 39 WASHINGTON Q. 139, 150 (2016) (stating that “the Houthis are ... considered Iranian proxies without question.”)

¹⁴⁴ United Nations Convention on the Law of the Sea, Dec. 10, 1982

1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 101(a) (providing, “[o]n the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed.”).

¹⁴⁵ *See e.g.*, Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa T. Yamamoto, Yemen: Is the U.S. Breaking the Law, 10 HARV. NAT'L SEC. J. 1, 5 (2019) (noting that “Yemen...suffered [an] “armed attack” by organized non-state actor groups and therefore has a right of self-defense against them under international law.”).

¹⁴⁶ *See e.g.*, Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 69 (2024) (observing that “a U.S. strike with Tomahawk cruise missiles destroyed the three Houthi radar sites that were used to attack Mason,” a U.S. guided-missile destroyer).

V. HOLDING PERPETRATORS OF THE VIOLATIONS OF INTERNATIONAL LAW ACCOUNTABLE

Assuming that there is liability for the Houthi actors, Yemeni and their aiders and abettors, it becomes necessary to discuss the plausibility for accountability mechanisms in that context. More recent reports indicate that the Houthi movement is “functioning now as the de facto government overseeing much of Yemen.”¹⁴⁷ *De facto* governments can be liable in international law, even absent international recognition.¹⁴⁸ In some cases, “the territorial state is not responsible for the acts themselves because it cannot control the acts of groups on its territory.”¹⁴⁹

To the extent that Houthis have exercised elements of governmental authority, Houthi actors who bear the greatest responsibility for attacks on vessels of other countries could be held liable for the crime of aggression and violations of other norms of international humanitarian law. If they are deemed to be only private actors, it would be hard to hold them liable for the crime of aggression. The amendment to the Rome Statute of the International Criminal Court provides that:

“[C]rime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.... “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.¹⁵⁰

¹⁴⁷Dan Lamothe and Missy Ryan, *U.S. attempts to stop arms smuggling to Yemen with limited resources*, (Mar. 16, 2024), WASH. POST, available at <https://www.washingtonpost.com/national-security/2024/03/16/houthis-weapons-smuggling-yemen-iran/>, (last visited on Jul. 17, 2024). After the Houthis took control of the capital of Yemeni, they “pronounced the dissolution of Parliament and the establishment of a ‘presidential council’.... Hadi was removed as head of state.” Benjamin Nussberger, *Military Strikes in Yemen in 2015: Intervention by Invitation and Self-Defence in the Course of Yemen's Model Transitional Process*, 4 J. ON USE FORCE & INT’L L. 90, 95 (2017).

¹⁴⁸ *The Tinoco Arbitration: Arbitration Between Great Britain and Costa Rica*, Opinion and Award of William H. Taft, Sole Arbitrator, Washington, D.C., Oct. 18, 1923, 18 American Journal of International Law 147 (1924), available at <https://www.ilsa.org/Jessup/Jessup12/Tinoco%20Claims%20Arbitration.pdf> (last visited on Apr. 5, 2024)(holding that “non-recognition loses something of evidential weight on the issue with which those applying the rules of international law are alone concerned.”).

¹⁴⁹ Mary Ellen O’Connell, *Lawful Self-Defense to Terrorism*, 63 U. PITT. L. REV. 889, 900-901(2002). See also, Raul Pedrozo, *Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula*, 103 Int’l L. Stud. Ser. US Naval War Col. 49, 68 (2024) (observing that “[i]f 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.”).

¹⁵⁰ International Criminal Court, *Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression*, available at https://asp.icc-cpi.int/sites/asp/files/asp_docs/RC2010/AMENDMENTS/CN.651.2010-ENG-CoA.pdf, (last visited on Aug. 8, 2024).

There are many tribunals that could be used to ensure accountability. The International Court of Justice could be used, but the International Tribunal on the Law of the Sea (ITLOS) could also have jurisdiction, if parties agree to submit their disputes to ITLOS.¹⁵¹ Another tribunal that could be relevant is the International Criminal Court. It is unlikely that the ICC would have jurisdiction unless the matter is referred by the United Nations Security Council. If these avenues prove impracticable, a new judicial institution, probably established under the auspices of the United Nations Security Council and/or the United Nations General Assembly, could have jurisdiction over allegations of violations of international law by Yemeni, Houthi actors and their aiders and abettors. The U.N. Security Council could address the maritime issues triggered by the Houthi attacks in the Red Sea as a threat to international peace and security¹⁵²—avoiding the issue of exclusive jurisdiction of the flag or coastal state¹⁵³—but that depends on whether all permanent members of the UNSC are onboard.¹⁵⁴ Indeed, on June 27, 2024, the

¹⁵¹ See, United Nations Convention on the Law of the Sea, Dec. 10, 1982 1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art.299(2) (providing that “[n]othing in this section impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.”).

¹⁵² United Nations Security Council, Resolution S/RES/2722(2024) available at <https://documents.un.org/doc/undoc/gen/n24/009/28/pdf/n2400928.pdf?token=g3a1JhIFhtLr9oHmLB&fe=true> (last visited on Jul. 10, 2024) (recognizing that Houthi attacks “undermine...regional peace and security.”).

¹⁵³ Cian Moran, Navigating between Scylla and Charybdis: International Law, Maritime Security and Freedom of Navigation, 15 EUR. J. LEGAL STUD. 9, 23 (2023). The coastal state may not exercise its criminal jurisdiction with respect to conduct which takes place aboard a vessel, unless the effects of that conduct extend to the coastal state. See, United Nations Convention on the Law of the Sea, Dec. 10, 1982 1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS], art. 27(1)(a).

¹⁵⁴ Brendan Cole, *Russian Support of Houthis Backfires on Putin’s Fleet*, NEWSWEEK, available at https://www.newsbreak.com/share/3497740520602-russian-support-of-houthis-backfires-on-putin-s-fleet? f=app_share&s=i0&pd=0IPWXa6T&lang=en_US&send_time=1718888309&trans_data=%7B%22platform%22%3A0%2C%22cv%22%3A%2224.24.0.46%22%2C%22languages%22%3A%22en%22%7D&sep=ns_foryou_blend_exp_24q3-v1%2Cns_foryou_model_exp_24q3-v6, last visited on Jul. 10, 2024 (reporting that “Russia is closely aligned with Tehran, and its vessels had been sailing through the area, ... warships passed the Bab el-Mandab Strait into the Red Sea without incident.... Russia condemned the U.S. and the U.K. for strikes against the Houthi militia, for its attack on ships passing through the Red Sea.”). See also, David Brennan, *Putin Mulls Arming Houthis With Cruise Missiles: Report*, NEWSWEEK, available at https://www.newsbreak.com/share/3511570708210-putin-mulls-arming-houthis-with-cruise-missiles-report? f=app_share&pd=0IPWXa6T&lang=en_US&send_time=1719886387&trans_data=%7B%22platform%22%3A0%2C%22cv%22%3A%2224.26.1.23%22%2C%22languages%22%3A%22en%22%7D&sep=ns_d_s_url-v3%2Cns_foryou_blend_exp_24q3-v1%2Cns_foryou_model_exp_24q3-v6&s=i0, (last visited on Jul. 10, 2024) (reporting that “[t]here are indications that Russian President Vladimir Putin is considering supplying the Iran-aligned Yemeni Houthi movement with anti-ship ballistic cruise missiles...Moscow has been coordinating with the Houthis as part of its growing alignment with Iran, with the Kremlin seeking new and deeper alliances among anti-Western powers.”). Russia’s motive for using the Houthi as a third intermediary to target U.S. interests be “response to Biden quietly green-lighting Ukraine’s use of US-supplied weapons on Russian territory.” Cameron Manley, *Russia may arm Houthi rebels with advanced anti-ship missiles, report says*, BUSINESS INSIDER, Jul. 20, 2024,

UNSC adopted a resolution in which it demanded that “the Houthis immediately cease all attacks against merchant and commercial vessels,”¹⁵⁵ but China and Russia abstained.¹⁵⁶ It is yet to be seen whether China and Russia would go along with the rest of the permanent members of UNSC when the international community seeks to ensure that their allies in the Middle East account for violations of international law.

VI. RECOMMENDATIONS AND CONCLUSION

Non-forcible measures to respond to the attacks on maritime trade in the Red Sea need to be pursued. This is because it is impracticable to pursue a long term and expensive strategy that would involve a collation of navy forces to prevent the incessant, persistent, unrelenting attacks perpetrated by the Houthi actors and their aiders and abettors.¹⁵⁷ The alternative is to ensure that those responsible for violations of international law do not continue to act with impunity and that means that the international community must send a clear message that there will be accountability. This article has attempted to establish that Yemeni, which is under the effective control of Houthi actors, could be liable for the unprovoked use of force on sea faring vessels, that the Houthi actors could also be liable for violations of international law, along with their aiders and abettors—particularly the Iranian state, which appears to have overall control over the Houthi actors. It would be possible for those actors and states to be held liable by different international judicial institutions, including the ICJ, ICC, or a new court established by the United Nations and/or the United Nations General Assembly.

available at <https://www.businessinsider.com/russia-may-arm-houthi-rebels-anti-ship-missiles-us-intel-2024-7>, (last visited on Jul. 20, 2024).

¹⁵⁵ United Nations Security Council, Resolution S/RES/2739(2024), available at <https://documents.un.org/doc/undoc/gen/n24/187/24/pdf/n2418724.pdf?token=2mur22JHQjyHWSkYpT&fe=true> (last visited on Jul.10, 2024).

¹⁵⁶ United Nations, *Security Council demands Houthis cease attacks in the Red Sea*, available at <https://news.un.org/en/story/2024/06/1151586> (last visited on Jul. 10, 2024).

¹⁵⁷ Raul Pedrozo, Protecting the Free Flow of Commerce from Houthi Attacks off the Arabian Peninsula, 103 Int'l L. Stud. Ser. US Naval War Col. 49, 69 (2024) (noting that a “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”)