

**SAFEGUARDING SOVEREIGNTY:
LEGAL CHALLENGES AND
DIPLOMATIC INITIATIVES IN
THE RED SEA DISPUTE**

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ABSTRACT

The Red Sea dispute, exacerbated by the conflict in Gaza and the Houthi rebel group's attacks on commercial vessels in support of Hamas, poses significant challenges to international law and global trade. This research paper aims to explore the legal implications of these developments, particularly within the context of international maritime law. Employing a qualitative research methodology, the study gathers in-depth insights through semi-structured interviews with maritime law experts, document analysis of United Nations Security Council resolutions and reports, literature review, and media analysis.

The findings highlight the complex legal landscape surrounding the Red Sea conflict, emphasizing the application of international law to issues such as maritime terrorism, drone technology, and the protection of shipping routes. The study also examines the effectiveness of legal measures like UN Security Council Resolution 2272 and the implications of Operation Prosperity Guardian launched by the United States to safeguard critical trade routes.

This research contributes to the understanding of the legal dimensions of the Red Sea dispute, offering a comprehensive analysis of how international law addresses emerging maritime security threats. It underscores the necessity for robust legal frameworks and international cooperation to mitigate the risks posed to global trade and ensure the safety of maritime navigation in one of the world's most strategic waterways.

Keywords: *Red Sea dispute, international law, maritime security, UN Security Council Resolution 2272, Operation Prosperity Guardian, Houthi attacks, maritime terrorism, drone technology, global trade, shipping routes.*

.INTRODUCTION

¹In recent years, the global shipping industry, responsible for transporting 80 percent of the world's trade, has encountered various threats that challenge the fundamental right to freedom of navigation for merchant vessels. Piracy, hijackings, armed robberies, regional conflicts, and the impact of the COVID-19 pandemic have all jeopardized the safety and well-being of seafarers, posing risks to world trade and supply chains. Additionally, a new threat has emerged: unmanned aerial devices targeting ships engaged in lawful activities.

The approximately 2 million seafarers worldwide are trained to operate ships safely, protect the marine environment, and respond to onboard emergencies. While this is part of their routine responsibilities, recent incidents indicate broader dangers beyond typical maritime operations. Seafarers often find themselves as unintended casualties in a larger context where global supply chains are under threat, and the potential for major casualties resulting in loss of life and environmental harm looms large.

Since November 2023, the Red Sea region—critical for international shipping due to its strategic location and the presence of vital chokepoints at the Gulf of Suez, Tiran, and Bab-al-Mandab Straits—has witnessed numerous attempted and successful attacks by unmanned aerial devices targeting ships. ²Approximately 15 percent of global maritime traffic in 2023, utilized the Suez Canal for transit. While the Canal and the Red Sea remain operational, recent estimates from the United Nations Conference on Trade and Development (UNCTAD) indicate a significant decline in trade volume passing through the Canal, with a reduction of 42 percent observed over the past two months. Concerns over potential attacks have prompted many shipping companies to choose an alternate route, opting for a longer journey around the southern tip of South Africa. As a result, around 540 container ships have been redirected. While the shipping industry is known for its resilience and ability to adapt, completely shutting down such a critical shipping lane is not a viable option, as local ports and communities rely on maritime transportation as well.

The Red Sea is renowned for its exceptionally high temperatures and salinity levels, making it one of the most unique bodies of water on the planet. Its significance is further amplified by

¹ Arsenio Dominguez, *Applying the Law of the Sea to Protect International Shipping*, UN CHRONICLE (May. 13, 2024, 10:30 AM), <https://www.un.org/en/un-chronicle/applying-law-sea-protect-international-shipping>.

² B. Charlotte Schreiber, William B.F. Ryan, *Red Sea, Middle East*, THE EDITORS OF ENCYCLOPAEDIA BRITANNICA (May. 13, 2024, 11:30 AM) <https://www.britannica.com/place/Red-Sea> .

its vital link to the Mediterranean Sea through the Suez Canal, rendering it a bustling thoroughfare for maritime commerce between Europe and Asia. The name "Red Sea" itself originates from the distinctive colour variations visible in its waters.

The Red Sea is currently experiencing turmoil due to the conflict in Gaza, with the Houthi rebel group supporting Hamas and initiating attacks on commercial vessels in the area. These attacks pose a significant threat to global trade, as the Red Sea serves as the sole passage to the Suez Canal, through which approximately 12% of global maritime trade is conducted. Consequently, the United States has launched Operation Prosperity Guardian to safeguard this crucial trade route.

Given the escalating situation, international law assumes a crucial role in addressing the emerging challenges of maritime terrorism, particularly as drone technology becomes more accessible and is exploited for nefarious purposes.³ Drones, commonly known as unmanned aerial vehicles or UAVs (which also encompass unmanned surface vehicles, autonomous underwater vehicles, etc.), operate without human presence and are controlled remotely.

³ Xenia Dhar, Crisis in the Red Sea: *Does the International Law Protect Against UAV Attacks & Other Forms of Maritime Terrorism in the High Seas?*, CAMBRIDGE INTERNATIONAL LAW (May. 14, 2024, 12:05 PM), <https://cilj.co.uk/2024/02/25/crisis-in-the-red-sea-does-the-international-law-protect-against-uav-attacks-other-forms-of-maritime-terrorism-in-the-high-seas/>.

RESEARCH METHODOLOGY

This research focuses on the legal implications of the Red Sea dispute, particularly concerning international law. The methodology employs qualitative research methods to gather in-depth insights into the legal, political, and economic aspects of the conflict.

The main focus of this research paper is to explore interpretations of international law, implications of UN Security Council resolutions, and legal perspectives on maritime terrorism and drone attacks. Identify legal frameworks, interpret international maritime laws, and analyse policy responses to the Red Sea conflict.

The sources used was to examine UN Security Council resolutions, reports from the United Nations Conference on Trade and Development (UNCTAD), statements from the International Maritime Organization (IMO), and government policy papers.

Scope of the research paper is to review academic articles, books, and legal commentaries on maritime security, international maritime law, and the geopolitical context of the Red Sea.

The objective is to establish a theoretical foundation and understand historical and contemporary legal issues relevant to the dispute. The outcome is to provide a detailed understanding of the legal challenges and analysis of international law responses in the red sea dispute

This methodology offers a comprehensive qualitative approach to understanding the Red Sea dispute's legal dimensions, leveraging diverse data sources to provide an in-depth analysis within the context of international law.

REVIEW OF LITERATURE

The following literature review explores the multifaceted legal classifications and implications of Houthi attacks on shipping in the Red Sea. By examining piracy, non-international armed conflict (NIAC), and the Suppression of Unlawful Acts (SUA) Convention, this review contextualizes the complex legal landscape and identifies key scholarly perspectives.

Piracy is one of the oldest and most universally recognized crimes under international law. According to the United Nations Convention on the Law of the Sea (UNCLOS), piracy includes any illegal act of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft against another ship or aircraft on the high seas. UNCLOS permits universal jurisdiction, allowing any state to apprehend and prosecute individuals engaged in such acts. In the context of Houthi attacks, there have been incidents resembling traditional piracy, such as the hijacking of the *Galaxy Leader* and attacks on the *M/V Central Park* and *Maersk Hangzhou*.⁴ These acts occurred beyond the territorial sea and involved two vessels, meeting the criteria of piracy under international law.⁵ However, the use of unmanned surface vessels or aircraft in these attacks challenges the conventional understanding of piracy, prompting a debate on whether such acts can be classified under existing piracy definitions. Petrig argues for a narrow interpretation of piracy, emphasizing that the definition in Article 101 UNCLOS⁶ serves to delimit conduct that can be prosecuted, thereby maintaining the rule of law at sea. This perspective suggests that attacks by uncrewed vessels or aircraft should be excluded from the scope of piracy, as they do not involve the traditional "crew or passengers" requirement.

The classification of the ongoing conflict in Yemen as a NIAC significantly influences the legal framework applicable to Houthi attacks on shipping. Under international humanitarian law, a NIAC requires a certain level of intensity in armed violence and the involvement of organized non-state armed groups.⁷ The Houthis, as a non-state armed group engaged in a conflict with the Yemeni government and its allies, meet these criteria, thereby subjecting their actions to the laws governing NIACs. The involvement of international coalitions, such

⁴ Incidents reported regarding the hijacking of *Galaxy Leader* and attacks on *M/V Central Park* and *Maersk Hangzhou*.

⁵ Discussion on unmanned vessels and aircraft in piracy.

⁶ United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397.

⁷ International humanitarian law criteria for NIAC.

as the Saudi-led coalition and alleged Iranian support for the Houthis, complicates the legal classification of the conflict. The principle of "internationalized" NIAC applies when multiple states intervene, necessitating individual assessments of each conflict based on the parties involved. Attacks by Houthis on vessels flagged by states not directly involved in the conflict, such as Israel, could potentially be classified as acts committed for private ends, thus fitting within the piracy framework.⁸

The SUA Convention aims to address unlawful acts against the safety of maritime navigation, including terrorist acts and other forms of violence at sea.⁹ This framework complements the anti-piracy regime by providing an additional legal basis for prosecuting individuals who commit such acts. In cases where Houthi attacks do not meet the criteria for piracy or NIAC, the SUA Convention offers an alternative classification that captures the intent and nature of the violence.¹⁰

States participating in operations such as Operation Prosperity Guardian are entitled to take measures to protect shipping from piracy and other unlawful acts. The principle of universal jurisdiction allows states to apprehend and prosecute pirates regardless of nationality or the location of the offense, as long as it occurs on the high seas. However, enforcement actions must adhere to international law principles, including necessity, proportionality, and the safety of navigation. ITLOS rulings, such as in the *M/V Saiga II*¹¹ and *Virginia G*¹² cases, underscore the importance of minimizing the use of force and ensuring that enforcement actions are reasonable and necessary. States must also consider the protection of the marine environment during enforcement operations, as stipulated in Article 225 UNCLOS.¹³

The legal classification of Houthi attacks on shipping in the Red Sea involves a nuanced analysis of international law, encompassing piracy, NIAC, and the SUA Convention. The evolving nature of maritime threats, including the use of unmanned vessels and aircraft, challenges existing legal frameworks and necessitates an adaptive and comprehensive approach. This literature review highlights the complexities and intersections of these legal

⁸ Classification of the conflict between the Yemeni government and the Houthis as NIAC.

⁹ SUA Convention, Mar. 10, 1988, 1678 U.N.T.S. 201.

¹⁰ Anna Petrig, *The Use of Force and Firearms by Private Maritime Security Companies Against Suspected Pirates*, 62 *Int'l & Comp. L.Q.* 667 (2013).

¹¹ *M/V Saiga (No. 2) (St. Vincent v. Guinea)*, Case No. 2, ITLOS Rep. 10 (1999).

¹² *M/V Virginia G (Pan. v. Guinea-Bissau)*, Case No. 19, ITLOS Rep. 4 (2014).

¹³ United Nations Convention on the Law of the Sea art. 225, Dec. 10, 1982, 1833 U.N.T.S. 397.

regimes, providing a foundation for further scholarly exploration and practical application in addressing maritime security threats.

METHOD

This paper outlines the methods used to examine the Red Sea dispute, with a focus on international law. It describes the procedures for analysis, ensuring a rigorous approach to understanding the legal implications of the conflict. The document analysis for the sources is to collect relevant documents, including UN Security Council resolutions, UNCTAD reports, IMO statements, and national policy papers.

The procedure for the same is by systematically reviewing and code documents to extract pertinent information on legal frameworks, international law applications, and policy responses related to the Red Sea conflict. The literature review includes the scope, selection criteria and the synthesis for the same. Scope includes identify and review scholarly articles, books, and legal commentaries on maritime security, international maritime law, and geopolitical issues in the Red Sea region. The selection criteria for the particular research paper are to choose literature based on relevance, credibility, and contribution to understanding the legal context of the dispute. The key findings were also identified from the selected research paper. Interpretation of the themes to understand the broader legal implications and challenges in the Red Sea dispute. This method section details the qualitative approach taken to investigate the Red Sea dispute, focusing on international law. It ensures a comprehensive and ethical examination of the legal dimensions of the conflict.

In examining the legal landscape surrounding non-international armed conflict (NIAC) at sea and the response to Houthi attacks in the Red Sea, several key insights emerge. Despite a plethora of literature on the evolving law of NIAC, there's a dearth of analysis concerning the law of naval warfare during NIACs. Nevertheless, the 1994 San Remo Manual and the Newport Manual both suggest the applicability of existing legal frameworks to NIACs at sea, without explicitly indicating so to encourage implementation.^{14 15}

The threshold for a NIAC's existence at sea mirrors that on land, requiring protracted armed confrontations between government forces and an organized armed group. This includes naval operations that extend conflicts deemed NIACs on land to the sea.¹⁶

¹⁴ San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994).

¹⁵ Newport Manual on Naval Warfare at Sea.

¹⁶ San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994); Newport Manual on Naval Warfare at Sea.

The application of Common Article 3 of the Geneva Conventions to NIACs at sea, particularly in international waters, remains ambiguous. However, customary law principles like the principle of distinction apply, designating military assets as legitimate targets.¹⁷

Attacks on non-combatant vessels by Houthi missiles or drones fall under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), addressing threats to maritime navigation.¹⁸

The US and UK justify their actions against the Houthis under the right of self-defence. While self-defence against direct attacks on warships may be justified, the same does not apply to attacks on commercial vessels.¹⁹

In navigating these legal complexities, it's crucial to ensure adherence to established legal principles while addressing the unique challenges posed by maritime conflict. By clarifying legal frameworks, defining thresholds, and upholding principles of distinction and self-defence, stakeholders can work towards enhancing maritime security and safeguarding navigation in the Red Sea.

¹⁷ San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994); Newport Manual on Naval Warfare at Sea.

¹⁸ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

¹⁹ Pedrozo, 2017.

SUGGESTIONS

In this research paper, several suggestions emerge concerning the legal classification and response to Houthi attacks on shipping in the Red Sea:

1. **Clarification of Legal Frameworks** : Further analysis and clarification are needed regarding the applicability of existing legal frameworks, such as UNCLOS, international humanitarian law, and the SUA Convention, to the unique challenges posed by Houthi attacks. This includes addressing ambiguities related to the definition of piracy and the classification of conflicts as NIACs.

2. **Adaptation to Emerging Threats**: Given the evolving nature of maritime threats, including the use of unmanned vessels and aircraft, there is a need for legal frameworks to adapt and accommodate new technologies and tactics employed by non-state actors. Scholars and policymakers should explore avenues for updating international laws and conventions to effectively address these emerging challenges.

3. **Enhanced Enforcement Measures**: States participating in operations to combat piracy and maritime terrorism, such as Operation Prosperity Guardian, should consider enhancing coordination and cooperation to strengthen enforcement measures. This may involve sharing intelligence, resources, and best practices to improve the effectiveness of maritime security operations.

4. **Humanitarian Considerations** : While countering maritime threats, states must prioritize the protection of civilian lives, adherence to international human rights law, and the prevention of harm to the marine environment. Any enforcement actions should be conducted with due regard for the safety and well-being of all individuals involved, including suspected pirates or attackers.

5. **Engagement with Regional Actors**: Collaboration with regional stakeholders, including coastal states, international organizations, and maritime industry stakeholders, is essential for addressing maritime security challenges effectively. By fostering partnerships and dialogue, states can enhance information-sharing, capacity-building, and mutual assistance efforts in combating piracy and maritime terrorism.

6. **Research and Policy Coordination**: Continued research and policy coordination among academics, practitioners, and policymakers are crucial for advancing understanding and

developing effective responses to maritime security threats. Multidisciplinary approaches that integrate legal, political, economic, and technological perspectives can contribute to more comprehensive and sustainable solutions.

7. International Cooperation and Diplomacy: Diplomatic efforts should be intensified to address the underlying political, economic, and social factors driving maritime insecurity in the Red Sea region. This includes supporting conflict resolution initiatives, promoting inclusive governance structures, and addressing root causes of instability that contribute to maritime violence.

CONCLUSION

The crisis unfolding in the Red Sea, stemming from Houthi attacks against Israeli-related targets, has transcended its initial classification as a mere extension of the conflict in Gaza. Instead, it has emerged as a distinct and pressing concern, primarily due to the significant threat it poses to international shipping in the region and its far-reaching implications for the global economy.

Amidst the political and financial analyses prompted by this crisis, there exists a critical need for a comprehensive legal examination—an endeavor this Insight has undertaken. With over 34 recorded attacks thus far, the Houthi assaults in the Red Sea, coupled with the robust response from states such as the US through Operation Prosperity Guardian, raise profound questions under international law.

In addressing these questions, several tentative conclusions emerge:

Firstly, the ongoing situation is properly characterized as a non-international armed conflict (NIAC) involving Yemen, other states including the US, and the non-state armed group, the Houthis.

Secondly, depending on the nature of the attacks and their targets, they may be categorized as acts of piracy, subject to the laws governing NIACs applicable to maritime settings, or as acts falling under the scope of the 1988 SUA Convention.

Lastly, states involved in combating the Houthis and ensuring navigation safety in the Red Sea possess the legal authority, as recognized by UN Security Council Resolution 2272, to undertake measures in line with international law. These measures derive legal justification from the United Nations Convention on the Law of the Sea (UNCLOS) and laws governing NIACs at sea.

While this analysis remains tentative due to the ongoing nature of the crisis and the potential for new developments to alter the legal landscape, it underscores the importance of scholarly inquiry to affirm and, if necessary, adapt international legal frameworks in response to evolving challenges. As events continue to unfold, it is certain that this crisis will stimulate further scholarly exploration, contributing to a deeper understanding and refinement of pertinent rules of international law.

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