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TRAVERSING TROUBLED WATERS: DECIPHERING THE LEGAL MYSTERY IN THE RED SEA – PIRACY OR TERRORISM?

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Abstract

The ongoing attacks caused by the Houthis in the Red Sea have sent fears through the shipping industry, highlighting the vulnerability of international trade routes. In a notable incident, a heavily armed Houthi fighter seized a merchant vessel, raising serious concerns about the safety of commercial navigation and prompting various legal questions. Amidst ongoing geopolitical tensions, the Red Sea has become a focal point for maritime issues, where the line between piracy and terrorism is starting to blur. This article examines the legal frameworks surrounding piracy and maritime terrorism under international law, with a particular focus on the actions of the Houthis. It aims to clarify the differences between these two issues and assess whether current legal measures are sufficient. Using a doctrinal approach, the paper analyses the legal definitions of piracy and terrorism, referencing relevant cases and statutes. The findings suggest that the Houthis' actions could be classified as both piracy and terrorism. Nevertheless, the paper espouses that the extant provisions of the UNCLOS regarding piracy do not adequately address the complexities of such situations, leading to ambiguities in legal classification. The findings indicate a critical gap in the current legal framework that governs maritime security, particularly concerning the activities of non-state actors like the Houthis. It was recommended that an effective synergy and clearer delineation between piracy and terrorism should be made to address the emerging threats in the Red Sea.

Keywords: Piracy, Maritime Terrorism, Maritime Crime, International Law.

1.1 Introduction

Historically recognised as a vital trade route, the Red Sea has recently become a hotspot for maritime security incidents that defy conventional legal classifications.¹ Recent events, characterised by acts of violence against commercial and merchant vessels transiting through this crucial maritime corridor, have introduced new threats and raised important questions about the legal characterisation of such acts. Piracy and terrorism have long been among the major historical threats to maritime security and international shipping.² However, these threats have subsided in recent years through significant multinational efforts and the deployment of armed guards.³ Yet, the ongoing and escalating attacks by Yemeni Houthis, including missile and drone strikes as well as attempted hijackings against vessels sailing through the Red Sea, have introduced a new level of risk, surpassing that posed by armed men in fishing boats. These relentless attacks on commercial ships have not only severely disrupted global trade and commerce but also contributed to an estimated 90 per cent decline in container shipping within the Red Sea.⁴

This article undertakes a comprehensive examination of recent incidents in the Red Sea. By analysing case studies and reported events, it aims to identify patterns, motives, and characteristics that distinguish acts of piracy from acts of

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¹ Shay Shaul, "The Houthi Maritime Threats in the Red Sea Basin," *Institute for Policy and Strategy* 9, (2017).

² Murphy Martin, *Contemporary Piracy and Maritime Terrorism: The Threat to International Security* (Routledge, 2013), 79.

³ Available at <https://www.cbsnews.com/news/who-are-houthi-rebels-what-to-know-yemen-militants-attack-ships-red-sea/> accessed 12 January 2024.

⁴ Based on the public assessment conducted by the Pentagon's Defense Intelligence Agency, 'the attacks impacted at least 65 countries and forced at least 29 major energy and shipping companies to alter their routes. See <https://economictimes.indiatimes.com/small-biz/trade/exports/insights/red-sea-attacks-drove-90-decline-in-container-shipping-us-spies-say/articleshow/111049093.cms?from=mdr> accessed 13 May 2024.

terrorism and other maritime crimes. Understanding the specific dynamics of each incident is crucial for formulating an effective legal response. This article explores the Red Sea's landscape and its significance to the shipping industry. It examines the legal framework governing piracy, maritime terrorism, and other maritime crimes, identifying several loopholes in international law and positioning the Houthis' attacks within the appropriate legal context. It delves into the blurred lines between piracy, terrorism, and other maritime crimes, clarifying their distinctions under international law. It concludes with key findings and targeted recommendations, and a final analysis. The rationale behind this discussion is to dissect the extant legal framework regulating the menace of piracy and terrorism, elucidate the peculiarities between them, and evaluate their appropriateness in addressing the intricacies posed by the Houthis' actions in the Red Sea.

1.2 The Red Sea Landscape:

The Red Sea is one of the world's most critical waterways; almost 15 per cent of global seaborne trade passes through the area, including 12 per cent of seaborne-traded oil and 8 per cent of the world's liquefied natural gas.⁵ A vital waterway situated between Northeast Africa and the Arabian Peninsula, it plays a pivotal role in global shipping trade. It connects the Mediterranean Sea to the Indian Ocean, as a critical link between Europe, Asia, and Africa.⁶ Its strategic location facilitates the shortest maritime route between Europe and the lands along the Indian Ocean, making it a key passage for international trade. It is a major part of the Suez Canal route, one of the world's busiest and most important artificial waterways. The Suez Canal, connecting the Red Sea to the Mediterranean, allows

⁵ It was reported that 'The region is crucial for the global transport of goods, with around 12% of global maritime trade normally passing through the Bab el-Mandeb Strait, which controls access to the Southern Red Sea. Many ship owners have decided to stop operating in the Red Sea, instead sending their ships on the longer route around South Africa.' See <https://www.al-monitor.com/originals/2024/02/uns-imo-working-tirelessly-solve-red-sea-crisis-head> accessed 13 December 2023.

⁶ Ibid.

ships to bypass the lengthy and perilous journey around the southern tip of Africa, significantly reducing transit times.⁷

The Red Sea is a critical artery for global trade, significantly boosting the countries' economies along its shores and those connected to its maritime routes. Its importance is heightened by the Suez Canal, which serves as a vital shortcut for the timely transportation of goods, petroleum, and other commodities. The Red Sea is essential for the shipment of oil and liquefied natural gas (LNG) from the Middle East to international markets. Key oil-producing nations like Saudi Arabia and Yemen rely on this route to export their energy resources. The geopolitical significance of the Red Sea is further emphasised by its proximity to critical chokepoints, which influence global energy security and trade dynamics. The stability and security of this region are, therefore, of international concern, as disruptions can have far-reaching impacts on global commerce. In essence, the Red Sea's strategic location, coupled with its role in the Suez Canal, makes it indispensable to global trade, connecting continents and facilitating the efficient movement of goods and resources.⁸

Recently, on the 4th of November 2024, to be specific, the IMO reported that its Secretary General in the person of Mr. Arsenio Dominguez conducted several visits to the countries contiguous to the Red Sea to *inter-alia*: assess the extent of carnage unleashed by the Houthis; and to explore modalities towards the release of the seafarers kidnapped by Houthis when the MV Galaxy Leader was attacked. As observed by Mr. Dominguez, the incessant threats posed by Houthis against vessels sailing through the Red Sea pose a significant threat and danger to not

⁷ Ibid.

⁸ Ibid.

only innocent seafarers but the entire maritime industry and, therefore, a serious dent to the world economy at large.⁹

Global shipping accounts for 80% of world commerce, and the Red Sea remains one of the vital shipping routes. Thus, the ongoing skirmishes around the Red Sea undoubtedly have a monumental impact on the global shipping industry.

As observed by Terry Hutson:

Between 10 and 12 per cent of total global trade by volume goes – or went – through the Suez Canal, which automatically includes the Red Sea. By way of interest, 22 per cent of the canal traffic is made up of container ships. Car carriers also number around the 20 per cent mark, while oil products, including crude oil vessels, account for another 25 per cent. That's around two-thirds of the shipping that ordinarily uses the shorter route. Most of those vessels are now avoiding the Red Sea, and the Suez Canal is suffering.¹⁰

In this debacle, Egypt stands out as the scapegoat, as it is, revenue accruing from the Suez Canal is plummeting and with no end in sight. As reported by the Suez Canal Authority (SCA), a whopping estimated revenue of around \$6,000,000,000 has been lost since the commencement of the Houthis' aggression.¹¹

1.3 The Background of Houthis

The Houthis, also known as Ansar Allah, are a Shia insurgent group based in Yemen.¹² The group originated in the early 1990s as a religious and political movement advocating for the rights of Yemen's Zaidi Shia Muslim minority, who

⁹ Report available at: <https://africaports.co.za/2024/11/09/africa-ports-ships-maritime-news-3-4-november-2024/#9144> accessed 6 November 2024.

¹⁰ Terry Hutson, "The Houthis are winning in the Red Sea: Rest of the World on the Back Foot," 2024 <https://www.defencweb.co.za/african-news/the-houthis-are-winning-in-the-red-sea-rest-of-the-world-on-the-back-foot/> accessed 2 November 2024.

¹¹ Ibid

¹² Clemon Glenn, "Who are Yemen's Houthis"? 2022 The U.S. Institute of Peace, <https://www.wilsoncenter.org/article/who-are-yemens-houthis> accessed 12 November 2023.

felt marginalized by the Sunni-dominated government.¹³ The group takes its name from its founder, Hussein Badreddin al-Houthi, who led the movement until he died in 2004.¹⁴

The Houthis' primary motive for attacking ships in the Red Sea is multifaceted. One major reason is their opposition to the Saudi-led coalition's military intervention in Yemen, which they view as an infringement on Yemen's sovereignty and an attempt to install a pro-Saudi government.¹⁵ The Houthis see targeting commercial vessels in the Red Sea, a crucial shipping route for global trade, as a way to disrupt the coalition's operations and draw international attention to their cause.

Furthermore, the Houthis have used maritime attacks as a means to exert pressure on regional powers and assert their influence in the strategic Bab el-Mandeb strait, a key chokepoint connecting the Red Sea to the Gulf of Aden. By targeting ships passing through this vital waterway, the Houthis seek to demonstrate their ability to disrupt maritime traffic and potentially escalate the conflict to a broader regional level. The Houthis' *modus operandi* involves boarding ships using small boats, unmanned drones, and a helicopter to launch a vicious attack on the deck of a cargo ship. In executing their mission, they also used sophisticated drones such as 'Qasef-1 and 2 drones, with an estimated range of 200km, and others with a flying range of up to 1,800km ('smallish semi-submerged motorised vessels loaded with high explosives'). Their ground-launched missiles may be capable of striking ships up to 800km away.'¹⁶

¹³ Ibid

¹⁴ Ibid

¹⁵ Aljazeera Report, <https://www.aljazeera.com/news/2024/6/13/yemens-houthis-say-they-targeted-greek-owned-ship-in-red-sea> accessed 14 June 2024

¹⁶ <https://www.bbc.com/news/world-middle-east-68031732> accessed 13 April 2024

Recently, the Houthis have been attacking Red Sea ships as a response to the war in the Gaza Strip. They have targeted commercial vessels using drones, missiles, and speedboats. The Houthi movement has said its "naval operations" are being carried out in solidarity with the Palestinians against the ongoing onslaught in Gaza by Israel. A spokesman of the Houthis remarks that "they have launched dozens of attacks against ships in the Red Sea especially those heading to Israel as an act of solidarity with the inhabitants of the Gaza Strip."¹⁷

Ironically, the motive behind the Houthis attacks, especially those heading to Israel, appears doubtful. Recently, it was reported that vessels with no connections with Israel were also attacked. Surprisingly, on May 5 2024, a grain-laden Iranian ship was attacked by Houthis.¹⁸ Is this a one-off incident gone awry, or does it reveal the true motive behind the Houthis' aggression?

According to the verified BBC database, it was reported that most of the attempted strikes on shipping occurred at the southern end of the Red Sea, along the Yemeni coast, as the waterway narrows into the Bab al-Mandan Strait.¹⁹ Shipping further east in the Gulf of Aden has also been targeted. Only a few of the attempted strikes have hit their targets.

Overall, the Houthis attacks on ships in the Red Sea are driven by a combination of strategic military objectives: a desire to challenge external intervention in

¹⁷ As reported by the Aljazeera News: 'Iran-backed Houthis have attacked what they say are Israel-linked commercial vessels since November, disrupting maritime trade routes. The Houthis say the attacks were a response to Israel's bombardment of Gaza.'
<https://www.aljazeera.com/news/2024/1/16/malta-flagged-cargo-ship-hit-by-missile-in-red-sea>
accessed 15 May 2024

¹⁸ As reported by the Los Angeles Times, "a grain-laden ship bound for Iran, which is reportedly under the ownership of Greek interests and registered under the Marshall Islands, was attacked by the Houthis." <https://www.latimes.com/world-nation/story/2024-05-30/ship-attacked-by-yemens-houthi-rebels-was-full-of-grain-bound-for-iran-the-groups-main-benefactor> accessed 13 June 2024

¹⁹ <https://www.bbc.com/news/world-middleeast-68031732> accessed on 01/06/2024

Yemen and a bid to assert their influence in the region and show their anger at the ongoing onslaught in Gaza by Israel and its Western allies. Presently, the Houthis have gained significant control of Yemen, including the Capital city of Sanaa. Their actions significantly affect maritime security, regional stability, and the global shipping industry.

1.4 The Chronicle of Houthi Attacks: November 2023 to October 2024

Since November 2023, the Houthis have launched numerous attempts to attack ships sailing in the Red Sea. These incidents have heavily impacted and disrupted the global shipping and supply chain. A fortiori, the consumers are at the receiving end due to the great deal of expenses the ships encountered as a result of deviating from the Red Sea for a safer but longer route. As reported by CBC News, “the U.S. Government estimates that almost 10% of the world’s seaborne petroleum products passed through the Bab al-Mandab Strait, which links the Red Sea and the Gulf of Aden, in 2017, along with myriad other goods, The impact of the threat to shipping in the area has already been significant, disrupting the logistics of some of the world’s biggest sea cargo lines and oil companies.”²⁰ According to the U.S. Maritime Administration, within the reported period, the Houthis attacked more than 50 ships, killed four sailors, seized a vessel and sunk two.²¹

The first widely reported attack on merchant shipping in the Red Sea by the Houthis was the seizure of the Bahamian-flagged vehicle carrier "Galaxy Leader" on November 19 2023, which was taken to Hodeidah.²² Spokespersons for the Houthis (Yahya Sare'e) claimed the group was targeting only those vessels with

²⁰ See: <https://www.cbcnews.com/news/bp-halts-oil-shipments-through-red-sea-amid-israel-hamas-war/> accessed 16 December 2023

²¹ https://apnews.com/article/yemen-houthi-red-sea-ship-attacks-israel-hamas-gaza_cf858f30b4ba19731f6dc7719e9fa892 accessed 2 June 2024

²² Rebekah Yeager_Malkin, “International Waters, Local Disputes: The Galaxy Leader Incident and the Challenge of Maritime Law” *Ingrid Burke Friedman U Pittsburgh School of Law US 2023* <https://www.jurist.org/features/2023/11/21/international-waters-local-disputes-the-galaxy-leader-and-the-challenge-of-maritime-law/> accessed 14 December 2023

Israeli connections in response to the conflict in Gaza between Israel and Hamas. According to Yahya:

The Yemeni Naval Forces managed to capture an Israeli ship in the depths of the Red Sea taking it to the Yemeni coast...The Yemeni armed forces reiterate their warning to all ships belonging to or dealing with the Israeli enemy that they will become a legitimate target for the armed forces. The Yemeni armed forces urge all countries whose citizens work in the Red Sea to avoid any work or activity involving Israeli ships or ships owned by Israelis. Yemeni armed forces confirm that they will continue to carry out military operations against the Israeli enemy until the aggression against Gaza stops and the heinous acts against our Palestinian brothers in Gaza and the West Bank stop.²³

In the early stages of the unrest, there was indeed a spate of missile and drone attacks on vessels either owned or managed by prominent Israeli nationals or corporations. Since then, there have been several reported attacks or attempted attacks on merchant ships of varying types and flags, and it is clear that a number of the attacked vessels have no conspicuous connection to Israel. The means of attack employed by the Houthis have been increasingly varied, with the reported use of a range of ballistic missiles, drones and autonomous underwater vehicles. Given this and the volume of traffic in the area, the risk of a misdirected or misinformed attack is clear.²⁴

On December 19, 2023, a coalition of state partners, including the US and UK, launched “Operation Prosperity Guardian”, in which naval forces were sent to the

²³ Ibid

²⁴ <https://www.theguardian.com/us-news/2023/dec/19/us-announces-naval-coalition-to-defend-red-sea-shipping-from-houthi-attacks> accessed 22 January 2024. It is estimated that around 50 merchants sail through the Red Sea daily, transiting between Europe and Asia. As noted by Moller-Maersk, a Danish Company, “It would reroute ships around Africa and the Cape of Good Hope, a journey that takes ten or more days longer, and that it would continue to monitor the situation closely.” In the same vein, similar companies such as Germany’s Hapag-Lloyd, British oil firm BP, Honk Kong’s OOL, and the Italian Swiss-owned Mediterranean Shipping Company have taken this drastic measure of diverting their ships from the Red Sea

area to protect merchant shipping from the Houthis' threat.²⁵ Despite the multinational effort, however, Houthi attacks continue to exacerbate and destabilise the maritime commercial activities in the Red Sea. On January 12 2024, the US and the UK, in response to further attacks on merchant shipping, launched missile strikes on Houthi targets in mainland Yemen. There have been further Houthi attacks and US/UK air strikes since then, and it is understood that US and UK vessels are considered targets by the Houthis.²⁶

On February 18 2024, the Belize-flagged, UK-owned cargo ship (The Rubymar),²⁷ with a fertiliser cargo of more than 41,000 tons, was attacked by the Houthis while sailing through the Bab el- Mandeb Strait. Fortunately, the crew were unhurt and subsequently evacuated to safety. As reported by the BBC, the Rubymar is the first ship to have been sunk by the Houthis.²⁸

On the 5th May, 2024, the Houthis launched a successful attack against the 'Laax, a Greek-owned, Marshall Islands-flagged bulk carrier.' It was a grain cargo bound for Bandar Khomeini, in Iran.²⁹

On the 13th of June 2024, it was reported that Houthis launched a successful missile assault (using an Uncrewed Surface Vessel) against the Tutor Coal Carrier, a Greek-owned cargo ship, leading to serious damage and eventually

²⁵ <https://www.theguardian.com/us-news/2023/dec/19/us-announces-naval-coalition-to-defend-red-sea-shipping-from-houthi-attacks> accessed 22 January 2024. As stated by the US defence secretary, Lloyd Austin, "the new effort was necessary to tackle the recent escalation in reckless Houthi attacks originating from Yemen."

²⁶ Ibid

²⁷ As reported by the BBC news, "the Rubymar was in the Gulf of Aden near the Bal al-Mandab Strait when it was hit by two missiles fired. The ship was reportedly carrying fertilisers and experts say the sinking risks as environmental catastrophe." <https://www.bbc.com/news/world-middle-east-68457445> accessed 5 March 2024

²⁸ <https://www.bbc.com/news/world-middle-east-68457445> accessed 5 March 2024

²⁹ <https://apnews.com/article/yemen-houthi-rebels-red-sea-attacks-iran-503de70230fba0cd7c992558e2d1b83a> accessed 6 June 2024

sinking it.³⁰ The unfortunate incident caused the death of one of the crew members who hailed from the Philippines. Issuing a cautionary advice to the other commercial ships navigating through the Red Sea, the United Kingdom Maritime Trade Operations (UKMTO), ‘the vessel is believed to have sunk in position 14°19’N 041°14’E’.³¹ The attack took place in the southwest of Hodeidah, about 68 nautical miles (126km). As confirmed by the US Central Command (CENTCOM), the attack caused severe flooding and damage to the engine room.’ Incidentally, Houthis admitted responsibility for this attack. Sadly, the following day, it was reported that another cargo vessel was targeted with missiles, causing fatal injuries, and the crew deserted the ship.³²

1.4.1 Deviating from the Alternative Route: Cape of Good Hope to the Rescue?

The incessant attacks by the Houthis forced ships to deviate through the Cape of Good Hope. But this deviation comes with a hefty price! It requires additional time (around two weeks), energy and resources to sail through the Cape of Good Hope instead of the Red Sea. For instance, ‘Maersk is reporting a 41% increase in revenue, and that’s despite having to re-route all of its Asia-Europe-Asia ships south via the Cape of Good Hope. And that means increased bunker consumption and overall operating costs.’³³

³⁰ The “Tutor loaded at the Port of Ust-Luga, Russia, on May 18 and discharged at Port Said, Egypt, on June 9, according to the London Stock Exchange Group data. Its next schedule destination was Aqaba, Jordan, according to it.” <https://www.aljazeera.com/news/2024/6/13/yemens-houthis-say-they-targeted-greek-owned-ship-in-red-sea> accessed 17 June 2024

³¹ See Aljazeera Report <https://www.aljazeera.com/news/2024/6/19/greek-owned-tutor-believed-to-have-sunk-a-week-after-houthi-missile-attack> accessed 14 June 2024

³² A Report by the Washington Daily, <https://channel16.dryadglobal.com/houthi-ship-attacks-pose-a-longer-term-challenge-to-regional-security-and-trade-plans> accessed 17 July 2024

³³ Terry Hutson, “The Houthis are winning in the Red Sea: Rest of the World on the Back Foot” <https://www.defenceweb.co.za/african-news/the-houthis-are-winning-in-the-red-sea-rest-of-the-world-on-the-back-foot/> accessed 2nd November 2024

Specifically, it has been a year now since the escalation of attacks against ships sailing the Red Sea by the Houthis. So far, they have attacked over 100 commercial ships in the Red Sea, justifying these attacks as solidarity with the Palestinians in the ongoing conflict with Israel. In a nutshell, these attacks have led to the sinking of 2 (two) vessels, the death of 4 (four) seafarers, and one vessel (The Galaxy Leader), along with its crew taken hostage by the Houthis.

Since the attacks in the Red Sea began, there has, predictably, been a reduction in vessels transiting the Red Sea and an upturn in vessels proceeding via the Cape of Good Hope, although precise and accurate figures are difficult to obtain publicly.³⁴

1.4.2 Legal Implications of Houthi Attacks on Ships in the Red Sea: Piracy vs Terrorism: Drawing the Blurred Line:

The incessant strikes by the Houthis targeting ships sailing the Red Sea have posed serious threats within the shipping sector as they relentlessly upset maritime security and innocent passage of ships. In the same vein, the vicious and daring attacks have raised enormous concerns under international law. These attacks raise questions about the classification of such activities and the applicable legal frameworks to address them. In other words, the perceived atrocities committed by the Houthis against ships in the Red Sea are by no means heinous or horrendous and have crucial implications under international law.

³⁴ As reported by the Washington Post: “The Houthi campaign has significantly disrupted global shipping. Major firms like the Mediterranean Shipping Company (MSC) and Maersk have avoided the southern Red Sea, leading to a 55% drop in container ship transits through the Bab al-Mandab Strait. This disruption has particularly impacted key Saudi Arabian ports, such as King Abdallah Port and Jeddah.” <https://channel16.dryadglobal.com/houthi-ship-attacks-pose-a-longer-term-challenge-to-regional-security-and-trade-plans> accessed 10 August 2024

The United Nations Convention on the Law of the Sea (UNCLOS) is the bedrock and anchor that provides the legal basis for regulating shipping activities.³⁵ Specifically, Article 17 of the UNCLOS provides that: ‘Subject to this Convention, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.’³⁶ Furthermore, the Convention sheds more light on the ‘Innocent Passage’ by stating, ‘Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Such passage shall take place in conformity with this Convention and other rules of international law.’³⁷

Undoubtedly, it is crucial to clearly define and ascertain what crimes the Houthis’ attacks on ships portend under international law. Houthis’ attacks on the ships demand interrogation about the taxonomy of such activities. Can we safely categorise them into Piracy, Terrorism, or other Maritime Crimes?

1.4.2.1 Piracy

The crime of Piracy is antiquated and has been ravaging the world for time immemorial. It was even mentioned in Ancient Greek writings and several other

³⁵ The UNCLOS embodies the universally accepted legal framework in relation to piracy, codified the authorities necessary to repress this crime, and imposed an obligation for the Parties to provide synergy and all the necessary cooperation towards actualisation of the Convention’s objectives. <https://www.osce.org/eea/31855> accessed 3 March 2024. The United Nations Convention on the Law of Sea was signed in Montego Bay 10th December 1982 and came into force on 16th November 1994. Yemen ratified the UNCLOS Convention in 1987. As of July 2024, according to the International Maritime Organisation (IMO), “170 sovereign States representing all regions of the world are at present, Parties to the UNCLOS Convention and accordingly members of the IMO.” <https://www.imo.org/en/MediaCentre/SecretaryGeneral/Pages/itlos.aspx> accessed 29 July 2024. Incidentally, the United States is not a party to it, but nevertheless recognises the UNCLOS Convention as a “codification of customary international law.” See Robert Beckman, ‘On the United States, the UN Convention on the Law of the Sea and US Freedom of Navigation Operations’ <https://fulcrum.sg/on-the-united-states-the-un-convention-on-the-law-of-the-sea-and-us-freedom-of-navigation-operations/> accessed 29 July 2024

³⁶ See Article 17 of the UNCLOS https://www.un.org/depts/los/convention_agreements/texts/unclos/part2.html accessed 1 November 2023

³⁷ See Article 19 of the UNCLOS.

treaties between the Carthaginians and Romans around 509 B.C. Subsequently, some piratical incidents were also recorded around 1500 within the spheres of the Mediterranean Sea, Indian Ocean, Caribbean and South America.³⁸

Due to the heinous and grievous nature of their nefarious activities, pirates are considered ‘*hostis humani generis*,’ that is, global enemies to the entire mankind. Since they are regarded as enemies of mankind, the pirates are considered and treated as universal criminals, thus conferring jurisdiction on any state to prosecute them accordingly.³⁹ However, as argued by one author, ‘the universal jurisdiction does not apply to acts committed within national jurisdictions. In addition to this, no chase or pursuit of pirates can be done by one state’s vessels in the waters of another state until made legal.’⁴⁰

From a historical perspective, in 1926, an attempt to battle the scourge of piracy was made in 1926 by the League of Nations by examining the first unapproved draft of the Convention on addressing piracy.⁴¹ During the first UN Conference on the Law of the Sea, the 1958 Convention on the High Seas was adopted with the obligations of all States to cooperate to the fullest possible extent in the suppression of piracy.⁴² The conventional definition of piracy in Article 15 of the

³⁸ Lewins K, Merkin R Masfield AG, “Piracy, Ransom and Marine Insurance” *MULR* 35 (2011): 717-734

³⁹ Ekaterina Antonova, “Piracy in International Law” 2022 <https://www.intechopen.com/chapters/84144#> accessed 27 June 2024

⁴⁰ Article 105 of the UNCLOS Conventions empowers the states to arrest a pirate ship and impose penalties thereof. It provides that: ‘On 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 were 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, and may also determine the action to be taken about the ships, aircraft or property, subject to the rights of third parties acting in good faith.’

⁴¹ Hestermeyer H et al, *Coexistence, Cooperation and Solidarity* (Lieber Americum Rüdiger Wolfrum Vol. II. Leiden: Martinus Nijhoff Publishers 2012), 1157-1176

⁴² See Article 14 of the Convention

1958 Convention on the High Seas was limited to the high seas and the exclusive economic zone. A crime may be qualified as piracy if it is committed only in this area. The rules on liability for the seizure of a ship or aircraft on suspicion of piracy without reasonable grounds are also set in the 1958 Convention.⁴³

1.4.2.2 From the Standpoint of the UNCLOS Convention:

The focal point for unravelling what constitutes piracy is provided for under Articles 101-107 of the UNCLOS.⁴⁴ Specifically, Article 101 defines piracy ‘as any illegal act 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 on the high seas or in a place outside the jurisdiction of any State against another ship or aircraft or against persons or property on board such ship or aircraft.’⁴⁵ Participation in such acts, inciting or intentionally facilitating such acts, also constitutes an international crime of piracy.

This definition is crucial for international maritime law as it establishes a framework for identifying and prosecuting this serious crime. However, the definition also has some drawbacks that require critical analysis, especially in the context of contemporary maritime threats.

Prima facie, the UNCLOS establishes a cutting-edge and concise legal framework for the definition of piracy, as well as a robust mechanism for the prosecution of

⁴³ Jacobsson M, “Terrorism at Sea in Mukherjee P et al (eds)” *Maritime Violence and Other Security Issues at Sea: The Proceedings of the Symposium on Maritime Violence and Other Security Issues at Sea* Sweden Malmö (WMU 2002)

⁴⁴ <https://www.osce.org/eea/31855> accessed March 3 2024. The United Nations Convention on the Law of Sea was signed in Montego Bay on 10th December 1982 and came into force on 16th November 1994. ‘As of July 2021, the UNCLOS has been ratified by 168 parties, which includes 167 States (164 United Nations member States plus the UN Observer State Palestine, as well as the Cook Islands and Niue) and the European Union. All parties to UNCLOS are automatically members of ISA. An additional 14 UN Member States have signed it, but not ratified it. <https://www.isa.org.jm/unclos-at-40/> accessed 13 October 2023. Approximately, 164 states are signatories to SUA, while around 30 are not. Yemen ratified the UNCLOS Convention in 1987.

⁴⁵ UNCLOS Convention.

pirates. Ironically, the legal framework has a general application to all the member states and encourages them to establish a strong legal mechanism for the prosecution of pirates in their respective jurisdictions as well as an effective synergy within the member states in combating piracy. The need for the state parties to the UNCLOS Convention to step up has been emphasised by the International Tribunal for the Law of the Sea (ITLOS) in the *MV Seaman Voyager*.⁴⁶ This decision has redefined and demonstrated an expansive and wider interpretation of state obligation in fighting piracy.

Thus, it follows that to constitute piracy, the salient elements contained in Article 101 must be satisfied. These elements are:

1. **Illegal acts of violence or detention, or any act of depredation:** This encompasses a wide range of harmful actions, including hijacking, hostage-taking, robbery, and causing damage to vessels.
2. **Committed for private ends:** This distinguishes piracy from acts of warfare or law enforcement conducted by state actors. Pillage and personal gain are key motivations for piracy.
3. The crew or passengers of a private ship or aircraft are excluded from this, as they are committed by personnel aboard government vessels.
4. Directed against another ship or aircraft, or against persons or property on board such ship or aircraft: This clarifies the target of the criminal act.
5. **Geographic Scope:** To qualify as Piracy, the piratical attack must take place on the high seas or in a place outside the jurisdiction of any State. Thus, piratical violence within the confines of territorial waters, or Exclusive Economic Zones (EEZs), would not, for all intents and

⁴⁶ [2023] U.S.D. In that case Eritrea was found wanting for failure to prevent an attack on a Singaporean ship notwithstanding taking place within the contours of its territorial waters. This decision has redefined and demonstrated an expansive and wider interpretation of state obligation in fighting piracy.

purposes, be regarded as Piracy under the UNCLOS Convention, notwithstanding the similarities of the attack.⁴⁷

From all indications, the legal framework for piracy has some drawbacks. An attack could be legally qualified as piracy if it takes place on the high seas; the motive behind the attack is purely for private purposes; and two ships are involved in the commission of the crime. Thus, attacks in the territorial sea or the internal waters of a coastal state, committed by crew on board the ship, hijacking, or attacks of criminals onboard for political ends and national interests are not within the purview of the piracy definition under UNCLOS.

Satisfying the requirement of “private ends” as envisaged by the UNCLOS would be an exercise in futility in the current reality. For instance, the motive behind the ongoing attack by the Houthis against ships passing through the Red Sea is not for a ‘private end’ but for ‘Political Objectives’.⁴⁸ This has blurred the thin line

⁴⁷ The main zones are the “Territorial Sea (a belt of water which extends up to 12 nautical miles (nm) from the baseline of a State and which is regarded as sovereign waters of that State, see Articles 3 & 4 of the UNCLOS Convention; the Archipelagic Waters (Archipelagic waters are a special regime that applies only to archipelagic States. Article 46 of the UNCLOS defines an “Archipelagic State” as “a State constituted wholly by one or more archipelagos and may include other islands.” An Archipelago is defined as “a group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.” Waters inside the baselines of an archipelagic State. Archipelagic waters are sovereign waters); the International Waters (which no state exercises absolute sovereignty, although coastal states and flag states may hold certain enforcement rights depending upon the activity and location. International waters include the Contiguous Zone (Article 33 of the UNCLOS, a zone adjacent to the territorial sea and extends no further than 24 nm from the coastal state’s baseline, & in which it has limited law enforcement authorities like FISC matters); the Exclusive Economic Zone (Article 57 of the UNCLOS: it lies beyond & adjacent to the territorial sea & extend up to 200 nm from the same baseline from which the territorial sea is measured. It does not exist automatically and as such it must be properly claimed); the Continental Shelf (Article 76: it comprises of the seabed & subsoil of the submarine areas that extend beyond its land territory to a distance of 200 nm’; and High Seas: Article 89 of the UNCLOS: “No State may validly purport to subject any part of the high seas to its sovereignty”)

⁴⁸ Quote from the spokesperson of the Houthis on the rationale behind the attack

between piracy and other maritime crimes. Can we then safely contend that the attacks by the Houthis amount to piracy as envisaged by the UNCLOS? The answer is not far-fetched, as it has been reiterated by the Houthis' spokesperson (Mohammed Abdussalam) that the motive behind their attack is to support the Palestinians against Israel in the ongoing onslaught in the Gaza region. In the same vein, the Houthis have been carrying out their attacks against ships not on the High Sea but within the Territorial Waters of Yemen.

1.4.2.3 Position of Yemen under UNCLOS

It is apposite to depict the position of Yemen under the UNCLOS Convention. Yemen, as a state actor, is a party to the UNCLOS Convention.⁴⁹ But the nagging question here is, what then is the status of the Houthis? They are non-state actors and therefore fall outside the purview of the UNCLOS Convention. This determines the efficacy or otherwise of the extent of involvement of the state parties. It is settled that international maritime law targets and regulates the conduct of state actors, so it is baffling and confusing to situate the activities of non-state actors like Houthis⁵⁰ within the confines of the UNCLOS Convention.

This brings into the fore as to what to do with the Houthi Rebels within the UNCLOS Regime! Perhaps, all hope is not lost as there might be a respite within the UN Security Council (UNSC). Pursuant to the Powers of the UNSC under Chapter VII, it has the mandate to maintain and restore peace and security globally. Any threat to the security and peace of international waters, like the ongoing carnage of Houthis in the Red Sea, may invoke resolutions permitting or empowering member states to take action. These resolutions may include mandates for naval patrols, interdictions, and the use of force against non-state

⁴⁹ Yemen is one of the signatories to the UNCLOS Convention, having signed and ratified it on 21st July 1987.

⁵⁰ They have acquired a quasi-governmental status in parts of Yemen.

actors attacking ships and posing a threat to the safety of navigation within international waters.⁵¹

Given that only a state actor should be a signatory to international treaties,⁵² the principles of customary international law may still be relevant and applicable to the Houthis' conundrum.⁵³ Thus, the underlying principles of Customary international law represent 'legal norms and practices accepted by states, and certain fundamental principles, such as freedom of navigation, prohibitions on acts of violence and the taking of hostages, are considered binding on all actors, regardless of their formal treaty commitments.'⁵⁴ However, the enforcement of customary international law against non-state actors often relies on the cooperation of states and the international community to bring the perpetrators to justice through national or international mechanisms.⁵⁵

In the context of the Houthis' attacks on ships in the Red Sea, several principles of customary international law are particularly relevant. For instance, Freedom of Navigation is one of the fundamental principles recognised and sanctioned under Customary International Law.⁵⁶ The underlying ethos of this principle is that

⁵¹ The UNSC permanent members consists of the China, France, Russia, the UK, and the US. Each permanent member of the UNSC has veto powers and considering the composition of the permanent members, the hope of getting the desired veto is very slim.

⁵² Danwood M. Chirwa, "The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights" *MJIL* 5 (2004) 1-36

⁵³ Customary international law consists of practices and rules that have become recognized as legally binding through consistent and general practice by states, combined with the belief that such practices are legally obligatory (*opinio juris*). Piracy is well recognized under Customary International Law, and every state, irrespective of whether it's a party to UNCLOS or not must suppress, capture and prosecute pirates. See Lawrence Azubuike, "International Law Regime against Piracy" (2009) V 15 (1) 1-18

⁵⁴ Leonnie Brassat, "The Lawfulness of Military Strikes against the Houthis in Yemen and the Red Sea" 2024 *EJIL* <https://www.ejiltalk.org/the-lawfulness-of-military-strikes-against-the-houthis-in-yemen-and-the-red-sea/> accessed 11 June 2024

⁵⁵ Nwotite Anita Maria, "Mechanisms for the Enforcement of International Law – Strength and Downside" *NAUJILJ* 15 no.2 (2024) 1-17

⁵⁶ Rudiger Wolfrum; Freedom of Navigation: New Challenges, available at: https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/freedom_navigation_080108_eng.pdf; accessed 16th May 2024. As asserted by the author, 'Freedom of

‘ships flying the flag of any sovereign state shall not suffer interference from other states, save for exceptional cases as provided by international law.’⁵⁷ One can easily see that the attacks by the Houthis especially within the corridors of the Bab-el-Mandeb strait, which is a crucial global maritime hub, amount to the disruption of freedom of navigation.

From the perspective of state responsibility within the precinct of customary international law, states are neither allowed nor permitted to allow any inch of their territory to be used for acts detrimental and harmful to other states.⁵⁸ This principle further amplifies the fact that ‘non-state actors, like the Houthis, do not engage in actions that violate international norms.’⁵⁹ However, the position is exacerbated considering the stark reality that the Houthis are a non-state actor in charge of vast territory within Yemen. The *de jure* Yemeni regime does not have any iota of control over the portions under the firm control of the Houthis. It is

Navigation is one of the oldest and most recognized principles in the legal regime governing ocean space. It may safely be said that since it was enshrined in the chapter ‘*De mare liberum*’ (‘On the freedom of the sea’) in the treatise – actually it was a legal opinion – of Hugo Grotius ‘*De iure praedae*’ of 1609 – this principle constitutes one of the pillars of the law of the sea and was at the origins of modern international law.’

⁵⁷ The UNCLOS Convention recognises and sanctions the freedom of navigation. For instance, Article 36 (freedom of navigation in straits used for international navigation); and Article 58 (freedom of navigation in the exclusive economic zone). For further discussion on this issue, see: M.A. Becker, “The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea,” *Harvard International Law Journal* 46/1 (2005) 131-230

⁵⁸ ‘The doctrine of state responsibility in international law holds that states are accountable for their actions and omissions that breach their obligations under international norms. This principle underscores that if a state fails to adhere to its international commitments, it must bear the consequences and may be required to make reparations. The doctrine has evolved alongside international law, emphasizing the necessity for states to engage responsively and responsibly on the global stage.’ See Pierre-Marie Dupuy, “The International Law of State Responsibility: Revolution or Evolution?” *Michigan Journal of International Law* 11 no. 1 (1989) available at: <https://core.ac.uk/download/pdf/232710565.pdf>; accessed 2nd May 2024

⁵⁹ Leonnie Brassat, “The Lawfulness of Military Strikes against the Houthis in Yemen and the Red Sea” 2024 EJIL <https://www.ejiltalk.org/the-lawfulness-of-military-strikes-against-the-houthis-in-yemen-and-the-red-sea/> accessed 11 June 2024

like two regimes within one country. Nevertheless, despite the complexities of the situation in Yemen, if it is established that there is any nexus, however remote it is that another country helps the Houthis, then such a state could be held accountable under the doctrine of state responsibility.⁶⁰

1.4.2.4 From the Viewpoint of the SUA Convention:

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA Convention) and the Protocol thereto⁶¹ aim to quell illegal acts against the safety of maritime navigation. It proscribes the compulsory capture of ships, any violent conduct or causing harm or injury against the crew on board as well as any damage or potential damage to the vessels.⁶²

1.4.2.4 Taxonomy of Houthi Activities:

Juxtaposing the violent conduct of Houthis towards the ships, thereby endangering the safety of navigation in the Red Sea, it is apparent that SUA Convention aptly captures this ugly incident. Unlike the UNCLOS Convention, which requires ‘private ends’ to establish the offence of Piracy, the political undertone or motive behind the attacks, satisfies the requirement of an offence and unlawful acts under the SUA Convention. In support of the SUA Convention, the various courts in the United States have addressed the issue of maritime security as contemplated under the SUA Convention.⁶³

⁶⁰ Brill Nijhoff, *Global Maritime Safety & Security Issues and East Asia* (2019) E-Book ISBN: 9789004389908

⁶¹ Signed in Rome on 10 March 1988 and came into force on 1 March 1992 <https://www.osce.org/eea/31855> accessed May 4 2024

⁶² Ibid. Article 3

⁶³ United States vs Lei Shi 396 F. Supp. 2d 1132 (2003). In this case, the U.S. courts applied the SUA Convention to prosecute acts of violence against ships, highlighting the broad applicability of the convention to various forms of maritime crimes; *The Enrica Incident (Italy v India)* [2020] PCA. This case involved the shooting of Indian fishermen by Italian marines on a commercial

1.4.3 Terrorism vs. Piracy vs. Other Maritime Crime

Piracy:

A cursory look at the atrocities of Houthis against ships in the Red Sea, it is obvious that the essential ingredients under the UNCLOS Convention to ground a conviction of piracy are far from being satisfied. In other words, from the perspective of the UNCLOS Convention, the Houthis attacks do not meet the definition of piracy due to the following reasons:

- i. Location: To secure a conviction for piracy under UNCLOS, one of the essential ingredients of the offence is the *locus in quo*, i.e., where the attack takes place. Article 101 stipulates that the attack must take place within the regime of the High Sea, and not a territorial water.
- ii. Motive: their political motivations. UNCLOS Convention recognises that acts ‘committed on the high seas for private ends’⁶⁴ could be regarded as piracy.

Prima facie, taking into consideration the trajectory, modus operandi, and the rationale behind the Houthis’ attack, it is obvious that piracy is out of the picture since all the conditions *sine qua non* as enumerated under the UNCLOS Convention have not been satisfied. What option(s) are then available to deal with these attacks? The discussion below attempts to provide a clearer perspective on this.

1.4.4 Terrorism in the Offing?

Unlike piracy, there is no consensus on the definition of terrorism within the spheres of international law. Nevertheless, various International Conventions attempted to tackle specific aspects of terrorists’ spells. Specifically, both the International Convention for the Suppression of the Financing of Terrorism

vessel. The dispute brought into focus issues of jurisdiction and the application of international conventions to acts of violence at sea.

⁶⁴ See Article 101 of the UNCLOS Convention

(1999)⁶⁵ and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) (1988) provide the legal framework for the concept.

The SUA Convention sets the tone for the legal basis and puts the appropriate measures for any form of violence against the ships, their crew or any form of interference with the safety of navigation. These criminal activities include, amongst other things, “the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which is likely to destroy or damage it.”⁶⁶

Notably, the SUA Protocol 2005 enlarges the categories of crimes as encapsulated in article 3 of the SUA 1988 and introduces other classifications of felonies. Specifically, article 3b (1)(a) of SUA 2005 relates to maritime terrorism and requires a terrorism motive. The rationale behind the attacks must be to “intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.”⁶⁷ Clearly, this falls squarely within the activities of the Houthis, where their main motive is to compel Israel to get out of Gaza.

In the same vein, Article 2 of the International Convention for the Suppression of the Financing of Terrorism (1999) provides as follows:

⁶⁵ The Convention came into force in 1999 and was adopted by 189 countries. It “aims to combat the financing of terrorism by establishing that any person who unlawfully and wilfully provides funds for terrorist activities commits an offence under this convention. It serves as an international legal framework to enhance cooperation among states in preventing and prosecuting acts of terrorism.” <https://treaties.un.org/doc/db/Terrorism/english-18-11.pdf> accessed 13 May 2024

⁶⁶ Ibid. Article 3(1) of the SUA Convention. See also the case of the S.S. Lotus (*France v. Turkey*), Permanent Court of International Justice (PCIJ), Twelfth (Ordinary) Session, Judgment No. 9, 7 September 1927.

⁶⁷ See Contribution from the International Maritime Organisation (IMO) to the United Nations Secretary-General’s Report on the Scope and Application of Universal Jurisdiction https://www.un.org/en/ga/sixth/76/universal_jurisdiction/imo_e.pdf accessed 19 May 2024

2(1). ‘Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annexe; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.’⁶⁸

Based on the foregoing and gleaned from the provisions of the above Conventions, it is clear that the Houthi attacks can be considered acts of terrorism, as they involve the use of violence and threats to advance political objectives. Both provisions of the International Convention for the Suppression of the Financing of Terrorism and the SUA Conventions support this classification by defining terrorism as acts intended to cause death or serious injury to civilians, to intimidate a population or to compel a government.

1.4.5 Other Maritime Crimes?

Maritime crimes encompass a broad range of illegal activities committed in the maritime domain. Apart from piracy and terrorism, there are several other categories of maritime crimes, each defined and regulated by international conventions and principles of international law.

This part will confine itself to the offence of Armed Robbery against Ships and Other Acts of Violence and Maritime Hijacking. The former is defined by the International Maritime Organisation (IMO) as ‘any unlawful act of violence or detention, or any act of depredation, or threat thereof, other than an act of piracy,

⁶⁸ Ibid

directed against a ship or persons or property on board such a ship within a state's internal waters, archipelagic waters, and territorial sea.’⁶⁹

In contradistinction to piracy, which takes place within the domain of high seas, armed robbery against ships takes place within the internal waters of a coastal state and involves attacks on ships within the anchorages, ports or territorial waters. The same offence could be regarded as piracy if it takes place on the high sea, while it is regarded as an armed robbery if it takes place within the territorial waters of a coastal state. This confers an exclusive jurisdiction of a coastal state to exercise jurisdiction, unlike piracy, where the principle of universal jurisdiction is invoked.

An armed robbery against vessels may include any of the following acts, to wit:

‘(a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea; and (b) any act of inciting or of intentionally facilitating an act described above.’⁷⁰

Based on the foregoing, the SUA Convention postulates a wider framework that encapsulates numerous illegal acts against the safety of maritime navigation, comprising politically driven violence. The Houthi attacks are a perfect scenario that fits this classification as they involve intentional violence that endangers the safety of ships and their crews.

⁶⁹ See the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, Resolution A. 1025(26).

⁷⁰ See Resolutions A.1025(26), (Annex, paragraph 2.2) on ‘IMO’s Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships.’

1.4.6 Mitigation Effect:

When navigating the Red Sea, it is strongly recommended that ships heed professional advice before embarking on the voyage. Specifically, the “Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea (**BMP5**)”⁷¹ guides vessels to plan their voyage and to detect, avoid and deter attacks. As part of the mitigating effort, all ships sailing through the Red Sea are urged to conduct a comprehensive ‘ship and voyage-specific risk assessment’ which considers, but is not limited to, engaging the services of the Privately Contracted Armed Security Personnel; and based on the data compiled by the ‘International Chamber of Shipping,’ it was established that compliance with BMP5 guidelines has provided significant improvement to the seafarers navigating through the Red Sea.⁷²

1.5 Conclusion

Navigating the tempestuous waters of the Red Sea entails a critical evaluation of the legal peculiarities between piracy, terrorism and other maritime crimes. This piece aims to contribute to the contemporary discourse by postulating a wide-ranging exploration of current events, a scrutiny of legal definitions, and offering actionable recommendations to tackle this multi-layered issue. As the Red Sea continues to be an epicentre for shipping, clarifying the legal framework is decisive for sustaining universal maritime security and safeguarding the rule of law on the high sea. The UNCLOS definition of piracy remains a cornerstone of international maritime law. However, its limitations require critical analysis to

⁷¹ Published by Witherby Publishing Group Ltd, 4 Dunlop Square, Livingston, Edinburgh, EH54 8SB, Scotland, UK. www.witherbys.com accessed 11 October 2024

⁷² However, BMP5 was never intended to provide an effective defence against a party armed with missiles and drones. Arguably, the precautions that can be taken onboard will help against possible hijacking (although probably only against boats rather than from the air) and liaison with the coalition forces and perhaps a convoy will assist but this situation is more akin to a war against state parties, rather than mere terrorism.

ensure it remains effective in contemporary contexts. Expanding the definition to encompass acts driven by political motives or adapting it to address technological advancements could be necessary to address evolving maritime threats.

The Houthis' attacks on ships in the Red Sea most appropriately fall under the category of maritime crimes as defined by the SUA Convention, given their politically motivated nature and the locations where they occur. While they may share characteristics with terrorism, the focus on maritime safety and security under the SUA Convention provides a robust legal framework for addressing these acts. Responding to incidents involving Houthis (non-state actors) confiscating vessels on high seas entails a multi-layered approach, encompassing the support of the UNSC, the application of customary international law, and the synergy of nations to guarantee that suitable actions are meted out against the offenders. The international community, leveraging the SUA Convention and relevant case law, should work together to ensure that such attacks are prosecuted, thereby enhancing maritime security and upholding international law. The distinction between terrorism, piracy, and maritime crime is critical in determining the appropriate legal responses and ensuring effective enforcement measures.

From the foregoing, the findings of this research imply that the attitudes of the Houthis indicate weighty legal issues. Their activities could be considered within the prism of international law as both piracy and maritime terrorism. This would create ambiguity and blur any meaningful distinction. In the same vein, the existing provisions under the UNCLOS regime regulating piracy appear to be inadequate to tackle the intricacies inherent in such attacks, aggravating legal ambiguities. Accordingly, a serious gap exists in the existing legal regime intended to safeguard maritime security, primarily concerning the dangers posed by non-state actors, such as the Houthis. To efficiently checkmate these evolving threats, the findings highlight the need for better clarity between the offence of

piracy and maritime terrorism, coupled with enhanced synergy among the appropriate legal frameworks.

Based on the foregoing, to ensure harmony and legal clarity in meeting the ingredients of both terrorism and maritime piracy, there is a dire need to amend the legal framework. Contextualising the nomenclature of the Houthis' consistent threats and aggression towards the ships sailing the Red Sea, it is apposite to expand the definition of piracy as encapsulated in the UNCLOS Convention to accommodate a 'politically driven, motivated threat.' It is no exaggeration to state the fact that implementing this proposal is by no means an easy task, as it requires not just a political will but a holistic and unified approach by the key players.