

Securing the Maritime Domain in the Red Sea

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by [Raul \(Pete\) Pedrozo](#) | Dec 8, 2023



Since the [brutal Hamas-led massacre](#) of over 1,300 innocent Israeli citizens on October 7, 2023, Houthi rebels based in Yemen have increased their attacks on Israeli and U.S. ships in the Red Sea. A [statement](#) issued by the Iranian-backed rebels indicated that they would continue to target Israeli ships and interests until Israel’s “aggression against Gaza stops.” The rebels further [warned](#) that “any military units providing protection to Israeli ships” would be considered legitimate targets. A maritime security warning for ships operating in the Red Sea was issued by the [International Maritime Security Construct](#) in response to these threats.

This post reviews recent maritime incidents involving attacks on commercial shipping and U.S. warships in the Red Sea and discusses the United States’ response to those incidents.

Maritime Incidents

On October 19, USS *Carney* (DDG 64) intercepted [three missiles and 15 unmanned aerial vehicles](#) (drones) in international airspace over the Red Sea. The missiles and drones were shot down with SM-2 surface-to-air missiles as they headed north along the Red Sea.

Although U.S. authorities subsequently determined that the projectiles were probably not aimed at the U.S. destroyer, or any other U.S. asset in the area, they were likely launched to attack targets in Israel. The U.S. action was purportedly based on the right of collective self-defense (UN Charter, art. 51). A statement by the Pentagon indicated that the “action was a demonstration of the integrated air and missile defense architecture that we built in the Middle East and that we are prepared to utilize whenever necessary to protect our partners and our interests in this important region.”

Less than a month later, USS *Hudner* (DDG 116) shot down a drone over the Red Sea in international airspace that had been launched from Yemen and was headed for the U.S. warship. *Hudner* engaged the drone in self-defense “to ensure the safety of U.S. personnel.” A week later, *Hudner* destroyed several more “one-way attack drones” over the Red Sea that were launched from Houthi-controlled areas in Yemen.

Undeterred by the presence of U.S. naval forces, Houthi rebels conducted a helicopter assault on the Bahamian-flagged M/V *Galaxy Leader* while it was transiting the Red Sea on November 19. The British-owned, Japanese-operated (NYK line) vehicle carrier was empty at the time of the assault. The British owners are associated with Ray Car Carriers, a company founded by a rich Israeli businessman. The ship and its 25-member crew are still being held hostage in Yemen following the piratical attack. Japan condemned the act of piracy as “a flagrant violation of international law” and demanded the immediate release of the ship and crew. A week later, a suspected Iranian Shahed-136 drone attacked the Israeli-owned M/V *CMA CGM Symi* in the Indian Ocean. The Maltese-flagged container ship suffered minor damage, but there were no injuries to the crew.

A second piratical attack occurred on November 26 when an armed group of men seized the M/V *Central Park* about 35 miles off the coast of Yemen. USS *Mason* (DDG 87) responded to the tanker’s distress call and demanded that the pirates release the Liberian-flagged ship and its 22 crew members. The pirates released the tanker and the U.S. warship apprehended them when they attempted to flee the scene. Initial reports indicate that the five attackers were from Somalia, although Somali pirates are not known to operate in this area. After the attack, two ballistic missiles purportedly fired by Houthi-rebels impacted about ten nautical miles from the U.S. destroyer. The tanker is operated by the London-based Zodiac Maritime, which is a subsidiary of the Israeli Zodiac Group. The Yemeni government denounced attack as an act of piracy.

Three days later, the USS *Carney* engaged a drone in international airspace over the Red Sea that was launched from Houthi-controlled Yemen. The incident occurred near the Bab al-Mandeb Strait, which separates the Arabian Peninsula from the Horn of Africa. The U.S. destroyer was escorting the USNS *Supply* (T-AOE-6), a fast combat support ship, and a U.S.-flagged and crewed merchant vessel transporting U.S. military equipment to the region

when it observed an Iranian-produced KAS-04 drone approaching the ships. A Pentagon spokesperson indicated that the captain exercised his obligation of unit self-defense because he believed the drone constituted a threat to his ship.

On December 3, USS *Carney* responded to distress calls from three merchant vessels after Houthi rebels attacked them in the southern Red Sea. Two missiles were fired at the M/V *Unity Explorer*, a Bahamian-flagged, British-owned and operated bulk carrier. The first missile landed near the vessel, but the second hit its target causing minor damage to the ship. During the intervening time between the two attacks, the U.S. destroyer detected and engaged a Houthi drone in self-defense as it was headed toward the warship. Thereafter, while assisting *Unity Explorer* with its damage assessment, *Carney* shot down a second inbound Houthi drone. Later that day, a Houthi missile also hit the M/V Number 9, a Panamanian-flagged, Bermuda/British-owned and operated bulk carrier while it was operating in an international shipping lane in the Red Sea. An hour later, the M/V *Sophie II*, a Panamanian-flagged bulk carrier, transmitted a distress call indicating it had also been hit by a Houthi missile. While responding to the distress call, the U.S. destroyer engaged a third Houthi drone in self-defense that was headed in its direction. Both *Unity Explorer* and *Number 9* have ties to Israeli citizens.

Finally, on December 6, U.S. officials confirmed that USS *Mason* shot down a drone that was headed in its direction in the southern Red Sea. The drone was launched from a Houthi-controlled area in Yemen and was operating in international airspace when it was engaged in self-defense. Further details on the incident are not currently available.

Counter-Piracy Operations

Acts of piracy violate international law and are considered a universal crime. As such, all States have an obligation to repress piracy on the high seas or in any other place outside the jurisdiction of any State (UN Convention on the Law of the Sea (UNCLOS), art. 100). Any State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, on the high seas, or in any other place outside the jurisdiction of a State and arrest the persons and seize the property on board (UNCLOS, art. 105). Under contemporary international law, piracy includes illegal acts of violence or detention, or acts of depredation, committed for private ends by the crew of a private ship or aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft (UNCLOS, art. 101). Seizure of pirates may only be carried out by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect (UNCLOS, art. 107).

To constitute piracy, the illegal act must be committed for private ends, that is, acts committed without the sanction or approval or on behalf of a State. This requirement is often mistakenly interpreted to include only those acts that fulfill a personal economic interest in financial gain, thus exempting politically motivated crimes. The distinction between “private

ends” and “public purposes” reflects the ban on privateering in the 1856 Declaration of Paris. Thus, the political motivations or lack of personal financial gain of the act of piracy are irrelevant to the analysis of whether the “private ends” element of the offense is fulfilled. While the “private end” can involve a profit motive or desire for monetary gain, it can also be driven by revenge, hatred, or other personal or political reasons (U.S. Navy, *Commander’s Handbook on the Law of Naval Operations*, NWP 1-14M (2022), § 3.5.2.4). In 2013, the U.S. Ninth Circuit Court of Appeals held that attacks against Japanese whaling ships by Sea Shepherd Conservation Society, a private environmental group, were motivated by “private ends” and constituted acts of piracy even though there was no motive for financial gain.

The attacks on the *Galaxy Leader* and *Central Park* were therefore clearly acts of piracy. As such, the intervention by USS *Mason* was justified under international law and U.S. law (18 U.S.C., Ch. 81). U.S. warships have a duty to repress piracy beyond foreign territorial seas directed against any vessel or aircraft, whether U.S. or foreign-flagged (NWP 1-14M (2022), § 3.5.3). For commanders repressing acts of piracy, the right and obligation of unit self-defense extend to the persons, vessels or aircraft being assisted (U.S. Chairman of the Joint Chiefs of Staff, “Standing Rules of Engagement” (CJCSI 3121.01B, encl. A)).

Right of Self-Defense

Under customary international law, all States retain the inherent right of individual and collective self-defense (reflected in the UN Charter, art. 51). U.S. commanders have the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent (CJCSI 3121.01B, encl. A). This right includes defense of other U.S. military forces in the vicinity. When authorized by the President or Secretary of Defense, U.S. commanders may also defend designated non-U.S. military forces and/or designated foreign nationals and their property from a hostile act or demonstrated hostile intent (CJCSI 3121.01B, encl. A).

A hostile act is defined as an attack or other use of force against the United States, U.S. forces or other designated persons or property (e.g., launching a missile). Hostile intent is defined as the threat of imminent use of force against the United States, U.S. forces or other designated persons or property. Imminent does not necessarily mean immediate or instantaneous. When determining whether the use of force is imminent, U.S. forces will assess all the facts and circumstances known at the time. This determination can be made at any level. When responding to a hostile act or demonstration of hostile intent, U.S. forces may use all necessary means available and all appropriate action to respond decisively to the hostile act or hostile intent (CJCSI 3121.01B, encl. A).

In the past, U.S. naval forces have established maritime safety or warning zones to assist in determining whether an unidentified ship or aircraft is demonstrating hostile intent. For example, following the Iraqi attack on the USS *Stark* (FFG 31) in May 1987, U.S. forces promulgated an international notice to airmen (NOTAM) for the Persian Gulf, Strait of

Hormuz, Gulf of Oman, and North Arabian Sea (U.S. Naval War College, *Maritime Operational Zones Manual*, appx C). The NOTAM warned that, given the continuing terrorist threat in the region, U.S. naval vessels would take “additional defensive precautions” and requested that aircraft “approaching U.S. naval forces establish and maintain radio contact” with U.S. forces. The NOTAM further indicated that “unidentified aircraft whose intentions are unclear or who are approaching U.S. naval vessels may be requested to identify themselves and state their intentions.” Additionally, to avoid an inadvertent confrontation, all aircraft “may be requested to remain well clear of U.S. vessels” and that “failure to respond to requests for identification and intention, or to warnings, and operating in a threatening manner, could place the aircraft at risk by U.S. defensive measures.”

These safety or warning zones do not create a free-fire zone or kill box. An unidentified contact does not become a lawful target simply because it enters the zone. The contact may not be engaged unless it commits a hostile act or demonstrates hostile intent. However, the presence of an unknown contact that is non-responsive and closing on U.S. forces may be probative in assessing its intentions. In all the engagements discussed above, U.S. forces legally acted in self-defense in shooting down the Houthi drones. Based on the totality of the circumstances—previous Houthi threats to attack U.S. forces, ongoing hostile acts committed against commercial shipping, the type of drone (one-way attack drone), and the failure to maintain radio communications and heed warnings after closing within 10 nautical miles—each U.S. commander correctly assessed that the incoming drones posed an imminent threat to their unit, as well as other U.S. forces and commercial shipping in the vicinity.

Compare the U.S. actions in the Red Sea with the U.S. response to an Iranian drone that came within 1,500 yards of the USS *Dwight D. Eisenhower* (CVN 69) while the U.S. aircraft carrier was conducting routine flight operations in the Persian Gulf. U.S. authorities condemned the incident as “unsafe, unprofessional, and irresponsible,” but the drone was not engaged even though it ignored multiple warnings.

Although the flag State is normally responsible for providing protection to vessels flying its flag on the high seas, international law contemplates the use of force by U.S. forces in peacetime to protect U.S.-flagged and foreign-flagged vessels at sea from unlawful acts of violence (NWP 1-14M (2022), § 3.10). The doctrine of self-defense and protection of nationals provides U.S. forces the authority to use proportionate force necessary to protect U.S.-flagged vessels and U.S. nationals and their property against unlawful acts of violence beyond foreign territorial seas (NWP 1-14M (2022), § 3.10.1). Similarly, the concept of collective self-defense authorizes U.S. 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 (NWP 1-14M (2022), § 3.10.1).

Conclusion

The Houthi attacks represent a direct threat to international commerce and maritime security in the Red Sea. U.S. authorities have accordingly indicated that the “United States will consider all appropriate responses in full coordination with its international allies and partners.”

Currently, securing the maritime domain in the region is the responsibility of Combined Maritime Forces (CMF). The multinational partnership was established to counter illicit non-State actors on the high seas and promote security, stability, and prosperity across the region. CMF currently has 39 participating States, is commanded by Commander Naval Forces Central Command/U.S. Fifth Fleet and is comprised of several combined task forces: CTF 150 (Maritime Security Operations outside the Arabian Gulf); CTF 151 (Counter-Piracy); CTF 152 (Maritime Security Operations inside the Arabian Gulf); CTF 153 (Red Sea Maritime Security); and CTF 154 (Maritime Security Training).

U.S. officials have indicated it may be necessary to establish a sixth naval task force under the auspices of the CMF to protect commercial shipping in the Red Sea. According to National Security Adviser Jake Sullivan, the United States is engaged in discussions with several of its allies with a view toward establishing a new task force to escort and ensure safe passage of commercial shipping in the Red Sea. The Vice Chairman of the Joint Chiefs of Staff stated that seven States have tentatively offered to provide forces to the task force. Actions taken by the CMF to defend coalition warships and other commercial vessels threatened with attack by Houthi rebels are lawful and necessary uses of force to protect international commerce and restore the rules-based order in the regional maritime environment.

Raul (Pete) Pedrozo is the Howard S. Levie Professor on the Law of Armed Conflict at the Stockton Center for International Law, U.S. Naval War College, Newport, Rhode Island.

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