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**State, non-state and maritime actors sparring in the Red Sea impact Africa and the rule of law.**

**Background**

In the Red Sea and Gulf of Aden off the Yemen coast, the [Houthi movement](#) in solidarity with the Palestinian cause and in opposition to the November 2023 Israeli offensive against Hamas began [attacking commercial vessels passing its shores en route to and from the Suez Canal](#). The initial motivation appeared to be vessels visiting Israeli ports, but this argument quickly escalated to ownership, to that of affiliation and then to almost any perceived connection to Israel. In defence of international shipping, freedom of navigation as an international good, and to prevent disruption and escalating risk perceptions, several [countries began to commit naval vessels to protect shipping](#) against Houthi missiles, arial drones and unmanned seaborne vessels.

The attacks on commercial shipping quickly escalated with the US stepping in with its navy and shipping companies and insurers undertaking risk mitigation measures while in early January 2024 Iran (a known ally of the Houthis) also deployed its navy to the Red Sea . While the Gaza connection and armed disruption of shipping passing off Yemen continue to catch headlines, two other matters must be considered. First, the implication for Africa and the Western Indian Ocean given that this littoral region became the primary alternative route to keep maritime trade going along a coast known for patches of bad order at sea and on land. A second matter is how does the presence of a non-state actor (the Houthi movement) parading as the government of Yemen impact the legality of state responses to counter their attacks on civilian vessels.

**Discussion**

By December 2023, the Red Sea and its southern exit into the Gulf of Aden assumed a starker military profile given the exchanges of missiles, drones, and naval counter measures to protect international shipping irrespective of nationality and other affiliations. The Houthi movement in Yemen house a production

capability for standoff systems they extensively use and in the Middle East. This aggression and international naval responses also play out against ongoing militarisation with the epicentre in Djibouti on the African coast close to the Bab-el-Mandeb Strait. China, France, Germany, India, Italy, Japan, Spain, Russia, the USA, the UK, and Turkey all form part of the mix with physical or aspirations of footholds in or close to the Red Sea and Gulf of Aden. Given that all these actors also muster naval capabilities, the scene is set for naval action when attacks on international shipping occur in this strategic strait.

As the standoff between the Houthi forces and international naval contingents escalate, more indicators of [piracy seem to surface as well](#). Although suppressed earlier, analysts held for some time that the piracy threat around the Horn of Africa is merely awaiting a catalyst to resurface. While a small number of incidents do not depict a piracy wave, the difficulty is that it is [another maritime threat to contend](#) with while navies must focus their expensive and limited platforms on deterring the spate of [attacks](#) on commercial vessels in off Yemen. Simultaneously one finds a growing number of commercial vessels loitering in the Gulf of Aden awaiting instructions that offer lucrative targets of opportunity for piracy and robbery attacks that bring a simultaneous criminal-military styled threat to the fore that the navies must contend with.

The Houthi attacks also compel [rerouting large numbers of commercial vessels around the Cape Sea Route](#). By implication, the sudden increase in vessels sailing around the Cape of Good Hope route turns the spotlight to Africa's harbours, infrastructure and general security of the continent's littoral regions and South Africa in particular. Of global strategic importance is that this is the primary alternative route when maritime trade cannot flow unhindered through the Red Sea. The current uncertainty serves as a stark reminder to take greater notice of the Cape route's threats and vulnerabilities when forced to sail around the [southern tip of Africa](#). Although the Red Sea and Suez Canal routes make financial sense, their maritime risk profiles due to geographic and geo-political realities are huge negatives thus again highlighting the continued importance of the route around Africa. As the overall security landscape deteriorates with civil war in Sudan bordering the Red Sea, Ethiopia's controversial access to [territory in Somaliland on the Gulf of Aden as an outlet to the ocean](#), as well as continued war in Somalia, the insurgency in northern Mozambique and South Africa's deteriorating maritime [infrastructure](#) and support industry, the necessity increases to ensure that this route's risk profile is co-managed with African actors to ensure a smooth switchover and safe passage when required.

Another matter set to influence the Red Sea conundrum and its global economic and political consequences, are the uncertainties surrounding the armed confrontation between state and non-state opponents. It is not a simple matter as the first response to a USA warning to the Houthis not to threaten its vessels and desist from attacking commercial vessels resulted in an [armed drone boat exploding](#) in a busy shipping lane and a wave of arial attacks on 9 January 2024. In turn naval vessels struck selected Houthi positions harbouring standoff weapons used against naval vessels and merchant shipping along the Yemen coast. This raises legalities on whether navies of sovereign countries have the right to attack a non-state actor in the sovereign territory of another state in defence of merchant shipping exercising freedom of navigation through an international sea lane.

Generally, the use of force against another state is prohibited in International Law, but it does recognise the right to self-defence as a legitimate exception to the rule against the use of force. The right to self-defence extends its protection to one's nationals and their property which would include merchant shipping. Although not envisaging armed force against non-state actors at its inception, it has been argued that article 51 of the UN Charter does not limit the right of self-defence to state actors only and is increasingly being invoked by states against non-state actors. To justify self-defence however, the attack by the non-state actor must be on a large scale.

As of the beginning of January 2024 there has been [24 attacks by Houthi rebels](#) and has been escalating since. Without minimising the disruption created by the attacks on international shipping, the question in the context of justifying the use of force is whether these attacks can be classified as a "large scale" attack when considering the number of ships making use of the Red Sea. To justify the use of self-defence, whether against

state or non-state actors, the gravity and the scale of the attack must reach the threshold of a conventional attack. The jury is still out on whether the Houthi attacks has reached this threshold in terms of international law. On the one hand international jurisprudence from the International Court of Justice (ICJ) indicates that self-defence against non-state actors in the territory of another state could only be justifiable where the actions of the non-state actors were attributable to the foreign state. On the other, there is growing support for the argument that [non-state actors can be targeted directly](#). Such arguments may not be in line with established rules of International Law, but the waters are being muddied by governments pushing a “rule-based order” to justify practices not clearly allowed in terms of accepted international norms.

More joint communiqués, such as the warning issued to the Houthis, reflect the language of a “rules-based order” to justify military operations against non-state actors although no clear rules exist on the legality of such action in terms of international law. Instead of waiting for the law to crystalize into generally accepted international customary law, these governments argue that it is the responsibility of members of the international community to work together to mitigate global threats by creating the rules and consequently enforcing them. The danger in this is that the rules will then only be made by those who have the capability and international presence to operate on a global level, thereby silencing those who have not. This is playing out on the international stage.

Following a week of emergency briefings and consultations, the UN Security Council passed a resolution on Wednesday 10 January 2024 condemning “in the strongest terms” the Houthi attacks on international shipping and taking “[note of the right of Member States](#) attacks”. The resolution does not settle the legal question on whether non-state actors may be targeted directly but may indeed strengthen the US argument for self-defence against non-state actors as evidenced by the consequent naval [airstrikes on several Yemen cities](#) under Houthi control in response to an anti-ship missile attack by the Houthis on 11 January 2024.

## Conclusions

The Houthi-led standoff attacks on international shipping in the Red Sea introduced a maritime security dimension into the Israeli-Gaza conflagration with an immediate impact on global maritime trade. While the attacks disrupts a critical maritime trade route, pitched navies against the Houthi attackers and brought about a UN Resolution calling on member countries to protect vessels from Houthi attacks, rerouting vessels around the Cape Sea Route escalated. This rerouting highlighted the importance of the route around South Africa, but also must account for the risks of a route where good order at sea and functional critical maritime infrastructure are not a given.

Questions on the legality of the direct targeting of the Houthis are now mainly academic in the face of the recent airstrikes on Yemen. The attacks do however show the vulnerability of shipping passing through the Red Sea to armed non-state groups that operate and view their actions as not subject to International Law in general and those regulating the safe passage of commercial vessels in particular. Of greater concern however is the potential effect on the fragile security situation in the Middle East and whether the Houthi attacks on shipping are set to become a persistent threat and resulting in large numbers of vessels sailing around the Cape of Good Hope.

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