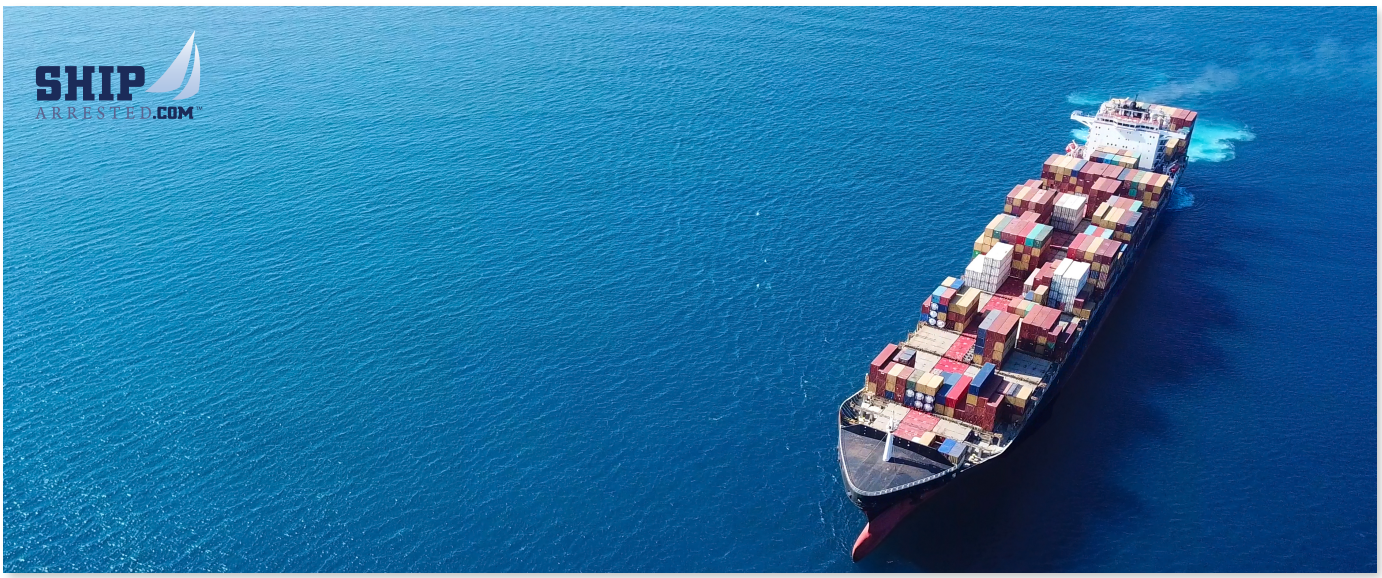
THE ARREST news

Issued by the industry network devoted to ship arrests, www.shiparrested.com

Issue 43. Edited by the Shiparrested.com Editorial Comm. info@shiparrested.com

January 2024



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Houthi Piracy and Freedom of Navigation

by Yoav Harris, Harris & Co. (Israel)

On the 19th of November 2023, a helicopter landed on the M/V *Galaxy Leader*, a cargo vessel worth $65M USD[1] flying a Bahamas flag owned by a British corporation, while navigating at Bab-al-Mandeb Strait in the Red Sea next to the shores of Yemen, on its way from Turkey to India[2]. Armed people came out of the aircraft and took over the vessel and its crew of about 25 people with different nationalities. This takeover was followed by an announcement on behalf of the "Yemeni Information Minister in the National Salvation Government", which was published on the following day at FARS news agency, that "all the Israeli ships at the Red Sea would be legitimate targets for the Yemeni armed forces, noting the Sana'a is confronting a strategic enemy of the entire Arab and Muslim Nation", and that "Sana'a has information on all Israeli ships that pass through the Red Sea"[3], and with the releasing of photos of the takeover at the Houthi Media Center.

[1] The Insurer, "Markel Leads ~65mn hull policy for Houthis-seized Galaxy Leader vessel".21.11.2023, https://www.theinsurer.com/

[2] Times of Israel, AP and TOI STAFF, "Iran-Backed Yemen, rebel's attack on Israel-linked ship raises risks in vital Red sea", 21.11.2023, www.timesofisrael.com

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The takeover of the *Galaxy Leader* seems in some ways similar to the manner in which on the 25th of February 2021 the M/V *Hellios Ray* was hit by either a missile or a sea mine while navigating through the Hurmoz Strait after it had called to King Abdul port in Saudia Arabia in a voyage that included the passage through the Suez Canal on her way to the Persian Gulf countries.

At that time, the attack was followed with publications at FARS on the increasing activities of Iranian Navy identifying foreign vessels and of protecting the interests of Iranian vessels, and of an interview with a person named David Swanson which was published under the heading of: "US, Israel Legitimizing Assassination in Other Countries".

The right of innocent passage is provided by UNCLOS (United Nation Convention on the Law of the Sea) not only at the High Seas but also within the territorial waters of a coastal state (*Article 17* of UNCLOS: "**ships of all States […] enjoy the rights of innocent passage through the territorial sea**") and in regards to passage through the straits the *Article 38* specifically states that :"**all ships and aircraft enjoy the rights of transit passage, which will not be interrupted**".

An occurrence in which armed people come down from an aircraft and accompanied by boats take over a cargo vessel while navigating according to its right for an innocent transit passage which should not be interrupted, is included in the definition of piracy (Articles 101, 102 of UNCLOS) as being an "illegal act of violence or detention […] directed against a ship in a place outside the jurisdiction of any state" and committed by persons of dominant control of the aircraft (or the ship) using it for the purpose of committing the act of violence or detention.

It should be mentioned that UNCLOS imposes liability on the states to "**cooperate to the fullest possible extent in the repression of piracy**" (*Article 100*) and provides the states with the authorities of seizure of a pirate ship or aircraft, (such authority includes the seizure of the ship or aircraft, the arrest of the persons and the seizure of the property on board, *Article 105*) and of a visit and search of the ship engaged in piracy (and also in slave trade, *Article 110*).

It should be noted that Bab-al-Mandab Straits are 'located' in the "corridor' leading from the southern part of the Suez Canal to the Gulf states or to the east - to India and further on. In fact, every vessel passing through the Suez Canal for its navigation in the route taking south and east (or in the opposite direction), has no choice but to pass through this Strait. Making this passage subject to intended organized violence effected against people of different nationalities - both as seafarers, shippers of the cargo carried and their consignees, and owners of the vessels - damages international trade.

The essence of the Suez Canal was evidenced in March 2021 when the MV *Ever Given* was grounded in the sands of the Canal which became blocked, and most of the vessels preferred to wait at the entrance of the Canal for the salvage operations and its re-opening (without being provided with any guarantee that the complicated salvage operations would indeed succeed) instead of taking the alternative long route of navigating along the African continent, as such alternative is not only expensive in terms of costs of oil and days of operation of the vessel (and hire payments), but also exposes the maritime adventure (the vessel, the cargo and the freight to be paid) to many more perils of the sea.

Therefore, securing safe navigation in this essential route of passing through the Red Sea and Bab-al-Mandab is crucial for securing the maritime transport in the area.

In the 80's, during the Iran-Iraq war, when Iran increased its attacks on Kuwaiti vessels, the United States responded in March 1987 by accepting the Kuwaiti request and placed the US flag on eleven of Kuwait's oil tankers and escorted them with US war ships. Additionally, the US and other states employed their war vessels in the Persian Gulf and the Strait of Hormuz in order to protect international shipping and to carry out minesweeping operations - these actions fully

[3] Fars news agency, "Yemen WarnsAll Israeli Ships in the ed Sea 'Legitimate Targets'", www.frasnews.ir, 20.11.2023

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consistent with international law which recognizes the right of a neutral state to escort and protect its ships carrying its flag.[4]

Houthis' attacks on vessels navigating in the Red Sea and other marine area surrounding the shores of Yemen have increased. For example, on the 3rd of December the M/V *Unity Explorer* (Bahamas flagged, U.K. owned); the MV *Number 9* (Panama Flagged) the M/V *Sophie II* (Panama Flagged) suffered from missile and drone attacks and "occupied" the US war ship USS Carney with intercepting missiles launched from Yemen direction and also protecting itself from a drone launched to its direction from a Houthi controlled area in Yemen.[5] "Zim" shipping company and other vessels decided to avoid entering the Red Sea and to change their navigation routes to the long tour around Africa. This situation will probably cause insurers to make use of the war cancelation clause and to cancel the regular insurance policies with a notice of 14 or 7 days, and requiring the insured to pay higher premium rates for war risk and piracy coverage, reflecting the current risks of navigating in the area. Further to this point, major shipping companies are considering their position. While Maersk has said it is preparing to resume shipping operations through the Red Sea and Culf of Aden, Happag-Lloyd has routed vessels south around South Africa and several ship owners have paused shipments via the Red Sea following the Houthi attacks.

The continuous Houthi attacks on vessels navigating in the area of Yemen has led to the establishment of Operation Prosperity Guardian – an international security initiative under the umbrella of the Combined Maritime Forces (CMF) (commanded by the US Navy) which will jointly address security challenges in the southern Red Sea and Gulf of Eden.[6] The declaration establishing Operation Prosperity Guardian was immediately answered by a Houthi announcement that "Yemeni Armed forces will not stand idly by. They will promptly target American warships, and barrages of missiles will rain down their sensitive sites".[7]

Also, it should be noted, that on the 4th of December 2023, some explosions were observed in the surroundings of Sana'a – a Houthi army area, which indicate that the attacks on cargo vessels will not go without response.

Currently, more than 90 days have passed since Hamas' carried out the horrific attacks in Israel by murdering 1,200 people on the 7th of October, most of them civilians, many of them tortured, and kidnapping almost 200 more. The Israeli government took the view that this was an act of war and that Israel has the right to defend itself. The actions of the Houthis in the Red Sea are said to be in support of Palestinians but are an indication of the dangers of warlike acts in the region, both in land and at sea.



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[4] Wolf Heintschel Von Heinegg "**Visit, Search, Diversion, and Capture in Naval Warfare**", Part **II**, Developments Since 1945, 30 CAN. Y.B. INT'L L. 89, 1992, page 104.
[5] US Centcom press release number 20231203-01"Houthi Attacks on Commercial Shipping in International Water Continue", Dec 3, 2023, www.centcom.mil.
[6] U.S. Department of Defense press release, " Statement from Secretary of Defense", Dec 18, 2023, www.defense.gov.
[7] FARS News Agency, "Ansarullah Leder Threatens to Attach US Warship", Dec 21, 2023, www.farsnews.ir

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