

2024, President Biden warned “the leadership of Israel” that “humanitarian assistance cannot be a secondary consideration or a bargaining chip. Protecting and saving innocent lives has to be a priority.”³⁹ The president did not publicly threaten to condition or withhold military aid, but shortly after the address he warned that an attack on southern Gaza city of Rafah, where one million Palestinians have sought refuge, would be a “red line.”⁴⁰ Subsequently, Israel reportedly provided written assurances pursuant to NSM-20 that it is using U.S. defense articles in accordance with international humanitarian law and not restricting the transport or delivery of U.S. humanitarian assistance.⁴¹ Those assurances are under review; arms transfers to Israel continue.⁴² On March 25, the Security Council adopted a resolution that “[d]emand[ed] an immediate ceasefire for the month of Ramadan . . . [and] the immediate and unconditional release of all hostages.”⁴³ The United States abstained from the vote on the resolution, which Ambassador Thomas-Greenfield said was “nonbinding.”⁴⁴

The United States and Partners Use Force Against the Houthis to Protect Freedom of Navigation in the Red Sea and the Gulf of Aden

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Following nearly two months of Houthi attacks on commercial ships traversing the Red Sea to and from the Suez Canal, one of the world’s most critical shipping lanes, the United States and the United Kingdom, with support from Australia, Bahrain, Canada, and the Netherlands, executed strikes against Houthi targets in Yemen on January 11, 2024.¹ The

Adviser in 1978, that Israeli settlements are “inconsistent with international law.” Letter from State Department Legal Adviser Concerning Legality of Israeli Settlements in the Occupied Territories, Apr. 21, 1978, 17 ILM 777. For background, see Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 288, 296 (2000).

³⁹ State of the Union Address, *supra* note 4.

⁴⁰ Michael R. Gordon, Dion Nissenbaum & Vivian Salama, *Biden Warns Netanyahu an Assault on Rafah Would Cross “Red Line,”* WALL ST. J. (Mar. 10, 2024), at <https://www.wsj.com/world/middle-east/biden-warns-netanyahu-an-assault-on-rafah-would-cross-red-line-c78677ba>. With regard to “red lines,” National Security Advisor Jake Sullivan said: “The president didn’t make any declarations or pronouncements or announcements.” Peter Baker & Alan Yuhas, *White House Denies Biden Has Set “Red Lines” for Israel-Hamas War in Gaza*, N.Y. TIMES (Mar. 12, 2024), at <https://www.nytimes.com/2024/03/12/world/middleeast/biden-netanyahu-israel-gaza-red-lines.html>.

⁴¹ See Karen DeYoung & John Hudson, *U.S. to Review Israeli Assurances It Is Not Violating International Law*, WASH. POST (Mar. 20, 2024), at <https://www.washingtonpost.com/national-security/2024/03/20/israel-gaza-weapons-international-law>.

⁴² See Karen DeYoung, John Hudson & Yasmeen Abutaleb, *Biden Administration Gauges Israeli Compliance With Laws of War*, WASH. POST (Mar. 22, 2024), at <https://www.washingtonpost.com/national-security/2024/03/22/israel-gaza-arms-transfer-law>; John Hudson, *U.S. Signs Off on More Bombs, Warplanes for Israel*, WASH. POST (Mar. 29, 2024), at <https://www.washingtonpost.com/national-security/2024/03/29/us-weapons-israel-gaza-war>.

⁴³ SC Res. 2728, para. 1 (2024).

⁴⁴ See U.S. Dep’t of State Press Release, *U.S. Abstention from UN Security Council Resolution on Gaza* (Mar. 25, 2024), <https://www.state.gov/u-s-abstention-from-un-security-council-resolution-on-gaza> [<https://perma.cc/P8ZS-M3C2>]; U.S. Mission to the UN Press Release, *Explanation of Vote Delivered by Ambassador Linda Thomas-Greenfield Following the Adoption of a UNSC Resolution on the Situation in the Middle East* (Mar. 25, 2024), at <https://usun.usmission.gov/explanation-of-vote-delivered-by-ambassador-linda-thomas-greenfield-following-the-adoption-of-a-uns-c-resolution-on-the-situation-in-the-middle-east> [<https://perma.cc/342B-5YP7>].

¹ See White House Press Release, *Statement from President Joe Biden on Coalition Strikes in Houthi-Controlled Areas in Yemen* (Jan. 11, 2024), at <https://www.whitehouse.gov/briefing-room/statements-releases/>

measures, according to President Joseph R. Biden, Jr., were “in direct response to unprecedented Houthi attacks against international maritime vessels in the Red Sea.”² Announcing the “defensive action,” the president said that the “targeted strikes are a clear message that the United States and our partners will not tolerate attacks on our personnel or allow hostile actors to imperil freedom of navigation in one of the world’s most critical commercial routes. I will not hesitate to direct further measures to protect our people and the free flow of international commerce as necessary.”³ Since these first strikes, U.S. forces, jointly and unilaterally, have hit Houthi positions multiple times while continuing to aid commercial vessels under attack, intercept missiles bound for Israel, and counter drones targeted at its own vessels, as they have since Houthi attacks began in October.

Connecting the Mediterranean Sea with the Red Sea, the Suez Canal is the “shortest maritime route” between Asia and Europe and “one of the most important waterways in the world.”⁴ About “15 percent of global seaborne trade passes through [the canal].”⁵ In 2019 (the most recent year for which information is publicly available) about 1.2 billion net tons traveled through the Suez Canal, about 3.3 million each day.⁶ This amounts to about 19,000 vessels per year, about 52 per day.⁷ About half is container cargo.⁸ About a quarter is “Oil & Products.”⁹ Northbound cargo is destined primarily for European ports from the Black Sea to the Baltic, with only 12.7 percent (by tonnage) headed to the Americas or elsewhere.¹⁰ Southbound, about sixty percent of cargo heads to East Asia and South Asia.¹¹ Ships that cannot transit the canal must navigate around the Cape of Good Hope, causing significant delays and substantially increasing the costs of the voyage.

Soon after the war between Israel and Hamas began in October 2023, the Houthis, an Iranian-backed non-state armed group now in control of much of north Yemen, including the country’s capital Sana’a, launched missiles at Israel, which the United States shot down.¹² On October 31, the Houthis released a statement through its spokesman Yahya Sare’e stating

2024/01/11/statement-from-president-joe-biden-on-coalition-strikes-in-houthi-controlled-areas-in-yemen [<https://perma.cc/WBK4-LHZZ>] [hereinafter Statement on Coalition Strikes].

² *Id.*

³ *Id.*

⁴ Suez Canal Authority, About Suez Canal, at <https://www.suezcanal.gov.eg/English/About/SuezCanal/Pages/AboutSuezCanal.aspx> [<https://perma.cc/BG44-MNMW>].

⁵ White House Press Release, A Joint Statement from the Governments of the United States, Australia, Bahrain, Belgium, Canada, Denmark, Germany, Italy, Japan, Netherlands, New Zealand, Republic of Korea, Singapore, and the United Kingdom (Jan. 3, 2024), at <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/03/a-joint-statement-from-the-governments-of-the-united-states-australia-bahrain-belgium-canada-denmark-germany-italy-japan-netherlands-new-zealand-and-the-united-kingdom> [<https://perma.cc/73EY-6WSU>] [hereinafter January 3 Joint Statement].

⁶ See Suez Canal Authority Annual Report, Suez Canal Traffic Statistics, at Table 2 (2019), at <https://www.suezcanal.gov.eg/English/Downloads/DownloadsDocLibrary/Navigation%20Reports/Annual%20Reports%E2%80%8B%E2%80%8B/2019.pdf> [<https://perma.cc/9UMX-NAQ3>].

⁷ See *id.*

⁸ See *id.*, Tables 17, 20 and Figures 5, 6.

⁹ See *id.*

¹⁰ See *id.*, Table 22.

¹¹ See *id.*, Table 19.

¹² See Eric Schmitt & Farnaz Fassihi, *U.S. Shoots Down Several Missiles and Drones Launched from Yemen*, N.Y. TIMES (Oct. 19, 2023), at <https://www.nytimes.com/2023/10/19/us/politics/us-missiles-yemen.html>.

that they “will continue to carry out more . . . attacks until #Israel ceases its aggression.”¹³ On November 19, in their first attack on a commercial vessel since the conflict began, the Houthis hijacked the *Galaxy Leader*, a Bahamian-flagged cargo vessel partially owned by an Israeli businessman, as it was traveling south in the Red Sea along the Yemini coast.¹⁴ State Department Spokesperson Matthew Miller said that the “Houthi seizure” is a “flagrant violation of international law.”¹⁵ The Houthis subsequently began a campaign against merchant shipping in the Red Sea and Gulf of Aden, targeting vessels and attempting hijackings, damaging some and injuring crew members. U.S. Navy ships in the area, as well as those of other countries, sought to protect these vessels, responding to their distress calls and shooting down drones and missiles that targeted them. U.S. ships became targets as well. By early December, the administration was considering the creation of a maritime task force that would patrol shipping lanes as vessels headed north or south along the Yemini coast to or from the Suez Canal.¹⁶

On December 1, 2023, the UN Security Council released a press statement “condemn[ing]” the Houthi attacks and “call[ing] for the immediate release” of the *Galaxy Leader* and its crew.¹⁷ Weeks later, on December 18, 2023, more than twenty countries, led by the United States, established Operation Prosperity Guardian, a multinational security initiative.¹⁸ Secretary of Defense Lloyd J. Austin III explained that the “recent escalation in reckless Houthi attacks originating from Yemen threatens the free flow of commerce, endangers innocent mariners, and violates international law.”¹⁹ Operation Prosperity Guardian would “address security challenges” in the Red Sea “with the goal of ensuring freedom of navigation for all countries and bolstering regional security and prosperity.”²⁰ Department of Defense Press Secretary Air Force Major General Pat Ryder explained that “[i]t’s very important to understand that the Houthis aren’t attacking just one country, they’re really attacking the international

¹³ Yahya Sare’e, (@Yahya_Saree), X (Oct. 31, 2023, 10:13am), at https://twitter.com/Yahya_Saree/status/1719356913740095608/photo/1 [<https://perma.cc/U8ZD-UQ85>].

¹⁴ See Christiaan Triebert & David Botti, *Video Shows Yemen’s Houthi Militia Hijacking Ship in the Red Sea*, N.Y. TIMES (Nov. 20, 2023), at <https://www.nytimes.com/2023/11/20/world/yemen-houthi-ship-hijacked.html>.

¹⁵ U.S. Dep’t of State Press Release, Department Press Briefing (Nov. 20, 2023), at <https://www.state.gov/briefings/department-press-briefing-november-20-2023> [<https://perma.cc/3PDH-PXKS>]. The Department’s spokesperson did not clarify whether the Houthis were considered state actors or whether international law could be violated by non-state actors.

¹⁶ See Peter Baker, *U.S. Considers Task Force to Guard Red Sea Ships from Iranian Proxy Forces*, N.Y. TIMES (Dec. 4, 2023), at <https://www.nytimes.com/2023/12/04/us/politics/us-red-sea-task-force-iran.html>.

¹⁷ See United Nations Press Release, Security Council Press Statement on Houthi Threats to Security at Sea, SC/15513 (Dec. 1, 2023), at <https://press.un.org/en/2023/sc15513.doc.htm> [<https://perma.cc/9GTK-HWVWL>].

¹⁸ See U.S. Dep’t of Defense Press Release, Statement from Secretary of Defense Lloyd J. Austin III on Ensuring Freedom of Navigation in the Red Sea (Dec. 18, 2023), at <https://www.defense.gov/News/Releases/Release/Article/3621110/statement-from-secretary-of-defense-loyd-j-austin-iii-on-ensuring-freedom-of-n> [<https://perma.cc/Z4AL-4VNA>] [hereinafter Austin Announces Operation Prosperity Guardian]; U.S. Dep’t of Defense, Jim Garamore, DOD News, Ryder Gives More Detail on How Operation Prosperity Guardian Will Work (Dec. 21, 2023), at <https://www.defense.gov/News/News-Stories/Article/Article/3624836/ryder-gives-more-detail-on-how-operation-prosperity-guardian-will-work> [<https://perma.cc/WTX9-QWPC>] [hereinafter Ryder Gives More Detail]. Other countries, such as India, have deployed vessels to the region independent of Operation Prosperity Guardian. See Anjana Pasricha, *India Projects Naval Power in Arabian Sea Amid Houthi Strikes, Piracy Resurgence*, VOICE OF AMERICA (Feb. 7, 2024), at <https://www.voanews.com/a/india-projects-naval-power-in-arabian-sea-amid-houthi-strikes-piracy-resurgence-17478463.html>.

¹⁹ Austin Announces Operation Prosperity Guardian, *supra* note 18.

²⁰ *Id.*

community. . . . They are attacking the economic well-being and prosperity of nations around the world. So in effect, they really become bandits along the international highway that is the Red Sea.”²¹ Houthi assaults on merchant vessels continued, however, and on December 31, the U.S. Navy engaged the Houthis directly for the first time as two destroyers responded to a distress call from a Danish-owned ship.²²

On January 3, 2024, the United States and thirteen other states “warn[ed] the Houthis against further attacks.”²³ Disregarding this warning, on January 9 the Houthis launched their “largest attack to date—directly targeting American ships.”²⁴ The following day, the UN Security Council adopted Resolution 2722.²⁵ The resolution “[c]ondemn[ed] in the strongest terms the at least two dozen Houthi attacks on merchant and commercial vessels since November 19, 2023,” “[d]emand[ed] that the Houthis immediately cease all such attacks,” “[a]ffirm[ed] [that] the exercise of navigational rights and freedoms by merchant and commercial vessels, in accordance with international law, must be respected, and [took] note of the right of Member States, in accordance with international law, to defend their vessels from attacks, including those that undermine navigational rights and freedoms.”²⁶

A day later, on January 11, American and British forces, with support from partner countries, “successfully conducted strikes against a number of targets in Yemen used by Houthi rebels.”²⁷ President Biden stated that the strikes are “a clear message that the United States and our partners will not tolerate [the Houthi] attacks.”²⁸ In a letter to the president of the Security Council, the United States “report[ed] . . . [that] in the exercise of its inherent right of self-defence . . . [it had] undertaken discrete strikes against Houthi facilities in Yemen in response to a series of armed attacks by Houthi militants over the last few months, including several attacks against United States Navy ships in the Red Sea.”²⁹ It further stated that

²¹ Ryder Gives More Detail, *supra* note 18.

²² See David E. Sanger, Eric Schmitt & Vivek Shankar, *U.S. Helicopters Sink 3 Houthi Boats in Red Sea, Pentagon Says* (Dec. 31, 2023), at <https://www.nytimes.com/2023/12/31/world/middleeast/us-houthi-clash.html>.

²³ January 3 Joint Statement, *supra* note 5.

²⁴ See Statement on Coalition Strikes, *supra* note 1.

²⁵ See United Nations Meetings Coverage, Adopting Resolution 2722 (2024) by Recorded Vote, Security Council Demands Houthis Immediately Stop Attacks on Merchant, Commercial Vessels in Red Sea, SC/15561 (Jan. 10, 2024), at <https://press.un.org/en/2024/sc15561.doc.htm> [<https://perma.cc/JQ57-3V9C>].

²⁶ SC Res. 2722 (2024) (Jan. 10, 2024).

²⁷ Statement on Coalition Strikes, *supra* note 1. The United States has also taken non-military measures, such as designating the Houthis as a “Specially Designated Global Terrorist group” and imposing sanctions on four Houthi military officials, as well as two ship owners and their vessels. See U.S. Dep’t of State Press Release, Terrorist Designation of the Houthis (Jan. 17, 2024), at <https://www.state.gov/terrorist-designation-of-the-houthis> [<https://perma.cc/5WYY-QTB2>]; U.S. Dep’t of State Press Release, The U.S. and U.K. Sanction Houthi Military Officials (Jan. 25, 2024), at <https://www.state.gov/the-u-s-and-uk-sanction-houthi-military-officials> [<https://perma.cc/K93N-KWDK>]; U.S. Dep’t of the Treasury Press Release, Treasury Targets Companies and Vessels Facilitating Qods Force and Houthi Commodity Shipments (Mar. 6, 2024), at <https://home.treasury.gov/news/press-releases/jy2159> [<https://perma.cc/36X2-GU7Q>]. On the U.S. diplomatic strategy, see Statement by U.S. Special Envoy for Yemen Timothy A. Lenderking (Feb. 27, 2024), at https://www.foreign.senate.gov/imo/media/doc/01e46a20-e6f6-4bad-f15a-0b48904ee027/022724_Lenderking_Testimony.pdf [<https://perma.cc/HE42-8NL9>].

²⁸ Statement on Coalition Strikes, *supra* note 1.

²⁹ Letter Dated 12 January 2024 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc. S/2024/56 (Jan. 15, 2024) [hereinafter U.S. Article 51 Letter]. The letter assumed that self-defense could be used in response to an attack by a non-state actor. The United Kingdom also submitted an Article 51 letter. See Letter Dated 12 January 2024 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations

“[t]hese necessary and proportionate strikes were taken after non-military options proved inadequate to address the threat . . . [and] were conducted to degrade and disrupt the ongoing pattern of attacks threatening the United States and deter the Houthi militants from conducting further attacks threatening merchant and commercial vessels transiting the Red Sea.”³⁰ The letter emphasized that the strikes were “consistent with international law” and “narrowly tailored.”³¹

Houthi attacks continued unabated, and the United States and the United Kingdom jointly “launched additional defensive strikes” against Houthi military targets in Yemen on January 22.³² Separate from these planned strategic joint operations, the United States has also conducted, and continues to conduct routinely, unilateral strikes against Houthi anti-ship missiles in Yemen that “were aimed,” “were prepared to launch,” and “were an imminent threat to merchant vessels and U.S. Navy ships in the region.”³³ The United States and the United Kingdom conducted two more planned joint operations in February.³⁴ In addition to these strikes against Houthi targets in Yemen, the United States has continued to take

addressed to the President of the Security Council, UN Doc. S/2024/55 (Jan. 15, 2024); *see also* Letter Dated 26 January 2024 from the Chargé d’Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Addressed to the President of the Security Council, UN Doc. S/2024/103 (Jan. 26, 2024).

³⁰ U.S. Article 51 Letter, *supra* note 29.

³¹ *Id.*

³² U.S. Dep’t of Defense Press Release, U.S., Partners Launch Additional Strikes Against Houthi Military Targets (Jan. 23, 2024), at <https://www.defense.gov/News/News-Stories/Article/Article/3652871/us-partners-launch-additional-strikes-against-houthi-military-targets> [<https://perma.cc/RMQ9-82AQ>]; *see also* U.S. Dep’t of Defense Press Release, Joint Statement from Australia, Bahrain, Canada, the Netherlands, United Kingdom and United States on Additional Strikes Against the Houthis in Yemen (Jan. 22, 2024), at <https://www.defense.gov/News/Releases/Release/Article/3652435/joint-statement-from-australia-bahrain-canada-the-netherlands-united-kingdom-an> [<https://perma.cc/H4Z2-R7BS>]; White House Press Release, A Joint Statement from the Governments of Albania, Australia, Bahrain, Canada, Croatia, Czech Republic, Denmark, Estonia, Germany, Guinea-Bissau, Hungary, Italy, Kenya, Latvia, Lithuania, Montenegro, Netherlands, New Zealand, North Macedonia, Poland, Republic of Korea, Romania, United Kingdom, and the United States (Jan. 23, 2024), at <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/23/joint-statement-from-the-governments-of-albania-australia-bahrain-canada-croatia-czech-republic-denmark-estonia-germany-guinea-bissau-hungary-italy-kenya-latvia-lithuania-montenegro-ne> [<https://perma.cc/5DUH-VSWC>].

³³ *See, e.g.*, U.S. Central Command Press Release, USCENTCOM Destroys Houthi Terrorists’ Anti-ship Missiles (Jan. 18, 2024), at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3649125/uscentcom-destroys-houthi-terrorists-anti-ship-missiles> [<https://perma.cc/36SF-64E5>]; U.S. Central Command Press Release, USCENTCOM Destroys Three Houthi Terrorists’ Anti-ship Missiles (Jan. 19, 2024), at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3651182/uscentcom-destroys-three-houthi-terrorists-anti-ship-missiles> [<https://perma.cc/MS9B-XBX5>]; U.S. Central Command Press Release, Feb. 13 Summary of USCENTCOM Self-Defense Strikes in Yemen (Feb. 14, 2024), at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3676461/feb-13-summary-of-uscentcom-self-defense-strikes-in-yemen> [<https://perma.cc/UP37-MJ5D>]; U.S. Central Command Press Release, Feb. 14 Summary of Red Sea Activities (Feb. 15, 2023), at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3677768/feb-14-summary-of-red-sea-activities> [<https://perma.cc/5CFX-LPJK>].

³⁴ *See* U.S. Dep’t of Defense Press Release, Joint Statement from Australia, Bahrain, Denmark, Canada, the Netherlands, New Zealand, United Kingdom, and United States on Additional Strikes Against the Houthis in Yemen (Feb. 3, 2024), at <https://www.defense.gov/News/Releases/Release/Article/3665864/joint-statement-from-australia-bahrain-denmark-canada-the-netherlands-new-zeala> [<https://perma.cc/ZTA7-XXD3>]; U.S. Dep’t of Defense Press Release, Joint Statement from Australia, Bahrain, Denmark, Canada, the Netherlands, New Zealand, United Kingdom, and United States on Additional Strikes Against the Houthis in Yemen (Feb. 24, 2024), at <https://www.defense.gov/News/Releases/Release/Article/3686190/joint-statement-from-australia-bahrain-denmark-canada-the-netherlands-new-zeala> [<https://perma.cc/2DRD-T3WL>].

protective measures defending merchant vessels and its own ships from Houthi attacks.³⁵ Also in February, the European Union announced a “defensive maritime security operation” in the Red Sea to “contribute to restore and safeguard freedom of navigation, for the sake of the EU, the region, and the wider international community.”³⁶ Some EU member states, such as France, were already operating naval vessels in the Red Sea.

Within forty-eight hours of each of the four planned joint operations to date targeting Houthi positions in Yemen,³⁷ President Biden sent Congress letters “consistent with”³⁸ the War Powers Resolution. In the letters, the president asserted that he had authorized the strikes “to protect and defend our personnel and assets, to degrade and disrupt the ability of the Houthi militants to carry out future attacks against the United States and against vessels operating in the Red Sea region that could further destabilize the region and threaten United States strategic interests.”³⁹ He asserted that the purpose of the strikes was “to degrade Houthi capacity to conduct future attacks and were conducted in a manner designed to limit the risk of escalation and avoid civilian casualties.”⁴⁰ He claimed that the actions were “consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations” and that they were “necessary and proportionate . . . [and] consistent with international law and in the exercise of the United States’ inherent right of self-defense as reflected in Article 51 of the United Nations Charter.”⁴¹ The War Powers Resolution requires the president to submit a report to Congress within forty-eight hours when “United States Armed Forces are introduced . . . into hostilities or into situations where imminent

³⁵ See, e.g., U.S. Central Command Press Release, March 23 Red Sea Update (Mar. 23, 2024), at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3716946/march-23-red-sea-update> [<https://perma.cc/HUZ3-LFPA>].

³⁶ EUNAVFOR OPERATION ASPIDES (Feb. 2024), at https://www.eeas.europa.eu/sites/default/files/documents/2024/EUNAVFOR%20OPERATION%20ASPIDES_2024_0.pdf [<https://perma.cc/V5Z2-RECT>].

³⁷ The president has not sent letters to Congress regarding strikes in Yemen that the administration has described as against targets that were “imminent threats.” See text at note 33 *supra*.

³⁸ See White House Press Release, Letter to the Speaker of the House and President Pro Tempore of the Senate Consistent with the War Powers Resolution (Public Law 93-148) (Jan. 12, 2024), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/01/12/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-10> [<https://perma.cc/8D2T-D5NH>]; White House Press Release, Letter to the Speaker of the House and President Pro Tempore of the Senate Consistent with the War Powers Resolution (Public Law 93-148) (Jan. 24, 2024), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/01/24/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-11> [<https://perma.cc/AG8P-8DEN>]; White House Press Release, Letter to the Speaker of the House and President Pro Tempore of the Senate Consistent with the War Powers Resolution (Public Law 93-148) (Feb. 5, 2024), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/02/05/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-14> [<https://perma.cc/5E6C-2P9E>]; White House Press Release, Letter to the Speaker of the House and President Pro Tempore of the Senate Consistent with the War Powers Resolution (Public Law 93-148) (Feb. 26, 2024), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/02/26/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-15> [<https://perma.cc/3UTH-ALB9>] [hereinafter February 26 WPR Letter].

³⁹ February 26 WPR Letter, *supra* note 38.

⁴⁰ *Id.*

⁴¹ *Id.*

involvement in hostilities is clearly indicated by the circumstances.”⁴² The Resolution also requires the “terminat[ion] [within sixty days of] any use of United States Armed Forces with respect to which [a War Powers Resolution] report was submitted” unless Congress has declared war, otherwise authorized the use of force, or extended the sixty-day period.⁴³

In a letter to the president, Senators Tim Kaine, Mike Lee, Chris Murphy, and Todd Young stated that, “unless there is a need to repel a sudden attack[,] the Constitution requires that the United States not engage in military action absent a favorable vote of Congress.”⁴⁴ They noted that they had “long advocated for deliberate congressional processes in and authorizations for decisions that put servicemembers into harm’s way overseas [and that] [t]here is no current congressional authorization for offensive U.S. military action against the Houthis.”⁴⁵ They asked the president to respond to a series of questions, including: “What is your Administration’s understanding of ‘self-defense’ in the context of these strikes, especially if the strikes are not deterring ongoing and future attacks from the Houthis?” and “Does your administration believe there is legal rationale for a President to unilaterally direct U.S. military action to defend ships of foreign nations?”⁴⁶ Administration lawyers, reportedly, were confident that the president had authority to conduct the strikes and were considering whether the War Powers Resolution’s sixty-day period applied.⁴⁷ The sixty-day deadline passed in March 2024 with no changes in U.S. military activity in the Red Sea and no declaration of war, authorization of the use of force, or extension of the sixty-day period by Congress.⁴⁸

Since the Houthis began attacking container ships, bulk carriers, oil tankers, and other merchant vessels, shipping operators have diverted a significant percentage of traffic from the Canal around the Cape of Good Hope, adding about ten days to the journey, disrupting supply chains, increasing costs, and putting upward pressure on prices.⁴⁹ On February 20, 2024, the seven-day average of transit calls at the Suez Canal was 51 percent of that number the year before, while the average transit trade volume was 42 percent of the prior year’s total.⁵⁰ The equivalent averages around the Cape were each more than double those a year earlier.⁵¹ The global average cost of shipping a 40ft container increased 176.7 percent from

⁴² Joint Resolution Concerning the War Powers of Congress and the President, Sec. 4(a)(1), Pub. L. 93-148, 87 Stat 555 (Nov. 7, 1973).

⁴³ *Id.*, Sec. 5(b).

⁴⁴ Letter of Senators Tim Kaine, Michael S. Lee, Christopher S. Murphy, and Todd Young to President Joseph R. Biden, Jr. (Jan. 23, 2024), at <https://www.kaine.senate.gov/imo/media/doc/12324yemenwarpowersletter.pdf> [<https://perma.cc/ZKL8-RQ47>].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Charlie Savage, *Biden Lawyers Wrestle with Lack of Congressional Blessing for Houthis Conflict*, N.Y. TIMES (Feb. 22, 2024), at <https://www.nytimes.com/2024/02/22/us/politics/biden-congress-houthi-conflict.html>.

⁴⁸ See Ellen Knickmeyer, *Middle East Conflicts Revive Clash Between the President and Congress Over War Powers*, ASSOCIATED PRESS (Mar. 14, 2024), at <https://apnews.com/article/biden-war-powers-israel-gaza-yemen-houthis-c9efce9a874fbc520ddcc4ef182bf63a>.

⁴⁹ See Chris Rogers, *Canal Route Pain: Red Sea Shipping Disruptions’ Impact on North American Supply Chains*, S&P GLOBAL MARKET INTELLIGENCE (Jan. 24, 2024), at <https://www.spglobal.com/marketintelligence/en/mi/research-analysis/supply-chain-red-sea-shipping-disruptions-impact.html> [<https://perma.cc/6A3T-TXYP>].

⁵⁰ PortWatch, *Trade Disruptions in the Red Sea*, at <https://portwatch.imf.org/pages/573013af3b6545deae50ed1cbaf9444> [<https://perma.cc/XTD2-DJ8C>].

⁵¹ See *id.*

December to February.⁵² The cost to ship a 40ft container from Shanghai, China to Genoa, Italy increased 318.6 percent—from \$1,397 on November 30 to \$5,848 on February 1.⁵³ Premiums for war risk insurance (typically required coverage for vessels transiting listed high risk areas) have multiplied by fifty to about 0.7 percent of a ship's value.⁵⁴

As of March, the Houthis have attacked more than fifty commercial and naval vessels, including hijacking one commercial ship, sinking another, damaging many more, and killing three civilian mariners.⁵⁵ They show no signs of stopping their attacks.

⁵² See Drewry, *World Container Index* (Feb. 8, 2024), at <https://www.drewry.co.uk/supply-chain-advisors/supply-chain-expertise/world-container-index-assessed-by-drewry> [<https://perma.cc/7EFR-X8R2>]. Calculated percent increase using \$1,382 on November 30 and \$3,824 on February 1.

⁵³ See *id.*

⁵⁴ See Stanley Reed, *Shipping Costs Soar in Wake of Red Sea Attacks*, N.Y. TIMES (Jan. 24, 2024), at <https://www.nytimes.com/2024/01/24/business/red-sea-attacks-shipping-costs.html>.

⁵⁵ See Statement by Daniel B. Shapiro Deputy Assistant Secretary of Defense for the Middle East Office (Feb. 27, 2024), at https://www.foreign.senate.gov/imo/media/doc/01e46a20-e6f6-4bad-f15a-0b48904ee027/022724_Shapiro_Testimony.pdf [<https://perma.cc/3AWY-V36Y>]; Gaya Gupta & Matthew Mpoke Bigg, *The Houthis Claim a Deadly Attack on a Commercial Ship Off Yemen's Coast*, N.Y. TIMES (Mar. 6, 2024), at <https://www.nytimes.com/live/2024/03/06/world/israel-hamas-war-gaza-news/a-commercial-vessel-has-been-hit-in-the-red-sea-a-british-naval-organization-says>; Costas Paris, *Two Canals, Two Big Problems—One Global Shipping Mess*, WALL. ST. J. (Mar. 10, 2024), at <https://www.wsj.com/business/logistics/shipping-panama-red-sea-suez-canal-edc91172>.