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Warzones and Pirates: Do You Feel Lucky, Punk?

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Presentation

- Current international regulations on piracy
- Current international and US response to piracy
- Difficulties in addressing piracy
- Engagement with pirates
- Insurance considerations for piracy
- How should pirates be dealt with?



Piracy: A definition

- In the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, "maritime piracy" consists of:
 - (a) any illegal acts 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:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
 - (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; and
 - (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

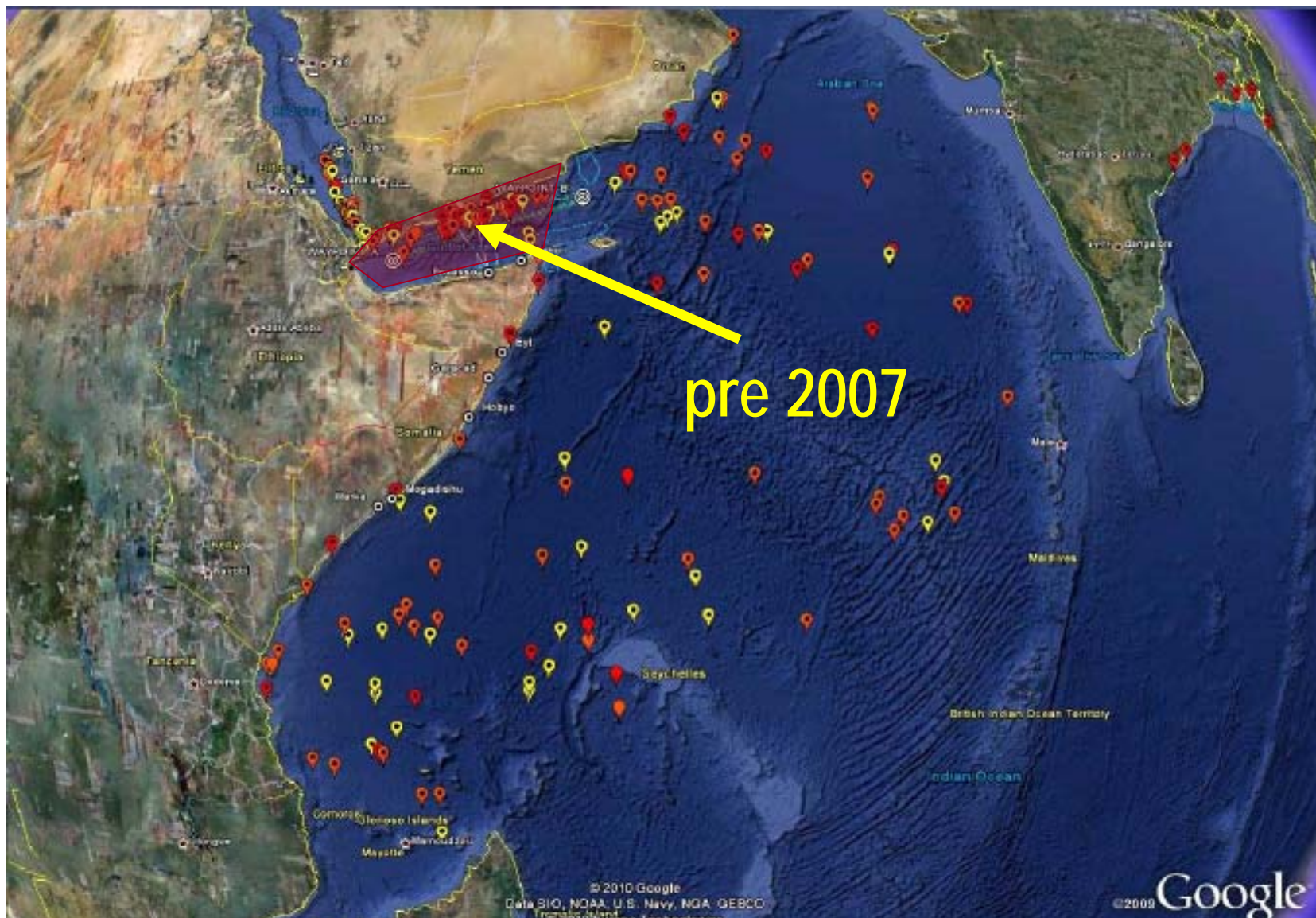


Updated statistics on global piracy

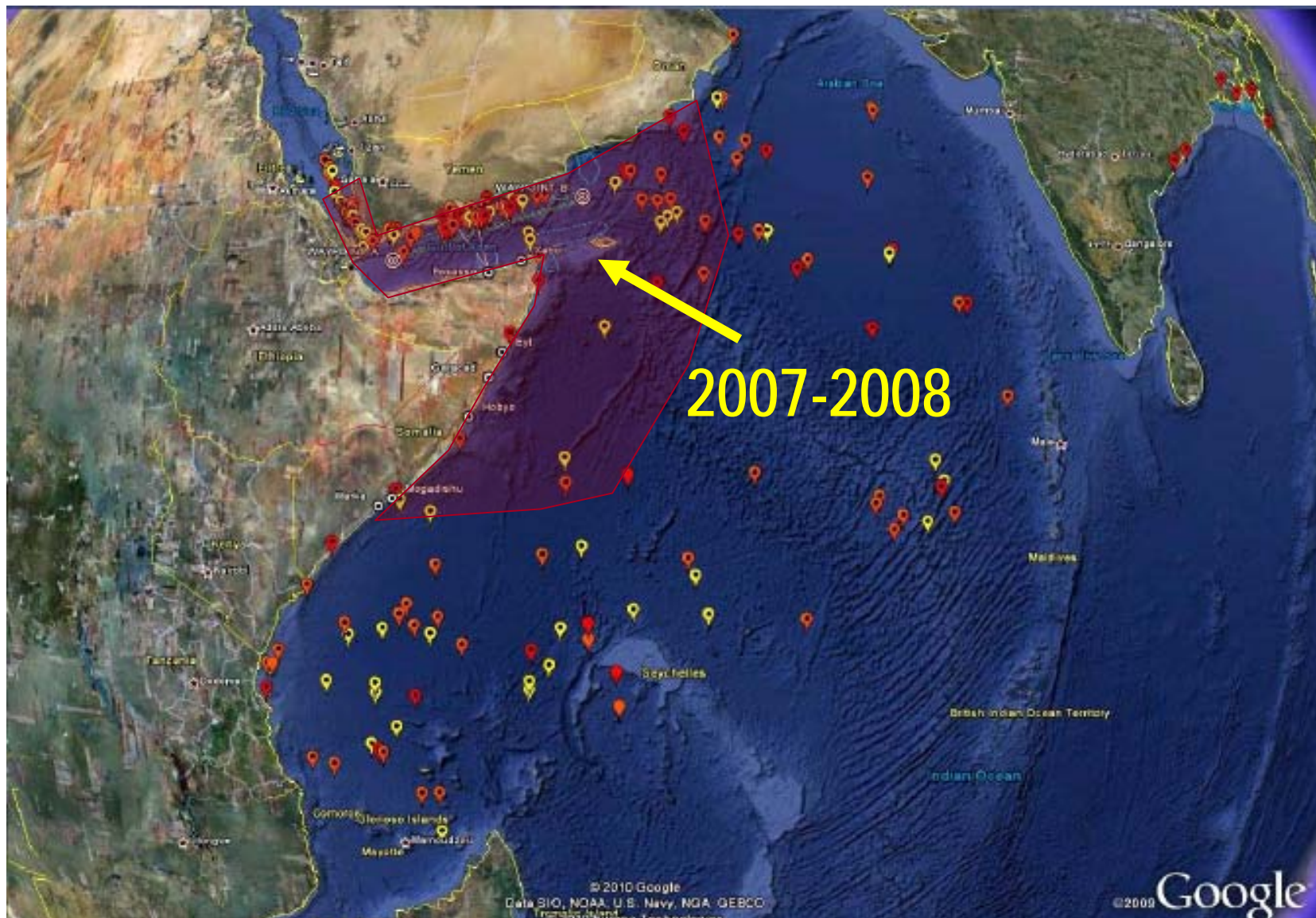
- **1st half 2010**
 - 100 incidents in Horn of Africa (HoA)
 - 544 seafarers taken hostage
 - 10 injured
 - 27 vessels hijacked
- **2009**
 - 217 incidents in HoA
 - 867 seafarers taken hostage
 - 10 injured/4 killed/1 missing
 - 47 vessels hijacked



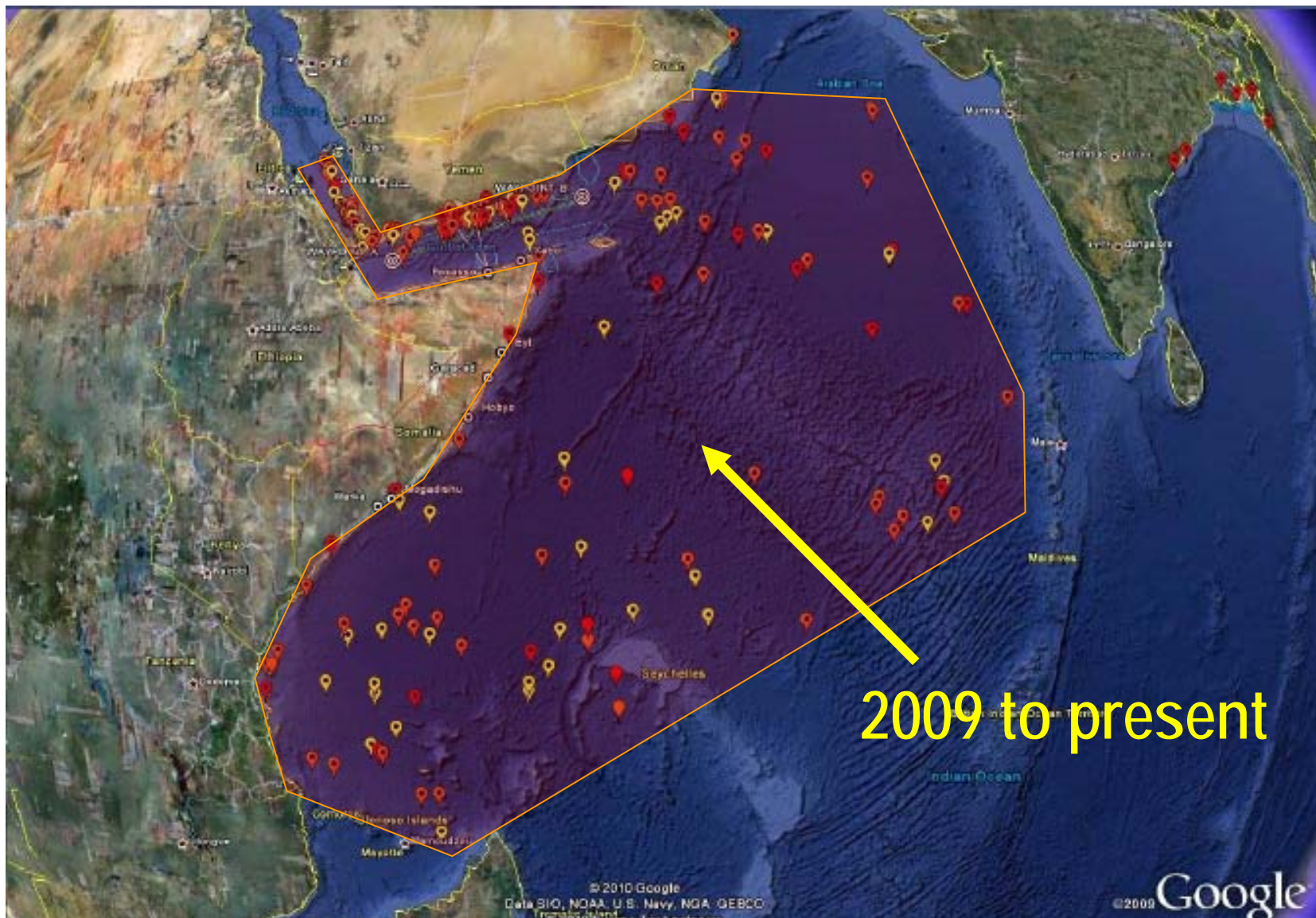
East African expansion of pirate activities since 2007



East African expansion of pirate activities since 2007



East African expansion of pirate activities since 207



Which vessels are targeted?

- **All kinds of vessels targeted...**
 - **Bulkers, tankers and general cargo ships targeted mostly**
 - **Low freeboard vessels steaming >13 knots most at risk**
- **Nigeria and Somalia are the hotspots for piracy at this time**
 - **Nigeria primarily offshore vessels/platforms**
 - **Somalia is all transiting shipping**



Gulf of Aden

- **Naval warships deployed**
 - **EUNAVFOR**
 - **CTF 151**
 - **NATO**
 - **India**
 - **Japan**
 - **China**
- **Naval forces have mixed success**
- **Increased number of detentions (however... 70% pirates are released!)**
- **Still unable to engage pirates in most cases... cloudy jurisdiction**
- **Djibouti Code of Conduct– coastal states working together to deter piracy**



The pirates

- **Very well armed with assault rifles and RPGs**
- **Motherships have considerable range and navigational technologies**
- **Pirate vessels blend in with local traffic including fishing boats, smugglers, etc.**
- **Many fishermen are armed**
- **Confusing intelligence picture!**
- **Weather has impact on piracy events—monsoons, heavier seas limit piracy in some seasons**



Laws & regulations addressing piracy

- United Nations Convention on Law of the Seas (UNCLOS)
- Suppression of Unlawful Acts against the Safety of Navigation (SUA Convention)
- U.S. Constitution
- Numerous recent UN resolutions



UNCLOS: Articles 100-107

- Article 100: Duty to cooperate in the repression of piracy
- Article 101: Definition of piracy
- Article 102: Piracy by a warship, government ship or government aircraft whose crew has mutinied
- Article 103: Definition of a pirate ship or aircraft
- Article 104: Retention of loss of nationality of a pirate ship or aircraft
- Article 105: Seizure of a pirate ship or aircraft
- Article 106: Liability for seizure without adequate grounds
- Article 107: Ships and aircraft which are entitled to seize on account of piracy



1988 SUA Convention

- Established after ACHILLE LAURO seizure
- Provides for contracting parties to:
 - create criminal offences for piracy
 - establish jurisdiction
 - accept into custody those responsible for piracy
 - enforcement relies on traditional jurisdictional bases of nationality and territoriality
- 2005 Protocol
 - includes acts of maritime piracy and 'political' piracy
 - Protocol doesn't affect normal non-politically motivated piracy



US Constitution: Art. 1, Sec. 8, Cl. 10

"The Congress shall have Power ... To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations"

Furthermore, Title 18 U.S.C. § 1651 states:

"Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life."



Recent American vessels piracy incidents

- **MAERSK ALABAMA**
- **ASHLAND**
- **NICHOLAS**



Difficulties in prosecuting pirates

- **Jurisdictions and laws**
- **Collecting evidence on events happening half way around the world**
- **Recent efforts to establish legal processing and imprisonment in Kenya**
 - **problems with volume of cases**
 - **problems with legal capabilities**
 - **concerns of human rights violations**



Insurance issues in piracy

- **Piracy considered a maritime risk for centuries... it is nothing new!**
- **Main types of insurances with piracy risks but coverages are distinct:**
 - **Hull and Machinery: “Marine or War?” deductibles are different, but what is covered?**
 - **Loss of hire: same problem**
 - **Protection & Indemnity: same problem**



Insurance issues in piracy (cont.)

- **General Average**
 - Supported by adjusters, lawyers, etc.
 - Expense for ‘common adventure’
 - Includes basic major costs... but still not certain
 - Not all underwriters, cargo interests agree
 - If vessel is in ballast– still a ‘common adventure’?
 - Does not include many extra costs... including ransom payment



Insurance issues in piracy (cont.)

- **Other considerations**
 - **Cameroon/Nigeria kidnappings are a further twist**
 - **Not strictly piracy**
 - **No contributing interests**
 - **Primary underwriters reluctant to confirm coverage**
 - **encourages more attacks and higher demands**



Insurance issues in piracy (cont.)

- **Kidnap & Ransom (K&R) insurance**
 - Ransom amount paid
 - Loss of ransom in transit
 - Response team costs
 - Ransom delivery costs
 - Independent negotiator
 - Repatriation/replacement of crew
 - Medical/psychiatric support
 - Salary/rehabilitation expenses
 - Legal costs/award for kidnap claims



Conclusions

- **Unfortunately, piracy is here to stay**
 - **Weak law enforcement & infrastructure**
 - **Political instability**
 - **Failure of local economies– worsening economic conditions will likely generate more piracy**
- **Need clearer directions on laws and regulations to assist in bringing pirates to justice**
- **So... the piracy punks do feel lucky!**

