



Written by [Robert Confer](#) on September 11, 2009

The Need for Letters of Marque and Reprisal

On September 9, the federal government sent out a press release that said, “The Maritime Administration today issued an advisory to mariners and ship operators that piracy is likely to increase off the Horn of Africa and in the Indian Ocean now that monsoon season has ended.”



After digesting that notification, it’s almost hard to believe that it has been five months since old-fashioned high seas drama unfolded before our very eyes on the nightly news when the cargo ship the *Maersk Alabama* was seized by a band of pirates just off the Somali coast. In the days that followed, the *Alabama*’s crew took back their craft but at a price. Their captain, Richard Phillips, surrendered himself to the pirates to guarantee the safety of his men. The pirates, with Phillips in tow, took off in a lifeboat and played a game of diplomatic cat and mouse with the U.S. Navy. With hopes of a release not looking like a possibility, Phillips was rescued when SEAL marksmen dispatched the pirates.

Despite such unwanted excitement bringing to the average American’s attention the threat of piracy and the ongoing and very real possibility for the loss of property and, more importantly, life, commercial craft are still no safer now than they were back in April. As the Maritime Administration’s press release indicates, these seafarers are still nothing more than sitting ducks when navigating dangerous waters around the African continent, unprotected souls just begging for another takeover or hostage crisis.

Such a lack of preparedness against the oceanic criminal element is not the fault of the mariners. No doubt they would protect themselves if they could. Their continued weakness is instead the direct result of government inaction: The United States has failed to recognize that private watercrafts have a constitutional privilege to protect themselves, a privilege that can be granted only by Congress.

It’s a little-known fact that the Constitution allows Congress to essentially deputize private individuals to protect American interests on international waters. Article 1, Section 8 of the Constitution says, “The Congress shall have power... To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.” It is those letters, contracts of sort, which would authorize a seafarer to take the law into his own hands and engage the pirates in gun play when threatened and take those pirates into custody, a citizen’s arrest as it were. Without such legal authorization, the mariner — who was only trying to protect the safety of crew and cargo — could theoretically be looked



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at as a pirate under international law.

As it stands, most of our commercial boats have navigated and will navigate into pirate-laden waters without the weaponry necessary to protect themselves. That means that every minute of every day is but a gamble for them. If Congress signed off on their ability to act in a defensive/offensive manner that gamble would be gone. The first cargo ship that stops a potential takeover by blasting pirate craft with machine guns and short-range explosives would make a statement that would resonate throughout the African shores: Private boats will no longer be the easy prey of those animals.

Unfortunately, over time, letters of marque and reprisal have become but a quaint reminder of the Founding Father's era (which, ironically, when it comes to piracy looks no different than today). They have been used only once by the United States since the War of 1812, in World War II when Congress signed such a contract with the *Resolute*, a dirigible that was used to hunt enemy submarines. Even the existence of that letter is the subject of debate as its issuance cannot be found in the congressional record. It should be noted, though, that the Confederate States of America issued countless letters of marque and reprisal during the Civil War.

One congressman, who is one of the very few who truly comprehends and respects the wonders of the Constitution, sees merit behind dusting off this piece of America's foundation. Dr. Ron Paul has been a consistent proponent of the letters, demanding their reintroduction through the years. He famously called for them in 2002 in response to the 9/11 terror attacks (which would have tempered some of the unconstitutional trappings of the USA PATRIOT Act) and again following this past spring's Somali standoff.

It's a little disconcerting that Congressman Paul's commonsense — and legal — ideas have fallen on deaf ears and that shippers haven't been granted their privilege of protection. Despite the logic behind such a faith in force — and the natural right to self-defense that far outweighs the legal privilege — the more "politically correct" officials of the day have opted to ignore letters of marque and reprisal and rely instead on our naval forces. Since the Maersk Alabama event, more U.S. warships have been deployed to the region as bodyguards and escorts of sorts for American and international commercial craft. It doesn't make sense to put naval fleets into waters the world over. It's impractical (we cannot protect every cargo ship), it's costly (Phillips' rescue alone cost tens of millions of dollars), and above all, it's not the best thing for global relations (most countries feel threatened when they see increased military activity in their neighboring waters).

It truly makes the most sense to empower the private craft to protect themselves. Not only is it the most cost-effective and diplomatically-friendly method, but it's the one most befitting the situation. These craft are the ones coming into contact with the pirates and they are the ones who must fight for survival. Survival is a God-given right and Congress must recognize its importance — and the importance of the lives of the men and women who ship our goods around the world — with letters of marque and reprisal. Only then can this ongoing issue of piracy be quelled and the Seven Seas once again made safe for navigation.



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