

Let's Go Privateering!

By Glenn Harlan Reynolds

Time to go a'privateering?

We've heard a bit about letters of marque and reprisal recently. Sen. Mike Lee has proposed [bringing back](#) letters of marque in a thread on X, suggesting them as a tool for going after Mexican drug cartels. Erik Prince, who founded Blackwater, the private security company (it's rude to call them "mercenaries") has also [weighed in](#) in favor of this approach. My own Congressman, Tim Burchett (R-TN) has introduced [legislation](#) allowing the President to issue letters of marque and reprisal against cartels, the Cartel Marque and Reprisal Reauthorization Act of 2025, co-sponsored with Rep. Mark Messmer, (R-IN). (The full text of the bill is [here](#).)

This isn't a new idea, really. Letters of marque and reprisal date back centuries; and even in this century there have been proposals to use them again, particularly after 9/11 when they were [proposed](#), particularly by Rep. Ron Paul (R-TX) as a way of going after terrorists. More recently, people have proposed ["Cyber Letters of Marque and Reprisal"](#) to go after hackers.

Is there anything to these ideas, or do they just appeal to our swashbuckling side? Let's talk.

First, "Letters of Marque and Reprisal" is a conjunctive. A letter of marque authorizes what is essentially a private war against another country, with whom the issuing country may or may not be at out-and-out war. Its chief value is that if captured, the holders are supposed to be treated as prisoners of war, not shot or hanged outright as pirates. In addition – and this was the appeal to privateers, of course – the holder got to keep whatever he could grab, sell it, and keep the revenue. The amount of revenue a letter of marque holder could

retain was essentially unlimited: Whatever he could capture and get to a friendly port.

Letters of reprisal were more limited. Foreign country done you wrong, to the tune of, say, ten million bucks? You can get a letter of reprisal and seize their goods until you've made up the ten million. Then you have to stop.

In either case, the capture had to be adjudged legitimate by a [prize court](#), with the capturer liable for damages if the capture were judged illegal. The United States has had no prize courts since [1899](#). (This would, however, be easy to remedy via legislation, though I notice that Burchett's bill does not do that).



Grok image generator's idea of what a modern privateer might look like. I could have refined it with better prompts but I kind of liked the steampunk vibe here.

Most nations [renounced](#) privateering and thus, presumably, letters of marque and reprisal in the 1856 Declaration of Paris. The United States refused to join that treaty, as did Spain, though Spain later acceded to it in 1908.

So does this have any value or application now? Well, letters of marque and reprisal have traditionally been about naval warfare. But there's no clear reason why that must be. I can imagine, for example, that private military contractors might seize cash, drugs, weapons, vehicles, etc. belonging to drug cartels under a letter of marque. Keep the cash, sell the other stuff to Uncle Sam at a favorable price, or – except for drugs and maybe weapons, to others after a prize adjudication, and you have an incentive to go after stuff.

Writing in *Proceedings of the U.S. Naval Institute* in 2007, Claude Berube suggests that you don't even [need](#) a letter of marque:

It is unlikely Congress would issue letters of marque, particularly since no nation has exercised them in more than a century. Instead, the United States might employ a 21st-century iteration, perhaps "contracts of marque" issued to private naval companies. Authorization for such companies already exists in Title 10 of the U.S. Code, which states: "The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States." . . .

It is important to emphasize that private naval companies would not supplant conventional, symmetric naval missions against navies of other nations in potential conflicts, but given proper embedded oversight and held accountable, their benefits could be harnessed and provide an asymmetric, demand-stimulated force multiplier against the asymmetric forces of

non-state actors.

Missing from this is how such actors would be paid. They could, of course, simply get a check from the government, in which case they would truly just be private military contractors. Or they could be compensated, in whole or in part, by what they could seize from the enemy, perhaps along with [awards](#) of something like “head and gun money,” which the Royal Navy granted for taking prisoners and armed ships. Such awards would make everything seem more exciting, romantic, and swashbuckling, anyway.

One often hears that the last award of prize money took place fairly recently, in the aftermath of World War II – though the seizure in question took place in 1941. This, however, is not correct.

The seizure in question was by the *U.S.S. Omaha*, which approached a suspicious vessel flying the American flag and bearing the false name, “*Willmoto, Philadelphia.*” It was in fact a German freighter named the *Odenwald*. The German crew tried to sink the ship with explosives and failed, allowing the *Omaha*’s boarding party to save the vessel and sail it first to Trinidad and then to Puerto Rico. It was decided (after the war) not as a prize case but as salvage, since the court found that the German crew legally abandoned the ship by fleeing and trying to sink her. Total salvage value was found to be three million dollars. Members of the boarding/salvage party who sailed the *Odenwald* in to port (sixty-seven men) were awarded \$3,000 each, and every other member of the *Omaha* and *Somers* crews received two months’ pay and allowances (\$124,211.66 total).

[The court](#) was careful not to characterize this payout as prize money, but as a salvage award. However, people continue to characterize it as prize money, probably because it sounds more romantic that way.

And I suspect the romance of privateering is one of the main sources of appeal here. But in a world of asymmetric warfare, there may be a place yet for privateers. In particular, I can imagine using them to seize certain cargoes, say, oil tankers carrying contraband oil from Iran. Tankers full of oil are valuable, Iran doesn't have the naval power to defend them, and this could be a fairly effective way of tightening the screws. (Likewise in a potential future set of sanctions on China, though China has a much larger and more capable navy than Iran.)

As for the application of letters of marque to the drug cartels, well, if Erik Prince thinks it could work that's probably worth more than my opinion. As the United States faces unusual military targets in a constrained fiscal environment, it might be a useful tool in the toolbox. People certainly seem to enjoy thinking about it.

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