



# Duty to Rescue – USG Position

CAPT Susan M. McGarvey

Force Judge Advocate

Naval Special Warfare Command



# Case Scenario – USS DUBUQUE (LPD-8)





# Legal Framework



## 1. Duty to Rescue – Peacetime & Wartime

- UNCLOS – Articles 98, 94, & 92 – Flag state responsibility
- 14 USC 88 – US Coast Guard
- 48 USC 2304 – Shipping master
- U.S. Navy Regulations, para 0925
- NWP 1-14M, Commanders Handbook on the Law of Naval Operations
- Geneva Convention II – Wounded, Sick and Shipwrecked, Arts 12 & 18

## 2. Right of Assistance Entry

## 3. Temporary Refuge & Asylum



# UNCLOS, Article 98

---

- Two obligations:
  - Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, crew, or passengers:
    - Render assistance to any person found at sea in danger of being lost;
    - To proceed at all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
    - After a collision, to render assistance to the other ship, its crew and its passengers.....
  - Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service



# U.S. Navy Regulations – 0925, Assistance to Persons, Ships and Aircraft in Distress



- 
- *Insofar as can be done without serious danger to the ship or crew, the commanding officer or the senior officer present as appropriate shall:*
    - Proceed with *all possible speed* to the rescue of persons in distress *if* informed of their need for assistance, *insofar as such action may reasonably be expected of him or her*;
    - Afford all *reasonable* assistance to distressed ships and aircraft; and
    - Render assistance to the other ship, after a collision, to her crew and passengers and, where possible, inform the other ship of his or her identity.





# U.S. Navy Regulations – 0925, Assistance to Persons, Ships and Aircraft in Distress

---



- Assistance may be rendered inside the territorial sea of a foreign country *without the permission* of the coastal state in accordance with customary international law as reflected in applicable directives and operational orders. Such assistance entry into the territorial sea is limited to situations in which the location of persons or property in distress is reasonably well known.



# GC II - Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

---



- *Article 12*: Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances....
- No definition of “shipwrecked” –commentary clarifies not limited
- Other GCs take over when individuals brought on land
- *Article 18*: After each engagement, Parties to the conflict shall without delay take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.



# U.S. Navy Regulations – 0939, Granting of Asylum and Temporary Refuge



- If an official of the Department of the Navy is requested to provide asylum or temporary refuge, the following procedures shall apply:
  - Not in foreign jurisdiction (i.e., outside TTS of any other coastal nation)
    - At his/her request, receive asylum applicant on board
    - Under no circumstances shall the person seeking asylum be surrendered to foreign jurisdiction or control, unless directed by SECNAV or higher authority
  - In foreign jurisdiction (inside TTS)
    - Temporary refuge shall be granted for humanitarian reasons on board only in extreme or exceptional circumstances wherein life or safety of the person is in imminent danger
    - When temporary refuge is granted, such protection will be terminated when directed by SECNAV or higher authority
    - Report request by foreign authorities for return of custody to CNO/Commandant
- Implemented through DoD and SECNAV instructions
- Guidance further spelled out in Judge Advocate General Manual ("JAGMAN")





# Other Considerations

---



- Enforcement: Dereliction of Duty & Orders violations?
- Duty to Provide Search & Rescue Services
- Duty to Rescue – Unmanned Systems