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## Rescue at Sea

By Marilyn Raia

Lately there have been several stories in the news about refugees in overloaded boats on the high seas. There have also been stories about mariners adrift in disabled vessels. Whether the master of another vessel must attempt to rescue such persons is a frequently raised question.

### International Treaties

There are several international treaties to which the United States is a signatory that impose a duty on mariners to give assistance to persons in danger at sea. For example, in 1910, the Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage At Sea [Brussels Convention] was adopted. It was ratified by the United States and came into force in 1913.

Article 11 of the Brussels Convention provides: "Every master is bound, so far as he can do so without serious danger to his vessel, her crew and passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost." Article 11 also provides that a vessel owner is not liable for the master's failure to render the required aid.

The International Convention on Salvage [Salvage Convention] was adopted in 1989 and replaced the Brussels Convention. It was ratified by the United States in 1992 and came into force in 1996. Article 10 of the Salvage Convention has three parts. The first part provides: "Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea." The second part requires the signatory countries to adopt measures necessary to enforce the first part. The third part exempts a vessel owner from liability if the vessel's master breaches the duty imposed by the first part. Article 16 provides that the person whose life is saved from danger at sea does not owe compensation to anyone for doing so.

The International Convention for the Safety of Life at Sea [SOLAS] was first adopted in 1914 in response to the *Titanic* disaster. It has been amended several times since. The version in effect today was adopted in 1974 and entered into force in 1980. Regulation 33 provides: "[t]he master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so."

None of these treaties provides for a penalty or enforcement mechanism. That aspect is left to the signatory countries.

### American Law

The duty to rescue persons in danger at sea is now codified under US law at 46 U.S.C. §2304, The Salvage Act. It provides: "a master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals on board." It also provides for a fine up to \$1,000 and/or two years of imprisonment if violated. Unlike the Brussels and Salvage Conventions, it does not excuse a vessel owner from liability for inaction by the vessel's master.

Congress also enacted The Standby Act, 46 U.S.C. § 2303, which applies to a vessel involved in a marine casualty. The Standby Act imposes a duty on a vessel master or person in charge



of a vessel that has been in a casualty to "render necessary assistance to each individual affected to save that affected individual from danger caused by the marine casualty" so far as it can be done without serious injury to the assisting vessel, its crew and passengers. Like the Salvage Act, the Standby Act provides for a fine and imprisonment for violations. It also provides for in rem liability to the United States for the fine. However, it specifically exempts from liability a person acting in good faith to comply with the obligations under the statute.

#### Contradictory Case Law

There are few cases addressing breach of the duty to rescue persons in distress at sea. Buffalo Law Review commentator Patrick J. Long reasoned in *The Good Samaritan and Admiralty: A Parable of a Statute Lost At Sea*: "Dead men tell no tales. Nor do they sue. Only those castaways who survive, and who can identify a passing ship, would be able to sue the ship's captain for leaving them behind. A decedent's family would have little means of discovering which ships may have passed by a loved one." Despite what might seem to be unambiguous international and federal obligations to rescue persons in danger at sea, the courts have not been uniform when analyzing those obligations.

*Korpi v. United States*, 961 F.Supp. 1335 (N.D.Ca. 1997) involved a vessel in distress near the Monterey Peninsula with Korpi, the vessel owner, aboard. The Coast Guard responded to Korpi's distress call and successfully rescued him by helicopter. But his boat became a total loss after the Coast Guard asked him to cut his anchor line, and efforts to secure a proper towing line failed. Korpi unsuccessfully sued the United States for pain and suffering as well as for the loss of his boat. As a preliminary matter, the district court held "a private party has no affirmative duty to rescue a vessel or person in distress" and "[t]he Coast Guard, therefore, also has no affirmative duty to render aid to a vessel or person in distress."

On the other hand, *Caminiti v. Tomlinson Fleet Corp.*, 1981 AMC 201 (N.D. OH 1979), involved two boaters who had fallen overboard from their vessel in a channel of the Detroit River. Tomlinson's vessel did not make any effort to stop to rescue the boaters but did shine a spotlight on them. A second vessel stopped and made a rescue attempt but ended the effort when a Coast Guard cutter was seen. The two boaters drowned and their administrators filed suit against the company whose vessel did not stop to attempt a rescue and against the company whose rescue effort was abandoned. The court recognized a statutory duty to rescue and that the statute does not exempt a vessel owner from liability for breach of the duty. It also found a duty to rescue strangers in peril "implicit and inherent in general maritime law."

#### Rescuer's Duty of Care

While the courts have been reluctant to impose liability for the failure to attempt a rescue, they have been less reluctant to impose liability on a person or the Coast Guard who has attempted a rescue. However, the standard of care to which an attempted rescuer is held is stricter than ordinary negligence. It takes into consideration the circumstances that the rescuer faced but not, as one court stated, "the wisdom of an armchair admiral." Private individuals as well as the Coast Guard are held to the same standard. Under the stricter standard, a rescuer is not liable for damages suffered by the victim unless: 1) the rescuer's negligence made the victim's position worse; or 2) the rescuer engaged in reckless and wanton conduct. *Hurd v. United States*, 2002 AMC 1584, (4th Cir. 2002) and *Berg v. Chevron U.S.A. Inc.*, 759 F.2d 1425 (9th Cir. 1985) illustrate the point.

*Hurd* involved a sailboat with one adult and three children aboard that struck a jetty leading into



Charleston Harbor. The Coast Guard received two mayday calls but was unable to contact the caller. It also received information from a harbor pilot aboard a cargo vessel about cries for help being heard. The pilot boat went to the area where the cries were heard to conduct a search and reported to the Coast Guard that nothing was found. Despite the distress calls, the Coast Guard took no further action. Four bodies were later discovered in the water. The Coast Guard was held liable for nearly \$19 million because it engaged in reckless and wanton conduct when discontinuing the search after the pilot boat did not find anything. The court found the adult was killed on impact with the jetty but the children might have been saved had a further rescue effort been made.

In *Berg*, the fishing vessel **Capella** struck rocks puncturing the lazarette and jamming the rudder. The master of a Chevron tanker saw the **Capella's** distress signal, went to the scene, and provided a tow. During the tow, the tanker's master asked the **Capella's** master, Berg, three times if the crew of the **Capella** would like to come aboard the tanker. The request was declined. Berg also responded "no" to hourly inquiries from the tanker master about the risk of sinking. Ten minutes after Berg advised all was well, the **Capella** capsized. All five crewmembers donned survival suits and jumped into the water without telling the tanker master. The tanker master notified the Coast Guard and went alongside the **Capella** but because of the weather did not take further steps to try to rescue the crewmembers he thought were trapped in the capsized **Capella**. One of the crewmembers was later retrieved from the water and four crewmembers, including Berg drowned. The survivors of the drowned crewmembers sued Chevron. The Ninth Circuit reversed the district court's holding that Chevron was liable. It found the tanker captain did not do anything reckless or to worsen the victims' situation. Moreover, it found Berg comparatively at fault.

The express language of international treaties and US statutes requires an attempt to rescue a person at sea in distress although not all courts agree. The failure to attempt a rescue rarely leads to the imposition of liability. Once a rescue is attempted, the rescuer is not liable unless acting recklessly or worsening the victim's situation.