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The COLREGS – Time for a Rewrite?

I. P. A. Stitt

It is 30 years since major changes were last made to the collision regulations. This paper identifies a number of shortcomings in the current Rules, including excessive verbiage, unnecessary duplications and complications, and the use of *weasel words*. It also examines the use that has been made of Rule 2 in broadening the interpretation of other Rules. Proposals are then put forward for rewriting *The Rules* so as to improve their clarity and hopefully their understanding. The paper is written from the viewpoint of a mariner.

KEY WORDS

1. COLREGS. 2. Marine collision avoidance. 3. Law. 4. Legal issues.

1. INTRODUCTION. Throughout this paper, *The International Regulations for Preventing Collisions at Sea* 1972 – also known as the COLREGS – are referred to as *The Rules*. The last major revision to *The Rules* was agreed in 1972 and came into force in July 1977. In the subsequent 25 years, there have been dramatic changes to the maritime industry in terms of the number and size of ships, manning levels, training and certification of personnel, and the use (and abuse) of technology. There has also been an explosive growth in the number of recreational craft. For example, there are approximately 30350 vessels of 1000 tonnes or more g.r.t.[1] throughout the world, whereas there are over 90000 cruising yachts in UK waters alone.[2]

The Rules serve two main purposes:

(a) to provide guidance to mariners on how to prevent collisions at sea, and
(b) to serve as a basis for apportioning blame when collisions do occur.

These two objectives often conflict one with the other.

Despite the wide-ranging consultative process that preceded the 1972 revision of *The Rules*, many mariners believe that insufficient attention was paid to their views. As a result, the delicate balance between the two conflicting objectives is seen as being heavily weighted in favour of provisions that are of relevance and benefit only to Regulators and the legal profession. Such provisions undermine the rest of *The Rules* and their efficacy.

This paper is written from the viewpoint of a seaman rather than a lawyer; it seeks to show that many of the practical problems that mariners face arise from the way in which *The Rules* have been drafted. Court decisions can often add further complications. For example, the words in a Rule should not always be given their strictly literal meaning.[3]

Seamanship usually involves experience and common sense rather than the interpretation of *weasel words*. The mariner wants rules that are as unambiguous as

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possible. It is often argued that *The Rules* must have sufficient flexibility to cater for the infinite variety of facts and circumstances that can face the mariner at sea. However, the 1972 Rules are replete with vague and subjective words and phrases. The resulting excessive flexibility has created more problems than it has solved and has resulted in the mariner being 'damned if he does and damned if he doesn't' in the event of a collision.[4]

Moreover, it is important to remember that '… it is not *The Rules* that prevent collisions; it is the people on board who are responsible for making them work.'[5] Hence, *The Rules* ought to be clear in their interpretation and operation to the average mariner.

2. LONG-STANDING CRITICISMS OF *THE RULES*. Even before the 1972 Rules were promulgated, a translator identified some of the problems when he commented: 'Two defects recur too often to be greeted at each encounter, and it should be possible to deal with them collectively. They are:

(a) the use of unnecessary words, and
(b) the use of different words to convey the same purport.'[6]

Many words and phrases in *The Rules* have been criticised as adding opacity rather than clarity. Even as the 1972 amendments were being discussed there was criticism that '… the existing legal jungle of highly subjective words and phrases seems to have thickened …'.[7]

All those criticisms are still valid, thirty years later. In part, this is due to a tendency to *cut and paste* old Rules instead of rewriting them properly. Other shortcomings identified in this paper include:

(a) the use of *weasel words*,
(b) inconsistencies and anomalies,
(c) overlapping Rules, and
(d) the use of language that is often 150 years old.

3. MORE FUNDAMENTAL PROBLEMS. Collisions still occur with alarming regularity. Many of the problems associated with applying *The Rules* in practice are widely recognised. The MAIB (Marine Accident Investigation Branch) recently summarised the position very succinctly:

> Finally, too many collisions are caused by the oldest shortcoming of all, making assumptions based on scanty information, especially scanty radar information. The point has been made already. Never, never, assume the other man is going to get it right.[8]

In the past forty years, there has been a very marked decrease in the collision rate – it has been reduced by over 50 %. However, it is probable that this improvement can be attributed almost entirely to the introduction of traffic separation schemes, other routing arrangements and the effective use of radar, rather than to *The Rules* themselves. Moreover, case law, the MARS reports[9] and anecdotal evidence all indicate that many of the basic principles of collision avoidance are improperly understood. Close passing occurs with alarming frequency, and there is still widespread disregard of many of *The Rules*. These are not new problems,[10] but there should have been a significant improvement in these areas over that same forty-year period.

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4. UNNECESSARY COMPLICATIONS. *The Rules* have been subjected to significant criticism from practicing mariners.[11] Although this paper does not attempt a detailed examination of all the uses and abuses of the words in *The Rules*, several examples of unnecessary complications have been included to illustrate some of the practical problems.

Under certain Rules[12] one vessel, here referred to for convenience as the *burdened vessel*, is required not to *impede* the passage of another vessel, referred to for convenience as the *privileged vessel*.[13]

4.1. *Rule 8(f)*. Under Rule 8(f)(i), the burdened vessel is required to take early action to allow sufficient sea-room for the safe passage of the privileged vessel. Arguably, this is little more than good seamanship in each case to which the *not to impede* provisions apply. Not unreasonably, Rule 8(f)(ii) states that the burdened vessel continues to have the obligation not to impede the other vessel even when a risk of collision develops. In other words, the burdened vessel is precisely that – its obligations continue to the bitter end.

The use of the word *impede* is an unnecessary complication. Elsewhere in *The Rules*, the normal requirement is for one vessel to *keep out of the way* of the other vessel. In normal English usage, *impede* means:

(a) to obstruct in progress or action,
(b) to hinder, or
(c) to stand in the way of.[14]

Hence it could be argued that *not to impede* means nothing more than *keeping out of the way of*. On the other hand, such is the richness of the English language, that the words also encompass phrases such as:

(a) not to obstruct, bother or inconvenience,
(b) not to get in the way of, and
(c) not to cross the path of.

Roget and other thesauri could provide many more meanings!

Fascinating as such musings may be, it is difficult to see the justification for not using the simple phrase *keep out of the way of*, particularly when considered in conjunction with Rule 2. It would have removed unnecessary verbiage and nuance, and it would have meant that Rule 17 applied automatically, at least when the two vessels are within sight of one another. There is no equivalent to Rule 17 as far as the *not to impede* provisions are concerned.

A further complication arises as a result of the *weasel words* to be found in Rule 8(f)(iii). The early parts of Rule 8(f) give the burdened vessel all the responsibility for collision avoidance. Unfortunately, Rule 8(f)(iii) then states that the privileged vessel remains fully obliged to comply with *The Rules* when a risk of collision develops.

Consider a simple situation where a risk of collision is developing, as illustrated in Figure 1. If the *not to impede* Rules did not exist, vessel A would be the give-way vessel, under Rule 15. The appropriate action would normally be a turn to starboard. On the other hand, if it is a *not to impede* case, then vessel B is the give-way vessel. Depending on all the facts and circumstances, B might alter course, slow down or stop. But, if a risk of collision exists, then both vessels have an obligation to give way to the other; vessel A by virtue of a combination of Rule 8(f)(iii) and Rules 15 and 16; and vessel B by virtue of a combination of Rule 8(f)(ii) and, say, Rule 18(b)(iii).

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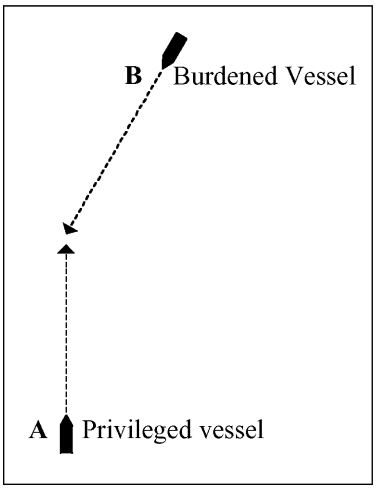


Figure 1. Risk of collision example.

Ironically, the only vessel that is given further guidance in such a case is vessel B, which is required to maintain her course and speed by virtue of the combination of Rule 8(f)(iii), Rule 15 and Rule 17(a)(i).

Another example of potential ambiguities is the way in which Rule 10(j) interacts with Rule 17.[15] It is difficult to understand why those who drafted the 1972 Rules did not attempt to avoid or resolve such unnecessary confusion. The current wording achieves little other than to give both vessels a basis for arguing that the other ship was the give-way vessel, in the event of a collision.

4.2. *Rules 9(b) and 10(j).* Another example of unnecessary complication is provided by a comparison of the words in Rules 9(b) and 10(j). Both Rules apply to vessels of less than 20 metres in length and to sailing vessels. Rule 9(b) applies in narrow channels, while Rule 10(j) is applicable to traffic separation schemes. Under Rule 9(b), such vessels are not to impede '… the passage of [a] vessel which can safely navigate only within [the] narrow channel or fairway …' In Rule 10(j) the obligation is not to impede '… the safe passage …' of power driven vessels following a TSS traffic lane. It is difficult to understand why the word *safe* was added in Rule 10(j). At the very least, it implies that there are circumstances where it would be perfectly acceptable for a small vessel to impede the passage of a vessel following one of the traffic lanes. It introduces a subjective judgement, which the helmsman/OOW of the (potentially) burdened vessel, i.e. the small vessel, is ill-equipped to make. That person is unlikely to have sufficient information regarding the other vessel to be able to make a valid evaluation. Moreover, the watchkeeper of the burdened vessel could not be certain that the OOW in the privileged vessel agreed with his assessment of whether, although her passage is impeded, there is sufficient room for manoeuvre so that the privileged vessel's *safe* passage is not impeded. Practical experience suggests that few masters, watchkeepers or pilots of larger vessels care about these nuances of wording and that even fewer helmsmen of small vessels know of their existence! Hence it is difficult not to conclude that it is merely another unnecessary complication. If the main objective of *The Rules* is to prevent collisions, it is submitted that there is no justification for including the word *safe* in Rule 10(j). Somewhat similar

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comments apply, but to a much wider range of vessels, in relation to Rule 18(d)(i) where, again, the phrase *safe passage* is used.

4.3. *Unnecessary duplication*. An element of confusion can also arise where there is unnecessary duplication in *The Rules*. If certain Rules duplicate words that appear elsewhere, the mariner could be forgiven for assuming that there is a specific, good and valid reason for such duplication or for assuming that a Rule has less force if there is no such duplication. The prime example is provided by Rule 16, which in effect merely repeats, in a shortened and different form, the words of Rule 8.

5. THE SCOPE OF RULE 2. There are two separate and distinct parts of Rule 2. Indeed, prior to 1972, there were two separate Rules. Rule 29 of the 1960 Rules became Rule 2(a) in the 1972 Rules; at the same time a number of changes were made to the wording. Rule 27 of the 1960 Rules became Rule 2(b) of the 1972 Rules, with only a very minor change in one phrase. Much of the wording of both old Rules had been around for a century.

5.1. *Rule 2(a)*. The main thrust of Rule 2(a) can be seen by rewriting the words of the Rule in a slightly different form:

Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences:

(a) of any neglect to comply with these Rules, or
(b) of the neglect of any precaution which may be required
(i) by the ordinary practice of seamen, or
(ii) by the special circumstances of the case.

The words *of any neglect to comply with these Rules* were added in 1972. The remaining words are almost identical to those used in Article 20 of an 1863 Order in Council.

The *ordinary practice of seaman* is usually taken as synonymous with *good seamanship*, which in turn is a question of fact, based on all the prevailing circumstances. It does not imply 'superhuman' skills but it does involve those that might be expected of an 'ordinarily competent'[16] seaman. For some years, there were mixed views on the relevance and application of Rule 2(a). In 1949, one Law Lord observed that he doubted if '… it is more than a solemn warning that compliance [with *The Rules*] does not terminate the ever present duty of using reasonable skill and care.'[17] Likewise, at least one authority believes that the Rule is nothing more than a restatement of a basic rule of Common Law in relation to negligence cases. In other words, '… one is liable in damages for the foreseeable consequences of a failure to use the care expected of those of one's calling, whatever that calling may be.'[18]

The forerunner to Rule 2(a)[19] specifically referred to the need to keep a proper lookout, and case law decisions indicated that it encompassed safe speed and several other subjects, each of which now has its own Rule. Thus, following the adoption of these additional Rules and the guidance inherent in them, it might have been thought that '… recourse by the Courts to [Rule 2(a) and] the principle of good seamanship would [have assumed] a residual, but by no means unimportant, character.'[20] In fact, Court decisions in the last few years appear to have changed that residual character very significantly. Rule 2 has been invoked in several cases to justify a broad interpretation of the words of other Rules. In particular, the permissive wording of Rule 17(a)(ii) has been held to be very close to compulsion when good seamanship so

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requires.[21] Furthermore, Rule 2 is mentioned with increasing frequency in MAIB reports.[22]

Not every mariner is familiar with the Common Law concept of negligence, which appears to be the principle underlying Rule 2 (and its predecessors). Indeed, it is questionable whether the majority of watchkeeping officers are even aware of such concepts, particularly those that come from countries where the legal system is not based on Common Law. Hence there is a strong argument for emphasising the paramount importance of this Rule. The trend towards treating the *ordinary practice of seamen* as being synonymous with *good seamanship* deserves further investigation. For example Rule 8(a) uses the specific words '… with due regard to the observance of good seamanship.' This is a positive statement, which can be contrasted with the double negatives inherent in Rule 2(a). Are the two phrases to be construed in the same way? If so, then it would be appropriate to use similar wording. Moreover, the use of the specific words in Rule 8(a) is unnecessary and misleading tautology, since all *The Rules* are subject to the need to observe good seamanship by virtue of Rule 2(a).

5.2. *Rule 2(b).* The words of Rule 2(b), rewritten in a slightly different form, are: *In construing and complying with these Rules due regard shall be had*

(a) to all dangers of navigation and collision, and
(b) to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

Taking Rule 2(b) as a whole, it allows a vessel to take action which is not in accordance with *The Rules*, but only when strict adherence to *The Rules* would endanger the vessel herself.

The words *including the limitations of the vessels involved* were only added (to Rule 27) as one of the changes agreed in 1948, which came into force in 1954. It is also important to note that those additional words were not added to Rule 29, which was the predecessor to Rule 2(a) of the 1972 Rules. The clear implication of this difference is that such limitations would not normally rank as *special circumstances* when Rule 2(a) is in point – something more would be required.

Rule 2 can also be interpreted to mean that, if there is a collision, slavish adherence to *The Rules* cannot be used to justify a particular course of action if that conflicts with what would be considered as good seamanship.

6. SOME FLAWS IN RULE 17. It is axiomatic that Rule 17 is a very complex Rule, both in its wording and its interpretation. In this paper, only Rule 17(b) is examined, and then only briefly. That Rule *requires* the stand-on vessel to take action when '… collision cannot be avoided by the action of the give-way vessel alone …'.[23]

A recent MAIB report implied that the words *special circumstances* in Rule 2(a) have the effect of altering the requirements of Rule 17(b):

> The watchkeeper on a highly manoeuvrable stand-on vessel could avoid collision by complying strictly with Rule 17(b), but, if the stand-on vessel is the larger vessel and less manoeuvrable, then adhering to Rule 17(b) could lead to collision in many cases. In other words, the larger or less manoeuvrable vessel is obliged (sic) to act earlier. This is a *special circumstance* under Rule 2(a) and means that the stand-on vessel is *required* (emphasis

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added) to take action at a distance, that is, one where her action alone will be enough to avoid collision.[24]

In a slightly different form, that reading of Rule 2 might be inferred from another MAIB report, issued a few months later.[25] If that interpretation is correct, it means that an OOW of the stand-on vessel **must** take action under Rule 17(b) no later than the earlier of:

(a) the point at which the collision can no longer be avoided by the action of the give-way vessel alone, or
(b) the last moment at which she, the stand-on vessel, can avoid a collision by her action alone.

A somewhat similar point was made in a paper written in 1995, which also included a suggested revised wording for Rule 17(b), to give effect to that interpretation.[26] There is little doubt that, in the circumstances envisaged both by MAIB and in the 1995 paper, any action by the stand-on vessel would be permitted, indeed almost certainly ought to be taken, by virtue of Rule 17(a)(ii) coupled with the *good seamanship* requirement of Rule 2(a). What is much more questionable is the MAIB's contention that Rule 17(b) would apply.

Under Rule 2(b) *special circumstances* automatically includes *the limitations of the vessels involved*. There is no such inclusion under Rule 2(a). There may be occasions when differences in manoeuvrability would constitute *special circumstances*. However, it is submitted that such occasions would be the exception rather than the rule, with the result that MAIB's contention is clearly open to challenge.

Encounters between vessels of different sizes and very different manoeuvring capabilities are commonplace, which in turn implies an absence of *special circumstances*. Hence, Rule 17(b) cannot be used to *require* the stand-on vessel to take account of the different manoeuvring capabilities of the two vessels.

The flaw in Rule 17(b) was referred to in the judgment in The SITAREM and The SPIRIT.[27] The relevant data in that case were as shown in Table 1.

Table 1. Comparison of manoeuvring capabilities.

	SPIRIT	SITAREM
Length	253 metres	88 metres
Beam	38·9 metres	13·7 metres
Gross Registered Tonnage	57517	2250
90° turn – Advance	615–650 metres	165–183 metres
90° turn – Transfer	380 metres *	37–45 metres
Stopping distance	3400 metres	183 metres
Time to stop	12 minutes	2·5 minutes
	* half tactical diameter	

The differences in the manoeuvring capabilities of the two ships can be seen very clearly in Figures 2 and 3.

It is clear from the manoeuvring data that, at the moment at which a collision could be avoided by the action of the give-way vessel alone (i.e. by The SITAREM), there was no action that the stand on vessel (i.e. The SPIRIT) could take to *best avoid* collision. Thus, if the MAIB's interpretation had merit, one would have expected the

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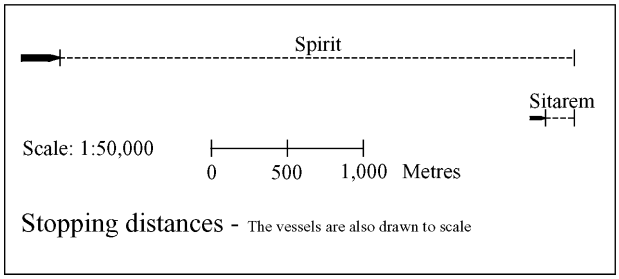


Figure 2. Comparison of stopping distances.

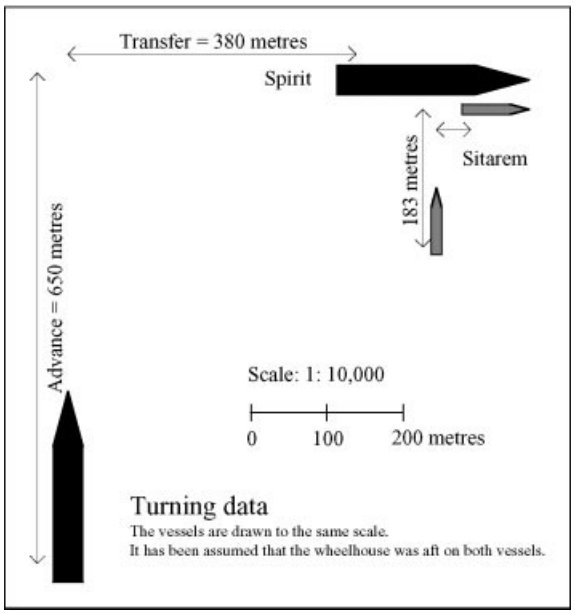


Figure 3. Comparison of turning data.

judge in the SITAREM/SPIRIT case to have made use of it, or at least to have mentioned it. In fact Mr. Justice David Steele's only comment on Rule 17(b) was: 'The impact of Rule 17(b) is to all intents and purposes eliminated given the relative size and manoeuvrability of the vessels concerned. I say no more about it.'[28]

If the MAIB's interpretation has merit, it would be logical to amend *The Rules* specifically to include a provision to that effect and hence remove any room for doubt. However, it is submitted that such a provision would be unworkable, because smaller and more manoeuvrable vessels would be a constant source of irritation or embarrassment to larger and less manoeuvrable vessels. As a result, such a Rule is likely to be widely disregarded in practice. Nevertheless, the possibility of such an amendment to *The Rules* should not be rejected completely, particularly if it were to be accompanied by a more general requirement for a wide range of small craft to *keep out of the way* of large vessels.

In any case, it appears probable that Rule 17(a)(ii) and Rule 2(a), when taken together mean that, unless there are special circumstances, action under Rule 17(a)(ii)

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effectively becomes compulsory at the latest point at which collision can be avoided by the actions of the stand-on vessel alone.

7. EXCESSIVE USE OF 'WOOLLY' WORDING. The 1972 amendments added several vague and potentially confusing phrases. Not one of them provides any guidance to mariners. Arguably, all add unnecessary complexity and serve absolutely no useful purpose in promoting collision avoidance. These points can be illustrated by reference to the most frequently used phrase: '… if the circumstances of the case admit …'.

It is not unreasonable to interpret that phrase as *normally* or *in the absence of special circumstances*. Rule 2 already provides a general exception where there are *special circumstances*. Thus, additional vague phrasing is unhelpful and is likely to do nothing other than cause further confusion, particularly in the minds of less experienced watchkeepers, or provide a spurious argument to anyone seeking to justify a totally inappropriate manoeuvre. H. Weber identified a total of 13 unnecessary exceptions to *The Rules*, spread over 5 subjective phrases.[29] There are others. There appears to be no valid reason why *The Rules* cannot be worded clearly and concisely, with all the flexibility that is necessary and appropriate being provided by Rule 2.

8. THE MIXTURE OF REGULATIONS AND GUIDANCE. Each of *The Rules* sets out some facet of 'the law' regarding collision avoidance. Some of *The Rules* then proceed to give guidance on how the law is to be applied. Not only is much of that guidance incomplete, but it also fails to keep abreast of technical developments.[30] It also tends to emphasise one aid to collision avoidance at the expense of others. As a result, confusion can arise not only in the minds of mariners but also in the Courts. In a number of cases,[31] the Courts have criticised the relevant ships' watchkeepers for their failure to make proper use of radar to determine whether a risk of collision existed. In none of those cases did the Courts make any mention of the most basic and, usually, most accurate method of determining a risk of collision – taking visual compass bearings.

Arguably, such guidance should not form part of *The Rules* themselves, but should be consigned to annexes, a new and separate document, or some other Convention, such as STCW.[32]

9. CHANGING *THE RULES*. Changing *The Rules* is difficult. In 1966, Captain (later Professor) J. F. Kemp commented: 'Mariners are by nature and very properly cautious people and changes should therefore be made in very small steps or, if a large step is unavoidable, then the transition must be allowed to occur slowly. Any radical proposal which does not provide for hysteresis of this sort is unlikely to find acceptance whatever its theoretical merits.'[33]

Moreover, there are significant difficulties inherent in negotiating major changes to an international agreement between many different countries, each with its own interpretation of the words that are used and each with its own 'agenda', both political and economic, during the negotiations. Problems can also arise in translating the final wording into the languages of the countries involved, for subsequent conversion into domestic law and for training and certification of their mariners. In particular, complications arise due to nuances in the wording of different languages.[34]

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All these factors only serve to emphasise the need for simplicity and clarity in the authoritative texts.

There may well be a case for revising a number of *The Rules*, for example to clarify Rule 17, or to take account of the increasing dangers arising from encounters between small craft and larger commercial vessels. It would take many years to get such changes agreed. Although it is probably unrealistic to consider any attempt to make major revisions to *The Rules*, many of the present shortcomings could be addressed if *The Rules* were to be reworded in simpler, more direct language, without changing their basic requirements. Achieving such a revision will not be easy, and is likely to prove controversial. However, those are not valid reasons for continuing to accept the present flawed wording of *The Rules*. Three steps are suggested:

(a) Each Rule should be rewritten in a way that eliminates unnecessary duplication, vague and subjective phrases and similar complications, particularly those identified in this paper.
(b) Guidance on the application of *The Rules* should be consigned to annexes or other documents and should be subjected to frequent review and updating in the light of technological developments and case law.
(c) It is now clear that Rule 2 is more than merely a residual provision. It's 'tentacles' reach into every subsequent Rule. At present, it is worded as a double negative. It should be transformed into a positive statement and be given greater prominence.

Over the past 40 years, this *Journal* has included several papers and comments on the wording of *The Rules*, with suggestions for change. They would serve as a useful source of material for a fresh look at the wording of *The Rules*.[35]

9.1. *Revising the Rules*. Realistically, the initiative for any such rewrite will have to be taken at a national level, with the result being forwarded to IMO through the 'proper channels'. It is submitted that the most satisfactory way to proceed would be:

(a) Mariners, not lawyers or bureaucrats, should prepare the first draft.
(b) Maritime and international lawyers and regulators should then be invited to make their contribution.
(c) Professional mariners should then review any proposed changes, amending them further if required.
(d) A (retired) Admiralty Court judge should be asked to review the final version.

In this way the primary function of *The Rules* – to prevent collisions – would be re-asserted, and the secondary function of providing a framework for apportioning blame put in its proper place.

As an initial contribution, the following revised wording is submitted for Rule 2. It will be noted that the main effects are to change a double negative into a positive statement and to state the over-riding importance of good seamanship.

Rule 2 (after revision)

(a) These rules and the way in which they are construed and applied are subject to the over-riding requirement to exercise good seamanship and to take account of special circumstances, including all dangers of navigation and collision.
(b) Where there are special circumstances, a departure from these rules may be necessary to avoid immediate danger.

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(c) Subject thereto, nothing in these rules can be used as justification for any failure to comply with The Rules.

9.2. *Revising guidance on The Rules.* Lawyers and the Courts maintain that they do not make the law; they merely interpret it. In practice, Court decisions have a significant effect on how *The Rules* are applied. In the English Courts, the opinions of the nautical assessors, once endorsed by the judge, may well establish important precedents that others ignore at their peril. At present, the only way in which the opinions of nautical assessors are subjected to a formal review is when a case is appealed to a higher Court. As any examination of recent case law shows, there have been occasions when the nautical assessors were wrong or, at the very least, when differing views have later been expressed.

It is inappropriate for lawyers to be the arbiters of what is good seamanship. It is equally inappropriate that two nautical assessors should be given such a responsibility alone, no matter how distinguished they may be. Thus, a panel of experienced mariners of all descriptions should be formed, charged with responsibility for reviewing the views expressed by nautical assessors, to ensure that there is a consensus that their conclusions do indeed reflect the *ordinary practice of seamen*, or *good seamanship*, as appropriate.

10. CONCLUSIONS. The time has come to rewrite *The Rules*, in simpler English, without changing their interpretation. This rewrite should use 21st Century words, and should minimise the use of double negatives, vague and subjective phrases, unnecessary duplication and other complications. Guidance, and assistance in interpretation, as opposed to *The Rules* themselves, should be put in separate annexes. It is submitted that it would be appropriate for the Royal Institute of Navigation to undertake such a project, preferably in conjunction with the Nautical Institute.

At the same time, or as a parallel project, a small panel should be established to 'codify' those elements of recent case law that deal with the *ordinary practice of seamen*. However, unlike the rewrite team, this panel should also review every future case, to enable the codification to be kept up-to-date. Given the limited number of cases that are now heard each year, this too is a role that could usefully be undertaken by the Royal Institute of Navigation and the Nautical Institute.

REFERENCES AND END NOTES

[1] Report by the UNCTAD Secretariat. Review of Marine Transport 2000, Table 16. The figures exclude the United States Reserve Fleet and the United States and Canada Great Lakes fleets.

[2] Presentation by Edmund Whelan of the Royal Yachting Association at a meeting of the Parliamentary Maritime Group, reported in the Summer 2001 edition of the magazine *Cruising*, page 12. However, in an interview reported in *RYA Magazine*, Autumn 2001, page 12, the Chief Executive of the Maritime and Coastguard Agency stated that the MCA has approximately 100 000 vessels registered under the CG66 scheme.

[3] For example, under Rule 17(a)(i) a stand-on vessel is required to '… keep her course and speed.' Case law provides examples of circumstances where a stand-on vessel need not maintain either a constant heading or a constant speed, such as when picking up a pilot.

[4] Captain (later Professor) J. F. Kemp made a somewhat similar point over 25 years ago. Behaviour patterns in encounters between ships. This *Journal*, Vol. **26**, 417.

[5] *MAIB Safety digest 3/2000*, page 55.

[6] S. A. Azad. (1959). The collision regulations through a translator's eyes. This *Journal*, Vol. **12**, 201.

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[7] Captain A. G. Corbet. (1972). Revision of the collision regulations. This *Journal*, Vol. **25**, 435.
[8] *MAIB Safety Digest 3/2000*, page 60.
[9] Marine Accident Reporting Scheme organised by the Nautical Institute.
[10] For example, over 40 years ago, in collision at sea despite radar, Captain F. J. Wylie R. N., commented: 'In clear weather … close passing is an everyday occurrence'. This *Journal*, Vol. **10**, 321.
[11] See, for example, Captain F. N. Hopkins. Some further comments on the regulations for preventing collisions at sea, 1972. This *Journal*, Vol. **27**, 115. Also, the Editor of the French magazine *Navigation* and Captain F. J. Wylie RN (retd.). Further comments on the 1972 collision regulations. This *Journal*, Vol. **27**, 530 and 532. Very recently, Thomas, D. (2001). *The fatal flaw*. Phaiacia, Ystradowen.
[12] Rules 9(b), 9(c), 10(i), 10(j) and 18(d)(i).
[13] These terms were used in a somewhat different context in earlier versions of *The Rules*.
[14] *Shorter Oxford English Dictionary*, 1987 reprint of 1983 edition, at page 1029.
[15] R. W. Cooper. (2001). Removal of an ambiguity from the maritime collision regulations. This *Journal*, Vol. **54**, 479.
[16] The words 'ordinarily competent' were actually used in a tax case – *Olin Energy Systems Ltd v Scorer* – [1982] STC 800, but seem to be admirably suited for use under Rule 2 as well.
[17] Lord MacDermott in The QUEEN MARY – 82 Ll.L.Rep. 303.
[18] Healy and Sweeney. (1998). *The Law of Marine Collision*, page 75. Cornell Maritime Press, Centreville.
[19] Rule 29 of the 1960 Rules and similar provisions in earlier versions of *The Rules*.
[20] Marsden. (1998). *Collisions at sea*, para. 6-06, page 123. Sweet and Maxwell, London.
[21] In particular, the *Iran Torab* [1988] 2 LLR 38, the *Koscierzyna* and *Hanjin Singapore* [1996] 2 LLR 124, and the *Mineral Dampier* and *Hanjin Madras* [2001] 2 LLR 419.
[22] Examples include *MAIB Report No 19/2000*, at page 11 and *Report No 21/2000*, at page 22.
[23] Rule 17(b).
[24] *MAIB Report 19/2000*, page 11.
[25] *MAIB Report 21/2000*, page 22.
[26] Hanno Weber. (1995). Clarification of the steering and sailing rules of the COLREGS. This *Journal*, Vol. **48**, 289.
[27] [2001] 2 LLR 107.
[28] *Ibid* at page 112, paragraph 40.
[29] As note 26.
[30] For example, Rule 7 makes no direct reference to ARPA.
[31] Including, recently: The SITAREM and SPIRIT, [2001] 2 LLR 107 (however, it did include an oblique reference); The MINERAL DAMPIER and the HANJIN MADRAS, [2000] 1 LLR 282 (High Court) and [2001] 2 LLR 419 (Court of Appeal).
[32] For example, the importance of taking visual compass bearings is mentioned in several places in the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended in 1995*.
[33] Captain J. F. Kemp. (1966). The impact of Radar on the Rule of the Road. This *Journal*, Vol. **19**, 268.
[34] Some examples by Captain F. J. Wylie, RN (retd.). Some comments on the Regulations for preventing collisions at sea, 1972. This *Journal*, Vol. **26**, 365.
[35] Four items in particular should be considered. See this *Journal*, Vol. **26**, page 365; Vol. **45**, 425; Vol. **48**, 289; and Vol. **49**, 377.

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