

Topic: Narrow Channel

By South Express Ltd.

In 2009 a collision occurred in Hong Kong waters causing the loss of 18 lives. The two ships involved were a fully loaded bulk carrier with a length of about 220 meters and a 12 meter draft, and a smaller supply boat with an estimated draft of 5-6 meters.

This article was originally written in October 2009 when the issue of whether the collision occurred in a "Narrow Channel" was in hot debate between the lawyers involved in the litigation. The article was never published. It is hoped that publishing this deliberation now might give the maritime industry another perspective of the definition of a narrow channel.

The crux of the matter is whether or not the area along the Hong Kong channel marked by buoys CP1 to CP8 is a narrow channel.

The channel is used by all ocean going vessels, and all ocean going vessels are required to have onboard a licensed pilot. Therefore, from practical point of view, the pilots' opinion as to whether or not the channel is narrow should be a deciding factor. Of all the known replies from the pilots, none has testified to the contrary.

Though this alone could be sufficient to prove the point, it would be more convincing if we could find some legal support in addition to this common understanding. This legal support must come from the "International Regulations for Preventing Collisions at Sea, 1972", or the "Colregs".

The Colregs are all about collision avoidance; it covers all areas upon the high seas and all waters connected therewith navigable by seagoing vessels (Rule 2, 1 (a)). Thus, it also covers the area from buoys CP1 to CP8.

Rule 8 of the Colregs covers basic principles of collision avoidance, and when the available sea-room is reduced until it becomes a narrow channel then Rule 9 (Narrow Channel) applies.

Rule 8 (c) says, "If there is sufficient sea room, alternation of course alone may be the most effective action to avoid a close-quarter situation..." The reason behind this is that alternation of course (versus alteration of speed) can "be large enough to

be readily apparent to another vessel observing visually or by radar" (Rule 8 (b)). The Colregs do not define what is sufficient sea room. Actually, one can note that the Colregs tries very hard not to give any figures to all the possible situations (safe speed is another one); for the reason that interactions between ships are too complicated even without the consideration of topographic and weather condition. Sometimes, to be apparent to the other ship, an alteration of 30-45 degrees from her original heading may still not be a big alteration. If a fully-loaded 220 meter bulker has already made a 45 degrees turn, then it may be better for her to continue the turn to make a 360 degree turn as this maneuver would take up less sea room. On average, a complete turn would be about 3 to 4 ship's length which is about 660 to 880 meters. This diameter is called turning circle and not affected by her speed.

The concept of turning circle is important, as it is a key factor to test the maneuverability of a ship. As a ship may be required to alter her course both to the starboard side and to the port side, therefore, we are talking about sufficient sea room on both sides of a ship. If one side of the channel has insufficient sea room, we would probably accept this is a narrow channel because a ship may not able to do what is being specified in rule 8 (b) and (c).

If we study the area between buoys CP1 to CP8, with the above parameters in mind, we would agree that the area will not have sufficient sea room for a large alternation of course.

Now, we can turn to Rule 9 and see more about narrow channels and the actions required for ships navigating in the channel. Rule 2, 8, and 18 are reproduced at the end of this for easy reference.

A. According to Rule 9 (a): *A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.*

Keeping to the outer limit provides more room for passing ships on a reciprocal course. This will also minimize the chance of meeting end on with ships on a reciprocal course. In other words, although the Colregs do not state it specifically, it actually treats a clear pass port to port (by keeping to starboard side of the channel) preferable than a head-on situation though each can still avoid collision by altering of course to starboard side.

B. According to Rule 9 (b): *A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.*

According to Rule 18, except where Rule 9 (narrow channel), Rule 10 (traffic separation schemes and Rule 13 (Overtaking) require, a power driven vessel including a fully-loaded 220 meter bulker should keep out of the way of a sailing vessel. (See Rule 18 (a) (iv)) and a fishing vessel (see Rule 18 (a) (iii)). Certainly this is not the case in the area between buoys CP1 to CP8 where neither sailing vessel nor fishing vessel are allowed to stay or fish inside the area if their presence would impede the safe passage to the 220 m fully-loaded bulker. If patrol service can be directed to chase sailing vessels and fishing vessels away from obstructing the channel, it is another way of confirming that this is a narrow channel.

In other words, had the channel NOT been a narrow channel, a fully loaded bulker should have no priority over the fishing and sailing vessels and in compliance with Rule 18 (a), she should keep out of the way of the sailing and or fishing vessel inside the channel.

C. According to Rule 9 (c): *A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.*

The argument regarding a fishing vessel is the same as those already provided in B.

D. According to Rule 9 (d): *A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.*

There are two vessels here: Vessel A is a crossing vessel, Vessel B is one which can safely navigate only within such channel or fairway. "Navigate" should include "action to avoid collision", then we shall again look into the definitions of "sea room", "large alteration", "alteration of course". All these elements are making a fully loaded bulker to treat the area between CP1 and CP8 a narrow channel.

There are two clear messages from this section: First, Vessel A should not cross a narrow channel or fairway if such crossing impedes the safe passage of vessel B. Second, which is actually also very clear, if vessel B can only navigate safely within

such channel or fairway, this channel has to be a narrow channel. It is likely that Vessel B can use her own discretion to determine whether she can safely navigate only within such channel or not. Vessel B is not supposed to be told or to be judged whether she is within a narrow channel or not, and further, if Vessel B is in doubt as to whether she is navigating inside a narrow channel or not, she should treat it as a narrow channel, and proceed to the starboard side of the channel, this is "ordinary practice of seamen" (Rule 2 (a)). Rule 9 (d) gives Vessel B and Vessel A different right to sound the signal prescribed in Rule 34(d) questioning the intention or action of the other vessel.

E. According to Rule 9 (e) (i): *In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c) (ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).*

Since it is a matter of fact that along the area between buoys CP1 to CP8, no overtaking would be allowed (referring to a fully-loaded bulker of 220 meters) This channel must be something narrower than a narrow channel if not a narrow channel itself.

This is because in a narrow channel (as stated in Rule 9 (e) (i)) overtaking can be considered. While from CP1 to CP8, overtaking would never be considered by the fully loaded bulker, nor by the port authority (as we reasonably suggest) nor by any fully loaded bulker of similar size (as we reasonably suggested). When in one area where overtaking can be considered and in another area overtaking is totally out of question, we can logically deduce that the latter is narrower than the former.

Given above, with the common consensus of all the users of the narrow channel, and the legal support deduced from the Colregs, we can conclude that the channel between CP1 to CP8 is a narrow channel as far as a fully loaded 220 meter bulker is concerned.

RULE 2

Responsibility

(a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew

thereof, from the consequences of any neglect to comply with these Rules or of the neglect of **any precaution which may be required by the ordinary practice of seamen**, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which **may make a departure from these Rules necessary to avoid immediate danger**.

RULE 8

Action to avoid collision

(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f) (i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea-room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this Part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this Part when the 2 vessels are approaching one another so as to involve risk of collision. (L.N. 365 of 1989)

RULE 18

Responsibilities between vessels

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to maneuver;
 - (iii) a vessel engaged in fishing;
 - (iv) a sailing vessel.
- (b) A sailing vessel underway shall keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to maneuver;
 - (iii) a vessel engaged in fishing.
- (c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to maneuver.
- (d) (i) Any vessel other than a vessel not under command or a vessel restricted in her ability to maneuver shall, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught, exhibiting the signals in Rule 28;
 - (ii) A vessel constrained by her draught shall navigate with particular caution having full regard to her special condition.
- (e) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

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