



Neutral Citation Number: [2026] EWCA Civ 251

Case No: CA-2025-001360

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
ADMIRALTY COURT (KBD)

Mr Justice Bryan
[2025] EWHC 1185 (Admlty)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2026

Before :

LORD JUSTICE COULSON
LORD JUSTICE NUGEE
and
LORD JUSTICE FOXTON

Nautical Assessors
Captain Nigel Hope
Rear Admiral Ian Moncrieff

Between :

MONFORD MANAGEMENT LTD
(the owners of the KIVELI)
- and -
AFINA NAVIGATION LIMITED
(the owners of the AFINA I)

Appellants

Respondents

Christopher Smith KC and Andrew Carruth (instructed by HFW LLP) for the Appellants
Nigel Cooper KC and Robert Ward (instructed by MFB Solicitors and Tatham & Co) for
the Respondents

Hearing dates : 18 and 19 February 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Foxton :

INTRODUCTION

1. On 13 March 2021, there was a collision between the bulk carriers KIVELI and AFINA I off the south coast of Greece in the course of which both vessels sustained substantial damage. After a trial comprising three days of evidence, and subsequent submissions, Mr Justice Bryan (“the Judge”) ruled that the KIVELI was 80% at fault in that collision, and the AFINA I 20% at fault ([2025] EWHC 1185 (Admlty): “the Judgment”). In reaching that conclusion, the Judge had the benefit of input from Commodore Robert W Dorey (“the Nautical Assessor”), an Elder Brother of Trinity House, assisting the court in accordance with the long-standing procedure for the trial of collision actions in the Admiralty Court.
2. The owners of the KIVELI (“the Appellants”) now appeal against the Judge’s determination, permission having been granted by Popplewell LJ on 30 July 2025 on three grounds which concern the interpretation of the International Regulations for Preventing Collisions at Sea 1972 (“the Collision Regulations”).
3. The Grounds of Appeal are as follows:
 - i) Ground 1: whether the collision occurred within a “head-on” situation for the purposes of Rule 14 of the Collision Regulations, which is broken down into four sub-issues:
 - a) The “Definitional Issue” (which I will refer to as “Ground 1(a)”).
 - b) The “And/or Issue” (Ground 1(b)).
 - c) The “A vessel Issue” (Ground 1(c)).
 - d) The “Rule 14(c) Issue” (Ground 1(d)).
 - ii) Ground 2: if a “head-on” situation came into existence, whether it continued at all relevant times thereafter, or whether the Judge should have found that it became a crossing situation, and subject to Rules 15 to 17, some 7 minutes or so prior to the collision.
 - iii) Ground 3 (the counterpart of Ground 1): whether the Judge ought to have concluded that there was a crossing situation within Rules 15 to 17 of the Collision Regulations with effect from 22 minutes prior to the collision.

THE BASIC FACTS

4. The underlying facts are set out in the Judge’s comprehensive judgment, and, save to a very limited extent, are not in dispute on this appeal. I have taken them from the Judgment, giving the paragraph references, and from the Agreed Statement of Facts (“ASOF”) filed for the trial. As the Judge explained at [4], the collision took place at 06.01 local time (“LT”). Where the timings in the judgment take the form of “C-x”, they are calculated from this time. The timings given are LT.

5. For the purposes of what follows, it may be helpful briefly to discuss four concepts which feature in the following summary when describing the vessels' relative positions:

- i) First, vessels are said to be on "reciprocal" courses where the course of one vessel is 180° different to the course of the other. A difference of slightly more or less than 180° would involve the vessels being on "nearly reciprocal" courses (the issue of how much more or less being one of the issues raised by the appeal). The extent to which the difference between two vessels' respective courses is greater or less than 180° different is often described as the "reciprocal heading" or simply the "reciprocal".
- ii) Second, merely because vessels are on reciprocal or nearly reciprocal courses does not of itself mean that they are at risk of collision. For example, there may be a significant distance between the two parallel lines which vessels on exactly reciprocal courses are following. However, where one vessel is "dead ahead" of the other (such that the vessels are effectively closing in opposite directions along a single line), the position is obviously different. That is also the case where one vessel is not exactly ahead of the other, but nearly ahead. The extent of any deviation of the position of one vessel from the other's centreline before the vessel can no longer be said to be "nearly ahead" is also an issue on the appeal.
- iii) Third, even when two vessels are on reciprocal or nearly reciprocal courses, with one being ahead or nearly ahead relative to the other, there may still be no risk of collision depending on the vessels' distance from each other and their speed. In this case, there is no issue on appeal that there came a point when the relative positions, speed and courses of the vessels were such that a risk of collision did arise.
- iv) Finally, it can be important to distinguish between two types of course: a vessel's course through the water (often referred to as the vessel's heading) and the vessel's course over ground ("COG"). The difference between these two concepts was explained by the Supreme Court in *Evergreen Marine (UK) Ltd v Nautical Challenge Ltd (The Ever Smart)* [2021] UKSC 6, [2021] 1 WLR 1436, [49]:

"The course of a vessel is the direction, again expressed by reference to the points or degrees of a compass, in which she is moving. This may be through the water or over the ground. Course over the ground is sometimes called the course made good, so as to distinguish it from her course through the water. The judge uses course over the ground and course made good interchangeably. It is the course over the ground rather than the course through the water that matters for present purposes, as para 70 of the judge's judgment makes clear. We use 'course' in that sense. Where there is no wind or current the course of a vessel both through the water and over the ground may well be the same as her heading. She simply moves in the direction in which she is pointed. But this will not necessarily be so, as the nautical assessors have confirmed and the present case illustrates. Tidal stream, current, surface drift and wind, if present, will or may cause her course over the ground to be different from both her heading and her course through the water. Thus a vessel heading North in an Easterly current will be on a course over the ground which is East of North, the amount of the Easterly element being the product of the ratio between her speed (through

the water) and the rate of the current. Broadly speaking, the slower the vessel's speed and the faster the current, the greater will be the difference between her heading and her course over the ground."

6. Turning to facts of this case, the AFINA I and the KIVELI are bulk carriers ([38]). At the time of the collision, both vessels were displaying two white masthead lights, red (port) and green (starboard) sidelights, and a white stern light ([41]).
7. At around 05:30 (C-31) on 13 March 2021, the KIVELI's Chief Officer began to "take particular note" of the AFINA I. At this time, the AFINA I was on a heading of 245.2° with a COG of 244.7°. The KIVELI was on a heading of 77.4° and a COG of 77.6° ([50]). The difference between their reciprocal headings was 12.2° (i.e. [77.4° plus 180°] - 245.2°). The AFINA I was 2.8° off the port bow of the KIVELI, and the KIVELI 3.7° off the AFINA I's starboard bow.
8. At 05:38 (C-23), the AFINA I's Chief Officer first observed the KIVELI ([52]; ASOF [13]-[15]). The AFINA I was on a heading of 249.9° (250.2° COG) and the KIVELI 77° (77.3° COG), a difference in reciprocal heading of 7.1°. The AFINA I was 2.3° off the port bow of the KIVELI, and the KIVELI 4.9° off the AFINA I's starboard bow ([53]).
9. At 05:39 (C-22), the reciprocal angle between the respective headings of the vessels was 7° (6.9° COG). The distance between the vessels was 8.688 nautical miles ("nm"). The AFINA I was bearing 2.1° off the port bow of the KIVELI ([54]). By implication, the KIVELI was 4.9° off the starboard bow of the AFINA I.
10. There is now no challenge to the Judge's finding that there was a risk of collision at C-22 ([216]). At that point, the Judge found:
 - i) The KIVELI and the AFINA I were in sight of each other by radar and visually (the Judge accepting the evidence of the Chief Officer of the AFINA I to that effect and stating that the Chief Officer of the KIVELI would have seen the AFINA I if keeping a proper lookout).
 - ii) The vessels were meeting on reciprocal or nearly reciprocal courses. This was based on the Nautical Assessor's evidence that "for the timings from C-26 to C-6, the vessels were within reasonable tolerance of being considered to be on reciprocal or nearly reciprocal headings" ([219]).
 - iii) Each vessel would have been able to see the other ahead or nearly ahead and each vessel was able to see the masthead lights of the other in line or nearly in line ([225]). This also reflected the advice of the Nautical Assessor:

"From the data above, for Kiveli observing Afina, the relative bearing from C-30 to C-6 remains broadly within plus or minus 5 degrees and therefore a reasonably competent OOW would see this as being ahead or nearly ahead. It is slightly different for Afina observing Kiveli, as the relative bearing of Kiveli remains within around 5 degrees where it could be reasonably stated that Afina would have seen Kiveli ahead or nearly ahead, until somewhere between C-22 and C-16 where the bearing starts to increase. By C-7.5 and certainly by C-6, the relative bearing of circa 009

degrees would be sufficient to say that Afina would by this time, see Kiveli as being fine to starboard”;

and

“as soon as each vessel could be visually observed by the other, perhaps at around 8.5 miles at C-22, with binoculars, a reasonably competent Officer of the Watch of each vessel would have seen the masthead lights of the other vessel to be in line or nearly in line”.

11. It will be noted that the Nautical Assessor adopted a 5° arc either side of the centreline for when a vessel is ahead or nearly ahead. At [224], the Judge found that the relative bearing of the AFINA I to the KIVELI between C-30 and C-7.5 was in a range of 2.6° to 3.5° which was “well within the range for which the OOW [Officer on Watch] on board KIVELI should have treated the vessels as being ahead or nearly ahead of each other or should at least have been in reasonable doubt as to whether such a situation existed.”
12. In terms of sidelights, the evidence of the AFINA I was that it could predominantly see the KIVELI’s green light, but on occasions both its green and red lights ([52]). The KIVELI’s Chief Officer gave evidence that he could see the AFINA I’s green starboard light at 05:45 ([63(1)]).
13. The Judge did not feel able to make findings as to what either vessel could or did see of the other’s sidelights at 05:39 (C-22) ([231]), but he held that a risk of collision existed regardless of the position. This Court has been asked to find on appeal that the KIVELI could **not** see both of the AFINA I’s sidelights at C-22. The Respondents do not appear to have argued at trial for a positive finding that the KIVELI **could** see both the AFINA I’s sidelights at C-22. As set out below, it is not necessary to make any finding on this issue for the purposes of resolving the appeal.
14. Between 05:45 (C-16) and 05:55 (C-6), the KIVELI made two minor course alterations (“nibbling”) to port ([59]). By 05:49 (C-12), the KIVELI was on a heading of 75.3° (75.7° COG), and the AFINA I on a heading of 249.9° (250.8° COG), a reciprocal of 5.3° (4.9° COG) ([62]). The AFINA I was bearing 1° off the starboard bow of the KIVELI, the KIVELI 6.4° off the starboard bow of the AFINA I.
15. By 05:52:45 (C-8.15), the KIVELI moved to port again, to 74.2° (75.2° COG), with the AFINA I on 250.1° (251.7° COG), such that the reciprocal was now 4.1° (3.5° COG). By 05:53:45, the AFINA I was bearing 2.9° off the starboard bow of the KIVELI, and the KIVELI 8.1° off the starboard bow of the AFINA I ([67]).
16. By around C-7.5, the Nautical Assessor advised that the relative bearing of circa 9° degrees was sufficient to say that AFINA I would see the KIVELI as being fine to starboard rather than ahead or nearly ahead ([223]). It is at this point, for the purposes of Ground 2 of its appeal, that the Appellants contend that if, contrary to their primary case, the vessels had been in a “head-on” situation, that ceased to be the case.
17. At 05:54 (C-7), the AFINA I used the vessel’s Aldis lamp to signal the KIVELI, but the KIVELI did not see the light signal because it was not keeping a proper look out ([68]).

18. At 05:56 (C-5), the AFINA I was on a heading of 252° (251.2° COG), having commenced a slow turn to starboard. The KIVELI was on a heading of 73.9° (74.2° COG), with the reciprocal being 1.9° (3° COG). The AFINA I was bearing 6.7° off the starboard bow of the KIVELI, and the KIVELI 10.1° off the starboard bow of the AFINA I ([70]).
19. The AFINA I continued to make a series of alterations to turn to starboard between C-6 and C-4 ([71]-[73]), such that by C-4 the AFINA I was on a heading of 259.8° (258.7° COG). The KIVELI was on a heading of 74.1° (73.9° COG) such that the reciprocal was 5.7°. The AFINA I was bearing 8.0° off the starboard bow of the KIVELI and the KIVELI was bearing 2.3° off the starboard bow of the AFINA I ([71]).
20. At about 05:59 (C-2), the KIVELI switched to manual steering and commenced a hard turn to port ([75]). The Judge found (accepting the advice of the Nautical Assessor) that the KIVELI should have made a bold alteration to starboard which would have resolved the collision risk ([18]). The Judge was particularly critical of the KIVELI's decision to turn to port at this point, but for which there would have been no collision ([78]), describing this manoeuvre as "the fatal turn to port" ([250]) and as "catastrophic (and negligent)" ([258]).
21. At C-0, the bow of the KIVELI hit the port side of the AFINA I's no 4 cargo hold at an angle of approximately 90° ([79]).

THE COLLISION REGULATIONS

Introduction

22. There have been rules for preventing collisions at sea since 1840, the rules having developed from regulations promulgated by Trinity House for sailing and steamships. The latter were given statutory force under English law by s.9 of the Steam Navigation Act 1846 and subsequent statutes. The first international conference on this subject took place in Washington in 1889, leading to a set of regulations brought into force by many countries (including the United Kingdom by the Regulations for Preventing Collisions at Sea, 1897, made by Order-in-Council of 27 November 1896). Further international maritime conferences followed, with various minor revisions to the rules, culminating in an International Conference on the Safety of Life at Sea in London in 1960 convened by the Inter-Governmental Maritime Consultative Organization, now the International Maritime Organization ("IMO"). The resultant rules came into force in the United Kingdom in 1965, by virtue of the Collision Regulations (Ships and Seaplanes on the Water) and Signals of Distress (Ships) Order 1965 ("the Collision Regulations 1960").
23. A further international conference took place in London in 1972, in which various changes were made to the 1960 rules, and the regulations in issue in this appeal are those adopted at that conference.
24. The Collision Regulations take the form of a multi-state treaty under international law (the Convention on the International Regulations for Preventing Collisions at Sea, 1972 ("1972 Convention")). Article IX of that Convention provides that the Convention and the Regulations are established in the English and French languages, both texts being equally authentic.

25. The Collision Regulations currently have effect under English law by virtue of the Merchant Shipping (Distress Signals and Prevention of Collision) Regulations 1996/75, as set out in Merchant Shipping Notice MSN 1781 (M + F) (“**the 1996 Regulations**”). It became apparent in the course of the appeal that the 1996 Regulations, which are the legal instrument directly applicable in this case, are not in all respects identical to the text of the Collision Regulations.

The Regulations in issue

26. The Judge cites a number of the relevant regulations at [91], [94], [97], [102], [104], [188], [193], [194] and [199] of the Judgment. In this section, I have not set out the text of all the regulations to which we have been referred, but summarised the broad structure of the Collision Regulations, together with the text of those of particular relevance in this case.
27. Rule 1(a) provides that the Rules “apply to all vessels upon the high seas” (albeit individual rules may only apply to particular types of vessel). Rule 2 preserves the responsibility of ships to take those precautions “required by the ordinary practice of seamen or by the special circumstances of the case”. Rule 2(b) provides a canon of interpretation as follows:
- “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.”
28. Rule 3 contains various definitions, including at (k) that “vessels shall be deemed to be in sight of one another only when one can be observed visually from the other”.
29. Rule 5 obliges every vessel to “maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.”
30. Rule 7 addresses “risk of collision”:
- “(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:
- (i) Such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;

- (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.”

31. Rule 8 provides that “any action taken to avoid collision shall be taken in accordance with the Rules of this Part” (a reference to Part B, Rules 4 to 19) and “if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship”. Rules 8(b) to (d) contained more detailed rules for avoiding collisions.
32. Section II of Part B contains a series of rules for the “conduct of vessels in sight of one other”. Some of these distinguish between sailing and powered vessels. Rule 13 provides:
- “(a) Notwithstanding anything contained in the Rules of Part B, Sections I and II, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.
 - (b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the stern light of that vessel but neither of her sidelights.
 - (c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.
 - (d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.”
33. Rule 14, with which this appeal is principally concerned, is headed “Head-on situation”. It only applies to power-driven vessels. In the original Treaty, it provides:
- “(a) When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.
 - (b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she *could* see the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.
 - (c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.”

(emphasis added).

34. In the 1996 Regulations, the word “would” appears in place of the word “could”. It has not been possible to determine whether this change was intentional, and, if so, the reason for it. In addition, “masthead lights” has been rendered as “mast head lights” in Rule 14, but not in the definition of that term in Rule 21. In this judgment, reference is made to “masthead lights”.

35. A “head-on” situation is to be contrasted with a crossing situation, addressed in Rule 15. The application of Rules 14 and 15 are mutually exclusive, the latter applying to risks of collision which are not “head-on” situations. This was made clear by the Supreme Court in *The Ever Smart*, [56]-[57]:

“Section 2 seeks to deal comprehensively with steady bearing collision situations by three rules which together cover the whole of the ground. Rules 13 and 14 deal respectively with vessels on substantially the same or reciprocal courses. Rule 13 (the overtaking rule) provides that, in an overtaking situation, the overtaking vessel must keep clear of the vessel being overtaken. Rule 14 (the head-on rule) provides that two vessels approaching each other on reciprocal or nearly reciprocal courses so as to create a risk of collision must each turn to starboard. ...

Rule 15 seeks to deal comprehensively with every other steady bearing collision situation, i.e. where the vessels are not overtaking or on reciprocal courses, but crossing courses.”

See also [68]; [77]; [98(i)]; [108] and [111].

36. Rule 15, which also only applies to power-driven vessels, provides:

“When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.”

37. Rule 15 distinguishes between the vessel which has the other vessel on her starboard side which is to “keep out of the way” – the “Give-way vessel” – and the other vessel – the “Stand-on vessel”. Rule 16 provides for the give-way vessel to take early and substantial action to keep well clear of the other vessel. Rule 17 provides:

“(a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.

(ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

- (c) A power-driven vessel which takes action in a crossing situation in accordance with sub-paragraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
 - (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.”
- 38. Part C makes provision for navigation lights, and contains the definitions of “masthead light” and “sidelights”:
 - i) Rule 20 provides that “the lights and shapes specified in these Rules shall comply with the provisions of Annex I to these Regulations.”
 - ii) Rule 23(a) requires a power-driven vessel underway to show two masthead lights (unless less than 50m in length), two sidelights and a sternlight. Power-driven vessels of less than 12m may have an all-round white light, and no masthead lights (Rule 23(d)).
 - iii) Rule 21(a) defines a masthead light as “a white light placed over the fore and aft centreline of the vessel”.
 - iv) Rule 21(b) defines sidelights as a red port and green starboard sidelight, but for vessels of less than 20m in length, sidelights can be combined in one lantern carried on the vessel’s fore and aft centreline.
 - v) Rule 22 provides for the minimum distance at which masthead lights and sidelights must be visible (with different minimum distances for vessels of different lengths), and in all cases for masthead lights to be visible at a greater distance than sidelights.
 - vi) Rule 34(d) provides for vessels in sight of and approaching each other, where either vessel has failed to understand or is in doubt as to the intentions or actions of the other, to indicate that doubt through use of its whistle (supplemented by a light signal).
- 39. Annex I, headed “Positioning and technical details of lights and shapes”, sets out certain technical requirements for navigation lights. Paragraph 9(a), addressing the horizontal sectors of lights, provides:
 - “(i) In the forward direction, sidelights as fitted on the vessel must show the minimum required intensities. The intensities must decrease to reach practical cut-off between 1 degree and 3 degrees outside the prescribed sectors.
 - (ii) For sternlights and masthead lights and at 22.5 degrees abaft the beam for sidelights, the minimum required intensities shall be maintained over the arc of the horizon up to 5 degrees within the limits of the sectors prescribed in Rule 21. From 5 degrees within the prescribed sectors the intensity may decrease by 50 per cent up to the prescribed limits; it shall decrease steadily to reach practical cut-off at not more than 5 degrees outside the prescribed limits.”

The proper approach to the interpretation of the Collision Regulations

40. Like the Judge (at [83]), I can take the proper approach to the interpretation of the Collision Regulations from the decision of the Supreme Court in *The Ever Smart*, [37]-[44] (the speech of Lord Briggs and Lord Hamblen):
- i) As an international convention, the Collision Regulations should be interpreted by reference to broad and general principles of construction rather than any narrower domestic law principles.
 - ii) Such general principles include the general rule of interpretation set out in article 31.1 of the Vienna Convention on the Law of Treaties 1969 (“VCLT”), which provides that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”
 - iii) The object and purpose of the 1972 Convention is to promote safe navigation and specifically the prevention of collisions at sea.
 - iv) The international character of the Collision Regulations and the safety of navigation mean that they must be capable of being understood and applied by mariners of all nationalities, of all types (professional and amateur), in a wide range of vessels and in worldwide waters. They should accordingly be interpreted in a practical manner so as to provide clear and readily ascertainable navigational rules capable of application by all mariners. They are meant to provide international “rules of the road”.
 - v) They should also be interpreted in a uniform manner and regard should therefore be had to how they have been interpreted by the courts of different countries.
41. Given the particular arguments put forward in this case, I would supplement that summary as follows:
- i) Article 32 of the VCLT provides:

“Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.”
 - ii) It was common ground in this case that regard could be had to the terms of the Collision Regulations 1960. As the 1972 Convention was a revising document, the earlier version would form part of “the circumstances of its conclusion”. A “head-on” situation was addressed in Rule 18 of the Collision Regulations 1960 in the following terms:

“When two power-driven vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other. This Rule only

applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other. The only cases to which it does apply are when each of two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own: and by night, to cases in which each vessel is in such a position as to see both the sidelights of the other. It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course: or, by night, to cases where the red light of one vessel is opposed to the red light of the other or where the green light of one vessel is opposed to the green light of the other or where a red light without a green light or a green light without a red light is seen ahead, or where both green and red lights are seen anywhere but ahead.”

- iii) So far as recourse to the travaux are concerned, in *Effort Shipping Co Ltd v Linden Management SA (The Giannis NK)* [1998] AC 604, 623, Lord Steyn stated:

“Following *Fothergill v. Monarch Airlines Ltd.* [1981] A.C. 251, I would be quite prepared, in an appropriate case involving truly feasible alternative interpretations of a convention, to allow the evidence contained in the travaux préparatoires to be determinative of the question of construction. But that is only possible where the court is satisfied that the travaux préparatoires clearly and indisputably point to a definite legal intention: see *Fothergill v. Monarch Airlines Ltd.*, per Lord Wilberforce, at p. 278C. Only a bull’s-eye counts. Nothing less will do.”

- iv) That statement must now be supplemented by reference to *JTI Polska sp z oo v Jakubowski* [2023] UKSC 19, [32]:

“The appellants do not suggest that the travaux préparatoires disclose a “bull’s eye” but Mr John Kimbell KC for the appellants submitted that this was only required where they are used to ‘determine’ rather than to ‘confirm’ the meaning resulting from the application of article 31. I accept that submission. The use of supplementary material to confirm a meaning is not subject to the restrictions set out in article 32(a) and (b). They only apply when the material is relied upon to determine the meaning. Moreover, confirmation may consist of finding support for a given meaning. It does not necessitate the identification of a ‘definite legislative intention’. It may, for example, include material which helps to identify the object and purpose of the treaty or provisions within the treaty. That will be a useful aid to interpretation but it is unlikely to disclose a definite legislative intention.”

THE JUDGE’S CONCLUSIONS

Ground 1(a): the Definitional Issue

42. The Judge addressed this issue at [116]-[131] (where the Judge considered the amendments effected by the Collision Regulations to Rule 18 of the Collision

Regulations 1960) and at [132]-[158]. The Judge held that Rule 14(b) was not exhaustive – or definitional – as to when a “head-on” situation existed:

- i) Rule 14(a) provided the “over-arching definitional Rule ([132]) and was not expressed to be “subject to” Rule 14(b) ([133]).
- ii) Treating Rule 14(a) rather than Rule 14(b) as the defining provision better promoted the purpose of the Collision Regulations ([134]), including by promoting action when it was apparent from data that the vessels were on reciprocal or nearly-reciprocal courses, but the vessels were not yet within the sight range of the relevant lights ([149]-[151]).
- iii) If Rule 14(b) was treated as definitional, “it is difficult to give a great deal of scope” to Rule 14(c) ([135]).
- iv) The Judge was not persuaded that the contrary argument was supported by passages from Sir Nigel Teare’s judgment in *FMG Hong Kong Shipping Ltd v Owners of the Apollo (The MSC Apollo)* [2023] EWHC 328 (Admlty), [101] ([136]-[141]) or the Supreme Court in *The Ever Smart*, [56] ([142]), whereas the Judge’s view was supported by at least one textbook ([140]).
- v) If Rule 14(b) is treated as definitional, issues would arise as to the application of Rule 14 to vessels which were not required under Rule 23 to have masthead lights and/or sidelights ([143]-[145]).

Ground 1(b): the “and/or” issue

43. The Judge held that Rule 14(b) provided alternative means of ascertaining when a “head-on” situation would be deemed to exist at night by reason of the lights visible from the other vessel, given the words “and/or”:
 - i) This reflected the ordinary and natural meaning of the words used ([161]).
 - ii) The alternative construction would create a risk of collision where the masthead lights were in line but only one sidelight was visible ([162]), and would delay action when the vessels were at a distance where the masthead lights of the other vessel were visible but not the sidelights ([167]).
 - iii) The passage in *The MSC Apollo*, [101] relied upon to support the contrary argument was addressing a different issue ([168]-[171]).
 - iv) The Judge’s construction was supported by one of the textbooks ([165], [176]).

Ground 1(c): the “A Vessel Issue”

44. The Judge held that Rule 14(b) was engaged for a vessel when it had the requisite visibility of the other’s lights, regardless of whether there was reciprocal Rule 14(b) visibility:
 - i) This was consistent with the language of Rule 14(b) and Rule 14 generally ([179]-[180]).

- ii) A vessel can only know if it has the requisite visibility of the other vessel, not whether there is reciprocal visibility ([180(4)]).
- iii) The passage from *The MSC Apollo*, [101] relied upon in support of the contrary argument was wrong ([182]).

Ground 1(d): the Rule 14(c) Issue

45. The Judge held that where Rule 14(c) was engaged, this not only obliged the vessel in doubt to “act accordingly”, but both vessels to act on the basis of a “head-on” situation ([187]).

Ground 2

46. The Judge held that once a risk of collision existed, whether a “head-on” situation or a crossing situation, subsequent changes did not affect the original classification ([152]). That was consistent with the view expressed in *Farwell’s Rules of the Nautical Road* (9th, 2020) (“Farwell”), p.296 ([153]) and a Louisiana authority ([154]), and with the position as expressly stated in Rule 13(d) in relation to overtaking ([155]).
47. The Judge found that the “head-on” situation continued at all material times ([240]) “until the risk of collision has ceased” ([247]), and that this precluded Rules 15 to 17 coming into operation prior to that point ([247]), even if the relative bearings were increasing from C-7.5.

The Judge’s findings on responsibility for the collision

48. The Judge found that the risk of collision at C-22 arose from a combination of (i) the vessels’ respective bearings; (ii) the vessels meeting on reciprocal or nearly reciprocal courses; and (iii) the vessels’ ability to see each other ahead or nearly ahead and the other vessel’s masthead lights in line, or nearly in line ([216]).
49. The Judge found that a “head-on” situation existed at that time ([237]):
- i) under Rule 14(a), which was the definitional provision; and
 - ii) under Rule 14(b), on the Judge’s construction of that Rule;
- and, in any event, if there was any doubt about the matter each vessel was required to assume a “head-on” situation existed under Rule 14(c) ([239]).
50. On the basis that a “head-on” situation existed, the Judge found that the KIVELI was in breach of the Collision Regulations and acted negligently in failing to turn to starboard ([257]), and in making small turns to port between 05:45 and 05:55 and a catastrophic turn to port at 06:00 ([258]).
51. Had the KIVELI turned to starboard as she should have done, the Judge found that the collision would have been avoided ([270]). The KIVELI’s decision to turn to port was not one taken “in the agony of the moment” in response to a situation of danger created by the AFINA I ([270], [274]).

52. In addition to the breach of Rule 14, the Judge found that the KIVELI was causatively negligent in failing to observe the AFINA I visually or keep a good lookout ([285]) and in dispensing with lookouts ([290], [293]), and found that there had been various associated breaches of Rules 2, 5, 7, 8, 34 and 36.
53. The AFINA I had acted correctly in turning to starboard ([276]), but should have turned earlier at 05:47:30, and the failure to commence the turn earlier resulted in a close-quarters situation ([282]). It was also at fault in failing to use sound signals (as well as the Aldis lamp which it did use) to detect the KIVELI's intentions ([303], [318]).
54. On the basis of his findings as to comparative fault, the Judge attributed 80% of the responsibility for the collision to the KIVELI and 20% to the AFINA I ([326]-[331]).

The Judge's alternative findings

55. The Judge made a number of alternative findings on the basis of the KIVELI's case that the collision occurred in a crossing situation, for the purposes of Rules 15 to 17, rather than a "head-on" situation within Rule 14:
 - i) If this was a crossing situation, the KIVELI should have followed the Rules for the stand-on vessel in taking action by her manoeuvre alone as soon as it became apparent that the AFINA I was not taking the action appropriate to such a situation. This involved acting earlier (at 05:39 and certainly by 05:45) and initially maintaining its course, and then altering course to starboard once it became apparent that the AFINA I was not taking actions appropriate to the give-way vessel, and certainly the KIVELI should not have turned to port, either the smaller earlier turns or the catastrophic later turn ([253]-[256], [262]-[263], [313]).
 - ii) Had the KIVELI either maintained its course or turned to starboard, the collision would have been avoided ([270]-[272]).
 - iii) The KIVELI had done the opposite of what should be done in either a "head-on" or crossing situation by turning to port, and had acted with gross negligence ([274]). In both situations, this was not a decision taken in "the agony of the moment" but acting "contrary to what any competent mariner would know should be done and would have done".
 - iv) By altering course to starboard, the AFINA I had taken the appropriate action "whether the situation was a head-on situation ... or a crossing situation" ([276]). The AFINA I did act to keep out of the KIVELI's way, as the give-way vessel was obliged to do, and appropriately turned to starboard ([315]), albeit it "might have turned to starboard earlier".
56. After the draft judgment of the Judge was circulated, the Appellants sought permission to appeal on various grounds, including that the Judge had been wrong to hold that this was a "head-on" situation. The Judge dealt with that application in a separate judgment handed down on the same occasion as the final version of the judgment ([2025] EWHC 1210 (Admlty)). In the consequential judgment, the Judge refused permission to appeal, inter alia on the basis that his apportionment of fault would have been the same

even if the collision had properly been classified as involving a crossing situation ([4]). At [8(1)]-[8(2)] the Judge stated:

“None of KIVELI’s Grounds of appeal assist her, unless KIVELI can establish that the consequence of what it says were errors made by the Court is that the Court failed to apportion liability in a way which was open to it on the facts (given that KIVELI accepts that the Court correctly stated the law in relation to apportionment). KIVELI is not in a position to do that. Even were KIVELI correct that the situation prior to the Collision was properly to be treated as a crossing situation (contrary to the findings of the Court and the views of the very experienced Nautical Assessor), the egregious faults on the part of KIVELI’s Chief Officer mean that KIVELI bears principal responsibility for the Collision and it was her failures which carried the overwhelming majority of the causative potency for the Collision.

KIVELI does not have any realistic prospect of overturning the Court’s conclusion that responsibility for the Collision rests 80% with KIVELI and 20% with AFINA I ... I have concluded that KIVELI’s Chief Officer was knowingly sailing in breach of the Collision Regulations from C-22 and had both nibbled to port whilst manoeuvring towards AFINA I and then made a last-minute disastrous turn to port which was the immediate cause of the Collision. In such circumstances I do not consider there is any realistic prospect of the Court of Appeal interfering with the Court’s apportionment, given the preceding full analysis of the factual evidence (almost all of which was agreed in terms of events), whilst the findings in relation to KIVELI’s Chief Officer are not challenged, and the detailed consideration (and considered application) of the Collision Regulations whether a head-on or crossing situation (as supported by the views of the Nautical Assessor), leads to the same outcome on apportionment.”

57. Paragraphs [11] and [14] of the consequential judgment are to similar effect.

THE APPLICATION FOR PERMISSION TO APPEAL

58. The Appellants renewed their application for permission to appeal to this court on four Grounds. Ground 1 raises the four issues of the interpretation of Rule 14 to which I have referred at [3(i)] above. Ground 1.6 challenged the Judge’s finding that each vessel would have seen the other’s masthead lights in line or nearly in line and Ground 1.7 the Judge’s conclusion that a “head-on” situation existed as a result.

59. The challenge to the Judge’s finding that each vessel’s mastheads could be seen nearly in line was premised on the success of an anterior argument as to what “nearly in line” meant on the proper interpretation of Rule 14(b). This was made clear in paragraph 57 of the accompanying skeleton filed in support of the application for permission to appeal, which stated:

“If the Appellant’s interpretation of Rule 14(b) is correct, it also follows that because KIVELI could not at C-22 have seen AFINA I’s masthead lights ‘in a line or nearly in a line’ within the meaning of that Rule, they were not on ‘reciprocal or nearly reciprocal courses so as to involve the risk of collision’.”

60. That there was no free-standing challenge to the Judge’s finding of fact that the masthead lights were visible in line or nearly in line, but only one premised on the suggestion that the proper meaning of those words imposed a geometric requirement which was not satisfied on the facts, was confirmed at the hearing of the appeal in the following exchange:

“LORD JUSTICE COULSON: But the finding about the mastheads being -- the lights being in a line or nearly in a line, that's a finding of fact.

MR SMITH: Well, my Lord, in our submission, no, because it presupposes what is meant by nearly in line.

LORD JUSTICE FOXTON: You’re saying if it means 3 degrees, then by in definition it is .. wrong. But I think you accept that if it doesn’t have a geometric meaning, but if it requires an answer to be given in a specific case, that answer has been given. Just say that it’s words are ‘nearly in a line’ and that be applied by the judge, he’s reached his decision, hasn’t he?

MR SMITH: If I'm wrong on everything else, including the importance of the sidelights and everything else, because of course our case is that, if you can only see one sidelight, you can’t see it nearly in line. But subject to all those caveats, yes, if I’m wrong on everything else, then the answer has been given.”

61. Ground 2 raised the duration of any “head-on” situation and Ground 3 was simply the converse of Ground 1 (if the Judge was wrong to find Rule 14 applied, he should have applied Rules 15 to 17).
62. Proposed Ground 4 sought to challenge the Judge’s 80:20 apportionment even if there was and remained a “head-on” situation.
63. Popplewell LJ granted permission to appeal on Grounds 1 to 3 and refused permission to appeal on Ground 4, holding:

“Grounds 1 to 3 are arguable and raise important issues of principle on the Collision Regulations in respect of which clear guidance from this court would be of value to the international maritime community. Apportionment of liability may be affected should the appellants succeed on grounds 1 to 3. Ground 4, however, is that his apportionment of liability should be overturned in the absence of any error in relation to his application of the collision regulations simply by way of challenge to his assessment of relative fault. That was an evaluative assessment in which there is a high threshold before this court will interfere. The two supposed errors of approach are no more than challenges to his weighting of the faults he found, which was a matter for his evaluation. It is not arguable that the 80%/20% apportionment was outside the wide range which was reasonably open to him on his findings.”

64. As Coulson LJ explains from [142] onwards below, when this hearing was first listed on 10 February 2026, no arrangements had been made for nautical assessors to be present in case their assistance was required. At the Appellants’ request, and without opposition from the Respondents, the hearing was adjourned. Thanks to the prompt

assistance of Trinity House, and the Civil Appeals Office, it proved possible to relist the case with two assessors, Rear Admiral Ian Moncrieff and Captain Nigel Hope, both from Trinity House, within a week.

65. Given the nature of the arguments raised on the appeal, the Court was not in the event persuaded that further input from nautical assessors was required. However, the Court invited the parties to provide a list of possible questions. Such a list was prepared, albeit it was not an agreed document, with each side reserving its position as to one of its two sections. In the event, after seeing how the argument had developed, neither party positively pressed for further input from the nautical assessors. The Court is satisfied that it is not necessary or appropriate, for the purposes of resolving those issues on which the appeal turns, and which are sufficient for its resolution, for assistance to be provided from the nautical assessors. However, the Court would like to reiterate its thanks to them for making themselves available to assist at short notice and ensuring that they were in a position to do so, if called upon.
66. I should state that I fully agree with Coulson LJ's judgment in relation to the procedural issues highlighted by the circumstances which led to the short adjournment of the appeal.

THE PARTIES' CASES ON APPEAL

The Appellants' case

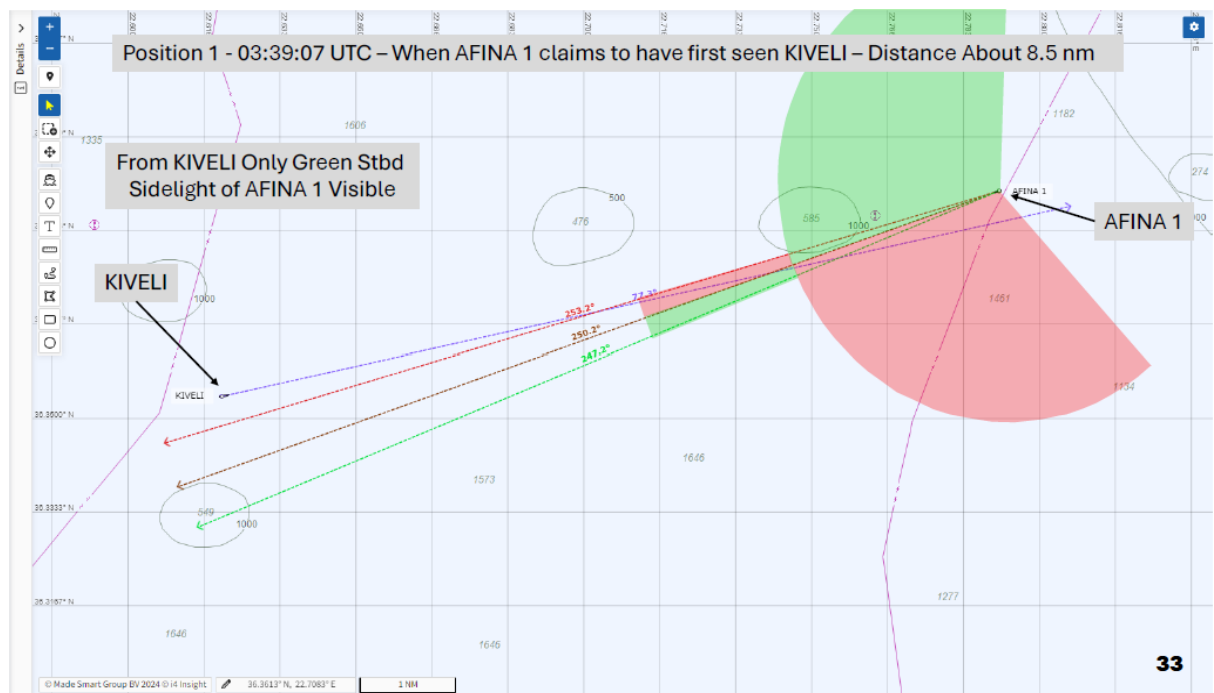
67. In his helpful submissions, Mr Smith KC explained the structure of the Appellants' argument.
68. Ground 1(a) was a threshold issue, if Ground 1 was to succeed. On this issue, the Judge's conclusion was not consistent with the ordinary meaning of the provision in context, it rendered Rule 14(b) superfluous and was contrary to *The Ever Smart*, [56] and *The MSC Apollo*, [97]-[106]. The Appellants submitted that their argument was supported by the travaux préparatoires.
69. If the appeal on Ground 1(a) succeeded, and Rule 14(b) exhaustively defined a "head-on" situation, then the Appellants submit that the terms of Rule 14(b) set a precise geometric limit to the circumstances of its application, which was not satisfied in this case. That construction is also said to provide the answer to Grounds 1(b) and 1(c) as well. By way of summary:
 - i) The references to when "a vessel sees the other ahead or nearly ahead" and "by night she would see the masthead lights of the other vessel in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect" were "all describing the same thing", namely a particular aspect of one vessel which the other can see.
 - ii) That aspect is precisely defined by reading Rule 14(b) in conjunction with Annex I paragraph 9, which provides for each sidelight to be visible up to a maximum of 3° on the opposite side of the centreline.
 - iii) On that basis, one vessel is "nearly ahead" of another when it is within a 3° arc of a centreline of the other. On the Judge's findings, at C-22 the KIVELI had the

AFINA I on a relative bearing of 2.1° to port ([54]), but the AFINA I had the KIVELI on a relative bearing of 4.9° to starboard (such that, on Mr Smith KC's case, the AFINA I could not see the KIVELI "ahead or nearly ahead", albeit the KIVELI could see the AFINA I "ahead or nearly ahead").

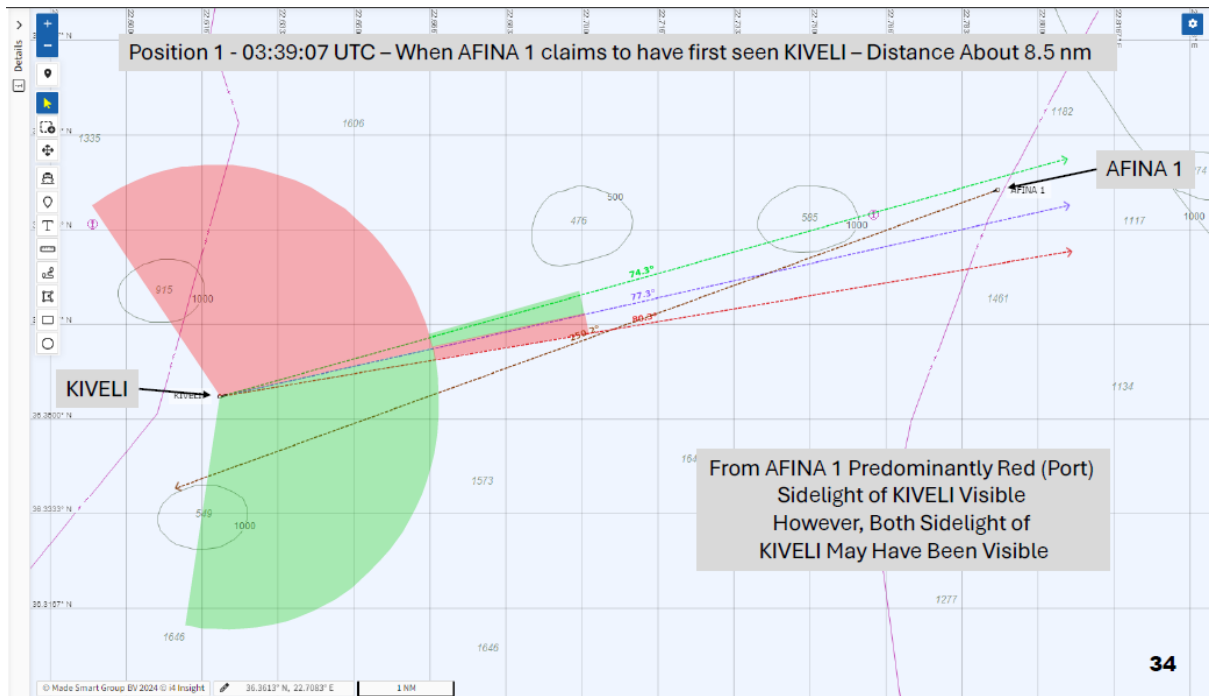
- iv) Similarly, the condition of the masthead lights being "nearly in a line" and/or both sidelights being visible describe the same geometric requirement of a 6° arc (once again derived from the point by which the light from each sidelight must cut off at the other side of the centreline under paragraph 9 of Annex I). If both the masthead light and sidelight references in Rule 14(b) involved the same 6° arc, then the "and/or" issue did not arise.
- v) Where those requirements are met, the requirements of Rule 14(b) will be satisfied in relation to each vessel, answering the issue of reciprocity raised by Ground 1(c).

70. The Appellants' geometric argument can be illustrated by two diagrams attached to its skeleton.

71. In the first diagram, the red and green lines represent the arc of visibility of the AFINA I's sidelights, and it is said that because the KIVELI is outside the red line, KIVELI would only be able to see the green sidelight of the AFINA I (albeit the Judge made no finding to this effect). It is accepted that the KIVELI had the AFINA I "ahead or nearly ahead" given the KIVELI had the AFINA I on a relative bearing of 2.1° to port.



72. The second diagram shows that the AFINA I is within the 6° arc of the KIVELI's sidelights, such that the AFINA I could see both of the KIVELI's sidelights (although there was no finding to this effect). However, the KIVELI would not be seen as "ahead or nearly ahead" by the AFINA I (given the 4.9° relative bearing).



73. I shall refer to this as the “geometric argument”. That description is not intended to diminish the argument itself. Indeed Mr Smith KC contended that one of the benefits of the argument was that the precise criteria it supplied better served the purposes of the Collision Regulations.
74. If the geometric argument does not succeed, Mr Smith KC accepts that he cannot realistically challenge the Judge’s evaluative conclusion that the KIVELI could see the two masthead lights of the AFINA I “nearly in a line” (see [10]-[11] above). However, that is not fatal for Mr Smith KC if he succeeds on Ground 1(b), the “and/or” issue. That is because the Judge did not make a finding that either the AFINA I or the KIVELI could at any relevant time see both sidelights of the other vessel (see [13] above). If, at least when the sidelights are in visual range, only one sidelight is visible, Mr Smith KC submits that Rule 14(b) is not engaged even if both masthead lights are visible “nearly in a line”. He submits that in concluding that the effect of the words “and/or” is that it is sufficient that either both masthead lights are visible “nearly in line” or both sidelights could be seen, the Judge had failed to read the provision in context, with masthead lights being visible at night at significantly greater distances than sidelights, and that the Judge’s interpretation was not consistent with the provisions regarding daylight observation in Rule 14(b) which referred to a single “corresponding aspect”.
75. It should be noted that in this case, the Judge found that each vessel could see the other’s masthead lights “nearly in a line” before the vessels were within the minimum range of the sidelights, but that it was possible that each vessel could in fact have seen the other’s sidelights at C-22 with binoculars ([229]). In these circumstances, the absence of any finding that the vessels’ sidelights were within visibility range when the risk of collision arose might have presented difficulties for Mr Smith KC’s “and/or” construction on the facts. However, I have assumed for the purposes of testing the argument that the vessels were within sidelight visibility range when the risk of collision arose.
76. If Mr Smith KC does not succeed on the “and/or” issue, then the “A vessel” issue does not arise. That is because there is then no basis to challenge the Judge’s finding that,

when the risk of collision arose, each vessel had the other “nearly ahead” and each could see the other’s masthead lights “nearly in line” (indeed it is not clear on the Judge’s findings whether the “A vessel” issue arises at all, because there is no finding that either of the vessels could see both sidelights of the other at C-22: see [13] above).

77. It follows that if both the geometric and “and/or” arguments fail, then Rule 14(b) was satisfied for both vessels on the Judge’s evaluative fact findings, which are not open to challenge. If, however, the Appellants fail on the geometric argument, but succeed on the “and/or” argument, the Appellants submit that the Judge should have concluded that Rule 14(b) was only engaged when both vessels satisfied the Rule 14(b) requirements, and should have followed the views of Sir Nigel Teare in *The MSC Apollo* in this respect.
78. If the Appellants succeed on Grounds 1(a) to (c) (in the sense summarised above), it must also succeed on Ground 1(d) which formed an alternative basis for the Judge’s conclusion that Rule 14 was engaged. If the Appellants do not succeed on Grounds 1(a) to (c), then Ground 1(d) cannot assist the Appellants and does not arise for determination. In relation to Ground 1(d), the Appellants submitted that the Judge should have held that Rule 14(c) only obliged a vessel which is in any doubt as to whether a “head-on” situation existed to assume that it did exist and act accordingly, and that a vessel which did not have such a doubt was only obliged to take the action required by Rule 14 where a “head-on” situation objectively existed (and not merely, by necessary implication, where there was, objectively, doubt as to whether a “head-on” situation existed).
79. Ground 2 is a free-standing Ground of Appeal which is not dependent on any of the aspects of Ground 1. In relation to Ground 2, the Appellants submit that the Judge should have held that whatever the position prior to C-5.15 (i.e. 05:55:45), when the AFINA I altered course at that point, no “head-on” situation continued to exist, and Rule 14 ceased to apply.
80. If it succeeds in its case that the collision fell to be treated on the basis that (a) by reference to Ground 1, it was a crossing situation and not a “head-on” situation; or (b) by reference to Ground 2, Rule 14 had ceased to apply prior to the collision, the Appellants submit that the Judge’s apportionment had to be revisited, with the AFINA I being found to be predominantly at fault. The Respondents accept that if the Appellants succeed on Ground 1, it will necessarily succeed on Ground 3, and the Appellants accept that if it does not succeed on Ground 1, Ground 3 does not arise.

The Respondents’ case

81. On Ground 1(a) the Respondents submitted that the Judgment should be upheld for the reasons the Judge gave. The Respondents submitted that the travaux (which were not relied upon before the Judge) do not assist.
82. So far as Mr Smith KC’s “geometric” interpretation of Rule 14(b) is concerned, Mr Cooper KC submitted that it involved a construction “which is not apparent on the face of the Rules”, was far too complex to achieve the purpose of the Collision Regulations of “providing practical advice to the mariners who may .. find themselves on a substantially smaller vessel in poor weather conditions” and was unsupported by authority and commentary.

83. In relation to Grounds 1(b) to (d), taken individually, and Ground 2, the Respondents invited us to uphold the Judge’s decision essentially for the reasons the Judge gave.
84. The Respondents also submitted that, even if the Appellants succeeded on Ground 1 (and hence Ground 3), and established that the Judge should have held that this was always a crossing situation:
- i) The Appellants had not obtained permission to challenge the Judge’s apportionment.
 - ii) The Judge had made it clear that his apportionment of liability 80% to the KIVELI and 20% to the AFINA I would not have changed even if this had been a crossing situation, and this was not one of those exceptional cases in which it would be appropriate for the Court of Appeal to interfere with the evaluative finding of the trial judge.

GROUND 1

85. As set out above [74]-[77], the Appellants can only succeed on this appeal if they win on (i) both Ground 1(a) and the geometric argument, or (b) Ground 1(a) and the “and/or” argument. The geometric arguments and the “and/or” arguments are of much narrower scope than the “Definitional argument”, and offer the most direct route to the determination of the appeal. For that reason, I have considered them first.

The geometric argument

The text

86. It is helpful to repeat the terms of Rule 14(b) as set out in the 1996 Regulations:
- “Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she would see the mast head lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.”
87. It is immediately apparent that not only does Rule 14(b) contain no references to the 3° angle and 6° arc which form the centre of Mr Smith KC’s argument, but that, on the contrary, it is formulated in language whose ordinary meaning is very different from the single mathematical answer which the geometric construction presupposes, with references to “*nearly* ahead” and “*nearly* in a line”. As Coulson LJ put it in the course of argument, the geometric argument involves “a very precise definition of, in the English language anyway, a very loose word”, a comment which is equally applicable to the words “*pratiquement*” (in relation to “*nearly* ahead”) and “*presque*” (in relation to “*nearly* in line”) in the French text.
88. Annex I paragraph 9, which Mr Smith KC relies upon, is not only not referred to in Rule 14, it is not referred to in Part B, of which Rule 14 forms part, nor in any Rule as such (contrast Rule 21(a) and (b) which do include arc requirements in the definitions of “masthead light”, “sidelight”, “sternlight” and “all-round light”). The only cross-reference to Annex I in a Rule is in Rule 20(e), in Part C (“Lights and Shapes”). The absence of any reference to the cut-off point of sidelights in Rule 14 is all the more

notable, because Rule 13(b) does expressly refer to the 22.5 degree abaft angle which appears in Rule 21.

89. Further, the terms of Annex I paragraph 9 make it an unlikely candidate as the source of a strict geometric limit to the application of Rule 14(b), because the 3° figure relied upon appears as part of a permissible range of “between 1 degree and 3 degrees”, with that range being the cut-off point for a diminution in intensity of the lights up to that point, rather than as an absolute value. That last reference would seem to presuppose that the sidelights may be capable of being seen from difference distances, as their intensity diminishes.
90. Finally as Mr Smith KC fairly accepted, on the geometric construction the reference to the masthead lights in Rule 14(b) does very little, even though Rule 14(b) offers the observation of the masthead lights as, at least in some circumstances, an alternative to the visibility of the sidelights. That redundancy might be thought to be particularly surprising because, as explained at [120] below, a specific amendment to refer to the masthead lights was introduced by the 1972 amendments.
91. The only textual point which Mr Smith KC made was the fact that Rule 14(b) referred to the “corresponding aspect” in daylight, which in the equally authoritative version of the French text is rendered as “sous un angle correspondant”. That is, with respect, a rather insubstantial foundation for the geometric argument. There is no difficulty in construing those words as referring to an aspect corresponding to one vessel seeing the other ahead or nearly ahead, when at night she would see the masthead lights of the other in a line or nearly in a line and/or both sidelights, but without requiring a precise geometric definition of any of those phrases.

The travaux préparatoires

92. Neither party pointed us to any part of the travaux préparatoires addressing the geometric argument. However, the Collision Regulations 1960 did not include compulsory cut-off points for sidelights (which cannot, therefore, have determined the scope of operation of its “head-on” situation provision, Rule 18). The introduction of a precise geometric definition of a “head-on” situation would have represented a significant change, and the definitions of the cut-off point for sidelights would surely have involved some form of reference to the important function this would serve in Rule 14 if they had been intended to have this role.
93. The material from the travaux with which the Court was provided, addressing the origins of Rule 14 and the reform of Rule 18, contains no reference to the 3° angle and 6° arcs, nor to any link between the reform of Rule 18 and the work which culminated in Annex I. While the Court was not shown the travaux addressing Annex I, Mr Smith KC very fairly confirmed that he had reviewed such material as he could obtain, and that there was nothing in it which bore on the issue before the Court. The absence in the travaux of any attempt to link paragraph 9 of Annex I to Rule 14(b), or any suggestion that Rule 18 was to be reformed by the introduction of a precise geometric test, provides confirmation of the interpretation of Rule 14(b) which I have reached from construing the text alone (the travaux being admissible for that purpose, as set out at [41] above).
94. The travaux also provide some insight into the origins of the words in the French version, on which Mr Smith KC relied. At the Ninth Meeting of the Conference on

Revision of the International Regulations for Preventing Collisions at Sea, on 11 October 1972, the French representative Mr Hugon referred to the words “equivalent aspect” in the English, stating that “the difficulty was that there was no equivalent in French for the word ‘aspect’ used in the English text.” The Chairman stated that it had been decided to ask the translation services “to find the appropriate formula for other languages”. That is not a promising basis for the suggestion that the word “angle” in the French text requires Rule 14(b) to be construed to require a precise, geometrically defined, scope of application.

The object and purpose of the Collision Regulations

95. Mr Smith KC also suggested that the precision which the geometric interpretation offered better served the purposes of the Collision Regulations. Mr Cooper KC disagreed, pointing to the difficulties which this might involve for smaller and less well-equipped vessels. In circumstances in which the text of Rule 14(b) is not fairly open to the interpretation for which Mr Smith KC contends, arguments as to which approach would better serve the purposes of the Collision Regulations cannot assist the Appellants. That would be to turn an exercise in Treaty-interpretation into one of Treaty-making.

Authority and commentary

96. Finally, I should consider what assistance can be obtained from authority and commentary. Mr Smith KC accepted that this was the first case, so far as his research had revealed, which had been called on to address this issue. Mr Smith KC understandably placed some reliance on the statement in *The Ever Smart* at [56]:

“Each of those rules contains precise specifications which triggers its application: see rules 13(b) and 14(b). In order to make them work clearly at night, the lighting rules, and rule 21 in particular, operate precisely in tandem with those triggering specifications. Rule 13(b), which triggers the overtaking rule, applies whenever the overtaking vessel is more than 22.5 degrees abaft the beam of the overtaken vessel.”

97. Whatever assistance this passage might give the Appellants on other aspects of the appeal, it does not assist here. Rule 14(b), defined by reference to what can be observed of the masthead lights and the sidelights (putting the issue of “and/or” aside for the moment), does operate in tandem with the lighting rules, but that does not entail that the references to lights in Rule 14(b) is simply a shorthand for a particular geometric arc. It is also noteworthy that the Supreme Court referred to Rule 21, which does contain the 22.5° angle expressly picked up in Rule 13, but not Annex I.
98. Both parties placed some reliance on Clarke J’s judgment in *The Lok Vivek and Common Venture* [1995] 2 Lloyd’s Rep 230. At p.239, Clarke J noted that at one point the vessels in that case were crossing at 8° and a little later at 13°. At p.240 he noted:

“There was some debate at trial about the scope of the head-on rule. However, I do not think it was argued on behalf of the defendants that if the difference between the course was 8 deg or more, the ships were meeting on reciprocal or nearly reciprocal courses within the meaning of r 14 of the regulations”.

This passage does not assist either party, because it contains no consideration of whether Rule 14(b) imposes a strict geometric limit, or what it is.

99. As to commentary, the court was referred to:
- i) *Farwell's Rules of the Nautical Road* (9th) (2020).
 - ii) *Cockcroft and Lameijer: A Guide to the Collision Avoidance Rules* (7th) (2011).
 - iii) *Marsden and Gault on Collisions At Sea* (15th, 2021) and (16th, 2025) – the latter produced after the first instance judgment.
 - iv) Captain Hirst, *Collisions at Sea* (2019).
 - v) Articles by Captain Hirst and Captain Thornton written after the first instance decision.
100. *Farwell*, p.293 does not suggest that the 1972 reforms introduced a precise geometric test of a “head-on” situation. Rather it suggests that:
- “The weight of authority supports the conclusion that a vessel should be considered nearly ahead under the present rule if, when risk of collision arises, her relative bearing is within one-half point (5 to 6 degrees) of the bow. Similarly, courses may be considered nearly reciprocal if within 5-6 degrees of the actual reciprocal”.
- At p.299, the authors note that “when applying the language in the former rule, which referred to situations where the vessels were ‘meeting end on or nearly end on,’ the phrase was interpreted to mean-at least in encounters in open waters-that the approaching vessels were on a relative bearing within one full point (11.25 degrees) of the other vessel's bow”. The authors note that “a number of US cases decided under the present rules carried forward the one-point rule”. They also make a similar statement as to the weight of authority so far as the issue of “reciprocal or nearly reciprocal course” is concerned, but noting that:
- “The reader must be cautioned, however, against harboring unwarranted expectations regarding the ability of the human eye, or the kind of equipment typically found on tugs and fishing vessels, to discern bearings with a high degree of accuracy. For some vessels and their operators, errors of plus or minus one point, particularly when one or both vessels are yawing, are not unreasonable and can be relied upon in forming a conclusion that a vessel was nearly ahead”.
101. As Mr Smith KC accepted, these conclusions were not derived from interpreting Rule 14(b) by reference to Annex I (which is not mentioned), but reflected “rules of thumb” derived from reported cases, and the preponderant effect of those cases. Indeed at p.300, the editors state that “no useful guidance on how the phrase ‘nearly’ in line should be interpreted has yet been provided”, whereas on the Appellants’ case the phrase is precisely defined by reference to Annex I, paragraph 9.
102. *Cockcroft and Lameijer* does not refer to a 6° arc or a 3° definition of “nearly ahead”, nor does the book refer to Annex I in its discussion of Rule 14.

103. Neither the 15th nor 16th editions of *Marsden and Gault* suggest that Rule 14(b) involves the geometric test for which the Appellants contend. The former refers to “the tendency of the old cases” to treat a difference in course of 1 point (11½°) as “more than enough to take the situation outside the rule and a difference of half a point or a little more to bring the situation within it” ([7-319]) and notes that “specified arcs of the sidelights are not perfect and some light will be observable beyond the set arcs, so as to show between one and three degrees off the bows” ([7-320]). The 16th edition is, in this respect, in similar terms (§MSR 14:1 Rule 14).
104. By contrast, I accept some support for Mr Smith KC’s interpretation can be found in the contributions from Captain Hirst and Captain Thornton.
105. So far as Captain Hirst is concerned:
- i) His textbook at pages 129 and 134 links the practical effect of the cut-off point for sidelights and Rule 14, noting that the effect of the cut-off point is that one vessel can see the masthead lights of the other and both sidelights “even though their courses can differ by up to 6° from reciprocal and more if they are yawing noticeably” (a reference to the vessel moving from side to side through the action of wind and/or waves without changing course). Similarly, at p.134, he notes that “it is possible, therefore, for all the elements for a head-on situation to exist when the courses of the two vessels differ by up to 6° from reciprocal, and it would seem that the words ‘nearly reciprocal’ are to be construed accordingly”. He also suggests that “for a vessel to be bearing not more than 6° on either bow in order to be ‘nearly ahead’ would appear reasonable for the purposes of determining whether Rule 14 applies” (p.139), with the same suggestion being advanced for the interpretation of “nearly ahead” (see also p.145).
 - ii) However, it is clear that Captain Hirst does not regard the 6° arc as definitional in the manner for which the Appellants contend, because he suggests that Rule 14 can apply even when only one sidelight is visible (pp.144-5 and 147).
 - iii) Captain Hirst’s paper, “The Kiveli/Afina Collision – Application of Rule 14” appears to treat the cut-off points of the sidelights as definitional for the purposes of Rule 14(b), without accepting that Rule 14(b) is definitional for the purposes of Rule 14. He also contends that outside of the 6° arc, there may be doubt as to whether there is a “head-on” situation, engaging Rule 14(c).
 - iv) By contrast, in a second paper, “The *Kiveli* Case: Rule 14 & The ‘Travaux Préparatoires’”, Captain Hirst specifically rejects the suggestion that Rule 14 was intended to be limited to the 6° arc, saying “if that was their intention then we believe they would have worded Rule 14(b) more precisely, e.g. by replacing ‘ahead or nearly ahead’ with ‘bearing directly ahead or within 3° either side thereof’. He also noted that the practical cut-off was between 1° and 3°, rather than being an absolute value.
106. Captain Thornton’s commentary, “‘Head-on’ or ‘Crossing’: Do the Travaux to the 1972 Colregs Cast a Different Light? *The Kiveli*” was written after the Judgment had been handed down. Captain Thornton considers Annex I, and states:

“a clear visual limit of ‘nearly ahead’ would be better to coincide with the maximum arc of seeing both sidelights, which is at most 3° either side of right ahead. If both vessels were in line with the extremity of the 3° cut-off and were able to see both sidelights, the corresponding maximum difference in reciprocal courses would be 6°. For uniformity, the limit of masthead lights being ‘nearly in line’ within the meaning of Rule 14(b) ought also to coincide with the same angular limits of the sidelights.”

107. In so far as Captain Thornton’s view involves fixing the interpretation of Rule 14(b) by reference to a 6° arc, I do not believe it is an answer which can be arrived at by any conventional process of treaty interpretation, and it is a view on which Captain Thornton stands as a lone voice. In so far as Captain Thornton’s view is that the advice of the Nautical Assessor that the 7° angle in the circumstances of this case met the test of the masthead lights being “nearly in line” was wrong, or that the Judge misinterpreted that advice and/or failed to attribute sufficient weight to the Nautical Assessor’s reference to “the arc of visibility of the fitted navigation lights” (which appears to be the thrust of much of the article), that involves an attack on the Judge’s evaluation of the evidence at the trial which is not open on this appeal.

Conclusion

108. For these reasons, I am not persuaded that Rule 14(b) is to be interpreted as imposing a fixed requirement that one vessel is only “nearly ahead” of another when it is within 3° of that vessel’s centreline, nor that the requirements that a vessel can see “the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day ... the corresponding aspect” can only be satisfied when the other vessel is within a 6° arc, drawn 3° on either side of the observing vessel’s centreline. Rule 14(b) is simply not expressed in such precise terms.
109. Having failed on that issue of construction, the Appellants’ complaint ultimately becomes that the Judge should not have found that the requirements of Rule 14(b) were satisfied by reference to the relative positions of the vessels at C-22, as set out at [10] above. However, the Appellants do not have permission to challenge the Judge’s application of Rule 14(b), as opposed to its interpretation (and I would in any event note that the Judge’s conclusion reflected the advice given by the Nautical Assessor).

Ground 1(b): the “and/or” issue

The issue

110. I can deal with this issue more briefly. As will be apparent from [41(ii)] above, there was no reference to masthead lights in Rule 18 of the Collision Regulations 1960, that reference being introduced by the 1972 amendments.
111. The Appellants argue that the ability to see “the masthead lights of the other [vessel] in a line or nearly in a line” only applies in circumstances in which the sidelights cannot be seen, pointing to the fact (as I accept) that the masthead lights are required to be visible at a significantly greater distance than the sidelights. The Appellants contend that when the sidelights are in range all that matters is whether both sidelights are visible (which I understood to mean a reference to the range at which the sidelights are in fact visible, rather than the range at which they are required to be visible). Mr Smith KC

suggests that the words “and/or” are a reference to the fact that, within sidelight range, a vessel may see both the masthead lights and the sidelights (the “and”) and outside sidelight range, it may only be possible to see the masthead lights (the “or”). On the Appellants’ case, Rule 14(b) is simply providing a means of determining whether the observing vessel is within the 6° arc of the centreline or heading of the other vessel, comprising 3° to port or starboard of the centreline, in circumstances in which Annex 1 para. 9(a)(i) states that the practical cut-off of sidelights in the forward direction is to be between 1° and 3°.

The Text of the Collision Regulations

112. When a state of affairs is to be said to be constituted by “A and/or B”, the ordinary meaning of the words is that either A or B or both of them will suffice to establish that state of affairs. The ordinary meaning of those words in Rule 14(b) is that it is enough to engage Rule 14(b) that the observing vessel can see *either* the masthead lights of the other in a line or nearly in a line, *or* both sidelights, *or* both the masthead lights of the other in a line or nearly in a line *and* both sidelights.
113. There is nothing in the text of Rule 14(b) to limit the effect of the reference to the masthead lights to cases in which only the masthead lights and not the sidelights are within sight range.
114. The Appellants’ construction treats Rule 14(b) as if it states “[i] the masthead lights of the other in a line or nearly in a line or [ii] the masthead lights and both sidelights”, and limits the application of [i] to that period of time before the sidelights are in range. Not only does this do violence to the text, but in the second option, the reference to the masthead lights seems largely superfluous (because if both sidelights are visible, the masthead lights in a “head-on situation” will also be visible). It also introduces an unnecessary uncertainty as to when (i) or (ii) is engaged (as evidenced by the equivocal conclusions in this case as to whether the sidelights were visible at C-22: see [229] of the Judgment).
115. By contrast, on the Judge’s construction, the reference to the masthead lights is not superfluous, even when the vessel is in sight range of the other vessel’s sidelights, because, for example, yawing of the vessel may obstruct the view of the latter.
116. While it can be argued that, on the Judge’s construction, there would be no need to refer to the sidelights at all, (i) the sidelight reference would provide an additional level of certainty given the potential ambiguity of the words “nearly in a line”; and (ii) Rule 14(b) applies to vessels which are required to have sidelights but only one masthead light (Rule 23(a)(ii)).
117. The only textual point the Appellants can point to the other way is the provision for observation by day (“she observes the corresponding aspect of the other vessel” or, in the French text, “sous un angle correspondant”), it being said that this presupposes that there is a single aspect to correspond with. As to this:
 - i) It is very difficult to see why the requirement for observation by day should involve two separate tests depending on whether the sidelights would or would not be within sight range *at night*.

- ii) The words “the corresponding aspect” can readily be read as referring to an aspect corresponding with “A and/or B” (particularly when A and B are both, in broad terms, aimed at the same target: when vessels are on a nearly reciprocal course).
- iii) The absence of a plural (“aspects” or in the French “angles”) is explained by the drafting history, the final sentence having become part of the travelling draft of the revised Collision Regulations before the reference to masthead lights was introduced.

The object and purpose of the Collision Regulations

118. So far as appeals to object and purpose are concerned, once again there are points which can be made on both sides:

- i) The Appellants submit that its construction ensures a precise and clear operation of Rule 14(b), namely the 6° arc. However, as noted, above, Rule 14(b) does not, as it so easily could, have defined its scope of operation by reference to a 6° arc, and the provision of the Collision Regulations from which the 6° arc is derived in fact expresses the practical cut-off of sidelights in the forward direction as being between 1° and 3°. That is an insufficient foundation for the suggestion that Rule 14(b) should be interpreted to give the sidelights a predominant role because they are defining the relevant aspect in essentially numerical terms.
- ii) The Appellants’ construction could involve a sudden change in the application of Rule 14(b) as the observing vessel came within sidelight range, even though it may not be aware of the practical cut-off of the observed vessel’s sidelights and even though weather conditions may make observing both sidelights difficult even within visual range.

119. In short, appeals to the object and purpose of the Collision Regulations do not justify giving the words “and/or” a meaning other than their ordinary and natural meaning.

The circumstances of conclusion of the Collision Regulations and the travaux

120. The travaux provide no real assistance on the purpose of the words “and/or”, and take the matter no further:

- i) In 1970, the USSR put forward a proposed amendment to the rule dealing with a “head-on” situation, which deemed vessels “to be meeting end on, or nearly end on, when they are approaching on reciprocal courses and each of them sees the other ahead of her course; by day, each vessel sees the masts of the other in a line or nearly in a line, with her own; and by night, each vessel sees ahead of her course the masthead lights of the other in a line or nearly in a line with her own, and also both sidelights of the other” (as set out in Captain Thornton’s article, page 8).
- ii) The USSR submitted a further note to the Working Group on 25 January 1971 (COLREG II/2/5) which proposed the following text for what became Rule 14(b):

“Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead so that by night she sees the masthead lights of the

other in a line or nearly in a line and/or both sidelights and by day she observes the appropriate aspect of the other vessel”.

- iii) At the Ninth Meeting on 11 October 1972 (CR/CONF/C.2/SR.9), the French delegate Mr Hugon observed “that the Committee had surely decided to eliminate the unsatisfactory formula ‘and/or’”, to be told by the chairman that “it had been decided to retain the words ‘and/or’ in the English text” (which were rendered as “et/ou” in the final French text).

Authority and commentary

121. The effect of the words “and/or” has not previously been addressed in any English authority. Mr Smith KC placed some reliance on the fact that, in *The Lok Vivek*, Clarke J addressed the issue in that case solely by reference to whether each vessel could see both the sidelights of the other (p.239), but the case involved no consideration of whether the masthead lights were “nearly in line”, still less the issue of construction now raised.
122. The same is true of *The MSC Apollo*, [101], on which Mr Smith KC also relies. While Teare J only discusses the Rule 14(b) issue in terms of whether both sidelights could be seen, that was not a case which involved any suggested difference between the masthead and sidelight aspects of Rule 14(b), nor any consideration of the effect of the words “and/or”. I am not persuaded that this passage addressing a different issue assists this court.
123. By contrast, assistance is to be derived in the interpretation of an international convention from the decision of the United States Court of Appeals for the Fifth Circuit in *Acacia Ver Navigation Co Ltd v Kezia Ltd (MV Omnia)* 78 F.3d 211 (5th Cir. 1996). The trial court had held that Rule 14 was not applicable because the vessels were not on reciprocal or nearly reciprocal courses. The losing party appealed, stating that the trial judge had made this finding solely by reference to whether each vessel could see both sidelights of the other vessel, and not whether their masthead lights were nearly in line, alleging “uncontroverted evidence shows that the masthead lights of both ships were in line or nearly in line”. The Court of Appeals explained the operation of Rule 14(b) as follows:
- “Thus at night, should a ship see either both sidelights or both masthead lights in line or nearly in line of another ship, that ship should presume that both ships are on a reciprocal course and alter the course to starboard to avoid collision”.
124. Thus the Court of Appeals accepted that either state of affairs was sufficient to engage Rule 14(b), but held that the trial court had implicitly found that neither state of affairs had been established (albeit “the lower court could have made clearer that the ships’ positions met none of the scenarios envisaged by Rule 14”).
125. As to commentary, *Farwell* supports the Judge’s construction, stating at p.300:
- “In identifying the visual picture of the head-on situation, Rule 14(b) refers to two possible light configurations: (1) masthead lights in line or nearly in line and/or (2) both sidelights. The and/or conjunction emphasizes that this

test can be met by the masthead light configuration by itself, the sidelight configuration by itself, or by both configurations ...

Because the Rule 14(b) test is phrased in disjunctive terms, it bears repeating that the test is satisfied by sighting both sidelights simultaneously or by sighting the two masthead lights in line or nearly in line”.

126. *Cockcroft and Lameijer* p.74 offers support to Mr Smith KC, stating “Rule 14 is apparently not intended to apply in cases in which, from a vessel ahead or nearly ahead, one sidelight can be seen but the other obscured”. However, that opinion is expressed in tentative terms (“apparently”), and the text also notes “the effect of yawing must also be taken into account”.
127. The issue is not addressed in the 15th edition of *Marsden and Gault*. The 16th edition suggests that the Judge’s conclusion was reached “unsurprisingly” and was consistent with the visual range requirements for masthead lights and sidelights (§MSR14:1).
128. Captain Hirst in *Collisions at Sea*, p.140 suggests that it is “not entirely clear” whether a “head-on” situation can only exist when a vessel can see both sidelights of the other, but expresses support for the view that it is sufficient to engage Rule 14(b) that the masthead lights are visible in line or nearly in line, suggesting “there is much to be said for this construction”. His article expresses approval for the Judge’s conclusion, describing the Judge’s reasoning as “compelling”.
129. Captain Thornton had no issue with the Judge’s conclusion if the geometric construction of Rule 14(b) applied (p.9), but suggested that, if that is not the case, the Judge’s construction was not consistent with the travaux. For the reasons I have set out above, I am not persuaded the travaux provide any assistance in this case.

Conclusion

130. This issue ultimately turns on the clear language of Rule 14(b). The Judge’s construction gives full effect to the ordinary meaning of “and/or” in Rule 14(b), and the Appellants’ does not. In the absence of factors compelling a different conclusion, the court should give effect to the ordinary meaning of the language used. The Appellants have been unable to point to any factors which point away from the ordinary meaning. The Judge’s construction is supported by the only court decision which directly addresses the issue, and the clear majority of the commentary. For these reasons, which essentially match those given by the Judge, I would reject this ground of appeal.

The remaining issues raised under Ground 1

131. As I have stated, the resolution of these two issues in the Respondents’ favour is sufficient to dismiss the appeal on Ground 1.
132. The other issues raised under Ground 1 – in particular, the definitional argument, but also the “A vessel” argument – involve more complex and wide-ranging issues, including consideration of Rule 13 and the treatment within the Collision Regulations generally of the very different concepts of bearing and course over ground. Those issues might themselves merit consideration of the travaux préparatoires and comparison of

the English and French versions, which were not the subject of submissions. I have concluded that they are best left to a case in which they are determinative.

GROUND 2

133. The Appellants contend that, even if the Judge was right that Rule 14 was at some point engaged, there came a point at which it ceased to be engaged. It is the Appellants' case that Rule 14 ceases to apply when the vessels cease to be "meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision", even if the risk of collision which first brought Rule 14 into effect remains.
134. The Judge held that once Rule 14 is engaged, it remains engaged until the risk of collision which brought Rule 14 into operation has passed ([247]). I am satisfied that the Judge's interpretation is correct on this issue:
- i) Rule 14, in contrast to Rule 13, does not expressly state when it ceases to be applicable (Rule 13(d) providing "any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these rules").
 - ii) However, inherent in the Appellants' argument is that a "head-on" situation will, before the risk of collision has passed, cease to be a "head-on" situation (because the effect of both vessels turning to starboard is that at an early stage in the course of that manoeuvre, even before the turn to starboard is complete, both sidelights will cease to be visible and the masthead lights of the other vessel will cease to be visible "nearly in a line").
 - iii) However, Rule 14 clearly contemplates that the Rule will continue to apply, requiring a course change so that "each shall pass on the port side of the other". Rule 8(d) also contemplates that actions taken to avoid collision "shall be such as to result in passing at a safe distance".
 - iv) Rules 14 and 8, therefore, support the Judge's conclusion that, once engaged, Rule 14 applies until the risk of collision has passed.
135. In addition, in my determination, the Judge's conclusion better advances the object and purpose of the Collision Regulations, offering greater certainty as to which Rule applies rather than leading to a move between different Rules while the same risk of collision continues.
136. The Judge's conclusion is also consistent with the sentiments expressed when interpreting a previous version of the crossing rule by the House of Lords in *Orduna v The Shipping Controller* (1920) 5 Lloyd's L Law Rep 241, 242-3, where Viscount Finlay observed:

"Another important contention raised for the *Orduna* was that the crossing rule had ceased to apply at the time when the *Orduna* starboarded, the green light of the *Konakry* being ahead of, or on the starboard bow of the *Orduna*, so that they were no longer crossing vessels. The green light of the *Konakry* was ahead of the *Orduna*, but even if it had been slightly on the starboard bow, Arts. 19 and 21 would not have ceased to apply. It appears to

me impossible to say that these two vessels had entered on a new phase the moment the green light of the *Konakry* got ahead, or even slightly on the starboard bow of the *Orduna*. The conditions which render the regulations for crossing ships applicable begin as soon as the two ships are approaching one another on courses which, if continued, may cause a collision. These conditions continue to subsist until the vessels have definitely passed out of the phase of crossing ships. It was far too soon to conclude that the vessels had passed when the green light of the *Konakry* got ahead of the *Orduna*. The operation of passing was not yet completed, and it would lead to danger and collision in very many cases if such a state of matters should be considered to constitute the position of passed ships so as to absolve either of them from further attention to the regulations for crossing.”

137. The Judge’s decision is also supported by the decision of the United States District Court for the Eastern District of Louisiana, in *Gulfoast Transit Company v MT Anco Princess et al* 1978 AMC 471 by reference to Rule 18 of the Collision Regulations 1960, where District Judge Sear stated:

“Once Article 18 comes into play, a vessel cannot change what is an end on situation to one which requires a starboard to starboard passage”.

138. It is also supported by much of the commentary:

- i) *Farwell*, p.296 notes that “once risk of collision exists and the approach situation can be classified, subsequent changes do not affect that original classification”.
- ii) *Marsden and Gault* (15th) observes at [7-320]:

“Paragraph (b) clearly applies only to the initial sighting. Two vessels on exactly opposite courses at night following tracks that will take them clear of each other port-to-port (by, for example, 500 yards or more) will in the early stages each see both sidelights of the other almost ahead; later, however, the green light of each will be shut out to the other, leaving them both “red-to-red”, but this will not mean that the rule ceases to apply.”

The 16th edition repeats that text with a citation to the first instance judgment.

- iii) The issue is not discussed in *Cockcroft and Lameijer* nor by Captain Hirst nor Captain Thornton.

139. For these reasons, I would reject Ground 2.

GROUND 3

140. In the light of the conclusions on Ground 1 and 2, I would dismiss the appeal. Accordingly, Ground 3 does not arise, nor any question of determining whether the Judge’s 80:20 allocation of fault could be impugned were the matter to be approached either by reference to Rules 15 to 17 of the Collision Regulations, or on the basis that Rule 14 ceased to apply at C-7.5. In those circumstances, it is not necessary to address the argument as to whether the Appellants had permission to challenge the Judge’s

apportionment of 80:20 if Grounds 1 or 2 had succeeded, nor the merits of any such challenge.

Nugee LJ

141. I agree with both judgments.

Coulson LJ

142. I agree that, for the reasons set out in the judgment of my Lord, Lord Justice Foxton, this appeal should be dismissed. The purpose of this short judgment is to identify, and I hope provide a practical response to, a procedural issue which arose during this appeal.

143. The appeal was due to be heard on Tuesday and Wednesday, 11 and 12 February 2026. However, on the first morning, Mr Smith KC, on behalf of the Appellants, said that his clients were concerned that the court was not sitting with nautical assessors. This came as something of a surprise for two reasons. First, neither the Appellants nor the Respondents had ever suggested that nautical assessors were required for the hearing of the appeal. Secondly, it seemed to the court that the limited issues raised in the Notice of Appeal, for which permission was granted by Popplewell LJ, did not require the assistance of nautical assessors. Certainly, Popplewell LJ did not indicate when granting permission that such assessors were required.

144. However, Mr Smith drew to our attention the provision of paragraph 26B of Practice Direction 52C which updated and clarified the previous rule¹. Paragraph 26B provides:

“Nautical Assessors Assisting in the Court of Appeal from Decisions of the Admiralty Court

26B.

(1) Where there is an appeal from the Admiralty Court in a collision claim or other claim involving issues of navigation or seamanship, the Court of Appeal will, unless the court otherwise orders, be assisted by two nautical assessors.

(2) The nautical assessors will consist of one Elder Brother of Trinity House (nominated by Trinity House but appointed by the Master of the Rolls or a court officer) and one member of the Honourable Company of Master Mariners (nominated by the Honourable Company but appointed by the Master of the Rolls or a court officer).

¹ The use of nautical assessors to assist judges in determining issues of seamanship dates back to at least the 16th Century. But, in the context of an appellate court, the modern requirement for two naval assessors was articulated in *Practice Direction (Admiralty Appeals: Assessors)* [1965] 1 WLR 853. This stated that “where the court below has been assisted by two Trinity Masters, the Court of Appeal is assisted (if no action is taken by a party to the appeal under paragraph 3, *infra*), by one Trinity Master and one Mercantile Marine assessor unless (1) a Trinity House vessel is involved in which case the assessors consist of one Royal Navy assessor and one Mercantile Marine assessor, or (2) a ship of the Royal Navy is involved in which case the assessors consist of one Trinity Master and one Royal Navy assessor. In all such cases it will be sufficient for the notice of appeal, and the respondent's notice (if any), to be marked ‘With assessors.’”

(3) If either party in any appeal seeks a different order from the above they should apply to the Court of Appeal at the time when the notice of appeal or respondent's notice is served.

(4) In the absence of any such application by the parties, the Master of the Rolls or a court officer may also decide that a different order is appropriate having regard to the particular circumstances of the case.

(5) In this paragraph, "court officer" means a court officer assigned to the Civil Appeals Office authorised to exercise the jurisdiction of the Court of Appeal under rule 52.24."

145. Faced with the proposition in sub-paragraph 26B(1), that the presence of nautical assessors was the default position unless the court had ordered otherwise, and Mr Smith's submission on behalf of the Appellants that they required such assessors, this court felt it had no option but to adjourn the appeal. Happily, as Lord Justice Foxton has observed, thanks to considerable hard work by the Court of Appeal listing office and Trinity House, it was possible to refix the hearing of the appeal with two distinguished assessors, and before the same constitution, only eight days later.
146. But there still remained the underlying issue of what the nautical assessors were required to do. At the outset of the appeal, there were no written questions from either party. As I have said, there was nothing obvious in the grounds of appeal which suggested itself as a matter on which the assistance of nautical assessors was required. In the end, for purely pragmatic reasons, a *modus operandi* was adopted whereby this court sat with the assessors on the clear understanding that it had yet to be decided whether or not their assistance was required.
147. In the end, some draft questions were provided, divided into two sections. The first section set out questions that went to the proper interpretation of the Collision Regulations. Both parties were, however, agreed that these questions should **not** be put to the nautical assessors, because matters of interpretation were for the court. I agree with that. I also note that the questions were very similar to some of those asked of the assessor below, and I have very much in mind the warning of Lord Simon of Glaisdale in *The Savina* [1976] 2 Lloyd's Law Reports 123 (at 131), that asking the same questions as before "is at least inviting embarrassment and complication...it should be exceptional that the same questions should be put by an Appellate Court to its Nautical Assessors as the court of first instance puts to [its assessor(s)] – unless of course, the advice given by the latter is challenged in the notice of appeal". The second section of the draft questions, prepared by the Appellants, set out questions concerned with apportionment, which were only potentially relevant if the Appellants succeeded on at least one ground of their appeal. Since they have not, the questions are otiose.
148. It is important to ensure that this unsatisfactory situation (an adjournment and the subsequent engagement of nautical assessors who were not ultimately required to perform any task), is not repeated. Paragraph 26B of PD52C needs to be looked at again by the Civil Procedure Rules Committee, because a mandatory requirement for assessors at appellate level, regardless of circumstance, seems to me to be contrary to the overriding objective, and the modern approach to attempts to appeal findings of fact. Perhaps, at the very least, the word "will" in sub-paragraph 26B(1) could be

replaced by the word “may”. In addition, the provision at sub-paragraph 26B(4) that the MR may make “a different order” without any application by or input from the parties, seems to me to be impractical and unrealistic. The parties, and in particular the appellant, must be encouraged to be more proactive, and the question of assessors should be dealt with by the LJ giving permission, rather than the MR or a court officer.

149. I consider that a party seeking to appeal in a collision case, or any other prospective appeal involving issues of navigational seamanship, must spell out in their Notice of Appeal: a) any opinion of the first instance assessor that is challenged, with reasons; b) those grounds of appeal on which the appellant says that the opinion of fresh nautical assessors will be required, again explaining why. The respondent can then address such matters in its PD 52C paragraph 19 statement of opposition. The LJ considering the application for permission to appeal can then take those matters into account when considering the application.
150. If permission to appeal is granted, but the order makes no mention of assessors (as happened here), then the parties should take it that the court has concluded that nautical assessors are not necessary for the purposes of the appeal. It would, however, be better if the order granting permission spelled that out in terms. If, on the other hand, the LJ granting permission considers that assessors are required on one or more of the grounds, then those should be identified, and the scope of the assessors’ role should be set out. If the LJ grants permission, but remains unsure as to whether assessors will be required at the hearing of the appeal, or what the scope of their role might be, such matters can be dealt with subsequently by way of written submissions, or perhaps at a short oral hearing. This last procedure is also likely to be appropriate if the trial judge has granted permission to appeal.
151. What must be avoided at all costs is the uncertainty that occasionally surfaced here, when it sometimes seemed that the Appellants were seeking to rerun large parts of their case (including matters on which the nautical assessor at first instance had set out clear views) which had been rejected by the Judge. That is wholly inappropriate. Lewison LJ’s well-known warning in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, that the trial is not a dress rehearsal, but the first and last night of the show, applies just as much to collision cases as it does to any other form of civil or commercial litigation.