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**Session 5 – ISM and ISPS Codes –
Influence on the Evolution of Liabilities**

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The ISM Code was not developed, and was never intended to be a tool for lawyers and the Courts to determine issues of liability. Nor was it developed to make the lives of ship operators and seafarers unbearably difficult or to down load their ships with mountains of paper. These are by-products! The ISM Code was intended to make ships safer and seas cleaner. In our deliberations we must never lose sight of that goal.

I fully concur with my colleague, Mr Simon Kverndal Q.C., when he reflects that ‘...*the first important consequence is that the ISM Code sets a practical rather than legal standard of what the reasonable and prudent shipowner ought to do...*’

Whilst I fully respect the nature of this colloquium I will, with your permission, address more that ‘practical’ standard rather than the strictly ‘legal’ issues of ISM – which have of course been dealt with so admirably by Mr. Kverndal.

It is well established that standards can and do change. In 1926 Lord Sumner said, in *Bradley & Sons v. Federal Steam Navigation Co*, “...*in the law of carriage of goods by sea neither seaworthiness nor due diligence is absolute. Both are relative, among other things, to the state of knowledge and standards prevailing at the time...*”¹ and in a more recent case, to which Mr Kverndal has already referred, ‘*The Eurasian Dream*’, Mr Justice Creswell echoed the words of Lord Sumner: “...*Seaworthiness must be judged by the standards and practices of the industry at the relevant time, at least so long as those standards and practices are reasonable...*”²

It is, I believe, through understanding the full nature and significance of that practical standard that we will gain an insight into the influence – past, present and future – on the Evolution of Liabilities both with regard to the ISM Code and the ISPS Code.

¹ Lord Sumner – *Bradley & Sons Ltd. v. Federal Steam Navigation Co.* (1926) 24 Ll.L. Rep. 446 (1927) 27 Ll.L Rep. 395

² Mr Justice Creswell – *Papera Traders Co. Ltd & others v. Hyundai Merchant Marine Co. Ltd. & Another (The ‘Eurasian Dream’)*; (2002) 1 Lloyd’s Rep.719

The Three Fold Mantra

I think the place to start is by reminding ourselves of a very simple, but yet profound, *Three Fold Mantra* in which is set out a full explanation of how the ISM Code is intended to work – and the link to issues involving legal liabilities.

The Mantra states:

- Say what you do;
- Do what you say that you do;
- Show that you do what you say that you do!

The Company will ‘say what it does’ through its various Safety Management and Procedures Manuals, checklists, instruction books, circulars and whatever else it decide to use to set out its documented Safety Management System. This is the first part of the Mantra.

The second part of the Mantra involves bringing those written and documented procedures alive – to make them part of the way in which the Company, its ships and its people, both on shore and on board ship, live, work and breath!

From a purely practical point of view – if you have achieved the second stage of the Mantra then you are flying! (Or rather sailing!) However, it is crucial that not only does the Company have good procedures in place and has fully implemented those procedures in a living, dynamic system but it must be able to demonstrate, to prove, that the system is working as it was intended. This will be achieved, mainly, through the creation of objective evidence. This is the third level of the Three Fold Mantra – to show that you do what you say that you do.

Interestingly though, the reason for creating this ‘objective evidence’ is not, primarily, to provide lawyers and the Courts with information to consider in liability cases – it is created to allow the Company, and those involved in running the Management System to measure and assess their success with their implementation efforts such that they can make properly considered decisions when it comes to implementing corrective action and in their activities of continually improving their System. The possible use by lawyers and the Courts is coincidental. That, in itself though, does create a potential dilemma – because the ‘risk’ or ‘fear’ that this objective evidence may be used against the ship operator, or its employees personally, in some future legal action may have the propensity to inhibit the willingness of those involved in its production to actually generate the hard evidence. If it is not produced then it is very unlikely that the Safety Management System could function – as a ‘management system’ – and we may as well go back to the position which existed previously of a prescriptive system of complying with sets of rules and regulations produced by Government bureaucrats. Of course if the objective evidence is deliberately not created the Company would also be non-compliant with the requirements of the ISM Code.

A problem which arises however, at a practical level, is the interpretation of the requirements of the ISM Code; this has become a very subjective matter. Consequently, what is required to satisfy the first level of the mantra is not at all universally agreed – which clearly will have a knock on effect with regard to the

second and third levels. The introduction of the ISM Code carried with it at least two quite major presuppositions:

i) it presupposed a level of understanding by the shipping industry of the ‘systems approach’ to management – which, in some cases, I fear was an unwarranted assumption to make,

ii) it presupposed that the shipping industry, to a large extent, was capable of regulating and policing itself – which, in some cases, I fear was an unwarranted assumption to make!

An Ill defined Standard

IMO Resolution A.741(18) OF 1993, as amended in December 2000 by Resolution MSC.104(73) – or, as it is otherwise known, The International Management Code for the Safe Operation of Ships and for Pollution Prevention (the International Safety Management (ISM) Code) – or simply The ISM Code – comprises 16 very short Sections – set out on 10 sides of a small A5 booklet. At one level it provides great latitude – recognising that there are many different types and sizes of commercial ship operating companies which will operate in quite different ways – but, at another level, it requires each Company to achieve certain common objectives or goals through the development of its Safety Management System. Those objectives are loosely defined within the ISM Code but the details were left to each individual ship operating company to workout and develop.

This latitude, I would say, has been one of the greatest strengths and also the greatest weakness’ of the ISM Code. Not only has it been left to each ship operating company to decide what it needs to do to satisfy those objectives – but it has also been left to individual Flag State Administrations, and Recognised Organisations (R/O’s) acting on their behalf, to apply their own interpretation on what is required – although they did receive a little more help by way of IMO Resolution A.788(19) – Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations – which were replaced with Revised Guidelines which were adopted by Resolution A.913(22) in November 2001. Still there was, and to some extent still is, widely differing interpretations, and consequently different standards adopted, by different Administrations and R/O’s – although the International Association of Classification Societies (IACS) and the International Chamber of Shipping (ICS) / International Shipping Federation (ISF) have also done their bit to try and introduce a common approach³. The policing of the Code however has been left very much to Port State Control and similar bodies – who also apply their own interpretation of what is required to comply. Although they have been helped with some guidance from IMO and from their MOU’s.

What I have seen and experienced in practice is that not only are there differences in interpretation between ship operating companies, between Flag State Administrations, between Recognised Organisations / Classification Societies, between different Port State Controls / Coast Guards and their MOU’s – but also between individuals within

³ For example: ‘IACS Recommendation No 41 – Guidance for IACS Auditors to the ISM Code’ and ‘ICS / ISF – Guidelines on the application of the IMO International Safety Management (ISM) Code’

the same organisations. Although that situation is improving as individuals and organisations progress up the learning curve with the passage of time. It would be a mistake however to believe that there exists, at this time, one universal standard which would define 'ISM Compliance' – although each Company will have its Document of Compliance (DOC) proudly displayed in a nice frame in its office ashore and each ship will have its Safety Management Certificate (SMC) neatly filed away ready for inspection.

It must also be remembered that the verification audits which led to the issue of the DOC to the Company and the SMC to the ship were a snap shot of the SMS in operation by specific individuals who happened to be there at that particular point in time. As those individuals change – as they invariably will – particularly on board ship – then there is every possibility that the operation of the SMS could be influenced and consequently changed. At a practical level therefore the possession of a DOC and SMC may not necessarily be coincidental with 'compliance' with the ISM Code – although it may be *prima facie* evidence of compliance.

From an evidential point of view, in the event of an incident which may give rise to legal liabilities, it will not only be necessary to take another 'snap shot' of the SMS at the time of the incident but, more importantly, it will be necessary to produce a 'movie' of what had been happening in the weeks and months prior to the incident. From a review of the movie we will gain an impression of the level to which compliance was being achieved.

One thing I would mention, within the context of reviewing that movie – or indeed of any other review of the SMS – is that we should not expect to find perfection. Things can and do go wrong – we should be looking for a management system which is working such that mistakes, omissions, problems are spotted, analysed and corrective action is implemented to learn lessons and avoid recurrence – within a cycle of continual improvement. Of course we should also be looking for an active regime of proactive accident prevention and risk management. Those types of activities should be interpreted as being much more indicative of a working SMS than the occasional mistake which might be made by an individual.

Has ISM changed anything?

This is an interesting question – and one which I believe requires more attention than has been given to it since ISM first came on the scene.

We could interpret the question to be asking whether ships have indeed become safer and seas cleaner since ISM implementation – but I think that question is for another venue and event. For the purpose of this Colloquium, I think the question is alluding to legal liabilities and at that level it can be stated quite clearly that there has been very little or no change in the law with regard to the raft of marine related liabilities as a consequence of the introduction of the ISM Code.

It is important to remember that the ISM Code is concerned with a 'systems' approach to management – a Safety Management System. It is that management system which should ensure compliance with MARPOL, SOLAS, IMDG Code, STCW and the all the other conventions, statutes, rules and regulations – as they may be adopted into the

domestic legislation of the Flag State and as they may apply to visiting ships within a Port State situation. If the Oil Record Book has not been properly completed then, in the first instance, that is likely to be a violation under the relevant section of the MARPOL Convention. If the navigation charts have not been corrected then that will be a violation under the relevant section of SOLAS. The obligations, responsibilities and potential consequences under the relevant national legislation will be the same after ISM implementation as they would have been before. What is new is the requirement to have a management system in place which will ensure compliance with those various rules and regulations. It is quite likely that the incident has arisen because of some failure in the Management System – but that, in itself, is not the breach which incurred the liability. Let us remind ourselves of the requirement of Section 1.2.3 of the ISM Code:

1.2.3 The safety management system should ensure:

- .1 compliance with mandatory rules and regulations; and
- .2 that applicable codes, guidelines and standards recommended by the Organization, Administrations, classification societies and maritime industry organizations are taken into account.

Although it may be a long list, it should be realistically possible to identify and define all the ‘mandatory rules and regulations’ which apply to ships flying the flag of a particular Flag State Administration, and presumably it would be at least theoretically possible to identify and define all the rules and regulations which might apply to all the different Countries to which each of the vessels within a ship operators fleet might visit – however, can we realistically identify the boundaries for compliance with Section 1.2.3.2? That is difficult and, I suspect, will become an evidential issue in some case in the future.

There are three aspects which I think can be considered as ‘new’ and which have changed the situation with regard to the way in which Companies operate post ISM Implementation and which I think will have a significant bearing upon the evolution of marine liabilities:

1. Audit trails
2. The Designated Person
3. The Company Verification, Review and Evaluation

The changes are at the evidential level – because of ‘new’ expectations which have been created through the ISM Code. This evidence, and the expectation of the existence of that evidence, does have the propensity to affect the outcome of liability case. It may be sufficient to tip the ‘balance of probability’ – or maybe even, in criminal case, to ‘prove beyond reasonable doubt’ a state of affairs; it may make the difference between distinguishing simple ‘negligence’ of an individual from the more significant status of ‘incompetence’.

I would like to consider each of these in a little more detail to explore what I see as their potential significance.

Audit Trails

This takes us back to our Three Fold Mantra. It should be possible to identify in the Procedures Manual(s) how a particular procedure or process should be carried out – it should ‘say what you should do’. By following the process through, by observing objective evidence – by following an audit trail - it should be possible to verify whether or not what was supposed to be done was actually done - on that occasion.

However, neither audit trails nor objective evidence are particularly new – and they certainly were not an invention coming out of the ISM Code. What is new is the expectation of actually finding the objective evidence and being able to follow a meaningful audit trail. There will be an expectation of the existence of a procedure and there will be a realistic expectation that there will have been records maintained to confirm that certain things were done to confirm that the correct procedures had been followed – for example a checklist completed, an entry made in a log book etc. In theory therefore it should be a relatively easy task to verify whether those on board were doing what they were supposed to be doing. Unfortunately there is a rather large practical problem here which has significant potential consequences when considering the legal tests which might be used to establish legal liability – for example due diligence.

How many individual jobs or tasks exist, or can be envisaged, on board a commercial ship – lets say a large Passenger Cruise Vessel, or maybe a Product Tanker? A few hundred? A few thousand maybe? Maybe more! – it would depend at what depth you might want to draw the line. Let us consider just two of the relevant requirements of the ISM Code – in order to put this matter into some sort of perspective and thus start to appreciate the scale of the potential problem:

1.2.2 Safety management objectives of the Company should, inter alia:

....2 establish safeguards against all identified risks...

That is quite a tall order if we are to read the requirement literally and if we interpret the requirement to mean that we should document all the safeguards we may have identified.

7 DEVELOPMENT OF PLANS FOR SHIPBOARD OPERATIONS

The Company should establish procedures for the preparation of plans and instructions, including checklists as appropriate, for key shipboard operations concerning the safety of the ship and the prevention of pollution. The various tasks involved should be defined and assigned to qualified personnel.

There is something of a limit provided in that we are only here dealing with ‘key’ shipboard operations – but if we assume that what was intended by ‘key’ shipboard operations to mean those operations which might impact upon, or involve the management of safety – then there would be few operations on board which would not fall into that criteria.

It seems to have become expected, by some, that the SMS must have a procedure for every single task imaginable? I have certainly seen systems running to twenty, even thirty and more Arch Lever files in size – in which the Company has tried to include everything. I was onboard a ship quite recently, a very small ship, and counted 65 manuals stacked upon the shelves of a specially constructed book case in the wheelhouse. The reality is that those volumes gather dust and the system – whilst it may look impressive to an outside observer – is of very little practical value. In fact such a system can easily become counter productive. Many Companies have realised that they need to reduce the size of their manuals and cut down on the paperwork generally. Indeed at the May 2006 session of the IMO Maritime Safety Committee meeting – a report was presented which set out the result of some extensive research carried out by a team of industry experts looking into the success, or otherwise, of ISM implementation.⁴ One of the recommendations coming out of that report was to cut down on the size of the manuals and the paperwork generally. That is all well and good but what is the potential end result when it comes to such things as paper trails and objective evidence? What would be the consequences in the event of an incident which may give rise to liability action – when it turns out that there was no clear written procedure for that very thing which was causative of the accident.

The reduction of paperwork and the production of objective evidence are not necessarily compatible goals!

I suspect there are many Safety Management Systems out there which are intentionally voluminous because by doing so the Company believes that it can shield itself from blame by saying that it had provided its Masters and sea staff with all the procedures they could ever need for the safe operation of their vessel and the incident occurred because the Master or other member of the sea staff did not follow the correct procedure. My own belief is that any ship operating Company which harbours such ideas is seriously misguided and is likely to receive a shock if an incident does occur – since an investigation would almost certainly reveal a non-functioning SMS and, through one means or another, find itself back on the Boardroom table.

The Designated Person

Mr Kverndal has already described, in some detail, the role of the Designated Person (D.P.), some of the potential issues and problems which might arise out of the role and, I think, dispelled a myth that had developed in some quarters that the D.P. would be considered as being synonymous with the alter-ego of the Company.

I do not intend repeating what Mr Kverndal has already stated so well – along with the profound insight which had been provided by Lord Donaldson – other than to reiterate the important requirement, set out in Section 4 of the Code, that the D.P. should have ‘...direct access to the highest levels of management...’ What use the D.P. makes of this is not made clear in the Code – but it can be safely implied, I believe, that it would be used to communicate issues relating to the management of safety within the Company and particularly where there maybe problems encountered. This is the ‘Achilles heel’ to which Lord Donaldson had referred.

⁴ IMO Maritime Safety Committee MSC 81/17/1 – 21 December 2005 – ‘Role of the Human Element’ – Assessment of the impact and effectiveness of the ISM Code’

However, there is one further, related, issue which should be considered alongside the requirement of the D.P. as set out in Section 4 – particularly relating to the ‘...monitoring of the safety and pollution prevention aspects of the operation of each ship...’ and that is the obligation and responsibility upon the Company under Section 3.3 to ensure that ‘...adequate resources and shore based support are provided to enable the designated person or persons to carry out their functions...’

The role of the D.P. should be a very active and participatory role and it will be an expectation, no-doubt, that evidence will exist to demonstrate that the D.P. was keeping his / her eye on the safety ball, was ensuring that safety related problems were resolved and was communicating safety related matters to the highest levels of management. The unresolved ‘question’ is how much information should be communicated?

The Company Verification, Review and Evaluation

Section 12 of the ISM Code is headed ‘Company Verification, Review and Evaluation’. This Section of the Code has not, in my view, received the attention it really deserves. In my view it is within this Section of the Code that issues of ‘due diligence’, privity and possibly even more extreme levels of the Company implications will be established.

I think it will be helpful to remind ourselves of the requirements of Section 12 of the Code:

- 12.1 The Company should carry out internal safety audits to verify whether safety and pollution-prevention activities comply with the safety management system.
- 12.2 The Company should periodically evaluate the efficiency of and, when needed, review the safety management system in accordance with procedures established by the Company.
- 12.3 The audits and possible corrective actions should be carried out in accordance with documented procedures.
- 12.4 Personnel carrying out audits should be independent of the areas being audited unless this is impracticable due to the size and the nature of the Company.
- 12.5 The results of the audits and reviews should be brought to the attention of all personnel having responsibility in the area involved.
- 12.6 The management personnel responsible for the area involved should take timely corrective action on deficiencies found.

In a way this can be considered as an extra dimension beyond the Three Fold Mantra. In fact it is merely part of ‘closing the loop’ in the cycle of continual improvement of any Management System. Section 12 however brings the Company management on centre stage to monitor and check how they are performing with their management of safety. They will then be in a position whereby they can improve their System.

Under the ISM Code the Company, with an upper case, capital, ‘C’, has an enormous range of responsibilities and obligations. It is one thing to set out the procedures and guidance with the Company directions on what those on board should be doing – but

that is not enough. The required training and familiarisation of the Master, Officers and Crew must be given – but that is not enough. The emergency drills and exercises can be carried out and safety committee meetings can be held – and much more – but that is not enough. In addition to all that, there is a clear obligation upon the Company to check that what they are supposed to be doing they are indeed doing and they are doing it properly! This is where the Company will have an opportunity to demonstrate the level of due diligence it is exercising.

The responsibility for managing safety is, in my view, back on the boardroom table – irrespective of what we may interpret the role of the Designated Person to be. There must be a very clear expectation that the Company will not only do the things required of it under Section 12 but these things will be reviewed and fully considered by those in the Company capable of making high level decisions and, consequently, that must equate to the highest levels of management.

The Flag State Administration / Recognised Organisation will carry out external, verification, audits – and these are important with regard to maintaining the DOC's and SMC's. However, the most important checks on the system are those conducted by the Company to check that its own systems are working as they are supposed to be working. Of course those with most to gain from a properly functioning SMS are the Company and its people. The Internal Audits of the Company therefore should receive close attention – it is here that the Company is checking that those on board are doing what they are supposed to be doing. It is a learning opportunity and an opportunity to self improve.

There is no clear guidance from IMO as to the frequency of Internal Audits – however, industry practice seems to have settled on a standard of at least one Internal Audit per year. I would suggest this is a minimum. Personally I would prefer an ongoing, rolling audit, involving not only an auditor from head office but also auditing by individuals on board – who have received training in auditing techniques.

In any event neither the External Audit nor the Internal Audit can be anything more than a 'sample' audit. I understand that, typically, External Audits by R/O's (invariably Classification Societies) are 'allowed' just one day to review the entire SMS - although I have been told on good authority that at least one leading Classification Society has bowed to pressure from its 'clients' to reduce its attendance for an intermediate verification audit to half a day – i.e. as far as the SMC is concerned, we are talking about a time period of between a half and one working day every two and half years or so for the Administration to satisfy itself that those on board the ship really are doing what they are supposed to be doing. I would suggest that the system of external audits, as it presently exists, is seriously flawed.

To come back to the Internal Audits then I would have to say that 'annual' audits on board each vessel really should be considered a minimum. Exactly how long such an Internal Audit of the SMS would take would depend upon a number of factors. The size, type and complexity of the ship are certainly factors which must be taken into account, as well as the number of people on board – whether those people are 'Company' people and are well familiar with the SMS.

Ideally the whole of the system should be audited annually – but that is usually perceived to be impractical within the time scale available. Consequently, a range of different areas of the SMS will be identified, and a sample of procedures within those areas will be subjected to thorough audit. If that sample audit is satisfactory then an assumption will tend to be made that it will be safe to believe that the rest of the procedures and systems will be adequate and working satisfactorily.

There will be an expectation that at least an annual internal audit will have taken place and that a report will have been prepared following such an audit.

However, what might be the consequences if an incident does happen and it transpires that the most relevant procedure, closely linked to causation of the incident, had not been the subject of an Internal Audit?

In partial satisfaction of the requirements of Section 12.2, it has become common practice for the Company to hold at least one annual formal, minuted meeting involving the highest levels of management where the entire meeting, or at least a major agenda item, involves those senior managers formally reviewing the working of the SMS. An expectation will exist that such a meeting will have been held and that a set of minutes will exist. From my own experience there are considerable variations between Companies in the way in which they discharge this requirement – and a clear insight can be gleaned from reviewing the minutes of those Management Review Meetings into the attitudes, beliefs and values of that Company when it comes to the importance they place on the management of safety.

The ISPS Code

I have not discussed in any detail the implications or influence of the ISPS Code on the Evolution of Liabilities – this is not because I consider the ISPS Code to be in any way less important but rather because the principle of many of the evidential issues involved will be similar to those arising under the ISM Code.

Both ISM and ISPS are based upon a Systems approach to management – which includes a cycle of continual improvement. There is though one major difference between ISM and ISPS in that, to a large extent, the documented procedures of the Security Management System – specifically the Ship Security Plan (SSP) and the Company Security Plan (CSP) will, because of their very nature, be ‘Confidential’ with very restricted access – limited to a small number of identified individuals.

Mr Kverndal has identified a number of possible scenarios where legal liabilities may follow from some security breach and which may in turn require an examination of evidence to establish how and why the security management system may have failed which possibly resulted in the security breach. However, such an investigation and disclosure of evidence may, potentially, compromise the security of the vessel.

I again believe that the ISPS Code, like the ISM Code, sets a practical rather than a legal standard of what is required of the reasonable and prudent shipowner.

Conclusion

The range of liabilities to which ship operators and others involved in related maritime and insurance sectors are exposed has not changed as a consequence of the ISM and ISPS Codes. What has changed, and what will, in my opinion, influence the evolution of marine liability claims and disputes is the expectation, by potential claimants and the Courts, of the existence of specific 'objective evidence'. Prior to ISM implementation deadlines it may well have been 'hoped' that such evidence would exist – it can now be presumed that it will exist or, if it does not, then the ship operator may need a very good explanation as to why it does not exist!

In another pre-ISM Case – *The Torepo*⁵ - a number of important and relevant principles were explored. The product tanker *Torepo* did have an embryonic ISM Safety Management System on board but had not gone through the full verification process and consequently did not have a Safety Management Certificate at the time of the incident – the incident having occurred some months before the implementation deadline. However, it would appear, from reading the Judgement, that the Admiralty Judge was aware of the existence and purpose of those procedures in the management of the vessel. Despite efforts of claimants to undertake something of a 'fishing expedition' around the safety management system to uncover incriminating, or at least embarrassing, evidence - the investigation remained focussed upon the navigational procedures and whether any failure to follow those navigational procedures was causative in the vessel grounding and having to be subsequently salvaged. Mr Justice Steel seemed to be satisfied with the adequacy of the procedures and satisfied that they were being followed. The cause of the grounding was a result of a series of almost simultaneous mistakes by the Pilot, Chief Officer and Lookout – he allowed the ship owners to rely upon the 'Error in Navigation' defence.⁶

It is possible, and logically probable, that the frequency of marine liability claims and disputes coming to Arbitration or the Courts will decrease – since they should be capable of being better and more easily evaluated, based upon the objective evidence, by the respective parties prior to ever reaching the steps of the Court. However, I believe there are a number of important issues which do require clarification and guidance to be provided to the industry before that situation can be reached, including:

- What is the significance of the role of the Designated Person and, specifically, what use should be made of that right of access to the highest levels of management?
- What level of documentation, by way of written procedures, guidelines and records, really will be expected?

⁵ *The Torepo* [2002] 2 Lloyds Re. 535, David Steel J

⁶ Carriage of Goods by Sea Act 1971 (1971 c 190) / Hague Visby Rules – Article IV – Rule 2.

(a)... 'Neither the carrier nor ship shall be responsible for loss or damage arising or resulting from:- Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship...

- Will the creation of documentation which is brought into existence to improve safety, maybe following an incident, but which may be self incriminating in nature be allowed some sort of 'privileged' status?

In some cases ship operators, and their management and staff – both ashore and onboard, do need to overcome a barrier which seems to exist which is inhibiting a full embracing of the ISM Code. A belief which seems to be held by some that the documentation which will be generated from a full and proper implementation of the Code will be used as a big stick to beat them with.

Maybe one way of overcoming such a barrier is for ship operators to understand that a properly implemented ISM system will work in their favour. That the ISM Code will be the greatest friend a ship operator could ever wish for – or the worst enemy it could ever imagine. It will all depend upon how well they have developed and implemented their SMS – and whether they can prove that they really were doing what they say that they do.