

In principle it looks like a business as usual arrest, posing the usual inconvenients in Spain, namely: a copy of a POA issued before a Notary is needed, time pressure is present even if for this arrest we have plenty of time to prepare the application, but posting counter security is often a time-challenge and it is mandatory to be able to enforce the arrest.

However, given the nature of the offending "ship" after our initial swift advice, we carry out a deeper investigation and our findings reveal some unexpected difficulties.



We find that in 2019 a judgment was issued in neighboring city of Tenerife (near Las Palmas) where the arrest of a similar platform was applied for and granted NOT under the 1999 Arrest Convention BUT under general principles of Spanish procedural law.

Moreover in the Tenerife arrest, the Owners appeared and contested the arrest. The Court ruled for the Owners on the basis the application of the arrest had not satisfied the fumus boni iuris,"



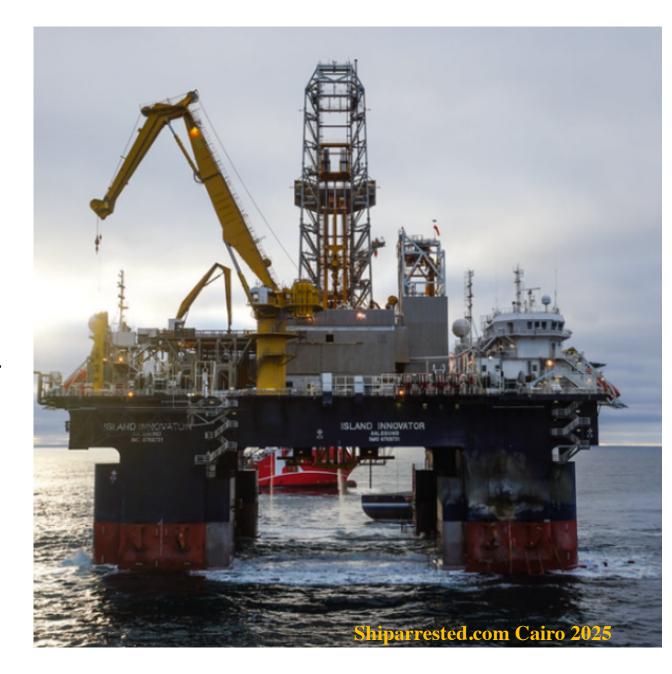
Arrest under the 1999 Convention vs Arrest under general principles of Spanish Procedural law

The mere allegation of a maritime claim vs Fumus Boni Iuris proceedings on the merits overseas: legal opinion

No need to prove a periculum in mora vs Proving that there is a risk of not getting paid the claim in the future

A minimun of 15% security vs Discretion of the Court

A common template vs A Tailor made order that It takes more time to be ready



Why can't we used the 1999 Arrest Convention?

The 1999 Convention does not define what a ship is.

Therefore we need to look into Spanish law for this.



Island Innovator has a flag, Norway

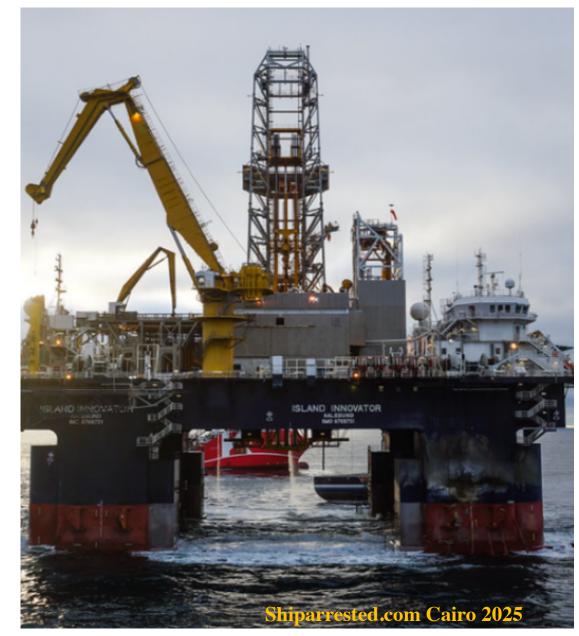
Island Innovator has a IMO number, 8769731

She has a length of 44,37 mt

She is not the fastest ship on the seas but she is self-propelled

How many of you think she is a ship and we should be able to arrest her under the 1999 Arrest Convention?

Do not answer the question yet let us explore what Spanish law has to say first.

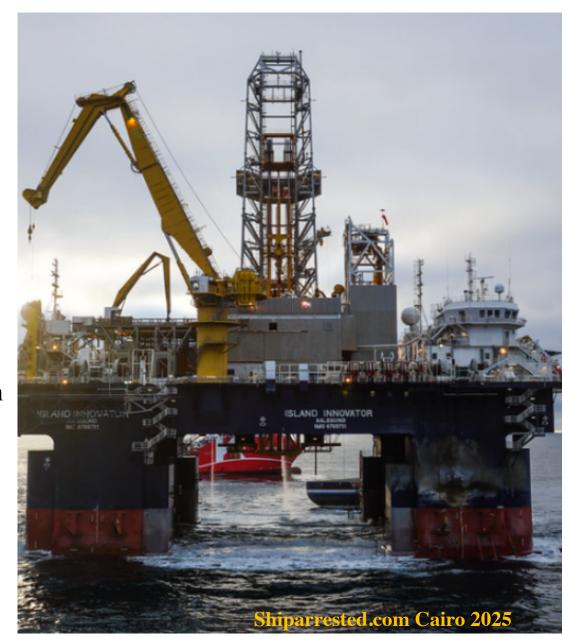


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Under Spanish law we find that section 56 of the Spanish Navigation Act reads:

Article 56 Vessel:

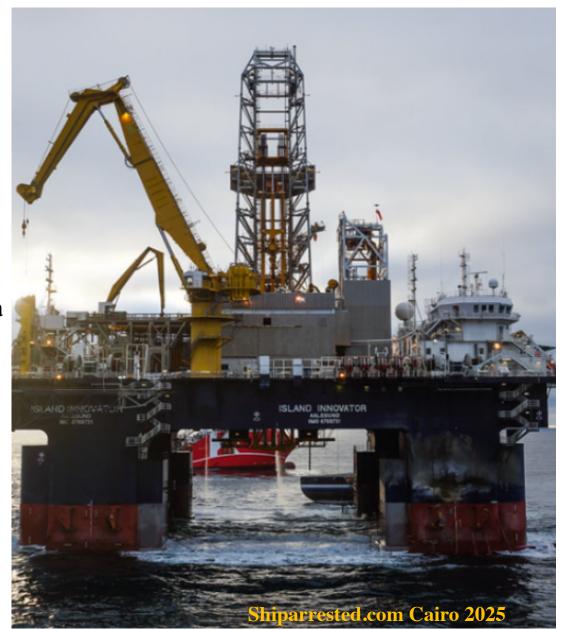
A vessel is understood to be any vehicle with a structure and capacity to navigate the sea and transport people or goods, that has a continuous deck and is equal to or greater than twenty-four meters in length.



Under Spanish law we find that section 57 of the Spanish Navigation Act reads:

Article 57 Boat:

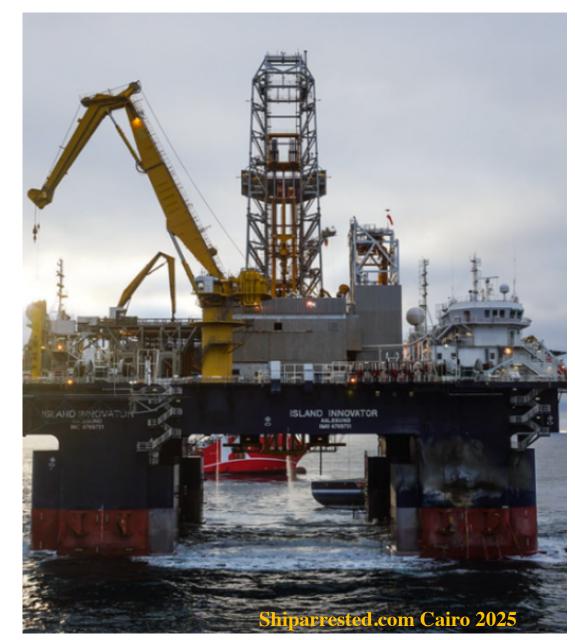
A Boat is understood to be a vehicle that lacks a continuous deck and a vehicle with a length of less than twenty-four meters, provided that, in either case, it is not classified by regulation as a smaller unit based on its propulsion or operating characteristics.



Under Spanish law we find that section 58 of the Spanish Navigation Act reads:

Article 58 Naval Artifact

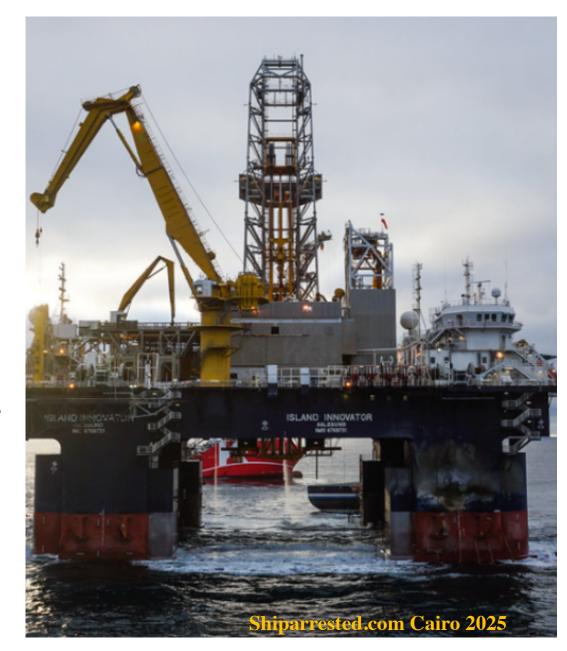
- 1. A naval artifact is understood to be any floating construction with the capacity and structure to accommodate persons or goods, whose purpose is not navigation, but rather to be located at a fixed point in the waters.
- 2. A vessel that has lost its status as such by being moored, grounded, or anchored in a fixed location and permanently used for activities other than navigation is also considered a naval artifact.



Under Spanish law we find that section 59 of the Spanish Navigation Act reads:

Article 59 Fixed Platform

- 1. A fixed platform is understood to be any structure or facility capable of carrying out operations to exploit maritime natural resources or being used for any other activities, located on the seabed, anchored, or resting thereon.
- 2. Because it is permanently attached to the waterbed, a fixed platform is considered real property under the Civil Code.





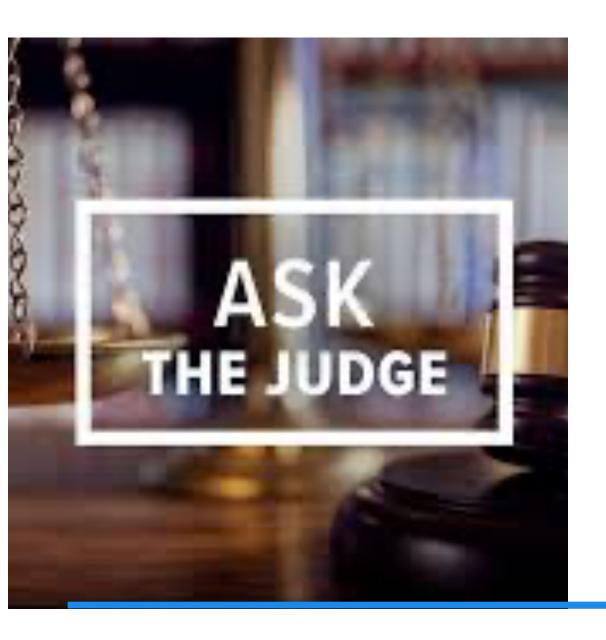
Now we have seen All options available to determine what Island Innovator is.

We have two lifelines:

- Ask the Audience
- Ask a Commercial Court Judge (not involved in case case...)



The Audience says:



The Commercial Court Judge says:

We have used our two lifelines

What we do next?

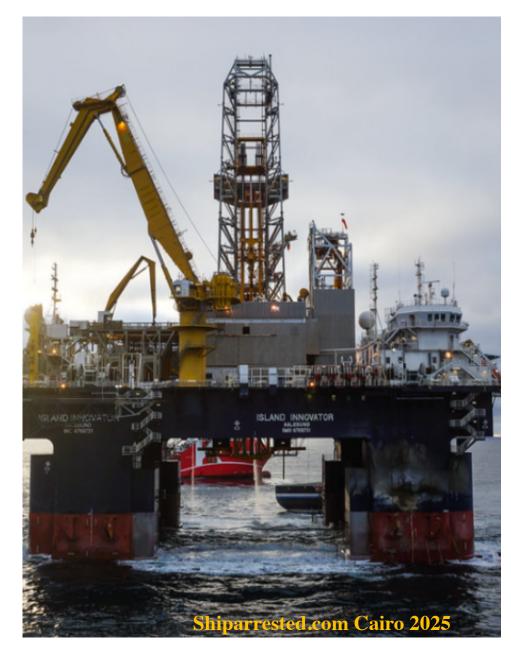
We inform the client about it.

We decide to prepare two arrests applications for each claim, one on the basis of the 1999 Arrest Convention and the other on the basis of Spanish procedural law principles.

In both of them we define Island Innovator as:

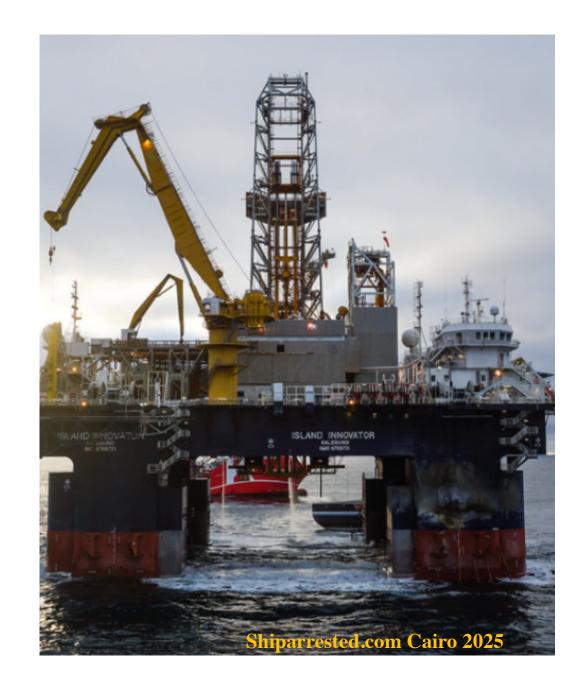
Plafform Vessel flagged in Norway With IMO number 8769731 Stating her owners and domicile,

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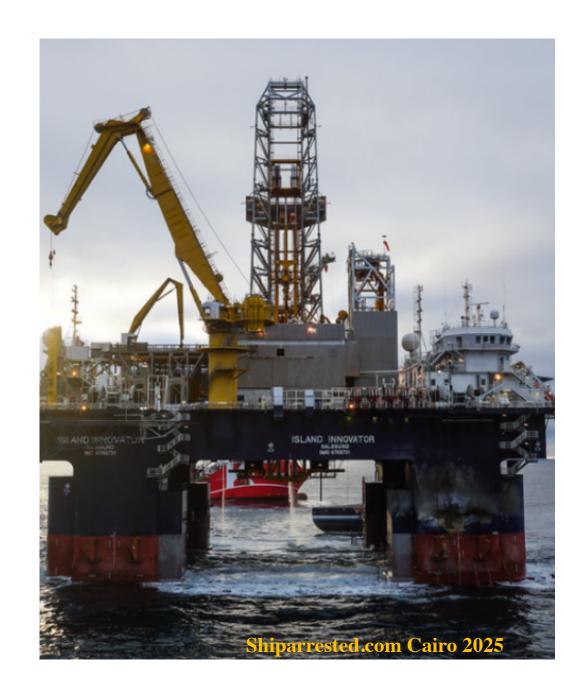


We decide that given Tenerife's judgment, it is safer to present the first Ex-Parte Arrest Application on the basis of general principles of Spanish Procedural Law.

What do you think the Court did following our application?



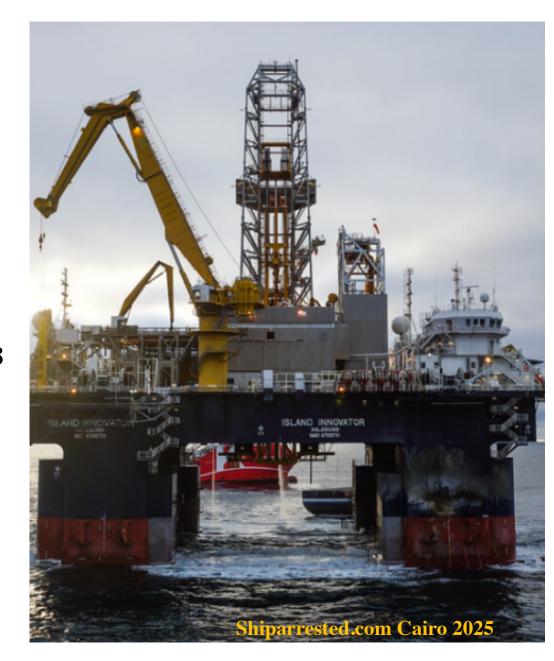
- A) Reject the application as not meeting the fumus boni iuris
- B) Granted the Arrest Order ex parte on the basis of the Spanish procedural law and fixing a high security
- C) Accept the Application but not ex parte and request the parties to attend an urgent hearing before deciding on the application
- D) Granting the Arrest Order ex parte but under the 1999 Convention



Against all odds the judge of the Commercial Court number 2 of Las Palmas accepted the ex parte Arrest application and issued the Arrest Order under the 1999 Arrest Convention

The Arrest Order is dated 24 May for 338.927 EUR of the claim plus interest and costs of 101.678 EUR

Security is fixed for 66.090,81 EUR



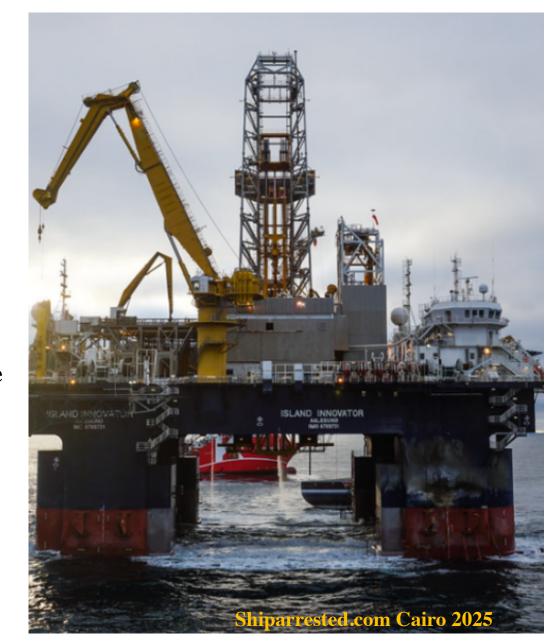
Are we happy about the outcome?

We are concerned that this could be a short-lived Victory if opponents contest the arrest.

We decide to present a writ to the Court seeking the Court to ammend the Arrest Order to include that in addition to the Arrest Convention the application also meets and should be granted under the Spanish principles of Procedural law:

Fumus boni iurus

Periculum in Mora

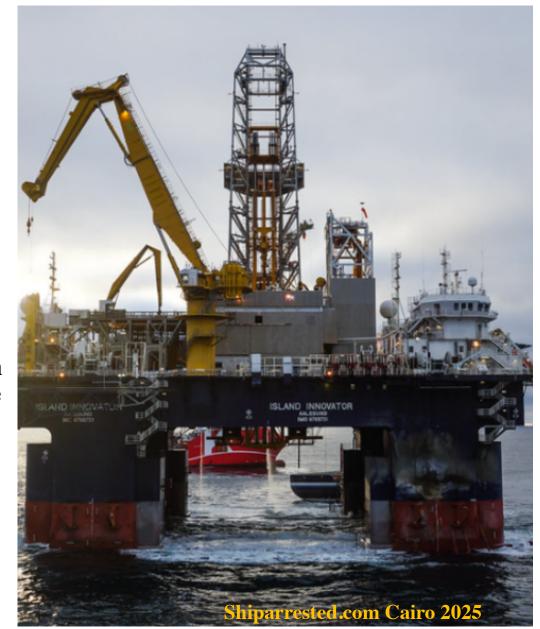


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The Court never returned to us on this new application to ammed the order

Meantime Opponents appear before the Court with lawyers and they have 20 days from service of the arrest order to contest the Arrest Order in which case a hearing is to be fixed by the judge to deal with the Owners' Opposition and a new judgment is to be rendered.

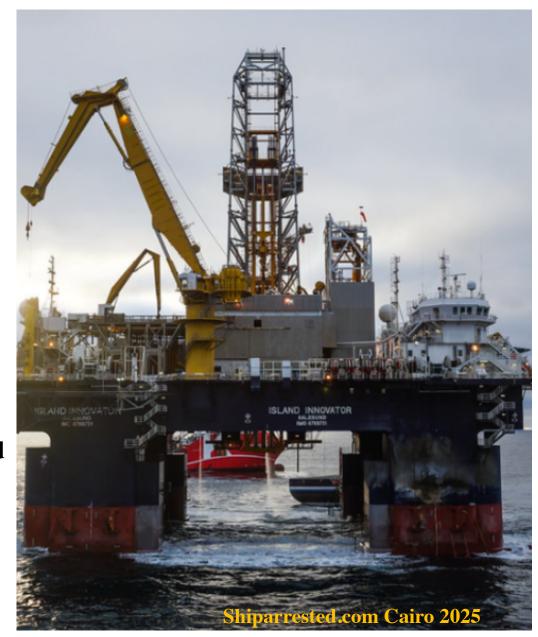
If the opponents succeed the arrest will be declared wrongful and the arresting party shall be entitled to present an appeal before the Court of Appeal



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What do you think Opponents did?

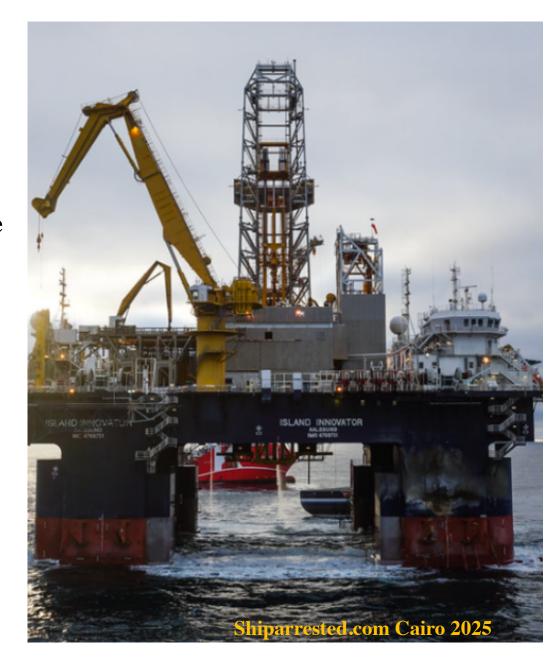
- A) They contested the arrest but proposed a settlment
- B) They contested the arrest and the judge fixed a hearing to take place
- C) They paid for the Claim
- D) They did nothing on the arrest proceedings and continued on the merits in Norway



In late June, yet unaware of opponents likely move forward, but knowing that they preparing the releasing the ship by providing security for the first claim, the client decides that we are to apply now for the second arrest.

The new application is presented and goes to the Court Commercial number 1 and the judge issues an arrest order for the claim for 182.894,19 EUR and 54.868,32 EUR of interest and legal costs.

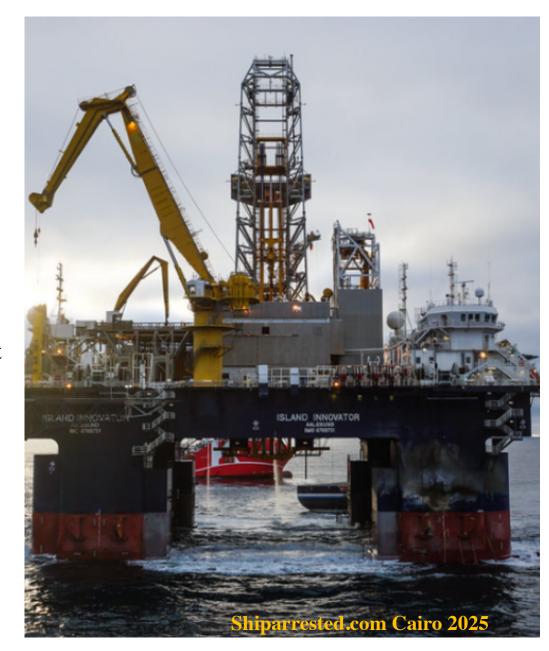
Security is fixed in 47.550 EUR



The Owners released Inland Innovator by putting full security before the Commercial Courts for both claims

Owners did not contest any of the arrests. They must have not came across the Tenerife's judgment

Our work is completed, the only problem we could face is that the case on the merits is lost in Norway, which in turn would render the arrest a wrongful arrest.



Is the matter finalized?

Indra can tell us

