

# JUDICIAL SALE OF VESSELS IN TURKEY AND THE EFFECT OF BEIJING CONVENTION

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# TOPICS OF TODAY

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**COMPULSORY EXECUTION PROCEDURE**

2

**THE JUDICIAL SALE OF THE VESSEL**

IF THE VESSEL IS IN THE  
TURKISH TERRITORY

IF A TURKISH-FLAGGED  
VESSEL IS IN A FOREIGN  
TERRITORY

3

**THE CONSEQUENCES OF THE  
JUDICIAL SALE OF THE  
VESSEL**

TURKISH  
WATERS

NON TURKISH  
WATERS

4

**BEIJING CONVENTION**

# ! HOW DOES THE PROCEDURE START?

✓ Precautionary attachment is a temporary protective measure that can only be used for a restricted number of maritime claims. (enumerated in Article 1352 of the TCC)

✓ Plausible proof

## ARTICLE 1352

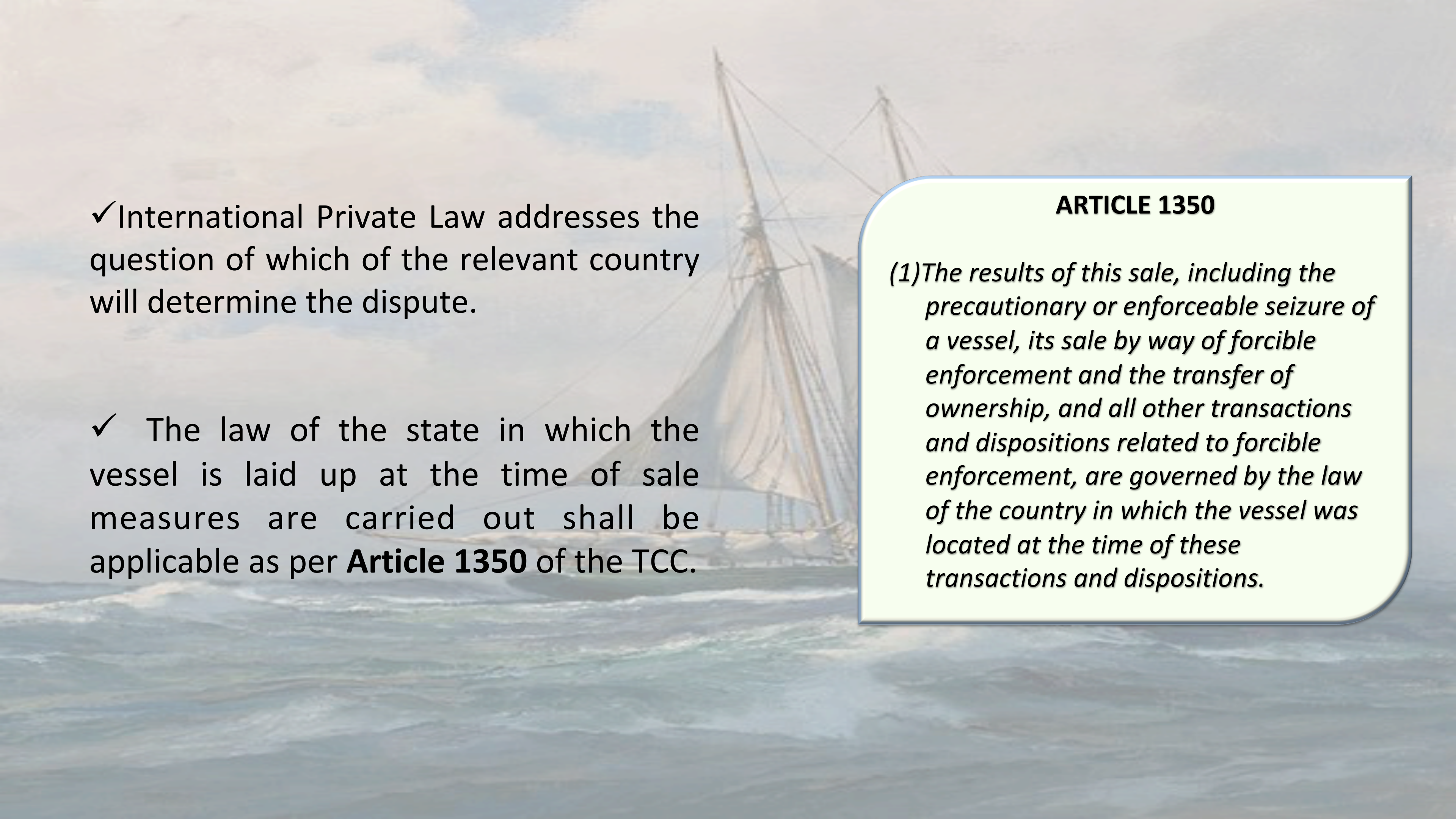
1) “Marine receivable”; means a claim arising from one or more of the following:

- a) Loss or damage caused by the operation of the ship.
- b) Loss of life or other bodily injury on land or in water directly related to the operation of the ship.
- c) Salvage activity or any kind of salvage contract, special compensation to be paid for salvage activity related to a ship or goods on board that poses a threat of environmental damage.....»



The given list is **\*\*numerus clausus\*\***





✓ International Private Law addresses the question of which of the relevant country will determine the dispute.

✓ The law of the state in which the vessel is laid up at the time of sale measures are carried out shall be applicable as per **Article 1350** of the TCC.

#### **ARTICLE 1350**

*(1) The results of this sale, including the precautionary or enforceable seizure of a vessel, its sale by way of forcible enforcement and the transfer of ownership, and all other transactions and dispositions related to forcible enforcement, are governed by the law of the country in which the vessel was located at the time of these transactions and dispositions.*



- ✓ Appraisal
- ✓ When the vessel is sold, the money is distributed according to the «list of creditors». **(Art.1389/1 of TCC) ;**

**I. First Rank :** Crew claim...

**II. Second Rank:** expenses of vessel removal by public authorities

**III.Third Rank:** Salvage fee...

**IV.Fourth Rank:** lien right of the shipyard

**V. Fifth Rank :** Customs fee..

**VI.Sixth Rank:** other contractual liens..

**VII.Seventh Rank:** other Maritime claims

**VIII.Eight Rank:** Receivables arising from Bankruptcy provisions

### **ARTICLE 1366**

*(2) In the minute of provisional attachement arranged by the Officer performing attachment it is enough to state ship with its name; it is not required to write its value.. Upon the request of one of the parties value of ship is determined by enforcement court; those concerned in the light of file are called to his determination.*

### **ARTICLE 1382**

*(1) Articles 1364 to 1368 on provisional attachement are applied in definite attachement of all ships with Turkish and foreign flags.*



## TCC Art. 1383

REGISTERED  
VESSEL

+

VESSEL WITH  
TURKISH/FOREIGN  
FLAG

=

PROVISIONS OF THE EXECUTION AND  
BANKRUPTCY LAW REGARDING  
IMMOVABLES SHALL APPLY.

NON-REGISTERED  
VESSEL

+

VESSEL WITH  
TURKISH/FOREIGN  
FLAG

=

PROVISIONS OF THE EXECUTION AND  
BANKRUPTCY LAW REGARDING  
MOVABLES SHALL APPLY.





# VESSEL IN TURKISH WATERS

- Article 1388 of the TCC clearly states that regardless of the vessel's flag or whether it is registered in Turkey or not, the personal rights/charges/limitations on a vessel shall be expired with the sale, regardless of the whether the vessel is Turkish-flagged or Foreign-flagged.

## **ARTICLE 1388**

- (1) In the event it is tendered or sold by enforcement Office to receiver, it acquires the ownership of the vessel.*
- (2) Once the sale price paid to the enforcement Office, out of the ones charged by the receiver with the consent of mortgagee, all real and personal rights, charges and limitations on the vessel are expired.*
- (3) This article is valid about all vessels without considering its flag or whether it is registered or not.***



# VESSEL IN NON-TURKISH WATERS

- The laws of the jurisdiction in which the vessel is located at the time
- Turkish-flagged vessel sold overseas
- The results of the sale, whether it will be valid or not, when the property will be acquired shall be determined by the law of that country.

## ARTICLE 1350

*(1)...In so far, in the event that a **Turkish-flagged vessel is sold abroad** by execution, the auctioning institution or the persons concerned, at least thirty days before this sale;*

- a) The Turkish Ship Registry where the vessel is registered,*
- b) To the registered owner of the vessel,*
- c) Other rights and receivables registered in the vessel registry must be announced in one of the newspapers with a circulation of more than fifty thousand and distributed at the level of Turkey, provided that the owners are notified or their expenses are covered by the relevant persons. In case the vessel is sold abroad by forceful execution without this notification or announcement, its registration cannot be deleted and the rights and receivables on the ship registered in the Turkish Ship Registry remain reserved.*



## DECISION OF THE SUPREME COURT, dated 06/05/1998:

*“... There should be no hesitation when the precautionary attachment decision is a compulsory execution of its legal consequences and provisions. Compulsory execution is one of the absolute powers and powers that every state has within its own country and borders. Again, compulsory execution is a direct result of the use of the sovereignty and sovereignty rights of the state. Therefore, it is a dominance disposition that symbolizes the influence and power of the state; can be said.”*





# WHAT IS THE BEIJING CONVENTION AND WHY DO WE NEED IT?

- Despite the fact that compulsory execution is the most effective way to collect debts, there is not any International Convention regulating it. The reason behind it is that every country has a different procedural process.
- New International Convention shall set universal norms for the sale of vessels sold by judicial sale in other countries.





# DRAFT INTERNATIONAL CONVENTION ON FOREIGN JUDICIAL SALES OF VESSELS AND THEIR RECOGNITION



CMI

UNCITRAL

PROVISIONS



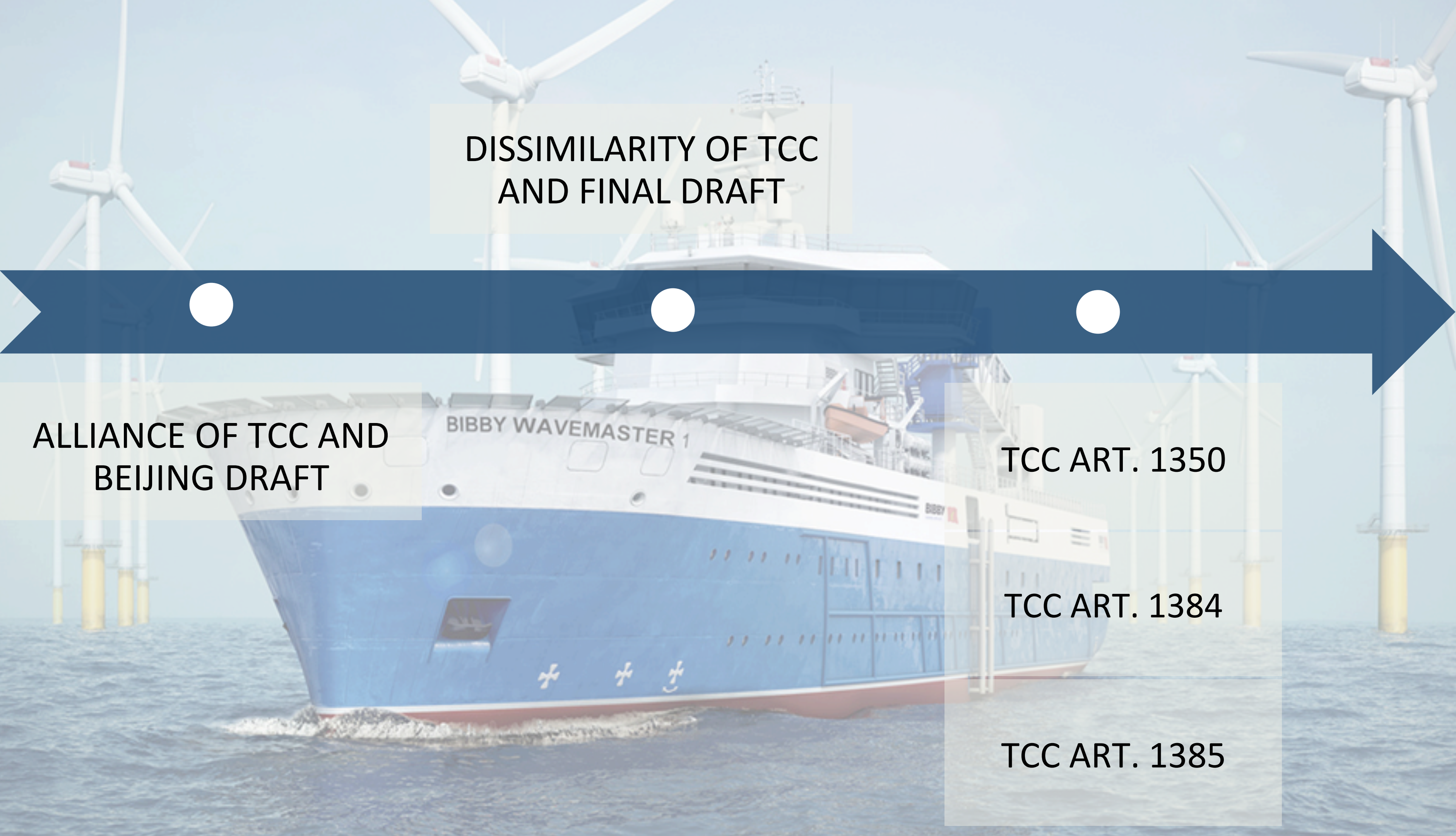
## DISSIMILARITY OF TCC AND FINAL DRAFT

ALLIANCE OF TCC AND  
BEIJING DRAFT

TCC ART. 1350

TCC ART. 1384

TCC ART. 1385





# THANK YOU

DO YOU HAVE ANY QUESTIONS?

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**TİLEGAL**

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