

Revisiting the Montreux Convention of 1936 in light of the current conflict between Russia and Ukraine

Prof Glen Segell

(Research Fellow in the Department of Political Sciences and Governance at the University of the Free State – South Africa)

Copyright @ 2022 <https://trendsresearch.org/insight/revisiting-the-montreux-convention-of-1936-in-light-of-the-current-conflict-between-russia-and-ukraine/>

Posted at RIEAS web site on 1 November 2022.

Note: The article reflects the opinion of the author and not necessarily the views of the Research Institute for European and American Studies (RIEAS).

Abstract

This paper examines and revisits the Regime of the Straits, often known simply as the Montreux Convention (1936), which went into effect in 1937. It is an international agreement governing the Turkish Straits that connect the Black Sea to the Mediterranean Sea, and so to the rest of the world. The regime it established is once again on the agenda following the military attack launched by Russia on Ukraine on 24 February 2022. Shortly after the onset of hostilities, Russia initiated a naval blockade of Ukrainian ports. The Convention prevented countries outside of the Black Sea area from sending ships into the Black Sea to break the blockade. In July, an agreement brokered by the United Nations was reached for limited exports of some products, especially grain, through three Ukrainian ports. There was an urgent need for this given that many countries worldwide rely on this grain and that without it hundreds of millions would starve. However, the same agreement also prevents the import of goods to Ukraine as Russia fears that foreign weapons could be shipped there. From February to July 2022, the question under intense debate was whether other states, especially NATO members, would contravene the Montreux Convention and send naval warships to break the blockade to alleviate the global grain shortage. Since July 2022, the terms of the Montreux Convention have become an area of focus with regard to humanitarian crises as the blockade on Ukrainian imports continues. Unless another agreement can be reached, foreign naval forces might need to enter the Black Sea and contravene the Convention. If this happens, it may well put to the test other similar international conventions.

Introduction

The seas, and especially narrow sea passages, are critical to ensuring maritime transport and preventing possible threats. One such significant maritime passage is the Turkish Straits, formed by the Bosphorus and Dardanelles Straits. The Turkish Straits constitute the sole connection of the Black Sea to the Mediterranean Sea, and so to the rest of the world.[1]

This paper revisits the Regime of the Straits, often known simply as the Montreux Convention (1936), which went into effect in 1937.[2] It is an international agreement governing the Turkish Straits. The agreement was signed by Australia, Bulgaria, France, Greece, Japan, Romania, Yugoslavia, the United Kingdom, the Soviet Union, and Turkey, and is still in effect. It gives Turkey control over access to key straits of the Black Sea — an agreement that is considered a big win for the country's foreign policy to this day. The Convention does not only relate to the passage of ships, but also to the security of Turkey and other Black Sea countries (Bulgaria and Romania, who are European Union and NATO members, as well as Georgia, Moldova, Russia, and Ukraine). The regime it established is once again on the agenda following the military attack launched by Russia on Ukraine on 24 February 2022, the total blockade of Ukrainian ports by Russia between February and July 2022, the United Nations brokered agreement to permit grain exports in July, and the ongoing blockade of imports into Ukrainian ports.[3]

The agenda of discussion relates to five issues. These are (1) the dilemma of Turkey wanting to be neutral in the Ukraine war but being bound by the 1936 Convention; (2) whether warships of Russia and Ukraine will be allowed to pass through the Turkish Straits; (3) whether the passage of future warships from other states will be allowed in the event of international military measures against Russia; (4) whether such ships could have established a naval humanitarian corridor between February and July to ensure the export of grain to prevent a global shortage; and (5) whether such ships could be used to enable imports to Ukrainian ports given Russia's ongoing blockade of these ports.

This paper will examine these issues under six headings: (1) The context of the current Russia-Ukraine conflict; (2) The Montreux Convention of 1936; (3) The geopolitical dimensions of the Montreux Convention of 1936; (4) The terms of the Montreux Convention of 1936; (5) Adhering to the terms of the Montreux Convention of 1936; and (6) Revisiting the terms of the Montreux Convention of 1936. The conclusions lead to whether the convention can survive this conflict, whether it needs to be renegotiated as naval warships and technology have changed dramatically since its signing and, if so, whether this may well put to the test other similar international agreements.

The context of the current Russia-Ukraine conflict

The Montreux Convention was aimed at bringing some assurances to reduce the security concerns of both Turkey and other Black Sea littoral countries arising from foreign warships (the Convention uses the concept of 'warship' instead of 'military ship'). The Straits are the only sea passage between the Black and Mediterranean seas, and thus constitute a choke point.[4] As maritime choke points are located at indispensable marine trade routes, in case of global security problems, avoiding these choke points has often been suggested as a workable option. However, as these Straits are the only sea passage between the two seas, going through them is the only viable option for any maritime trade with the eight states on the Black Sea.

Recently, a crisis arose when Russia implemented a full naval blockade of Ukraine's Black Sea ports between February and July 2022. Despite the July 2022 agreement allowing for the export of grain, there still remains a blockade of imports to Ukraine.[5] At the onset of the conflict in February 2022, over 100 foreign-flagged vessels and hundreds of mariners were stranded in Ukrainian ports. On 22 July, the United Nations, the Russian Federation, Turkey, and Ukraine agreed to the Black Sea Grain Initiative, at a signing ceremony in Turkey's largest city, Istanbul.[6]

The Russian military strategy aimed at cutting Ukraine off from its access to the sea to decapitate its economy threatened world food security. At the height of the blockade, world leaders expressed their anger at the situation at the World Economic Forum in Davos, Switzerland, in May 2022, calling it the "weaponization of food".[7] The export of Ukrainian grain provides food security for more than 300 million people around the world. The six-month blockade of exports left millions of tons of grain sitting in Ukrainian grain elevators, or the cargo holds of the foreign ships stuck in Ukrainian ports, and much of this decayed.[8]

The July deal allows for the export of grain, other foodstuffs, and fertilizer – including ammonia – to resume through a safe maritime humanitarian corridor, but from only three Ukrainian ports: Chornomorsk, Odesa, and Yuzhny/Pivdennyi. To implement the deal, a Joint Coordination Centre (JCC) was established in Istanbul, comprising senior representatives from the Russian Federation, Turkey, Ukraine, and the United Nations. According to procedures issued by the JCC, vessels wishing to participate in the Initiative will undergo inspection off Istanbul to ensure they are empty of cargo, after which they will be permitted to sail through the maritime humanitarian corridor to Ukrainian ports to load. Vessels on the return journey will also be inspected at the inspection area off Istanbul.[9]

This six-month embargo on the export of Ukrainian grain by the Russian Black Sea fleet represented a serious global food security threat, while the ongoing blockade of imports – though aimed at preventing the flow of weapons – is further decapitating the Ukrainian economy, bringing suffering to its civilians. Frustrating the situation is the absence of laws, national or international, on such a situation. The options open to the world are like all such global crises involving conflict and these are diplomacy and/or the use of military force to bring an immediate solution. Further complicating the options is the Montreux Convention, which prevents foreign navies from entering the Black Sea.

Less effective, as it takes longer to implement, would be sanctions or embargoes. The situation was summed up by U.N. Secretary-General António Guterres who pointed out that whilst most attention is focused on the effects of the war on Ukrainians, it is also having a global impact, in a world that is already witnessing increased poverty, hunger and social unrest. Even though the export blockade has been broken by diplomatic means, the war has dramatically reduced grain production to less than a

quarter of what it was. Thus, the Ukraine crisis still risks tipping up to 1.7 billion people worldwide – over one-fifth of humanity – into poverty, destitution, and hunger.[10]

Prior to the conflict, Ukraine was one of the world's largest grain exporters and, in 2021, supplied around 45 million tonnes of grain to the global market. Following Russia's attack on the country, in late February 2022, mountains of grains built up in silos, with ships unable to secure safe passage to and from Ukrainian ports and land routes unable to compensate. Much of this harvested grain decayed and became unusable. Given the war, for all scenarios, yield decline is assumed since agri-technologies application will suffer due to a deficit of fuel, finances, and manpower. It is projected that wheat production in Ukraine, in 2022, will be 19.8 million tonnes, so exports could be estimated at no more than 14-16 million tonnes, or a quarter of 2021.[11]

A report issued by the Global Crisis Response Group on Food, Energy and Finance called on international financial institutions to release funding for the most vulnerable countries, help governments in developing countries to invest in the poorest and most vulnerable by increasing social protection, and work towards reforming the global financial system so that inequalities are reduced.[12] However, that would be addressing the symptoms in the short term but not the cause. It could be said that it is imperative that the world acts. There is hope in this direction as Russia has shown some flexibility. Russian Foreign Minister Sergey Lavrov visited Turkey in June 2022 for intense negotiations on the issue of breaking the blockade and while seemingly fruitless at the time nevertheless led to compromise in July, enabling exports but still preventing imports.[13] Only an end to the conflict would bring grain production back to its previous levels and end the global shortage.

While diplomatic efforts continue, the other alternative is military means. Since the end of the Second World War and the establishment of the United Nations, the use of military means for humanitarian purposes is normally preceded by a debate in the United Nations and the granting of a resolution. Those willing to implement the resolution have been a coalition either as part of a United Nations force or another regional organization such as the European Union or NATO. This is a significant point as the Convention permits warships to pass through the Straits from the Mediterranean into the Black Sea in the case of assistance rendered to a state that is the victim of aggression by virtue of a treaty of mutual assistance. This would bind Turkey, as concluded within the framework of the Charter of the United Nations (Article 51).[14]

However, Russia as a permanent member of the United Nations would no doubt veto such a United Nations Security Council Resolution, thereby bringing into question the validity of any NATO action.[15] Furthermore, should any state proceed to break the naval blockade on humanitarian grounds, this would clearly bring them into direct conflict with Russia.

The presence of a Western naval flotilla in nearby waters for the expressed purpose of countering Moscow's war strategy would no doubt be perceived as a military threat by Russia. That such a convoy would have an ultimate humanitarian objective will not negate these facts. Thus, they would need to balance the options and decide if they wish to enter the war on the side of Ukraine. Even short of Russia directly and deliberately attacking coalition ships, the risk of accidental escalation would be high, as demonstrated by the 1988 American downing of an Iranian civilian airliner (IR655) by the USS Vincennes while conducting a similar operation to protect oil shipments through the Arabian Gulf.[16]

In the face of these conditions, the contention that the United States and its allies can break Moscow's ongoing blockade of imports to Ukraine (or the February to July export blockade) 'without firing a shot' is dubious at best. Here, neither the United States nor any other NATO member appear eager to challenge Turkey's implementation of the Convention. To illustrate, NATO warships have not transited through the Turkish Straits since the onset of the conflict in February 2022.

The Montreux Convention of 1936

A mission that seeks to achieve humanitarian objectives through military means is still a military operation, carrying all the risks that this kind of action would normally entail. In addition, should any states proceed as a 'coalition of the willing' to establish a 'maritime corridor' or to break the ongoing naval blockade of imports (or the February to July export blockade) using their own naval vessels, then at the fore would be the need to adhere to the Montreux Convention of 1936, if they are to abide by international law and custom. Signed on 20 July 1936, at the Montreux Palace in Switzerland, the Convention went into effect on 9 November 1936, addressing the long running 'Straits Question' over who should control the strategically vital link between the Black and Mediterranean seas. The agreement concerns the Dardanelles strait, the Sea of Marmara, and the Bosphorus strait.

The 'Straits Question' was long-running as its origins is the Treaty of Lausanne, a peace treaty negotiated during the Lausanne Conference of 1922–23 and signed in the Palais de Rumine, Lausanne, Switzerland, on 24 July 1923.[17] The treaty officially settled the conflict that had originally existed between the Ottoman Empire and the Allied French Republic, British Empire, Kingdom of Italy, Empire of Japan, Kingdom of Greece, and the Kingdom of Romania since the onset of World War I. The Treaty of Lausanne had demilitarized the Dardanelles and opened the Straits to unrestricted civilian and military traffic, under the supervision of the International Straits Commission of the League of Nations.

By the mid-1930s, the strategic situation in the Mediterranean had altered with the rise of Fascist Italy, which controlled the Greek-inhabited Dodecanese Islands off the west coast of Turkey and constructed fortifications on Rhodes, Leros and Kos. The Turks feared that Italy would seek to exploit access to the Straits to expand its power into Anatolia and the Black Sea region. There were also fears of Bulgarian rearmament.[18] Turkey was not permitted to rearm the Straits. In April 1935, the Turkish government dispatched a lengthy diplomatic note to the signatories of the Treaty of Lausanne proposing a conference on the agreement of a new regime for the Straits and requested that the League of Nations authorize the reconstruction of the Dardanelles forts. The Abyssinia Crisis of 1934–1935, the denunciation by Germany of the Treaty of Versailles, and international moves towards rearmament meant that the only guarantee intended to guard against the total insecurity of the Straits had just disappeared in its turn.[19]

In 1936, in response to Turkey's request to rearm the maritime area, the signatories of the Treaty of Lausanne and others met in Montreux, Switzerland, and reached an agreement to return the zone to Turkish military control. The Convention allowed Turkey to close the Straits to all warships in times of war and to permit merchant ships free passage. It remains in effect in 2022 and is thus relevant to the Russia-Ukraine conflict. The emphasis here is times of war. In order for the provisions of the Montreux Convention to go into effect, especially for Turkey to start using its powers and responsibilities, a war situation must exist. According to international law, a formal declaration of war is not required for the definitive determination of a state of war. Even if there is no official declaration of war by the state using armed force, the laws of war should begin to apply when there is a substantial use of armed force. In the context of the Russia-Ukraine war, Russia officially declared that it had launched a special military operation against Ukraine on the morning of 24 February 2022 – an official declaration of the start of a comprehensive military operation against another state.[20]

Historically, it should be noted from the negotiations in 1936 that the British, supported by France, sought to exclude the Soviet fleet from the Mediterranean Sea during World War II, where it might have threatened the vital shipping lanes to India, Egypt and the Far East. Britain's willingness to permit Turkey to have control has been attributed to a desire to avoid Turkey being driven to ally itself with or to fall under the influence of Adolf Hitler or Benito Mussolini.[21] Turkey has used the Convention's powers before. During World War II, Turkey closed the Straits to warships belonging to combatant nations. That prevented the Axis powers from sending their warships to attack the Soviet Union and blocked the Soviet navy from participating in combat in the Mediterranean.[22]



Figure 1: The Black Sea Corridor/Straits/Maritime Choke Point

Source: [AFCAN, https://afcan.org/dossiers_techniques/tsvts_gb.html](https://afcan.org/dossiers_techniques/tsvts_gb.html).

Now, the Montreux Convention is serving an important role in the Ukraine conflict. Ukraine asked Turkey to close the Straits to Russian warships, highlighting the Turkish role in keeping regional peace. The Turkish government agreed to this on 28 February 2022. However, several Russian warships have continued to enter and leave the Black Sea, with Turkey saying that it could not and would not prevent this if Russia claimed they were returning to their home port as that is permitted in the Montreux Convention.[23]

Russia is taking advantage of this and so the freedom of movement enables its Black Sea fleet to conduct business as usual. For example, these ships exit the Black Sea to perform tasks in the Sea of Japan – interacting with the Russian Baltic Sea fleet – and to undertake regular patrols in the Mediterranean Sea. They then return to their home port in the Black Sea as and when they wish. At the time of the 2014 Crimean crisis, an intent of Russia was to create on the Crimean Peninsula such a basing system that would meet all the requirements for performing combat missions.[24]

The geopolitical dimensions of the Montreux Convention of 1936

There is a Turkish saying, “Did your ships sink in the Black Sea?” The expression is used when a person is lost in thought, trying to resolve a seemingly unsolvable problem. As it turns out, that is the very body of water that has Turkey on a geopolitical tightrope since Russia initiated its attack on Ukraine and began military operations from those waters.[25]

Located in the western part of the landmass of Eurasia, the Straits are conventionally considered the boundary between the continents of Europe and Asia, as well as the dividing line between European Turkey and Asian Turkey.[26] The Straits are two internationally significant waterways in northwestern Turkey, which create a series of passages that connect the Mediterranean Sea to the Black Sea. They consist of the Dardanelles and the Bosphorus. The Straits are on opposite ends of the Sea of Marmara. The Straits and the Sea of Marmara are part of the sovereign sea territory of Turkey and subject to the regime of internal waters, yet also subject to international agreements such as the Montreux Convention of 1936.

The Dardanelles is a narrow strait in northwestern Turkey, 61 kilometers long and 1.2 to 6.5 kilometers wide, linking the Aegean Sea (in the Mediterranean Sea) with the Sea of Marmara (in the Black Sea).[27] The city of Dardanus in the Troad (territory around ancient Troy), is where Mithradates VI (King of Pontus) and Sulla (the Roman general) signed a treaty in 85 BCE, giving the Strait its name. The location of the Dardanelles has given it international political importance.[28]

The name “Bosphorus” was derived from the Ancient Greek word “Bosporos”, meaning “cattle strait” or “ox ford”. The Strait is located in northwestern Turkey and separates Thrace from Anatolia. It is the narrowest strait in the world, with a maximum length of 31 kilometers and a maximum width of 3.7 kilometers. The narrowest point is 700 meters wide, which is located between Anadoluhisari and Rumelihisari. Its depth ranges from 36.5 meters to 124 meters below the sea surface. It runs through Istanbul, the only city located on two continents. The Strait’s shore is heavily settled and part of the Istanbul metropolitan area, Turkey’s largest metropolis with 17 million people. Two suspension bridges are constructed across the Strait: Bosphorus Bridge I (15th July Martyrs Bridge) was constructed in 1973, while Bosphorus II (Fatih Sultan Mehmet Bridge) was completed in 1988.[29]

Owing to their strategic importance in international commerce, politics, and warfare, the sea straits connecting the Black Sea to the Mediterranean Sea have played a significant role in European and world history. A historical example of significance was when the straits connecting the two seas were closed and then forced by a British fleet under Adm. Sir John T. Duckworth in 1807, during the Napoleonic Wars.[30] During World War I, the Allies failed to capture this sea route, though a British submarine penetrated the minefields blocking the sea route and sank a Turkish battleship off the Golden Horn, an inlet on the Bosphorus.[31]

The Straits are recognized as one of the seven maritime choke points that have gained immense ill-fame in both past and present times, especially due to the heavy geo-political pressure surrounding them.[32] The Montreux Convention regulates maritime traffic through the Black Sea and guarantees “complete freedom” of passage for all civilian vessels in all circumstances in times of peace.

The terms of the Montreux Convention of 1936

The convention consists of 29 Articles, four Annexes and one Protocol. Articles 2–7 consider the passage of merchant ships and Articles 8–22 consider the passage of war vessels. The key principle of freedom of passage and navigation is stated in Articles 1 and 2. Article 1 provides that “the High Contracting Parties recognize and affirm the principle of freedom of passage and navigation by sea in the Straits,” while Article 2 states that ‘in time of peace, merchant vessels shall enjoy complete freedom of passage and navigation in the Straits, by day and by night, under any flag with any kind of cargo.’[33]

In peacetime, military vessels are limited in number, tonnage, and weaponry, with specific provisions governing their mode of entry and duration of stay. Warships must provide advance notification to Turkish authorities, which, in turn, must inform the parties to the Convention. There is a formal process for ships, both military and non-military, in transiting the Straits. These are detailed in the Turkish Straits Maritime Traffic Order Regulations Enforcement Directives.[34] There are also guidelines and recommended procedures by international organizations such as the Oil Companies International Marine Forum (OCIMF).[35] The Turkish authorities observe the vessels as they transit the Straits, confirming that each ship matches the request for passage and the international registry of ships while also confirming its weight, at least relative to the date of its construction.

Turkey is authorized to close the Straits to all foreign warships during a war or when it is threatened by aggression. Turkey is also authorized to refuse the transit of merchant ships belonging to countries at war with it. In wartime, with Turkey not involved in the conflict, warships of the nations at war may not pass through the Straits, except when returning to their base (Article 19). Articles 14 and 18 impose several highly specific restrictions on what type of warships are allowed passage. Non-Black Sea powers wishing to send a vessel must notify Turkish authorities 15 days prior to the requested passing, while Black Sea states must submit their request 8 days prior to passage. Furthermore, no more than nine foreign warships, with a total aggregate tonnage of 15,000 tons, may pass at any one time. Passage is also denied to a single ship heavier than 10,000 tons. An aggregate tonnage of all non-Black Sea warships in the Black Sea must be no more than 45,000 tons, with no one state exceeding 30,000 tons at any given time. Non-Black Sea warships are not permitted to stay in the Black Sea for more than 21 days.[36] Only Black Sea states may transit capital ships of any tonnage, escorted by no more than two destroyers. Any revisions to articles 14 and 18 require a 3/4 majority of signatory countries and must include Turkey.[37]

Under Article 12, Black Sea states are allowed to send submarines through the Straits with prior notice as long as the vessels have been constructed, purchased or sent for repair outside the Black Sea. The less restrictive rules applicable to Black Sea states were agreed as effectively a concession to the Soviet Union, the only Black Sea state other than Turkey with any significant number of capital ships or submarines.

The treaty contains no explicit prohibition on aircraft carriers. However, modern aircraft carriers are heavier than the 15,000-ton limit imposed on warships, which makes it impossible for non-Black Sea powers to transit modern aircraft carriers through the Straits.

Adhering to the terms of the Montreux Convention of 1936

While the Montreux Convention was designed for a particular geopolitical context in 1936, and remains unchanged since its adoption, it has endured as a “solid example of a rules-based international order” since most of the intent of its terms are still followed.[38]

To follow the intent of the terms, the former Soviet Union during the Cold War designated its Kiev-class and Kuznetsov-class ships as aircraft-carrying cruisers as the ships were armed with P-500 and P-700 cruise missiles, which also form the main armament of the Slava-class cruiser and the Kirov-class battlecruiser. The result was that the Soviet Navy could send these aircraft-carrying cruisers through the Straits in compliance with the Convention, but at the same time, the Convention denied access to NATO aircraft carriers, which exceeded the 15,000-ton limit.[39]

Turkey chose to accept the designation of the Soviet aircraft carrying cruisers as aircraft cruisers, as any revision of the Convention could leave Turkey with less control over the Straits, especially as another agreement, the United Nations Convention on the Law of the Sea (UNCLOS), had already established a more liberal passage through other straits. Technically UNCLOS governs transit passage through

international straits around the world. However, Article 35 clarifies that UNCLOS does not apply to long-standing international conventions in force.[40]

By allowing the Soviet aircraft-carrying cruisers to transit the Straits, Turkey could leave the other elements of the more restrictive Montreux Convention in place. The upshot: it is the Montreux Convention, and not UNCLOS, that governs the Turkish Straits – which enjoy a truly unique legal status in international transit governance.

Revisiting the terms of the Montreux Convention of 1936

The Convention remains in force but not without dispute. It was repeatedly challenged by the Soviet Union during World War II and the Cold War. For example, for several years after World War II, the Soviets exploited the restriction on the number of warships by ensuring that one of theirs was always in the Straits, thus effectively blocking any state other than Turkey from sending warships through the Straits.[41] Soviet pressure expanded into full demands to revise the Montreux Convention, giving rise to the 1946 Turkish Straits crisis, which led to Turkey abandoning its policy of neutrality. In 1947, it became the recipient of US military and economic assistance under the Truman Doctrine of containment and joined NATO, along with Greece, in 1952. It can therefore be said that the 'Straits Question' is the reason why Turkey became a member of NATO.[42]

The United States has not signed the Convention but generally abides by it under customary international law. In doing so, the Montreux Convention is an obstacle to US naval build-up in the Black Sea due to the Convention's stipulations regulating warship traffic by nations not sharing a Black Sea coastline. Those stipulations place Turkey's relationship with the US and its obligations as a NATO member in potential dispute with Russia and thus the regulations of the Montreux Convention. Russia may see an increased NATO presence in the Black Sea as an escalatory measure.[43]

The United Nations Convention on the Law of the Sea, which entered into force in November 1994, may well prompt calls for the Montreux Convention to be revised and adapted to make it compatible with UNCLOS's regime governing straits used for international navigation. However, Turkey's longstanding refusal to sign UNCLOS has meant that the Montreux Convention remains in force without further amendments. Furthermore, disregarding the Convention and permitting NATO warships into the Black Sea would immediately escalate tensions between Russia and Turkey.

Following Russia's attack on Ukraine on 24 February 2022, the Ukrainian government appealed to Turkey to exercise its authority under the Montreux Convention to limit the transit of Russian warships from the Mediterranean to the Black Sea. After initial reluctance, attributed to the country's close ties with both Russia and Ukraine, Turkish Foreign Minister Mevlüt Çavuşoğlu announced on 27 February that his government would legally recognize the Russian attack as a war, which provided grounds for implementing the Convention with respect to military vessels.[44] This meant denying passage to all military naval vessels, including those of NATO powers, who now cannot move their vessels from the Mediterranean to the Black Sea.

However, Çavuşoğlu reiterated that pursuant to the terms of the agreement, Turkey cannot block Russian warships based in the Black Sea from returning to their registered base. Around 27-29 February, Turkey denied 3 of 4 Russian warships permission to enter the Black Sea as they did not have a home base in the Black Sea. Russia had previously been deploying its Kilo-class submarines from the Black Sea to the Mediterranean for extensive periods of time, after which they would return to their home port in the Black Sea, thereby enjoying freedom of movement in both seas. At least six Russian warships and a submarine have crossed the Turkish Straits since the start of the Russia-Ukraine war in February 2022.[45]

Conclusions

At the time of writing of this paper in October 2022, during which the Russia-Ukraine war is ongoing, the terms of the Montreux Convention remain a focus. Between February and July 2022 Russia maintained a total naval blockade of Ukrainian ports. Grain was not exported threatening to leave hundreds of millions worldwide starving. During this period, the question under intense debate was whether other states, especially NATO members, would contravene the Montreux Convention and send naval warships to break the blockade to alleviate the global grain shortage.

The United Nations brokered a deal to enable exports, but the same agreement also prevents the import of goods to Ukraine as Russia fears that foreign weapons could be shipped there. Since July 2022, the

terms of the Montreux Convention have become an area of focus with regard to humanitarian crises as the blockade on Ukrainian imports continues. Unless another agreement can be reached, foreign naval forces might need to enter the Black Sea and contravene the Convention. If this happens it may well put to the test other similar international conventions.

As the implementer of the Convention, the Turkish government finds itself in a difficult position. Article 19 of the Montreux Convention provides that if Turkey is not belligerent in a time of war, warships of any warring state will be prohibited from passing through the Straits except to return to their home bases. Herein lies a weakness as it is possible to change a home port. Thus, while a home port of any ship (military or non-military) is defined when it is commissioned and enters service, this can change. The most common time to shift home port is in conjunction with a major yard period maintenance availability. When a conflict breaks out, such as the current one, Turkey would rely on information that had been provided by Russia and Ukraine prior to the onset of the conflict. There is no legal means for Turkey to challenge them should they inform Turkey during the conflict that more ships had been added to that list. At the same time, the warships of other countries that are sent to support Ukraine or Russia, or to break the Russian naval blockade of Ukrainian imports, or the earlier blockade of exports as well, would similarly need to be banned, as these countries are regarded as warring countries and their home ports are not in the Black Sea. It would rest on Turkey to do this.

Nevertheless, both Ukraine and Russia are important partners in critical energy and trade agreements for Turkey. Disregarding the Montreux Convention would immediately escalate tensions between Russia and Turkey. At the same time, Turkey, who has been a NATO member since 1952, wants to maintain or even strengthen its ties with the West. Its control over these key Straits may test its balancing act of relations with Russia and members of NATO and the EU.

Furthermore, it is fair to say that aggravating Turkey's difficult position is the very fundamental tenets of the international community – peace and stability. The justification of letting foreign naval ships into the Black Sea in contravention of the Montreux Convention would be based on humanitarian grounds. The need to end the conflict and restore grain production to its pre-war levels remains a priority even if exports are now permitted. With the war ongoing, the risk and potential remains that there will be no grain to export. Furthermore, as of October 2022, imports are still blockaded and this has resulted in an ever-growing humanitarian crisis in Ukraine.

Foreign naval ships entering the Black Sea, regardless of the reason, would put the Montreux Convention of 1936 to the test, and it may not survive. A rationale for its renegotiation could be the fact that the Convention was signed over 85 years ago, and that naval warships and technology have changed dramatically since that time, thus making it difficult to apply the Convention's highly technical transit limitations to modern warships. Another reason is that the nature of just and unjust wars and what is permissible in war (*jus ad bellum*, which refers to the conditions under which states may resort to war or to the use of armed force in general, and *jus in bello*, which regulates the conduct of parties engaged in an armed conflict in legal terms) is no longer the same as what it was between the two World Wars. Thus, other instruments such as conventions might also need to be amended to reflect this.

If this happens, it may well put to the test other similar international agreements. To be sure, international agreements are sane and civilized instruments by which states and other subjects of international law, such as certain international organizations, regulate matters of concern to them in a normative manner. The bottom line then is that the international community must be sensitive to the effects of any potential naval responses to Russia, as they could implicate or even undermine the Montreux Convention as well as other conventions. However, if diplomacy does not bring an end to the conflict, then this might be the only means.

References

^[1] A map of the Turkish Straits is available at: <http://bitly.ws/uCYi>.

^[2] United Kingdom Foreign, Commonwealth & Development Office, Convention Regarding the Regime of the Straits, Treaty Series No. 30, July 20, 1936, <https://treaties.fcdo.gov.uk/data/Library2/pdf/1937-TS0030.pdf>.

^[3] Aditi Sangal, Meg Wagner, Adrienne Vogt, Melissa Macaya, Rob Picheta, and Lauren Said-Moorhouse, "February 24, 2022 Russia-Ukraine News," *CNN*, February 24, 2022, <https://edition.cnn.com/europe/live-news/ukraine-russia-news-02-24-22-intl/index.html>.

- ^[4] Lewis M. Alexander, "The Role of Choke Points in the Ocean Context," *GeoJournal* 26 (1992), <https://doi.org/10.1007/BF02665750>.
- ^[5] Bill Coombs, "Russia's War in Ukraine: The War at Sea," *International Centre for Defence and Security*, Brief No. 6, June 21, 2022, <https://bit.ly/3BARHSZ>.
- ^[6] United Nations, "Updates from the Joint Coordination Centre," *Black Sea Grain Initiative Joint Coordination Centre*, <https://www.un.org/en/black-sea-grain-initiative/updates>.
- ^[7] Phil McCausland, "Europe's Lost 'Breadbasket': How Russia's War in Ukraine Is Stoking a Global Food Crisis," *NBC News*, May 28, 2022, <https://www.nbcnews.com/news/world/russia-ukraine-war-grain-blockade-global-food-crisis-rcna25910>.
- ^[8] Vladislav Davidzon, "Opening Up Ukraine's Sea Routes Is Tough but Critical," *Foreign Policy*, July 21, 2022, <http://bitly.ws/uCYr>.
- ^[9] United Nations, "Joint Coordination Centre for the Black Sea Grain Initiative," *Black Sea Grain Initiative Joint Coordination Centre*, <https://www.un.org/en/black-sea-grain-initiative/background>.
- ^[10] United Nations, "Ukraine War Unleashing a 'Perfect Storm' of Crises, Warns UN Chief," *UN News*, April 13, 2022, <https://news.un.org/en/story/2022/04/1116152>.
- ^[11] "Grain Production-2022 Forecast in Ukraine: Variety of Scenarios," *UkrAgroConsult*, April 26, 2022, <https://ukragroconsult.com/en/news/grain-production-2022-forecast-in-ukraine-variety-of-scenarios/>.
- ^[12] Ibid.
- ^[13] Ulaş Ateşçi, "Russian Foreign Minister Lavrov Visits Turkey as NATO Escalates War in Ukraine," June 10, 2022, <https://www.wsws.org/en/articles/2022/06/11/lece-j11.html>.
- ^[14] United Nations Charter, <https://www.un.org/en/about-us/un-charter/full-text>.
- ^[15] Hossein Malekshahi, Farid Azadbakht, and Hengameh Ghazanfari, "Legal Models of Rule of Law: A Focus on Veto Power of Permanent Members of Security Council of United Nations," *International Studies Journal* (2022), <http://doi.org/10.22034/ISJ.2022.306003.1609>.
- ^[16] Peter Margulies, "Benchmarks for Reducing Civilian Harm in Armed Conflict: Learning Feasible Lessons about Systemic Change," *Roger Williams University – School of Law*, Legal Studies Paper No. 214 (2022), <http://dx.doi.org/10.2139/ssrn.4186087>.
- ^[17] Treaty of Lausanne, https://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne.
- ^[18] Mehmet Doğar, "The Place of Italy in Turkish Foreign Policy in the 1930s," *Middle Eastern Studies* 58, no. 1 (2021): 48-69, <http://doi.org/10.1080/00263206.2021.1955353>.
- ^[19] Lacin Idil Oztig and Mehmet Akif Okur, "Border Settlement Dynamics and Border Status Quo: A Comparative Analysis of Turkey's Borders," *Geopolitics* (2022), <http://doi.org/10.1080/14650045.2022.2084385>.
- ^[20] Elena Chachko and Katerina Linos, "International Law After Ukraine: Introduction to the Symposium," *AJIL Unbound* 116 (2022): 124-129, <http://doi.org/10.1017/aju.2022.18>.
- ^[21] Raul (Pete) Pedrozo, "Closing the Turkish Straits in Times of War," *International Law Studies – Stockton Center for International Law* 99 (2022), <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3016&context=ils>.
- ^[22] Nicholas J. Myers, "The Significance of the Turkish Straits to the Russian Navy," *Foreign Policy Research Institute (FPRI)*, March 4, 2022, <https://bit.ly/3LvaDat>.

^[23] Selen Baldıran, Dinçer Bayer, and Hüseyin Gençer, “The Importance of the 1936 Montreux Convention for the Black Sea Security: A Close Look into Russia-NATO Controversy on the Russian Ukrainian Conflict in 2022,” *Information and Security* 51 (2022): 11-23, <https://bit.ly/3UvOyMU>.

^[24] “Black Sea Fleet of Russia: Composition and List of Ships,” *UNANSEA*, <https://en.unansea.com/black-sea-fleet-of-russia-composition-and-list-of-ships/>.

^[25] Cengiz Vefa Ekici, Ozcan Arslan, and Ulku Ozturk, “Fuzzy C-Means Clustering of Ships Passing Through Turkish Straits,” in *Intelligent and Fuzzy Systems: Digital Acceleration and the New Normal*, ed. Cengiz Kahraman, A. Cagri Tolga, Sezi Cevik Onar et. al., Proceedings of the INFUS 2022 Conference, https://doi.org/10.1007/978-3-031-09173-5_43.

^[26] The ensuing geographic details are quoted from: Hasan Bora Usluer, Güler Alkan, and Osman Turan, “Prediction of the Effects of the Current Regime on Ship’s Maneuvering at the Strait of Istanbul,” *Kent Akademisi* 15, no. 2 (2022): 611-629, <http://doi.org/10.35674/kent.1098026>.

^[27] “How Deep Is the Hellespont?” *Staveleyfa.com*, 2022, <http://bitly.ws/uCYY>.

^[28] W.R. Kermack, “Notes on the Historical Geography of the Dardanelles,” *Scottish Geographical Magazine* 35, no. 7 (1919), <https://doi.org/10.1080/14702541908554894>.

^[29] Erkan Gökaşan, Emin Demirbag, Fazli Y. Oktay et. al., “On the Origin of the Bosphorus,” *Marine Geology* 140, no. 1–2 (1997): pp. 183-199, [https://doi.org/10.1016/S0025-3227\(97\)00022-4](https://doi.org/10.1016/S0025-3227(97)00022-4).

^[30] Roger Knight, *Convoys: The British Struggle Against Napoleonic Europe and America* (New Haven & London: Yale University Press, 2022).

^[31] John Fairley, *The Royal Navy in Action: Art from Dreadnought to Vengeance* (Barnsley: Pen and Sword, 2022).

^[32] Carmen Ang, “Mapping the World’s Key Maritime Choke Points,” *Visual Capitalist*, March 30, 2021, <https://www.visualcapitalist.com/mapping-the-worlds-key-maritime-choke-points/>.

^[33] The discussion henceforth quotes the content of the Convention: United Kingdom Foreign, Commonwealth & Development Office, Convention Regarding the Regime of the Straits, Treaty Series No. 30, July 20, 1936, <https://treaties.fcdo.gov.uk/data/Library2/pdf/1937-TS0030.pdf>.

^[34] Republic of Turkey, Ministry of Transportation, Maritime Affairs and Communications, “Turkish Straits Maritime Traffic Order Regulations Enforcement Directives,” November 15, 2011, <https://bit.ly/3BBLDd9>.

^[35] OCIMF, *Guidelines for Transiting the Turkish Straits*, Second Edition (London: Oil Companies International Marine Forum, 2021), <https://www.ocimf.org/publications/information-papers/guidelines-for-transiting-the-turkish-straits/#>.

^[36] United Kingdom Foreign, Commonwealth & Development Office, Convention Regarding the Regime of the Straits, Treaty Series No. 30, July 20, 1936, <https://treaties.fcdo.gov.uk/data/Library2/pdf/1937-TS0030.pdf>.

^[37] Ibid.

^[38] Philip Towle, “The Montreux Convention as a Regional Arms Control Treaty – Negotiation and Practice,” *Military Affairs* 45, no. 3 (1981): pp. 121-126, <https://doi.org/10.2307/1987753>.

^[39] Alex Pape, *Janes Fighting Ships 2020-2021* (Coulson: Janes Information Group, 2020).

^[40] United Nations, *United Nations Convention on the Law of the Sea*, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

^[41] Constantine Capsaskis, *Moscow's Strategic Obsession with the Eastern Mediterranean: Lessons from Pre-Cold-War History*, Policy Paper No.103/2022, Hellenic Foundation for European & Foreign Policy (2022),

<https://www.eliamep.gr/wp-content/uploads/2022/06/Policy-paper-103-final.pdf>.

^[42] Jamil Hasanli, *Stalin's Early Cold War Foreign Policy: Southern Neighbours in the Shadow of Moscow, 1945-1947* (New York: Routledge, 2022).

^[43] Adam Aliano, *The Montreux Convention and a Black Sea Presence: Leveraging Law to Enable Operational Capabilities* (Newport: Naval War college, 2022), <https://apps.dtic.mil/sti/pdfs/AD1174860.pdf>.

^[44] Tayfun Ozberk, "Turkey Closes the Dardanelles and Bosphorus to Warships," *Naval News*, February 28, 2022, <https://www.navalnews.com/naval-news/2022/02/turkey-closes-the-dardanelles-and-bosphorus-to-warships/>.

^[45] Adam Aliano, "Is Russia Exploiting a Gap in the Montreux Convention?" *Lawfare*, June 14, 2022, <https://www.lawfareblog.com/russia-exploiting-gap-montreux-convention>.