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On February 28, 2022, Turkish Foreign Minister Mevlut Cavusoglu closed the Bosphorus and Dardanelles Straits to Russian warships, exercising Ankara's right under Article 19 of the 1936 Montreux Convention.¹

The straits have become a strategic factor in the war between Russia and Ukraine. Before Russia's recent invasion of Ukraine, sixteen Russian warships sailed into the Black Sea to conduct military exercises.² Now, those forces are in the fight. Early in the conflict, Russian forces captured Ukraine's Snake Island in the Black Sea and attacked Odessa, the country's largest and busiest port as well as the country's largest oil and gas terminal.

In a phone call with Turkish President Recep Tayyip Erdogan on February 26, Ukrainian President Volodymyr Zelensky asked Turkey to block Russian warships from using the straits.³ Shortly after, Zelensky tweeted: "I thank my friend [Erdogan] and the people of [Turkey] for their strong support. The ban on the passage of [Russian] warships to the Black Sea and

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The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

1. Tayfun Ozberk, *Turkey Closes the Dardanelles and Bosphorus to Warships*, NAVAL NEWS (Feb. 28, 2022), <https://www.navalnews.com/naval-news/2022/02/turkey-closes-the-dardanelles-and-bosphorus-to-warships/>.

2. John Irish et al., *NATO Leaves Black Sea Exposed as Russia Invades Ukraine*, REUTERS (Feb. 24, 2022), <https://www.reuters.com/world/europe/nato-leaves-black-sea-exposed-russia-invades-ukraine-2022-02-24/>.

3. *Turkey Says It's Trying to Broker Ceasefire Between Russia and Ukraine*, THE TIMES OF ISRAEL (Feb. 26, 2022), <https://www.timesofisrael.com/turkey-says-its-trying-to-broker-ceasefire-between-russia-and-ukraine/>.

significant military and humanitarian support for [Ukraine] are extremely important today. The people of [Ukraine] will never forget that!”⁴

However, afterward, there appeared to be some confusion about Turkey’s legal authority to close the straits under international law (or its willingness to exercise it),⁵ as Ankara replied it cannot stop the passage of Russian warships.⁶ Later, however, Turkish officials clarified that only Russian naval vessels returning to their home port would be exempt from the straits’ closure.⁷

It is unclear whether Turkey exceeded its legal authority in closing the straits. Turkey has discretion to close the straits to warships of all nations party to a conflict. It may also do so if it is in apprehension of an “imminent danger of war.” But closing the straits to neutral warships that are neither party to the Russia-Ukraine conflict nor pose a threat to Turkey in such a way that they would place it in “imminent danger” appears to go beyond Ankara’s authority.

If Turkey exceeds its legal authority, that constitutes a breach of an international obligation or duty, exposing Turkey to the law of State responsibility. In customary international law, States may be held legally accountable through legal processes for internationally wrongful acts. An injured neutral State, for example, might seek arbitration to vindicate its navigational rights.

The Turkish Straits, consisting of the Bosphorus and the Dardanelles Straits, are divided by the Sea of Marmara and constitute Turkey’s internal waters. Internal waters are those that are landward of a maritime baseline and include small inlets and bays, rivers, canals, harbors, and the mouths of rivers. These sea areas have the same legal character of the land itself, and

4. Volodymyr Zelensky (@ZelenskyyUa), TWITTER (Feb. 26, 2022, 8:27 AM), <https://twitter.com/ZelenskyyUa/status/1497564078897774598?s=20&t=eNH8r3otF9RMUFWQu20gIw>.

5. Misty Severi, *Zelensky Says Erdogan Agreed to Close Strait Despite Turkish Officials’ Denials*, WASHINGTON EXAMINER (Feb. 26, 2022, 2:49 PM), <https://www.washingtonexaminer.com/policy/defense-national-security/zelensky-says-erdogan-agreed-to-close-strait-despite-turkish-officials-denials>.

6. Isil Sariyuce & Celine Alkhaldi, *Turkey Says it Cannot Stop the Passage of Warships Through its Straits Following Request From Ukraine*, CNN (Feb. 25, 2022, 9:50 AM), https://www.cnn.com/europe/live-news/ukraine-russia-news-02-25-22/h_b1dac846833337ccfe54d84d5672d68b.

7. Firat Kozok, *Turkey to Restrict Transit of Russian Warships Through Straits*, BLOOMBERG (Feb. 28, 2022, 2:21 PM EST), <https://www.bloomberg.com/news/articles/2022-02-28/turkey-to-restrict-transit-of-russian-warships-through-straits>.

States generally have the right to bar the transit of foreign-flagged vessels in these waters.

In this case, however, the Turkish Straits constitute straits used for international navigation, so Turkey must balance its right of sovereignty with its corresponding duty to the international community. The Turkish Straits are governed by the Montreux Convention,⁸ a “long-standing international [convention],” indirectly referred to in Article 35(c) of the United Nations Convention on the Law of the Sea.⁹

The convention also contains rules that apply differently to States that border the Black Sea, such as Russia and Ukraine, than to naval vessels of States outside the Black Sea. In this regard, the total number of warships and maximum aggregate tonnage of warships from Black Sea States and States outside the region that transit the straits are limited to nine vessels and fifteen thousand tons, respectively.¹⁰ (Warship tonnage is a shorthand metric for capability, albeit an imperfect one.)

Finally, only submarines belonging to a Black Sea State may transit the Turkish Straits for the purpose of rejoining their Black Sea bases for the first time after their construction or purchase or for the purpose of repairs in dockyards outside of the Black Sea.¹¹

Naval forces must notify Turkey of their intended transit through diplomatic channels, providing eight days for Black Sea States and fifteen days for non-Black Sea States.¹²

The upshot of these rules is that Russia, as a Black Sea State, has the privileged right to transit the Turkish Straits to return its warships to their bases. The treaty states that during armed conflict, belligerents’ warships “shall not” pass through the straits unless the ships belong to a State that borders the Black Sea and are returning to their home ports.¹³ Once Turkey determined that Russia was “at war,” it had no choice under the treaty but to stop Russian warships from transiting the straits. The only exception: If Russian warships are returning to their bases in the Black Sea, then they are permitted passage.¹⁴

8. Convention Regarding the Regime of Straits, with Annexes and Protocol (Montreux Convention), July 20, 1936, 173 L.N.T.S. 215 (English version).

9. United Nations Convention on the Law of the Sea art. 35(c), Dec. 10, 1982, 1833 U.N.T.S. 397.

10. Montreux Convention, *supra* note 8, art. 14.

11. *Id.* art. 12.

12. *Id.* art. 13.

13. *Id.* art. 19.

14. *Id.*

Turkey also has complete discretion under Article 20 to close the straits to warships of all nations if Ankara is a party to the conflict.¹⁵ In such case, Turkey can stop warships of any nation from transiting the straits. Further, Article 21 of the Montreux Convention states that even if Turkey is not at war but “considers herself to be threatened with imminent danger of war,” the straits may be closed at Turkey’s discretion.¹⁶ Turkey invoked this provision on Feb. 28 and announced it was closing the straits to warships of all nations.

Turkey might plausibly suggest it is closing the straits to warships of all nations because some neutral States are likely to aid one of the belligerents, such as NATO warships surreptitiously supplying Ukrainian forces with intelligence and thereby escalating the risk of conflict on Turkey’s doorstep and indirectly threatening Turkey with “imminent danger of war.”¹⁷ But this argument is quite a stretch, as neutral warships generally pose no threat to Turkey and therefore cannot be excluded. The right of neutral warships to transit the straits is also guaranteed in Article 20, however.

Turkey’s action to close the straits to warships of all nations sets an uncomfortable precedent for neutral States that are not party to the Ukraine conflict. Although they are not involved in the conflict, their navigational rights protected in Article 20 may be infringed on by Turkey’s decision, which appears not narrowly tailored to de-escalate the conflict at hand. For example, the U.S. Sixth Fleet and other NATO members operate warships in the Black Sea, and the United States is a neutral party to the conflict. Those operations are essential for the alliance’s presence and security as well as to reassure allies Bulgaria and Romania, both coastal States on the Black Sea. In 2021, around twelve U.S. Navy ships, including the Sixth Fleet flagship, USS *Mount Whitney*, spent a total of 182 days in the Black Sea.¹⁸

Although U.S. Secretary of State Antony Blinken reportedly “expressed his appreciation” to Cavusoglu for Turkey’s action, it remains an open question how long the United States is prepared to give up its navigational rights

15. *Id.* art. 20.

16. *Id.* art. 21.

17. See generally *id.* art. 6.

18. Alison Bath, *U.S. Navy and NATO Presence in the Black Sea Has Fallen Since Russia Took Part of Ukraine, Figures Show*, STARS AND STRIPES (Jan. 28, 2022), <https://www.stripes.com/theaters/europe/2022-01-28/sporadic-nato-patrols-in-black-sea-leaving-void-for-Russians-4443921.html#:~:text=U.S.%20warships%20had%20not%20spent,days%20in%20the%20Black%20Sea.>

through two of the world's strategic straits.¹⁹ Rather than resolving the issue of warship transit through the straits, Turkey's decision to close the waterways complicates its relationship with Russia while posing new and unintended legal issues with its NATO partners.

Straits governed by long-standing conventions include the Danish straits connecting the Baltic Sea to the North Atlantic, which are governed by a series of nineteenth century treaties between Denmark and other States. The Strait of Magellan between Argentina and Chile that joins the Atlantic Ocean with the Pacific Ocean is subject to an 1881 convention that guarantees all nations' use. Likewise, the Aland Strait between Denmark and Sweden, which connects the Bothnian Sea with the Baltic Proper, falls under a 1922 agreement that ensures the islands' non-fortification and neutralization.

The Turkish Straits are governed by the 1936 Montreux Convention, which has the most detailed provisions of long-standing conventions. The Montreux Convention provides that merchant vessels of all States enjoy freedom of passage through the Turkish Straits and contains some restrictions on warships, such as prohibiting the passage of aircraft carriers by any State.²⁰

19. Laurie Mylroie, *Turkey Says It Will Close Straits to Warships, as U.S. Welcomes Decision*, KURDISTAN 24 (Mar. 1, 2022, 12:12 PM), <https://www.kurdistan24.net/en/story/27439-Turkey-says-it-will-close-straits-to-warships,-as-US-welcomes-decision>.

20. See REPUBLIC OF TURKEY, MINISTRY OF FOREIGN AFFAIRS, *Implementation of the Montreux Convention*, <https://www.mfa.gov.tr/implementation-of-the-montreux-convention.en.mfa> (last visited Aug. 29, 2022).