

---

---

# INTERNATIONAL LAW STUDIES

*Published Since 1895*

---

## Russia's Attack on Ukraine: The Montreux Convention and Turkiye

*Yücel Acer*

100 INT'L L. STUD. 285 (2023)

Volume 100



2023

---

---

*Published by the Stockton Center for International Law*

ISSN 2375-2831

## Russia's Attack on Ukraine: The Montreux Convention and Türkiye

*Yücel Acer\**

I.	Introduction.....	286
II.	The Past and Present of the Montreux Convention.....	289
III.	The Framework of the Regime Established by the Montreux Convention .....	294
	A. Warships and Security Measures.....	294
	B. Civil Maritime Navigation and Related Security Measures .....	296
IV.	Wartime and Application of the Montreux Convention: Past Experience.....	298
V.	The Ukraine War and the Montreux Convention.....	301
	A. The Ukraine War and its Relation to the Straits.....	302
	B. Warships and Trade Ships .....	303
	C. Possible UN Sanctions and the Montreux Convention .....	306
	D. Evaluation of Türkiye's Stance .....	308
VI.	Conclusions .....	310

---

\* Professor of International Law at the Faculty of Law, Ankara Yıldırım Beyazıt University, Ankara, Türkiye.

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.

## I. INTRODUCTION

The seas have been important navigational routes between communities, countries, and continents throughout known human history. Seafarers were mainly coastal sailors who were able to navigate only between relatively close coasts until the fifteenth century, following shallow coastal areas or areas with a large continental shelf. Farther maritime navigation emerged starting in the sixteenth century and gradually expanded with the help of improving technical and technological developments.<sup>1</sup>

As global maritime navigation became increasingly common, security threats against coastal States and trading ships emerged.<sup>2</sup> Coastal States began to consider the need to defend their internal and territorial waters.<sup>3</sup>

Since that time, straits have gradually been considered particularly significant in the security perceptions of coastal States since they are narrow sea passages between two land territories. Potential security threats to coastal States posed by foreign ships—especially those of military nature passing through the straits<sup>4</sup>—is an overriding national security issue.<sup>5</sup> The safety of

---

1. For a review of the early history of modern maritime navigation, see Willem F.J. Mörzner Bruyns, *Research in the History of Navigation: Its Role in Maritime History*, 21 INTERNATIONAL JOURNAL OF MARITIME HISTORY 261 (2009); John Kemp & Brian D'Olier, *Early Navigation in the North Sea—The Use of the Lead and Line and Other Navigation Methods*, 69 JOURNAL OF NAVIGATION 673 (2016); PHILIP REID, *THE MERCHANT SHIP IN THE BRITISH ATLANTIC, 1600–1800: THE CONTINUITY* (1967).

2. Piracy was, in the same period, an important security issue in the seas, as it is even today. Mazyar Ahmad, *Maritime Piracy Operations: Some Legal Issues*, 4 JOURNAL OF INTERNATIONAL MARITIME SAFETY, ENVIRONMENTAL AFFAIRS, AND SHIPPING 62 (2020).

3. Barry J. Ryan, *The Disciplined Sea: A History of Maritime Security and Zonation*, 95 INTERNATIONAL AFFAIRS 1055 (2019); Katja Lindskov Jacobsen & Jessica Larsen, *Piracy Studies Coming of Age: A Window on the Making of Maritime Intervention Actors*, 95 INTERNATIONAL AFFAIRS 1037 (2019).

4. The term “straits used for international navigation” is adopted in Article 34 of the United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

5. W. Michael Reisman, *The Regime of Straits and National Security: An Appraisal of International Lawmaking*, 74 AMERICAN JOURNAL OF INTERNATIONAL LAW 48 (1980). Straits also possess commercial and strategic importance for States. The Bering, Gibraltar, Bab el-Mandeb, Bosphorus, and Torres straits separate continents.

the transiting ships and the security of the straits themselves are also significant factors in security considerations.<sup>6</sup>

Generally, a strait is defined in many legal writings as a naturally formed maritime passage connecting two separate sea areas.<sup>7</sup> The 1982 United Nations Law of the Sea Convention refers to “straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone” to specify the application of the “transit passage” regime through international straits.<sup>8</sup>

The maritime areas where many powerful States intersect, such as the Mediterranean Sea, Aegean Sea, and Black Sea, have formed and continue to form the most intense and important sea areas both in maritime navigation and in security-related considerations.<sup>9</sup> These maritime areas are where both the Ottoman Empire and the Republic of Türkiye were established. As some western States got stronger over time and the Ottoman Empire became relatively weaker, one of the pressing issues the emerging European powers took up was the control of the passage through the Straits of Çanakkale (the Dardanelles) and the Strait of Istanbul (the Bosphorus). These straits stayed under complete Ottoman rule until the 1774 Treaty of Küçük Kaynarca, which ended the Russo-Turkish War of 1768–1774. With this treaty and many subsequent public and secret treaties, some of the major powers received the privilege of sea passage through these straits.

With the London Straits Convention concluded on July 13, 1841, the straits regime was largely internationalized and the Ottoman Empire was obligated not to allow warships to pass through the straits during peacetime.<sup>10</sup> With the Armistice of Mondros (alternatively, Mudros or Moudhros) signed

---

6. When regulations are negotiated concerning the straits in law of the sea treaties, it is apparent that the safety of transiting ships and security and well-being of the straits are important considerations. *See, e.g.*, UNCLOS, *supra* note 4, art. 39(2), which provides the ships comply with regulations concerning “safety at sea,” and “the prevention, reduction and control of pollution from ships.”

7. ROBIN CHURCHILL & A.V. LOWE, *THE LAW OF THE SEA* 102 (3d ed. 1999); AYDOĞAN ÖZMAN, *DENİZ HUKUKU I*, at 355 (2005).

8. UNCLOS, *supra* note 4, art. 37. *See also* MALCOLM N. SHAW, *INTERNATIONAL LAW* 417 (7th ed. 2014). There are said to be more than 260 straits in the world. ANNOTATED SUPPLEMENT TO THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS 2-86 to 2-87 tbl. A2-5 (Arthur Thomas & James Duncan eds., 1997), *reprinted in* 73 *INTERNATIONAL LAW STUDIES* 207–8 (1999).

9. JAMES T. SHOTWELL, *A SHORT HISTORY OF THE QUESTION OF CONSTANTINOPLE AND THE STRAITS* 9–27 (1922).

10. *Id.* at 50–51.

on October 30, 1918, the Ottoman Empire completely lost control over the Çanakkale and Istanbul straits.<sup>11</sup>

The Lausanne Straits Convention, signed on July 24, 1923, at the Lausanne Peace Conference, did not completely shift this situation in favor of the Republic of Türkiye. The convention contained provisions that undermined the sovereignty and control of the Republic of Türkiye over the straits.<sup>12</sup> While the Lausanne Convention gave the right of free passage to the ships of all States, it also gave the rights to administer the straits to the International Straits Commission and demilitarized the land twenty-five to thirty kilometers on either side of the straits, including the Sea of Marmara. Furthermore, the convention put the commission under the auspices of the League of Nations—the predecessor of the United Nations.<sup>13</sup>

The straits were an important issue to the Republic of Türkiye in the years following the Lausanne Straits Convention due to its highly negative provisions that brought considerable restrictions on Türkiye's jurisdiction and control over the straits. The emergence of the expansionist ambitions of Mussolini's Italy, Hitler's Germany, and Imperial Japan in the 1930s led to the strengthening of Türkiye's demands for a better status for the straits. These demands were eventually supported by Britain.

A new convention was signed in 1936 by nine States, including Türkiye. It established a new legal regime for the straits—the Strait of Çanakkale, the Sea of Marmara, and the Istanbul Strait (or the Black Sea Strait, as the convention names it). The Montreux Straits Convention,<sup>14</sup> officially called the “Convention Regarding the Regime of the Straits Signed at Montreux” (hereinafter the Montreux Convention), should be considered as an agreement that takes into account the “sovereignty restrictions” and “security concerns” of Türkiye. It is not, therefore, only a “navigational” but also a “security” convention.

The regime established by the convention is once again under a fresh discussion due to the ongoing Russia-Ukraine War. The military attack launched by Russia on Ukraine on February 23, 2022, raised a fundamental

---

11. Article I of the armistice provided for the opening of the Dardanelles and Bosphorus, secure access to the Black Sea, and allied occupation of the Dardanelles and Bosphorus forts. Armistice of Mudros, Oct. 30, 1918, reprinted in FREDERICK MAURICE, *THE ARMISTICES OF 1918*, at 85–87 (1943). See also Gwynne Dyer, *The Turkish Armistice of 1918: 2—A Lost Opportunity: The Armistice Negotiations of Mudros*, 8 MIDDLE EASTERN STUDIES 313 (1972).

12. Convention Relating to the Regime of the Straits, July 24, 1923, 28 L.N.T.S. 117.

13. *Id.* art. 15.

14. Convention Regarding the Regime of Straits, with Annexes and Protocol, July 20, 1936, 173 L.N.T.S. 215 [hereinafter Montreux Convention].

question of the possible passage of Russian and Ukrainian warships through the straits. There are, moreover, some other questions related to possible scenarios. For example, one should consider the effect of possible international economic or military measures to be decided by the UN General Assembly or Security Council against Russia. A related issue could be foreign warships aiding Ukraine or Russia individually or by a UN decision. Finally, what would be the treatment of civilian or military ships of warring States if Türkiye applies any sanction of a civil or military nature to one of the warring sides?

All these issues are significant not only in the context of the effect of the Russia-Ukraine War but also in other possible war situations in the region. This article first provides a background and then examines the application of the Montreux Convention in the existing and potential situations resulting from the Russia-Ukraine War.

## II. THE PAST AND PRESENT OF THE MONTREUX CONVENTION

The straits have historically gone through politically difficult periods due to being the subject of external pressures from major powers. Rules regulating passage have been changed frequently to favor one side or another. The Montreux Convention is the current regulation concerning the straits and was created to address certain concerns of Türkiye and other States.

As the Lausanne Straits Convention established the right to free passage to ships of all States, distinctive restrictions were also imposed on Türkiye's control over the passages and its sovereignty over the territories surrounding the Strait of Çanakkale, Sea of Marmara, and Strait of Istanbul, which are all surrounded by the coasts of mainland Türkiye.

One of these restrictions concerned control over the passages in wartime. If Türkiye was not a belligerent, it would not have a right to take all precautions it deemed necessary against warships of belligerent countries. Being a non-belligerent State, Türkiye was not authorized to take any measures to prevent passage through the waters of the straits or through the airspace over them. Passages would be "fully free," just like in peacetime. Therefore, when Türkiye was not a belligerent, it could not take measures to control the risk of war spreading to the straits region.

A further restriction on Türkiye's control and sovereignty over the straits was the demilitarization imposed on an area of twenty-five to thirty kilometers on either side of the Strait of Çanakkale, Sea of Marmara, and the Strait

of Istanbul, as well as the islands in the Marmara Sea (except Emir Ali Island), and the Turkish islands in the Aegean Sea (Gökçeada, Bozcaada, and Rabbit Islands). Therefore, Türkiye was left unable to fortify positions, install permanent weapon systems, and employ military personnel other than the police and gendarmerie in the demilitarized areas inside its own country.

Another limitation was that the authority to manage the passages and to supervise the implementation of the provisions of the convention was left not to Türkiye but to the International Straits Commission established by the convention. Although it was to be chaired by a Turkish delegate, the commission representatives were from all party States.<sup>15</sup> The commission was further empowered to make arrangements regarding its tasks entrusted by the convention.

Türkiye's main goal at the Lausanne Conference was to liberate Istanbul and the straits from occupation.<sup>16</sup> As the Lausanne Straits Convention ended the occupation and promised a future collective security system and a collective disarmament under the auspices of the League of Nations, Türkiye was satisfied with the convention despite the comprehensive restrictions on Türkiye's authority concerning passage and the territories surrounding the straits.<sup>17</sup>

However, the rapidly and dramatically changing circumstances in the following decade drove Türkiye to demand changes, especially in the provisions imposing demilitarization and limitations on Türkiye's control over foreign warships in wartime. In the period approaching the Second World War, Türkiye was fully justified to feel major risks to its own security. But achieving change in the status of the straits was to be far from an easy task in the highly complicated world of the 1930s. Therefore, Türkiye's demand had to wait until a new regime of passage through the Turkish straits was deemed necessary by the major States of that time.<sup>18</sup>

Like any international agreement with no time limit, parties could demand to revise or end the convention if there were certain legally justifiable

---

15. Other than Türkiye, these representatives included France, Great Britain, Italy, Japan, Bulgaria, Greece, Romania, Russia, and the Serb-Croat-Slovene State.

16. Sami Doğru, *Türk Boğazları'nın Hukuki Statüsü: Sevr ve Lozan'dan Montrö'ye Geçiş*, 15 DOKUZ EYLÜL ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ 148 (2013).

17. Kudret Özersay, *Montreux Boğazlar Sözleşmesi*, 1 TÜRK DIŞ POLİTİKASI: KURTULUŞ SAVAŞINDAN BUGÜNE OLGULAR, BELGELER, YORUMLAR 370 (Baskın Oran ed., 2001).

18. Şarika Gedikli Berber, *Lozan Antlaşması Perspektifinden Türk Boğazları Meselesine Bakış*, 14 KASTAMONU EĞİTİM DERGİSİ 627 (2006).

reasons, such as the agreement of all parties or radical changes in circumstances (*rebus sic stantibus*).<sup>19</sup>

It was well understood in the 1930s that a new world war could well be on its way. The peaceful order, intended to be established after the First World War, seemed far from reality. Quite to the contrary, the world started to move towards a new worldwide war. Japan's attack on Manchuria, Italy's occupation of Albania, and Germany's arming of the Rhine region were striking signs of upcoming war. The security system that the League of Nations aimed to establish was becoming increasingly unrealistic.<sup>20</sup> The military activities of Italy in the Menteşe (Dodecanese) Islands started to threaten the security of the Mediterranean, and there was another development that showed that the guarantee system, which should have been under the supervision of the League of Nations with Article 18 of the Lausanne Straits Convention, would not work.<sup>21</sup>

The developments in those years gradually paved the way towards revising the convention.<sup>22</sup> In those tense years, the straits were an important factor in the efforts of the great powers to get Türkiye on their side. Almost twenty years after the First World War, Germany and the Soviet Union did not still think that they had seized enough power to impose any of their policies on Britain. The straits were of great importance in this manner, especially for the Soviet Union as a transit route to threaten Britain's sovereignty in the Eastern Mediterranean. The ideal situation for the Soviets was to seize control of the straits, even if only partly.

However, Britain and France were making sincere and intense efforts to attract Türkiye to their side to prevent a situation that would leave the control of the straits to the Soviet Union. For these countries, the way to keep the Soviet Union away from the Eastern Mediterranean was to secure the straits against the Soviet Union.<sup>23</sup>

Türkiye, on the other hand, tried to revise the convention in order to remove the demilitarization clauses. Türkiye was especially aware of the disadvantages that the disarmament provisions would create in the event of a possible war, both for the control of the straits and for Türkiye's security.

---

19. SHAW, *supra* note 8, at 688–90.

20. YÜKSEL İNAN, TÜRK BOĞAZLARININ SİYASAL VE HUKUKSAL REJİMİ 41 (1995).

21. Doğru, *supra* note 16, at 152.

22. Mesut Hakkı Çaşın, *Askeri ve Stratejik Açıdan Montreux'nün Dünü ve Geleceği*, 37 PUBLIC AND PRIVATE INTERNATIONAL LAW BULLETIN 51, 72–80 (2017).

23. Yücel Karlıklı, *80. Yıldönümünde Montrö Boğazlar Sözleşmesi'ni Yeniden Düşünmek*, 37 PUBLIC AND PRIVATE INTERNATIONAL LAW BULLETIN 29, 37–38 (2017).



The fact that Türkiye could not do anything in terms of controlling the passages through the straits when there was an imminent threat of war was another security weakness resulting from the Lausanne Straits Convention.

Türkiye brought up the issue for the first time on May 23, 1933, at the forty-seventh meeting of the General Disarmament Conference in Geneva.<sup>24</sup> The British stance was quite negative at that time. Britain feared that revision of the Lausanne Convention and refortification of the straits would jeopardize British naval operations in the straits and Black Sea against the Soviets. Additionally, the British were concerned that Türkiye would be less susceptible to coercion and freer to move independently, either closer or further away from Great Britain, if the straits were militarized by Türkiye.<sup>25</sup> The Turkish proposal was opposed by the British and French delegates as such proposal was “out of place at a Disarmament Conference.”<sup>26</sup>

The Soviet Union, on the other hand, was not satisfied with the Lausanne Straits Convention as the Soviets had wanted the straits to be completely closed to warships to ensure the security of the Black Sea.<sup>27</sup> The Turkish authorities knew that if they were to demand revision of the Lausanne Convention they would obtain Soviet support.<sup>28</sup> Quite expectedly, when Türkiye brought up the issue on May 23, 1933, the Soviet delegate supported the Turkish proposal.<sup>29</sup>

The British Foreign Office began to consider the benefits of a close alliance with Türkiye in early 1936. The time was ripe for revision. As the Germans and Italians had already proved their aggressive intentions, Britain was trying to re-establish their position in the Mediterranean.<sup>30</sup> This coincided with the interests of Türkiye, leading to a significant turn from the earlier British stance.

---

24. FERİDUN CEMAL ERKİN, TÜRK SOVYET İLİŞKİLERİ VE BOĞAZLAR MESELESİ 64–65 (1968); FAHIR ARMAOĞLU, 1 YÜZYİL SİYASİ TARİHİ 1914–1990, at 343 (7th ed. 1992); İNAN, *supra* note 20, at 58.

25. Mensur Akgün, *Great Powers and The Straits: From Lausanne to Montreux*, 24 *TURKISH YEARBOOK OF INTERNATIONAL RELATIONS* 57, 64 (1994).

26. D. A. Routh, *The Mediterranean: The Montreux Convention Regarding the Regime of the Black Sea Straits (20th July 1936)*, in *SURVEY OF INTERNATIONAL AFFAIRS 1936*, at 584, 601 (Arnold Toynbee ed., 1937). The diplomatic offensive nevertheless continued. The question was raised, for instance, during the bilateral Greco-Turkish negotiations in Rome in July 1933.

27. Akgün, *supra* note 25, at 61.

28. *Id.* at 63.

29. ANTONY R. DE LUCA, *THE MONTREUX CONFERENCE OF 1936: A DIPLOMATIC STUDY OF ANGLO-SOVIET RIVALRY AT THE TURKISH STRAITS* 25 (1973).

30. Akgün, *supra* note 25, at 63.

On April 11, 1936, Türkiye conveyed its request to convene a new conference on the straits by sending a note to all States party to the Lausanne Straits Convention. This note was also sent to the Secretary General of the League of Nations and, through him, to the members of the League on the same day.<sup>31</sup>

Türkiye noted that the failure of disarmament attempts, the ineffective nature of collective measures against a powerful aggressor, and the impossibility of establishing an additional four-power guarantee as envisaged by the convention were the reasons that justified Türkiye's fears. Türkiye was said to be prepared to enter into negotiations with a view to arriving at the conclusion of an agreement for a new regime for the straits based on security considerations.<sup>32</sup>

Eventually, the conference convened on June 22 in the Montreux Palace Hotel with the participation of delegates from Australia, Bulgaria, France, Great Britain, Greece, Japan, Romania, the Soviet Union, Türkiye, and Yugoslavia.<sup>33</sup> The resulting Montreux Convention was signed on July 20, 1936, and entered into force on November 9, 1936. Like the Lausanne Straits Convention, it covers the Strait of Çanakkale, the Sea of Marmara, and the Bosphorus.

Despite the Anglo-Soviet contention over the number and tonnage of warships in passage, as well as many other complicated issues, the outcome satisfied Türkiye in many respects. Türkiye's desires in terms of the militarization of the straits region and the abolition of the Straits Commission were all met.

---

31. The original copy of the note can be found at the UK National Archives: Turkey, Code 44, File 26, Papers 1973-2796 (the National Archives website contains a catalog description and information on how to access the document: <https://discovery.nationalarchives.gov.uk/details/r/C2777738> (last visited Apr. 14, 2023); *see also* Dođru, *supra* note 16, at 154.

32. Akgün, *supra* note 25, at 57, 63, 64; FERENC A. VÁLI, *THE TURKISH STRAITS AND NATO 195–99* (1972).

33. İNAN, *supra* note 20, at 40–46.

### III. THE FRAMEWORK OF THE REGIME ESTABLISHED BY THE MONTREUX CONVENTION

#### A. *Warships and Security Measures*

The convention brings some assurances to reduce both Türkiye's security concerns and the security concerns of other Black Sea littoral States.<sup>34</sup> These assurances could be viewed from two separate perspectives. First, the convention restricts the number and tonnage of foreign warships that can pass through the straits at once. Secondly, it limits the number, tonnage, and duration of non-Black Sea countries' warships in the Black Sea at any one time. While the first of these regulations aimed at eliminating Türkiye's security concerns, the second aimed at eliminating the security concerns of all Black Sea countries, including Türkiye.

To ensure the security of the Black Sea littoral States, including Türkiye, within the Black Sea, the convention limited the total tonnage of military ships that non-Black Sea littoral States can keep in the Black Sea to 30,000 tons in time of peace. It can be expanded up to 45,000 tons under certain conditions. Whatever the purpose of their presence in the Black Sea, warships of non-riparian States cannot stay for more than twenty-one days.<sup>35</sup>

The other group of measures are to ensure Türkiye's security in the straits region and relates to warships. In time of peace, light surface vessels, minor war vessels, and auxiliary vessels, whether belonging to Black Sea or non-Black Sea powers, shall enjoy freedom to transit through the straits without any taxes or charges whatsoever, provided that such transit is done during daylight and subjected to the conditions laid down.<sup>36</sup> Apart from these relatively small military vessels, other warships enjoy a right of transit under the special conditions and restrictions provided for in the convention.

In peacetime, the naval forces of all States, whether they have a coast on the Black Sea or not, are under the obligation to give prior notice to Türkiye through the diplomatic channel before transiting,<sup>37</sup> except for "naval auxiliary vessels specifically designed for the carriage of fuel, liquid or nonliquid" on condition that they shall pass through the straits singly.<sup>38</sup> While the Black

---

34. The convention uses the concept of "warship" instead of "military ship." *See* Montreux Convention, *supra* note 14, arts. 19, 20.

35. *Id.* art. 18.

36. *Id.* art. 10.

37. *Id.* art. 13.

38. *Id.* art. 9.

Sea countries should give notice eight days before they pass, this period can be extended up to fifteen days for non-Black Sea countries. Without being under any obligation to stop, the commander of the naval force shall communicate to a signal station at the entrance to the Dardanelles or the Bosphorus the exact composition of the force under his command.<sup>39</sup>

The maximum aggregate tonnage of all foreign naval forces that are in the course of transit through the straits shall not exceed 15,000 tons except for the Black Sea States, which may send through the straits capital ships of tonnage greater than that on condition that these vessels pass through the straits singly, escorted by not more than two destroyers.<sup>40</sup> In addition to the tonnage restriction above, the specified forces shall not comprise more than nine vessels during one passage.<sup>41</sup>

Some other regulations were introduced, especially in favor of Turkiye, regarding the passage of warships through the straits in peacetime. Warships in transit through the straits shall in no case use the aircraft they may be carrying<sup>42</sup> and shall not stay in the straits longer than necessary for their passage, except in cases of damage or peril of the sea, not related to the technical management of the vessel.<sup>43</sup> In addition, Black Sea States shall have the right to send through the straits, for the purpose of re-joining their base, submarines constructed or purchased outside the Black Sea, provided that adequate notice of the laying down or purchase of such submarines is given to Turkiye.<sup>44</sup>

Apart from peacetime, the convention brought some extra guarantees for Turkiye to be applied in time of war. If Turkiye is not a belligerent in a war, warships will enjoy the freedom of passage by complying with certain conditions. They shall enjoy complete freedom of transit and navigation under the same conditions as specified for warships during peacetime. However, warships belonging to belligerent powers shall not pass through the straits except in cases of the rights and obligations arising out of the Covenant of the League of Nations. Another exception is a case of assistance rendered to a State victim of aggression in virtue of a treaty of mutual assistance that is binding on Turkiye. In these two exceptional cases, therefore, the warships of one or more of the belligerent countries would have to be

---

39. *Id.* art. 13.

40. *Id.* art. 11, 14.

41. *Id.* art. 14.

42. *Id.* art. 15.

43. *Id.* art. 16.

44. *Id.* art. 12.

allowed to pass without having to abide by the limitations laid down in the convention. Finally, vessels of war belonging to belligerent powers, whether they are Black Sea powers or not, which have become separated from their bases, may return to their bases under the limitations laid down in the convention.<sup>45</sup>

If, however, Türkiye is a belligerent State, the passage of warships shall be left entirely to the discretion of the Turkish government, and the limitations laid down in the convention are not to be applicable.

One of the situations that was not addressed in the Lausanne Straits Convention was a situation in which Türkiye considers herself to be threatened with an imminent danger of war. Article 21 of the Montreux Convention introduced this as a new situation. In such a situation, the convention grants Türkiye the same rights it has when it is a belligerent; that is, warships may return to their bases. However, Türkiye may deny this right to vessels of war belonging to the State whose actions have given rise to the application of the imminent war situation.<sup>46</sup>

For Türkiye to consider a situation of an imminent war and start to take appropriate measures, a notification to that effect shall be addressed to the convention's parties and the Secretary-General of the League of Nations (now the United Nations). If a two-thirds majority of the Council of the League of Nations (now the UN Security Council<sup>47</sup>) and the majority of the parties to the convention decide that the measures taken by Türkiye are not justified, the Turkish government must discontinue the measures in question.<sup>48</sup>

### B. Civil Maritime Navigation and Related Security Measures

The Montreux Convention is both a navigation and security convention. In 1936, when the convention was signed, only an average of seventeen ships per day were passing through the Bosphorus. Today, this number is 130.<sup>49</sup>

---

45. *Id.* art. 19.

46. *Id.* art. 21.

47. Although there are discussions whether the UN took over the rights and obligations given to the League of Nations by the Montreux Convention, we may assume as such without making conclusive remarks. For the discussions, see Enver Arıkoğlu, *Montrö Konvansiyonu Uyarınca Peki Yakın Savaş Tehlikesi Durumunda Türkiye'nin Yetkileri*, 37 PUBLIC AND PRIVATE INTERNATIONAL LAW BULLETIN 185, 192–97 (2017).

48. Montreux Convention, *supra* note 14, art. 21.

49. Republic of Türkiye, Ministry of Foreign Affairs, *Note on the Turkish Straits*, <https://www.mfa.gov.tr/the-turkish-straits.en.mfa> (last visited Apr. 14, 2023).

After the Montreux Convention, not only did ship traffic increase, but also the size of ships increased as a result of improvements in maritime shipping technologies as well as the nature of the cargo carried by ships. A significant number of ships passing through the Turkish Straits carry toxic, dangerous, and explosive materials (such as crude oil, ammonia, liquefied gas, radioactive materials, and hazardous wastes). Especially since the 1990s, parallel to the increase in oil flowing to the ports in the Black Sea, the increase in the number of ships carrying dangerous materials and oil through the Turkish Straits has doubled.<sup>50</sup>

Article 1 of the convention conveys the principle of “freedom of passage and round-trip (transport)” as its fundamental principle regulating passage. Article 2 of the convention states that “In time of peace, merchant vessels shall enjoy complete freedom of transit and navigation in the Straits, by day and by night, under any flag and with any kind of cargo, without any formalities.” However, freedom of passage does not mean absolute freedom even for civil passages.

Immediately following the general principle of the freedom of passage, Articles 3, 4, 5, and 6 designate the circumstances in which merchant ships<sup>51</sup> will be stopped or not allowed to pass. The first and ordinary case is checking merchant ships for health control.<sup>52</sup> Secondly, if Türkiye is at war, merchant vessels not belonging to a country at war with Türkiye shall enjoy freedom of transit and navigation in the straits on condition that they do not in any way assist the enemy. Such vessels shall enter the straits by day, and their transit shall be effected by the route that shall, in each case, be indicated by the Turkish authorities.<sup>53</sup> Should Türkiye consider herself to be threatened with imminent danger of war, the freedom of passage for merchant vessels shall nevertheless continue to be applied on the condition that vessels must enter the straits by day and their transit must be effected by the route indicated by the Turkish authorities.<sup>54</sup>

Finally, the convention contains regulations not only for merchant ships but also for civil aircraft. It stipulates that in order to ensure the passage of

---

50. Republic of Türkiye, Ministry of Foreign Affairs, *Implementation of the Montreux Convention*, <https://www.mfa.gov.tr/implementation-of-the-montreux-convention.en.mfa> (last visited Apr. 14, 2023).

51. The term “merchant vessels” applies to all vessels which are not warships, as defined in the convention. Montreux Convention, *supra* note 14, art. 7.

52. *Id.* art. 3.

53. *Id.* art. 5.

54. *Id.* art. 6.

civil aircraft between the Mediterranean and Black Seas, the Turkish Government will designate air routes reserved for this passage.<sup>55</sup> The convention only allows the passage of civil aircraft.

#### IV. WARTIME AND APPLICATION OF THE MONTREUX CONVENTION: PAST EXPERIENCE

The Montreux Convention contained significant new provisions for Turkiye's control over the straits as well as for the passage of warships. This new regime was put to a very serious test almost immediately after the convention was signed, in the tense period leading up to the Second World War and then during the war.

Once Germany realized that Turkiye would not join the Axis alliance, it tried to ensure that Turkiye would at least remain neutral and that the straits would be closed to all warships. Despite German efforts, the excessive and aggressive attitude of Italy, an ally of Germany, drove Turkiye closer to Britain and France. On April 7, 1939, when Italy invaded Albania, Turkiye's concerns increased further.<sup>56</sup> Turkiye, Britain, and France made a declaration of friendship in 1939, planning to conclude an alliance agreement in May or June, before the war had even begun.<sup>57</sup> Eventually, Turkiye, Britain, and France signed an alliance agreement on October 18, 1939, providing that Turkiye would enter the war when attacked.

Britain and France gave such importance to the straits that they planned to send some military ships and submarines to the Black Sea before the war started. They prepared military build-up plans in Thessaloniki and Istanbul so that they would be able to prevent Germany's possible advance in the Black Sea, especially in the straits region.<sup>58</sup> The Soviet Union, however, continued to apply pressure on Turkiye to agree to a unilateral revision of the Montreux Convention, which would in effect have placed control of the straits in Soviet hands.<sup>59</sup>

Turkiye was accused of favoring Germany and the passage of her ships through the straits in the first years of the war. Britain protested the Turkish

---

55. *Id.* art. 23.

56. ROBERT ELSIE, HISTORICAL DICTIONARY OF ALBANIA 125–26 (2004).

57. Ayla Göl, *A Short Summary of Turkish Foreign Policy: 1923–1939*, 48 ANKARA ÜNİVERSİTESİ SBF DERGİSİ 57, 70 (1993).

58. Çaşın, *supra* note 22, at 73.

59. Yücel Güçlü, *The Uneasy Relationship: Türkiye's Foreign Policy as Regards the Soviet Union at the Outbreak of the Second World War*, 67 BELLETEN TÜRK TARİH KURUMU 949 (2003).

government's permission to German warships as "accompanying ships" through the straits. The Turkish government defended the passage, claiming that these vessels were small transport vessels, between twenty and forty tons, for commercial purposes. When Britain claimed that they were warships since they had cannons on board, the Turkish government claimed that the gun alone was not sufficient equipment for a warship.<sup>60</sup>

While the Soviet's approach to Türkiye concerning the straits became softer immediately after Germany's attack on Russia,<sup>61</sup> Türkiye started to align closer to the Allies. Two Romanian merchant ships, which were thought to be likely to go from Istanbul to the Black Sea and evacuate the Germans, were not allowed to pass in April 1944.<sup>62</sup> Two unarmed German boats were not allowed to pass in June. On the same date, Türkiye's Minister of Foreign Affairs, Numan Menemenciöđü, resigned because he had earlier facilitated the passage of two German ships loaded with concealed weapons. Menemenciöđü argued that if Türkiye made the straits a policy tool for the benefit of the cooperating States by closing them during a war that Türkiye was not yet a party to, even just for one time in violation of the convention, it would put Türkiye in a difficult position in international politics after the war.<sup>63</sup>

For Türkiye, the next danger for the straits was the Soviet Union. Although Stalin did not exactly express what he wanted at the Tehran, Cairo, and Moscow meetings held between the Allies during the war, he clearly expressed his discomfort with the Montreux Convention.<sup>64</sup> In a meeting with the Turkish ambassador in Moscow on June 7, 1945, contrary to what was said to the United Kingdom and the United States, the Soviets made clear their true intentions and demanded that the Kars and Ardahan provinces be given to Russia, as well as a revision of the Montreux Convention to give the Soviets bases in the straits. This Soviet imposition was seen by Türkiye and Britain as serious damage to Türkiye's control over the straits as well as to the Britain's strategic position in the region.<sup>65</sup>

---

60. NEZİHE SELCEN KORKMAZCAN, İKİNCİ DÜNYA SAVAŞI'NDA TÜRK DİPLOMASİSİ 265–66 (2018).

61. Süleyman Seydi & Steven Morewood, *Türkiye's Application of Montreux Convention in the Second World War*, 41 MIDDLE EASTERN STUDIES 79, 79 (2005).

62. A.L. Macfie, *The Turkish Straits in the Second World War, 1939–45*, 25 MIDDLE EASTERN STUDIES 238, 245 (1989).

63. *Id.*

64. *Id.*

65. *Id.* at 246.



Britain's objections started as of January 1944. It informed the Turkish government at the end of May that the German ships that were going to pass through the straits were equipped with war materials and equipment and demanded the ships be stopped by Türkiye. However, after the ships were scanned, no violation of the Montreux Convention was found, and the ships were allowed to pass.

Britain once again claimed in June that three ships should be stopped. The Turkish government was going to allow these ships to pass based on a special assurance from the German Ambassador Franz von Papen. However, in the period between obtaining the guarantee from Papen and granting the permit, the ships were prevented from entering the Black Sea when the officers searching the ships found weapons, radar equipment, and military uniforms.<sup>66</sup>

Though not clarified in the convention, Türkiye seemed to have considered a merchant ship as a warship simply because a merchant ship would turn into a warship if it was carrying weapons or other war materials. Considering that Türkiye did not declare herself to be threatened with imminent danger of war according to Article 21, the search of ships by Türkiye was therefore done to clarify if the searched ship was in fact a disguised warship carrying war materials.

Following the German warship issue, the Turkish government protested against Germany for violating the Montreux Convention by using the merchant ships as military ships. E.M.S.-type and *Mannheim*-class German ships were prohibited from passing through the straits, and a strict search requirement was imposed on German ships prior to passage.<sup>67</sup>

In the immediate aftermath of the war, the Soviet Union was not the only country to demand changes in the Montreux Convention. The United States also forwarded its note on the amendment of the Montreux Convention to the Turkish Foreign Ministry on November 2, 1945. The United States desired revision to ensure that the straits would always be open to merchant ships of all nations and to the warships of the States bordering the Black Sea, leaving open to the warships of non-Black Sea countries only for

---

66. Mustafa Aydın, *İkinci Dünya Savaşı ve Türkiye, 1939–1945*, in TÜRK DIŞ POLİTİKASI 399, 467 (Baskın Oran ed., 2014).

67. EDWARD WEISBAND, İKİNCİ DÜNYA SAVAŞI'NDA İNÖNÜ'NÜN DIŞ POLİTİKASI 62–63 (2000).

a limited tonnage to be determined during peacetime. The United States also wanted the exclusion of Japan as a contracting State.<sup>68</sup>

Ultimately, the demands of both the Soviet Union and the United States could not progress further, as the Soviet Union's preference was to address the changes through bilateral negotiations with Türkiye rather than an international conference.

It is clear that the straits played a significant role in determining the course of events in the Second World War. Their closure, especially in the early stages of the war, allowed the Germans to pursue their plans in Eastern Europe knowing that Britain and France would not be able to engage with Germany's enemies in the Black Sea. On the other hand, the straits acted as a barrier, deterring the Axis powers from an attack on Britain's vital interests in the Middle East, and especially in 1940–1941 from a possible German-Soviet coalition. Eventually, the straits were subjected to the complex diplomatic game played by the powers, especially in the Russo-German talks in November 1940, as well as towards the end of the war between Türkiye and the Allied powers.

It would not be wrong to observe that the warring parties during World War Two demanded more free passage from Türkiye through the straits, depending on the situation in the war. At first, when Germany and Italy were predominant in the war, it was these two States that made such requests. However, when the tide of the war turned in favor of the Allies in 1944, these States, which previously wanted a strict interpretation of the convention, changed their stance and began to advocate a more liberal interpretation.

## V. THE UKRAINE WAR AND THE MONTREUX CONVENTION

The war in Ukraine has given rise to some fundamental questions based on the Montreux Convention and the previous experience. The first issue is the status of Russian and Ukrainian ships as military or merchant vessels. The other significant issue is the possibility of a UN decision labeling Russia as the aggressor<sup>69</sup> and its effect on passage in the straits. Finally, the attitudes of Türkiye in governing the straits so far should also be reviewed, especially from the legal perspective.

---

68. KAMURAN GÜRÜN, SAVAŞAN DÜNYA VE TÜRKİYE 3 (2000); MARK L. HAAS, SOVIET GRAND STRATEGY IN THE INTERWAR YEARS 660 (2012).

69. See G.A. Res. ES-11/1, Aggression Against Ukraine (Mar. 2, 2022). The resolution received an overwhelming majority of 141 to 5.

*A. The Ukraine War and its Relation to the Straits*

There must be a “war situation” for the provisions of the Montreux Convention concerning wartime to start functioning or for Turkiye to use its relevant powers and responsibilities. The convention uses the concept of “time of war” to describe a war situation without defining what a time of war means.

According to the rules of international law, a formal declaration of war means that there is legally a situation of war. However, it is not imperative that there should be a formal declaration to assume the existence of a war. According to the 1949 Geneva Conventions, there is a war when there is a declared war or any other armed conflict between parties to the Conventions, and also when there is total or partial occupation of one State’s territory, even if there is no official declaration of war by the State or States using armed force.<sup>70</sup>

The Montreux Convention requires a war situation for the application of the relevant provisions. By using the term “time of war” the convention could be excluding situations that fall short of war depending on the intensity of the employed force. Reprisals and pacific blockades are examples of the use of force as “hostile measures short of war.”<sup>71</sup>

Russia has officially declared that a “special military operation” was launched against Ukraine on the morning of February 24, 2022. Although Russia did not refer to “war” and did not specify the scale of the special military operation, it was clear from the first day that what Russia initiated was a full-scale war resulting in the invasion of Ukrainian territory. Ukraine also declared that Russia launched a comprehensive military attack and that they were defending their country by resorting to military force.

---

70. Common Article 2 of the Geneva Conventions provides that the conventions

shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by them. . . . [and] to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field art. 2, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; for more discussion, *see* MALCOLM N. SHAW, INTERNATIONAL LAW 811, 850 (7th ed. 2014); IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 87 (1963).

71. SHAW, *supra* note 8, at 811.

The UN General Assembly held an emergency meeting to discuss the war started by Russia, following the inability of the UN Security Council to take any decision on the situation because of the Russian veto. The decision taken by the Assembly with an overwhelming majority condemned Russia as an aggressor State against Ukraine.<sup>72</sup>

Whatever the terms used by Russia, its declaration was an official declaration of a comprehensive military/armed operation against Ukraine and its territory coupled with an at least partial invasion of Ukrainian territory. All these concrete developments show there is a state of war between the two States. Therefore, there is a “time of war” as stipulated by the Montreux Convention.

### *B. Warships and Trade Ships*

Is it possible for the two Black Sea countries, Ukraine and Russia, to pass their ships, especially those of military nature, through the straits during the war? Does Turkiye legally have to allow these passages?

As stated above, the Montreux Convention provides in Article 19 that if Turkiye is not a combatant in time of war, warships shall enjoy full freedom of passage and navigation through the straits under the same conditions as in time of peace. However, with very few exceptions, warships of any warring State are forbidden to pass through the straits. Turkiye is, therefore, under an obligation not to allow the warships of Ukraine and Russia to transit the straits.

In fact, Turkiye declared in the early days of the conflict that it would not allow passage of the warships of the two warring countries based on Article 19 of the Montreux Convention. The official statement specified that Turkiye applied Article 19 since there was a war situation and Turkiye was not one of the belligerent States.

In a statement to the Turkish press on February 27, 2022, Turkish Foreign Minister Mevlüt Çavuşoğlu announced that the ongoing crisis between Russia and Ukraine was defined as “war” and that the powers granted to Turkiye by the Montreux Convention would be used accordingly. Reminding that Turkiye, which is not a belligerent State, has the authority and obligation

---

72. *General Assembly Holds Emergency Special Session on Ukraine*, UN NEWS (Feb. 28, 2022), <https://news.un.org/en/story/2022/02/1112912>; Margaret Besheer, *UN General Assembly Overwhelmingly Condemns Russia’s Invasion of Ukraine*, VOICE OF AMERICA NEWS (Mar. 2, 2022), <https://www.voanews.com/a/un-general-assembly-overwhelmingly-condemns-russia-s-invasion-of-ukraine-/6467348.html>.

not to let the ships of the warring countries through the strait, Çavuşoğlu said to reporters that if the warship was returning to its base in the Black Sea, the passage would not be blocked.<sup>73</sup>

However, Türkiye seemed to have gone further to include an almost complete ban on the passage of warships of all countries, riparian and non-riparian of the Black Sea without declaring that Türkiye is a belligerent State or a State threatened with imminent danger of war. As Çavuşoğlu stated, “All governments, riparian and non-riparian, were warned not to send warships across the straits.”<sup>74</sup> He declared in another statement, “We apply the provisions of Montreux. It is important for all riparian and non-riparian countries not to pass warships through the Straits. We did what Montreux said, and we will do it from now on. Until now, there has been no request for passage or passage through the straits.”<sup>75</sup>

These statements implied that countries that could send warships to support Ukraine or Russia would be deemed as warring countries. Based on the fact that many NATO countries and European States are applying sanctions against Russia and providing Ukraine with assistance and military weapons, these countries could be regarded as States somehow involved in the conflict. No such demand to pass the warships of NATO or European States has been noted so far that would press Türkiye for clarification.

An exception to the ban on warships of warring countries is that warships of Black Sea countries that are outside the Black Sea can transit the straits to return to their bases in the Black Sea. Vessels of war belonging to belligerent powers, whether they are Black Sea powers or not, that have become separated from their bases may transit the straits to return.

In such a case, Russian warships, which have extensive overseas military activities in the Mediterranean and other sea areas, would be able to return to their ports in the Black Sea. However, Russian warships that are homeported outside of the Black Sea should not be allowed to cross into the Black Sea. Türkiye’s attitude was clear as it declared that it would not allow

---

73. See *Montrö Boğazlar Sözleşmesi: Türkiye'nin hamlesi ne anlama geliyor, Rusya-Ukrayna krizinin seyri değişebilir mi?*, BBC NEWS TÜRKÇE (Mar. 1, 2022), <https://www.bbc.com/turkce/haberler-turkiye-60571805> (translated by the author).

74. Tayfun Ozberk, *Türkiye 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/>.

75. See *Montrö Boğazlar Sözleşmesi: Türkiye'nin hamlesi ne anlama geliyor, Rusya-Ukrayna krizinin seyri değişebilir mi?*, *supra* note 73.

one of the three Russian warships to transit on the basis that its homeport was not in the Black Sea.<sup>76</sup>

The existence of a war does not affect the usual operation of the Montreux Convention concerning commercial ships when Türkiye is not a belligerent or does not consider herself to be threatened with an imminent danger of war.<sup>77</sup> Commercial ships and civil aviation enjoy complete freedom of transit and navigation in the straits, by day and by night, whether they belong to one of the warring sides or not. No authority is given to Türkiye to search civil (“commercial” as the convention defines) ships if they just transit the straits without calling on any port on Türkiye’s coasts.

As experienced in the Second World War, however, Türkiye is under an obligation not to allow any ship of warring countries to transit if they are, in fact, military ships disguised under civil or commercial signs. Türkiye encountered such German ships after warnings from Britain that German ships trying to transit the straits carried war materials. The ships were searched but no violations of the Montreux Convention were found. The concept of war equipment should include war materials, such as weapons, but also military personnel when they are intended for the armament of the vessels themselves.<sup>78</sup>

The experience demonstrates that Türkiye has a right to stop commercial ships of warring sides to search for war materials to determine if the ship is a vessel of war, and thus prohibited to transit the Turkish Straits to the Black Sea.

The authority of Türkiye to stop and search commercial ships when Türkiye is not a belligerent or in imminent danger of war comes from the convention as a matter of interpretation. It is quite reasonable to consider merchant ships as warships if they carry war materials. This could even be regarded as an obligation if there are clear signs or proof that a merchant ship carries war materials such as weapons, munitions, or military personnel. It would not however be reasonable to consider indirectly related materials as war materials.

No similar incidents of commercial ships carrying war materials have been publicly reported since the start of the Russia-Ukraine War. However,

---

76. *Türkiye Rusya’nın Hangi Gemilerine İzin Vermedi?*, TR HABERLER (Mar. 3, 2022), <https://www.trhaberler.com/turkiye-rusyanin-hangi-gemilerine-musaade-etmedi-haber-622606>.

77. Montreux Convention, *supra* note 14, art. 4.

78. Süleyman Seydi & Steven Morewood, *Türkiye’s Application of Montreux Convention in the Second World War*, 41 MIDDLE EASTERN STUDIES 85 (2005).

Ukraine requested that Türkiye stop Russian ships on the basis that these ships were allegedly carrying stolen Ukrainian grain.<sup>79</sup> Such a Russian ship was searched only on one occasion because that ship, named *Zhibek Zoly*, called upon Türkiye's port of Karasu near Istanbul.<sup>80</sup> No such evidence was found.<sup>81</sup> Under the authority of the Montreux Convention it is clear that if a commercial ship of any country is due to transit the straits without stopping at a Turkish port, Türkiye has limited authority to stop and search for illegal materials. The only exception is, as a matter of interpretation of the convention, for all ships that are suspected of carrying war materials, as noted in the preceding paragraph.

Commercial ships carrying grain and/or other sorts of food from Ukraine or Russia and those going to these States are stopped and searched at the entrance to the straits to make sure that they are not carrying war materials or personnel. This authority does not come from the convention but from the treaty signed between Ukraine, Russia, and Türkiye on July 22, 2022, in Istanbul (the so-called Food Corridor Treaty).<sup>82</sup>

### C. Possible UN Sanctions and the Montreux Convention

There are, as discussed above,<sup>83</sup> two more exceptions to Article 19's ban on the passage of warships of warring countries. The first of these is for obligations that may arise from UN decisions.

Chapter VII of the UN Charter empowers the Security Council to make decisions binding on all member States to prevent aggression or to restore peace if there is a "threat to peace, breach of the peace, or act of aggression."<sup>84</sup> Decisions may contain various measures of "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic

---

79. *Ukrayna Büyükelçisi Bodnar: Türkiye tahıl yüklü Rus gemisini alıkoydu*, BBC NEWS TÜRKÇE (July 1, 2022), <https://www.bbc.com/turkce/haberler-dunya-62011057>.

80. *Ukrayna tahıl taşımakla suçlanan Rus gemisi Karasu'dan ayrıldı*, BBC NEWS TÜRKÇE (July 5, 2022), <https://www.bbc.com/turkce/haberler-dunya-62053585>.

81. Amberin Zaman, *Türkiye Says No Evidence Ukrainian Grains Stolen by Russia Reached Its Shores*, AL-MONITOR (June 23, 2022), <https://www.al-monitor.com/originals/2022/06/turkey-says-no-evidence-ukrainian-grains-stolen-russia-reached-its-shores>.

82. *Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports*, Turk.-Russ.-Ukr., July 22, 2022, [https://www.un.org/sites/un2.un.org/files/black\\_sea\\_grain\\_initiative\\_full\\_text.pdf](https://www.un.org/sites/un2.un.org/files/black_sea_grain_initiative_full_text.pdf).

83. *See supra* sec. III(A).

84. U.N. Charter art. 39.

relations.”<sup>85</sup> If these measures “would be inadequate,” the Security Council “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”<sup>86</sup> These “may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.”<sup>87</sup>

Paragraph 5 of Article 2 of the Charter provides that “All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.” Paragraph 7 moreover provides that although the UN has no authority to intervene in “matters which are essentially within the domestic jurisdiction of any state,” this restriction does not cover the “application of enforcement measures under Chapter VII.” Article 103 of the UN Charter further provides that if there is a conflict “between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” It is therefore quite clear that any enforcement measures to be taken by the Security Council should be applied notwithstanding the Montreux Convention.

The Montreux Convention itself implicitly recognizes the primacy of a UN Security Council decision. Article 25 provides that “Nothing in the present Convention shall prejudice the rights and obligations of Türkiye, or of any of the other High Contracting Members of the League of Nations, arising out of the Covenant of the League of Nations.” Reference to the Covenant of the League of Nations should be taken as now applicable to the Charter of the United Nations.

Therefore, if the UN Security Council was able to take a binding decision requiring aid to Ukraine or containing sanctions or even military measures against Russia, Türkiye would be in a position to be legally obliged to apply the requirements of such a decision, even to the passage of warships through the straits.

A controversial situation is whether Türkiye would have to fulfill the requirements of any decision taken by the UN General Assembly, whose resolutions are, in fact, advisory, unlike those of the Security Council. The UN General Assembly held an emergency session between February 28 and

---

85. *Id.* art. 41.

86. *Id.* art. 42.

87. *Id.*



March 2, 2022, and adopted a resolution that demands that Russia “immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State.”<sup>88</sup> The decision moreover expressed that the General Assembly deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter. However, the resolution does not contain measures of any kind against Russia.

If it were the case, would Turkiye have a choice to apply the Montreux Convention in accordance with such a probable UN General Assembly decision? It would not be compulsory for Turkiye to act in accordance with the General Assembly resolution simply because it is not legally binding. Turkiye would not legally be obliged to allow warships that would help Ukraine to pass through the straits based on any possible General Assembly resolution.

It is also correct to say that it would be equally legal if Turkiye allowed these same warships to transit the straits because of the UN General Assembly decision. The imperatives of enforcing peace against any aggressor should be regarded to have a priority. This is the case, at least in terms of the political and humanitarian interests of the international community, if not strictly in terms of law.

The second exception to Article 19’s ban on the passage of warships of warring countries is “cases of assistance rendered to a State victim of aggression in virtue of a treaty of mutual assistance binding Turkiye, concluded within the framework of the Covenant of the League of Nations” (today’s UN Charter). Accordingly, passing warships would be exempt from this prohibition and they would be able to pass freely through the straits. In these exceptional cases, the restrictions laid down for wartime in which Turkiye is not a belligerent will not be applicable.<sup>89</sup>

There is no such agreement between Turkiye and Ukraine. That exception is therefore not applicable to the current situation of the Russia-Ukraine war.

#### *D. Evaluation of Turkiye’s Stance*

Turkiye’s official stance is that the Montreux Convention is an essential element of Black Sea security and stability and that the convention has been

---

88. G.A. Res. ES-11/1 (Mar. 2, 2022).

89. Montreux Convention, *supra* note 14, art. 19, ¶¶ 2, 3.

“properly and impartially” implemented by Türkiye for more than seven decades.<sup>90</sup> Periods of war, such as the Second World War, test this stance. The Russia-Ukraine War has constituted a similar test for Türkiye’s overall stance concerning the application of the Montreux Convention.

The attitude of Türkiye concerning the straits in this sensitive situation has legal relevance. Türkiye stated at the beginning of the conflict that it was examining whether the conflict had gained the character of war before it declared the situation as a war. Based on the criteria mentioned above regarding the legal determination of a state of war, Türkiye’s approach seems legally appropriate. Moreover, no contrary statement or objection has been recorded from other relevant countries, including Russia and Ukraine.

Following the determination of a state of war, Türkiye declared that it applied the relevant article of the Montreux Convention, Article 19. Accordingly, Türkiye has not closed the straits to warships of non-belligerent countries but declared that the passage of warships of Ukraine and Russia was prohibited in accordance with Article 19. This approach has been fully justified as Article 19 is the relevant provision for such cases. The only confusing statement was Türkiye’s call on all States to not send warships through the straits. This statement should, however, be deemed to be a cordial request in order to protect the region from any tension leading to a conflict.

Türkiye’s attitude regarding the exceptions to the prohibition on warships of warring countries is similarly in line with the relevant provisions of the convention. Türkiye has declared that warships homeported in Black Sea ports would be allowed to return to their own ports, but warships that were not based in Black Sea ports would not be allowed to pass. It was declared on one occasion that one of three Russian warships was not allowed to pass on the ground that it was not based at a Black Sea port.<sup>91</sup> Russia did not object to this.

If the UN General Assembly, which does not have binding decision-making authority, took sanctions against Russia it would be a matter of discussion whether Türkiye would have to fulfill the requirements of the decision. Since there is no development in this direction in the UN General Assembly, Türkiye has not taken a stand on the issue.

Türkiye contributes to the restoration of peace in the current war conditions not only by taking no part in the conflict but also by properly fulfilling

---

90. *Implementation of the Montreux Convention, supra* note 50.

91. *Türkiye Rusya’nın Hangi Gemilerine İzin Vermedi?*, TR HABERLER (Mar. 3, 2022), <https://www.trhaberler.com/turkiye-rusyanin-hangi-gemilerine-musaade-etmedi-haber-622606>.

the provisions of the Montreux Convention, which has an overall aim to contribute to the protection of peace in the region by reducing risks of conflict around the straits.

## VI. CONCLUSIONS

Freedom of navigation does not mean that the right to free passage is an unregulated one. The right to free navigation itself necessitates regulations to enable ships to properly enjoy free navigation.

The convention establishes a complex system of passage through the straits in order to preserve both free passages for all ships and security for the surrounding countries, Turkiye being at the forefront. The system is designed with variables depending on three different situations: peacetime, a danger of an imminent war, and wartime.

Warships have been the most significant security concern for both the area adjacent to the straits and the region as a whole. These ships cause sensitive and flammable incidents and pose a greater danger if their passages are not properly managed in war situations. The Montreux Convention strictly regulates passages during wartime by banning the warships of belligerent States in order to prevent the war spreading to the straits and endangering the security of Turkiye and passing traffic.

There is, however, always room for interpreting the related provisions of the convention one way or another in sensitive times. The concept of warships has come under close scrutiny in such periods when it comes to commercial ships involved in military activities. Despite a clear ban on warships of belligerent countries, it is not clearly defined in the convention what should happen to commercial ships carrying military materials and/or military personnel. The widely approved interpretation supported by past experience is that commercial ships involving in such concrete military activities would be deemed as warships and be prohibited.

The exceptions that are made by the convention to the ban on the warships of warring States could be another source of disagreement. It could be difficult to name which countries are “warring” countries when there are countries helping the belligerent countries with sanctions and/or military materials without officially declaring war on the other side or sides. It seems that it would be a matter of appreciation for related countries, including Turkiye, to name such countries as belligerent and treat them as such.

The past experience also shows that there could be pressure from major countries for an implementation of the convention more akin to their own

interests. Such demands always put Turkiye under a certain degree of pressure, complicating the application of the convention even further.

The ongoing armed conflict between Russia and Ukraine poses the same difficulties in the application of the convention. Russia forced Turkiye to act by attempting to transit military ships, some of which were not based in the Black Sea. Ukraine demanded Turkiye not allow passage of the Russian commercial ships allegedly carrying stolen Ukrainian grains.

There is not yet an official demand from the Ukrainian or Russian side to Turkiye to stop commercial ships allegedly carrying military materials or personnel. If such demand happens, it would be a matter of Turkiye to appreciate in the light of the evidence submitted. As Turkiye has not declared herself in imminent danger of war, no routine stopping and control of commercial ships can happen. The only control is now carried out based on the Grain Deal Agreement signed by Ukraine, Russia, and Turkiye in July 2022. This is in fact unrelated to the framework of the Montreux Convention.

The most pressing scenario would be a UN Security Council decision providing various sanctions against Russia, which would eventually create major restrictions, even for Russian commercial ships. Alternatively, any probable UN General Assembly resolution containing sanctions against Russia would create another source of difficulties in the application of the convention. In such a scenario, Turkiye would be in a very delicate situation as to how far it would restrict the use of the straits by Russian commercial ships.