



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

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ABSTRACT:

Russia's intervention in Ukraine on February 24, 2022, once again brought into view the current variety of risks to Black Sea security. Lengthy diplomatic and political negotiations and statements made by NATO and primarily US authorities before Russia launched its military operation in Ukraine were not enough to deter Russia's military action. It is considered that NATO's reactions to deter Russia from operations in Ukraine have been insufficient due to NATO's weakness in naval power projection capability to the Black Sea due to the Montreux Convention's restrictions. Montreux Convention is recognized as the main international agreement that provides barriers to an efficient naval deployment from external sources to the Black Sea. This article examines the effects of the Montreux Convention on regional security within the framework of the historical background and the situations that threatened regional security in the past and reveals the importance of this convention for Black Sea security in the future.

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Introduction

The Black Sea is a semi-enclosed sea that is geographically connected to the open seas through the Turkish Straits. For the purposes of international law, according to article 122 of the United Nations Convention on the Law of the Sea (UNCLOS), “semi-enclosed sea” means a sea surrounded by two or more states and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal states. The Black Sea is enclosed by Turkey, Georgia, Russian Federation, Ukraine, Romania, and Bulgaria and is connected to the Mediterranean Sea through the Turkish Straits (Çanakkale Strait, Marmara Sea, and Istanbul Strait).

Turkish Straits provides the only way access to and exit from the Black Sea which is quite important for all littoral states and nearby neighbors (Tulun, 2020, p.1). The Straits connect the Black Sea to the Mediterranean. In addition, the Straits have sui generis characteristics because it forms the boundary between the continents, and it is also the only waterway that connects the Black Sea through the Mediterranean to the Suez Canal and the Straits of Gibraltar. Therefore, it provides not only an essential trading route for maritime shipping to and from Black Sea ports but also very valuable geographical advantage for the security of all Black Sea littoral states. For that reason, the Turkish Straits has always been deemed security concerns of regional states since it caused a lot of political, economic, and social attention, not just by Black Sea littoral countries, but also other actors who are not well-connected to the region (Keleş, 2021). Thus, maritime powers have competed for influence over the Turkish Straits and the Black Sea for more than three centuries, and the Straits are becoming more important due to the increased developments in the region (Gökçiçek, 2008, p. 4).

The Montreux Straits Convention regulates the passage and navigation through the Turkish Straits in a way that protects Turkey’s security and the Black Sea littoral states’ security in the Black Sea. It was signed on July 20, 1936, in Montreux, Switzerland, between the Union of Soviet Socialist Republics (USSR), which was dissolved in 1991, and Yugoslavia, Romania, Bulgaria, Turkey, Greece, France, England, and Japan, and entered into force on November 9, 1936. This convention is the main agreement in having regional security in the Black Sea.

The Black Sea is assumed as a sea of peace since it is in the interest of all regional states. The six Black Sea littoral states should use the rights granted to them by international law within the framework of friendly and good neighborly relations. States bordering a semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under UNCLOS article 123. To this end, they shall endeavor, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration, and exploitation of the living resources of the sea

- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment
- (c) to coordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area
- (d) to invite, as appropriate, other interested states or international organizations to cooperate with them based on different needs.

Although this region is ideally desired to be an area of peace, friendship, and cooperation due to the demands of the current international legal order and global relations, it has been witnessed from time to time that it could be an area of instability due to the different disagreements and conflicts among coastal states such as the worst was the last Russian-Ukrainian War. Recently, the conflict between Russia and Ukraine has focused attention again on the strategic importance of the Turkish Straits and Montreux Convention (Karadeniz, 2007, p. 96).

The Montreux Convention provides a guarantee against destabilization of the region by non-Black Sea powers. However, its effects on the regional security issues which may be caused by Black Sea littoral states are controversial. There may be a need to look for an effective mechanism to overcome instability issues in the region, possibly caused by littoral states in the region. Since the global order needs democratic and steady relations between states, security and stability in the Black Sea are important not only for the littoral states but also for some other powers such as European Union member states and NATO. (Karadeniz, 2007, p. 99). At this point, and also in light of the current security concerns after the Russian invasion of Ukraine, the Black Sea can be seen as an area of increasing strategic competition and rivalry between Russia and the West (Larrabee, 2009, p. 302).

By taking into account the issues mentioned above, this study will examine the effects and importance of the Montreux Convention for Black Sea security. The article will begin by examining the current security concerns in the Black Sea and the historical background of the Black Sea security with reference to the Montreux Convention and will follow by analyzing the Convention restrictions. In this direction, the study attempts to answer the question: "What is the importance of the Montreux Convention for the Black Sea security, especially under the destabilizing conditions created by the last Russian and Ukrainian Crisis in 2022?"

Methodology

The aim of the study is to determine the effects of the 1936 Montreux Convention on the current Black Sea Security architecture based on political developments. The objectives are to define the Black Sea security concept, analyze the current threats to the security environment in different instability cases, and evaluate the effects of the Montreux Conventions on regional security.

The problem of the study is to put forward the Montreux Convention's effectiveness on the current security threats to the Black Sea Security. Therefore, at the beginning of the study, the concept of Black Sea security based on historical instability backgrounds will be defined, then prevailing security concerns and threats that may be caused by any Black Sea littoral states or any other non-Black Sea power will be discussed, and finally, the effects of the Montreux Convention's regulations and restrictions on those security concerns are evaluated. The current conflict between Russia and Ukraine, which are important in terms of understanding today's Black Sea security architecture, is also considered. The article concludes with an assessment of the potential outcomes.

This study is based on a qualitative methodology. The data is derived from primary and secondary resources from a literature review. The study relies on data obtained through primary resources such as the Montreux Convention itself, declarations of states and institutions, and political developments in the Black Sea security environment.

Discussion

Theoretical Approach to the Black Sea Security

Security means protection of a person, building, organization, or country against threats such as crime or attacks by foreign countries in the Cambridge Dictionary. However, this study considers the security of states but not the personal or institutional security. From the perspective of this study, security is defined as the protection of a country or countries against threats of attacks by foreign countries.

In other words, security is to keep the current situation to resist a possible negative change. Speaking about multilateral environmental security, it is important to define the current situation fairly and correctly. Therefore, security should be obtained for all but not for others. When security is a common benefit, all the partners should fairly enjoy the advantages of the secure situation. Ideally, each one of the partners should get the benefit of the situation equally.

The Montreux Convention was held in the post-First world war security environment in 1936. In that period, security caused the evaluation of threats in the national framework and covered the protection of both the state and individuals' security against external threats. In this context, idealism has expanded its sphere of influence, and the need to ensure the security of nation-states has brought the understanding of realism to the fore.

Since security is handled in a narrow way and the necessary elements to ensure its security are limited only to the state and the ideology in which the state is located, security has been narrowly approached only from the state aspect.

Realism and Neo-realism concepts and approaches have begun to fall short in the new world order that emerged after the Cold War, and post-modern security approaches have been shaped.

With the effects of globalization, nation-state structures have lost their former power. Policies surrounded by nation states and international security have turned into risk policies that are post-international and separated from nation-state understanding. With the incalculability of the dangers to civilization, globalization destroys the distinctions and fundamental theories of early modernity. Today, unrestricted risks and uncertainties such as transnational terrorism, climate disasters, the struggle for water resources, migration movements, pandemics, genetically modified food, and computer viruses infiltrating communications become more difficult to identify. The removal of borders in communication and the spread of risks cause more awareness in international relations and more conflicts over borders.

Liberalism continues its effectiveness to a certain extent under the name of neo-liberalism or democratic liberalism to overcome today's security risks. The democratic peace view, based on the assumption that democracies are less prone to conflict than other regime types and put forward by democratic idealism apart from the ideological competition, is dominant in liberal states. This view is the most common security understanding, which is also valid for the global world order under the influence of liberalism.

Even if post-modern approaches focus on human security and emerging risks rather than state-oriented security, in this study, when the Black Sea security is concerned, only state-oriented security issues are considered because the Montreux Convention was formulated only to achieve the security of Turkey and the Black Sea littoral states and additionally the democratic liberalism of today uses even the same assumptions as of that Montreux' time.

Another handicap in defining the Black Sea Security is caused by the nature of the possible sides of the potential conflicts. Threats to security may originate from Black Sea littoral states or non-littoral states. For instance, in the last Russia-Ukraine conflict, Russia was the creator of the regional instability. In essence, Montreux Convention does not have any mechanism to be applied to the littoral states to enforce the Black Sea security. Therefore, in the study, only the effects of non-littoral states on the security concerns in the Black Sea are considered.

The Historical Background of the Security in the Black Sea under the Regulations of the Montreux Convention

Thanks to the Montreux Convention's regulations, crisis periods in the Black Sea have been successfully managed, including during World War II (WW II), during and after the Cold War, and especially in the 2008 Georgian War and Russia's annexation of Crimea in 2014.

During WWII, Turkey closed the straits to warships belonging to warring states. This decision blocked the Axis powers from sending their warships to attack the Soviet Union and prevented the Soviet navy from participating in battles in the Mediterranean (Özerdem, 2022).

During the Cold War period, no Turkish government allowed a NATO exercise in the Black Sea. Turkey aimed to abstain from actions that could unbalance the Black Sea or provoke its neighbors.

Since the beginning of the post-Cold War era, enforcement of the convention has caused some problems between the USA/NATO and regional states. Although USA/NATO declared their commitments to the Convention, there were instances in which Turkey had to reject proposals that acted against the regulations of the Montreux Convention (Oral and Oğuz, 2021, pp. 9-10).

In 2006, the USA aimed to expand NATO's maritime security operation in the Mediterranean and the Black Sea (Larrabee, 2009, p. 305). The operation's aim was to support establishing a recognized maritime structure in the Black Sea along the sea lines of communication and to shadow-trail suspect ships. However, Russia and Turkey strictly took a stand against the US proposal despite being approved by both Bulgaria and Romania. Turkey refused this proposal because the deployment of non-regional ships in the Black Sea would mean a violation of the Montreux Convention (Oral and Oğuz, 2021, p. 8). In other words, the presence of non-littoral NATO and the USA could threaten the maritime status quo in the Black Sea (Sanders, 2014, p. 8).

The 2008 war in Georgia already showed what this limitation could imply in practice (Penzvalto, 2019, p. 91). During the 2008 Georgian War, the USA wanted to deploy two military hospital ships (USNS Comfort and USNS Mercy), both over 60,000 tons, which exceeded the tonnage limit of the Montreux in the Black Sea for transportation of support by sea to Georgia, but after Turkish governments' decisive action, other civilian ships within the proper size were deployed for the same aim (Oral and Oğuz, 2021, pp. 9-10).

In the 2008 War, Turkey did not also permit an American warship to cross the Dardanelles Strait and enter the Black Sea. This decision of Turkey entrapped Georgia, which was at war with Russia (Aridemir, 2016, p. 250.). It is crucial that Turkey's restrictions on USA warships within the framework of the Montreux prevented any change in the balances related to the Black Sea and the Straits, to which Russia was highly sensitive. Turkey's decision and attentiveness to the Montreux Convention in the 2008 Georgian War considerably pleased Moscow (Özbay, 2014).

As mentioned above, the Montreux generally limits the transit of capital ships greater than 15000 tons, but some disputes can be shown up. The 2008 Georgian War is also given as an example of one part of some disputes. The USS Mount Whitney transited the Straits and entered the Black Sea despite questions about its tonnage and whether it fell under a Montreux exception. While Russia defined the USS Mount Whitney's transit as a violation of Montreux, Turkey has permitted the USS Mount Whitney to transit the Turkish Straits since they assessed that ship should be cleared at that time. Additionally, USA destroyers routinely passed the Straits from time to time for training purposes in the Black Sea. In addition, the USS Porter, which is a guided missile destroyer, operated exercises in November 2021 with the Bulgarian, Romanian, Turkish, and Ukrainian navies (Nevitt, 2022).

Another case was related to the USS Taylor warship, which exceeded the time limit for foreign warships' presence in the Black Sea per the Montreux Convention during the Sochi Winter Olympics in 2014 (Oral and Oğuz, 2021, p. 10). Russia insisted that the US warship exceeded its duration of stay in the Black Sea and thereby violated the Montreux clauses twice (Özbay, 2014). On April 10, 2014, Russia indicated that USS Taylor stayed in the Black Sea for more than 21 days. Russia claimed that USS Taylor entered the Black Sea on February 5, 2014, and extended her stay until March 9, 2014, while Russian authorities were not informed about this delay. Thus, the US warship had stayed in the Black Sea 11 days more than allowed by the Montreux Convention. USA explained their excuses as USS Taylor entered the Black Sea to ensure the security of the Sochi Olympics, but then its propeller broke when it came into the Samsun Harbor for refueling. On April 12, 2014, the Turkish Ministry of Foreign Affairs made a declaration as an answer to Russia's claims, stating that the Russian authorities and other parties of the Montreux Convention were definitely informed about the warship's delay and that violation of the Convention was out of the question. Thereby, Turkey determinately refused the claims about violation of the Montreux Convention (Özbay, 2014; Oral and Oğuz, 2021, p. 10).

Russia's offensive on Ukraine, NATO's Reactions to the Russian invasion of Ukraine and the effects of those developments on the regional security environment

Ever since Ukraine has gained its modern national identity, its sovereignty has been threatened by Russia. Russia aimed to establish its influence over Ukraine's domestic and foreign policy, and hence Russia had a negative stance on Ukraine's closer relations with European Union and NATO (Ganguly et al., 2022, p.2). In 2014, Russia annexed Crimea and facilitated separatist activities in Ukraine's east. Although both countries completed negotiations, their fight continued.

In October 2021, tensions among them escalated again, and Russia placed troops and military equipment near its border with Ukraine without explanation (US Department HHS, 2022). On February 21, 2022, Russian President Putin formally recognized the separatist republics Donetsk and Luhansk in east Ukraine as independent states. On February 22, 2022, the USA, Europe, the UK, Canada, Japan, and Australia implemented the first sanctions to mitigate conflict escalation. Implemented sanctions were slight (Subran, et al., 2022). Between February 22 and 25, USA and NATO Allies expanded sanctions on Russia (CRS Report, 2022). In addition to these sanctions, Germany, Finland, and Sweden decided to send arms to Ukraine (Tuygan, 2022). On February 24, 2022, Russia invaded Ukraine beyond the Donbas region (Subran, et al., 2022). In response to this invasion, Ukraine declared a 30-day state of emergency as cyberattacks knocked out government institutions, and Ukrainian President Zelenskyy declared martial law. This attack was called a full-scale invasion by the foreign minister (US Department HHS, 2022). On February 26, the leaders of the European Commission, France, Germany, Italy, the United Kingdom, Canada,

and the USA decided to remove some Russian banks from the Society of Worldwide Interbank Financial Telecommunication (SWIFT). This decision can be taken to limit Russia's accessing a portion of its international reserves (CRS Report, 2022).

On February 24, 2022, a Statement by the North Atlantic Council on Russia's attack on Ukraine defined Russia's attack in Ukraine as a grave violation of international law, including the UN Charter, and underlined that it contradicted Russia's commitments in the Helsinki Final Act, the Charter of Paris, the Budapest Memorandum and the NATO-Russia Founding Act. Allies expressed that NATO will continue to take all necessary measures to secure and defense the Allies (NATO, 2022).

On February 25, 2022, a Statement by NATO Heads of State and Government on Russia's attack on Ukraine called on Russia to immediately cease its military assault and withdraw all its forces from Ukraine. The statement also expressed that massive and unprecedented sanctions have already been imposed on Russia and that NATO will continue to coordinate closely with relevant stakeholders and other international organizations, including the EU (NATO, 2022).

On March 24, 2022, the Heads of State and Government of the 30 NATO Allies met to address Russia's aggression against Ukraine, the gravest threat to Euro-Atlantic security in decades. Russia's war against Ukraine was defined as a threat to European peace and enormous human suffering and destruction. They called on President Putin to immediately stop this war and withdraw military forces from Ukraine. They underlined that Russia should comply with the March 16 ruling by the UN International Court of Justice and immediately suspend military operations. NATO Allies also reaffirmed their unwavering support for the independence, sovereignty, and territorial integrity of Ukraine within its internationally recognized borders extending to its territorial waters (NATO, 2022).

The world faced the most outstanding military conflict since World War II (Scobell and Yang, 2022) and the first large-scale international aggression in Europe. Russia's military attack from land, sea, and air can be defined as the biggest attack by one state against another in Europe since World War II (Waghmare, 2022). With reference to the basic charter of the United Nations, this attack is also a violation of a fundamental principle in international law from the point of respect for an independent state's sovereignty (Storey and Choong, 2022). Thereby, this attack is proof of the violation of the United Nations Charter Article 2 (4), which refers to the use of force against the territorial integrity or political independence of a state. Ukraine, which is not a NATO member, defends itself in accordance with UN Charter Article 51, which is related to establishing an inherent right to individual or collective self-defense in case of an armed attack against a UN member (European Parliament, 2022).

Russia's influence and policy over the Black Sea region directly affect Black Sea security perceptions. Russia and Ukraine conflict is likely the most critical threat to the security balance between the Black Sea littoral states (Yazıcı and Cungurlu, 2022, p. 1). The reason would be that Putin would risk war to end NATO expansion by separating Ukraine from the West (Wasielewski and Jones,

2022, p. 2). But the crisis is influencing Eastern Europe and, more broadly, the Black Sea. At this point, in addition to Ukraine, all Black Sea countries and especially Turkey will be the most-affected countries because of the insecure environment in the Black Sea created by Russia (Yurtsever, 2022). After the beginning of the Russian invasion of Ukraine in late February, Turkey declared that it would implement the Montreux Convention on the regime of the Turkish Straits (Bianet, 2022).

Montreux Convention' Regulations and Restrictions in Dealing with Black Sea Security

The Montreux Convention regarding the regime of the straits gave Turkey authority over the Turkish Straits in managing the transit of naval ships. It guarantees the free passage of civilian vessels in peacetime while limiting the passage of non-riparian Black Sea states' naval ships according to their type, tonnage, duration, and number while requiring notification in advance from riparian or non-riparian states for the passage. This Convention is not only about the sovereignty of the Turkish Straits but also the security regime in the Black Sea (Oral and Oğuz, 2021, p.9).

The Montreux Convention regulates the passage of warships through the Turkish Straits from countries with no coastline on the Black Sea. It also manages the duration and total tonnage of warships permitted to deploy in the Black Sea. To remove security concerns of littoral countries, the duration of deployment in the Black Sea is limited to 21 days, and the individual and combined tonnage of foreign warships is also limited by Montreux's regulations (Yurtsever, 2022).

The U.N. Convention on the Law of the Sea (UNCLOS), the "Constitution of the Oceans," manages transit passage through international straits around the world. Article 35 clarifies that UNCLOS does not apply to "long-standing international conventions in force." After all, Montreux Convention's restrictive provisions, and not UNCLOS, manage the Turkish Straits, which enjoy a truly unique legal status in international transit governance (Nevitt, 2022).

After the Cold War, the international system welcomed the two main powers that sought active involvement in the Black Sea. One of them is the European Union which is now a coastal state to the Black Sea with the enlargement, and the other is NATO and its influential member, the USA, which aims to gain a permanent power in the Black Sea from the point of its foreign policies. For the USA, the Black Sea is a limited open sea because it cannot move freely. This regional limitation for the USA is a result of the Montreux Convention. The Convention limited the tonnage of warships of non-littoral states in the Black Sea to a total of 45 000. Although the Black Sea is international water and its security is preserved by the Montreux, the USA still searches permanent presence (Özbay, 2014). Turkey does not want an expansion of NATO's military presence in the Black Sea due to its strong historical ties and common strategic interests with Russia (Larrabee, 2009, p. 305).

After the Russian invasion of Ukraine has accelerated, the Montreux Convention has gained more importance as a potential regulator of warship traffic into the conflict area (Nevitt, 2022). On February 24, the first day of the invasion, Ukraine asked Turkey to use its power under the Montreux to close the straits to Russian warships. Turkey's first response to this request of Ukraine was impartial and indicated that Russian warships would still transit. On February 27, Turkish Foreign Minister Mevlüt avuŖođlu qualified Putin's invasion as a war. This is a significant decision allowing to invoke Article 19. It foresaw that Article 19 invocation was imminent, and the straits would be closed to Russian warships (Overfield, 2022). In late February, Turkey thereby defined the Russian invasion of Ukraine as a state of war and invoked Article 19 of the 1936 Convention Regarding the Regime of the Straits, which bars belligerent countries' naval access to and from the Black Sea through the Turkish Straits. Turkey's invocation of Article 19 for the first time since World War II may have a limited near-term military impact. Russia reportedly has naval predominance over Ukraine with its Black Sea fleet and other ships that transited the Straits before the invasion (CRS, 2022).

Conclusions

Turkey's decision to invoke Article 19 and Article 18 of the Montreux Convention put NATO at a disadvantage in the Black Sea. Article 19 of the 1936 Montreux Convention provides that when Turkey itself is not in a war, warships enjoy the rights of passage as provided for in articles 10-18. Article 18 of the Montreux Convention places transit limits on the aggregate tonnage of non-Black Sea country warships and the duration of their stays. However, the passage is denied under article 19. This restriction also prevents NATO's most powerful military asset, American aircraft carriers, from entering. In other words, this decision could negatively affect NATO's ability to protect shipping in the Black Sea, NATO's ability to protect Romania and Bulgaria from Russian aggression, and the balance of forces in a prolonged Russia-Ukraine war. Thereby, NATO's naval power projection capability to the Black Sea and to deter Russia from operations in Ukraine has been limited and insufficient due to Montreux Convention.

Turkey aims to avoid a dangerous naval confrontation between Russia and Turkey as a key NATO member in the Black Sea. Turkey's control over Black Sea access directly affects the balance of power in a longer Russia-Ukraine war. At this point, Montreux's regulations are important to stabilize conditions created by Russia-Ukraine Crisis in 2022. After the escalation of the crisis, we see that Montreux, as a guardian of warship traffic, secures not only the Turkish Straits but also the Black Sea.

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