

REPUBLIC OF TÜRKİYE
ANKARA UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF MARITIME TRANSPORTATION LAW AND POLITICS

**TÜRKİYE'S LEGAL PERSPECTIVE ON THE UKRAINE-RUSSIA WAR IN THE
CONTEXT OF THE MONTRÉUX CONVENTION**

LLM Program with Thesis (conducted in English) in the Sea & Maritime Law

Yağmur Ayşe SELÇUK

Ankara, 2025

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THESIS JURY MEMBERS

Name and Surname

- 1- Prof. Dr. İsmail DEMİR**
- 2- Asst. Prof. Dr. Beyza ÖZTURANLI ŞANDA**
- 3- Asst. Prof. Dr. Kübra VAR TÜRK**

Thesis Defense Date

01/07/2025

REPUBLIC OF TÜRKİYE
ANKARA UNIVERSITY
DIRECTORATE OF GRADUATE SCHOOL OF SOCIAL SCIENCES

I state that all the information in my master's thesis titled "TÜRKİYE'S LEGAL PERSPECTIVE ON THE UKRAINE-RUSSIA WAR IN THE CONTEXT OF THE MONTRÉUX CONVENTION" (2025, Ankara), which I prepared under the supervision of Asst. Prof. Dr. Kübra VAR TÜRK, was collected and presented in accordance with academic rules and ethical behavior principles, I fully indicated the information I received from other sources in the text and the bibliography, I declare that I have acted in accordance with the ethical rules and I will accept any legal consequences in case the contrary arises.

Date: 30/07/2025

Yağmur Ayşe

SELÇUK

TABLE OF CONTENTS

TABLE OF CONTENTS	i
ABBREVIATIONS.....	iv
LIST OF FIGURES	vi
PREFACE.....	vii
INTRODUCTION	1
A) SUBJECT MATTER, AIM AND QUESTIONS	1
B) SCOPE AND STRUCTURE	3
C) APPROACH AND METHODOLOGY	5
I. HISTORICAL BACKGROUND TO THE UKRAINE – RUSSIA WAR	6
II. STRAITS AND THE MONTREUX CONVENTION: HISTORICAL CONTEXT, LEGAL REGIME AND ITS ROLE.....	12
A) STRAITS UNDER THE INTERNATIONAL LAW	12
1- Overview	12
2- National Straits	13
3- International Straits	14
B) HISTORICAL AND GEOPOLITICAL CONTEXT OF THE MONTRÉUX CONVENTION.....	18
1- Overview	18
2- Historical Development and Geopolitical Context	21
3- Comparison to Lausanne Convention.....	28
4- Comparison to UNCLOS	30
C) LEGAL REGIME OF THE TURKISH STRAITS.....	34

1- Overview	35
2- Definitions.....	35
a) <i>Merchant Ships</i>	<i>35</i>
b) <i>Warships</i>	<i>36</i>
3- Passage Regime Through the Turkish Straits.....	43
a) <i>Overview</i>	<i>43</i>
b) <i>Passage Regime of Merchant Vessels.....</i>	<i>43</i>
c) <i>Passage Regime of Warships.....</i>	<i>46</i>
d) <i>Passage Regime of Aircrafts.....</i>	<i>53</i>
e) <i>The Controversy Regarding Whether Ships Supplying Resources to Belligerent States Should Be Considered Warships</i>	<i>53</i>
D) THE ROLE OF THE CONVENTION IN REGULATING MARITIME TRAFFIC IN THE TURKISH STRAITS AND THE BLACK SEA.....	58
1- Safety Measures and Navigation Rules.....	59
2- Monitoring and Enforcement Mechanisms.....	62
III. TÜRKİYE’S LEGAL PERSPECTIVE ON THE UKRAINE-RUSSIA CONFLICT	65
A) <i>IMPLICATIONS FOR TÜRKİYE’S FOREIGN POLICY IN TERMS OF UKRAINE-RUSSIA WAR</i>	<i>65</i>
B) <i>ANALYSIS OF TÜRKİYE’S POSITION ON THE UKRAINE-RUSSIA CONFLICT AND TÜRKİYE’S INTERPRETATION OF THE CONVENTION.....</i>	<i>67</i>
IV. CASE STUDIES AND LEGAL CHALLENGES.....	71
A) <i>PAST PRACTICES OF TÜRKİYE</i>	<i>71</i>
B) <i>POTENTIAL RESPONSES OF TÜRKİYE IN THE EVENT OF POTENTIAL CONFLICTS</i>	<i>72</i>
V. CONCLUSION	75

ACADEMIC SOURCES 78

ABSTRACT..... 95

ÖZET 97



ABBREVIATIONS

1994 Straits Regulation	: Maritime Traffic Regulations for the Turkish Straits and the Marmara Region (1994)
2019 Straits Regulation	: 2019 Turkish Straits Maritime Traffic Regulation
A.k.a.	: Also known as
AIS	: Automatic Identification System
Brown J World Aff	: Brown Journal of World Affairs
BSGI	: The Black Sea Grain Initiative
COLREG	: 1972 Convention on the International Regulations for Preventing Collisions at Sea
DEHUKAMDER	: DEHUKAM Journal of the Sea and Maritime Law
EU	: European Union
ICJ	: The International Court of Justice
IMO	: International Maritime Organization
Km/h	: Kilometer per hour
Lausanne Convention	: 1923 Lausanne Convention Relating to the Régime of the Straits
MARPOL 73/78	: 1973 International Convention for the Prevention of Marine Pollution
METU	: Middle East Technical University
Mm	: Milimeter

Montréal Convention	: 1936 Montréal Convention regarding the Regime of the Straits
NATO	: North Atlantic Treaty Organization
OSCE	: The Organisation for Security and Co-operation in Europe
OUP	: Oxford University Press
Rev Cent & E Eur L	: Review of Central and East European Law
Russia	: The Russian Federation
Soviet Union	: The Union of Soviet Socialist Republics
Treaty of Lausanne	: Treaty of Peace with Turkey, Signed at Lausanne on July 24, 1923
UN Charter	: United Nations Charter
UNCLOS	: 1982 United Nations Convention on the Law of the Sea
USSR	: The Union of Soviet Socialist Republics
VTs	: Vessel Traffic Services

LIST OF FIGURES

Figure 1: The Map of the Black Sea Region.....	6
Figure 2: The Turkish Straits and the Marmara Sea.....	19
Figure 3 and 4: The Turkish Straits Traffic Separation Schemes.....	61



PREFACE

The purpose of this thesis is to examine Türkiye's legal perspective on the Ukraine-Russia war in the context of the Montr  ux Convention on the Straits. The preparation of the thesis has been an intensive process requiring in-depth research, extensive literature reviews and legal analyses. Throughout the endeavour of writing this thesis, I have had the opportunity to delve into the complicated legal dimensions of the Montr  ux Convention and its implications for Türkiye's legal perspective amidst the Ukraine-Russia conflict. This research has deepened my knowledge of the law of the sea and provided me with invaluable insights into Türkiye's legal and strategic position in the Black Sea region.

First and foremost, I extend my deepest gratitude to my esteemed supervisor, Asst. Prof. K  bra Var T  rk, who made a great contribution with her guidance at my thesis process, and was completely understanding and endlessly patient with me. She has not only helped me refine my research and orientate my career, but has also inspired me with her dedication and commitment to academic excellence. I am truly grateful for her belief in my work and unwavering support.

I would like to express my appreciation to Kocaeli University Maritime Faculty, where I have had the privilege of working as a research assistant in the sea and maritime law area. The knowledge and insights I have gained from engaging with various scholars in the field of maritime have significantly contributed to the depth and quality of this research. I would like to express my gratitude to Prof. Dr. Soner Esmer, whom I had the opportunity to meet through this institution, for his guidance in both my career and academic life.

My heartfelt thanks to Prof. Dr. Hakan Karan, whose support, both as my former thesis supervisor and during my former legal career as an attorney at law, has been instrumental in my journey. I appreciate the impact he had on my life, albeit briefly. I would also like to acknowledge the support of Ankara University, the Law Faculty Library, and DEHUKAM, whose resources and academic environment greatly facilitated my research process.

Among the many people who have supported me on this journey, Mert Hazar holds a truly special place. Beyond being a brilliant Ph.D. candidate at Istanbul Technical University Maritime Faculty and my esteemed colleague as a research assistant, he has become one of my closest friends. His confidence in my abilities, even when I doubted myself, has been a guiding force that has kept me motivated and focused. I am deeply appreciative of his encouragement and unwavering belief in my potential. Also, with his assistance in technical matters and personal encouragement, I would like to extend my gratitude to Serhan Eraslan, whose unwavering support has been invaluable throughout this journey.

I would like to extend my gratitude to the institutions and scholars whose works have provided the foundation for my research, whether I could access or not. This thesis would not have been possible without their contributions to international law of the sea and the Montr  ux Convention.

Lastly, I owe a deep debt of gratitude to my dearest loving family, whose unwavering support, patience, and encouragement have been my greatest source of motivation throughout this journey, despite the difficulties we have overcome. I cannot thank them enough for nurturing and guiding me throughout my upbringing and making me who I am today. Their patience and belief in my work have been my greatest source of motivation.

Yağmur Ay  e Sel  uk

Ankara, 01/07/2025.

INTRODUCTION

A) SUBJECT MATTER, AIM AND QUESTIONS

The Black Sea holds significant strategic importance regarding geopolitical and economic matters, especially for Türkiye. As Türkiye has a unique geopolitical location, this quality gives it heavy responsibilities, such as being the gatekeeper of the Black Sea and serves as a maritime hinge connecting divergent strategic zones. The repercussions of these responsibilities have become even more apparent today, especially in the context of the war between Ukraine and Russia. Since Türkiye exercises authority over the Turkish Straits, its influence on the direction in which the war will evolve will be undeniable, particularly considering “the Montréux Convention regarding the Regime of the Straits” (*hereinafter: the Montréux Convention*) with putting the diplomatic efforts and relations aside.

The Montréux Conference that had taken place in 1936 indicated an essential time for international law, due to the reason that it harmoniously revised the regimes of the Treaty of Lausanne. The Montréux Convention constitutes a critical international legal milestone, which balances state sovereignty and collective security, while establishing the foundation for addressing contemporary challenges in the context of the Ukraine-Russia War for Türkiye.

This thesis primarily undertakes a legal analysis of Türkiye’s position, underlying justifications, interpretative approaches, and practical difficulties in operationalising the normative framework established by the Montréux Convention during the course of the Ukraine-Russia conflict. The objective of the present research is to ascertain the manner in which Türkiye navigates the tension between its legal obligations under international law and its geopolitical and strategic interests, particularly as a maritime domain of high strategic sensitivity, the Black Sea presents complex legal and political considerations.

The thesis seeks to analyse primary sources such as international treaties, conventions, legal doctrines and diplomatic statements, with the purpose of determining the extent of Türkiye’s interpretation and execution of the regulations of the Montréux Convention comply with established international legal principles and collective global responses to

the conflict at hand. With conducting an overall analysis of Türkiye's actions and obligations in accordance with the Montréux Convention, this thesis makes a significant contribution to wider scholarly debates on the intersection of relevant maritime law, treaty obligations, and the efforts to manage and resolve geopolitical tensions that converge in the Black Sea theatre.

This study is structured to explore the following core research questions:

- What are the legal foundations of the Montréux Convention regarding access to the Black Sea, particularly during times of war?
- What legal obligations does Türkiye have under the Convention in the context of the Russia–Ukraine War?
- How has Türkiye interpreted and implemented these obligations, especially regarding the passage of warships and auxiliary vessels?
- Does Türkiye have direct or indirect interests in the Ukraine–Russia conflict, and how might these influence its application of the Convention?
- To what extent is Türkiye's conduct in alignment with general principles of international law?
- What legal disputes or challenges have emerged from Türkiye's application of the Convention, and how do they affect regional legal and strategic stability?

Through addressing these questions, the study aims to provide a comprehensive analysis of the legal, geopolitical, and historical dimensions of Türkiye's obligations and decision-making under the Montréux Convention.

It also considers whether the implementation of the Montréux Convention by Türkiye is in alignment with overarching principles of international law. Furthermore, the research further delves into the legal disputes and challenges that have arisen as a result of the Convention's implementation by Türkiye and evaluates how Türkiye's legal position influences regional stability.

B) SCOPE AND STRUCTURE

This thesis will be limited to a strictly legal analysis concerning Türkiye's obligations in the context of the Montréal Convention. Therefore, it does not extend to political, economic or military matters unless they directly overlap with the legal interpretation of the Convention. The research mainly focuses on legal sources including international treaties, relevant cases, legal doctrine and state practice, in order to assess Türkiye's role in the implementation and enforcement of the Montréal Convention in the context of the Ukraine-Russia war. The thesis undertakes a detailed examination of the treaty-based structure underpinning the Montréal Convention, and Türkiye's legal perspective on the war in question as two fundamental areas. The present thesis is comprised of six chapters.

The first chapter will essentially provide a solid foundation for what will be built in the following chapters of the thesis by providing explanations of the issues from the past to the present that led to the Ukraine-Russia war.

The second chapter of this thesis focuses on straits and the Montréal Convention. Accordingly, the primary term of its thesis, "strait", will be elucidated within the paradigm of international law. The subsequent discourse will elucidate the sequence of events that ultimately culminated in the establishment of the Montréal Convention, whilst concomitantly providing a comprehensive exposition of the geopolitical characteristics that characterised the Convention. In addition, a comparative legal analysis will be conducted, encompassing a juxtaposition of the Montréal Convention, the Lausanne Treaty, and "the United Nations Convention on the Law of the Sea" (UNCLOS).¹ Subsequently, a detailed examination will address the classification of vessels governed by the Montreux Convention, together with the specific navigational regimes assigned to each category under the Convention's legal framework. This examination will be grounded in the textual provisions of the Convention itself, supplemented by interpretative insights drawn from secondary legal sources, including scholarly doctrine. Then, the Convention's role in determining maritime flow and control

¹ United Nations Convention on the Law of the Sea (UNCLOS) (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> accessed 3 January 2025.

in the Turkish Straits will form the core of this analysis, and the second chapter will be concluded after determining the parties to the Convention. This chapter establishes the fundamental framework for understanding Türkiye's obligations and discretionary authorities within the context of the Convention.

After the foundations of the thesis are laid firmly in the first two chapters, the main purpose of the thesis will be the subject of examination in the third chapter, which perhaps could be called the heart of the thesis. First, at the beginning of the chapter, Türkiye's focal point regarding its foreign policy will be briefly expressed in a law-oriented manner. Within this framework, the ensuing discourse pertains to Türkiye's foreign policy aspirations in the Black Sea region, and the manner in which these objectives influence the nation's implementation of the Montréux Convention. Furthermore, this chapter explores Türkiye's attempts to balance the legal commitments imposed by international law and its strategic interests in diplomatic interests. This chapter is devoted to an examination of Türkiye's legal standpoint on the Ukraine-Russia war, which is approached by an examination of official legal arguments, judicial interpretations and enforcement mechanisms regarding warships.

In the fifth and final chapter, the primary case analyses in the thesis and the legal issues arising within the framework of the Montréux Convention take place. This chapter will analyse Türkiye's implementation of the Montréux regime, the diplomatic complications it encountered in this process, and the reactions of international actors to this implementation. It will provide concrete examples to understand Türkiye's room for manoeuvre under the Montréux Convention and the legal and political challenges it faces from the perspective of public international law.

This thesis primarily aims to examine Türkiye's legal and political stance concerning the ongoing conflict between Ukraine and Russia within the framework of the Montréux Convention. Although the Montréux regime provides the formal legal basis for regulating naval and merchant vessel transit through the Turkish Straits, it has also emerged as a focal point in Türkiye's diplomatic engagement with both parties to the conflict. This thesis aims to explore how Türkiye's approach to the Ukraine – Russia war is being

influenced by its diplomatic and strategic interests and decision-making process as regards the Montr  ux Convention.

C) APPROACH AND METHODOLOGY

This thesis analyses T  rkiye's legal position under the Montr  ux Convention through normative legal analysis, comparative law method and case studies. While the Montr  ux Convention, the Treaty of Lausanne, UNCLOS and relevant court decisions are evaluated as primary sources, academic publications and state practices are included among secondary sources.

With the comparative law method, the Montr  ux regime will be compared with other international strait regimes, revealing its differences. Within the scope of the case study method, T  rkiye's implementation of the provision enshrined in Article 19 of the 1936 Montr  ux regime during the Ukraine-Russia War will be evaluated in the light of its legal grounds and international reactions. This multifaceted methodological approach aims to analyse the place of the Montr  ux regime in international law while revealing T  rkiye's legal obligations.

I. HISTORICAL BACKGROUND TO THE UKRAINE – RUSSIA WAR

Ukraine has been in a delicate position between Russia and Europe as a geopolitical battleground and an energy transfer corridor. Both Russia and Ukraine are nations of Slavic descent, stemming from the same linguistic and cultural roots.² Also, as could be seen below, Ukraine and Russia are both states with coasts adjacent to the Black Sea, sharing vast stretches of its northern and northeastern coastlines.



Figure 1: Map of the Black Sea Region.³

While contemporary discourse tends to frame the Russia–Ukraine rivalry as a primarily 21st-century phenomenon, the historical roots of their contentious bilateral dynamics extend to the collapse of the Union of Soviet Socialist Republics (USSR) in 1991, which

² Nur Jale Ece, ‘Rusya-Ukrayna Savaşı’nın Deniz Taşımacılığı ve Ticaretine Etkileri’ in İsmail Demir (ed), *Ukrayna Rusya Savaşı’nın Deniz Sigortalarına Etkisi Konferansı Tam Metin Bildiri Kitabı* (DEHUKAM Yayınları 2024) <<https://dergipark.org.tr/en/download/article-file/53072>> accessed 17 January 2025, 95.

³ ‘Black Sea’ (Encyclopædia Britannica, 2025) <<https://www.britannica.com/place/Black-Sea>> accessed 27 January 2025.

simultaneously signaled the termination of the Cold War period.^{4 5} In the immediate aftermath, the leaders of the Russian Federation, Ukraine,⁶ and Belarus signed the Belovezha Accords, which formalised the dissolution of the Soviet Union and led to the establishment of the Commonwealth of Independent States (CIS).⁷

The disintegration of the USSR in the early 1990s marked a fundamental shift in the area, in terms of geopolitical issues across the Eurasia⁸ region. In the early times, it has been assumed that with the termination of the Soviet political entity in 1991 the Russian dominance over Ukraine territory would end, however, the past years have shown otherwise. In spite of being recognized as an independent state formally by Russia, Ukraine maintained its close ties with its formal imperial power due to economic dependencies and joint military arrangements.⁹

Since Russia has been internationally recognised as the continuator state to the Soviet Union, it also inherited its international obligations, which include obligations regarding maritime treaties, military bases and naval assets. Ukraine, on the other hand, had to secure its recognition of its sovereignty and define its maritime borders as it struggled with challenges.

In the aftermath of the Cold War, a marked estrangement emerged between the Russian Federation and the former Eastern European republics of the USSR, coinciding with

⁴ The Cold War was mainly an emerged rivalry among the Soviet Union and the United States of America, which were considered as the two superpowers at that time, since both Germany and Japan were defeated during World War II. The Cold War had lasted from the end of World War II in 1945 to the early 1990s, due to a combination of several reasons. Although the most noteworthy reason was the collapse of the Soviet Union. Spencer C Tucker (ed), *The Cold War: The Definitive Encyclopedia and Document Collection* (ABC-CLIO 2019) vol 1, XIIX <<https://research.ebsco.com/c/kqcaaq/search/details/2hrxjazkmb?q=The%20Cold%20War%3A%20The%20Definitive%20Encyclopedia%20and%20Document%20Collection%20>> accessed 19 September 2024.

⁵ Roman Popadiuk, 'Dynamics of Ukraine-Russia Relations' (2021) 28 Brown J World Aff 39 <<https://research.ebsco.com/c/kqcaaq/viewer/pdf/jpdfztixyb>> accessed 18 September 2024.

⁶ Following the collapse of the Soviet Union, Ukraine rose as an independent state, depending on the referendum that took place on 1 December 1991, which ratified Ukraine's independence. This referendum was concluded with over 90% Ukrainians voting for independence, while majority of them were ethnic Russians and other minorities. Ibid 43.

⁷ Presidential Library, 'The Belavezha Accords Signed' <https://www.prilib.ru/en/history/619792> accessed 3 December 2024.

⁸ Eurasia is a geographical region that includes the continents of Asia and Europe. Richard Sheposh, 'Eurasia.' <https://research.ebsco.com/c/kqcaaq/viewer/html/k44hghhhlf> (access date: 8 February 2025).

⁹ Popadiuk (n 5) 39.

NATO's¹⁰ strategic shift towards enlargement. This transformation began with the Alliance's 1997 Madrid Summit, where Hungary, Poland, and the Czech Republic, three former Warsaw Pact countries, were formally invited to initiate the accession process.¹¹ A subsequent enlargement round followed at the 2002 Prague Summit, culminating in the integration of seven additional states, several of which had once been part of the Soviet sphere of influence in the Baltic and Balkan regions. By 2008, the dialogue surrounding Ukraine's potential membership in both the European Union and NATO had gained considerable momentum.¹²

The 2004 Orange Revolution¹³ and the 2013 Euromaidan protest activities could be interpreted as a manifestation of Ukraine's internal discord over its alignment with either European institutions or Russian geopolitical frameworks. Following the ousting of President Yanukovich in 2014, Russia annexed Crimea, a move that was widely condemned due to its contravention of the UN Charter and the Budapest Memorandum.¹⁴

15

The ongoing conflict in eastern Ukraine, instigated by pro-Russian separatists, led to the Minsk Agreements in 2014 and 2015, which were facilitated by "the Organisation for Security and Co-operation in Europe" (OSCE) and aimed to restore peace. However, the perpetration of repeated violations undermined the efficacy of these agreements, prompting further consideration of more stringent measures. Meanwhile, Türkiye maintained a nuanced behaviour, balancing its obligations as a NATO member with its economic interests in Russia. Mainly, the Euromaidan protests that started in 2013 led to

¹⁰ 'NATO is a political and military alliance of countries from Europe and North America. Its members are committed to protecting each other from any threat.' 'What is NATO?' <<https://www.nato.int/nato-welcome/>> accessed 4 December 2024.

¹¹ Jan Eichler, *NATO's Expansion After the Cold War: Geopolitics and Impacts for International Security* (Springer 2021) <<https://link.springer.com/book/10.1007/978-3-030-66641-5>> accessed 5 December 2024 47.

¹² Ibid 58.

¹³ Adrian Karatnycky, 'Ukraine's Orange Revolution' (2005) 84(2) *Foreign Affairs* 35 <<https://www.jstor.org/stable/pdf/20034274.pdf>> accessed 5 December 2024, 49.

¹⁴ Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (signed 5 December 1994) <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/52241/Part/I-52241-080000028045a5f6.pdf> accessed 8 December 2024.

¹⁵ 'Navigating the Ukraine-Russia Conflict: Implications for US Foreign Policy' - Real Raw News. <<https://realrawnews.info/navigating-the-ukraine-russia-conflict-implications-for-us-foreign-policy/1544/>> accessed 1 December 2024.

Russia's unilateral incorporation of the Crimean Peninsula. On November 21, 2013, small protests were caused by the Ukrainian government's rejection, or suspension, to sign the EU – Ukraine Association Agreement¹⁶, which gave these events the name Euromaidan, in a way that reflects positively on their ties with Russia.¹⁷ In February 2014, the president of that period, Yanukovich, fled to Russia.¹⁸ Consequently, the Euromaidan protests divided the country in such a way that two extreme sides have emerged.¹⁹

In consequence of the contested plebiscite that occurred on 16 March 2014 in Crimea, Crimea's self-proclaimed secession process from Ukraine and subsequent temporary occupation by the Russian Federation, which continues to this day, started.²⁰ This was the subject of a considerable degree of condemnation.²¹

Considering domestic Ukrainian law, the Crimea being annexed by Russia constitutes an unlawful act, according to the Ukrainian Constitution, just as all acts of annexation are unlawful.²² However, contrary to the general judgment that has been formed across the Globe, it is emphasised that Russian politics has not been conducted with the will to recover the predecessor's, the Soviet Union's lands.²³

The 2018 Incident of Kerch Strait caused an important escalation of tensions as Russia seized the warships of Ukraine, as a violation of bilateral agreements.²⁴ Ukraine asserted

¹⁶ The Association Agreement between Ukraine and the European Union is mostly regarded as a guide to internal reforms in Ukraine. The goal of this agreement is mainly forming a political association and economic integration among them. European Union External Action, 'EU-Ukraine Association Agreement' (2014) <www.eeas.europa.eu/sites/default/files/071215_eu-ukraine_association_agreement.pdf> accessed 30 December 2024.

¹⁷ Olga Onuch 'Maidans Past and Present: Comparing the Orange Revolution and the Euromaidan' in David R Marples and Frederick V Mills (eds), *Ukraine's Euromaidan* (Ibidem-Verlag 2015) <<https://research.ebsco.com/c/kqcaa/qsearch/details/vnfhuldxkb?isDashboardExpanded=true&limiters=FT1%3AY&q=Ukraine%E2%80%99s%20Euromaidan%20>> accessed 10 December 2024, 27.

¹⁸ Serhy Yekelchuk, *The Conflict in Ukraine: What Everyone Needs to Know* (Oxford University Press 2015) 3.

¹⁹ Ibid 28.

²⁰ Yekelchuk (n 18) 4-5.

²¹ 'No: 86, 17 March 2014, Press Release Regarding the Referendum held in Crimea' <<https://www.mfa.gov.tr/no-86-17-march-2014-press-release-regarding-the-referendum-held-in-crimea.en.mfa>> accessed 7 February 2025.

²² Ferdinand Feldbrugge, 'Ukraine, Russia and International Law' (2014) 39 Rev Cent & E Eur L 95 <https://www.researchgate.net/publication/275506684_Ukraine_Russia_and_International_Law> accessed 6 February 2025.

²³ Ibid 1.

²⁴ Treaty Between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait (signed 24 December 2003, entered into force 23 April 2004). Following the formal

that the incident in question constituted a breach of the innocent passage provisions under UNCLOS, a position that has been endorsed by various international law scholars. Concurrently, the progressive militarisation of the Black Sea has led to an intensification of both Russian naval assertiveness and NATO-led maritime exercises.²⁵

Concerns regarding the conflict in Ukraine have increased following the United Kingdom's disclosure of intelligence²⁶ revealing the Russian government's potential plans to invade Ukraine and establish a pro-Russian government and the observed military buildup by Russian forces along the Ukrainian border.²⁷ The process has acquired a different dimension as Russia recognised the Donetsk and Lugansk People's Republics.^{28 29}

On 22 February 2022,³⁰ the Federation Council of the Russian Federation adopted a resolution authorising the President to deploy military forces beyond national borders, purportedly in accordance with the 'universally recognised principles and norms of international law'. Acting upon this mandate, the Russian government launched what it described as a 'special military operation' against Ukraine on 24 February 2022. That same day, Russian troops initiated a coordinated multi-domain assault—comprising land, air, and naval forces—against Ukraine's territorial integrity.³¹ While the Russia presented

denunciation of all treaties with Russia concerning cooperation in the Sea of Azov by the Ukrainian parliament (Verkhovna Rada) in February 2023, the Russian Federation Council approved a bill denouncing the aforementioned treaty in June 2023. The bill cited the annexation of Crimea as the reason for the Sea of Azov and the Kerch Strait now falling under Russia's sole jurisdiction. Federal Law of the Russian Federation on the Denunciation of the Treaty Between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait (signed 14 June 2023) <https://en.kremlin.ru/acts/news/71354> accessed 8 December 2024.

²⁵ Atlantic Council, 'A Security Strategy for the Black Sea' (Atlantic Council, 2023) <https://www.atlanticcouncil.org/wp-content/uploads/2023/12/A-security-strategy-for-the-black-sea.pdf> accessed 8 February 2025.

²⁶ 'Kremlin plan to install pro-Russian leadership in Ukraine exposed' <<https://www.gov.uk/government/news/kremlin-plan-to-install-pro-russian-leadership-in-ukraine-exposed>> accessed 7 February 2025.

²⁷ Cüneyt Yüksel and Kaan Erdoğan, 'Jus Ad Bellum Çerçevesinde Rusya-Ukrayna Savaşı' in Cüneyt Yüksel and Ceren Karagözoğlu (eds), *Rusya-Ukrayna Krizi ve Uluslararası Hukuk* (On İki Levha Yayıncılık 2023) 9.

²⁸ 'Signing of documents recognising Donetsk and Lugansk People's Republics' <<http://www.en.kremlin.ru/events/president/news/67829>> accessed 7 February 2025.

²⁹ Yüksel/Erdoğan (n 27) 10.

³⁰ 'Federation Council gives consent to use the Russian Armed Forces outside of the Russian Federation' <<https://council.gov.ru/en/events/news/133443/>> accessed 7 February 2025.

³¹ Yüksel/Erdoğan (n 27) 10.

various legal arguments to justify its actions, its principal claim was that the operation constituted an invocation of the inherent right of self-defence. Notification of this assertion was conveyed to the United Nations Security Council pursuant to Article 51³² of the UN Charter.³³

The Ukraine-Russia War has been a significant conflict that has effects not only regional; but also worldwide, as both Ukraine and Russia are the major producers of several grains, and exporters of the products in question.³⁴ In order to mitigate trade disruptions, “the Black Sea Grain Initiative” (BSGI)³⁵ was brokered by Türkiye and the UN, with the purpose of continuing Ukrainian grain exports. However, it has collapsed in 2023 due to Russia not extending the deal and unilaterally terminating its participation.

³² ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.’ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 51 <<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> accessed 7 February 2025.

³³ Permanent Representative of the Russian Federation to the United Nations, ‘Letter dated 24 February 2022 addressed to the Secretary-General’ (24 February 2022) UN Doc S/2022/154 <https://digitallibrary.un.org/record/3959647/files/S_2022_154-EN.pdf> accessed 7 February 2025.

³⁴ Mottaleb KA / Kruseman G / Snapp S, ‘Potential impacts of Ukraine-Russia armed conflict on global wheat food security: A quantitative exploration’ (2022) 35 Global Food Security <<https://www.sciencedirect.com/science/article/pii/S2211912422000499>> accessed 10 September 2024.

³⁵ Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports (signed 22 July 2022) <<https://peacemaker.un.org/sites/default/files/document/files/2024/05/blackseagraininitiativefulltext.pdf>> accessed 7 February 2025.

II. STRAITS AND THE MONTREUX CONVENTION: HISTORICAL CONTEXT, LEGAL REGIME AND ITS ROLE

A) STRAITS UNDER THE INTERNATIONAL LAW

1- Overview

Maritime transport constitutes a vital cornerstone of global trade, with about 80% of the volume of it.³⁶ Therefore, due to their feature of shortening distances, straits play a vital role in global trade. As straits are the connecting element of different sea areas, it could be said that on Earth, there is only one World Sea that consists of different sea areas, regardless of its name.³⁷

Although international conventions refrain from articulating a comprehensive definition of what constitutes a ‘strait’, according to a certain point of view in doctrine, the definition of ‘straits’ could be determined as natural sea routes connecting two sea areas between land masses or or groups of islands.³⁸ The definition in question essentially depends on the geographical perspective, rather than legal. Accordingly, legally, not every strait falls within the scope of UNCLOS, even though it constitutes a strait with regard to geographical perspective.^{39 40} For instance, narrow waterways between two lakes may also be considered as straits in terms of geographical perspective, however, UNCLOS provisions do not apply to such circumstances.

Considering the explanations provided above, in order to talk about the existence of a strait, there must be a waterway that takes place between two landmasses, and this

³⁶ World Trade Organization, ‘Over 80 per cent of global merchandise trade is on most-favoured-nation basis’ <https://www.wto.org/english/blogs_e/data_blog_e/blog_dta_21jan25_e.htm> accessed 30 November 2024.

³⁷ Hakan Karan, ‘Türk Boğazlarının Hukuki Statüsü’ in Aynur Yongalık and others (eds), *Prof. Dr. Hikmet Sami Türk’e Armağan* (Turhan 2017a) 424; Hakan Karan, ‘Türk Boğazlarının Hukuki Statüsü’ in Saim Oğuzülgen (ed), *80. Yılında Montreux Türk Boğazları Sözleşmesi Sempozyumu* (Detay 2017b) 67.

³⁸ George K Walker (ed), *Definitions for the Law of the Sea: Terms Not Defined by the 1982 Convention* (Brill 2012) 308; Hüseyin Pazarcı and Erdem Denk, *Uluslararası Hukuk* (23rd edn, Turhan 2024) 292; Aydoğan Özman, *Deniz Hukuku I* (Turhan 2006) 356.

³⁹ Walker (n 38) 308.

⁴⁰ Paragraph 94 of the Consolidated Glossary, reiterating the previous definition (¶ 84), defines “strait” geographically as “a narrow passage of water situated between two land masses, islands or groups of islands and connecting two areas of sea.” Ibid 309.

waterway should connect the two sea areas in such a way as to enable navigation on it. Additionally, this connection must be natural, and the waterway must be narrow.⁴¹ Thus, the distinction that takes place between straits and human-made canals rests on the “natural” feature of straits.⁴²

The issue that the straits should be narrow is regarded as controversial in doctrine,⁴³ and applied international law does not seem to take this doctrine into account, as Pazarcı mentions.⁴⁴ While it is not necessary for the waterway to be used for navigation in order to speak of a strait from a spatial positioning, straits are legally significant only when they are used for navigation.⁴⁵

The straits are separated into two main groups, national straits and international straits, according to certain characteristics they exhibit.⁴⁶ This distinction matters, due to the determination of the set of navigational rules enforced in the context of strait passage and the assignation of the authority that regulates this regime. As it will be discussed below, the two different types of straits will again be subject to different regulations.

2- National Straits

In order to determine whether a waterway is a ‘national’ or ‘international’ strait, the geographic features of the waterway will be significant. National straits are narrow waterways that are generally the straits that a single state dominating both coasts of that strait⁴⁷ or connect to an enclosed sea.⁴⁸ Thus, it could be said that considering the geographical features of the area, the coastal state has a wider scope of regulatory powers over national straits. Stated differently, when a strait represents a narrow, naturally occurring maritime corridor linking a state’s internal waters to the high seas, and both of

⁴¹ Karan (n 37) (2017a) 424; (2017b) 68.

⁴² Özman (n 39) 355; Ali Kurumahmut, Montrö Sözleşmesi Türk Boğazları ve Karadeniz Güvenliği (TÜDAV Publications No 74, Turkish Marine Research Foundation 2025) 15.

⁴³ Karan (n 37) (2017a) 425; Karan (n 37) (2017b) 67-68; Pazarcı/Denk (n 39) 292.

⁴⁴ Pazarcı/Denk (n 39) 292.

⁴⁵ Karan (n 37) (2017a) 424; (2017b) 68.

⁴⁶ Pazarcı/Denk (n 39) 292.

⁴⁷ For instance, the Menai or the Minch Straits of England could be given as examples for this matter. Ibid 292.

⁴⁸ The most well-known example for straits that connect to an enclosed sea could be the Kerch Strait that connects the Black Sea to the Sea of Azov, when the Soviet Union was the only coastal state for that strait. Ibid 292.

its shores fall under the sovereignty of a single coastal state, there is no uncertainty in international law: the coastal state maintains comprehensive territorial jurisdiction, extending not only to the regulation of navigational rights but also encompassing all other domains of legal and administrative control.⁴⁹

3- International Straits

International straits compose crucial and vital connectors between mostly larger bodies of water. Moreover, they facilitate global maritime trade, international cooperation, and military operations. Because of their strategic importance, the waterways in question have become the center of discussions within the framework of international legal principles.

While the term ‘international straits’ is used widely in international doctrine, the term in question cannot be found among the international conventions. Conversely, ‘the straits used for international navigation’ could be found. The rationale behind this is to eradicate the potential for the term ‘international straits’ to engender a state of perplexity in relation to the strait-bordering state’s sovereign entitlements. These straits are subject exclusively to international regulations regarding the body of rules that govern the movement of vessels through straits, in contradistinction to the areas that are subject to international regulations in their totality. It is widely upheld in legal scholarship that, apart from specific constraints imposed by the applicable passage regime, the coastal state exercises full and exclusive sovereignty over the waters of the strait, including the underlying seabed, the superjacent water column, and the airspace above.⁵⁰

Article 16(4) of “the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone”⁵¹ is recognised as a foundational legal articulation of the principle of innocent passage. The provision affirms that straits used for international navigation, whether they

⁴⁹ Özman (n 39) 357.

⁵⁰ Özman (n 39) 356; Pazarcı/Denk (n 39) 292.

⁵¹ ‘There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.’ (Convention on the Territorial Sea and the Contiguous Zone (adopted 29 April 1958, entered into force 10 September 1964) 516 UNTS 205 art 16(4) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-1&chapter=21> accessed 3 February 2025).

connect separate areas of the high seas or lie within the territorial sea of a coastal state, shall not be subject to suspension with respect to the passage of foreign vessels.⁵²

In order to comprehend the regulations at hand properly, a cross examination with *the Corfu Channel Case*⁵³ would be vital⁵⁴ due to the fact that the case mainly provides valuable precedents regarding State responsibility in terms of maritime security, innocent passage through the straits, and the balance between international navigation rights and sovereignty of the strait state. Additionally, the consensus among all explanations regarding this subject is essentially geographically based.⁵⁵

Considering the events that caused the case in question, it becomes evident that Albania opened fire on British vessels that are navigating through the Corfu Channel,⁵⁶ on 15 May 1946.⁵⁷ In the ensuing months, on 22 October 1946 to be exact, a reinforced force consisting of cruisers and destroyers proceeded towards the North Corfu Strait, where two of the said vessels encountered and faced significant damage.⁵⁸ Consequently, this situation led to the event that British forces initiated a military operation in the Corfu

⁵² Ibid art 16(4).

⁵³ International Court of Justice, *Corfu Channel Case (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4, 22 <<https://www.icj-cij.org/sites/default/files/case-related/1/001-19490409-JUD-01-00-EN.pdf>> accessed 30 January 2025.

⁵⁴ Malcolm N. Shaw, *Uluslararası Hukuk* (Yücel Acer et al trs, Turkish Academy of Sciences 2019) 408.

⁵⁵ Özman (n 39) 357.

⁵⁶ Albania opened fire on British warships that navigating through the Corfu Channel, a strait located within its territorial waters. The Albanian government asserted that foreign warships were necessitated prior notification and permission before navigating through its territorial waters. *Corfu Channel Case (Merits)* [1949] ICJ Rep 4, 28; Louis B Sohn and others, *Law of the Sea in a Nutshell* (2nd edn, West Academic Publishing 2010) 220.

⁵⁷ While the ICJ did not consider the question of the innocent passage of warships through the territorial waters in its general sense, it did express its opinion that, in addressing the particular situation of the Corfu Channel, the general acceptance was that states in times of peace had the right to send warships to navigate through straits used for international navigation that take place between two parts of the high seas without the authorisation of strait state, in case of that the passage was innocent. The ICJ determined that it was unnecessary to deliberate on the concern of the innocent passage of warships through the territorial sea in general, but in addressing the specific matter of the Corfu Channel, it was pointed out that it was generally recognised and in compliance with international custom that in times of international peace, warships of states have a right to navigate through straits used for international navigation between two parts of the high seas without the explicit authorization of a Coastal State, provided that such navigation is regarded as innocent. Sohn (n 34) 220; *Corfu Channel Case (Merits)* [1949] ICJ Rep 4, 28.

⁵⁸ It has been asserted that the passage of British vessels through the Corfu Channel was considered as a trial run, in order to test if Albania would intervene again, in a manner consistent with the event that had previously occurred on 15 May 1946. *Corfu Channel Case (Merits)* [1949] ICJ Rep 4, 28; Özman (n 39) 358.

Channel to clean it of twenty mines that were manufactured by the Germans, which were subsequently neutralized.⁵⁹

Following the relevant incidents, the United Kingdom instituted proceedings before the International Court of Justice (ICJ), seeking reparation for the damages sustained. The crux of the UK's argument was that the Corfu Channel qualified as an 'international strait', thereby rendering Albanian authorities legally incompetent to impede the transit of foreign warships. While the UK maintained that the Corfu Channel constituted a navigational route of international character, Albania refuted this classification, asserting that the waterway did not meet the criteria of an international strait.⁶⁰ In essence, the foundation of Albania's claim was constituted by the ground, which is that although the Corfu Channel serves as a navigational corridor linking distinct areas of the high seas, it is not deemed an obligatory route under international law due to its limited strategic relevance and predominant use for intra-regional maritime transit.⁶¹ Consequently, the international status of the Corfu Channel was regarded and argued as conditional depending on its significance for maritime transportation, by Albania.

The ICJ has ruled that to qualify as an 'international strait' in the legal sense, the necessity for the strait to be significant was not dictated by the volume of traffic navigating the straits; rather, this volume was deemed inconsequential in terms of the strait's overall importance. From the perspective of the ICJ, the decisive criteria for classifying a maritime passage as an international strait are its geographic configuration, linking two portions of the high seas, and its actual use for international navigation. Although the Corfu Channel does not serve as an obligatory maritime corridor between the Mediterranean and Adriatic Seas, it nonetheless offers navigational advantages of international relevance.⁶²

The geographical criterion adopted by the ICJ was a subject of deliberation during "the First United Nations Conference on the Law of the Sea", held from 24 February to 27 April 1958. Influenced by the ICJ's reasoning in the *Corfu Channel* case, "the 1958

⁵⁹ *Corfu Channel Case (Merits)* [1949] ICJ Rep 4, 15.

⁶⁰ Özman (n 39) 358.

⁶¹ *Corfu Channel Case (Merits)* [1949] ICJ Rep 4, 28.

⁶² Ibid 28.

Convention on the Territorial Sea and the Contiguous Zone” codified this criterion within the framework of the right of innocent passage.⁶³

Pursuant to the UNCLOS, international law differentiates between two primary categories of navigational straits, assigning distinct passage regimes based on their geographical configuration and legal status. Accordingly, straits that connect either two portions of the high seas or exclusive economic zones (EEZ), as well as those linking such maritime zones with territorial waters, are regulated under different legal frameworks within the UNCLOS regime, irrespective of whether they are formally designated as ‘international straits’.⁶⁴

For a strait to qualify as an ‘international strait’ under UNCLOS, it must serve as a geographic link between two separate bodies of the high seas or exclusive economic zones. Additionally, it is imperative that the strait is customarily employed for the purpose of international navigation.⁶⁵ Within the framework of UNCLOS, international straits are distinguished from national straits and internal waters by the transit passage regime,⁶⁶ which is recognised as a fundamental navigational freedom codified under the Convention.⁶⁷

⁶³ The provision in question is delineated in Article 16(4) of the Convention on the Territorial Sea and the Contiguous Zone, which was previously stated in the above text; this issue was only briefly touched upon.

⁶⁴ ‘This section applies 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.’ UNCLOS (n 1) art 37; Pazarcı/Denk (n 39) 295.

⁶⁵ UNCLOS (n 1) art 37.

⁶⁶ During a period when the majority of states regarded the territorial sea width to extend not more than three nautical miles, numerous straits could be used, or navigated through, without entering any states’ territorial waters due to the existence of a strip of high sea area in the middle of the strait. Although, for narrower ones, the issue regarding passage was resolved through the implementation of rare exceptions, which permitted innocent passage through the territorial water. (See the Corfu Channel Case). Lori Fisler Damrosch and Sean D Murphy, *International Law: Cases and Materials* (7th edn, West Academic Publishing 2019) 1334.

⁶⁷ ‘In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.’ (UNCLOS (n 1) art 38(1)).

B) HISTORICAL AND GEOPOLITICAL CONTEXT OF THE MONTRÉUX CONVENTION

1- Overview

The Turkish Straits comprise of two straits, the İstanbul Strait⁶⁸ and the Çanakkale Strait,⁶⁹ that are connected with an inland sea, the Marmara Sea.^{70 71} These maritime areas compose the Turkish Straits as a whole,⁷² which connects the Black Sea to the Mediterranean Sea.

⁶⁸ A.k.a. the Bosphorus Strait.

⁶⁹ A.k.a. the Dardanelles Strait.

⁷⁰ During the 1936 Montréux Conference on the Turkish Straits, the Turkish delegation, especially the then Minister of Foreign Affairs Tevfik Rüştü Aras, emphasised that the Marmara Sea constituted Türkiye's internal waters. Moreover, no objections were raised on this point either. Seha L Meray and Osman Olcay (trs), *Montrö Boğazlar Konferansı: Tutanaklar, Belgeler* (Türkiye İş Bankası Kültür Yayınları 2020) 24.

⁷¹ Ali Kurumahmut, *Montrö Sözleşmesi, Türk Boğazları ve Karadeniz* (TÜDAV Publications No 26, Turkish Marine Research Foundation 2006) 5.

⁷² 'Desiring to regulate transit and navigation in the Straits of the Dardanelles, the Sea of Marmora and the Bosphorus comprised under the general term "Straits" in such manner as to safeguard, within the framework of Turkish security and of the security, in the Black Sea, of the riparian States, the principle enshrined in Article 23 of the Treaty of Peace signed at Lausanne on the 24th July, 1923'. (Convention Regarding the Regime of the Straits (adopted 20 July 1936, entered into force 9 November 1936) 173 LNTS 213, Preamble <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20173/v173.pdf>> accessed 19 December 2024). Thus, based on the preamble of the Convention, it could be clearly stated that the parties' acceptance of the convention as a whole means that the parties have accepted the aforementioned situation and even that it has become a state practice. Additionally, the Montréux Convention is not the first document that describes the Turkish Straits as a whole. *Convention relating to the Régime of the Straits* (adopted 24 July 1923, entered into force 6 August 1924) 28 LNTS 115, Preamble <<https://treaties.un.org/doc/publication/unts/lon/volume%2028/v28.pdf>> accessed 4 December 2024.



Figure 2: The Turkish Straits and the Marmara Sea.⁷³

Azov, Black, Marmara, Aegean, and Mediterranean seas are part of the geography that are connected by the Turkish Straits; the shores of the Eurasian region also take place in these seas. The Danube River, the Strait of Gibraltar, and the Suez Canal constitute the connections of the seas in question to the Atlantic and Indian Oceans. The unique significance of the Turkish Straits becomes undeniable in the light of the aforementioned features of the area.⁷⁴

The Turkish Straits have progressively acquired enhanced geopolitical and economic relevance due to their function as a vital international maritime corridor, particularly for the Black Sea littoral states and regional trade flows. While their strategic and commercial significance is indisputable, it must be emphasised that the definition of “the Straits” under the Montr  ux Convention is confined to the scope and context of that specific treaty framework.⁷⁵

Among the most influential and heavily trafficked waterways of the world maritime trade, the Turkish Straits are located in a geographical position connecting two significant seas,

⁷³ T  rk Boğazları Deniz Trafik D  zeni Y  netmeliđi (2019 Turkish Straits Maritime Traffic Regulation), Decision No 1426 (Official Gazette, 15 August 2019, No 30859) Annex I.

⁷⁴ Mustafa Herg  ner, *Cumhuriyetimizin İlk Yıllarında T  rk Boğazları ve Boğazlar Komisyonu Bařkanı Vasıf (Temel) Pařa* (T  DAV Educational Series No 9, Turkish Marine Research Foundation 2004) 12.

⁷⁵ Karan (n 37) (2017a) 430.

which are the Black Sea and the Aegean Sea.⁷⁶ Since the Turkish Straits separate Asia and Europe geographically, they have always served as a bridge for cultural, commercial and military crossings between the two continents. The Straits have continuously constituted a natural waterway that great powers competed to possess throughout the history, due to their strategic importance.⁷⁷

The Turkish Straits extend approximately 160 nautical miles in terms of total navigable length. The Çanakkale Strait measures only 3.7 kilometres wide at its entrance and narrows to as little as 1.8 kilometres at certain points. In its most constricted section, where steep coastal topography imposes significant navigational constraints, the surface current accelerates beyond 8 km/h, thereby posing substantial challenges to safe and efficient maritime transit.⁷⁸

Vessels may encounter challenges in areas where the circulation of water intersects with the surface currents. During periods of strong southern winds, the strength of surface currents is known to weaken and reverse. This phenomenon, locally referred to as ‘orkoz’, poses a potential significant risk to navigation due to its unpredictability.⁷⁹

Therefore, it is crucial to understand and comprehend the area’s strategic importance, as demonstrated by its position as a key location of transport infrastructure within the borders of the former Soviet Union. This is highlighted by a network of natural and artificial waterways that facilitate connectivity the Baltic and Black Seas, in conjunction with the construction of the canal that links the Danube and Main rivers. Hence, the region’s strategic significance is such that it constitutes an integral hinterland for circulation through the İstanbul Strait.⁸⁰ The strategic significance of the Turkish Straits is further amplified by their role as the sole maritime corridor facilitating access to the Black Sea economies, including Bulgaria, Georgia, Romania, Ukraine, and Russia. This

⁷⁶ İsmail Demir, ‘Montrö Boğazlar Sözleşmesi’nin Feshi’ (2018) 136 Union of Turkish Bar Association <<https://www.idealonline.com.tr/IdealOnline/lookAtPublications/paperDetail.xhtml?uId=72998>> accessed 10 November 2024 327-328.

⁷⁷ Ibid 328.

⁷⁸ Hugo Caminos; Vincent P. Cogliati-Bantz, *The Legal Regime of Straits: Contemporary Challenges and Solutions* (Cambridge University Press 2014) 77.

⁷⁹ Ibid 77-78.

⁸⁰ Ibid 78.

pivotal transit function similarly extends to the Caspian Basin and the landlocked Central Asian markets of Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, and Armenia.⁸¹

The Montr  ux Convention, a fundamental regulation concerning Turkish Straits, is essentially regarded as an international security convention, as it includes regulations regarding international navigation.⁸² The Montr  ux Convention introduces a *sui generis* passage regime applicable to the Turkish Straits, one that safeguards the national character of these waterways while imposing relatively limited constraints on the sovereignty of the strait state—particularly when compared to the regulatory frameworks governing other international straits in contemporary maritime law. In the Montr  ux Convention’s regime, T  rkiye’s jurisdiction and authority as a strait state is the rule, while restrictions take place as exceptions to this rule. The restrictions in question have been established by taking T  rkiye’s security and sovereignty into consideration at the highest echelons of government. The principle of free and uninterrupted international transport constitutes the overarching principle which governs the aforementioned restrictions.⁸³

The Montr  ux Convention is broadly recognised as the cornerstone legal instrument in preserving the Black Sea as a zone of peace and stability. In light of current geopolitical developments, the Convention’s relevance in maintaining regional equilibrium has become even more pronounced.⁸⁴

2- Historical Development and Geopolitical Context

The Turkish Straits have always been a center of interest throughout history, and geopolitical rivalries and international diplomacy were the main elements that shaped the regime of the straits for years.⁸⁵ Following the conquest of İstanbul in 1453, the Ottoman Empire exercised full and exclusive sovereignty over both the İstanbul and   anakkale Straits. Consequently, the right of passage through these strategic waterways was strictly

⁸¹ Ibid 78.

⁸² Karan (n 37) (2017b) 70;   zgenur Kara Balc  , ‘Independenta Deniz Kazasının Hukuki Etkileri   zerine Bir Değerlendirme’ (2020) 2 DEHUKAMDER 629.

⁸³ Tolgahan Alpyavuz, *Montreux (Montr  ) S  zleşmesi Uyarınca T  rk Boğazları’ndan Savaş Gemilerinin Ge  iş Rejimi* (LLM thesis, İstanbul University 2009) 29.

⁸⁴ Cihat Yayc  , *Soru ve Cevaplarla Montr  : Nedir, Ne Değildir?* (Girdap Kitap 2021) 46.

⁸⁵ Ibid 34.

subject to the prior consent and discretion of the Ottoman authorities.⁸⁶ Accordingly, as of the 15th century, the Turkish Straits were completely national straits and were closed to other states.⁸⁷ Given that the Ottoman Empire held sovereignty over the entire coastline of the Black Sea during that period, the sea was effectively characterised as a *mare clausum*, thereby acquiring the legal status of an inland or closed sea.⁸⁸ This domination played a crucial role for the Ottomans since it provided them with control over defense strategies and commerce policies.

From 1774 onwards, passage through the straits became possible for other states as well.⁸⁹ As Russia had been granted rights of passage for its merchant ships from the Black Sea to the Mediterranean Sea and from the Mediterranean Sea to the Black Sea, and a right of navigation with commercial ships on Ottoman waters. By signing the Treaty of Küçük Kaynarca with the Ottomans, the Black Sea has lost its status as an inland sea.⁹⁰ The Treaty of Küçük Kaynarca, which had major ramifications for the status of the Crimea and Russian-Ottoman ties throughout the nineteenth century, has been seen as an essential shift in Ottoman and Russian dominance in the Black Sea and Caucasus region.⁹¹

Following the ratification of the Treaty of Edirne between the Ottoman Empire and the Russian Empire, it was stipulated that the Turkish Straits would remain accessible to commercial shipping from all states maintaining trade ties with Russia, on the condition that such states were not in a state of war with the Ottoman Empire.⁹² This development marked a significant diminution of Ottoman control, as it effectively curtailed their authority over the passage of Russian-flagged merchant ships through the Straits.⁹³

⁸⁶ Selami Kuran, *Uluslararası Deniz Hukuku* (8th Edn, Beta 2022) 133; Pazarcı/Denk (n 39) 297; Yayıcı (n 84) 34.

⁸⁷ Seçil Mine Türk, *Çevresel Güvenlik: Marmara Denizi Örneği* (1st edn, Nobel 2018) 154.

⁸⁸ Kuran (n 86) 133; Yayıcı (n 84) 33.

⁸⁹ Türk (n 87) 154.

⁹⁰ Kuran (n 86) 134.

⁹¹ Hasan Acar, 'Boğazlar Sorunu Üzerine Jeopolitik Bir Değerlendirme: İstanbul'un Fethinden Montrö Boğazlar Sözleşmesine' (2019) 2(1) *Turkish Journal of Political Science* 110 <<https://dergipark.org.tr/en/download/article-file/856445>> accessed 19 October 2024; 'A shift in the Russo-Ottoman balance of power in the Black Sea region' (Oxford Public International Law) <https://opil.ouplaw.com/page/616> accessed 14 January 2025.

⁹² Kuran (n 86) 134.

⁹³ Acar (n 91) 115.

After the Ottoman defeat in the Egyptian-Ottoman War in the early 1830s, the Treaty of Hünkâr İskelesi was signed by the parties in 1833, granting Russia favourable privileges, including the right to call for the closure of the Turkish Straits to all but Russian vessels in case of a European conflict, which could come from the south. This situation shows that Russia had a say on the straits during that time.⁹⁴

The London Straits Convention of 1841, recognised as a pivotal legal instrument in the history of the Turkish Straits, was concluded among the principal European powers of the era, namely the United Kingdom, France, Austria, Prussia, and Russia, shortly after the resolution of the Egyptian Question. Motivated by apprehensions over potential Russian expansionism, the Convention established a peacetime prohibition on the passage of foreign warships through the Turkish Straits, thus initiating the foundations of an international oversight framework concerning the regulation of strait navigation and security.⁹⁵ The Straits Issue took on an international character with this convention.⁹⁶ The regime established by this convention was applied until World War I.⁹⁷

During the First World War, the Turkish Straits emerged as a focal point of strategic significance, culminating in the Gelibolu Campaign between 1915 and 1916, wherein Allied forces⁹⁸ attempted to breach Çanakkale. Following the Ottoman Empire's defeat in the war, the 1920 Treaty of Sèvres introduced an international commission tasked with administering the Turkish Straits. Notably, the Ottoman State was intentionally excluded

⁹⁴ Ibid 117.

⁹⁵ Ibid 118.

⁹⁶ Yaycı (n 84) 36.

⁹⁷ Ibid 38.

⁹⁸ In the First World War, the Allied Powers were initially built on the Triple Entente alliance between Britain (United Kingdom), France and Russia. At the beginning of the war, these three states formed a common front against the Central Powers (Central Powers) formed by Germany and the Austro-Hungarian Empire. Over time, the number of Allied Powers increased, and other countries joined the bloc. Italy, although initially neutral, joined the Allies in 1915. Likewise, Serbia, Japan, Portugal, Romania, Portugal, Romania and China joined the Allies at different stages of the war. In addition, some states in Latin America also joined the Allies, mainly to maintain their maritime trade and to oppose Germany's unrestricted submarine warfare. This expansion suggests that the Allied Powers acted as an ever-growing coalition throughout the war. Tobias A. Jopp, 'How Does the Public Perceive Alliances? The Central and Allied Powers in World War I' (2018) 59(1) *Jahrbuch für Wirtschaftsgeschichte* 187 <https://doi.org/10.1515/jbwg-2018-0008> accessed 9 December 2024.

from this governing body, thereby rendering its sovereignty over the Straits effectively null and void.⁹⁹

The Treaty of Sèvres, signed on 10 August 1920, was a seminal yet unratified agreement between the Allied Powers and the Ottoman Empire, with an objective to dismantling the latter's territorial integrity in the period following the conclusion of the First World War.¹⁰⁰ As the Treaty of Sèvres met with strong opposition from Turkish nationalists, this led to the Turkish War of Independence. The resistance in question peaked with the negotiation of the Treaty of Lausanne in 1923, which effectively annulled the Treaty of Sèvres with the recognition of the sovereignty of the newly established Republic of Türkiye.¹⁰¹ This transition represented an essential shift in the geopolitics of the region.

The Treaty of Lausanne in 1923,¹⁰² which replaced the Treaty of Sèvres, was signed after the Turkish War of Independence, which took place between 1919-1922. The re-establishment of Turkish sovereignty over the straits was a key outcome of the Treaty of Lausanne. Simultaneously, however, it instituted a Straits regime that guaranteed the free passage of both civilian and military vessels during peacetime, mandated the demilitarisation of the straits zone,¹⁰³ and established an international supervisory body tasked with overseeing navigation and ensuring compliance with the relevant legal provisions.¹⁰⁴ Thus, although the Turkish Straits were under Turkish sovereignty, it continued to maintain its international status and regime.¹⁰⁵

With the Montréux Convention, Türkiye regained its complete sovereignty over the Turkish Straits. This occurrence constitutes an enormous gain in terms of sovereignty

⁹⁹ Sina Akşin, *Kısa Türkiye Tarihi* (32nd ed, Türkiye İş Bankası Kültür Yayınları 2023) 153-154; Center for Eurasian Studies (AVİM), 'The Regime of the Turkish Straits: A Historical Perspective' (AVİM Report No. 17, 2017) <<https://avim.org.tr/images/uploads/Rapor/rapor-17-arsiv-icin.pdf>> accessed 29 January 2025.

¹⁰⁰ Ibid 152.

¹⁰¹ Michelle Tusan, 'Chapter 5 - The Treaty of Sèvres' in *The Last Treaty: Lausanne and the End of the First World War in the Middle East* (Cambridge University Press 2023) 143, 143-169 <<https://www.cambridge.org/core/books/last-treaty/treaty-of-sevres/3444F85ACD6E019FB8EC9B356458A643>> accessed 4 February 2025.

¹⁰² As the provisions of the Treaty of Lausanne relating to the Straits will be examined in detail below, the subject is briefly included in this section in the order in which they appear.

¹⁰³ Sina Akşin, *Kısa 20. Yüzyıl Tarihi* (9th ed, Türkiye İş Bankası Kültür Yayınları 2022) 137.

¹⁰⁴ Ibid 180.

¹⁰⁵ Salih Güngör, *Montreux'den Kanal İstanbul'a Türk Boğazları* (1st ed, Gece 2020) 77.

over the Turkish Straits.¹⁰⁶ As the mid-1930s approached, a shift in the geopolitical situation in Europe had undergone significant change, marked by escalated threats from Nazi Germany and Fascist Italy,¹⁰⁷ with European rearmament.¹⁰⁸

It is evident that the aforementioned issues have compelled Türkiye to explore strategies for the remilitarization of the Straits, thereby ensuring the preservation of its territorial integrity and the maintenance of regional stability of the country.¹⁰⁹ In light of these reasons, at the extraordinary meeting of the League of Nations on April 17, 1935, Minister of Foreign Affairs Tevfik Rüştü Aras persuasively contended that disarmament and demilitarization of the Turkish Straits had compromised Türkiye's security and defence capabilities, and underscored the imperative for the revision of the existing regulations.¹¹⁰ In its note,¹¹¹ Türkiye has generally highlighted the following reasons for its concerns:

- The escalating armament race in Europe, the political situation's deviation from 1923; and the Strait's insecurity in the Mediterranean, thereby posing a threat to Türkiye's sovereignty, security and defence.
- The League of Nations' evident incapacity to prevent the 1933 Italian aggression against Abyssinia, coupled with the withdrawal of Japan—a contracting party to the collective security mechanism embedded in the Lausanne Straits

¹⁰⁶ Chamber of Shipping (DTO), *Montreux'nün 57. Yılında Türk Boğazlarının Güncel Sorunları Sempozyumu* (9 November 1993, Istanbul), *Bildiriler*, Publication No 33 (Chamber of Shipping Publications 1994) 8.

¹⁰⁷ The actions of Germany and Italy that led to World War II stemmed from their expansionist policies in the 1930s. Germany annexed Austria (Anschluss) in 1938, seized the Sudetenland with the Munich Agreement, and occupied all of Czechoslovakia in 1939. Finally, its attack on Poland on September 1, 1939, led to Britain and France declaring war, starting World War II. On the other hand, Italy attempted to increase its influence in the Balkans and Africa by occupying Ethiopia in 1935-1936 and Albania in 1939. Following Germany's lead, it enacted anti-Jewish laws in 1938 and eventually became part of the Axis Powers by joining the Tripartite Pact in 1940. These aggressive policies upset the balance in Europe and made war inevitable. Patrick Bernhard, 'The Great Divide? Notions of Racism in Fascist Italy and Nazi Germany: New Answers to an Old Problem' (2019) 24(1) *Journal of Modern Italian Studies* 97-114 <https://doi.org/10.1080/1354571X.2019.1550701> accessed 15 November 2024.

¹⁰⁸ Dikran M Zenginkuzucu and Abdülbari Çintan, 'Revisiting the Status of Montreux Convention on Straits in the Context of Actual Developments and the Canal Istanbul Project' (2019) 1(2) *Journal of International Law and Politics* 67 <<https://dergipark.org.tr/en/download/article-file/923525>> accessed 15 November 2024.

¹⁰⁹ AVİM (n 99) 24.

¹¹⁰ Şule Güneş, 'Türk Boğazları' (2007) 34 *METU Studies in Development* 217, 228 <<https://www.ajindex.com/dosyalar/makale/acarindex-1423910018.pdf>> accessed 16 September 2024.

¹¹¹ Acar (n 91) 127.

Convention—substantially undermined the practical enforceability of the Convention’s provisions, rendering its implementation increasingly tenuous.

- The Lausanne Straits Convention, in its provisions, only includes the regime to be adopted only in the times of war and peace, with making no explicit mention at all of the regime to be applied in the face of an imminent threat of war. It also does not refer to any necessity of recognising the right of self-defense, which is imperative to ensure its resilience in such a case.¹¹²

Concurrent with these developments, the Turkish Government endeavoured to safeguard the territorial integrity of its state and to revoke the demilitarization provisions established by the Lausanne Straits Convention.¹¹³

Whilst the Turkish Government proffered these justifications, the Soviet Union had been seeking various assurances in relation to the security of its Black Sea coastline, in particular restrictions on naval access by non-Black Sea states, to prevent potential encirclement.¹¹⁴ During the same period, the British and French governments prioritised the preservation of the regional balance of power, voicing apprehensions regarding the prospect of unrestricted naval transit that might jeopardise their strategic interests in the Mediterranean basin.¹¹⁵

The Lausanne Straits regime remained in force for merely thirteen years. During the 1930s, the rise of expansionist policies by Japan and Italy, coupled with the institutional decline of the League of Nations amid escalating global tensions, reignited debates concerning Türkiye’s national security vulnerabilities within the prevailing international order.¹¹⁶

On 11 April 1936, Türkiye submitted a note to the parties to the Convention, asserting the inoperability of the Lausanne regime and requesting an amendment to the agreements.¹¹⁷ Consequently, the Montréux Conference was held on 22 June 1936 with

¹¹² Zenginkuzucu (n 108) 72.

¹¹³ Ibid 72.

¹¹⁴ AVİM (n 99) 19-21.

¹¹⁵ Alpyavuz (n 83) 23-26.

¹¹⁶ Kuran (n 86) 135.

¹¹⁷ To access examples of notes, see: Meray/Olcay (n 70) Annex 1, XXIX.

the aim of reformulating the existing legal framework governing the Turkish Straits. Following a series of intensive diplomatic negotiations, the Montréux Convention was concluded on 20 July 1936, establishing a treaty-based regulatory regime for the governance of maritime passage through the Turkish Straits. The Convention formally entered into force on 9 November 1936, thereby annulling and replacing the prior legal structure codified under the Treaty of Lausanne concerning the straits.¹¹⁸

The legal framework governing the Turkish Straits is presently anchored in the treaty norms enshrined in the 1936 Montréux Convention. Although the Convention's initial term was set to expire in 1956,¹¹⁹ no party has invoked the termination mechanism. As a result, the Convention remains legally operative, and the straits regime continues to be regulated in accordance with its substantive provisions.

The long-standing and uncontested application of the Montréux Convention's provisions by its signatories, as well as by the broader international community, indicates that the Convention's core principles may have attained the status of customary international law. Accordingly, even in the event of the Convention's formal termination, its substantive rules would likely continue to govern the regime of the Turkish Straits by virtue of their customary character.¹²⁰

The Montréux Convention played a pivotal role in enabling Türkiye to fulfil key strategic objectives, notably by addressing the prevailing international security concerns of multiple states. This was accomplished through a restructuring of the regional power dynamics and the formal reassertion of Türkiye's sovereign rights over the Turkish Straits.¹²¹ However, the Montréux Convention simultaneously delineates specific treaty-based limitations on the exercise of that sovereignty, particularly in relation to the governance of maritime navigation and transit activities through the Straits. The Convention acknowledges Türkiye's authority in areas that haven't been covered by its

¹¹⁸ Kuran (n 86) 135.

¹¹⁹ 'The present Convention shall remain in force for twenty years from the date of its entry into force.' Montréux Convention (n 72) art 28(1).

¹²⁰ In the Convention, even in the event of termination, the Turkish Straits were viewed as a whole, and the freedom of passage and navigation was acknowledged as indefinite. Demir (n 75) 347.

¹²¹ Acar (n 91) 128.

provisions, which include jurisdiction, the prevention of marine pollution, the regulatory framework of maritime traffic without compromising the freedom of navigation principle.

3- Comparison to Lausanne Convention

Convened in 1936, the Montréal Conference, and the subsequent adoption of the Montréal Convention, primarily sought to reformulate the straits regime that had been previously established under the framework of the Treaty of Lausanne.¹²² The Montréal Convention serves as a paradigmatic instance of treaty modification through diplomatic negotiation, exemplifying the restoration of Türkiye's sovereign authority and its elevated role in international affairs. It abolished the previously imposed demilitarised zones surrounding the straits and instituted novel legal regimes governing the passage of vessels.¹²³

After World War I, the Treaty of Lausanne was signed as an aftermath of the war, thereby effectively superseding the earlier Treaty of Sevres and delineating the modern Turkish Republic's boundaries, including primary stipulations on the Turkish Straits.¹²⁴ These provisions that take place in the Lausanne Treaty sought to balance between the newly-formed Turkish Republic and the international community's interests in terms of controlling and ensuring passage through the Turkish Straits.¹²⁵ Nonetheless, the geopolitical dynamics evolved in the 1930s, especially with the rise of new security related concerns in Europe, which resulted in the Montréal Convention that not only

¹²² Anthony R. DeLuca, 'Montreux and Collective Security' (1975) 1 *The Historian* 1 <<https://www.jstor.org/stable/24444912>> accessed 16 September 2024.

¹²³ Ibid 2.

¹²⁴ 'The British Empire, France, Italy, Japan, Greece, Roumania and the Serb-Croat-Slovens State of the one part, and TURKEY, of the other part; Being united in the desire to bring to a final close the state of war which has existed in the East since 1914, Being anxious to re-establish the relations of friends and commerce which are essential to the mutual well-being of their respective peoples, And considering that these relations must be based on respect for the independence and sovereignty of States, (...) (The Lausanne Convention (n 47) Preamble); 'The British Empire, France, Italy, Japan, Bulgaria, Greece, Roumania, Russia, the Serb-Croat-Slovene State and Turkey, being desirous of ensuring in the Straits freedom of transit and navigation between the Mediterranean Sea and the Black Sea for all nations, in accordance with the principle laid down in Article 23 of the Treaty of Peace signed this day. And considering that the maintenance of that freedom is necessary to the general peace and the commerce of the world. (...) (Treaty of Lausanne (signed 24 July 1923, entered into force 6 August 1924) 28 LNTS 11 (Treaty of Lausanne), Preamble <<https://treaties.un.org/doc/publication/unts/lon/volume%2028/v28.pdf>> accessed 4 December 2024).

¹²⁵ Ibid.

served to revise the regime of Straits, but also replaced the entire regulation with regard to the Straits under the Lausanne Treaty.¹²⁶

Pursuant to the provisions of the Montréux Convention, Türkiye witnessed a significant reinforcement of its sovereign rights over the Turkish Straits, notably through the reassertion of its authority to deploy military forces and fortifications within the straits region.¹²⁷ This outcome reflected the increasing recognition of strategic interests of Türkiye. Moreover, the Montréux Convention imposes limitations on Türkiye's sovereign rights on the Straits solely concerning passage and transport. However, it also acknowledges Türkiye's authority in matters not covered by the Convention, such as jurisdiction, the prevention of marine pollution, the maritime traffic regulation without compromising the freedom of navigation. On the contrary, the preceding provisions of Lausanne had established an international commission¹²⁸ that had a limited Turkish oversight, which was seen as a threat by Turkish authorities.¹²⁹

The Turkish Straits were mainly recognised as an internationally significant waterway by the Lausanne Convention, with being placed under an international supervision that limits Turkish sovereignty.¹³⁰ The arrangement in question encompassed the demilitarization of certain areas surrounding the Turkish Straits, as well as the establishment of an international body entrusted with ensuring and overseeing the principle of free navigation. Conversely, the legal framework established by the Montréux Convention marked a decisive shift towards the full reassertion of the Türkiye's sovereignty over the Turkish

¹²⁶ Montréux Convention (n 72) Preamble.

¹²⁷ Despite the absence of specific and explicit regulations with regard to permitting Türkiye to militarize the Turkish Straits and the surrounding area, this conclusion could be reached due to the existence of the clear statement that take place in the preamble of the Montréux Convention, which clearly underlines that the Montréux Convention repealed and replaced the Lausanne Convention. Ibid Preamble.

¹²⁸ 'There shall be constituted at Constantinople an International Commission composed in accordance with Article 12 and called the "Straits Commission."' (Lausanne Convention (n 89) art 10); 'The Commission will exercise its functions over the waters of the Straits.' (Ibid art 11); '(1)The Commission shall be composed of a representative of Turkey, who shall be President, and representatives of France, Great Britain, Italy, Japan, Bulgaria, Greece, Roumania, Russia, and the Serb-Croat-Slovene State, in so far as these Powers are signatories of the present Convention, each of these Powers being entitled to representation as from its ratification of the said Convention. (2) The United States of America, in the event of their acceding to the present Convention, will also be entitled to have one representative on the Commission. (3) Under the same conditions any independent littoral States of the Black Sea which are not mentioned in the first paragraph of the present Article will possess the same right.' (Ibid art 12).

¹²⁹ Alpyavuz (n 83) 28-30.

¹³⁰ Hergüner (n 74) 37.

Straits, thereby granting the State the authority to re-militarise the area and to implement an enhanced regime of administrative and strategic control.¹³¹

Under the regulations that take place in the Lausanne Convention, merchant vessels were permitted to transit the Turkish Straits during periods of peace, relatively unrestricted but with limited oversight of the international commission.¹³² In contrast, the Montréux Convention not only managed to reassert Turkish control over the Straits, but also clarified merchant vessels' rights. According to the merchant vessel regulations of the Montréux Convention, it is emphasized that at all times, merchant ships of all nations are permitted to pass through the Straits, whether the area is in peace or war, with the condition that Türkiye is not itself a belligerent state.¹³³ Additionally, the Montréux Convention allows Türkiye to impose specific charges concerning sanitary controls and lighthouses, although within frameworks that are internationally recognised.

The circumstances that have been regulated in the Montréux Convention, whilst had not taken place in the Lausanne Convention, included a situation as a new provision that permits the Republic of Türkiye to take necessary measures based on the preventive self-defence right, which is that Türkiye considering itself to be in an imminent threat of war.¹³⁴ In the context of merchant vessels, the compulsory pilotage service, which was previously free of charge according to the Lausanne Convention, was subsequently altered as chargeable in the Montréux Convention during times of belligerence by Türkiye. Restricting the passage of merchant vessels is contingent solely on Türkiye considering itself to be under imminent threat of war, as determined in the Montréux Convention. Although the compulsory pilotage services were exempted from the aforementioned charging rule in this instance.¹³⁵

4- Comparison to UNCLOS

UNCLOS originated from “the Third United Nations Conference on the Law of the Sea”, held between 1973 and 1982, with the objective of formulating a comprehensive legal

¹³¹ Montréux Convention (n 72) art 1; Alpyavuz (n 83) 29-30.

¹³² Lausanne Treaty (n 72) arts 38–39.

¹³³ Montréux Convention (n 72) arts 2–4.

¹³⁴ Ibid arts 6, 21.

¹³⁵ Alpyavuz (n 83) 30.

codification for the law of the sea and fostering its progressive evolution. In contrast to the Montréal Convention, which functions as a *lex specialis*¹³⁶ specifically governing the Turkish Straits, UNCLOS provides a universal legal framework that regulates various maritime zones and navigational rights under public international law.¹³⁷ Notably, Part III of UNCLOS introduces the concept of transit passage, establishing a distinct regime for straits used for international navigation.¹³⁸

Notably, Türkiye has not only not become a party to UNCLOS, but also is a persistent objector¹³⁹ to specific provisions,¹⁴⁰ therefore preventing the implementation of certain

¹³⁶ The principle of *lex specialis* is a general rule of law, which states that a special law (*lex specialis*) shall prevail over a general law (*lex generalis*). According to this principle, the special provision shall apply if there are both general and special provisions on the same subject. For instance, when a general criminal law conflicts with a special law that regulates a specific type of crime in more detail, the provisions of the special law in question take precedence. This principle is used to resolve conflicts between legal norms and to ensure legal certainty. Kemal Gözler, ‘Yorum İlkeleri’ (2012) 68 Kamu Hukukçuları Platformu Toplantısı, 66-67 <<https://www.anayasa.gen.tr/yorum-ilkeleri.pdf>> accessed 9 December 2024.

¹³⁷ Articles 34–45 and 233 of UNCLOS provide that the right of transit passage (other than those covered by article 45) cannot be suspended in straits open to international maritime traffic, and that the right of innocent passage cannot be suspended in straits covered by article 45. Article 35(c) specifies that these provisions do not apply to straits whose passage regime is regulated by an international agreement already in force. Article 35(b) provides that these provisions do not apply to the legal status of maritime zones beyond the territorial waters of coastal States (for instance, exclusive economic zones or the high seas). Article 54 makes articles 39–40, 42 and 44 applicable by analogy to maritime routes within archipelagic jurisdictions. Walker (n 38) 309.

¹³⁸ As the explanations regarding these provisions of UNCLOS have been addressed above, the subjects are merely mentioned under this title.

¹³⁹ The fundamental legal basis of the Persistent Objector principle was established by the ICJ in the *Fisheries case*. According to the case, the United Kingdom argued that Norway’s fishing limits, based on the straight baseline system, were contrary to international law. Norway, on the other hand, contended that the application of this method was necessary due to its geographical structure, while asserting that this particular approach was historically adopted. Consequently, the ICJ rejected the UK’s claim, stating that Norway had been consistently applying this method for many years, while regarding it as in accordance with the principle of persistent objector in international law. The ICJ rules that if a state persistently, explicitly and consistently objects to a customary law that evolves, that particular rule becomes unapplicable to the state in question. As a customary law is binding on states, states that persistently object that a particular rule will not be subject to it. (*Anglo-Norwegian Fisheries Case* (UK v Norway) [1951] ICJ Rep 116, 139 <<https://www.icj-cij.org/case/5>> accessed 1 February 2025.) The same approach may be encountered in the *Asylum case*. Accordingly, Colombia contended that a common customary law exists in Latin America in terms of granting asylum in its diplomatic missions. On the contrary, Peru countered with asserting that such law was not binding, while not recognising it. However, Colombia argued that the aforementioned practice had evolved into a regional rule of customary law, and regarded this rule as binding for Peru. Eventually, the ICJ ruled in favour of Peru, acknowledging its persistent objections with regard to this practice. Furthermore, the ICJ put forward that even though such customary law existed, Peru would not be subject to it. (*Asylum Case* (Colombia v Peru) [1950] ICJ Rep 266, 277-278 <<https://www.icj-cij.org/case/7>> accessed 1 February 2025). This principle may be considered similar to the fact that Türkiye is not a party to UNCLOS.

¹⁴⁰ It is clear as seen at the pleadings presented before courts and tribunals of this kind, that states usually accept the ‘persistent objector’ rule. Although it should be underlined that this principle also applies

provisions of UNCLOS to Türkiye, despite the fact that the provisions of the Convention have become a state practice.¹⁴¹ Türkiye's position as a persistent objector to particular provisions of UNCLOS emphasises the unique status of the Straits and maintains the Montréal Convention's relevance in modern maritime law.

Article 35(c)¹⁴² of the 1982 UNCLOS clearly and explicitly states that the passage regime that have been established by UNCLOS shall not affect any of the old and existing international regimes which are already in force.¹⁴³ Accordingly, the Montréal Convention also constitutes an exception in terms of Article 35(c) of the UNCLOS.¹⁴⁴

outside the courtroom, and Türkiye represents a notable example in terms of this situation. While Türkiye is not only a non-party to UNCLOS, but also a persistent objector to several provisions that oppose its interests, at this juncture, it could be stated that one of the regulations that Türkiye has persistently objected to is the rule of the extension of the 12-nautical-mile limit for territorial waters, due to the issues with Greece, as the intention of Greece was to extend the breadth of its territorial waters up to twelve nautical miles. Türkiye consistently and evidently refused to accept the customary status of the extension of the breadth of territorial seas up to twelve nautical miles ever since the early 20th century, while it became particularly vehement in the 25 years immediately prior to the adoption of UNCLOS. James A. Green, *The Persistent Objector Rule in International Law* (Oxford University Press 2016) 53 <<https://academic.oup.com/book/57170>> accessed 5 August 2024.

¹⁴¹ State practice could be defined as official governmental conduct, reflected in a variety of acts. These acts include formal instructions to diplomatic agents, official statements in international conferences and in diplomatic exchanges, national court decisions, legislative measures and other actions conducted by governments to deal with international matters, according to international lawyers. Customary international law evolves due to the practice of states (*North Sea Continental Shelf Cases* (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) [1969] ICJ Rep 3, 43 <<https://www.icj-cij.org/case/52>> accessed 2 February 2025.). Although a state practice does not become a customary international law rule, as the practice also must comply with the *opinio iuris*. Sean D Murphy, *Public International Law in a Nutshell* (5th edn, West Academic Publishing 2013) 27-29. The *opinio iuris* corresponds to the belief that state practices must be executed as a legal obligation by the states. Pazarcı/Denk (n 39) 112.

¹⁴² The emphasized paragraph of the article in question states: "Nothing in this part affects: (...) the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits." The part that mentioned in terms of this provision corresponds to the provisions that have established the regime of straits in terms of UNCLOS, UNCLOS (n 1) art 35(c).

¹⁴³ In this case, there is a general agreement that certain straits are exempt from the implementation of transit passage due to this provision. The Turkish Straits, the Danish Straits, the Magellan Strait, and the Åland Strait could be regarded among those. Dolunay Özbek, 'Article 35(c) Straits of the UN Law of the Sea Convention' in David D Caron and Nilufer Oral (eds), *Navigating Straits: Challenges for International Law* (Brill 2014) 180-181. The legal regimes governing the rules of passage through the straits are established by international treaties. Although the treaties in question concluded by the states concerned have some deviations, these treaties generally align with the principle of freedom of passage. Kuran (n 86) 141-142.

¹⁴⁴ The Montréal Convention serves as a notable example of a pre-UNCLOS initiative to address the question of passing through an international strait by warships. It encompassed a range of measures that made distinctions between different types of naval ships based on their capacity and size, flag of origin, and overall maximum aggregate tonnage of a naval force exercising navigation. The right to transit

Türkiye is entitled to assert both regulatory and jurisdictional control over foreign vessels navigating through the Turkish Straits, provided that such actions preserve the core substance of the right of passage and align with the general principles of the law of the sea, as circumscribed by the applicable legal framework. Importantly, the Montréux Convention includes no explicit provision that constrains Türkiye's jurisdiction in this domain.¹⁴⁵ Due to this, Turkish courts possess the authority to exercise proceedings and jurisdictions on foreign vessels passing through the straits, even during transit.¹⁴⁶

Pursuant to the provisions of the Montréux Convention, the passage of merchant vessels through the Turkish Straits is guaranteed under conditions of peace, whereas the navigation of warships is subject to specific limitations concerning tonnage, armament, and prior notification requirements.¹⁴⁷ Türkiye maintains the prerogative to restrict the transit of warships through the Turkish Straits during periods of armed conflict or when it perceives an imminent threat thereof.¹⁴⁸ This legal mechanism reflects a calibrated equilibrium between Türkiye's territorial sovereignty and the principle of freedom of navigation.

Conversely, UNCLOS codifies the transit passage regime, which governs straits utilized for international navigation. Under this framework, both ships and aircraft are entitled to continuous and unobstructed passage, while the authority of the coastal state to suspend such passage is substantially curtailed.¹⁴⁹ Nevertheless, the legal framework allows for the enforcement of domestic laws concerning navigational safety and environmental preservation. Contrary to the Montréux Convention, UNCLOS does not include an

through the straits was subject to limitations and constraints, and notification to Türkiye was mandatory prior to transit.

¹⁴⁵ Türkiye's use of its sovereignty in matters related to "passage and transportation", in the context of Article 1 of the Montréux Convention, although not in general, may be considered to be limited as foreseen in the Convention. However, even if such a limit is accepted regarding the powers that Türkiye will exercise in the Turkish Straits as a coastal state, it is also a well-established principle of international law that all restrictions and limitations regarding the exercise of sovereignty, as foreseen by international law, should be evaluated as limited and confined to the narrowest area possible. Bayram Öztürk, Mikdat Kadioğlu and Hüseyin Öztürk (eds), *Marmara Denizi 2000 Sempozyumu Bildiriler Kitabı* (Turkish Marine Research Foundation Publications No 5, 2000) 11.

¹⁴⁶ Kuran (n 86) 143.

¹⁴⁷ Montréux Convention (n 72) arts 2–7, 8–22.

¹⁴⁸ Ibid arts 19–21.

¹⁴⁹ UNCLOS (n 1) arts 38–44.

explicit regulation in terms of the passage of naval vessels, leaving this matter to the discretion of the coastal state and international laws regarding armed conflict.

The Montréux Convention provides that, even in the event of its termination, the principle of free passage through the Turkish Straits shall continue to apply without temporal limitation.¹⁵⁰ This enduring obligation reflects the prior affirmation by the contracting parties of their adherence to the freedom of passage, as previously articulated in the Lausanne Convention and consolidated through the established norms of customary international law.¹⁵¹

C) LEGAL REGIME OF THE TURKISH STRAITS

The existing legal framework applicable to the Turkish Straits is founded upon the Montréux Convention, a multilateral treaty concluded on 20 July 1936 to regulate passage through these strategic waterways.¹⁵² This Convention was signed by representatives of Türkiye, Greece, Bulgaria, France, Romania, the Soviet Union, Yugoslavia, Japan, England and Austria, who were affiliated with the British Commonwealth.¹⁵³ The Convention formally came into effect on 9 November 1936. Italy became a signatory to the Convention on 2 May 1938,¹⁵⁴ and Japan renounced all its rights in terms of the Montréux Convention, in the subsequent Peace Treaty of 1951. This Convention consists of 29-article main text, with 4 annexes and a Protocol.¹⁵⁵

¹⁵⁰ 'The principle of freedom of transit and navigation affirmed in Article 1 of the present Convention shall however continue without limit of time.' Montréux Convention (n 72) art 28(2).

¹⁵¹ Kuran (n 86) 143.

¹⁵² Kuran (n 37) (2017b) 70.

¹⁵³ Montréux Convention (n 72) Preamble.

¹⁵⁴ The provision that allows Italy to become a state party to the Montréux Convention is as follows: '(1) The present Convention shall, from the date of its entry into force, be open to accession by any Power signatory to the Treaty of Peace at Lausanne signed on the 24th July, 1923. (2) Each accession shall be notified, through the diplomatic channel, to the Government of the French Republic, and by the latter to all the High Contracting Parties. (3) Accessions shall come into force from the date of notification to the French Government.' Ibid art 24. Since Italy was one of the state parties of the Lausanne Peace Treaty, according to the Lausanne Convention, this situation enabled it to accede to the Montréux Convention later, per the article in question.

¹⁵⁵ Since the Montréux Convention can be terminated by any party states, it is important to determine which states, especially Ukraine, have the status of a party to the Convention. Following the dissolution of the Soviet Union and Yugoslavia, the determination of the parties to the Montréux Convention has become a contentious issue. Despite the dissolution of the Soviet Union, Russia maintained its international legal personality and assumed the position of the USSR in the United Nations Security Council. It is indisputable that Russia, as the ongoing state, is also a party state to the Montréux Convention.

Article 1 of the Montr  ux Convention affirms the contracting parties' recognition and acceptance of the principles of freedom of passage and navigation through the Turkish Straits. The exercise of these freedoms remains subject to the specific limitations and regulatory framework established by the Convention.¹⁵⁶ Furthermore, as a consequence of the related regulation, the Straits Commission dissolved and all the powers that the Commission was granted by the Lausanne Convention transferred to the Republic of T  rkiye.¹⁵⁷

1- Overview

The Montr  ux Convention differentiates the applicable passage regimes based on the categorisation of vessels as outlined in Annex II. This classification is fundamental to the Convention's practical implementation, since the legal framework governing maritime transit through the Turkish Straits varies in accordance with the prevailing security conditions, namely, peacetime, armed conflict, or periods of heightened threat. Under Annex II, vessels are primarily divided into two core groups: merchant ships and warships, each subject to distinct regulatory conditions.

2- Definitions

a) Merchant Ships

Considering international law practice, merchant ships may be defined as ships used in maritime transport. However, since government ships may also be used for maritime transportation, and this situation is highly common, international law practice creates another distinction in the context of government ships. According to this distinction,

However, it should be noted that notifications made in accordance with Article 24 are also made to Ukraine. Georgia, which is a coastal state on the Black Sea, is not notified. In the wake of the dissolution of Yugoslavia, none of the states that emerged were considered to be the continuation of the state in question, and consequently became members of the United Nations with the new membership system. Enver Arıko  lu, 'Rusya-Ukrayna Savaşı Ba  lamında Montr   Bo  azlar Konvansiyonu'nun Uygulanması' in C  neyt Y  ksel and Ceren Karag  zo  lu (eds), *Rusya-Ukrayna Krizi ve Uluslararası Hukuk* (On İki Levha Yayıncılık 2023) 41, 52-54.

¹⁵⁶ 'The High Contracting Parties recognise and affirm the principle of freedom of transit and navigation by sea in the Straits. The exercise of this freedom shall henceforth be regulated by the provisions of the present Convention.' Montr  ux Convention (n 72) art 1.

¹⁵⁷ 'The functions of the International Commission set up under the Convention relating to the regime of the Straits of the 24th July, 1923, are hereby transferred to the Turkish Government.' Ibid art 24(1).

international law practice provides that the regime of merchant ships will be applied in principle to government ships utilised for commercial purposes.¹⁵⁸

Although it contains regulations regarding merchant ships, the Montréux Convention does not include a definition for them. Yet, it is also regulated that all provisions applicable to merchant vessels in the context of Montréux Convention shall be implemented to all vessels not falling within the scope of warships that regulated in Section II of the Convention.¹⁵⁹

b) Warships

While the Montréux Convention guarantees unimpeded passage for merchant ships during time of peace, it also imposes particular restrictions on the navigation, duration of stay and aggregate tonnage of warships, particularly focusing on those belonging to non-Black Sea Powers. Warships constitute the most significant type of government ships, which also determine the legal regime of other ships that not for commercial purposes.¹⁶⁰

The Montréux Convention does not include an overarching definition for warships. Alternatively, it provides detailed categorisations of particular types of naval ships that take place within the Annex II of the Montréux Convention, which will be explained below. In the relevant articles of several conventions¹⁶¹ it is being pointed that warships have the following characteristics: their affiliation to the naval armed forces of a particular State and displaying that State's external marks, being subordinated to an officer who has

¹⁵⁸ Pazarcı/Denk (n 39) 271.

¹⁵⁹ 'The term "merchant vessels" applies to all vessels which are not covered by Section II of the present Convention.' (Montréux Convention (n 72) art 7).

¹⁶⁰ Pazarcı/Denk (n 39) 271.

¹⁶¹ 'For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.' (Convention on the High Seas (n 27) art 8(2).); 'For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.' (UNCLOS (n 1) art 29).

been duly commissioned by the State's government of and is listed in the Navy List, and the ship's crew being subject to regular naval disciplinary principles.¹⁶²

As delineated in Annex II, warship categories that are permitted to navigate through the Turkish Straits are capital ships, aircraft-carriers, light surface ships, minor war vessels, submarines, and auxiliary warships.

The capital ships are defined in Article B of Annex II to the Montréal Convention, alongside other ship classes.¹⁶³ According to the aforementioned provision, capital vessels could be distinguished by the presence of certain features. Accordingly, capital ships are essentially surface warships that do not include aircraft carriers and auxiliary ships. Such vessels are defined either by a displacement¹⁶⁴ exceeding 10,000 tons or by the possession of artillery with a calibre greater than 203 mm. Alternatively, excluding aircraft carriers, they may also be characterised by a displacement not exceeding 8,000 tons while still carrying weapons with calibres above 203 mm.¹⁶⁵

The Russian nuclear-powered battlecruiser *Pyotr Velikiy* (Peter the Great) exemplifies this category of warship. Possessing a standard displacement of approximately 24,300 tons, the vessel is powered by dual nuclear reactors, enabling continuous operation for up to five decades without the necessity of refueling. It is armed with P-700 Granite anti-

¹⁶² Pazarcı/Denk (n 39) 271.

¹⁶³ '(1) Capital Ships are surface vessels of war belonging to one of the two following sub-categories: (a) Surface vessels of war, other than aircraft-carriers, auxiliary vessels, or capital ships of sub-category (b), the standard displacement of which exceeds 10,000 tons (10,160 metric tons) or which carry a gun with a calibre exceeding 8 in. (203 mm.) ; (b) Surface vessels of war, other than aircraft-carriers, the standard displacement of which does not exceed 8,000 tons (8,128 metric tons) and which carry a gun with a calibre exceeding 8 in. (203 mm.).' (Montréal Convention (n 72) Annex II art B(1)).

¹⁶⁴ The term displacement mainly refers to the weight of water that displaced by a vessel while the vessel floats. It could be concluded that said weight is equivalent to the vessel's weight, including its contents, which could be any cargo, fuel, passengers etc. 'Displacement' < https://taylorandfrancis.com/knowledge/Engineering_and_technology/Chemical_engineering/Displacement/ > accessed 10 February 2025.

¹⁶⁵ As Alpyavuz puts forward in his thesis of 2009, the spelling style that have been used in this definition is problematic and difficult to comprehend, due to its confusing nature. As the author argues with the provision of examples, considering Annex II of the Montréal Convention in case of existence of two auxiliary ships armed with 205 mm calibre cannon, the vessel of 8.000 tonnes would be regarded as a warship, while the 8.500-tonne one would not. As he puts forward, the rationale behind the sub-categorization of capital ships as warships remains unclear. Alpyavuz (n 83) 36.

ship missiles and outfitted with the S-300 long-range air defense system.¹⁶⁶ Also, the US Navy's *Iowa-class* battleships, with their large-calibre guns and high displacement, could also be categorised as capital ships.¹⁶⁷

As stipulated in Annex II of the Montréal Convention, aircraft carriers are classified as surface warships irrespective of their displacement. This designation applies exclusively to vessels constructed or modified primarily for the purpose of transporting and operating aircraft at sea. Accordingly, the mere installation of a take-off or landing deck on a vessel not intended for such use does not, in itself, justify its categorisation as an aircraft carrier.¹⁶⁸

As per the Montréal Convention, aircraft-carriers differentiate between two types that one equipped with a fitted deck that is suitable for an aircraft to take-off and land,¹⁶⁹ and one not equipped with such a structure. The Convention does not provide any information with regards to the aforementioned vessel that lacks the deck that is suitable for an aircraft to take-off and land, that have been regulated within the scope of aircraft-carriers.

The Russian aircraft carrier *Admiral Kuznetsov*¹⁷⁰ exemplifies this class of naval vessel. Similarly, the United Kingdom's *HMS Queen Elizabeth*,¹⁷¹ operated by a NATO member state, belongs to the same category. As one of the largest and most advanced surface combatants ever commissioned by the Royal Navy, it possesses the capacity to host up to

¹⁶⁶ 'Royal Navy sails to meet Russian Task Group' (08.05.2014) <<https://web.archive.org/web/20140513010710/http://www.royalnavy.mod.uk/News-and-Events/Latest-News/2014/May/08/140508-Russian-Task-Group>> accessed 11 February 2025.

¹⁶⁷ 'Fact Sheet' <<https://pacificbattleship.com/our-story/media/fact-sheet/>> accessed 11 February 2025.

¹⁶⁸ '(2) Aircraft-Carriers are surface vessels of war, whatever their displacement, designed or adapted primarily for the purpose of carrying and operating aircraft at sea. The fitting of a landing-on or flying-off deck on any vessel of war, provided such vessel has not been designed or adapted primarily for the purpose of carrying and operating aircraft at sea, shall not cause any vessel so fitted to be classified in the category of aircraft-carriers. (3) The category of aircraft-carriers is divided into two sub-categories as follows: (a) Vessels fitted with a flight deck, from which aircraft can take off, or on which aircraft can land from the air; (b) (3) Vessels not fitted with a flight deck as described in (a) above.' (Montréal Convention (n 72) Annex II art B(2)).

¹⁶⁹ Should this term be given due consideration, there is also the potential for the inclusion of helicopters. Alpyavuz (n 83) 37.

¹⁷⁰ David V. Miller and Jonathan T. Hine Jr, *Soviet Carriers in the Turkish Straits* (Naval War College, 31 January 1990) https://www.researchgate.net/publication/235210425_Soviet_Carriers_in_Turkish_Straits accessed 8 February 2025.

¹⁷¹ 'HMS Queen Elizabeth (R08)' <<https://www.royalnavy.mod.uk/organisation/units-and-squadrons/aircraft-carriers/hms-queen-elizabeth>> accessed 8 February 2025.

40 aircraft, encompassing both fixed-wing fighter jets and rotary-wing helicopters. In addition to its operational capabilities, the vessel is equipped with extensive onboard facilities, including multiple gymnasiums, a chapel, and a medical centre.¹⁷²

Light surface vessels refer to the ships that weigh between 100-10,000 tons and are equipped with a gun that does not exceed 203 mm calibre, while excluding the aforementioned warship types. In terms of the Montreux Convention, light surface vessels are evaluated in three distinct subcategories. The relevant classification encompasses: (i) vessels armed with guns of a calibre exceeding 155 millimetres; (ii) ships not equipped with such artillery but possessing a standard displacement surpassing 3,000 tons; and (iii) units lacking heavy-calibre weaponry yet still exceeding the 3,000-ton threshold in displacement, thereby falling within the scope of the regulatory restrictions imposed under the Convention.¹⁷³ These categories are taken into account for the total tonnage of the navies of the Black Sea littoral states, that take place in this particular area.¹⁷⁴

The *Hetman Ivan Mazepa* corvette, which is planned to join the inventory of the Ukrainian Navy, is an example of this class. This ship is being built under an agreement with Türkiye and was launched in 2023.¹⁷⁵

In terms of the Montreux Convention, a submarine could be defined as a vessel that is designed to operate beneath the surface of the sea.¹⁷⁶ As is apparent from the wording of the provision, any vessel that is eligible to navigate and operate submerged, despite the

¹⁷² Ibid.

¹⁷³ '(3) Light Surface Vessels are surface vessels of war other than aircraft-carriers, minor war vessels or auxiliary vessels, the standard displacement of which exceeds 100 tons (102 metric tons) and does not exceed 10,000 tons (10,160 metric tons), and which do not carry a gun with a calibre exceeding 8 in. (203 mm.). The category of light surface vessels is divided into three sub-categories as follows: (a) Vessels which carry a gun with a calibre exceeding 6.1 in. (155 mm.); (b) Vessels which do not carry a gun with a calibre exceeding 6.1 in. (155 mm.) and the standard displacement of which exceeds 3,000 tons (3,048 metric tons); (c) Vessels which do not carry a gun with a calibre exceeding 6.1 in. (155 mm.) and the standard displacement of which does not exceed 3,000 tons (3,048 metric tons).' (Montreux Convention (n 72) Annex II art B(3)).

¹⁷⁴ Alpyavuz (n 83) 38.

¹⁷⁵ 'The lead corvette of the Turkish construction "Hetman Ivan Mazepa" for the Ukrainian Navy was launched' <<https://vpk.name/en/637752-the-lead-corvette-of-the-turkish-construction-hetman-ivan-mazepa-for-the-ukrainian-navy-was-launched.html>> accessed 8 February 2025; 'Ukrayna'nın ilk MİLGEM gemisi seyir denemesinde' <<https://www.defenceturk.net/ukraynanin-ilk-milgem-gemisi-seyir-denemesinde>> accessed 8 February 2025.

¹⁷⁶ '(4) Submarines are all vessels designed to operate below the surface of the sea.' (Montreux Convention (n 72) Annex II art B(4)).

vessel being intended for civilian purposes, shall be subject to the limitations determined within the Convention. The underlying reason for this situation pertains to the classification of other warships that are also subject to the Montréal Convention, as the classifications included the employment of the term ‘warship’ and the vessel’s armament status. However, such an approach was not adopted in terms of submarines.¹⁷⁷ Russia’s *K-561 Kazan* nuclear submarine is an example of this class. 120 metres long and 13 metres wide, this submarine has various launch capacities.¹⁷⁸

Minor war vessels correspond to surface warships that weigh between 100-2.000 tons, and are not equipped with a gun with greater than 155 mm-calibre, excluding auxiliary vessels. However, it is important to emphasise that a vessel possessing the aforementioned characteristics must not be armed with guns whose calibre exceeds 155 millimetres, must lack torpedo-launching capabilities, and must not be constructed for speeds surpassing twenty knots.¹⁷⁹ The cumulative presence of any of these features would disqualify the vessel from a more lenient classification and may place it within the scope of warships subject to stricter regulatory limitations under the Montréal Convention.¹⁸⁰ The distinction made is of no consequence concerning passage regime. Although Article 18 of the Montréal Convention refers to this criterion for the purpose of calculating the aggregate tonnage of naval forces maintained by the Black Sea littoral States, its application is confined exclusively to naval forces stationed within the Black Sea region.¹⁸¹

¹⁷⁷ Alpyavuz (n 83) 38-39.

¹⁷⁸ ‘Crews assembled for ‘Kazan’ and ‘Knyaz Vladimir’ submarines, which are under construction’ <https://thewarmy.com/a/gotovy_ekipazhi_dlja_strojaschihsja_podlodok_kazan_i_knjaz_vladimir-5422/> accessed 8 February 2025.

¹⁷⁹ The *knot*, which is accepted as a unit of speed measurement in maritime, is very important in legal and technical regulations. Under the Montreux Convention, the requirement that warships transiting the Turkish Straits comply with certain speed limits constitutes an important control mechanism for international maritime traffic. Within the framework of UNCLOS and International Maritime Organization (IMO) regulations, speed limits set in knots to ensure the safety of transiting vessels are an integral part of international maritime law. TÜBİTAK, ‘Neden Denizcilikte Hız Birimi Olarak Knot Kullanılıyor?’ (Bilim Genç, 7 March 2025) <<https://bilimgenc.tubitak.gov.tr/makale/neden-denizcilikte-hiz-birimi-olarak-knot-kullaniliyor>> accessed 7 March 2025.

¹⁸⁰ ‘(5) Minor War Vessels are surface vessels of war, other than auxiliary vessels, the standard displacement of which exceeds 100 tons (102 metric tons) and does not exceed 2,000 tons (2,032 metric tons), provided they have none of the following characteristics: (a) Mount a gun with a calibre exceeding 6.1 in. (155 mm.); (b) Are designed or fitted to launch torpedoes; (c) Are designed for a speed greater than twenty knots.’ (Montréal Convention (n 72) Annex II art B(5)).

¹⁸¹ Alpyavuz (n 83) 39.

Auxiliary vessels constitute naval surface vessels which weigh more than the standard displacement of 100 tons. These vessels were used for fleet duties, troop transport, or other sorts of roles not explicitly assigned for military combat.¹⁸²

As auxiliary vessels have these features, those vessels must not be equipped with a gun with a calibre consists of more than 155mm, possess more than eight guns with greater than 76-mm-calibre, be designed of fitted for launching torpedoes, protected by armour plate, able to speed more that twenty-eight knots, being constructed or equipped mainly for operating aircraft at sea, and be equipped with more than two aircraft-launching equipment.

In terms of Annex II of the Montréal Convention, specific periods have been established for ships that have completed their age on the basis of classes. In this context, 26 years for capital ships, 20 years for aircraft carriers, 16 years if laid down prior to 1 January 1920 and 20 years if laid down after 31 December 1919 for light surface vessels, and 13 years for submarines.¹⁸³

In the regulation that takes place in Article 1 of Annex IV of the Montréal Convention¹⁸⁴, it is expressly provided that, for the purposes of calculating total tonnage, only standard displacement tonnage as defined in Annex II shall be considered, and that solely those vessels which do not exceed the age limitations set forth therein shall be included in the computation.^{185 186}

¹⁸² (6) Auxiliary Vessels are naval surface vessels the standard displacement of which exceeds 100 tons (102 metric tons), which are normally employed on fleet duties or as troop transports, or in some other way than as fighting ships, and which are not specifically built as fighting ships, provided they have none of the following characteristics: (a) Mount a gun with a calibre exceeding 6.1 in. (155 mm.); (b) Mount more than eight guns with a calibre exceeding 3 in. (76 mm.); (c) Are designed or fitted to launch torpedoes; (d) Are designed for protection by armour plate; (e) Are designed for a speed greater than twenty-eight knots; (f) Are designed or adapted primarily for operating aircraft at sea; (g) Mount more than two aircraft-launching apparatus.' (Montréal Convention (n 72) Annex II art B(6)).

¹⁸³ Montréal Convention (n 72) Annex II art C.

¹⁸⁴ Ibid Annex IV art 1(3).

¹⁸⁵ Meray/Olcay (n 70) 758.

¹⁸⁶ Annex II of the Montréal Convention does not explicitly determine whether over-aged ships should be included in the tonnage calculation. However, since the total tonnage of the navies of the Black Sea littoral states is calculated in other parts of the same Annex, it could be concluded that these vessels are not only to be taken into account in the tonnage calculation of the littoral states. Alternatively, an interpretation could be made that this provision could also be applied to non-riparian states' transit and stay tonnage calculation. However, this interpretation is incorrect. When interpreted by the purpose of



the Convention, it is seen that Montr  ux aims to protect the security of T  rkiye and the Black Sea littoral states. Therefore, the exclusion of over-aged ships from the tonnage calculation of non-riparian states would contradict the security purpose of the Convention. Moreover, this practice, which ensures that the total tonnage of the littoral states in the Black Sea is kept low, is aimed at limiting the military presence of the non-littoral states in the region. Adopting Annexes II, III and IV of the Convention without negotiation shows that the parties had this intention. Alpyavuz (n 83) 41-42.

3- Passage Regime Through the Turkish Straits

a) Overview

The Montr  ux Convention establishes a *sui generis*¹⁸⁷ system of passage regimes within the Convention. This regime is unique in that it does not fully comply with the categories of completely harmless or transit passage.¹⁸⁸ The regime under discussion differs from the ‘transit passage’ regime delineated in UNCLOS, as mentioned above, and is incompatible with the harmless transit regime that was in effect during the period of the signing of the Montr  ux Convention.¹⁸⁹ In addition to upholding the principle of free passage, one of the core objectives underpinning the Montr  ux regime is to ensure regional stability and safeguard the security interests of both T  rkiye and the littoral states of the Black Sea.

b) Passage Regime of Merchant Vessels

In times of peace, merchant vessels of all nations and carrying all sorts of cargo, are to be granted unimpeded navigation and transit through the Turkish Straits. This navigational freedom may be exercised continuously, irrespective of the hour, day or night, without the imposition of procedural formalities, except for the requirement that vessels undergo sanitary inspection as prescribed by Turkish legislation in alignment with applicable international health regulations.¹⁹⁰ Furthermore, all vessels approaching the Turkish

¹⁸⁷ A Latin expression meaning ‘unique’, ‘unprecedented’, ‘original’, used in many disciplines such as law. It is one of a kind. Republic of T  rkiye Ministry of Justice, ‘Sui Generis’ (Turkish Ministry of Justice Legal Dictionary) <<https://sozluk.adalet.gov.tr/Harf/S?Sayfa=3>> accessed 8 January 2025.

¹⁸⁸ Nur Jale Ece, *The Montreux Convention on its 75th Anniversary* (ORSAM Analysis No 51, Center for Middle Eastern Strategic Studies 2011) 5 <<https://md.teyit.org/file/1577085069073-orsam-analiz-51-nur-jale-ece-necmettin-a.pdf>> accessed 8 January 2025; Serkan Kaya, ‘T  rk Boğazları’nda Uygulanan Ge  iş Rejimi ve G  ncel Sorunlar: Montr   T  rk Boğazları S  zleşmesi’nin Feshi Halinde Ortaya   ıkabilecek Sorunlara ve Kanal İstanbul Projesi’ne İlişkin Tartışmalar’ (LLM Thesis, Maltepe University 2022) 58 <<https://openaccess.maltepe.edu.tr/bitstreams/53f69c57-f61b-4bd9-8a2f-80cebe439a77/download>> accessed 8 January 2025.

¹⁸⁹ Sel  uk Koca, ‘Possible Regimes of Passage from Canal Istanbul and Its Risks for Montreux Straits Convention under International Law’ (2023) 81(2) *Ankara Bar Review* 89 <<https://doi.org/10.30915/abd.1168580>> accessed 12 February 2025.

¹⁹⁰ ‘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, except as provided in Article 3 below. No taxes or charges other than those authorised by Annex I to the present Convention shall be levied by the Turkish authorities on these vessels when passing in transit without calling at a port in the Straits.’ Montr  ux Convention art 2(1).

Straits from either the Aegean Sea or the Black Sea are obligated to halt at a designated sanitary control station situated proximate to the respective entrance, as mandated by Turkish public health regulations. The inspection procedure must be carried out with maximum promptness—regardless of the time of day—for ships that are deemed to be in good sanitary condition or have submitted a health declaration affirming the absence of any infectious or epidemic disease on board. Vessels are not obligated to stop further during their navigation through the Turkish Straits.¹⁹¹ Moreover, no distinction shall be made regarding the freedom of passage and financial obligations between Turkish vessels and vessels of other nations.¹⁹²

Merchant vessels are exempt from the payment of any taxes or duties, with the exception of the taxes and duties that are foreseen to be collected during the non-stop passage process under the Annex I of the Montréal Convention.¹⁹³

It is important to note that pilotage and tugs services remain at the discretion of the parties concerned.¹⁹⁴ In case the agent or the master of a merchant vessel requests these services and these services to be provided by the Turkish authorities, fees may be levied. The Turkish Government shall periodically publish details regarding the fees to be charged for pilotage and tugs services.¹⁹⁵

In the absence of belligerent action on the part of Türkiye during a time of war, merchant vessels are to be granted freedom of passage and transport through the Turkish Straits,

¹⁹¹ ‘All ships entering the Straits by the Aegean Sea or by the Black Sea shall stop at a sanitary station near the entrance to the Straits for the purposes of the sanitary control prescribed by Turkish law within the framework of international sanitary regulations. This control, in the case of ships possessing a clean bill of health or presenting a declaration of health testifying that they do not fall within the scope of the provisions of the second paragraph of the present Article, shall be carried out by day and by night with all possible speed, and the vessels in question shall not be required to make any other stop during their passage through the Straits.’ Ibid art 3(1).

¹⁹² Kuran (n 86) 137.

¹⁹³ Montréal Convention (n 72) art 2(1), 3(1).

¹⁹⁴ ‘Pilotage and towage remain optional.’ Ibid art 2(3).

¹⁹⁵ ‘Merchant vessels may be required to pay taxes and charges for optional services, such as pilotage and towage, when any such service shall have been duly rendered by the Turkish authorities at the request of the agent or master of any such vessel. The Turkish Government will publish from time to time the tariff of the taxes and charges to be levied for such optional services.’ Ibid Annex I art 5.

irrespective of their flags or cargo, in accordance with the conditions that are regulated in terms of peacetime.¹⁹⁶

In the context of armed conflict, when Türkiye is a belligerent, it is imperative to impose restrictions on the freedom of passage and transportation of merchant vessels belonging to a state that is engaged in hostilities with Türkiye. Merchant vessels flying the flag of states not engaged in hostilities with Türkiye retain the right to exercise the aforementioned freedom of passage through the Turkish Straits, provided that they do not render any form of direct or indirect assistance to a belligerent state in conflict with Türkiye.¹⁹⁷

Considering the condition of not assisting the enemy in any way that takes place at Article 5(1) in terms of Türkiye's rights emerge from the Law of War as a belligerent state, it could be concluded that Türkiye may exercise control over the cargo transported by merchant vessels navigating through the Turkish Straits. Therefore, this provides Türkiye with the right of seizure and confiscation in terms of contraband of war.¹⁹⁸ In such instances, it is incumbent upon the merchant vessels to navigate through Turkish Straits during daylight hours and in accordance with the designated and instructed routes as stipulated by the Turkish authorities.¹⁹⁹

Provided that Türkiye considers itself in an imminent threat of war, merchant vessels shall enjoy the freedom of transport and passage in accordance with the conditions of peacetime, which are set out in Article 2. In this instance, it is mandatory for merchant vessels to enter the Turkish Straits during daylight hours and navigate through the designated and instructed route as per the directives of the Turkish authorities.²⁰⁰

¹⁹⁶ 'In time of war, Turkey not being belligerent, merchant vessels, under any flag or with any kind of cargo, shall enjoy freedom of transit and navigation in the Straits subject to the provisions of Articles 2 and 3.' Ibid art 4.

¹⁹⁷ 'In time of war, Turkey being belligerent, merchant vessels not belonging to a country at war with Turkey shall enjoy freedom of transit and navigation in the Straits on condition that they do not in any way assist the enemy.' Ibid art 5(1).

¹⁹⁸ Yaycı (n 84) 49-50.

¹⁹⁹ 'Such vessels shall enter the Straits by day and their transit shall be effected by the route which shall in each case be indicated by the Turkish authorities.' Montréux Convention (n 72) art 5(2).

²⁰⁰ 'Should Turkey consider herself to be threatened with imminent danger of war, the provisions of Article 2 shall nevertheless continue to be applied except that vessels must enter the Straits by day and that

c) Passage Regime of Warships

The regulation regarding peacetime encompasses the passage of warships and their status in the Black Sea. To safeguard its national security interests, Türkiye imposed specific restrictions on the navigational regime applicable to the passage of vessels through the Turkish Straits. Furthermore, restrictions were introduced concerning the presence of non-littoral warships in the Black Sea, aiming to preserve the security interests of the coastal states bordering the region.²⁰¹

During peacetime, various categories of naval vessels, including light surface units, minor warships, and auxiliary craft, operated by Black Sea coastal states or other littoral powers, regardless of their flag state, are entitled to transit the Turkish Straits free of any taxation or dues. However, the exercise of this right is subject to the fulfilment of specific conditions stipulated within the Convention.²⁰²

The restrictions concerning aggregate tonnage and vessel classification are not applicable to warships belonging to Black Sea littoral states. Under exceptional circumstances, such states may be permitted to send warships exceeding the prescribed tonnage thresholds through the Turkish Straits, provided that the transit occurs individually and is accompanied by no more than two escorting destroyers.²⁰³

Submarines belonging to Black Sea coastal states may be allowed to transit the Turkish Straits for the sole purpose of returning to their principal naval bases, provided that they were either constructed or purchased outside the Black Sea region and that Türkiye has been formally notified in advance concerning the relevant procurement or construction

their transit must be effected by the route which shall, in each case, be indicated by the Turkish authorities.’ Ibid art 6.

²⁰¹ Kuran (n 86) 138.

²⁰² ‘In time of peace, light surface vessels, minor war vessels and auxiliary vessels, whether belonging to Black Sea or non-Black Sea Powers, and whatever their flag, shall enjoy freedom of transit through the Straits without any taxes or charges whatever, provided that such transit is begun during daylight and subject to the conditions laid down in Article 13 and the Articles following thereafter.’ Montréux Convention art 10(1).

²⁰³ ‘Black Sea Powers may send through the Straits capital ships of a tonnage greater than that laid down in the first paragraph of Article 14, on condition that these vessels pass through the Straits singly, escorted by not more than two destroyers.’ Ibid art 11.

activity.²⁰⁴ The passage of the aforementioned submarines through the Turkish Straits is also authorised for the purpose of undergoing repairs in shipyards situated outside the Black Sea, on the condition that Türkiye is notified in advance with detailed information concerning the nature and scope of the intended repairs.²⁰⁵ Regardless of circumstances, the submarines in question are required to travel on the surface of the water and during daytime, and pass the Turkish Straits individually.²⁰⁶

The transit of warships through the Turkish Straits is contingent upon prior notification being submitted to the Government of Türkiye via official diplomatic channels. While the standard notice period is set at eight days, it is recommended that non-Black Sea states extend this period to fifteen days to ensure procedural compliance. The required notification must contain detailed information including the vessel's name, type, number, and intended destination. Furthermore, the prior notification must include the expected date of entry into the Turkish Straits, along with the estimated date of return where relevant. Should there be any alteration to the original transit plan, the revised date must be duly submitted to the Turkish Government at least three days before the newly intended passage.²⁰⁷ Additionally, the stipulated timeframe for entry to the Turkish Straits is limited to five days, with the initial notification serving as the official starting point for this period. Subsequent to the expiration of the stipulated five-day period, it is incumbent upon the relevant parties to submit a new preliminary notification. The conditions of the initial preliminary notification will remain applicable in this instance.²⁰⁸ During passage through the Straits, the commanding officer of the naval formation is obligated to report

²⁰⁴ 'Black Sea Powers shall have the right to send through the Straits, for the purpose of rejoining their base, submarines constructed or purchased outside the Black Sea, provided that adequate notice of the laying down or purchase of such submarines shall have been given to Turkey.' Ibid art 12(1).

²⁰⁵ 'Submarines belonging to the said Powers shall also be entitled to pass through the Straits to be repaired in dockyards outside the Black Sea on condition that detailed information on the matter is given to Turkey.' Ibid art 12(2).

²⁰⁶ 'In either case, the said submarines must travel by day and on the surface, and must pass through the Straits singly.' Ibid art 12(3).

²⁰⁷ 'The transit of vessels of war through the Straits shall be preceded by a notification given to the Turkish Government through the diplomatic channel. The normal period of notice shall be eight days ; but it is desirable that in the case of non-Black Sea Powers this period should be increased to fifteen days. The notification shall specify the destination, name, type and number of the vessels, as also the date of entry for the outward passage and, if necessary, for the return journey. Any change of date shall be subject to three days' notice.' Ibid art 13(1).

²⁰⁸ 'Entry into the Straits for the outward passage shall take place within a period of five days from the date given in the original notification. After the expiry of this period, a new notification shall be given under the same conditions as for the original notification.' Ibid art 13(2).

the precise composition of the forces under their command to the signal station located at the entrance of either the Çanakkale or Istanbul Strait, without any requirement to bring the vessel to a stop.²⁰⁹

In addition to the limitations explained above, Article 14 imposes additional restrictions in terms of the tonnage and number of vessels. The Montréux Convention prescribes that the combined tonnage of foreign naval forces transiting the Turkish Straits shall not exceed 15,000 tons, and that such formations must be composed of no more than nine vessels.²¹⁰ Moreover, vessels that make a port call within the Turkish Straits, as well as those that have incurred damage during transit, shall be exempted from the calculation of total tonnage under the Montréux Convention.²¹¹ In the event of damage to a vessel, its owner shall be obliged to comply with the provisions of safety that have been laid down specifically by Türkiye during the process of repair and restoration.²¹²

Warships that navigate through the Turkish Straits must, under any circumstances, refrain from using any aircraft that they may be carrying.²¹³ Moreover, such vessels are not permitted to remain in the Straits beyond the duration strictly required for transit, except in cases involving maritime casualties or emergencies arising from perils of the sea.²¹⁴

Nothing in the Montréux Convention shall be interpreted as prohibiting a naval contingent, irrespective of its displacement or structural characteristics, from conducting a goodwill visit to a port situated within the Turkish Straits, so long as such a visit is initiated upon formal invitation extended by the Turkish Government and does not exceed

²⁰⁹ ‘When effecting transit, the commander of the naval force shall, without being under any obligation to stop, communicate to a signal station at the entrance to the Dardanelles or the Bosphorus the exact composition of the force under his orders.’ Ibid art 13 (3).

²¹⁰ ‘The maximum aggregate tonnage of all foreign naval forces which may be in course of transit through the Straits shall not exceed 15,000 tons, except in the cases provided for in Article ii and in Annex III to the present Convention. The forces specified in the preceding paragraph shall not, however, comprise more than nine vessels.’ Ibid art 14(1, 2).

²¹¹ ‘Vessels, whether belonging to Black Sea or non-Black Sea Powers, paying visits to a port in the Straits, in accordance with the provisions of Article 17, shall not be included in this tonnage.’ Ibid art 14(3).

²¹² ‘Neither shall vessels of war which have suffered damage during their passage through the Straits be included in this tonnage ; such vessels, while undergoing repair, shall be subject to any special provisions relating to security laid down by Turkey.’ Ibid art 14(4).

²¹³ ‘Vessels of war in transit through the Straits shall in no circumstances make use of any aircraft which they may be carrying.’ Ibid art 15.

²¹⁴ ‘Vessels of war in transit through the Straits shall not, except in the event of damage or peril of the sea, remain therein longer than is necessary for them to effect the passage.’ Ibid art 16.

a limited timeframe. Importantly, given that this activity does not fall within the legal definition of “transit passage”, the naval units concerned are obligated to exit the Straits via the same route they entered, unless they independently meet the conditions prescribed for lawful passage under the Convention.²¹⁵

As previously discussed, the Montréux Convention permits only specific categories of naval vessels, namely light surface combatants, minor warships, and auxiliary units, belonging to non-Black Sea powers to navigate the Turkish Straits during periods of peace. Under this legal framework, the entry of aircraft carriers, capital-class vessels, and submarines operated by non-riparian states into the Black Sea is explicitly restricted, given that these states do not hold the requisite rights under the Convention to deploy such classes of warships through the Straits.²¹⁶ Furthermore, the aggregate tonnage of the permitted vessels shall not, as a general rule, exceed 30,000 tons.²¹⁷ However, this restriction may increase up to 45,000 tons, under certain circumstances.²¹⁸ The Montréux Convention stipulates that no individual non-Black Sea state may maintain a naval presence in the Black Sea exceeding two-thirds of the total tonnage collectively authorised for all such non-riparian states.²¹⁹

The Montréux Convention introduces a narrowly tailored exception to the general limitations imposed on naval access to the Black Sea by authorising non-littoral states to dispatch warships without prior notification to Türkiye, provided that the displacement does not exceed 8,000 tons, the mission is strictly humanitarian in nature, and explicit

²¹⁵ ‘Nothing in the provisions of the preceding Articles shall prevent a naval force of any tonnage or composition from paying a courtesy visit of limited duration to a port in the Straits, at the invitation of the Turkish Government. Any such force must leave the Straits by the same route as that by which it entered, unless it fulfils the conditions required for passage in transit through the Straits as laid down by Articles 10, 14 and 18.’ Ibid art 17.

²¹⁶ Kuran (n 86) 138-139.

²¹⁷ ‘Except as provided in paragraph (b) below, the aggregate tonnage of the said Powers shall not exceed 30,000 tons’ Montréux Convention art 18(1-a).

²¹⁸ ‘If at any time the tonnage of the strongest fleet in the Black Sea shall exceed by at least 10,000 tons the tonnage of the strongest fleet in that sea at the date of the signature of the present Convention, the aggregate tonnage of 30,000 tons mentioned in paragraph (a) shall be increased by the same amount, up to a maximum of 45,000 tons. For this purpose, each Black Sea Power shall, in conformity with Annex IV to the present Convention, inform the Turkish Government, on the 1st January and the 1st July of each year, of the total tonnage of its fleet in the Black Sea; and the Turkish Government shall transmit this information to the other High Contracting Parties and to the Secretary General of the League of Nations’ Ibid art 18(1-b).

²¹⁹ ‘The tonnage which any one non-Black Sea Power may have in the Black Sea shall be limited to two-thirds of the aggregate tonnage provided for in paragraphs (a) and (b) above’ Ibid art 18(1-c).

consent has been granted by the Turkish Government. The legal permissibility of such deployments depends on whether the overall cumulative tonnage threshold of 45,000 tons, stipulated for non-Black Sea powers, has been exceeded. Where this ceiling has not been breached, Türkiye is expected to allow the transit. Conversely, if the aggregate tonnage of previously authorised deployments has already surpassed the threshold, or if the intended passage would result in such a breach, Türkiye is obliged to promptly notify the Black Sea littoral states of the request.²²⁰ Additionally, warships from non-riparian states are only permitted to remain in the Black Sea for a maximum of twenty-one days, regardless of the stated purpose of their deployment.²²¹

During periods of armed conflict, as long as Türkiye retains its status as a neutral power, the passage and navigation rights of warships through the Turkish Straits shall remain governed by the same rules applicable in peacetime, in accordance with the Montréux Convention.²²² However, the Convention imposes an absolute prohibition on the transit of warships belonging to belligerent states, regardless of whether such states are coastal nations of the Black Sea. Nevertheless, an exception is granted for such vessels if they are returning to their home ports or bases, provided that they had departed those bases prior to the outbreak of hostilities.²²³ During the passage, the rights that have been granted

²²⁰ 'In the event, however, of one or more non-Black Sea Powers desiring to send naval forces into the Black Sea, for a humanitarian purpose, the said forces, which shall in no case exceed 8,000 tons altogether, shall be allowed to enter the Black Sea without having to give the notification provided for in Article 13 of the present Convention, provided an authorisation is obtained from the Turkish Government in the following circumstances: if the figure of the aggregate tonnage specified in paragraphs (a) and (b) above has not been reached and will not be exceeded by the despatch of the forces which it is desired to send, the Turkish Government shall grant the said authorisation within the shortest possible time after receiving the request which has been addressed to it ; if the said figure as already been reached or if the despatch of the forces which it is desired to send will cause it to be exceeded, the Turkish Government will immediately inform the other Black Sea Powers of the request for authorisation, and if the said Powers make no objection within twenty-four hours of having received this information, the Turkish Government shall, within forty-eight hours at the latest, inform the interested Powers of the reply which it has decided to make to their request.' Ibid art 18(1-d).

²²¹ 'Vessels of war belonging to non-Black Sea Powers shall not remain in the Black Sea more than twenty-one days, whatever be the object of their presence there.' Ibid art 18(2).

²²² 'In time of war, Turkey not being belligerent, warships shall enjoy complete freedom of transit and navigation through the Straits under the same conditions as those laid down in Articles 10 to 18' Ibid art 19(1).

²²³ 'Vessels of war belonging to belligerent Powers shall not, however, pass through the Straits except in cases arising out of the application of Article 25 of the present Convention, and in cases of assistance rendered to a State victim of aggression in virtue of a treaty of mutual assistance binding Turkey, concluded within the framework of the Covenant of the League of Nations, and registered and published in accordance with the provisions of Article 18 of the Covenant.' Ibid art 19(2); 'Notwithstanding the prohibition of passage laid down in paragraph 2 above, vessels of war belonging to belligerent Powers,

to the belligerent States in terms of the Law of Warfare, which consists of exercising the right of capture, confiscation, or any action with a hostile nature, are prohibited from being exercised.²²⁴

Although the general restriction on the passage of warships remains operative under the Montreux Convention, two significant exceptions to this prohibition are explicitly recognised. The first permits the transit of naval units involved in missions sanctioned by the League of Nations.²²⁵ ²²⁶ The second authorises the return of warships to their original bases, provided that such vessels had departed prior to the commencement of armed hostilities.²²⁷

Should Türkiye become involved as a belligerent in an armed conflict, the Turkish Government is vested with complete authority to determine the conditions under which warships may transit the Turkish Straits. As a result, the legal framework applicable to peacetime naval passage becomes inoperative.²²⁸

In situations where Türkiye deems itself exposed to a proximate threat of war, the legal regime governing the passage of warships applicable during armed conflict, as stipulated

whether they are Black Sea Powers or not, which have become separated from their bases, may return thereto.' Ibid art 19(4).

²²⁴ 'Vessels of war belonging to belligerent Powers shall not make any capture, exercise the right of visit and search, or carry out any hostile act in the Straits.' Ibid art 19(5).

²²⁵ Since the League of Nations was legally abolished on April 19, 1946, and there is no succession status between it and the United Nations, the above provision has become unfeasible. Furthermore, all the states that are parties to the Montreux Convention Regarding the Straits are parties to the United Nations Charter, which is a later agreement. According to Article 25 of the UN Charter, the members of the organisation are obliged to accept and implement the decisions taken by the Security Council. Within the scope of the practices in the 7th section of the UN Charter, titled "Actions to be taken in case of threat to the peace or acts of aggression", the members of the United Nations have undertaken the obligation to assist in the implementation of the measures decided by the Security Council in accordance with Article 49. Therefore, in order to implement the coercive measures to be taken by the Security Council, the warships of any belligerent state may pass through the Strait. The implementation of coercive measures taken within the framework of the United Nations Organization constitutes an exception to the principle that the Straits are closed to the warships of belligerent States today. Yaycı (n 84) 56; Sevin Toluner, *Milletlerarası Hukuk Dersleri* (5th ed, Beta 1996) 176.

²²⁶ 'Vessels of war belonging to belligerent Powers shall not, however, pass through the Straits except in cases arising out of the application of Article 25 of the present Convention, and in cases of assistance rendered to a State victim of aggression in virtue of a treaty of mutual assistance binding Turkey, concluded within the framework of the Covenant of the League of Nations, and registered and published in accordance with the provisions of Article 18 of the Covenant.' Montreux Convention art 19(2).

²²⁷ Ibid art 19(4).

²²⁸ 'In time of war, Turkey being belligerent, the provisions of Articles 10 to 18 shall not be applicable; the passage of warships shall be left entirely to the discretion of the Turkish Government.' Ibid art 20.

under the Montréux Convention, shall become operative.²²⁹ Vessels of war that have left their bases and ports prior to the time Türkiye exercises its powers conferred upon it, the vessels in question shall be allowed to return to their ports and bases that they have been separated from. Nevertheless, Türkiye may refrain from implementing this right for the warships of a State that it considers itself under the risk of an imminent threat of war due to the actions of the State in question.²³⁰

In the event that Türkiye perceives an imminent threat of armed conflict, it is entitled to invoke the discretionary powers conferred by the Montréux Convention to adopt precautionary regulatory measures. Upon doing so, Türkiye is required to immediately notify both the High Contracting Parties and the Secretary-General of the League of Nations²³¹ regarding the content and justification of such actions.²³² Should the Council of the League of Nations conclude, by a two-thirds majority, that the measures lack sufficient justification, and if this view is endorsed by a considerable number of the Convention's signatory states, Türkiye would be obliged under international law to withdraw the measures in question.²³³

²²⁹ 'Should Turkey consider herself to be threatened with imminent danger of war she shall have the right to apply the provisions of Article 20 of the present Convention.' Ibid art 21(1).

²³⁰ 'Vessels which have passed through the Straits before Turkey has made use of the powers conferred upon her by the preceding paragraph, and which thus find themselves separated from their bases, may return thereto. It is, however, understood that Turkey may deny this right to vessels of war belonging to the State whose attitude has given rise to the application of the present Article.' Ibid art 21(2).

²³¹ Although the organs of the League were assigned in 21 articles of the Convention, the General Assembly of the League of Nations decided to dissolve the League on April 18, 1946, and thus, the League of Nations was dissolved and ceased to exist. Instead, the United Nations was established separately from it. In terms of today's international relations, the League of Nations has almost no practical value. The United Nations emerged as a new international organisation independent of the League of Nations. It is not a continuation of the League of Nations as it is not a successor, and there is no functional connection between them. However, the United Nations took over the assets, archives, facilities, and non-political technical functions of the League of Nations through arrangements made between the two organisations. It is generally accepted that the political functions assigned to the League of Nations by various agreements and arrangements may not be automatically assumed by the United Nations but only upon request after the General Assembly or the relevant organ has made a decision in this direction. Yayı (n 84) 58-59.

²³² 'Should the Turkish Government make use of the powers conferred by the first paragraph of the present Article, a notification to that effect shall be addressed to the High Contracting Parties and to the Secretary-General of the League of Nations.' Montréux Convention art 21(3).

²³³ 'If the Council of the League of Nations decide by a majority of two-thirds that the measures thus taken by Turkey are not justified, and if such should also be the opinion of the majority of the High Contracting Parties signatories to the present Convention, the Turkish Government undertakes to discontinue the measures in question as also any measures which may have been taken under Article 6 of the present Convention.' Ibid art 21(4).

d) Passage Regime of Aircrafts

Under the Montr  ux Convention, civil aircraft are authorised to traverse the airspace above the Turkish Straits between the Mediterranean and Black Seas. The delineation of permissible air corridors for such transit lies within the exclusive competence of the Turkish Government, excluding areas formally designated as prohibited zones. Civil aircraft shall be authorised to utilise the designated air routes over the Turkish Straits, provided that prior notification is submitted to the Turkish Government at least three days in advance for scheduled flights, and that general information regarding the dates of transit is communicated in the case of regular services.²³⁴

The obligation to establish and maintain the necessary infrastructure and operational services for civil aircraft authorised to transit Turkish airspace, particularly along the air corridors linking the European and Asian continents in accordance with national aviation laws, lies with the Turkish authorities, with the primary objective of ensuring the safe conduct of air navigation.²³⁵

e) The Controversy Regarding Whether Ships Supplying Resources to Belligerent States Should Be Considered Warships

As previously discussed, the Montr  ux Convention principally governs the passage regime applicable to both military and commercial vessels transiting the Turkish Straits. Under its provisions, warships are subject to strict limitations concerning displacement tonnage and advance notification requirements, whereas merchant vessels benefit from a comparatively more liberal passage framework.²³⁶ Nevertheless, in periods of armed conflict, the Turkish Government is vested with the authority to regulate or deny the

²³⁴ ‘In order to assure the passage of civil aircraft between the Mediterranean and the Black Sea, the Turkish Government will indicate the air routes available for this purpose, outside the forbidden zones which may be established in the Straits. Civil aircraft may use these routes provided that they give the Turkish Government, as regards occasional flights, a notification of three days, and as regards flights on regular services, a general notification of the dates of passage.’ Ibid art 23(1).

²³⁵ ‘The Turkish Government moreover undertake, notwithstanding any remilitarisation of the Straits, to furnish the necessary facilities for the safe passage of civil aircraft authorised under the air regulations in force in Turkey to fly across Turkish territory between Europe and Asia. The route which is to be followed in the Straits zone by aircraft which have obtained an authorisation shall be indicated from time to time.’ Ibid art 23(2).

²³⁶ The Montr  ux Convention.

passage of warships belonging to belligerent powers, pursuant to Article 19²³⁷ of the Montr  ux Convention, an authority that carries substantial relevance in the context of contemporary hostilities, notably the ongoing war between Ukraine and Russia.

According to the Montr  ux Convention, civilian or commercial vessels, regardless of their cargo, are not considered warships; this is due to being considered a warship depends on the vessel's status as an official warship affiliated with the armed forces of a state. The Convention strictly defines warships in Article 10 and Annex II, thus embedding this distinction in the text. Indeed, T  rkiye also states that it is legally obligated to comply with the definitions in question, and shall not apply the Montr  ux Convention's warship-specific restrictions to vessels other than the ships mentioned.

The controversy emerges from the question of whether ships supplying resources to a belligerent State should be regarded as a vessel of war. The arguments in favour, which argue that such ships constitute a warship, focus on the perspective that such ships mainly engage in military operations by providing fundamental resources such as guns, to a belligerent State. Such actions arguably constitute contributions to war. The most concrete example of this argument is provided by the notes issued by the United Kingdom to T  rkiye regarding the German ships during World War II.²³⁸ Accordingly, The United Kingdom asserted in June 1944 that although six German ships had crossed the Turkish Straits disarmed, yet they were vessels of war.

The Foreign Secretary at the time, Anthony Eden, contended that even though the vessels in question were ostensibly vessels of commerce, they were in fact capable of the carriage of weapons and ammunition, and thus should be considered as a war vessel, or at the very least, as auxilliary vessels under the Montr  ux Convention. The British side contended that Turkish authorities, through a hasty and superficial examination, had mistakenly classified these vessels as merchant ships, whereas their passage should have been prohibited under Article 19 of the Montr  ux Convention. As a result of this diplomatic pressure, T  rkiye adopted a more rigorous inspection regime concerning German vessels

²³⁷ Ibid art 19.

²³⁸ U  ur Bayillo  lu, 'Provisions of the Montreux Convention Regarding Wartime: Turkey's Rights and Obligations' (2024) 19(2) *Terazi Law Review* 35-50, 38 <<https://jurix.com.tr/article/38385?c=0&u=0>> accessed 27 February 2025.

and, on 5 June 1944, intercepted certain German ships at the entrance of the Straits. This incident illustrates one of the grey zones within the Montréux regime; namely, the ambiguity surrounding the distinction between warships and merchant vessels.

On the contrary, the opposing argument regards such ships as merchant vessels, due to their commercial nature, unless the vessels in question are under command of the naval forces, or officially designated as auxiliary vessels. Classifying such vessels as warships could constitute a significant example that narrows the distinction between warships and merchant vessels, putting commercial trade in danger and causing non-belligerent states issues in terms of engaging in trades during conflicts. The following example may be provided to illustrate Türkiye's literal interpretation of Annex II of the Montréux Convention, as set out in the notes provided by the United Kingdom.²³⁹

Annexes of the Montréux Convention provide a detailed classification of naval vessels, distinguishing them from merchant ships. Annex II identifies various types of warships; such as battleships, aircraft carriers, light surface vessels, submarines, and auxiliary vessels. Notably, auxiliary vessels are also treated as warships under the Convention, particularly if they exceed certain tonnage thresholds.²⁴⁰ Notwithstanding the nature of their cargo, civilian or commercial vessels are not deemed warships under the Montréux Convention. The legal status of a warship is predicated on its formal integration into the naval forces of a sovereign state and its operation under the authority of those forces, as underlined above. In line with this, Türkiye consistently affirms that it is legally obliged to adhere to these definitions and, consequently, cannot extend the Convention's warship-specific restrictions to vessels falling outside this delineated category.

Considering the Montréux Convention and its implementation, the aforementioned classification has significant consequences with regards to Türkiye's obligations. Historically, Türkiye had interpreted the Montréux Convention strictly, due to its role as a neutral gatekeeper of the Black Sea. Nonetheless, Türkiye has received requests with

²³⁹ Bayılhoğlu (n 238) 39.

²⁴⁰ Montréux Convention Annex II.

regards to the restriction of several vessels from international actors. The vessels in question are suspected of supplying resources to Russia or Ukraine, in the context of war.

Although Türkiye invoked Article 19 of the Montreux Convention to restrict the passage of warships through the Turkish Straits in response to Russia's 2022 military offensive against Ukraine, the legal status of merchant vessels providing logistical support to belligerent states remains a matter of interpretative debate.²⁴¹ As the conflict endured, allegations emerged suggesting that Russia had established a maritime logistical supply route through the Turkish Straits. According to various news²⁴², in the absence of access to supply lines from Syria and the Mediterranean, Russia began repurposing civilian cargo vessels as *de facto* auxiliary naval units; utilising them to transport arms, ammunition, fuel, and provisions from ports in the Baltic and Mediterranean to the port of Novorossiysk. It has been observed through close monitoring of the Turkish Straits' maritime traffic that the logistical requirements of the Voenno-Morskoy Flot (Russian Navy) have been met by means of civilian vessels.²⁴³

While Turkish authorities have officially maintained that no formal breach of the Convention has occurred, the Ukrainian side and certain observers have argued that

²⁴¹ For statements, see: 'Dışişleri Bakanı Çavuşoğlu: Montrö Sözleşmesi'nin Bütün Hükümlerini Şeffaf Bir Şekilde Uygulayacağız' (Anadolu Ajansı, 27 February 2022) <<https://www.aa.com.tr/tr/gundem/disisleri-bakani-cavusoglu-montro-sozlesmesinin-butun-hukumlerini-seffaf-bir-sekilde-uygulayacagiz/2517057>> accessed 25 February 2025; 'Dışişleri Bakanı Çavuşoğlu: Kıyıdaş Olan, Olmayan Bütün Ülkeleri Boğazlardan Savaş Gemisi Geçirmemesi Konusunda Uyardık' (Anadolu Ajansı, 28 February 2022) <<https://www.aa.com.tr/tr/gundem/disisleri-bakani-cavusoglu-kiyidast-olan-olmayan-butun-ulkeleri-bogazlardan-savas-gemisigecirmemesi-konusunda-uyardik/2518767>> accessed 25 February 2025.

²⁴² 'Is Russia Exploiting a Gap in the Montreux Convention?' (Lawfare, 14 June 2022) <<https://www.lawfaremedia.org/article/russia-exploiting-gap-montreux-convention#:~:text=In%20light%20of%20Turkey%E2%80%99s%20Feb,%E2%80%9D%20Some%20commentators%20argue%20that>> accessed 24 July 2025.

²⁴³ For instance, it has been reported that cargo vessels operated by Oboronlogistika, a company affiliated with the Russian Ministry of Defence, such as those belonging to the "Sparta" series, have been routinely transporting military equipment between Novorossiysk and Syria under the guise of civilian maritime activity. Similarly, the Russian-flagged RORO vessel *Lady Mariia* has allegedly been used to carry weapons from Kaliningrad to Novorossiysk, with subsequent redeployments to other destinations. In a comparable manner, the Russian Federation has for years utilised its civilian tankers *Sig* and *Yaz* to deliver fuel to its airbase in Syria. These smaller tankers, though classified as civilian, have functioned effectively as naval auxiliary supply ships while transporting jet fuel through the Straits to Syria. Middle East Institute, 'Russia is violating the spirit of Montreux by using civilian ships for war' (18 May 2022) <<https://www.mei.edu/publications/russia-violating-spirit-montreux-using-civilian-ships-war#:~:text=using%20navy%20ships,the%20Mediterranean%20and%20Black%20seas>> accessed 24 July 2025.

Russia's use of ostensibly civilian vessels for military purposes constitutes a violation of the Convention's normative intent, while Russia has attributed the closure of the Straits to its warships to Western, particularly NATO, pressure, yet has expressed satisfaction with the continuation of commercial passage.²⁴⁴ Nonetheless, no state has thus far formally alleged that these operations are in legal contravention of the Montréux regime, given that the Convention's express provisions do not explicitly prohibit such logistical transfers.

Article 4 of the Montréux Convention is particularly significant, as it ensures that merchant vessels may freely pass through the Straits during wartime, provided Türkiye is not a party to the conflict, regardless of their flag or cargo.²⁴⁵ This means that carrying military goods does not, by itself, justify restricting civilian ships. Since 2022, Türkiye has implemented this rule, allowing merchant vessels of the warring parties to pass without interference. In doing so, it has maintained a clear legal and practical distinction between warships and civilian ships, reinforcing its stance of neutrality.

In a similar vein, another pertinent definition, grounded in the fundamental distinction upheld by general law of the sea, is set forth in Article 29 of UNCLOS, which defines a warship as a ship belonging to the armed forces of a state, flying the recognized warship flag of that state, under the command of an officer appointed by the government, and whose crew is subject to the discipline of the regular armed forces.²⁴⁶ This incident points to one of the gray areas of the Montréux regime: the ambiguity of the distinction between a warship and a merchant ship.

In comparison, the Montréux Convention adopts a more categorical and enumerative approach, as reflected in its Annex II, which classifies warships into specific types and tonnage thresholds. While both regimes uphold the principle that warships must be State-operated and subject to military command, the Montréux Convention introduces stricter,

²⁴⁴ Lawfare (n 242).

²⁴⁵ Montréux Convention art 4 (n 196).

²⁴⁶ "For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline." UNCLOS (n 1) Art 29.

technical and quantitative criteria, particularly due to its role in regulating passage through a geopolitically sensitive strait system.

Contemporary international humanitarian law interprets the distinction between warships and merchant vessels primarily in terms of ‘targetability’. According to the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*,²⁴⁷ a merchant vessel may lose its protection from attack if it makes an effective contribution to military action—such as transporting arms, troops, or refuelling warships—and if its destruction offers a definite military advantage. In such cases, the vessel becomes a lawful target, even though it retains its civilian legal status and its crew must be treated as prize detainees rather than prisoners of war.

While the Montreux Convention adopts a formal classification of ships based on criteria like flag, command structure, and displacement, it does not address the functional transformation of merchant vessels engaged in military support. In practice, this creates a legal tension—especially under Article 19—when Türkiye must decide whether a seemingly civilian vessel supplying a belligerent should be permitted to transit the Straits. San Remo principles suggest that such vessels may be denied passage or treated as auxiliary warships, regardless of their formal status. This illustrates the growing gap between treaty-based legal categories and operational realities at sea.

D) THE ROLE OF THE CONVENTION IN REGULATING MARITIME TRAFFIC IN THE TURKISH STRAITS AND THE BLACK SEA

A noticeable escalation in maritime activity through the Turkish Straits has been recorded in recent years, with a particularly sharp increase in the volume and frequency of oil tanker transits, as well as in the quantities of both crude and refined petroleum cargoes

²⁴⁷ See *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (12 June 1994) <https://ihl-databases.icrc.org/en/ihl-treaties/san-remo-manual-1994?gad_source=1&gad_campaignid=22787781333&gbraid=0AAAAADriTE9LSfhv6Rn7N54Un2RuefbXO&gclid=Cj0KCQjws4fEBhD-ARIsACC3d28zlMekONXKpemOsLTshMAXD2eapy8l8gVK7OT4d4H69tiageZHFWSaAjiXEALw_wcB> accessed 24 July 2025. The Manual is not a treaty but a codification of customary international humanitarian law, drafted by legal and military experts under the auspices of the International Institute of Humanitarian Law. It is widely recognised as a soft law instrument with significant persuasive authority in both academic and operational contexts.

being conveyed. This has given rise to an augmented risk and danger of substantial maritime accidents in the Turkish Straits, with potentially destructive consequences.²⁴⁸

Türkiye's adoption of navigational safety measures has become imperative in response to the increasing significance of preventing maritime accidents and environmental degradation. Nonetheless, the enforcement of such regulatory frameworks must remain consistent with core legal principles—particularly ensuring that the essential character of the right of passage is upheld and that no conflict arises with the explicit provisions enshrined in the Montréux Convention.²⁴⁹ In pursuit of this objective, Türkiye promulgated the Maritime Traffic Regulations for the Turkish Straits and the Sea of Marmara in 1994.²⁵⁰ This framework was later replaced in 1998 by a revised regulatory text entitled the Maritime Traffic Regulations for the Turkish Straits.^{251 252} The current legal regime is governed by the 2019 Turkish Straits Maritime Traffic Regulation (*hereinafter: the 2019 Straits Regulation*), which was officially published in the Official Gazette²⁵³ and entered into force by repealing the 1998 Regulation.

1- Safety Measures and Navigation Rules

The primary objective of the Turkish Straits Maritime Traffic Regulations is to establish a unified regulatory framework that governs the movement of vessels through the Straits,

²⁴⁸ Ministry of Foreign Affairs, 'Note on the Turkish Straits' <<https://www.mfa.gov.tr/the-turkish-straits.en.mfa>> accessed 3 February 2025.

²⁴⁹ Kuran (n 86) 137.

²⁵⁰ *Regulation on the Maritime Traffic Order of the Straits and the Marmara Region*, Decision No 94/5146 (Official Gazette, 11 January 1994, No 21815) <https://www.resmigazete.gov.tr/arsiv/21815.pdf> accessed 4 February 2025; Maritime Traffic Regulations for the Turkish Straits and the Marmara Region (entered into force 1 July 1994) <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1994_Regulations.pdf> accessed 4 February 2025. The main purpose of this regulation is to ensure the safety of life, property, environment and navigation in the Turkish Straits. Haydar Berk, 'TÜRK BOĞAZLARI' <<https://www.mfa.gov.tr/turk-bocazlari.tr.mfa>> accessed 4 February 2025.

²⁵¹ *Türk Boğazları Deniz Trafik Düzeni Tüzüğü*, Decision No 98/11860 (Official Gazette, 6 November 1998, No 23515) <<https://www.resmigazete.gov.tr/arsiv/21980.pdf>> accessed 4 February 2025.

²⁵² '23.11.1993 tarih ve 1993/5061 sayılı Bakanlar Kurulu Kararıyla yürürlüğe konulan "Boğazlar ve Marmara Bölgesi Deniz Trafik Düzeni Hakkındaki Tüzük" yürürlükten kaldırılmıştır.' (*The "Regulation on the Maritime Traffic Order in the Straits and the Sea of Marmara," which was enacted by the Council of Ministers Decision dated 23 November 1993 and numbered 1993/5061, has been repealed.*) (academic translation). Ibid art 52.

²⁵³ *Türk Boğazları Deniz Trafik Düzeni Yönetmeliği* (2019 Turkish Straits Maritime Traffic Regulation), Decision No 1426 (Official Gazette, 15 August 2019, No 30859) <<https://www.resmigazete.gov.tr/eskiler/2019/08/20190815-18.pdf>> accessed 4 February 2025.

with a view to ensuring navigational safety, safeguarding human life and property, and protecting the integrity of the marine environment.²⁵⁴ While the implementation of any regulatory scheme must respect the core principles of the right of passage enshrined in the Montr  ux Convention, T  rkiye retains sovereign authority to promulgate navigational regulations and maritime safety protocols aimed at facilitating the secure and efficient management of vessel traffic within the Turkish Straits.

The aforementioned right and authority are exercised by T  rkiye in various ways, such as by using Vessel Traffic Services (VTS)²⁵⁵ to regulate maritime traffic and avoid collisions, providing mandatory pilotage and tugboat assistance in place for hazardous or large cargo ships with the purpose of ensuring the safety of navigation. Also, the implementation of Environmental Protection Protocols particularly for vessels containing dangerous substances.

The 2019 Straits Regulation introduces a series of precautionary measures designed to mitigate navigational hazards in the Turkish Straits. In this context, the Turkish Straits Vessel Traffic Services²⁵⁶ system has been established. The system is designed to monitor maritime traffic, respond to fluctuating conditions, and proactively plan and organise the maritime traffic, with the purpose of enhancing maritime safety. The system in-question has been expanded to cover the Turkish Straits as a whole, with offering comprehensive monitoring of vessel traffic in the entire Straits area.²⁵⁷

In addition, the 2019 Regulation on the Turkish Straits incorporates Traffic Separation Schemes (TSS), designed in conformity with Rule 10 of “the 1972 Convention on the

²⁵⁴ The aim mentioned above has taken place at all regulations regarding the Turkish Straits in the Turkish domestic law. See: The Straits Regulation of 1994 (n 243) art 1; The Straits Regulation of 1998 (n 244) art 1; 2019 Turkish Straits Maritime Traffic Regulation (n 246) art 1.

²⁵⁵ Vessel Traffic Services (*T  rk Boğazları Gemi Trafik Hizmetleri*) generally corresponds to a technology orientated navigational system with purposes such as preventing collisions and groundings by ensuring the safety of life property, environment and navigation, with ensuring the safe functioning of maritime traffic. Fevzi Topsoy, Fevzi Topsoy, ‘Uluslararası Deniz Hukuku Kuralları Işığında Gemi Trafik Hizmetleri (VTS) Sistemi ve Operat  rlerinin Hukuk   Stat  s  ’ (2013) 17(1-2) Gazi University Faculty of Law Review 899.

²⁵⁶ *T  rk Boğazları Gemi Trafik Hizmetleri (TBGTH)*; ‘Bakanlık/  dare, trafik ayırım d  zeninin uygulanması, denetlenmesi ve rapor sisteminin i  şlerliğı i  in T  rk Boğazları Gemi Trafik Hizmetleri Sistemi’ni kurar.’ 2019 Turkish Straits Maritime Traffic Regulation (n 246) art 5.

²⁵⁷ ‘Note on the Turkish Straits’ (n 241); ‘Gemi Trafik ve Kılavuzluk Hizmetleri’ <https://www.kiyiemniyeti.gov.tr/gemi_trafik_ve_kilavuzluk_hizmeti> accessed 20 February 2025.

International Regulations for Preventing Collisions at Sea” (COLREGs)²⁵⁸, with the objective of reinforcing navigational safety within the Turkish Straits.²⁵⁹ Previously, between 1934 and 1982, in order to regulate maritime traffic and guarantee the navigation, environment, and property safety, the Left Navigation Regime was established.²⁶⁰

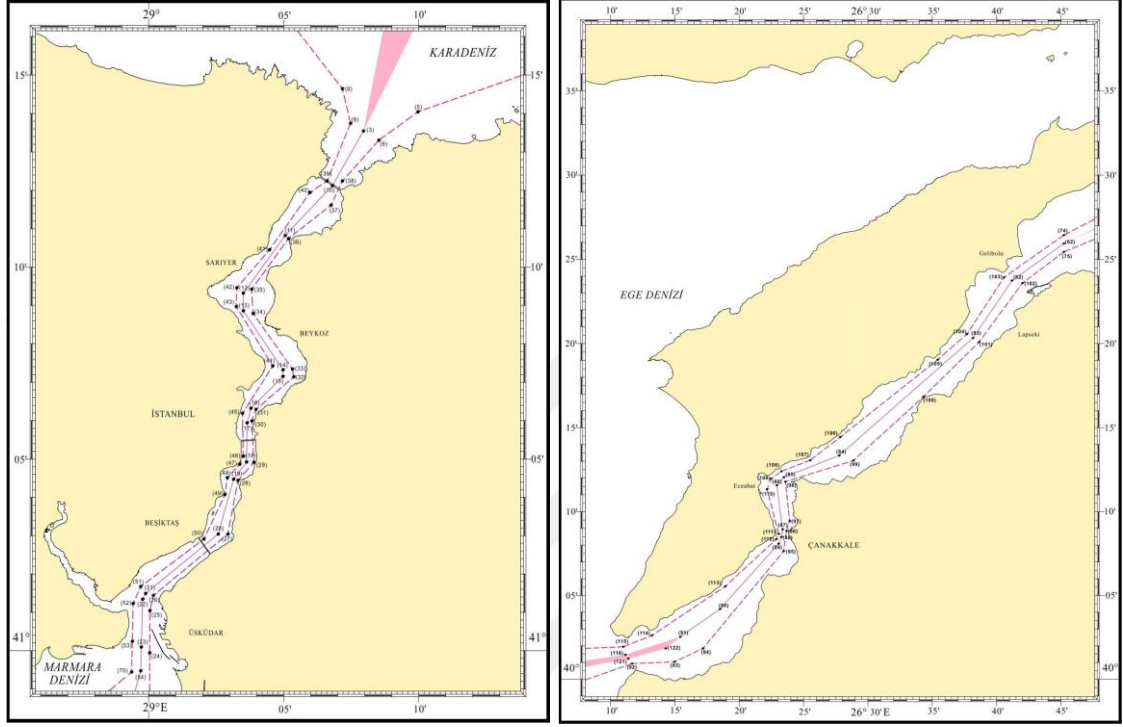


Figure 3 and 4: The Turkish Straits Traffic Separation Schemes.²⁶¹

The regulations in terms of navigational rules also take place in establishing particular navigational guidelines for navigating ships. For instance, in the 2019 Straits Regulation, it has been regulated that vessels navigating through the Turkish Straits are required to

²⁵⁸ Convention on the International Regulations for Preventing Collisions at Sea (adopted 20 October 1972, entered into force 15 July 1977) 1050 UNTS 16 (COLREGs), rule 10. <<https://treaties.un.org/pages/showDetails.aspx?objid=08000002800fcf87>> accessed 20 February 2025.

²⁵⁹ ‘Türk Boğazları ile yaklaşımlarında, WGS 84 datumu esas alınarak hazırlanan ve bu Yönetmeliğin ekinde yer alan Ek-1’de belirtilen, Uluslararası Denizde Çatışmayı Önleme Sözleşmesi’nin (COLREG 72) 10 uncu Kuralına göre düzenlenen ve IMO tarafından kabul edilen trafik ayırımı düzeni tesis edilmiştir.’ (‘In the Turkish Straits and their approaches, a traffic separation scheme has been established in accordance with Regulation 10 of the International Convention for Preventing Collisions at Sea (COLREG 72), prepared on the basis of WGS 84 datum and specified in Annex-1 of this Regulation, and accepted by IMO.’) (academic translation) The 2019 Straits Regulation (n 246) art 4(1).

²⁶⁰ Ece (n 2) 41.

²⁶¹ The 2019 Straits Regulation, Annex 1.2, 1.4.

have authorised personnel placed at the main engine control station and vessels must be manoeuvred by hand. Moreover, the regulations also state that ships navigating through the Turkish Straits must refrain from passing the ship that navigates ahead of them except in cases that require such action, and that vessels navigating in the same direction are required to maintain a minimum distance of eight gomina from one another. Additionally, it is recommended, and in some cases mandated, that vessels navigating through the Turkish Straits use pilotage and tugboat assistance in terms of the 2019 Straits Regulation.

2- Monitoring and Enforcement Mechanisms

Türkiye has established and is implementing various mechanisms to ensure the effective monitoring and control of maritime traffic. In this regard, the implementation of Vessel Traffic Services may also be considered relevant, as the system is primarily structured to ensure navigational safety by maintaining a continuous flow of maritime information and facilitating timely intervention when deemed necessary.²⁶² Vessels that navigate through the Turkish Straits are obliged to submit specific reports to the VTS centre prior to and during the navigation process. The processing of the reports in question is undertaken by the Turkish Straits Report System.²⁶³

As another monitoring mechanism, the Automatic Identification System (AIS) plays a vital role in terms of monitoring maritime traffic by automatically transmitting critical pieces of information regarding ships, including location, speed and course. The implementations of this system enable authorities to effectively monitor vessel movements in real time, thus facilitating the identification of potential dangers in advance.²⁶⁴

Administrative sanctions imposed during passage through the Turkish Straits are regulated in Türkiye's domestic law through various laws and regulations. As mentioned above, the 2019 Straits Regulation regulates vessel traffic in the İstanbul and Çanakkale

²⁶² 'Gemi Trafik ve Kılavuzluk Hizmetleri' (n 250).

²⁶³ The system corresponds to the Turkish Straits Reporting System, including Navigation Plan-1 and 2, Position Report and Calling Point Report, *ibid* art 3(1-l). The mentioned reports are also regulated under the provisions of the 2019 Straits Regulation, The 2019 Straits Regulation (n 246) art 7. For vessels' obligation of notification, see *ibid* art 32.

²⁶⁴ Devrim Selim Mısır, 'Gemi Trafik Hizmetleri-VTS' (2008) 8(3) Yunus Araştırma Bülteni 11 <<https://dergipark.org.tr/tr/download/article-file/204317>> accessed 9 February 2025.

Straits and the Marmara Sea, ensuring that ships act in accordance with navigational safety. Within the scope of this Regulation, administrative sanctions are imposed in case the ships transit the Turkish Straits fail to adhere to the stipulated traffic regulations. According to the provisions of the Regulation, ships that jeopardise the safety of navigation, especially in narrow waterways, may be fined, and in some cases, their right of passage may be suspended.

However, the Ports Law,²⁶⁵ which includes regulations for vessels using Türkiye's ports and straits, provides various sanctions for vessels violating the safety of navigation. Pursuant to the relevant articles of the Law, the competent authorities can impose administrative fines on vessels violating the strait passage regime, as well as impose sanctions by not allowing such vessels to leave Turkish territorial waters in certain circumstances. Furthermore, the Law on Misdemeanors²⁶⁶ sets out the general framework for the imposition of administrative fines on vessels transiting the Turkish Straits in case the vessels in question violate traffic rules.

Another important sanction imposed by Türkiye on vessels using the Turkish Straits is related to environmental protection measures. The Environmental Law²⁶⁷ provides for serious administrative sanctions against marine pollution that may be caused by ships passing through the Turkish Straits. Notably, vessels found to be discharging oil, chemical pollutants, or other environmentally hazardous substances into the Turkish Straits or adjacent maritime zones are subject to substantial administrative fines and, in certain instances, face prohibitions on further passage. As a contracting party to key international marine environmental instruments—most prominently “the International Convention for the Prevention of Pollution from Ships” (MARPOL 73/78),²⁶⁸ Türkiye

²⁶⁵ Corresponds to ‘Limanlar Kanunu’ in Turkish. Ports Law, Law No 618 (Official Gazette, 14 April 1925, No 1673) <<https://www.uab.gov.tr/uploads/legislations/limanlar-kanunu/limanlar-kanunu.pdf>> accessed 12 February 2025.

²⁶⁶ Corresponds to ‘Kabahatler Kanunu’ in Turkish. Misdemeanors Law, Law No 5326 (Official Gazette, 31 March 2005, No 25772). <<https://www.resmigazete.gov.tr/eskiler/2005/03/20050331M1-2.htm>> accessed 12 February 2025.

²⁶⁷ Corresponds to Çevre Kanunu in Turkish. Environmental Law, Law No 2872 (Official Gazette, 11 August 1983, No 18132). <<https://www.resmigazete.gov.tr/arsiv/18132.pdf>> accessed 12 February 2025.

²⁶⁸ International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, entered into force 2 October 1983) 1340 UNTS 184, as modified by the Protocol of 1978 (adopted 17 February 1978, entered into force 2 October 1983) 1340 UNTS 61 (MARPOL) accessed 20 February 2025.

actively enforces its treaty obligations and imposes penalties on vessels that breach the Convention's regulatory standards.



III. TÜRKİYE’S LEGAL PERSPECTIVE

A) IMPLICATIONS FOR TÜRKİYE’S FOREIGN POLICY IN TERMS OF UKRAINE-RUSSIA WAR

Türkiye’s foreign policy orientation in the Black Sea region is shaped through a complex interplay of historical responsibilities, strategic geopolitical considerations, and binding legal obligations derived from international law. The policy of Türkiye, which is a pivotal regional actor, is directed towards the preservation of stability,²⁶⁹ the prevention of external intervention and the reinforcement of its strategic autonomy.²⁷⁰ Pursuant to the legal regime codified under the Montréux Convention, Türkiye retains sovereign competence to regulate and oversee maritime navigation through the Turkish Straits. The exercise of this authority holds the potential to critically shape Türkiye’s strategic orientation in the context of the ongoing armed confrontation between Russia and Ukraine.

Although Türkiye officially endorses the territorial integrity and sovereignty of Ukraine, shares profound energy dependency and economic relations.²⁷¹ Furthermore, Türkiye’s diplomatic initiatives, most notably the Black Sea Grain Initiative, illustrate its dedication to mediating conflicts and fostering economic stability in the region. Türkiye has tried to implement a balanced policy by maintaining diplomatic relations with both Russia and Ukraine since the beginning of the war.²⁷² President Recep Tayyip Erdoğan emphasised that Türkiye maintains a fair and balanced stance.²⁷³

²⁶⁹ Mesut Hakkı Caşın, ‘Askeri ve Stratejik Açıdan Montreux’nün Dünü ve Geleceği’ (2017) 37(1) *Public and Private International Law Bulletin* 51 <https://dergipark.org.tr/en/download/article-file/411246> accessed 26 February 2025, 57.

²⁷⁰ Ibid 82.

²⁷¹ Ministry of Foreign Affairs, ‘Ukrayna’da Son Durum ve İkili İlişkiler’ <<https://www.mfa.gov.tr/ukrayna-da-son-durum-ve-ikili-iliskiler.tr.mfa>> accessed 26 February 2025.

²⁷² Nur Jale Ece, ‘The Effect of the Russia-Ukraine War on Foreign Trade and Global Security: The Contribution of the Montreux Convention to Preventing the Expansion of War’ (2022) 15(3) *Kent Academy Journal* 1399 <<https://dergipark.org.tr/en/download/article-file/2494326>> accessed 26 February 2025.

²⁷³ ‘Erdoğan “Türkiye, Rusya-Ukrayna savaşında adil ve dengeli duruşunu sürdürüyor”’ <<https://www.iletisim.gov.tr/turkce/dis-basinda-turkiye/detay/erdogan-turkiye-rusya-ukrayna-savasinda-adil-ve-dengeli-durusunu-surduruyor>> accessed 7 October 2024.

At the beginning of the war, Türkiye pioneered opening humanitarian corridors to evacuate civilians from Mariupol. Children and their caregivers from the orphanage were brought to Türkiye and placed under protection. In addition, 84 Ahıska Turks were safely transported to Türkiye.²⁷⁴ Furthermore, Türkiye played a mediating role by hosting talks between Russia and Ukraine in the first weeks of the war. These talks, held in Istanbul, contributed to the establishment of direct communication between the parties.²⁷⁵

In response to the commencement of the Russia's military campaign against Ukraine, the Turkish Ministry of Foreign Affairs issued an official communiqué characterising the assault as both unacceptable and inconsistent with fundamental principles of international law. The statement reaffirmed Türkiye's stance that the resort to armed force in this context constitutes a manifest violation of international legal obligations.²⁷⁶ During a joint press appearance with Ukrainian Foreign Minister Dmytro Kuleba in Kyiv, Türkiye's Foreign Minister Hakan Fidan reaffirmed Türkiye's unwavering commitment to the principles of Ukraine's sovereignty and territorial integrity. He also noted that joint efforts to revive the Black Sea Grain Initiative²⁷⁷ and Ukraine's NATO membership were ongoing²⁷⁸, as it was unilaterally terminated by Russia as mentioned above.

In a statement made on the second anniversary of the war in Ukraine, it was stated that the devastating impact of the conflict on Ukraine has grown, and the negative

²⁷⁴ 'Ukrayna-Rusya Savaşında Türkiye'nin Rolü' <<https://turkiyearastirmalari.org/2025/02/24/fokus/ukrayna-rusya-savasinda-turkiyenin-rolu/>> accessed 27 February 2025.

²⁷⁵ Alişan Baltacı, 'Rusya Ukrayna Savaşı Kapsamında Türkiye'nin Siyasi ve Ekonomik Rolü' in M G Açıkgöz and Z Alimgerey (eds), *Proceedings Book of the 14th International Congress on Social Sciences, China to Adriatic* (IKSAD Global 2022) 25.

²⁷⁶ 'No: 62, 24 Şubat 2022, Rusya Federasyonu Tarafından Ukrayna'ya Yönelik Başlatılan Askeri Operasyon Hk.' <https://www.mfa.gov.tr/no_-62_-rusya-federasyonu-terafindan-ukrayna-ya-yonelik-baslatilan-askeri-operasyon-hk.tr.mfa> accessed 7 October 2024.

²⁷⁷ The Agreement stipulated the establishment of a coordination center in Istanbul to oversee the safety and operational integrity of the shipment. Additionally, it outlined the inspection of cargo vessels traversing the designated food corridor within Türkiye, with the involvement of Russia. Ece (n 265) 1404.

²⁷⁸ 'Dışişleri Bakanı Sayın Hakan Fidan'ın Ukrayna Dışişleri Bakanı Dmitro Kuleba ile Ortak Basın Toplantısı, 25 Ağustos 2023' <<https://www.mfa.gov.tr/disisleri-bakani-sayin-hakan-fidan-in-ukrayna-disisleri-bakani-dmitro-kuleba-ile-ortak-basin-toplantisi-25-8-2023.tr.mfa>> accessed 7 October 2024.

consequences at the regional and global levels have deepened. Türkiye emphasized that it will continue its efforts to revitalize the diplomatic process.²⁷⁹

Foreign Minister Hakan Fidan, in a media briefing held in Istanbul with representatives of national and international media organizations, stated that the Russia-Ukraine war is about to enter its fourth year and drew attention to the importance of Türkiye maintaining its balanced policy and opening up space for diplomacy. He also stated that diplomatic initiatives to ensure navigation safety in the Black Sea are ongoing.²⁸⁰ Subsequently, Foreign Minister Fidan, in a joint media briefing with Russian Foreign Minister Sergey Lavrov, stated that they wanted the loss of life and destruction caused by the war to end as soon as possible on the third anniversary of the Russia-Ukraine war. He also stated that Türkiye has supported finding a solution to the war through diplomacy since the first day and that they are ready to provide all kinds of support for establishing peace through negotiations.²⁸¹

As of 2025, Türkiye has reiterated its offer to host possible peace talks between Ukraine and Russia. Foreign Minister Hakan Fidan emphasised Türkiye's determination on this issue at the European leaders' summit in London. It was also stated that Türkiye is ready to send troops to a peacekeeping mission in Ukraine.²⁸²

B) ANALYSIS OF TÜRKİYE'S POSITION ON THE UKRAINE-RUSSIA CONFLICT AND TÜRKİYE'S INTERPRETATION OF THE CONVENTION

As elaborated in the preceding sections, the Montréux Convention accords Türkiye sovereign authority over the Turkish Straits, including the legal competence to regulate

²⁷⁹ 'No: 35, 24 Şubat 2024, Ukrayna Savaşı'nın Başlangıcının İkinci Yıl Dönümü Hk.' <https://www.mfa.gov.tr/no_-35_-ukrayna-savasi-nin-baslangicinin-ikinci-yil-donumu-hk.tr.mfa> accessed 8 October 2024.

²⁸⁰ 'Dışişleri Bakanı Sayın Hakan Fidan'ın Ulusal ve Uluslararası Medya Kuruluşlarının Temsilcileriyle Gerçekleştirdiği Basın Toplantısı, 10 Ocak 2025, İstanbul' <<https://www.mfa.gov.tr/disisleri-bakani-sayin-hakan-fidan-in-ulusal-ve-uluslararasi-medya-kuruluslarinin-temsilcileriyle-gerceklestirdigi-basin-toplantisi-10-01-2025-istanbul.tr.mfa>> accessed 20 January 2025.

²⁸¹ 'Dışişleri Bakanı Sayın Hakan Fidan'ın Rusya Dışişleri Bakanı Sergey Lavrov ile Ortak Basın Toplantısı, 24 Şubat 2025' <<https://www.mfa.gov.tr/disisleri-bakani-sayin-hakan-fidan-in-rusya-disisleri-bakani-sergey-lavrov-ile-ortak-basin-toplantisi-24-02-2025.tr.mfa>> accessed 25 February 2025.

²⁸² 'Turkey to repeat offer to host Ukraine-Russia peace talks at London summit, source says' <<https://www.reuters.com/world/europe/turkey-repeat-offer-host-ukraine-russia-peace-talks-london-summit-source-says-2025-03-01/>> accessed 4 March 2025.

the transit of naval forces. In particular, Article 19 empowers Türkiye to impose specific restrictions on the passage of warships belonging to belligerent states during periods of armed conflict.²⁸³ In response to the Russian invasion, Türkiye restricted its naval reinforcements.²⁸⁴

In March 2022, Türkiye invoked Article 19 of the Montr  ux Convention to restrict passage through the Turkish Straits for warships affiliated with both Black Sea littoral states and Western powers. According to monthly data published by the Turkish Naval Forces, the number of naval vessels transiting the Istanbul Strait dropped significantly, from 12 recorded in January and February 2022 to just 1 in March, while no such passages occurred in April or May. On the other hand, the number of war vessels passing through the   anakkale decreased from 13 in January 2022 and 11 in February to 0 in March, April and May. However, in June, a single warship was recorded passing through both Straits.²⁸⁵

The Ukraine-Russia war has had significant geopolitical and legal consequences.²⁸⁶ The strategic management of T  rkiye over the Turkish Straits within the framework of the Montr  ux Convention plays a vital role in this conflict. Accordingly, T  rkiye must pursue a balanced policy, which is key in constraining Russia's forceful moves and maintaining its relations with the West in the context of the Montr  ux Convention, as the international community failed to forestall Russia's military threat,²⁸⁷ which emphasises the necessity for a more proactive interpretation of the Montr  ux Convention concerning regional security.²⁸⁸ As previously discussed, the Montr  ux Convention confers upon T  rkiye the

²⁸³ The Montr  ux Convention art 19.

²⁸⁴ 'Turkey to implement pact limiting Russian warships to Black Sea' <<https://www.reuters.com/world/middle-east/turkey-implement-international-pact-access-shipping-straits-due-ukraine-war-2022-02-27/>> accessed 3 January 2025; 'Russia cancelled Black Sea passage bid of four warships: Turkey' <<https://www.aljazeera.com/news/2022/3/2/russia-cancelled-black-sea-passage-bid-warships-turkey>> accessed 4 March 2025; Ece (n 265) 1396-1399.

²⁸⁵ Ministry of Transport and Infrastructure 'T  rk Boğazları Gemi Ge  iş İstatistikleri' <<https://denizcilikistatistikleri.uab.gov.tr/turk-bogazlari-gemi-gecis-istatistikleri>> accessed 20 April 2025; Ece (n 265) 1394.

²⁸⁶ Merve Suna   zel   zcan, 'The Concept of Stability Diplomacy in Turkish Foreign Policy: The Case of the Russia-Ukraine War' (2024) 14(2) *Kırıkkale University Journal of Social Sciences* 220 <<https://dergipark.org.tr/en/download/article-file/3694164>> accessed 24 February 2025.

²⁸⁷ Sava Jankovic and Volker Roeben, 'The Threat of Russia's Force in Ukraine' (2024) 11(1-2) *Journal on the Use of Force and International Law* 95, 102 <<https://doi.org/10.1080/20531702.2024.2415262>> accessed 21 February 2025.

²⁸⁸   zel   zcan (n 286) 221.

legal authority to regulate access to the Turkish Straits and to restrict the transit of warships during times of armed conflict.²⁸⁹

Following the outbreak of hostilities between Russia and Ukraine, Türkiye invoked Article 19 of the Montréux Convention. In line with the provisions therein, the Turkish Government imposed a restriction on the passage of warships flagged by belligerent states through the Turkish Straits, with the sole exception granted to those vessels navigating back to their original ports or naval stations.²⁹⁰ This decision of Türkiye, which Ukraine and its allies welcomed, required diplomatic sensitivity in order for Türkiye to preserve its economic and strategic relations with Russia.

Although Türkiye has supported Ukraine's sovereignty as a NATO member, it preserved its neutrality by not fully participating in Western embargoes against Russia.²⁹¹ The Black Sea's economic significance in energy trade has also been among the elements shaping Türkiye's balanced policy.²⁹² The Ukraine-Russia war has disrupted commerce routes in the region and increased maritime security concerns.²⁹³

Türkiye's interpretation of the Montréux Convention reflects its commitment to maintaining regional stability and authority over the Straits.²⁹⁴ The implementation of the warship passage restriction has reaffirmed the enduring relevance of the Montréux Convention and consolidated Türkiye's normative authority within the framework of the law of the sea. Concurrently, Türkiye has enhanced its diplomatic standing by facilitating negotiations between Russia and Ukraine, notably through hosting initiatives such as the Black Sea grain export agreements.²⁹⁵

²⁸⁹ Montréux Convention (n 72) art 19.

²⁹⁰ Ministry of Foreign Affairs (n 247).

²⁹¹ Özel Özcan (n 286) 221.

²⁹² Ece (n 272) 1399.

²⁹³ Ibid 1404.

²⁹⁴ Çağlar Özer, 'The Russia-Ukraine War and Turkish Foreign Policy' in Rıfat Karakoç (ed), *Current Studies in International Relations and Political Science* (Duvar Publications 2023) 1, 12 <https://www.duvar yayinlari.com/Webkontrol/IcerikYonetimi/Dosyalar/siyaset-bilimi-guncel_icerik_g3775_96EJdcLP.pdf#page=10> accessed 24 February 2025.

²⁹⁵ Ece (n 272) 1399.

Türkiye's strategy towards the Ukraine-Russia war balances its legal obligations with geopolitical interests.²⁹⁶ Türkiye counters external pressures by preserving the Montr  ux Convention's legal framework and improving its diplomatic mediation role. Türkiye remains as a key actor in Black Sea security and regional stability by fulfilling its commitments while maintaining its economic and strategic ties. In the future, Türkiye's legal and diplomatic actions will persist in shaping the geopolitical dynamics of this conflict.

T  rkiye interprets the Montr  ux Convention to safeguard its sovereignty over the Straits and ensure regional stability. In implementing the Montr  ux Convention, particularly in the context of the Ukrainian-Russian war that emerged in 2022, T  rkiye has focused on preventing the war from disrupting regional balances and fulfilling its obligations under international law.²⁹⁷

²⁹⁶ Nur Jale Ece, Volkan Tok and İzzettin Temiz, 'An Analysis of Marine Accidents in the Strait of Çanakkale' (2020) Special Issue *Dokuz Eyl  l University Maritime Faculty Journal* 24 <<https://dergipark.org.tr/en/pub/deudfd/issue/54400/740152>> accessed 19 February 2025.

²⁹⁷   zel   zcan (n 286) 221; Ece (n 272) 1407.

IV. CASE STUDIES AND LEGAL CHALLENGES

A) PAST PRACTICES OF TÜRKİYE

Türkiye's lack of experience with warfare, except for a brief declaration of formal war, has made the issue of merchant vessels, as outlined in Article 5 of the Montréux Convention, non-contentious. On the contrary, the subject of foreign warships' passage during time of war has been the primary source of contention, thus garnering the most attention among all examples.²⁹⁸

Throughout the Second World War, Türkiye enforced Article 19 of the Montréux Convention by denying passage through the Straits to the warships of belligerent powers, thereby reaffirming its commitment to a policy of neutrality.²⁹⁹ In notes dated 7 August 1946 and 24 September 1946, the Soviet Union asserted that some German and Italian warships had passed through the straits, and Türkiye responded to these claims in notes dated 22 August 1946 and 18 October 1946.³⁰⁰

The passage of certain German ships, which was also the subject of the Soviet note, in May and June 1944 also triggered the Turkish-English dispute at that time. On 1 June 1944, the United Kingdom issued a diplomatic note to Türkiye, claiming that six unarmed German warships had passed through the Straits.³⁰¹ The United Kingdom condemned the passage of German warships under the guise of merchant vessels, arguing that this violated the Montréux Convention.³⁰² Accordingly, Türkiye, by the political balances of the period, interpreted Annex 2 depending on the British thesis with an elegant example of legal politics and sacrificed the then Minister of Foreign Affairs.³⁰³

²⁹⁸ Bayıllıoğlu (n 238) 38.

²⁹⁹ Özel Özcan (n 286) 77-78.

³⁰⁰ Bayıllıoğlu (n 238) 38.

³⁰¹ The incident in question has been thoroughly touched upon in previous headings.

³⁰² In the House of Commons, British Foreign Secretary Anthony Eden stated that although the ships in question had been disarmed, they could carry various weapons and war reactionaries and that they should, therefore, be considered warships or auxiliary warships whose passage was prohibited under Article 19 of the Montréux Convention. Furthermore, it was asserted that the Turkish authorities' subsequent determination that these ships were merchant vessels resulted from an inadequate and hurried inspection. In addition, it was emphasised that the Ankara Embassy had made the necessary initiatives in this regard. On the Turkish authorities had, on 5 June, stopped some German ships at the entrance to the strait upon receiving warnings. Ibid.

³⁰³ Ibid 39.

In the aftermath of the Russian Federation's military offensive against Ukraine in 2022, Türkiye invoked Article 19 of the Montréux Convention to prohibit the transit of warships belonging to belligerent states through the Turkish Straits. This course of action underscored Türkiye's intent to uphold its neutral status and contribute to the maintenance of regional stability in accordance with international legal norms. Nonetheless, Russian naval vessels already stationed in the Black Sea were permitted to return to their home bases, pursuant to the exceptional clauses of the Convention—a move that was broadly deemed lawful by the international legal community.³⁰⁴

B) POTENTIAL RESPONSES OF TÜRKİYE IN THE EVENT OF POTENTIAL CONFLICTS

Despite the ongoing nature of the war, it is crucial to assess the potential responses of Türkiye to any disputes that may emerge within the context of this conflict. In this context, various crisis scenarios regarding the Ukraine-Russia war will be analysed to determine the measures that Türkiye may take in terms of international law.³⁰⁵

One potential scenario subject to legal evaluation involves a hypothetical request by the Russian Federation for Türkiye to permit the passage of its warships stationed in the Mediterranean or Baltic Seas, with the aim of reinforcing its naval capabilities in the Black Sea during an ongoing conflict. However, pursuant to Article 19 of the Montréux Convention, such passage is explicitly prohibited for the vessels of belligerent powers in times of war, provided that Türkiye maintains a position of neutrality.³⁰⁶ The only exception to this rule is when vessels return to their bases or ports, which could constitute the grounds for the requests of Russia.³⁰⁷ Consequently, Türkiye may reject Russia's

³⁰⁴ Nur Jale Ece, 'İstanbul Boğazında Meydana Gelen Deniz Kazalarının İncelenmesi ve Analizi' (2011), 3(2) Dokuz Eylül University Maritime Faculty Journal, 37 <<https://dergipark.org.tr/tr/pub/deudfd/issue/4583/62751>> accessed 25 February 2025.

³⁰⁵ It should be asserted that the examples that are to be provided herein are hypothetical in nature.

³⁰⁶ Montréux Convention art 19(2).

³⁰⁷ Ibid art 19(4).

requests for passage of war vessels in a diplomatic way, or maintain the policy of impartiality by strictly implementing the Montréux Convention.³⁰⁸

Another prospect is that Russia could use merchant ships to transport military supplies such as troops or ammunition and logistical support to bypass the Montréux Convention's warship restrictions. Similarly, Western states may consider the delivery of arms and ammunition to Ukraine by merchant vessels to be a case of sufficient significance to warrant Russia's claim that these ships should be regarded as warships. Nonetheless, under the Montréux Convention, merchant vessels do not fall within the legal classification of warships. This distinction must be assessed in light of Article 10, which reflects a strict textualist approach to interpretation.³⁰⁹ In light of Türkiye's legal obligation to adhere to the definitions of warships as stipulated in Annex II of the Montréux Convention, vessels that fall outside the scope of these prescribed classifications cannot be regarded as subject to the regulatory framework set forth in Article 10.

It is conceivable that NATO member states might contemplate the deployment of naval assets to the Black Sea as a form of support for Ukraine.³¹⁰ However, as outlined earlier, the Montréux Convention enforces specific constraints on both the cumulative displacement and the permitted duration of deployment for warships belonging to states that are not littoral to the Black Sea. According to Article 18 of the Convention, such states are obligated to ensure that the aggregate tonnage of their naval presence does not surpass 15,000 tons, and their warships may not remain in the Black Sea for more than twenty-one days. Nevertheless, in a scenario where a non-riparian state becomes a direct belligerent rather than merely a supporting actor, an alternative interpretation of the Convention's implementation might be contemplated.

³⁰⁸ As a concrete example, see: Sinan Tavşan, 'Turkey Rejects Russia's Request for Navy Ships to Pass Bosphorus' (Nikkei Asia, 2 March 2022) <<https://asia.nikkei.com/Politics/Ukraine-war/Turkey-rejects-Russia-s-requestfor-navy-ships-to-pass-Bosphorus>> accessed 27 February 2025.

³⁰⁹ Montréux Convention art 10.

³¹⁰ As a concrete example, see: 'İspanya, NATO Organizasyonunda Karadeniz'e 2 Savaş Gemisi Gönderiyor' (Anadolu Ajansı, 20 January 2022) <<https://www.aa.com.tr/tr/dunya/ispanya-nato-organizasyonunda-karadenize-2-savas-gemisi-gonderiyor/2481041>> accessed 27 February 2025.

Should the Russian Federation, maintaining a naval base within Syrian territorial waters, seek to deploy submarines to the Black Sea in order to extend its operational capacity, the Montr  ux Convention, as the governing legal regime for vessel passage into and out of the Black Sea, may establish clear limitations on such movement. In this regard, Article 12 of the Convention permits submarines owned by Black Sea littoral states to pass through the Turkish Straits solely for the purpose of returning to their home bases for repairs, subject to prior notification. Finally, in the event of a direct attack on T  rkiye or its involvement in the Ukraine-Russia war, Article 21 of the Montr  ux Convention permits T  rkiye to close the Straits entirely, as T  rkiye becomes a belligerent State in terms of the Montr  ux Convention.



V. CONCLUSION

This thesis has thoroughly addressed Türkiye's legal standpoint on the Ukraine-Russia war within the framework of the Montréux Convention. The study details the wartime functioning of the Turkish Straits' legal regime by studying Türkiye's legal obligations, policy responses, and strategic decision-making methods in the Black Sea region.

Türkiye's application of the Montréux Convention has yielded considerable implications for both regional stability and the normative development of international law. In full adherence to the Convention's legal framework, Türkiye has exercised its regulatory competence over maritime traffic in the Black Sea. Aimed at containing the conflict and preventing its expansion beyond regional borders, the Turkish government has adopted a range of legal and diplomatic measures grounded in precaution and neutrality.

Türkiye's strict application of the Montréux Convention has prevented the war from escalating into a wider international concern. Türkiye has adhered to the principle of impartiality in implementing the Montréux Convention but has also considered its geopolitical stakes.

Moreover, this thesis indicates that Türkiye has enhanced legal certainty by reinforcing its commitment to the normative structure of international law as codified under the Montréux Convention, and that this alignment has contributed to the formation of a precedent within the broader international legal order. Türkiye's strict adherence to international law while implementing the Montréux Convention is an essential example of how the law could be utilised as a diplomatic tool.

Although this study details Türkiye's stance in the Ukraine-Russia war in the context of the Montréux Convention, it has some limitations. First, the study mainly focuses on a legal framework; however, a more in-depth examination of the implementation of the Montréux Convention in terms of military and security policies will contribute to future studies. Additionally, issues such as how Türkiye pursued a policy regarding energy security, economic sanctions, and trade routes during the war can be addressed in more detail. It is also suggested that an examination be conducted regarding what kind of

situation might occur, assuming that there is a possibility of war in which one side is a Black Sea littoral State, and the other is not.

Moreover, the long-term effects of the Montr  ux Convention on T  rkiye's foreign policy and maritime security strategy could be examined. T  rkiye's policies regarding maritime jurisdiction areas and its relations with NATO and regional actors within the framework of the Montr  ux Convention could be the subject of further academic studies in the future. The possibility of change in the Montr  ux Convention and the analysis of the attitudes of international actors towards the Convention will help understand how the Convention could be addressed in the future. Since it is evident that supplying the belligerent States by merchant vessels will be a significant topic of discussion in the future, it is helpful to focus on this issue as well since there are assertions that imply the ships in question constitute warships.

While evaluating policy recommendations, T  rkiye needs to continue to implement the provisions of the Montr  ux Convention stably and consistently to maintain its international credibility. While adhering to international law regarding Montr  ux implementation, T  rkiye should also develop a more proactive strategy to prevent crises in the Black Sea by strengthening its regional diplomacy.

Moreover, it should closely observe legal disputes regarding the different interpretations of the Montr  ux Convention and, when required, embrace a determined stance to preserve the current structure of the Montr  ux Convention by resorting to international legal mechanisms. T  rkiye may enhance its role in safeguarding regional maritime stability by fostering deeper cooperative mechanisms with Black Sea littoral states beyond the scope of the regulatory framework established under the Montr  ux Convention.

Within this framework, T  rkiye's enduring strategic interests are poised to play a decisive role in preserving the geopolitical equilibrium of the Black Sea region. This can be achieved through an approach grounded in the normative principles of international law governing the implementation of the Montreux Convention and the advancement of more robust crisis management mechanisms.

In contemplating the broader implications of this research, I have come to appreciate the Montréal Convention not merely as a relic of interwar diplomacy, but as a living legal instrument whose relevance endures precisely because of its structural resilience. Yet, as this study has sought to demonstrate, the Convention's enduring authority does not render it immune to interpretative strain. In my considered view, there exists both a legal and a practical necessity to re-engage with the Convention's framework; not to dismantle its normative foundations, but to refine and clarify areas where modern realities have outpaced textual rigidity. The possibility of introducing interpretative supplements or annexes, carefully calibrated so as to preserve the Convention's core intent, ought to be approached not with apprehension, but with scholarly and diplomatic foresight.



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ABSTRACT

The ongoing war between Ukraine and Russia has escalated geopolitical tensions in the Black Sea region, prompting renewed scrutiny of the Montréux Convention 1936. This legal instrument sets the regulatory framework governing vessel transit through the Turkish Straits. As the primary enforcer of this Convention, Türkiye faces critical legal and diplomatic challenges, especially in balancing its international law obligations and national strategic stakes. This study explores Türkiye's legal standpoint on the Ukraine-Russia war, focusing essentially on its responsibilities and discretionary powers in the context of the Montréux Convention. The study commences with an exhaustive historical and legal analysis of the Montréux Convention, comparing it with other noteworthy international maritime treaties such as the Lausanne Convention and UNCLOS. The following examination of the Convention's provisions within the context of the Ukraine-Russia conflict is intended to provide a comprehensive knowledge of the implications for both belligerent and neutral states.

This thesis studies Türkiye's foreign policy method, as its legal view on the conflict is intricately connected with wider diplomatic and security considerations. The study analyses Türkiye's balancing act between its NATO obligations, regional security crises, and economic links with Ukraine and Russia. Through an analysis of reactions to legal challenges posed by the conflict, the study determines if measures taken by Türkiye establish a precedent for using the Montréux Convention during wartime. While using a doctrinal legal methodology, this study synthesises primary sources containing treaty texts with secondary literature on the law of the sea and international conflict regulation. Case studies of historical disputes concerning the Turkish Straits provide further insights into the legal precedents that shape Türkiye's current standpoint. The conclusions contribute to comprehending how legal frameworks such as the Montréux Convention could be implemented in contemporary geopolitical crises, offering a crucial evaluation of Türkiye's role in maintaining regional stability and upholding international law. By contextualising Türkiye's legal responsibilities within its wider foreign policy imperatives, this thesis thoroughly analyses the intersection between law of the sea and global security in the Black Sea region. Likewise, it determines potential avenues for

forthcoming legal and diplomatic developments in the management of strategic waterways under circumstances of war.

Keywords: Montréal Convention, Turkish Straits, Ukraine-Russia War, International Law of the Sea.



ÖZET

Ukrayna ve Rusya arasında devam etmekte olan savaş, Karadeniz bölgesindeki jeopolitik gerilimi tırmandırarak 1936 Montrö Boğazlar Sözleşmesi'nin yeniden değerlendirilmesine yol açmıştır. Bu belge, Türk Boğazlarından gemi geçişlerini düzenleyen yasal çerçeveyi belirlemektedir. Bu Sözleşmenin birincil uygulayıcısı olan Türkiye, özellikle uluslararası hukuk yükümlülükleri ile ulusal stratejik çıkarlarını dengeleme konusunda kritik hukuki ve diplomatik zorluklarla karşı karşıya kalmaktadır. Bu çalışma, Montrö Boğazlar Sözleşmesi bağlamında Türkiye'nin sorumluluklarına ve takdir yetkisine odaklanarak, Türkiye'nin Ukrayna-Rusya savaşına ilişkin hukuki bakış açısını incelemektedir. Tez, Montrö Boğazlar Sözleşmesi'nin kapsamlı tarihsel ve hukuki analizi ile başlamakta, Lozan Barış Anlaşması'nın Boğazlara ilişkin hükümleri ve BMDHS gibi diğer kayda değer uluslararası denizcilik anlaşmaları ile karşılaştırmaktadır. Sözleşme'nin hükümlerinin Ukrayna-Rusya savaşı bağlamında incelenmesinin ardından, hem savaşan hem de tarafsız devletler için sonuçları hakkında kapsamlı bir bilgi sağlanması amaçlanmaktadır.

Bu tez Türkiye'nin dış politika yöntemini incelemektedir, zira Türkiye'nin çatışmaya ilişkin hukuki görüşü daha geniş diplomatik ve güvenlik mülahazalarıyla iç içe geçmiştir. Çalışma, Türkiye'nin NATO yükümlülükleri, bölgesel güvenlik krizleri ve Ukrayna ve Rusya ile ekonomik bağlantıları arasında kurduğu dengeyi analiz etmektedir. Çatışmanın ortaya çıkardığı hukuki zorluklara verilen tepkilerin analizi yoluyla, çalışma Türkiye tarafından alınan tedbirlerin savaş zamanında Montréux Sözleşmesi'nin kullanılması için bir emsal teşkil edip etmediğini belirlemektedir. Doktriner bir hukuk metodolojisi kullanan bu çalışma, antlaşma metinlerini içeren birincil kaynakları, deniz hukuku ve uluslararası çatışma düzenlemelerine ilişkin ikincil literatürle sentezlemektedir. Türk Boğazları ile ilgili tarihsel ihtilaflara ilişkin vaka çalışmaları, Türkiye'nin mevcut bakış açısını şekillendiren hukuki emsaller hakkında daha fazla bilgi sağlamaktadır. Sonuçlar, Montréux Sözleşmesi gibi hukuki çerçevelerin günümüz jeopolitik krizlerinde nasıl uygulanabileceğinin anlaşılmasına katkıda bulunmakta ve Türkiye'nin bölgesel istikrarın korunması ve uluslararası hukukun desteklenmesindeki rolüne ilişkin önemli bir değerlendirme sunmaktadır. Bu tez, Türkiye'nin hukuki sorumluluklarını daha geniş dış politika zorunlulukları içinde bağlamsallaştırarak, Karadeniz bölgesinde deniz hukuku ve

küresel güvenlik arasındaki kesişimi kapsamlı bir şekilde analiz etmektedir. Aynı şekilde, silahlı çatışma koşullarında stratejik su yollarının yönetiminde gelecekteki hukuki ve diplomatik gelişmeler için potansiyel yolları belirlemektedir.

Anahtar Kelimeler: Montrö Boğazlar Sözleşmesi, Türk Boğazları, Ukrayna-Rusya Savaşı, Uluslararası Deniz Hukuku.

