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## Closing the Turkish Straits in Times of War

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## Closing the Turkish Straits in Times of War

*Raul (Pete) Pedrozo\**

### I. INTRODUCTION

On February 21, 2022, Russian President Vladimir Putin recognized the self-proclaimed Donetsk People's Republic and Luhansk People's Republic as independent States and purportedly deployed Russian "peacekeeping" troops to the breakaway Ukrainian regions to maintain the peace.<sup>1</sup> Three days later, Russian forces launched a full-scale invasion of Ukraine,<sup>2</sup> prompting Ukraine's ambassador in Ankara to request that Turkey close the Turkish Straits (the Bosphorus, Dardanelles, and the Sea of Marmara) to Russian warships.<sup>3</sup>

The passage of ships through the Turkish Straits is regulated under the 1936 Montreux Convention.<sup>4</sup> Although initially noncommittal to the

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

1. Laura Kelly, *Putin Recognizes Independence of Ukraine Breakaway Regions*, THE HILL (Feb. 21, 2022), <https://thehill.com/policy/international/595189-putin-to-recognize-independence-of-ukraine-breakaway-regions/>.

2. Elliott Davis Jr., *Explainer: Why Did Russia Invade Ukraine?*, U.S. NEWS & WORLD REPORT (Feb. 24, 2022), <https://www.usnews.com/news/best-countries/articles/2022-02-24/explainer-why-did-russia-invade-ukraine>.

3. *Kiev Asks Ankara to Close Turkish Straits to Russian Warships*, TASS (Feb. 24, 2022), <https://tass.com/politics/1409585>.

4. Convention Regarding the Regime of the Straits, with Annexes and Protocol, July 20, 1936, 173 U.N.T.S. 213.

Ukrainian request,<sup>5</sup> Turkey closed the Turkish Straits to warship transits on March 1, 2022.<sup>6</sup> It is unclear, however, whether Turkey has barred transit of all warships or just Russian and Ukrainian warships.<sup>7</sup> This article considers the legality of Turkey's decision in light of its rights and obligations under the 1936 Montreux Convention.

## II. PASSAGE OF WARSHIPS UNDER THE MONTREUX CONVENTION

Russian naval forces can gain access to the Black Sea via two routes—one from the Caspian Sea (via the Lenin Volga-Don Shipping Canal and the Sea of Azov) and the other from the Mediterranean Sea (via the Turkish Straits). Passage through the Volga-Don Canal is under the exclusive control of Russian authorities, which allows Russian warships from the Caspian Flotilla<sup>8</sup> to conduct unimpeded naval exercises and operations with warships from the Black Sea Fleet. Access to the Black Sea from the Mediterranean, however, is under the exclusive control of Turkey and is regulated by the 1936 Montreux Convention.<sup>9</sup>

The Convention upholds the “principle of freedom of transit and navigation” through the straits, subject to certain limitations in time of war (Article 1). If Turkey is not a belligerent, all merchant ships, regardless of flag or cargo, may transit the straits in time of war (Article 4), subject to the same conditions applicable to merchant ships in time of peace (Articles 2 and 3). If Turkey is a belligerent, neutral merchant vessels may transit the straits by day through designated routes, but only if they do not assist the enemy (Article 5).

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5. Ragip Soylu, *Russia-Ukraine War: Turkey Denies Closing Black Sea to Russian Warships*, MIDDLE EAST EYE (Feb. 26, 2022), <https://www.middleeasteye.net/news/russia-ukraine-war-turkey-denies-closing-black-sea-russian-warships>.

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

7. *See Turkey Blocks Warships from Bosphorus and Dardanelle Straits amid Russia-Ukraine Crisis*, THE NATIONAL NEWS, (updated Mar. 1, 2022), <https://www.thenationalnews.com/world/2022/02/28/turkey-blocks-warships-from-bosphorus-and-dardanelle-straits/>; Ozberk, *supra* note 6.

8. *Russian Black Sea Fleet, Caspian Flotilla to Hold Live-Fire Exercise*, TASS (Jan. 25, 2022), <https://tass.com/defense/1392921>.

9. Convention Regarding the Regime of the Straits, with Annexes and Protocol, Jul. 20, 1936, 173 U.N.T.S. 213.

In time of peace, warships also enjoy passage rights through the Straits but must provide advance notice to Turkey (eight days for Black Sea States and fifteen days for other States) before beginning their transit (Article 13). Submarines of non-Black Sea States, however, may not pass through the Straits (Article 12). The convention also imposes maximum aggregate tonnage restrictions and limitations on the number of non-riparian naval forces that can pass through the Straits at one time (Article 14), as well as maximum aggregate tonnage limitations that non-riparian States can have in the Black Sea at one time (Article 18). Additionally, warships of non-riparian States may only stay in the Black Sea for twenty-one days (Article 18).

Thus, the passage through the Straits of three *Ropucha*-class tank landing ships (RFS *Minsk* (127), RFS *Korolev* (130), and RFS *Kaliningrad* (102)), two *Ropcha*-class amphibious ships (RTS *Georgy Pobedonosets* (016) and RTS *Olenegorsky Gornyak* (012)), an *Ivan Gren*-class landing ship (RTS *Pyotr Morgunov*), and a *Kilo*-class diesel-electric attack submarine (RTS *Rostov-na-Donu* (B-237)) in early February to participate in a naval exercise in the Black Sea prior to the onset of hostilities was permissible under the convention.<sup>10</sup>

In time of war, if Turkey is not a belligerent, foreign warships enjoy complete freedom of transit and navigation through the Straits under the same conditions that apply in peacetime, with one exception—Turkey may prohibit the transit of warships belonging to the belligerent powers unless it is a warship returning to its home port in the Black Sea (Article 19). If Turkey is a belligerent, the passage of foreign warships is left entirely to the discretion of the Turkish Government (Article 20). Finally, if Turkey considers itself to be threatened with imminent danger of war, it may apply the provisions of Article 20 (Article 21).

### III. TURKEY'S DECISION UNDER THE MONTREUX CONVENTION

Turkey views the Montreux Convention as an essential element of Black Sea security and stability and has faithfully implemented the provisions of the convention for eighty-six years.<sup>11</sup> Consistent with its role as gatekeeper

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10. H. I. Sutton, *6 Russian Warships and Submarine Now Entering Black Sea Towards Ukraine*, NAVALNEWS (Feb. 8, 2022), <https://www.navalnews.com/naval-news/2022/02/6-russian-warships-and-submarine-now-entering-black-sea-towards-ukraine/>.

11. Republic of Turkey, Ministry of Foreign Affairs, Implementation of the Montreux Convention, <https://www.mfa.gov.tr/implementation-of-the-montreux-convention.en.mfa> (last visited Aug. 24, 2022).

of the Turkish Straits, Turkey announced on February 28, 2022, it was restricting passage of warships belonging to Ukraine and Russia through the Straits unless said ships were returning to their bases in the Black Sea.<sup>12</sup> Thus, Russian warships based in other regions and currently operating in the Mediterranean Sea, like the *Slava*-class cruisers RTS *Marshal Ustinov* (055) from the Northern Fleet and RFS *Varyag* (011) from the Pacific Fleet, are now prohibited from entering the Black Sea.<sup>13</sup>

Turkey's announcement to close the Straits to Russian and Ukrainian warships is consistent with Article 19 of the Montreux Convention. However, Foreign Minister Mevlüt Çavuşoğlu also indicated that Turkey had warned both riparian and non-riparian States not to pass warships through the Straits. Prohibiting the transit of all warships, whether belonging to the belligerents or not, would exceed Turkey's authority under Article 19.<sup>14</sup>

The only plausible argument Turkey may make to justify closing the Straits to all warships is to invoke Article 21 on the basis that its own security is threatened due to the danger of war. Nonetheless, given Turkey's amicable relations with both the Ukraine and Russia, it would be difficult for Ankara to make a convincing argument that it considers itself threatened with imminent danger of war.

Conceivably, Turkey could argue that allowing NATO warships to transit the Straits while prohibiting Russia's access to the Black Sea could result in an armed attack by Russian forces and therefore application of Article 21 is warranted. It is more likely, however, that Turkey has invoked Article 21 as a political expediency to temper adverse repercussions from Moscow. Nevertheless, invoking Article 21 could result in long-term unintended consequences if Turkey does not truly believe there is an imminent threat of danger of war against it.

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12. Ozberk, *supra* note 6.

13. Heather Mongilio, *Turkey Closes Bosphorus, Dardanelles Straits to Warships*, USNI NEWS (Feb. 28, 2022), <https://news.usni.org/2022/02/28/turkey-closes-bosphorus-dardanelles-straits-to-warships>.

14. *Turkey Blocks Warships from Bosphorus and Dardanelle Straits*, *supra* note 7.