RUSSIAN ATTACK ON UKRAINE AND TURKEY'S APPROACH IN IMPLEMENTING THE MONTREUX CONVENTION

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- What are the general guidelines for passage through the Turkish Straits according to the Montreux Convention?
- Is it legally possible for Ukraine and Russia to send their warships through the straits during the ongoing war?
- Is Turkey obligated to block the passage of both Ukrainian and Russian warships?
- Should warships of other states that may come to aid Ukraine be allowed to pass?
- What is Turkey's approach towards implementing the Montreux Convention?

Narrow maritime passages are critical to ensure the flow of maritime traffic and to prevent threats that may arise therein. The Turkish Straits are located within Turkish territory and play a significant role both in ensuring maritime passage to and from the Black Sea and in preventing possible security threats for the regional countries, especially for Turkey.

Following the Treaty of Lausanne – signed in 1923 at the Lausanne Peace Conference but falling far short of Turkey's expectations – a new convention on the Turkish Straits was drafted and signed on July 20, 1936, between nine states including Turkey, at the Montreux Straits Conference as a result of Turkey's efforts in the pre-World War II circumstances. Officially named the Montreux Convention Regarding the Regime of the Straits, it remains the applicable convention on the Turkish Straits.

The convention not only addresses the passage of ships but also the security concerns of Turkey and other Black Sea countries. The convention regulates vessels passing through the Çanakkale Strait (the Dardanelles), the Marmara Sea, and the Strait of Istanbul (the Bosphorus), also known as "the Turkish Straits."

Once again, the application of the established convention is on the agenda following the military attack launched on Feb. 24, 2022, by Russia on Ukraine. The initial discussion relates to whether Russian and Ukrainian warships will be allowed to pass through the Turkish Straits. A second relevant question is whether the passage of warships will be allowed in the event of possible international military measures against Russia.

THE MONTREUX REGIME

Some of the regulations of the convention are designed to reduce the security concerns of both Turkey and other Black Sea countries that may arise from foreign warships (the convention uses the concept of warship instead of "military ship.")

The first group of such measures addresses Turkey's security in the straits themselves during peaceful periods. In times of peace, while both civilian ships and military ships of all states can pass freely, depending on the convention's basic principle of the freedom of passage, warships of all countries are under obligation to notify Turkey before their passage, except for

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auxiliary ships specially built for the transport of fuel. (Article 9) Moreover, the highest (ceiling) total tonnage of all foreign naval forces that can transit through the straits, whether they have a coastline on the Black Sea or not, shall not exceed 15,000 tons. Apart from this tonnage limitation, the total number of ships passing through the straits at once cannot be more than nine. (Article 14) Some relative advantages are provided to the Black Sea countries. A warship of any Black Sea country with a tonnage greater than 15,000 tons can pass alone through the straits. (Article 11)

To ensure the security of states littoral to the Black Sea, the convention limits the total tonnage of military ships that non-Black Sea states can keep in the sea in peacetime to 30,000 tons, (it could be 45,000 tons under certain conditions). It also limits the duration of these warships' stay in the Black Sea to 21 days at most. (article 18.)

The convention brings much wider guarantees for Turkey in times of both an eminent war and a war. In cases in which Turkey considers itself to be threatened with an imminent danger of war or when Turkey is the belligerent side, it can regulate the passages of warships as it deems appropriate. (Articles 20, 21.)

If there is a war but Turkey is not belligerent, just as in the present situation of the conflict between Russia and Ukraine, warships of non-belligerent states still enjoy the freedom of passage by complying with the number and tonnage limitations as described above. The warships of belligerent states, however, should not be allowed to pass the straits. Turkey should not allow them to pass. (Article 19)

There are, however, exceptions to this ban. The first exception is that the warships of belligerent states can pass through the straits only to return to their military bases in the Black Sea. The second exception is that Turkey should allow the warships of belligerent states to pass in line with the rights and obligations listed in the Charter of the U.N. (or in the Covenant the League of Nations in the past), including those of Turkey or any other high contracting parties who were members of the League of Nations. The third exception is that the warships of belligerent states may pass in cases of assistance rendered to a state targeted by the aggression that has a treaty of mutual assistance binding Turkey, concluded within the framework of the Covenant of the League of Nations.

Although the convention stipulates that the Turkish government will allow the passage of commercial airlines, except in the prohibited areas of the straits, to ensure the passage of civilian aircraft between the Mediterranean (Aegean) and the Black Sea (Article 23.), there is no such requirement for military aircraft.

RUSSIAN ATTACK ON UKRAINE AND THE MONTREUX CONVENTION

For the provisions of the Montreux Convention on the straits to be put into effect and for Turkey to use its authority to fulfill its responsibilities, a conflict must be defined as a "war." The relevant rules of international law do not require that a formal declaration by any warring state is needed to legally conclude that a war situation exists. A situation is considered a war based on the intensity of the use of force.

Russia officially declared that it launched a "special military operation" against Ukraine on the morning of Feb. 24, 2022. Whatever its name, this was an official declaration of a comprehensive military operation against another state. From the very beginning, the military assaults covered an extensive use of land, sea, and air forces. Ukraine, on the other hand, declared that Russia had launched a comprehensive military attack against the country and that Ukrainian forces were defending their territory through military measures.

The statements of several other states and officials of many international organizations, including the secretary-general of the U.N., have also confirmed that Russia launched a comprehensive military attack with the goal of full-scale occupation of Ukraine. This military confrontation continues at present at full force, leading to a substantial occupation of Ukraine.

Considering that the conflict is now defined as a war, can the warships of Ukraine and Russia pass

through the Turkish Straits? Does Turkey have to legally allow these warships to pass?

As explained above, Article 19 of the Montreux Convention on the straits requires that if Turkey is not directly involved in the war, the warships of any warring state shall not be allowed to pass through the straits. Turkey is, therefore, under an obligation to block the warships of both Ukraine and Russia from passing through the straits.

There are, however, some exceptions to the ban. The ban should not interfere with Turkey or any of the members of the United Nations (the League of Nations at that time) regarding the obligations that may arise from any binding decisions of the U.N. Security Council (the Council of the League of Nations Convention at that time). If the U.N. Security Council makes a decision that envisages aid to Ukraine or requires military measures against Russia, Turkey has to allow such warships to pass through the straits.

The controversial issue in this context is whether Turkey will have to fulfill the requirements of any possible decisions of the U.N. General Assembly, which are not legally binding. In cases where warships of other states try to pass through the straits based on decisions made by the U.N. General Assembly, Turkey would not legally be obliged to allow these warships to pass. It would not, however, be illegal if Turkey allows these warships to pass, as these measures are designed to protect the very fundamentals of the international community as well as peace and stability.

The final exception is that Turkey should allow the warships of Ukraine and Russia to pass through the straits to return to their respective base ports in the Black Sea. Paragraph 4 of Article 19 states, "Vessels of war belonging to belligerent Powers, whether they are Black Sea Powers or not, which have become separated from their bases, may return thereto." It is possible that one of the warring states, especially Russia with its intense overseas military activities, may request passage for warships currently in the Mediterranean or other seas to return to their bases in the Black Sea. This exception covers only the warships whose bases are in Black Sea ports but not those whose base ports are elsewhere. Ships with non-Black Sea ports should not, therefore, be allowed to cross into the Black Sea.

TURKEY'S STANCE

The Çanakkale Strait (the Dardanelles), the Marmara Sea, and the Strait of Istanbul (the Bosphorus), which together form the Turkish Straits, are sea passages situated wholly within Turkey's territory and therefore are under the Turkish sovereignty. The Montreux Convention is limited to regulating the rules for foreign ships, that is, ships not registered in Turkey, that want to travel through these sea passages. Therefore, the authority and responsibility for implementing the convention belong to Turkey, which has sovereignty over the region.

It is clear there is an ongoing armed conflict between Russia and Ukraine, both Black Sea countries. As we mentioned above, the situation must be defined as a "war" for the related rules of the Montreux Convention to be applied.

The determination of Turkey as the sovereign state in this regard is of legal importance. At the beginning of the conflict, Turkey stated that it was examining whether the said conflict could be defined as a war, and then declared it had determined that the situation is a "state of war."

When evaluated based on the criteria we have mentioned above regarding the legal determination of a war, Turkey's approach seems legally appropriate based on the clear indications mentioned above. As a matter of fact, no statement or objection to the contrary has been issued from other relevant countries.

Upon this determination, Turkey declared the implementation of the relevant article of the Montreux Convention, Article 19. The statements of Turkey do not imply that the straits are closed to warships of all states, which would not be in accordance with the relevant provision of the Montreux Convention. Turkey has rather stated that the warships of both Ukraine and Russia, as belligerent states, are prohibited from passing through the straits. Therefore, Turkey is fulfill-

ing the requirements of the convention relevant to the present case.

Turkey's attitude towards the exceptions to the ban also seems to be in accordance with the relevant rules of the convention. Turkey has declared that warships registered in Black Sea ports will be allowed to return to their own ports, but warships that are not registered in the ports in the Black Sea will not be allowed to pass. In this context, it was declared that three of the four warships requested by Russia to pass could not pass because they were not registered at Black Sea ports. It has been stated that Russia did not object to this practice.

However, if the U.N. General Assembly, whose decisions are of an advisory nature, decides to urge military aid to Ukraine and military measures against Russia, Turkey is not legally obliged to fulfill the requirements of this decision. However, Turkey has not issued any statements on this matter as the U.N. General Assembly has yet to issue a resolution. Therefore, Turkey is not, at present, in a position to have to make any formal statement concerning this possible scenario.

The Montreux Convention has an ambitious mission to contribute to the peaceful protection of passage through the Turkish Straits by reducing security risks. In the current war conditions, in which Turkey has not been a party, Turkey significantly contributes to the restoration of peace by fulfilling the provisions of the Montreux Convention.