

CIVILIAN VESSEL PASSAGE IN THE TURKISH STRAITS: THE FIRST COMPREHENSIVE REGULATION (1994)

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Abstract: *The desire to control the passage regime of the Turkish Straits caused several wars throughout history. For 86 years, beginning with the 20th century, the Montreux Convention (1936) has regulated the long-term transit regime of the Straits. After the Montreux Convention, vessel-building technology progressed at such a rate that several provisions were created to adapt to the newly established Cold War (CW) conditions. Nevertheless, almost all those arrangements were aimed at regulating the passage of naval vessels, and no comprehensive regulation addressing civilian vessels was made until the 1990s. A comprehensive regulation was prepared and issued at the beginning of January 1994 to fill that gap, in compliance with the UN Convention on the Law of the Sea (UNCLOS) of 1982. The new Regulation imposed several new rules and brought restrictions contrary to the freedom of passage guaranteed by international conventions and even by the Montreux Convention. The Russian Federation (RF), as a littoral country, was the first to express strong opposition to the new Regulation, and other countries soon followed. Despite criticism and reasonable concerns, the Regulation came into force six months after its publication, at the beginning of July 1994. However, persistent complaints forced Turkey and the RF to reach an agreement, and four years later, the first Regulation on the Turkish Straits was replaced by a new one. This study examines the rules implemented by the first comprehensive regulation of the Straits in 1994, the protests, objections, and amendments consistent with the provisions of UNCLOS.*

Keywords: *Turkish Straits, Freedom of Passage, Regulation, Montreux, Contrariety*

Rezumat: Dispoziții normative privitoare la trecerea vaselor civile prin strâmtoarele turcești: primul regulament complet dat în folosință în 1994. *Dorința de control a regimului de trecere prin strâmtoarele turcești a provocat, de-a lungul istoriei, mai multe războaie. Începând cu secolul XX, regimul de trecere de lungă durată a strâmtoarelor a fost reglementat de Convenția de la Montreux din 1936, timp de 86 de ani. După Montreux, tehnologia construcțiilor navale s-a dezvoltat atât de repede, încât au fost făcute mai multe aranjamente pentru a se adapta la condițiile nou apărute în vremea Războiului Rece. Cu toate acestea, aproape toate aranjamentele aveau ca scop reglementarea trecerii navelor de război. Până în anii '90 nu s-au făcut aranjamente de reglementare comprehensivă referitoare la trecerea navelor civile. Pentru a umple această lacună, un regulament cuprinzător a fost pregătit și publicat la începutul lunii ianuarie 1994. Noul regulament urmărea să fie în conformitate cu Convenția ONU privind dreptul mării (UNCLOS), deschisă pentru semnături în 1982. Acest regulament a introdus o serie de reguli și a adus reglementări stricte într-o serie de puncte, contrare libertății de trecere, garantată de convențiile internaționale și chiar de convenția de la Montreux. Mai întâi Rusia, țara riverană/litorală, a protestat vehement împotriva noului regulament, proteste și obiecții similare fiind exprimate la scurt timp și de către alte țări. În ciuda criticilor și a obiecțiilor legitime, întemeiate și rezonabile, regulamentul a intrat în vigoare la șase luni după publicarea sa, la începutul lunii iulie 1994. Cu toate acestea, protestele permanente au forțat Turcia și Rusia să adopte o înțelegere comună iar patru ani mai târziu, primul regulament privind trecerea prin strâmtoarele turcești a fost înlocuită cu unul nou. În această lucrare sunt analizate noile reguli puse în aplicare de primul regulament cuprinzător al strâmtoarelor din 1994, protestele, obiecțiile și modificările puse în concordanță cu prevederile UNCLOS.*

INTRODUCTION

The Montreux Convention, which has been regulating maritime traffic through the Turkish Straits since 1936 was reached in response to the military and political developments of the era. It ensured the safety of the Black Sea littoral countries and the free passage of commercial and civilian vessels. When the Montreux was signed, the average number of yearly commercial transits through the Turkish Straits was 4,500-5,000 ships, despite sharp fluctuations during WWII. The route averaged 13 vessels per day.

However, after WWII, the annual number of transits through the Straits increased significantly. Ten years after the Montreux Convention, in 1945, cargo transit through the Straits increased significantly. Unforeseen events at the time the Convention was signed brought along new challenges. During the Cold War (CW), these challenges required rapid solutions to handle the recently arising situations.

The phenomenon of 3rd generation globalization, which accelerated in the last decade of the CW, multiplied the volume of worldwide trade. Similar to other sea corridors in the world, the Turkish Straits were affected by increasing economic activities and intensified transit traffic. The average daily vessel passage through the Bosphorus in the 31 years between 1991 and 2023 was 119. As can be noticed, the new figure is nine times higher than the passage numbers at the time the Montreux Convention Regarding the Regime of [Turkish] Straits (MCRR[T]S) was signed. In the Dardanelles, daily transit reached 116 vessels during the same period. In addition to higher transit numbers, the carried load increased by an average of 25 times. Because of increased trade volume, a wider range of commodities such as chemicals that threaten human life, crude oil, ammonia, liquefied natural gas, radioactive materials, hazardous wastes, and toxic, dangerous and explosive substances, has become available for transportation through the Turkish Straits.¹

The Montreux Convention is a legal agreement that established internationally recognized universal legal maritime norms. The basic principle of the Convention is the complete freedom of navigation and passage for all civilian vessels in times of peace, while military vessels are limited in number, tonnage, and weaponry, with specific provisions governing their entry and duration of stay. To conform to the rules-based international order, Turkey supervises all transits, whether stopover or non-stopover. In this sense, it is Turkey's duty to carry out the Montreux agreement in line with its spirit. On the other hand, understanding the principle of freedom of passage in the Straits as "free and unregulated" violates Turkey's sovereign rights.² States across the world, whether Montreux parties or not, have no objection regarding Turkey's authority to transit control.

In addition to gradually intensifying vertical traffic, which accelerated in the last 10 years of the CW and reached a high rate in the 1990s, the horizontal sea traffic in Istanbul, which has an average daily population of 20 million including incomers, is around 2,500 including boats, sea buses, and other similar sea vehicles. According to the data of the Turkish Statistical Institute (TUIK) for 2022, the resident population of Istanbul was 15,907,951 people.³ This figure, which is greater than the total population of several states across the world, does not account for the unofficially estimated 2.5 million asylum seekers who come to Istanbul as irregular immigrants, and tourists.

¹ <http://www.kiyiemniyeti.gov.tr/default.aspx?pid=23> (Accessed 10.03.2022).

² <http://www.mfa.gov.tr/turk-bogazlari.tr.mfa> (Accessed 08.04.2022).

³ <https://data.tuik.gov.tr/Bulten/Index?p=37210> (Accessed 18.03.2022).

This study investigates the newly emerging conditions leading to the first post-CW Straits Regulation in 1994, along with the counterarguments and objections raised by littoral and non-littoral, in the context of the United Nations Convention on the Law of the Sea (UNCLOS), which has been enforcing new regulations and enacting current ones since 1982.

THE STRAITS BEFORE THE INTRODUCTION OF THE 1994 REGULATION

Before examining the Regulation published in 1994, which was the first comprehensive regularization on the passage regime of the Straits after the CW, several basic circulars and bylaws governing the passage regime of the Turkish Straits after the Montreux Convention are worth mentioning.

The first regulation on the regime of the Turkish Straits was published with the signature of President Atatürk after the Montreux Convention came into force in November 1936.⁴ Until that Regulation, there were two distinct passage regimes in effect in the Straits: (1) Passage regime based on full freedom of passage for commercial/civilian vessels. (2) Passage regime with various restrictions for naval warships. Although the Montreux (MCRR[T]S) agreement provided guidelines for both regimes, due to the rapid progress in both the military and civilian shipbuilding industry and the development of new technologies, the Montreux agreement began to fall short in certain areas. Some naval improvements were made for that purpose sixteen years before the signing of the UN Convention on the Law of the Sea, in 1982. To solve the military inadequacies, the first Regulation governing the passage of warships was published 30 years after the Montreux agreement, on 22 June 1966. It had been modified to take into account the maritime customs, practices, and new developments.⁵

Eleven years later, on 27 December 1978, bill No. 7/17114 of the Turkish Council of Ministers established several additional provisions. On 20 February 1979, the “Foreign Warships Passing and Visiting Turkish Waters” revised Regulation went into effect. A few years following that, on 24 November 1983 and 13 December 1987, two new Regulations governing the warship passage

⁴ *Türkiye Cumhuriyeti Başbakanlık Cumhuriyet Arşivi* (TR-BCA) [Republic of Türkiye Prime Ministry National Archives], 030.10.168.171.05. 26/11/1936.

⁵ *Yabancı Uçak ve Gemilerin Ziyaretleriyle İlgili Tüzük Hazırlandı* [A regulation was prepared Regarding Visits of Foreign Vessels and Aircraft Carriers], in “Cumhuriyet Gazete”, July 23, 1966, p. 7.

regime were implemented. The number of regulations regarding warships was four; nevertheless, there was no complete regulation generating a response to almost half-century collected civilian passage issues until that date. The UNCLOS was opened for signing on December 10, 1982, following long and difficult discussions under the auspices of the UN. On 20 May 1982, seven months before the UNCLOS was opened for signature, the Law on Turkish Territorial Waters No. 2674 went into effect. The new legislation took into consideration all pre-UNCLOS conferences, new international consents, and liberalization norms linked to territorial waters, even if it had little connection with the Straits passing regime directly.⁶

The last regulation on territorial waters implemented by the coupe government (military rule) was largely a duplicate of the rules issued by the civilian government in 1979, both in form and in content. Furthermore, it attempted to restrict the transit regime of foreign warships through Turkish territorial waters. Because the new arrangements and regulations were insufficient to meet the most recent developments, a new regulation was issued and put into effect again by the military rule almost a year after the UNCLOS was opened for signature, in 1983. In light of recent developments, that rule added several technical definitions such as nuclear warships, nuclear fuel, territorial waters, inland waters, ports, etc.

Because the Black Sea and the Straits were among the ports to be visited by warships, the Regulation had to be compliant with the Montreux Convention and capable of meeting Turkey's NATO membership requirements. To eliminate those deficiencies, the first paragraph of Article 15 of the Regulation issued on 24 November 1983 was revised in 1987. Warships entering Turkish territorial waters within the scope of NATO deployment and invited foreign state warships entering Turkish ports were exempted from the provisions of the Regulation. Accordingly, the arrival and departure times of foreign warships to and from Turkish ports for visiting purposes, except for ships visiting Turkish ports for planned NATO or bilateral exercises/training purposes could range between 08.00 and 17.00 on weekdays.⁷

Although Article 2 of the Montreux Convention regulates the passage of merchant ships, it lacks clarity in solving all issues that could arise during the passage of warships and has become unsatisfactory over time. While the

⁶ "Türkiye Cumhuriyeti Resmi Gazete (TCRG)" [Republic of Türkiye Official Journal], N. 17706, May 29, 1982, p. 1.

⁷ TCRG, N. 19663, December 13, 1987, p. 2.

Convention guarantees absolute freedom of passage for merchant ships, it also exposes certain loopholes in Turkey's sovereignty. As the traffic in the Straits increased rapidly after the CW, an arrangement had to be made after 1980 that could make up for the deficiencies in the Montreux Convention. As previously stated, laws governing the transit of warships across the Turkish Straits were issued during the CW, but no formal regulation was created addressing merchant/civilian ships.

Apart from the limitations that apply to territorial waters, two regulations were established in 1965 and 1982 regarding Turkish ports. These were implemented since the Turkish Straits have several ports, at the east and west littorals, namely Canakkale, Marmara, and Istanbul. Thus, both port laws controlled navigation in the Straits.⁸

Before addressing the first civilian Straits Regulation, certain explanations regarding the [Turkish] Territorial Waters Law No. 2674, which was regarded as the foundation of the Regulation last issued in 1987, should be made. The law consisted of eight articles. It redefined the terms baseline, territorial waters, and inland waters. As a result, Turkish territorial waters have been set at a minimum of six miles, with the Council of Ministers having the authority to raise it to 12 miles.⁹ Regardless of these measures, the need for a civilian passage regulation remained.

PREPARATIONS FOR THE FIRST COMPREHENSIVE CIVIL PASSAGE REGULATION OF THE STRAITS

Nearly 53 years after the Montreux Convention, collaborative efforts were launched in 1989 to address the issues of civilian ship transit and a commission was established in 1990 for that purpose. The document would be the first comprehensive instrument governing the transit of the Turkish Straits. Following the publication, the Russian Federation claimed that Turkey's main goal was to divert oil flow to the Baku-Ceyhan pipeline. It is evident that this was not the entire explanation, and the criticism had some justification. However, the USSR had not yet disintegrated when the commission was established to set the rules for civilian passage through the Straits. Moreover, neither Turkestan nor Caspian

⁸ Hakan Emanet, *Deniz Hâkimiyetinden Dünya Hâkimiyetine Giden Yolda Türk Boğazları* [Turkish Straits on the Road from Sea Hegemony to World Hegemony], Istanbul, IQ Kültür Sanat Yayıncılık, 2003, p. 107.

⁹ TCRG, N. 17706, May 29, 1982, p. 1.

oil was on the agenda at the time.¹⁰

While the regulation was underway, the CW officially ended in December 1991. Aside from the increasing trend of civilian vessel traffic across the Straits, oil and other hazardous, dangerous shipments reached excessively high volumes. Aside from the quick surge in traffic, the control and administrative adaptation of the Straits to civilian and commercial ship traffic required urgent implementation of new efficient rules.

There were several reasons for such an urgent need, and some of them had vital importance. (1) The rising numbers of tankers crossing the Straits after the CW, carrying oil from pipelines to the Russian port of Novorossiysk. (2) Plans to transport oil in the Caspian and Turkestan basins in the same way. (3) The RF's declaration that it would accept nuclear waste, some of which would be transported through the Straits. (4) The post-Soviet RF's Baltic ports remaining in the countries leaving the union and the RF's dependability on the Turkish Straits. (5) The resulting higher importance placed by the RF to the Black Sea ports and thus to the Straits. (6) The event of 25 September 1992, barely one year after, when the connection of the North Sea to the Black Sea via the Rhine-Main-Danube was done and from there to the high seas through the Turkish Straits. (7) Because of vessel navigation between the Don-Volga Canal, the Caspian Sea and the Black Sea, traffic in the Straits became unmanageable with the rules at the time.¹¹

When the CW was over, one of the most serious concerns of Ankara was that post-Soviet Armenia would join the Montreux Convention. The fear was baseless because there were only three new states bordering the Black Sea after the collapse of the Soviet Union: the RF, Georgia, and Ukraine. Another issue was that the Montreux Convention would be cancelled in the post-CW era and a new contract could be signed instead. It was mostly desired by Western states, especially the USA. In June 1992, a delegation was sent to Moscow to avoid such a scenario. The other aim of the delegation was to prevent any Armenian participation in the Montreux Convention. The RF had similar concerns with Ankara about a potential new application that could replace the Montreux

¹⁰ Gündüz Aybay, *İngilizlerin Kelime Oyunu* [Wording Game of Britons], in "Cumhuriyet", August 24, 2000, p. 8.

¹¹ Fevzi Topsoy, *Ulusal ve Uluslararası Düzenlemeler Işığında Türk Boğazlarının Güvenliği Sorunu* [The Security Problem of the Turkish Straits in the Light of National and International Regulations], Kırıkkale, Kırıkkale Üniversitesi SBE Yayınlanmamış Yüksek Lisans Tezi, 2003, p. 4.

Convention. Therefore, it was not difficult to reach a consensus on a continuation of the Montreux agreement.

While contacts and negotiations were taking place, preparatory works for the first comprehensive civilian Regulation on the Turkish Straits were also underway. Almost every country, most importantly the RF, was aware of how the regulation works. Not surprisingly, the first country to develop bold arguments and reject any limitation on the passage before the official announcement of the Regulation was the RF. Meanwhile, in 1993, the International Maritime Organization (IMO) had a general meeting in London, and Turkey was one of the participants.

Before the meeting, the RF informed IMO about its counterarguments and derogations regarding the new Straits Regulation. A few weeks later, in May 1993, a document on "Navigation and Environment Safety in Turkish Straits" was submitted to the IMO Maritime Safety Committee. The aim was to draw attention to the rising environmental and navigation risks in the Straits. However, the RF did not have any intent to consider such risks. The RF, Greece, Southern Cyprus Greek Administration (SCGA), and Panama jointly declared that possible changes and rules that would be enforced by Turkey concerning the passage through the Straits were against the Montreux Convention. The arguments and opposition of the RF and other countries lacked credibility and were unfounded. Turkey, during and after the CW, had followed a policy of broadly interpreting and implementing the Montreux Convention to ease the Soviet successor, the RF's use of the Straits. Otherwise, aircraft carriers built by the Soviets on Black Sea shipyards after the 1970s could not pass from north to south through the Turkish Straits. If the new regulation had not been implemented, the RF would have enabled the same intolerance in civilian navigation.

Aside from persistent counterarguments, strong oppositions, and firm negative attitudes, pressing issues such as environmental security and growing tanker traffic have increased dramatically. In addition, the number of countries signing the UNCLOS reached 60, and it was clear that the Convention would come into force in a few months. Considering all those developments, by the end of 1993, the preliminary work for the first comprehensive civilian vessel passage regulation of the Straits was almost completed. The Turkish Foreign Ministry, the Ministry of Transport Undersecretaries of Maritime Affairs, and the Navy High Command Department of Navigation Hydrography and Oceanography cooperated closely to create the Regulation.¹² According to those institutions and the Turkish

¹² Deniz Bölükbaşı, *Dışişleri İskelesi, Dışişleri'nde 34 Yıl* [34 Years in the Ministry of Foreign Affairs], Istanbul, Doğan Kitap, 2011, p. 219.

Government, the new Regulation was ready to enter into force at the end of 1993. Nevertheless, the RF and several other countries did not agree.

THE NEW REGULATION OF 1994

On 23 December 1993, after the completion of necessary formalities, the Council of Ministers ratified the discussed draft and decided that the Straits Regulation for civilian passage should be put into force according to Article 37 of the Laws 115 and 3046 and Article 2 of the Law of Ports No. 618.¹³ Two weeks after the Council of Ministers' decision, the Turkish Official Journal No. 21815 announced the new Regulation on 11 January 1994. It consisted of seven chapters, 59 articles, six additional parts, and 21 maps. Its full name was "Straits and Marmara Region Maritime Traffic Management Regulation" and was only used for the Turkish Straits. Nevertheless, the Regulation did not include the concepts of "*stopover/call-in vessels*" for non-transit passage and "*non-stopover/non-call-in vessels*" for transit passage, and the name "Turkish Straits" was associated with it.¹⁴

Although it was omitted from the original text, the term "Turkish Straits" has been used in international treaties for many years.¹⁵ The name "Turkish Straits" and the new definition of the passage regime as "*stopover/call-in vessels*" and "*non-stopover/non-call-in vessels*" would be corrected in 1998 through the second Regulation. In the preamble of the Regulation, passage lanes and geographic signs and coordinates were clearly defined and fixed on the attached maps. The first 4 articles of the Regulation defined traffic schemes and lanes, borders of the Straits, related coordinates, routes, including nuclear-powered vessel classes, and the lines vessels had to use through the passage. In 1982, the right traffic system was put into use in the Straits and the Regulation endorsed that change.¹⁶ One of the basic principles of the Montreux Convention was to guarantee the free passage of civilian vessels and to protect Turkey's regulative authority. The Convention also guaranteed the safety of the Black Sea littoral countries and enforced tonnage and duration limitations on non-littoral countries' warships. Yet, Article 5 of the new Regulation forced all countries to

¹³ TCRG, N. 21815, January 11, 1994, p. 2.

¹⁴ TR-BCA, 030.18.01.02.777.573.10. 18/05/1994.

¹⁵ Hilmi Fırat, *Türk Boğazları ve Önemi* [Turkish Straits and Their Importance], T.C. Deniz Basımevi, İstanbul, 1950, p. 3.

¹⁶ TCRG, N. 21815, January 11, 1994, p. 3-5. Articles 1-4.

obey any rule put into force by Turkey. Actually, such a new rule was contrary to the rules established by the Montreux Convention, and clearly, it was obviously an abuse of power.¹⁷

Soon after the Regulation entered into force, the RF and several other countries with high traffic through the Straits argued that the basic aim of the Regulation was to force the construction of the Baku-Ceyhan pipeline. According to that, the new rules would slow down passages through the Straits. Moreover, strict implementation of the Montreux rules would obstruct the traffic as well. As it is very well known, the Istanbul Strait (Bosporus) is narrower and more curved than the Canakkale (Dardanelles). In addition, because Istanbul is a megacity, there is heavy horizontal traffic in the Istanbul Strait too. That is why the most difficult passage of the Straits is in the Istanbul section, and due to new rules, vessels had to wait for passage permits at either the Marmara entrance or the Black Sea entrance to the north to sail through the Istanbul Strait.¹⁸

One of the basic deficiencies of the Regulation was the “*stopover/call-in vessels*” and “*non-stopover/non-call-in vessels*” classification. It had been updated and codified before the opening of the UNCLOS for signature and it strengthened the authority of the coastal state. As underlined above, it would be included in the second regulation of 1998. Articles 9-14 regulated the passage rules, such as the obligation to display a flag during day passages and a green light during night passages, pilotage, transit passage, and vessels that entered a Turkish port during the passage. The third chapter dealt with the transit across the Straits. During the passage, for safety regulations, the steering mechanism should be controlled manually, the passing vessel should navigate under the control of an authorized captain (Article 15), and night lighting should be provided for vessels longer than 150 m. Article 16 specified conditions for maximum speed. The average top speed was 10 knots (18.5 km/h). Unless they endanger vertical and horizontal traffic within specified limits, vessels could gear down or gear up (Article 17).¹⁹

The length of the Turkish Straits is 164 nautical miles (303 km). The average transit time for a vessel navigating at a constant 10-knot speed through the Straits

¹⁷ TR-BCA, 030.18.01.02.777.573.10. 18/05/1994; TCRG, N. 21815, January 11, 1994, p. 5. Article 5; TCRG, N. 21815, January 11, 1994, p. 6. Article 7.

¹⁸ Deniz Som, *Boğazda Yeni Seyir Düzeni* [New Navigation System in the Straits], in “Cumhuriyet”, April 29, 1982, p. 22; Nur Jale Ece, *Istanbul Boğazı: Deniz Kazaları ve Analizi* [Istanbul Strait Maritime Accidents and Their Analysis], Istanbul, Deniz Kılavuzluk AŞ. Yayını, 2007, p. 22.

¹⁹ TR-BCA, 030.18.01.02.777.573.10. 18/05/1994; TCRG, N. 21815, January 11, 1994, pp. 8-9. Articles 9-17.

is around 16 hours. However, several locations in the Istanbul Strait are unfit for a 10-knot speed. Even if it were possible to gear up in the Marmara Sea, where the passage lane is 110 nm (203 km.), according to the new regulations, the passage through Marmara would also take 8-10 hours.

According to Article 41 of the UNCLOS, which would come into force after the completion of the necessary number of signatures in the same year as the Regulation in 1994, coastal countries, in accordance with international rules and practices, have the right to determine traffic schemes/lanes and passage routes in the Straits.²⁰

The fourth chapter of the Regulation established passage rules for large vessels and nuclear-powered vessels. Nuclear-powered vessels and those carrying nuclear cargo required previous approval from the Undersecretaries of [Turkish] Maritime Affairs while vessels carrying hazardous, dangerous cargo required prior permission from the [Turkish] Ministry of Environment. These vessels have to conform to IMO rules. Those vessels would have a red light on during their night journey. Any vessel infringing the rules will be stopped and commanders will be investigated.²¹

Despite the lack of a precise definition, nuclear waste, chemicals, oil, natural gas, and other comparable items were considered risky cargoes due to the strict regulations governing nuclear-powered vessels. As mentioned before, the maximum average speed restriction for a transit vessel between the Straits of Istanbul and Canakkale was 10 knots and 12 knots in the Straits of Marmara. Even under ideal circumstances, it would take a vessel 12 to 15 hours to cross the Straits. When considering seasonal inconveniences and unfavourable weather conditions during winter, it was clear that the regulation imposed some fixed limits on the number of dangerous cargoes that could pass, particularly restricting the passage of oil and natural gas tankers, regardless of whether the entry was made through the north or the south. Moreover, it should be kept in mind that the passage of a vessel will be slowed because of its size, draft line, extent, and weight of cargo. A *non-call-in* vessel's (transit vessel) average passage duration through the Istanbul Strait under convenient conditions is 3 hours. Therefore, even if all conditions were optimal, the number of dangerous cargo vessels that might transit the Istanbul Strait in a single day may be limited to seven or eight. Aside from that, the average frequency of misty and unfavourable weather days in the

²⁰ UN, UNCLOS, *Entry into Force Registration Status Text*, C.N.1023.2005.TREATIES-7, October 7, 2005, pp. 32-38.

²¹ TCRG, N. 21815, January 11, 1994, p. 14. Article 35/b.

Istanbul Strait is high.²²

As can be seen, the Regulation's articles, procedures, and norms had various issues, inconsistencies, and disagreements with the Montreux Convention. Following repeated objections, a second regulation seemed unavoidable. Limits would be eliminated in the second regulation of 1998. However, pilotage and towing would be required for hazardous cargo vessels larger than 200 meters and tankers.

The fifth chapter of the Regulation governed the sequence of marine traffic division schemes in the Istanbul Strait and associated rules. Horizontally navigating ships, boats, yachts etc. are not allowed to interfere with vertical traffic. The passage might be put on hold according to the provisions in that chapter, in the event of fast current and counter-current, mist, inadequate visibility, and southerly winds (Articles 38-40). Although it was a Regulation controlling the passage in accordance with natural conditions, limiting the free passage was contradictory to the rules of the Montreux Convention. Nevertheless, restrictions governing nuclear-powered and nuclear cargo-carrying vessels did not violate the Montreux Convention because nuclear energy had not been discovered when the Montreux was signed. Setting regulatory standards for nuclear technology was a *rius sic stantibus* exception and not an excess of authority.

The definition of fines and penalties in the seventh chapter of the Regulation stipulated that breaking the rules or causing any disruption would result in the payment of fines and penalties. The articles additionally established the amounts of fines.²³ Landmarks, coordinates, and separation lanes were defined on conveniently enclosed maps. To prevent any possible misconduct, the southern and northern approach lanes to the Straits, navigation rules, the transit line in Marmara, and route coordinates were explicitly specified and placed on maps. The passage through Marmara would be on a fixed straight line close to the western bank, with no deviation from the predetermined trajectory. The transit across the Istanbul and Canakkale Straits would be through previously determined lanes running north-south near the western bank and south-north close to the eastern bank.²⁴

²² Erich Obst, *Boğazlar İstanbul Çanakkale Mıntıkası İklimi* [Straits, Istanbul and Canakkale Climate], İstanbul, Tefeyyüz Kitaphanesi, 1932, pp. 6-9.

²³ TCRG, N. 21815, January 11, 1994. p. 20. Article 57.

²⁴ TCRG, N. 21815, January 11, 1994. pp. 21-47. Enclosure Map.

JUDICIAL OBJECTIONS TO THE REGULATION AND SETTLEMENT ATTEMPTS

Even though the Regulation was already in effect, its official implementation would start on the first day of July, six months after its release. As it is widely known, the highest number of oil and commercial vessels passing through the Straits belonged to the RF, and it was reasonable that the country would continue to criticize the Regulation. Soon after the start of the *ipso facto* execution, littoral countries such as Ukraine, Romania, Bulgaria, and Greece, which had a high number of passages through the Straits, and the SCGA, which supported the Russian protests, jointly applied to the IMO and other related international organizations for cancellation or amendment of the Regulation. The RF, Greece, SCGA, and Oman claimed that the new Regulation restricted the universal free passage principle.

While disputes over and debates on the Regulation were going on, an environmentalist group led by Turkish lawyers filed a complaint to the Istanbul Administrative Tribunal three months after the Regulation began to take effect. To attract public attention, they made the collision of the tanker *Independenta* in 1979 an ongoing issue, claiming that the accident had caused an environmental disaster, but neither the related company nor the flag state had taken the necessary measures before and after the collision. The increased tanker traffic has brought new risks and similar incidents could occur. Using such arguments as foundation, the lawyers sought the closing of the Straits to tanker traffic. Almost four days before, on March 13, the petrol tanker *Nassia* had collided with a dry-goods vessel in the Istanbul Strait, putting the megacity at risk for a large-scale disaster.²⁵ Although the lawsuit was a humanitarian effort since the Montreux Convention governed *non-vessel call* (transit) passage through the Straits, local tribunals lacked the authority for litigation in such circumstances. Hence, the tribunal's decision would be invalid.

The RF was the primary opponent of the Regulation. On 14 April 1994, one month before the IMO ratification and three months before its official entry into force, the RF sent a diplomatic note to Turkey underlining its objections. As it is known, when the note was sent, *de jure* formal recognition of the Regulation had not yet begun. The RF applied to the IMO a second time, arguing that the

²⁵ *Boğazlarda Felaketi Lodos Engelledi* [Southeastern Anatolia Prevented a Disaster in Straits], in "Milliyet", March 15, 1994, p. 1.

Regulation breached the International Maritime Law. Russian objections were mainly driven by the likelihood of oil transit issues through the Straits. Russia's plan in those years was to ship oil in the Novorossiysk seaport and to ensure that oil tankers could transit freely across the Turkish Straits to the high seas, and then sell the oil to western markets. Oil pipelines were not operational during those years, hence the most profitable transfer method was maritime transport. Any limit on tankers and civilian vessels would pose a serious threat to that approach.

Despite ongoing Russian protests and objections, Turkey had adopted a firm policy, ignoring Russian demands. Accordingly, the Russian diplomatic note was replied on May 13. Russian claims such as contradiction with the Montreux Convention and demands for major revision before the official entry into force were boldly rejected. The note emphasized that the RF desired an application of the Montreux Convention regardless of the latest developments and that the RF ignored contemporary International Maritime Law.²⁶ Soviet leader Stalin made similar complaints around 1945. The roles have changed since then. It was clear, and Ankara was firm that the Regulation would come into force on the first day of July.

Three days before the formal coming into force on June 29, Greece delivered a diplomatic message in support of Russian demands. Greece also complained that the Regulation was a clear breach of the Montreux Convention, and it should be discussed in the IMO. One day after that note, on June 30, the RF sent a second note referring to the Regulation. The Russian note was both a threat and a warning notifying that Turkey would be responsible for any issues caused by the Regulation. It was clear that the RF and Greece were pursuing a joint policy. The tones of their notes were similar. Despite such objections and rising protests, the IMO implemented the Regulation's traffic structure. The new schemes would take effect on November 24 of that year. The Russian note further said that the RF would obey only rules ratified by the IMO and that unratified rules would be ignored. That was the most serious and real challenge thus far, well beyond diplomatic rules. Turkey sent counter notes both to Greece and the RF, and all demands were firmly rejected.²⁷

Protests and objections were not ineffective. Turkey noted the objections, and although it was not its obligation, it submitted the Regulation to the IMO

²⁶ *Rusya'ya Montreux Notası* [Montreux Note to Russia], in "Cumhuriyet", May 14, 1994, p. 8.

²⁷ *Moskova'dan Ankara'ya Nota* [Note by Moscow to Ankara], in "Cumhuriyet", July 1, 1994, p. 1.

Maritime Safety Committee (IMOMSC).²⁸ Before Turkey's submission, at the 64th meeting of the IMOMSC, the Russian delegation had filed their protests, claiming that several articles of the Regulation contradicted the IMO rules. That objection was the reason for Turkey's submission of the Regulation to the IMOMSC. Overall, submission to the IMOMSC paved the way for an unexpected new discussion regarding navigation through the Turkish Straits: whether to rely on the Regulation or IMO norms. On 24 May 1994, the IMOMSC ratified the Regulation with a few minor revisions. It would come into force on November 24, 1994. The ratification was very important. Thus, right lane navigation through the Straits and traffic separation schemes were endorsed by a high-ranking international organization. Moreover, the ratification had also approved the newly imposed limits on large vessel passages.

Nevertheless, the ratification was far from covering the RF's demands, so it fuelled arguments about the Regulation. One of Moscow's most serious objections was that "due to the infringement of the Montreux Convention" the RF would face considerable economic loss. There was still an impasse; thus, at the 67th meeting of the IMOMSC, the RF suggested creating an international organization to control navigation through the Turkish Straits. The proposal was a clear violation of the Montreux Convention, and totally against the sovereign rights of Turkey. Most likely, the basic aim of that ridiculous proposal was to force Turkey to accept Russian demands. The proposal was rejected by Ankara. The firm line taken by Ankara forced Russia to reconcile; yet, certain critical disagreements were difficult to solve.²⁹ Actually, the Regulation's restrictions were contrary to civilian vessels' free passage principle that had been used since 1829.

It was not only Russian oil and natural gas passing through the Straits. Arms and tanks sold to SCGA were also shipped to Black Sea ports and transported through the Straits. SCGA had purchased high-altitude S-300 missile batteries from the RF, and those systems would very certainly be transported through the Straits. Turkey declared that the deployment of S-300 systems in SCGA was *casus belli*. During those hot days, critical information was intercepted indicating that the RF would transport S-300 batteries through the Straits. The

²⁸ *Türk Boğazlarının Mevcut Durumu ve Güvenliğinin Milli Güvenliğimize Etkileri* [Current Status of Turkish Straits and Effect of Strait Security on Turkey's Security], Ankara, Harp Akademileri Komutanlığı, p. 101-102.

²⁹ Mansur Akgün, *Türk Dış Politikasında Bir Jeopolitik Etken Olarak Boğazlar* [Straits as a Geopolitical Factor in Turkish Foreign Policy], in Faruk Sönmezoğlu (Ed.), *Türk Dış Politikasının Analizi*, İstanbul, Der Yayınları, 1994, p. 29.

Montreux Convention had authorized Turkey to prevent such passage, and Turkey declared that if that happened, the batteries would be captured in the Straits.³⁰ The batteries would not be transported through the Straits, and because of Turkey's firm stance in 1998, they would be deployed in Crete, instead of Southern Cyprus.

Despite its firm stance, Ankara had to handle a compromise and respond to objections two weeks before the entry into force, with the Council of Ministers making minor revisions and changing several strongly disputed parts. The decision was published on 21 June 1994 in the Turkish Official Journal No. 21967. The first revision addressed nuclear cargo vessels and nuclear-powered vessels. It also restricted the application of broad clauses, and nuclear-powered vessels that should be managed by special rules were omitted from the article (Article 1/1). The rules for hazardous cargo and waste cargo were revised in compliance with IMO and MARPOL regulations (Article 1/2).³¹

In addition, Article 4, which specified maritime traffic navigation routes and schemes, was changed, and new schemes were established (Article 2). Article 27, covering traffic flow, schemes, and anchoring locations in the Istanbul Strait, was revised and redetermination and marking on the attached maps were done. An integrated map of the Straits, passage routes, and schemes were also attached. In the Regulation, there was no such integrated comprehensive map. The Council of Ministers' revision decision would come into force on the same date as the Regulation, after the endorsement of the Council of State. Meanwhile, the Council of State endorsed the Regulation.³² The successive Russian and Greek notes sent one week after the revisions proved that the changes made were not enough to meet the demands of the RF and other states. Actually, the revisions did not bring a passage guarantee by any means, and some articles were still contrary to the basic rules of the Montreux Convention.

Despite the arguments, counterarguments, protests, and objections, the new first civilian vessel passage Regulation, which would provide solutions to serious issues that had accumulated since the ratification of the Montreux Convention, entered into force on 1 July 1994 as announced six months before. Its official name was "Maritime Traffic Management Regulation in the Straits and

³⁰ *Füzeleri Mutlaka Vereceğiz*, [We will Definitely Surrender the Missiles], in "Milliyet", February 14, 1997, p. 18.

³¹ TCRG, N. 21815, June 21, 1994, pp. 2. Article 1.

³² TCRG, N. 21815, June 21, 1994, pp. 2-3. Articles 1-6.

Marmara Region”.³³ Discussions and objections persisted after the regulation came into force, which opened the door for a new crisis between the RF and Turkey. Until that date, quarrels had broken out mostly due to martial conflicts. It was the first time the conflict over the Straits was steered by civilian passage issues. Six months after the Regulation went into force, at the beginning of January 1995, the RF sent a third note, complaining about the serious economic losses caused by its implementation. It was believed that the objections and protests would fade with time, but new concerns arose, such as the Regulation being submitted to the UN for a fair solution.³⁴ In such a situation, the Montreux Convention would come under discussion, and undesired developments for both Turkey and the RF would arise. Another option was to take the Regulation to the International Court of Justice (ICJ).

If the Regulation was taken to the ICJ, it was likely that the right of free navigation would be broadened, and even warships may benefit from the internationally accepted concept of unlimited free passage. During and after WWII, the RF firmly insisted on a revision of the Montreux Convention, but after the CW, the RF has been striving to keep the Montreux Convention in use. Despite the Convention’s violations of rights, the RF declined to get involved in any discussions on the Montreux Convention. At that point, an open route for compromise between Moscow and Turkey could occur. There was no Vessel Trafficking System (VTS) in the Straits at that time. The system would be operational in 2002.

Turkey’s authority over the Straits was challenged severely because it was evident that the Regulation was done without concern for diplomatic practices, binding conventions, or even UN rules. Moreover, the third 20-year period of the Montreux Convention would end in 1996, and signatory countries, especially the RF could ask for a revision or, worse, termination of the Montreux Convention. Article 29 of the Montreux Convention allowed the RF to demand revision. Such a policy had not been used since Stalin’s 1946 notes, but because of Turkey’s firm attitude, a new crisis could erupt. Worse, as previously said, the Montreux Convention could be replaced by the UNCLOS.

Such a development would represent a serious threat to Russian security in the Black Sea, as established by the Montreux Convention, and Turkey would lose complete control over the Straits. If the UNCLOS fully takes effect, airspace over

³³ TCRG, N. 21815, January 11, 1994.

³⁴ *Moskova’dan Boğazlar Notası* [Straits note by Moscow], in “Cumhuriyet”, March 3, 1995, p. 8.

the Straits would be open to foreign flights. It was the practice under the Lausanne rules, which were in effect until the Montreux Convention. The Montreux agreement favoured both Turkey and the RF. Moscow was well aware of the risks if Montreux became a matter of international discussion. That is why Russian protests and objections to the Regulation and revisions never addressed any discussion on Montreux. Article 29, which allowed signatory countries to amend the agreement, was never mentioned.

Moscow has persistently maintained its objections and ongoing arguments against the Regulation. Worse, in November 1995, Moscow sent a letter to the Secretary-General of the UN, Boutros Ghali complaining about the Regulation. The basic problem was the RF's consistent determination to continue transporting oil and natural gas from the Caspian Sea, Turkestan, and Azerbaijan through the Turkish Straits. Although certain reserves had not been identified, it was known that that area had rich oil and natural gas reserves. While natural gas would be transported after being liquidated, such intense traffic was very risky for the megacity of Istanbul.

Moscow was uninterested in pipelines across Turkey or Ukraine at the time. Numerous oil and natural gas agreements were signed between Moscow and Central Asian countries. Moscow had also intended to transport Kazakhstan's oil across the Straits. Almost 37% of the annual oil transported through the Straits belonged to the RF.³⁵ Furthermore, an agreement was signed between Moscow and Kazakhstan for the transportation of Tengiz oil.

Azerbaijan oil and natural gas wells in Sah Deniz-I (Caspian Sea) would be used in addition to the existing proved and unproved reserves. That oil and natural gas would also be transported through the Straits.³⁶ In 1995, Moscow implemented both the "Greater Mediterranean" and the Black Sea cooperation maritime force policies.³⁷

Despite the ongoing complaints, in addition to the IMO's ratification, in January 1995, the OCIMF also ratified traffic separation schemes and announced that its members would obey the Regulation.³⁸ In the same year, the IMO published a brochure announcing clauses for the passage through the Turkish

³⁵ Serkan Demirtaş, *İsmail Soysal, Montreux Değişebilir* [Ismail Generic, Montreux May Change], in "Cumhuriyet", May 11, 1996, p. 10.

³⁶ Ferruh Demirmen, *Bakû-Ceyhan ve Mavi Akım: Yurtdışından Bakış* [Baku-Ceyhan and Blue Stream: View from Outside], in "Cumhuriyet", November 8, 1999, p. 2.

³⁷ Tatiana Zonova, *Mediterranean Trend in the Russia's Foreign Policy*, in "Rivista di Studi Politici Internazionali", Nuova Serie, Vol. 82, 2015, No. 4, p. 523.

³⁸ *Guidelines for Transiting the Turkish Straits*, August 2007, p. 1.

Straits. The following were the IMO passage recommendations: (1) Any vessel entering the Straits has to conform to the traffic separation schemes. (2) Any vessel entering the Straits shall be required to register with the Turkish Straits Reporting System (TUBRAP). (3) For safe passage, pilotage (strait pilot) should be provided. (4) Vessels longer than 200 metres and with draft lines deeper than 15 metres must transit in daylight. (5) If towing is required, it must be arranged in advance. (6) When required, passing vessels should be anchored in predetermined areas.³⁹

In addition to the IMO, the OCMF had also been supporting and encouraging pilotage service because there had been a well-running pilotage service system in the Turkish Straits, and about 140-150 Strait pilots worked in shifts. This recommendation might become a rule, and pilotage could be obligatory for large vessels. Even after the UNCLOS was in use, *non-vessel-in-call* (transit) vessels benefited from free pilotage, and any vessel entering Turkish ports during passage could obtain pilotage. After the entry of the 1994 Regulation in force, the average ratio of the vessels requiring pilotage increased by 55 per cent. The rate of pilotage in the Istanbul Strait was higher than that in the Canakkale Strait.

Protests, complaints, and counterarguments were thoroughly evaluated in Ankara, regardless of difficult opinions. Thus, preparations for a new regulation started before the end of 1995. The new Regulation, addressing nearly all objections, would come into force in 1998. Because the UNCLOS granted broader rights to coastal states, a *non-vessel-in-call* and *vessel-in-call* passage regime would be implemented, and the name of the Straits would be ultimately established as the "Turkish Straits".⁴⁰ Both implementations are compliant with the Montreux Convention, and none of the signatory countries would raise substantial objections this time.

CONCLUSIONS

The Montreux Convention has regulated the passage regime of the Turkish Straits since 1936. Because of geographic challenges throughout history, the status of the Black Sea has been determined by the passage regime of the Straits. The Montreux agreement was signed in response to rising security concerns on the eve of WWII to regulate mostly warship passage rules through the Turkish Straits. The Convention has also regulated the passage of civilian/commercial

³⁹ *Ibid.*, p. 6.

⁴⁰ TR-BCA,00955.00246.00010. 08/10/1998.

vessels. Both civilian vessel technology and navy sea powers saw rapid technical advancement, particularly after WWII. Several regulations were issued and implemented until the end of the CW to govern warship passage through the Straits. For instance, there were no nuclear power ships, large aircraft carriers or missile technology when the Montreux Convention was signed. It employed new rules to address issues caused by technological progress.

A similar trend transformed the civilian vessel industry, as there were no tanker ships and no natural gas carriers when the Montreux Convention was signed. Humanity dealt with tremendous tonnage and exceptionally large vessels no fewer than three decades later. The number of civilian vessels passing through the Turkish Straits when the Montreux Convention was signed was 4,500-5,000. Meanwhile, by the time the CW ended in 1991, that number increased nearly tenfold. Block policies dominated international policy throughout the Cold War, as is widely known. Hence, all regulations, bylaws, circulars etc. until the end of the CW aimed to regulate warship passages. That policy caused accumulated civilian passage problems, and when the CW ended, Turkey decided to issue a new and comprehensive regulation to govern civilian vessel passage through the Straits. Another motivation for the new regulation was the rising number of dangerous cargo ships carrying natural gas, oil, or nuclear wastes, as well as the UNCLOS, in 1982. The preparations started soon after the CW and the Regulation was announced in January of 1994.

It was littoral countries, such as the RF, that first objected to the new Regulation and claimed that the new rules breached the freedom of passage established by the Montreux Convention. Even non-littoral countries such as Greece, SCGA, and Oman also objected to the Regulation. Protests mostly targeted new restrictions imposed in contradiction of conventional practices and international conventions. The new Regulation attempted to regulate civilian transit according to safety standards and to establish several radical reforms.

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