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Black Sea security first. Opportunities and limits in the context of the Montreux Convention

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Abstract. The Montreux Convention has once again become one of the international normative acts of maximum interest, in the context of the Russian-Ukrainian conflict. The rights and obligations stipulated in the content of this normative act are carefully studied in terms of the effects generated, especially at military, economic and geostrategic level. Protecting the security of the Black Sea area becomes the priority objective, to which decisions on how to implement the provisions of the Montreux Convention also relate, although we are a long way from the moment of signing the Convention, and the architecture of international organization is quite different.

Keywords. Montreux Convention, geopolitics, diplomacy, Black Sea security, navigation

1. Background and relevance

In the context in which the war started by Russia in Ukraine in February 2022 has brought the Black Sea region back to the attention of the entire world, the Montreux Convention [1] has also returned to the agenda of heads of state, diplomats, military, but also journalists and political analysts. Unfortunately, the public discourse surrounding the treaty (and today the public discourse surrounding a war is a much more important than before) raises great problems of understanding that diplomatic and strategic phenomenon.

The idea of this text is to clarify, or to question a series of elements circulated in public analyses in Romania regarding the Montreux Convention. Of course, a number of elements related to the effective applicability of the famous treaty also imply the ability to interpret an instrument which, although invoked several times, has never been used on such a scale between the Second World War and the year of commencement of the current Russian-Ukrainian war (2022) [2].

Not coincidentally, some officials and analysts see the Montreux Convention, with all subsequent attempts at amendment, either as an extremely pragmatic instrument or as "a diplomatic relic" [3]. We specify that we see the analysis we propose not so much as an exercise of legal analysis, but rather as one of sociology of the norms governing a geopolitical reality, in a specific geostrategic context.

Of course, the Black Sea security complex exists. The Black Sea issue, as well as the Danube issue, are classic topics of diplomacy and geopolitics or, as theorists have said from a

point onwards, theory of international relations, security studies, etc. Eastern Europe is full of "geographies" with great geopolitical charge: the Pontic-Baltic isthmus (which includes almost all of them), the Baltic area, the Russian-Finnish border, the Kaliningrad enclave, the Carpathian basin, the Republic of Moldova and Transnistria, the mouth of the Danube, the Balkans, the Black Sea and the Straits, even the Caucasus, if we go a little further east, etc. It is the historical specificity of this area: a very high density of empires, borders and populations whose maps did not usually sit quietly next to each other.

Almost inconsequential from World War II to the Cuban Missile Crisis [4], when American missiles in Turkey first shook the USSR's impression that the sea was a "Soviet lake", the Black Sea regained global geopolitical stake when Romania and Bulgaria were accepted into NATO. The frontier of the West moves there, and as Russia loses influence over the riparian countries, the balance of power in the area changes dramatically.

Next comes the installation of the Deveselu shield and the American base at Mihail Kogalniceanu in Romania, and the wider Black Sea area becomes a long-term strategic option, not a simple geopolitical fad. The rapprochement of the Republic of Moldova and Ukraine with the EU and NATO after 2010 leads to a new loss of influence for Russia, the most brutal effect being its stimulation of separatism in eastern Ukraine (after 2014) and the rather skilful occupation of the Crimean Peninsula at that time (2014). The centrality of Crimea at this stage of the conflict puts the Black Sea back on the map, just as the operations of the war started in 2022, as well as the attempt to economically block Ukraine and Western aid to it, could not avoid the entire coastline of Ukraine, from Mariupol to Odessa, on either side of the "natural aircraft carrier", Crimea.

We do not aim to make a history of the convention. Our text is addressed to those who have a certain degree of knowledge of the issue. The problem that many analysts don't ask themselves is *Who did this treaty help in its emergence* in 1936? Let us not forget that it was a critical period for Europe, peace after World War I was seriously challenged by the behaviour of Germany and Italy, while the United States was really in an exercise in self-isolation, and the Soviet Union seemed more approachable than later proved to the democratic Western powers. The foreign policy of the USSR was still in the "Litvinov era".

For Romania, for example, it is not excluded that participation in these negotiations had an even more direct stake: Titulescu's attempt to obtain from Litvinov the recognition of the eastern border of our country at that time.

2. Normative peculiarities and effects of the Montreux Convention

The Montreux Convention was adopted in the geopolitical context of the emancipation of power roles in the region of some state actors, and a new regulation was needed to replace the provisions of the Peace Treaty signed in Lausanne on July 24, 1923.

The Convention on the Regime of the Black Sea Straits of July 20, 1936 was signed by Turkey, USSR, Great Britain, France, Romania, Bulgaria, Greece, Yugoslavia and Japan (which later withdrew from the Convention after World War II). Italy ratified the Convention in 1938. Other states, even if they have not ratified the Convention, have complied with its provisions (e.g. the USA).

The purpose of adopting this international enactment is to regulate passage and navigation "in the Dardanelles Strait, the Sea of Marmara and the Bosphorus, under the general name of "Straits", so as to safeguard, within the framework of Turkey's security and the security in the Black Sea, of the riparian States, the principle enshrined in Article 23 of the Peace Treaty signed at Lausanne on July 24, 1923." [5].

The adoption of this Convention was a favourable moment for the attempt of the riparian States to consolidate their existing privileges and to extend them, in a political and diplomatic context that made it possible to achieve good cooperation. Ensuring stability and security in the Black Sea area was also an additional guarantee of Romania's security in the area. Although, as indicated in the section above, analysts are still discussing which of the regional actors rather uses the convention. Some even suspect that Russia. The answer given (below) at that time by Titulescu explains how Romania is a net beneficiary of the Convention's mechanism, by avoiding escalation induced by involving the sea in a possible conflict in the region. The diplomatic and political-economic opportunities of the historical context were well exploited by riparian States. In his declaration on the regime of navigation through the Black Sea Straits, Nicolae Titulescu emphasized:

"Everything that touches Turkey's security touches Romania's security and everything that touches the Black Sea interests my country to the highest degree, given that our only access to the high seas is through the Black Sea and the Straits.

The honourable Minister of Foreign Affairs of Turkey was right to say in his speech that Turkey has its weakest point in the Straits and that it was her right to defend herself and the duty of others to support her.

I would say that the Straits are the very heart of Turkey. But they are also Romania's lungs. When a region is, by its geographical situation, the heart of one nation and the lungs of another, the most basic wisdom dictates that these two nations unite and make one whole. Romania and Turkey understood this. Through the Balkan Pact, the two countries linked their fate to each other, as well as to that of Greece and Yugoslavia" [6].

The provisions of the Montreux Convention remained in force after the signing of the Montreux Convention United Nations Convention of 10 December 1982 on the Law of the Sea (UNCLOS, Montego Bay Convention), which states, in Article 35, with reference to the scope of that Convention:

"Nothing in this Part shall affect:

(a) inland waters forming part of a strait, unless the route of a straight baseline, established in accordance with the method described in Article 7, includes in internal waters waters not previously considered as such;

(b) the legal status of waters beyond the territorial sea of States bordering strait, whether forming part of an exclusive economic zone or of the high seas;

(c) the legal status of straits in which passage is regulated, in whole or in part, by long-existing international conventions still in force specifically relating to them" [7].

According to this provision on the applicable legal regime, the Black Sea straits remain under the rules of the Montreux Convention.

The Convention on the Regime of the Black Sea Straits of 20 July 1936 sets out separately the rules applicable in this region to merchant ships and warships respectively. Regarding trading vessels, the Convention establishes (in Article 2) that in peacetime, they "shall enjoy complete freedom of passage and navigation in the Straits, day and night, whatever flag and cargo may be, without any formality." [5].

For periods of war, the Convention regulates the following situations on trading vessels:

- In time of war, **Turkey not being belligerent**, merchant vessels, whatever their flag and cargo, shall enjoy freedom of passage and navigation in the Straits under the conditions laid down in Articles 2 and 3. Pilotage and towing remain optional (Article 4 of the Convention).

- In time of war, Turkey **being belligerent**, merchant ships not belonging to a country at war with Turkey, will enjoy freedom of passage and navigation in the Straits, provided they do not help the enemy in any way. These vessels will enter the Straits during the day and the passage will have to be carried out by the route to be indicated, for each case, by the Turkish authorities (Article 5 of the Convention).

A distinct situation is governed by Article 6 of the Convention, according to which "should Turkey consider itself threatened by an imminent danger of war, the provisions of Article 2 shall nevertheless be maintained, except that vessels shall enter the Straits during the day and that passage shall be effected by such route as shall be indicated, in each case, by the Turkish authorities." [5]. Even if a notification procedure is put in place in this case, the Turkish authorities are primarily concerned with the assessment of the situation which may constitute a threat of imminent danger of war.

For warships, the Convention contains different regulations, with riparians having a privileged regime. According to the provisions of Article 10, "In time of peace, light surface vessels, small battleships, and auxiliary vessels, whether or not belonging to the Black Sea Riparian Powers, shall enjoy, whatever their flag, free of charge or burden, freedom of passage through the Straits, but may enter them only during the day and under the conditions laid down in Articles 13 et seq.

War vessels, other than those falling within the categories referred to in the preceding paragraph, shall have the right-of-way only under the special conditions laid down in Articles 11 and 12" [5].

Riverans have the privilege of being able to pass through the Straits with vessels of line greater than the maximum global tonnage, and with submarines, returning to the base, constructed, purchased or repaired outside the Black Sea, following procedures, primarily those related to information (of Turkey) and transit (according to Article 12, sail during the day and on the surface and cross the Straits in isolation).

Article 19 of the Convention regulates the situation in which there is a state of war, but Turkey **is not a belligerent state**. For such a context, the rule is established, but exceptions are also provided. According to the first paragraph of Article 19: "In time of war, Turkey not being belligerent, warships shall enjoy full freedom of passage and navigation through the Straits under conditions identical to those stipulated in Articles 10 to 18." [5].

For warships of **belligerent States**, however, it is established the **prohibition** of passing through the Straits, but there are also the following exceptions, according to Article 19, in conjunction with Article 25 of the Convention (*paraphrase from the text of the Convention*):

- Exercise of the rights and obligations arising from the Covenant of the League of Nations for Turkey or for any other High Contracting Party Member of the League of Nations (organization subsequently replaced by the United Nations).

- In the case of assistance to a State victim of aggression pursuant to a treaty of mutual assistance binding on Turkey, concluded within the framework of the Covenant of the League of Nations, registered and published in accordance with the provisions of Article 18 of the Covenant.

- Warships of the Black Sea riparian or non-riparian belligerent Powers, separated from their base ports shall be authorized to return to these ports.

Even in exceptional circumstances, warships shall be bound by the prohibitions laid down in the last paragraph of Article 19: "It is forbidden for belligerent warships to make any capture, exercise visiting rights and commit any hostile act in the Straits." [5].

There are strict provisions in the Convention regarding the maximum period of stay of warships belonging to non-coastal States (maximum 21 days), the prohibition on the access of aircraft carriers, and regarding the right to decide on the passage of warships (according to the provisions of Article 20 of the Convention), it is left to the discretion of the Turkish Government, in time of war, if Turkey **would have been a belligerent state**.

In these circumstances, the political, diplomatic and military interest (especially of non-riparian states, but with interests in the Black Sea area) is oriented towards encouraging the promotion of international relations and negotiations that encourage Turkey to be a mediator of peace in the area, this being a very important role. Also, in terms of how the rights of riparians are configured under the Montreux Convention, the status of a coastal state is essential, compared to any other statutory, contractual or alliance position related to this area. So we must not forget that Turkey has the privilege and obligation to act not only as a riparian state or NATO member, but also as a gatekeeper of the Black Sea.

3. Comments and conclusions

The analyses made for our media space in the past two years drew attention to the Montreux Convention, in the context of the attempt of Western allies to help Ukraine, of course, within the limits allowed by law. The key in which this was read is simple – the country advantaged by the Convention would be Russia, because significant maritime powers outside the Black Sea area that have also proven their intention to help Ukraine militarily more than others (US and UK) cannot manifest themselves due to the restrictions of the convention.

It has even been suggested that NATO's very ability to defend its own territory is reduced because of this. Other analysts were quick to blame Turkey's duplicitous behaviour, too close to Russia for a NATO state. The fact is, however, that Turkey's mediation has been accepted by both Russia and Ukraine (albeit without success so far), and NATO has not issued relevant complaints about Turkey's handling the *gate* to the Black Sea.

The fact is that in the first days of the war in Ukraine, the Ukrainian side was the first to ask Turkey to accept that the special operation is actually a war and to prohibit the return to the Black Sea of an important Russian maritime force from the Mediterranean [8]. Which Turkey did. Moreover, Turkish representatives explained the behaviour to all interested parties (not necessarily participants) in this context [9].

So if Turkey has cautiously applied the rule-exception ratio of the provisions of the Convention, in the case of the fleet of a Black Sea power, it was obviously expected to apply it to non-riparian powers, even non-belligerent, but centred on helping Ukraine. The rules that apply to non-riparian NATO vessels (which are non-belligerent) are clear and of a completely different nature than those that apply to ships of riparian and belligerent states (i.e. Ukrainian or Russian). And they reduce the risks of escalation. *It must be said that in the unfortunate case of a war involving NATO's defense in the Black Sea, the alliance is not at all entangled by the Convention, as we saw in the previous section, as it also has three member states as riparian states (including Turkey).*

It is not the moral factor that is at issue here, or the moral framing of the war unleashed by Russia, but the Black Sea regime. Turkey's idea was, both as a diplomatic and declarative mechanism, to protect the security of the Black Sea and to keep the Sea out of war [10].

The benefits of this policy would be the elimination of one of the possibilities of escalation of the war. There would also be economic, touristic, environmental benefits, keeping a loophole for possible further negotiations and, of course, protecting Turkey's security, closely linked to the security of the entire maritime security complex.

Basically, the convention, although old, was applied in its spirit and letter and worked for now according to the mechanism for which it was created. And let's not forget that it was created 10 years before NATO came into existence and 15-16 years before Turkey joined the alliance.

Of course, perhaps it would be useful for the literature in the field of security studies to start looking more at the distinction between *security* and *defence*, concepts that may coincide if the international system goes through times of peace, but take on different emphases if we talk about war.

Let's not forget that the current discipline of security studies appeared at the end of the Cold War, progressed enormously in the strategically optimistic period of the 1990s and 2000s, gained new valences after defining asymmetric threats (after 2001), then witnessed the emergence of the questionable concept of *asymmetric warfare* (which turned out to be just a preparation for Russia's challenge to the European and international order after the Cold War). The level of competition between Russia and NATO is now at a stage not seen since the Cold War, and its harsher times.

So Turkey's behaviour in the case we are discussing imprints the idea of security rather than defence and is part of an effort to keep the Black Sea out of the conflict, including by avoiding a path of escalation of it, both objectively and subjectively.

References

- [1] Convention on the Regime of the Black Sea Straits of 20.07.1936, text published in the Brochure of January 1, 2001.
- [2] Daly, J.C.K., Referee and Goalkeeper of the Turkish Straits: The Relevance and Strategic Implications of the Montreux Convention for Conflict in the Black Sea, May 10th, 2022, The Jamestown Foundation, available at Referee and Goalkeeper of the Turkish Straits: The Relevance and Strategic Implications of the Montreux Convention for Conflict in the Black Sea - Jamestown
- [3] Serge V. Pavlyuk, Regulation of the Turkish Straits: UNCLOS as an Alternative to the Treaty of Montreux and the 1994 Maritime Traffic Regulations for the Turkish Straits and Marmara Region, 22 FORDHAM INT'L L.J. 961 (1998)
- [4] Süleyman Seydi & Steven Morewood (2005) Turkey's Application of the Montreux Convention in the Second World War, Middle Eastern Studies, 41:1, 79-101, DOI: 10.1080/0026320042000322725
- [5] Convention on the Regime of the Black Sea Straits of 20.07.1936, text published in the Brochure of January 1, 2001.
- [6] Scurtu, I., Stănescu-Stanciu, T., Scurtu, G. M., 2001, România între anii 1918-1940, Documente și materiale (Romania between 1918-1940, Documents and materials), University of Bucharest Publishing House, accessed at <http://ebooks.unibuc.ro/istorie/istorie1918-1940/11-3-7.htm>
- [7] United Nations Convention of 10 December 1982 on the Law of the Sea, ratified by Law No 110 of 10 October 1996 on the ratification of the United Nations Convention on the Law of the Sea, done at Montego Bay (Jamaica) on 10 December 1982, and accession to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, done at New York on 28 July 1994, published in Official Gazette No 300 of 21 November 1996.
- [8] Can Turkey Close the Turkish Straits to Russian Warships? – EJIL: Talk! (ejiltalk.org)

[9] Türkiye's implementation of Montreux Convention keeps Black Sea out of war: Official (aa.com.tr)

[10] Idem