Chapter 10

Black Sea Security under the 1936 Montreux Treaty

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Introduction

The Convention Regarding the Regime of the Straits was adopted on 20 July 1936 in the Swiss city of Montreux, entered into force on 9 November 1936 and has remained in force.¹ The Convention regulates the passage of merchant and military vessels through the Turkish Straits. The Montreux Convention created a unique regime of passage not only for the Turkish Straits but also for the Black Sea. It is the only international treaty that imposed limits on the total number and tonnage of military vessels as well the duration of their stay in a sea that would otherwise be open to international navigation. Negotiated against the backdrop of World War II, the Convention sought to safeguard the security of Turkey as well as that of the Black Sea, as expressly stated in the Preamble of the Convention.

The 1982 Law of the Sea Convention (UNCLOS)² created a new regime of transit passage for both merchant vessels and war ships engaged in passage through straits used for international navigation. It maintained and codified the customary international law regime of non-suspendable innocent passage for a limited category of straits. Furthermore, having in mind long-standing treaties such as the 1936 Montreux Convention, article 35(c) excluded a small number of these straits from the scope of Part III. Instead, these straits are subject to the conditions of passage as established under the applicable long-standing convention. Among the long-standing treaties governing straits, however, the 1936 Montreux Convention is the only one to regulate the passage of military vessels in detail.

The Montreux Convention, having withstood the pressures of World War II and the Cold War period, faces new challenges from the post-Cold War period that struggled in redefining the role of NATO, the emergence of regional and global conflicts, and new energy corridors critical for energy security. This

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chapter begins by an examination of the historical background to the negotiation and adoption of the 1936 Montreux Convention and then explores recent events raising security issues in the Black Sea, and the role of the Montreux Convention and why it continues to be a viable and important agreement. Despite changes in the international political order, the Montreux Convention has maintained the delicate balance of regional and, by extension, global powers consistent with international law and the law of the sea.

A Legal History of the Black Sea

The Ottoman conquest of Constantinople (Istanbul) in 1453 gave it complete control over the Turkish Straits and access to the Black Sea. Until the demise of the Ottoman Empire in 1922, foreign warships were not allowed passage through the Straits without the consent of the Sultan. The absolute right of the Ottoman Sultan to prohibit the passage of foreign warships through the Straits was known as the ancient rule of the Ottoman Empire. In other words, foreign warships could only enter the Turkish Straits with the express permission of the Ottoman Sultan.

The Ottoman Empire's absolute control over the Black Sea was first successfully challenged in 1696 when Peter the Great captured the Fort of Azov on the Crimea coast and gave Russia its first strategic foothold in the Black Sea. In 1699, after losing a battle against the Austro-Hungarian Empire, the Ottoman Empire was forced under the Peace Treaty of Carlowitz to cede to Russia the Fort of Azov and eighty miles of coast along the Crimean coastline. The agreement was signed on 26 January 1699. Following a defeat against the Ottomans in 1711, however, Russia was forced to return these gains under the Treaty of Pruth, signed on 21 July 1711. The Treaty of Pruth is the first international treaty to regulate the status of the Black Sea, and it prohibited Russia from maintaining a naval fleet in the Black Sea. Catherine the Great, however, took Crimea from the Ottomans in 1783, and she succeeded in creating a permanent Russian

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3 In 1699 after losing a battle against the Austro-Hungarian Empire the Ottoman Empire was forced to give to Russia the fort in Azov and eighty miles of coast along the Crimean coastline under the Peace Treaty of Carlowitz, signed 26 January 1699. However, following a defeat against the Ottomans in 1711 Russia was forced to return these gains under the Treaty of Pruth, signed 21 July 1711.

4 For an overview of the legal history of the Turkish Straits and Black Sea see Nilufer Oral, Regional Co-operation and Protection of the Marine Environment Under International Law (Martinus Nijhoff, 2013), 17–28.