THE SECURITY AND THE LEGAL ASPECTS OF TURKISH STRAITS

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ABSTRACT

During the last century, Turkish Straits witnessed two world wars and, following them, the Cold War tension between the NATO and Warsaw Pacts just near the coast of the magnificent blue waters. Also, just a decade ago the terrible Soviet Black Sea Armada was the main threat for NATO Alliance security strategies around these waters. But today, NATO has signed important agreements with Russia, the ex-arch-enemy of the Alliance which formulated (19+1) new security relationship and cooperation, also ongoing friendly common exercises with Black Sea riparian states naval fleets and Black Sea rapid deployment forces. Nowadays they are ready for humanitarian missions to protect democratic humanitarian ideas. All these tremendous peaceful steps exchange legal and security aspects of Turkish Straits in an optimistic dimension. However, up to 1,500 ships a day sail through the Bosphorus, Sea of Marmara and the Dardanelles Straits that links the Mediterranean and Black Seas off the coast of habitat of more than ten millions people in Turkey. After the collapse of the Soviet Union, an increasing energy transport has been aimed at taking the pressure off these strategic waterways that link the Caspian Sea oil and gas resources to the world market. Indeed, as Dana MUNRO stressed the Russians were the first to import petroleum to Germany in 1883 from rich Russian wells in Baku. According to this, German oil market demand jumped up from 300.000 tons to 755.199 tons in 1911, creating a big competition between Russia, Austria, Romania, and the USA, just before the ‘‘Great Game’’ oil operation in the region. The existing Montreux Convention allows complete freedom of passage both day and night, regardless of the nationality of the vessels or their cargoes.  

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1 On the maritime the main axis, such as that directed against the Bosphorus-Dardaneles an operational – strategic assault landing would probably involve amphibious and airborne forces supported by naval surface combatants as well as aircraft of the navy and the air forces. See Philip A. PETERSEN: The Southeastern TVD in Soviet Military Planning-The Bosphorus-Dardanelles Direction’, Conference Papers, ‘‘ Strengthening NATO’s Defense in the Southern Region: A 40 Th Anniversary Perspective ‘’, Foreign Policy Institute, Ankara, 1990.
5 Article 2. In time of peace, merchant vessels shall enjoy complete freedom of transit and navigation in the Straits, by day and by night, under any flag and with any kind of cargo, without any formalities, except as
To respect new regulations drawn up by the International Maritime Organization (IMO), dangerous cargoes must now be given a notice in advance. Furthermore, these cargoes are under a possible threat of terrorist attack after September 11, 2001.

**INTRODUCTION**

As the world moves towards becoming an international community at the beginning of a new millennium, greater effects of globalization also tend to concentrate on economic growth supported by free trade and free markets. The growth of the economic productivity and transportation in international trade has been overwhelmingly dominated by shipping at the beginning of this century. Furthermore, international maritime law is trying to understand how such globalization advances be accomplished and human achievement could also be burdened with so much sustainable environmental security matters and destruction. It considers problems, opportunities, and key principles that have emerged in recent international negotiations on admiralty law. In 1977 shipping did some 95 percent of all international commerce by weight and over 1.1 trillion US dollars by value. Instead, the major part of world’s tanker fleet, about 80 percent controlled by the oil industry, either owns the ships or charters them on long term contracts. The Turkish Straits are one of the main important sea routes on the planet connecting Asia and Europe.

From the ancient regime Straits to the last century, combatant coastal states have been actively involved in very serious complex questions dealing WW-I and WW-II provided in Article 3 below. No taxes or charges other than those authorized by Annex 1 to the present Convention shall be levied by the Turkish authorities on these vessels when passing in transit without calling at a port in the Straits. In order to facilitate the collection of these taxes or charges merchant vessels passing through the Straits shall communicate to the officials at the stations referred to in Article 3 their name, nationality, tonnage, destination and last port of call (Kamyar, MEHDİYOUN : “Ownership of Oil and Gas Resources in the Caspian Sea” American Journal of International Law, Vol.94, Issue 1, p.179-189, Jan.2000., Thomas, GOLTZ: “The Caspian Oil Sweep Stokes”, Nation, VOL. 205, 17.XI, 1997.


8 Troy Wars, Persian Armies, Roman Empire Soldiers, Christendom Attacks, Byzantine Armies, Arab Challengers, finally the Turkish Troops captured and controlled Turkish Straits initially the Gallipoli step to European continent, in 1356 also following Istanbul faiths by the Fatih Sultan Mehmet Han in 1453. See, Mesut Hakki, CAġIN: ” Dünya Deniz UlaĢımında Marmara Denizi ve Türk Boğazlarının XXI. Yüzyılda DeğiĢen Stratejik Vizyonu”Ibid, “100 Soruda Türk Boğazları”, Genelkurmay Basmevi, 2002, Feridun Cemal
II of national security balance with such rights like allowing passage for warship vessels or commercial ships through the Straits. They were adopted and modified as well as multilateral conventions between the *mare liberum* and *mare clausum*, and have legitimized the rules of maritime law in the 20th century. This article aims to concentrate exclusively on the events of Turkish Straits from the WW-I until today, and provides Montreux Regime concepts as a basis for understanding the 20th century crisis behavior of the actors. In this article, we aim to discuss changing balances around the navigation safety broadened on the basis of threats and innocent passage discussions. In this regard, we need to study the reasonable legal and institutional solutions that bring preventive measures rather than tearing down the bridges for navigation safety from more than one perspective.

The passage right of the Turkish Straits by foreign naval forces was only one of the security elements in the 20th century but it was perhaps the key instrument in Turkish diplomacy and defense policies. Indeed, the rivalry of the Ottomans and Russians, two powerful neighbors of the Eurasian Empires, for the control of Black Sea and the strategic Turkish Straits was crucial to the growing importance for the reality of international geopolitics. Nevertheless, at the heart of the understanding recently developments about the Turkish Straits legal matters, of course, requires detailed explanations after the 1936 Montreux Convention regime. Unfortunately, what we usually regard as long historical large scale naval operations for controlling the Turkish Straits with the interests of actors has been established within the limits of international law. Therefore, the high contracted parties have been legislated by force to present all relevant evidence in the spirit of treaties, the nature of Bosphorus and Dardanelles, geographical, ecological, technical, military, economical, political and diplomatic procedures on the maritime law which result from main differences among the other international straits. The conflict surrounding these important waterways still prevails.
today, though, not using military force used as it was in the past. At the present stage, the problem of Turkish Straits is primarily economic and political. However, in order to understand the recent picture, we should look at the previous settlements in the history.

1. CHANGING THE LEGAL STATUS OF TURKISH STRAITS FROM THE CRIMEAN WAR TO THE GREAT WAR

After the Ottoman Empire had increased its maritime power, the Black Sea became the internal sea of the Ottoman Empire, and as a result, Istanbul became the Omni-power to determine the Black Sea Straits regime. The 1809 Kale-i Sultaniyye Treaty with Great Britain since Russia followed 1774 Küçük Kaynarca Treaty was signed with Russia right after the wars \(^{12}\) and France decided to have an alliance against England. \(^{13}\) The next step was the Treaty of London concluded by the four powers (Russia, Great Britain, Prussia and Austria) in 1841, which completely changed the situation, establishing the regime of closing the Straits to foreign warships in the time of peace only. This agreement, accepted by other powers, later became a part of public order between the Ottoman Empire (Turkey) and the Western European powers. After the 1856 Paris Agreement, on March 13, 1871 the Treaty of London was accepted, which became the fundamental ground of the Black Sea Straits regime until the WW-I. Its sense was formulated as follows: "\textit{No Foreign warships allowed into the Straits as long as the Porte is at peace}". The situation completely changed after the WW-I broke out. But the Crimean War was a corner stone for the future power balances and Western-Ottoman relations at end of the 17\textsuperscript{th} century.

After the Crimean War, British changed their policy for the status of straits. According to Lord Campbell the “best fatal” operation route was the Black Sea. On this latitude, the English side notified the Turkish Government on the passage permission for the British Fleet to enter the Black Sea. \(^{14}\) The English Naval Fleet decided to design new warships carrying “oil only”; considering its advantages over the coal usage; not only speed supremacy but also the benefits of cutting on personnel and costs, \(^{15}\) but increased capability more than 40%. By that time the English Naval Fleet built 189 vessels and raised the oil demand from 20,000 tons to 200,000 tons in


Although these changing strategic material demands and wartime supply, Dreadnought oil requirements created to find oil supply in “sufficient quantities” and at a “reasonable price”, and thus, resulted in new challenges with Germany to control the “Oil Supply” regions for Naval Power which dominated in Mediterranean and Mesopotamia. It should be underlined that, Germany was one of the most important players about the Turkish Straits security diplomacy during the WW-I and WW-II. As CHADWICK stressed, Germany continued to appeal to challenge British diplomacy in Far East, Mediterranean, Egypt, and North Africa by establishing Naval Force from Atlantic to the Black Sea. In order to achieve this aim Germany planned to increase her naval construction capacity, without reflecting that is requested her national growth and growing people armaments are the instrument by which expansion is achieved. The Admiral Von Tirpitz shaped Germany’s naval building program and their political aims. He was the architect of developing a naval power as an instrument for the establishment of Germany and as a world power by building of a German battle fleet. British decision-makers wanted to eliminate German’s naval threat to their security. Also, they determined that a strategic alliance between Germany and the Ottoman Empire would be important considering the oil demands in the future of Middle East. This fear brought in maritime history a big competition between the German and British naval forces just before the war.

Why Britain suddenly turned traditional Turkish Alliance down and applied an arms embargo on the Turkish cruisers? I think considering the future oil supply question was one of the important reasons to gain regional control ability by the British manipulation on the Ottoman Empire’s Middle East territories via using Arab nationalism. For that reason, rising possible strong Germany-Ottoman Empire cooperation on the oil field rights would be against the British vital interests. The British side’s consideration for supplies of oil from Mesopotamia might or might not eventually be required for naval purposes and the establishment of the perpetuation of British control in the region. This aim had become the sine qua non of British Strategy which, counter balances allowing Russia to Istanbul and the Turkish Straits, and providing for a logical bargain. Great Britain had decided to change its policies on the Turkish Straits considering the “ill and therefore weak” Ottoman Strategy. The maintenance of close and friendly relations with the Turks was against the Anglo-Russian Convention interests and German influence in the Middle East.

19 Mesut Hakkı ÇAĞIN : ‘’Strategic Effects of WW-I for the International Security Balances in the Middle East ‘’Ibid.
20 Sir Edmund, BARROW: Military Secretary, India Office, “Military Situation in the Middle East”, 25 Jan 1915, PRO Cab 37/123/50.
Why did Russia form an alliance with Great Britain for their interests in Turkish Straits? What were the Russian side’s strategic concerns about the Ottoman-German Alliance and Turkish Straits control?

Russia's interest in the Straits was both complex and shared by other states. Russian policymakers had been seriously concerned with the Straits since Catherine II made Russia a riparian power on the Black Sea. In terms of total value of trade, over 1906-13 the southern ports averaged 26.1 percent of the total Russian international trade, while the Baltic ports averaged 30.4 percent over the same period. More crucially, the Black Sea ports were the gateway largely for exports, while the majority of imports came through the northern ports. Russia's naval interests in the Straits began to change shortly before Sazonov became foreign minister in 1910. Russia's southern coast had long been protected by the prohibition against the passage of foreign warships through the Straits without the Sultan's permission, but from the time of the Russo-Japanese War this prohibition proved more a hindrance than help. During that war, St. Petersburg had been unable to send reinforcements from the Black Sea to the Pacific. The Straits regime thus played a critical part in Russia's sense of national security. Before the Balkan wars, efforts to change this situation had begun. Diplomatically, there had been two notable Russian attempts to change the Straits regime. Sazonov then explained the resolution that would best suit those needs. First, he dismissed internationalization of Constantinople and neutralization of the Straits as an insufficient guarantee of Russia's key interests. Land or sea forces could be used to violate any treaty that disarmed these areas, threatening both the closure of the Straits and the penetration of other Powers' warships into the Black Sea. “Russia must not rely on written agreements”, Sazonov concluded, “but instead must physically assure its vital interests at this crucial waterway”. Finding such an arrangement, of course, was no easy matter. The radical option was to seize Constantinople and the Straits by force. Such an arrangement would give Russia several advantages, including control of a center of world trade and a "key to the Mediterranean Sea."  

Sazonov's preferred option was to control the upper Bosphorus, once further Turkish role there was impossible, either as an outright possession or through a long-term lease. Most important, a fortified position on the Bosphorus would allow St. Petersburg to prevent any hostile ships from entering the Black Sea. Constantinople itself could be internationalized, and the Dardanelles stripped of any fortifications. Under such an arrangement, Sazonov hypothesized; the strengthening of the Russian Black Sea Fleet would allow Russia freedom of passage through the Dardanelles. In this manner, Russia would occupy a minimum of territory but acquire a significant change in its rights at the Straits. Russia would also have made an important first step toward someday acquiring the whole region. From this analysis, then, certain things stand out in Sazonov's attitude toward Constantinople and the

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Straits. Potential German control of the Straits was an issue of immense gravity for Russia. As Minister of the Navy J.K. Grigorovich wrote Sazonov late in 1913, ‘...Russia cannot allow another power to dominate the Bosphorus and the Dardanelles, for the Straits in the hands of another power state would mean the control of the economic development of southern Russia. A foreign power could transfer to that state of the hegemony of the Balkans and the key to Asia Minor.’

The question of the Black Sea Straits became one of the main topics of the President Wilson address to the joint session of USA Congress on January 8, 1918 (the 12th one of the famous 14 points): "...the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees". Detailed discussions of the status of Constantinople and the Straits took place at the Paris Peace Conference, but no solution was reached before the Treaty of Lausanne signature (July 24, 1923). The Lausanne Convention of the Straits, presented on July 24 1923 was composed of twenty articles with an annex to Article 2, concerning the rules of commercial and war vessels and aircraft forces throughout the region of the Straits passage.

2. THE REMILITARIZATION OF THE TURKISH STRAITS UNDER THE MONTREUX CONVENTION REGIME

The changing power balances and vital interests of Big Powers, especially Anglo-American and Soviet Union, considering German-Italian predominance threat around the Mediterranean-Persian Gulf oil regions interests totally modified their policies to a friendly situation contrary to WW-I desires. On 10 April 1936, the Turkish government, in a note, requested that the Lausanne Treaty signatories and the Secretary-General of the League, Joseph Avenol, call a conference to revise the Straits Convention. Turkey declared that when the Lausanne Convention was signed, the European situation presented a totally different aspect which had come to existence. Ankara's request for revision of the Straits Convention by negotiation had thrown Turkey's weight on the side of international law and peaceful revision.

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23 Leading this effort, Foreign Minister Sergei D. Sazonov repeatedly made clear that his government could allow no power, large or small, the opportunity to control the Straits save for Turkey or, ultimately, Russia. His policy was the preservation of the status quo at the Straits for as long as possible, until Russia would be able to take them over itself. Long the subject of historical investigation, the centrality of the Straits question in Russian diplomacy has been accepted by all sides of the debate, even with some differences of interpretation over the primacy of the issue vis-a-vis the need to contain the expansionism of the Germanic empires. First, he believed that any arrangement would have to satisfy Russian needs on the ground, for no written agreement could protect Russia's economic, military, and cultural interests there. Second, while Sazonov was fully aware of Constantinople's and the Straits' potential importance to the Russian Empire, the current threat of Austrian expansion outweighed them in his calculations. Here, then, was not some blind, romantic pursuit of traditional aspirations, but a calculated appraisal of Russia's strategic position.


25 HOWARD : Ibid.
The Montreux Convention was a victory for Turkey, for its friends in the Balkan Entente, and for the policy of regional pacts. In the eyes of Western observers, Turkey's peaceful, diplomatic and lawful approach to revision of the Lausanne Straits Convention was welcomed contrasting Hitler's unilateral action in the Rhineland and Mussolini’s aggression in Ethiopia. The High Contractor Parties, considering development existing strategic power balance and “rebus sic stantibus” principles, decided to change the existing status quo through the Montreux Convention in 1936. The Montreux Convention Regime recognized the reestablishment Turkish Sovereignty over the Turkish Straits region in consistent with the “Right to Remilitarize” the zone. Also, the Convention provided for a key to new provisions, that regulated commercial vessels to enter Straits by day and transit by route indicated by Turkish authorities (Art. 6) and introduced concrete limits for warships belong to non-Black Sea powers; for Black Sea powers—insignificant limits (Art. 13-18). When we evaluate Turkey’s role in detail we will see it as a successful guardian of the Straits during the WW-II against the progress of “violent action” against of the belligerent parties. This was addressed not only by the French Governor’s observers but also stressed by Anthony De Luca.

It’s very interesting that, both the Soviet Union and Great Britain wished “to see Turkey strong and prosperous”. But, in Hitler’s view, about the Turkey “never be an enemy of the Axis”, and it” would remain neutral to the end of the war”. Because, Von PAPEN expressed his views to İNOPÜ that “the British Fleet would support the Russian Flank in the Black Sea and a convenient way for defense of the Caucasus would be found”. Churchill and Eden desired to play the “Turkish Card” whether in munitions or diplomatic proposals without delay. During the Casablanca Conference, they brought up the issue of the “Turkish Straits” to force the country to join the war. However, İNONU was very careful against these intentions. His explanations for security balance, favored guarantees, substantial munitions and reinforcement of Turkish Armed Forces in the event of attack. Turkey during the war strictly kept the general regime of the Montreux Convention, which mainly was served and supported Soviets and British interests during the WW-II. It was also natural that the Turkish Government should have pursued a cautious policy.

26 Yücel,GÜÇLÜ: ‘Regulation of the Passage the Turkish Straits ‘’ Perceptions, Journal of International Affairs, Volume VI - Number 1, March - May 2001.
throughout this period. Contrary to the WW-II threat and tensions near the borders of Turkey, German troop’s hands were tied and unable to breathe properly. The occupation of the Aegean Islands which was the main lead to Turkish Straits was not a desirable choice to involve as a belligerent party. Prime Minister İsmet İNÖNÜ and Chief of General Staff Fevzi ÇAKMAK kept to the foreign policy principles of Mustafa Kemal ATATÜRK’s which meant “There is no desire at all to obtain territorial gain”, and it considered against Atlantic-Euro-Pacific front for the possibility of not involving a conflict threat by sticking to the principle of “neutrality”. Thanks to İsmet İnönü's astute leadership, Turkey managed to stay out of WW-II, maintaining formal neutrality right through the end of the war. On the other hand, Anthony de Luca stressed that in effect the grand strategy of the United States as the defenders of Turkish integrity and independence about the issue of Turkish Straits actually just behind WW-II Soviets pressures upon Turkey; since its strategic geopolitical situation. According the to Anthony R. De LUCA: “Soviet-American Politics and the issue of Turkish Straits actually just behind WW-II Soviets pressures upon Turkey; since its strategic geopolitical situation.35 Indeed, Washington looked with apprehension upon Turkish Straits about the free passage right issue “to be open to merchant vessels at all times” possession of the keys to their house”.36

3. NEW ENVIRONMENT SECURITY PROBLEMS AROUND THE TURKISH STRAITS

There are different questions about the maritime law, which dominated the meaning of environmental safety and free passage rights. We aimed to answer these questions within the legal arguments of about the straits and freedom of innocent passage: What are the main elements of innocent passage phenomena? What if any ship gives causes hazard to either territorial waters of coastal states, or it is against environmental security and vital interests of a state? Regardless of national or international dimensions, can we accept this illegal action as being “innocent”? H.GROTIUS stressed that “one who has occupied a part of the sea cannot hinder navigation which is without weapons and of innocent intent”.37 Netherlands argued before the 1930 Hague Codification Conference, the right of free passage as customary law for all ships only in straits “which may be regarded as main routes of

35 Anthony R. De LUCA: “Soviet-American Politics and the Turkish Straits”, Political Science Quarterly, Vol.92 Issue 3, p503-515, autumn, 1977. Also, Ferench, VALI stressed that : Turkey endeavored to apply the Montreux Convention as best as she could during the difficult war years. The entry of the ships of Western Allies into the Straits had become impossible by late 1944. Despite the pressures exerted on Ankara by Berlin and the counter pressures by Moscow and the Western Allies, the Turkish Government managed to prevent the passage of forbidden craft through the Straits”. When misled by camouflage it prohibited renewed entry of each ship as soon as the real character was discovered.”
communication”. But, the Italian delegate stated at the Conference that “as a general role, all straits which are of general concern to world shipping are already governed by special regulations.” However, innocent passage termed “inoffensive” navigation moves. Such as Rousseau, defines “who does not have opportunity nor intention to do wrong”\(^{39}\) We can determine in this point that manner of passage do not reflect to coastal state national security or independence of the state rights. STRUPP remarked in 1934 that “as for as straits are concerned, the most important ones, such as the Bosphorus and the Dardanelles, fall under a special conventional regime and exceed therefore our context, there is virtually no settled, generally accepted rule”.\(^{40}\) In 1956 the International Law Commission stated the innocence based on behavior or manner: “Passage is innocent so long as a ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules, or to other rules of international law”.\(^{41}\) “Once again, since the Turkish Straits have special rules for individual cases, after 1956 Convention Commission Reports, the Turkish government stated that the existing rules relating to straits did not lend themselves to conditions affecting the regimes of straits are and by nature ought to be widely divergent.”\(^{42}\)

Recently, the navigation safety and marine environment problems are important in around the Turkish Straits. If the rule of UN Convention Article Part XII: “States have the obligation to protect and preserve the marine environment” is correct; the rights and duties of coastal states and flag states have to be carefully protected against pollution or violations of navigation safety. In this context, an objective analysis of Turkey’s attention will show the efforts behind the Montreux Convention for longer than six decades. However, considering end of the Cold War transformation around the Europe and Eurasia, it is necessary to an amend the Convention, or a better solution is required to set rules for the safety of navigation addressing international law rebus sic stantibus rule. Will Turkey attempt to prevent, reduce and control possible pollution threats as well as being a coastal state cooperating with international organizations and their actors? On the other hand, the Montreux Convention well-established principle remains in force. There is no official application for radical revision circumstances under Article 28 of the Convention and 1969 Vienna Convention on the Law of the Treaties Article 62(1) (b). It should be used in the parties’ demands. Is there any attempt in this way? However, if there is such a requirement recently or in the future about the present convention, which kind of modalities of transmits if shall become obvious for further development in free passage and environment safety rules in creating legal framework? In this regard, especially argued in this article, should be balanced with,

inter alia between the flag states important strait state navigation safety and environmental security interests. The potential utilization maritime transport, hazardous cargo, nuclear waste transportation and oil spill accidents have created threats to the Black Sea and Turkish Straits causing hazards to the environment and ecology of the area. Turkey has decided to establish maritime traffic control system and traffic separation schemes where necessary to promote safe passage for ships and to look at the problem as a part navigation safety for keeping track with the changing conditions and maritime environment. Of course, one of the most important security matters is terrorist attacks to shipping cargo tankers after the September 11 attacks. A new argument after September 11 tragic attack in New York and Pentagon that US territorial integrity by international terror organizations can engage a considerable range of risks and possible security affects in the future, which was not taken up in the Montreux Convention directly.

Of course, the Convention is in force since 1936, nearly half a century including periods of war and tension, without being amended or terminated, in spite of its provisions to that effect. This is a concrete proof of the fact that it has served well the interests of all the states concerned, so much so that, although there have been objections from time to time to some of its provisions, especially those regarding the passage of vessels of war. They are in fact in the nature of special provisions as compared with the general rules of international law. No contracting state ventured the revision of the Convention up to the present time. It is unquestionable that Turkey had accepted the principle of the freedom of passage for merchant vessels. Nevertheless, once again, despite the use of the term “free of passage” the preparatory work of the conference clearly demonstrates that in recognized the right of freedom of passage for merchant vessels this right was subject to Turkey’s authority. This ‘policy navigation’ and to ensure that passage be ‘inoffensive’ or ‘innocent’ The Montreux Convention thus created regime of passage for merchant vessels that incorporated the general principles of an innocent passage regime but in addition, included unique conditions of passage. Free passage and navigation in the Turkish Straits for merchant vessels is a limited freedom subject to the interests of Turkey to protect its territorial welfare. A clear understanding of the meaning of “freedom of passage and navigation through the Turkish Straits as provided for by the Montreux Convention is of great importance in light of the continuing objections raised by Turkey’s Balkan and Black Sea neighbors at IMO platforms.

44 In May, the U.S. Coast Guard alerted law-enforcement officials that it had received intelligence information that 25 "Islamic extremists" linked to the al Qaeda network had entered America on prominent commercial cargo vessels through the ports of Miami, Fla.; Savannah, Ga.; and Long Beach, Calif. Open Door for Terror, By Michlle , MALKIN , September 22, 2002 --http://www.nypost.com/postopinion/opedcolumnists/57503.htm
45 Sevin, TOLUNER: “The Regulation of Passage Through the Turkish Straits and the Montreux Convention”, p.79-95, Annales-6.
However, unless we devise a better way to make international law for the environment, future progress is likely to be piecemeal, fitful, unsystematic and even random. If the appropriate steps are not taken now, the manifestly unsatisfactory situation we have will limp along towards crisis.  

Black Sea exports, however, must pass through the increasingly crowded the Istanbul Strait. Traditional export routes through Black Sea ports have been running at full capacity, and environmental concerns about the possibility of oil spills in the Turkish Straits increase. On the other hand, considering general energy marketing dynamics, Kazakhstan may also increase oil export capacity by using Turkish Straits especially for the next 25 to 50 years. It might be argued that in November 1998, the Caspian Pipeline Consortium, a joint venture of three governments and several companies, reached agreement on the construction, by mid-2001, of a Tengiz-Novorossiysk pipeline. Its initial throughput capacity is projected to be 28 million tons per annum (MTPA), subsequently rising to a maximum of 67 MTPA. These developments show that transiting vessels of hydrocarbons under the potential risk trends in mid and long term. Average ship traffic has measured about 700 ships during the Montreux Convention signed in 1936. But, because of above mentioned factors and beginning Caspian Sea oil transport into the market, heavy shipping traffic dramatically increased %150 skip tonnage and %400 numbers of these vessels. Although, the Black Sea was always open under the Montreux Regime to all merchant ships of all littoral and third states, the amount of maritime traffic is steadily increasing since the opening trade routes through Bulgaria-Romania-Ukraine-Russia-Georgia facilitated the integration with the Western Markets. Thus, the economic commercial importance has replaced the previous military significance. Furthermore, the European Union recently agreed to clear the Danube River, blocked since the 1999 NATO’s Kosovo Operation.

In March 1994, a dramatic accident occurred in the Istanbul Strait, very near to the entrance to the Black Sea. The 100.000-ton oil tanker Nassia collided with a cargo ship the Shipbroker, which exploded and ran ashore, killing most of its crew. The stricken Nassia caught fire and released over 1000 tons of oil to the sea, causing extensive environmental damage. This incident, one of many which occur in the busy and winding Bosphorus, is a sharp reminder of the risks involved in transporting oil and the poor state of preparedness of Black Sea countries in the event of an accident. These passages and shipment results have been evident with critical navigation safety threats with dramatic accidents and oil spills that polluted Turkish Straits like Greek Ship Evryali and Romanian tanker Independenta. The 100.000 ton oil tanker Nassia collided with a cargo ship the Shipbroker which

48 Russia: Oil and Natural Gas Exports April 2002http://www.eia.doe.gov/emeu/cabs/rusexp.html
51 Mesut Hakki ÇAĞIN : ‘‘ Turkish Straits and Black Sea Countries Geopolitics in The XXI Th Century”-Ukraine And Turkey Security And Cooperation In The Black Sea Region Conference’’, Kyiv, on April 10-11, 2000.
exploded and ran ashore, killing most of its crew. Finally Russian oil ship Volganeft 248, which sunk down in Marmara Sea after structural failure causing an environmental disaster. 1279 tons of heavy fuel-oil was spilled into the sea during Volganeft 248 incident affecting a 5 kilometer. Long shoreline. It sank down at a 30 meter-depth of sea water. This part was salvaged without causing any pollution damages to the environment in the Sea of Marmara. All these serious accidents have brought Turkish authorities to make decisions about navigation control and safety rules and to declare new traffic control measures and Traffic Separation Schemes-TSS. This declaration was supplemented by assurances that Turkey’s concerns were mainly security and environmental safety reasons, and in no way were they intended a revision of the Montreux Convention. However, the other Black Sea coastal states, especially Russia, have resisted against the implementation process of the Montreux Convention. Russia asserted that it was technically safe for very ‘large vessels’ to pass, and those only large vessels over 340 m. long and ‘deep drought vessels’ with a maximum draught of 17.6 m. or more required to take special measures and precautions. It suggested no upper size limit for transiting vessels. Russia has asserted that ‘when the status of the TSS is changed, it leads to difficulties for captains so far as application of the COLREGS is concerned. It has to underline that Turkey established a communication links between the Black Sea coastal states and IMO in order to develop TSS. These efforts finally accepted by the IMO, and the results have decreased the accidents after their implementation. More reliable modes should be established after TSS and VTS operation modes. As the PLANT emphasized that largely as a result of the US support, Turkey was able to fight a Russian rearguard action at the 69th Session of the Maritime Safety Committee, in May 1998, by promising to co-operate in future discussions in IMO of all aspects of safety of navigation in the Straits. This was interpreted by the Committee Chairman to include a review of the IMO Rules and Recommendations. Turkey thus secured a decision to take no further action on the existing NAV Sub-Committee report and defer the matter of preparing a new report to the next session of the Sub-Committee. This is regarded as a major victory, and viewing the subsequent events need to be considered.

54 See, broadcast on 23 November 1993 and then published in the Official Gazette of 11 January 1994, No. 21815. Some of the provisions of the regulations were amended the same year and these were promulgated in the Official Gazette of 21 June 1994, No. 21967.
55 See: G. PLANT : ‘The Turkish Straits and Tanker Traffic:’Marine Policy’, Vol.24, 193-214, 2000., Tankers of newer design are likely to be smaller in tonnage terms than tankers of equal dimensions but older design, because of the addition of segregated ballast tanks, etc.
56 MSC 70/11/11, para. 6 and 70/23, para. 11.13. See also MSC 71/22/8, 19 March 1999, para. 11. Added to this is the uncertainty caused by the absence of suspension on certain occasions when vesselsover 150 m are transiting: see MSC 71/22/8, para.10.
57 See e.g. IMO doc. MSC 69/22, para. 5.45.
58 MSC 69/22, paras. 5.40 and 5.48.
59 126MSC 69/22, paras. 5.48}5.51.
60 127MSC 69/22, para. 5.52.
According to Article 17 of UNCLOS, “ships of all States … enjoy the right of innocent passage through the territorial sea.” Furthermore, pursuant to Article 21(1), also Article 22(3) of UNCLOS, “the Coastal State shall take due notice of the recommendations of the competent international organization,” together with 21(6), appear to favor the transfer of the environmental approach to routing measures from the IMO to coastal States. However, Article 22(3) directs that in designating a sea-lane “the coastal State shall take into account … (b) any channels customarily used for international navigation.” Besides, Article 22(2) already established the possibility of adopting routing measures for environmental reasons, as well as for the security of maritime traffic, even though when certain types of ships are involved it reads that … tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances… They may be required to confine their passage to such sea lanes.” The second requirement is expressed in Article 24(1) of UNCLOS: “The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea. Except in accordance with this Convention…” A valid interpretation of this provision would be that the coastal State can forbid navigation in protected sea areas but it cannot outlaw the passage of ships in the full breadth of the territorial sea. The question remains, however, whether satisfactory results will materialize if adequacy technologies to meet environmental standards. Indeed, the general directives of UNCLOS III present key problems to international enforcement of the treaty. Under Article 192, States have the obligation ‘to protect and preserve the marine environment’’. This protection and preservation, is achieved by both individual and collective member-state action under Article 194: "States shall . . . reduce and control pollution of the marine environment from any source, using for this purpose the best practical means at their disposal.

4. CONCLUSION

It’s a reality that, nevertheless, there have been critical oil spill and pollution threat and causes serious environmental damages not only in Turkish Straits, but also the Black Sea is under this potential risk. However, protecting the Straits as a coastal state is not only in Turkey’s responsibility since any disaster could close the Straits relating vital interest of all the riparian states of the Black Sea and the international maritime community. We have to remember that history taught us that unilateral restrictions on navigational safety could not accomplish to reach purposes without personnel who have a strong belief in their benefits. In this regard, coastal & flag states need reasonable balances of interests in innocent passages and have contribute to a stable legal order. From this multi-channel efficient communication perspective, the Montreux Convention guarantees to perform protection environmental disasters if the

parties combine their efforts in *bona fide* manner with respect to environmental sensitivity. In this regard of these indicators, first "Conflict Scenario", tanker and oil traffic should continue dangerously to threat the Turkish Straits navigation safety and environment security concerns. In the second "International Cooperation Scenario", to reduce heavy tanker traffic and eliminate the any possible environmental threat through the Turkish Straits, the international community, IMO, UNEP, NATO CCMS, Black Sea states, Caspian Sea states also environmental NGO’s and IGO’s develop cooperation efforts which secured solutions for navigation safety. The third scenario is; in spite of Turkey’s traffic regime implementation, VTS application efforts with IMO and other institutions may be faced with a breakdown point after very serious accidents. If the existing tanker traffic creates threats to Turkish Straits and local navigation safety rules, Turkey unitarily should increase the regime control, which declared under the Montreux preamble of territorial security concerns.

As Bayram ÖZTÜRK indicated that, the major significant threats to marine life growing the ecological and environmental security concepts originates part of ship – oriented marine pollution threat not only around the Turkish Straits and, but also in the Black Sea and Aegean Sea ecological life and going to crucial international legal problem together with technological progress and rapid growth of energy transport. Also the health of Turkish Straits System, is vital for the protection of the Black Sea and Mediterranean Sea and their marine biodiversity. Furthermore, we have to keep in mind that, the advance in environmental law affected by the Convention, is reflected in the unfettered clarity of the opening article of Part XII ‘’states have the obligation to protect and preserve the marine environment ‘’. Thus, it also provides for environmental impact of planned activities for pollution emergencies and force major casualties around the straits. In this regard, basically, the states, UNEP, UN Convention on the Law of Sea, the IMO are required tasks to cooperate in establishing regional and global applicable and generally acceptable rules and standards to eliminate sources and results of marine pollution around the straits. The implementation of marine pollution control standards will be costly, and freight rates will be high. However, the in principle higher cost of maritime transport and navigation is aimed to protect the environment and marine ecology is simply the price paid for the protection and preservation of universal a city of Istanbul civilization habitat and heritage which accepted by the UN, one of the world’s most beautiful international city.

In addition to this problem, after expressing international terror in September 11 in the US, the possible risk and threat potential bring some of the deployments around the Turkish Straits, especially against to hazardous cargo. Of course, there is no doubt that present’s potential risk capability of terror around the maritime shipping. In this regard, the concerning state has to take measures against piracy and

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63 LOS Convention, Art.192, Experienced aware of achieving to articulate an environmental norms.
terror under the international maritime law. The Geneva Convention on the High Seas or the UN Convention on the Law of Sea jointly has provisions against maritime terrorism. Furthermore the IMO should also pay attention to their approach to provide application methodologies in the future, not only around the Straits, but also in the entire enforcement process of the maritime navigation safety rules.

Therefore, such a serious collision threat between the tankers and city passenger’s ships is another serious maritime traffic threat in the Straits. Another critical example was the former Soviet Union aircraft carrier Varyag passages. The Turkish Government was reluctant to give permission for the Varyag to pass through the Bosphorus straits because it thought it was dangerous for the giant engine ship to move through the narrow waterways. Additionally the total tonnage of navy ships in the Turkish Straits at any given moment should not exceed 15,000mt, whereas the 'Varyag' alone displaces 35,000 tons. The Convention also empowers Turkey to deny passage to a vessel considered technically unsafe ('Varyag' was a dead ship without engines). Escorted by several other tugs and fire-fighting vessels, the transit took place on 01 November 2001 with massive media attention. ITC tug 'Solano' escorted the vessel during the passage. Immediately after the passage, the transport encountered bad weather in the Aegean Sea. The tow wire of the tug 'Havila Champion' parted, leaving the 'Varyag' adrift in the Greek Archipelago. With little time left before stranding, the 'Havila Champion' managed to make an emergency connection. Escorted by several other tugs and fire-fighting vessels, the transit took place on 01 November 2001 with massive media attention. Of course, modern global economy dependence with high ratio oil and hydrocarbon products in using industrialized features of distribution of economic circulation. But we should understand to share both mechanisms that help environmental prevention as an institutionalized point in order to survive marine navigation from the Turkish Straits. International law of sea should have an immediate focus on using effective implementation navigation safety rules and preventive environmental diplomacy methodologies to promote the free of passage not only through the Straits but also through all sea routes and aspirations of freedom. Those efforts in maritime shipping community should develop the rules against the global terrorism. As addressed above, the ultimate message of this paper can be found in the statement of Jacques-Yves Cousteau, there is only one pollution; it is water pollution, because everything ends up in the water.”

64 See, International Law Commissions draft article 38i which became article 14 of the Geneva Convention, INT’L, L.CMM’N 282, UN Doc.A/CN.4/SER.A/1956/Add.1

