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REGULATION OF THE PASSAGE THROUGH THE TURKISH STRAITS

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The Turkish Straits have all the importance of a vital international waterway, as well as being the key to Istanbul and the meeting-place of Europe and Asia. In several places the Straits are very narrow and therefore technically within the territorial jurisdiction of its riverain power. Their coasts command commercial and strategic communications, not only of the Marmara and Black Seas, but also of the whole Black Sea basin, including southern Russia and the Danube valley. The question of the Straits has been one of the cornerstones of Turkey's relations with the Powers for more than two centuries. The modern problem dates essentially from 1774 when Russia by an international agreement acquired commercial access through the Straits - a right later extended to other states. But the waterway remained closed to non-Turkish warships according to the ancient rule of the Ottoman Empire, which continued to be the law until the end of the First World War.¹

LAUSANNE STRAITS CONVENTION

The Peace Treaty of Lausanne, 24 July 1923, registering the victory of the Turkish nation in its war of liberation, recognised the complete independence of Turkey and provided a new convention for the Straits. The Lausanne Straits Convention laid down the principle of freedom of passage, thus totally changing the provisions of the Convention of 1841, which had given international sanction to the ancient rule of the Sublime Porte to keep the Straits closed to warships of foreign powers. It guaranteed the commercial freedom of the Straits with certain restrictions in time of war. The warships that any one Power in time of peace might send through the Straits were not to exceed the strength of the most powerful Black Sea fleet, i.e. the Russian's. The Powers reserved the right at all times and under all circumstances to send no more than three warships into the Black Sea, none to exceed 10,000 gross tons each. To ensure the execution of these provisions, the convention provided for the demilitarisation of the shores of both the Çanakkale and Istanbul straits, the islands of the Marmara Sea and the Greek and Turkish islands commanding the entrance to the Straits. An International Straits Commission was set up to supervise the freedom of passage and ensure proper application of the other provisions of the convention.²

Turkey's desire for an individual and collective guarantee was refused; instead, the Powers offered to act together under the League of Nations if the security of the zone were menaced. Nevertheless, both Turkey and Russia considered the Straits provisions inadequate for the security of the region. Fundamentally, Lausanne did not answer the question.³

By the early 1930s, Turkey had become a stabilising factor in the Balkans and the eastern Mediterranean. In 1932, it joined the League of Nations. In 1933, it signed a close alliance with Greece. It took a leading part in the Balkan conferences and concluded the pact of the Balkan

Entente in 1934 with Greece, Yugoslavia and Romania, to guard against aggression in the region. In that same year, 1934, the Turkish-Russian Treaty of Non-aggression was extended for another ten-year period and Turkey, Iraq, Iran and Afghanistan initialled the Pact of Saadabad. By these pacts and alliances Turkey had done more than enhance its importance as the bridge between Europe and Asia and provided for regional collective security. It had assisted in providing a genuine base for peace, since, as a preliminary to signature of the pacts, a number of long-standing quarrels and points of friction were removed. Turkey, therefore, was in a good position to work for the revision of the Lausanne Convention.⁴

The diplomatic preparation for revision was thorough. At the International Disarmament Conference of 1933 Turkey ventilated a revision of the statute governing the Straits for the first time and it referred to it again in Geneva in the two following years. In 1935, it was supported by Russia, which considered the Lausanne settlement unsatisfactory in its existing state. Turkey could thus be assured of Soviet support. During the Ethiopian crisis, Turkey, in return for assuming its full obligations under Article 16 of the League Covenant, received reciprocal assurances from Britain and France concerning the Straits. But it was not until the spring of 1936 that a formal request for revision of the regime was made.⁵

Request for Revision of the Straits Convention

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 from that which came to exist. At the time of signing, the League seemed strong and its guarantees effective, the future looked peaceful and there was a prospect of arms reduction. This was no longer true. International guarantees had failed elsewhere - Turkey had to rely on its own strength. The Turks considered the matter most urgent. It was significant that while Ankara's reiterated wishes for a change in the status of the Straits had hitherto gone unanswered by the Western Powers, the Turkish demand of 10 April, led to prompt action.⁶

Britain not only found the Turkish claim fully justified but was also in need of new allies in the eastern Mediterranean, where Italy was challenging its interests. In Lausanne in 1923 the British deprived the Turks of control over the Straits so that their navy could, in the event of hostilities, pursue the Soviet fleet into the Black Sea and destroy the yards and arsenals on its shore. But, in 1936 the British were far more alarmed about Adolf Hitler's introduction of military conscription in Germany and Benito Mussolini's aggression against Ethiopia than they were about the Soviet navy. Looking at a future conference as an opportunity to revise the Straits regime in its favour, Russia too welcomed the proposal. The Soviet government strove to play a more active part in the Mediterranean area, which could be explained by its increased interest towards Spain. Therefore, it was not surprising that, when the Spanish civil war began in July 1936, Russia actively supported the Republicans. It sent large quantities of arms and ammunition to Republican Spain from Black Sea ports. Another very important reason for Moscow's interest was the growing German threat to the Baltic ports, compelling the Russians to gain access to the Mediterranean. Both the British and the Russian governments replied on 16 April accepting the convocation of a conference without delay and the latter thoroughly supported the Turkish desire for remilitarisation of the Straits.⁷

At the end of April, France fell into line. Paris showed eagerness to consider the Straits question in the hope of adding to Soviet influence in the Mediterranean and thus increasing the value of the Franco-Russian Pact of 2 May 1935. In case of war, the Soviet Black Sea fleet could lend its support

to the actions of the French fleet in the Mediterranean. The Balkan Entente was likewise favourably disposed. The Bulgarian government, not a member of the Balkan Entente, did not feel that it could oppose the conference and announced that it would not oppose remilitarisation. Japan was sympathetic. Only Italy disapproved.⁸

Turkey, through its support of the League and its participation in ententes and pacts, lent its support to the principle of collective security. Coming at a time when a series of unilateral treaty repudiations had seriously damaged the prestige of international law and all but undermined the League system, it proved that there was at least one power that had not succumbed to the fascination of the *fait accompli* and still retained a proper respect for international agreements. It is worth remembering that the *faits accomplis* had not been confined to Great Powers. Austria had reintroduced military conscription in violation of the Treaty of St Germain on 1 April 1936. Turkish leadership, having found from diplomatic inquiries that the Powers would return a favourable answer to a Turkish request made in a lawful way, decided that for Turkey there was more to be gained from legal methods. It saw that in this case, by using lawful means, it could gain its immediate objective, and more besides, without further undermining either the League system or the sanctity of international law as a whole.⁹

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. In so doing, the reputation for following a consistent peace policy and the moral prestige of having been the first power to employ methods of peaceful change were secured. Turkish diplomacy was remarkable and praiseworthy.¹⁰ The British press commended Turkey for using a conference where Hitler and Mussolini would have used cannon. But *The Times* of 22 June 1936 went further: it practically thanked the Turks for not simply tearing up the Treaty of Lausanne and dubbed them the "good boy of Europe" for not doing so.

Montreux Straits Convention

The conference for revision met in Montreux, Switzerland, on 22 June. All the Lausanne Treaty signatories were represented except Italy. At Montreux, Turkey was in the difficult position of reconciling the views of the Mediterranean and the Black Sea powers with its own interests and strategic considerations.¹¹ Throughout the meetings, Joseph Paul-Boncour of France acted as the mediator between the British and the Russo-Turkish positions.¹² The result was the conclusion of the new convention on 20 July. The new convention re-established Turkish sovereignty over the Straits, with full right to remilitarise the zone. Turkey received the unrestricted right to occupy and fortify both shores of the Çanakkale and Istanbul straits. Ankara thus gained a heightened sense of international security in a period of growing distrust of collective security and non-aggression pacts.¹³

The Straits remained open to commercial vessels and, in peacetime, to warships of the Black Sea states with some limitations, e.g. submarines and aircraft carriers. On the other hand, the size, number, armament and period of stay of vessels of non-Black Sea states were greatly limited, both in passage through the Straits and in the Black Sea. During war, the Straits would be closed to warships of the Black Sea states, except if, under the Covenant obligations, they were proceeding to the aid of an attacked nation. If Turkey were "threatened with imminent danger of war" or actually engaged in war, Articles 20 and 21 laid down that "the passages of warships should be left entirely to the discretion of the Turkish government."

The Montreux Convention was a victory for Turkey, for its friends in the Balkan Entente and for the policy of regional pacts. But there were gains also for Russia, who was closely associated with Turkey. The Soviets could now send their fleet into the Mediterranean in peacetime without restriction, while non-riverain powers were limited to 45,000 gross tons in the Black Sea.

The new convention was received with much enthusiasm in Turkey. On 31 July 1936, İsmet İnönü, the Prime Minister, in a speech in the Grand National Assembly to frenzied applause, thanked Tevfik Rüştü Aras, the Foreign Minister, for his work in obtaining a settlement so much in accordance with Turkish desires and interests.¹⁴ In a speech on 27 July, Anthony Eden, the British Foreign Secretary, exhibited the convention as a triumph of peaceful and lawful diplomacy, telling the House of Commons that, from the point of view of general European politics, the conference showed that treaty revision by negotiation and agreement, in accordance with the normal procedures and principles of international relations and practice, could lead to an agreement more favourable to all concerned than the unilateral methods of repudiation or modification of treaty engagements.¹⁵

For the first time since the beginning of the struggle for the Straits, Turkey, Britain and Russia were at one. This occurred largely through the opposition of all three states to Italian expansion, but it was only made possible by the real independence of Turkey. The Montreux Conference, where Turkey won by negotiation what had been lost in war, was a triumph for reconciliation. Turkey's free right to dispose of the Straits considerably extended its influence and significance. The Turkish government doubtless realised that regaining control over the Straits would henceforth be so important in European diplomacy that no country could afford to disregard it and each would have to seek Turkey's goodwill and friendship. That Turkish policy succeeded cannot be doubted.

In the eyes of Western observers, Turkey's peaceful, diplomatic and lawful approach to revision of the Lausanne Straits Convention was in welcome contrast to Hitler's unilateral action in the Rhineland and Mussolini's aggression in Ethiopia. Many thought that the Turkish goal had been pursued with a level-headedness and steadfastness, a sober acceptance of limitations and a shrewd assessment of opportunities, that were far from characteristic of all nations that had in the post-1918 era asserted their sovereignty.¹⁶

The Montreux regime provides safety to both Russia and the Mediterranean powers. In principle, it is an ideal system, safeguarding the interests and strategic exigencies of all three groups: the riparian powers, the non-riparian powers and Turkey. It is the best possible system that could be devised for safeguarding peace in this part of the world.

Recent Developments

The Straits agreement produced at Montreux endures - and it does so for the simple reason that it has proved serviceable through all subsequent alterations of strategic reality. However, the experience of the past few years has shown that some details of the Montreux Convention, which set up such an admirable system, now require contemporary interpretation in the light of developments in international law, e.g. pollution, security of navigation and environment, and the safety of people on shore.

In 1936, when the Montreux Convention was signed, freighters and tankers were far smaller, their number passing through the Straits was one-tenth of what it is today, and Istanbul had one-fifteenth of its present population. In 1936, only four or five ships a day - small cargoes, mostly - passed

through the Straits, and very large crude oil carriers and liquid gas carriers did not exist. Now there are about 150 ships a day and their tonnage has no common measure with 1936. A third of these ships are tankers. They are the ones that worry the Turkish authorities. Within the past decade, 150 serious shipping mishaps have occurred, and every very large crude oil carrier or liquid gas carrier is a potential bomb.¹⁷

New Regulations

In March 1994, the tanker, *Nassia*, collided with the dry bulk carrier, *Shipbroker*, in the Strait of Istanbul. Burning and spilling its cargo of crude oil, the *Nassia* drifted perilously close to the European side before the Turkish authorities managed to tow the flaming wreck into the Black Sea. Thirty seamen were killed in the accident, shipping through the Istanbul Strait was interrupted for seven days and over 500 vessels had to wait for passage. In May of the same year, the Turkish government issued a declaration that, beginning 1 July, Turkey would exercise certain supervisory powers over shipping in the Straits, Turkey's case here is not that it is exercising powers it did not have previously, but merely tailoring international standards and norms to the Turkish Straits situation. Briefly, the new rules were to be as follows:¹⁸

1. Ships with dangerous cargoes should inform the Turkish authorities of their intention to pass through the Straits 24 hours in advance and, while they were in passage, no other ship would be allowed to pass through the Straits.
2. Ships using the Straits should abide by the report systems, traffic control measures and traffic separation schemes put in place by the Turkish authorities.
3. Speed would be limited to 10 knots, overtaking would be forbidden and vessel height would be sensibly limited to 190 feet because of the two suspension bridges north of Istanbul.
4. Turkey reserved the right to close the Straits temporarily while fire fighting, sounding, sports and scientific activities, rescue operations or anti-pollution projects were going on.

This declaration was supplemented by assurances that the Turkish concern was for security and environmental safety, and in no way was it intended as a revision of the Montreux Convention. It was stated that it was impossible to throw Istanbul, a city of 10 million, into danger. Turkey's purpose in setting the new regulations was simply to prevent accidents, to safeguard security and provide protection for its citizens. These measures did not aim to affect or prejudice the rights of any ship using the Straits under international law. Turkey only sought to tighten its safety measures because the framers of the Montreux Convention could not foresee the dangers of the chemical, explosive and nuclear cargoes that are now carried through this narrow waterway.¹⁹ Despite the dissent of certain members of the international maritime community - particularly among the Black Sea riparian states - the new regulations were enforced, as promised, beginning on 1 July 1994.²⁰

Navigational Conditions of the Straits

The Turkish Straits are unique in many respects. These narrow and winding straits are one of the most hazardous, crowded, difficult and potentially dangerous waterways to navigate in the world. Furthermore, they also bear unique physical, geographical, hydrological and oceanographic characteristics and complicated navigational conditions. The Strait of Istanbul, which runs right through the commercial and cultural capital of Turkey, is approximately 32 kilometres long and 700 meters wide at its narrowest point. As it has several sharp turns, ships are bound to alter course at

least 12 times for these bends. At Kandilli and Yeniköy turns, the rear and forward sights are totally blocked before and during the course alteration. Ships approaching from the opposite direction cannot be seen round the bends. The Strait of Istanbul is so deep and steep that it offers few shallows or sandbars where ships in trouble might ground before smashing into buildings along the shore. Bad weather, fog and unpredictable currents only add to the danger. The Strait of Çanakkale is about 70 kilometres long, with a general width ranging from 1.3 to 2.0 kilometres. A very sharp course alteration is needed at its narrowest point. The Sea of Marmara, between the Istanbul and Çanakkale Straits, is an enclosed sea within Turkey and has a densely populated coastline through which every transiting vessel has to pass.²¹

The Turkish Straits are among the most crowded sea-lanes in the world. Navigation in this waterway is highly congested with merchant ships, coasters, fishing vessels, and motor and sailing boats. The dense traffic includes the transport of hazardous cargoes (oil, LNG, LPG, chemicals, and other explosive and environmentally harmful substances). Each year, approximately 50,000 vessels and about 60 foreign warships transit the Straits. The number of local crossings by intra-city ferries and other shuttle boats is almost 1,500 per day. This figure does not include the movement of transiting ships, leisure craft and fishing vessels. One and a half million people daily cross the strait from one side of Istanbul to another. The Strait of Istanbul forms part of the port of Istanbul. It is included within the port limits. The legs of the two bridges over the Strait of Istanbul are grounded by the waterway. Due to many physical constraints, the Straits already present a bottleneck for maritime traffic. The risks and dangers associated with tanker navigation, maritime accidents and environmental catastrophes are further aggravated by the increase in the density of traffic, tanker size and cargo capacity as well as by the nature of the cargo.²²

Congestion is expected to increase even more in the near future due to the following factors:

1. The opening of the Main-Danube canal in September 1992 has linked the Rhine and Danube rivers, thereby creating a direct route between Rotterdam and Constanza.
2. An increase has recently been observed in the traffic originating from the Volga-Baltic and Volga-Don canals bound for the Mediterranean and Turkish ports.
3. The economic recovery and foreign investment in the Russian Federation and other successor states of the Soviet Union, which rely on the Straits and Black Sea for their maritime trade, are expanding significantly the volume of traffic through the Straits.

Accidents in the Strait of Istanbul have become increasingly frequent and they have resulted in deaths, oil spills and pollution, vessel groundings, explosions, fires, the damage and destruction of buildings and the closing of the waterway. The reasons for most accidents is vessels not taking a pilot, misinterpreting the structure of the waterway, winds and currents, restricted visibility, and breakdowns and technical insufficiencies. According to the Montreux Convention, pilotage and towage remain optional, but because the majority of accidents occur with pilotless ships, Turkey and the Turkish public want all ships over a certain length or carrying certain cargoes, transiting the Strait of Istanbul to take pilots. There is a lot of support - including some from oil companies - for new safety rules and mandatory pilotage because it is clear that the situation in the Strait of Istanbul is going to get worse unless something is done. Given the multiple perils of navigating here, it would seem obvious that any prudent shipmaster would take a pilot as a matter of course, but surprisingly, only about half do so. The Russians, whose ships account for nearly a third of the passages through

the Strait of Istanbul, almost always refuse the services of the 42 pilots who man the waterway 24 hours a day under the authority of the Turkish government.²³

A proposed pipeline transporting oil from the Caspian to the Mediterranean might alleviate the situation, but only somewhat. Other remedies are also needed, such as more modern ships, special training to prepare officers for the many hazards of the Strait of Istanbul, and a reduction in the volume of dangerous materials transported. On the other hand, if the newly discovered Caspian oil is transported through the Straits, the number of tankers could double. Apparently, plans are that the oil and natural gas originating in Azerbaijan, Kazakhstan and the Russian Federation will be transported by pipelines to the Russian Black Sea port of Novorossiysk and then to international markets through the Straits. While no firm figures are available on the tonnage of oil currently passing through the Straits, an estimated 80-100 million tons of oil to be produced in these countries are supposedly earmarked for transportation through the Turkish waterways. However, it is obvious that due to the nature of the waterway and the existing grave situation created by dense traffic congestion, the Turkish Straits cannot be an oil transportation route. The Straits cannot carry the additional burden that will be brought by large amounts of oil shipments. Turkish officials have stated that Turkey will not allow the sea-lanes of the Strait of Istanbul to be turned into oil pipelines.²⁴

Given that alternative projects such as the building of oil pipelines over Turkish territory to the Mediterranean Sea are economically and technically feasible, environmentally much safer, and more secure and logical in every sense, then, relying on the Straits as a mock oil pipeline for the large-scale transportation of crude oil and other dangerous cargo appears ill-advised and, in the long run, self-defeating. It is not a viable and practical option for crude exports.

The Turkish Straits are among the very few waterways that fall outside Part Three of the United Nations Convention on the Law of the Sea of 1982, to which Turkey is not a party. As stipulated in Article 35(C) of this act, the Montreux Convention of 1936 regulates passage through the Turkish Straits. The mode of passage that has been in effect in the Turkish Straits is clearly different from the transit passage regime that has been developed throughout the Convention on the Law of the Sea. Under the Montreux Convention, freedom of passage through the Turkish Straits is not absolute but subject to the principle of innocent passage. In the Convention on the Law of the Sea, the traditional right of innocent passage is replaced with the right of transit passage. The new regime would significantly restrict the authority to regulate and intervene in passage through the straits. As the Turkish Straits are territorial waters, however, the power to regulate maritime activity through them belongs solely to Turkey.

Public and Environmental Protection

Turkey is committed to the principle of freedom of navigation through the Turkish Straits. The essence of freedom of navigation is that it should be exercised and effected in safety both for the navigators and for the inhabitants of the coasts bordering the straits. Therefore, it is Turkey's right and indeed responsibility as the only bordering country, to protect the public and the environment as well as to ensure safety of navigation and efficient traffic flow in the Turkish Straits. It is with these considerations in mind that a set of maritime traffic regulations for the Strait of Istanbul, the Sea of Marmara and the Strait of Çanakkale was promulgated on 11 January 1994 and entered into force on 1 July 1994.²⁵

The purpose of the new regulations was to ensure, to the greatest extent possible, safety of navigation

while providing security to the inhabitants in and around the Straits as well as the environment at the current dense level of maritime traffic. The relevant provisions of such international instruments as the Convention on the International Regulations for Preventing Collisions at Sea (1972), International Convention for the Prevention of Pollution of Ships (1973), International Convention for the Safety of Life at Sea (1974) and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989) were duly and adequately reflected in the regulations.²⁶

Turkey, cognisant of its responsibilities, has submitted the traffic separation schemes (TSSs) in the Turkish Straits to the International Maritime Organisation (IMO). The relevant bodies of the IMO, the Subcommittee on Safety of Navigation and the Maritime Safety Committee (MSC), discussed and adopted on 25 May 1994 the TSS and a set of associated special rules and recommendations relevant to the safe navigation of large vessels in the Straits of Istanbul and Çanakkale. These became effective on 24 November 1994. Both the TSSs and the rules and recommendations were adopted by the 19th IMO Assembly, which took place between 13 and 24 November 1995. IMO rules and recommendations are limited in scope. They are functional and pertain to specific situations with respect to the implementation of the TSSs in the Straits of Istanbul and Çanakkale.²⁷

On the other hand, the regulations which fall within national jurisdiction and that were therefore not submitted to IMO are comprehensive in scope and contain detailed provisions covering all aspects of traffic management in the whole area of the Straits, as well as rules to be applied to all vessels irrespective of their size.

In July 1998, the Strait of Istanbul had to be closed after a tanker carrying 87,000 tons of crude oil ran aground. In August 1998, a tanker nearly broke apart the historic Topkapı Palace. More lately, in April 2000, a Lebanese-registered freighter collided with a Turkish minerals-carrying cargo ship when leaving the Strait of Istanbul for the Black Sea. The Turkish vessel was left listing and leaking. There are lesser accidents all the time and some go unreported. Turkey has now reached saturation point and it has the right to manage international traffic in the Straits. Montreux, by means of interpretation and implementation, must balance human rights with shipping rights because the citizens of Istanbul are not safe. The vessels passing through the Strait of Istanbul do so for profit and have no right to destroy the city. Every ten minutes there is a risk to the citizens of Istanbul. The shipping industry has grown in recent decades and the Strait of Istanbul is filled with ever-larger vessels. Today it is not simply Istanbul's main street but a maritime super highway. Therefore, the commitment to free navigation enshrined in the Montreux Convention must be balanced against the safety of a vital waterway that runs through the heart of a teeming metropolis.

Conclusion

Turkey is very much concerned by the increased tanker traffic through the Straits. Millions of people living in the area, the treasures of several civilisations and the natural environment are all under serious threat. The rational limits of traffic in the Turkish Straits have already been surpassed. Physically, Turkey cannot afford more. If additional oil transport through the Straits is envisioned, it is obvious that substantial difficulties will occur. Not that Turkey will create this extra difficulty, not that Turkey will overlook the Montreux Convention, but physically that traffic will have to be carefully organised, monitored and eventually, it will be very slow.

In our times, it is not possible to consider the international law of the sea and the notion of freedom of passage independently from the concept of safe navigation. In addition, it is a fundamental

principle of international law that the status of maritime waters within a strait is in no way to be affected by the fact that these waters are used for international navigation. The status of the Turkish Straits is such that they are internal waters. The ships in transit in this critical sea-lane must pass through 325 kilometres of waters under the sovereignty and jurisdiction of Turkey. Overall, the transit time is 16 hours.

Turkey, taking into consideration the principles of freedom of passage and safety of navigation, as well as the provisions of the Montreux Convention, has enacted the regulations for orderly traffic management in the Turkish Straits. Had no regulations been adopted for passage through the Turkish Straits, accidents that could have happened not only would have endangered the densely populated urban areas and the environment, but also would have resulted in closure to traffic of the Straits for extended periods. That in turn would have impaired freedom of passage through the Straits. Therefore, the recent Straits regulations are fully in line with applicable international law and freedom of passage and navigation. The regulations uphold the Montreux Convention and in no way infringe upon its provisions.

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