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# МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ В ГЛОБАЛЬНОМ ИЗМЕРЕНИИ

Сборник научных трудов

Выпуск 4



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**ВЛИЯНИЕ РЕЖИМОВ МОРСКИХ ПРОЛИВОВ  
НА БЕЗОПАСНОСТЬ В ЧЕРНОМОРСКОМ РЕГИОНЕ**

**MARITIME REGIMES AS FACTOR IMPACTING THE SECURITY  
IN THE BLACK SEA REGION**

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*Abstract:* The Black Sea region lies at the crossroads of Europe, Asia, the Middle East, and forms a nexus of various strategic interests that are reflected in the varying geographical and cultural influences that lap the waters of the inland sea. Rising instability shows the need of a complex approach that could encompass numerous concerns and layers of security. In this sense, maritime regimes of the passage through the Black Sea Straits as well as through the Kerch Strait should be taken into account. Because the further qualitative and quantitative development of the naval forces of the states of the Black Sea basin, among other things, will depend on the growing tension between the North Atlantic Alliance and Russia. Situation in the Middle East and the participation of Turkey and Russia in regional conflicts will remain an important factor (as the example of the new round of the Nagorno-Karabakh conflict has already shown). In this context, it is worth noting the special operation of the Russian Federation in Ukraine, which began in February 2022, which served as an impetus for the West to build up potentials in the Black Sea and further escalation. Turkey's attempts to adapt the maritime regime to its national legislation also cause solicitude. The general conclusion for the security architecture of the Black Sea region is concerned with the necessity of arms control and maritime regimes conceptualization specifically for this region because they are constituent parts of its security space.

*Аннотация:* Черноморский регион расположен на перекрестке Европы, Азии и Ближнего Востока и образует узел различных стратегических интересов, на которые влияют географические и культурные особенности. Рост нестабильности свидетельствует о необходимости комплексного подхода, который сможет охватить многочисленные проблемы и уровни безопасности. При этом следует учитывать

морские режимы прохода через Черноморские проливы, а также через Керченский пролив. Потому что дальнейшее качественное и количественное развитие военно-морских сил государств Черноморского бассейна, в том числе будет зависеть от роста напряженности между Североатлантическим альянсом и Россией. Важным фактором останется ситуация на Ближнем Востоке и участие Турции и России в региональных конфликтах (как уже показал пример нового витка Нагорно-Карабахского конфликта). В этом контексте стоит отметить начавшуюся в феврале 2022 года спецоперацию РФ, которая послужила толчком для Запада к наращиванию потенциалов и призывам к усилению НАТО в Черном море и дальнейшей эскалации. Попытки Турции адаптировать режим морских проливов под свое национальное законодательство также вызывают опасения. Общий вывод для архитектуры безопасности Черноморского региона касается важности морских режимов как составных частей его пространства.

*Key words:* BLACK SEA REGION, SECURITY, SEA STRAITS, MARITIME REGIME, MONTREUX CONVENTION, RUSSIA, TURKEY, NATO.

*Ключевые слова:* ЧЕРНОМОРСКИЙ РЕГИОН, БЕЗОПАСНОСТЬ, РЕЖИМ МОРСКИХ ПРОЛИВОВ, КОНВЕНЦИЯ МОНТРЁ, РОССИЯ, ТУРЦИЯ, НАТО.

The geopolitical complexities of the Black Sea are enhanced by both trade and smuggling, with all the economic rivalries introduced by the former and the security challenges by the latter. «Vast amounts of legal and illegal commodities pass through this strategic corridor. These commodities are the economic and strategic drivers for the entire region and are also the key to Russian and Western considerations» [1]. In such a compound situation the only possible way to regulate the actors' behaviour is to facilitate adherence to various international regimes. In the realm of Black Sea security architecture – to the maritime and arms control regimes. This article is mainly concerned with the regime of sea straits and its impact on the regional security.

The Black Sea distinguishes from other semi-closed water areas by a special regime that regulates the passage through the straits. However, this issue largely depends on the position of the Republic of Turkey and its regulation of the Black Sea Straits for access by ships of non-regional powers in accordance with the provisions of the Montreux Convention [2]. Prominently, for warships of non-coastal states the maritime regime does not allow the presence for more than 21 days. Moreover, warships of more than 30 thousand tons and aircraft carriers are prohibited to enter the Black Sea which makes this area quite secure. As a result, the permanent presence of whether the US or other members of the Alliance in the region is not possible.

Nevertheless, in the last decade NATO undertook attempts to advance its positions in the region, mostly by bilateral initiatives with Bulgaria and Romania. The possible review of status of the straits could lead to additional risks and increase the likelihood of a conflict between Russia and NATO in the Black Sea region. Considering the complicated background, Turkey and Russia, the countries with the largest fleets in the Black Sea, are trying to maintain an appropriate level of cooperation. So, even with all the desire of the NATO states to build up their potential in the Black Sea region, Russia and Turkey find common ground in regional issues, as happened with the closure of the straits with the start of the Russian special operation in Ukraine.

After Ukrainian government imposed martial law in the country in February 2022, Turkey exercised its authority to limit the transit of military vessels through Dardanelles and Bosphorus. According to Turkish Foreign Minister, the Republic has warned all foreign states to ban the passage of warships through the Bosphorus and Dardanelles. Çavuşoğlu also said, however, that the Montreux Convention also provides that the ships of the countries involved in hostilities can return to their bases [3]. «At least six Russian warships and a submarine had crossed the Turkish straits in February» [4]. It can be said that situation changed drastically after the Russian Black Sea Fleet flagship “Moskva” sank allegedly after Ukrainian “Neptune” anti-ship missile strikes from Odessa in the middle of April. Considering the symbolic meaning of this incident and inability to provide replacement we can observe imbalances appearing.

At the same time, the strict adherence to the Montreux Convention of the Turkish government can be seen as a very rational approach to solving regional security issues, since such guaranteed non-intervention of third countries will allow not to build up military potential in the region and the conflict will be resolved one way or another by the already existing forces. Therefore, Turkey's actions can be depicted as a desire to prevent further escalation and thus preserve the regional balance of power. After all, in this way the Turkish leadership shows the whole world that it complies with the norms of international law and brings a rational grain to the outbreak of conflict, such an actor will have more trust, including during the mediation of the negotiation process. Ankara's role highlights how crucial it is to regional security.

Significantly, the Republic of Turkey took on the role of mediator in the outbreak of the conflict – the first high-level negotiations since the beginning

of the special operation were held at the site of the Diplomatic Forum in Antalya on March 10, 2022 [5]. Despite the low effectiveness of this meeting, the Turkish side continues to look for lines of interaction. Thus, on March 17, 2022, the Presidents of Turkey and Russia, Recep Tayyip Erdoğan and Vladimir Putin, discussed the Russian military operation in Ukraine during telephone conversations. It is obvious that none of the regional actors – and Turkey in the first place – is not interested in the emergence of new threats to regional security, so the ongoing mediation efforts are logical and justified by geopolitical necessity.

However, over a few last decades, Turkey undertook attempts to adapt the maritime regime to its national legislation by providing various documents that could regulate the straits in accordance with inland waters regime enshrined in the 1982 Convention.

In fact, in 1993, instead of the historical names of the straits (Bosporus and Dardanelles), Turkey began to call them “Istanbul” and the “Çanakkale Straits”, and the entire system of straits – not «Black Sea Straits», but «Turkish Straits». This action did not undermine the legal foundations of the regime, but years later it may well enter the system of international law as a custom supported by the tacit consent of the Montreux Convention signatory parties.

In 1994, Turkey introduced «the National Regulations of Navigation in the Zone of The Black Sea Straits» [6], which meant the introduction of national rules for merchant shipping in the straits. «This was done unilaterally, without consultation with other parties to the Montreux Convention» [7]. According to this regulation, «Turkey declared itself the right to suspend merchant shipping not only due to force majeure (natural disasters, accidents in the strait), but also for a number of less justified reasons (holding sports events, research); allowed to introduce restrictions and prohibit the passage of large-capacity tankers, introduced a permitting procedure for passage for non-military ships with a nuclear power plant or carrying radioactive cargo or waste, included provisions on mandatory pilotage and towing, contained the possibility of police and customs control in relation to transit ships» [6].

In 1998, a new regulation was issued that replaced the 1994 document [8]. It mentioned the right of the Turkish authorities to block the passage of ships not only to investigate cases of accidents or grounding, but also in accordance with domestic Turkish law, as well as the right to block traffic in

the straits for «public safety requirements», as well as for «the purposes improving the well-being of society». The conditions for the transportation of oil and the passage of ships with nuclear engines or with radioactive or hazardous cargo and waste were combined.

In 2002, a special Instruction for the Application of the 1998 Regulation was issued [9]. It has «tightened national rules for the passage of tankers and other large-capacity vessels 250-300 meters long and with a displacement of 50,000 tons or more through the straits, including a ban on oncoming traffic in the straits for the duration of their passage» [9]. A temporary suspension of traffic is expected for ships over 200 meters or more when passing through the Istanbul Strait (Bosphorus) and over 250 meters long when passing through Çanakkale (Dardanelles). This Instruction by establishing mandatory pilotage for ships directly violates the Convention.

Moreover, in 2018 «Instructions for the Application of the Rules for the Traffic of Sea Vessels through the Turkish Straits were issued» [10]. This document established equating civilian ships with combat cargo to combat ships which may affect Russian national interest. Since the 2015 the supply of Russian weapons to Syria has been organized through Bosphorus. For that reason, the passage regime will influence the Russian ability to counter security threats in the Middle East. However, to a greater extent, it also concerns the US attempts to strengthen the naval component of its allies in the Black Sea, which is undoubtedly beneficial for the Russian Federation, given the priority of protecting the southern borders.

In conclusion, it should be said that the Regulations of 1994 and 1998, the instructions of 2002 were adopted and developed by Turkey in violation of the provisions and spirit of the Montreux Convention. The tendency indicates that Turkey intended to completely replace the regime of the Montreux Convention with its national legislation, even though the 2022 precedent shows the opposite. Turkey often replaces the concept of «freedom of navigation» with the concept of «ensure the safety of navigation», placing the second above the first.

Turkey insists on its full sovereignty over the straits while being a littoral state. The government claims to ensure «the free and safe navigation, the protection of the marine environment, cultural heritage and human life». In fact, the Convention indicates Turkey's incomplete or limited sovereignty over the straits because unilateral changes to the rules of the passage without



consulting to other signatory states are restricted. The maritime regime here is the subject of international legal regulation rather than domestic law. In that case the construction of the new Istanbul Canal [11] raises serious questions: whether the presence of NATO warships in the canal be limited to 21 days as well as in the Black Sea Basin or will the construction of a second canal become the basis for the erosion of the Montreux regime.

However, the President of Turkey stated that the Istanbul Canal has no connection with the Montreux Convention. It will be an achievement for Turkey since it will help to seriously unload the Bosphorus from the point of view of environmental protection. The Istanbul Canal will become an object of state property of the relevant jurisdiction and all the ensuing consequences. According to Recep Tayyip Erdoğan the Republic will fully control any movement from the Black to the Sea of Marmara and back. Respectively, this path will become a more effective lever of influence than the Bosphorus. Moreover, it is necessary to note a few important factors. In 2011, during the election campaign, while still being Prime Minister Erdoğan made a promising statement about navigation in the Bosphorus that will be completely stopped after the completion of the construction [12]. Definitely, the construction of the Istanbul Canal will strengthen the political influence of Ankara in the region and increase the significance of Istanbul as a crucial geostrategic staging post and a stumbling block for the interests of the great powers.

Simultaneously, Istanbul Canal turned to compete with North-South Project of international transport corridor, which will pass from Russia to India through Tehran bypassing the busy Suez Canal and – partly – Black Sea Straits. With the construction of the Istanbul Canal, Turkey will gain leverage of economic pressure. Ankara strives to become a hub that unites North, South, West, and East. It is precisely with this that the activity in the post-Soviet space, in the Middle East, and in North Africa is connected. Turkey can become a huge hub, so the use of its geopolitical position to unite other countries through infrastructure projects is crucial, but at the same time it might limit the export of Russian oil and oil products. More than half of the world's oil is transported by sea. The Bosphorus Strait is one of the most important maritime routes for transporting oil and oil products from Russia (the main sea export of oil from Novorossiysk goes through the Black Sea straits). It is estimated that about 3 million barrels of oil per day and 20 million tons of petroleum products per year are exported through the Black

Sea straits. Hydrocarbon raw materials play an important role in the foreign trade of the Russian Federation, mainly Russia exports oil and oil products, gas, coal [13]. About 38 % of Russian exports of oil and oil products pass through the Bosphorus and the Dardanelles [14]. For that reason, the construction of Istanbul Canal poses threats even to Russian economic interests and other countries energy security. Therefore, given the intensification of the infrastructure development of the North-South Project, importance of Russian logistic connections with the Middle East and other geopolitical considerations, the Istanbul Canal is clearly not in Russian interest.

Nevertheless, Bosphorus and Dardanelles are not the only straits which legal status can pose military threat to Russian national security. Kerch strait represents an interesting case as well: due to its legal status and specific geopolitical importance for the Russian Federation (because of the passage to the Azov Sea and the crucial infrastructure) it becomes a vulnerable spot for Russia, which ultimately leads to increased insecurity.

While analyzing legal status of the Kerch strait we should refer to the bilateral agreement between Russia and Ukraine on cooperation in the use of the Sea of Azov and the Kerch Strait (2003) [15]. According to the document, these water areas are declared «inland waters of Russia and Ukraine; the “historical” nature of such a legal status is especially emphasized; because the state border is not defined, and the sovereignty of Russia and Ukraine exists, then the need to delimit the Sea of Azov by the line of the state border is fixed by concluding a bilateral agreement; the inadmissibility of unilateral actions to change the status or draw the state border» was highlighted[15]. In that case non-military vessels and warships beneath the flag of Russia or Ukraine revel in freedom of navigation in the Sea of Azov and the Kerch Strait. At the same time «merchant vessels under the flags of third countries may enter this water area if they are heading to or returning from a Russian or Ukrainian port». Visits of foreign vessels can also be carried out in the above-mentioned ports in agreement with both parties.

After 2014, the situation has changed: if the state border is drawn, Ukraine can no longer claim a demarcation in proportions of 70 to 30 in its favor, or even 50 to 50. In the case of using the median (equidistant) line method, this delimitation is possible in the proportion of 80 to 20 in favour of the Russian Federation. Ukraine's position in this regard also changed: the

government stated that «the category of "historical waters" was not clarified and therefore it cannot be considered an established norm of customary international law». Moreover, there is no global practice of simultaneous recognition water areas as interior historical waters of 2 states. Such a legislative decision cannot be set up unilaterally; it requires the consent of the international community. The problem is also that according to the current Ukrainian position, the 2003 Treaty violates the rights of third countries. For that reason, they advocate shaping zones of sovereignty and jurisdiction of Russia and Ukraine in a way which will permit third countries to obtain certain rights to use its spaces and resources.

Considering the vivid confrontation, the question arises whether the Sea of Azov represents *internal historical waters* or, more precisely, a *historical bay*. In the Convention on the territorial sea and the contiguous zone of 1958 and the Convention on the Law of the Sea of 1982, the internal waters of the state include bays, the distance between the points of natural entry into which does not exceed 24 nautical miles. However, this provision does not apply to the so-called historical bays. The Conventions do not give a definition of what a "historic bay" is. There are no rules regarding the delimitation of internal waters, and in the case of the Sea of Azov, the waters of the historic bay, between the two states. On practice, these waters are indeed of great defense and strategic importance for Russian Federation and before 2014 there was obviously a silent international consent on bilateral sovereignty over the Azov Sea.

After the events of 2022, «the Sea of Azov has de facto become an inland Russian sea, which means that previous treaties and conventions are inapplicable to the Kerch Strait». However, the Russian side has not yet consolidated this fact at the doctrinal level, and recognition by the international community in the medium term should not be expected.

In the current situation of ongoing conflict, the key provisions of existing security architecture need to be revised to create a strong security regime. In case of the Dardanelles and Bosphorus the regulations should be tightened and still based on strict adherence to the Montreux Convention. The maritime regime should not fall under the Turkish domestic jurisdiction. In case of the Kerch Strait and new territories, their legal status should be de jure enshrined in a regional agreement. However, this, perhaps, will be possible only in the long term.

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