

**The Montreux Convention and a Black Sea Presence: Leveraging Law to Enable  
Operational Capabilities**

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
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1. REPORT DATE (DD-MM-YYYY) 13-02-2022		2. REPORT TYPE FINAL		3. DATES COVERED (From - To) N/A	
4. TITLE AND SUBTITLE "The Montreux Convention and a Black Sea Presence: Leveraging Law to Enable Operational Capabilities"				5a. CONTRACT NUMBER N/A	
				5b. GRANT NUMBER N/A	
				5c. PROGRAM ELEMENT NUMBER N/A	
6. AUTHOR(S) LCDR Adam Aliano, JAGC, USN				5d. PROJECT NUMBER N/A	
				5e. TASK NUMBER N/A	
				5f. WORK UNIT NUMBER N/A	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)  Writing & Teaching Excellence Center Naval War College 686 Cushing Road Newport, RI 02841-1207				8. PERFORMING ORGANIZATION REPORT NUMBER N/A	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)  N/A				10. SPONSOR/MONITOR'S ACRONYM(S) N/A	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S) N/A	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution Statement A: Approved for public release; Distribution is unlimited.					
13. SUPPLEMENTARY NOTES A paper submitted to the faculty of the NWC in partial satisfaction of the requirements of the curriculum. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.					
14. ABSTRACT  The 1936 Montreux Convention inherently restricts the ability of the U.S. and non-riparian NATO states to transit warships through the Turkish Straits and into the Black Sea. These restrictions become increasingly salient during periods of hostility in the Black Sea theater. Despite the Montreux Convention's limitations on allied surface presence in the Black Sea, cognizant Commander, U.S. European Command ("EUCOM") can leverage legal aspects of the convention to enable operational capabilities in theater. Notably, EUCOM can work with NATO partners to establish a multi-national surface action group to maximize the permissible warship presence in the Black Sea in accordance with the Montreux Convention. Moreover, in conjunction with riparian states and NATO partners, commanders can utilize the Danube River and Danube-Black Sea Canal to increase the on-station time of forces in the Black Sea. Lastly, EUCOM can leverage the inherent transit flexibility afforded auxiliary ships in the Montreux Convention to create operational opportunities in the Black Sea theater.					
15. SUBJECT TERMS (Key words) Montreux Convention; Maritime Operations; Black Sea					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT  N/A	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON Director, Writing Center
a. REPORT UNCLASSIFIED	b. ABSTRACT UNCLASSIFIED	c. THIS PAGE UNCLASSIFIED			19b. TELEPHONE NUMBER (include area code) 401-841-6499

## Introduction

A central tenant of operational planning requires that commanders account for potential limitations that pertinent nations—and attendant legal regimes—may impose on “friendly” operations.<sup>1</sup> As present-day Russian aggression in Ukraine endures, the United States and allied forces must assess what naval theorist Milan Vego termed “externally imposed limitations” apply throughout the Black Sea theater of operations.<sup>2</sup> One of the most significant—and ultimately restrictive—limitations on potential allied operations in the Black Sea derives from the 1936 Montreux Convention (hereinafter “Montreux” or “Convention”).<sup>3</sup> The agreement “governs the transit of the Turkish Straits [the Dardanelles and Bosphorus] for merchant vessels, vessels of war, and aircraft.”<sup>4</sup> Should the United States or its allies wish to access the Black Sea to conduct maritime operations with surface forces, they must transit the Turkish Straits (hereinafter “Straits”) to do so—thus, implicating Montreux. In addition to peacetime limitations, the Convention affords Turkey “the [sole] legal authority to control the passage of warships through the Straits during war.”<sup>5</sup> Turkey thus retains the unfettered ability to unilaterally declare the existence of war and determine which states are a party to the conflict. Turkey can then limit access to the parties deemed “belligerent.” Through Montreux, Ankara can also restrict access to *any* party it deems appropriate should it believe it is involved in hostilities or is threatened with an attack on its homeland.

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<sup>1</sup> Milan N. Vego, *Joint Operational Warfare: Theory and Practice* (Newport, RI: U.S. Naval War College, reprint, 2009), IX-35.

<sup>2</sup> Ibid.

<sup>3</sup> The Convention was originally titled the “1936 Convention Regarding the Regime of the Straits.”

<sup>4</sup> Mark Nevitt, “The Russia-Ukraine Conflict, the Black Sea, and the Montreux Convention,” *Just Security*, 28 February 2022, <https://www.justsecurity.org/80384/the-russia-ukraine-conflict-the-black-sea-and-the-montreux-convention/>. Importantly, Montreux governs the transit of the Turkish Straits and not the U.N. Convention on the Law of the Sea (UNCLOS). UNCLOS, “the ‘Constitution of the Oceans,’ governs transit passage through international straits worldwide. Article 35 clarifies that UNCLOS does not apply to “long-standing international conventions in force. The upshot: Montreux Convention's restrictive provisions, and not UNCLOS, govern the Turkish Straits, which enjoy a truly unique legal status in international transit governance.”

<sup>5</sup> Ibid.

As stated, even in peacetime, Montreux transit restrictions limit the quantity and type of warship the United States can bring to bear in the Black Sea. Thus, it is integral that Black Sea theater commanders—specifically Commander, U.S. European Command (hereinafter “EUCOM”<sup>6</sup>)—understand the scope of Montreux restrictions and its attendant effects when planning operations. *However, despite Montreux's inherent limitations, EUCOM can leverage provisions of the Convention to enable operational maritime capabilities in the Black Sea—especially during ongoing hostilities in theater.* First, EUCOM can work with NATO partners to establish a permanent Black Sea surface presence by establishing a rotational Montreux-compliant Black Sea surface action group (“SAG”). Second, allies can leverage Danube River and Danube-Black Sea Canal access to maximize on-station time for warships in the Black Sea by tolling Montreux's twenty-one-day limitation. Lastly, per Montreux, allies can utilize auxiliary surface platforms to freely transit the Straits, enabling multi-mission capabilities in the Black Sea.

### **Leveraging the Law to Enable Operational Objectives**

In February 2022, Turkey invoked Article 19 of Montreux and declared that hostilities in Ukraine equated to “war.” Turkey further specified that both Russia and Ukraine were “belligerents,” thus preventing their ability to transit warships through the Turkish Straits unless returning to their homeport in the Black Sea.<sup>7</sup> Absent Turkey’s future designation of the United States (or other allied nations) as a “belligerent,” the United States will likely retain the ability to

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<sup>6</sup> EUCOM is dual-hatted as NATO’s Supreme Allied Commander, Europe.

<sup>7</sup> Kemal Kirişçi, “Erdoğan’s straits of indecision in the Russia-Ukraine war,” *Brookings Institute*, 28 February 2022, <https://www.brookings.edu/blog/order-from-chaos/2022/02/28/erdogans-straits-of-indecision-in-the-russia-ukraine-war/>. In accordance with Article 19 of the Montreux Convention, if Turkey declares the United States—or any other ally—a wartime “belligerent,” that country is barred from transiting *any* warships through the Turkish Straits whatsoever. Article 21 of the Convention also permits Turkey to issue a total ban on warships of another country if it determines it—as a state—is in immediate danger of an imminent threat from that country. However, if the country is a riparian Black Sea state, it can *return* warships to their homeport of origin—and thus through the Straits as applicable.

transit warships through the Turkish Straits to meet operational demands.<sup>8</sup> In light of ongoing hostilities in the Black Sea theater, an allied surface presence may be required to respond to humanitarian fallout, deter escalatory behavior, or conduct kinetic operations should the conflict spill outside of Ukrainian territory, thus further implicating Montreux.<sup>9</sup>

As mentioned, even in peacetime, the United States and its NATO allies are bound by several operative provisions of Montreux. First, the Convention prohibits the transit of submarines and aircraft carriers of any non-Black Sea (“non-riparian”) state from transiting the Turkish Straits.<sup>10</sup> Montreux further restricts non-riparian states to an aggregate of nine warships with an aggregate displacement of 45,000 tons in the Black Sea at any time.<sup>11</sup> The maximum allowable tonnage for any *one* non-riparian state is 30,000 tons.<sup>12</sup> Moreover, non-riparian states must notify Turkey at least fifteen days before a planned transit, and each warship is limited to no more than twenty-one days in the Black Sea.<sup>13</sup> These limitations effectively impede the ability of U.S. surface ships—and non-riparian allies—to respond to events in the Black Sea and ultimately governs which platforms commanders designate for operations therein.<sup>14</sup>

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<sup>8</sup> “1936 Convention Regarding the Regime of the Straits,” adopted 20 July 1936, *Center for International Law*: 8, <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1936-Convention-Regarding-the-Regime-of-the-Straits.pdf>. There is evidence that Turkey tacitly invoked Article 21 of the Montreux Convention by barring all warships, regardless of country of origin, from transiting the Turkish Straits. That being said, it is arguable whether this action was legally justifiable. Pete Pedrozo, “Closing the Turkish Straits in Times of War,” *Articles of War*, 3 March 2022, <https://lieber.westpoint.edu/closing-turkish-straits-war/>. This paper assumes that the world is operating under an Article 19 invocation only (i.e., there is a war between Russia and Ukraine only, and those two countries are the only belligerents prevented from transiting the Strait). I briefly analyze the operative “wartime articles” as they relate to auxiliary ships in the Black Sea later in this paper.

<sup>9</sup> This paper will not detail the potentialities of the conflict in Ukraine. I argue that having a surface presence in the Black Sea ready to respond while shortening the transit time and decreasing operations through a narrow sea during potential hostilities is desirable.

<sup>10</sup> “1936 Convention Regarding the Regime of the Straits,” 16-17.

<sup>11</sup> *Ibid.*, 7-8.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.* Montreux does not restrict the number of ships that riparian Black Sea states can transit through the Turkish Straits. Riparian submarines, but not ships whose primary function is carrying aircraft (read, aircraft carriers), are permitted to transit the Straits. There are no restrictions on merchant vessels of any state.

<sup>14</sup> Even in Humanitarian Aid and Disaster Relief missions, Montreux limits non-riparian surface unit access to the Black Sea. “Article 18(d) of the Convention provide[s] that if one or more non-riparian states wish to send naval forces into the Black Sea for humanitarian purposes they will be allowed to enter the Black Sea without the notification required by Article 13 [a prior notification 15 days before the entrance] if they do not exceed total tonnage of 8,000 tons altogether. However, non-riparian states *must* obtain authorization from the Turkish

Despite these legal controls, theater commanders retain several pursuable options—albeit limited ones—should they be tasked to provide a surface presence in the Black Sea. Notably, these options are tailored to the above-mentioned treaty provisions to balance legal compliance with furthering operational objectives.

### *Black Sea Presence through the NATO Alliance*

No NATO warships have entered the Black Sea since late 2021.<sup>15</sup> In the present Montreux regime,<sup>16</sup> it would take at least fifteen days before even one allied warship could transit the Turkish Straits due to Montreux notice requirements—significantly delaying allied surface unit response time. To mitigate the effects of the Montreux-imposed delay and provide a responsive surface presence in the Black Sea, theater commanders should leverage NATO allies to establish a legally compliant multinational standing surface action group (SAG).<sup>17</sup> In recent years, the United States—and, importantly, Turkey—already signaled a willingness to augment an increased NATO maritime presence in the Black Sea.<sup>18</sup> Notably, there is a contemporary precedent for this type of NATO force to serve as a blueprint for future operations. As recently as July 2021, NATO established Standing NATO Maritime Group Two (SNMG2) “to

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government, and Turkey must immediately inform the Black Sea powers about the request. If there is no objection from Black Sea powers within 24 hours of receiving this information, Turkey should reply within 48 hours to the government which requested the passage. Additionally, this tonnage counts against the [non-riparian aggregate] tonnage limitation (45,000 tons).” (emphasis added). Kurtuluş Yücel, “The Legal Regime of the Turkish Straits: Regulation of the Montreux Convention and its Importance on the International Relations after the Conflict of Ukraine,” Ph.D. diss., (Johann Wolfgang Goethe-University, 2019), 212.

<sup>15</sup> Cem Devrim Yaylali, “Foreign Warships on Bosphorus,” *Bosphorus Naval News*, accessed April 28, 2022, <https://turkishnavy.net/foreign-warship-on-bosphorus/foreign-warship-on-bosphorus-in-2021/>.

<sup>16</sup> By this, I mean that Turkey only designated Russia and Ukraine as belligerents under Article 19 of the Convention. Again, it is arguable whether Turkey invoked Article 21 and barred all warships from entering the Straits. Here, based on public discourse and a textual interpretation of the Convention, the Article 19 “regime” governs.

<sup>17</sup> Allied Maritime Command, “NATO Ship Sails into the Black Sea,” accessed 20 March 2020, <https://mc.nato.int/media-centre/news/2021/nato-ship-sails-into-the-black-sea>.

<sup>18</sup> Joshua Kucera, “Erdogan, In Plea To NATO, Says Black Sea Has Become ‘Russian Lake,’” *eurasianet*, 12 May 2016, <https://eurasianet.org/erdogan-plea-nato-says-black-sea-has-become-russian-lake>.

conduct...routine operations and to participate in [joint] exercises [in the Black Sea].”<sup>19</sup> SNMG2 worked closely with Black Sea states to “improve interoperability, practice NATO standard procedures, tactics and techniques.”<sup>20</sup> The SNMG2 is a component of NATO’s already-established Very High Readiness Joint Task Force (VJTF)—a multilateral organization that maintains continual readiness to respond to crises immediately.<sup>21</sup> Within this construct, EUCOM should work closely with NATO counterparts to stand up a rotational SAG that maximizes the permissible aggregate tonnage for non-Black Sea states under Montreux (i.e., nine warships and 45,000 aggregate tons and no more than 30,000 tons per nation).<sup>22</sup> The rotational aspect of the SAG is essential to establish an enduring surface presence. NATO can consolidate Straits transit permissions with Turkey to rotate non-riparian warships into the Black Sea on or before the twenty-first day of operations in the Black Sea—while also adhering to the fifteen-day notice requirement. As discussed below, Montreux’s permissive posture regarding auxiliary ships would also increase the on-station time of the Black Sea SAG in theater.<sup>23</sup> Ultimately, the rotational SAG would supplement Romanian and Bulgarian (riparian) warships, ensure a seamless allied presence in the theater, and mitigate Montreux Convention delays in crisis

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<sup>19</sup> Allied Maritime Command, “NATO Ship Sails into the Black Sea.”

<sup>20</sup> Ibid.

<sup>21</sup> Allied Maritime Command, “The Very High Readiness Task Force,” accessed 28 March 2022, <https://shape.nato.int/steadfast-defender/media-centre/questions-and-answers/the-very-high-readiness-joint-task-force>.

<sup>22</sup> Craigkn, “Optimal Black Sea NATO SAG and the Montreux Convention,” *Command: Modern Operations Series Blog*, 27 January 2022, <https://www.matrixgames.com/forums/viewtopic.php?p=4950996>. A hypothetical example of an optimized Montreux compliant multinational SAG would be as follows:

“U.S.:

- (1) Ticonderoga-class CG (9,466 tons);
- (2) 2 x Arleigh Burke Block IIA-class DDG (9,217 tons)

Total: 27,900 total tons

NATO:

- (1) 1 x UK Type 45-class Batch 2 DDG (8,000 tons)
- (2) 1 x Spanish Modified Alvaro De Bazan (F100)-class FFG (6,041 tons)

Total: 14,041  
Total SAG tonnage: 41,941.”

<sup>23</sup> “1936 Convention Regarding the Regime of the Straits,” 6.

response.<sup>24</sup> This option is firmly compliant with Montreux provisions and likely incurs little-to-no legal risk for operational commanders.

### *Danubian Operations*

The broader NATO alliance can leverage both the Danube River and Danube-Black Sea Canal to minimize response time delays and enhance its presence in the Black Sea. Both bodies of water connect to the Black Sea and yield unique legal carve-outs in Montreux for non-Black Sea states. Utilizing the Danube River implicates the 1949 Convention Regarding the Regime of Navigation on the Danube River (“Danube River Convention”).<sup>25</sup> Article 30 of the Danube River Convention specifically governs naval vessels within the waterway. The article prohibits *all* non-Danubian naval vessels from navigating the river. Further, it directs that naval vessels of a Danubian state cannot navigate naval vessels beyond their corresponding territorial jurisdiction of the river without permission from the country that borders that particular portion of the Danube.<sup>26</sup> Notably, Germany is “[t]he only Danubian country that is not on the Black Sea but still has a navy....”<sup>27</sup> Germany, then, is uniquely situated to provide support to the multilateral presence in the Black Sea. The Danube Convention offers Germany, and by extension NATO, the ability to quickly toll the twenty-one-day (Article 18(2)) Montreux requirement in the Black Sea. In practice, Germany can circumvent Montreux’s non-riparian temporal limit by garnering permission from Romania to enter its Danubian water space—exiting the Black Sea—and

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<sup>24</sup> Stephen J. Flanagan, Anika Binnendijk, Irina A. Chindea, Katherine Costello, Geoffrey Kirkwood, Dara Massicot, and Clint Reach, “Russia, NATO, and Black Sea Security,” (Santa Monica, CA: RAND Corporation, 2020), [rand.org/pubs/research\\_reports/RRA357-1.html](https://rand.org/pubs/research_reports/RRA357-1.html): 157.

<sup>25</sup> “Convention Regarding the Regime of Navigation on the Danube,” signed August 18, 1948, *League of Nations Treaty Series, Volume XXVI*. <http://www.danubecommission.org/uploads/doc/convention-en.pdf>. The Convention governs the navigable portion of the Danube river—and attendant bordering states—between Ulm and the Black Sea.

<sup>26</sup> “Convention Regarding the Regime of Navigation on the Danube,” 6.

<sup>27</sup> Luke Coffey, “To Boost NATO’s Presence in the Black Sea, Get Creative,” *Defense One*, 30 May 2020, <https://www.defenseone.com/ideas/2020/05/increasing-natos-presence-black-sea-time-get-creative/165760/>.



quickly returning with prior permission from Turkey restarting another twenty-one-day clock under Montreux.

Similarly, the Danube-Black Sea Canal in Romania offers an additional option for non-Black Sea state operational commanders to toll Montreux's time limitations in theater.<sup>28</sup> Much like the Danube River route, pre-arranged Romanian consent to enter its internal waters would be required. However, this option is more restrictive than the Danube River option, as the maximum allowable draft in the canal is 5,000 tons.<sup>29</sup> However, the Danube Convention does not govern passage in the canal. Absent those restrictive provisions, the canal route is thus open to *any* state that seeks to utilize it so long as it garners Romanian consent. Despite the limited tonnage restriction in the canal, several platforms in the allied inventory can take advantage of this option. For example, the United States' Littoral Combat Ship (LCS) displaces a mere 3,450 tons, making it a suitable platform to take advantage of this exception to the Convention. NATO commanders could feasibly attach one LCS—or more—to the Black Sea SAG and retain a continual presence with minimal interruption by tolling the twenty-one-day Montreux clock by transiting into the canal for even a brief period.

Though these Danube-centric options are seemingly more esoteric—and arguably less operationally impactful—than the rotational SAG described above, they are nevertheless wholly compliant with the Montreux Convention and provide added operational flexibility for theater commanders.

### *Multi-mission Auxiliary Ships*

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<sup>28</sup> Ibid.

<sup>29</sup> The Shipping Platform, "Danube-Black Sea Canal Port Restrictions," accessed 12 April 2022, <https://shipnext.com/port/danube-black-sea-canal-rou>.

A unique operational capability that NATO and U.S. theater commanders retain at their disposal centers on the auxiliary ship provision within Montreux. This avenue allows commanders to provide an at-sea presence and increased operational flexibility in the Black Sea.<sup>30</sup> Article 9 of the Convention specifies that “vessels...designed for the carriage of fuel...shall not be subject to the provisions...regarding [warship] notification, nor shall they be counted for the purpose of calculating the tonnage which is subject to limitation....”<sup>31</sup> Thus, auxiliary ships do not require a fifteen-day notice, nor is there a limitation on the displacement of auxiliaries in the Black Sea. These vessels may also carry limited armament onboard and still qualify for the exceptional status under the Convention. Montreux offers that a unit's armament “for use against floating targets, [no] more than two guns of a maximum calibre of 105 millimeters; for use against aerial targets, [no] more than two guns of a maximum calibre of 75 millimeters.”<sup>32</sup> At a minimum, the unfettered ability for non-riparian states to transit auxiliary ships to the Black Sea enhances operational capability for allied commanders while increasing the on-station time for friendly warships in the theater.<sup>33</sup> The ability to refuel and resupply without tonnage or time restrictions further mitigates potential gaps for the proposed NATO Black Sea SAG. Warships can extend their operational breadth without the need to exit the Black Sea for critical supplies and fuel—making adherence to the twenty-one-day Montreux clock the only actual limitation for warships in the Black Sea.

Importantly, there is nothing codified in the Montreux Convention limiting an auxiliary ship's operational functionality once in the Black Sea. The Convention merely restricts what an auxiliary ship can carry aboard *through* the Turkish Straits (i.e., primarily fuel and limited

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<sup>30</sup> Pete Pedrozo (Howard S. Levie Professor on the Law of Armed Conflict, U.S. Naval War College, Stockton Center for International Law), in discussion with the author, 21 March 2022.

<sup>31</sup> “Convention Regarding the Regime of Navigation on the Danube,” 6.

<sup>32</sup> Ibid.

<sup>33</sup> The only textual limitation in Montreux is likely the nine-warship maximum threshold per country. In reading Montreux, auxiliaries likely count in this tally.

armament). Arguably, the Convention even explicitly affords latitude for auxiliary ship operations in the Black Sea. Though Annex II of Montreux broadly defines auxiliary vessels as a subset of “warship,”<sup>34</sup> it allows them to be “employed on fleet duties or as troop transports, or in some other way than as fighting ships....”<sup>35</sup> The Convention does not spell out what “fleet duties” are—providing commanders with operational leeway. Moreover, not only can auxiliary ships supplement the maritime units in theater, but they can also augment troop movements throughout it.<sup>36</sup> Thus, it is feasible that auxiliary ships be used to augment ship-to-shore troop transfers and support special operations and aviation activities as needed. Auxiliary ships can also play a significant role in humanitarian aid missions as they can shift supplies and personnel to shore and even serve as an extraction platform should the need arise.

Without any “mission” limitation in the Convention, commanders can outfit auxiliary ships with a full medical staff complement and attendant equipment to support humanitarian operations from the sea. This multi-functional capability is increasingly valuable in light of recent Black Sea history. During Russia’s invasion of South Ossetia in 2008, the U.S. attempted to send two hospital ships, the USNS MERCY and USNS COMFORT, into the Black Sea to afford Georgia humanitarian aid.<sup>37</sup> As these hospital ships were re-designated tankers, they fell outside the wide latitude afforded a primary-function auxiliary ship. Thus, they fell subject to Montreux’s restrictions for non-riparian warships.<sup>38</sup> Further, under Montreux’s Article 18(d) exception for humanitarian support, there is a strict 8,000-ton limitation for each ship—which would also count against the aggregate 45,000-ton limitation.<sup>39</sup> As each hospital ship displaced

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<sup>34</sup> The effect of the subcategorization of “warship” in the Convention is detailed in the coming paragraphs.

<sup>35</sup> “Convention Regarding the Regime of Navigation on the Danube,” 16.

<sup>36</sup> Yücel, “The Legal Regime of the Turkish Straits,” 130.

<sup>37</sup> John C.K. Daly, “Analysis: Naval aspects of the South Ossetia confrontation,” *UPI*, 21 August 2008, <https://www.upi.com/Energy-News/2008/08/21/Analysis-Naval-aspects-of-the-South-Ossetia-confrontation/52431219349503/>.

<sup>38</sup> Yücel, “The Legal Regime of the Turkish Straits,” 211.

<sup>39</sup> *Ibid.*, 212.

over 69,000 tons, Montreux prevented them from transiting the Straits altogether. The United States changed course accordingly and transited two smaller warships to provide limited aid in Georgia.<sup>40</sup>

However, the Convention *does* contain restrictive provisions in its “wartime articles” for auxiliary ships.<sup>41</sup> Again, auxiliary vessels are “[recognized] on the same footing as vessels of war” within these articles and, as such, may be prevented from transiting the Straits should officials in Ankara deem it appropriate.<sup>42</sup> Should Turkey explicitly prevent the transit of allied warships through the Straits under Articles 19, 20, or 21 of the Convention, *all* warships—including auxiliary vessels—would be prohibited from entering the Black Sea.<sup>43</sup>

The auxiliary ship option yields another avenue for EUCOM—and allied commanders—to capitalize on while remaining firmly within the legal boundaries of Montreux. Though the operational capabilities that auxiliary ships provide may be limited, the above-mentioned measures can shift at least *some* operational burden from the proposed NATO SAG while providing added allied presence in theater without counting against Montreux’s quantitative restrictions.

### *Counterargument: Added Presence Tempts Escalation*

There is a colorable argument that leveraging the Montreux Convention to bolster allied surface presence in the Black Sea would tempt the escalation of tensions during an already precarious wartime setting. An added NATO presence could breed miscommunication in theater

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<sup>40</sup> “Montreux Convention to limit NATO’s defence of Ukraine against Russia,” *Ahval News*, 20 February 2022, <https://ahvalnews.com/turkey/montreux-convention-limit-natos-defence-ukraine-against-russia-ex-turkish-ambassador>.

<sup>41</sup> Here I use “wartime articles” to mean Articles 19, 20, and 21 of the Convention. Collectively, these articles focus on periods of hostility and afford Turkey the ability to limit passage through its Straits, according to the relevant article.

<sup>42</sup> “Convention Regarding the Regime of Navigation on the Danube,” 6.

<sup>43</sup> *Ibid.*, 9.

and risks further globalizing the ongoing conflict in Ukraine.<sup>44</sup> Communications between NATO and Russia are historically fraught with issues. At the doorstep of war, further operational activity in the Black Sea would only tempt miscalculation on both sides of a potential conflict.<sup>45</sup> Recent Black Sea history undergirds this assertion. As recently as 2021, during Operation Sea Breeze—a NATO maritime exercise in the Black Sea—Russia postured that they were victims of an aggressive and threatening multinational front near their territory.<sup>46</sup> There is no shortage of examples where seemingly routine operations near Russia enticed escalation due to misunderstandings in intentions. For example, in January 2022, American aircraft intercepted Russian warplanes operating in proximity to NATO airspace.<sup>47</sup> This situation typifies how a dearth of communication, even during benign periods, can quickly spiral with dire consequences. Further, as mentioned previously, Russia emphatically objected to *any* NATO transit of the Turkish Straits in 2008 as it conducted offensive operations in Georgia. Russia voiced that they were “growing alarmed” as NATO ships sailed into the Black Sea, offering that “NATO vessels [would] outnumber the ships in their fleet” in the theater.<sup>48</sup> During that conflict, the United States did transit three smaller warships to provide humanitarian aid to the Georgian coast but nevertheless “maneuvered in close proximity” to Russian warships in the Black Sea, leaving “the Kremlin deeply suspicious of American motives.”<sup>49</sup> Russian President Dimitri Medvedev publicly asserted that the Americans were transiting weapons under the guise of aid. At the same

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<sup>44</sup> I use the term “globalizing” purposefully here. Any threatened or actual attack on a NATO ship would likely trigger Article 5 of the NATO Treaty—likely enmeshing all NATO countries in the conflict to various extents.

<sup>45</sup> Julian Borger, “Ukraine crisis: miscalculation could trigger unintended wider conflict,” *The Guardian*, 13 February 2022, <https://www.theguardian.com/world/2022/feb/13/ukraine-crisis-miscalculation-could-trigger-unintended-wider-conflict>.

<sup>46</sup> Scott McCann, “The US isn’t doing itself any favors by conducting military exercises in Europe’s most tense region,” *Insider*, 12 July 2021, <https://www.businessinsider.com/us-does-itself-no-favors-with-black-sea-military-exercises-2021-7>.

<sup>47</sup> *Ibid.*

<sup>48</sup> Andrew Kramer, “NATO Ships in Black Sea Raise Alarms in Russia,” *The New York Times*, 27 August 2008, <https://www.nytimes.com/2008/08/28/world/europe/28russia.html>.

<sup>49</sup> *Ibid.*

time, the Kremlin's military leadership invoked the Montreux Convention to contest the presence, and number, of allied warships in the Black Sea.<sup>50</sup> Thus, it is easy to posit that added NATO presence, especially during periods of conflict, would only serve to place allied warships in close quarters with an already-engaged and exceedingly apprehensive Russian force. Those who favor steering clear of the Black Sea may argue that NATO should focus maritime operations in the Mediterranean Sea—just outside of the Turkish Straits. This tact would provide sufficient presence through long-range strike capabilities while mitigating the risk of miscalculation in close proximity to hostilities in the Black Sea.<sup>51</sup>

*Rebuttal: Black Sea Operations may be Necessary*

In his most recent posture statement to the Senate Armed Services Committee, EUCOM Commander General Todd Wolters stated that the command's “primary mission is to compete, deter, and respond to aggression [in the Euro-Atlantic area] with the full weight of the NATO Alliance.”<sup>52</sup> EUCOM positioned resources to support presence operations in all warfare domains throughout the theater to affect this mission. Specifically, EUCOM further detailed that operations *in* the Black Sea are vital to upholding obligations in accordance with the NATO Treaty and the concept of collective security. General Jeff Harrigan, Commander, U.S. Air Forces Europe, stated that “[c]onducting operations in the Black Sea ensures stability throughout the region. Our combined presence strengthens relationships with our allies and partners while sending a message to any adversary that we are committed to collective defense and ready to

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<sup>50</sup> Ibid.

<sup>51</sup> Jeffrey Frost, “Developing a Black Sea Strategy,” *U.S. Naval Institute Blog*, 27 May 2019, <https://blog.usni.org/posts/2019/05/27/developing-a-black-sea-strategy>.

<sup>52</sup> Tod D. Wolters, *United States European Command: Posture Statement*. [Washington, D.C.: s.n.], 2022, <https://www.eucom.mil/document/41165/general-wolters-fy2022-statement-to-the-senate-armed-services-committee>.

respond in a complex security environment....”<sup>53</sup> Thus, establishing a maritime capability in the Black Sea was, and now more than ever is, an operational priority for theater commanders.<sup>54</sup>

Though Russia will inevitably look askance at any allied transit of the Turkish Straits, these operations yield unparalleled operational capabilities that an over-the-horizon presence from the Mediterranean cannot. Though the over-the-horizon approach lends itself particularly well to power projection, it is likely to be effectively countered in a confrontation with Russia operating from its own shores. Due to time and distance issues, the approach is also less effective in myriad other mission sets—notably deterrence, Humanitarian Aid and Disaster Relief (HADR), and affecting the littorals.<sup>55</sup> Jim Townsend, the former Undersecretary of Defense for European and NATO policy, stated that “[with] the Black Sea specifically, so much of deterrence and dealing with other nations geopolitically has to do with *presence*...if you’re not there...then the assumption is you don’t care [about the region].”<sup>56</sup> (emphasis added). Arguably, the lack of an allied Black Sea presence since late 2021 left the theater a “major exposed flank” upon which Russia felt free to capitalize in their invasion of Ukraine.<sup>57</sup> Presence and, by default, deterrence, in the Black Sea may have at least impacted the Kremlin’s decision-making calculus for invasion.

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<sup>53</sup> Renae Pittman, “Black Sea: All domains, all day,” *U.S. European Command*, 23 July 2020, <https://www.eucom.mil/article/40604/black-sea-all-domains-all-day>.

<sup>54</sup> An important caveat to this posture is that the recommendations in this paper do not connote a *must* for commanders. Policymakers and strategic decision-makers should use their best judgment on when, if at all, to increase operations in the Black Sea in the national—and international—interest. These recommendations aim to provide the most effective and legally sufficient opportunities for operational commanders to pursue should they be directed to operate in the Black Sea.

<sup>55</sup> Frost, “Developing a Black Sea Strategy.”

<sup>56</sup> Alison Bath, “US Navy and NATO presence in the Black Sea has fallen since Russia took part of Ukraine, figures show,” *Stars and Stripes*, 28 January 2022, <https://www.stripes.com/theaters/europe/2022-01-28/sporadic-nato-patrols-in-black-sea-leaving-void-for-Russians>.

<sup>57</sup> John Irish, Robin Emmott, and Jonathan Saul, “NATO leaves Black Sea exposed as Russia invades Ukraine,” *Reuters*, 24 February 2022, <https://www.reuters.com/world/europe/nato-leaves-black-sea-exposed-russia-invades-ukraine-2022-02-24/>.

Moreover, particular Montreux Convention restrictions *severely* limit the operational responsiveness of allied maritime forces should they need to operate in the Black Sea. Even in emergency humanitarian aid missions, non-riparian surface unit access to the Black Sea is limited.

Article 18(d) of the Convention provide[s] that if one or more non-riparian states wish to send naval forces into the Black Sea for humanitarian purposes they will be allowed to enter the Black Sea without the notification required by Article 13 [a prior notification 15 days before the entrance], if they do not exceed total tonnage of 8,000 tons altogether. However, the Turkish government must authorize the request and immediately inform the Black Sea powers about the request. If there is no objection from Black Sea powers within 24 hours of receiving this information, Turkey should reply within 48 hours to the government which requested the passage. Additionally, this tonnage of the humanitarian aid will be included in the [non-riparian aggregate] tonnage limitation (45,000 tons).<sup>58</sup>

The operative provision of the Montreux Convention is that *all* Black Sea powers must agree to permit a non-riparian ship to conduct humanitarian operations. As Russia is one of the “Black Sea Powers” and is likely to object to any NATO presence therein, this temporal carve-out for humanitarian assistance is probably unavailing. In the ordinary course of operations, should NATO need to respond to events within the Black Sea, Montreux Article 13 applies, delaying allied at-sea response by *fifteen* days. This significant delay may prove decisive amid fast-moving hostilities in Ukraine.

Lastly, in a worst-case scenario, the United States should have contingent Black Sea plans ready in the event that hostilities in Ukraine spill over into bordering NATO countries (namely, Romania, Bulgaria, Slovakia, Lithuania, and Poland). An “attack” within the territory of those nations may ultimately trigger Article 5 of the NATO Treaty, wherein an attack on one country can be considered an attack on all.<sup>59</sup> This invocation of Article 5 may *require* a NATO

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<sup>58</sup> Yücel, “The Legal Regime of the Turkish Straits,” 212.

<sup>59</sup> North Atlantic Treaty Organization, “Collective defence—Article 5,” last updated 24 March 2022, [https://www.nato.int/cps/en/natohq/topics\\_110496.htm](https://www.nato.int/cps/en/natohq/topics_110496.htm).



presence in the Black Sea—depending on the consultation and decision of NATO and its individual states. This course of events, coupled with the built-in delays inherent in the Montreux Convention, may hamstring an effective response by operational commanders.

### **Conclusion**

“Lawfare” is a term sometimes used pejoratively. Laws, regulations, and treaties are often considered prohibitive of operational effectiveness. However, General Charles Dunlap provided a more pragmatic and favorable way to view the concept of “lawfare” by defining it as “the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective.”<sup>60</sup> The Montreux Convention, on its face, restricts the amount and type of platform EUCOM and allied maritime forces can send into the Black Sea. The provisions of the Convention affect operational planning in myriad ways, especially the component force a nation can bring to bear to accomplish objectives in the Black Sea. These restrictions increase salience during periods of conflict, such as the present day. However, a keen understanding of the Convention can yield comparative advantages against competitors operating under the same instrument in the Black Sea. Grasping the limitations of the Montreux Convention and culling the inherent operational latitude within the text of the treaty can afford commanders potentially impactful operational opportunities.

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<sup>60</sup> ML Cavanaugh, “The Law in Strategy: Lawfare’s limits value, and future,” *Strategy Notes*, 11 October 2021, <https://www.strategynotes.co/p/the-law-in-strategy?s=r>.

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