

THE POLITICAL FEASIBILITY OF THE ISTANBUL CANAL PROJECT

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ABSTRACT Popularly referred to as the “crazy” project, Turkish Prime Minister Recep Tayyip Erdoğan’s Istanbul Canal Project has been debated vigorously since its proposal prior to the 2011 elections in the country. While some questioned its economic and ecological feasibility, others carried the discussion towards the Project’s political implications. In addition to evaluating these debates, in this policy brief we discuss the Project through a historical perspective that includes the dynamics of the 1936 Montreux Convention. We argue that the feasibility of the Canal Project is valid only after certain changes are made in the application of the Montreux Convention. However, we conclude that this may lead to an outcome in which the signatories would question the legitimacy of the Convention under present conditions.

Introduction

Proposed by Prime Minister Recep Tayyip Erdoğan’s in an election campaign speech on April 29, 2011 and often referred to as the “crazy” project, the Istanbul Canal Project that will connect Black Sea and the Sea of Marmara bypassing the Strait of Istanbul, has elicited many questions and criticisms. While some mentioned the ecological damage that the Project may cause, others referred to the consequences of a possible rentier economy that it might lead to. There were also others who argued that the potential resources

that would be spent on the Project could be used more efficiently.

Despite being an election pledge, the Prime Minister’s statement was taken seriously by almost everyone (excepting his political opponents). Indeed, land speculation started in the area that the canal is estimated to pass through, and Ankara representative of the country that is sensitive about the status of the Straits made a statement.

We do not yet know how much work has been done on this proposed canal project, or how feasible it is. Yet, we also take the Prime Minister’s statement seriously and fundamentally believe that the construct-

ion of a waterway that would bypass the Istanbul Strait would be a fair decision that could also minimize the risk of accidents. (We naturally attach importance to the security of the city of Istanbul.)

According to the data of the Undersecretary of Navigation, 50,871 vessels passed through the Istanbul Strait in 2010. We can add that this number – and hence the risk of accidents – will increase as the trade capacities of the countries of the Black Sea basin expand. Additionally, considering the petroleum and the other dangerous items that are transported from the shores of the Black Sea - first and foremost from the Port of Novorossisk – to the world markets through the Istanbul Strait, we believe that the importance of opening up a new bypass route is self-evident.

Despite rules that regulate the transits through the Turkish straits, the schemas of traffic distinction and the radar systems (VTS), it is not possible to say that the risk of accidents has been eliminated. Small accidents due to rudder lock-up, engine breakdown or human error that do not cause tangible damage, and therefore do not get much attention, still take place despite preventive measures. The morphological characteristics of the Istanbul Strait also contribute to the occurrence of such accidents.

In any case, it is essential to consider the political and legal outcomes of implementing such a Project. The first that comes to mind is the fact that the prospective Canal would challenge the Montreux Convention, which regulates the transit through the Straits region.

As an example, a commercial ship with a net tonnage of 10,000 that enters the Straits from the Black Sea is obliged to pay 4,881 USD to Turkey for a transit pass. It does not seem likely that this amount would be sufficient for the construction and operation of the proposed canal when we also consider the transit fees for the other similar canals.

The Montreux Convention

The Montreux Convention, which was signed at the beautiful Montreux Palace Hotel located on the shores of Lake Geneva in July 1936, replacing the Lausanne Straits Convention of July 24, 1923, governs the transit of battleships and commercial ships through the so-called “Straits” (including the Sea of Marmara) during times of peace, war or a threat of war.

The convention guarantees the security of Turkey to a large extent through restrictions on, and notification obligations for battleships, especially during peacetime; assures the strategic balance of the Black Sea and the Mediterranean; and provides a political role for Turkey in the case of a possible threat of war.

The constitutive balanced nature of the convention also serves the interests of the Russian Federation, preventing the presence of any non-coastal military power in the Black Sea that has a tonnage above 45,000. Thus, in the case of the “collapse” of the Convention, the interests of the Russian Federation will be damaged as much as Turkey’s.

The danger of the collapse of the Montreux Straits regime derives from the possibility that the method of calculating the fees for non-stop transits in application since 1983 could be changed, leading to objections.

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Although this issue will only be clarified after a detailed economic feasibility study, the data we have suggests that the resources provided by the current system are not adequate for the construction of the canal.

In fact, the fee for the transit of vessels through the Turkish Straits covers the entire passage. In other words, the cost of transit through the Strait of Istanbul is only a portion of the total sum paid. The transit pass is two-sided and even covers the Strait of Çanakkale and the Sea of Marmara in addition to Strait of Istanbul.

Moreover, we should also emphasize that deterrents and artificial delays at the entrances of the Straits are not possible to enforce; the system that was tried for the Baku-Ceyhan line in 1994 failed.

The International Maritime Organization (IMO) and professional associations follow the transits through the Straits closely, arranging the necessary technical regulations with traffic distinction schemas and VTS systems.

Unless there are certain changes in the Montreux Convention's provisions regarding the transit of commercial ships, it is almost impossible that the canal passageway could complete with Strait of Istanbul transit route with the introduce-

tion of deterrent measures. Despite the political, legal and economic consequences, it is naturally possible for the if it is considered essential, it is, naturally possible that Turkey can close transits through the Straits, referring to the Canal as an alternative for the Strait of Istanbul.

Yet, even in such a condition, the financial resources to be generated will not increase. If the financing of the canal is based on the transit fees, the only possibility that can be brought to the agenda might be the word-by-word implementation of the Montreux Straits Convention. In the case of such a scenario, the transit fees would increase many

times more: according to the gold rate as of August 4, 2011, the fee would increase to 59,976 USD for the previously exemplified commercial ship that has a tonnage of 10,000.

Within the scope of this short study, we will emphasize that with the re-introduction of Gold Francs as the basis for the transit fee payments – mentioned in Appendix-1 of the Montreux Straits Convention yet not implemented after 1983 – the

transit through the Strait would become expensive, which in fact may render the financing of the canal project possible along with a competitive pricing strategy.

However, this is not a feasibility study. Its main purpose is to point out the obstacles facing the Istanbul Canal Project and draw attention to the fact that a regime founded by the Montreux Convention and meeting virtually all of Turkey's security needs may collapse.

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Historical Background

When the Ottoman Empire took over Akkarman Castle, located near Odessa, in 1484, it had acquired the control of all the Black Sea shores, closing the transit through the Straits of Istanbul and Çanakkale to all ships with foreign flags. While France in 1535 and England in 1602 obtained the right to trade in seas under the dominion of the Empire, this right exempted transit to Black Sea.

The Sublime Porte (Bab-ı Ali) in all agreements since 1484, registered the principal of “closed-ness” as a right of the “ancestries’ heritage” (ecdattan mevrus). The transit right, recognized for Austria in 1718 with the Treaty of Passarowitz, was not put into action until 1783. The principal that the Straits would be closed to all ships with foreign flags only changed after the Treaty of Küçük Kaynarca, signed with Russia in 1774, as its 11th article provided free transit for commercial ships.

The privilege given to France in 1802 was later extended to England, and the flag restriction for the transit of the commercial ships was weakened in parallel to the weakening of the Empire and the increasing control of the shores of the Black Sea by Czarist Russia. On the other hand, the transit of warships with foreign flags was first permitted in 1798 during Napoleon’s Egypt campaign.

The regime that managed the Straits of Çanakkale and Istanbul acquired a multilateral character with the signing of the Treaty of Kale-i Sultan on January 5, 1809, in which the Sublime Porte officially assured England of the principle that the

Straits would be closed to the foreign warships. Therefore, the Straits regime stopped being an issue of domestic law and became an inter-state issue. This understanding was confirmed with multilateral agreements that were signed in London in 1841, in Paris in 1856, again in London in 1871, and in Berlin in 1878.

Defeated in World War I, Turkey signed the Armistice of Moudros on October 30, 1918, opening up its Straits to warships in line with the first article of the Agreement, With the 37th article of the Treaty of Sevres, signed on August 10, 1920, Turkey also confirmed the absolute liberality principle. The Straits Convention, which is in the appendix of the Lausanne Treaty of July 24, 1923, also accepted transit liberty as a universal rule, protecting Turkey’s, and especially Soviet Russia’s, interests with the limitations it put on the transit of warships.

However, the Lausanne Straits Convention brought about the disarmament of the Straits region and the management of the regime through an international commission, not through Turkey itself. The regime that was established in Lausanne

was changed with the Montreux Straits Convention that was signed on July 20, 1936. With the establishment of the new regime, Turkey won back many of its supremacy rights - particularly regarding demilitarization - guaranteeing its security to a large extent.

The Montreux Convention, composed of 29 articles, four appendixes and one protocol, indicates that the signatories accept the principle of transit liberty as a universal rule in its first article and, in the following sections, explains the passage of

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warships and commercial ships through the Straits during times of peace, war and threat of war. Additionally, with the restrictions the Convention imposes on warships regarding the total amount of goods they can carry at one time, Turkey has turned into a key player of the Mediterranean-Black Sea balance.

The Montreux Convention's second article dealing with the transit of commercial ships is particularly important with regards to the Istanbul Canal Project. It states that in times of peace commercial ships, regardless of their flags or loads, can completely benefit from transportation freedom during the day or night, as long as they comply with the health rules indicated in the third article. Moreover, the Convention expresses that ships are not exempt from any taxation or duties other than the ones specified in the first article of the Convention.

In summary, as long as this article exists it is impossible for Turkey to close the Straits with deterrent measures and to direct ships carrying hazardous material such as petroleum or gas to the Canal, asking for a higher fee. By justifying the risks that these kinds of ships pose, Turkey could direct them to use the planned Canal only by charging an equal amount for the use of both of the waterways. For this, the fee that Turkey charges for the transit through the Strait of Istanbul needs to be increased to the amount that is acknowledged under the original version of the Montreux Convention, which means returning to the Gold Franc basis.

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The Gold Franc

The first article of the Montreux Convention states that in the case that the timeframe between the departure and arrival of the commercial ships that pass through the Straits does not exceed six months, the following fees – for one time and per ton – will be charged: 0.075 Gold Francs for health inspection; 0.42 Gold Francs for torch and float services for tonnages until 800; 0.21 Gold Francs for the tonnages above 800; and 0.1 Gold Francs for all the other services, mainly including rescue services.

Turkey implemented a transit fee through a rate that was close to the real value of this currency unit – which is not in circulation anymore – until 1983, when the Central Bank fixed the rate of 1 Gold Franc to 0.8063 USD, which has remained fixed to the present day. This, as we mentioned previously, induces Turkey to charge a nominal fee for the transit pass. While the Turkish Government mentioned

that Turkey would return to the Gold Franc basis starting from January, there have not been any attempts to do so far.

Considering the Montreux Convention's articles and appendixes, it is valid to charge transit fees through the Gold Franc. However, more than being a legally binding

text, the Montreux Convention today is used as an agreement that determines the fundamental norms of the Straits regime, which is implemented by Turkey with the approval of other actors that benefit from its current implementation. Turkey's attempt to return to an interpretation that reflects the text rather than the spirit of



the agreement may bring about the collapse of the regime itself.

Indeed, many concepts and descriptions that appear in the text of the agreement do not reflect the realities of our present day and, in many cases, do not coincide with the norms of international law. A word-by-word interpretation of Appendix 1 may lead to more than one signatory's demand for modifications.

Yet the Convention 29th article allows for such change. According to the article, starting with the entry of the agreement into force, three months before the end of every five-year period each of the signatory states can recommend changes in one or a few articles of the Convention.

Conclusion

The moment that Pandora's box is opened, there are not many chances for the agreement to survive. As emphasized above, many articles of the agreement have already completed their life spans in terms of their legal and technical perspectives. Ranging from the references to the League of Nations to the types of weapons that are prohibited to be transited, there are articles in the agreement that do not make sense under the conditions of our present day.

Moreover, the second paragraph of the 28th article states that the principle of transit and navigation liberty, which is mentioned in the first article, is eternal. According to Dr. Sevin Toluner, in her seminal legal analyses on the issue of the Straits, "in the case of the disappearance of the Montreux order, the contracting parties have expressed their intention to uphold the principle of transit liberty as foreseen by international customs and traditions."

When one considers that the first article of the agreement makes no distinction between warships and commercial ships, it can be said that, in the case of the collapse of the Montreux Convention, the principle of transit liberty would also apply to warships during times of peace. Indeed, according to its April 9, 1949 decision regarding two Great British destroyers that crashed on October 22, 1946 while passing the Corfu Canal as a result of mines laid by Albania, the International Court of Justice ruled that the warships could use their right to innocent passage while transiting through international waterways.

To summarize, the financing of the Istanbul Canal under the current circumstances seems possible only with the re-introduction of the Gold Franc standard. Nevertheless, this transition will probably be painful and require massive diplomatic energy on the part of Turkey.

The construction of the Canal requires serious legal analysis, diplomatic effort and political vision. This short study argues that the collapse of the Montreux Convention, which protects Turkey's interests, is one possible outcome of the Istanbul Canal project that should be taken seriously.



For More Information

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