

DOI 10.26886/2524-101X.9.4.2023.1

Editorial

Black Sea Grain Initiative is Dead, Long Live the New Trade Corridor

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CITATION

Kormych, B., & Averochkina, T. (2023). Black Sea Grain Initiative is Dead, Long Live the New Trade Corridor. *Lex Portus*, 9(4), 7–15. <https://doi.org/10.26886/2524-101X.9.4.2023.1>

Russia's withdrawal from the Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports in July 2023 (Beacon on the Black Sea, n.d.) created significant security threats to the Black Sea shipping regime. The belligerents even issued nearly mirrored coastal warnings (Ministry of Defence of the Russian Federation, 2023; Ministry of Defence of Ukraine, 2023) that included a) claims that all vessels in the Black Sea heading to ports controlled by the other party would be regarded as potential carriers of military cargo; b) declarations of large areas of Black Sea as dangerous for navigation. Furthermore, the Russian Federation made a single attempt to stop and control a neutral vessel sailing to a Ukrainian port (Rubryka, 2023).

During the year of its implementation, the Black Sea Grain Initiative (BSGI) played a significant role in supporting the export of agricultural products from Ukraine – about 33 million tons (Vessel Movements, n.d.) – and relatively stable filling of the state budget [over 20 billion dollars (Ukrinform, 2023)]. As part of the BSGI, Ukraine gradually demined water areas and restored the functioning of the three ports of “Great Odesa” (Odesa, Chornomorsk, and Pivdennyi). Although it is customary to call the BSGI an unprecedented agreement (United Nations, 2022) which, according to Turkish President Recep Tayyip Erdogan, “went down in history as an important diplomatic success” (Midttun, 2023), it had unresolvable flaws. The core BSGI instruments – the “Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports” and the “Memorandum of Understanding Between the Russian Federation and the Secretariat of the United Nations on Promoting Russian Food Products and Fertilizers to the World Markets” – failed even to mention the ongoing Russo-Ukrainian armed conflict and, hence, did not refer to any provisions of the law regarding the armed conflict. Instead, they utilized SOLAS and ISPS Code “to facilitate the safe navigation for the export of grain and related foodstuffs and fertilizers” (Para. 3 of the Initiative) and made statements of “ongoing crisis in the supply chains and disruptions in the logistics sector” (Preamble of Memorandum) without addressing its cause. In this regard, the BSGI followed pre-war Russo-Ukrainian settlement attempts, in which instruments enveloped a political deal in a formal language acceptable to all parties even though such wording was deliberately vague or

ignored specific facts (Kormych et al., 2023). In particular, this allowed Russia to exploit gaps in the BSGI provisions to slow down Ukrainian grain exports, from creating artificial delays in the inspection of vessels to completely stalling vessel movement (Ministry for Communities, Territories and Infrastructure Development of Ukraine, 2023). The constant drop in ship calls became a vivid indicator of this problem (Figure 1). For comparison, 89 % of Ukraine's grain exports were sent through Black Sea ports before the war. Odesa, Chornomorsk, Pivdenny, and Mykolaiv processed up to 6 million tons of grain monthly in 2021 (Petrushko, 2023b).

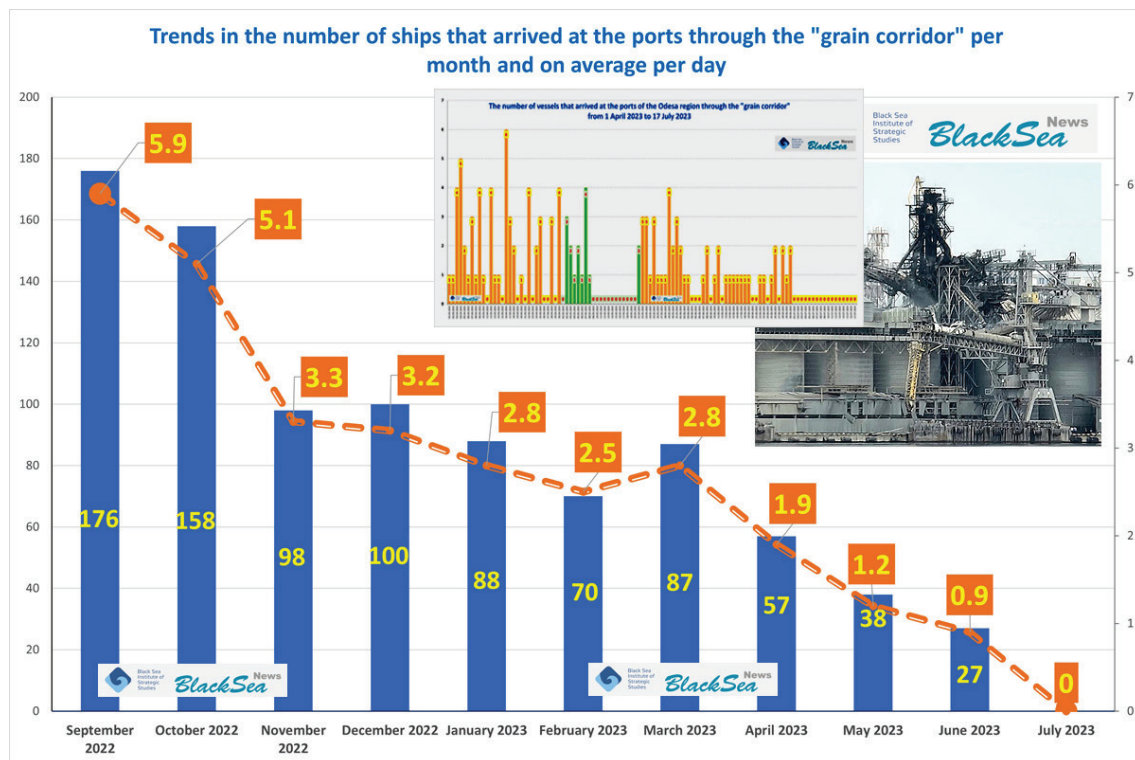


Figure 1. Trends in the number of ships that arrived at the ports through the “grain corridor” per month and on average per day (Black Sea News, 2023b)

The termination of the BSGI necessitated the search for new ways to ensure the reliability and security of supply chains. Moreover, immediately after the Russian withdrawal from the BSGI, the ports involved in it and the grain silos throughout South Ukraine were subjected to a massive missile attack by the Russian Federation (United Nations, 2023; Datsenko, 2023; Petrushko, 2023b).

Throughout the summer, Russia continued a series of strikes on Ukrainian port infrastructure and vessels (MFA of Ukraine, 2023). These in aggregate caused freight rates to rise and insurance premiums to rise in the region. But most importantly, the successful Ukrainian attacks on the Russian Navy in Crimea and Novorossiysk and strikes at captured gas and oil platforms in the Crimean coastal waters (Pavlyshak, 2023) significantly diminished Russian ability to interfere with navigation to Ukrainian seaports. The latter became the key to restoring the functioning of Ukrainian seaports without arrangements with Russia. After all, the new “unilateral” corridor, unlike the BSGI, utilizes the opportunities for neutral ships and neutral countries provided by the law of naval warfare.

Almost immediately after the termination of the BSGI, Ukraine began to consider the possibility of transporting grain through the territorial seas of neighboring states – Romania, Bulgaria, and Turkey – which could help save Ukrainian exports. The San Remo Manual on International Law Applicable to Armed Conflicts at Sea directly prohibits hostile actions

by belligerent forces within neutral waters (Para. 15), which “consist of the internal waters, territorial sea, and, where applicable, the archipelagic waters, of neutral States” (Para. 14). According to the Manual, a neutral State is obliged to take measures, “...including the exercise of surveillance, as the means at its disposal allow, to prevent the violation of its neutrality by belligerent forces” (Para. 15). Furthermore, given that the waters in question are part of the sovereign territories of NATO member states, this makes attacks by the Russian Federation unlikely, even considering Russia’s poor record of compliance with international law and the Law of Armed Conflict (LOAC) in particular. In addition, these States are among those that have taken a position of qualified neutrality regarding the Russian-Ukraine conflict (Pedrozo, 2023, p. 52–53), which involves deviations from obligations of strict impartiality and abstention in favor of a State that is the victim of a war of aggression. Given the clear and broad agreement on who the aggressor State is and that the UN’s collective security mechanism is failing (Fink, 2023, p. 707) due to Russia’s veto in the UN Security Council, we recall that the San Remo Manual permits neutral States to lend assistance to any State which has been the victim of a breach of the peace or an act of aggression (Para. 7).

One way or another, after consultations with Romania and Bulgaria, “the order of the Navy of the Armed Forces of Ukraine No. 6” on August 8th, 2023, announced new temporary routes for the movement of civilian vessels to and from the Black Sea seaports of Ukraine (Navy of the Armed Forces of Ukraine, 2023). Subsequently, consultations on creating a new safe corridor were held with Turkey (Ports of Ukraine, 2023b). The most significant practical result of the relevant consultations was the approval of demining measures. This decision was made on October 12th, 2023 after a meeting of representatives from the Ukraine Defense Contact Group at the Rammstein Air Base. Since October 16th, the minesweeping group of the Navy of Bulgaria and Romania has begun demining the Black Sea waters near the coast of Bulgaria. The operation covers not only the territorial sea but also the adjacent zone, where the bulker routes of the new Ukrainian grain corridor pass (Militarnyi, 2023).

Later, Turkey, Ukraine, and Bulgaria agreed to establish a trilateral mechanism aimed at clearing floating mines in the Black Sea. This agreement came amid warnings that Russia may use sea mines to target Ukraine shipments and is scheduled to be implemented in November (Akin, 2023). This effort is essential due to three instances where merchant vessels encountered mines during September and October. It also supports initiatives to organize external operations in the territorial waters of Romania and Ukraine for the Ukrainian Danube ports, furthering the development of these ports. This strategy is considered the best approach for increasing the capacity of Ukrainian export logistics. The organization of transshipment activities for grain from barges in the Danube ports to large Panamax-type ships will allow the transshipment of grain to double. These measures are anticipated to reduce logistics costs; in particular, the cost of transshipment by barges on the Danube may decrease from \$20 to \$10 (Kyrychenko, 2023).

To organize a new maritime corridor, Ukraine adopted changes to the traffic distribution system, as seen in “Approaches to the ports of Chornomorsk, Odesa and Pivdenny” (Figure 2). Ukraine sent them with other documents to the International Maritime Organization (IMO). IMO, in turn, issued the respective circular letter dated July 19th, 2023 (No. 4748). On August 16th, 2023, the Hong Kong-flagged container ship “Joseph Schulte” became the first ship to use the new corridor to leave the port of Odesa (Tarasovsky, 2023). Over time, several more ships blocked in Ukrainian seaports since the beginning of the large-scale invasion took advantage of it (Bukatiuk, 2023). The permanent navigation along this route from the ports of Great Odesa started on September 19th, when the vessel successfully called in and out of the port of Chornomorsk to transport agricultural products (Zharykova, 2023).

It should be noted that in May of 2023, taking into account the growing reluctance of insurers to cooperate with shipowners in the region, the Ukrainian government established the Procedure for Providing Guarantees of Compensation for Damage Caused to Charterers, Operators and/or Owners of Sea and Inland Navigation Vessels as a Result of Armed Aggression of the Russian Federation, which applies to vessels sailing under the flag of Ukraine and the flags of foreign countries. The Procedure states that if the insurer refuses to compensate the operator or shipowner for damage caused as a result of Russia's invasion of Ukraine, they can apply to the Ministry of Infrastructure for compensation within 90 days of receiving the insurer's refusal to provide insurance compensation. They can receive compensation for the destruction of the ship, damage to the cargo, expenses related to the elimination of environmental pollution, fines for environmental pollution, or harm to the life and health of passengers or crew members. This order is valid for one year, and applications for compensation must be sent by December 1, 2023. The validity period will likely be extended, or a new version will be adopted for 2024. In February 2023, the Verkhovna Rada supported amendments to Ukraine's state budget for 2023, which provide charterers, operators, and owners of sea and inland waterway vessels with guarantees of compensation for damage caused by Russian aggression. Up to UAH 20 billion has been earmarked for these purposes (about 500 million dollars). Indeed, the cost of insuring ships sailing in such a risky area is also an issue. As a sign that the new strategy is gaining momentum, insurance broker Miller said it offered "full war risks insurance coverage" for Ukrainian Black Sea grain ships (Quinn & Krasnolutska, 2023).

The situation in the Black Sea significantly impacted the Ukrainian Danube ports (Izmail, Reni, and Ust-Dunaysk). After the outbreak of full-scale war, this previously depressed region became a crucial player in shipping activities. Before the war, the Danube accounted for 2.5–4.2% of all transshipments. However, in the face of the escalated conflict, the region prevented a complete blockade of shipping routes. As a result, cargo handled by the Danube ports has increased threefold, from 5.5 million tons to 16.5 million tons. It is primarily transported along the Danube River to the Romanian port of Constanta (National Institute for Strategic Studies, 2023). In 2022, 15 million dollars were invested in the Danube ports, and by April 2023, more than 20 new terminals had already been put into operation (Kolishnichenko, 2023). Consequently, the cargo handling record was updated after the first six months of 2023, amounting to more than 14 million tons (Krasikov, 2023). The Danube ports have become the primary route for certain goods. For example, 2,422 million tons of sunflower oil, or 43.1% of total exports, were exported through Danube ports in the 2022–2023 marketing year, spanning from September 2022 to August 2023 (Black Sea News, 2023a).

Initially, the emphasis on the development of the Ukrainian Danube ports was made based on their location on an international river several hundred meters from the territory of a NATO member state. This should make Russian attacks on these ports more difficult. However, with the termination of the BSGI, this region suffered enormous Russian missile and drone attacks, causing significant damage to the infrastructure (Petrushko, 2023a; Reuters, 2023). In general, from the moment Russia withdrew from the grain deal until mid-October, Russia carried out 17 massive attacks on the port infrastructure of both the Danube and Black Sea ports in the Odesa region. As a result, more than 150 port and grain infrastructure facilities were destroyed or damaged (Grigorenko, 2023).

It should be noted that the Russian tactics of attacks on port infrastructure and grain silos, among other things, indicate that the Russian navy has lost control over a significant portion of the Black Sea and is currently unable to enforce naval blockade or contraband law toward maritime traffic to and from Ukrainian seaports. This confirms the partial success of Ukraine's strategy to unblock its maritime trade (Quinn & Choursina, 2023).

During the month-long operation of the temporary sea corridor, 51 ships passed to the ports of Great Odesa, 23 of which were in the ports under loading as of October 27th, 2023 (Ports of Ukraine, 2023a). From September 16th to October 29th, 2023, almost 1.5 million tons of Ukrainian products were exported (Grain Sold Out, 2023), exceeding the figures from the final months of the BSGI's work. Thus, the impact of the Russian sabotage of the inspection teams working within the framework of the BSGI was comparable to that of the attacks by hundreds of cruise missiles and drones in the following months. This fact is indicative for assessing the prospect of negotiations with Russia, which constantly tries to use any international arrangements as lawfare instruments.

In addition, an alternative temporary corridor for merchant ships allowed the range of cargo to expand, which today, in addition to foodstuffs, includes iron ore (Grigorenko, 2023), metal products (UaProm, 2023), coal, and clay¹. Even though freight rates from the ports of Great Odesa remain high, they have already caught up with the Ukrainian Danube ports: the transportation of grain at the end of October 2023 costs \$43.5 per ton Ismail/Reni – Alexandria, \$44.5 per ton Chornomorsk – SpanMed (ISM Report, 2023). Compared to the BSGI, an additional advantage is that now ships do not come to Ukraine empty – they import fuel, salt, and construction materials, such as cement and plaster.

The work of the temporary corridor periodically faces specific difficulties. For example, on October 26th, some news agencies reported the suspension of the corridor due to a mine threat (VoA, 2023). In addition, the Ukrainian government has changed the procedure for exporting agricultural products, aiming to counter the gray market and the non-return of foreign exchange earnings. Companies engaged in the export of agricultural products will need to be registered in the State Agrarian Register (SAR). The registration process involves verifying the taxpayer's certificate as of February 23, 2022, and the current status of the certificate. Companies also need to have no overdue returns of foreign exchange earnings. Otherwise, the exporter must obtain a license to export agricultural products. Another innovation will be a change in the procedure for refunding VAT to exporters, which will occur only after the exporter returns foreign exchange earnings. The revenue return period has been reduced from 180 to 90 days. In addition, the National Bank will prohibit closing accounts until currency controls are lifted (Ukrainian Grain Association, 2023).

Thus, despite the completion of the BSGI, the use of instruments of the law of war at sea and the support of other countries make it possible to maintain freedom of navigation in the Black Sea and the operation of Ukrainian seaports, even in conditions of full-scale aggression by the Russian Federation. It seems this situation does not suit Russian aggressive plans. On November 8, 2023, Russia resorted to what can be classified as an indiscriminate attack on neutral merchant vessels in violation of basic rules of naval warfare (Paras. 41, 42 of San Remo Manual). The Kh-31P anti-radar missile launched from the Russian tactical aircraft in the Black Sea targeted the superstructure of the Liberian-flagged bulk carrier KMAX RULER (IMO 9436642) near Odesa, killing the pilot and injuring four more crew members (Lozovenko, 2023). This attempt to disrupt Ukrainian maritime routes multiplies the risks of slipping to unlawful unlimited attacks on merchant shipping in the Black Sea.

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¹ From authors' interviews with representatives of shipping industry (2023, October 21).

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