War without War: The Battle of Navarino, the Ottoman Empire, and the Pacific Blockade

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1 Introduction

Even as events in Libya in 2011 and Syria in 2013 have revived debates about the legality and wisdom of humanitarian intervention, those debates have taken a historical turn. While some have looked to early modern Europe, Davide Rodogno and Gary Bass have turned their attention to European actions in the nineteenth-century Ottoman Empire. These debates revolve

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around the motivations and justifications of European actions: could (and
did) humanitarian concern for civilian populations motivate the use of force
against another state? Or were geopolitical concerns paramount? And were
the Ottomans, as a Muslim empire, even seen as a legitimate sovereign state
protected by international law?

In the context of these debates, the 1827 battle of Navarino – in which a
Franco-Russo-British fleet destroyed the Ottoman Empire’s navy and paved
the way for Greek independence – has often been seen as an early ‘humani-
tarian intervention’. On the other hand, recent studies by Rodogno and John
Bew have carefully explored Navarino’s motivations, justifications, and impli-
cations, showing that they were far from fully humanitarian at first, but that
the action was seen differently in later decades. International law often fig-
ures in these discussions, but we are still missing a detailed analysis of how
the diplomats themselves thought about, described, and justified their own
actions in legal terms. Drawing on Ottoman and British archival sources, this
article undertakes such an examination – but this is not a story of humani-
tarianism, or of its absence. The article finds that during the 1820s, European
and Ottoman diplomats’ legal debates did not revolve around the two topics
most discussed in the existing literature: whether humanitarianism could jus-
tify force, or whether the Ottomans’ religion diminished their legal protection.

The most hotly contested legal question at the time was, rather, whether
the allies and Ottomans were at war – a point not explored in the existing
literature. War was a legally recognised way to settle disputes, and the states
involved had many disputes to settle. What generated specifically legal (as
opposed to political) debates at the time was not so much that the allies
imposed a naval blockade and then fought the battle of Navarino in 1827, but
that they did this while denying that they were at war. The Ottomans challenged

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2 See, e.g., Bass, Freedom’s Battle 2008 (n. 1); Stephen C. Neff, War and the Law of Nations
(Cambridge: CUP 2005), 224.
3 See Rodogno, Against Massacre 2012 (n. 1), 63–90; and Bew, ‘Umpire’ 2011 (n. 1).
4 For simplicity, and because France, Britain, and Russia acted together in 1827, I use the term
‘Europe’ as a convenient shorthand for all three. This is not intended as a holistic judgment
that the Russian Empire always had more in common with France or Britain than it did with
the Ottomans.
5 Rodogno, Against Massacre 2012 (n. 1), 5, 20–22, 88, takes the difference between war and
intervention as a given, and limits his analysis to the latter. Neff, War 2005 (n. 2), 225, notes
that ‘humanitarian interventions’ were not ‘wars’ as a matter of doctrine, but does not dis-
cuss this difference, or contests over it, with reference to the 1820s. Bass occasionally refers to
Navarino as a potential ‘war’, but he treats the difference between war and intervention as a
factual, rather than legal, matter.
this, but because they eventually gave way, one important legacy of Navarino was to help create a new means of using force in international law. This was the ‘pacific blockade’, a form of ‘intervention’, in the sense of using force outside of wartime – whether for humanitarian or other reasons. The article is thus concerned with contests over the legal structure of events, rather than their motivations or justifications. This is particularly relevant today, as both the US and the UK have cast actions in Libya, and possible actions in Syria, as something less than ‘war’.

Beyond suggesting that Navarino’s legal incoherence helped create new law, this perspective also provides insight into the relationship between the Ottoman Empire and international law. Scholars have long debated whether, and when, the Ottomans entered the European system of international law – with some now discarding the conventional date of 1856, pointing to a longer history of legal relations between the Ottomans and European powers.

6 This is, to be sure, one of many ways the word can be used. I use it here in the sense defined by Lassa Oppenheim, as ‘dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things’, and as a type of force short of war. See Lassa Oppenheim, International Law: A Treatise, 2 vols. (London: Longmans, Green 1905), 1181, 12:29; Neff, War 2005 (n. 2), 219. This contrasts with earlier uses of the term to refer to virtually any involvement by one state in the internal affairs of another. After the Napoleonic Wars, for example, there were debates in Britain over whether to support ‘intervention’ to prevent revolutions against monarchs. This type of intervention might or might not have been legally problematic, but was often done with the target sovereign’s consent, and without overt violence. See D.J.B. Trim, ‘Conclusion: Humanitarian Intervention in Historical Perspective’, in Brendan Simms and D.J.B. Trim (eds), Humanitarian Intervention: A History (Cambridge: CUP 2011), 384; Bew, ‘Umpire’ 2011 (n. 1); Henry Wheaton, Elements of International Law: With a Sketch of the History of the Science (Philadelphia: Carey, Lea & Blanchard 1836), 85–87; Rodogno, Against Massacre 2012 (n. 1), 20–21, 36–62; Neff, War 2005 (n. 2), 219–221.


Indeed, the story that follows makes clear that, while the Ottomans did not refer to specific European legal treatises during the 1820s, they shared a common set of legal principles with their European interlocutors. At the same time, European diplomats at this particular moment did not argue that the Ottomans were legally (as opposed to culturally or politically) inferior, or governed by fundamentally different rules of sovereignty. This article therefore moves beyond the question of membership of the legal system, and beyond doctrinal analysis, to situate the law of nations in the context of contested diplomatic and military power relationships. Thus this is not a history of what international law was, but of what diplomats thought (or at least claimed) it was. Indeed, the states contested how the law should apply. I will argue that the different ways they used it – and, arguably, departed from it – eventually changed international law.

In making these arguments, I will first summarise the history of the Greek War of Independence, before discussing the states’ competing legal theories, the eventual blockade and battle of Navarino, Ottoman reactions, and the events’ legal legacy.

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9 It is unclear when Ottoman diplomats first became acquainted with the canonical European treatises, and the broader question of how the Ottomans saw international law in this era remains to be explored. The first Ottoman translation of Grotius appears to have come in the seventeenth century, and of Vattel in 1837. For Grotius, see Jean Lévesque de Burigny, *The Life of the Truly Eminent and Learned Hugo Grotius* (London: Millar, Whiston, White, and Davis 1754), 262. For Vattel, see Palabiyik, ‘International Law’ 2014 (n. 8), 241–245. I thank Michael Tworek for the Grotius citation.

10 This may reflect Jennifer Pitts’s conception of a more open, universalistic eighteenth-century law of nations, that was eclipsed only by a turn toward liberal imperialism in the nineteenth century. See Pitts, *A Turn to Empire: The Rise of Liberal Imperialism in Britain and France* (Princeton, NJ: Princeton University Press 2005); Pitts, ‘Empire and Legal Universalisms in the Eighteenth Century’, *American Historical Review* 117 (2012), 92–121.

11 In this sense, the article responds to John Witt’s call ‘to make sense of the significance of international law in particular times and places’ by studying how a variety of actors, including (though certainly not limited to) diplomats, used legal ideas. See John Fabian Witt, ‘A Social History of International Law: Historical Commentary, 1861–1900’, in David L. Sloss, Michael D. Ramsey and William S. Dodge (eds), *International Law in the u.s. Supreme Court: Continuity and Change* (New York: CUP 2011), 164–187, 179.
The Greek War of Independence: A Brief History

The Greek war of independence began in 1821, when Alexander Ypsilantis led an army of Greek expatriates from Russia into the Ottoman province of Moldavia, in modern-day Romania. Ottoman forces quickly crushed him, but his actions sparked a revolt further south in the Balkans, among the Greek inhabitants of the long-impoverished Peloponnesus peninsula and the islands of the Aegean. This proved more difficult for local governors to suppress, and soon Sultan Mahmud II (r. 1808–1839) was forced to call on the powerful governor of Egypt, Mehmed Ali. Mehmed dispatched to the Peloponnesus his efficient army of Egyptian peasant conscripts, commanded by Turkish-speaking officers and European advisors, under the command of his son Ibrahim Pasha. The war was brutal. Greek rebels massacred Muslim civilians and often killed their prisoners or sold them into slavery. Mahmud’s chief jurist, the şeyhülislam, declared that the inhabitants of any rebellious Greek town or village which refused to submit had forfeited their status as loyal non-Muslim subjects under Islamic law, and were therefore liable to be killed or sold into slavery – most notoriously on the island of Chios, where Ottoman forces enslaved or killed nearly the entire population in 1822. At the same time, Mahmud also purged the elite Greek families who had played a critical role in governance, throwing Ottoman diplomacy into chaos.

Many European ‘philhellenes’, seeing the Greeks as Christian co-religionists and as heirs to classical civilisation, were horrified by the violence against them. The Russians, who had repeatedly (and successfully) fought wars against the Ottomans for control of the Black Sea basin in 1711, 1735–1739, 1768–1774, 1787–1792, and 1806–1812, also saw a political opportunity to weaken their rivals. Yet at the same time, governments across the continent, bitterly remembering the French Revolution and Napoleonic Wars, were committed to preserving legitimate sovereigns against popular revolts. British, French, and Austrian merchants also profited from trade with the Ottoman Empire.
which depended on commercial treaties, the Capitulations, between them and the Sublime Porte (as Europeans called the Ottoman government). By 1830, Greek corsairs – who targeted ships carrying Ottoman goods, and sometimes any ships at all – cost British and French merchants at least 1.2 million francs. The British, especially, also worried that any new conflict between the Russians and Ottomans could disrupt the European balance of power, block British trade with India, or touch off a continent-wide war. The British therefore sought to contain Russia, which, as Bew has shown, sometimes meant joining with the tsar to limit and control Russian demands.

These interests shaped diplomatic debates throughout the 1820s, and matters came to a head in 1821, and 1826, when Russo-Ottoman wars seemed imminent. But beginning in 1826, with an agreement signed at St. Petersburg, the British and Russians allied to check each other’s ambitions and present a united front to the Ottomans while trying to resolve the Greek question. Prussia and Austria – under the famously anti-revolutionary State Chancellor Klemens von Metternich – still stood aside. The 1827 Treaty of London extended the protocol, and the French joined in. The allied fleets put pressure on Ottoman-Egyptian forces in Greece, eventually resulting in a violent clash on 20 October 1827 – the battle of Navarino. The following spring, the Russians and Ottomans went to war, and a Russian victory led to Greek independence in 1830.

3 Non-Interference

In attempting to advance their interests, the British, French, Ottomans, Russians, and Austrians all drew upon the language and categories of the law of nations, explicitly and implicitly. Tracing the arguments diplomats made, and comparing them with the rules traced in Emmerich de Vattel’s widely read treatise, is revealing. Again, my goal here is not to determine conclusively

14 Apostolos E. Vacalopoulos, ‘Piracy During the Last Years of the Greek War of Independence’, in Apostolos Vacalopoulos et al. (eds), Southeast European Maritime Commerce and Naval Policies from the Mid-Eighteenth Century to 1914 (Boulder: Social Science Monographs 1988), 363–377, 373.
15 Bew, ‘Umpire’ 2011 (n. 1).
16 Vattel’s treatise was arguably the most influential at the time, and it is also among the most often referenced in the existing literature – most notably in Rodogno and Chesterman, though neither undertake the examination here. For a cautionary note on
what the law was – others have attempted that – but to examine how diplomats used it. Each state made different arguments, of course, and each theorised the situation in different terms, but almost all shared a common conclusion: the European states could legally interfere in the Greek revolt, but they would have to go to war to do it.

Most often discussed in the literature is the norm of ‘non-intervention’ or ‘non-interference’ – the classical opposite of ‘humanitarian intervention’. As stated by Vattel, no state had ‘a right to interfere in’ the internal affairs of another, ‘nor ought to intermeddle with them otherwise than by its good offices, unless requested to do it, or induced by particular reasons’. Scholars have differed on whether Europeans applied this rule to the Ottomans – Rodogno argues that in the later nineteenth century, they did not, helping make interventions possible. Şükrü Hanioğlu, looking to early nineteenth-century Ottoman sources, takes a different view.

However, as we will see, in the 1820s, few European diplomats questioned that this rule and the rest of the Law of Nations, in general, bound them in their dealings with the Ottomans. Here, as in other legal debates throughout the 1820s, Europeans might denigrate Ottoman statecraft, religion, and civilisation in stark terms, but almost no one suggested this had legal implications.

Vattel, however, see Brian Richardson, ‘The Use of Vattel in the American Law of Nations’, American Journal of International Law 106 (2012), 547–571.

Chesterman distinguishes ‘non-intervention’ from ‘non-interference’. See Chesterman, Just War 2001 (n. 1), 19–20. Unlike Chesterman, however, I will use only ‘non-interference’, to avoid confusion with the type of ‘intervention’ discussed at the end of the article. The legal norm is often conflated with British debates over ‘intervention’ as a matter of policy; see n. 6.


M. Şükrü Hanioğlu, A Brief History of the Late Ottoman Empire (Princeton: Princeton University Press 2010), 68–69. He suggests that the Greek War of Independence may have changed this.

Two exceptions were the sometime French Foreign Minister François-René de Chateaubriand, and the Russian Foreign Minister Ioannis Kapodistrias. The former, however, referred only to the Ottomans’ Christian territories, and the latter may have had in mind as much Russia’s policy of opposing rebellions, as he did law. See Rodogno, Against
For example, the British, French, Swedish, Prussian, Dutch, Spanish, Danish, Russian, and Austrian envoys met in April 1821 to discuss presenting a joint note to the Porte, about ‘the insecurity of the public tranquillity at this Residence [Constantinople], and . . . the insults and violence to which ourselves and the subjects of our Courts, have been so long exposed’, at the hands of Ottoman Muslims who associated foreign Christians with domestic rebels.22 When a few participants suggested including language about the rebellion itself, the meeting collapsed; the British Ambassador, Strangford, felt that they ‘had no right to obtrude their opinions upon the Government to which they are accredited, and with the internal concerns of which, I presume, we are not entitled to interfere’.23

The Ottomans, not surprisingly, interpreted the non-interference principle to bar any foreign assertions about the rebellion. This was an internal matter, they argued, and in the absence of a treaty right or a declaration of war (this, as we shall see, was vital), no other state could interfere. In 1822, for example, the Ottoman Reisülküttap (de facto foreign minister) Canib Efendi responded to European ambassadors’ complaints about the events on Chios. The Porte, he told Strangford, ‘was an independent Government’, and thus ‘had a right to act as she pleased toward her own subjects, except where Treaties interfered’.24 Even Russia, he argued, had never used its military victories to ‘impose upon Turkey the general principle that she was not entitled to make slaves of her own subjects whenever she chose to do so’25 In this particular case, the Ottomans insisted, ‘No one’s interference will be tolerated in bringing [the Porte’s] own subjects back into obedience’.26 ‘If England had rebels of her own to deal with,’

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22 The [UK] National Archives (hereinafter TNA), Foreign Office collection (hereinafter FO) 78/98 #26.
24 TNA-FO 78/105 #73.
25 This was not strictly true, but it reflected the outcome of Russo-Ottoman negotiations over the previous decades. See Will Smiley, ‘Let Whose People Go? Subjecthood, Sovereignty, Liberation, and Legalism in Eighteenth-Century Russo-Ottoman Relations’, Turkish Historical Review 3 (2012), 196–228.
26 Başbakanlık Ottoman Archives (hereinafter BOA), Hatt-ı Hümayun collection (hereinafter HAT) 1217/47680; a similar argument is found in BOA, Cevdet Hariciye collection (hereinafter CHR) 5228.
Reis Efendi Mehmed Said Pertev Pasha asked in 1827, ‘what would she say to any Foreign Power who presumed to interfere in their behalf?’

The Austrian government shared the Ottomans’ view of the legal situation. Metternich, concerned about rebellions against legitimate monarchs, declared that he ‘could never consider the Greeks in any other light, than as subjects in a state of rebellion against their lawful Sovereign’. This meant that others had no grounds to meddle. As pro-Greek sentiment built in Europe, he asked, ‘[c]ould the powers base on principles of public law the support that they would lend to the cause of Greek independence?’ No, he said: ‘The question is sliced by a single word; all Europe is in relations of peace with the Sultan’.

4 War for Treaty Rights or Self-Defence

Politically, whether to interfere in the Ottoman-Greek was a critical question, as other scholars have discussed. Yet legally non-interference was less important. As even Canib and Metternich recognised, wars and treaties allowed plenty of ‘interference’. War, at the time, was a legal institution, recognised as the way sovereigns settled their disputes. Belligerents in wartime could use force against each other, including — crucially — blockading each other’s coasts to cut off trade. Outside states had to regard the belligerents as ‘equally lawful’. Non-belligerents, through the law of neutrality, incurred both rights and duties with respect to belligerents. Wars, moreover, typically ended with treaties which, if violated, might be claimed to justify further war, or limited reprisals. The Ottomans, for example, issued a manifesto citing treaty violations as a reason for war with Russia in 1807. During the Greek crisis, the Russians believed both that they already held a variety of treaty rights related to the Greek revolt,

29 Bass, *Freedom’s Battle* 2008 (n. 1), 118.
and that if they chose to enforce any of their rights through war, they could gain still more rights after they won (as they surely would).

What were their existing treaty rights? First, the Russians pointed to the 1774 Treaty of Küçük Kaynarca, which allowed them to protect an Orthodox Christian church in Constantinople. The Russians also claimed their right of protection extended to all Ottoman Christians, including the rebellious Greeks, though this was not its original intent. The Ottomans, indeed, argued that the Russians had no such right – and in the absence of a treaty right, they claimed sarcastically, they could just as easily hold the Russians responsible for the misdeeds of their own rebellious co-religionists, the Greeks. The British were also dubious; while Strangford admitted that the treaty ‘certainly does give the Russian Minister a distinct right to interfere in questions affecting the Security of the Greek Ecclesiastical Establishment in this Country’; he doubted it extended to all Greek Christians. Even if it did, George Canning also wondered if the rebels, by ‘throw[ing] off their allegiance’ to the Ottomans, were no longer Ottoman subjects, covered by the treaty.

But Küçük Kaynarca was not the only treaty the Russians invoked. The 1812 Treaty of Bucharest, which had ended the most recent Russo-Ottoman war, constrained Ottoman power over its Serbian possessions, and regulated the presence of Ottoman troops in the Danubian principalities. These were both crucial points, as the Russians believed that Ottoman policies, especially sending forces into the principalities to suppress the initial uprisings, violated the treaty. Meanwhile, a commercial treaty from 1783 governed the rights of Russian subjects in the Ottoman Empire.

The Russians invoked these treaties in a July 1821 ultimatum, demanding that the Ottomans evacuate the principalities of the troops they had sent to suppress the revolt, restore damaged Christian property, refrain from attacking innocent Christians, and ‘acknowledge Russian protection of [all] Orthodox

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34 For the treaty, see Noradounghian, Recueil 1897–1903 (n. 33), 1:33; Roderic H. Davison, “Russian Skill and Turkish Imbecility”: The Treaty of Kuchuk Kainardji Reconsidered, Slavic Review 35 (1976), 463–483. For its interpretation, see TNA-FO 78/98 #31; Allan Cunningham, Anglo-Ottoman Encounters in the Age of Revolution (London: Cass 1993), 213–214, 226.
35 Richmond, Voice of England 2014 (n. 27), 175.
36 TNA-FO 78/98 #31.
Christians in the Ottoman Empire’.\textsuperscript{39} When the Ottomans did not comply, the Russians withdrew their ambassador, and war seemed likely – similar escalations had led to Russo-Ottoman wars in 1768, 1787, and 1806.\textsuperscript{40} Yet the Russians backed down. Tsar Alexander feared the precedent he might set by allowing rebels to gain sovereignty, and the other European powers pressured him not to act without consulting with them. The 1814–1815 Congress of Vienna settlement, they argued, required the powers to consult before taking any action that might jeopardise others’ interests.\textsuperscript{41} In 1826, the Russians issued another ultimatum, again based on alleged Ottoman violations of the Treaty of Bucharest. The Ottomans, fearing that the British might support a Russian declaration of war, accepted the Russians’ demands, signing the Akkerman Convention in October.\textsuperscript{42} Yet the Russians continued to insist, into 1827, that they had legitimate grievances against the Ottomans unconnected to the Greek question – they contended that Mahmud had not paid an indemnity due under the Akkerman Convention, and that he had allowed the Persians to cross Ottoman territory while the former were at war with Russia.\textsuperscript{43}

The Russians, then, could have found reasons to vindicate their treaty rights by declaring war at virtually any point throughout the 1820s. Concern for the Greeks might have \textit{motivated} such a declaration – indeed, some Russians called for a ‘war for humanity’ against the Ottomans\textsuperscript{44} – but there was no need to invoke it as a \textit{legal} justification. Russia could go to war to remedy treaty violations related to troops in the principalities, or Ottoman aid to Persia, or (as they eventually did) the abrogation of commercial rights, and the tsar could impose further terms on the Ottomans if he won (as everyone expected he would). This was, indeed, precisely why the British feared a Russo-Ottoman war: the Russians, whatever their legal reason for war, might ‘gobble Greece at one mouthful and Turkey at the next’, disrupting British trade and the balance of power.\textsuperscript{45}

\begin{itemize}
\item See Aksan, \textit{Wars} 2007 (n. 12).
\item Rodogno, \textit{Against Massacre} 2012 (n. 1), 19; Bitis, \textit{Russia and the Eastern Question} 2006 (n. 39), 113.
\item Marie de Testa and Antoine Gautier, \textit{Drogmans et diplomates européens auprès de la Porte Ottomane} (Istanbul: Isis 2003), 315.
\item TNA-FO 78/155 #16.
\item Rodogno, \textit{Against Massacre} 2012 (n. 1), 54, 67–68.
\item Temperley, \textit{Canning} 1925 (n. 37), 329.
\end{itemize}
Other European states could disagree whether Russia’s cause was just, or they could argue that the Russians were obliged to consult with them first before declaring war – but once Alexander *did* declare war, they would legally be obligated to recognise the state of war, and either to grant Russia the rights of a belligerent, or to join the war on the Ottoman side. Victory would give the tsar the right and the ability to demand virtually any terms he wished. Some Western Europeans who sympathised with the Greek cause saw a Russian war as their best hope, even if they feared its political consequences. ‘I wish to heaven’, the once and future British ambassador to Istanbul Stratford Canning said in October 1821, ‘that the interests of Europe would allow of letting the Russians loose *tout bonnement* on the Sultan and his hordes’.46 In short, few doubted that the Russians *could* legally use force against the Ottomans – and everyone agreed that such force would take the form of war.

Though they had less political motivation to do so, the British and French themselves could have also found grounds to declare war on the Ottoman Empire. The commercial Capitulations obligated the Ottomans to protect British and French property, especially that of merchants, against piracy by Ottoman subjects.47 But, as noted above, Greek pirates preyed on shipping throughout the 1820s, including many British and French ships. While the pirates were not loyal to the Porte, George Canning believed the Ottomans were ultimately responsible for their depredations. Because no power, even the Russians, recognised Greek independence, Canning argued that ‘the Powers which denied a national existence to the Greeks should seek compensation for piracy from the Porte, which was responsible for keeping its subjects in order’.48 George Canning contended in December 1824 that nothing the Ottomans did had violated the commercial Capitulations, but based on his own reasoning, he could have argued the opposite had he wanted to.49 As he implied, if the Ottomans failed to secure British (or French) property, the latter could vindicate their treaty rights, or their right to self-defence, through war. Indeed, this legal reasoning, as we will see, became vital in 1827.

46 Richmond, *Voice of England* 2014 (n. 27), 143.
49 Temperley, *Canning* 1925 (n. 37), 333.
5 War of Alliance

Beyond treaty rights and self-defence, one further route was open to the maritime powers if they wished to aid the Greeks – and, once again, it would have meant war. ‘[W]hen the bands of the political society are broken, or at least suspended, between the sovereign and his people’, Vattel wrote, they could be ‘considered as two distinct powers; and since they are both equally independent of all foreign authority, nobody has a right to judge them. Either may be in the right; and each of those who grant their assistance may imagine that he is acting in support of the better cause’. Thus, states might offer to ‘interpose their good offices’ to mediate, and that if this failed, they could – just as in international armed conflicts – ‘assist the party which they shall judge to have right on its side, in case that party requests their assistance or accepts the offer of it: they are equally at liberty, I say, to do this, as to espouse the quarrel of one nation embarking in a war against another’.50 At least one French statesman explicitly applied this reasoning to the Greek case, as Rodogno has pointed out.51 The British, implicitly, went quite a way down this road, before eventually pulling back.

The rationale would have required two critical steps: recognising the Greek government, and going to war with the Ottomans. Though all of the European powers were reluctant to recognise Greek sovereignty, the British led the way in this direction. The impetus came from Greek corsairs in the Mediterranean, who often attacked British merchant ships. As long as the British did not recognise Greece, the British Royal Navy could only regard them as pirates – illegal combatants, liable to trial and punishment. Yet British philhellenism made this unpalatable, and Canning believed that the Greek government had too much ‘force and stability’ to be regarded as mere pirates. So, faced with two unacceptable alternatives, he created a third: in March 1823, Canning recognised the Greeks as legitimate belligerents, entitled to the same rights and responsibilities as a state in wartime, but still not as sovereign. ‘Belligerency’, he said, ‘was not so much principle as fact’.52 This meant the Greeks could legally

50 De Vattel, Law of Nations 2008 (n. 18), 291, 649. See also Chesterman, Just War 2001 (n. 1), 19; Rodogno, Against Massacre 2012 (n. 1), 5; Zurbuchen, ‘Non-Intervention’ 2010 (n. 18), 77–82.

51 This was Chateaubriand – though, as noted above, at the same time he partly denied Ottoman sovereignty. Rodogno, Against Massacre 2012 (n. 1), 74.

52 Temperley, Canning 1925 (n. 37), 326. See also Bew, ‘Umpire’ 2011 (n. 1), 131; Bass, Freedom’s Battle 2008 (n. 1), 114–115.
license corsairs as privateers, but also that British merchants were entitled to protection as neutrals.

Canning carefully stopped short of recognising the Greek government as a fully sovereign state, and refused to receive a Greek delegation in September 1825. Nonetheless, his declaration could have been interpreted as an admission that Ottoman power in Greece had been, in Vattel’s terms, ‘broken, or at least suspended’. Following the Vattelian script, the British could next offer to mediate between the Ottomans and Greeks – and this is what Canning did. In 1826, spurred by a (false) rumour that Ibrahim Pasha intended to deport the entire Greek Christian population of the Peloponnese and by a renewed threat that Russia would declare war, the British and Russians signed the St. Petersburg Protocol, accepting a Greek request for mediation. Canning explained that the Greek request was vital, because ‘to mediate … unasked … was, in our eyes, improper, as assuming a right, on the part of the Alliance, to interfere in the concerns of nations, as if in virtue of some inherent authority of supervision and control’.

The catch, of course, was what to do if the Ottomans declined mediation. According to Vattel, if mediation failed, the interposing state(s) might enter the war on either side. Canning hoped the Ottomans would give in before it came to this; ‘I hope to save Greece’, he said, ‘by the agency of the Russian name upon the fears of Turkey without war’. He contemplated withdrawing diplomats from Istanbul, or officially recognising Greek sovereignty. The Ottomans anticipated exactly these measures, seeing them – probably rightly – merely as preludes to a declaration of war. Thus the Vattelian approach, like all of the others, seemed destined to result in war.

But here, events departed from the script. In 1826–1827, all of the states continued to use the language and categories of the law of nations to structure their claims and actions, even as they departed from it in one critical way: led by the British, they refused to accept a state of war, even when this seemed the inevitable result of their actions. This incoherence, we will see, laid the groundwork for the battle of Navarino and its afterlife.

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53 Temperley, Canning 1925 (n. 37), 331.
55 Temperley, Canning 1925 (n. 37), 358–360.
56 Richmond, Voice of England 2014 (n. 27), 141; Crawley, Greek Independence 1973 (n. 48), 53.
57 TNA-FO 352/15B #37, 24–25.
58 BOA-CHR 5228.
Canning’s critics recognised the dilemma implied by the 1826 St. Petersburg Protocol offering mediation, asking him (as he himself quoted them), ‘Do you mean to go to war with Turkey, or with Greece, whichever may be the recusant party? or, with one of them only in case of such recusancy? and with which?’ As he had with the question of Greek belligerency, Canning invented a third way. Force, he believed, could be used against the Ottoman-Egyptian forces in Greece, but nowhere else. This, of course, raised a further question: ‘whether the British Government would consider itself to be in a state of war with the Porte, should that Power continue to carry on the war in Greece with other troops’. Canning gave the Duke of Wellington, who negotiated with the Russians, no instructions on this point, but he did suggest a possible alternative: the British and Russians could blockade Greece, preventing reinforcements from arriving, without pursuing broader hostilities against the Ottomans. According to C.W. Crawley, the negotiators referred to this as a ‘pacific blockade’.

This particular crisis cooled in 1826, as the Ottomans officially disclaimed any intention of deporting the Greek population of the Peloponneseus, and as the Russians and Ottomans resolved their differences (except those related to Greece) through the Akkerman Convention. But many in Russia still wanted a war to aid the Greeks, and Mahmud still would not compromise, issuing a firm manifesto in June 1827 refusing to accept foreign interference – including mediation. Meanwhile, Greek piracy continued to trouble British and French commerce in the Aegean – helping lead the French to join the British-Russian coalition in early 1827.

6 Blockade and Battle

As this survey has shown, there were many legal theories that would allow European action – but nearly everyone assumed that any theory would lead

59 Temperley, Canning 1925 (n. 37), 359.
60 TNA-FO 352/15B #37, 16; Temperley, Canning 1925 (n. 37), 354, 360.
61 TNA-FO 352/15B #37, 18.
62 Crawley, Greek Independence 1973 (n. 48), 61. As he notes, this term is normally traced to the international lawyer Laurent Basile Hautefeuille in 1849.
64 TNA-FO 352/15B #37, 49–51; Crawley, Greek Independence 1973 (n. 48), 58; Temperley, Canning 1925 (n. 37), 391–394; Woodhouse, Battle of Navarino 1965 (n. 54), 25.
to war. The allies initially followed these theories, but then began to depart from them. They agreed to the Treaty of London on 6 July 1827, aimed at finally resolving the Greek question, by securing Greek autonomy (but not sovereignty). Rodogno and Simon Chesterman have argued that the treaty’s goals were more pragmatic and political than humanitarian. Against the backdrop of the debates discussed above, the treaty’s legal reasoning is quite interesting. While it did mention ‘the sanguinary struggle’ in Greece, it primarily invoked piracy and ‘impediments to the commerce of the States of Europe’, ‘which not only expose the subjects of the High Contracting Parties to grievous losses, but also render necessary measures which are burdensome for their observation and suppression’. It also renewed the earlier British-Russian offer of mediation, and noted that the Greeks had invited this. In other words, the treaty seemed to invoke precisely the same grounds that could have been used to justify a British or French declaration of war, grounded on the defence of their own subjects and commerce, or on recognising and joining the Greeks.

But the powers did not declare war. They did threaten force, in a secret article (appearing in The Times six days later) declaring that if either the Greeks or Ottomans refused to agree to an armistice, the signatories would enforce one themselves. The Russians, recognising British reluctance to declare war, suggested that enforcement should come through Canning’s earlier idea of a blockade, cutting off Ibrahim and his forces from their bases in Alexandria and Istanbul. The British, however, now resisted using the term ‘blockade’, fearing it implied war – and Canning insisted on a stipulation that the allies would not ‘take any part in the hostilities between the Two Contending Parties’. Specifically, the allies agreed that their fleets would ‘intercept every expedition of men, arms, &c. which was directed by sea against Greece, from Turkey or Africa, – taking care however that the measures adopted by them for this purpose did not degenerate into hostility’.

This was, obviously, a blockade, even if the British would not admit it. Already before the treaty was signed, the British King’s Advocate (the chief civil and admiralty lawyer), Christopher Robinson, ‘pointed out some objections to one of the clauses of the additional Article, by which it was proposed

65 Treaty of London, 6 July 1827; Crawley, Greek Independence 1973 (n. 48), 77.
66 Rodogno, Against Massacre 2012 (n. 1), 88; Chesterman, Just War 2001 (n. 1), 29–32.
67 Chesterman, Just War 2001 (n. 1), 30.
68 Crawley, Greek Independence 1973 (n. 48), 68–69, 74–75; Temperley, Canning 1925 (n. 37), 398.
69 ‘Abstracts of Proceedings in the Greek Question subsequent to the Treaty of the 6th July, 1827: Part V’ (sic), TNA-FO 352/15B #20, 5; Woodhouse, Battle of Navarino 1965 (n. 54), 68.
to declare to the Porte, in the event of its refusal, that the united Squadrons of the Contracting Parties would prevent all succour from arriving, by sea, to the Turkish Forces.\textsuperscript{70} He and other lawyers warned ‘that the use of force might lead to hostilities’.\textsuperscript{71} What he meant, most likely, was that a blockade was legal only within a state of war. As Lassa Oppenheim later observed, ‘before the nineteenth century blockade was only known as a measure between belligerents in time of war’.\textsuperscript{72} Indeed, in September, when the allies considered a plan to put further pressure on the Ottomans by overtly blockading the Dardanelles and Bosphorus, the British Foreign Secretary, the Earl of Dudley, initially demurred, worrying that ‘the measure implies war and cannot be adopted unless we are disposed altogether to throw away the scabbard’.\textsuperscript{73}

George Canning had no answer to this incoherence, and this is surely why the orders issued over the summer to the British Vice Admiral Edward Codrington, commanding the combined allied fleet in the Mediterranean, were couched in vague euphemisms. ‘You ought’, he was told, ‘to be most particularly careful that the measures which you may adopt against the Ottoman navy do not degenerate into hostilities’.\textsuperscript{74} The French likewise ordered their Admiral Henri de Rigny simply to use ‘material measures’.\textsuperscript{75} On 12 August, Codrington requested clarification from Stratford Canning, then the British ambassador to Istanbul, noting that neither he nor de Rigny ‘can make out how we are by force to prevent the Turks, if obstinate, from pursuing any line of conduct which we are instructed to oppose, without committing hostility…Surely, it must be like a blockade; if an attempt be made to force it, by force only can that attempt be resisted’.\textsuperscript{76}

Stratford Canning – who had no instructions from London at the time – agreed. The quasi-blockade, he said, was to be enforced ‘in case of necessity, with that which is used for the maintenance of a blockade against friends as well as foes; – I mean force’, and (in a separate letter), ‘when all other means are exhausted, by cannon shot’.\textsuperscript{77} This, of course, begged the question – a blockade against friends was meaningless, and without a state of war, there

\textsuperscript{70} TNA-FO 352/15B #37, 32.
\textsuperscript{71} Temperley, \textit{Canning} 1925 (n. 37), 401.
\textsuperscript{72} Oppenheim, \textit{International Law} 1905 (n. 6), 11:43–44.
\textsuperscript{73} Crawley, \textit{Greek Independence} 1973 (n. 48), 94.
\textsuperscript{74} Woodhouse, \textit{Battle of Navarino} 1965 (n. 54), 46–47.
\textsuperscript{75} TNA-FO 78/155, 282r.
\textsuperscript{76} Temperley, \textit{Canning} 1925 (n. 37), 404.
\textsuperscript{77} Richmond, \textit{Voice of England} 2014 (n. 27), 171; Woodhouse, \textit{Battle of Navarino} 1965 (n. 54), 53–54.
were no foes. De Rigny and the Russian commander, Vice Admiral Louis de Heiden, were more forthright. They were willing and even eager to engage in combat, and by October, Heiden told Codrington ‘that the Tsar had probably already declared war’.78

Now the crisis of Navarino was at hand. Codrington found Ibrahim’s fleet in the bay of Navarino, and informed him that he would enforce the quasi-blockade, and ‘[i]f any one shot should be fired at the British flag on this occasion, it will be fatal to the Ottoman fleet’.79 When Ibrahim sailed out of the bay toward the island of Patras, the allies chased him. Codrington kept him from reaching Patras, ‘not certainly without firing guns, but without producing hostilities’.80 The Ottoman fleet returned to Navarino. The following day, recognising that it would be impossible to sustain the blockade as winter set in, the admirals resolved to put more pressure on Ibrahim by sailing into the bay, aggressively placing their fleet alongside his.81 They did so on 20 October, and firing soon broke out between the fleets, with the Ottomans probably firing the first shot.

This touched off the battle of Navarino – the last major battle to be fought by sail-powered ships – and the allies prevailed decisively. The Ottoman fleet was annihilated, with the loss of thousands of Ottoman sailors, against only a few dozen allied casualties.82

7 Diplomatic Reactions

As the Ottomans, Russians, British, and French alike scrambled to deal with the aftermath of Navarino, they made legal arguments that eventually shaped the battle’s legacy – and they argued, once again, about whether they were at war. To understand this legacy, it is necessary to step back, and examine the Ottoman reaction not only to the battle of Navarino, but also to the preceding blockade, between July and November of 1827.

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78 Crawley, Greek Independence 1973 (n. 48), 90; Woodhouse, Battle of Navarino 1965 (n. 54), 96.
80 BOA-HAT 38071C; Borchier, Memoir 1873 (n. 79), II:3–2, 41.
82 Rodogno, Against Massacre 2012 (n. 1), 83; Woodhouse, Battle of Navarino 1965 (n. 54).
The Ottoman government initially expected that the Treaty of London meant war. This was only logical; as discussed above, every option for European action would legally lead to war with the Ottomans. The Porte resolved not to give in, even when expecting the allies would withdraw their ambassadors, recognise the Greeks, use their navies to cut off communications between Greece and Egypt, and eventually declare war. British merchants in the Ottoman Empire worried that Ottoman subjects, upon the outbreak of war, might attack them, and they sought protection from the Austrian and Prussian embassies. Stratford Canning’s sources told him that the Ottomans would ‘infallibly decide on war rather than give way in the first instance’, though he himself hoped Mahmud ‘may so far dissipulate his resentment as not to construe their execution into an overt breach of pacific relations’.

Both the Austrians (who still opposed any European interference) and the Ottomans, though, were quick to seize on the legal inconsistency of a blockade without a war, both before and after the battle of Navarino. As we have seen, Metternich implicitly recognised that Russia or other states could have interfered in the Greek matter if they were at war with the Ottomans. But without a war, he argued, the allied position made no sense. It was, he claimed, analogous to the French government recognising ‘as a Power equal in rights to that of the [British] King the first Irish Club which declares itself the Insurgent Government of Ireland’; even as ‘[t]he Ambassador of France will none the less continue his diplomatic functions, French commerce will suffer no prejudice in English ports. Whither does this absurdity not lead us?’ It would be contradictory to ‘the foundations of the law of nations recognised up to this hour’—not because the allies were using force, but because they claimed to do so without being at war.

Metternich, of course, was motivated largely by his suspicion of revolutions and his fear of Russia. But he also had more quotidian concerns. Throughout the 1820s, Austrian ships supplied the Ottomans. To sever Ottoman supply lines, then, the allies would have to turn away Austrian as well as Ottoman ships, and indeed Codrington did so at first. But what right did he have to do this? Belligerents could legally enforce a blockade against neutrals, but

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83 BOA-CHR 5228; TNA-FO 78/155 #16.
84 TNA-FO 78/155 #16.
85 TNA-FO 78/155 #16.
86 Temperley, Canning 1925 (n. 37), 361.
87 BOA-HAT 38071C; UK Government, Constantinople Protocols 1830 (n. 79), 156; Bourchier, Memoir 1873 (n. 79), 11:31, 38, 51; Bass, Freedom’s Battle 2008 (n. 1), 117, 123, 140.
88 Bourchier, Memoir 1873 (n. 79), 11:39, 38–39.
the allies denied that they were belligerents. Metternich therefore protested
that the ‘blockade of the port of Navarino by ships of the European powers
was not regularly announced’, and that neither Britain nor France nor Russia
had declared war, so they had no right to stop Austrian ships.90 Accordingly,
Austrian merchant ships began to travel in convoys, escorted by warships
ordered not to allow the allies to search their charges.91 The British Law Officers
of the Crown agreed with Metternich, finding ‘no legal ground for interfering
with such convoys of a neutral power, when the allies themselves were not
belligerents’. The British relaxed the blockade on 16 October, and into 1828
the allied fleets allowed Austrian convoys to pass.92

Throughout September and October, the Ottomans also contested the block-
ade’s legality. The revolt, the Porte continued to insist, was a purely internal
matter, in which the allies could not interfere without renouncing their treaties
of friendship and declaring war.93 ‘Have we broken the ties’, the Reisülküttap
Mehmed Said Pertev Pasha asked, ‘which attach their Governments to ours?
We have Treaties with France, with Great Britain, with Russia; does any one of
their Articles give a right to the pretensions put forward by the Powers?’

Pertev was particularly stinging in his objection to the allies’ ambiguous,
and arguably self-contradictory, announcement on 31 August 1827. The three
European states declared that they would use ‘measures which they should
judge to be the most effectual’,95 but which would not ‘disturb[] their friendly
relations’ with the Porte, or Mahmud’s sovereign right to follow ‘the suggestions
of his own wisdom’.96 In response, Pertev exclaimed, ‘Hostility! Friendship!
What a confusion of terms in all this!’ ‘Can you explain to me how water and
fire, or cotton and fire, can exist together? . . . If it is a declaration of war that
you have to make to us, say so’.97 The ambassadors ‘eluded’ this question,98 but
Pertev later warned, ominously, that ‘[w]henever the Commander of your
squadrons put into execution the measures which you announce to us, the
aggression will be on their side’.99

89 Bass, Freedom’s Battle 2008 (n. 1), 140.
90 Crawley, Greek Independence 1973 (n. 48), 84.
91 Crawley, Greek Independence 1973 (n. 48), 84.
92 Crawley, Greek Independence 1973 (n. 48), 87, 134.
93 UK Government, Constantinople Protocols 1830 (n. 79), 138.
94 UK Government, Constantinople Protocols 1830 (n. 79), 138.
95 UK Government, Constantinople Protocols 1830 (n. 79), 125.
96 UK Government, Constantinople Protocols 1830 (n. 79), 126.
97 UK Government, Constantinople Protocols 1830 (n. 79), 126; TNA-FO 352/15B #20, 6.
98 TNA-FO 352/15B #20, 6.
The Ottomans argued especially strenuously that the blockade was illegal. According to the Ottoman chronicler Lûtfî, Ibrahim protested to the British that ‘no state will have the right to prohibit the Sublime [Ottoman] State from moving about in its own territory’, and that ‘[t]he entry or exit of [Ottoman] state ships to the ports of the Sublime State is not forbidden by treaty’. Mahmud himself agreed, wondering sarcastically if it was ‘in the treaty’ for the allied ships ‘to wait in the mouth of the harbour in order to blockade our ships inside the harbour’. In other words, the Ottomans argued that, in the absence of a specific treaty right, the allies could not blockade the port of Navarino while they were at peace. The Ottoman fleet’s commander, Tahir Pasha, reported on 30 September that breaking the blockade would result in an allied declaration of war.

But this did not happen – the allies did not immediately declare war after the battle of Navarino, even though arguably they were at war. Instead, the legal situation became even more incoherent. The first Ottoman reports – from Ibrahim, and from his father Mehmed Ali – described the allies’ entry into the bay as ‘according to the custom of war’, and the battle as an allied declaration of war and a violation of treaties. The Imperial Council, too, decided that allies’ actions amounted to a violation of the Capitulations, the treaties that secured friendship between the allies and the Porte.

As soon as rumours of the battle arrived in Istanbul on 29 October, the allied ambassadors hastened to ask Pertev whether the Porte would consider itself at war with the allies. He demurred, but the ambassadors renewed their efforts on 4 November, after official word of the clash had arrived. They sent their interpreters to declare ‘the sincerity of the pacific dispositions of the High Powers’. Ottoman and European sources give different accounts of the Ottoman reply, but their tone is similar. According to the British, Pertev asked:

[h]ow can the Sublime Porte listen to [the allies’] wishes for peace, when they have broken that peace? Their conduct is an instance of extreme contrariety. The case is actually as if in breaking a man’s head 1 at the

101 Akbayar, Lûtfî 1999 (n. 100), 1:66.
102 BOA-HAT 38071.
103 BOA-HAT 38367A, 40691, 40691C, 40696, 40700, 40700A, 44317A.
104 Akbayar, Lûtfî 1999 (n. 100), 1:67.
105 BOA-HAT 1217/47680; Crawley, Greek Independence 1973 (n. 48), 92.
106 UK Government, Constantinople Protocols 1830 (n. 79), 185.
same time assured him of my friendship. Would not such a proceeding be absurd? Such however, is the present question. Your Ambassadors talk about peace, and have broken the Treaties.107

According to an Ottoman summary of the conversation, Pertev demanded to know whether the ambassadors were plenipotentiaries (in other words, entrusted with full powers to negotiate a peace treaty). If they were not, then their reassurances of friendship were meaningless; and if they were, then they should discuss what had happened at Navarino itself. And in that case, ‘[t]o declare war yesterday, and to say today “we demand a reconfirmation of friendship,” is like a game’.108

Over the course of the following week, the Ottomans’ legal theory, and its political uses, became clear. In meetings held at the office of the şeyhülislâm (the chief Ottoman jurist) a group of high-ranking Ottoman officials agreed that, while the allies had not yet declared war, their actions ‘outside the law of nations’, without notice to the Porte, were a strong sign that they would declare war. The Ottomans recognised that they could not defeat the allies in a full-scale conflict but decided that, because the allies had broken the Capitulations, they should withhold the benefits of those agreements. They would sever relations, refuse to allow merchant shipping to pass through the Bosphorus and Dardanelles, and delay all other routine diplomatic and consular matters. If the Europeans asked why, Pertev was instructed to demand that the allies apologise to the Ottomans, indemnify their losses at Navarino, and renounce any interference in the Greek revolt. Furthermore, they began making plans to confiscate allied ships and goods in Ottoman ports, and to detain or deport allied subjects.109 In early November, the Ottomans acted on these plans, refusing to issue safe passage papers to allied couriers, and disrupting business with the allied embassies.110

Pertev presented the Ottomans’ legal theory to the allied ambassadors on 9 November, as the Council had directed.111 He described the battle of Navarino as ‘a violation of Treaties, – a declaration of war’, and demanded an apology, an indemnity, and an allied withdrawal from the Greek question.112 The Ottomans

107 UK Government, Constantinople Protocols 1830 (n. 79), 187.
109 BOA-HAT 89/39346E, 1057/43490.
110 UK Government, Constantinople Protocols 1830 (n. 79), 188–190.
111 TNA-FO 352/15B #20, 11.
112 TNA-FO 352/15B #20, 11; UK Government, Constantinople Protocols 1830 (n. 79), 191.
also began to move against allied subjects. They deemed well-connected, wealthy merchants too risky to deport before ‘the certification of the declaration of war’, but they felt differently about ‘vagabonds’. The Porte ordered ‘all Franks [western Europeans] who had no stated business in the capital’ to leave.\footnote{BOA-HAT 39346E, 1057/43490; Richmond, \textit{Voice of England} 2014 (n. 27), 181.}

The allies refused to comply, describing the indemnity in particular as ‘not related to true rights’.\footnote{BOA-HAT 891/39346E. Over a century later, the legal scholar Ian Brownlie suggested that this would have been the right outcome. Ian Brownlie, \textit{International Law and the Use of Force by States} (Oxford: Clarendon Press 1963), 30–31.} But the Ottomans’ demands proceeded from a clear logic: if a state of war existed, then all treaties were nullified, and allied diplomats and subjects could not receive their benefits. If a state of war did not exist, then the destruction of the Ottoman fleet had been a wrongful act, and the Porte was entitled to compensation and an apology.

As Ottoman harassment escalated, the allied ambassadors left Istanbul on 8 December – while insisting that ‘the question of war and peace, after their departure, is not for their decision, but for that of their Sovereigns’.\footnote{TNA-FO 352/15B #20, 14, 134–35; UK Government, \textit{Constantinople Protocols} 1830 (n. 79), 233; Richmond, \textit{Voice of England} 2014 (n. 27), 179–180.} Those sovereigns, however, were themselves conflicted. In a secret conference held at the British Foreign Office on 12 December, the three powers discussed the measures to be taken ‘if, unhappily, the measures adopted by the Turkish Government should assume the character of direct hostility’.\footnote{UK Government, \textit{Constantinople Protocols} 1830 (n. 79), 190.} The French government contemplated that they might \textit{already} be at war.\footnote{TNA-FO 352/15B #20, 22. In early 1828, French troops landed in the Peloponnesus, raising a host of new questions. See Rodogno, \textit{Against Massacre} 2012 (n. 1), 84–87.}\footnote{TNA-FO 352/15B #20, 15–16, 18.} The British and French, together, contemplated sending direct financial aid to the Greek rebels – something that Canning had earlier rejected, on the grounds that it ‘would be to make war upon the Porte’.\footnote{TNA-FO 352/15B #20, 20. On 2 October, the allies had decided to blockade the Dardanelles and Bosphorus, but not against neutral ships. The battle of Navarino put this plan on hold. Crawley, \textit{Greek Independence} 1973 (n. 48), 94–95.} At the Russians’ urging, both western European powers considered a new, formal blockade, which would ‘treat as enemies all Turkish or Egyptian Vessels attempting to pass; and, being thus in a state of war with the Porte, should exercise, with regard to neutrals, the rights of belligerents’.\footnote{TNA-FO 352/15B #20, 20.}
It looked, then, like Britain and France, if not already legally at war, would soon be. Yet they continued to deny this, and they took no further hostile steps. They held back from recognising Greece, or sending money; they did not blockade the Dardanelles; and open hostilities did not erupt. The British King George IV, opening Parliament on 29 January 1828, downplayed the quasi-blockade and the battle, describing it merely as ‘an untoward event’ with ‘the Naval Force of an Ancient Ally’ which, he hoped ‘will not be followed by further hostilities’.120

The Russians, though, welcomed war in law and in fact. Tsar Nicholas proudly distributed medals to both Codrington and Heiden,121 and on 30 November 1827 he withdrew from the 1826 Convention of Akkerman, thus re-opening Russia’s grievances against the Porte under the Treaties of Küçük Kaynarca and Bucharest.122 On 20 December Mahmud returned the favour – he too withdrew from the convention, restricted Russian commerce, seized Russian merchants and goods, mobilised his army, and called for war against Russia, which was ‘at all times the sworn enemy of Islam’.123 The Russians finally declared war in April 1828, and their forces crossed the River Prut into the Ottoman Danubian principalities less than two weeks later – beginning a full-scale land conflict.124 This ended in September 1829 with the Treaty of Adrianople. Greek independence followed in 1830.

8 Navarino’s Legal Legacy

By 1830, then, Navarino had led to widespread hostilities only between Russia and the Ottomans, even though under existing international law it might have seemed clear that all three European states had gone to war with the Ottomans. Both the Ottomans and the Russians were careful to humour the French and British protestations of peace, and this was critical to Navarino’s

120 Quoted in R.B. Mowat, A History of European Diplomacy, 1815–1914 (London: E. Arnold 1922), 50. The diplomats do not seem to have explored the difference between an ‘act of war’ or a ‘state of war’, much debated by legal scholars later in the nineteenth century. See Neff, War 2005 (n. 2), 172–76.
122 Bitis, Russia and the Eastern Question 2006 (n. 39), 179.
123 Anton Prokesch von Osten, Geschichte des Abfalls der Griechen vom Türkischen Reiche im Jahre 1821 und der Gründung des Hellenischen Königreiches (Wien: C. Gerold’s Sohn 1867), 140.
124 Daly, Russian Seapower 1991 (n. 121), 18–19.
legacy of shaping uses of force without war. Mahmud’s proclamation insisted that all three European states, at Navarino, had ‘openly broken the peace, and declared war’, so ‘the Sublime Porte had undoubtedly the right to proceed with reciprocal hostilities against their missions, their subjects[,] and their vessels’.125 But he announced that he had not gone this far, and would not.126 Nicholas did the same: when he declared war in April 1828, he grounded his declaration not on Navarino, the Treaty of London, or even the Greek question more broadly, but on the Porte’s violation of Russian rights under the Treaties of Küçük Kaynarca and Bucharest, particularly with regard to commerce.127 Thus both states avoided involving Britain or France – allowing the Russians a freer hand in waging war and making peace, and saving the Ottomans from fighting all three of Europe’s leading powers simultaneously.

This also meant that the legal incoherence of the blockade and the battle went unresolved. Russo-Ottoman relations were now clearly recognisable; they were at war, and the other states were neutral. The British explicitly did not ‘question [Russia’s] right’ to declare war, and when the Russians blockaded the Dardanelles, both the British and the Austrians recognised this as a belligerent’s prerogative.128 In yet another questionable legal manoeuvre, the Russians announced that a portion of their fleet, which continued to blockade the Peloponnesus with the British and French, still was neutral, even as the rest of their fleet openly fought the Ottomans.129 Metternich mocked this claim.130

All parties, then, eventually recognised European interference in the Greek revolt as a war. But the fact that this took so long to happen, and that only one European power was universally recognised as a belligerent, was critical in making the events of 1827 a useful precedent in international law. If any of the major powers’ initial legal theories – non-interference, war for treaty rights, war for self-defence, or overt alliance with the Greeks – had prevailed, scholars of humanitarian intervention probably would have taken little notice.131

125 Prokesch von Osten, Geschichte Des Abfalls 1867 (n. 123), 142. See also UK Government, Constantinople Protocols 1830 (n. 79), 213.
128 BOA-HAT 949/40815, 949/40811, 1206/47286B; TNA-FO 352/15B #20. Bitis, Russia and the Eastern Question 2006 (n. 39), 352–353; Daly, Russian Seapower 1991 (n. 121), 27, 81. The British eventually persuaded Russia to cancel the blockade in July 1829, but this was a matter of policy, not of right. Crawley, Greek Independence 1973 (n. 48), 113–115.
129 Crawley, Greek Independence 1973 (n. 48), 115.
130 Rodogno, Against Massacre 2012 (n. 1), 84.
131 Rodogno, for example, explicitly does not examine ‘wars’. Against Massacre 2012 (n. 1), 5, 20.
Thus, the 1828–1829 Russo-Ottoman war receives little attention in the history of international law—it was simply a war. Likewise, in 1877 Russia declared war on the Ottomans, while proclaiming its manifest duty of protecting the Christian population of Turkey from the inhumane treatment to which they were being subjected.\(^\text{132}\) Yet, few scholars consider humanitarianism as a motivation for Russia.\(^\text{133}\) In any case, partly because all of these events fit within the established legal template of war, they did not create important precedents.

But the British had not wanted a war, and the Ottomans had wisely avoided pressing the point. Indeed, the British denied that Navarino fit into the law of nations, or stood for any generalisable legal principle. In March 1828, Dudley wrote to the Russian government, justifying British actions as necessary ‘[t]o accomplish a great good, to put an end to a great evil, pressing seriously upon the interests of His Majesty’s own Subjects’—notably, not Greeks. King George IV, Dudley said, had departed ‘from the general rule which forbids other Powers to interfere in contests betwixt Sovereign and Subject’, but had nonetheless ‘strictly limited himself to what he deemed the necessity of the case; and in pursuing an object of policy, endeavoured to adhere, as much as possible, to the principles of [inter]national law’. The conduct of the Allies, Dudley insisted, ‘is inexplicable upon any other ground than that which is here stated to have been its foundation’.\(^\text{134}\)

Dudley was on shaky legal ground, and he knew it. As Anthea Roberts has noted, ‘[t]he distinction[] between…exceptions and precedents [is] difficult to sustain in international law for the simple reason that state practice helps to create international law’.\(^\text{135}\) This is exactly what happened. While Rodogno and Bew have shown that ideas of humanitarianism came to be associated with Navarino in complex ways, with some scholars perceiving a right of ‘humanitarian intervention’, the action also had a clearer legacy in international law.

Because Navarino was not a war, it helped create a new legal form of force, the ‘pacific blockade’. Between 1849 and 1887, treatise writers, and then the

\(^{132}\) Rodogno, Against Massacre 2012 (n. 1), 164; Ellery Stowell, Intervention in International Law (Washington: J. Byrne & Co. 1921), 131.

\(^{133}\) Rodogno, Against Massacre 2012 (n. 1), 164; Chesterman, Just War 2001 (n. 1), 201; Bass, Freedom’s Battle 2008 (n. 1), 23, 29. They draw on Theodore Salisbury Woolsey, America’s Foreign Policy: Essays and Addresses (New York: The Century Co. 1898), 74. Other jurists were more charitable toward Russian motives; see Heraclides, ‘Humanitarian Intervention’ 2014 (n. 1), 58–59.

\(^{134}\) UK Government, Papers Relative to the Affairs of Greece, 1826–1832 (1835), 54–55.

Institute of International Law, recognised that it might be legal for one state to blockade another, without declaring war.\textsuperscript{136} Crucially, nearly every treatise writer traced the institution to Navarino. This reflected state practice. Between 1831 and 1902, the British or French navies pacifically blockaded Portugal, the Netherlands, New Granada, Mexico, Argentina, Nicaragua, Brazil, Dahomey, Formosa/Taiwan, Venezuela and even Greece itself (twice).\textsuperscript{137} In 1897 the Ottomans themselves consented to a European pacific blockade of Crete in an effort to cut off Greek aid to rebels there – aid that soon helped precipitate an Ottoman declaration of war on Greece.\textsuperscript{138} The institution was hotly contested. Some believed the pacific blockade could serve as a safety valve to avoid the ravages of war, while others saw it as ‘an illicit expedient invented by France and Great Britain to injure weak states without assuming the responsibility of a state of war’.\textsuperscript{139}

This debate is intriguing in itself, but what is important here is that the pacific blockade was rarely used for humanitarian purposes. It was a tool for empires to collect debts, vindicate treaty rights, or protect subjects – precisely the grievances that had traditionally been resolved through war. By the time Lassa Oppenheim wrote his influential treatise in 1905, pacific blockade had become a key element of a broader legal institution, that of ‘intervention’.\textsuperscript{140} A pacific blockade, like a military occupation, was one of several measures which, while forcible, ‘are neither by the conflicting nor by other States considered as acts of war, and consequently all relations of peace, such as diplomatic and commercial intercourse, the execution of treaties, and the like, remain

\begin{footnotesize}
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\item See Hogan, \textit{Pacific Blockade} 1908 (n. 136); Washburn, ‘Pacific Blockade I’ 1921 (n. 136). In 1908, Nils Söderquist showed that Sweden blockaded Norway in 1814 while at peace, but this was not seen as a precedent during the nineteenth century. Washburn, ‘Pacific Blockade I’ 1921 (n. 136), 61–63.
\item Rodogno, \textit{Against Massacre} 2012 (n. 1), 215; Washburn, ‘Pacific Blockade I’ 1921 (n. 136), 451–452.
\item Washburn, ‘Pacific Blockade I’ 1921 (n. 136), 55 (quoting Friedrich Heinrich Geffcken); see also Neff, \textit{War} 2005 (n. 2), 236–37.
\end{enumerate}
\end{footnotesize}
undisturbed’. And Oppenheim, like other scholars, listed Navarino as the very first pacific blockade.

To be sure, the battle of Navarino had other effects on international relations – it stood for an association between humanitarian claims and military ‘intervention’, especially against the Ottomans, and for an assumption that European powers could ‘decid[e], ultimately on their own terms, whether or not future demands for secession would be valid’ in the Ottoman Empire. But neither humanitarianism, nor the Ottoman Empire’s status as a non-Christian, arguably illegitimate state in European eyes, appear to have been legally important in the 1820s. Instead, the legal debates of the decade turned not on motives or justifications, but on the form that the use of force might take – specifically, whether the allies could use force, including a blockade, outside of war. British assertions and Ottoman responses created a legal incoherence, in which a blockade and peace could coexist. This in turn provided a strong precedent that empires, and treatise writers, could use to claim a right for powerful states to advance their interests through force, without the costs of war. This, at least as much as humanitarianism or challenges to Ottoman sovereignty, was Navarino’s legacy.

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141 Rodogno, Against Massacre 2012 (n. 1), 88–89.
142 Philliou, Biography of an Empire 2011 (n. 12), 110.