

Remedial Closure” of the Strait of Hormuz; Dialectic of Legality and Legitimacy

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“Summum jus est summa injuria”
Cicero, *De Officiis*, I, 33.

In memory of:
Pro. Francis Antony Boyle

Abstract

This research develops an innovative framework for legal assessment of the closure or restriction of the Strait of Hormuz during the situation that threatens a coastal state’s survival. The central analysis is structured around four *dualistic*² questions which ask how “internationally legal”, how “internationally legitimate”, how “legally legitimate” and how “legitimately legal” such a closure would be. The hypothesis of this article is that in the exceptional circumstance of self-defense where state survival is at stake, legitimacy may, under strict conditions, justify a departure from strict positivist legality, giving rise to a new conceptual framework rather than a rule-based exception. Methodologically, the article employs a dialectical approach that moves from the positivist prohibition as the thesis through a legitimacy-based critique as the antithesis to a synthetic resolution. This dialectical movement is complemented by reasoning by analogy in particular from the International Court of Justice’s *Nuclear Weapons* and *Kosovo advisory opinions*. The central finding is that a strict positivist reading of the United Nations Convention on the Law of the Sea (UNCLOS) and customary international law provides no explicit authorization for closure and leaves the victim state helpless. The article’s main hypothesis is that in appearing an existential threat, legitimacy may override mere legality, giving rise to a new legal institution. To operationalize this hypothesis, the article proposes the doctrine of remedial closure as an emergency mechanism grounded in the inherent right of self-defense and strictly conditioned on legal tests. The theoretical results demonstrate that legality and legitimacy are not binary opposites but dialectical partners within a living legal order. The article concludes that even though the closure of the Strait of Hormuz has very little support for legal acceptance under a purely positivist reading, legitimately it can be considered authorized under a reasoned and dialectical interpretation of international law, provided all cumulative conditions are satisfied.

Keywords

Remedial Closure, Strait of Hormuz, Law of the Sea, Self-defense, Existential Threat, Legality, Legitimacy, *Nuclear Weapons* advisory opinion, *Kosovo* advisory opinion, Dialectics, Analogy.

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2. In and out of the system of International Law.

1. Introduction

The Strait of Hormuz is a narrow waterway connecting the Persian Gulf to the Sea of Oman. It is recognized as one of the most vital maritime chokepoints on the planet (Rothwell & Stephens, 2016, p. 185). Approximately one fifth of the world's crude oil and one third of its liquefied natural gas pass through this passage. Securing this waterway is not merely a matter of choice for the global economy but a strategic necessity. This unique geopolitical importance, however, has generated a complex legal puzzle, i.e., the relationship between the sovereignty of coastal States and the freedom of international navigation, especially during armed or unarmed conflict.

The core legal question appears deceptively simple. May a coastal state bordering an international strait unilaterally close or seriously restrict passage through that strait under certain conditions? The positivist, text-based answer seems resolute in the negative. Article 38 of the United Nations Convention on the Law of the Sea (*UNCLOS*) guarantees the right of transit passage through straits used for international navigation, stating that this right “shall not be impeded” (*UNCLOS*, 1982, art. 38(2); Churchill & Lowe, 1999, p. 85). Article 44 provides that states bordering straits “shall not hamper transit passage” and declares that “[t]here shall be no suspension of transit passage” (*UNCLOS*, art. 44). This, in essence, is the positivist position. The text says no, and any other interpretation would appear to betray the will of states and the predictability of international law.

Nevertheless, can this categorical prohibition be accepted in all circumstances without regard to context? Consider a scenario where an aggressor state launches a full scale, unprovoked military or non-military attack against a coastal state, threatening its very survival. The aggressor's naval and air forces must pass through the Strait of Hormuz to strike the coastal state's military and economic installations. Under the clear terms of Article 44, the coastal state is obliged to create no suspension of transit passage and to place no obstacle in the aggressor's path. Does international law truly require the coastal state to watch as enemy warships move through its own territorial waters to the front lines of battle? This seemingly absurd result would contradict the ultimate purpose of international law as expressed in the preamble of the UN Charter, namely “to save succeeding generations from the scourge of war” (UN Charter, 1945, preamble). The novelty and literature review of the present study lies in the fact that previous scholarship has addressed the Strait of Hormuz primarily from the perspective of *UNCLOS* compliance, the law of self-defense, or geopolitical analysis. However, no study has systematically attempted to reconcile the absolute prohibition of Article 44 with the existential self-defense scenario

through a dialectical framework that draws analogically on the ICJ's Nuclear Weapons and Kosovo advisory opinions. The novelty of the analysis lies in four elements: (1) the explicit four-question framework distinguishing legality from legitimacy; (2) the dialectical method (thesis-antithesis-synthesis) applied to straits closure; (3) the cautious analogy to the Nuclear Weapons opinion's *non liquet* rather than a claim of a *fortiori* legitimacy; and (4) the proposal of a five-condition "remedial closure" doctrine, which has not been systematically articulated in previous literature.

In response to this irreducible tension, this article does not merely ask whether the closure of the Strait of Hormuz is legal or illegal under a static reading of the law of the sea. Instead, it seeks to navigate a more sophisticated set of inquiries. Four central questions structure the entire analysis.

The first question is how internationally legal the closure of the Strait of Hormuz is. This question demands a positivist, text-based assessment of the relevant provisions of *UNCLOS* and customary international law. It asks whether the act conforms to the formal, codified rules governing transit passage. As will be demonstrated in Section Two, the answer to this question is that the closure has very little, if any, support for legal acceptance under a purely positivist reading, because Article 44 contains an absolute prohibition on suspension.

The second question is how internationally legitimate the closure of the Strait of Hormuz is. This question shifts the inquiry from formal rules to the deeper principles and values that underpin the international legal order. It asks whether the act, even if technically prohibited by a specific treaty provision, is coherent with foundational norms such as the prohibition of aggression, the inherent right of self-defense under Article 51 of the UN Charter, the state of necessity, and the principle of proportionality. This question will be addressed in Section Three.

The third question draws these two inquiries together. It asks how legally legitimate the closure of the Strait of Hormuz is. This question recognizes that legitimacy is not merely an external moral or political judgment, it can be internalized into the legal discourse through analogical reasoning and dialectical synthesis. A state's action may be described as "legally legitimate" when it finds support not in a single explicit treaty rule but in the overall architecture of international law, including general principles, peremptory norms and the evolving jurisprudence of the International Court of Justice (ICJ). *The Kosovo advisory opinion* (2010) and the *Nuclear Weapons advisory opinion* (1996) provide the methodological tools to construct this category.

The fourth question is how legitimately legal the closure of the Strait of Hormuz is. This question, which is the most subtle and perhaps the most important, asks whether the law itself can be subject to a legitimacy audit. In extreme circumstances where the application of a literal rule leads to an absurd or self-destructive result, the law's own legitimacy may be called into question. A legal rule that requires a state to facilitate its own destruction may be said to lack internal legitimacy. A state that acts to preserve its existence, even in violation of a secondary rule, may be acting in a manner that is “legitimately legal” because it is faithful to the higher purposes of the legal system itself.

The central claim is not that the Nuclear Weapons opinion declared nuclear use legitimate (it did not), nor that the Kosovo opinion created a right of unilateral action (it merely found no prohibition). Rather, the claim is that these opinions demonstrate that international law contains grey zones where explicit rules conflict with foundational principles, and that in such zones, a state acting in existential self-defense under strict conditions may not be acting illegally in a definitive sense. This is an invitation to a more nuanced engagement with the law, not an invitation to lawlessness.

The article is organized in five main parts. Section two broadens '*existential threat*' to include unilateral coercive measures and protracted emergencies, not just war. It answers that the logic of remedial closure applies a fortiori to all three existential threats, not only to armed conflict. Section three presents a positivist analysis of the prohibition on closing straits, demonstrating the textual force of Article 44 and the difficulty of finding any explicit legal authorization for closure. This section answers the first question by showing that under a strict legality test, closure has little support. Section four constructs the conceptual distinction between legality and legitimacy, drawing on ICJ jurisprudence, including the *Nuclear Weapons*, *Nicaragua*, *Gabčíkovo Nagymaros*, *Corfu Channel* and *Kosovo* cases, as well as on the philosophy of law as developed by *Hart* and *Dworkin*. This section introduces the method of dialectical reasoning and analogy as a way to move beyond the positivist dead end and provides the resources to answer the second question regarding international legitimacy. Section Five proposes the doctrine of remedial closure as a synthetic framework. This section brings together the threads of the argument to demonstrate how an act that lacks purely positivist legal acceptance can nevertheless be legally legitimate, and indeed legitimately legal, under the most extreme circumstances. The final section concludes with reflections on the dialectical relationship between legality and legitimacy as a permanent feature of a living international legal order.

2. War, UCM¹ and Protracted Emergencies as Existential Threats

A threat to the survival of a State is not a phenomenon confined to the theater of armed conflict or the presence of enemy regular forces. Historical experience and the evolution of international law have demonstrated that the very existence of a nation can be imperiled across a spectrum of situations, ranging from open warfare to apparent peacetime. In truth, the state of war represents only one manifestation of such existential danger. Today, the state of sanction, particularly when materialized through unilateral coercive measures known as UCMs, can prove equally if not more capable of jeopardizing a state's survival. These measures, encompassing comprehensive economic, financial, banking, commercial, and even digital and informational blockades, are designed to paralyze the essential structures of a government, induce famine and medical shortages, deny access to critical technologies, and ultimately precipitate the collapse of public order and national sovereignty. (Seyvanizad, 2024, p16) Consequently, any threat, whether military or non-military, whose origin can target the very existence of a State, irrespective of the nature of the instruments employed, merits consideration within the framework of a survival threatening state of emergency.

In contemporary international law, as well as in domestic legal systems including that of the United States, the state of emergency is a mechanism foreseen to confront such exceptional threats that exceed the ordinary management capacity of sovereign authorities. A critical observation is that the continuation of this emergency state is legally contingent upon the persistence of the threat's source. Until that source is repelled or removed, the logic of self-preservation dictates that the emergency status may legitimately endure. However, what has inflicted serious damage upon the

1. Unilateral Coercive Measures (UCMs) are defined as extra-jurisdictional acts or omissions undertaken by one or more states outside the collective security framework of the United Nations Charter, particularly its articles 39 to 42. These measures also operate beyond the codified legal regime of countermeasures established under Articles 49 to 53 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Unlike multilateral sanctions duly authorized by the *Security Council*, UCMs lack any basis for the preclusion of wrongfulness under international law. They employ economic, financial, diplomatic, or cyber instruments to compel a targeted state to alter its sovereign policies. In doing so, UCMs frequently violate fundamental norms of international law. These norms include the duty of non-intervention as articulated in UN General Assembly Resolution 2625 (the Friendly Relations Declaration), the freedom of transit under Article V of the General Agreement on Tariffs and Trade (GATT), and basic human rights as interpreted in General Comment No. 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Consequently, regardless of the stated political motives of the coercing state, UCMs constitute a *prima facie* internationally wrongful act.

legitimacy of international law in practice is the abusive invocation and prolonged extension of this legal institution. For instance, within the United States, several declared national emergencies, including the emergency relating to sanctions against Iran first proclaimed on November 14, 1979, have persisted for decades despite the absence of any justification consistent with the original threat source. The longest standing example, the national emergency with respect to the unusual and extraordinary threat from developments in Iran under Executive Order 12170, declared following the hostage crisis, not only remains in full force today but has also served as an umbrella for dozens of subsequent rounds of unilateral sanctions. Some states of emergency in the United States, particularly those linked to the Cold War era, have continued for over forty years without the National Council or Congress ever approving such an immense temporal scope (Boyle, 2004, p. 191). This practice, reflecting a political exploitation of the emergency institution, itself operates as a threat to the survival of other States. By perpetuating a domestic state of emergency, a powerful State may sustain unilateral coercive measures against another government that gradually erode all pillars of that State's existence, including its economy, public health, and social cohesion.

From this perspective, three distinct yet interrelated legal statuses can generate a threat to State survival. These are the state of sanction, particularly in the form of unilateral coercive measures, the state of war, whether traditional or proxy, and the state of emergency, which may itself be either the source of the threat or a response to it. (Seyvanizad, 2026) What unites these three situations is their shared capacity to produce a grey zone in which the application of ordinary international law rules, such as the prohibition on suspending transit passage through international straits or the prohibition against violating a State's economic sovereignty, leads to an unreasonable and unjust outcome, i.e., the imperilment of the victim State's survival.¹ Notwithstanding the foregoing explanations, and in light of the

1. The concept of “*existential threat*” as elaborated in this article, encompassing armed attack, unilateral coercive measures, and protracted emergencies, must be extended also to the realm of critical undersea infrastructure. The submarine fibre optic cables traversing the seabed of the Strait of Hormuz carry a substantial portion of regional and intercontinental data traffic, including financial messaging, cloud synchronisation, and military communications. While industry data indicates that bandwidth through the Strait represents a small fraction of global international bandwidth, the strategic significance of these cables lies in their essentiality to the economic and informational survival of the coastal State rather than in their global share. The destruction of these cables, whether by sabotage, military action, or an “accident” attributable to hybrid warfare tactics, would produce effects functionally equivalent to a naval blockade. These effects include economic paralysis, loss of access to global financial systems, and disruption of command and control capabilities. Crucially, no *lex specialis regime* currently exists under treaty or customary international law for the protection of submarine

occurrence of an armed conflict against Iran, the central focus of this writing remains on the military threat. However, one must never assume that a threat to the survival of a nation is exhausted by or confined to armed conflict (Boyle, 2008, p. 234). To do so would be to ignore the equally destructive potential of prolonged unilateral coercive measures and perpetual states of emergency imposed from outside.

The analytical framework advanced in the analysis concerning remedial closure of the Strait of Hormuz in a war scenario is therefore extendable, *a fortiori*, to the right of a State to suspend temporarily certain obligations when facing unilateral coercive measures that threaten its survival. Likewise, a State subjected to a protracted and disproportionate emergency situation arising from unilateral sanctions finds itself in a survival threatening state of emergency and may be compelled to adopt exceptional and strictly conditioned measures, analogous to remedial closure or proportionate countermeasures, to repel that threat. The continuation of such an emergency status, until the originating threat such as crippling sanctions or economic siege is removed, remains legally justifiable under international law, provided that the principles of necessity, proportionality, transparency, and temporal limitation are scrupulously observed. The historical precedents of states of emergency enduring for up to four decades within the United States legal system serve as a sobering warning to the international community. This legal institution must not be transformed into an instrument for multi decade threats against the survival of other nations. (Seyvanizad,2026)

3. Positivist Analysis

Modern law of the sea, as codified in *UNCLOS* (1982), represents a delicate compromise between the legitimate sovereign rights of coastal States and the vital interests of the international community in freedom of navigation (Brownlie, 2012, p. 195). This compromise is nowhere more sensitive than in the regime governing international straits. The Strait of

cables in armed conflict. As one recent study concludes, “no *lex specialis* rules have emerged specific to the protection of submarine cables in armed conflict, either in treaty or customary international law.” Rob McLaughlin and Tamsin Phillipa Paige, (2024) 100 International Law Studies 1, 4 to 7 Where *UNCLOS* provides no adequate solution for existential threats to such critical infrastructure, the customary international law of necessity, as recognised in *Gabčíkovo Nagymaros* and the ILC Draft Articles on State Responsibility, may justify defensive measures that would otherwise technically violate the freedom of navigation. The remedial closure doctrine, therefore, is not confined to the closure of the waterway to warships. It extends *a fortiori* to the protection of the seabed infrastructure upon which the survival of the coastal State may depend.

Hormuz narrows to approximately 21 nautical miles at its most constricted point, lying entirely within the overlapping territorial seas of Iran and Oman.

3.1. The Normative Framework of UNCLOS

The law governing international straits wholly within territorial seas is set out in Part III of *UNCLOS*, specifically Articles 34 through 45, which establishes the regime of transit passage. Article 34 states that the regime of transit passage shall not affect the exercise of sovereignty by states bordering straits over their territorial waters. The very next paragraph, however, provides that the exercise of such sovereignty is subject to the regime of transit passage (*UNCLOS*, art. 34(2)). Thus, the sovereignty of the coastal state is bound and limited by a fundamental right of the international community.

Article 38 provides a detailed definition. Paragraph 1 states explicitly that “*all ships and aircraft enjoy the right of transit passage, which shall not be impeded*”. The words “all” and “shall not be impeded” indicate universality and absolute obligation. Paragraph 2 defines transit passage as the exercise of the freedoms of navigation and overflight solely for the purpose of continuous and expeditious transit (*UNCLOS*, art. 38(2)). In the terminology of the law of the sea, a ‘freedom’ stands at a higher level than a mere ‘right’, meaning no permission is required from the coastal state and passage cannot be unilaterally suspended (*ITLOS, Saiga (No 2), 1999, para. 215*).

3.2. Article 44 and the Absolute Prohibition of Suspension

The core provision is Article 44, which contains arguably the strongest language in the entire Convention. It reads as follows: “*States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation. There shall be no suspension of transit passage*” (*UNCLOS*, art. 44). The language is categorical, free of any ‘if’ or ‘but’. No reference to possible exceptions, including no mention of emergency conditions or self-defense, appears in this article. This absolute language was deliberately inserted to prevent abuse by coastal States, prompted by historical experiences of strait closures (Rothwell & Stephens, 2016, p. 266).

Beyond the prohibition of suspension, other provisions also prohibit levying any tolls or charges on foreign ships solely for passage through territorial waters (*UNCLOS*, art. 26(1)(a); Oxman, 1987, p. 63). International maritime organizations have repeatedly stressed that imposing charges on international straits contradicts the spirit and letter of the law of the sea.

3.3. The Question of Customary Status and the Position of Non-Parties

A contested issue concerns the states that have not ratified *UNCLOS*. Under the Vienna Convention on the Law of Treaties (1969, art. 18), signature does not amount to final acceptance of treaty obligations. Nevertheless, customary international law binds states independently of treaties. The ICJ emphasized this in the Nicaragua judgment (1986, para. 177). Some provisions of *UNCLOS*, such as the 12-mile territorial sea, have risen to customary status. The most disputed issue concerns transit passage itself. Some coastal States, including Iran, have consistently argued that transit passage, unlike innocent passage, never emerged from international custom and is obligatory only for parties to the Convention. See, for example, the statement of the Iranian representative at the 11th Meeting of the States Parties to *UNCLOS* (2001, UN Doc. SPLOS/91) and Iran's declarations upon signing *UNCLOS* in 1982, though Iran has not ratified the Convention. Under innocent passage, the coastal State enjoys the power to take necessary steps to prevent passage that is prejudicial to its peace, good order or security (*UNCLOS*, art. 19(1)). It may also adopt national laws on safety of navigation, provided such laws do not effectively block or discriminate against transit (*UNCLOS*, art. 24(1)(a)–(b)).

3.4. The Positivist Dead End¹

From a purely textual and positivist perspective, the answer to the fundamental question whether a coastal State may close the Strait of Hormuz

1. The *San Remo* Manual on International Law Applicable to Armed Conflicts at Sea (1994) constitutes the most authoritative restatement of the law of naval warfare, though it is a not *binding* instrument. Its relevance to the present analysis is threefold. First, the Manual confirms that the law of the sea does not operate in a vacuum during armed conflict. While *UNCLOS* Article 44 prohibits the suspension of transit passage in peacetime, the Manual recognises that belligerent rights and the law of neutrality introduce a different legal architecture during hostilities. Second, Rule 29 of the Manual provides that “a neutral State may not suspend, hamper, or otherwise impede the right of transit passage” through international straits. This provision appears, at first glance, to reinforce the absolute prohibition. However, the Manual simultaneously recognises, in Rules 27 and 33, that the law of naval warfare operates as *lex specialis* during armed conflict, modifying the peacetime obligations of *UNCLOS*. Third, and most significantly, the provisions of the Manual on naval blockade, in Rules 93 to 104, demonstrate that a belligerent coastal State may lawfully restrict navigation in its territorial waters under strict conditions of necessity, proportionality, and notification. The doctrine of remedial closure, as proposed in this article, draws upon this logic. It is an exceptional measure grounded in the inherent right of self defence, rather than a suspension of transit passage in the peacetime sense, and it is analogous to the belligerent rights that the Manual codifies. The Manual thus provides positive legal support for the proposition that the Article 44 prohibition is not absolute when the survival of the coastal State is at stake.

is a clear and unambiguous negative (*UNCLOS*, art. 44). A faithful positivist lawyer would declare with confidence that suspension of transit passage in any circumstances, even in time of war and self-defense, violates international law. Thus, in response to the first question posed in the introduction, it must be concluded that the closure of the Strait of Hormuz has very little, if any, support for legal acceptance under a strict reading of the positive rules of the law of the sea.

However, this emphatic prohibition raises a deeper question. Does international law truly require the coastal state to watch as enemy warships move through its own backyard to the front lines of battle? Is this absurd result compatible with the ultimate aim of the UN Charter, namely to save succeeding generations from the scourge of war? This dead end reveals the limitation of dogmatic positivism. Positivism, with its emphasis on text and State will as the sole source of valid law, has severed itself from the foundational moral and political principles that constitute the very reason for law's existence. As *D'Amato* observes, international law is too important to be left to impassioned rhetoric, but it is equally too important to be reduced to a mechanical reading of texts in isolation from the values they serve. (2001, p. 35) Faced with the imminent danger of a State's destruction, the dry text of the law of the sea stands helpless. This is precisely the point at which law moves from the narrow territory of legality into the broad realm of legitimacy and justice.

4. Meta Textual Analysis

The positivist response, however textually solid, appears from the perspectives of legal philosophy and collective moral conscience to be incomplete and one dimensional. International law is more than a collection of neutral texts and rules. These rules are the fruit of centuries of human struggle to limit power, create a more just order and escape the state of nature. To step into the rich territory of meta textual analysis, the current analysis distinguishes two fundamental concepts, i.e., legality and legitimacy.

4.1. The Conceptual and Philosophical Distinction

Legality, in the precise positivist sense, refers to the formal and procedural conformity of a State's action with rules derived from formal sources of law, including treaties, customary international law and general principles of law (Seyvanizad, 2017, p. 76). This narrow view which is largely shaped by the Lotus principle (PCIJ, Lotus, 1927, p. 18), holds that international law governs relations between independent States and that restrictions upon State independence cannot be presumed. While serving a vital function in

preserving State sovereignty, this view fails before fundamental questions of justice and human dignity.

Legitimacy, on the other hand, is rooted in the sociology of law and critical legal theory. As Bodansky explains, legitimacy relates to the “justification and acceptance of political authority”. (2007, p. 2) It refers to the degree of substantive coherence and compatibility between a State’s action and the principles and values that give meaning to the international legal order as a whole. Legitimacy asks the decisive question whether an action is compatible with the spirit, purpose and underlying logic of international law. It also asks whether it is compatible with the lofty ideals of the UN Charter, including peace, security, development and human rights (UN Charter, preamble and art. 1). In response to the second question posed in the introduction, it is necessary to examine how internationally legitimate the closure of the Strait of Hormuz might be, even if it lacks strict positivist legality.

Several foundational principles underpin this analysis. First, the prohibition of the threat or use of force in Article 2(4) of the UN Charter has risen to the level of a peremptory norm, namely *jus cogens*. Second, the inherent right of self-defense is preserved in Article 51. A State that cannot defend itself against aggression is no longer a sovereign State as before. Third, the state of necessity permits States in emergency circumstances to derogate temporarily from certain obligations to protect essential interests. Fourth, the principle of proportionality governs both the resort to force and the conduct of military operations. Fifth, fundamental human rights norms are now an inseparable part of international public order.

4.2. Dialectical Method and Analogy as Pathways Beyond Positivism

The argument moves dialectically through three moments. The first moment is the affirmation of the positivist prohibition, which constitutes the thesis. The second moment is the critique of that prohibition from the standpoint of legitimacy, justice and State survival, which constitutes the antithesis. The third moment is the synthesis that preserves the validity of the rule while recognizing a narrow, strictly conditioned exception, i.e., remedial closure. This dialectical movement is not a rejection of law but settling it down, reflecting a recognition that legal norms exist in a dynamic relationship with the principles that justify them. As Brunnee and Toope have shown, law manages stability and change through practices of legality that are grounded in shared understandings. (2018, p. 12) When those shared understandings, such as the prohibition of aggression and the right of survival, come into conflict with a specific treaty rule, *legality* must be *recalibrated*. (Seyvanizad, 2026)

Furthermore, the article employs reasoning by analogy, a well-established method in international jurisprudence, to cautiously transfer the legal logic of certain ICJ opinions to the context of the Strait of Hormuz. Two advisory opinions serve as analogous touchstones. The *Nuclear Weapons opinion* (1996) established that even the most destructive weapons cannot be declared definitively illegal in the extreme circumstance of self-defense where a State's survival is at stake (ICJ, *Nuclear Weapons*, 1996, para. 105(2)E). The *Kosovo opinion* (2010) also shifted the framing of the legal question from whether there is a right to do something to whether there is a prohibition on doing something, a methodological move that opens space for legitimate action where no explicit rule forbids it (ICJ, *Kosovo*, para. 86). If the use of *Nuclear Weapons* may be legitimate in an existential self-defense scenario, then a fortiori the temporary and limited closure of a strait, which causes infinitely less damage, may also be legitimate in comparable circumstances. This analogy is not merely rhetorical, it is grounded in the same logic of necessity, proportionality and State survival that the Court already itself employed.

4.3. The Nuclear Weapons advisory opinion (1996)

Among the many decisions of the ICJ since its establishment in 1945, few match the *Nuclear Weapons advisory opinion* of 1996 in terms of philosophical and legal consequences. The Court was asked by the United Nations General Assembly whether the threat or use of *Nuclear Weapons* is permissible in any circumstances (ICJ, *Nuclear Weapons*, para. 10). The Court faced a dilemma. On one hand, no explicit rule of treaty or customary international law prohibited the use of *Nuclear Weapons* in all circumstances without exception. A legal gap existed. On the other hand, the foundational principles of international humanitarian law, namely the principle of distinction separating civilians from combatants, the prohibition of unnecessary suffering, and the principle of proportionality, are such that the use of *Nuclear Weapons* appears to conflict with all of these ancient and fundamental rules, given their long-term radiation effects.

Critically, the Court did not declare that nuclear weapons are legitimate in existential self-defense. It declared: "*However, in view of the current state of international law, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense in which the very survival of a state would be at stake*" (ICJ, *Nuclear Weapons*, para. 105(2)E). More probably, "this is a *non liquet*, i.e., a declaration of judicial inability to answer definitively". Actually, it may create a grey

zone, not a green light. Judge Fleischhauer explained that if the Court had declared nuclear use entirely illegal, it would have deprived the victim State of its final means of self-defense (Fleischhauer, 1999, p. 295). But this is still an argument against absolute prohibition, not an argument for affirmative legitimacy.

The present deduction acknowledges that a pure and unqualified a fortiori argument would be legally unsound. Such an argument would claim that because nuclear weapons may be legitimate, strait closure is a fortiori legitimate. The Court in the Nuclear Weapons opinion did not affirm the legitimacy of nuclear use. It merely refused to declare it definitively illegal. However, a qualified a fortiori reasoning remains valid and is employed in the present analysis. If even the most destructive weapon cannot be declared definitively illegal in the existential self-defense scenario, then a fortiori the temporary closure of a strait cannot be declared definitively illegal either. A strait closure causes infinitely less damage than nuclear weapons. The difference between the two situations in terms of scale and effect strengthens rather than weakens the a fortiori inference. A lesser intrusion on the international legal order is a fortiori more justifiable than a greater one. Thus, both nuclear use and strait closure occupy a space of legal uncertainty rather than a space of affirmed legitimacy. The coastal state invoking closure cannot claim an affirmative right. It can only argue that its action is not definitively prohibited under the totality of international law. This qualified a fortiori reasoning is entirely consistent with the cautious methodology of the analysis.

4.4. The Nicaragua Judgment (1986)

Alongside the critically important *Nuclear Weapons advisory opinion*, the Nicaragua case of 1986 matters greatly because the Court for the first time in its history traced in detail the conditions, elements, boundaries and limits of the right of self-defense (Kolb, 2013, p. 145). This judgment is relevant to the present analysis in multiple vital respects.

Crucially, the Court in paragraph 190 referred to the prohibition of the use of force as a peremptory norm (*jus cogens*)¹. Article 44 of UNCLOS is an ordinary treaty rule. However, the conclusion that "self-defense must prevail" is not automatic. The relationship between a *jus cogens* norm

1. "The Court considers that the prohibition embodied in Article 2, paragraph 4, of the United Nations Charter is thus a conspicuous example of a rule of international law which has the character of *jus cogens*. The Commission (ILC) expressed the view in its work on the law of treaties that 'the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*.' The Court shares this view."

(prohibition of aggression, right of self-defense) and an ordinary treaty rule (Article 44) is not one of hierarchical invalidation of the latter. Rather, the coastal State invoking self-defense must demonstrate that its action is a necessary and proportionate response to an armed attack. If this demonstration fails, Article 44 remains fully applicable. The *jus cogens* status of self-defense does not negate the treaty obligation, it just provides a potential justification for temporary non-compliance, subject to strict scrutiny.

4.5. The State of Necessity and Proportionality in the Jurisprudence

The principles of necessity and proportionality have deep roots in customary international law. In the *Gabčíkovo Nagymaros* case (1997), the Court recognized the state of necessity as a well-established customary rule. The Court stressed that a plea of necessity is permitted only in exceptional circumstances where three conditions are met. First, there must exist a grave and imminent peril to an essential interest of the state, such as territorial integrity, political independence, national security, economic survival or public order (Beyerlin, 2011, para. 12). Second, the measure taken must be the only means of safeguarding that essential interest, meaning that no effective and less restrictive alternative is available (Gaja, 1999, p. 265). Third, the measure must not seriously impair an essential interest of the other state or a peremptory norm (ILC Draft Articles on State Responsibility, art. 25(1)(b), p. 30; Vienna Convention, art. 53).

In the Wall Advisory Opinion of 2004, the Court again acknowledged the continuing validity of the state of necessity as a rule of customary international law, although ultimately rejecting Israel’s plea of necessity on the facts (Kolb, 2013, p. 180). The International Tribunal for the Law of the Sea in the *M/V Saiga* (No 2) case of 1999 likewise confirmed that the state of necessity exists as a customary rule of international law (ITLOS, *Saiga* (No 2), 1999, para. 135). Also in the *Nuclear Weapons advisory opinion*, even though the Court did not use the technical term “necessity”, the logic underlying paragraph 105 echoes precisely the structure and content of the state of necessity as defined in *Gabčíkovo Nagymaros* (ICJ, *Nuclear Weapons*, para. 105(2)E; Fleischhauer, 1999, p. 299). That paragraph concerns the existence of a grave and imminent threat to the survival of the State as the highest essential interest.

Applying this to the present case, a coastal State can legitimately argue that the unimpeded and privileged passage of an aggressor’s warships through the Strait of Hormuz constitutes a grave and imminent peril to its essential interests. This is particularly true when that aggressor is engaged in a large scale, organized and deadly attack on the territorial integrity of the

coastal state. The essential interests at stake include national security, territorial integrity, political survival and economic independence (Beyerlin, 2011, para. 15). The coastal State can also reasonably argue that, in those critical circumstances, the only timely and proportionate means of averting that grave and imminent peril is the conditional and justified suspension of transit passage through the strait (Scobbie, 1999, p. 540). No less restrictive, timely and effective alternative would work in those critical moments. Mere inspection, futile diplomatic warnings or slow motion before the Security Council simply would not suffice (Gray, 2018, p. 135). Therefore, the vital principle of necessity can, as a legitimate legal tool, very restrictedly and subject to multiple conditions modify or suspend the coastal State's heavy obligations under the Law of the Sea Convention, especially Article 44 (ILC Draft Articles on State Responsibility, art. 25, p. 30; ICJ, *Nuclear Weapons*, para. 3)

4.6. The Corfu Channel Case (1949)

The Corfu Channel case of 1949 is arguably the first and one of the most influential classic decisions of the International Court of Justice in the post-World War II era (Kolb, 2013). This case is vital for the present argument because it shows elegantly that the international law of the sea, contrary to superficial and popular misconceptions, is not a one-sided system tilted in favor of the great maritime powers and of the right of passage for their vessels (Shaw, 2017, p. 470). The law of the sea, on the contrary, is a balanced web of reciprocal rights and obligations between the coastal State and the States that use the waterway, i.e., flag States. The interplay and interaction of these rights and obligations is what creates order and security at sea (ICJ, *Corfu Channel*, p. 30).

In this historic case, several British warships, while passing through the Corfu Channel which then lay within Albanian territorial waters, struck mines that had been previously laid. They suffered heavy loss of life and damage. The Court first recognized the fundamental principle that in time of peace, States have the inherent right to send their warships through straits used for international navigation without obtaining prior permission from the coastal State (Lauterpacht, 1949, p. 70). This part of the judgment, reflecting the high value placed on freedom of navigation, later served as an inspiration for the transit passage regime of the 1982 Convention (Oxman, 1987, p. 61). But the Court also imposed a heavy, fundamental and inescapable obligation on the coastal State. The Court held, explicitly and with great force, that a coastal State may not knowingly and deliberately allow its territorial waters to be used for acts prejudicial to the innocent passage of foreign ships. In other words, the

coastal State must maintain, monitor and protect its territorial waters in such a way that passage is innocent and secure for other States’ vessels (ITLOS, *Saiga* (No 2), para. 219). Because Albania knew, or should with ordinary diligence have known, of the mines in the channel and failed to warn the British ships of the danger, the Court held Albania internationally responsible for the resulting damage.

A twofold application to the present case emerges. First, the Corfu Channel judgment affirms the right of passage of ships, even warships, through international straits (Churchill & Lowe, 1999, p. 82). This affirmation appears on its face to support the position of the major maritime powers in the Strait of Hormuz dispute. Second and more importantly for the present argument, the judgment insists on the duty of the coastal State to ensure safe and non-prejudicial passage for others (ICJ, *Corfu Channel*, p. 22). If passage by the warships of an aggressive and expansionist State is not only not innocent but actually creates the conditions for insecurity that will lead to a direct and large-scale attack on the national security of the coastal State, then a further question arises (Gray, 2018, p. 130). Can the coastal State not argue with force that its fundamental and vital duty to protect its own security, territorial integrity, independence and survival must prevail over its secondary and derivative duty to provide safe and unimpeded passage to the aggressor’s warships? This fundamental duty is rooted in international public order and the peremptory norm of self-defense (Fleischhauer, 1999, p. 297).

The logic of the Corfu Channel judgment shows that the law of the sea establishes a dynamic and fluid balance between the right of passage on the one hand and the right to security and territorial integrity of the coastal State on the other. In time of peace and calm, the balance tilts toward freedom of navigation (Rothwell & Stephens, 2016, p. 260). But in time of war, aggression, grave threat and extreme circumstances, namely the situation referred to in the Nuclear Weapons opinion as the survival of the State, the same logic of balance and procedural fairness requires the scale to tilt heavily toward the right to life, security, territorial integrity and immediate survival of the coastal State (Simma, 2011, p. 438).

The case does not directly address closure in self-defense. Its relevance lies in demonstrating that the law of the sea establishes a dynamic balance between passage rights and coastal security. In peacetime, the balance tilts toward freedom of navigation. In existential self-defense, the logic of balance requires the scale to tilt toward coastal State survival.

4.7. Philosophical Foundations

The philosophical foundations of the legitimacy-based argument draw on Hart and Ronald Dworkin. Hart distinguished between primary rules which govern conduct and secondary rules which govern how primary rules are created, recognized and applied (Hart, 2012, pp. 79–94). The rule of recognition tells us which primary rules are valid. In the positivist dead end described in this article, the ultimate rule of recognition cannot be limited either to the mere will of states, which often conflicts, or to the bare text of the rules, which admits of exceptions (Hart, 2012, p. 205). The rule of recognition must refer to more abstract principles such as justice and international public order.

Dworkin, in his theory of law as integrity, went beyond contractarianism and pure positivism (Dworkin, 1986, p. 225). For Dworkin, law consists not only of explicit and codified rules but also of principles and policies that carry equal weight with rules. Principles, unlike rules which operate in an all or nothing fashion, possess a dimension of weight. (Seyvanizad, 2017, p. 89) When principles conflict with rules or with other principles, they can prevail based on their relative weight in the specific context. In the present dispute, the rule of Article 44 conflicts with the principle of self-defense, whose roots in international law are as old as international law itself (UN Charter, art. 51), and with the principle of State survival. A Dworkinian judge would not look merely to the text. He would look to the legal system as a whole and to the best possible interpretation of that system. He would seek a solution compatible with the foundational principles governing that system, i.e., integrity and procedural and substantive justice (Rawls, 1971, p. 60). Such an ideal judge would surely not interpret the rule of passage in a way that leads to the destruction of the very subject of international law, the State itself (Shaw, 2017, p. 24). The concept of international public order, now well established in contemporary international law, functions similarly (Kolb, 2013). It indicates that modern international law is not a closed and self-sufficient system based solely on State consent. It incorporates values and principles such as peace, collective security, human rights and human dignity that stand at the apex of the normative hierarchy and prevail over all other rules.

4.8. The Kosovo Advisory Opinion (2010)

The Kosovo advisory opinion (2010) provides an innovative methodological model (Simma, 2011, p. 425). The Court faced a structurally similar dilemma. On one hand, the ancient and weighty principle of territorial integrity argues that secession without the consent of the central State violates international law. On the other hand, the plight of the Kosovar

people, the atrocities committed against them, and other grave humanitarian crises demanded a different response (Krieg, 2010, p. 5). To escape this dilemma courageously the Court shifted the framing of the question. It moved away from the traditional question of whether Kosovo had a right to declare independence, which was extremely difficult, politically charged and practically unanswerable (Krueger, 2010, p. 12). Instead, the Court asked a more subtle question, i.e., whether any consensual and prohibitive rule of international law exists that in all circumstances and conditions prohibits a territory from unilaterally declaring independence (ICJ, Kosovo, para. 86). After careful examination, the Court concluded that no such prohibitive rule exists (ICJ, Kosovo, para. 87). Therefore, the declaration of independence was not a violation of international law.

The same methodological shift is proposed here. The traditional and positivist question has always been whether Iran or any coastal State has an absolute right to close the Strait of Hormuz. This question confines the analysis to the narrow and static space of positive law and the dogma that what is not explicitly permitted is prohibited (PCIJ, Lotus, 1927, p. 18). The answer, as shown in Section Two, is an unequivocal negative (Krueger, 2010, p. 8). However, a different question can be asked with courage. In contemporary international law, taking into account the entire system, its principles and its governing values, does any explicit, absolute and prohibitive rule exist that prohibits the closure of a strait in the specific circumstances of lawful self-defense in a situation of grave peril and threatened State survival? This is precisely the situation described in the *Nuclear Weapons advisory opinion*. The answer to this properly framed question, unlike the first, no longer has the same simplicity or finality. The explicit and literal text of Article 44 of UNCLOS does not foresee such an exception, but it does not explicitly deny it either. Moreover, the well-established principles of necessity, proportionality and justice together with the relevant interpretative jurisprudence, open a window, a justification, and a legitimate way out for the victim State in extreme and emergency circumstances (Seyvanizad, 2026).

However, the present article acknowledges a critical distinction between Kosovo and the strait context. In Kosovo, there was no treaty provision explicitly stating "unilateral declarations of independence are prohibited." In the strait context, Article 44 explicitly states "there shall be no suspension." Therefore, the Kosovo method cannot be applied identically. One cannot simply ask "is there an explicit prohibitive rule?" because the answer is yes – Article 44. The correct methodological adaptation is to ask a narrower question. Does any explicit prohibitive rule prohibit closure in the exceptional circumstance of existential self-defense where the State's

survival is at stake? Article 44 does not mention such an exception, but neither does it explicitly deny it. The question is whether the rule's scope of application includes this extreme scenario. *This is a question of interpretation, not of the existence of a rule.* The Kosovo method is thus adapted. It shifts attention from whether a right exists to whether the prohibition's scope covers the exceptional case, leaving room for interpretive nuance.

4.9. The Four Questions Answered Through the Dialectic of Legality and Legitimacy

Before proceeding to the synthetic framework of remedial closure, it is useful to summarize how the dialectical method developed in this section responds to the four central questions posed in the introduction.

First, how internationally legal is the closure of the Strait of Hormuz? Under a strictly positivist reading of *UNCLOS*, particularly Article 44, the closure has very little support for legal acceptance. The text is categorical and admits of no explicit exception for self-defense or state necessity. A positivist lawyer must conclude that the closure violates international law. This is the thesis of the dialectic.

Second, how internationally legitimate is the closure of the Strait of Hormuz? From the standpoint of the foundational principles of the international legal order, the closure can be highly legitimate. The peremptory norm prohibiting aggression and the inherent right of self-defense under Article 51 of the UN Charter, read together with the state of necessity and the principle of proportionality, provide strong normative support for a coastal State's action to defend its very survival. This is the antithesis of the dialectic, challenging the primacy of the positivist rule.

Third, how legally legitimate is the closure of the Strait of Hormuz? This question recognizes that legitimacy is not merely an external moral judgment but can be internalized into legal reasoning through analogy and systemic interpretation. Drawing on the *Nuclear Weapons advisory opinion*, which recognized an exception for extreme self-defense where a State's survival is at stake, and the Kosovo advisory opinion, which shifted the question from whether there is a right to whether there is a prohibition, the closure can be described as legally legitimate. No explicit rule prohibits closure in these extreme circumstances, and the higher principles of the legal system justify it.

Fourth, how legitimately legal is the closure of the Strait of Hormuz? This question inverts the perspective and asks whether the law itself remains legitimate when it demands self-destruction. A legal rule that requires a state to facilitate its own annihilation would be fundamentally

illegitimate. A state that acts to preserve its existence, even in technical violation of a secondary rule, may be acting in a manner that is legitimately legal because it is faithful to the ultimate purposes of the legal system. The closure, under the strict conditions elaborated in Section Four, can meet this demanding standard.

The precedence of legitimacy over legality in these borderline cases is not an absolute or unlimited license. It is a double-edged sword, confining the coastal State within the strictest imaginable conditions. Any violation of these conditions destroys legitimacy and exposes the state to international responsibility. Section Four is devoted to elaborating this conditional framework.

5. The Doctrine of “Remedial Closure” as a Synthetic Framework

Two opposing poles have been depicted in the preceding sections. Legality, in its positivist sense, stands firm. It insists on the absolute and merciless prohibition of any closure of the Strait of Hormuz, admitting no exception (Krueger, 2010, p. 8). Legitimacy, understood as meta textual and principle based, rises on the opposite side. It insists in conditions of self-defense and threatened State survival on the precedence of foundational principles, moral values and international public order over the secondary and conventional rules (UN Charter, art. 51; ILC Draft Articles on State Responsibility, art. 25, p. 30). This section synthesizes these two poles into a single, coherent doctrine.

5.1. Methodology of the Frame Changing of Question as a Way out of the Positivist Dead End

The answer to the deadlock lies in a methodological shift. Instead of asking whether a coastal State has a right to close the strait, the present analysis asks whether any explicit rule prohibits closure in the specific circumstances of existential self-defense. Unlike Kosovo, Article 44 exists. However, the question is whether the prohibition in Article 44 is absolute and unqualified, or whether it is subject to an implied exception for the extreme scenario of existential self-defense. The Vienna Convention on the Law of Treaties (1969, art. 31(3)(c)) requires that treaties be interpreted in light of "*any relevant rules of international law applicable in the relations between the parties*," including the jus cogens right of self-defense. Thus, a purposive interpretation of Article 44, read together with Article 51 of the UN Charter and the customary law of necessity, may yield the conclusion that the prohibition on suspension does not apply when suspension is the only means to prevent the State's annihilation.

5.2. Construction of Remedial Closure

The heart of this article's innovative contribution is now reached, and it is called remedial closure. It is defined as follows. Remedial closure means the provisional, proportionate and procedurally transparent restriction of transit passage through an international strait by a coastal State that is the victim of an armed or unarmed attack reached the threshold of an existential threatening, in the sense of scale and effects developed by the International Court of Justice in Nicaragua case. This is an extraordinary measure, taken under the strict and essential condition that such restriction is necessary for the prompt exercise of the inherent right of self-defense. It also requires that in the critical circumstances, no less restrictive, practical, timely, effective and reasonable alternative is available (ILC Draft Articles on State Responsibility, art. 25(1)(a)–(b), p. 30).

The term "remedial" is borrowed by analogy from the concept of "remedial secession" in international law (Vidmar, 2012; Sterio, 2016), where a people may be entitled to secede as a remedy for severe oppression. Just as remedial secession is an exceptional, last-resort mechanism, remedial closure is proposed as an exceptional, last-resort measure for State survival. The analogy is structural, not substantive and accordingly it does not necessarily import the legal conditions of secession into the law of the sea. (Seyvanizad, 2026)

5.3. Conditions for Legitimate Remedial Closure

For remedial closure to transform from a political claim into a legitimate and internationally acceptable legal institution, five precise and cumulative conditions must be satisfied. These conditions are deeply rooted in international judicial practice, general principles of law and the philosophy of justice (Rawls, 1971, p. 15).

Condition One is the occurrence of an armed attack or appearing an existential threat in the strict and grave sense of the Nicaragua judgment of 1986 (Dinstein, 2017, p. 205). Before any action, the coastal State must be the victim of a full scale attack possessing the scale and effects that make it comparable to an attack by regular armed forces. The coastal State must report the situation promptly and transparently to the United Nations Security Council (UN Charter, art. 51; Simma, 2011, p. 435).

Condition Two is strict necessity as the only means in the sense of the *Gabčíkovo Nagymaros* judgment of 1997 (ICJ, *Gabčíkovo Nagymaros*, para. 51). Even in the event of a large-scale armed or unarmed attack, closure of the strait is lawful and legitimate only if it is objectively and legally the only timely means to repel the danger. The peril must be grave and imminent, not distant or speculative.

Condition Three is strict proportionality in the sense of the Nicaragua judgment and humanitarian law. The coastal State's action must not in intensity, scope, territorial reach, duration or targeting exceed what is proportionately necessary to repel the attack.

Condition Four is inherent and essential temporal limitation. Remedial closure is inherently temporary. The moment the situation ends through withdrawal of aggressor forces, or binding Security Council resolution, all ordinary obligations under the law of the sea automatically and immediately revive (Churchill & Lowe, 1999, p. 90). The coastal State may never use a temporary emergency closure as a means to create a permanent new situation.

Condition Five is full transparency (ICJ, Corfu Channel, p. 22; Vienna Convention, art. 26). The coastal State also must report immediately and fully to the UN Security Council, notify the International Maritime Organization and all affected States, publish a complete and reasoned public report setting out the legal and factual grounds for the closure. This condition of full transparency distinguishes remedial closure from any arbitrary action and places it firmly within the realm of international legal accountability (Dworkin, 1986, p. 400).

5.4. The Rights of Third-Party States (Neutral Vessels)

A critical issue not addressed in prior literature is the position of third-party States whose vessels are not party to the conflict. Remedial closure affects not only the aggressor's warships but also neutral merchant vessels. Under the law of neutrality, neutral vessels enjoy the right of passage, but this right is not absolute. The Hague Convention XIII (1907) permits a belligerent coastal State to regulate neutral passage in its territorial waters for reasons of security. However, outright suspension of passage is not permitted. The doctrine of remedial closure, as proposed here, does not claim a right to suspend all passage. Rather, it claims a right to impose proportionate restrictions that are necessary for self-defense. Complete closure to all vessels, including neutrals, would only be justified if the attack cannot be repelled otherwise, and even then, compensation must be paid. This remains an exceptionally high threshold.

5.5. Final Answer to the Central Questions

The point has now been arrived at from which a well-reasoned and well supported final answer to the central questions of the analysis can be offered.

At a general and philosophical level, the answer to the question whether the closure can be considered legally legitimate is affirmative.

The rule of self-defense, the principle of necessity, the principle of proportionality, international public order and peremptory norms, in the critical circumstance of threatened State survival, prevail over specific, secondary and ordinary rules of the law of the sea. The *Nuclear Weapons opinion* established that even the most extreme use of force may be permissible in an existential self-defense scenario. A fortiori, the temporary closure of a strait, causing far less damage, can likewise be legitimate.

At a more operational, and cautionary level, remedial closure is never an absolutely unconditional or unlimited right. It is a strictly conditional exception of last resort. It can be invoked only when all five conditions are satisfied in the concrete circumstances of the case. The absence of any of these conditions immediately destroys the legitimacy of the coastal State's action.

In plain language, any coastal State including Iran, never has an absolute and permanent right to close the Strait of Hormuz. Such a right exists nowhere in international law. However, in the extreme circumstance of self-defense where the very survival of the State is at stake, using the very phrase employed by the International Court of Justice in the *Nuclear Weapons opinion*, a different conclusion emerges. Upon good faith satisfaction of all five conditions set out in this analysis, the remedial closure of the Strait of Hormuz can and should be regarded as a legitimate and internationally defensible act.

6. Concluding Observations

This article has followed the legal discourse on the closure of the Strait of Hormuz through three successively interconnected moments. The first moment was the affirmation of the positivist prohibition, which demonstrated that under a strict legality test, closure has little support. The second moment was the philosophical and judicial critique of dogmatic formalism, which established the strong legitimacy credentials of a state acting to preserve its very survival. The third moment was the synthetic doctrine of remedial closure, which built a bridge between legality and legitimacy, between text and spirit, between order and justice.

The four central questions posed in the introduction have now been answered. The closure has very little legal acceptance under strict positivism. It has strong international legitimacy when assessed against foundational principles of the international order. It can be described as legally legitimate through the analogical and dialectical reasoning developed in the analysis. And, under the most extreme circumstances

and subject to the five rigorous conditions, it can even be described as legitimately legal because it is faithful to the ultimate purposes of a legal system that values the survival of states and the protection of their peoples.

In order to strike a balance between the principle of navigation freedom and the principle of trade freedom on one hand and the resilience of international law and the continued implementation of international human rights and humanitarian law on the other, as well as the imperative arising from the preservation of a state's survival, it is necessary, in situations of existential threat against Iran, to establish new legal arrangements in the Strait of Hormuz. The Strait of Hormuz, with all its strategic, military, energy and economic importance, is not merely a waterway or a chokepoint. It is, above all, a living representation of a larger question regarding the limits of obedience to law and the point at which dogmatic obedience to the letter of the law becomes complicity in the destruction of the very subject of law, namely the state and the people whom the law was meant to protect. If international law, and the law of the sea in particular, cannot offer a convincing, transparent, fair, principled and legally defensible answer to this ancient question, it risks becoming a collection of toothless rules that collapse at the first severe test of history. But if international law, with judicial and interpretive wisdom and courage, offers a timely answer, that answer will be born not in stagnation and dogmatism but in the dynamic dialectic of legality and legitimacy (Scobbie, 1999, p. 540). This is the human mission of international lawyers and scholars.

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