



LEX-FORA INTERNATIONAL

(Advocates & Solicitors)

(Maritime, Admiralty, Corporate & Tax

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Ref: LF(CON)-035

Date: 03 May 2025

Commodore Jawad Akhtar (Retd)

The Advisor

Ministry of Maritime Affairs

ISLAMABAD

Subject: LEGAL BASES FOR DENIAL OF PORT ACCESS TO INDIAN VESSELS IN PAKISTANI PORTS

Dear Sir,

Kindly refer to your query on the above subject and your request for our opinion as to whether a state can lawfully restrict or deny access to its ports for vessels of another country where reciprocal access is not afforded.

We have also examined the order dated 03 May 2025, issued by the Director General of Shipping, Mumbai. Our opinion is as follows:

At the outset, the order issued by the DG Shipping appears to be selfcontradictory, unsubstantiated, and internally inconsistent. It references provisions of Indian merchant shipping law concerning commercial and safety considerations, yet simultaneously invokes ambiguous national security concerns by citing “the present situation.” This attempt to merge two distinct legal justifications; commercial protection and national security, lacks coherence.

Secondly, the order fails to cite any specific act of aggression or threat from Pakistan. On the contrary, Pakistan has consistently denied involvement in any alleged incident and has reiterated its commitment to regional peace and stability. Therefore, the rationale offered in the order appears tenuous and unfounded.

Thirdly, by prohibiting Indian-flagged vessels from calling at Pakistani ports, the measure not only disrupts maritime commerce involving Pakistani-flagged vessels but also adversely affects India’s own commercial interests.

Fourthly, unilateral restrictions of this nature, based on ambiguous and flawed reasoning, do not conform to treaty obligations or established norms of customary international law. International legal frameworks generally require substantive justification or multilateral sanction, such as through the United Nations for such measures. The US blockade during the Cuban Missile Crisis is a historical example of a contested and ultimately controversial use of unilateral maritime restrictions.



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It is our view that this directive, lacking both legal foundation and practical merit, may be short-lived and unsustainable.

In so far as Pakistan's Response is concerned the Legal position is based on 'Reciprocity'. Under international maritime law and state practice, the principle of reciprocity (*quid pro quo*) is a recognized and lawful basis for denying or restricting port access. Pakistan may, in the current context, lawfully adopt reciprocal measures. The following legal bases support this view:

- a. UNCLOS Article 25(2) grants coastal states the discretion to regulate or deny access to internal waters or ports.
- b. UNCLOS Article 211(3), while requiring non-discriminatory treatment among foreign vessels, does not preclude reciprocal arrangements based on state conduct.
- c. State practice confirms that foreign-flagged vessels have no inherent right of access to ports unless granted under treaty or bilateral arrangements.
- d. WTO jurisprudence allows for countermeasures and reciprocal trade restrictions when a member state fails to uphold equitable trade access.
- e. EU Regulation (EU) 2017/352, Article 21, permits the EU to impose port access restrictions on third-country service providers where reciprocal access is denied.
- f. The ITLOS judgments in *M/V "Saiga"* and *"Grand Prince"* affirm that port access is subject to state sovereignty, and may lawfully be denied, provided such actions conform with international law and are not arbitrary.
- g. The United States enforces cabotage restrictions and has routinely invoked reciprocity as a legal basis for limiting maritime and shipping privileges.

In view of the above, our considered opinion is that the 'Reciprocity' is a legally recognized and strategically justified basis for restricting port access. It is consistent with principles of state sovereignty, UNCLOS provisions, WTO rules, and international case law. However, any such measures should be carefully designed to avoid perceptions of arbitrariness or discrimination, and ideally should be grounded in domestic regulations or accompanied by diplomatic communication.

We hope that it would serve the purpose nevertheless feel free to ask any elaboration of the above or any further query as your good self-feel like, please. Yours sincerely,

M. Nawaz Mirza

Advocate High Court

For LEX-FORA International Advocates & Solicitors

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