The Mayaguez: The Right of Innocent Passage and the Legality of Reprisal

Robert E. Ward
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On May 12, 1975 the SS Mayaguez, a merchant vessel of United States registry enroute from Hong Kong to Thailand manned by a United States citizen crew, was fired upon, stopped, boarded and seized by Cambodian naval forces in the vicinity of Poulo Wai Islands in the Gulf of Thailand. While the position of the Mayaguez at the time of seizure is disputed, the vessel was reportedly underway some sixty nautical miles from the Cambodian mainland and six and one-half nautical miles south of Poulo Wai. Subsequent diplomatic efforts by the United States government proved unsuccessful, and military operations were undertaken, resulting in the recapture of the merchant vessel and the freeing of its crewmen on May 15, 1975.

Use of military force by the United States government to secure the release of the Mayaguez, based on the alleged illegality of the seizure and Cambodian failure to respond to diplomatic efforts, was apparently justified by the doctrine of reprisal. There are,

3. Initial reports placed the Mayaguez eight miles south of Poulo Wai while Cambodian government sources claimed the ship was two and one-half to three miles east of the islands. Charles T. Miller, the captain of the Mayaguez, later stated the seizure occurred six and one-half miles south of Poulo Wai. See N.Y. Times, May 13, 1975, at 19, col. 4; id., May 16, 1975, at 15, col. 5; id., May 18, 1975, at 26, col. 3.
5. It should be noted that members of the United Nations are not to engage in reprisals with the same freedom from constraint that predated their membership, because article two, paragraph four of the United Nations Charter prohibits the use of force to settle disputes. Commentators have noted the linkage of the use of force with the criterion of self-defense. The argument has been advanced, however, that the prohibition against use of force is directed to acts violating the territorial integrity or political inde-
however, three prerequisite elements for a legitimate reprisal: first, an illegal act of one State against another; second, an unsatisfied demand for redress of the injury; and third, a reasonable use of force to obtain reparation from the delinquent State.6

In this article, only the first element of a legitimate reprisal will be examined,7 namely, did the seizure constitute an international wrong? Three aspects of this element will be considered: whether the Mayaguez was within Cambodia's territorial waters, whether the ship was engaged in innocent passage, and finally, whether Cambodia had a legitimate claim to the Wai Islands, offshore of which the vessel was seized.

**Extent of the Cambodian Territorial Sea**

Seizure of the Mayaguez occurred within six and one-half miles of the Poulo Wai Islands, and Cambodia claimed the ship was in territorial waters.8 The United States, however, recognizing a territorial sea limit of three miles, charged Cambodia with committing an illegal act of seizing a United States vessel on the high seas.9 Since, under these circumstances, the boarding and seizure can arguably be lawful only if so done in Cambodia's territorial waters,


7. The second element, an unsatisfied demand for redress, was evidently met by Cambodia's retention of the Mayaguez from May 12 until its recovery by the United States forces on May 15, even though the United States had requested its release from the Cambodian mission in Peking and had asked the assistance of the Chinese government in Peking in obtaining the release of the Mayaguez on May 12 and had asked the Secretary General of the United Nations on May 14 for similar assistance. Letter from Robert J. McCloskey, supra note 4.

8. The third element, whether the force utilized was reasonable to accomplish the rectification of the international wrong, is beyond the scope of this article. *See generally* G. Hackworth, *Digest of International Law* 154 (1940); L. Oppenheimer, *supra* note 6, at 34-42; *International Law Situations*, *supra* note 6, at 56-62.

an initial determination must be made as to whether Cambodia's territorial sea extends to the point of seizure.

**International and Unilateral Evolution of the Territorial Sea**

The territorial sea, a maritime zone or band adjacent to a coastal State's shoreline, is considered as a prolongation of territory over which the coastal State may exercise jurisdiction. This concept of a maritime zone is now almost universally accepted in international law, though the extent of the coastal State's sovereignty and the breadth of the territorial sea have yet to be defined by international agreement. The major reason for the lack of agreement has been, as in the seizure of the Mayaguez, a divergence in interests between the coastal States and the foreign States whose vessels seek passage through the territorial sea. These competing interests have resisted international codification—both in respect to the breadth of the territorial sea as well as to the coastal State's degree of sovereignty over it.

In the seventeenth century, it was proposed a coastal zone be limited only by the State's ability to effectuate its control over the sea. The idea that a coastal State could claim sovereignty over adjacent sea which it effectively controlled gave rise to the "cannon-shot rule," favored until the early twentieth century.

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13. See notes 32-49 infra and accompanying text. Earliest references to the territorial sea are abundant with contradictions between claims denying sovereignty over coastal waters and claims of actual ownership and complete sovereignty. Penn, *Origins of the Theory of Territorial Waters*, 20 Am. J. Int'l L. 465 (1926). A recently published study concluded that probably the earliest formal pronouncement on the legal status of the seas was that of Roman law. Second century writings simply declared the sea and the fish in it were open or common to all men. There was no extension of state jurisdiction from shore to seaward. S. Swartztrauber, *The Three-Mile Limit of the Territorial Seas* 10 (1972). The contrary view, a claim to absolute sovereignty, was advanced in the sixteenth century. C. Colombos, *supra* note 11, at 89.
15. S. Swartztrauber, *supra* note 13, at 25. Swartztrauber states the
When this rule was first recognized, the art of gunnery was such that a typical cannon's effective range was about a marine league, or three nautical miles. This led to the concept of a three-mile limit, later assimilated into international recognition of the extent of the territorial sea.

In the twentieth century, the international community attempted to codify the law of the sea, especially that concerning the territorial sea. Major conventions were held in the Hague in 1930, Geneva in 1958 and 1960 and the first two substantive sessions of the latest convention in Caracas in 1974 and Geneva in 1975.

Forty-two states sent delegates to the 1930 Hague Codification Conference, and although no treaty was agreed upon, a Draft on "The Legal Status of the Territorial Sea" was adopted. The Draft proclaimed a belt of territorial sea forms part of the territory of a State and the sovereignty exercised over this belt is to be the same as that which the State exercises over its land domain, though limited by "conditions established by international law." The conference did not come to an agreement about the breadth of the territorial sea, however. Subsequent conferences have suffered the same fate.

"cannon-shot rule" as: "A state exercises sovereignty over its coastal waters as far as a cannon can shoot."


19. No limitation on sovereignty was specified other than the right of innocent passage. I G. Hackworth, supra note 7, at 624.

20. The 1958 Geneva Convention did succeed in adopting a Convention on the Territorial Sea and the Contiguous Zone but again there was no agreement on the breadth of the territorial sea. "The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea." Convention on the Territorial Sea and Contiguous Zone, done at Geneva, Apr. 29, 1958, art. 6, 15 U.S.T. 1606, T.I.A.S. No. 5639, 518 U.N.T.S. 205. Similarly, the 1960 Geneva Conference, which was called principally for the purpose of agreement on the breadth of the territorial sea, produced no agreement. C. Colombos, supra note 11, at 109. The Third Law of the Sea Convention in its Caracas sessions in 1974 and its Geneva sessions in 1975 has
What could not be agreed upon by international conventions became the subject of unilateral actions by coastal States. Following failure of the 1930 Hague Convention to fix a breadth to the territorial sea, coastal States began to declare the extent of their territorial sea. A number of nations have adopted territorial seas of varying extents, the only common characteristic of which is most are in excess of three miles.21 A 1974 compilation of territorial sea claims showed over fifty States claimed a territorial sea of twelve nautical miles, twenty-two States claimed more than twelve nautical miles, while only thirty-four claimed three miles.22

It is against this background of unilateral action that Cambodia's claims to a territorial sea must be viewed. As part of the French colonial possession of Indochina, Cambodia claimed a territorial sea of three nautical miles, and maintained this claim after gaining independence in 1954.23 In 1957 its territorial sea was extended to five nautical miles, and the decree of September 27, 1969 extended the territorial sea to twelve nautical miles.24 Thus, the seizure of the Mayaguez, six and one-half miles from Poulo Wai Island, was within the proclaimed territorial waters of Cambodia.25

The United States, however, has consistently refused to give recognition to rights claimed by other States outside a three-mile

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24. Id.

25. But see notes 59-77 infra and accompanying text.
In 1973 the United States reaffirmed its adherence to the three-mile limit.

Under international law the United States is not obligated to recognize or give effect to territorial sea claims in excess of three miles in breadth, nor claims to zones of special coastal state jurisdictional competence (i.e. relative to fishing, customs, fiscal or sanitary requirements) in excess of twelve miles in breadth. Not all states agree that their jurisdictional competence is limited in the same manner described, however, and may have claimed territorial seas in excess of three miles.27

After the Mayaguez was captured, the United States reiterated its refusal to recognize a territorial sea greater than three miles. Thus, the United States claimed Cambodia's seizure took place on the high seas.28

However, in asking whether the reprisal taken against Cambodia was initiated on a basis which is legal under international law, the question is not whether a national wrong was committed against the United States, but rather whether such acts constituted an international wrong. That Cambodia claims a twelve-nautical-mile territorial sea which the United States refuses to recognize does not make a seizure six and one-half nautical miles offshore de facto unlawful. To the contrary, "if in fact twenty-five states claim a twelve mile limit, it is scarcely likely that any international tribunal would hold such a claim . . . illegal per se in international law."29 There has never been any customary international law concerning the maximum breadth of the territorial sea.30

26. After failure to adopt a breadth to the territorial sea by the 1960 Geneva Conference, Mr. Arthur J. Dean, Chairman of the United States Delegation said:

The three mile limit was regarded by the United States as international law . . . unilateral claims to greater breadth conflicted with the universally accepted principle of the freedom of the seas and ought to be rejected. U.N. Doc. A/CONF.19/SR.14, at 6 (1960).

Earlier the United States had informed El Salvador that the United States "would not consider its nationals or vessels or aircraft as being subject" to the two-hundred-mile territorial sea. Note 160 from Ambassador Shaw to Minister of Foreign Affairs, Dept. of State, Dec. 12, 1950, file 716.022/12-1250 in 4 M. Whiteman, supra note 21, at 802.


It is conceded that while there is no complete uniformity in principle or practice regarding the breadth of the territorial sea, yet it is admitted that for many years there has been consensus as to the breadth of this area. Traditional international law recognized the marine league, that is, the limit of three nautical miles.
mile limit, "while perhaps not dead, could no longer be considered a rule of international law, at best it could be described as a de jure practice of almost one-third of the states of the world."  

It may therefore be argued that under international law, seizure of a foreign vessel by a State within its claimed twelve-mile territorial sea is not, without more, an unlawful act; nonrecognition of the twelve-mile territorial sea by the foreign State notwithstanding.

THE INNOCENCE OF THE MAYAGUEZ'S PASSAGE

The Right of Innocent Passage

The SS Mayaguez is a container ship operated by Sea-Land Corporation of Edison, New Jersey. The vessel is designed to carry 274 thirty-five foot containers, and at the time of seizure was loaded to capacity with commercial cargo. Seizure of an unarmed merchant vessel in territorial waters violates the internationally recognized right of innocent passage, provided the passage is indeed innocent and not prejudicial to the peace, good order or security of the coastal State. Similar to the concept of a territorial sea, the right of innocent passage is a product of both customary international law and recent codification. The extent of the right of innocent passage is likewise lacking in certainty and definition.

As a concept, the right of innocent passage is a general principle "firmly established in international law" requiring "no supporting argument or dictation of authority." It is one of the oldest rules of public international law. This right is apparently the result of an attempt to reconcile the freedom of ocean navigation with

the theory of the territorial sea, balancing on one hand the freedom
of seas and on the other the rights of the coastal States over waters
near their shore.³⁷

Under traditional international law, the right of innocent passage
was a qualified, not an absolute, immunity.³⁸ The passage of a mer-
chant vessel through a coastal State's territorial sea was not out-
side the sovereignty or jurisdiction of the coastal State for all pur-
poses,³⁹ the coastal State retained the recognized right to prescribe
reasonable regulations⁴⁰ applicable to all ships.⁴¹

In 1958, the Geneva Convention on the Territorial Sea and Con-
tiguous Zone was adopted,⁴² but rather than codifying existing
international law on the right of innocent passage, it departed sub-
stantially from existing international law.⁴³ Article 14(4) of
section III states, inter alia: "Passage is innocent as long as it is
not prejudicial to the peace, good order or security of the coastal
states . . . ."⁴⁴ As pointed out by several commentators, the
emphasis on passage rather than on acts committed during passage
gives the coastal State subjective capacity to determine if passage
is prejudicial to its "peace, good order or security."⁴⁵ Conceivably,
it allows the coastal State to interfere with passage because of the
nature of the cargo or its ultimate destination.⁴⁶ Such subjectivity
and discretion by the coastal State has led to fears "that the coastal
states might impose unreasonable burdens on international com-

³⁷. P. Jessup, supra note 34, at 120. Hugo Grotius, 1583-1645, an eminent
Dutch jurist and statesman whose writings were very influential in the
seventeenth century development of international law, maintained the right
of innocent passage was based on the purpose of promoting commerce.
Slonim, supra note 36, at 96. Modern commentators have said the purpose
is wider than trade; the coastal State's sovereignty did not extend to con-
trolling the use of the territorial sea so as to prevent the passage of foreign
merchant vessels which posed no threat to the safety or welfare of the
coastal State. I. G. Hackworth, supra note 7, at 646.

³⁸. 4 M. Whiteman, supra note 21, at 349.

³⁹. Id.

supp. 1929).

⁴¹. Reasonable regulations may include sailing regulations, traffic separa-
tion schemes, rules of the road, obligatory pilotage and protection of
structures provisions applicable to all ships. C. Colombos, supra note 11,
at 132.

⁴². Convention on the Territorial Sea and Contiguous Zone, supra note
20.

⁴³. Slonim, supra note 36, at 101.

⁴⁴. Convention on the Territorial Sea and Contiguous Zone, supra note
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⁴⁵. 4 M. Whiteman, supra note 21, at 346; Hearn, The Law of the Sea—
The 1958 Geneva Conference, JAG J. 3, 5 (Mar.-Apr. 1960); Knight, supra
note 12, at 183-84; Slonim, supra note 36, at 101.

⁴⁶. Hearn, supra note 45, at 5.
merce by categorizing for political, military or economic reasons, certain types of passage as not innocent."

The subjective discretion granted under article 14 is not total, however. Article 16 says a coastal State may take necessary steps to prevent passage which is not innocent, but the State's determination of "innocence" may not be wholly without reference to international law. If a coastal State's determination of what constitutes innocent passage exceeds the necessities of protecting its real interests, and interferes with the legitimate interests of a foreign State, it establishes an abuse of rights, and ipso facto—an international wrong.

Cambodian Claims of Noninnocence of Passage

Following the seizure of the Mayaguez on May 12, the government of Cambodia offered four rationales for the interference with the right of innocent passage. The first explanation asserted was

47. Knight, supra note 12, at 184. The almost complete subjectivity of what constitutes innocent passage was addressed at the 1974 Caracas session of the Third Law of the Sea Conference by proposals to amend article 16 of the Convention on the Territorial Sea and the Contiguous Zone. The proposed amendment by Great Britain was substantively similar to a joint proposal by the U.S.S.R., People's Republic of Bulgaria, German Democratic Republic, and the Polish People's Republic and proposals by Oman and Fiji, and provided that the following activities would constitute noninnocent passage when authorization was obtained from the coastal State or the activities were otherwise justified under international law:

(a) any exercise or practice with weapons;
(b) the launching or taking on board of aircraft
(c) the launching, landing or recovery of any military device;
(d) the embarking or disembarking of any person or cargo contrary to the laws or regulations of the coastal state;
(e) any act aimed at interfering with any system of communication of the coastal state;
(f) any act aimed at interfering with any other facilities or installations of the coastal state.


48. Convention on the Territorial Sea and the Contiguous Zone, supra note 20, art. 16.

49. Bower, supra note 29, at 44; the coastal State is by no means completely free to inhibit passage as it sees fit. Burke, supra note 18, at 196, 200.
that the *Mayaguez* was only one of several spy vessels seized in the Gulf of Thailand. These vessels were claimed to be manned by the United States Central Intelligence Agency agents who were to establish contact with other agents on Cambodian soil. A second explanation, made in the same communique, stated Cambodian forces merely wanted to examine the vessel, question the crew and warn against any further moves so close to Cambodian territory. The third explanation was rendered by Information Minister Hu Nim on May 18, 1975 in a four-hundred-word communique which charged the *Mayaguez* incident to be a “blatant provocation” by the United States to “execute a preestablished plan” to destroy Cambodian ports and economic facilities.

Perhaps a fourth and enlightening explanation was given by Cambodian Deputy Premier Ieng Sary in an August interview. He said the decision to capture the ship was made by the “local commander at the scene” who found the ship in Cambodian territorial waters. Defending the capture, the Deputy Premier said Cambodian local fighters, though “not technicians,” had discovered radio equipment aboard the *Mayaguez*, indicating it was a spy ship. Thus, the seizure was probably a local action by Cambodian military forces, and any claims that the *Mayaguez*’s passage was prejudicial to the peace, good order or security of Cambodia are apparently not grounded on rational considerations of the terms.

The local action explanation appears plausible in light of other events occurring contemporaneously in the Gulf of Thailand—a Cambodian attack on a Korean freighter on May 4, 1975, a Cambodian seizure and detention of a Panamanian freighter on May 7, 1975 and the firing from unidentified fishing-style vessels on the *SS Gateway City* twenty-five miles southeast of Sattahip, Thailand on July 8, 1975. Additionally, a Cambodian spokesman claimed his government had not learned of the local commander’s

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50. N.Y. Times, May 16, 1975, at 1, col. 4.
51. Id. at 15, col. 5.
52. Id., May 18, 1975, at 6, col. 1.
54. N.Y. Times, May 18, 1975, at 1, col. 8.
55. Id.
56. Associated Press Dispatch, July 11, 1975, in 101 U.S. NAV. INST. PROC. 122 (Oct. 1975). The *Gateway City* had replaced the *Mayaguez* on the regular cargo run from Hong Kong and is of very similar appearance. The *Gateway City* is 469 feet in length with a beam width of 72 feet, and carries 226, 35-foot containers while the *Mayaguez* is 504 feet in length with a beam width of 74 feet, and carries 274, 35-foot containers. Both are operated by Sea-Land Service.
capture of the Mayaguez until hearing of the seizure on United States radio. The United States Government and the owners of the Mayaguez maintained the ship was not a spy vessel, but was on a regular commercial run from Hong Kong to Thailand. An evaluation of the Cambodian claims that the Mayaguez was a spy ship, as well as part of a preestablished plan to destroy Cambodian ports, viewed in conjunction with the probability the seizure was an unauthorized local action by Cambodian military forces, indicates strongly that the Mayaguez’s passage was not prejudicial to the peace, good order or security of Cambodia, and any subjective attempt to so define it by Cambodia would constitute an abuse of rights. If the passage of the Mayaguez was not innocent, then there apparently is no meaning to the term “innocent passage.” Therefore, the seizure of the Mayaguez while in innocent passage was almost certainly an international wrong against the vessel’s flag state—the United States.

CAMBODIA’S CLAIM TO SOVEREIGNTY OVER THE WAI ISLANDS

The actions taken by Cambodia in seizing the Mayaguez in its territorial sea can be arguably lawful only if, as discussed previously, the vessel was within the territorial waters of Cambodia. However, this argument is premised on Cambodia’s lawful exercise of sovereignty over the Wai Islands. Cambodia’s claims to the Wai Islands are not undisputed. To the contrary, Vietnam has claimed the islands since the two nations were partitioned from French Indochina in July 1954. Both nations continue to assert sovereignty over the islands; although neither has a clearly superior claim, the Vietnamese have achieved a superior position in the area, casting doubts on whether Cambodia could at all lawfully claim the surrounding territorial sea.

Poulo Wai Islands are a small rocky group lying fifty-four and one-half nautical miles southwest of the Vietnamese island of Phu Quoc. Even their designation is unsettled—they are referred to

57. L.A. Times, supra note 53.
59. See notes 8-31 supra and accompanying text.
60. Chart of Can Tho, (1:5000,000), published by the National Geographic Society of Vietnam (2d ed. 1969).
as Ko Way or Ko Wai, the Cambodian designations, and appear on French and Vietnamese charts as Hon Wai or Poulo Wai.

Dissension began over these and other islands immediately after Cambodia became independent June 21, 1954. The boundary between Cambodia and Vietnam was not extended out into the Gulf of Thailand and no determination was made as to ownership of islands off the shores of either country. Consequently, the Wai Islands were claimed by both nations.

On November 1, 1955, the Cambodians charged that Vietnamese soldiers occupied the disputed islands in the Gulf of Thailand, confiscated fishing vessels, and held propaganda meetings proclaiming the sovereignty of Vietnam over them. On November 29, 1955, Cambodia alleged Vietnamese customs officials had arrested, detained and fined Cambodian fishermen in the vicinity of the disputed islands, releasing them after a warning that the islands were Vietnamese. Again, on December 3, 1955, Cambodia complained that its fishermen were chased from the area by Vietnamese customs officials.

Cambodia submitted a formal complaint to the International Control Commission on January 4, 1956, claiming Vietnam had committed border violations by occupying the islands. The Commission directed its supervising team to investigate the boundary dispute, but the team reported Cambodian authorities were unable to produce conclusive documentary proof that the islands were internationally recognized as Cambodian territory. The Commission informed the Cambodian government that the boundary was "in dispute" and the Commission was not competent to sit in judgment over territorial disputes.

In March and April 1960, the Saigon government called on the Cambodian government to renounce claims to the disputed islands, a proposition rejected by Cambodia. In 1964 Prince Sihanouk

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63. Fifth Interim Report, supra note 62, at 35.
64. Id.
65. Id.
66. Id.; M. LEIFER, supra note 61.
67. M. LEIFER, supra note 61; Fifth Interim Report, supra note 62, at 35–36. The International Control Commission reported it was unable to obtain any information from the French High Commission which claimed documents could not be located because the archives were dispersed, and the main part of which had been destroyed during the Japanese occupation.
68. M. LEIFER, supra note 61; Fifth Interim Report, supra note 62, at 35.
of Cambodia made an assertion of sovereignty over the islands as well as a province of the Republic of Vietnam,\textsuperscript{70} a contention which was not followed by any attempts to exercise sovereignty.\textsuperscript{71}

Apparently no attempt to assert Cambodian sovereignty over Poulo Wai was made until several weeks before the seizure of the \textit{Mayaguez}, when Cambodia's Khymer Routge forces established a garrison there.\textsuperscript{72} The Cambodian occupation was very brief; Vietnamese troops landed on Poulo Wai the night of June 10, 1975, overran the Cambodian garrison and took control of it.\textsuperscript{73}

The effect under international law of the disputed claims of sovereignty is unclear, but a dispute between Great Britain and France over small islands in the English Channel\textsuperscript{74} provides a parallel for comparison.

The Minquiers and Ecrehos are small islets and rocks in the English Channel, the Minquiers lying nine and eight-tenths miles from the English island of Jersey and eight miles from the French Chausey Islands; Ecrehos being three and nine-tenths miles from Jersey and six and six-tenths from the French mainland. Both Great Britain and France had claimed them in the dispute beginning in the year 1066.\textsuperscript{75} Over the course of the disagreement, Great Britain exercised possession almost exclusively, except for brief occupations by King Phillip Augustus of France in the thirteenth century. In the greater part of the nineteenth and during the entire twentieth century, Great Britain exercised sovereignty over the islands, enjoying possession and establishing a customs house. The International Court of Justice awarded the disputed islands to Great Britain, primarily on the basis that Great Britain had acquired possession of them through continuous and effective exercise of state functions over them.\textsuperscript{76}

In a separate opinion Judge Basdevant stated:

These islands are practically uninhabited and most are uninhabitable. From a military point of view, for the King of England to hold them, it is not necessary that he should maintain a garrison there; it is sufficient that by reason of his military and naval power, he should be in a position to intervene there when he considers it appropriate without being prevented from doing so by forces of the King of France and that, by the same token, he should be in a position to prevent intervention by these forces.\(^7\)

In comparison, Poulo Wai apparently has been under the exercised sovereignty of Vietnam from November 1955 until the present, with only an interruption of several weeks during the spring of 1975, during which time Cambodia claimed the territorial water around the island and seized the *Mayaguez*. Though the time of possession by Vietnam is much less than that of Great Britain in the Minquiers and Ecrehos Islands, the argument may be advanced that under international law Vietnam, and not Cambodia, has the better claim to Poulo Wai and its surrounding territorial sea. In this view, Cambodia's seizure of the *Mayaguez* was an international wrong; the vessel was not in Cambodia's territorial waters at all.

**CONCLUSION**

The seizure of the freighter *Mayaguez* demonstrated that under current views of international law, the exercise of sovereignty by a coastal State within a claimed twelve-mile limit is not itself an international wrong, even if the affected foreign State only recognizes a three-mile territorial sea. The coastal State's determination of what constitutes passage prejudicial to its peace, good order or security is subjective and discretionary: too great a departure from protection of its own interests, with a corresponding infringement on the interests of the foreign State, will be regarded as an international wrong. Additionally, the premise that Cambodia actually had an internationally recognized claim to Poulo Wai is opened to doubts by an examination of the facts of territorial possession in the Gulf of Thailand.

Therefore, the initiation of reprisal by the United States was a lawful response to the international wrong of seizing a merchant vessel on the high seas.

ROBERT E. WARD

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\(^7\) The Minquiers and Ecrehos Case, [1953] I.C.J. 47, 77-78.