

5-1-1981

## More Revelations About Mayaguez (and its Secret Cargo)

Jordan J. Paust

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/iclr>



Part of the [International Law Commons](#)

---

### Recommended Citation

Jordan J. Paust, *More Revelations About Mayaguez (and its Secret Cargo)*, 4 B.C. Int'l & Comp. L. Rev. 61 (1981), <http://lawdigitalcommons.bc.edu/iclr/vol4/iss1/4>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

## More Revelations About Mayaguez (and its Secret Cargo)

by Jordan J. Paust\*

### PAUST ON THE MAYAGUEZ: EDITORS' INTRODUCTION\*\*

*In May 1975, the U.S. merchant ship Mayaguez was held captive by forces of the Cambodian Government for three days. The incident has produced a lively controversy among international legal scholars.*

*Professor Jordan Paust of the University of Houston has written extensively over the last few years on the issues presented by the Mayaguez incident. In 1976, Professor Paust discussed the legality of governmental actions surrounding the Mayaguez incident. His analysis elicited a critical response from the State Department. The ensuing debate is continued here.*

*The present article examines the litigation engendered by the incident. Such litigation involves suits brought by crew members of the Mayaguez against the owner of the merchant vessel and against the U.S. Government. Claims against the private shippers have generally been settled while claims against the Government are still pending. The suits are interesting for two reasons. First, new facts surrounding the incident have been revealed which have a bearing on the legality of the actions taken by the two governments. Second, the suits are grounded in part on a novel application of international law. Specifically, crew members have alleged that affirmative duties in admiralty law were breached by violations of international law.*

*The following summarizes the facts of the incident as recounted by Professor Paust in his 1976 article and briefly restates the major points of the debate between Professor Paust and the State Department.*

*On May 12, 1975, at 3:18 a.m. (Washington, D.C. time), the merchant ship Mayaguez and her crew were stopped and seized by forces of the Cambodian Government. This action took place off the Poulo Wai Islands, a group of small rocky islands about 60*

---

\* A.B., J.D., University of California at Los Angeles; LL.M., University of Virginia; J.S.D. candidate, Yale. Professor of Law, University of Houston.

\*\* Professor Paust's text begins on page 63.

miles off the Cambodian coast and 30 miles from the Cambodian island of Koh Tang. At the time of the seizure, sovereignty over the Poulo Wai Islands was claimed by three states: Cambodia, Vietnam, and Thailand. However, Cambodia, the closest of the three nations in terms of geographic proximity, was in control. The seizure took place within 12 miles of the coast and, therefore, within an area claimed by Cambodia to be within its territorial waters. The Cambodian Government later justified the seizure on claims of national security. The Government cited the fact that two or three ships operating as fishing vessels entered the territorial waters daily for the purpose of espionage activity.

Following the seizure, the crew was questioned to determine whether the *Mayaguez* was armed and whether the ship was transporting arms. The crew's possible affiliation with the C.I.A. or the F.B.I. was also investigated. The period of detention continued for approximately 64 hours.

President Ford learned of the seizure four hours after it took place, and met with the National Security Council that day at noon to discuss the matter. Following the meeting, Press Secretary Nessen issued a statement claiming that the seizure had taken place on the high seas. The statement, which characterized the action as piracy, demanded the immediate release of the ship and warned that serious consequences would follow if the demand went unheeded. Messages were sent to the Cambodians through People's Republic of China conveying a 24-hour ultimatum for the crew's release.

On the morning after the seizure, the Cambodians began to move the crew to the mainland. The United States, fearing that it would be difficult to get the crew back once it reached the Cambodian mainland, launched an air attack on the Cambodian naval vessels escorting the crew of the *Mayaguez* to the mainland. Three Cambodian patrol craft were destroyed and four others were damaged and immobilized. The efforts to deter the transfer of the crew to the mainland were partially successful. The crew was brought ashore on some nearby islands.

Approximately 14 hours after its air attack, the United States turned for the first time to the United Nations. Subsequently, Secretary General Waldheim appealed to the nations involved to resolve the dispute peacefully. Later the same day, i.e., about two and one half days after the *Mayaguez* was captured, President Ford decided to dispatch the Marines. Shortly after the appropriate order left the Pentagon, the President met with congressional leaders to inform them of his decision. Independently of these events, the crew left the mainland to be returned to their ship. Nevertheless, Marine assault forces landed on Tang Island and American planes bombed Ream airport on the Cambodian mainland just after the crew had been released.

In his article, *The Seizure and Recovery of the Mayaguez*, 85 *YALE L.J.* 774 (1976), the author concluded that: (1) the incident did not take place in international waters; (2) there was reasonable justification for a belief that, under the circumstances the passage of the *Mayaguez* through these waters was not "innocent;" (3) the seizure of the *Mayaguez* by the Cambodians was legal under international law; and (4) the actions taken by the United States in response to the seizure were contrary to international law. The author took note of Cambodia's viable claim to sovereignty over the islands — a claim which was disputed by Vietnam and Thailand. He further examined the reasonable inference that the *Mayaguez*

was engaged in espionage activity or carrying weapons or military materiel, an inference which could have justified the seizure of the *Mayaguez* in the context of the Cambodian revolution. Finally, Paust argued that U.S. actions were unreasonable and inconsistent with international law and ordinary U.S. practice under the circumstances.

Michael David Sandler, Special Assistant to the Legal Advisor of the Department of State, responded to Professor Paust's version of the facts and the law in *CORRESPONDENCE*, 85 *YALE L.J.* 203 (1976). These areas of disagreement included: (1) Whether the *Mayaguez* had been travelling in an international sea lane; (2) Whether the presence of the *Mayaguez* was objectively menacing and non-innocent; (3) whether the Cambodians had the right to stop the ship for inspection; (4) whether the U.S. Government reasonably believed that use of force was necessary to protect American lives; and (5) whether the air attacks were justified in order to reduce the ability of the Cambodian forces on the mainland to threaten U.S. Marines then withdrawing.

In the following, Professor Paust continues his examination into the *Mayaguez* incident. This examination incorporates newly revealed facts gleaned from the prosecution of various lawsuits against the owners of the *Mayaguez* and the U.S. Government by members of the crew.

## More Revelations About *Mayaguez* (and its Secret Cargo)

### I. INTRODUCTION

Since the publication of the author's article, *The Seizure and Recovery of the Mayaguez*,<sup>1</sup> the letter-reply by an attorney in the State Department, Michael D. Sandler,<sup>2</sup> and the author's letter-response,<sup>3</sup> significant new facts concerning the *Mayaguez* incident have been revealed. Such facts include, *inter alia*, disclosures related to the location of the *Mayaguez* at the time of its seizure, the appearance of the ship, the actual cargo on board the ship and the knowledge of crew members about prior Cambodian searches of vessels. These matters have come to light as a result of the prosecution of various multimillion dollar law suits brought by crew members against the United States and the Sea-Land Service Corporation, the prior owners of the once famous *Mayaguez*.<sup>4</sup>

Several such lawsuits, consolidated as *Rappenecker v. Sea-Land Services, Inc.*,<sup>5</sup> were brought as suits in admiralty in the San Francisco Superior Court of the

---

1. Paust, *The Seizure and Recovery of the Mayaguez*, 85 *YALE L.J.* 774 (1976) [hereinafter cited as Paust, *Seizure*].

2. Sandler, *Correspondence*, 86 *YALE L.J.* 203 (1976) [hereinafter cited as Sandler].

3. Paust, *Correspondence*, 86 *YALE L.J.* 207 (1976) [hereinafter cited as Paust, *Correspondence*].

4. The *Mayaguez* was sold for scrap in February 1979. See, e.g., *Remember the Mayaguez?* International Herald Tribune, Fed. 23, 1979, at 6, col. 1.

5. *Rappenecker v. Sea-Land Services, Inc.*, No. 691-717, consolidated with 691-718, 719, 720, 721 and 695-952 (Cal. Super. Ct., filed Apr. 26, 1977). See Brief for Plaintiffs [hereinafter cited as Brief for Plaintiffs]; Plaintiffs' Settlement Conference Statement [hereinafter cited as

State of California. The prosecution of these suits entailed extensive discovery and, as a result, new facts were added to the record. Depositions were taken of several persons, including certain crew members. In addition, the usual litigant documents were prepared and filed. Such documents included trial briefs and conference settlement statements. In June 1977, a court-approved settlement of these initial lawsuits was finalized under which the plaintiffs were awarded large sums of money to be paid by the Sea-Land Corporation.<sup>6</sup> This settlement functionally ended much of the plaintiff-initiated discovery of additional facts about the *Mayaguez* incident.

In addition to the settlement reached in the California court, in February 1979 another settlement was reached concerning most of the state court actions brought by crew members who had not initially joined in the litigation against Sea-Land.<sup>7</sup> This second settlement awarded substantial sums to many of those plaintiffs who had not previously been compensated. Thus, most of the plaintiff crew members have received some compensation.

Other lawsuits involving consolidated crew member claims against the U.S. Government are still pending in the Federal District Court in San Francisco. Doubt remains, however, whether it will be financially worthwhile to pursue litigation in the future against an uncooperative, even secretive, U.S. Government. Moreover, a recent memorandum opinion and order by District Judge Schwarzer may have taken some of the wind out of the plaintiffs' sails, at least for the time being.<sup>8</sup> Consequently, it has been questioned whether the plaintiffs will pursue their claims against the United States.<sup>9</sup>

Plaintiffs' Settlement Conference Statement]. A set of companion suits is still pending in federal court. See note 8 *infra*.

6. See letter from Atty. M. Jarvis to the author (Oct. 21, 1977), adding: the cases "were settled for the total sum of 258,000. . . . Separate formal judgments were entered in each of these actions and these judgments have already been paid." The federal cases are still pending. See note 8 *infra*.

7. See INTERNATIONAL LAW ASSOCIATION, PRACTITIONER'S NOTEBOOK, No. 6, Apr. 1979, at 2-3. Settlement was for \$130,000, bringing the total to \$388,000.

8. *Rappenacker v. United States*, Nos. C-76-0298-WWS, C-76-0422-WWS, C-77-0565-WWS, C-77-0939-WWS (N.D. Cal., Jul. 8, 1980) (Memorandum of Opinion and Order) [hereinafter cited as Memorandum of Opinion and Order]. The court's order granted the defendant's motion for summary judgment "with respect to all claims arising out of the military operations" engaged in by the United States, but allowed plaintiffs to test their claim concerning a U.S. failure to warn ships about dangers in the area where the *Mayaguez* was seized. See *id.* at 11, lines 9-12. Trial is scheduled for January 1981. The order was premised on the court's understanding that such matters present non-justiciable political questions. However, such a premise is erroneous, as explained in more detail in Paust, *Is the President Bound by the Supreme Law of the Land? — Foreign Affairs and National Security Re-Examined*, (1980) (available from the author at the following address: University of Houston, Central Campus, Houston, Texas 77004). As noted in the preceding article, several cases have examined the propriety of Executive acts taken abroad, even when military force was used in time of war and, thus, when Executive power is admittedly at its highest. As explained therein, such cases have addressed Executive violations of international law and have voided illegal acts or otherwise issued sanctions against violations of supreme federal law. *Id.*

9. See INTERNATIONAL LAW ASSOCIATION, PRACTITIONER'S NOTEBOOK, No. 6, Apr. 1979, at 2-3.

The import of the new record established by these lawsuits reaches far beyond the parties directly involved. Here, the inquiry begins by outlining an interesting new precedent set by the *Mayaguez* lawsuits, one that involves the integration of international law into plaintiffs' claims in admiralty for compensatory and punitive damages. Next, there are sections that will detail newly revealed facts concerning the location and the appearance of the ship, its secret cargo, and the prior knowledge possessed by the ship's operators concerning recent hostilities in the area. Quite clearly, knowledge of these new facts is necessary in order adequately to assess the propriety with which the governments of the United States and Cambodia conducted themselves during the course of the incident.

## II. PLAINTIFFS' USE OF INTERNATIONAL LAW

The *Mayaguez* lawsuits were based in part on a novel theory of liability in admiralty law. Specifically, the plaintiffs argued that certain violations of international law were, in context, interconnected with a violation by Sea-Land of the affirmative duty imposed by admiralty law to protect the health and safety of crew members. In the California cases, the plaintiffs claimed that the defendant's Master (Captain Miller) was derelict in this duty<sup>10</sup> by "recklessly venturing into known dangerous and hostile waters of foreign sovereignty (Cambodia)"<sup>11</sup> and otherwise "inviting the capture"<sup>12</sup> of the *Mayaguez* by sailing within 1.75 miles of an island claimed by Cambodia<sup>13</sup> without flying a flag,<sup>14</sup> and under other circumstances which clearly show "that defendant's ship was neither in international waters nor engaged in 'innocent passage' at the time and place of her seizure and detention by the Cambodians, as warranted under the established Treaty and the applicable international law."<sup>15</sup>

10. See Brief for Plaintiffs, *supra* note 5, at 2-4.

11. See *id.* at 10, line 26, to *id.* at 11, line 2. See also *id.* at 13, lines 13-16.

12. *Id.* at 27, lines 17-18.

13. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 2, line 1; *id.* at 4, lines 13, 20; *id.* at 17, line 16, to *id.* at 18, line 6; *id.* at 44, lines 8-10. In the Federal District Court order of July 8, 1980, the court declared that the vessel "passed within 3 miles of the Poulo Wai Islands. . . ." See Memorandum of Opinion and Order, *supra* note 8, at 2, lines 25-6. In the Government's Answer to Plaintiffs' Request for Admissions, *Rappennecker v. Sea-Land Services, Inc.*, No. 691-717, consolidated with 691-718, 719, 720, 721 and 695-952 (Cal. Super. Ct., filed Apr. 26, 1977) [hereinafter cited as Government's Answer], the Government admitted that it knew that Cambodia had claimed and occupied Poulo Wai. See *id.* at 7-8; and *infra* note 37.

14. Brief for Plaintiffs, *supra* note 5, at 19, line 19-20; and Plaintiffs' Settlement Conference Statement, *supra* note 5, at 7, lines 6-7. To these claims, the United States responded on January 28, 1980: "Defendant does admit . . . that on May 12, 1975, the *Mayaguez* was painted at least partially black and that it is common for merchant vessels not to fly a flag while sailing between ports." See Government's Answer, *supra* note 13, at 4, lines 14-19.

15. Brief for Plaintiffs, *supra* note 5, at 19, lines 21-25, citing Paust, *Seizure*, *supra* note 1. The brief included a copy of the Paust article as plaintiffs' Exhibit B. Brief for Plaintiffs, *supra* note 5, at 7, lines 5-12. The "Treaty" referred to is the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, 516 U.N.T.S. 205, 15 U.S.T. 1606. In the federal suits, the Government

The plaintiffs' pretrial statement of February 22, 1977 denied defendant Sea-Land's claim that the *Mayaguez* was sailing on the high seas in international navigable waters when seized.<sup>16</sup> Additional specific references to violations of international law were made at several points in the Plaintiffs' Settlement Conference Statement.<sup>17</sup>

The plaintiffs' claims before the California court were not grounded solely on claims to compensatory and punitive damages for violations of international law as such. The plaintiffs argued that by violating international law and otherwise "recklessly venturing into Cambodian waters" and general areas of hostility, the corporate defendant, through the actions of the Master of the *Mayaguez*, "clearly invited the seizure and detention of the MAYAGUEZ"<sup>18</sup> and thus subjected the crew to serious injury or death in violation of relevant principles of maritime law. The plaintiffs, apparently, were not ready to argue that violations of international law by private corporations should automatically lead to recovery of damages by certain victims of those violations. Such an argument is entirely possible, at least where violations of the constitutional rights of the victims also occur in connection with the violation of general human rights and/or other international norms.<sup>19</sup> There was some reference made to the "human rights" of the crew.<sup>20</sup> However, it does not appear that the plaintiffs were ready to argue claims for compensation on the basis of serious deprivations of the human rights and/or the civil rights of the plaintiff crew members.<sup>21</sup> Again, the nature of the

---

has denied the allegations of violations of international law. See Government's Answer, *supra* note 13, at 16-17.

16. Pretrial Statement of Plaintiffs, at 4, lines 16-19, *Rappenecker v. Sea-Land Services, Inc.*, No. 691-717, consolidated with 691-718, 719, 720, 721, and 695-952 (Cal. Super Ct., filed Apr. 26, 1977). See Plaintiffs' Settlement Conference Statement, *supra* note 5, at 4, lines 1-3, 11-22. In the federal suits, the Government has denied allegations that the *Mayaguez* was captured in territorial seas. See note 15 *supra*.

17. See generally Plaintiffs' Settlement Conference Statement, *supra* note 5, at 4, 18. Such references include: "navigating the vessel in violation of the Treaty," at 18, lines 13-14; "the MAYAGUEZ was in direct violation of the Treaty [by] carrying military cargo and supplies into Cambodian waters," *id.* at 18, lines 7-8; "the MAYAGUEZ was in violation of the supreme law of our land under the solemn Treaty existing between the United States and Cambodia and as defined under the United States Constitution, Article VI, Clause 2," *id.* at 4, lines 14-18. In federal court, the plaintiffs alleged that "the President acted negligently in the exercise of his power, arguing that Cambodia's seizure of the *Mayaguez* in its territorial waters did not violate international law," Memorandum of Opinion and Order, *supra* note 8, at 7, lines 22-25.

18. Plaintiffs' Settlement Conference Statement, *supra* note 5 at 4, lines 19-22.

19. See e.g., Paust, *Does Your Police Force Use Illegal Weapons? A Configurative Approach to Decision Integrating International and Domestic Law*, 18 HARV. INT'L L.J. 19 (1977), and cases cited; and Paust, *Human Rights and the Ninth Amendment: A New Form of Guarantee*, 60 CORNELL L. REV. 231 (1975). See also *The Ringeisen Case*, European Court of Human Rights (Jun. 22, 1972), reprinted in 11 INT'L L. MAT. 1062 (1972); and Paust, Book Review, 55 N.Y.U. L. REV. (1980). However, plaintiffs may have intended to argue automatic recovery. See Plaintiffs' Settlement Conference Statement, *supra* note 5, at 18, lines 4-10 (recovery "as a matter of law").

20. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 5, lines 9-10.

21. See note 19 *supra*.

lawsuits seemed merely to involve the incorporation of international legal standards into claims in admiralty law,<sup>22</sup> although other lawsuits against the United States are still pending.<sup>23</sup>

In their federal suits, the plaintiffs alleged that the U.S. Government "was negligent in the performance of [its] undertaking [to rescue the crew] in using force of arms, instead of resort to existing treaty law and the use of the judicial process or other available peaceful means under domestic and international law."<sup>24</sup> The plaintiffs further alleged that the United States "was also negligent in the manner of performance of its rescue undertaking."<sup>25</sup> In addition, the plaintiffs argued that in view of relevant treaty and other international law, "the defendant was negligent in assuming that the arrest and detention of the *Mayaguez* was unlawful in the first place."<sup>26</sup> In support of these allegations, the plaintiffs set forth some of the basic elements of fact and law which supported their conclusion that Cambodia's seizure of the *Mayaguez* was legally defensible and that several aspects of the U.S. response were legally impermissible.<sup>27</sup> Various scholars have indicated their support of these or similar legal conclusions.<sup>28</sup>

The use of international legal standards in suits in admiralty is not entirely new, especially with regard to the conduct of vessels and with regard to the rights to vessel or cargo control and ownership.<sup>29</sup> International law has also

22. See Plaintiffs' Settlement Conference Statement, *supra* note 5, at 9, lines 12-19.

23. See note 8 *supra*.

24. See Plaintiffs' Opening Brief, at 4, lines 5-9, *Rappenacker v. United States*, Nos. C-76-0298-WWS, C-76-0422-WWS, C-77-0565-WWS, C-77-0939-WWS, (N.D. Cal., filed Jul. 8, 1980) [hereinafter cited as Plaintiffs' Opening Brief].

25. *Id.* lines 9-10. See *id.* at 7-10, citing, Paust, *Seizure*, *supra* note 1.

26. See Plaintiffs' Opening Brief, *supra* note 24, at 7, lines 8-9.

27. See *id.* at 7-10.

28. See the articles cited in notes 1-3 *supra*. See also the following more recently published articles: Friedlander, *The Mayaguez in Retrospect: Humanitarian Intervention or Showing the Flag?*, 22 ST. LOUIS U.L.J. 601 (1978) [hereinafter cited as Friedlander]; Rubin, *Revolution and Self-Defense at Sea*, 7 THESAURUS ACROASIMUM 101, 123 (Greece 1977); Fried, *War-Exclusive or War-Inclusive Style in International Conduct*, 11 TEX. INT'L L.J. 1, 49-60 (1976); Sohn, letter to the author (Nov. 29, 1976); Fisher, REMARKS, 70 PROC. A.S.I.L. 136 (1976). With regard to constitutional problems posed by President Ford's reaction, see the writings listed in Friedlander, *supra*, at 612 n.71. The author is not opposed to the use of reasonably necessary and proportionate force (*e.g.*, self-help) where the circumstances justify such a limited responsive action. See Paust, *Entebbe and Self-Help: the Israeli Response to Terrorism*, 2 THE FLETCHER FORUM 86 (1978). Such is also relevant to legal inquiry into the propriety of the abortive U.S. rescue mission in Iran.

29. See, *e.g.*, *The Paquete Habana*, 175 U.S. 677 (1900); *Hilton v. Guyot*, 159 U.S. 113, 163 and 167 (1895); *United States v. Steever*, 113 U.S. 747 (1885); *Cushing v. Laird* 107 U.S. 69, 76-77, 80-81 (1882); *The Scotia*, 81 U.S. (14 Wall.) 170, 187-188 (1871); *The China*, 74 U.S. (7 Wall.) 53 (1868); *Ramsey v. Allegre*, 25 U.S. (12 Wheat.) 611, 623 (1827); *The Nereide*, 13 U.S. (9 Cranch) 388, 421 *ff.* (1815); *The Betsey and Charlotte*, 8 U.S. (4 Cranch) 443 (1808); *Croudson v. Leonard*, 8 U.S. (4 Cranch) 434 (1808); *Jennings v. Carson*, 8 U.S. (4 Cranch) 2, 19 (1807); *The Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804); *Bolchos v. Darrel*, 3 Fed. Cas. 810 (No. 1607) (D.S.C. 1795); *Moxon v. The Fanny*, 17 Fed. Cas. 942 (No. 9895) (D. Pa. 1793). See also Bourguignon, *Incorporation of the Law of Nations During the American Revolution — The Case of the*



served as a basis for exposition of jurisdictional competence.<sup>30</sup> Moreover, the payment of money damages to ship or cargo owners for violations of international law is not unknown.<sup>31</sup> Claims made by a state on behalf of its nationals for illegal seizures of a ship and/or cargo have also been successful.<sup>32</sup> However, the incorporation of relevant international legal standards into the claims of crew members for compensation for injuries sustained seems fairly novel<sup>33</sup> and the *Mayaguez* lawsuits are significant precedents in that regard.

Further, it is not unusual to discover the integration of treaty standards and admiralty law in connection with suits in admiralty which arise out of the collision of two or more vessels at sea.<sup>34</sup> Even negligence standards are involved in such cases.<sup>35</sup> Nevertheless, typically in such cases the relevant treaty law and agreed norms derived from international maritime conferences<sup>36</sup> are created

*San Antonio*, 71 AM. J. INT'L L. 270 (1977) [hereinafter cited as Bourguignon]; Dickinson, *The Law of Nations as Part of the National Law of the United States*, 101 U. PA. L. REV. 792 (1953) [hereinafter cited as Dickinson]; Dickinson, *Changing Concepts and the Doctrine of Incorporation*, 26 AM. J. INT'L L. 239 (1932).

30. See, e.g., *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963); *Lauritzen v. Larsen*, 345 U.S. 571 (1953); *Farrell v. U.S.*, 336 U.S. 511 (1949); *U.S. v. Flores*, 289 U.S. 137, 155-159 (1933); *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 123 (1923); *In re Ross*, 140 U.S. 453 (1891); *Wildenhus's Case*, 120 U.S. 1 (1887). See also H. STEINER & D. VAGTS, *TRANSNATIONAL LEGAL PROBLEMS* 551 (1976) [hereinafter cited as STEINER & VAGTS]; *The Amelia*, 5 U.S. (1 Cranch) 1, 40-41 (1801); *Talbot v. Jansen*, 3 U.S. (3 Dall.) 133, 159-161 (1795).

31. See Bourguignon, *supra* note 29, at 292 (upon review of admiralty decision in the case of the *San Antonio*, reversal and award of trial and appellate costs plus \$1,000 damages for illegal detention and capture); *The Paquete Habana*, 175 U.S. 677, 714 (1900); *The Charming Betsy*, 6 U.S. (2 Cranch) 64, 125-126 (1804).

32. See, e.g., *Hoff, Administratrix (United States v. United Mexican States)*, General Claims Commission (1929), IV U.N. REP. INT'L ARB. AWARDS 44 (1952) (award of \$5,000 with 6% interest from Apr. 24, 1884).

33. Two relevant cases are known, although they were based on claims by aliens. See *Lopes v. Reederie Richard Schroder*, 225 F. Supp. 292 (E.D. Pa. 1963), involving a possible dismissal of an alien's claim for relief under 28 U.S.C.A. §1350 (tort committed against alien in violation of international law) unless plaintiff agreed to transfer the case to the admiralty docket. The court concluded that one of the doctrines utilized by plaintiff, the doctrine of "unseaworthiness," is not a doctrine of international law but an American court-developed doctrine applied in admiralty. The court also held that: "[n]othing has been found to indicate that the acts or omissions described as the negligence in this Complaint would be considered as a violation of the law of nations." *Id.* at 297. The court also noted the case of *Khedivial Line, S.A.E. v. Seafarer's International Union*, 278 F.2d 49, 52 (2d Cir. 1960), which denied a claim that the picketing of a foreign vessel while it is within a U.S. port constitutes a tort in violation of international law.

34. See, e.g., G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 489-512 (2 ed. 1975), and cases cited.

35. See *id.* at 508-11.

36. See *id.* at 489, 825, 987, 990. In this regard one must not forget, of course, the historic interconnections between the general law maritime and the law of nations. See also STEINER & VAGTS, *supra* note 30; Dickinson, *supra* note 29; C. RHYNE, *INTERNATIONAL LAW* 14-15 (1972); *The China*, 74 U.S. (7 Wall.) 53 (1868); *Petition of Gulf Oil Corp.*, 172 F. Supp. 911, 914 (S.D.N.Y. 1959); *Mangone v. Moore-McCormack Lines, Inc.*, 152 F. Supp. 848, 854 (E.D.N.Y. 1957).

for a particular purpose — *i.e.*, application to collision cases. The suits by the *Mayaguez* crew members utilizing international law as a basis for a showing of negligence or dereliction *vis-à-vis* the crew, involved a far broader integration of international and admiralty law. Thus, for this additional reason, the *Mayaguez* lawsuits are unique and important.

### III. LOCATION OF THE SHIP

Depositions of various crew members disclosed that the *Mayaguez* was 1.75 miles off the coast of an island under Cambodian control and thus within territorial waters claimed by Cambodia. The legal analysis of Cambodia's right to stop and search the *Mayaguez* does not depend upon whether the *Mayaguez* was 6 miles or 1.75 miles off the coast. This is true because in either case, the ship was within a claimed 12 mile territorial sea. Indeed, Cambodia would have had such a right under the circumstances even had the *Mayaguez* been on the high seas.<sup>37</sup> However, the disclosure that the ship was actually 1.75 miles from the relevant island is significant for two reasons.

First, the disclosure places additional doubt on the Captain's assertions that the *Mayaguez* was merely engaged in "innocent passage" as a cargo vessel and that no espionage equipment or military cargo of use to insurgents in their military actions against Cambodia was on board the *Mayaguez* at the time of its seizure. Second, the fact that the *Mayaguez* was within 1.75 miles of an island in Cambodian control, far closer than the original announcement, makes Cambodian suspicion, under the circumstances, even more reasonable.<sup>38</sup> Moreover, the fact that the *Mayaguez* was within 1.75 miles of a claimed Cambodian island placed it well outside any international shipping lanes.<sup>39</sup>

Allegations that the *Mayaguez* passed dangerously close to the island were made public shortly after the incident by the statement of a crew member, Americo Faria. Mr. Faria stated that he had passed the island many times previously aboard another vessel and had never observed the island from as close a distance.<sup>40</sup> To substantiate the fact that the *Mayaguez* was within 1.75

---

37. Compare Paust, *Seizure*, *supra* note 1 and Paust, *Correspondence*, *supra* note 3, with Sandler, *supra* note 2. The Government's answer of January 28, 1980 admitted that the United States knew of earlier Cambodian claims to a 12-mile territorial sea and "that Cambodia had claimed sovereignty over Poulo Wai for a long time though it is understood that the first written claim was made in July 1972." Government's Answer, *supra* note 13, at 7, lines 17-19, 28-30. The Government also admitted that it knew that Cambodia had actually occupied Poulo Wai, at least since "late April 1975." *See id.* at 8, lines 8-10.

38. *See* Paust, *Seizure*, *supra* note 1, at 785-95; Paust, *Correspondence*, *supra* note 3, at 209-10. For the Federal District Court's finding of fact, *see* Memorandum of Opinion and Order, *supra* note 8.

39. Compare Sandler, *supra* note 2, at 203 with Paust, *Correspondence*, *supra* note 3, at 209. *See* text accompanying note 40 *infra* (a crew member had never been so close to the island before); and the court finding, Memorandum of Opinion and Order, *supra* note 8.

40. *See* R. ROWAN, *THE FOUR DAYS OF MAYAGUEZ* 24-25 (1975).

miles from the relevant island, the attorney for the plaintiffs, Martin J. Jarvis, offered the depositions of a crew member and the shipowner's Marine Manager.

The deposition of the crew member, Darryl Kastl, is instructive:

- A. He had no business being close to an island that was seized by the Cambodians.  
 Q. How close was he?  
 A. In my estimate, approximately two miles.  
 Q. Were you on deck at the time of the seizure?  
 A. I was looking out my porthole.<sup>41</sup>

The admission of Captain Miller, the *Mayaguez* Captain, contained in the deposition of the shipowner's Marine Manager was even more precise:

- Q. Did he mention how close he was to the Cambodian-claimed island of Poulo Wai when the ship was seized?  
 A. Yes.  
 Q. What did he say in that regard?  
 A. I think he said he was about 1.75 miles from the island when he was fired upon . . .  
 A. I asked him how close he had approached the island.  
 Q. All right, and his answer was what?  
 A. 1.75 miles. . . .<sup>42</sup>

Plaintiffs also produced an expert who "examined the original gyroscope course recorder tracings of the" *Mayaguez*, "the ship's deck log, engine log, bell book and the radio log, as well as the official government charts and data on prevailing tides and weather conditions. . . ." <sup>43</sup> The conclusion of the expert was that the *Mayaguez* "was 2.2 miles off the islands of Poulo Wai when seized and detained (plus or minus a possible error of half a mile). . . ." <sup>44</sup>

41. Deposition of Darryl V. Kastl, Jul. 3, 1976, at 11, lines 5-10, *Rappenacker v. Sea-Land Services, Inc.*, No. 691-717, consolidated with 691-718, 719, 720, 721 and 695-952 (Cal. Super. Ct., filed Apr. 26, 1977).

42. Deposition of Harold D. Simmons, Feb. 26, 1976, at 121, lines 11-16; *id.* at 131, line 28, to *id.* at 132, line 2, *Rappenacker v. Sea-Land Services, Inc.*, No. 691-717, consolidated with 691-718, 719, 720, 721 and 695-952 (Cal. Super. Ct., filed Apr. 26, 1977). For the federal court's finding, *see* Memorandum of Opinion and Order, *supra* note 8. The plaintiffs were also going to offer the ship's log in evidence to show that the *Mayaguez* must have been within 2 miles of the island. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 2, lines 13-16, also cited the depositions of two other crew members to support this claim: Deposition of Frank Conway, Jul. 28, 1975; and Deposition of C.J. Harrington, Jul. 17, 1977. *See also* text accompanying notes 43-44 *infra*. The Captain also admitted in an affidavit that the ship "passed within 3 miles of the Cambodian islands of Poulo Wai." Affidavit of Charles T. Miller, Apr. 24, 1980, at 8, lines 30-31.

43. Affidavit of Henrik E. Sievers, Master Mariner, Jan. 11, 1980, at 3, lines 2-7, *Rappenacker v. United States*, Nos. C-76-0298-WWS, C-76-0422-WWS, C-77-0565-WWS, C-77-0939-WWS (N.D. Cal., filed Jul. 8, 1980).

44. *Id.* at 3, lines 7-10.

## IV. APPEARANCE OF THE SHIP

The general appearance of the *Mayaguez* is also relevant to the reasonableness of Cambodia's suspicion under the circumstances and its right to stop the *Mayaguez*, whether on the high seas or in territorial waters. Although several relevant facts were previously known about the appearance of the ship,<sup>45</sup> the plaintiffs' Settlement Conference Statement stressed the fact, now nearly admitted by the U.S. Government, that the *Mayaguez* was painted black and flying no flag at the time of seizure.<sup>46</sup> Such facts were stressed by the plaintiffs to show negligence, dereliction and reckless misconduct. The facts also lend support to the reasonableness of Cambodia's suspicion.

Of particular importance is the fact that the *Mayaguez* was showing no flag. Such a fact is a primary justification for the stopping of any merchant vessel in the territorial sea of a coastal state<sup>47</sup> and, more importantly, anywhere upon the high seas.<sup>48</sup> For example, in 1977, a freighter, the *Juliana I*, was detained some 120 miles east-north east of Boston by the U.S. Coast Guard because it did not display a flag.<sup>49</sup> After ordering the *Juliana* to stop, the Coast Guard boarded the *Juliana* to determine nationality and proper documentation.

45. See Paust, *Seizure*, *supra* note 1, at 792-794; and Paust, *Correspondence*, *supra* note 3, at 209-10.

46. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 7, lines 6-7. This was admitted in part by the Government. See Government's Answer, *supra* note 13. The ship might have been painted black so as to be able to run closer to the shore without lights (or "blacked out") and avoid being discovered. See also Deposition of Wilbert Bock, Mar. 4, 1977, at 128, lines 21-24; *id.* at 130, lines 14-19, *Rappenacker v. Sea-Land Services, Inc.*, No. 691-717, consolidated with 691-718, 719, 720, 721 and 695-952 (Cal. Super. Ct., filed Apr. 26, 1977).

47. See Paust, *Correspondence*, *supra* note 3, at 209.

48. See 1958 Geneva Convention on the High Seas, art. 22(2), 450 U.N.T.S. 82, 13 U.S.T. 2312 [hereinafter cited as 1958 Geneva Convention on the High Seas]; and 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 667 (1965) [hereinafter cited as WHITEMAN] (right of approach and verification). See also C. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA 291-292, 496 (6th ed. 1967); A. HIGGINS & C. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA 344 (2nd ed. 1951); M.S. MCDUGAL & W.T. BURKE, THE PUBLIC ORDER OF THE OCEANS 1085-86, 1121 (1962). The general "burden of proof" or justifying factor for detention is reasonable suspicion. See WHITEMAN, *supra*; and Article 22(1), 1958 Geneva Convention on the High Seas, *supra* (reasonable ground for suspecting). When the *Mayaguez* showed no flag there was no question about the right of Cambodia to approach and attempt verification. The reasonable suspicion standard is the same general standard utilized in cases of detention in the territorial sea, a contiguous zone or on the high seas, when the legal ground relates to noninnocent passage or general self-defense measures (*i.e.*, measures other than the alternative justification for detention of the *Mayaguez*, the right of verification). See Paust, *Seizure*, *supra* note 1, at 786-791, and authorities cited therein; *id.* at 793 n.91; Paust, *Correspondence*, *supra* note 3, at 209-210, and authorities cited at 210 n.20; Burke, *Contemporary Law of the Sea: Transportation, Communication and Flight*, 2 YALE STUD. WORLD PUB. ORDER 183, 186-88, 203-04, 209-14 (1976); Slonim, *The Right of Innocent Passage and the 1958 Geneva Conference on the Law of the Sea*, 5 COLUM. J. TRANSNAT'L L. 96, 100-02 (1966); 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 346 (1965); *Re Martinez*, Italian Court of Cassation (1959), 28 INT'L L. REP. 170 (1963), reprinted in N. LEECH, C. OLIVER, & J. SWEENEY, THE INTERNATIONAL LEGAL SYSTEM 184-88 (1973).

49. See U.S. COAST GUARD, COMMANDANT'S BULLETIN, NO. 40-77, at 4 (Oct. 3, 1977). The vessel raised the Honduran flag just after the Coast Guard ordered the vessel to stop.

While below, in an attempt to observe the main beam number (for identification purposes), the Coast Guard personnel discovered some 25.5 tons of marijuana, one of the largest marijuana seizures ever made by the Coast Guard. The Coast Guard did obtain the consent of the Honduran Government, through the U.S. Department of State, to take appropriate law enforcement action.<sup>50</sup> Significantly, however, the initial stopping of the vessel to verify its nationality was perfectly proper under Article 22, paragraphs (1) (c) and (2) of the 1958 Geneva Convention on the High Seas.<sup>51</sup>

#### V. THE SECRET CARGO

On board the *Mayaguez* at the time of its seizure were 274 containers. The contents of these containers have never been disclosed. However, it is known that the *Mayaguez* left Saigon nine days before the capital of South Vietnam fell, that the Captain of the *Mayaguez* destroyed a secret code upon capture, and that there was an \$800 mini-computer on board in addition to radar and radio equipment.<sup>52</sup> These disclosures fueled suspicion that the *Mayaguez* was somehow involved in espionage activity and/or the carriage of military equipment of use in armed activities against Cambodia. Disclosures pursuant to the *Mayaguez* lawsuits have intensified these suspicions.

Several of the 35 foot, 25 ton containers were picked up in Saigon under special circumstances (*e.g.*, with escort by Embassy personnel) nine days before Saigon fell. These containers housed secret data and other material from the U.S. Embassy in Saigon and were loaded on board as "administrative material."<sup>53</sup> It is still not known where or when these secret containers were off-loaded or what they actually contained. Such facts were not disclosed in spite of the fact that the plaintiffs pressed for full disclosure and had obtained some information prior to the settlement of the first set of lawsuits.<sup>54</sup> However, it is known that the *Mayaguez* carried several other con-

50. *Id.* This apparently took place while the search proceeded. The detention lasted from September 12 until September 14 when the *Juliana* was escorted to Boston.

51. 1958 Geneva Convention on the High Seas, *supra* note 48, art. 22.

52. See Paust, *Seizure*, *supra* note 1, at 793-94 n.91; Paust, *Correspondence*, *supra* note 3, at 210 n.23. The Government has admitted at least that "an Alpha envelope had been issued to the Master of the *Mayaguez* . . . with instructions that it be opened only under certain circumstances." See Government's Answer, *supra* note 13, at 15, lines 17-19.

53. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 30, lines 13-15; *id.* at 33, lines 15-17, *citing* Depositions of Captain Charles T. Miller, Nov. 24-25, 1975 and Dec. 22, 1975; Deposition of Timothy T. Titus (Sea-Land Country Manager, Vietnam), Apr. 29, 1976; Deposition of John Vanna, Apr. 12-13, 1977; Deposition of Cpt. David D. Partridge, Apr. 19, 1977; and N.Y. Times, May 23, 1975, at 3, col. 3 (West German Magazine Asserts *Mayaguez* Carried C.I.A. Data). The containers were 35 feet long, 8 feet wide and 8.5 feet high. See JANE, FREIGHT CONTAINERS 1972-1973 292 (5th ed. 1973).

54. See Plaintiffs' Settlement Conference Statement, *supra* note 5, at 13-16; *id.* at 30, lines 13-15; *id.* at 46, lines 8-13. Still today, many relevant facts are unavailable to Congress since they are classified. See Paust, *Correspondence*, *supra* note 3, at 207.

tainers with military cargo and military supplies destined for the U.S. airbase in Sattahip, Thailand, as it and other Sea-Land vessels had done in the past.<sup>55</sup>

A Sea-Land official, Michael McEvoy, stated shortly after the incident that the *Mayaguez* carried "107 containers of routine cargo, 77 containers of military cargo, and 90 empty containers."<sup>56</sup> No mention was made of the secret Embassy containers, but the admission that 77 military containers existed is relevant. Further, the partial cargo list furnished to the plaintiffs by defendant Sea-Land Corporation included seventeen containers labeled as "cannot identify — all going to AAFES, but contents cannot be identified," two containers labeled as "general cargo," and six containers labelled as "six additional loads from the U.S. East Coast . . . it is believed one was loaded at Baltimore, 3 at Norfolk/Portsmouth, and 2 at Elizabeth."<sup>57</sup>

Also disclosed was the surreptitious off-loading of several containers at Singapore after release of the *Mayaguez* and before actual inspection of any container by the public. The depositions taken by plaintiffs disclosed the following sequence of events relevant to the overall mystery and the off-loading process:

There were 274 cargo containers aboard the *MAYAGUEZ* when she was seized in the Gulf of Thailand on 12 May 1975. After release from capture by Cambodia, the vessel did not proceed on her scheduled run to Sattahip, but was rerouted to Singapore where certain of her cargo containers (which had been on board at the time of vessel seizure) *were off-loaded at Singapore. Thereafter*, while still at Singapore the World Press was invited by the Chairman of the Board of Sea-Land Service, Inc., to inspect the contents of the cargo containers *then* remaining on board the *MAYAGUEZ*. No inspection of the actual contents of the *MAYAGUEZ* cargo containers (either those containers which had

---

55. See Plaintiffs' Settlement Conference Statement, *supra* note 5, at 13, lines 10-17; *id.* at 16, lines 9-18, *citing* a partial cargo list supplied by the Sea-Land defendant; *see also* Government's Answer, *supra* note 13, at 4, lines 20-24. The partial cargo list included "radio transmitter sets," "electrical equipment," numerous chemicals and other military equipment. These were "suspect" cargoes under a previously established United States-South Vietnamese practice, enforcing the Viet-Nam Decree on Sea Surveillance for security and defense purposes. *See Paust, Seizure, supra* note 1, at 788-89.

56. San Francisco Chronicle, Jun. 29, 1975; *See G.A.O Report, infra* note 61, at 127.

57. Plaintiffs' Settlement Conference Statement, *supra* note 5, Exhibit K (May 15, 1975). This cargo list was "authenticated by Mr. Gilbertson under judicial oath." *See Affidavit of Martin J. Jarvis in Support of Jurisdiction* (Jan. 17, 1980), at 4, lines 1-5, *Rappenacker v. United States*, Nos. C-76-0298-WWS, C-76-0422-WWS, C-77-0565-WWS, C-77-0939-WWS (N.D. Cal., filed Jul. 8, 1980). Mr. Gilbertson was the President and Chief Operating Officer for the defendant Sea-Land. There was no mention of "administrative material" from the U.S. Embassy in Saigon in the partial list of cargo. In answers to plaintiff interrogatories in the federal action, Attorney William Gwatkin, a U.S. Attorney, denied that an Embassy cargo (of some 34 containers) was on board the *Mayaguez* at the time of its seizure. *See Answers to Plaintiffs' Interrogatories*, Jun. 30, 1977, at 2, lines 1-5, *Rappenacker v. United States*, Nos. C-76-298-LHB, C-76-422-LHB (N.D. Cal.).

been off-loaded or those remaining aboard the ship) *was in fact actually made at Singapore.*

Additional new containers were unloaded before the vessel departed Singapore for Hong Kong. Upon arrival Hong Kong the Press was invited to inspect the then cargo container contents of the MAYAGUEZ. Only 6 out of the 274 containers "from the stacked deck" (an expression on the ancient game of poker by Hoyle) were in fact opened at random at Hong Kong.<sup>58</sup>

The German magazine *Stern* reported that the *Mayaguez* was carrying containers of top-secret intelligence data as well as all the electronic equipment (including radio and decoding equipment) from two former C.I.A. offices in Saigon. However, the U.S. Government has refused to admit such allegations. Ron Nessen of the White House staff denied that the containers held "classified C.I.A. material of any kind."<sup>59</sup> Similarly, the corporate defendants proved to be evasive.<sup>60</sup> The world may never know exactly what was inside all of the containers. Perhaps if *Stern* was correct that the United States went after the cargo, and apparently not the crew at all, then the U.S. mission was relatively successful.<sup>61</sup> In contrast, the efforts of the plaintiffs to learn about the contents of the containers were relatively in vain.

## VI. PRIOR KNOWLEDGE OF HOSTILITIES

Plaintiffs' Settlement Conference Statement claimed that widely circulated "national and international magazines including *Time* and *Newsweek*, the contents of which were known to the defendant's operating personnel and the

58. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 15, lines 1-18, citing Depositions of Michael McEvoy (Apr. 29, 1977) and Don O'Hare (Mar. 30, 1977), two Sea-Land executives (one of whom was also on the Executive Committee of R.J. Reynolds Industries, Inc., the parent corporation of defendant Sea-Land). In F. Houk, *The Mayaguez Incident* (Feb. 1977) (unpublished student thesis at the University of North Carolina Library), Mr. Houk posits a U.S. intelligence connection to the *Mayaguez* through the R.J. Reynolds Co. to Sea-Land, although the only apparent "proof" offered is the fact that Gordon Gray, on the Board of Directors of R.J. Reynolds, has been actively involved in military intelligence during his career, has worked indirectly with the C.I.A., and has for sixteen years been on the President's Foreign Intelligence Advisory Board. *Id.* at 78-83.

59. See N.Y. Times, May 23, 1975 at 3, col. 3 (West German Magazine Asserts Mayaguez Carried C.I.A. Data). The GAO was "unable to confirm" many relevant facts because they are still classified and unavailable to the U.S. Congress. See Paust, *Correspondence*, *supra* note 3, at 207.

60. See Plaintiffs' Settlement Conference Statement, *supra* note 5, at 14, lines 1-3, 13-23.

61. See N.Y. Times, May 23, 1975 at 3, col. 3 (West German Magazine Asserts Mayaguez Carried C.I.A. Data). *Stern* also reported that frogmen had set mines under the ship before the crew was moved to the mainland and that the United States would have destroyed the ship had aerial reconnaissance showed that Cambodians were opening containers. *Id.* In this regard, it may be relevant that U.S. reconnaissance was directed (at least twice during nighttime missions) to measure spaces between the containers aboard the *Mayaguez*. See SUBCOMM. ON INTERNATIONAL POLITICAL AND MILITARY AFFAIRS OF THE HOUSE COMM. ON INTERNATIONAL RELATIONS, 94th CONG., 2D SESS., REPORTS OF THE COMPTROLLER GENERAL ON THE SEIZURE OF THE MAYAGUEZ 77 (Comm. Print 1976) [hereinafter cited as G.A.O. Report]. See also note 69 *infra*.

Master of the *MAYAGUEZ*,<sup>62</sup> had published news accounts of intense hostilities between Vietnamese and Cambodian forces as well as Thai fishing boats that had occurred in the general area for several months prior to the seizure of the *Mayaguez*. Indeed, the defendant Sea-Land had ordered all of its vessels to stay at least twenty nautical miles off the coast of Vietnam and relevant islands.<sup>63</sup> Moreover, the U.S. Government "Sailing Directions" (dated 1957 through 1976) had warned that vessels were "subject to search" within the limit of twelve nautical miles off the coast of Vietnam and that general vicinity.<sup>64</sup>

The plaintiffs also alleged that Sea-Land had specifically warned the Captain of the *Mayaguez* on several occasions just prior to the seizure to give wide-berth to armed fishing boats, and further that the Captain had been specifically warned to avoid shellfire around Poulo Wai:

The Master of the *MAYAGUEZ* prior to departure Hong Kong on May 9, 1975 . . . had been specifically warned . . . regarding reports of actual shellfire between Vietnamese watercraft and Cambodian vessels, in the vicinity of the off-lying islands of Cambodia including Poulo Wai.<sup>65</sup>

It is also clear that other crew members had known about the general dangers in those waters.<sup>67</sup> The unanswered question is why the *Mayaguez*, knowing of the dangers involved, was 1.75 miles from the Poulo Wai islands at the time it was spotted by the Cambodians.<sup>68</sup>

## VII. CONCLUSION

The *Mayaguez* lawsuits in admiralty have added much to our knowledge of important facts that relate to the reasonableness of Cambodian suspicion and

62. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 2, lines 4-8, 17-22. The magazine articles are listed in Plaintiffs' Exhibit B. *Id.* See *id.* at 50, lines 13-24; *id.* at 51, lines 5-9 (personally known to Cpt. Miller and Sea-Land) *citing* numerous depositions; *id.* at 52-53. With regard to such knowledge and, most likely, nautical guidelines issued by both Sea-Land and the U.S. Government, see notes 63-64 *infra*, the Government's answer seems to be: "Some of the information sought in this request is classified, is regarded as sensitive, and has not been declassified." See Government's Answer, *supra* note 13, at 8-9; *but see id.* at 12-13 concerning admissions with regard to knowledge of the seizure of, or incidents involving, at least fifteen vessels from May 2 to May 7, 1975 (*i.e.*, from 10 to 5 days prior to the seizure of the *Mayaguez*).

63. Plaintiffs' Settlement Conference Statement, *supra* note 5, at 37, lines 18-24; *id.* at 38, lines 3-6; *id.* at 5, lines 11-14, 21-26 (Sea-Land had approved the Master's venturing into hostile waters); *id.* at 26, lines 4-14; *id.* at 38, lines 1-6. See also *id.* at 46, line 14, to 47, line 9.

64. See *id.* at 37, lines 18-24; *id.* at 46, lines 14-18. See also *id.* at 53, lines 1-6 (additional specific warnings).

65. *Id.* at 52, lines 1-8, 19-24.

66. *Id.* at 52, lines 9-15, *citing* "per Harold Simmons — Sea-Land Marine Manager-Southeast Asia, stationed at Hong Kong." See Deposition of Harold Simmons, Feb. 26, 1976, at 42-47.

67. See Paust, *Seizure*, *supra* note 1, at 795 n.94; Deposition of Frank Conway, Jul. 28, 1975, at 59; Deposition of Wilbert Bock, Mar. 3-4, 1977, at 122, 127-29.

68. Cf. R. ROWAN, *THE FOUR DAYS OF MAYAGUEZ 17 (1975)* (off course).



the right of Cambodia to approach the *Mayaguez*, stop the ship and conduct a search of the vessel. The disclosures about the actual location of the *Mayaguez* (1.75 miles off a claimed Cambodian island and outside any international shipping lanes) as well as the disclosures related to the appearance of the vessel (without any flag), the still-secret cargo and the knowledge of the U.S. Government, Sea-Land, the Captain and some crew members concerning the hostilities in the general area, specifically including the Poulo Wai islands, are particularly relevant.

Someday historians may learn even more about the secret cargo and whether the Ford Administration actually sought to recapture *the cargo* in disregard of the actual safety and lives of the crew. On this point it is at least clear that the Administration thought that the crew had been transferred to the Cambodian mainland.<sup>69</sup> In addition, until the contents of each of the 274 containers is revealed, speculation that the containers housed new, sophisticated espionage equipment to monitor coastal activities in the "post-Pueblo" era of intelligence gathering seems appropriate. The *Mayaguez* lawsuits did not shed much additional light on such a question. The same is true of the evasiveness of the Sea-Land Corporation and the numerous "classified fact" refusals of the Executive branch in response to G.A.O., Congressional and private inquiry. Thus, the actual cargo and mission of the *Mayaguez* remain an intriguing mystery.<sup>70</sup>

---

69. See Paust, *Seizure*, *supra* note 1, at 779-80, 800-01. See also G.A.O. Report, *supra* note 61, at 75-76. The Government now admits "that U.S. military aircrafts attempted to prevent the removal of the crew-members of the *Mayaguez* to shore by firing warning shots and dropping riot control agents near the Cambodian vessels." See Government's Answer, *supra* note 13, at 20, lines 13-19.

70. In response to a request for the exact inventory of containers, the Attorney in Charge (West Coast Admiralty and Shipping Section, U.S. Department of Justice) stated "that the information was classified, quite sensitive . . ." Letter to the author from plaintiffs' attorney M. Jarvis (Nov. 8, 1977). In the Government's answer to a broad question about the cargo and hostilities between Vietnam and Cambodia, the Government responded: "The information sought in this request is classified, is regarded as sensitive, and has not been declassified to date. Thus defendant is unable to respond to this request." See Government's Answer, *supra* note 13, at 9, lines 3-14.