Spain's "Splendid Little War" with Morocco

IAN MARTINEZ*

I. Introduction

In the summer of 2002, a "miniature war" that was barely mentioned in the U.S. press erupted between Spain and Morocco in what some commentators dubbed a "microcosm of the clash of civilizations." The clash erupted over an island called "Isla de Perejil" by the Spanish and "Leila Island" by the Moroccans. This island is part of a series of Spanish possessions in Morocco that date back to the fifteenth century. In 1960, Spain and Morocco signed an agreement that neither country would establish a permanent presence on Perejil. Accordingly, Spain withdrew the island's last permanent inhabitants, Spanish Foreign Legionnaires, forty years ago. On July 11, 2002, Morocco stormed the island and ended the forty-year-old status quo. Spain quickly reacted with an invasion and returned the situation to the status quo ante thus avoiding a Moroccan fait accompli.

Seizure of the island, however, is not Morocco's main concern. Ceuta and Melilla, Spanish city port enclaves on Morocco's north coast, are the real source of the current tensions between Morocco and Spain. Since gaining independence, Morocco has claimed the enclaves and the island. Spain, however, has claimed them as well. Seemingly, the seizure of

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*This article is submitted on behalf of the African Law Committee of the American Bar Association's Section of International Law and Practice. Ian Martinez, a member of the African Law Committee, is an attorney admitted in Florida and is an associate with Rasco, Reininger, Perez & Esquenazi, PA in their Miami office. Mr. Martinez has written several articles on Africa and the law, including Conflict Diamonds in Sierra Leone and Anthrax in Rhodesia. He is a former Intelligence Officer with the Central Intelligence Agency.

2. Guardian Unlimited, Anyone for Parsley? Spain and Morocco Disagree on Everything to Do With This Rocky Islet in the Strait of Gibraltar, Including Its Name (July 19, 2002), available at http://www.guardian.co.uk/spain/article/0,2763,757803,00.html [hereinafter Anyone for Parsley?].
5. Id.
6. Id.
7. Id.
8. Id.
the island was a litmus test of Spanish resolve to use force to defend the enclaves of Melilla and Ceuta.10

II. The Battle over the Enclaves

A. EARLY HISTORY AND ESTABLISHING TITLE

In 711, the Goths, rulers of Spain, controlled Ceuta.11 That same year the armies of Islam sacked Ceuta, allied themselves with the Gothic commander of the city-port and invaded Spain. It would not be until 1415 when a Portuguese protectorate was established over the city that Ceuta would revert to European control again.12 In 1578, Moroccan forces defeated a Portuguese army in four hours at Al-Ksar al-Kebir,13 thus plunging Portugal into chaos as its king was killed and its army wasted.14 That same year, Spain annexed Portugal and declared a presidio over Ceuta.15 In 1581, Perejil and Ceuta were brought under Spanish control for the first time after Portugal ceded the territories to Spain.16 The union ended in 1640, and in 1663 Ceuta opted to remain a Spanish presidio.17 In 1668, Portugal and Spain signed a treaty ending the War of Restoration, which resulted in Portugal ceding all claims to the island and Ceuta.18 Melilla was made a Spanish possession in 1497 five years after the Reconquista of Spain which drove the Muslim invaders out of Spain, but before Pamplona joined the Kingdom of Castilla y Leon in 1512.19

Spain’s Moroccan territories were tranquil until 1859 when a revolt broke out against Spanish rule in Ceuta.20 The Spanish quickly crushed the six-month revolt and its North African possessions grew slightly due to concessions made by the Moroccan Sultan.21 In 1893, a revolt broke out again against Spanish rule—this time in Melilla.22 Spain had to rush more than 15,000 reinforcements to the presidio.23 After the Spanish-American War, known in Spain as el Desastre (the disaster), Spain had only its barren rocks, the two cities
of Ceuta and Melilla, Ifini (in Morocco), Rio de Oro (present day Spanish Sahara), and Equatorial Guinea (in central Africa). The rebellion is important for two reasons. First, it occurred soon after el Desastre, and second, the post-el Desastre officer corps saw action for the first time. Among these officers was Francisco Franco, the future dictator of Spain. The territory remained in various stages of conflict until full rebellion erupted in 1919. That year the Spanish authorities created the Spanish Foreign Legion in Ceuta. The Spanish Foreign Legion would eventually be commanded by Franco and used as shock troops in Morocco and the Spanish Civil War. Herein lays the bond between Spain's current leadership and its Splendid Little War: the African enclaves were the launching point of both the 800-year Muslim domination of Spain, and Franco's civil war movement which provided the training grounds for future heroes of the Spanish Civil War.

B. Modern Root of the Current Conflict

Morocco gained independence in 1956. Spain, however, held onto Melilla, Ceuta, Ifini, the Spanish Sahara, as well as the islands of Chafarinas, Alhucemas, de Velez, de la Gomera, and Perejil. Morocco maintained the position that the two enclaves, Melilla and Ceuta, were colonies. Regardless, the United Nations (UN) refused to list them as colonies, citing that Spaniards had lived on them long before Morocco ever existed. Morocco began incursions into Ifini in 1957. After minor clashes, Spain ceded Ifini to Morocco in 1969.

To the south of Morocco, Spain retained the Spanish Sahara, developing the phosphate deposits that were discovered in 1945 near Bou-Craa. In 1972, a group of students founded the Frente Popular para la Liberacion de Saguia el-Hamra y Rio de Oro (Polisario). The following year with the help of Libya, Polisario launched a guerrilla campaign to oust the Spanish from the Sahara. With Franco in the twilight of his life, Spain was concerned
“History of Perejil Island”

Since 1415, the contested island belonged to Portuguese administered Ceuta. In 1581, the Spanish took over the island. Portugal recognized Spanish sovereignty in 1668, though Spain did not exercise any sovereignty over the island until 1779 when a military reconnaissance expedition arrived on the island. During the Napoleonic Wars, the British occupied the island until 1813. In 1836, Washington approached Spain with the intention of building a coaling station on the island, an idea the British persuaded Spain to reject.

In 1894, rumors began to circulate that the Sultan of Morocco ceded all claims to the island and sovereignty to Britain. The treaty dividing Morocco between Spain and France makes no mention of the island. A detachment of Spanish Foreign Legionnaires occupied the island from the 1930s to the 1960s. Since then, the island has been uninhabited. The Spanish statute setting up Ceuta’s autonomy makes no mention of Perejil. Morocco claims the island was liberated in 1956. In 1975, Morocco submitted the island and the other Spanish enclaves to the UN on Decolonialization. The UN has declined to rule on their status.


more with a smooth transition to new leadership than with the Spanish Sahara. Thus, in August 1974, Spain proposed a referendum for its colony.

The move took Morocco by surprise. King Hassan II, monarch since 1961, had barely survived two previous coup attempts. Furthermore, guerillas operated in the south of the country. To buy time and to prepare his army, Hassan launched a complaint with the International Court of Justice (ICJ) at The Hague Convention. Spain meanwhile threw its support to the Polisario Front. On October 15, 1975, a United Nations mission announced the results of the referendum: “the majority of the population within Spanish Sahara was manifestly in favor of independence.” The next day, the ICJ ruled there was no “tie of territorial sovereignty between the Territory of Spanish Sahara and the Kingdom of Morocco or the Mauritanian entity.” King Hassan II, however, declared that the ICJ had ruled in his favor and asked the Moroccans to join him for a Green March across the frontier to re-occupy the territory.

40. Brogan, supra note 37.
41. Id.
42. See R. Ernest Dupuy & Trevor N. Dupuy, The Harper Encyclopedia of Military History 1435 (Book Sales, 1993). In 1971, military officers attacked the king at his palace. In 1972, his plane was attacked by two Moroccan Air Force jets.
43. Id.
45. Pennell, supra note 39, at 338.
46. See Brogan, supra note 37, at 57.
47. Id.
48. Id.
C. The Green March

By October 21, 1975, there were 524,000 Moroccans at the border of the Spanish Sahara. Because both Washington and Paris supported King Hassan, Spain, which was preoccupied by Franco's succession, broke off its support to Polisario.49 In addition, Morocco amassed 25,000 troops, which outnumbered Spain's 20,000.50 On October 21, 1975, Spain opened negotiations with Morocco and seven days later began evacuating the colony.51 On November 5, 1975, in the "Green March" some 300,000 Moroccans crossed the border waving flags, the King's portrait, and the Koran.52 On November 8, 1975, Spain capitulated and later agreed, on November 14, 1975, to withdraw from the colony by February 1976.53 During the conflict, Morocco also claimed Ceuta and Melilla, demanding that they be placed under Moroccan control. Spain responded by dispatching several gunboats to the ports.54 Spain sent a clear message; an encroachment on the enclaves would be treated very differently than either Ifini or the Spanish Sahara. The line-in-the-sand had been drawn. Spain would not pull out of the enclaves. On November 20, 1975, Franco died.55 Spain's empire was reduced to Melilla, Ceuta, and the islands of Chafarinas, Alhucemas, de Velez, de la Gomera, and Perejil.56 The empire now occupied thirty-two square kilometers and was populated by 120,000 Spaniards.57

The transfer of the Spanish Sahara gave the enclaves a respite from Moroccan claims for at least a decade. Morocco also ceased to bring up the issue of the enclaves to the United Nations Decolonization Committee.58 According to one commentator, "[t]his was due to Morocco's desire to avoid a confrontation with the UN over self-determination for Western Sahara."59 Morocco and Spain even held naval exercises in 1985 during which the Spanish Naval Staff in Spain, ironically, prepared contingency plans for the defense of the enclaves.60

The détente ended in January 1987 when the King sent Spain a proposal to end Spain's presence in the enclaves.61 Spain never responded to the "committee of experts" recommendation. Hassan also implied that if the British ever handed Gibraltar back to Spain, then Spain must follow suit and hand over the enclaves to Morocco.62 As if on cue, local

50. See Best & Blij, supra note 31, at 563.
51. See Brogan, supra note 37, at 57. The zoo was emptied and all animals were taken to another zoo in Spain. The cemetery was emptied of all Spanish corpses, which were relocated to the Canary Islands.
52. Id. See also Best & Blij, supra note 31, at 563. Green is the color of Mohammed and is thus the color of peace. David Lamb, The Arabs: Journeys Beyond the Mirage 298 (Random House, 1987).
53. See Elusive Peace, supra note 49.
54. See Best & Blij, supra note 31, at 564.
56. See de Vilegas, supra note 17, at 6.
58. Gold, supra note 34, at 12.
59. Id. at 13.
60. Id. at 9.
61. Id. at 7–8.
62. Id. at 7.
Muslim leaders attempted to breach the border crossing. Violent demonstrations erupted in February between Muslims and "cristianos," which is the term enclavers gave to those of Spanish (non-Arab) Christian descent, in which twenty-two people were injured. In March 1987, violent demonstrations by people demanding to be Moroccan broke out in the Spanish territories.

In 1988, breaking their silence at the UN, Moroccan Foreign Affairs Minister, Abdelatif Filali, stated:

It is imperative to resolve the dispute concerning the enclaves of Ceuta and Melilla and other small Mediterranean Islands under Spanish occupation, in order to prevent this anachronistic situation—consequence of earlier times—from threatening the essential harmony which should prevail over the relations between the two countries situated on either side of the straight of Gibraltar.

Relations between the two countries improved in 1989 with King Hassan's first visit to Spain. On July 6, 1991, both monarchs signed a Treaty of Friendship—Spain's first with an Arab nation. The treaty covered the non-use of force, non-intervention in internal affairs, peaceful settlements of disputes, respect for human rights, and human freedoms.

D. The Splendid Little War of 2002: A Wedding, a Cruise, and an "Invasion"

1. Pressure on the Enclaves

Several events in the mid-1990s focused and highlighted the tensions that would eventually erupt into open conflict in 2002. In 1995, Morocco called the enclaves "an integral part of Moroccan territory ... the last colonies in Africa." That same year, Spain finally approved a plan that made the enclaves autonomous regions, but the plan was not quite on par with those of the Basques, Andalusians, and Catalans. Morocco vehemently condemned the passage of the acts. On April 28, 1995, two bomb attacks occurred in Ceuta. A group called the "21 August Organisation [sic] for the Liberation of Occupied Moroccan Territories" claimed responsibility.

Many in the enclaves suspected the Moroccan secret service. In 1995, the European Union (EU) began to enact the Schengen Accords, which weakened internal border control within the Union. Virtually overnight, Spain, a country which emigrated more people than it immigrated, was faced with hitherto unknown illegal immigration through Ceuta and Melilla. By 2000, twenty to twenty-five illegal immigrants...
entered the two enclaves each day. Moroccans, the backbone of the enclaves’ economy, were allowed to come into the enclaves unhindered, but were restricted from using the maritime and air links to Europe. Moroccans who overstayed were simply deported.

2. Prelude to the Splendid Little War

In 1994, the Spanish army, still reorganizing after the Franco years, instituted El Plan Norte. It was a top-to-bottom reorganization of the army. It refocused the army away from being a garrison army controlling the independence-minded Catalans and Basques, to a modern NATO army projecting force externally rather than internally. The focus of this force projection was North Africa, particularly the Maghreb nations. Protecting the African enclaves and Spanish territorial sovereignty was now the priority of the Spanish military.

On July 23, 1999, the elderly King Hassan II died, and his son succeeded to the throne as Mohammed VI. There were doubts that the young king could hold power and it was widely acknowledged that if internal Moroccan politics worsen, the enclaves would be used as a rallying point. Shortly after Mohammed VI's ascension, the Spanish President Jose Maria Aznar visited Morocco in an attempt to smooth over deteriorated relations. The two met in a room where the enclaves were marked as Moroccan. The Moroccan Prime Minister stated: “the current status cannot last.” In response, Aznar declared, “[w]e are not going to pay any attention to any Moroccan claims.”

By 2001, litanies of Moroccan concerns, such as illegal immigration, border control hassles, drug smuggling, fishing rights, and the status of the enclaves, were straining Moroccan-Spanish relations. Morocco recalled its ambassador to Spain in October 2001, as attempts to negotiate the disputes made no progress. In January 2002, it called the proposed Spanish oil prospecting off the Canary Islands an “unfriendly act.”

3. A Wedding, a Cruise, and an Invasion

King Mohammed VI announced that he was getting married and that there would be a royal wedding in April 2002. Due to a rise in Israeli-Palestinian violence, however, the King decided to postpone his celebrations until July. Either by sheer coincidence, dumb

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75. Id.
76. Id.
78. Id.
79. Id.
80. Id.
81. Id.
83. Id.
84. Id.
85. Id.
89. Id.

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luck, or provocation, Spain decided to send warships for a cruise near Perejil Island. Spain and the EU asked for the Moroccan troops to leave the island, but the requests were met with silence.

At first Morocco downplayed the invasion and stated that they were merely looking at smuggling activities on the 500 yard island, which lies a mere 220 yards from the Moroccan coastline. Spain then dispatched warships off the coast of Ceuta. As the EU dithered and debated, NATO issued a communiqué describing the Moroccan invasion as “an unfriendly act.” The enclaves, however, were expressly outside of NATO’s defensive area. Thus, all defenses fell solely to Spain.

At dawn on July 17, 2002, twenty-eight members of the Spanish Special Forces landed on Perejil. Using bullhorns, they asked the Moroccan contingent, now reduced to six men, to surrender. Without firing a shot, the Moroccans ended their invasion. The Spanish Foreign Minister said the action “was not an attempt to impose any solution by force, but rather to restore the island to the previous status quo.”

Spain also beefed up its garrisons in Ceuta and Melilla. The “Spanish Street” was solidly behind Aznar’s unilateral move. On July 20, 2002, Spain withdrew from Perejil after American pressure to stop fighting, which Washington had been applying since the wedding festivities.

As of this writing, both sides have met to try to soothe over relations.

90. The Moroccan foreign minister even lodged a protest over the cruise.
91. See Caldwell, supra note 4.
92. See id.
93. Id.
94. Spain Rattles Sabre at Morocco, supra note 87.
95. Id.
97. See Caldwell, supra note 4.
98. Gold, supra note 34, at 152. However, NATO leaders have made various comments indicating that NATO may step in if the enclaves were directly threatened.
100. Id.
101. Id.
103. Richburg, supra note 99.
105. In a series of questions asked of its readers, even El País’s—“flagship paper of Spain’s left intelligence”—readers were behind the repulse. Asked, “Do you believe justified the Spanish Military intervention on Perejil?”, 72 percent said yes, compared to 26 percent who said no. The same readers emphatically rejected an exclusive diplomatic option by 71 percent to 27 percent. In a similar poll conducted on the day of the Spanish invasion, El Mundo—Spain’s leading newspaper—showed an incredible 92 percent approval for military intervention. See Spaniards Back Perejil Military Action, BBC NEWS, available at http://news.bbc.co.uk/hi/english/world/europe/newsid_2134000/2134265.stm (last visited July 17, 2002).
III. Legal Analysis: Territorial Acquisition and International Law

Under international law, a state may traditionally acquire territory in the following five ways: discovery, cession, accretion, conquest, and prescription. There is a new interplay, however, that is advocated by leading international law jurists that seeks to commingle these traditional modes with self determination principles and critical dates.

A. Cession/Conquest

Spain bases its title to the enclaves on Portugal’s cession in the sixteenth century and its conquest of Melilla. Cession is defined as “the relinquishment or transfer of land from one state to another.” However, “the title it confers is derivative in the sense that its validity is dependent upon the validity of the title of the ceding State.” Therefore, in order to ascertain Spain’s claim of legitimate title, one has to look at Portugal’s acquisition of the territories, focusing on Ceuta and Perejil. Portugal gained title through “conquest.” Spain did likewise with Melilla. The right of conquest is the right of the victor to sovereignty over the defeated land and its inhabitants. Before World War II, conquest was recognized in international law. Fortunately, international law no longer holds this view. Nonetheless, at one time conquest was a valid form of acquiring title to land. Three criteria had to be met for effective conquest: (a) there had to be a forceful taking in times of war; (b) the victor must occupy the territory with the intention of extending its own national sovereignty over the territory; and (c) the control must be effective and uncontested. Therefore, by application of the intertemporal doctrine, which demands that the validity of legal rights must be determined by the law in effect when the right was created, Portugal had a valid title to the lands in question. As sovereign, Portugal could legally transfer its rights in the sixteenth century to Spain. Thus, Spain has maintained continued, uninterrupted title to Melilla since 1497.

B. Prescription

Morocco will argue that Spain’s title from Portugal is defective based on the fact that conquest is no longer recognized. Therefore, Spain’s claim to Melilla is faulty because it is based on expired modes of acquisition. If that argument is accepted, discarding intertemporal doctrine, which demands that the validity of legal rights must be determined by the law in effect when the right was created, Portugal had a valid title to the lands in question. As sovereign, Portugal could legally transfer its rights in the sixteenth century to Spain. Thus, Spain has maintained continued, uninterrupted title to Melilla since 1497.

108. Id. at 2.
109. Id. at 3.
110. Richburg, supra note 99.
111. BLACK’S LAW DICTIONARY 221 (7th ed. 1999).
112. Lee, supra note 107, at 6.
113. Id. at 11.
114. Id.
116. Lee, supra note 107, at 11.
117. See United States v. Netherlands, Permanent Court of Arbitration 1928.
poral issues and historical dates of acquisition, Morocco must still overcome another theory that Spain will use to trump Morocco’s claims—prescription. Prescription is the international equivalent of the common law’s adverse possession. Possession and the actual exercise of sovereignty prolonged over a period allow a cure in a defective title. A check to prescription is that it must be undisturbed. If the country from which the territory is seized manifests continuous dissent and objection, prescription is defeated.118 Prescription can be divided into two camps: (a) acquisitive and (b) extinctive. Acquisitive prescription involves long term, peaceful possession of a territory with no other claimant protesting the possession. Spain never accepted the Muslim invasion and fought vigorously, until it was able to reassert itself throughout the Iberian Peninsula. Extinctive prescription “involves the possession, although originally wrongful, of such a long term that it ultimately stops the deposed state from asserting its claim.”119 Therefore, Spain will argue that Morocco is estopped from laying claim to the islands.

C. CONTIGUITY

Morocco’s main argument is that the islands and the enclaves are contiguous to it. It is a similar argument that Argentina has used over the Falklands.120 Contiguity, however, has not been widely recognized in international law for acquiring territory.121 One aspect supporting Morocco’s position but lacking to Argentina’s is the proximity of the islands and enclaves to Morocco—a distance measured in yards—compared to that of the Falklands, which is over 500 miles from the mainland. Morocco will argue that the enclaves are inexplicably tied to it through economic ties because the main source of income arises from cross-border trade. This argument hurts Spain’s interest the most because it is the same argument it uses against the British for the return of Gibraltar. Undermining Spain’s argument against the British, the Moroccans have tied the questions of the enclaves with that of Gibraltar. The Moroccans argue that if Spain receives Gibraltar because of contiguity, then, *ipso facto*, the enclaves are “ours” under the same theory.

D. SELF-DETERMINATION

Self-determination is a legal concept that has been recognized in the latter half of the twentieth century.122 Morocco has already had a negative brush with self-determination when the ICJ ruled that the inhabitants of the Western Sahara could determine their own future.123 It appears that self-determination may trump even historical claims: “[g]enerally,
neighboring states have not been allowed to help themselves to adjacent territories on the basis of historical claims; boundary readjustments must come as an expression of the democratically expressed will of those subject to readjustment." Many argue that self-determination should trump historical claims because if it doesn’t “it will lead to endless conflicts, as modern states find themselves under pressure to join a general reversionary march backward to [an] . . . uncertain age and validity.” The prime example of this is East Timor. Morocco will argue that a plebiscite is meaningless because the majority of the enclaves’ citizens are cristianos. Legally, taking all issues into consideration, Spain may then have the stronger of the two competing claims based on conquest, cession, prescription, the still evolving right of self-determination, and historical dates analysis.

IV. Conclusion

The future of the enclaves is difficult to judge. With a growing Muslim population, the steady emigration, and declining birthrate of cristianos, the enclaves will eventually have a predominantly Muslim population. Those residents may advocate self-determination and reunification with Morocco. Conversely, they may opt to stay within Spain and enjoy the standards afforded by the EU. Spain will not give up the enclaves. To do so may unravel Spain itself. With the Basques and Catalans seeking independence, jettisoning the enclaves, which joined Spain earlier than the Autonomous Regions, may be a prelude to the complete abandonment of Spain as a country. That is what Morocco and others do not understand. Although time is on Morocco’s side, it will ultimately be up to the enclaves’ residents as to where their destiny lies. Morocco will not present its case to the United Nations in the near future, nor will it submit its claims to the ICJ. Morocco may attempt a repeat of its “Green March” and hurl thousands of women and children onto the enclaves. This would be Spain’s worst-case-scenario and a public relations disaster because it may be forced to respond with military action. As for the rocks, if Morocco ratchets up the tension, Spain may sacrifice some of the lesser rocks to bide more time for the enclaves. Nevertheless, Spain will avoid that slippery slope at all costs, as evidenced by their Splendid Little War.

125. Id. at 698.