

Spain's "Splendid Little War" with Morocco

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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."¹ The clash erupted over an island called "Isla de Perejil" by the Spanish and "Leila Island" by the Moroccans.² This island is part of a series of Spanish possessions in Morocco that date back to the fifteenth century.³ In 1960, Spain and Morocco signed an agreement that neither country would establish a permanent presence on Perejil.⁴ Accordingly, Spain withdrew the island's last permanent inhabitants, Spanish Foreign Legionnaires, forty years ago.⁵ On July 11, 2002, Morocco stormed the island and ended the forty-year-old status quo.⁶ Spain quickly reacted with an invasion and returned the situation to the status quo ante thus avoiding a Moroccan *fait accompli*.⁷

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.⁸ Since gaining independence, Morocco has claimed the enclaves and the island. Spain, however, has claimed them as well.⁹ Seemingly, the seizure of

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1. See Julian Schvindelman, *Spain's Double Standard*, MIAAMI HERALD, Op Ed., Aug. 9, 2002, at 7B.

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?*].

3. Terra.com, *La Isla de Perejil y Otros Enclaves Españoles en el Norte de África* (July 22, 2002), available at http://www.bolsami.com/discu/_discu/0000002f.htm [hereinafter *La Isla*].

4. Christopher Caldwell, *The Reign of Spain: Repelling Morocco's Miniature Invasion*, THE WEEKLY STANDARD, July 29, 2002, at 44, available at <http://www.weeklystandard.com/content/public/articles/000/000/001/489bfscp.asp>.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Anyone for Parsley?*, *supra* note 2.

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

10. Caldwell, *supra* note 4.

11. John A. Crow, *Spain the Root and the Flower: An Interpretation of Spain and the Spanish People*, 3rd Edition, (Univ. of California Press, 1985).

12. *See id.* Henry the Navigator participated in the campaign against the city. *See* ERNESTO VEGA PAGAN, *EL ROL DE LOS PORTUGUESES EN EL DESCUBRIMIENTO DEL NUEVO MUNDO* (1990).

13. *See* JOHN P. CANN, *COUNTERINSURGENCY IN AFRICA: THE PORTUGUESE WAY OF WAR, 1961–1974* (Greenwood Publishing Group, 1997). King Sebastiao was killed and only 100 of his 15,000-strong army survived the battle.

14. Stanley G. Payne, *A History of Spain and Portugal: Volume 1*, The Library of Iberian Resources Online, available at <http://libro.uca.edu/payne1/payne12.htm> (last visited Feb. 12, 2003).

15. *See* JOSÉ E. ALVAREZ, *THE BETROTHED OF DEATH: THE SPANISH FOREIGN LEGION DURING THE RIF REBELLION, 1920–1927* (2001).

16. *See* *La Crisis de la Isla de Perejil*, EL MUNDO, July 17, 2002, available at <http://www.elmundo.es/2002/graficos/jul/s2/islote.html>.

17. *See* DIAZ DE VILLEGAS, *PLAZAS Y PROVINCIAS AFRICANAS ESPAÑOLAS I* (Institute de Estudios Africanos, 1963).

18. *See id.*

19. *See id.* at 3.

20. *See* ALVAREZ, *supra* note 15, at 1.

21. *See* DAVID S. WOOLMAN, *REBELS IN THE RIF: ABD EL KRIM AND THE RIF REBELLION* 33 (Stanford Univ. Press, 1968).

22. *See* ALVAREZ, *supra* note 15, at 1.

23. *Id.*

of Ceuta and Melilla, Ifni (in Morocco), Rio de Oro (present day Spanish Sahara), and Equatorial Guinea (in central Africa).²⁴

In 1909, again rebellion erupted outside Melilla.²⁵ 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.²⁶ Among these officers was Francisco Franco, the future dictator of Spain.²⁷ The territory remained in various stages of conflict until full rebellion erupted in 1919.²⁸ That year the Spanish authorities created the Spanish Foreign Legion in Ceuta.²⁹ 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.³⁰

B. MODERN ROOT OF THE CURRENT CONFLICT

Morocco gained independence in 1956.³¹ Spain, however, held onto Melilla, Ceuta, Ifni, the Spanish Sahara, as well as the islands of Chafarinas, Alhucemas, de Velez, de la Gomera, and Perejil.³² Morocco maintained the position that the two enclaves, Melilla and Ceuta, were colonies.³³ Regardless, the United Nations (UN) refused to list them as colonies, citing that Spaniards had lived on them long before Morocco ever existed.³⁴ Morocco began incursions into Ifni in 1957.³⁵ After minor clashes, Spain ceded Ifni to Morocco in 1969.³⁶

To the south of Morocco, Spain retained the Spanish Sahara, developing the phosphate deposits that were discovered in 1945 near Bou-Craa.³⁷ In 1972, a group of students founded the *Frente Popular para la Liberacion de Saguia el-Hamra y Rio de Oro (Polisario)*.³⁸ The following year with the help of Libya, *Polisario* launched a guerilla campaign to oust the Spanish from the Sahara.³⁹ With Franco in the twilight of his life, Spain was concerned

24. *Id.* at 2.

25. *Id.*

26. See SEBASTIAN BALFOUR, *DEADLY EMBRACE: MOROCCO AND THE ROAD TO THE SPANISH CIVIL WAR* 24–29 (Oxford Univ. Press, 2002).

27. See ALVAREZ, *supra* note 15, at 3. Franco did not arrive in Morocco until 1912. He did, however, take part in all major battles, often leading the charges himself. *Id.* at 247–49.

28. BALFOUR, *supra* note 26, at 57.

29. *Id.* at 13. The Rif Rebellion lasted until 1927.

30. See PAUL PRESTON, *FRANCO: A BIOGRAPHY* 133–63 (Harper Collins Publishers, 1994); see also ALVAREZ, *supra* note 15, at 249.

31. See ALAN C.G. BEST & HARM J. DE BLIJ, *AFRICAN SURVEY* 561 (John Wiley & Sons, 1977). In March, Morocco gained independence from France. In April, Morocco gained independence from Spain.

32. *Id.*

33. *La Isla*, *supra* note 3.

34. PETER GOLD, *EUROPE OR AFRICA? A CONTEMPORARY STUDY OF THE SPANISH NORTH AFRICAN ENCLAVES OF CEUTA AND MELILLA* xiii (Liverpool Univ. Press, 2000).

35. See PRESTON, *supra* note 30, at 672.

36. BEST & BLIJ, *supra* note 31, at 561.

37. See PATRICK BROGAN, *WORLD CONFLICTS: WHY AND WHERE THEY ARE HAPPENING* 55 (Bloomsbury, 1992).

38. *Id.*

39. See C.R. PENNELL, *MOROCCO SINCE 1830: A HISTORY* 337 (Powell Publishing, 2000).

“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 Decolonization. The UN has declined to rule on their status.

La Isla de Perejil y Otros Enclaves Espanoles en el Norte de Africa, *available at* <http://www.Terra.com> (last visited Oct. 6, 2002).

more with a smooth transition to new leadership than with the Spanish Sahara.⁴⁰ Thus, in August 1974, Spain proposed a referendum for its colony.⁴¹

The move took Morocco by surprise. King Hassan II, monarch since 1961, had barely survived two previous coup attempts.⁴² Furthermore, guerillas operated in the south of the country.⁴³ To buy time and to prepare his army, Hassan launched a complaint with the International Court of Justice (ICJ) at The Hague Convention.⁴⁴ Spain meanwhile threw its support to the *Polisario Front*.⁴⁵ On October 15, 1975, a United Nations mission announced the results of the referendum: “[t]he majority of the population within Spanish Sahara was manifestly in favor of independence.”⁴⁶ 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.”⁴⁷ 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.⁴⁸

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.*

44. See *Western Sahara: The Unfinished Struggle*, *available at* <http://www.rimbaud.freereserve.co.uk/westernsahara.pdf> (last visited Apr. 10, 2003).

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 Ifni 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

49. See Khalil Osman, *The Elusive Quest for Peace in the Western Sahara*, available at <http://www.muslimedia.com/archives/oaw98/sahara.htm> (last visited Apr. 10, 2003) [hereinafter *Elusive Peace*].

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.

55. *Francisco Franco*, available at <http://www.rochester.k12.mn.us/kellogg/rodders/core/wwwtwo/franco.htm> (last visited Apr. 10, 2003).

56. See DE VILLEGAS, *supra* note 17, at 6.

57. See *Spain's North African Enclaves*, BBC NEWS, July 17, 2002, available at http://news.bbc.co.uk/hi/english/world/europe/newsid_2131000/2131636.stm.

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.⁶³ Violent demonstrations erupted in February between Muslims and “*crisianos*,” which is the term enclavers gave to those of Spanish (non-Arab) Christian descent, in which twenty-two people were injured.⁶⁴ In March 1987, violent demonstrations by people demanding to be Moroccan broke out in the Spanish territories.⁶⁵

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 strait of Gibraltar.⁶⁶

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.⁶⁷ The treaty covered the non-use of force, non-intervention in internal affairs, peaceful settlements of disputes, respect for human rights, and human freedoms.⁶⁸

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.”⁶⁹ 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.⁷⁰ 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.⁷¹ Many in the enclaves suspected the Moroccan secret service.⁷²

In 1995, the European Union (EU) began to enact the Schengen Accords, which weakened internal border control within the Union.⁷³ Virtually overnight, Spain, a country which emigrated more people than it immigrated, was faced with hitherto unknown illegal immigration through Ceuta and Melilla.⁷⁴ By 2000, twenty to twenty-five illegal immigrants

63. *Id.* at 106–07.

64. *Id.*

65. THE PRS GROUP, CEUTA AND MELILLA AND OTHER AFRICAN ENCLAVES (1987).

66. El Ministro de Exteriores Marroqui Reivindica Ceuta y Melilla en la ONU, EL PAIS, Oct. 8, 1988, available at <http://www.elpais.es>.

67. ArabicNews.com, *Morocco and Spain Pledge to Give New Momentum to Bilateral Relations* (Apr. 30, 1999), available at <http://www.arabicnews.com/ansub/Daily/Day/990430/1999043034.html>.

68. GOLD, *supra* note 34, at 16.

69. *Id.* at 21.

70. *Id.* at 50.

71. *Id.*

72. *Id.*

73. George Stolz, *Europe’s Back Doors* (Jan. 1, 2000), available at <http://www.theatlantic.com/issues/2000/01/001stolz.htm>.

74. *Id.*

entered the two enclaves each day.⁷⁵ 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.⁷⁶ 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*.⁷⁷ 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.⁷⁸ The focus of this force projection was North Africa, particularly the Maghreb nations.⁷⁹ Protecting the African enclaves and Spanish territorial sovereignty was now the priority of the Spanish military.⁸⁰

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 worsened, the enclaves would be used as a rallying point.⁸¹ Shortly after Mohammed VI's ascension, the Spanish President Jose Maria Aznar visited Morocco in an attempt to smooth over deteriorated relations.⁸² The two met in a room where the enclaves were marked as Moroccan.⁸³ The Moroccan Prime Minister stated: "the current status cannot last."⁸⁴ In response, Aznar declared, "[w]e are not going to pay any attention to any Moroccan claims."⁸⁵

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.⁸⁶ In January 2002, it called the proposed Spanish oil prospecting off the Canary Islands an "unfriendly act."⁸⁷

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 2002.⁸⁸ Due to a rise in Israeli-Palestinian violence, however, the King decided to postpone his celebrations until July.⁸⁹ Either by sheer coincidence, dumb

75. *Id.*

76. *Id.*

77. Geoffrey B. Demarest, *Spain's Military-Strategic Outlook*, available at <http://carlisle-www.army.mil/usawc/parameters/96winter/demerest.htm> (last visited July 25, 2002).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Paul Reynolds, *Analysis: Spanish or Moroccan land?* BBC NEWS, July 16, 2002, available at http://news.bbc.co.uk/hi/english/world/europe/newsid_2131000/2131853.stm; THE ECONOMIST, *The Mayor and the Moroccans*, Sept. 2, 1999, available at <http://economist.com>.

83. *Id.*

84. *Id.*

85. *Id.*

86. THE PRS GROUP, INTERNATIONAL COUNTRY RISK GUIDE, Aug. 1, 2002.

87. *Spain Rattles Sabre at Morocco*, BBC NEWS, July 12, 2002, available at http://news.bbc.co.uk/hi/english/world/europe/newsid_2124000/2124418.stm.

88. See ArabicNews.com, *Ceremonies of King Mohammed's Wedding in Morocco as of Friday*, available at <http://www.arabicnews.com/ansub/Daily/Day/020709/2002070915.html> (last visited Apr. 10, 2003).

89. *Id.*

luck, or provocation, Spain decided to send warships for a cruise near Perejil Island.⁹⁰ Embarrassed that his wedding celebrations would be overshadowed, the King sent in a dozen soldiers and raised the Moroccan flag over Perejil on July 11, 2002.⁹¹ It was the first invasion of Western European territory since World War II, and it did not sit well in Spain.

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.⁹² Spain and the EU asked for the Moroccan troops to leave the island, but the requests were met with silence.⁹³ Then on July 12, 2002, Moroccan patrol boats were spotted near Melilla around the Chafarinas Islands. Spain dispatched troops to the Chafarinas to avert a similar *fait accompli*.⁹⁴ Spain then dispatched warships off the coast of Ceuta.⁹⁵ On July, 17, amid silence from Morocco, Spain recalled its ambassador from Morocco.⁹⁶ As the EU dithered and debated, NATO issued a communiqué describing the Moroccan invasion as “an unfriendly act.”⁹⁷ The enclaves, however, were expressly outside of NATO’s defensive area. Thus, all defenses fell solely to Spain.⁹⁸

At dawn on July 17, 2002, twenty-eight members of the Spanish Special Forces landed on Perejil.⁹⁹ Using bullhorns, they asked the Moroccan contingent, now reduced to six men, to surrender.¹⁰⁰ Without firing a shot, the Moroccans ended their invasion.¹⁰¹ 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.”¹⁰² Morocco responded by saying “the island is an integral part of Moroccan territory.”¹⁰³ Spain also beefed up its garrisons in Ceuta and Melilla.¹⁰⁴ The “Spanish Street” was solidly behind Aznar’s unilateral move.¹⁰⁵ On July 20, 2002, Spain withdrew from Perejil after American pressure to stop fighting, which Washington had been applying since the wedding festivities.¹⁰⁶ As of this writing, both sides have met to try to sooth 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.*

96. *Spain Recalls Envoy in Island Row*, BBC NEWS, available at http://news.bbc.co.uk/hi/english/world/europe/newsid_2132000/2132793.stm (last visited July 17, 2002).

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.

99. Keith B. Richburg, *Spanish Commandos Evict Moroccans from Island; Pre-Dawn Assault Threatens to Escalate Territorial Dispute*, WASH. POST, July 18, 2002, at A22.

100. *Id.*

101. *Id.*

102. *Spain Retakes Moroccan Island*, available at <http://pub115.ezboard.com/fpoliticsofthepeoplefrm2.showMessage?topicID=267.topic> (last visited Feb. 13, 2003).

103. Richburg, *supra* note 99.

104. Leslie Crawford, *Spain Protests at Morocco 'Invasion'*, FIN. TIMES, July 13, 2002, at P5.

105. In a series of questions asked of its readers, even *El País*'s—“flagship paper of Spain’s left intelligentia”—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:¹⁰⁷ discovery, cession, accretion, conquest, and prescription.¹⁰⁸ 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.¹⁰⁹

A. CESSION/CONQUEST

Spain bases its title to the enclaves on Portugal's cession in the sixteenth century and its conquest of Melilla.¹¹⁰ Cession is defined as "the relinquishment or transfer of land from one state to another."¹¹¹ 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."¹¹² 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.¹¹³ Before World War II, conquest was recognized in international law.¹¹⁴ Fortunately, international law no longer holds this view.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷ 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 intertem-

106. Ed McCullough, *Spain, Morocco Reach Accord, U.S. Intervenes to Help Resolve Rift Over Uninhabited Islet*, WASH. POST, July 21, 2002, at A16.

107. Seokwoo Lee, *Continuing Relevance of Traditional Modes of Territorial Acquisition in International Law and A Modest Proposal*, 16 CONN. J. INT'L L. 1 (2000).

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.*

115. See Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, Supp. No. 28, at 121, U.N. Doc. A/8082 (1970).

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 inextricably 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,

118. Lee, *supra* note 107, at 13; see also James Francis Gravelle, *Contemporary International Legal Issues—The Falkland (Malvinas) Islands: an international law analysis of the dispute between Argentina and Great Britain*, Winter 1985, 107 MIL. L. REV. 5, 24 (1985).

119. *Id.*

120. *Id.* at 27.

121. *Id.*

122. See *cf.* UN Charter; International Covenant on Civil and Political Rights, available at http://193.194.138.190/html/menu3/b/a_opt.htm (last visited Apr. 10, 2003); International Covenant on Economic, Social and Cultural Rights, available at http://193.194.138.190/html/menu3/b/a_cescr.htm (last visited Apr. 10, 2003); Declaration on the Granting of Independence to Colonial Countries and Peoples, available at http://193.194.138.190/html/menu3/b/c_coloni.htm (last visited Apr. 10, 2003); *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia*, 1971 I.C.J. 16 (June 21, 1971).

123. *Western Sahara*, 1975 I.C.J. 12, 31–35 (Oct. 16, 1975).

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."¹²⁴ 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."¹²⁵ The prime example of this is East Timor. Morocco will argue that a plebiscite is meaningless because the majority of the enclaves' citizens are *crístianos*. 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 *crístianos*, 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.

124. Thomas Franck, *The Stealing of the Sahara*, 70 AM. J. INT'L L. 694, 697-98 (1976).

125. *Id.* at 698.

