



THE DELIMITATION OF THE SPANISH MARINE WATERS IN THE STRAIT OF GIBRALTAR

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1. - INTRODUCTION

Studying the Strait of Gibraltar from a legal point of view is a difficult endeavour. Its internationality and its concrete geographical characteristics would not pose problems for understanding the nature and legal status of its waters if the interests of both coastal states regarding sovereignty over specific territories were not so difficult to conciliate. That circumstance has made it impossible for years (we could even say that for centuries) to agree a definition of the jurisdictional boundaries of the region. Morocco's claims for sovereignty over the Spanish territories located on the Maghreb coast along the Mediterranean Sea, as well as the radically different interpretations of article X of the Treaty of Utrecht between Spain and the United Kingdom regarding the British colony of Gibraltar, have had an influence throughout history in these countries' international relations. Thus, the Strait of Gibraltar is a wonderful example to study international Law and particularly the rules of the Law of the Sea.

The aim of this essay is to clarify the legal status of the waters of the Strait of Gibraltar, according to the Law of the Sea, and analyze the type of navigation that takes place in practice. For that purpose, first of all, we will study the current situation of the controversial points in the Gibraltar Strait (Perejil Island, Ceuta and the British colony of Gibraltar). Then, we will analyze the jurisdictional rights that these States exercise over its waters, as well as the international legal regime of navigation.

2. - GEOPOLITICAL AND STRATEGIC ANALYSIS OF THE STRAIT OF GIBRALTAR

In order to get to know the legal status applicable to the region and understand the controversies that its application may cause, we must analyze the physical features of the strait. For that purpose, we will draw a picture of the geographical framework of the marine spaces where both States exercise sovereignty and have jurisdictional rights. Thus, we must explain the meaning of the word "strait" from both geographical and legal points of view.

A strait is a natural channel of water between two coastlines; it is the result of a contraction of the sea, which separates two portions of land and connects two maritime areas. The Strait of Gibraltar is a narrow area of water that runs alongside 33 NM¹, separating the *Southwestern* extreme of Europe and the *Northwestern* extreme of Africa, where the Mediterranean Sea and the Atlantic Ocean meet. Its northern coast (between the Cape of Trafalgar and Europa Point – Rock of Gibraltar) has a length of 55 NM and its southern coast (between Cape Spartel and Santa Catalina Point – Ceuta) is 42 NM long. According to the Spanish Instituto Hidrográfico de la Marina, the western mouth of the Strait (between the Cape of Trafalgar and Cape Spartel) is 24.2 NM² long, whereas the eastern part of the Strait (between Europa Point and Ceuta) is 12.5 NM; the narrowest part of the Strait, with a length of 7.45 NM, is the area located between Point Cires, in the South, and the median line between Tarifa and Guadalmeší river, in the North.



¹ Nautical miles. 1 nautical mile is equivalent to 1,852 meters.

² This is the biggest distance of the distances existing between the baselines used for measuring the territorial sea, which are established by the coastal States in the Strait, Spain and Morocco. See: V.L. Gutiérrez Castillo, *España y sus fronteras en el mar*, Dykinson, Madrid, 2004 and *El Magreb y sus fronteras en el mar*, Hygens, Barcelona, 2009 by the same author.

However, from the legal point of view, the concept of the Strait is more complex and it is defined by four concurrent factors: a) the existence of a strait, from the geographical point of view; b) its use as a navigation channel, which highlights the fact that it is a strait; c) the legal status of its waters; d) the regime of navigation it sets. In this sense, the United Nations Convention on the Law of the Sea of 1982 (UNCLOS) establishes a variety of legal status that can be applied to straits according to their waters and their legal nature. It establishes a difference between those with a broad regime of freedom of navigation (*regime of transit passage*) and those with a more limited regime of navigation (*regime of innocent passage*). The first regime is applied to the straits connecting “a high seas area or an area within an Exclusive Economic Zone (EEZ) with another high seas area or another area within an EEZ (such as the Strait of Malacca, or the Strait of Hormuz)”. This regime is applied to “those straits that are part of a high seas route or a route that goes through an EEZ”. The second regime is applied only to waters forming a strait between an island of a State and the mainland of that State, on one side, and a high seas route or a route through an EEZ, on the other side, and it can also be applied to straits between a high seas area or an EEZ and the territorial sea of another State, like the Strait of Corfu and the Strait of Tiran.

Regarding the Strait of Gibraltar, we could say that all its waters are under state sovereignty and/or state jurisdiction, which does not hinder navigation. The main characteristic of the legal status of its waters, as we will see later, is the freedom of navigation. This statement is based on the internal and international rules currently applicable in the zone. According to the Spanish Ley 10/77 de 4 de enero (BOE de 8 de enero de 1977) and *Dahir portant Loi* n.º 1-73-211 du *Moharrem* 1393 (2 mars 1973), the area of territorial sea corresponding to Spain and Morocco is 12 NM long from the coastlines of both countries. Moreover, the United Kingdom claims since 1878 a territorial sea of 3 NM around its colony in virtue of the *Territorial Waters Jurisdictional Act*³. Morocco, on the other hand, has established EEZ in all its coasts, including the ones located in the Strait and in the rest of its Mediterranean shore by means of *Dahir* du 8 avril 1981⁴. If we take all these data into account, there is no doubt that, from the geographical point of view, the waters of the Strait of Gibraltar are located in an area of waters under the sovereignty or under the jurisdiction of the coastal States.

Due to the factors mentioned, the Strait has the first legal status established by the UNCLOS that we have already explained: it connects a high seas area or an area within an EEZ with another high seas area or another area within an EEZ; in this kind of straits, the *regime of transit passage* is applied. The Strait of Gibraltar connects an area of the Atlantic Ocean where Morocco, Spain and Portugal⁵ have established EEZs that overlap, with Mediterranean waters, specifically the Alboran Sea, where only Morocco has established an EEZ.

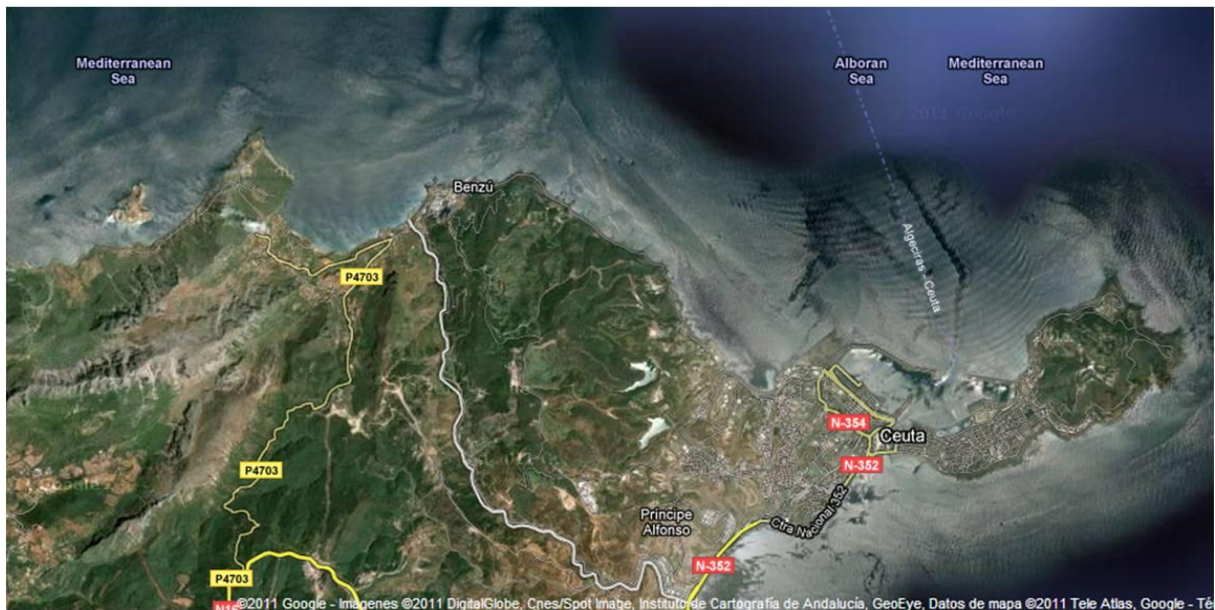
³ J.L. Suárez de Vivero, “Jurisdicciones marítimas en el Estrecho de Gibraltar”, available at the website of Real Instituto Elcano, <http://www.realinstitutoelcano.org/analisis/44.asp>, (22/7/2002)

⁴ *Dahir* n.º 1-81-179 du 3 *joumada* II 1401 (8 avril 1981) *portant Loi* n.º 1-81, according to which it is established an EEZ of 200 NM along the coasts of Morocco.

⁵ Ley n.º 33/77 de 28 de mayo de 1977. *Diario Republica Portuguesa*, 28th May 1977.

3. - POINTS WHOSE SOVEREIGNTY IS CONTROVERSIAL AND DELIMITATION OF SEA FRONTIERS

One of the most remarkable aspects in the study of this topic is the fact that there have been claims over small territories located in both sides of Strait for centuries. These claims have been affecting the relations between Spain, Morocco and the United Kingdom in an intermittent way; it is the case of Morocco, regarding the Spanish territory located in Ceuta and Perejil Island, and the case of Spain regarding the waters that surround the British colony of Gibraltar. We will now move on to the points whose sovereignty is controversial and their titles.



3.1.- Perejil Island

Perejil Island, also known as *Leila Island* or *Toura Island*, is a rocky islet that was originally part of the *Yebel Musa* Mountain. It is located 200 meters away from the Moroccan coast and less than 8 kilometers from Ceuta, between Almanza Point and Leona Point (one of the narrowest parts of the Strait of Gibraltar). There are two small inlets on its shore: the one on the north is called “Cala del Rey” and the one on the south is called “Cala de la Reina”, near which there still remain the ruins of a tower built during the Portuguese occupation. Historically, Perejil Island has been part of Spain; however, it has been inhabited since 1960’s. Due to its physical features (it cannot be inhabited by humans) and the lack of economic activity, this islet can be considered as a “rock” and not as an “island”, according to the Article 121 of the UNCLOS; this means that it does not belong to any continental platform or EEZ, but it does belong to a territorial sea of up to 12 NM and an adjacent area of up to 24 NM.

The legal status of Perejil Island is perhaps one of the most controversial ones in the Mediterranean Sea, and it is still a potential focus of conflict. The control of this territory⁶ has caused many confrontations throughout history; however, the most international one was the conflict that took place on July 11th 2002, when a group of Moroccan military men⁷ took control over the islet, clearly claiming sovereignty over the territory. That action led to an official complaint by the Diplomatic Information Office of the Spanish Ministry of Foreign Affairs⁸; in addition, Spanish military men were sent⁹ there in order to move them away. That situation caused a bilateral crisis, the so-called *Perejil crisis*, which threatened to spread throughout the Mediterranean Sea. This crisis ended after the intervention of the US Secretary, Colin Powell, who sent letters to the Ministers of Foreign Affairs of Spain and Morocco, bringing about the compromise to restore and maintain the *statu quo* existing before July 2002¹⁰ and taking both parts back to their initial position.

Bearing in mind all the circumstances mentioned, it is obvious that Spanish and Moroccan waters overlap. In practice, there is a situation of uncertainty and even potential conflict: according to Spain, this island is within its jurisdictional waters, whereas according to Morocco, the island is located in Moroccan waters and is considered to be part of the territory of the country. There is not a delimitation agreement; there are only confronted positions: each part recognizes itself to have rights over the waters that surround the island and ignores the claims of the other part. Anyway, according to the international rules, the limits of this geographic feature are determined by the imaginary, equidistant line between the Spanish territory and the Moroccan territory¹¹; Perejil's territorial waters are thus

⁶ For more information on this subject, see V.L. Gutiérrez Castillo, "Le conflit hispano-marocain . . . cit.;" J.A. Tomás Ortiz de La Torre, "La isla de Perejil y el Derecho internacional", *Revista General de Legislación y Jurisprudencia*, Madrid, nº. 1, 2002, pp. 57-80 and A. P. González "España, Marruecos y la isla del Perejil", *Razón y Fe: Revista de Cultura* nº 1247-8, 2002, pp. 175-186.

⁷ Eleven military men from the Moroccan Navy and Army, under the command of a major, occupied Perejil island on July 11th at 16.00 pm. They deployed two flags and set up tents. Along with military presence, the news agency MAP distributed a press release which was attributed to an important member of the Moroccan Foreign Affairs Department in which it was stated that "according to the existing legislation in Morocco", the islet was "part of the Moroccan sovereignty". Mohamed Achaari, Moroccan Government Spokesman, expressed that "Morocco wanted to use an islet which is under its sovereignty to fight more efficiently against immigrants trafficking and terrorism". *Vid. El País*, July 13th 2002.

⁸ Communication of the Diplomatic Information Office on July 17th, 2002 (point 4).

⁹ The island was taken over by members of the Special Operations Command of the Spanish Army, also known as *boinas verdes*, whose base is in Alicante. They were supported by three helicopters of the Spanish Army Airmobile Forces (FAMET), whose base is in El Coplero (Seville). The operation was given the name of "Romeo Sierra". The detachment corps Duque de Alba from the Legion of Ceuta stayed in the island for some days.

¹⁰ For more information about the solution of the controversies related to this case, see. A. Rodríguez Carrión and M.I. Torres Cazorla, "Una readaptación de los medios de arreglo pacífico de controversias: el caso de isla de Perejil y los medios utilizados para la solución de este conflicto", *Revista Española de Derecho Internacional* 2002 n.º 2, pp. 717 and following.

¹¹ According to Article 15 of the UNCLOS, when the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. That provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

connected with the waters projected by the Peninsula through a corridor of waters belonging to Spain¹².

3.2.- The Spanish city of Ceuta

The city of Ceuta has an extension of 19 square kilometers. It has been part of the Spanish Crown since the 15th century; Portugal handed it over to Spain by the Treaty of Alcaçovas (1479-1480) and this transfer was reassured some years later with the Treaties of Tordesillas (1494) and the Convention of Sintra (1509)¹³. The Moroccan Government has been claiming this portion of the Spanish territory located in the African coast, in the middle of the Strait of Gibraltar has been, as well as the city of Melilla, the Rock of Vélez de la Gomera, the Rock of Alhucemas and the Chafarinas Islands, since 1956. Even though the territories mentioned are not in the United Nations' list of non-self-governing territories, Morocco has pursued a policy of territorial claims since it became independent, which has been expressed not only through international declarations but also through its intern legislation and its policy of delimitation and exploitation of the marine spaces. An example of this is that Morocco has established baselines according to which Ceuta and some other Spanish territories are surrounded by Moroccan waters.

Leaving aside this legal-politic controversy, it is evident that Spain has sovereignty titles over the city of Ceuta, which is part of the Spanish territory and thus, like any other territory, it has rights to have a territorial sea, a contiguous zone, an EEZ and a continental platform. All the spaces mentioned overlap with the ones established by Morocco. Currently, Spain and Morocco have not reached an agreement. Given the situation, according to the Spanish legislation and the UNCLOS, it can be understood that the maritime frontiers of Ceuta are determined by the equidistant line between the coasts of Ceuta and the Moroccan coasts, which means that the territory of Ceuta is encapsulated inside Moroccan jurisdictional waters.

3.3. - The British colony of Gibraltar

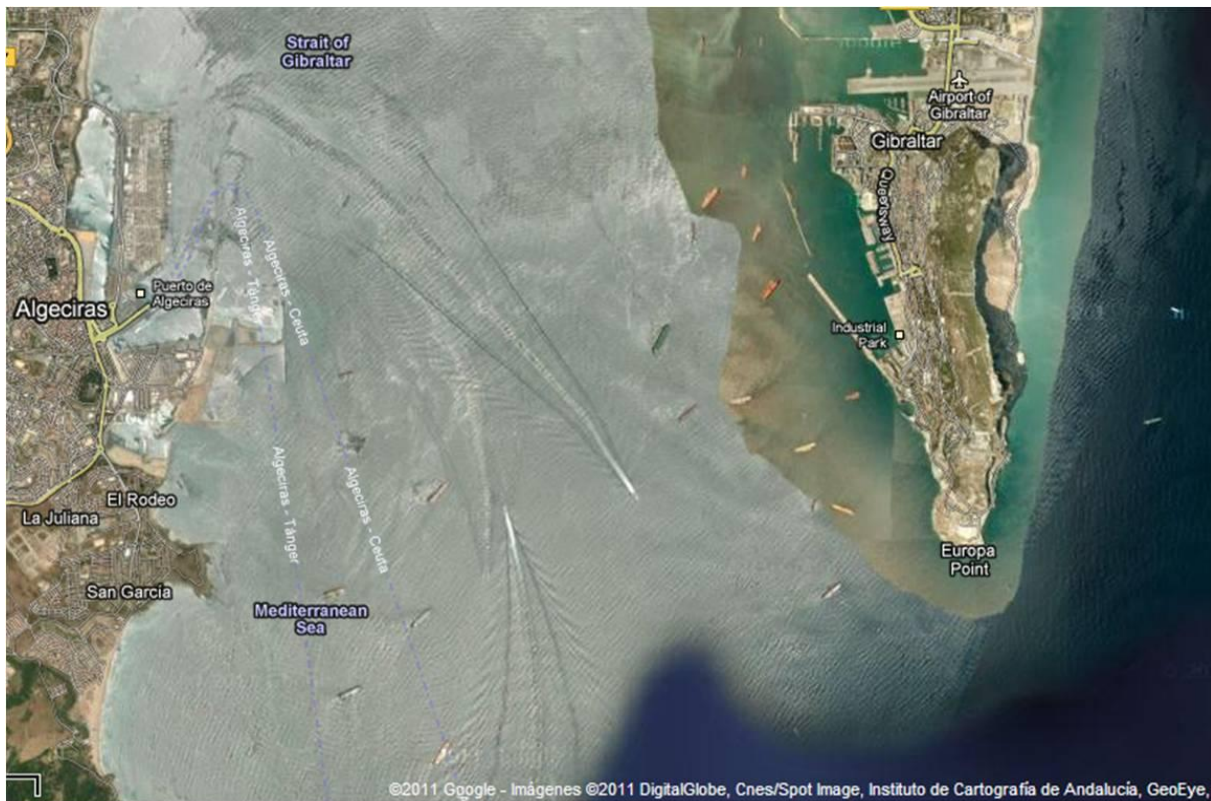
The legal regime of the waters of Algeciras Bay and particularly its delimitation is highly conditioned by the Spanish-British controversy regarding the colony of Gibraltar and the interpretation of the article 10 in the Treaty of Utrecht (1713), by which Spain handed over

¹² For more information about the conflict of Perejil, V.L. Gutierrez Castillo, "Le conflit hispano-marocain de l'île de Persil: étude des titres de souveraineté et de son statu quo", *Annuaire du Droit de la Mer* 2003, Volume VIII, Paris, pp. 83-99.

¹³ For more information about the Spanish sovereignty titles related to Ceuta and other Spanish territories located in Africa see. D. Del Pino, *Marruecos entre la tradición y el modernismo*, Universidad de Granada, Granada, 1990, p. 267. See also A. Remiro Brotons, "La cuestión norteafricana, españolidad y marroquinidad de Ceuta y Melilla", *Las ciudades de soberanía española: respuestas para una sociedad multicultural (Melilla, 6-9 de abril de 1999)*, Colección Aula Abierta, I. García Rodríguez (ed.), Univ. Alcalá Henares, Madrid, 1999, pp. 89 and following and J.R. Remacha, "Las fronteras de Ceuta y Melilla", *Anuario Derecho Internacional*, volume X, 1994, pp. 195 and following.

the full property of the city and the castle of Gibraltar, as well as its port and its fortress¹⁴ to the British Crown.

Gibraltar was occupied by the Castillian troops of Ferdinand IV in 1309. The Nazaries of Granada recovered it in 1333 and Gibraltar remained under Muslim sovereignty until 1462, when it was conquered by the Duke of Medina Sidonia. Since that moment and until 1704, it belonged to the Kingdom of Spain. In 1704, it came under British sovereignty, as it was conquered by the troops of Archiduke Charles during the secession war, which confronted the ones who supported the House of Bourbon and those who supported the House of Austria to occupy the Crown. This situation became formal in 1713, thanks to the Treaty of Utrecht¹⁵.



One of the problems posed by the Colony of Gibraltar is, among others¹⁶, the different interpretations that Spain and the United Kingdom make of the Article 10 of the Treaty of Utrecht and the controversial progressive occupation by the English of spaces that were not originally handed over and that affect the waters of the Strait. According to the British

¹⁴ For an in-depth study of the waters of Gibraltar, see I. Aurrecochea, "Las aguas territoriales de Gibraltar", *Anuario de Derecho Marítimo*, vol. IX, 1992, pp. 273 and following. For a study of the controversy about Gibraltar, see. F. Baeza Betancort, *Una aproximación jurídica al contencioso de Gibraltar. La cláusula rebus sic stantibus y el derecho de la libre determinación de los pueblos*, Real Sociedad Económica de Amigos del País de Gran Canaria, 2001.

¹⁵ C. Izquierdo Sans, "Gibraltar. ¿El fin de la última colonia británica en Europa?", *Clío*, n.º 5 pp. 59 and following and "Gibraltar ¿el fin de una controversia?", *REDI*, n.º 2, 2002, pp. 617 and following.

¹⁶ For an interesting and complete study of Gibraltar, as well as the problems it poses, see A del Valle Gálvez and I. González García (Eds), *Gibraltar 300 años*, Servicio Publicaciones de Cádiz, Cádiz, 2005.

Government, “the fact that only the harbor of Gibraltar was handed over, without mentioning the territorial waters, is irrelevant, because it is widely accepted since some time ago that handing over a territory entails handing over its territorial waters as well, unless it has been specifically established the contrary”¹⁷. Hence, the United Kingdom has extended its jurisdictional waters up to 3 NM around the Rock of Gibraltar and up to 2 NM in the Algeciras Bay¹⁸, arguing that a maritime zone cannot be handed over without also handing over the rights of the neighboring maritime spaces.

Under this expansion policy, the United Kingdom delimited unilaterally in the 19th century the waters of its colony, and it established the limits of the harbor of Gibraltar and marked them with buoys that connected San Felipe with the Old Harbor of Gibraltar¹⁹. However, according to Spain, that action by the British is against International Law, as Spain believes that the controversy must be considered according to the 6th paragraph of the United Nations Resolution 1512 (XV), which reads: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.²⁰ In addition, the Spanish Government has always been firm and has interpreted literally the Article 10 of the Treaty of Utrecht of 1713²¹, recognizing the British sovereignty only over the waters of the harbor of Gibraltar. Spain has expressed this in many international protests²² and in the first clause of

¹⁷ In this sense, it is important to highlight the position that the British delegation defended during the talks of 1966. See I. Aurrecoechea, *op. cit.*, p. 277.

¹⁸ According to the United Kingdom, “British waters extend to a limit of three nautical miles around Gibraltar. The limit is restricted to two nautical miles on the west side, in the Algeciras Bay, where a median line exists between British and Spanish waters”. See. G. O’ Reilly, “Gibraltar, Sovereignty Dispute and Territorial Waters”, *Boundary and Security Bulletin*, vol. 7, nº . 1, 1999, p. 76.

¹⁹ This is stated by Professor J.M. Cordero Torres in *Fronteras Hispánicas. Geografía e historia diplomacia y administración*, IEP, Madrid, 1960, p. 341.

²⁰ See. J. Díez-Hochleitner, “Les relations hispano-britanniques au sujet de Gibraltar, État actuel”, *AFDI*, volume XXXV, 1989, pp. 167 and following; F. Baeza Betancort, *Una aproximación jurídica al contencioso de Gibraltar. La cláusula rebus sic stantibus y el derecho de libre determinación de los pueblos*, Las Palmas, 2001.

²¹ In this sense, the first clause of the final provisions of the Act 10/1977 establishes that “the present legal text cannot be interpreted as a recognition of any rights or situations whatsoever related to the maritime spaces of Gibraltar which are not included in the Article 10 of the Treaty of Utrecht of July 13th 1713, between the Crowns of Spain and Great Britain”. A declaration like that was made by Spain when it signed and ratified the UNCLOS.

²² In addition, there have been many protests formulated by our country. For example, the note of April 3rd 1986, in which the Spanish Government declared that “it only ceded the waters of the harbor in a strict sense and thus, the waters surrounding the Rock of Gibraltar are under Spanish sovereignty” (*El País*, April 4th 1986). Another example is the communication by the Diplomatic Information Office in Madrid on February 28th 1997 in which it was declared that “Spain only recognizes the sovereignty over Gibraltar that derives from the Article 10 of the Treaty of Utrecht”. In this respect, it is worth highlighting the declaration by the Foreign Affairs Minister, Mr. Abel Matutes, on December 2nd 1997, in which he stated: “Spain has shown a firm position regarding Gibraltar throughout history and especially in the last years” (these communications are available at the website of the Foreign Affairs Department that has already been mentioned). For a more detailed study of the position of Spain regarding Gibraltar and the British presence in the waters of the Algeciras Bay, see I. Aurrecoechea, *op. cit.* pp. 273 and following; D. Mathy, “L’autodetermination des petits territoires revendiqués par des États tiers”, *Revue Belge Droit International*, n.º 1, 1975, pp. 132 and following; A. Marquina Barrio, “Gibraltar en la política exterior del Gobierno socialista”, *Revista Estudios Internacionales*, n.º 4, 1985, pp. 889 and following and E. Martel, “Gibraltar y política exterior, un principio de solución”, *Revista Estudios*

the final provisions of the Act of 4 January 1977, according to which “the present legal text cannot be interpreted as a recognition of any rights or situations whatsoever related to the maritime spaces of Gibraltar which are not included in the Article 10 of the Treaty of Utrecht of July 13th 1777, between the Crowns of Spain and Great Britain” (BOE de 8 de enero de 1977), as well as the act of ratification that the UNCLOS²³ carried out in 1997.

4.- LACK OF DEFINITION OF THE MARINE FRONTIERS AND DIFFICULTIES OF DELIMITATION IN THE STRAIT

After having explained what the situation is, it is easier to understand the behavior of both the United Kingdom and the coastal States of the Strait. Each State acts according to its own interests and its own interpretation of its rights in the area, which makes it impossible to reach an agreement regarding the definition of marine frontiers. Hence, Morocco establishes unilaterally its jurisdictional limits in the sea as if Ceuta and Perejil Island were part of the Moroccan territory, so that the interior limits of its marine spaces (straight baselines and closing lines for the delimitation of bays) are within waters that are under Spanish sovereignty; Morocco considers those waters are Moroccan interior waters, whereas Spain considers they are Spanish territorial waters (see the red lines in the picture below). There is no doubt that the *Dahir* of 21st July 1975 in which Morocco draws these straight baselines (and thus, the interior limits of its marine spaces) is unenforceable to Spain, which presented a written diplomatic claim on 7th February 1976.

Something similar happens to Gibraltar, though both parts have more respect to the positions that the other part defends. The United Kingdom has fixed a strip of territorial waters of 3 NM around the Rock of Gibraltar, which is beyond the limits established in the Treaty of Utrecht; Spain, on the other hand, has not given up its position in the area and fixed the limits of the Algeciras-La Línea harbor in 1967 (*Decreto 2671 de 19 de octubre*, published in *Diario Oficial de la Marina* on 14th November 1967) but no delimitation agreement has been reached.

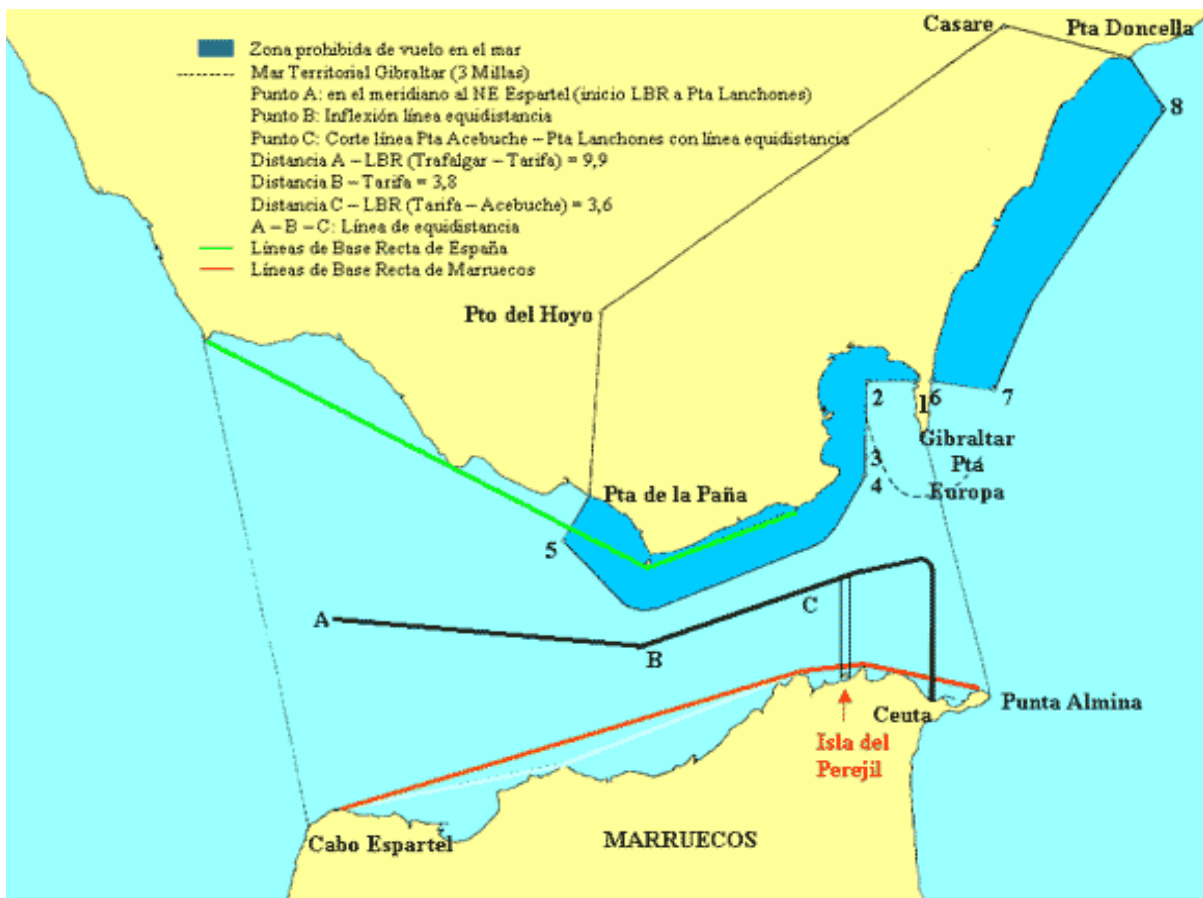
Taking into account all the facts mentioned, it can be stated that there is a paradoxical situation: three States with different points of view claim different territorial waters in that area, which causes a jurisdictional chaos in practice²⁴. The United Kingdom, on the one hand, defends its sovereignty in the north-eastern part; Spain, on the other hand, considers that there are only two coastal States in the Strait of Gibraltar; Morocco, in turn, also considers

Internacionales, n.º 4, 1985, pp. 907 and following; J. M. Cordero Torres, “Gibraltar en 1965”, *Revista de Política Internacional*, n.º 78, 1965, pp. 5 and following.

²³ When Spain ratified the UNCLOS, it posed nine reservations. The third of these reservations was related to this problem, and it stated that the ratification act could not be “...interpreted as a recognition of any rights or situations whatsoever related to the marine spaces of Gibraltar which are not included in the Article 10 of the Treaty of Utrecht of 13th July 1713, between the Crowns of Spain and the United Kingdom of Great Britain. Spain also considers that the Third Resolution of the Third United Nations Conference on the Law of the Sea is not applicable to the case of the Colony of Gibraltar, which is under a process of decolonization in which only the resolutions adopted by the United Nations General Assembly are applicable”.

²⁴ In the central and western parts of the Strait, there are not, in principle, problems of understanding between Spain and Morocco, as there are not *plazas de soberanía* and both States accept the median line criterion.

that there are two areas of sovereignty, but “in equal measure”²⁵, which implies not taking into account neither the Spanish sovereignty over Ceuta and Perejil Island nor the British presence in Gibraltar. This situation has resulted in an overlapping and a juxtaposition of the territorial waters of these States and thus, it has caused various types of conflicts (though not very serious): fishing conflicts (Morocco arrests Spanish fishermen who fish near Ceuta and Spain does the same with Moroccan fishermen, because both countries consider those waters are under their own jurisdiction); environmental conflicts, contraband and security conflicts, especially in the Algeciras Bay, where contrabandists escape the Spanish Guardia Civil by entering the jurisdictional waters of the colony. In addition, the recognition and delimitation of the marine spaces of Morocco has a great impact in bilateral relations, as in many occasions Morocco has used them to put pressure on some certain questions, such as the self-determination policy of the Sahara or the immigration and security agreements.



Source: J.L., Suárez de Vivero, “Jurisdicciones marítimas en el Estrecho de Gibraltar”

Given this situation, it is worth wondering where the limits of the Spanish territorial sea in the Strait are. From the Spanish point of view, the limits of the marine spaces in this area are determined by an equidistant line between the Spanish coast, the Moroccan coast and the

²⁵ Morocco considers that the waters of the Strait “devraient être placées sous une co-jurisdiction nationale partagée avec l’Espagne selon une ligne médiane”, see. Moulay Abdallah, *op. cit.*, p. 23. See also. A. Ahmady, “Les positions du Maroc concernant la question des détroits”, *Revue juridique, politique et économique du Maroc*, nº. 6, 1979, p.74.

British shore (in the colony). The result is a highly fragmented space in which the different sovereignties interrupt each other. If we apply the Ley 10/77 de 4 de enero del mar territorial (BOE de 8 de enero de 1977), we could state that the waters of Ceuta are connected to the waters that surround the Spanish continental territory. Furthermore, it is important to highlight that, as Perejil Island is surrounded by Spanish jurisdictional waters and it is very near the Moroccan coast, this creates a corridor of jurisdiction that connects vertically the Peninsula's territorial sea with the island's one.

5.- THE LEGAL REGIME OF NAVIGATION IN THE STRAIT OF GIBRALTAR

Nowadays there are approximately 120 straits in the world; according to the extension of their territorial sea, 100 of them are within the jurisdiction of the international waters of coastal States²⁶. The Strait of Gibraltar is one of the Straits with the busiest international marine traffic in the world, with 250 ships crossing it each day²⁷. As we have already said at the beginning of this document, the Strait of Gibraltar is an area of exchange between the Mediterranean Sea and the Atlantic Ocean, which connects offshore areas and/or EEZ, just like the Straits of Ormuz, Bab el Mandeb, Bering or Malacca do. The UNCLOS establishes the regime of transit passage (part III, section 2, articles 37-44) for this type of straits, as we have already mentioned. According to this regime, the exercise of freedom of navigation and flight is allowed exclusively for purposes of quick and uninterrupted transit by those [straits](#). [However](#), this requirement does not impede the transit of ships to enter a coastal [State](#) of the Strait, or to go out of that [State](#) or go back to it, in conformity with the conditions that regulate the entry to that [State](#) (article 38.2).

Regarding transit passage of ships, these must comply with the international [regulations](#), [proceedings](#) and practices that are widely accepted for security in the sea, which are aimed at preventing [boardings](#) and also reducing and controlling [pollution](#) (article 39.2 a and b). Regarding aircrafts, the article obliges civil [aircrafts](#) to comply with the [regulations](#) of the Air established by the [International Civil Aviation Organisation \(ICAO\)](#); [State aircrafts](#) must comply with those [safety measures](#) and shall always operate taking care of the security of navigation (article 39.3 a).

6.- CONCLUSIONS

The Strait of Gibraltar is one of the international straits with the busiest maritime traffic in the world; it is the key to communicate the Mediterranean Sea and the Atlantic Ocean, Africa and Europe. Regarding the marine spaces proclaimed by the coastal States, it can be stated that most of the waters of the Strait are under the sovereignty of those States, as the waters of the Strait are part of their interior waters or their territorial sea. Due to these features, as well as the fact that Gibraltar connects the Spanish, Portuguese and Moroccan

²⁶ D. Dahak, "El régimen jurídico de los Estrechos", in *Coloquio de Madrid. Coloquio internacional sobre la factibilidad de una comunicación fija a través del Estrecho de Gibraltar*, Madrid 9-13 November 1982, Volume II, p. 497.

²⁷ J.L. Suárez de Vivero (15/7/2002), "La Isla del Perejil y los conflictos territoriales en el estrecho de Gibraltar. Un punto de vista geográfico", available in the website of Real Instituto Elcano: <http://www.realinstitutoelcano.org/analisis/31.asp>.

EEZ in the Atlantic Ocean with the Moroccan EEZ and offshore in the Mediterranean sea, the Strait of Gibraltar can be classified within the category of international straits regulated by the article 37 of the UNCLOS and it is thus under the regime of *transit passage*.

Regarding the definition of the marine spaces, it is important to highlight that the situation of these waters is rather complicated, due to the different points of view that the implicated States have about the same reality. It is the case of the colony of Gibraltar with regard to the United Kingdom and Spain, and it is also the case of Ceuta and Perejil Island with regard to Spain and Morocco. Hence, there is a paradoxical situation: three States which have different points of view claim territorial waters, which causes the juxtaposition of their jurisdictions regarding their marine spaces. The United Kingdom defends its sovereignty over the north-eastern part, beyond the waters of the harbor, expanding its jurisdiction 3 NM around the Rock of Gibraltar and 2 NM inside the Algeciras Bay; the Spanish government does not consent this situation. Spain considers that there are only two coastal States in the Strait, and it does not approve of any delimitation of waters with any State but Morocco. Morocco, in turn, keeps on claiming the Spanish territories in the African coast and it does not recognize the existence of Spanish waters around these territories; in addition, Morocco does not take these waters into account for any delimitation. The lack of definition of frontiers that this situation creates does not affect navigation in the Strait. However, it is undeniable that the existence of delimitation agreements would contribute to a greater international cooperation in the area.

Hence, in practice, it is not possible to talk about a border agreement in the area, but about frontiers that have been established unilaterally and with different features depending on the country that has established them. This makes the Strait a point of potential conflict. However, this situation is compensated by the good neighboring relations that usually exist between the States implicated.

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²⁸ The ideas expressed in the Opinion Documents are under their authors' responsibility and do not necessarily reflect the opinion of the IEEE or the opinion of the Spanish Defense Department.