THE LEGAL STATUS OF THE TERRITORIAL SEA

The actions of states, whether on a national or an international scale, are based on the principle of sovereignty. When two or more sovereign subjects of international law meet, questions of jurisdiction arise, i.e., who has the right and obligation to act. The main purpose of the Convention is to define and regulate such questions relevant to the sea. A central point in this respect concerns how far from the coast the influence of a coastal state extends.

For the average person, the sea begins at the beach, the coastline of the mainland, where realization that another world begins is unavoidable: a different environment of wind, waves, tides, special means of communications, fishing, and so on. This perception of the sea is almost identical with that part of the planet which the Convention seeks to regulate. However, the Convention does not necessarily see the natural coastline as the limit of the sea; instead, an artificial line, the baseline, is drawn, as will be described in the next section. Within this artificial line all water areas (which are known as internal waters), the mainland, and islands are not subject to the Convention, and the state can exercise its sovereignty as provided elsewhere in international law. Adjacent to this baseline is a belt of sea known as the territorial sea, which falls within the area governed by the Convention. Every state can establish a territorial sea with a maximum breadth of twelve nautical miles, measured from the baseline[1]. Nonetheless, the importance of the Convention for this area is somewhat lessened by the fact that the Convention itself declares that the sovereignty of the coastal state extends over the territorial sea, including the air space over the sea as well as its bed and subsoil[2]. This also applies to archipelagic waters[3]. The sovereignty of a coastal state as well as that of an archipelagic state[4] is limited only by the fact that this sovereignty must be exercised in accordance with the Convention and with international law[5]. However, the Convention retains precedence with respect to matters of navigation which are of considerable importance:

(1) Technical regulations for drawing the artificial baseline and extending the territorial sea by a maximum of twelve nautical miles measured from the baseline (Articles 3-16);
(2) Passage through the territorial sea (Articles 17-32), including suspension of navigation in certain areas (Article 25, Paragraph 3); Safety zones around scientific research installations (Article 260);
(3) Passage through straits (Articles 34-45); using the territorial sea of states bordering the strait (Article 37)
(4) Passage through archipelagic waters (Article 2, Paragraph 1; Articles 52-54);
(5) Pollution from vessels (Articles 194, Subparagraph 3(b), 211, 217-234).

The Convention also retains precedence in pollution matters, requiring states parties to protect and preserve the marine environment[6] in particular by controlling

(1) Pollution from land-based sources (Article 207),
(2) Pollution from sea-bed activities (Article 208),
(3) Pollution by dumping (Article 209), and
(4) Pollution from and "through the air (Article 210),

and holds the coastal state responsible for the fulfilment of its international obligations[7]. There are some further regulations imposing limits on the state's sovereignty, but they are generally of less importance[8].

The Convention jurisdiction thus described is subject to compulsory dispute settlement provided by the Convention[9].

[1] Art. 3
[2] Art. 2, Para. 1&2
[3] Art.2; 49, Para.1
[4] Part IV
[5] Art.2, Para.3
[6] Art. 192, 194
[7] Art. 235
[8] e.g., Art. 131; 258
[9] Art. 297, Para. 1

Further Readings: - Territorial Sea, Page 112
- Internal Waters, 'Historic Bays' and Ports, Page 111
- The Reasons for International Maritime Conflicts, Page 2
- The I and II UN Conferences on the Law of the Sea, Page 4

THE RIGHTS OF FOREIGN NATIONALS IN INTERNAL WATERS AND THE TERRITORIAL SEA

NB: For vessels the flag state is in general obliged
- to exercise its jurisdiction and control in administrative, technical, and social matters (Article 94), and
- to ensure compliance with international pollution standards (Articles 211, 217).

ACTIVITY	INTERNAL WATERS	TERRITORIAL SEA
Navigation	Convention not applicable except where establishment of baseline encloses new internal waters (Article 8, Paragraph 2)	Convention applicable with regard to - Innocent passage of merchant vessels (Articles 17-28) - Innocent passage of warships (Articles 17-26, 29-32)
Overflight	Convention not applicable	Convention not applicable
Fishing	Convention not applicable	Convention not applicable
Scientific Research	Convention not applicable	Consent of coastal state required; conducted on conditions set by coastal state (Article 245)
Laying submarine cable	Convention not applicable	Convention not applicable
Mining	Convention not applicable	Convention not applicable
Imposition of environmental legislation	Convention not applicable	Only by coastal state (Article 21, 192 and following); must not hamper innocent passage (Article 211, Paragraph 4); 220 (2); Warships (Article 236)