

TOPIC 4

International law and us

4.1 Overview

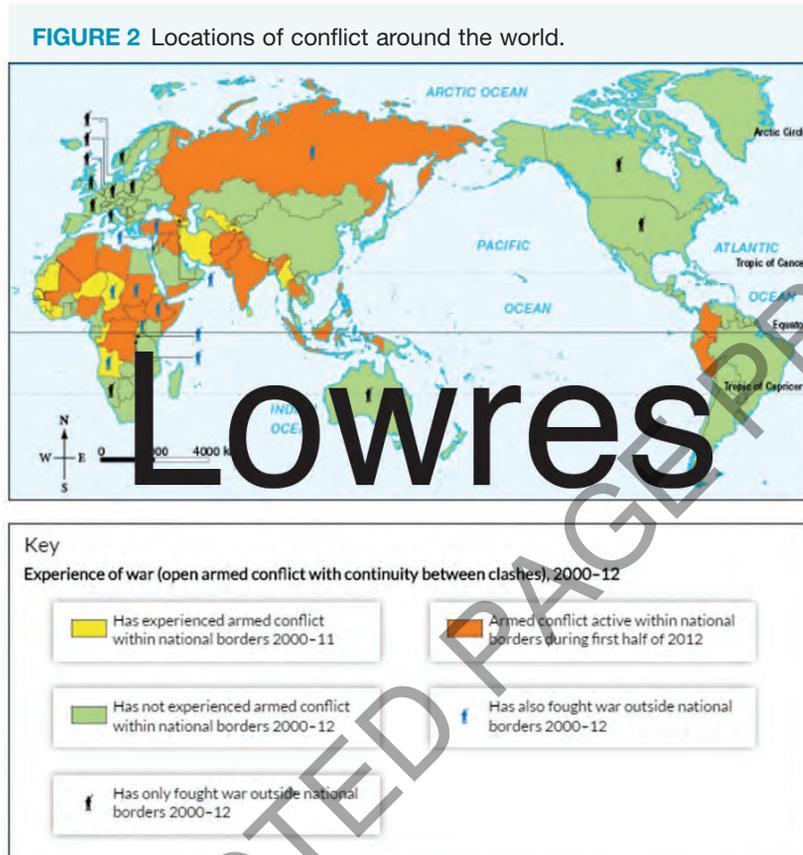
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On 8 May 1945 the world celebrated VE (Victory in Europe) Day, when Germany surrendered to the Allies. Less than four months later the world celebrated VJ (Victory in Japan) Day, marking the end of World War II — a conflict that had lasted almost six years. No-one had expected another world war so close to the end of World War I in 1918. The world hoped that this time peace would be longer lasting and such a massive death toll would not be seen for a long time.

FIGURE 1 Conflicts continue to occur around the world although they are different in nature to the wars of the twentieth century.



In the seven decades since the end of World War II there has not been another world war, but that does not mean the world has been peaceful. Conflicts of varying size and longevity have been fought across the world almost since the end of that war. These conflicts often stem from religious, ethnic or historical disputes and sometimes cross borders. Whatever the cause, these conflicts have left us with a less than peaceful world (see **figure 2**).



While many of these conflicts are internal disputes between ethnic groups of a country or region, they can spill over into other areas and impact other nations and people, many of them innocents. Witness the internal conflict in the Ukraine in 2014 — on 18 July 2014 the world was brought into that conflict through the shooting down of Air Malaysia flight MH17, flying from Amsterdam to Kuala Lumpur.



Starter questions

Follow the **World conflict map** weblink in the Resources tab to help you complete the following:

1. Where are most of the conflicts occurring?
2. Select one conflict and provide a brief outline of what is occurring.
3. What role (if any) is Australia playing in this conflict?
4. What role (if any) is the general global community playing in this conflict?
5. When referring to the shooting down of Air Malaysia flight MH17, many reports use the word 'terrorism'. Explain what you believe terrorism means.
6. Could the conflict you have chosen in **question 2** be considered terrorism? Provide a reason for your answer.

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- [Explore more with this weblink: Conflict in Gaza](#)
- [Explore more with this weblink: Australian victims of flight MH17](#)
- [Explore more with this weblink: World conflict map](#)

4.2 What is international law?

As citizens, we are members of a number of communities. We are members of our local community (the suburb we live in), the state we live in and the country we live in. As members of these communities, we are expected to abide by the laws that apply to those communities — the parking laws at our local shopping centres, the speed limits when driving on the roads and the laws governing taxation when completing our tax return for the Australian government. We are also a part of the global community. Therefore shouldn't we abide by the laws created for all of us to live in a peaceful world, devoid of international conflict? International law is concerned

with setting standards of acceptable behaviour for nations and their citizens when dealing with issues that cross borders or issues of concern to society in general.

FIGURE 1 When the rules of society are broken, it is the role of the police and other law-enforcement officials to deal with the offenders and consequences.



4.2.1 The United Nations

In **topic 2** you were introduced to the United Nations (UN), a world body that was established with the aim of promoting world peace and security and supporting economic development among all nations of the world. Its current Charter allows it to make the enforcement of international law, security, economic

development, social progress, and human rights easier for all countries. Although the UN was officially founded in 1945, it had its beginnings at a meeting between the United States president and the prime minister of Great Britain in 1939 and then became more formalised in 1942 when the Declaration by United Nations was signed.

Twenty-six countries signed this Declaration, including Australia. Its purpose was to formally unite these countries against the Axis Powers (represented by Germany, Italy and Japan), whom they were fighting in World War II. It was from this document and from the subsequent revelations of the horrors of World War II — in particular the concentration camps and treatment of prisoners and civilians — that the current version of the United Nations was born. Membership of the UN has increased to 193 countries since then, with the latest member (South Sudan) joining in 2011.

The original 26 countries that signed the Declaration by United Nations did not include France — one of the first countries to be overrun by the German armies once World War II began.

FIGURE 2 The newly formed United Nations promoted itself as a fighter for freedom.



One of the roles of the United Nations is the enforcement of international law. Let us look at how international law is made and the effect those laws have on Australia and on our lives.

4.2.2 International law

International law consists of the rules and principles governing the relations and dealings of nations with each other, relations between states and individuals, and relations between international organisations. There are generally considered to be two types of international law:

- *public international law*, which concerns itself only with questions of rights between several nations, or between nations and the citizens or subjects of other nations
- *private international law*, which deals with controversies between private persons arising out of situations involving more than one nation.

International law is developed from a

number of sources but it is primarily derived from treaties and conventions between countries. A treaty is a form of contract between two parties (two countries or two international organisations from different countries). Perhaps the most famous treaty is the Treaty of Versailles, signed at the end of World War I. It details Germany's culpability for starting the war and its responsibility for making **reparations** to the countries it waged war upon. The Treaty of Versailles required Germany to pay the equivalent of US\$33 billion to the Allied countries (worth about US\$400 billion today).

Other sources of international law include the Charter of the United Nations, international customs and the general principles of law that apply in the majority of countries.

The Charter of the United Nations provides a number of chapters that allow international laws to be established:

FIGURE 3 The United Nations is the body responsible for determining international law.



- Chapter I sets forth the purposes of the United Nations, including the important provisions for the maintenance of international peace and security.
- Chapters III–XV, the bulk of the document, describe the organs and institutions of the UN and their respective powers.
- Chapters XVI–XVII describe arrangements for integrating the UN Charter with established international law.

The following chapters deal with the enforcement powers of UN bodies:

- Chapter VI describes the Security Council’s power to investigate and mediate disputes.
- Chapter VII describes the Security Council’s power to authorise economic, diplomatic, and military sanctions — as well as the use of military force — to resolve disputes.
- Chapter VIII makes it possible for regional arrangements to maintain peace and security within their own region.
- Chapters XIV–XV establish the powers of the International Court of Justice and the United Nations Secretariat respectively.

One key section of the Charter allows the creation of the International Court of Justice to hear and rule on international disputes.

The United Nations is responsible for drafting and ratifying international conventions and declarations that seek to establish guidelines for behaviour and the establishment of rights for citizens of the world. These conventions and declarations are drafted by the General Assembly of the United Nations or one of the six main committees of the UN. These committees draft resolutions, conventions and declarations which are then ratified by a vote of the General Assembly’s 193 members.

4.2.3 Enforcing international law

It is the role of the United Nations to both establish international laws and enforce them. The United Nations makes use of the International Court of Justice and the UN Security Council, responsible for deploying UN peacekeepers, to assist it in enforcing international law.

The International Court of Justice

The International Court of Justice is the primary judicial branch of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states (member countries of the United Nations) and to provide advisory opinions on legal questions submitted to it by duly authorised international branches, agencies and the UN General Assembly.

As at April 2014, a total of 160 cases had been brought before the International Court of Justice. Australia has been involved in five of those cases, one of which is still in progress. The cases involving Australia are:

- Nuclear Tests Case (*Australia v. France*) 1974
- Certain Phosphate Lands in Nauru (*Nauru v. Australia*) 1992
- East Timor (*Portugal v. Australia*) 1995
- Whaling in the Antarctic (*New Zealand & Australia v. Japan*) 2014
- Seizure of Certain Documents and Data (*Timor-Leste v. Australia*), in progress.

The most recent case resolved that involved Australia was a joint action brought by Australia and New Zealand accusing Japan of exceeding its limits on whaling for research purposes in the Antarctic. The International Court ruled in Australia’s favour and banned Japan from whaling in the Antarctic.

FIGURE 4 The International Court of Justice, The Hague



UN peacekeepers

When disputes relating to international law or disputes between nations or ethnicities turn to conflict, the United Nations will often step in and deploy peacekeepers. Peacekeepers are military and other personnel who help countries experiencing conflict create conditions for lasting peace. Their role is to provide security as well as the political and peacebuilding support to help countries make the difficult transition from conflict to peace.

There are currently 17 UN peace operations deployed on four continents. They not only help to maintain peace and security, but also:

- facilitate the political process
- protect civilians
- assist in the disarmament, demobilisation and reintegration of former combatants
- support the organisation of elections
- protect and promote human rights
- assist in restoring the rule of law.

This is done through activities such as:

- conflict prevention and mediation
- peacemaking
- peace enforcement
- peacebuilding.

According to the Department of Foreign Affairs and Trade, Australia has participated in more than 50 UN peace and security missions involving over 65 000 personnel. There are more than 3500 Australians currently serving in missions around the world, including those in the Middle East (with UNTSO since 1953) and in Cyprus (with UNFICYP since 1964). Australia has led successful regional missions in the Solomon Islands, Timor-Leste (East Timor), and Bougainville in Papua New Guinea. As a member of the Commonwealth, we have also contributed to missions in Zimbabwe and Uganda, and to the Multinational Force and Observers in the Sinai. Australia is also contributing to international stabilisation efforts in Afghanistan. We are the largest non-NATO contributor to the International Security Assistance Force.

4.2 Activities

To answer questions online and to receive **immediate feedback** and **sample responses** for every question, go to your learnON title at www.jacplus.com.au. *Note:* Question numbers may vary slightly.

Remember

1. How many countries are currently in the United Nations?
2. Why was the United Nations established?
3. What is meant by international law?

Explain

4. Why was the United Nations established?
5. Why does the United Nations play a role in peacekeeping around the world?

Discover

6. Follow the **Australian military involvement in peacekeeping** weblink in the Resources tab to help you complete the following:
 - (a) Select a peacekeeping mission Australia has been involved in or is currently involved in. Prepare a report on the role played by Australian forces and the reason the mission was needed.
 - (b) 'The members of the United Nations do not have to abide by decisions of the International Court of Justice.' Describe how this statement may reflect a weakness of the way the United Nations operates.

- [Explore more with this weblink: United Nations map](#)
- [Explore more with this weblink: Japanese whaling in Antarctica](#)
- [Explore more with this weblink: UN peacekeeping missions](#)
- [Explore more with this weblink: Video of UN peacekeeping mission](#)
- [Explore more with this weblink: Australian military involvement in peacekeeping](#)

4.3 Key treaties affecting Australia

Treaties are designed to formalise agreements between countries. The Department of Foreign Affairs and Trade identifies 21 areas in which treaties can be categorised. These areas include:

- atmosphere and outer space
- criminal matters
- defence and security
- human rights
- international trade
- labour.

As a good global citizen Australia adopts these treaties in good faith, intending to abide by them and to assist in bringing countries that breach these treaties to account. This can lead to Australia passing its own laws to bring these international treaties into effect in Australia. However, adoption of these treaties can cause conflict in Australia as governments attempt to pass laws that enforce the treaties and hence dictate the direction of government policy. An example of such a scenario was Australia's signing of the World Heritage Convention in 1972. The signing of this Convention led to a High Court case, a change in government policy and an election.

4.3.1 *The Commonwealth v. The State of Tasmania*

In 1972 the United Nations ratified the World Heritage Convention, a document drafted by UNESCO (United Nations Educational, Scientific and Cultural Organization). This document aimed to establish a process for countries to identify significant natural or cultural sites with a view to protecting them from damage, destruction or any other form of harm. Using the terms of the Convention, which is an international treaty, the Commonwealth nominated for World Heritage listing specific areas in Tasmania that the Tasmanian government had planned to dam for the purposes of generating hydroelectricity.

The area concerned, the Franklin and Gordon rivers, contained unique flora and fauna as well as significant Indigenous artefacts that would be destroyed by the dam. To ensure their protection, the Commonwealth Parliament passed the *World Heritage Properties*

FIGURE 1 Protests at the Franklin River gained widespread media coverage and provoked such a public response that the Hawke government subsequently nominated the area for World Heritage listing under the terms of an international treaty.



Conservation Act 1983. This ensured the protection of much of the south-west wilderness regions of Tasmania.

The Tasmanian government challenged the Commonwealth law on the basis that the Commonwealth didn't have the power to make laws in this area because it was an area of law-making belonging to the states. The Commonwealth argued that a section of the Constitution gave it the power to make laws under the heading 'external affairs'. It successfully claimed that 'external affairs' allowed it to sign treaties and so by default pass domestic laws that supported those international treaties. The Commonwealth case was started by the Labor government, led by Bob Hawke. He had been elected prime minister only recently, having campaigned to 'stop the dam'.

Further developments

In 1972 Australia signed the International Covenant on Civil and Political Rights and ratified it in 1980. This Covenant is a multilateral treaty that commits its parties to respect the civil and political rights of individuals. These include the right to life, freedom of religion, freedom of speech and freedom of assembly, as well as electoral rights and rights to due process and fair trials. Article 17 of the Covenant has been implemented by the federal *Privacy Act 1988*, and the Covenant's equality and anti-discrimination provisions are supported by the federal *Disability Discrimination Act 1992*.

One outcome of the Tasmanian Dam Case was that some laws made by the states could be declared invalid if they contradicted laws made by the Commonwealth as a result of Australia signing a treaty. The Commonwealth passed the *Human Rights (Sexual Conduct) Act 1994* with the express purpose of overturning two sections of the Tasmanian Criminal Code that outlawed certain consensual adult behaviour conducted in private.

4.3.2 International trade

All countries trade goods and services because trading brings many benefits. These include:

- access to a wider variety of goods and services
- increased incomes as goods sold overseas bring income into the country
- higher living standards as we gain access to better quality goods and services
- falling prices from access to cheaper goods and services and increased competition between sellers
- higher employment as more goods need to be produced for export.

Consequently, many treaties signed by Australia and other countries are **trade** agreements. Such agreements establish rules and guidelines for the trade of goods and services between countries. Some trade agreements are merely contracts between countries to supply certain goods and services at certain prices. Other trade agreements are significant international agreements that affect how our government operates in the area of international trade. On 1 January 1995 the General Agreement on Tariffs and Trade (GATT) was replaced by the World Trade Organization (WTO) framework. This provided a new agreement to continue improving trade relations and reducing trade barriers between countries.

However, not all countries trade freely. They erect trade barriers to make it difficult for foreign products to enter the country and compete with local goods. GATT and the WTO have sought to rectify this issue by encouraging countries to

FIGURE 2 International trade involves treaties and agreements between countries.



move towards free trade. They have done this by advocating the signing of free-trade agreements between countries or regions, and the removal of trade barriers such as **tariffs**.

As a result of the free-trade efforts of GATT and the WTO, Australia has reduced tariffs in a number of areas including the manufacture of motor vehicles. Tariffs on imported cars have been steadily reduced over the last 25–30 years, with the last reduction occurring in 2010 when the tax on imported cars fell from 10 per cent to 5 per cent. This reduction was part of government policy established in the 1980s to reduce protection for Australian car manufacturers. The tariff reductions have resulted in lower prices for imported cars and reduced sales for Australian-made cars. The overall outcome will be the closure of local car-manufacturing plants by 2017 with the loss of thousands of jobs. While this may seem to be a negative outcome, we must remember that other countries have also reduced their tariffs, allowing our goods to better compete in those countries and creating jobs in Australia.

FIGURE 3 Tariff reductions have resulted in cheaper imported cars but also job losses and car plant closures in Australia.



4.3.3 ANZUS

Some of the most important treaties have arisen from armed conflict. (One of these was the Treaty of Versailles, discussed in **section 4.1**). During World War I Australia fought with British, New Zealand and US troops on various battlefields across Europe. When World War II commenced in the Pacific, Australia was threatened — the Japanese had bombed Darwin and sent their mini-submarines into Sydney Harbour. Our strong ties with the United States led the Americans to provide aid and support during this time, and to fight with us to push back the Japanese forces.

This conflict strengthened our ties with both the United States and New Zealand, culminating in the signing in 1951 of the ANZUS (Australia, New Zealand, United States Security) agreement. This treaty bound the three nations to cooperate on defence matters in the Pacific Ocean region. While the treaty was modified in 1984 due to New Zealand's objections to nuclear warships entering its ports, the agreement is still in effect and annual meetings are held to confirm the relationship. The treaty also allows for joint defence installations to be operated on Australian soil.

FIGURE 4 Security treaties such as ANZUS provide Australia with military support if needed.



4.3.4 The International Labour Organization

Australia is a member of the International Labour Organization (ILO), an agency of the United Nations that deals with labour issues among member states. The eighty-sixth International Labour Conference in 1998 adopted the Declaration on Fundamental Principles and Rights at Work. This declaration contains four fundamental policies:

1. the right of workers to associate freely and bargain collectively
2. the end of forced and compulsory labour
3. the end of child labour
4. the end of unfair discrimination among workers.

The ILO asserts that its members have an obligation to work towards fully respecting these principles, which are embodied in relevant ILO conventions. As a signatory, Australia has adopted these policies and many of them are reflected in our labour laws.

4.3 Activities

To answer questions online and to receive **immediate feedback** and **sample responses** for every question, go to your learnON title at www.jacplus.com.au. *Note:* Question numbers may vary slightly.

Remember

1. What is a treaty?
2. Why do countries sign treaties?
3. Outline three benefits of free trade.

Explain

4. Explain how signing a treaty can affect the laws of Australia.
5. Choose one of the treaties mentioned in this topic and explain how it benefits Australian citizens.

Discover

6. Follow the **Australia's trade agreements** weblink in the Resources tab to help you complete the following:
 - (a) Choose a treaty by clicking on one of the countries highlighted on the map (the highlighting indicates the existence of a bilateral free-trade agreement). Write a report on the free-trade agreement you have selected. In your report, outline when the agreement came into effect and whether the agreement is wide-ranging or limited to specific goods or industries.
 - (b) Click on the 'REGIONAL' tab and select one regional free-trade agreement. Provide a summary of the regional free-trade agreement you have selected. In your summary, state when the agreement came into effect, name the signatories to the agreement and outline what the agreement is attempting to achieve.
7. As a human being you have certain rights.
 - (a) Provide a list of the basic rights you believe you are entitled to.
 - (b) Use the **Unicef** weblink in the Resources tab to research the Convention on the Rights of the Child. Provide a summary of the rights outlined in this Convention.
 - (c) Prepare a table comparing the rights you identified in part c and the rights provided in the Convention.

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-  **Watch this eLesson:** Tassie's Franklin River — 20 years on (eles 0636)
-  **Explore more with this weblink:** Australia's trade agreements
-  **Explore more with this weblink:** Unicef

4.4 International law and Indigenous Australians

As discussed in **topics 2 and 3**, Australia is a signatory to the Universal Declaration of Human Rights. The Declaration establishes certain rights that all citizens in all countries are entitled to. By signing the document, a country agrees to abide by the provisions of the Declaration and not engage in any conduct that infringes upon those rights.

A further declaration passed by the United Nations and ratified by Australia is the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention was ratified in 1965 and came into effect in 1969. It contains 25 articles (or sections) that define racial discrimination and the various types of racial discrimination that exist in the world. Article 5 includes the following:

FIGURE 1 When the British arrived in Australia, they considered the land to belong to no-one.



In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ...

One impact this Convention (and this article in particular) has had on government policy can be seen in the passing of the *Commonwealth Racial Discrimination Act 1975*. The preamble and long title of the Act clearly outline the reasons for passing this legislation:

Long title

An Act relating to the Elimination of Racial and other Discrimination

Preamble

... it is desirable, in pursuance of all relevant powers of the Parliament, including, but not limited to, its power to make laws with respect to external affairs, with respect to the people of any race for whom it is deemed necessary to make special laws and with respect to immigration, to make the provisions contained in this Act for the prohibition of racial discrimination and certain other forms of discrimination and, in particular, to make provision for giving effect to the Convention ...

Despite these laudable aims, there have been instances where the treatment of **Indigenous** Australians has fallen short of our obligations under the Declaration and the Convention. One particular area of conflict is land rights. Having occupied the country for between 40 000 and 60 000 years before the arrival of Europeans, Indigenous peoples have a valid claim to land in many different parts of Australia. Weighed against this is the English-based legal system of land and property ownership imposed here since 1788, under which both urban and rural Australians believe they have legal title to land they occupy. Finding a legal balance between these conflicting claims, while ensuring fairness and justice, is clearly a challenge for our legal system. It was this issue that was at the heart of a long-running legal dispute over rights and Australia's obligations: the Mabo Case.

4.4.1 The Mabo Case

In August 1770, Captain James Cook claimed all of the east coast of what is now Australia as British territory. Under the internationally recognised law of the time, Cook could claim land on any one of the three following legal grounds:

- If the land was uninhabited, any country could claim ownership and settle the land under the principle of *terra nullius*.

- If the land was inhabited, another country could ask the leaders of the indigenous inhabitants for permission to make use of some of the land. This could involve making a land purchase or coming to some other arrangement such as a treaty, but the arrangement had to be agreeable to the indigenous population.
- A country already inhabited could be conquered through invasion and war, defeating the indigenous population in battle. International law at the time created an expectation that the conquered inhabitants still had rights that had to be respected.

Although the land was inhabited, Cook claimed it under the principle of *terra nullius*. The British did not recognise the Aboriginal peoples as having any legal title over the land because they had no written laws of **land tenure** as existed in European countries.

In 1982 Eddie Mabo, an inhabitant of Murray Island in the Torres Strait, began legal action against the State of Queensland, claiming that he and his people were the legal owners of Murray Island. Mabo was an active campaigner for Indigenous rights. He discovered that, contrary to what he had believed all his life, his people did not legally own the land they always believed was theirs. Mabo was joined in this action by a number of other Indigenous inhabitants of Murray Island. The action was brought largely as a test case. The Murray Islanders believed they owned the land because their people had occupied it for centuries, long before European settlement of Australia, but Queensland law appeared to designate the Torres Strait Islands as being under the ownership and control of the Queensland government.

The Mabo decision

The Full Bench of the High Court decided in favour of the Islander plaintiffs and declared that: ‘The Murray Islanders of the Torres Strait are entitled, as against the whole world, to possession, occupation and enjoyment of the lands of the Murray Islands.’

The basis for this decision rested on the following:

- The principle of *terra nullius* had been incorrectly applied. Australia had never been an empty land, and so the British were wrong to use it as the legal basis for their occupation of the land.
- In the absence of *terra nullius*, it was appropriate to apply principles relating to native title to land occupied and used by its traditional Indigenous owners.
- Native title can be recognised and included in the Australian system of property law and common law.

The Meriam people of Murray Island could claim native title because they were able to demonstrate continuing occupation and use of their land. Their system of family ownership and land usage was significant because it could be clearly demonstrated that these had operated continuously since before white settlement. In other parts of Australia, where Aboriginal people have been dispossessed, the issue was not so clear. In his judgement, Chief Justice Brennan indicated that: ‘there may be other areas of Australia where an Aboriginal people, maintaining their identity and their customs, are entitled to enjoy their native title’. Future claims by other Indigenous groups would need to demonstrate clearly that a high level of traditional occupation and land usage would be necessary to support such a claim. Individual claims would have to be decided on a case-by-case basis.

FIGURE 2 Eddie Mabo challenged the state of Queensland in the High Court, resulting in changes to the law concerning Indigenous land rights.



Native title legislation

Western Australia was the first state to respond to the Mabo Case with legislation. The state parliament passed the *Land (Titles and Traditional Usages) Act 1993*. Its aim was to extinguish the common law right of native title throughout the state and replace it with a statutory right of ‘traditional usage’, which could itself be extinguished by the government at any time. This Act was a deliberate attempt to favour mining and pastoral companies in any dispute with Indigenous occupants over rights to the land.

Commonwealth governments had previously avoided coming into conflict with state governments over Indigenous land rights, but the Keating Labor government wished to find a way to support those rights. The risk that some other state governments might try to legislate to extinguish Indigenous land rights as Western Australia had done led the Commonwealth to propose its own legislation. The *Native Title Act 1993* (Cwth) was passed in late December 1993 and came into force on 1 January 1994. This Act included the following principles:

- legislative recognition and protection for the previously common law concept of native title
- the extinguishment of native title rights over freehold land
- no extinguishment of native title rights by any processes other than those contained in the Act
- the rights of Indigenous people to claim native title over Crown land if they could prove a traditional and continuing attachment to that land
- procedures for claiming native title through the establishment of a Native Title Tribunal.

Western Australia v. Commonwealth

In the case *Western Australia v. Commonwealth* [1995] HCA 47 the Western Australian government challenged the validity of the Native Title Act in the High Court. At the same time Indigenous groups from outback Western Australia, such as the Worora and Martu peoples, challenged the validity of that state’s legislation.

The High Court heard all three cases together, and declared the Western Australian legislation invalid under section 109 of the Constitution because it was inconsistent with both the Native Title Act and the Racial Discrimination Act. This case reinforced the jurisdiction of the Commonwealth Parliament over native title matters.

By 1995, the legal principle of native title was clearly established in Australia. *Terra nullius* no longer had application in Australian law, and a process for determining Indigenous land rights claims was in operation. If a native title claim is contested by any other party, the Federal Court and the High Court have ultimate jurisdiction to determine the matter. The Native Title Tribunal was established to help determine the validity of native title claims and to provide mediation services to help resolve disputes over native title. No state could introduce laws relating to Aboriginal or Torres Strait Island land rights that were inconsistent with the Commonwealth Native Title Act.

4.4 Activities

To answer questions online and to receive **immediate feedback** and **sample responses** for every question, go to your learnON title at www.jacplus.com.au. *Note:* Question numbers may vary slightly.

Remember

1. What is meant by terra nullius?
2. On what grounds did Captain Cook claim Australia as a British colony?

Explain

3. Explain what is meant by native title.
4. What were the principles behind the decision of the High Court in the Mabo case?
5. What influence do you believe the Universal Declaration of Human Rights had on the decision to grant native title? Explain your answer.

Discover

6. There are other issues relating to Australia's treatment of Indigenous peoples. Using internet resources, explain what is meant by the term 'stolen generations' and describe how Australia has responded to this issue to date.
7. The Mabo Case was followed eight years later by the Wik Case. Using internet resources, research the Wik Case and provide a brief summary of the case and its link to the Mabo Case.
8. One country that has approached its relationship with the Indigenous population differently is New Zealand. Research and provide a summary of the Treaty of Waitangi.
9. Follow the **UN and racial discrimination** weblink in the Resources tab to help you complete the following:
 - (a) How does the United Nations define racial discrimination?
 - (b) Select two rights found in article 5 and explain what they mean.
 - (c) Read article 7 and explain whether you believe Australia has complied with this article. Give reasons for your answer.
 - (d) If your answer to **part c** was 'No', outline what Australia could do to comply with the conditions set out in article 7.

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 Explore more with this weblink: UN and racial discrimination

4.5 SkillBuilder: A treating in the classroom

4.5.1 Tell me

By now you should realise that a treaty is a document that provides rules for behaviour among nations. While some treaties are small in nature (being between only two countries), some are broader in scope and application. Consider how these broader treaties are developed and agreed upon.

This activity will require students to work in groups to draft and negotiate a treaty for the class. Students will need to consider the aims of both parties to the treaty (students and staff) and what each party may be seeking to gain from the treaty.

4.5.2 Let me do it

Prepare the background to the case

Divide into groups. Allocate one group the task of representing the staff, with the other groups representing the students. Each group should choose an area or issue they would like to see discussed for inclusion in the treaty. These could include:

- the setting of homework
- the use of mobile phones and other electronic devices during class
- lateness to class
- punishments for breaches of conditions of the treaty
- assessment procedures and criteria.

Remember to consider the interests of both parties to the treaty (students and staff).

The task

- Working in their groups, students should draft a set of conditions or articles for inclusion in a class treaty. Using a pre-established process, debate and discuss the various sections for inclusion. Each group should present its sections to the whole class for discussion and amendment.
- As each section is discussed and debated, the class should vote as a whole on whether or not to adopt the section. Those sections agreed to should be included in the treaty.

- Upon completion of the drafting stage, as a class present the treaty to your teacher. Be prepared to engage in further discussion and debate over the conditions established and agreed to by the class. As a result of this further discussion and debate, the treaty may need to go back to the class for amendment.
- When the terms of the treaty have been agreed to, arrange for the treaty to be signed by all parties. Invite your principal to be present and arrange for a member of the school magazine to record the event.
- Print the treaty and display it on the wall of the classroom.

4.6 Review and reflect

4.6.1 Review

Rules and laws are needed whenever a large group of people live together and interact with each other. The continuing development of technology has allowed for increased communication and interaction between countries and peoples. This has necessitated the need for a global body to oversee and attempt to regulate the interactions between countries. The aim of such a global body is to minimise the incidence of conflict among peoples and nations.

Treaties play an important part in establishing rules for behaviour in a range of areas:

- economics and trade
- labour laws
- military and defence
- economic development
- human rights.

As a member of the global community, Australia has played a role in the development of these global laws, treaties and the bodies responsible for drafting and enforcing these rules. Australia was a founding member of the United Nations, a participant in United Nations peacekeeping missions, and a member of many of the bodies established under the United Nations banner.

Australia is acutely aware of its role in the international community and aims to fulfil its responsibilities to that community. Australia also recognises its obligations at home and applies the terms of international treaties and agreements at home to improve the lives of its citizens.

4.6.2 Reflect

This activity requires you to reflect on what child labour means and the impact it can have on an individual child, a generation and a society as a whole.

Prepare a multimedia report on child labour. In it you need to:

1. Define child labour.
2. Outline your experience of working as a child. (What jobs do you do at home? Do you get pocket money and what do you do to earn it? Do you have a part-time job? If so, what do you do, who do you work for and what are your working conditions?)
3. Explain the negative impact of child labour on children and society.
4. Discuss whether children should be allowed to work and the circumstances in which this should be allowed.
5. Present relevant statistics related to child labour.
6. Discuss the labour laws in Australia.

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- Try out this interactivity: Multiple choice (int-5527)
- Try out this interactivity: True/false (int-5528)
- Try out this interactivity: Crossword (int-5529)