





**RULE OF LAW**  
**INSTITUTE OF AUSTRALIA**

**The Rule of Law and International Law**

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'Law, at its very foundation, is conceived and derived from **values**. These values are such as inform and underpin a rational and fair expectation of **how power should be organised,**'

'The essential human values most particularly relevant to public law are: a **rejection of unfairness** and an **insistence on essential equality**; **respect** for the **integrity and dignity of the individual**; and **mercy**. Each goes to the core of what we understand humanity and the individual to be, and to what is expected **when power is exercised by or against individuals.**'

Chief Justice Allsop AO, 'Values in Law: How the Influence and Shape Rules and the Application of Law'

# Definition of Human Rights:

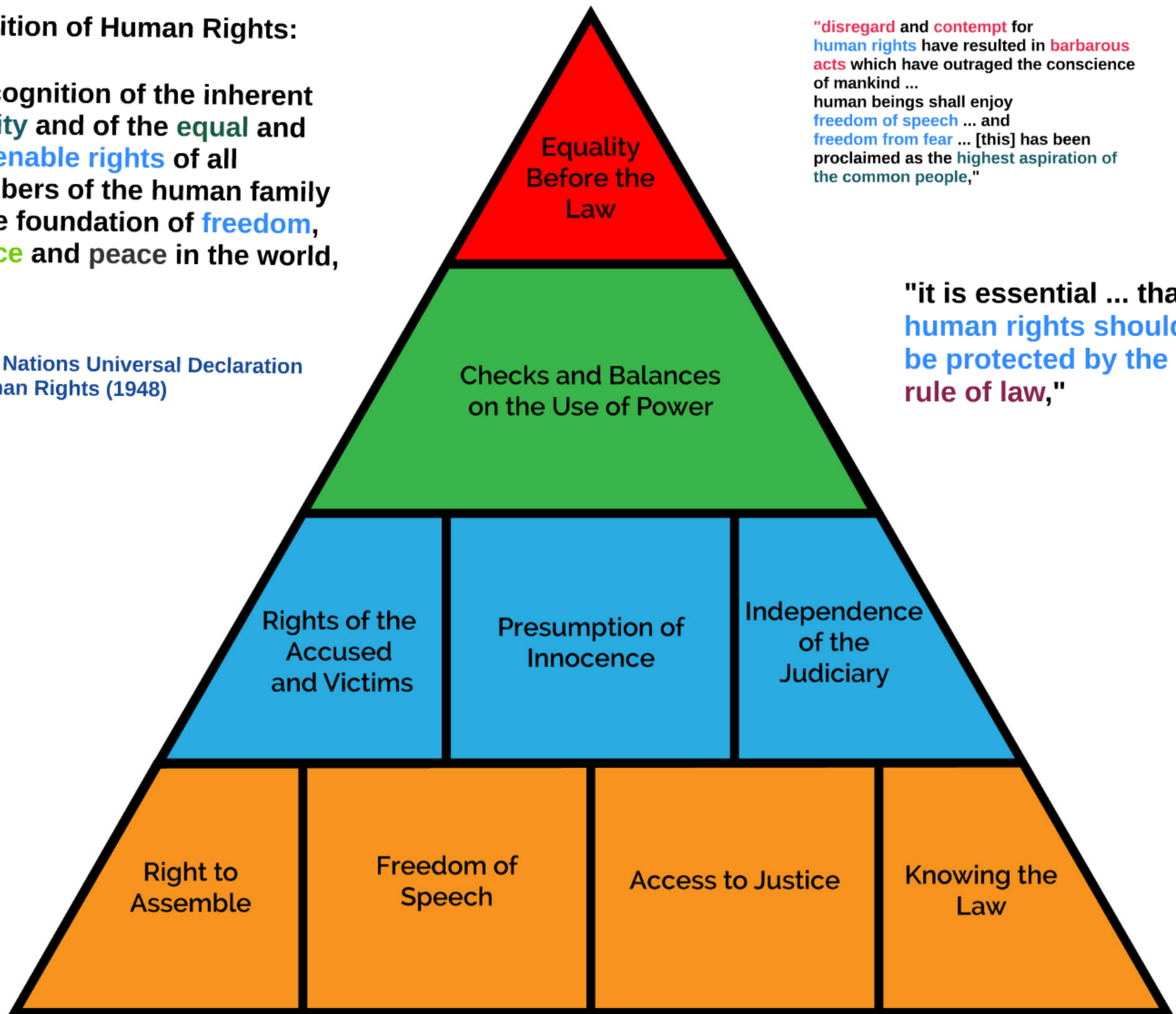
...recognition of the inherent **dignity** and of the **equal** and **inalienable rights** of all members of the human family is the foundation of **freedom**, **justice** and peace in the world,

**"it is essential ... that  
human rights should  
be protected by the  
rule of law,"**

## Definition of Human Rights:

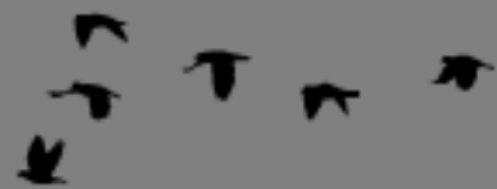
...recognition of the inherent **dignity** and of the **equal** and **inalienable rights** of all members of the human family is the foundation of **freedom**, **justice** and peace in the world,

United Nations Universal Declaration of Human Rights (1948)



"disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ... human beings shall enjoy freedom of speech ... and freedom from fear ... [this] has been proclaimed as the highest aspiration of the common people,"

"it is essential ... that human rights should be protected by the rule of law,"



1948



The Holocaust

The Genocide Convention (1948)

UDHR

1945

International Court of Justice (ICJ)

1939



International Covenant on Economic, Social and Cultural Rights (ICESCR)  
International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols

1966

1969

Convention for the Elimination of Racial Discrimination - (CERD)

1993

Balkan War (ICTY)

1994

Rwandan Genocide (ICTR)

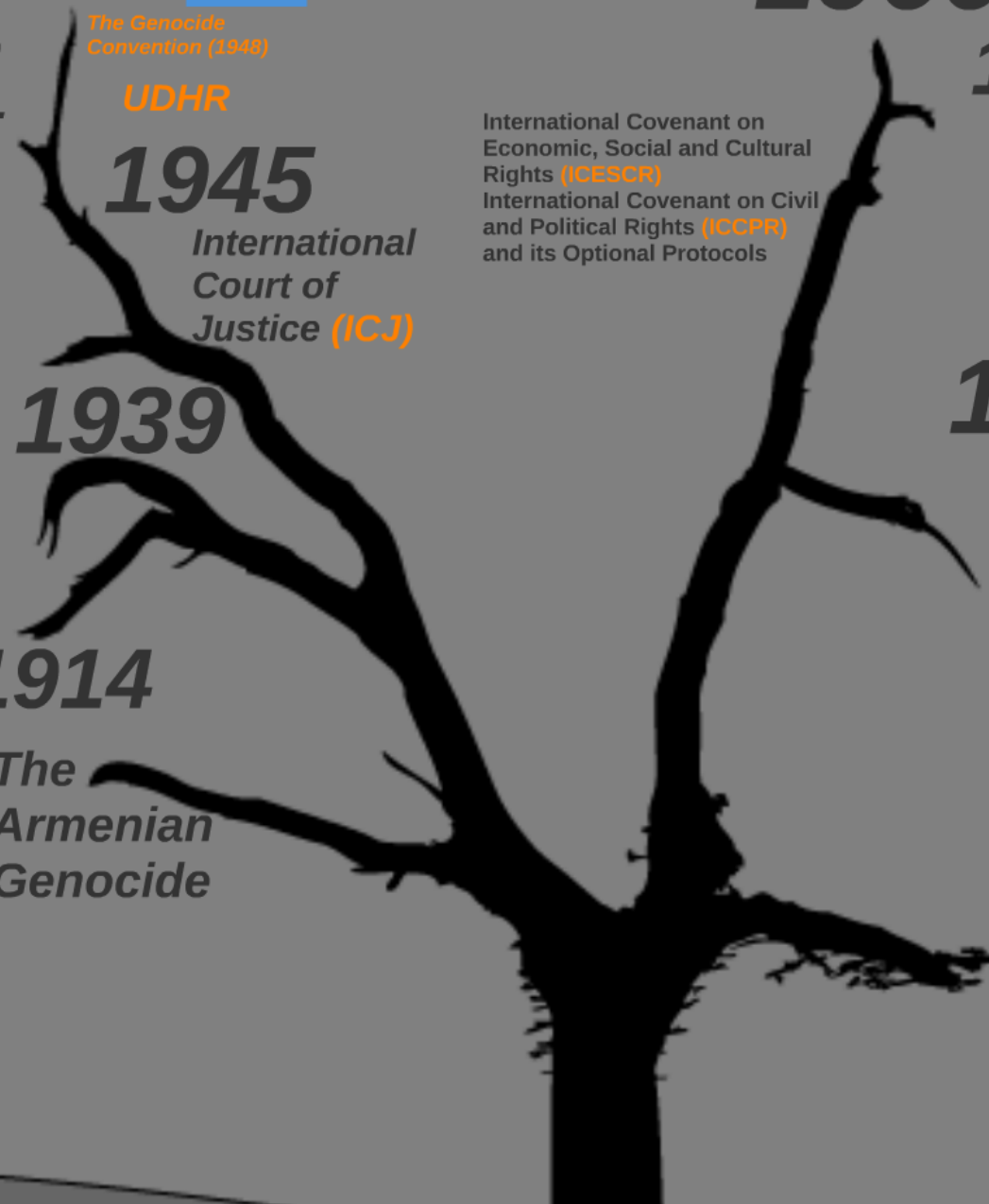
1914

WWI

The Armenian Genocide

2004

International Criminal Court (ICC)



## ***SOVEREIGN STATES***

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## ***INTERNATIONAL LAW & THE UN***

***Treaties are ratified  
by sovereign states***

***States can then  
make laws which  
bring effect to the  
treaty***

***Limitation:  
States put their  
needs before  
international law***



# **International Law**

- **Treaties, international court decisions, and United Nations resolutions**
- **“international custom, as evidence of general practice of law” found in Article 38 of the Statute of the International Court of Justice (ICJ)**
- **ICJ unable to create legally binding precedents**

# Customary international law

- **Fundamental - eg sovereignty of each state**
- **'Opinion of law' - common international law - precedent - States act with consistency and consider themselves legally bound by the decisions**
- **Example: acts of self-defence must be necessary and proportionate**
- **At what point does a state acting differently cease to be illegal and become a new rule?**
- **International Law Commission**

# Australia and International Law

- **1983 decision in the Tasmanian Dam case was a milestone in Australian Constitutional Law**
  - **Commonwealth Government to rely upon a treaty to enact legislation to protect the Tasmanian environment.**
  - **brought citizens' attention to the extent of Australia's treaty obligations, particularly under the World Heritage Convention**
- 
- **Australian's failure to ratify the 2007 Treaty on Extradition with China due to Human Rights Concerns.**
  - **The Law Council of Australia has said that China:**
  - **... does not act in accordance with procedural fairness and rule of law standards in criminal proceedings.**
  - **China does not have true rule of law because there is no independent judicial system.**

# Current Issues



## UN slams 'excessive' Israeli force against Palestinians in Gaza

The resolution, backed by 120 countries, rejected a US bid to blame Hamas for the violence that has left 129 dead.

<https://www.aljazeera.com/news/2018/06/condemns-excessive-israeli-force-palestinians-gaza-180614053144538.html>



Fleeing family violence to another country and taking your child is not 'abduction', but that's how the law sees it

<https://theconversation.com/fleeing-family-violence-to-another-country-and-taking-your-child-is-not-abduction-but-thats-how-the-law-sees-it-109664>

## The prosecution of pirates was a model for today's system of international justice

by Lisa St. George



<https://theconversation.com/the-prosecution-of-pirates-was-a-model-for-todays-system-of-international-justice-109169>

## North Korea

- Korea divided after end of WWII along 38th parallel as joint decision of Soviet Union and America.
- Korean War 25 June 1950
- North Korea invaded South Korea.
- US gained UN resolution for defence of South Korea and joined the war.
- Ended on 27 July 1953 by the signing of an armistice.
- Demilitarised zone set up.
- No peace treaty ever signed.

## Proceedings in the ICJ

The government of Qatar is taking the United Arab Emirates (UAE) to the UN International Court of Justice (ICJ) over what it described as human rights violations

Qatar believes the actions were in violation of CERD - including discrimination on the basis of nationality - of which the UAE and Qatar are both signatories.

## Teacher Resources

Australia and International Law - video



International Law Association Qld <http://ila.org.au/chapters/queensland-chapter/>

United Nations Association of Australia <https://www.unaa.org.au/school-teaching-resources/>

<https://research.un.org/en/docs/humanrights/undhr>

[www.ruleoflaw.org.au](http://www.ruleoflaw.org.au) - Search for International law and/or human rights

NEWS / GAZA

## UN slams 'excessive' Israeli force against Palestinians in Gaza

*The resolution, backed by 120 countries, rejected a US bid to blame Hamas for the violence that has left 129 dead.*

3 hours ago  

<https://www.aljazeera.com/news/2018/06/condemns-excessive-israeli-force-palestinians-gaza-180614053144538.html>

## The prosecution of pirates was a model for today's system of international justice

January 12, 2019 12.46am AEDT



<https://theconversation.com/the-prosecution-of-pirates-was-a-model-for-todays-system-of-international-justice-109169>



**Fleeing family violence to another country and taking your child is not 'abduction', but that's how the law sees it**

January 21, 2019 5.55am AEDT Updated January 22, 2019 11.25am AEDT

<https://theconversation.com/fleeing-family-violence-to-another-country-and-taking-your-child-is-not-abduction-but-thats-how-the-law-sees-it-109664>

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