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Secondly, “The existence of an established usage is the basis of a rational expectation of its continuance in the future.”¹¹

The International Court of Justice in *Asylum Case: Columbia v. Peru*¹² described custom as a ‘constant and uniform usage, accepted by law’, i.e. those areas of state practice which arise as a result of a belief by states that they are obliged by law to act in the manner described.¹³ The facts of the case have been discussed in depth later in the compilation.¹⁴ In the abovementioned case the Court declined to acknowledge the existence of a custom as claimed by Columbia.

A similar case was also held by the International Court of Justice in the *United States Nationals in Morocco Case*¹⁵ where the denial was also a cause of ambiguity and uncertainty. Although an international court is bound in the first instance to consider any applicable treaty provisions binding on the parties, the treaty in case of a doubt be interpreted against the background of customary international law, which in so far as it embodies a rule of *ius cogens* with which the treaty is in conflict, will indeed prevail over the treaty.¹⁶

The various essentials and features of custom as a source on international law have been discussed in the topics to follow.

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Duration of Practice

The actual practice engaged in by states constitutes the initial factor to be brought into account. There are a number of points to be considered concerning the nature of a particular practice by states, including its duration, consistency, repetition and generality. As far as the duration is concerned, most countries specify a recognized time-scale for the acceptance of a practice as a customary rule within their municipal systems. This can vary from ‘time immemorial’ in the English common law dating back to 1189, to figures from thirty or forty years on the Continent.¹⁷

¹¹ Tripathi, B.N. Mani, Jurisprudence (Legal Theory), 18th Ed., Allahabad Law Agency, Faridabad, 2008. p185.

¹² (1950) ICJ Rep. 266.

¹³ Kaczorowska Alina, Public International Law, Old Baily Press, London, 2002. p. 15.

¹⁴ Refer topic “Consistency” p. 6.

¹⁵ (1952) ICJ Rep. 200.

¹⁶ Oppenheim’s International Law, Volume I, 9th Ed., Pearson Education Singapore, Delhi, 2005. p. 26.

¹⁷ Shaw, Malcolm N., International Law, 6th Ed., Cambridge University Press, Cambridge, 2009. p. 76.