Customary international law is not set down in treaties or other documents; it comes from the usual behavior of states towards each other. A rule is identified on the basis that states usually act in a certain way, and do so out of a sense of obligation. This source of international law has long been accepted – the law of piracy is an example. Customary law is an important source of international law because it binds all nations, and so is not limited in its application, as a treaty is, by reference to who has ratified it or acceded to it.

The elements of custom are:

- uniform and consistent state practice over time; and
- the belief that such practice is obligatory.

To determine whether a principle has gained the status of customary international law, it is necessary to consider whether there is sufficient evidence both of state practice and acceptance of an obligation to act in a certain way. In international customary law there is the concept of *jus cogens*, or ‘peremptory norms’ of general international law.

These are rules of customary law which are considered so fundamental that they cannot be departed from or set aside by treaty. They can be modified only by a subsequent norm of general international law that has the same character (Article 53, *Vienna Convention on the Law of Treaties 1969*). Examples of *jus cogens* include the principle of self-determination, and prohibitions on slavery, genocide, racial discrimination and the use of force by states.