

**HERSCH
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1. GENERAL WORKS

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INTERNATIONAL LAW—THE GENERAL PART

'general principles of law as recognized by civilized States'. Thus viewed, the order of enumeration adopted in the Statute of the International Court of Justice provides a workable and accurate starting point for the application of the law.

However, the order of the sources of international law as thus indicated cannot be applied in a mechanical way. Nor does it fully express their relative importance. Undoubtedly, the rights and duties of States must be determined in the first instance by reference to applicable treaties. Yet, while it is true that international customary law applies only in the absence of available provisions of treaties, and that 'general principles of law' are merely a residuary source of law in cases in which there is no applicable treaty or custom, treaties, in turn, must be interpreted in the light of customary international law¹—just as the latter, as well as treaties, must be interpreted against the background of general principles of law. When the meaning of a treaty is not clear, it must be assumed that the parties intended it to be in conformity with general, customary, international law—and it is then that customary international law becomes relevant and decisive, notwithstanding any hierarchical order establishing the priority of a treaty. Thus, in the Advisory Opinion on the *Frontier between Turkey and Iraq* the Permanent Court of International Justice interpreted the rule of unanimity—which was a rule both of the Covenant of the League of Nations in the matter of decisions of its Council and of customary international law in relation to decisions of international bodies generally—in the light of the general principle of law that no one can be judge in his own cause.² In the result, the Court interpreted away the customary rule of unanimity. In an even more drastic manner, in the Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations* the Court, by reference to a general principle derived from the needs of the international community, modified the customary rule according to which treaties cannot affect the rights and obligations of States which are not parties thereto.³ A treaty may be rendered obsolete or inoperative, wholly or in part, by custom—as has been the case with regard to the provisions of the Treaty of Vienna of 1815 classifying the categories of diplomatic agents.

In view of this, while the hierarchy of sources of international

¹ For an affirmation of that principle see the decision of the French-Mexican Claims Commission in the *Georges Pinson* case (Verzijl, President) (*Annual Digest*, 4 (1927-8), Case no. 292) and of the Permanent Court of Arbitration (Borel, Arbitrator) in the case of *The Kronprinz Gustav Adolph* (*A.J.* 26 (1932), 839).

² Series B, no. 12, p. 31.

³ *I.C.J. Reports* 1949, p. 174.