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XALQARO SUD STATUTINING 38(1)(C)-MODDASINI QAYTA TALQIN ETISH: HUQUQNING UMUMIY PRINSIPLARI XALQARO HUQUQNING MUSTAQIL MANBASI SIFATIDA

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Annotatsiya. *Ushbu maqola Xalqaro Sud Statutining 38(1)(c)-moddasi doirasida xalqaro huquqning umumiy prinsiplarining huquqiy tabiati, maqomi va funksiyalarini tahlil qiladi.*

Tadqiqot umumiy prinsiplarning xalqaro huquqning mustaqil manbasi ekanligi hamda ularning tabiiy huquq yoki pozitiv huquq kategoriyasiga mansubligi haqidagi ilmiy munozaralarni ko‘rib chiqadi. Doktrinal va qiyosiy-huquqiy tahlil asosida maqola 38-moddasi matni, Statutning tayyorlanish tarixi, Xalqaro Sud amaliyoti hamda tegishli ilmiy adabiyotlarni baholaydi.

Tadqiqot natijalari shuni ko‘rsatadiki, xalqaro huquqning umumiy prinsiplari shartnomalar va xalqaro odat huquqi bilan bir qatorda mustaqil huquqiy maqomga ega bo‘lib, ular tabiiy huquq emas, balki pozitiv xalqaro huquq tarkibiga kiradi. Shuningdek, ushbu prinsiplar shartnomaviy va odat huquqidagi bo‘shliqlar yoki noaniqliklarni to‘ldirishda muhim qo‘shimcha va talqin etuvchi funksiyalarni bajaradi.

Zamonaviy xalqaro huquqning inson huquqlari, iqlim o‘zgarishi va kosmik huquq kabi sohalarida umumiy prinsiplarning ahamiyati tobora ortib bormoqda. Maqola xulosasiga ko‘ra, umumiy prinsiplarning doirasi va funksiyalarini aniqlashtirish xalqaro huquq nazariyasi hamda xalqaro nizolarni hal etish amaliyoti uchun muhim ahamiyatga ega.

Kalit so‘zlar: *xalqaro huquqning umumiy prinsiplari, Xalqaro Sud Statutining 38(1)(c)-moddasi, xalqaro huquq manbalari, xalqaro odat huquqi, xalqaro shartnomalar, pozitiv xalqaro huquq, tabiiy huquq nazariyasi, xalqaro huquq tizimi, Xalqaro sud amaliyoti, huquqiy talqin, bo‘shliqni to‘ldirish funksiyasi, qo‘shimcha xarakter, davlat amaliyoti, opinio juris, xalqaro sudlov.*

ПЕРЕОСМЫСЛЕНИЕ СТАТЬИ 38(1)(C) СТАТУТА МЕЖДУНАРОДНОГО СУДА: ОБЩИЕ ПРИНЦИПЫ ПРАВА КАК САМОСТОЯТЕЛЬНЫЙ ИСТОЧНИК МЕЖДУНАРОДНОГО ПРАВА

Аннотация. *Настоящая статья анализирует правовую природу, статус и функции общих принципов права в соответствии со статьёй 38(1)(c) Статута Международного Суда. Исследование рассматривает продолжающиеся научные дискуссии относительно того, являются ли общие принципы права самостоятельным источником международного права, а также относятся ли они к категории естественного или позитивного права. На основе доктринального и сравнительно-правового анализа в работе оцениваются текст статьи 38, история подготовки Статута, судебная практика Международного Суда и соответствующая научная литература.*

Результаты исследования показывают, что общие принципы права обладают самостоятельным правовым статусом наряду с договорами и международным обычным

правом и должны рассматриваться как часть позитивного международного права, а не естественного права. Кроме того, данные принципы выполняют важные вспомогательные и интерпретационные функции, особенно в ситуациях пробелов или неопределённости в договорном и обычном праве.

В современных областях международного права, таких как права человека, изменение климата и космическое право, значение общих принципов права продолжает возрастать. В заключении отмечается, что уточнение сферы действия и функций общих принципов права имеет важное значение как для теории международного права, так и для практики разрешения международных споров.

Ключевые слова: *общие принципы права, статья 38(1)(c) Статута Международного Суда, источники международного права, международное обычное право, договоры, позитивное международное право, теория естественного права, система международного права, практика МС ООН, правовое толкование, функция восполнения пробелов, дополнительный характер, государственная практика, opinio juris, международное правосудие.*

GENERAL PRINCIPLES OF LAW AS AN INDEPENDENT SOURCE OF INTERNATIONAL LAW: REASSESSING ARTICLE 38(1)(C) OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Abstract. *This article examines the legal nature, status, and functions of general principles of law under Article 38(1)(c) of the Statute of the International Court of Justice. The study addresses ongoing academic debates concerning whether general principles of law constitute an independent source of international law and whether they should be regarded as a category of natural law or positive law. Using doctrinal and comparative legal analysis, the paper evaluates the text of Article 38, the drafting history of the Statute, the jurisprudence of the International Court of Justice, and relevant scholarly opinions.*

The findings demonstrate that general principles of law possess an independent legal status alongside treaties and customary international law and should be understood as part of positive international law rather than natural law. The study further shows that these principles perform important complementary and interpretative functions, particularly in situations involving gaps or ambiguities in treaty and customary law.

In contemporary areas such as human rights, climate change, and outer space law, general principles of law continue to play an increasingly significant role in the development and application of international law. The article concludes that clarifying the scope and function of general principles of law is essential for both international legal theory and the practical settlement of international disputes.

Keywords: *General principles of law, Article 38(1)(c) ICJ Statute, sources of international law, customary international law, treaties, positive international law, natural law theory, international legal system, ICJ jurisprudence, legal interpretation, gap-filling function, complementarity, state practice, opinio juris, international adjudication.*

INTRODUCTION.

General principles of law occupy a distinct place in international law. Article 38(1)(c) of the Statute of the International Court of Justice recognizes “the general principles of law recognized by civilized nations” as one of the sources the Court may apply in settling international disputes. Alongside treaties and customary international law, these principles contribute to the coherence, completeness, and practical operation of the international legal system.

Despite this formal recognition, the concept of general principles of law remains contested.

Scholars disagree on whether they constitute an independent source of international law or whether they are merely reflections of treaty rules and customary norms[1]. There is also no full agreement on their legal character. Some writers treat them as part of natural law, while others place them squarely within positive international law. These disagreements have left their precise status and function uncertain[2]. This uncertainty is closely connected to the broader question of the sources of international law.

General principles of law are usually understood as principles common to domestic legal systems that may be received into international law. The International Law Commission, in its 2019 Report, also treated general principles of law as part of the structure of international law[3].

This shows that the topic cannot be examined in isolation, but must be considered within the wider framework of the international legal order.

A further issue concerns the way these principles are identified. The phrase “civilized nations” in Article 38(1)(c) has long been criticized as outdated and inconsistent with the principle of sovereign equality. Modern scholarship and the work of the International Law Commission therefore favour the term “States”[4]. Unlike customary international law, which depends on state practice and opinio juris, general principles of law are derived from common features found across national legal systems. Their recognition therefore requires comparative legal analysis rather than proof of inter-state conduct.

The practical importance of general principles of law has become more visible in recent decades. As international law expands into areas such as human rights, environmental protection, climate change, cyber activities, and outer space, courts and tribunals increasingly face situations in which treaty law or custom is incomplete, unclear, or silent. In such situations, general principles of law help fill gaps and support the interpretation of existing rules.

They therefore play an important role in preserving the effectiveness of international

[1] Tong Jian, Liu Huasheng and Liu Wenzong, *Theoretical Problems of International Law* (World Knowledge Press 1965) 131–133; Zhou Gengsheng, *International Law, Vol 1* (Commercial Press 1981) 10.

[2] Luo Guoqiang, ‘The Dilemma and the Way Out of General Legal Principles’ (2010) 2 *Law Review* 77–83; Zhou Zhonghai, *International Law* (China University of Political Science and Law Press 2008) 72.

[3] Luo Guoqiang, ‘The Dilemma and the Way Out of General Legal Principles’ (2010) 2 *Law Review* 77–83; Zhou Zhonghai, *International Law* (China University of Political Science and Law Press 2008) 72.

[4] International Law Commission, *Report of the International Law Commission* UN Doc A/74/10 (2019) para 218 https://legal.un.org/ilc/reports/2019/ Accessed 18 June 2026.

adjudication[5]. Although general principles of law have been widely discussed, important questions remain unresolved, especially regarding their legal status, their relationship with customary international law, and their practical role in judicial reasoning. This article examines those questions through Article 38(1)(c) of the ICJ Statute, relevant case law, and scholarly debate. It argues that general principles of law should be understood as an independent source of international law within the framework of positive law and that they continue to have real significance in the development and application of international law.

METHODS. This study uses a qualitative doctrinal legal research method to examine the legal nature, status, and function of general principles of law under Article 38(1)(c) of the Statute of the International Court of Justice. The research is based on the analysis of primary and secondary legal sources.

Primary sources include Article 38(1)(c) of the ICJ Statute, the Statute of the Permanent Court of International Justice, the travaux préparatoires of Article 38, judgments and advisory opinions of the ICJ and PCIJ, arbitral awards, reports of the International Law Commission, and relevant United Nations documents. Secondary sources include books, journal articles, and doctrinal writings on the sources of international law and the concept of general principles of law.

The doctrinal method is used to assess the main theoretical positions on general principles of law and to determine whether they should be regarded as an independent source of international law. It is also used to examine whether their legal basis lies in positive law or natural law. This helps clarify the meaning of Article 38(1)(c) and its place within the sources of international law.

Comparative legal analysis is used to identify principles that appear across different domestic legal systems and to examine how such principles may acquire international legal relevance. This method is essential for understanding how general principles of law are formed and for distinguishing them from customary international law.

Historical analysis is applied to the drafting history of Article 38 and the work of the Advisory Committee of Jurists that prepared the Statute of the Permanent Court of International Justice. This makes it possible to understand why general principles of law were included as a separate source and what function they were intended to serve.

Case-law analysis is used to examine how international courts and tribunals have applied general principles of law in practice. Particular attention is given to the Temple of Preah Vihear Case, the Legal Status of Eastern Greenland Case, the Asylum Case, the North Sea Continental Shelf Cases, the Sea-Land Service Case, the Walfish Bay arbitration, and the Fubini Case. These decisions show how general principles of law have been used to resolve disputes, interpret legal rules, and address gaps in treaty and customary law.

The findings are interpreted through comparison, synthesis, and critical evaluation. By combining doctrinal, comparative, historical, and case-law analysis, the study assesses the legal status of general principles of law, their relationship with customary international law, and their current role in the international legal system.

[5] International Law Commission, *Memorandum by the Secretariat on General Principles of Law* UN Doc A/CN.4/742 (2020) para 85 https://legal.un.org/ilc/documentation/english/a_cn4_742.pdf Accessed 18 June 2026.

RESULTS. Since Article 38(1) of the Statute of the International Court of Justice expressly recognizes "general principles of law recognized by civilized nations," the legal status and normative nature of general principles of law have long been contested in international legal scholarship. Three principal approaches dominate this debate: the first denies their status as an independent source of international law, the second recognizes them as both an autonomous source of international law and an expression of natural law and the third, adopted in this study, affirms their status as an independent source while grounding their legal character in positive international law.

The first approach rejects the independent legal status of general principles of law, arguing that fundamentally divergent legal systems, particularly those shaped by socialist and bourgeois ideological frameworks, lack a sufficiently common normative foundation to generate universal legal principles. On this view, the "general principles of law" referred to in Article 38 are not an autonomous source of international law but rather derivative abstractions from treaties and customary international law[6]. Accordingly, international legal norms are formed exclusively through treaty and custom, while domestic legal systems and judicial practice serve only as auxiliary materials in their development. In a similar vein, Kelsen questions the possibility of deriving universally valid legal principles from ideologically fragmented legal orders, while Professor Zhou Kunsheng explicitly confines the sources of international law to treaties and custom alone[7]. The conceptual consequence of this approach is a strictly dualistic and closed model of international law that excludes general principles as an independent normative category.

The second approach advances the opposite position, arguing that general principles of law constitute both an independent source of international law and a manifestation of natural law.

Proponents of this view emphasize that such principles reflect a shared normative consciousness of humankind that transcends individual domestic legal systems and therefore cannot be reduced to treaty or customary rules alone. According to Luo, general principles of law derive simultaneously from natural law and the international legal order[8]. In a similar direction, Zhou Zhonghai argues that, irrespective of theoretical disagreements regarding their origin, general principles of law are widely accepted as part of a universal normative framework rooted in natural law reasoning [9](Zhou, 2008). From this perspective, the limited explicit invocation of general principles by international courts does not indicate their insignificance, but rather reflects their embedded and implicit operation within judicial reasoning as foundational moral-legal standards.

The third approach, which this study endorses, accepts the autonomy of general principles of law but rejects their classification as natural law, instead locating them firmly within positive international law. This position is supported by the drafting history of the Statute of the Permanent Court of International Justice, where the Advisory Committee of Jurists deliberately placed general principles of law alongside treaties and customary international law as co-equal sources of

[6]Tong Jian, Liu Huasheng and Liu Wenzong, *Theoretical Problems of International Law* (World Knowledge Press 1965) 131–133.
[7] Zhou Gengsheng, *International Law, Vol 1* (Commercial Press 1981) 10.
[8] Luo Guoqiang, 'The Dilemma and the Way Out of General Legal Principles' (2010) 2 *Law Review* 77–83.
[9] Zhou Zhonghai, *International Law* (China University of Political Science and Law Press 2008) 72

law, thereby indicating their intended normative parity. Their express inclusion in Article 38 of the ICJ Statute confirms that they were conceived as an operative and independent source of law rather than a subsidiary interpretative technique[10]. Further support is found in the interpretative breadth of the United Nations Charter preamble, which refers to "other sources of international law," a formulation sufficiently broad to encompass general principles of law[11]. A textual reading of Article 38(1)(c) further confirms that general principles are derived from the common features of domestic legal systems but acquire independent legal force once recognized at the international level, thereby transforming domestic legal convergence into a distinct source of positive international law.

This study supports the third approach because both the first and second approaches fail to fully capture the dual normative nature of general principles of law. While the first approach underestimates the functional convergence of domestic legal systems, the second overextends their normative basis into natural law without sufficiently accounting for their positive legal recognition within Article 38. In practice, despite differences in political and economic systems, domestic legal orders exhibit significant structural commonalities. As Bodenheimer observes, although socio-economic systems vary across states, legal systems inevitably share foundational principles that law is capable of identifying and systematizing[12]. Moreover, the explicit codification of general principles of law in Article 38 of the ICJ Statute, together with scholarly support from authorities such as Li Haopei and Zhou Zhonghai, confirms their status as an independent source of international law. The claim that they are merely domestic in origin fails to account for the transformative legal process through which domestic principles, once recognized and applied internationally, acquire autonomous normative authority within the international legal order.

In terms of their legal characteristics, general principles of law are defined by three interrelated functions: independence, complementarity, and interpretative authority. First, their independence is confirmed by Article 38(1) of the ICJ Statute, which lists treaties, customary international law, and general principles of law without establishing any hierarchical order among them. As Oppenheim observes, general principles of law operate independently of both treaties and custom (Lawrence, 1915), while Li Haopei emphasizes that the structure of Article 38 is purely descriptive and does not imply normative hierarchy[13]. Zhou Zhonghai similarly identifies general principles of law as an autonomous third source of international law[14]. This independence is reflected in judicial practice, where international courts directly apply general principles in the absence or insufficiency of treaty and customary rules, as illustrated by the International Court of Justice in the Temple of Preah Vihear case (1962), where the principle of estoppel was used to

[10] Song Jie, 'Article 38 of the Statute of the International Court of Justice: The Drafting Process and the Enlightenment' (2019) 4 *International Law Studies* 33–49.

[11] Wang Tieya, *An Introduction to International Law* (Peking University Press 1998) 92.

[12] Edgar Bodenheimer, *Law, Legal Philosophy and Legal Method* (China University of Political Science and Law Press 1999) 4.

[13] Li Haopei, *The Concept and Sources of International Law* (Guizhou People Press 1994) 110; Zhou Zhonghai, *International Law* (China University of Political Science and Law Press 2008) 72.

[14] Zhou Zhonghai, *International Law* (China University of Political Science and Law Press 2008) 72.

affirm Cambodia's sovereignty, and by the Permanent Court of International Justice in the Eastern Greenland case (1933), where estoppel similarly played a decisive role[15].

Second, general principles of law perform a complementary or gap-filling function within the international legal system. Where treaty law and customary international law fail to provide a complete or determinative rule, general principles operate as residual norms ensuring the completeness and functionality of the legal system. In the Walfish Bay arbitration, it was explicitly recognized that, where positive law does not resolve a dispute, general principles of law must guide adjudication (Germany v Great Britain, 1911)[16]. Likewise, in disputes concerning religious property, tribunals have relied on general principles of law and equity where treaty provisions were insufficient. The drafting history of the PCIJ Statute further confirms that general principles were introduced precisely to prevent jurisdictional denial resulting from legal lacunae, ensuring that international adjudication remains possible even in the absence of express treaty or customary rules[17]. Accordingly, general principles function as a necessary residual layer of international law that safeguards its systemic completeness.

Third, general principles of law perform an important interpretative function in international adjudication. Where treaty provisions or customary rules are ambiguous or open-textured, general principles assist in clarifying their meaning and ensuring coherent legal interpretation. International courts rarely rely on a single source of law in isolation; rather, they integrate multiple sources to achieve consistent legal reasoning. In the Fubini case (1959), for instance, the Conciliation Commission resolved the dispute by applying general principles of international law alongside relevant treaty provisions, demonstrating their role in harmonizing and stabilizing legal interpretation[18]. This interpretative function confirms that general principles of law are not merely residual rules for exceptional situations but an integral component of the methodological structure of international judicial reasoning.

DISCUSSION. General principles of law are conceptually distinct from treaties and customary international law, yet their relationship with customary international law has not been sufficiently theorized in much of the literature, resulting in persistent confusion as to their legal nature and functional autonomy. While the relationship between treaties and custom has been examined extensively, the interaction between general principles of law and customary international law remains comparatively underdeveloped, despite its importance for a coherent understanding of Article 38(1) of the Statute of the International Court of Justice. This lack of sustained analysis has encouraged a mistaken tendency to assimilate general principles of law into customary international law, thereby obscuring their independent normative character. A clearer distinction between the two is therefore essential for doctrinal precision in international law.

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[15] *Temple of Preah Vihear (Cambodia v Thailand)* [1962] ICJ Rep 6 https://www.icj-cij.org/case/45 Accessed 18 June 2026.
[16] *Germany Great Britain* (1911) XI RIAA 263 https://legal.un.org/riaa/cases/vol_XI/263-308.pdf Accessed 18 June 2026.
[17] International Law Commission, *Memorandum by the Secretariat on General Principles of Law* UN Doc A/CN.4/742 (2020) para 85 https://legal.un.org/ilc/documentation/english/a_cn4_742.pdf Accessed 18 June 2026.
[18] *Fubini Case* (1959) XIV RIAA 227 https://legal.un.org/riaa/vol_XIV/ Accessed 18 June 2026.

Customary international law, as reflected in Article 38(1)(b) of the ICJ Statute, consists of "general practice accepted as law." The International Law Commission has confirmed that customary international law is formed through two elements: a general and consistent state practice, and opinion juris, namely the belief that such practice is legally required[19]. In establishing the existence of a customary rule, international courts examine both the extent of state practice and the subjective conviction that the conduct in question is undertaken as a matter of legal obligation. General practice must therefore be sufficiently widespread, representative, and consistent over time to support the emergence of a binding norm. Yet neither the frequency nor the duration of practice is, by itself, decisive; the crucial factor is the combination of practice and legal conviction, as the International Court of Justice made clear in the North Sea Continental Shelf cases (1969), where it emphasized that customary law requires not only extensive practice but also opinio juris[20].

The distinction between general principles of law and customary international law becomes clearer when their constitutive structures are compared. General principles of law originate primarily in the domestic legal systems of states and reflect common legal reasoning across different jurisdictions, such as good faith, estoppel, res judicata, and prescription. Their existence does not depend on repeated inter-state conduct or on the presence of opinio juris at the international level. Instead, their international legal relevance arises from their recognition as common principles across municipal legal systems and their subsequent reception into international law. This is fundamentally different from customary international law, which emerges from consistent state conduct performed under a sense of legal obligation. In this sense, customary international law is grounded in horizontal behavior among states, whereas general principles of law are grounded in vertical convergence across domestic legal orders before being projected into the international sphere.

This structural distinction carries significant doctrinal consequences. First, the epistemic basis of recognition differs: customary international law requires proof of both practice and opinio juris, while general principles of law are identified through comparative legal analysis rather than through evidence of inter-state behavior[21]. Second, the process of normative formation differs: customary international law develops gradually through repeated state practice, whereas general principles of law are abstracted from recurring legal concepts already embedded in domestic legal systems. Third, the nature of the obligation differs, customary international law binds states through conduct accepted as legally obligatory, while general principles of law function as foundational legal standards that guide judicial reasoning even in the absence of prior international practice.

These differences show that the two categories are not interchangeable and cannot be reduced to one another without distorting their legal function. International jurisprudence confirms this distinction. In the Asylum case (Colombia v. Peru, 1950), the International Court of Justice

[19] International Law Commission, *First Report on General Principles of Law* UN Doc A/CN.4/732 (2019) para 177 https://legal.un.org/ilc/documentation/english/a_cn4_732.pdf Accessed 18 June 2026.
[20] *North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 3 https://www.icj-cij.org/case/51 Accessed 18 June 2026
[21] Li Haopei, *The Concept and Sources of International Law* (1994) 110.

declined to recognize a regional customary rule because the evidence of consistent practice and opinio juris was insufficient, illustrating the demanding evidentiary threshold applicable to customary international law[22]. Likewise, in the North Sea Continental Shelf cases (1969), the Court rejected the claim that the equidistance principle had crystallized into custom, finding that neither widespread practice nor legal conviction had been sufficiently established[23]. By contrast, general principles of law such as estoppel and good faith have been applied by international courts without proof of corresponding inter-state practice, which demonstrates their different methodological basis. These cases reveal that customary international law and general principles of law operate according to distinct legal logics: the former is inductive and empirical, whereas the latter is comparative and systemic.

The assumption that general principles of law are absorbed into customary international law is therefore doctrinally unsustainable. Such a view conflates two separate normative processes and wrongly reduces general principles to a derivative status dependent on state behavior. In reality, many general principles pre-exist their international application because they have already been recognized across domestic legal systems. Their international significance does not depend on the repetition of state conduct, but on their cross-systemic validity and their functional necessity in adjudication. This is precisely why international courts frequently rely on general principles to fill legal gaps or to support interpretation, even where no customary rule can be established. Treating general principles as a subset of custom would therefore deprive them of their gap-filling and interpretative functions and undermine the structure of Article 38(1) of the ICJ Statute.

In light of the above, general principles of law and customary international law must be understood as conceptually and methodologically distinct sources of international law. Customary law is based on state practice and opinio juris within the international system, whereas general principles are derived from the comparative convergence of domestic legal systems and operate as autonomous normative standards in international adjudication. Recognizing this distinction is essential not only for doctrinal clarity but also for preserving the coherence of Article 38(1) as a framework of sources. Failure to maintain this distinction results in conceptual reductionism, in which general principles are mistakenly subsumed under custom and their independent role in international legal reasoning is obscured.

In conclusion, since the adoption of the Statute of the Permanent Court of International Justice in 1920 and, subsequently, Article 38(1) of the Statute of the International Court of Justice, general principles of law have occupied a distinctive and increasingly important position in the system of international law. The analysis in this article shows that the nature, legal status, and functional scope of general principles of law cannot be adequately understood by treating them either as mere supplements to treaties and custom or as a form of natural law detached from the positive international legal order. Rather, general principles of law are best understood as an independent source of international law whose legal force arises from the commonalities of

[22] *Asylum (Colombia v Peru)* [1950] ICJ Rep 266 https://www.icj-cij.org/case/7 Accessed 18 June 2026.
[23] *North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 3 https://www.icj-cij.org/case/51 Accessed 18 June 2026.

domestic legal systems and whose operation is confirmed through international recognition and judicial application. This conclusion is supported by the drafting history of Article 38, the doctrinal debate surrounding the source theory of international law, and the practice of international courts and tribunals.

The study further demonstrates that the relationship between general principles of law and customary international law must be carefully distinguished. Customary international law is formed through general and consistent state practice accepted as law, whereas general principles of law are derived from the comparative convergence of domestic legal systems and do not depend on the same evidentiary requirements as custom. Their overlap in certain judicial settings does not eliminate their conceptual distinction. On the contrary, their differences in formation, proof, and legal function confirm that general principles of law perform a separate and irreplaceable role in international adjudication. In particular, they serve as an independent normative basis, a supplementary mechanism for filling gaps in treaty and customary law, and an interpretative tool for clarifying ambiguous legal rules.

From a scientific perspective, the main contribution of this article lies in clarifying the doctrinal ambiguity surrounding general principles of law and in demonstrating that their legal nature is rooted in positive law rather than natural law. From a practical perspective, the study shows that a proper understanding of general principles of law is essential for the coherence of international judicial reasoning, the effective application of Article 38(1), and the orderly development of the international legal system. In resolving the research problem, this article concludes that treaties and customary international law remain the primary sources of international law, but general principles of law constitute a distinct and autonomous third source that strengthens the completeness, consistency, and fairness of international law. Their recognition is therefore not merely theoretical; it is necessary for ensuring that international adjudication remains capable of addressing legal silence, avoiding interpretative uncertainty, and promoting the systematic development of international legal norms.

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7. UN Doc A/CN.4/742 (2020) para 85

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