I. Introduction

There are at least two ways to approach the subject-matter of today's discussion. One way would be to look at different cases decided by the Court and search for references to rules of customary international law and then examine the manner and reasons for such references. Another way would be to identify if the Court has a particular method in approaching rules of customary international law. Ideally, for a comprehensive study on the issue both studies should be carried out, but, in view of time limits, I shall focus on the identification of the method.

At the start of reflecting on the European Court's approach to customary rules of international law, it is necessary to determine the approach that the Court has adopted in general in relation to rules of international law other than the text of the Convention and its Protocols, being mindful of the fact that the Court's jurisdiction is limited to the Convention and the Protocols.1

The Court has always declared that it interprets the Convention in accordance with the rule of interpretation of treaties as enshrined in the Vienna Convention on the Law of Treaties. In order to determine the meaning of the terms and phrases used in the Convention, the Court is guided mainly

* Views are expressed in a private capacity and do not by any means bind the Court.

1) In accordance with Article 32 of the Convention,

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

II. *Demir and Baykara* Case

In the case of *Demir and Baykara v. Turkey* [GC], no. 34503/97, ECHR 2008, the Court took the opportunity to explain in detail its understanding of the two notions in Article 31 (c), i.e., “other rules” and “applicable between the parties”. The Court explained the following: “On the contrary, [the Court] must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 62, ECHR 2008, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI and *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 150, ECHR 2005-VI; see also Article 31 § 3 (c) of the Vienna Convention).”

The Court continued spelling out what could be seen as its pronouncement of an open and integrationist approach to international law. The Court thus said:

Being made up of a set of rules and principles that are accepted by the vast majority of States, the common international or domestic law standards of European States reflect a reality that the Court cannot disregard when it is called upon to clarify the scope of a Convention provision that more conventional means of interpretation have not enabled it to establish with a sufficient degree of certainty. The Court observes in this connection that in searching for common ground among the norms of international law it has never distinguished between sources of law according to whether or not they have been signed or ratified by the respondent State.

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2) See *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008.