The Martens Clause reads:

“Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity[1] and the dictates of public conscience.”

It is named after Fyodor Fyodorovich Martens, who introduced the clause for the first time in the Preamble of the 1899 Hague Convention[2] (as a compromise in discussions on the treatment of fighters not accorded prisoner-of-war status). The Martens Clause, understood today as of general applicability, has acquired the status of a customary rule[3] and has been adopted, either in whole or in part, by other IHL instruments.

The effect of the clause is to underline that in cases not covered by IHL treaties, persons affected by armed conflicts will never find themselves completely deprived of protection. Instead, the conduct of belligerents remains regulated at a minimum by the principles of the law of nations, the laws of humanity, and from the dictates of public conscience.

See Fundamental Principles of IHL[4]; Humanity[1];
Chapter 4, III, Fundamental Principles of IHL

Chapter 4, III, 1. The Martens Clause

LEGAL SOURCE

GCI, 63 (see ICRC updated Commentary)

GCII, 62 (see ICRC updated Commentary)

GCIII, 142

GCIV, 158

DOCUMENT

Minimum Humanitarian Standards (Part B., Paras 84-85)

CASES

ICJ, Nicaragua v. United States (Para.218)

ICTY, The Prosecutor v. Kupreskic (Paras. 525-526)

Colombia, Constitutional Conformity of Protocol II (Para. 22)

Autonomous Weapon Systems
BIBLIOGRAPHIC RESOURCES


Source URL: https://casebook.icrc.org/glossary/martens-clause

Links
[1] https://casebook.icrc.org/glossary/humanity
[6] https://casebook.icrc.org/law/fundamentals-ihl#d_iii_1