



Published on *How does law protect in war? - Online casebook* (<https://casebook.icrc.org>)

Home > Martens Clause

---

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 <sup>[1]</sup> 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 <sup>[2]</sup> (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 <sup>[3]</sup> 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](#) <sup>[4]</sup>; [Humanity](#) <sup>[1]</sup>;

**OUTLINE**

Chapter 4, III, Fundamental Principles of IHL <sup>[5]</sup>

Chapter 4, III, 1. The Martens Clause <sup>[6]</sup>

## LEGAL SOURCE

GCI, 63 <sup>[7]</sup> (see ICRC updated Commentary <sup>[8]</sup>)

GCII, 62 <sup>[9]</sup> (see ICRC updated Commentary <sup>[10]</sup>)

GCIII, 142 <sup>[11]</sup>

GCIV, 158 <sup>[12]</sup>

## DOCUMENT

Minimum Humanitarian Standards <sup>[13]</sup> (Part B., Paras 84-85 <sup>[14]</sup>)

## CASES

ICJ, Nicaragua v. United States (Para.218) <sup>[15]</sup>

ICTY, The Prosecutor v. Kupreskic (Paras. 525-526) <sup>[16]</sup>

Colombia, Constitutional Conformity of Protocol II (Para. 22) <sup>[17]</sup>

Autonomous Weapon Systems <sup>[18]</sup>

## BIBLIOGRAPHIC RESOURCES

CASSESE Antonio, “The Martens Clause: Half a Loaf or Simply Pie in the Sky?”, in *EJIL*, Vol. 11, No.1, 2000, pp. 187-216.

CRAWFORD Emily, “The Modern Relevance of the Martens Clause”, in *ISIL Yearbook of International Humanitarian and Refugee Law*, Vol. 6, 2006, pp. 1-18.

DUPUY Pierre-Marie, “Les ‘considérations élémentaires d’humanité’ dans la jurisprudence de la Cour internationale de Justice”, in *Mélanges en l’honneur de Nicolas Valticos*, Paris, Pedone, 1999, pp. 117-130.

HEINTZE Hans-Joachim, “Terrorism and Asymmetrical Conflicts: a Role for the Martens Clause?”, in GIEGERICH Thomas (ed.), *A Wiser Century?: Judicial Dispute Settlement, Disarmament and the Laws of War 100 Years After the Second Hague Peace Conference*, Berlin, Duncker and Humblot, 2009, pp. 429-434

MERON Theodor, “The Martens Clause, Principles of Humanity and Dictates of Public Conscience”, in *AJIL*, Vol. 94/1, 2000, pp. 78-89.

PUSTOGAROV Vladimir V., “The Martens Clause in International Law”, in *Journal of the History of International Law*, Vol. 1/2, 1999, pp. 125-135.

TICEHURST Rupert, “The Martens Clause and the Laws of Armed Conflict”, in *IRRC*, No. 317, March-April 1997, pp. 125-134.

VEUTHEY Michel, “Public Conscience in International Humanitarian Law Today”, in FISCHER Horst, FROISSART Ulrike, HEINTSCHEL VON HEINEGG Wolff & RAAP Christian (eds), *Crisis Management and Humanitarian Protection: In Honour of Dieter Fleck*, Berlin, Berliner Wissenschafts-Verlag, 2004, pp. 611-642

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

#### **Links**

[1] <https://casebook.icrc.org/glossary/humanity>

[2] <https://casebook.icrc.org/glossary/hague-conventions>

[3] <https://casebook.icrc.org/glossary/customary-international-humanitarian-law>

[4] <https://casebook.icrc.org/glossary/fundamental-principles-ihl>

[5] [https://casebook.icrc.org/law/fundamentals-ihl#d\\_iii](https://casebook.icrc.org/law/fundamentals-ihl#d_iii)

[6] [https://casebook.icrc.org/law/fundamentals-ihl#d\\_iii\\_1](https://casebook.icrc.org/law/fundamentals-ihl#d_iii_1)

[7]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=1019C76849BB95ECC12563CD0>

[8] [https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=E6BD0D82E2A36F3EC1257F7A)

[databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=E6BD0D82E2A36F3EC1257F7A](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=E6BD0D82E2A36F3EC1257F7A)

[9]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=691BB45CFA8B2650C12563CD0>

[10] [https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=42376D4763042448C125811500)

[databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=42376D4763042448C125811500](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=42376D4763042448C125811500)

[11]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=21ABCE5C723889A3C12563CD0>

[12]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=38BF216CC3FB859EC12563CD0>

[13] <https://casebook.icrc.org/case-study/un-minimum-humanitarian-standards>

[14] [https://casebook.icrc.org/case-study/un-minimum-humanitarian-standards#part\\_b\\_para\\_84](https://casebook.icrc.org/case-study/un-minimum-humanitarian-standards#part_b_para_84)

[15] <https://casebook.icrc.org/case-study/icj-nicaragua-v-united-states#para218>

[16] [https://casebook.icrc.org/case-study/icty-prosecutor-v-kupreskic-et-al#para\\_525](https://casebook.icrc.org/case-study/icty-prosecutor-v-kupreskic-et-al#para_525)

[17] [https://casebook.icrc.org/case-study/colombia-constitutional-conformity-protocol-ii#para\\_22](https://casebook.icrc.org/case-study/colombia-constitutional-conformity-protocol-ii#para_22)

[18] <https://casebook.icrc.org/case-study/autonomous-weapon-systems>

[19] <https://casebook.icrc.org/case-study/colombia-peace-agreement>

