

Fyodor Fyodorovich Martens (1845-1909) a humanist of modern times

by Vladimir Pustogarov

In the history of humankind, no matter how far back we look into the past, peaceful relations between people and nations have always been the ideal, and yet this history abounds in wars and bloodshed. The



*Fyodor Fyodorovich
Martens (1845-1909)*

Original: Russian.

documentary evidence, oral tradition and the mute testimony of archaeological sites tell an incontrovertible tale of man's cruelty and violence against his fellow man. Nevertheless, manifestations of compassion, mercy and mutual aid have a no less ancient record. Peace and war, goodneighbourly attitudes and aggression, brutality and humanity exist side by side in the contemporary world as well.

The primary task of modern times is to break this vicious chain and to put an end to war and violence — a goal which is all the more vital because of its close links with the need to prevent the ecological disaster that threatens the whole planet and its inhabitants.

Recipes for the elimination of war are many and varied and are all worthy of attention, but at the same time no one can question the significance and fruitfulness of the noble idea of protecting the life, honour and dignity of human beings by legal means, with the ultimate aim of banishing war itself from international relations. In this connection, the importance of promoting legal awareness is primordial, since *homo sapiens* behaves in accordance with conceptions formed in his mind, and a legal norm can come into effect only when it becomes inherent in the way of thinking of a large enough number of people. The Ten Commandments of the Bible can be carved on stone tablets, cast in bronze or stamped on steel plates, but will nevertheless remain a dead letter unless they become part of the legal consciousness of society.

The evolution of the moral values that determine the concept of justice (*justitia*) entails changes in the law, including international law, and the crowning points of this development are marked by the names of outstanding lawyers. It is indeed regrettable that our cultural tradition — at least, since the fall of ancient Rome - has placed lawyers far from the vanguard, behind emperors and army commanders, men of letters and painters. The poems of the 12th century minnesinger Walter von der Vogelweide are still included in anthologies of German verse, Napoleon and Suvorov are still legendary heroes of the past and the canvases of Titian and Rubens are still regarded as masterpieces — but who remembers Eike von Rāphoff, the first codifier of mediaeval law and the author of the rhymed *Saxon Mirror*?

It was not until the 17th century that Hugo Grotius became widely known in Europe and more centuries passed before international developments in the last quarter of the 19th century brought forth a brilliant galaxy of international law experts from various countries who laid the foundations of contemporary international law.

One of the most outstanding representatives of this pleiad was *Fyodor Fyodorovich Martens* (1845-1909), a Russian jurist, diplomat and publicist whose influence on international law is appreciable to this day.

Martens as an international lawyer

F.F. Martens was born into a poor family in the town of Pernov (now Pärnu) of the Liefland province of the Russian Empire. At that time the province comprised the territory of modern Latvia and Estonia.

At the age of nine he lost both his parents and was sent to a Lutheran orphanage in St. Petersburg, where he successfully completed the full course of studies at a German high school and in 1863 entered the law faculty of St. Petersburg University.

Very little is known of his childhood and youth. No doubt they were not easy. He himself did not like to recall those years, although sometimes the accumulated bitterness would suddenly burst forth, and he would write in his diary such entries as this one on the occasion of his 60th birthday: "I have never had a worse day in my life, even if I think back to my childhood years".¹ Apparently the hardships of his childhood had not faded from his memory...

At the university the young man was a brilliant student and his gifts caught the attention of I.I. Ivanovsky, the faculty dean, whose support enabled him to continue his studies at the university and to obtain the degree of professor of international law.

Martens soon defended his master's thesis *On the law of private property in time of war* and was sent on a study tour abroad, attending lectures at the universities of Vienna, Heidelberg and Leipzig. As may be seen from his later works, he was mainly influenced by A.D. Gradovsky, professor of St. Petersburg University, who advocated the ideas of the rights of the individual and West European constitutionalism, by L. von Stein, professor at the University of Vienna, well known for his works on management and "social intercommunication" across State boundaries, and by J.K. Bluntschli, professor at Heidelberg University, who published *The Modern International Law of Civilized States* in the form of a code.

¹ Archives of Russian Foreign Policy (ARFP), Inventory 787, File 9, Storage unit 6, pp. 73-74.

His growing knowledge of Russian and West European schools of thought helped to broaden his outlook and to develop his spirit of innovation and independent thinking. When delivering his first lecture to students in January 1871, he defied tradition by not continuing the course begun by his predecessor, but by criticizing the current state of the science of international law, on the grounds that it was not yet based on the study of material factors, was not trying to identify the objective laws of development and “made no attempt to investigate the internal laws of communication between States and of international relations”. Martens believed that it was time to “start looking into the laws of the historical development of nations in their international life”.² It was indeed bold of the young academic to claim to have created his own school of thought in international law.

Martens was above all opposed to any concept implying that law was based on force. He regarded such views as unworthy of human beings and pernicious for international relations, pointing out that in such cases even prominent experts were confusing law enforcement procedures with law itself, for the fact that law was safeguarded by force did not mean that force should serve as the basis for law. According to Martens, the inviolability of human life, honour and dignity is recognized to be the right of everyone, not because it is protected by criminal law, but because everyone has an inalienable right to life, honour and dignity.

With regard to the driving force of international law, Martens saw it in the development of international relations, reflecting the nations’ need to communicate among themselves: “*ubi societas ibi jus est*” (“where there is communication there is law”). He wrote: “The idea of international communication under which every independent State is an organic part of a single whole, linked with the other States by their common interests and rights, should serve as the basis for a scientific system of contemporary international law”.³

The real needs of States are constituted by international relations, which in turn are expressed in international law. At the same time, international law is not merely a device for recording the formation of

² F.F. Martens, *On the goals of contemporary international law*, St. Petersburg, 1871 (in Russian).

³ F.F. Martens, *The contemporary international law of civilized nations*, vol. 1, St. Petersburg, 1882, p. 178 (in Russian).

relations between States, but is also a manifestation of the moral values of the human race.

Although a down-to-earth realist, Martens stressed the “ideal power of law”, the power of the ideals of justice and humanity, and as a jurist and a humanist, he saw the basis for an equitable legal order, not in State sovereignty, “political balance” or nationalistic ideas, but solely in law: it is only law and the absolute rule of law that can ever serve as a basis for a properly organized life, free from war and violence.

In his analysis of the history of antiquity, feudalism and the modern era, Martens recorded a steady shift in the correlation between law and force in favour of law. He believed that “in the area of international relations, too, the time will come when the great law of social life will finally prevail, and each nation will exist for the world and the world for each nation”.⁴

Martens’ sublime humanism and foresight caused him to situate the human being at the centre of international life. He concludes that there is but one law running through the entire history of nations, namely “the principle of respect for the human person”.⁵

It is to his credit that he placed the human being at the centre of international law in spite of the views prevailing at the time. Martens considered protection of the rights, interests and property of a human being to be the substance of the entire system of international relations and regarded respect for human rights as a yardstick of the degree of civilization of States and international relations. “It is our conviction,” he wrote, “that once the human being as such is recognized by the State to be the source of civil and political rights, international life will reach a high degree of development, law and order. And the reverse is also true — international relations can neither be developed nor established on a firm basis with a State in which the human person enjoys no rights and is oppressed”.⁶ The wording of Martens’ credo is outstandingly clear: “Protection of the individual is the ultimate purpose of the State and goal of international relations”⁷ — an idea and formulation worthy of the UN Charter or the Universal Declaration of Human Rights!

⁴ F.F. Martens, *The Eastern War and the Brussels Conference*, St. Petersburg, 1879, p. 45 (in Russian).

⁵ F.F. Martens, *op. cit.* (note 3), pp. 23-34.

⁶ *Idem*, pp. 110-129.

⁷ *Idem*.

Martens' humanism was incompatible with the spirit of militarism — even that emanating from his own homeland. The essay he contributed to a St. Petersburg journal in connection with the celebration of the 150th anniversary of the University of Bern (Switzerland), to which he was invited as guest of honour, is noteworthy in this respect. Martens was fascinated by the fact that a country as small as Switzerland had seven universities, that the university jubilee was being celebrated as a public holiday by the town and the whole canton of Bern and that this little canton maintained a university and provided for it better than Russia did for her institutions. "For us Russians," he wrote, "the history of this small cantonal University of Bern is enlightening at least by familiarizing us with the experiences and vicissitudes of cultural life". To this he added: "The Swiss realized long ago what constitutes the true, essential and unshakeable might of every nation. It is not millions of bayonets, an immense national territory or a vast population, but it is the power before which everyone must bow and which triumphs over everything — the power of superior culture, intellect and talent".⁸

Martens' scholarly outlook determined his practical activities as both a lawyer and a diplomat.

Martens as a diplomat

Unlike pacifists and representatives of similar trends, Martens considered the idea of the abolition of war in the immediate or more distant future to be purely utopian. In his opinion, the only solution that was compatible with the humane goals of law was to limit the horrors of war by means of clearly defined rules accepted by all States.

It is worth mentioning that in Martens' time an anti-war offensive was being launched from many quarters and along different lines. The number of peace associations was growing. After emerging in the USA and Great Britain, they soon sprang up in a considerable number of countries. By 1895 there were 125 of them, including 36 in Great Britain, 26 in Germany, 14 in France, 14 in Italy, 9 in Switzerland and so forth, and at the beginning of the 20th century Russia was the only European country in which there were none. In Brussels in 1848, the peace associations held their first congress, which then became an annual event. Their activities influenced world public opinion by decrying the glorification of war, and

⁸ "The European Herald", St. Petersburg, 1884, No. 10, pp. 852-858 (in Russian).

the Interparliamentary Conferences held regularly after the first such conference in Paris in 1899 had a similar effect.⁹

The idea of joining the civilized States in a single union within which all conflicts would be resolved peacefully was quite popular at the time. One of its most ardent supporters was L.A. Kamarovsky (1846-1909), a Russian jurist best known as the initiator of a permanent international court, who suggested as a first step the establishment of a union of European and American States along the lines of the USA,¹⁰ in the belief that strengthening the practice of federalism was important for promoting the idea of peace.¹¹

The demand for the reduction of armaments and — in some circles — the concept of universal disarmament received relatively wide support among the general public.

The development and production of increasingly devastating weapons triggered a counterreaction, and in 1868, at the initiative of Russia, a number of States signed the St. Petersburg Declaration, renouncing the use, in time of war at sea or on land, “of any projectile of a weight below 400 grammes which is either explosive or charged with fulminating or inflammable substances”.¹² That provision was motivated by the desire to avoid excessive human suffering.

Attention is usually concentrated on this particular rule, whereas the Declaration of 1868 contains a number of other important principles, for instance, that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy”. On the basis of the laws of humanity, the Declaration banned all arms, the use of which would exceed that object of war and called for control to be exercised over future technical improvements of armaments.

Another fast-growing trend in mitigating the horrors of war was towards providing care for the wounded, prisoners of war and civilians. This work received a strong impetus from the activities of Henry Dunant,

⁹ L.A. Kamarovsky, *The success of the idea of peace*, Moscow, 1898, pp. 89-179 (in Russian).

¹⁰ L.A. Kamarovsky, *On an international court*, Moscow, 1881, pp. 483-501 (in Russian).

¹¹ L.A. Kamarovsky, *The question of an international organization. The United States of Europe*. Moscow, 1905 (in Russian).

¹² Declaration renouncing the use, in time of war, of explosive projectiles under 400 grammes weight, St. Petersburg 1868 (“Declaration of St. Petersburg”).

a young Swiss who had witnessed the aftermath of the bloody battle of Solferino (during the Franco-Austro-Italian War of 1859) and had written a book about that experience: "A Memory of Solferino". At the end of his book, Dunant proposed that every country should set up a society to care for the wounded and that an international congress should be held on the subject. The proposals fell on fertile soil: the first meeting of the *International Committee for Aid to Wounded Soldiers* was held in 1863, and 1864 saw the adoption of the (Geneva) *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*. Societies for relief to the wounded began to emerge in various countries, and in 1880 Dunant's original Committee became known as the *International Committee of the Red Cross (ICRC)*.

The picture outlined above should not, however, give a false impression of States' willingness to impose restrictions on armaments and means of warfare or to introduce more humane rules for the conduct of war. At that stage, a new legal awareness was only putting out its first shoots and the law-making process was in its early beginnings. As a matter of fact, Martens himself was soon to face some harsh realities.

Martens and the laws of war

With the backing of D.A. Miliutin, the Defence Minister who was close to the Tsar, Martens prepared a draft convention on the laws and customs of war, an instrument which was intended to establish universal rules of warfare for all belligerent States and included regulations for the treatment of the civilian population and of non-combatants in general. The rules were designed to mitigate the horrors of war, in accordance with the legal awareness and humanism that were growing among the general public.

At the initiative of Russia, Martens' draft was submitted to the International Conference convened in Brussels in 1874, but that assembly failed to adopt the convention. Although the text itself did not meet with any objection, the idea of restricting war by international rules came up against widespread resistance. The draft was finally adopted as a declaration of the Conference and did not become a convention until two decades later.

The results of the Brussels Conference did not discourage Martens, who defended his views in the press. In 1879, he published a voluminous work entitled *The Eastern War and the Brussels Conference* in which he strongly castigated the apologists of war. Of great significance was his two-volume course *The Contemporary International Law of Civilized*

Nations, published in 1881-1882, which ran into five editions and continued to be the most authoritative textbook in Russian universities for the next 30 years. It was soon translated into seven languages and was used by various foreign universities.

The publication of the *Collection of Treaties and Conventions Concluded by Russia with Foreign States* brought him world-wide fame. Its 15 bulky volumes, based on materials in the Russian archives, were issued in 1874-1909. By prefacing each treaty and convention with an essay on its history, Martens turned the collection into "a historical and diplomatic encyclopaedia of Russia's foreign relations".¹³

Martens was an active member of the Ghent Institute of International Law, participating, *inter alia*, in its work on documents relating to Red Cross activities. As from 1884, Martens represented Russia at all Red Cross conferences and was particularly active in the review of the initial Red Cross Convention at the Geneva Conference of 1906. In 1902, F.F. Martens received the Red Cross Distinguished Service Award for his services to society.

Martens' authoritative status gradually gained international recognition. During his 40 years of service in the Russian Ministry of Foreign Affairs, he represented Russia at nearly all the international conferences in which it participated. He thus took an active part in preparing the documents for the Berlin Conference on Africa (November 1884-February 1885) and the Brussels Conference on African Affairs (1889-1890), and also in drafting the main provisions of the "General Act on international measures for combating the maritime traffic in negroes". In 1893, Martens was a delegate to the First Conference on International Private Law and later represented Russia at the Second, Third and Fourth Conferences (1904). He acted as arbitrator in international disputes on a number of occasions, the best-known being his arbitration in the dispute between Great Britain and Holland in 1892: not only did his award satisfy both parties, but he also laid down the principle of a captain's jurisdiction, under the laws of the vessel's flag, for offences committed on the high seas. In 1899, as an umpire of the court of arbitration, Martens examined the territorial dispute between Great Britain and Venezuela (whose interests were represented by the USA). The demarcation line drawn by the court along the Orinoco river basin has ever since constituted the

¹³ M.A. Taube, *F.F. Martens (1845-1909) - An obituary*, St. Petersburg, 1909, p. 9 (in Russian). The volumes were published simultaneously in Russian and French.

frontier between Venezuela and Guyana. Martens was also a member of the Russian delegation which signed the peace treaty with Japan in Portsmouth (USA) in 1905.

The Hague Peace Conferences

The hour of Martens' triumph as a jurist and a diplomat came with the organization and conduct of the First World Peace Conference in The Hague in 1899.

We now know from archival documents that it was none other than Martens who drew up the programme of the Conference. On 12 August 1898, M.N. Muravyov, the Russian Minister for Foreign Affairs, circulated a note among the foreign envoys in St. Petersburg proposing that an international conference be convened with a view to ensuring "genuine peace and primarily putting an end to the progressive development of armaments". The note, drawn up without any prior consultations, came as a complete surprise to foreign States and was not substantiated by any preliminary drafts or well-considered plans in the Russian Ministry of Foreign Affairs itself. It was, so to speak, "a bare idea", intended to produce a general impact.

As it happened, the proposal to convene a disarmament conference did meet with an enthusiastic response among certain circles in several countries, and out of consideration for those feelings the Governments of Great Britain, France, Germany and other countries supported the Russian initiative. It was nevertheless clear to Martens who was following the foreign press coverage of the issue and to the senior officials of the Ministry of Foreign Affairs that none of the Powers were prepared to disarm. Martens was to learn this from his personal experience: when drawing up the conference programme, he quite reasonably assumed that Russia as the initiator should set a tangible, even if minor, example of disarmament, and therefore proposed to declare at the conference that in the year of its holding Russia would reduce the number of its army recruits during that year. Tsar Nicholas II, however, commented as follows on the draft programme: "I find it difficult to agree to a decrease in the strength of the Russian army".¹⁴

Having obtained a positive public response and seeing that any form of disarmament was utopian, the senior officials of the Ministry of Foreign

¹⁴ ARFP, Inventory 470, file 63, E.450.

Affairs were inclined to give the plan for the conference a quiet burial. Minister M.N.Muravyov, for instance, suggested that a meeting of the ambassadors accredited to St. Petersburg, which might come up with some kind of a declaration, should be substituted for the conference.

Martens, who had shouldered the burden of preparations for the conference, was of a different opinion. Although by now he did not believe in the feasibility of any reduction of armaments, he found a way out by transforming the conference on disarmament into the first peace conference.

The programme drawn up by Martens which later served as a basis for the work of the 1899 Hague Conference provided that:

1. With regard to disarmament, a declaration should be adopted to the effect that the States parties "in the near future undertake not to resort to military force for the protection of their rights and legal interests without prior endeavours to seek good offices, mediation or arbitration proceedings".

In addition to the above it was proposed to discuss some measures for freezing armaments.

2. Another aspect of the Conference's work concerned the establishment of a permanent court of international arbitration.

3. The third aspect of its work was the adoption of a convention on the laws and customs of war.¹⁵

The conference programme suggested by Martens not only brought the disarmament initiative of Russian diplomacy out of a deadlock, but also created a practicable basis for measures aimed at strengthening peaceful relations between nations and mitigating the horrors of war.

When the First Hague Conference opened on 6 May 1899, bringing together the representatives of 27 States (21 European countries, the USA, Mexico, China, Japan, Persia and Siam), Martens was elected Chairman of the Third Commission, dealing with the laws and customs of war.

Although the relevant draft convention had been submitted as early as 1874 in Brussels, the conciliation process in the Third Commission ran into a number of difficulties. At one point, a situation arose which Martens described as "critical": a group of small countries headed by Belgium

¹⁵ ARFP, Inventory 787, file 9, storage unit 4, pp. 80-86.

opposed the very principle of the rights and duties of armies of occupation, and demanded an unlimited right of resistance for the population of occupied territories. A solution was found in the form of the so-called "Martens clause", the reservation that he proposed to insert in the preamble to the convention, reading as follows: "... in cases not included in the Regulations adopted by them (*the States Parties — V.P.*), the inhabitants and the belligerents remain under the protection and rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience".¹⁶ Martens' proposal was greeted by applause and the whole convention was adopted unanimously.

In addition to presiding over the Third Commission, Martens repeatedly addressed the plenary meetings of the Conference and spoke in its Second Commission. His merits were so widely recognized that he came to be called "the life and soul of the Conference".

As a result of the discussions, the First Peace Conference adopted a resolution on the desirability of restricting military budgets, the Convention Respecting the Laws and Customs of War on Land and the Convention for the Pacific Settlement of International Disputes, which provided in particular for the establishment of a Permanent Court of Arbitration.

The significance of the Conventions signed at the First Peace Conference and the impact they had and still have on the development of contemporary international law do not require any further comment. Individual clauses of the Hague Conventions (including those signed in 1907) have given rise to the development of separate branches of law which have become so topical today. These Conventions are a memorial to F.F. Martens, that outstanding Russian jurist, diplomat and humanitarian. In evaluating Martens' contribution to the overall results of the Conference, Jean Pictet, a well-known expert on international humanitarian law, wrote that the Martens clause had been brought into existence by its author's "genius".¹⁷ It is noteworthy that the full text of a slightly amended version of the Martens clause was included in Additional Protocol I to the Geneva Conventions of 1949.¹⁸

¹⁶ As adopted by Convention (IV) Respecting the Laws and Customs of War on Land, of 18 October 1907, 8th preambular paragraph.

¹⁷ J. Pictet, *Development and Principles of International Humanitarian Law*, Dordrecht/Boston/Lancaster/Geneva, 1985, p. 60.

¹⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Article 1, par. 2.

The articles of the Hague Convention on the Laws and Customs of War look strange to the modern reader. "Prisoners of war may be set at liberty on parole..." (Article 10); it is forbidden "to kill or wound treacherously individuals belonging to the hostile nation or army", "to declare that no quarter will be given" (Article 23 (a) and (d)); "the pillage of a town or place, even when taken by assault, is prohibited" (Article 28); or (for occupied territories) "pillage is formally forbidden" (Article 47). But all this was a reflection of the contemporary realities of war, and it cannot be said that the provisions of the Hague Conventions are always observed in present-day conflicts. In any case, their humanitarian significance and their effect on legal awareness can hardly be overestimated.

The Martens clause

The Second World Peace Conference met in The Hague on 15 June 1907 with 44 countries participating. It was practically a world assembly, or "an international parliament" as Martens put it.

Martens again had to take a most active part in preparing the Conference programme, in its proceedings and in bringing about the adoption of agreed texts of the conventions. On the one hand, the organizational work was considerably facilitated by the fact that the way had been paved by the 1899 Conference, but on the other hand a substantial number of complex questions, left unsettled because of their difficulty, had accumulated for consideration by the Second Conference. In addition, that work had to be carried out in an atmosphere of deteriorating relations between the world Powers and of the formation of military blocs in preparation for a new war. The naval rivalry between Great Britain and Germany was particularly acute.

In the light of this new situation, the Tsar's Government decided to send Martens on a tour round the European capitals with a view to sounding out opinions and holding consultations.

In Berlin he met Kaiser Wilhelm II, in Paris — President Fallières, in London — Lord Grey, the Foreign Secretary, and King Edward VII, in The Hague — the whole royal family, in Italy — King Victor Emmanuel III and in Vienna — the Minister of Foreign Affairs von Ehtental and the Emperor Franz Josef. There were also numerous meetings with senior government officials and public figures. This tour by "Professor Martens" created quite a sensation and helped to promote the preparations for the Conference, although it naturally could not smooth over the existing Anglo-German and Franco-German differences. Wilhelm II, in

particular, strongly objected to any discussion of the British proposal for the reduction of armaments, threatening to disrupt the conference if such a discussion were to be held. Tsar Nicholas II was greatly influenced by Wilhelm II's position on this issue and Martens had to prove to him the "harmlessness" of the British proposal. The Tsar continued to vacillate, however, and was even thinking of cancelling the Conference altogether.

Those were the circumstances in which the Second Peace Conference, attended by delegates from 44 countries, started its work in The Hague on 15 June 1907. It should be noted in this connection that in Martens' theoretical course congresses of States, regularly convened at a world-wide level, were assigned the role of legislative bodies for the international community, as it was believed at the time that the prevailing trend was towards strengthening that community on the basis of law.

Four commissions were set up at the Conference, and Martens was elected Chairman of the Fourth, or "naval", Commission, which he called "the most difficult", since the Anglo-German rivalry was most clearly manifested there and Martens often had to settle differences between the protagonists. The Fourth Commission was nevertheless the first to complete its work, thanks to Martens' experience.

The Second Hague Conference ultimately adopted a Final Act to which 13 Conventions and a Declaration were annexed. The States parties agreed to convene the Third World Peace Conference after a specified interval.

The 1907 Conference revised and further developed a number of the provisions adopted in 1899, with the result that the documents of the First Conference are usually quoted in the form in which they were amended in 1907. The First Peace Conference has in a way been absorbed by its successor, and when reference is made to a Hague Convention it is an instrument of the 1907 Conference that is usually implied. The oblivion into which the First Peace Conference has fallen is politically and legally unjustified, and it would be more equitable to consider both conferences from the point of view of their interrelationship. Russia's initiative to mark the centenary of the 1899 Conference by convening the Third World Peace Conference is therefore worthy of support.

As we have already mentioned, the anti-war offensive was launched from different directions and took various forms, but practical realities soon channelled these activities into two trends which, although interrelated, are legally and structurally quite distinct. One trend focused on the protection of war victims — the wounded, prisoners of war,

internees and other non-combatants; the beginning of the codification process in this area being connected with the Geneva Conference of 1864 and the activities of the International Committee of the Red Cross. This trend is referred to in the literature as “the Law of Geneva”, while the other trend, focused on the rules of the conduct of war and constraints on the means of warfare and hence mainly concerned with combatants, has become known as “the Law of The Hague”.

Martens himself personified the unity and organic interrelationship of “the Law of Geneva” and “the Law of The Hague”. He took an active part in the development of “the Law of Geneva” and at the 1899 Hague Conference worked successfully for the adoption of a number of important provisions on non-combatants, primarily defining the status of prisoners of war, the wounded and the shipwrecked during hostilities at sea, as well as the status of civilians in occupied territories. Those provisions were subsequently incorporated in the Geneva Conventions of 1929 and 1949.

Martens and human rights

Martens has already been assigned his rightful place among the creators of international humanitarian law with respect to its “Law of Geneva” and “Law of the Hague” branches, but now we can include him among those who laid the foundations of another branch, that of the protection of fundamental human rights. Its codification is considered to start with the Universal Declaration of Human Rights of 1948, and which some jurists distinguish as “the Law of New York”.¹⁹ It was Martens who in his works and lawmaking activities placed the human person at the centre of international life and recognized the protection of the human being to be the ultimate objective of international law.

Fedor Fedorovich Martens died in 1909 and was buried in St. Petersburg.

Vladimir Vasilievich Pustogarov, an international jurist and Doctor of Law, was Deputy Director of the Institute of State and Law, Academy of Sciences (USSR), and is currently Senior Researcher at the Institute of Law and Government of the Russian Academy of Sciences. He is the author of the first monograph on F.F. Martens: “... *With the olive branch of peace. F.F. Martens - jurist, diplomat and publicist*” (Moscow 1993, 287 pages). In March 1996, he was awarded the *Martens Prize of the Russian Academy of Sciences*.

¹⁹ F. Kalshoven, *Constraints on the waging of war*, ICRC, Geneva, 1987, pp. 7-23.