

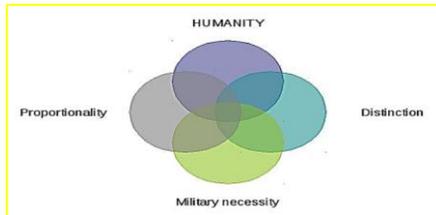
# The Principle of Humanity: A Beacon of Hope in the Modern 'Fog of War'

## Research Question

What is the **continued relevance of the Principle of Humanity** in the area of **Weapons Regulation** in International Humanitarian Law?

## General Principles of International Humanitarian Law (IHL)

- Principles of **Distinction**, **Military Necessity**, **Proportionality**, all under the overarching principle of **Humanity**.



- Unlike the other principles, which all "carry a particular, and well-defined, meaning in IHL", the principle of humanity remains "**vague in several respects**".
- However, by remaining vague, the principle of humanity offers flexible protection in IHL and "holds primacy as a space of common ground" in its role as **filling the various lacunae that remain in IHL**, offering a beacon of hope in the 'fog of war'.

## Relevance of the Martens Clause & Principle of Humanity in Weapons Regulation

- Following the introduction of the Martens Clause, it became obvious that the principle of humanity was necessary because "**all codifications omit some matters**".
- Thus, the Martens Clause was included in many IHL instruments, including **weapons regulation instruments** such as:

1907 Hague Convention;  
1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons;  
1997 Anti-Personnel Mine Ban Convention;  
2008 Convention on Cluster Munitions;  
2017 Treaty on the Prohibition of Nuclear Weapons.

- It is the flexibility of the principle of humanity which makes the **Martens Clause a "provision for centuries to come" in weapons regulation**, especially in dealing with the **emergence of new weapons technologies**.
- This continued relevance of the principle of humanity in weapons regulation in IHL is evident from its inclusion in the debates surrounding **Lethal Autonomous Weapons (LAWs)** and the **Introduction of Weapons into Outer Space**.

## Lethal Autonomous Weapons (LAWs)

- LAWs are robotic weapons which "will operate autonomously to **locate their own targets and destroy them without human intervention**".
- In 2013, **Human Rights Watch** released a report titled '**Losing Humanity: The Case Against Killer Robots**' based on the argument that LAWs should not be used in armed conflict situations **by virtue of the principle of humanity, as enshrined in the Martens Clause**.
- Taking the **human out of the loop of decision-making** in armed conflict is **unlikely to align with the principle of humanity**, which poses a challenge to the introduction of LAWs into armed conflicts.



## Conclusions

- The principle of humanity has not been lost in the 'fog of war', but instead "**remains as present as ever**" as a **beacon of hope** in the instances that IHL legislation never foresaw.
- The flexible protection offered by the principle of humanity, and the Martens Clause, ensures that the interests of humanity remain protected, especially in the face of **advancing weapons technologies**.

## Aim of Research

- To illustrate the **central role** that the principle of humanity **continues to play in IHL**.
- To highlight that the principle of humanity serves "**to 'humanise' the conduct of war by imposing limits on the means and methods of warfare**".
- To show that the principle is of **continued relevance** by offering a beacon of hope, especially in the area of **weapons regulation**.

## The Martens Clause

- The principle of humanity was concretised in the **Martens Clause of the 1899 Hague Convention II**:  
  
"Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from usages established between civilized nations, from the **laws of humanity**, and the requirements of public conscience."
- The Martens Clause constituted the codification of the principle of humanity, but **maintained the flexibility to provide protection in the face of unforeseen challenges to IHL**.

## The Introduction of Weapons into Outer Space

- With **NATO declaring Outer Space an 'operational domain'** in late 2019, the introduction of weapons into Outer Space is a prevailing concern.
- The reactions of the international community to this prospect "**will determine the very future of warfare, humanity's use of space, and the nature of global peace and stability**".
- Thus, the principle of humanity and the Martens Clause, constitute central considerations in the use of weapons in Outer Space because "space warfare, often thought to be the most technologically innovative form of warfare", constitutes a **lacuna in IHL which is currently only being filled by the principle of humanity**.

## References

- Kietil Muizginovic Larsen, Camilla Guldaahl Cooper and Gro Nystuen, Searching for a 'Principle of Humanity' in International Humanitarian Law (Cambridge University Press 2012) 1-2.  
Larissa Fast, 'Unpacking the principle of humanity: Tensions and implications' (2015) 97 International Review of the Red Cross 111, 113.  
Nicholas Tsagourias and Alasdair Morrison, International Humanitarian Law: Cases, Materials and Commentary (Cambridge University Press 2018) 39.  
Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (signed 29 July 1899, entered into force 4 September 1990) (The 1899 Hague Convention II) preamble.  
Theodor Meron, 'The Martens Clause, Principles of Humanity, and Dictates of Public Conscience' (2000) 94(1) The American Journal of International Law 78, 80.  
V.V. Pustogarov, 'The Martens Clause in International Law' (1999) 1 Journal of the History of International Law 125, 129.  
Tyler D. Evans, 'At War with the Robots: Autonomous Weapon Systems and the Martens Clause' (2013) 41 Hofstra Law Review 697, 733.  
Noel Sharkey, 'Saying 'No' to Lethal Autonomous Targeting' (2010) 9(1) Journal of Military Ethics 369, 376.  
Human Rights Watch, 'Losing Humanity: The Case Against Killer Robots' (19 November 2012) <<https://www.hrw.org/report/2012/11/19/losing-humanity/case-against-killer-robots>> accessed 10 March 2020.  
Robert David Onley, 'Death from above – The Weaponization of Space and the Threat to International Humanitarian Law' (2013) 78 Journal of Air Law and Commerce 739, 743.  
Robert A. Ramey, 'Armed Conflict on the Final Frontier: The Law of War in Space' (2000) 48 Air Force Law Review 1, 128.  
**Images**  
Gendri.org: <http://gendri.org/jur5739-international-humanitarian-law-the-law-of-armed-confli.html>,  
Shanmugam IAS Academy: <https://www.iastipnpsc.in/mission-shakti-makes-india-space-super-power/>,  
Medium.com: <https://medium.com/syncedreview/lethal-autonomous-weapons-info-wars-a-scientists-warning-c925793bc302>,  
Dev Bentham.com: <http://www.devbentham.com/blog/2017/1/20/love-is-a-light-a-beacon-in-the-dark>.