
F.F. Martens and His Time: When Russia Was an Integral Part of the European Tradition of International Law

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Abstract

This introductory article opens the symposium which examines the legacy of the Russian international lawyer Friedrich Fromhold von (or Fyodor Fyodorovich) Martens (1845–1909). In the first section, the article critically reviews previous research and literature on Martens and discusses the importance of the Martens diaries that are preserved in a Moscow archive. In the second section, the article offers an intellectual portrait of Martens and analyses the main elements in his international legal theory as expressed in his textbook. In particular, his claim that international law was applicable only between ‘civilized states’ is illuminated and discussed.

1 Introduction

This symposium, dealing with the life and work of Fyodor Fyodorovich aka Friedrich Fromhold von Martens (1845–1909) differs from previous *EJIL* symposia on the European tradition of international law in two ways: it is a leap both in time and in geography. The temporal aspect is that F.F. Martens takes the reader further back in time than previous *EJIL* symposia. Consider the dates of birth of the most senior symposia protagonists so far: Anzilotti (1869), Politis (1872), Kelsen (1881), and De Visscher (1884). With F.F. Martens, who was born in 1845, we will move back in history for a whole generation.

However, the move back in time raises simultaneously interesting questions about the essence of the European tradition of international law. How should the tradition be dealt with – primarily based on memories, memories of memories, and disciples’

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devotion, or rather on the ‘objective’ role of the respective lawyers in the history of the European tradition? Perhaps contemporary scholars have been a bit reluctant to recognize as ‘one’s own’ pre-modern – and especially colonialist – foundations of the European tradition of international law. Be that as it may, it is noteworthy that so far *EJIL* has approached the European tradition of international law without focusing on its true founding fathers. At the same time, recent scholarship demonstrates that interest in the historical giants in the European tradition of international law is increasing.¹ It will be interesting to see whether the editors of *EJIL* will in the future decide to move further back in time, perhaps until Vitoria and Grotius, or whether the discussion of these legal thinkers will better be left for the pages of the *Journal of History of International Law – suum cuique*, as Martens wrote, referring to antiquity, on the very cover of his textbook of international law.²

The other and equally significant leap that this symposium makes is a geographical one. Fyodor Fyodorovich Martens is the first international lawyer in the *EJIL* symposia to genuinely represent Eastern Europe because he was based in the region throughout his life. In this sense, he differs from Galician-born Hersch Lauterpacht who was educated in Vienna and became a British international lawyer or the Greek internationalist Nicolas Politis who spent a significant part of his life in Paris. The geographical aspect also raises the question what exactly has been considered ‘Europe’ in the European tradition of international law. When you read this article and contemplate the sub-text of Arthur Nussbaum’s criticism of F.F. Martens, you may come to the conclusion that for Nussbaum the Russian legal tradition was something quite different from the European/Western one. In any case, taking a glance at the list of *EJIL* symposia protagonists so far, lawyers from East European lands come across as under-represented.³ It is possible that this reflects both the historical reality (Eastern Europe or lawyers from that sub-region were indeed relatively speaking more peripheral with respect to central events and ideas in the history of international law) as well as contemporary cultural-linguistic biases and power relations within the Western-dominated legal academia. A kind of passivity among the scholars in the Eastern part of Europe, a reluctance to ‘promote’ their own professional predecessors may also be a factor.

This introductory article on F.F. Martens has two substantive sections. In the first section I will offer a summary of the previous reception of his life and work and touch upon the importance of his diaries. In the second section, I will give a succinct intellectual portrait of F.F. Martens, focusing especially on central elements in his theory

¹ See, e.g., E. Jouannet, *Vattel and the Emergence of Classic International Law* (trans. G. Bellande and R. Howse (forthcoming in 2015); B. Kingsbury and B. Straumann (eds), *The Roman Foundations of the Law of Nations. Alberico Gentili and the Justice of Empire* (2010).

² F. von Martens, *Völkerrecht. Das internationale Recht der civilisirten Nationen* (trans. C. Bergbohm (1883), i).

³ A relatively recent attempt to look at the history of international law scholarship in East European countries is a symposium in *7 Baltic Yearbook of International Law* (2007). Its contributors discuss, among other figures, Paweł Włodkovic/Paulus Vladimiri (1370–1435), Jan Amos Komenský (Comenius) (1592–1670), the end of 18th century scholar Hieronim Strojnowski from Wilna/Vilnius, Antonin Hobza (1876–1954), Baron Boris Nolde (1876–1948), František Weyr (1879–1951), László Buza (1885–1969), Bohuš Tomsa (1888–1977), Hersch Lauterpacht (1897–1960), and Manfred Lachs (1914–1993).

of international law. A concise *vita* of E.F. Martens, based on the biography written by Vladimir Pustogarov,⁴ can be found in the appendix to this article. The reader is kindly advised to consult it before or in parallel to reading the articles in the symposium.

2 A History of the Reception of E.F. Martens and the Importance of His Diary

The personality of E.F. Martens has already succeeded in triggering the curiosity of generations of legal researchers. Quite unusually among the circle of individuals who dedicated their lives to the cause of international law, the personality of E.F. Martens has even inspired a historical novel.⁵ One can already speak of the 'history of history' of Martens, the history of his reception. When planning and executing this *EJIL* symposium, we wanted to take into account the previous research and writing on F.F. Martens, to build on it, and critically relate to it.

Less than ten years after the death of Martens in 1909, the Bolsheviks came to power in Russia, and in their international legal discourse they distanced themselves from Tsarist diplomats and writers on international law. Vladimir Pustogarov and Sergey Bakhin, the current Professor of International Law at St Petersburg State University, have both noted that throughout most of the Soviet period, Martens' legacy was not worthily celebrated in Russia.⁶ On the other hand, Martens was not forgotten in the Soviet Russian scholarship either. Sometimes references to him were quite extensive, and at least partly positive.⁷ However, following Fyodor Kozhevnikov,⁸ there was an ideological trend to downplay the fact that Martens had been the undisputed doyen of international law in late Tsarist Russia. Instead, Martens was discussed as one among a number of talented Russian international law scholars at the time, not even *primus inter pares*.⁹

In post-Soviet Russia, Martens' status has again been raised considerably. His 1882 textbook of international law has been reprinted twice, in 1996 and 2008. ICRC's Moscow office organizes biannual conferences on international humanitarian law called 'Martens Readings'.¹⁰ In 2009, the Faculty of Law of St Petersburg State University organized a symposium marking the passing of 100 years since the death of E.F. Martens.¹¹

⁴ V. Pustogarov, *Our Martens. E.F. Martens: International Lawyer and Architect of Peace* (ed. and trans. with an Introduction by W.E. Butler, 2000).

⁵ J. Kross, *Professor Martens' Departure* (trans. A. Hollo, 1994).

⁶ Bakhin, 'Paradoksy professora Martensa', *Russian Yrbk Int'l L* (2009) 35, at 36; Pustogarov, *supra* note 4, at 4.

⁷ D.B. Levin, *Nauka mezhdunarodnogo prava v Rossii v kontse XIX i nachale XX v. Obshie voprosy teorii mezhdunarodnogo prava* (1982), at 9–10, 71, 117–119, 139–141.

⁸ E.I. Kozhevnikov, *Russkoe gosudarstvo i mezhdunarodnoe pravo (do XX veka)* (2006; original 1947), at 127–128.

⁹ V. Grabar, *The History of International Law in Russia, 1647–1917, A Bio-Bibliographical Study* (trans. W.E. Butler, 1990), at 387..

¹⁰ The materials from these conferences have been published in the special issues of the *Russian Yearbook of International Law* 2005, 2009, and 2011.

¹¹ See the law journal 2 *Pravovedenie* (2009) 6. The symposium was edited by S. Bakhin and contributors include T. Kamenova, R. Müllerson, W. E. Butler and V.S. Ivanenko.

Moreover, in contemporary Russian textbooks of international law Martens is omnipresent; a solid thread by which the history of international law is woven. This partly reflects the trend that contemporary Russian international law scholars have started in order to distance themselves from the Soviet period and instead search for inspiration and pedigree in the pre-1917 imperial era.¹² In these works, Martens emerges as Russia's Grotius,¹³ as mythical superhero of international law (and Russia) – not only someone who played a key role at the 1899 and 1907 Hague conferences and developed international humanitarian law,¹⁴ but also someone who in the context of arbitration was the 'main judge of the Christian world' and the 'Lord-Chancellor of Europe';¹⁵ the founder of the concept of international criminal law,¹⁶ and also, of course, an internationally recognized scholar.¹⁷ It seems that these sometimes exaggerated or not sufficiently contextualized claims in contemporary Russian scholarship reflect the psychological need to count for something important in the universal history of international law and its scholarship.

In what follows I would like to pay particular attention to the work of three authors who all, although each quite differently, dealt with Martens in depth – Nussbaum, Kross, and Pustogarov.

In 1952, the German emigré scholar in the US, Arthur Nussbaum, himself the author of a well-received history of the law of nations,¹⁸ published an article on F.F. Martens,¹⁹ which has made waves to this day. In his article, Nussbaum set himself the task of analysing the 'writings and actions' of Martens.²⁰ First, he turned his attention to Martens' celebrated two-volume textbook and pointed out several pro-Russian gaps and biases in its historical part. Nussbaum held that the historical part was characterized by:

Flagrant lack of objectivity and conscientiousness. The Tsars and Tsarinas invariably appear as pure representatives of peace, conciliation, moderation and justice, whereas the moral qualities of their non-Russian opponents leave much to be desired.²¹

Nussbaum pointed out that Martens gave an extensive meaning to the notion of 'international administrative law' – even including 'war' in the field of international administration – and emphasized that the supreme principle of international administrative law was 'expediency'. Nussbaum was very critical of the application of this concept:

¹² See further for the analysis of how international law is understood and its history constructed in contemporary Russia, and how this influences state practice, L. Mälksoo, *Russian Approaches to International Law* (forthcoming in 2015).

¹³ A.A. Kovalev and S.V. Chernichenko (eds), *Mezhdunarodnoe pravo* (2008), at 13.

¹⁴ V.S. Batyr', *Mezhdunarodnoe gumanitarnoe pravo* (2011), at 38.

¹⁵ G. Starodubtsev, in K.A. Bekyashev (ed.), *Mezhdunarodnoe publichnoe pravo* (2003), at 43 and in G.M. Melkov (ed.), *Mezhdunarodnoe pravo* (2009), at 60.

¹⁶ E.T. Usenko and G.G. Shinkaretskaya (eds), *Mezhdunarodnoe pravo* (2005), at 451.

¹⁷ I.I. Lukashuk, *Mezhdunarodnoe pravo. Obshaya chast* (2nd edn, 2001), at 67.

¹⁸ A. Nussbaum, *A Concise History of the Law of Nations* (1954).

¹⁹ Nussbaum, 'Frederic de Martens. Representative Tsarist Writer on International Law', 22 *Nordisk Tidsskrift International Ret og Jus Gentium* (1952) 51.

²⁰ *Ibid.*, at 52.

²¹ *Ibid.*, at 55.

Expanding the range of international administrative law meant, therefore, expanding the dominance of expediency – which is the very opposite of law.²²

Further, Nussbaum turned his attention to the other ('publicist') writings of F.F. Martens, mostly the ones published in *Revue de droit international et de législation comparée*. Nussbaum criticized that

they are invariably signed by de Martens as professor of international law at the University of St. Petersburg, and as member of Institut de Droit International. He does not mention his high position in the Ministry of Foreign Affairs. The implication is obvious, but in reality the articles are nothing but unrestrained briefs for various actions of the Russian Government.²³

For example, Nussbaum concluded about the 1874 article by F.F. Martens on the Brussels conference, 'It is purely apologetic and has nothing to do with law.'²⁴

Further, Nussbaum turned to Martens' activities as arbitrator and found them 'most conspicuous'.²⁵ In particular, Nussbaum referred to a memorandum of Venezuelan lawyer Mr Severo Mellet Provost that had been made public posthumously. Mr Provost's memorandum made the claim that Martens had approached his fellow US arbitrators-judges with an ultimatum – either they would agree with a generally pro-British solution or Martens as umpire would join the British arbitrators with a solution that would be even less favourable for Venezuela. Nussbaum held that Mr Provost's account seemed 'entirely credible in all essential parts' and concluded:

The spirit of arbitration will be perverted more seriously if the neutral arbitrator does not possess the external and internal independence from his government, which, according to the conception of most countries of Western civilization, is an essential attribute of judicial office. That independence de Martens certainly did not have, and it is difficult to see how he could have acquired it within the framework of the Tsarist regime and tradition.²⁶

Finally, Nussbaum concluded:

It appears that de Martens did not think of international law as something different from, and in a sense above, diplomacy. ... de Martens considered in his professional duty as a scholar and writer on international law to defend and back up the policies of his government at any price. ... Obviously his motivation was overwhelmingly, if not exclusively, political and patriotic. Legal argument served him as a refined art to tender his pleas for Russian claims more impressive or more palatable. He was not really a man of law...²⁷

Somewhat paradoxically, Nussbaum concluded his essay by suggesting that notwithstanding all his criticisms, F.F. Martens nevertheless 'deserved' the Nobel Peace Prize.²⁸

In the context of his reception in Estonia, the intriguing figure of F.F. Martens was picked up by the fiction writer Jaan Kross (1920–2007) who in 1984 published a novel which was translated and published in English as *Professor Martens' Departure* in 1994,²⁹ and has been published in other major European languages as well. Kross

²² *Ibid.*, at 54.

²³ *Ibid.*, at 56.

²⁴ *Ibid.*, at 57.

²⁵ *Ibid.*, at 58.

²⁶ *Ibid.*, at 59.

²⁷ *Ibid.*, at 60.

²⁸ *Ibid.*, at 62.

²⁹ Kross, *supra* note 5.

had specific credentials for writing the novel – he had himself trained as an international lawyer before and during World War II at the University of Tartu. During the 1940s, Kross was arrested and imprisoned by both the Nazis and the Communists. When the Soviet security police arrested him in 1945, Kross worked as an assistant at the law faculty and was literally carrying his almost-finished dissertation on the history of international treaty law in his suitcase. Kross was deported to Siberia and was allowed to return only in 1954. Upon his return from Siberia to Estonia, Kross started successfully to publish poetry and fiction, the latter mostly on historical themes. For his novel on Martens, Kross backed up his fiction with research in archives and libraries. Of course, there are things that are spiced up and basically pure fantasy in the novel – like Martens' affair and extramarital child with a certain Yvette, for example.³⁰ Historical sources that have more recently become available for researchers also demonstrate that Kross did get some historical details wrong – for example, the 1899 British-Venezuelan arbitration took place in Paris, not in The Hague.³¹ Moreover, the real F.F. Martens would not have over-emphasized his role at the Portsmouth Peace negotiations.³² One of the claims that Kross makes is that by his origin Martens was ethnic Estonian (not Baltic German as had sometimes been suggested, probably reaching the conclusion based on his Germanic-sounding family name).³³ In particular, Kross discovered that Martens' grandparents had been ethnic Estonian peasants in Audru parish, Pärnu province.³⁴ This finding was corroborated by certain other evidence and recollections – for example, the Estonian newspaper obituaries in 1909 referred to F.F. Martens as ethnic Estonian³⁵ and recollections of a later academic lawyer, Leo Leesment (1902–1986), who as a small boy had been in Pärnu and mixed with Martens.

In his novel, Kross offers a speculative look at the mind of a successful international lawyer, theoretician, and practitioner. We learn flattering things, for example that international law is an 'elegant'³⁶ discipline, and also unexpected ones, such as that a classification of kisses exists but international law does not concern itself with it.³⁷

The greatest value of the Kross novel, and the reason it remains today recommended reading for international lawyers, is in its observations and speculations on the ethics of international law scholarship and diplomacy, truth and power, moral compromises and faithfulness to one's principles. For example, Kross's imaginary Martens reflects on the methods of compiling the historical collection of imperial Russia's treaties. Should Martens write about the history of these treaties '*wie es eigentlich gewesen sei*', as the historian Leopold von Ranke had suggested, and what would such a programme actually imply in practice? Here is what Kross's Martens thinks:

³⁰ *Ibid.*, at 166.

³¹ *Ibid.*, at 50.

³² But see *ibid.*, at 121 and 231.

³³ See in particular ch. 25 of *ibid.*

³⁴ *Ibid.*, at 103.

³⁵ One of them has been reproduced with the Estonian wikipedia article on F.F. Martens, http://et.wikipedia.org/wiki/Friedrich_Fromhold_Martens.

³⁶ Kross, *supra* note 5, at 57.

³⁷ *Ibid.*, at 24.

And won't the truth, which we claim to be preserving, be lost in any case? But is it really the truth that we want to preserve? Scholarship strives for a record of the truth. The powers-that-be want to see their own point of view confirmed. In the end, it doesn't really matter who wins: as far as I can see, the truth survives distortion. Our temporal distortions will be secondary truths in the future, and an informed reader always will be able to see through them. Besides, there is nothing one can do about past distortions. So: every treaty has to be annotated in regard to the developments that led up to it. These have to be described as truthfully as possible or as expediently as possible, should expediency demand it.³⁸

Either way, Kross's Martens thinks that full candour was a complex commodity among civilized individuals:

Candour does not agree with good breeding. Not in the family, nor in the state, nor in international relations. I'm sure you remember what they say Bülow once said about me: that I was a man of such extreme natural integrity that he had never heard me utter a single original lie – whenever I was forced to lie, I resorted, on principle, only to official platitudes!³⁹

Moreover, here is a pertinent passage on dilemmas of 'theoreticians connected to official institutions, people like myself':

Serving two masters – their governments, and their own ideals – they are torn between the two. The more selfish those governments, the more intense will be the interior conflicts these people inevitably suffer. (When the government even *calls itself* an autocracy, the term speaks for itself.) Hence, they devote most of their energies to the concealment of their own dichotomies from the eyes of the world, and from themselves ...⁴⁰

Kross's Martens has an ambivalent relationship with the Russian Empire – he serves it but at the same time is sarcastically critical of it. Martens' Russia is messy – 'in my experience, all Russian lavatories stink, except for those in castles'⁴¹ – and not free – 'in Russia, no one can even be *born* without somebody else's permission'.⁴² For Kross, this becomes vividly relevant in the appraisal of the central element in Martens' international legal theory – that international law regulates only the relationships of 'civilized nations', and 'civilization' is defined by the respect that the state gives to the individual and her rights. Kross imagines that the Russian and other readers of Martens must have noticed that with this understanding of what it actually meant to be 'civilized', Martens placed imperial Russia 'in the company of the Sultanates of Sarawak and Zanzibar'.⁴³

It has been a well-recorded phenomenon in Russia's intellectual history that, due to constraints imposed by the state power, literature took upon itself tasks that otherwise would have belonged to scholarship and philosophy. If problems could not be addressed directly, at least they could be addressed 'as fiction'. Kross's book can also be seen as part of the same historical phenomenon. At the time when Kross wrote and published his novel, in 1984, the Soviet authorities had managed to conceal well

³⁸ *Ibid.*, at 74.

³⁹ *Ibid.*, at 76.

⁴⁰ *Ibid.*, at 122.

⁴¹ *Ibid.*, at 64.

⁴² *Ibid.*, at 82.

⁴³ *Ibid.*, at 136.

an important detail – the actual Martens diaries existed, in a closed foreign ministry archive in Moscow. When writing his novel, Kross had been unaware of the existence of these diaries and, thus, did not use them for his novel.⁴⁴ Paradoxically, we owe the Kross novel in this form to the fact that the Soviet authorities decided to keep the Martens diaries secret.

Thus, when *perestroika* was launched, some researchers in Moscow were given access to the Martens diaries. This is essentially the background to Vladimir Pustogarov's (1920–1999) biography of Martens – Pustogarov has constructed his narrative based on his reading of Martens' actual diaries. At the same time, Pustogarov engaged himself only relatively little with Martens' international legal theory.⁴⁵ Altogether, the attitude of Pustogarov the biographer to his object of study has been benevolent and occasionally emphatically defensive-patriotic. Pustogarov wrote his study on Martens as anti-Nussbaum. Compare, for example, Pustogarov's opinion of Martens' publicist works with the previously quoted view of Nussbaum:

The great distinctiveness of Martens' publicist works lay in the fact that he viewed events and policies from the standpoint of international law. When he assessed the actions of English or Russian diplomacy, he correlated them not with national interests, but with international law. This approach was rare in publicist works of the day.⁴⁶

Furthermore, Pustogarov emphasized:

It is asserted, for example, that Martens wrote his articles and pamphlets to order for the Tsarist Government in support of its various foreign policy actions. The works were supposedly written in Russian and then translated into foreign languages and extensively propagandised. Such assertions do not correspond to reality.⁴⁷

Pustogarov rejected the image of Martens as offered by Nussbaum as unfounded – especially the 'absurd' notion that Martens had exhibited a 'desire to serve his sovereign'.⁴⁸ Therefore, parts of Pustogarov's biography read like a defendant's brief written in response to a plaintiff's claims:

What can be said about the comment that Martens supposedly acted at the [1st Hague Peace] Conference as a 'Russian politician'? The members of all delegations acted at the Conference as the representatives of their countries. Martens was no exception. But if in such a statement there is an allusion that Martens' actions were determined by some sort of mercenary interests of Russia, this must be resolutely refuted.⁴⁹

In particular, in the case of the controversy around the Anglo-Venezuelan arbitration, Pustogarov defends Martens' reputation against subsequent insinuations⁵⁰ – and as his ultimate argument he notes that Martens did not write about such a 'secret deal' in his diaries. In principle, such an interpretation is possible – although the secrecy

⁴⁴ The author's interview with Kross in 2005.

⁴⁵ Pustogarov, *supra* note 4, chs iii and iv.

⁴⁶ *Ibid.*, at 146.

⁴⁷ *Ibid.*, at 147–148.

⁴⁸ *Ibid.*, at 153.

⁴⁹ *Ibid.*, at 191.

⁵⁰ *Ibid.*, at 211–216.

of secret deals may also extend to one's diary. Martens' diary could also have been a careful construction of himself for the after-world, along the lines of the imaginary Martens of the novelist Kross:

Even though I wrote a great number of notes and letters, I had begun to regard them as historical to some degree. That is to say, historical to the extent that I could imagine strangers reading them at some future date; and this was an incentive to pay close attention to what I wrote.⁵¹

Thus, the Martens diaries that are held in the Archive of Foreign Policy of the Russian Empire in Moscow⁵² have become crucial for an understanding of the life and work of E.F. Martens. The archive belongs to the Foreign Ministry of the Russian Federation and the decision to go ahead with the full publication of the Martens diaries is thus also for the Russian MFA to make. It is clear, however, that the Martens diaries should be published as an important historical source; ideally, equipped with academic commentaries and translated into English as well. The Pustogarov biography does not answer all the research needs of the international scholarly community because in the biography the Martens diaries come to the reader through the filter of the biographer's interpretation and selection. In reality, the Martens diaries speak best for themselves and they deserve to be published as such.

In my own reading,⁵³ the Martens diaries demonstrate to what extent Martens had an inner conflict with the Tsarist government; his state of mind could indeed be characterized as 'inner emigration'. Martens deplored the weakness of the Tsars,⁵⁴ foreign ministers⁵⁵ and MFA officials,⁵⁶ the political repressions and instability in the country,⁵⁷ and repeatedly lamented: 'Poor Russia!'⁵⁸ Thus, Martens may have persistently defended Russia's legal interests abroad, but his own attitude towards the Russian government was much more ambivalent than Nussbaum seems to have implied. For example, Martens wrote in his diary, 'In my life, I never looked for power because without it one lives much better. It only demoralizes and takes one's sleep away.'⁵⁹ Even more pertinent is the following entry: 'I put my personal independence higher than anything in the world and do not recognize censors of my word.'⁶⁰

Regarding Kross's novel, the Martens diaries reveal that Kross privatized Martens a little bit too extensively for Estonia. Martens never discussed in his actual diaries his ethnic Estonian roots or 'local' events or individuals. Whatever Martens' roots were, his diaries

⁵¹ Kross, *supra* note 5, at 114.

⁵² Arhiv Vneshnei Politiki Rossiiskoi Imperii (AVPRI), address: Bolshaya Serpukhovskaya ulitsa 15, Moscow, available at: www.mid.ru/bdomp/ns-arch.nsf/e7ef353cc1b1406043256b06004bbbe2/66b2e6b54209c6a7442579ca003ea43f!OpenDocument. The reference to the Martens diaries in the archive is: Fond No 340, opis no 787.

⁵³ Thanks to a grant from the Estonian Science Agency and the permission granted by the Russian MFA, I had the opportunity to study the Martens diaries in AVPRI in 2010.

⁵⁴ Martens' diary, *supra* note 52, 29 Aug. 1901, 10 May 1906.

⁵⁵ *Ibid.*, 19 Jan. 1901.

⁵⁶ *Ibid.*, 9 Jan. 1906; 4 May 1906.

⁵⁷ *Ibid.*, 20 Jan. 1905.

⁵⁸ *Ibid.*, e.g., 27 Jan. 1906., 2 Apr. 1906, 13 Oct. 1908, 28 Nov. 1908.

⁵⁹ *Ibid.*, 10 May 1906.

⁶⁰ *Ibid.*, 26 Mar. 1907.

reveal that his personal identity was clearly that of a (political) Russian. Perhaps a little symbol for this tendency is that Kross makes Martens' birthplace Pernau (Pärnu), and his house there at Gartenstrasse 10 the main place for his summer vacations, and thus distances Martens from his other summer house, Villa Waldensee near Volmar (Valmiera) in today's Latvia.⁶¹ However, on 30 July 1908, Martens wrote in his diary that he had spent two months on holiday in his 'dear Waldensee'. It seems that on 1 April 1909 he made the last entry in his diary, announcing another trip to Waldensee. Can it thus be that Kross's imagined last trainride from Pärnu to St Petersburg (through Valga) never took place, and in reality Martens rather travelled from Valmiera to Valga, on the Riga-Valga railway?

Nevertheless, concerning his *political Russian* identity, in the Martens diaries there are also ambivalences; as a non-ethnic Russian he still feels the glass ceiling. At a reception organized by Kaiser Wilhelm II in Berlin in 1907, someone mentions that many outstanding individuals in London seem to be Scottish. Indeed, comments Martens in his diary, in Britain all English subjects, whatever their background and identity, can get the highest recognitions and positions: '[i]n Russia, there is nothing like that. Everybody who is not Orthodox or indigenous Russian is suspicious and persecuted.'⁶² At the same time, Martens keeps his distance from the Russian popular masses, and when once in Rome, discussing the 'Jewish question' (euphemism for pogroms) in Russia, refers to the 'uncultured nature of Russian *muzhiks*' as an obstacle to reaching stable conditions in that regard.⁶³ However, it is questionable to what extent Martens actually knew the 'real' Russia beyond the capital St Petersburg. Pustogarov writes:

In Russia, except for Petersburg, he knew virtually only one little corner of Lifland. He was never in Moscow or Kiev, not to mention more remote cities.⁶⁴

In Kross's novel, Martens acquires, thanks to a successful blending of high politics and personal poesy, a certain lightness and coolness; in his actual diaries, the Martens of his last years appears as a disillusioned and frustrated ageing man. For example, on 24 March 1905, Martens laments that 'after 37 years of service in the MFA' his further promotion, a senior diplomatic post abroad, was not forthcoming. When travelling to the Portsmouth peace negotiations in 1905, Martens was upset and found it insulting that younger colleagues of the Russian MFA addressed him merely as 'Professor' (apparently implying that he was 'nothing more than a scholar').⁶⁵ Repeatedly, Martens thinks aloud about possible emigration.⁶⁶ During the second Hague Peace Conference, Martens writes that the diplomatically hardest part for him was the communication with his own Russian MFA colleagues-delegates: '[i]t is difficult to imagine how uncultured and limited these gentlemen are!'⁶⁷

⁶¹ Kross, *supra* note 5, at 7 and 14.

⁶² Martens' diary, *supra* note 52, at 3 Mar. 1907, at 113. When World War I broke out and Russia and Germany ended up in war against each other, the suspicion and persecution of the (Baltic) German administrative elites in the Russian Empire became systematic: see M. von Taube, *Der grossen Katastrophe entgegen* (1937), at 371 ff.

⁶³ Martens' diary, *supra* note 52, at 3 Mar. 1907, at 114.

⁶⁴ Pustogarov, *supra* note 4, at 279.

⁶⁵ Martens' diary, *supra* note 52, at 22 July 1905 (4 Aug. 1905), New York, at 26; 29 July 1905 (1 Aug. 1905), at 3.

⁶⁶ *Ibid.*, 18 Jan. 1905, 27 Apr. 1906.

⁶⁷ *Ibid.*, 6 June 1907 (19 June 1907).

We probably primarily owe to this spoilt relationship between Martens and the Russian MFA the fact that the Martens diaries have so far not been made fully accessible to the public. However, Martens' grievances go beyond the Russian MFA as such – he is frustrated that his student and successor at the international law chair, 'little'⁶⁸ Baron Taube, is appointed as the Russian delegate to the London conference on naval warfare in 1907.⁶⁹ The relationship of Martens with his colleagues could be strained – Carl Bergbohm from Dorpat (Tartu) translated his textbook into the German language and yet the two had substantive differences and Martens saw in Bergbohm a 'personal enemy'.⁷⁰ Martens did not conceal his disappointment when the French international lawyer Louis Renault (1843–1918) received the Nobel Peace Prize in 1907 and wryly noted in his diary that while Renault wrote 'one' volume on international law, he had written 'twenty'; Renault 'just made presentations at the time when I created'.⁷¹

Altogether, Martens did not have a low opinion of himself and his achievements. At the end of the second Hague Peace Conference in 1907, he wrote in his diary, bringing to the reader's memory associations with Pushkin's self-congratulatory poem 'Exegi monumentum':

I am proud that I helped create the foundations for the common life of nations, as much as my strength permitted. I can contentedly close my eyes. Neither Russia nor the entire rest of the world will forget me after my death, and my activity to the benefit of the development of international law will not be forgotten."⁷²

It has not been forgotten – and the present symposium is but one proof for this.

3 An Intellectual Portrait of F.F. Martens

How then might an intellectual portrait of F.F. Martens look and what was his approach to international law? It has almost become a cliché that the living monument to F.F. Martens is the Martens Clause, symbolizing and reminding us of his seminal role in the first Hague Peace Conference in 1899.⁷³ The Martens Clause is indeed important, although the reasons Martens remains relevant go beyond it. In what follows, I will analyse key positions of Martens' international legal theory as they were expressed mostly in his textbook of international law, and situate them both in the context of the evolution of international legal theory and the Russian tradition of the discipline.

⁶⁸ *Ibid.*, 11 Nov. 1907. Mikhail Taube speaks about the complex relationship with his 'teacher, supervisor and friend' F.F. Martens in M.A. Taube, 'Zarnitsy'. *Vospominania o tragicheskoi sud'be predrevoljutsionnoi Rossii (1900–1917)* (2007), at 35 ff.

⁶⁹ Thus, Pustogarov's reading of Martens' positive reaction to the appointment of Taube does not seem to be correct: see Pustogarov, *supra* note 4, at 329.

⁷⁰ G. Starodubtsev, *Mezhdunarodno-pravovaya nauka Rossiiskoi emigratsii* (2000), at 21 (referring to a letter from Martens).

⁷¹ Martens' diary, *supra* note 52, at 29 Nov. 1907 (11 Dec. 1907).

⁷² AVPRI, op. 787, delo 9, ed. khr. 7, l. 85, quoted in Pustogarov, *supra* note 4, at 248.

⁷³ Cassese, 'The Martens Clause: Half a Loaf or Simply Pie in the Sky', 11 *EJIL* (2000) 187; Meron, 'The Martens Clause, Principles of Humanity, and Dictates of Public Conscience', 94 *AJIL* (2000) 78.

One thing that is striking about Martens is how strongly his thinking about public international law was historical. Unlike in Martens' textbook, the history of international law has essentially been absent in some leading contemporary international law textbooks in English.⁷⁴ Most of the first volume of Martens' textbook comprises the history of international law and legal scholarship as he interpreted it. If one adds to his textbook the collection of Russia's historical treaties with West European nations, which Martens edited and equipped with commentaries, one sees to what a large extent Martens saw international law as having grown historically. The emphasis on history was characteristic in particular of the German tradition of legal scholarship, and Martens in Russia seems to have been heavily influenced by it.

Quite typically for his time, Martens held that the main principle in the history of international law was its progressive development.⁷⁵ Martens' own view on the evolution of international law and relations can indeed be considered progressive in the sense that cosmopolitanism as opposed to strict emphasis on sovereignty was increasingly seen as progressive in the profession. For instance, Martens held – in the early 1880s – that the system of international law was no longer built on the absolute sovereignty of states, but on the idea of an international community of which sovereign states were merely a part.⁷⁶ Here is also a reason why the Soviet theory of international law was not overly enthusiastic about Martens' theory – Soviet scholars emphasized state sovereignty and spoke globally of a mere peaceful coexistence, not unity, with the capitalist states of the West.⁷⁷ In this context, Martens also introduced in his theory the concept of international administration, by which he meant broadly all legally permitted activities of states in the sphere of international communication with the purpose of satisfying the life interests of their population.⁷⁸ Thus, Martens' notion of 'international administration' is different from 'global administrative law' as nowadays popularized by internationalists at the NYU School of Law in particular.

Another aspect is that Martens preferred to build his analysis 'close to facts' or, in Koskenniemi's terms,⁷⁹ apologetically. He held that international law drew its authority from the 'actual order of things', and thus international legal scholarship had to take into account 'conditions of life' that existed between peoples.⁸⁰ Conveniently, this theory favoured European and generally more powerful nations that had been able to dictate 'conditions of life' to the weaker ones. Leaving aside his advocacy for the Russian Empire in concrete disputes, the analytical emphasis on the 'actual order of things' was a more systemic reason why Martens has sometimes been seen by his opponents as 'political' in the sense of 'not legal enough'. His historical and policy oriented approach to international law was indeed different from mere abstractions of *Rechtsdogmatik*.

⁷⁴ See, e.g., I. Brownlie, *Principles of Public International Law* (6th edn, 2003).

⁷⁵ Martens, *supra* note 2, at 25. See also T. Skouteris, *The Notion of Progress in International Law Discourse* (2010).

⁷⁶ Martens, *supra* note 2, at 178–180, 200.

⁷⁷ T. Schweisfurth, *Sozialistisches Völkerrecht? Darstellung, Wertung, Analyse der sowjetmarxistischen Theorie vom Völkerrecht, neuen Typs* (1979).

⁷⁸ F. von Martens, *Völkerrecht* (1886), ii.

⁷⁹ M. Koskenniemi, *From Apology to Utopia. The Structure of International Legal Argument* (1989).

⁸⁰ Martens, *supra* note 2, at 19.

At the same time, Martens held that neither the balance of power nor the nationality principle but ‘the idea of law’ was the foundation of progressive international law.⁸¹ Both the Soviet international law scholar David Levin (1907–1990) and contemporary US historian Peter Holquist have pointed out that the scholarship of Martens and his contemporary Russian scholars highlighted the guiding importance of international law in international relations, and did so in a certain opposition to German legal realists – *Völkerrechtsleugner*.⁸² While these authors seem to suggest that the general approach of Martens (or Tsarist Russia) to international law at the time was inherently idealist and humanist, other, strongly realist elements in Martens’ theory suggest that Russia at that time needed rhetorically to raise the shield of international law in order to face its geopolitical challenger, imperial Germany. Holquist rightly sees it as a paradox that Russia, an autocracy and thus a country with little rule of law inside its borders, promoted itself externally as a guardian of international law.⁸³ A comparable phenomenon can be witnessed nowadays when the Russian government in its foreign policy doctrine strongly projects itself as guardian of international law (especially against the hegemonic ambitions of the US),⁸⁴ but this emphasis on international legal rules is not necessarily felt in its own immediate neighbourhood.

Further, Martens’ theory of international law was liberal. He emphasized the role of the individual in general and the role of human rights in particular. Although he did not yet enlist individuals as full subjects of international law,⁸⁵ he considered them to be part of the international community⁸⁶ and as having specific rights protected by it.⁸⁷ In a classical liberal sentence, Martens declared that the ultimate mission of the state and international agreements was the protection of individuals.⁸⁸ In the context of human rights, Martens defended unconditionally, for example, the right of individual citizens to emigrate. The liberal emphasis on the individual and human rights is another reason why the Soviet doctrine of international law could not consider Martens fully as ‘its own’. Some leading post-Soviet Russian theoreticians of international law such as Stanislav V. Chernichenko still reject the idea that individuals could be subjects of international law.⁸⁹ Moreover, even nationalist, conservative Russian dissidents at the time of the USSR such as Aleksandr Solzhenitsyn severely criticized the fact that the liberal dissident Andrei Sakharov laid major emphasis on the ideology of human rights, and in particular demanded from the authorities the recognition of the right to emigrate.⁹⁰

⁸¹ *Ibid.*, at 31.

⁸² Holquist, ‘The Russian Empire as a “Civilized State”: International Law as Principle and Practice in Imperial Russia, 1874–1878’ (2004), available at: www.ucis.pitt.edu/nceer/2004_818-06g_Holquist.pdf; Levin, *supra* note 7, at 71–78.

⁸³ Holquist, *supra* note 82

⁸⁴ Concept of the Foreign Policy of the Russian Federation, 12 Feb. 2013, at 15 and 31, available at: www.mid.ru/brp_4.nsf/0/76389FEC168189ED44257B2E0039B16D.

⁸⁵ Martens, *supra* note 2, at 231.

⁸⁶ *Ibid.*, at 206.

⁸⁷ *Ibid.*, at 325.

⁸⁸ *Ibid.*, at 326.

⁸⁹ Kovalev and Chernichenko, *supra* note 13, at 170.

⁹⁰ A. Solschenitsyn, *Meine amerikanischen Jahre* (2007), at 78.

In the Russian domestic context, liberal Martens was clearly a Westernizer, opposing the conservative Slavophiles who emphasized the uniqueness of the country from Europe. In Martens' historical narrative, Russia's (Muscovy's) periods of isolation in international relations deserved an unequivocally negative assessment and the integration with Western Europe since the early 18th century a positive appraisal.⁹¹ In essence, Martens held the Eurocentric view that international law arrived in Russia only with its 'opening up' to Europe.

Let us finally turn to the main element in Martens' theory of international law which he considered his central contribution to the field. This was the liberal idea that the domestic structure and situation in a country had a decisive impact on its concept of international law and relations. Martens wrote:

The internal political organization and the general way of life of the states has ... a decisive influence on the character of their relationships with foreign countries. If one knows the internal life and public institutions of a country, it is no longer difficult to understand the maxims and rules based on which it conducts its external relations.⁹²

Martens went further from this premise and postulated that international law was applicable only between the 'civilized' (i.e., Christian and European/Western) nations, and 'non-civilized' countries like Turkey, Japan, and China could not invoke it. While from today's viewpoint it is tempting to reject these theories as arrogant racism plain and simple, it is nevertheless noteworthy that Martens connected 'civilizedness' with the situation of human rights in a country:

The study of the history of international relations generally and of Russia's participation in it in particular has led us to unwavering conviction that inner life and order of a State determine the level of its participation in international life. ... The more governments recognize their obligations with respect to all of their subjects, the more respectfully they relate to their rights and legal interests, the stronger is domestic order in the State and the better is safeguarded peaceful and legal evolution of international life ... we came to the conclusion that if in a State the individual as such is recognized as source of civil and political rights, then also international life presents a higher level of the development of order and law. To the contrary, with a State where the individual does not have any rights, where he is suppressed, international relations may not develop nor be established on firm foundations.⁹³

Thus, F.F. Martens is an outstanding early representative of the doctrine that liberal states 'behave better' in the context of international law – an ideological premise that has since the end of the Cold War also been intensely discussed in the pages of *EJIL*.⁹⁴ In today's international normative debates, human rights tend to play a similar role to the concept of 'civilization' in the late 19th century. It seems that the US human rights scholar Jack Donnelly was correct when he demonstrated a strong continuity between the political functions of the 19th century 'standard of civilization' and today's internationally

⁹¹ Martens, *supra* note 2, at 98–99, 205.

⁹² *Ibid.*, at 25.

⁹³ *Ibid.*, at 25..

⁹⁴ Slaughter, 'International Law in a World of Liberal States', 6 *EJIL* (1995) 503; Alvarez, 'Do Liberal States behave Better? A Critique of Slaughter's Liberal Theory', 12 *EJIL* (2001) 183; Simpson, 'Two Liberalisms', 12 *EJIL* (2001) 537.

recognized human rights.⁹⁵ Reading Martens, one can come to the conclusion that they are essentially the same thing. In international politics and the Western discourse in particular, ‘civilized’ states are nowadays still those which respect human rights. Similarly, contemporary critical scholars see in the discourse of international human rights the same abusive and imperialist potential as in the civilizational discourse of the 19th century.⁹⁶ Martens was, of course, not the only European legal scholar of his time who restricted the applicability of international law only to civilized/European nations. However, there was a particular intensity in his advocacy of the principle. He must have thought that Russia was at the crossroads of the European and Asian civilizations, and that therefore he had a particular legitimacy and knowledge base on which to defend the exclusiveness of Europe in international law. However, the first, biographical part of this article should have made clear the enormous inner tension in his claim – European civilization was contested in Russia, and Russia’s Europeanness for Europe. It is interesting that Martens pointed an admonishing finger towards Johann Caspar Bluntschli (1808–1881), the Swiss international law scholar who had started to advocate the universality of international law.⁹⁷ The Soviet scholar David Levin also pointed out that some other less famous Russian international law scholars at the time of Martens already favoured the universal application of international law.⁹⁸ The aspect of civilization was another, embarrassing factor in Martens’ international legal theory from the standpoint of the USSR since it desired to be a credible anti-imperialist partner for the ‘third world’ states that had emerged from colonialism.

By connecting respect for human rights with a country’s explicit or implicit status in the international community, Martens still sounds today like a contemporary voice. His sentences ‘in the case of non-respect for human rights the civilized governments take common international measures’⁹⁹ and ‘the unconditional recognition of the human personality is the principle by which the European nations are guided in their external relations’¹⁰⁰ echo as if they were written not in late 19th century St Petersburg but rather in 21st century New York or Brussels.

* * *

This symposium will continue with two critical deconstructions of Martens’ diplomatic and scholarly *œuvre*. Dr Rotem Giladi takes a critical historical look at what the Martens clause really ‘was’ – and became. According to Dr Giladi, there are some ironies contained in the fact that the Martens clause has continued to be called by his name. However, I would add that the Martens clause also seems to be an example of how the international law world sometimes does with a man’s work what it wants; that it needs certain men as symbols for something that these men lack further control

⁹⁵ Donnelly, ‘Human Rights: A New Standard of Civilization?’, 74 *Int’l Affairs* (1998) 1.

⁹⁶ M. Mutua, *Human Rights. A Political and Cultural Critique* (2008).

⁹⁷ Martens, *supra* note 2, at 184.

⁹⁸ Levin, *supra* note 7, at 84–86.

⁹⁹ Martens, *supra* note 2, at 216.

¹⁰⁰ *Ibid.*, at 327.

over. It seems to be one of history's ironies that Martens did not get the Nobel Peace Prize (although even Nussbaum thought that he deserved it) but got a 'personal' (although ambiguous) legal norm instead, however inconclusive its historical origin.

The other critical deconstruction is by Dr Andreas T. Müller, who rediscovers for us Martens' doctoral thesis on consular jurisdiction in the 'East'. This is a subject that illustrates and exemplifies the colonialist aspects of the work and thinking of Martens. A number of the issues that Martens raised in his doctoral dissertation have remained topical – even if sometimes suppressed – in the relations between the West and some other parts of the world.

The final article, by Rein Müllerson from Tallinn University, the current President of the *Institut de droit international*, relates further to the points raised by Andreas T. Müller. Both authors partly ask the same question: How much of the distinction between the civilized and uncivilized is still with us today? How should we relate to the colonial legacy in the European tradition of international law? If you carefully read both articles, you will notice that the authors give slightly different answers to these questions.

This symposium owes much to the initiative and encouragement of Bruno Simma from the *EJIL* Board of Editors. I would like to express here my deep gratitude to Judge Simma for his role in bringing this symposium to life. The symposium has developed from the panel on F.F. Martens at the 4th Research Forum of the European Society of International Law in May 2011 in Tallinn, Estonia.¹⁰¹

Appendix

Succinct Biography of F.F. Martens (1845–1909), based on the Monograph by V.V. Pustogarov¹⁰²

15 August 1845 – Friedrich Fromhold Martens was born in the town of Pernau in the Russian Empire's Baltic province of Livonia (today's Pärnu in the Republic of Estonia).

1854 – Martens' mother died when he was nine years old; his father had already died when he was four. Young Friedrich, at the initiative of his remaining relatives, was taken to live in the Orphan Home attached to St Peter's Evangelical Lutheran Church in the imperial capital St Petersburg.

1863 – Martens completed the gymnasium course at St Peter's Main German School in St Petersburg.

1863–1867 – Martens studied at the Faculty of Law of the Imperial University of St Petersburg.

1869 – A master's degree was conferred to Martens; his dissertation was on the right of private property during wartime.

1869 – Martens was enrolled in service at Russia's Ministry of Foreign Affairs as collegium secretary. Throughout his career, Martens combined tasks at the university

¹⁰¹ See further for articles drawn from this ESIL Research Forum in 12 *Baltic Yearbook of International Law* 2012, containing a symposium on international law in the post-Soviet space.

¹⁰² Pustogarov, *supra* note 4.

and at the Ministry of Foreign Affairs. In 1881, he became a member of the Council attached to the Minister of Foreign Affairs; a position he maintained until his death. At that time, the main function of the Council was to conduct examinations of diplomats. However, Martens also acted as adviser to the Russian foreign ministers.

1870 – Study trip to Central Europe; Martens attended lectures by Lorenz von Stein in Vienna and Johann Caspar Bluntschli in Heidelberg.

1871 – Martens became the holder of the chair of international law at Imperial St Petersburg University; his inaugural lecture was entitled ‘On the Tasks of Contemporary International Law’.

1873 – Martens defended his doctor of sciences degree. In the voluminous doctoral thesis on consular jurisdiction he defended the colonial practices of the European powers. The dissertation was also translated and published in Germany, *Das Consularwesen und die Consularjurisdiction im Orient* (1874).

1874 – Member of the Russian delegation at the Brussels Conference for the Codification of the Laws and Customs of Land Warfare. Martens played a key role in formulating Russia’s proposals but the effort to codify the law of warfare failed due to disagreements between European states.

1874–1909 – Having been granted special access to tsarist archives, he published the 15-volume treaty collection of imperial Russia, *Sobranie traktatov i konventsii, zaklyuchennykh Rossieyu s inostrannymi derzhavami* (*Recueil des traités et conventions, conclus par Russie avec les états étrangers*). Apart from his textbook on international law, the publication of the treaty collection was his main scholarly achievement; all major treaties were introduced with his extensive historical commentaries.

1874 – Martens became a member of the *Institut de droit international* which had been established in 1873. He became the author or co-author of a number of documents prepared by the *Institut* such as on the protectorate over the Suez Canal (1879), the manual on the laws and customs of warfare (1880), navigation along international rivers (1887), the convention on an international union for the publication of treaties (1892), rules for mixed cases in the Orient (1892), the draft regulation on trade in ‘Negros’ (1894).

1876 – Martens became professor ordinarius at Imperial St Petersburg University.

1877–1878 – Russo-Turkish War. In 1877, Martens published ‘Etude historique sur la politique Russe dans la question d’Orient’, IX *Revue de droit international* (1877); *Die russische Politik in der orientalischen Frage: Eine historische Studie* (St Petersburg, 1877). In 1879, he published a book, *The War in the Orient and the Brussels Conferences 1874–1878* (St Petersburg, 1879) in which he analysed – favourably for Russia – the actions of Russian and Ottoman forces in the Eastern War.

1879 – England and Russia found themselves in a race to acquire territories in Central Asia. Martens published ‘La Russie et l’Angleterre dans l’Asie Centrale’, XI *Revue de droit international* (1879) 227. In this work, Martens advocated common interests of the empires; there was space for both in Central Asia. The work was translated into German, English, and Russian.

1880 – Another timely publicist work by Martens, ‘Le conflit entre la Russie et la Chine, son développement et sa portée universelle’, XII *Revue de la droit international*

(1880). The publication appeared in the course of negotiations between Russia and China, which at that time was faced with colonization in particular by the British. Martens emphasized that (unlike other European empires) Russia was a friendly and benevolent nation towards its neighbour China.

1882 – In ‘La question Egyptienne et le droit international’, XIV *Revue de droit international et legislation comparée* (1882), Martens argued that the establishment of the Anglo-French condominium in Egypt violated the rights of other European powers. Instead, Egypt should have been neutralized.

1882–1883 – Publication of the first comprehensive textbook on international law in the Russian language, *Contemporary International Law of Civilized Peoples* (2 volumes). One of the defining features in the work was the distinction between ‘civilized peoples’ (to whom international law applied) and ‘uncivilized peoples’ (to whom only natural law applied). Subsequently, the textbook was translated and published in German, French, Spanish, Chinese, Persian, Serbian, and Japanese.

1884 – Martens prepared Russia’s positions for the Berlin conference and emphasized that although African matters remained distant for Russia, the international legal principles for occupying new lands would find application not only in Africa but also in Asia.

1893 – Martens attended the first Hague Conference on Private International Law and was active in a number of later sessions.

1895–1896 – Martens acted as arbitrator in the *Costa Rica Packet* case, concerning the arrest by Dutch authorities of the master of an English whaling ship, the *Costa Rica Packet*.

12 August 1898 – The Russian Minister of Foreign Affairs M.N. Murav’ev proposed that the foreign representatives in St Petersburg convene an international conference for the purposes of ensuring a ‘true and stable peace, and above all to put an end to the progressing development of armaments’. Martens was given the task of compiling Russia’s proposal for the programme of the conference. At the First Hague Peace conference, Martens was a member of the Russian delegation which was led by G.G. Staal, the Russian envoy in London.

6 May–17 July 1899 – The First Peace Conference was held at The Hague. Martens was elected chairman of the second commission where the question was the adoption of a Convention on the laws and customs of warfare based on the 1874 Brussels Declaration by means of an article-by-article discussion. Martens used the text of the Belgian delegate, modified it, and suggested the formulation that later became known as the Martens clause. States signed the Convention on the laws and customs of land warfare. Martens was also active in the third commission where the mechanisms for the peaceful settlement of inter-state disputes were being worked out and the main issue was the founding of a permanent court of arbitration. The Convention on the peaceful settlement of international disputes was adopted and the Permanent Chamber of the International Court of Arbitration founded. The institution of international commissions of inquiry was also established. The first commission of inquiry, held in 1905, dealt with the 1904 Dogger Bank (Hull) incident – when the Russian admiral Rozhdestvenskii mistakenly shelled British fishermen in the North Sea – and

the establishment of the commission of inquiry prevented a possible war between Russia and England.

June 1899 – The beginning of the Anglo-Venezuelan arbitration in Paris in which Martens was the umpire. For a month and a half, Martens travelled back and forth between The Hague and Paris. The debate was about the boundary between Venezuela and British Guiana along the Orinoco river; the US supported Venezuela's claims. The membership of the international arbitral tribunal was the following: chairman FF Martens, Lord Chief Justice C.A. Russell, Lord Justice Collins, M.V. Fuller (Chief Justice of the Supreme Court of the US), and D.J. Brewer (associate justice of the Supreme Court of the US). The hearing concluded on 27 September 1899 and on 3 October 1899 the Tribunal announced its award. The award gave 90 per cent of the disputed territory to Great Britain, and 10 per cent to Venezuela. The award was made by the Tribunal as a whole; there were no dissenting opinions of the minority. Half a century later a scandal ensued when one of the US lawyers involved in the case claimed that Russia had reached a behind-closed-doors deal with Britain which Martens had transmitted to the Tribunal, cornering the US members of the Tribunal with an ultimatum. However, the British lawyer Child refuted the 'American' account of what had happened.

1903 – Martens retired as professor at St Petersburg University; the chair was for some years occupied by his former disciple, Baron Mikhail Taube (1869–1961).

9 August 1905 – The beginning of the Russo-Japanese peace negotiations in Portsmouth, New Hampshire. Martens was included as expert in the Russian delegation led by Sergei Yul'evich Witte. However, Martens was not admitted to the negotiating table and felt sidelined. Martens helped draft the text of the peace treaty but had no influence on reaching agreement with regard to material questions. The plenipotentiaries of Russia and Japan signed the peace treaty on 5 September 1905.

January–February 1907 – Authorized by Tsar Nicholas II, Martens, accompanied by his former disciple Boris Nolde, went on a diplomatic tour to Berlin, Paris, London, The Hague, Rome, and Vienna in order to negotiate the programme for the Second Hague Peace conference.

15 June 1907 – The Second Peace Conference opened at The Hague. 44 states participated. Martens acted as president of the fourth committee (on maritime law). The Russian delegation was headed by Nelidov, the Ambassador in Paris, who was elected chairman of the conference. Martens was considered for the task of leading the formulation of the Statute on the Prize Court but unexpectedly Russia withdrew its support for the initiative. On 14 September 1907 the work of the fourth committee was approved by the conference; it has been regarded as the first step towards the codification of the law of warfare at sea, which led to the further London Conference in 1909 (in which Martens no longer participated). On 18 October 1907 the Second Hague Peace Conference adopted a Final Act to which were appended 13 conventions and one declaration.

7 June 1909 – During a train ride from his summer residence to St Petersburg, Martens died of a heart attack at the railway station in Valga (Walk), currently a border town between Estonia and Latvia.