

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.

The Martens Clause predates the general principle of public international law resulting from the *Steamship Lotus case*³⁶. The effect of the Martens clause is twofold and limited to international agreements that deal with the law of armed conflict. Firstly, in areas where LOAC treaties are silent, customary international law governs the situation. Secondly, during the conduct of hostilities what is not specifically prohibited is not necessarily permitted. Different versions of the Martens Clause appear throughout the *corpus* of LOAC³⁷. The Martens Clause is of particular importance to new military technologies such as ASAT capabilities. In fact, within the Nuclear Weapons Case the ICJ referred to the Martens Clause stating that it “*has proved to be an effective means of addressing the rapid evolution of military technology*”³⁸. The most recent expression of this clause reads as follows:

*"In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."*³⁹

³⁶ *Lotus Case* (1927) PCIJ Ser. A N10 what is not specifically prohibited is permitted.

³⁷ GCI art 63; GCII art 62; GC III art 142; GC IV art 158 supra note 6; API art I, supra note 11.

³⁸ Nuclear Weapons Case supra note 6 para. 78.

³⁹ AP I art 1.2, supra note 11.