destructive weapons in total disregard of humanitarian considerations. In this regard, Prof. Chimni drew a distinction between the essentially humanitarian concerns which the ICRC promotes through the protection of the rights of individuals in times of war and the humanitarian which is invaded by its non-humanitarian character seeking to legitimize violence an a particular vision of world order.

5. Professor Chimni also expressed concern about the North-South divide which has affected the application of the Laws of War and wondered why some powerful countries should ignore the laws of war as a Vietnam and champion the establishment of tribunals for war crimes in Rwanda and former Yugoslavia whilst opposing the establishment of an International Criminal Court in the interest of resuming the application of international laws of war against its own people.

6. Finally, Professor Chimni drew attention to the inadequate examination of the relationships between International Human Rights Law and International Humanitarian Law in the context of internal conflicts (conflicts within States).

7. Dr. (Ms) Zahra Noparast's presentation essentially dealt with the need for international law to clarify the notion of the right of self-defence which tends to encourage States to resort to the use of force. It was argued that a sanctions regime coupled with a compulsory jurisdiction for the International Court of Justice to enforce compliance would have a restraining influence to those States which wage illegal wars under the guise of the right of self-defence. In this connection, Dr. Noparast expressed concern about the International customary definition of the right of self-defence, the vague manner in which the right of self-defence is defined in Article 51 of the Charter and the apparent changes which the concept has undergone. Referring to Prof. Greenwood's report which stipulates that the conditions of "necessity" and "proportionality" are requirements for the invocation of the right of self-defence, Dr. Noparast argued that it was necessary to have a time frame which would prevent arbitrary action in the use of the right of self-defence.

8. In his presentation, the Legal Officer of the ICRC Regional Delegation, Mr. Umesh Kadam, stated that the ICRC was in agreement with the conclusions of the Greenwood Report to wit - no new laws were required and that the effective implementation of existing laws remained the essential challenges today and tomorrow.

9. The ICRC representative emphasized that the terms "International Humanitarian Law" and the "Laws of War" did not reflect different areas of the law but, in effect, referred to the same thing. He referred to Article 51 of the Additional Protocol I which codifies the principle of proportionality and lamented the absence of a reference in the report relating to indiscriminate attacks where in spite of clear identification of military targets, civilians tend to suffer the consequences of such attack.

10. The representative also stressed the importance of discrimination of international humanitarian; law as espoused in the Geneva Conventions. The lack of implementation of existing international humanitarian law resulted from the lack of political will of States to fully apply the law and informed the meeting that the Advisory Service of the ICRC was addressing those concerns.

11. Finally, the representative informed the meeting of the impending 50th Anniversary of the Geneva Conventions on August 12, 1999 which would remain the cornerstone of protection for the victims of armed conflict and afford an opportunity for victims of war to share their experiences.

12. Before opening the floor for views and comments on the presentations made, the President stated that he agreed with Prof. Greenwood's emphasis on the protection of human; lives in armed conflict as well as the need to concentrate on new techniques for the effective compliance with existing laws.

13. Several participants suggested the conclusions of the Greenwood report to the effect that there was no need for new laws and stressed the need for the effective enforcement of existing International Humanitarian Law and Laws of War.

14. A suggestion was made by participants for the creation of an expert body to study the military manuals of armies throughout the world to facilitate the formulation of training programmes for military personnel which guaranteed adequate knowledge of International Humanitarian Law and the Laws of War for compliance in war situations.

15. In this regard, participants also suggested that dissemination of information on these laws should not be limited to military personnel but also to be general public, in the belief that an enlightened public opinion could positively affect violations of IHL in times of war. It was recommended that co-operation with ICRC in this regard would promote the objectives of the 50th Anniversary of the Geneva Conventions.

16. Participants also welcomed the establishment of war-crimes tribunals such as in Rwanda and former Yugoslavia and expressed concern about the delays between the apprehension of criminals, their trial and conviction. In this connection the UN Security Council's power to establish criminal courts as already demonstrated was highlighted.

17. Finally, the consensus emerged that whether it was International Humanitarian Law or Human Rights Law, the objective to protect human live and the vulnerable such as women and children in war situations remained the same. Participants also agreed that States should honour their obligations in the implementation of IHL and human rights laws.

ANNEX III

REPORT OF THE RAPPORTEUR ON THE THEME "DEVELOPMENT OF INTERNATIONAL LAW RELATING TO DISARMAMENTS AND ARMS CONTROL SINCE THE FIRST HAGUE PEACE CONFERENCE IN 1999".

1. The Third Session of the "AALCC Meeting to Consider the Preliminary Reports on the Themes on the First International Peace Conference" was chaired by Dr. P.S. Rao, President of the AALCC. The Moderator was Mr. Frank X. N'jenga, former Secretary General, AALCC and Dean, Faculty if Law, Moi University, Kenya. The key speakers were Dr. Raja Mohan, Dr. K. Subrahmanyam, and Professor V.S. Mani.

2. The Moderator said the armaments race during the last hundred years had destabilized the world community. In the light of this backdrop, he felt the Blix Report was an opportune development. He felt the Report was succinct and very clear in its historical disposition.

3. Professor Mani presented a paper entitled "The International Law of Disarmament: A Centennial Overview". Describing the subject as an important one, he wondered why the international legal community had stayed away. The Blix Report, in his view, chiefly focused on issues "concerning arms and disarmament". He however felt that the Report did not aim "to completely cover the issues or to examine all the Agreements...'. He felt the Blix Report could be divided into matters concerning:

1. Aims of the First Hague Peace Conference;
2. Focus on the time after the first Peace Conference;
3. Realization of the aims of the first Hague Peace Conference regarding disarmament and arms control; and
4. Common issues: seeking their solution.

4. The main thrust however he averred were on issues pertaining to compliance and verification of arms control and disarmament agreements. While appreciating the accumulated experience and first hand knowledge of Dr. Blix, he felt certain deficiencies of the Report needed to be highlighted and evacuated. In his view there were: (i) that most attempts at disarmament's have been tentative and partial with inadequate commitment on the part of State; (ii) the effort towards disarmament is underscored by mutuality of suspicion and distrust; (iii) the move towards disarmament have been a pragmatic step-by-step approach; (iv) Efforts towards nuclear disarmament have been discriminatory, especially the NPT regime which focuses on the ban on horizontal proliferation of weapons; (v) Furthermore, a discussion of non-proliferation must encompass issue of (oligopolistic) regimes like the London Club, Australia Club and the MTCR retime; (vi) The Blix Report had left untouched issues concerning the international transfer of armaments and related materials; (vii) the Report was largely an analysis of the verification and compliance mechanisms prevalent in disarmament agreements; and (viii) Lastly the Blix Report did not make an attempt to look into the legality of weapons. He concluded by suggesting some items for an agenda towards future disarmament efforts which would include:

1. Ban on nuclear testing coupled with an obligation to negotiate a treaty banning nuclear weapons.

2. Creation of reciprocal no first use arrangements among nuclear weapon States.

3. Stable non-use guarantees by Nuclear Weapon States to non-nuclear States.

4. Ending deployment of short range nuclear weapons.

5. Taking nuclear forces off alert.

6. The removal of nuclear warheads from delivery system (removal of hair trigger elements).

7. Control over fissionable material.

8. Ban/restrictions on development/production of new weapons.

9. Ban on first use of existing weapons of mass destruction.

10. Identification, and ban or restriction on the existing means and methods of warfare whose use violates Article 35 of Geneva Protocol I of 1977.

5. Mr. Subhramanyam felt that the title of the Blix Report "Development of International Law Relating to Disarmament and Arms Control since the First Hague Peace Conference" was misleading as it did not deal at al with the issue of legality of nuclear weapons, which had come up before the ICJ as an Advisory Opinion. In his view, the Blix Report also, did not speak about the 'legitimacy or the legality of the use of nuclear weapons'. A diabolical stand was adopted by the nuclear have, as there existed no obligation was regulation of nuclear weapons, when lesser weapons of mass destruction such as biological and chemical weapons were regulated upon. Furthermore, he felt that the Blix Report was silent on the important issue of nuclear weapon technology.

6. the most important event not considered by the Blix Report, he said, was the indefinite extension of the NPT after the 25 year review in 1995. This act, in his view, had once and for all legitimized nuclear weapons, in all its facets. the chief challenge before international lawyers, he felt, was to evolve ways and means to delegitimize this process.

7. Another issue, he touched upon related to the violation of a basic norm of the 1969 Vienna Convention relating to Law of Treaties, wherein obligations, arose when a State is a party to a treaty regime. In this regard, he felt the efforts of the Big Five nuclear powers to coerce India to adhere to the CTBT regime, violated the Law of Treaties.

8. Dr. Raja Mohan, while thanking the Committee for affording an opportunity to speak on this important topic, felt that security experts often felt international law, not germane to their discussions. However, he was quick to add, that it cannot be denied that international law regulated the use of force in international relations. The element of power prevalent in the international relations, he felt, often transcended the international legal processes. The challenge before international lawyers, he averred, was how to get around this dilemma. Considering the fact that, there was a discriminatory regime which created two sets of laws, one for the have an other for the have notes. The real challenge to international lawyers is to press for a "universal no first use treaty regime".

9. He felt, that the non-State actors, new entrants in the process of disarmament who could play a damaging role, especially after the collapse of the Soviet Union, where one never felt the need for a verification regime. Following these presentations, the floor was left open for discussions. the main points of discussion are briefly summarized as under:-

(a) There is an urgent need for a genuine universal disarmament regime.

(b) The Hans Blix Report does not cover important aspect - viz. Transfer and trade of nuclear technology.

(c) the strengthening of international law relating to disarmament, could be achieved only if international law is based on reciprocity as unilateralism has been the main stumbling block towards multilateral negotiations in addressing disarmament issues.

(d) Given the existence of a treaty regime prohibiting production, use and stockpiling of chemical and biological weapons, speakers questioned the differential approach to nuclear weapons, as both categories were weapons of mass destruction.

(e) A view was expressed that States should endeavour to have a "no first use treaty regime".

(f) Another view expressed was that the extension of NPT regime essentially calls for a de-legitimization of the nuclear weapons proliferation regime.

(g) A view was expressed that the report did not reflect on a number of relevant issues relating to the effects of infinite extension of NPT, evaluation of NPT regime, relationship between legal instruments created and complete disarmament and lack of future perspectives and direction towards disarmament in the next century.

ANNEX IV

STATEMENT ON BEHALF OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS MADE BY THE LEGAL OFFICER, ICRC REGIONAL DELEGATION, NEW DELHI

Mr. Chairman,

The ICRC is pleased to note that discussion on international humanitarian law is assuming a prominent place in the context of the Centennial Commemoration of the First International Peace Conference and also the United Nations Decade of International Law, I would like to convey the good wishes of my colleagues in Geneva to the AALCC for taking the initiative to organize the regional consultation to discuss the preliminary reports on the themes of the First International Peace Conference. The ICRC has studied with great interest these reports, particularly the report prepared by Professor Christopher Greenwood on international humanitarian law. This document thoroughly and objectively analyses the developments relating to different facets of this body of law. The ICRC is in agreement with most of the conclusions reached by Prof. Greenwood, especially the one identifying implementation of humanitarian law as today main challenge. The effective implementation of existing law, including the obligation to ensure its respect, is indeed the most pressing matter at present. We will revert to this issue later, but let me mention here that this conclusion counters arguments suggesting that existing humanitarian law is outmoded and inadequate to protect the victims of today's conflicts. The ICRC, for its part, is absolutely convinced that humanitarian law remains fully relevant.

Although, Mr. Chairman, we are in agreement with Prof. Greenwood's most of the conclusions, we would like to share a few thoughts and comments with Prof. Greenwood and also others who have studied the report, especially on this present occasion when we are having a critical look at the report.

Mr. Chairman, the report is titled as 'International Humanitarian Law and the Laws of War'. Perhaps the title may lead one to believe that international that international humanitarian law and laws of war are two different areas of law and some confusion regarding their content. In our view, both the terms, in effect, relate to the same thing these days. The term international humanitarian law, which has gained the approval of most publicists, has now become official in vie of the title of the Geneva Diplomatic Conference of 1974-77, on "the reaffirmation and development of international humanitarian law applicable in armed conflicts".

When the term 'humanitarian law' was first used to describe laws of war, it was said that it combined two ideas of different natures, one legal and the other moral. Indeed, the provisions constituting this discipline are, in fact, a transposition into international law of moral and more specifically of humanitarian concerns. Accordingly, the name, international humanitarian law, seems satisfactory.

Mr. Chairman, we agree with the view of Prof. Greenwood that Article 51 of the Additional Protocol I codifies the principle of proportionality, although it does not use that term (page 47). However, there is another equally significant principle that is also codified by Article 51 which prohibits indiscriminate attacks, which is not identified in the report. The principle of proportionality presupposes that a military objective has been identified and aimed at, but that the incidental damage is excessive compared with the military value of the target. However, the real problem that we face around the world today is that too many forces simply aim in the general direction of the "enemy" without isolating one or more military objectives. they simply do not care about the fact that civilians are there also - a fact of which they are fully aware and do not take a precaution of directing attacks at military objectives. Such blind attacks are certainly prohibited but do not clearly fall within either attacks aimed at civilians or disproportionate attacks. Such attacks are described in Article 51(4) of the Protocol which are in general considered as "indiscriminate attacks". We think that the report should make allusion to this point, which is very important in practice.

Mr. Chairman, let me draw your attention to one of the tests applied for determining the scope of application of the law of internal armed conflicts as mentioned in the report (page 60). Article 1(I) of the Additional Protocol provides that the Protocol applies to armed conflicts.

Which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

While commenting on this provision, the report says,

The requirement of territorial control means that the majority of internal armed conflicts fall outside the scope of Additional Protocol II, the application of which is confined to full scale civil wars of the kind which occurred in Nigeria in the late 1960s.

We have some doubts about this rather absolute affirmation, especially if one looks at the internal armed conflicts that occurred approximately during the last ten years, one discovers that in most cases, the armed opposition groups had indeed territorial control. Examples would be Mozambique Angola, Liberia, Sierra Leone, Gongo, Ethiopia, Somalia, Uganda, Sudan, Afghanistan, Sri Lanka, Cambodia, Tadjikistan, Chechnya, Azerbaijan, Armenia, Bosnia, Columbia etc. This list of course not exhaustive.

Mr. Chairman, another issue associated with the one just referred to is a conclusion of Prof. Greemwood that the comparatively high threshold for the applicability of the law of internal armed conflicts opened up the threat of a gap between the coverage of human rights treaties and the rules of that law (page 63). the gap is most likely to be widened, according to the report, because most human rights treaties permit derogation in case of national emergency. According to us the gap identified does not seem to be that important according to recent positions