



**United Nations General Assembly I Sixth Committee
Report of the International Law Commission (Cluster III)
30-31 October 2018**

(check against delivery)

Mr. Chairman,

On the third cluster of items discussed in the report of the International Law Commission, Brazil would like to make brief comments to the topic of “Protection of the environment in relation to armed conflicts”. First of all, we thank former Special Rapporteur Marie Jacobsson for her work on this topic, and congratulates Ms. Marja Lehto for her appointment as Special Rapporteur.

The current report addresses a crucial but extremely complex topic of international humanitarian law (IHL): the law of occupation. The coapplication of different areas of law, such as IHL and international humanitarian law, is not a simple task, particularly during a protracted occupation. For Brazil, in situations of occupation, IHL does not automatically override other international obligations related to human rights and environment. The concrete determination of the applicable law in these scenarios goes beyond a straightforward application of the *lex specialis* principle, but demands a careful analysis of the concrete situation on the ground.

We agree with the general view that the Commission should not seek to change IHL but rather to fill gaps relating to environmental protection, taking into account the recent developments of international law. In the same vein, we consider that the current exercise should not seek to change international environmental law or attempt to create new norms.

We coincide with the Rapporteur’s views on the obligation of the Occupying Power to respect the legislation of the occupied territory concerning environmental protection. For Brazil, the principle of permanent sovereignty over natural resources plays a key role in the issue at hand. The Occupying Power should act for the benefit of the people under occupation, not for its own benefit.

Brazil considers that there are still considerable differences between international and non-international armed conflicts, particularly in terms of applicable law. The draft principles should take these differences into account.

On the commentaries to principle 4, we were a bit startled in seeing references to somewhat outdated sources, such as the Stockholm Declaration, but practically no reference to key documents in this area, such as the Rio Declaration, the Johannesburg Plan of Implementation and, more recently, the document

The Future we Want, adopted in 2012. In moving forward with the study of this topic, the Commission should, as far as possible, take into account core principles that have guided discussions on sustainable development and that are reflected in the aforementioned documents.

Regarding principle 8, we note that the Commission opted for the expression “peace operations”, which might cause confusion among distinct frameworks, ranging from duly authorized UN peacekeeping operations to actions whose legality might be elusive. Although IHL is indifferent to the causes or the legality of an armed conflict, the applicable norms might vary depending on the kind of operation. It is commendable that the report correctly assess that not all operations have a direct link to armed conflict. The terminology adopted in the guidelines and its commentaries should be in line with this assumption. For instance, we should stick to the operations’ carbon footprint, agreed upon in C-34, and not experiment with new terms, such as ‘environmental impacts’, which encompasses a whole different range of evaluations. Therefore, Brazil would caution against guidelines that might prejudice issues that are still under consideration in more appropriate fora. Here, guideline 8 might create rather than solve questions of fragmentation, given that it relates to the mandate of peacekeeping operations, which are discussed in other organs of the United Nations.

Thank you, Mr. Chairman.