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TOWARDS A CONCEPT OF UNIVERSAL HARM – WAR ETHICS FROM SAINT AUGUSTINE TO MODERN INTERNATIONAL LAW

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"Si se hominem meminit, multo magis dolebit iustorum necessitatem sibi exstitisse bellorum."

It is difficult to consider a war just, given the suffering it entails.
戦争が伴う苦しみを考えると、それを正義と見なすのは難しい。
Важко вважати війну справедливою, з огляду на страждання, які вона спричиняє.
من الصعب اعتبار الحرب عادلة نظرًا للمعاناة التي تنطوي عليها.

Saint Augustine, City of God, XIX, 7

Abstract. This article advances "universal harm" as a legalethical category for acts that disrupt both the social order and the cosmic/ecological order on which life depends. Bridging intellectual history (Augustine, Aquinas, Vitoria, Grotius) and contemporary doctrine, the author shows how modern warfare – especially nuclear weapons and depleteduranium (DU) munitions – exceeds traditional humanitarianlaw frames by inflicting longlived, transboundary and intergenerational damage. A comparative analysis of jurisprudence (e.g., *Shimoda* on the atomic bombings; *Overseas Hibakusha*; Italian case law granting administrative indemnities to soldiers exposed to DU) and international instruments (UN/UNEP, EU, Earth Charter) reveals a persistent recognition gap: the law mitigates consequences but rarely recognizes or repairs universal harm, partly due to narrow causality tests and a fragmented application of the precautionary principle. Conceptually, the paper situates war within a wider "diffused war" topology that entangles states, private actors, ecosystems, and future generations, weakening the rule of law. Normatively, it calls for (i) codifying universal harm as a ground of *erga omnes* state responsibility, (ii) adopting treatylevel moratoria/bans on DU and other ecocide-risk weapons, (iii) shifting from ex post compensation toward restorative obligations (ecosystem remediation, health protection), and (iv) integrating constitutional, humanrights, and environmental law around a biospherecentred precautionary standard. The result is a peaceoriented legal agenda that aligns security with the stability of biospheric processes and the dignity of present and future life.

Keywords: universal harm; depleted uranium; precautionary principle; erga omnes obligations; humanitarian law; ecocide; biosphere.

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INTRODUCTION

Since its emergence, humanity has exerted a significant impact on ecosystems and the biosphere. However, the development of technological society, the outbreak of world wars, and the use of increasingly invasive technologies in the realm of life and within ecosystems raise serious doubts about the ability of human beings to direct their organizational and operational efforts in a way that is in symbiosis with the biosphere, its regularities, and its processes.

The importance of granting binding force to international law aimed at mitigating climate change – underscored by the recent advisory opinion of the International Court of Justice on the obligations of States in this regard[1] – thus brings to light the issue of the necessary coherence between international norms and those adopted at the national level and by international organizations for their implementation.

However, such coherence cannot be conceived solely within a purely legal perspective, as is the case in the most widely recognized current studies [Peczenik 1989]. It must be considered in light of the ecological conditions in which we live and of the human factor which, through its actions, endangers those very conditions. The tension between the factual dimension and the form of legal relations cannot be resolved either through a purely discursive approach, following Habermas [1992] or by assuming the autonomy of technology, as suggested by Ellul [(1954), 1964].

The attempt to ground law in an ecological ethics – one that reflects the multiple moral approaches to our relationship with nature, as envisaged by Luhmann [(1986), 1989] – also encounters serious difficulties, especially in the face of the urgent need to develop a legal framework consistent with that relationship.

In this context, we find it increasingly useful to approach the issue in terms of ecology of the biosphere, understood as the capacity to listen

[1] International Court of Justice, Advisory Opinion on the Obligations of States in Respect of Climate Change, 23 July 2025, Press release No. 2025/36. See at least the last part of the judgment in which the Court asserts as follows: "a breach by a State of any obligations identified in response to question (a) constitutes an internationally wrongful act entailing the responsibility of that State. The responsible State is under a continuing duty to perform the obligation breached. The legal consequences resulting from the commission of an internationally wrongful act may include the obligations of: (a) cessation of the wrongful actions or omissions, if they are continuing; (b) providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and (c) full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury.

to nature. This approach allows us to overcome the fundamental limitation of Western metaphysics, highlighted by Heidegger [1953], which privileges the assertion of discourse over the experience of listening.

From this perspective, the issue of the link between pollution, climate change, and military activities – even when military technologies are adapted for peaceful purposes – cannot be overlooked in the search for a legal framework consistent with the Earth's limited capacity to absorb anthropogenic impacts and with the need to protect the fundamental values of the human person and their communities.

In this brief study, we will examine the difficulties related to proving the damage inflicted on the climate and the natural balances in which we live – damage that directly affects life, the rule of law, individual freedom, and property. Within this framework, the notion of a concept of *universal harm* appears complex, yet increasingly necessary.

1. HARM AS A DISRUPTION TO THE COSMIC AND SOCIAL ORDER

The study of ancient cultures and of ethical and political systems suggests a profound convergence between the concept of harm and the institutional forms devised for its reparation [Madden 2005]. In particular, harm was often associated with the disruption of both the cosmic order and the social order [Bussami 2015, 82-83].

In our view, these two lines of inquiry tend to converge. The development of moral principles and the concept of justice seems to emerge at the point of intersection between these two dimensions.

With modernity, there has been a gradual separation between the sphere of law, politics, and justice on the one hand, and that of the moral and cosmic order on the other. Nevertheless, in many indigenous legal systems, harm continues to be understood as a rupture in the cosmic balance, revealing a historical continuity in the conception of justice and reparation.

In parallel, contemporary legal systems have evolved in a direction that has led to a growing convergence in the concepts and institutions related to harm and compensation. On the one hand, this homogeneity can be attributed to the global influence of European legal traditions rooted in Roman law; on the other, it could be argued that it reflects the persistence of a shared consciousness of harm – one capable of transcending cultural differences and historical transformations.

Such a consciousness might justify the need to reconsider the question of cosmic order, reconstructing the ontology of law starting from an awareness of human existence within a cosmic, physical, geological, and biological system, structured by relationships and regularities.

Regardless of scientific observations – such as the regularities of the biosphere identified by Vernadsky [(1926): 1989], the implications of their transformations studied by Barnosky [2012], the Gaia hypothesis formulated by Lovelock [1979] and Margulis [1998], or the theory of symbiotic evolution advanced by the latter, what clearly emerges is the urgent need to rethink humanity's place within nature.

The development of society, with its expanding technological capabilities, has forcefully revived the problem of the disruption of the cosmic order. This disruption manifests itself especially through the harm caused by organized activities that profoundly undermine the relationships between humanity and the universal order – social and legal – which is also reflected in ethics, as highlighted by the evolution of philosophical thought [MacIntyre 1967].

2. THE LIMITS OF WAR AND UNIVERSAL HARM BETWEEN ETHICS, PHILOSOPHY, AND LAW

Among the organized activities capable of generating universal harm, war represents the most significant phenomenon. Already in the Hellenistic world, and later in late antiquity and the long transition from the Middle Ages to the modern era, war was perceived as an event capable of breaking the cosmic balance. Universal ethics, understood as a reflection of that order and its rationality, therefore imposed a series of limitations on the use of war, recognizing the need to subject it to precise rules. In particular, the authority to declare war was reserved to States, while wars of mere conquest, excessive cruelty, and actions directed against civilians were considered inadmissible.

In the Christian West, this reflection was developed above all by Saint Augustine, in his *Epistles* and in *The City of God*, where he affirms: a) that war must be a necessity, not a pretext[2]; b) that it is difficult to consider a war just, given the suffering it entails;[3] c) that agreements must be respected even during war, both with regard to enemies, allies, and society;[4] d) that war can never be a pretext, but must be a necessity: and therefore, it is necessity that defines the aims and actions of war;[5] e) that one must show clemency toward the vanquished.[6]

It is important to remember that Saint Augustine's approach to the limitation of war developed within the context of the Roman Empire, which made extensive use of war to maintain and expand its territory and its control over diverse populations [Pope 1940].

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[2] Saint Augustine, Epistola 189, Ad Bonifacium.
[3] Saint Augustine, De Civitate Dei, XIX, 7.
[4] Saint Augustine, Epistola 189, Ad Bonifacium.
[5] Saint Augustine, Epistola 189, Ad Bonifacium.
[6] Epistola 189, Ad Bonifacium.

This perspective is revisited, in a different historical context, by Saint Thomas Aquinas [II-II, q. 40, art. 1], who affirms that war is not always a sin, but only when it originates from greed or injustice. To this end, Thomas Aquinas establishes that: a) war must be declared by someone who has the authority to care for the public good; b) it must be waged for a just cause, that is, to remedy an injustice; c) it must be conducted with the right intention, aimed at promoting good or avoiding evil.

Here again, Thomas confirms what was affirmed by Saint Augustine, emphasizing the continuity of his thought with that of the Bishop of Hippo: "As Augustine states in the Liber Quaestionum, those armed conflicts are considered just which aim to punish an injustice suffered, when a nation or a city ought to be sanctioned for having failed to punish a wrongful act committed by its own members, or for having refused to return what was unjustly taken."[7] Furthermore: "Therefore, as Augustine states in his letter to Boniface (*Ep.* ad Bonif. clxxxix), peace is not pursued in order to wage war, but rather war is undertaken as a means to restore peace."[8]

The positions of Saint Augustine and Saint Thomas are important because, while addressing the problem of war from a predominantly ethical perspective, they remain in continuity with classical thought, also encompassing the legal dimension of war and justice. This continuity allows war to be linked not only to the disruption of the social and cosmic order, but also to the production of a universal harm – a concept we intend to develop in this contribution.

A fundamental step in this direction was taken by Francisco de Vitoria, who, by introducing the concept of universal rights applicable to all peoples – including indigenous populations – established a general legal limit to acts of war, grounding his reasoning in the *ius gentium*. His reflections on the immunity of non-combatants, the illegality of killing innocents, and the legal and moral constraints imposed on warfare – based on common human dignity and the rights to life, property, and social order – carry both theoretical and practical significance. As has been noted, they even raise the issue of rules of engagement. This perspective, both universal and dynamic, remains fully relevant today [Ruston 1999].

Grotius's approach [(1625), 2005] would later complete this vision by strongly emphasizing—on solid historical grounds – the role of law and treaties in the regulation of conflicts. He underscores that even war must be subject to legal and moral limits in order to protect humanity.[9]

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[7] Saint Thomas, Summa Theologiae, ST II–II 40.1, *corpus.*

[8] Saint Thomas, Summa Theologiae, ST II–II, q.40, a.1, *corpus*

[9] (*De iure belli ac pacis*) *The Rights of War and Peace*, Book II, Chap. I, II, I: "As for the causes of war, some are just, some unjust. Just causes are defense, recovery of property, and punishment."

These principles would form the foundation for the subsequent development of humanitarian law, as reflected in the Hague and Geneva Conventions.[10] Their evolution, from antiquity to the contemporary era, confirms the perception of war not only as a legal fact, but as a phenomenon capable of generating universal harm to the social and moral order.[11]

Thus, a line of continuity can be seen in the thought of Saint Augustine, Saint Thomas Aquinas, and Grotius, who conceive war as a possible instrument of punishment, while being fully aware of its extreme danger and of the need to impose legal and moral constraints.[12]

Between the second half of the 19th century and the early 20th, the development of the Hague Conventions (1899 and 1907) and the Geneva Conventions (beginning in 1864), which contributed to the formation of the corpus of contemporary international humanitarian law, made it clear that the use of weapons could no longer be regarded solely as a matter between warring states, but had assumed a universal dimension.

This evolution challenges the conception of war as the continuation of politics by other means, as theorized by Carl von Clausewitz [1832; 1989]. Indeed, while the suffering caused by conflicts raises concerns of a universal nature, war continues to be accepted as a phenomenon intrinsic to social life.

This ambiguity stems from the fact that humanitarian law, although a branch of international law, has had as its primary objective of mitigation of the human consequences of war, rather than its prevention. Its provisions and warnings regarding the risks associated with wars waged by technologically advanced societies – including in terms of communication – nonetheless served a deterrent function. However, this did not prevent the outbreak of the First World War, nor its escalation, which further undermined the global political and social order, exacerbated by the difficulties in enforcing the norms already in place.

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[10] *The Rights of War and Peace*, Book III,f.e. Ch. XII: "there is no manner of Justice, that a whole Kingdom should be laid waste, for the driving away of a few Cattle, or the burning of some Houses.." (but a thorough reading of XII and XIII Chater may really help understanding the relation between reason, good sense and moderation in this ambit).

[11] Prolegomena to the first edition of *De Iure Belli ac Pacis* (1625): "The great truth is that everything is insecure as soon as we abandon laws."

[12] Grotius, *The Rights…*, Book II, Ch. XX, XI, I: "Kings, and those who are invested with a Power equal to that of Kings, have a Right to exact Punishments, not only for Injuries committed against themselves, or their Subjects, but likewise, for those which do not peculiarly concern them, but which are, in any Persons whatsoever, grievous Violations of the Law of Nature or Nations."

3. INTERNATIONAL LAW, POLITICAL SOCIETY, AND PROTECTION FROM UNIVERSAL HARM

From this perspective, it becomes essential to reflect on the relationship between international law, political society, and the need to protect humanity from harm on a universal scale.

Among the consequences of this tragic course of events are the emergence and expansion of authoritarian states and, as the twentieth century progressed, the rise of totalitarian logic – favored by the evolution of techniques of social control and propaganda, which became even more effective through technological advancement. The unfolding of these transformations eventually led to the Second World War, revealing how the organizational and technological capacities of contemporary societies showing that the organizational and technological capacities of contemporary societies not only enabled the subjugation of entire groups of people but also facilitated the perpetration of large-scale crimes, such as genocide. In fact, such episodes had already occurred at the beginning of the twentieth century, as demonstrated by the persecution and genocide of the Herero and Nama peoples. In this regard, Rachel Anderson has argued that recognizing the claims advanced by the Herero would have implications far beyond the borders of Namibia, restoring a voice to colonized, annihilated, and silenced masses in Africa and throughout the world. Therefore – she concludes – international law must acknowledge this voice, even if the states directly involved continue to refuse to do so. In this sense, the universality of the harm inflicted is also affirmed [Anderson 2005].

As shown also by the research of Benjamin Madley [2005], there is a continuity between the extermination practices adopted in Africa and the techniques of elimination developed in Eastern Europe during the Nazi regime.

4. BETWEEN THE EXISTENCE AND RECOGNITION OF UNIVERSAL HARM

The technological and organizational capacities of States, consolidated in the 19th century, made possible – within the framework of the vast scientific progress of the first half of the 20th century – the development of an unprecedented offensive potential, both in terms of the destructiveness of weapons and of industrial military capacity, which culminated, in the following century, with the advent of nuclear weapons.[13]

[13] As emerges from the records of the inquiry conducted by the United States Atomic Energy Commission, including the testimony of Oppenheimer himself, "On the one hand, he is said to have suffered great remorse, along with other nuclear scientists, at having brought the

Ellul [1964, 427], on the other hand, who deeply analyzed the development of technological society, emphasized that the autonomy of technological systems fundamentally and irreversibly increases our dependence on them – even in relation to our spiritual expressions.[14] For this reason, reflecting on weapons – or the technologies that result in mass destruction – requires an objective understanding of what the effects of such devices and the related processes produce in terms of the very possibility of our own existence. Only in this way can the concept of universal harm lead to a critical questioning of the very technical processes that drive the proliferation of such weapons [Ellul 1964, 99, 425].[15]

The effects of this weapon – particularly those caused by radiation – have raised the issue of a type of harm whose scope transcends the context of warfare, affecting not only those who suffered it directly, but also future generations. This scenario thus poses the question of how to define and frame, in legal terms, the concept of universal harm, including in relation to the international responsibility of States.

The risk that harm resulting from war could lead to the destruction of all human civilization emerges implicitly in the rescript of the Japanese Emperor dated August 15, 1945, which announced the acceptance of unconditional surrender, referring to the threat posed by new weapons and the need to preserve the Empire. This was an element that influenced the negotiations regarding the Emperor's position in the postwar period.

The content of this document, drafted under extraordinary circumstances involving confrontation between the Emperor and the government – particularly with the military leadership – reveals a specific concern about weapons of mass destruction, likely related to the imperial prerogatives that saw him as the guarantor of the balance between Heaven and Earth.

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atomic bomb into the world; and he recounts in his hearing his profound doubts about creating a vastly more destructive weapon. Yet, not just once, but twice in the course of the hearing, he said that this fearsome device (or, rather, Edward Teiler's new notion for making it) was too "technically sweet" not to proceed with. His fellow scientists explain this as the voice of the purely intellectual, purely scientific part of the man. Well, if scientists as sensitive as Oppenheimer can indeed wall off their moral sensibilities so completely and successfully, then technology is an even more fearsome monster than most of us realize" (1971).

[14] "With the final integration of the instinctive and the spiritual by means of these human techniques, the edifice of the technical society will be completed". In it, our desires and our protests will be harmless products of that very construction. "And the supreme luxury of the society of technical necessity will be to grant the bonus of useless revolt and of an acquiescent smile."

[15] Even though the same author warns that "The complete separation of thought and action affected by technique produces in a new guise a phenomenon which we have already discussed as it appears in other areas: the lack of spiritual efficacy of even the best ideas."

Rather than addressing the responsibilities for crimes committed during the war, the document appears to reflect an attempt to confront the problem of new weaponry within a broader framework, one that included a reflection on the continuity of political order and the relationship between the government and the imperial role:

"The enemy has begun to employ a new and most cruel bomb, the power of which to do damage is indeed incalculable, taking the toll of many innocent lives. Should we continue to fight, it would not only result in an ultimate collapse and obliteration of the Japanese nation, but also it would lead to the total extinction of human civilization. Such being the case, how are We to save the millions of Our subjects; or to atone Ourselves before the hallowed spirits of Our Imperial Ancestors? This is the reason why We have ordered the acceptance of the provisions of the Joint Declaration of the Powers" [Emperor Shōwa 1945].

With the founding of the United Nations, an attempt was made to establish a new international order based on the renunciation of war, with open membership to all peace-loving nations. However, the very principle on which the UN was built – and in particular, the system of collective security entrusted to the permanent members of the Security Council – was quickly undermined by the onset of the Cold War, due in part to the systematic use of the veto power by the major powers.

The emergence of nuclear deterrence and the logic of Mutual Assured Destruction (MAD) [Jeervis 2002, 40-42][16] prevented the outbreak of direct conflict between the major powers. However, they also exposed the limitations of collective security, encouraging nuclear proliferation and the spread of geopolitical tensions through indirect conflicts and proxy wars. All of this, however, highlights the catastrophic nature of the potential harm – even from the perspective of the culture of coexistence and the legal principles associated with it [Ifft 2017, 71].[17]

In this context, the concept of proxy war has become a recurring strategy through which major powers have influenced the course of conflicts without directly engaging in combat. This approach, encouraged by the logic of the Cold War and nuclear deterrence, characterized several conflicts of the 20th century, such as the Korean War (1950-1953), the Vietnam War (1955-1975), and the war in Afghanistan (1979-1989), in which the United States and the

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[16] The literature on this topic generally highlights the paradoxical nature of this approach, precisely because of the destruction it can cause.

[17] "...because nuclear weapons can inflict 'uncontestable costs,' they do offer a capability that in many respects is ideal as a deterrent, especially when incorporated into a strategy of retaliation. No matter what an opponent does, including an all-out nuclear assault, a few remaining nuclear weapons can carry out retaliatory threats that can inflict catastrophic levels of damage."

Soviet Union supported opposing factions without confronting each other directly on the battlefield.

In the 21st century, proxy wars have taken on an even more complex form, due to the development of asymmetric warfare and cyber warfare, which, according to Rid, are nothing more than three historically constitutive aspects of war itself: sabotage, espionage, and subversion [Rid 2011, 15].[18] These elements add to the significant material, human, and biospheric damage caused by actual hostilities, a permanent threat to freedom, the security of contracts, property, and the dignity of life. In other words, the catastrophic aspects of such phenomena continue to reveal the enduring nature of a sphere of relations in which human beings are deprived of the respect for certain fundamental values.

The conflicts in Syria, Yemen, and Ukraine are emblematic examples of this evolution, in which non-state actors, such as armed groups and private military companies [Bassiouni 2008], have further blurred the boundaries between conventional and irregular warfare [Regan 2002].

Moreover, the study of proxy war highlights the extent of suffering and destruction associated with it, which by its very nature tends to multiply hostilities and, consequently, the harm produced [Fox 2019, 55].[19]

The conflicts we have discussed show how war today tends to unfold according to a logic of progressive expansion, involving a multiplicity of actors within increasingly broad and structured topological frameworks that endanger human life, the stability of ecosystems, and even the very existence of law. This characteristic may be defined as diffused war, which manifests within societies and through them, ultimately affecting the relationship between humanity, the biota, and the biosphere, as well as the ability of law

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[18] "But all known political cyber offenses, criminal or not, are neither common crime nor common war. Their purpose is subverting, spying, or sabotaging. In all three cases, Clausewitz's three criteria are jumbled. These activities need not be violent to be effective. They need not be instrumental to work, as subversion may often be an expression of collective passion and espionage may be an outcome of opportunity rather than strategy. And finally: aggressors engaging in subversion, espionage or sabotage do act politically; but in sharp contrast to warfare, they are likely to have a permanent or at least temporary interest in avoiding attribution."

[19] "Modern proxy conflict is dominated by death and destruction; however, it just so happens that the death and destruction affect the proxy to almost an equal degree as that of the enemy. More to the point, in recent year's proxy warfare has resulted a drastic increase in the number, duration, and lethality of sieges across the globe.35 Sieges, like those in Mosul and Marawi, from an American perspective, or Donetsk airport and Debal'tseve from a Russian perspective, illustrate the close bond between fighting through proxies and the increased risk for the principal's proxy. The resultant effect is that the character of proxy warfare increases the cost and risk for the proxy force and its government, therefore creating the conditions that can accelerate divergence in the relationship between the partners."

to develop a universal presence. Within this difficulty lies one of the manifestations of universal harm – namely, the weakening of law.

Although the Geneva Conventions and other international norms regulate armed conflicts, the issue of the intrinsic illegality of war has not yet been adequately addressed. The problem is, in fact, linked to numerous paradoxical situations that deserve to be considered together. For example, the very aim of minimizing human suffering calls into question the principles of humanitarian law in a way that is paradoxical enough to warrant deeper reflection [Stephens and Lewis 2005, 85].[20] This is especially true when considered in relation to the danger to human life and health, as well as to ecosystems, resulting from military activities – particularly in the era of technological society [Falk 1973].[21] A possible starting point could be the development of a new ethics grounded in our relationship with life as a cosmic phenomenon – an approach that would call upon the law to care for this very dimension. Therefore, the multiplication of war-related phenomena, together with the complexity of weaponry and the intensity of its use, should be adequately considered in terms of their real danger and universal harm.

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[20] "What has been contended in this review is that there should be recognition of the limits of the existing law and, especially in the current paradigm of fighting a global war on terrorism, a sustained assessment of the efficacy of the existing structure. It is a mutual goal of the humanitarian and military camps that victory in warfare should be achieved swiftly and with the least amount of suffering. It has been contended that the existing principles of distinction and proportionality do not always secure these laudable goals especially in the new 'battle-space' in which we find ourselves, and that new concepts dealing with 'effects-based operations' may promise a better alternative."

[21] As for the war in Indochina, the author, among various references, points out that "Perhaps the crudest tool the United States is using to destroy the ecology in Indochina is the 'Rome plow'. This is a heavily armored caterpillar bulldozer with a 2.5 ton blade. The Rome Plow can cut a swath through the heaviest forest. It has been used to clear several hundred yards on each side of all main roads in South Vietnam. In mid-1971 five land clearing companies were at work, each with some thirty plows, mowing down Vietnamese forests. By then some 800,000 acres had been cleared and the clearing was continuing at a rate of about 2,000 acres (3 square miles) daily." In this regard, he refers to the war crimes perpetrated against the primeval forests during the German occupation, involving logging operations that far exceeded the forests' capacity to regenerate.

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