

Theory of the Partisan: Intermediate Commentary on the Concept of the Political (1963)¹.
Carl Schmitt. *Telos* 127 (Spring 2004): 11-78.

INTRODUCTION

View of the Initial Situation 1808-13

The starting point of our considerations concerning the problem of the partisan is the guerrilla war that the Spanish people waged against the army of a foreign conqueror between 1808 and 1813. In this war, a pre-bourgeois, pre-industrial, pre-conventional people for the first time confronted a modern, well-organized, regular army that had evolved from the experiences of the French Revolution. This opened new horizons to the art of war, paving the way for a new understanding of the strategy and ultimately a new theory of war and politics.

The partisan fights as an irregular. But the difference between regular and irregular combat depends on a clear definition of what is "regular," and finds only in modern forms of war organization, which originated in the wars that ensued after the French Revolution, its real antithesis and therefore its true definition. In history, there have always been war regulations and rules of engagement, and consequently there have been also transgressions and violations of these rules. Examples that can be defined as instances of partisan war have occurred in all periods of great crisis, in Germany during the Thirty Years War (1618-48), and in all civil and colonial wars in world history.

In elaborating a general theory of the partisan it is important not to forget that the significance of his "irregularity" depends on the importance attributed to the "regular" that the partisan struggle questions. It is precisely this regularity of the state, as well as of the army, that receives from Napoleon a new and exact definition, both for the French armed forces and the state. The countless Indian wars of the white conquerors against the American redskins from the

¹ Published originally as *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen*, 2nd ed. (Berlin: Duncker und Humblot, 1975). Dedicated to Ernst Forsthoff on his 60th Birthday (September 13, 1963). This discussion, *Theory of the Partisan*, originated in two lectures I delivered in 1962: on March 15, in Pamplona, at the invitation of General de Navarra College; on March 17, at the University of Saragossa, at meetings organized by the General Palafox School, at the invitation of its director, Professor Luis Garcia Arias. The lectures were published by the Palafox Professorship at the end of 1962. The subtitle, *Intermediate Commentary on the Concept of the Political*, has reference to the concrete moment of publication, when the publisher [of *The Concept of the Political*] was making my 1932 work available once again. In the last decades, a number of corollaries on the subject have appeared. This discussion is not such a corollary, but rather an independent, if sketchy, work, whose theme unavoidably flows into the problem of the distinction between friend and enemy. Thus, I would like to offer this elaboration on my 1962 lectures in the modest form of an intermediate commentary, and in this way to make it accessible to all those who have followed attentively the difficult discussion of the concept of the political.

17th to the 19th century, as well as the riflemen's methods during the American War of Independence against the regular English army (1774-83), and the civil war in the Vendee between Chouans and Jacobins (1793-96) must all be located in a pre-Napoleonic stage. The new art of war of Napoleon's regular army was the result of a new way of fighting – a revolutionary one.²

The partisan of the 1808 Spanish guerrilla war was the first who dared to fight irregularly against a modern, regular army. In the fall of 1808, Napoleon had defeated the regular Spanish army. The first Spanish guerrilla war began only after this defeat. Even today we still do not have a complete, documented history of the Spanish partisan war. According to what Fernando Solano Costa claims in his essay *Los Guerrilleros*, such a history seems necessary, but it is a difficult task, since the Spanish guerrilla war consisted of at least 200 regional small wars in Asturias, Aragon, Catalonia, Navarra, Castile etc., each under a different leader, whose name is shrouded in legends and myths.³ Juan Martin Diez, who became a terror for the French under the name *Empecinado* [the incorrigible], was one of them and rendered unsafe the road connecting

² Eberhard Kessel, "Die Wandlung der Kriegskunst im Zeitalter der französischen Revolution," in *Historische Zeitschrift*, Vol. 148 (1933) pp. 248 f., and Vol. 191 (1960), pp. 397 ff., which is a review of Robert S. Quimby, *The Background of Napoleonic Warfare: The Theory of Military Tactics in Eighteenth Century France* (New York: Columbia University Press, 1957); Werner Hahlweg, *Preussische Reformzeit und revolutionärer Krieg*, Supp. 18 of the *Wehrwissenschaftlichen Rundschau* (Sept. 1962), pp. 49-50: "From the new way of fighting of the revolutionary mass army, Napoleon developed a complete system in an exemplary way: its military operations on a grand style, its great tactic and its great strategy." The Prussian officer and publicist Julius von Voss wrote that Napoleon's whole 1806 campaign "could be defined as a guerrilla war on a grand scale," p. 14.

³ In the publications of the General Palafox School, see *La Guerra Moderna* (1955): Fernando de Salas Lopez, *Guerrillas y quintas columnas* (Vol. II, pp. 181-211); in *La Guerra de la Independencia Espanola y los Sitios de Zaragoza* (1958): Jose Maria Jover Zamora, "La Guerra Espanola de la Independencia en el Marco de las Guerras Europeas de Liberacion (1808-1814)," pp. 41-165; Fernando Solano Costa, "La Resistencia Popular en la Guerra de la Independencia: Los Guerrilleros," pp. 387-423; Antonio Cerrano Montalvo, "El Pueblo en la Guerra de la Independencia: La Resistencia en las Ciudades," pp. 463-530. Luis Garcia Arias' two fundamental essays, "Sobre la Licitud de la Guerra Moderna," and "El Nuevo Concepto de Defensa Nacional" can be found, respectively, in *La Guerra Moderna y la Organizacion Internacional* (Madrid: Instituto de Estudios Politicos, 1962), Vol. I; and in *Defensa Nacional* (1960). At the end of the previously cited article, Costa points out that, hitherto, there is no documented history of the Spanish popular movement against Napoleon. Yet, we must consider his essay, along with that of Jover Zamora, an outstanding summary, and recall with gratitude that, for us, it has been an important source of information. Spanish historical works deal with guerrilla wars in various ways, but they have not provided for today's readers a sufficiently comprehensive picture. See Conde de Toreno, Modesto Lafuente, Rodriguez de Solis, Jose M. Garcia Rodriguez) and, in a very detailed account, Jose Gomez de Arceche, in Vols. 4, 5, 7, 9, 11, and 14 of his history of the war of Independence. An examination of French, English, and German publications would lead us too far astray. For an excellent overview of all these, see Fernando Solano Costa, "El Guerillo y su Trascendencia" in the publications of the *Congreso Historico Internacional de la Guerra y su Epoca* (Saragossa: Institucion Fernando el Catolico, March-April 1959). See also Santiago Amado Loriga, *Aspectos Militares de la Guerra de la Independencia*, and Juan Mercader Riba, *La Organizacion administrativa Francesca en Espana*, in the same set of publications.

Madrid to Saragossa.⁴ This partisan war was waged on both sides with the most gruesome cruelty, and it is no wonder that more historical material was given to the press by cultivated writers, the only ones able to write books and memoirs, than by the guerrilla fighters. Obviously, these intellectuals were pro-French *afrancesados*. At any rate, between myth and legends, on the one hand, and documented history, on the other, the general lines of our initial situation remain clear. According to Clausewitz, half of the entire French army was often posted in Spain, and half of them, i.e., 250-260,000 men, were often checkmated by guerrilla fighters, whose number has been estimated by Gomez de Arceche at 50,000, and by others as much lower. The situation of the Spanish partisan in 1808 is characterized primarily by the fact that he engaged in war only on his own soil, while his king and his family were not yet able to tell exactly who the real enemy was. From this viewpoint, the legitimate authorities in Spain did not act differently from the ones in Germany. In addition, typical of the Spanish situation is that the educated strata of the nobility and of the high clergy, and even of the bourgeoisie, were mostly *afrancesados*, i.e., they sympathized with the foreign conqueror. This is why there are parallels with Germany, where the great German poet Goethe wrote hymns glorifying Napoleon and the German educated elite never succeeded in developing a clear idea of what should be its political idea. In Spain, it was the guerrilla, a poor devil, the first typical case of that cannon fodder used by great world powers for their armed conflicts, who ran the risk of a hopeless fight. All of this fits, almost like an overture, in a theory of the partisan.

At that time, a spark jumped from Spain to Northern Europe, but up there it did not ignite the same fire that gave the Spanish guerrilla war its historical significance. It provoked, however, a series of reactions whose effectiveness reaches our days, this second half of the 20th century, in order to transform the face of the earth and of her inhabitants.

An organic attempt to imitate the Spanish model was first made in 1809, during the short war waged by Austria against Napoleon. With the help of famous publicists, the Austrian government staged a national anti-napoleonic campaign. Among them, we should recall the

⁴ Costa, "Los Guerilleros," *op. cit.*, pp. 387, 402, and 405; Gregorio Maranon has published a Spanish translation of the section on *Empecinado* in Frederick Hardman, *Peninsular Scenes and Sketches* (Edinburgh and London: W. Blackwood & Sons, 1846). [See *El Empecinado visto por un ingles* (Buenos Aires: Espasa-Caalpe, 1946), with a prologue by Maranon]. In Vol. 14, Jose de Arceche has published as an appendix a lecture on *Empecinado*. Along with *Empecinado*, mention should be made of Priest Merino, to whom the last account in the above-cited *Empecinado* published by Maranon is dedicated. *Empecinado* and Priest Merino found themselves standing on two different barricades when, in 1823, the French invaded Spain on the directives of the Holy Alliance: *Empecinado*, on the side of the constitutionalists; Priest Merino, on the side of the French absolutists.

names of Friedrich Genz and Friedrich Schlegel. There was a dissemination of Spanish pamphlets translated into German.⁵ Heinrich von Kleist was one of the first to join, and after this 1809 Austrian war, he continued anti-French propaganda in Berlin. In these years, up to his death in November 1811, he became the poet of national resistance against the foreign conqueror. His play, "Die Hermannsschlacht," remains the greatest partisan poem of all times. He also wrote a poem titled "An Palafox," and put the defender of Saragossa in the same company as Leonidas, Arminius, and William Tell.⁶ That the reformers in the Prussian general staff, especially August von Gneisenau and Gerhard von Scharnhorst, were deeply impressed by the Spanish example is something now well known and will be discussed later. Even the germs of that book, *On War*, through which the name Carl von Clausewitz acquired an almost mythical resonance, can be found in the patrimony of ideas of those officers of the Prussian general staff during the years between 1808 and 1813. His formula of "war as the continuation of politics" already contains in a nutshell a theory of the partisan, whose logic has been pursued to its end by Lenin and Mao Tse-tung.⁷

A real guerrilla war that should be mentioned in the context of our problem of the partisan was waged only in Tyrol, where Andreas Hofer, Joseph Speckbacher, and the Capuchin friar Joachim Happinger were active. As Clausewitz put it, the Tyroleans became "a mighty torch."⁸ This 1809 episode, however, reached a rapid conclusion. There was no partisan war against the French in the rest of Germany. The strong national impulse expressed in isolated uprising by small bands, ended very quickly, and had no impact on the course of regular war.

⁵ Peter Rassow discusses the pamphlet by the Spanish Minister Ceballo, Ernst Moritz Arndt, and Heinrich von Kleist's "Katechismus der Deutschen," in "Die Wirkung der Erhebung Spaniens auf die Erhebung gegen Napoleon I," in *Historische Zeitschrift* 167 (1943) pp. 310-335; see Hahlweg, *Preussische Reformzeit und revolutionärer Krieg*, *op. cit.*, p. 9, n. 9-13 (on the 1807-1813 insurrections in Germany). Colonel von Schepeler, who later became known as a historian of the Spanish War of Independence, also collaborated from the North on the Austrian plans for armed insurrection against the French. See Hans Jureschke, "El Colonel von Schepeler, Character y Calor informativo de su obra historiográfica sobre el reinado de Fernando VII," in *Revista de Estudios Políticos*, No. 126 (special issue on the constitution of Cadiz 1812), p. 230.

⁶ Rudolf Borchardt included Kleist's poem, "An Palafox," in his collection, *Ewiger Vorrat deutscher Poesie* (1926). The defender of Saragossa, General Palafox, was no partisan, but rather a regular professional officer, and the defense of the town by the entire population was not yet a partisan war, but rather a regular resistance against a regular siege, as emphasized by Hans Schomerus emphasizes in "Partisanen," in *Christ und Welt*, No. 26 (1949), p. 38, n. 19.

⁷ Carl von Clausewitz, *On War*, ed. and tr. by Michael Howard and Peter Paret (Princeton: Princeton University Press, 1989), pp. 357ff. and 605ff., respectively.

⁸ Carl von Clausewitz, *Politische Schriften und Briefe*, ed. by Dr. Hans Rothfels (Munich: Drei Masken Verlag, 1922), p. 217.

The fighting of spring and summer 1813 took place on the battlefield, and the decisive blow was struck in a pitched battle near Leipzig in October 1813.

Within the framework of the European general restoration, the Congress of Vienna (1814-15) reestablished the principles of the European laws of war. This was one of the most remarkable restorations in world history. It was so enormously successful that these laws of war, of the bracketed continental land war, still regulated the military conduct of European land war during WWI (1914-18). Even today, these laws of war are still called "classic," and they actually deserve the name. In fact, they establish clear distinctions, above all between war and peace, combatants and non-combatants, enemies and common criminals.⁹ War was waged between states, as a war between regular state armies, between sovereign bearers of a *jus belli*, who also respected each other during war as enemies, and did not consider each other criminals, so that a peaceful conclusion was possible and even remains the normal, almost obvious, conclusion of war. Given such a classic regularity--at least as long as it actually held sway – the partisan could only remain a marginal figure, as he was during the entire WWI.

The Horizon of Out Observations

In order not to create ambiguities, when I occasionally speak of *modern* theories of the partisan, I must emphasize that actually there are no *ancient* theories of the partisan. At least up to now, in the classic laws of war of European international law there is no place for the figure of the partisan in the modern sense among the norms concerning war. If anything, partisans are seen as a kind of very mobile *light troops*, but always regular, as in 18th century wars, or they are outside the law, considered as particularly gruesome criminals; they are simply *hors la loi*. As

⁹ A whole series of restorations brought about by the Congress of Vienna were readily accepted, e.g., the principle of dynastic legitimacy and the legitimate monarchy, as well as the high aristocracy in Germany, the Pontifical State in Italy, and, beyond the papacy, the Jesuit order. There is less awareness of the great work of the restoration concerning the *jus publicum Europaeum* and its bracketing of land war between European sovereign states--a restoration which, at least in textbooks of international law, has been retained up to now as a "classic" facade. In my book, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, tr. by G. L. Ulmen (New York: Telos Press, 2003), the disruption caused by wars during the French Revolution and the Napoleonic age is not dealt with in a sufficiently detailed way. Hans Wehberger has rightly criticized this shortcoming in his review in *Friedenswarte*, Vol. 50 (1951), pp. 305-14. As an at least partial supplement, I can now refer to Roman Schnur's research concerning the ideas and the practice of international law in France, from 1789 to 1815, of which until now only one essay, "Land und Meer," has appeared in *Zeitschrift für Politik* (1961), pp. 11 ff. Even Switzerland's uninterrupted neutrality belongs, along with its *situation unique* within the framework of the restoration work that bracketed the European war. See *The Nomos of the Earth*, *op. cit.*, pp. 190 and 249ff.

long as war remained a kind of duel based on the cavalry of the combatants and on clear laws, it could not have been otherwise.

With the introduction of compulsory military service, however, all wars become in principle national wars of liberation. This soon led to complex situations, often irresolvable on the basis of classic laws of war, as could be those of a more or less improvised mass conscription, or those of voluntary groups (*Freikorps*), or snipers (*franc tireurs*). This will be discussed later. In any case, war remains fundamentally *bracketed*, and the partisan ends up outside this bracketing. Rather, it is precisely this fact that marginalized him. The modern partisan expects neither law nor mercy from the enemy. He has moved away from the conventional enmity of controlled and bracketed war, and into the realm of another, real enmity, which, through terror and counter-terror, grows continually, up to reciprocal annihilation.

There are two types of particularly important wars in relation to the partisan (*Partisanentum*) and, in some sense, related to each other: civil war and colonial war. Today, this relation has become very specific. Classic European international law had removed these two dangerous subspecies of war and of enmity, to the point of marginalizing them. In the *jus publicum Europaeum*, war was waged *between* states, by a regular state army against another. Open civil war was seen as an armed insurrection, which was defeated by means of a state of siege and by allowing the police and the army to intervene – unless it led to the recognition of rebels as belligerents. The military science of European nations such as England, France, and Spain has not forgotten altogether colonial wars. Yet, all of this has never challenged the classic model of regular wars among states.¹⁰

Here, Russia deserves particular mention. During the whole 19th century, the Russian army waged many wars against Asiatic mountain peoples, and never restricted itself to waging exclusively regular army wars, as did the Prussian-German army. Furthermore, Russian history was able to become familiar with the autochthonous partisan war against Napoleon's army. In the summer of 1812, Russian partisans under military leadership placed a series of obstacles on the path of the French army advancing toward Moscow; in rail and winter of the same year, Russian peasants decimated the hungry, frozen and besieged French soldiers in retreat. All of this did not last more than half a year, but it sufficed to become an historical event of great import,

¹⁰ See the pages listed in the subject index of *The Nomos of the Earth, op. cit.*, under the keywords: "civil war," "enemy," "*justa causa*" and "*justus hostis*."

admittedly more through the political myth that it became than through its paradigmatic impact in the history of military science. Here, we must mention and even contrapose different interpretations of this Russian partisan war of 1812: an anarchist one, elaborated by Michael Bakunin and Peter Kropotkin, which became famous in Leo Tolstoy's novel *War and Peace*, and a Stalinist one, articulated by the Bolsheviks in their tactics and strategy of revolutionary war.

Unlike Bakunin or Kropotkin, Tolstoy was not an anarchist, but the impact of his literary influence was much greater. His epic work *War and Peace* generated more myths than any political doctrine or documented history. He attributed to the Russian partisan of 1812 the role of the bearer of primordial powers unchained by the Russian soil, which shook off the illustrious emperor Napoleon and his splendid army as if they were lurid cockroaches. Tolstoy's uneducated, illiterate peasant is not only stronger, but also more intelligent than all the great strategists and tacticians; above all, he is more intelligent than the great general Napoleon, who becomes a puppet in the flow of history. During WWII, Stalin resurrected this myth of the indigenous, national partisan against Germany, and put it very concretely into the service of communist world politics. This opened up a completely new era in the history of the partisan war, countersigned by Mao Tse-tung's name.

For thirty years now (1963), partisan wars have been waged over large areas of the earth. They began in China before WWII, in 1927, and later expanded in other Asiatic countries--the same that later defended themselves against the Japanese invasion from 1932 to 1945. During WWII, Russia, Poland, the Balkans, France, Albania, Greece, and other countries became the theater of this type of war. After WWII, partisan warfare continued in Indochina, where it was organized in a particularly effective ways by the Vietnamese communist leader Ho Chi-minh and by the winner of Dien Bien Phu, General Vo Nguyen Giap, against the French colonial army. It has also exploded in the Philippines, Algeria, and Cyprus, under General George Grivas, and in Cuba under Fidel Castro and Che Guevara. Today (1963), it is the time of Indo-Chinese countries of Laos and Vietnam, theaters of partisan wars, which every day develop new methods of overpowering or outwitting the enemy. Modern technology provides ever stronger weapons and means of destruction, ever more sophisticated means of transportation and communication, not only to the partisan, but also to the regular troops who fight against them. In the vicious circle of terror and counter-terror, the hunt of the partisan often becomes a mirror image of the partisan war, and reiterates the correctness of the old saying – often cited as Napoleon's order to

General Lefevre on September 12, 1813: "in fighting the partisan anywhere, one must fight as a partisan."

Some particular questions regarding uniform codes in international law will be examined later. Here, the fundamental problematic remains clear: what is under discussion is its application to rapidly developing concrete situations. In recent years, a particularly interesting document has been drafted, which expresses the will of total resistance, and not just the will, accompanied as it is by precise norms and dispositions concerning its concrete execution. It is the "Everyman's Guide to Guerrilla Warfare," published by the Swiss Association of Non-Commissioned Officers.¹¹ In little more than 180 pages, it provides instructions for passive and active resistance against a foreign invasion, with detailed indications concerning how to carry out acts of sabotage, camouflage, how to conceal weapons and organize surprise attacks, how to uncover spies, etc. It demonstrates that he has known how to use wisely the experiences of the last decades. This modern introduction to generalized warfare begins with the remark that "resistance to the end" must adhere to the 1907 Hague Convention Respecting the Laws and Customs of War on Land, and to the 1949 Geneva Conventions. *This goes without saying*. It is also not difficult to imagine how a regular army would react to a guerrilla war conducted according to this kind of dispositions (e.g., silent killing of guards by hitting them with an axe),¹² at least as long as it did not feel defeated.

Partisan: the Word and the Concept

The brief listing of a few known names and events, with which we have attempted to circumscribe the context of our observations, demonstrates the extreme complexity of both the subject and of its problematic. Thus, it is advisable to define some features and criteria in order to avoid that the discussion becomes abstract and boundless. One such feature has already been mentioned at the beginning of our presentation, when we claimed that the partisan is an *irregular* fighter. The "regular" fighter is identified by a soldier's uniform, which is more of a professional garb, because it provides security in public and is the symbol of an authority enhanced by the visible presence of weapons. The enemy soldier in uniform is the real target of the typical partisan.

¹¹ H. von Dach, *Der totale Widerstand: Kleinkriegsanleitung für Jedermann*, 2nd ed. (Biel: Zentralsekretariat des Schweizerischen Unteroftiziersverbandes, 1958).

¹² *Ibid.*, p. 43.

Today, another feature that comes to the fore is the intense political engagement that distinguishes the partisan from other fighters. This intense political character of the partisan must be kept in mind, precisely because it makes it possible to distinguish him from the ordinary criminal and thief, whose motives are concerned purely with private enrichment. This conceptual criterion, its *political* character, has exactly the opposite structure of that of the pirate in the law of sea war: this concept includes the *apolitical* character of the pirate's evil deeds, focused as they are on booty and private gain. As jurists put it, the pirate has an *animus furandi* [evil intent]. The partisan fights within a political front, and precisely the political character of his acts restores the original meaning of the word partisan. In fact, the word derives from *party*, and refers to the tie with a part or a group somehow involved in the fighting, both in war and in active politics. Ties to a party of this kind become especially strong during revolutionary times.

In revolutionary war, belonging to a revolutionary party amounts to establishing a total tie. Other groups or associations, especially the contemporary state, are no longer able to bind their own members in such a definitive way, as is the case with the fighters of a party engaged in a revolutionary struggle. In the course of the long debate concerning the so-called total state, it has not yet been possible to see clearly, as we do today, that not the *state* as such, but the revolutionary *party* represents the only true totalitarian organization.¹³ From a purely organizational viewpoint, i.e., in the rigorous articulation of the relation of protection and obedience, it could be said that some revolutionary organization is even superior to all regular troops, and that within the context of international law there must be some confusion if organization as such is raised to a criterion for establishing "regularity," as occurred in the 1949 Geneva Conventions.

In German, the word "partisan" refers to one who "follows a party" (*Partei-ganger*), and what this means concretely varies at different times in relation to the party or the front to which one belongs, the way one "takes sides" and commits himself, which can also mean to fight and be taken prisoner. There are belligerent parties, but also parties that come into being during judicial procedures, parties of parliamentary democracy, parties of opinion and those who come together around particular objectives. In romance languages, the word partisan can be used both as a noun as well as an adjective: in French, one can even speak of the *partisan* of some opinion;

¹³ See gloss 3 to "Weiterentwicklung des totalen Staates in Deutschland" (1933), in Carl Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialien zu einer Verfassungslehre* (Berlin: Duncker & Humblot, 1958 [2nd. ed., 1973]), p. 366.

in short, a very general and ambiguous designation can suddenly become profoundly political. Linguistic parallels with a general term like *status*, which can suddenly mean *state*, are obvious. In times of social disintegration, such as in the 17th century during the Thirty Years War, the irregular soldier ends up becoming confused with thieves and vagrants; he wages war for personal profit, and becomes a central figure of picaresque novels, such as the Spanish *picaro* [rogue] of Estebanillo Gonzales, who found himself engaged in the battle of Nordlingen (1635) and wrote a story in the style of the soldier Schweik, or in Grimmelshausen's *Simplizius Simplizissimus*, or even in the prints and etchings of someone like Jean Callot. In the 18th century, "party-followers" belonged to the *pandours*, the hussars, and other types of light troops which, as mobile troops, "fight separately" and pursue so-called small wars, rather than participate as slower troops in "great wars." Here, the distinction between regular and irregular is based only on the purely technological-military fact, which is absolutely incomparable with the legal-illegal opposition in the juridical sense of international and constitutional law. With today's partisans, the opposition regular-irregular and legal-illegal lose their borders and become interchangeable.

Today, mobility, surprise attacks and retreats, in one word, maximum flexibility, remain the partisan's distinctive features, and this characteristic becomes even more visible with technological progress and growing motorization. It so happens, however, that revolutionary war abolishes both regular-irregular and legal-illegal oppositions, when numerous semi- and para-regular groups come into being. The partisan that fights with weapons in hand always remains connected with a regular organization. It was Fidel Castro's comrade-in-arms in Cuba, Ernesto Che Guevara, who strongly emphasized this aspect.¹⁴ Consequently, precisely because of this cooperation between regulars and irregulars, or where a government, by no means revolutionary, calls for defense of the national soil against a foreign invader, some intermediary stages become more evident. National wars of liberation and guerrilla wars then become one. Already at the beginning of the 16th century, the term *partisan* can be found in regulations concerning similar formations.¹⁵ We will become acquainted with two important examples of formal regulations of

¹⁴ Ernesto Che Guevara, *On Guerrilla Warfare*, with an introduction by Major Harries-Clichy Peterson (New York: Frederick A. Praeger, 1961), p. 9: "It is obvious that guerrilla warfare is a preliminary step, unable to win a war all by itself."

¹⁵ Manuel Fraga Iribane, in his essay "Guerra y Politica en el siglo XX," points out that since 1595 there have been French decrees regarding enemy invasions, in which the terms *partisan* and *parti de guerre* were used. Cf. *Las*

national war of liberation and of local militia that tried to regulate guerrilla warfare. At any rate, even foreign invaders issue dispositions concerning how to combat against enemy partisans.

All norms of this type confront the difficult problem of a legal regulation of the irregular, based on an international law accepted by both sides. It is a matter of recognizing the partisan as a combatant and of treating him as prisoner of war, in addition to respecting the rights of the occupying military power. We have already mentioned the fact that at this point we run into some juridical controversies. We will have an opportunity to discuss this matter in connection with the question of snipers during the Franco-Prussian war (1870-71) after having examined the situation in international law.

In view of the rapid changes in the world, it is all too understandable why there is a tendency to change or abandon traditional or "classic" concepts, as they are called today.¹⁶ This is also the case with the "classic," if one may call it that, concept of the partisan. In an important book for our subject, illegal resistance fighters and underground activists are presented as the true model of the partisan.¹⁷ This is a conceptual transformation that takes as its point of reference certain determinate situations that developed in Hitler's Germany and, as such, are worthy of consideration. Illegality is substituted for irregularity; resistance, for military combat. All of this seems to imply a significant alteration in the meaning of partisan as he participates in national wars of independence, and misunderstands how the revolutionizing of war has lost sight of the relation between the regular army and irregular combatants.

In some cases, this alteration of meaning becomes exhausted in an indefinite symbolization that ends up dissolving the original concept. The result is that every non-conformist individual who acts as he sees fit can be called a partisan, even if he never even thought about taking up arms.¹⁸ As a metaphor, this is not necessarily inadmissible,¹⁹ and I have

Relaciones Internacionales en la era de la guerra fría (Madrid: Instituto de Estudios Políticos, 1962), p. 29, n. 62 and 27.

¹⁶ See my lecture, "El orden del mundo después de la segunda guerra mundial," in *Revista de Estudios Políticos* (1962), No. 122, p. 12, and the keyword "classic" in the subject index of Schmitt, *Verfassungsrechtliche Aufsätze*, *op. cit.*

¹⁷ Rolf Schroers, *Der Partisan: Ein Beitrag zur politischen Anthropologie* (Cologne: Kiepenheuer und Witsch, 1961). In the course of our discussion, we will return several times to this work. Schroers rightly distinguishes the partisan from revolutionary agents, functionaries, spies, and saboteurs, but he identifies him with the resistance fighter in general. In contrast, I adhere to the criteria mentioned in the text, and hope thereby to have taken a clearer position allowing for a fruitful debate.

¹⁸ See Hans Joachim Sell, *Partisan* (Düsseldorf: Eugen Friedrichs Verlag, 1962). This is a superb novel, with psychologically and sociologically interesting depictions of aristocratic and bourgeois figures in the Federal Republic of Germany during the 1950s.

myself used it to characterize specific historical figures and situations. In a broad sense, we could also claim that "to be a man is to be a fighter," so that a consistent individualist is one who fights for himself, and if he is courageous, at his own risk. He then becomes his own partisan. Such conceptual dissolutions are signs of the time, which should not be ignored and would deserve a separate examination. Yet, for a theory of the partisan as it is meant here, a number of criteria must be kept in mind, so that the theme does not dissolve into abstract generalities. Such criteria are: irregularity, increased mobility of active combat, and increased intensity of political engagement.

I would also like to retain a further, fourth distinct characteristic of the true partisan, which Jover Zamora has designated as telluric. Despite all tactical mobility, this characteristic is important for defining the partisan's position, which remains fundamentally defensive; and he deforms his nature when he appropriates absolute and technicized aggressivity or dreams about a world revolution. Two interesting discussions of this theme have appeared: Rolf Schroers' book²⁰

¹⁹ Thus, in an essay on Lorenz von Stein in 1940 ["Die Stellung Lorenz von Steins in der Geschichte des 19. Jahrhunderts," in *Schmollers Jahrbuch für Gesetzgebung, Verwaltung, und Volkswirtschaft im Deutschen Reiches*, Vol. 64, No. 6, pp. 641-646] and in a lecture on Donoso Cortes in 1944, I called Bruno Bauer and Max Stirner "partisans of the world spirit." See "A Pan-European Interpretation of Donoso Cortes," in *Telos* 125 (Fall 2002), p. 112. In an essay on the occasion of the 250th anniversary of Rousseau's death, "Dem wahren Johann Jakob Rousseau--Zum 28. Juni 1962," in *Zürcher Woche*, No. 26 (June 29, 1962), p. 1, in reference to Schroers and Sell, I have used the figure of the partisan to clarify the controversial image of Rousseau. In the meantime, I have become familiar with an essay by Henri Guillemin, "J. J. Rousseau, trouble-fete," which seems to confirm this interpretation. Guillemin is the editor of Rousseau's *Lettres écrites de la Montagne* (Neufchâtel Collection du Sablier, éditions Ides et Calendes, 1962).

²⁰ Schroers, *Der Partisan: Ein Beitrag zur politischen Anthropologie, op cit.*, sees in the partisan the last resistance against the nihilism of a thoroughly technologized world, the last defender of species and soil, and ultimately, the last man. To Gerhard Nebel the partisan appears to be precisely the opposite, i.e., a figure of modern nihilism, who, like the fate of our century, encompasses all professions and classes, the priest, the peasant, the scholar, and, in this way, also the soldier. Nebel's book, *Unter Partisanen und Kreuzfahrten* (Stuttgart: Ernst Klett Verlag, 1950), is the war journal of a German soldier in 1944-45 in Italy and Germany, and it would be worth the effort to compare his depiction of the partisan in Italy at that time with Schroers' interpretation (cf. p. 243). In particular, Nebel's book contains a remarkable account of the moment where a large regular army dissolves and, as a mob, either is killed by the population or itself kills and plunders, whereby both sides could be called partisan. If Nebel, beyond his good descriptions, categorizes the poor devils and rogues as "nihilists," this is only a metaphysical spice of the time, and today belongs to that time, just as the 17th century picaresque novel belongs somewhat to scholastic theology. Ernst Junger, *Der Waldgang* (Frankfurt a/M: Verlag Vittorio Klostermann, 1951), constructs the *Waldgänger* [the walker in the forest], whom he calls partisan several times, as a "figure" in the sense of the "worker" (1932). The individual, surrounded by machines, does not give up in the seemingly desperate situation, but wants to continue with utmost fortitude, and "decides to walk in the forest." "As for place, the forest is everywhere" (p. 11). Thus, for Gethsemane, the Mount of Olives, which we know from the passion story of Jesus Christ, is "forest" in Junger's sense (p. 73), but also the Daimonion of Socrates (p. 82). Accordingly, the "teachers of law and constitutional law" are denied their ability to "give the walker in the forest the necessary means of defense. Poets and philosophers already see better what is needed" (p. 126). Only theologians know the true sources of power. "Because all wise men understand the theologians" (p. 95).

and Jurg H. Schmid's dissertation²¹ about the position of the partisan according to international law. In my opinion, it is indispensable to ground the partisan on the telluric dimension in order to emphasize his defensive character, i.e., the limited nature of hostility, and preserve him from the absolute pretenses of an abstract justice.

For the partisans who fought in Spain (1803-1813), Tyrol, and Russia, this is self-evident. Even the partisan struggles during WWII and thereafter in Indochina and other countries, connected with the names of Mao Tse-tung, Ho Chi-minh, and Fidel Castro, are clear demonstrations that the tie to the soil, to the indigenous population, and to the particularity of the land – mountain-ranges, forests, jungles or deserts – have lost nothing of their relevance. The partisan is and remains distinct, not only from the pirate, but also from the corsair, at least as long as land and sea remain distinct as elementary spaces of human activity and battlefields among nations. Not only have land and sea developed different strategic means of pursuing war, and different theaters of war, but also different concepts of war, enemy, and booty.²² Thus, at least as long as there are anti-colonial wars on our planet, the partisan will represent only a type of combatant active on land.²³ A comparison with some typical figures of maritime law will provide a further contribution to the clarification of the partisan's telluric character.

Yet, even the indigenous partisan with an agrarian background is easily drawn into the force-field of an irresistible, technological-industrial progress. With the the help of motorization, his mobility becomes such that he runs the risk of ending up completely uprooted from his environment. In the situations brought about by the cold war, he becomes a technician of clandestine combat, a saboteur, and a spy. Already during WWII, there were groups of saboteurs

²¹ Cf. Jurg H. Schmid, "Die volkerrechtliche Stellung der Partisanen im Kriege," in *Zurcher Studien zum Internationalem Recht*, No. 23 (1956).

²² Carl Schmitt, *Land und Meer – Eine weltgeschichtliches Betrachtung* [1942-1954] (Hohenheim: Edition Maschke, 1981); *The Nomos of the Earth, op. cit.*, pp. 172ff. and 310; "Die geschichtliche Struktur des heutigen Weltgegensatzes von Ost und West," in *Freundschaftliche Begegnungen: Festschrift für Ernst Junger zum 60. Geburtstag* (Frankfurt a/M: Vittorio Klostermann, 1955), pp. 135-167. In this latter essay, which also appeared in *Revista de Estudios Politicos*, No. 81 (Madrid, 1955), I announced that I would like to develop fully and hermetically sections 247-8 of Hegel's *Philosophy of Right* as a historico-intellectual nucleus for understanding the contemporary technological-industrial world, just as the Marxist interpretation developed the preceding sections 243-6 for an understanding of bourgeois society.

²³ In her review of Schroers' book, *Der Partisan: Ein Beitrag zur politischen Anthropologie, op cit.*, Margret Boveri (in *Merkur*, No. 168 [February 1962]) praises Czeslav Milosz's book, *West- und Oestliches Gelginde* (Cologne: Kiepenheuer und Witsch, 1961). The author presents a vivid and sympathetic picture of his life in Lithuania, Poland, and Western Europe, especially Paris, and tells of his underground existence in Warsaw during the German occupation, where he disseminated pamphlets against the Germans. He says explicitly that he was not a partisan and that he did not want to be one (p. 276). Yet, his love for his Lithuanian homeland and its forests does support us in adhering to the telluric character of the partisan.

with a typical partisan training. Thus, motorization leads to the partisan losing his telluric character, and he ends up becoming a gear in the mastodontic machine that operates politically on a global level. This machine uses him as a first line combatant, as guerrilla of the machine or, depending on general necessities, it even deactivates him when necessary. This possibility is also part of his present-day existence, and should not be neglected by a theory of the partisan.

With these four criteria – irregularity, increased mobility, intensity of political engagement, and telluric character – and without forgetting the possible consequences of a further technicization, industrialization, and diminution of his "agrarian" character, we have outlined, on the conceptual level, the horizon of our observations. They begin with an examination of the napoleonic guerrilla fighter and end up with today's well-equipped partisan: they go from *Empecinado* to Mao Tse-tung and Ho Chi-minh, up to Fidel Castro. As can be seen, this is a large field, concerning which historiography and military thought have accumulated an enormous, ever growing amount of material. To the extent that we have been able to consult it, we will also utilize it in order to draw those insights appropriate for formulating a theory of the partisan.

The Situation from the Viewpoint of International Law

The partisan fights irregularly. But some categories of irregular fighters are equated with regular troops, and enjoy the same rights and privileges. This means: their military acts are not illegal, and if they are captured by their enemy, they have a right to the special treatment reserved to prisoners of war and those who are wounded. This legal situation was codified in the 1907 Hague Convention, which today is generally accepted as valid. After WWII, it has been further developed in the 1949 Geneva Conventions, two of which regulate the fate of the wounded and the sick in land and sea war, the third regulates treatment of prisoners of war, and the fourth deals with the protection of civilians during wartime. Numerous states, both in the Western world and in the Eastern bloc, have readily ratified them. Even the new American military handbook dealing with land war law (July 18, 1956) has accepted them.

Under certain conditions, the 1907 Hague Convention placed regular armed forces on the same level of militia, volunteer corps, and participants in spontaneous mass insurrections. Later, when we will deal with the unhappy relation between Prussians and partisans, we will mention some unclear passages of this regulation. The preliminary work that resulted in the 1949 Geneva

Conventions was characterized by the acceptance of significant modifications concerning European international law, which up to that point obtained only between states. An ever growing number of war participants are recognized as combatants. Even civilians in territories militarily occupied by the enemy – thus the battlefield typical of the partisan fighting behind enemy lines – enjoys, from then on, a greater legal protection than that defined in the war agreements of the 1907 Hague Convention. Many comrades-in-arms, who were hitherto considered partisans, are now compared with regular combatants, and have the same rights and prerogatives. To be sure, they should no longer be called partisans. Yet, the concepts are still unclear and vague.

The formulations of the 1949 Geneva Conventions have European experiences in mind, and certainly not Mao Tse-tung's partisan war, nor the later developments of modern partisan war. Immediately after 1945, it was not yet clear what an expert like Hermann Foertsch had seen, when he claimed that belligerent actions after 1945 assumed a partisan character because those who had nuclear weapons shunned using them for humanitarian reasons, and those who did not have them took into account these reservations. This had an unexpected effect on both the atomic bomb and humanitarian concerns. The fundamental points regarding the problem of the partisan found in the 1949 Geneva are derived from particular situations. They refer directly to WWII resistance movements (1939-45).²⁴

The conventions do not seek any profound changes in the 1907 Hague Convention. They even retained the four conditions defining who could be considered regular troops – responsible officers, firm and visible symbols, open display of weapons, observance of rules and application of laws of war. To be honest, the convention concerning the protection of civilian populations is extended not only to wars between states, but also to all international armed conflicts, and therefore also to uprisings, civil wars, etc. It is also true, however, that this sought to create the legal foundations for humanitarian interventions of the International Committee of the Red Cross (and other non-partisan organizations). *Inter arma caritas*. In the convention's Art. 3, Sec. 4, it is explicitly stated that the legal status of the conflicting parties will not be affected.²⁵ In wars between states, the power occupying a region militarily retains, first and foremost, the right to direct the local police to maintain order and to suppress irregular military actions, including

²⁴ This was stated in the seminal commentary of the International Red Cross led by Jean S. Pictet, Vol. III (1958), p. 65.

²⁵ *Ibid.*, Vol. III, pp. 39-40.

partisan activities, "without regard to what ideas inspired them."²⁶ It follows that the discrimination of *partisans* – in the sense of irregular fighters, not comparable to regular troops – remains fundamentally true. In this sense, the partisan does not have the rights and privileges of the combatant; he is a common criminal and should be rendered harmless with summary punishment and repressive measures. That was fundamentally recognized also in war crimes trials after WWII, e.g., in the Nuremberg judgments against German generals (Jodl, Leeb, and List), whereby it follows that eventual unnecessary atrocities, terrorist measures, collective punishments, or even participation in mass exterminations remain war crimes.

The 1949 Geneva Conventions widened the circle of those compared to regular fighters, above all because they place on the same level the members of an "organized resistance movement" and those of voluntary corps or of militias, and in this way grant them the rights and prerogatives of regular combatants. In order to enjoy these rights and prerogatives it was not even explicitly necessary to belong to a military organization (Art. 13 of the convention concerning the wounded, and Art. 4 dealing with prisoners-of-war). The convention concerning the protection of civilian populations considers equally "international conflicts" conducted with the force of arms, and the wars between states in classic European international law, thereby catching the central point of a well known, typical legal institution concerning of the right to war– *occupatio bellica*. To such expansions and relaxations, cited here only as examples, one can add the great transformations and modifications that emerge from the evolution of modern war technology, which have a still more intense impact on partisan warfare. Thus, what is the meaning of the rule that, for a resistance fighter, weapons must be "carried openly," when the "Everyman's Guide to Guerrilla Warfare"²⁷ provides the following instructions: "Move only at night and stay in the woods during the day"? Or what is the meaning of the requirement to display a clearly visible badge of rank during war at night or in a contest between long-range weapons of modern technological warfare? These are some of the questions that come to mind when we begin to examine the problem of the partisan, taking into account most of all environmental changes and technological developments.

There are various aspects concerning the protection of civilian populations in militarily occupied areas. The occupying power has an interest in seeing that there is peace and order in the

²⁶ *Ibid.*, Vol. IV (1958), p. 330.

²⁷ Dach, *Der totale Widerstand, op. cit.*, p. 13.

militarily occupied area. It is claimed that the people of these occupied areas have the obligation to adhere to the disposition of the occupants who respect the laws of war. Even civil servants (including the police) should continue to work correctly, and, correspondingly should be handled correctly by the occupying power. The whole matter appears as an extremely difficult balanced compromise between the interests of the occupying power and those of its adversaries. The partisan disturbs this type of order in the occupied area in a dangerous way – not only because he operates behind the enemy's back and, in such a zone, he interferes with the delivery of supplies, but also because he is more or less aided by the local population. According to the already cited "Everyman's Guide to Guerrilla Warfare,"²⁸ "the population is your greatest friend." But in this case to protect the population also amounts to partially protecting the partisan. This explains why, in the history of the development of the laws of war, in the 1907 Hague Convention and afterwards, one can see the development of two typical fronts: the great military powers, the potential occupying powers, demand that in the militarily occupied regions order is strictly guaranteed, while smaller states – Belgium, Switzerland, and Luxemburg – afraid of being invaded, try to extend the maximum possible protection to the civilian population and the resistance fighters. From this viewpoint as well, post-WWII developments have led to new realizations to be examined later, while the disintegration of social structures raises the question of whether there can also be cases in which the population needs protection from the partisans.

The 1949 Geneva Conventions have introduced modifications within the classic legal institutions of *occupatio bellica* that the 1907 Hague Convention's regulation of land war had spelled out very precisely. The last effects of these modifications remain, in many respects, still unforeseeable. Resistance fighters, who were earlier classified as partisans, are now raised to the level of regular combatants as soon as they turn out to be organized. With such decision, the interests of the population of the occupied zones are raised to the level of those of the occupying power, so that, at least in theory, any resistance to the occupying power, including the partisans', is enough to make it appear *not illegal* as long as it springs from respectable motives. On the other hand, the occupying power must retain the possibility to deploy repressive measures. In this situation, a partisan would find himself in the predicament of acting not in a properly legal, but also not in too illegal a way, rather, at his own risk and danger and, in this sense, he would act in a *risky way*.

²⁸ *Ibid.*, p. 28.

If one uses words such as *risk* and *risky* in a general and not pregnant sense, it must be immediately clarified that, in a zone occupied militarily by the enemy and riddled with partisans, it is not just the latter that live at risk. In this general sense of insecurity and danger, the area's entire population turns out to be involved in a risky situation. Those functionaries who, in accord with the 1907 Hague Convention, want to continue to carry out their duty correctly, confront additional risks both because of their initiatives as well as shortcomings; in particular, the police functionary ends up between a rock and a hard place: the occupying power expects him to maintain security and tranquillity, which is precisely what the partisans violate, while his nation-state expects his loyalty and, after the war, will hold him responsible for his actions. The population to which he belongs, expects loyalty and solidarity which, if actually practiced, lead to a completely contradictory behavior, unless he decides to become himself a partisan. It is unavoidable that both the partisan and his adversary soon drag these functionaries in the vicious circle of reprisals and anti-reprisals. Generally speaking, however, initiatives and acts of official omission are not typical of a fighting partisan's behavior.

The word *risky* takes on an even more pregnant meaning, when he who acts in a risky way exposes himself personally to the danger and also takes into account the eventual negative consequences of his actions or of his omissions, so that he cannot consider it an injustice when these consequences hit him. By the same token, if he remains within the limits of legality, he retains the possibility of compensating for the risk by stipulating an insurance contract. The juridical home of the concept of risk – its juridical-scientific *topos* – remains the right of insurance. Men live in the midst of all kinds of dangers and insecurities and, from a juridical perspective, to assign to a danger or to a condition of scarce security the term risk means to render them, as well as he who is hit, *insurable*. In the case of the partisan, this will probably fail because of the irregularity and the illegality of his actions, even if for the rest there would be a disposition to protect him from a risk too great through his insertion, from the viewpoint of insurance technology, in a class with the highest risk.

The situations created by war and the development of hostilities call for a reflection concerning the concept of risk. In Germany, the word risk entered the theory of the international law of war through a 1935 book by Joseph L. Kunz.²⁹ Yet, this book does not refer to land war and certainly not to the partisan. In fact, it has nothing to do with them. Leaving aside the right of

²⁹ Joseph L. Kunz, *Kriegsrecht und Neutralitätsrecht* (Vienna: J. Springer, 1935), pp. 146 and 274.

insurance as the juridical home of the concept of risk and the imprecise uses of the word, e.g., the comparison with the escaped prisoner, who "risks" being shot, it remains to be demonstrated, from a more specifically juridical-military viewpoint, that Kunz' refers primarily to sea war and its norms, as well as its figures and situations. In most cases, sea war is a trade war; with respect to land war, it has its own space and its own concepts of the enemy and of booty. Even the amelioration of the rate of the wounded in the 1949 Geneva Conventions has required two conventions--one for the land and another for the sea.

In this specific sense, two participants in sea war act in a risky way: the neutral blockade runner and the neutral contraband leader. In relation to them the term risky has its own precise and pregnant sense. Both types become involved in a "very profitable, yet very risky commercial venture,"³⁰ i.e., they risk ship and freight in case they are caught. But in these activities they are not confronted with an enemy, although in terms of sea war law they are considered enemies. Their social ideal is good business. Their field of operations is the free sea. They do not even think about protecting the homeland and the household against a foreign invader, which is the archetype of the autochthonous partisan. They even enter into insurance contracts in order to counterbalance their risks. In these cases, the tariffs are correspondingly high because of changing risk factors such as being sunk by a submarine – something very risky, but highly insured.

A word so apt as *risky* should not be extrapolated from the conceptual context of the law of sea war in order to dissolve it in a general concept that blurs all borders. For us, who remain convinced of the telluric nature of the partisan, this is particularly important. If even I once characterized the pirates and the buccaneers of early capitalism as "partisans of the sea," today I would like to correct this terminological error.³¹ The partisan has an enemy and "risks" something completely different from those who plan a blockade or practice contraband. Not only does he risk his own life, as every regular combatant, but he knows, and for him everything depends on this fact, that the enemy considers him outside of every law, honor, and legality. On the other hand, even the revolutionary fighter does the same thing and declares his enemy to be a criminal, while regarding as an ideological swindle all of the enemy's convictions about the concepts of right, law, and honor. Despite all the characteristic links and mixtures of both types

³⁰ *Ibid.* p. 227.

³¹ Schmitt, *The Nomos of the Earth, op cit.*, p. 174.

of partisans typical of the period that goes from WWII to today, i.e., the kind of autochthonous defender of the national soil and the revolutionary activist that operates over the whole world, the antithesis remains. As we will see, it is based on fundamentally different concepts of war and enmity, which are realized in different types of partisans. Where war is pursued by both sides as a non-discriminatory clash of a state against another, the partisan remains a marginal figure, who does not avoid the framework of war and does not change the overall structure of the political phenomenon. When, however, one goes on to regard the enemy as a real criminal, when a war, such as a civil war is fought between class enemies and its primary goal becomes the annihilation of the government of the state enemy, in that case the explosive revolutionary efficiency of the criminalization of the enemy transforms the partisan into the true hero of the war. He enforces the death penalty against criminals and, for his part, risks to be treated as a criminal or a vandal. This is the logic of a war of *justa causa* which does not recognize a *justus hostis* [the just enemy]. Thus, the partisan becomes the conflict's central figure.

However, the problem of the partisan becomes the best touchstone. The various types of partisan war can be mixed and become similar in concrete praxis, although at bottom they continue to differentiate themselves so profoundly that they become the criterion according to which certain political oppositions come into being. We have mentioned earlier the typical opposition that developed during the preparatory work of the 1907 Hague Convention: great military powers vis-a-vis small neutral countries. A compromise formula was reached with great effort during the deliberations of the 1949 Geneva Conventions – a compromise formula that placed at the same level organized resistance movements and volunteer formations. When it came to accept within precise norms of international law the experiences of WWII, that typical opposition resurfaced. Here also, the great military powers, the potential occupiers, were pitted against small states who feared a possible occupation of their territory. In this context, however, this contraposition took on a striking symptomatic variation: the world's greatest land power, the strongest potential occupier, the Soviet Union, stood on the side of small states.

In his well-documented work,³² Schmid wants to place "the conditions of civilians' guerrilla warfare" – and here one thinks concretely of Stalin's partisans – "under the shield of law." The author sees in this "the quintessence of the problem of the partisan" and the main legally creative merit of the 1949 Geneva Conventions. He would like "to eliminate certain

³² Schmid, "Die volkerrechtliche Stellung der Partisanen im Kriege," *op. cit.*

restraints concerning the right of occupation," residues of the long since transcended concept of the power of occupation, and among them, most of all, the "much praised duty of obedience." To this end, he relies on the thesis of legal, but risky, war activities, shifting the emphasis on the fact that they are risky, but not illegal. Thus, he minimizes the risk of the partisan, to whom he attributes as many rights as he can, at the expense of the occupying power. It is unclear to me, however, how he can avoid the logic of terror and counter-terror, even if he were to accept to treat the enemy as a criminal that the partisan fights against. All of this seems to be a highly interesting hybrid of two different juridical statuses, i.e., that of combatants and that of civilians, with two different types of modern war, i.e., hot and cold war, between the population and the occupying power, to which Schmid's partisan (following Mao) participates with both hands. What is astounding, and this represents a real logical leap, is only that this de-illegalization of Stalin's partisans at the expense of classic international law is simultaneously connected with the return to the Rousseau-Portalis Doctrine of a pure war between states, concerning which Schmid claims that it would have forbidden civilians from engaging in hostile acts, but only "initially." In this way, the partisan becomes insurable.

The four 1949 Geneva Conventions are the work of an admirable human disposition and humanitarian development. Given that they guarantee the enemy not only its humanity, but also justice in the sense of recognition of its rights, they remain within classic international law and its tradition, without which such a humanitarian work would be unthinkable. Its foundation remains the conduct of war based on the state and consequently a bracketing of war, with its clear distinctions between war and peace, military and civilian, enemy and criminal, war between states and civil war. When these essential distinctions fade or are even challenged, they create the premises for a type of war that deliberately destroys these clear distinctions. Then, many cautiously stylized compromise norms appear only as the narrow bridge over an abyss, which conceals a profound modification of the concepts of war, enemy, and partisan – a modification full of consequences.

THE DEVELOPMENT OF THE THEORY

Prussian Incompatibility with the Partisan

In Prussia, the leading German military power, the uprising against Napoleon in early 1813 was fueled by a strong national feeling. The great moment passed quickly; however, it

remained so essential in the history of partisan war that we must focus on it later. First, however, we must take note of an undisputed historical fact, i.e., that both the Prussian and the German army led by Prussia from 1813 through the early part of WWII provided the classic example of a military organization that had repressed the idea of the partisan. The 30 years of German colonial domination in Africa (1885-1915) were not important enough militarily to cause the extraordinary theoreticians of the Prussian General Staff to take the problem seriously. The Austro-Hungarian army had to deal with the partisan war in the Balkans, and had a regulation dealing with small wars. By contrast, the Prussian-German army that marched into Russia on June 22, 1941 in WWII, did not conceive of a partisan war. Its campaign against Stalin began with the maxim: troops will fight the enemy; marauders will be handled by the police. The first special directives regarding fighting partisans came only in October 1941; in May 1944, just before the end of the four-year war, the first complete regulation regarding partisan war was instituted by the Wehrmacht's Supreme Command of the armed forces.³³

In the 19th century, the Prussian-German army became the most famous and exemplary military organization in Europe at that time. This reputation, however, was due exclusively to military victories over other regular European armies, in particular those of France and Austria. Only during the Franco-Prussian War (1870-71) in France did it encounter irregular combatants in the form of snipers, and were handled according to martial law, just as every regular army would have done.

A well-disciplined regular army is used to distinguishing accurately between military and civilians, and considers an enemy only whoever wears a uniform. When it confronts an entire civilian population, which participates in combat without uniforms, it becomes nervous and loses its self-control. Then, the military reacts with hard reprisals, firing-squads, hostage-taking, and the destruction of villages, and considers all of this just punishment for treachery and perfidy. Thus, the more the regular, uniformed opponent is respected as an enemy, even in the bloodiest clashes, the more are irregular combatants considered true criminals. Such an attitude is the natural consequence of classic European laws of war, which distinguished between military and civilians, combatants and non-combatants, and had the great merit of not regarding the enemy as a criminal.

³³ Hans Schomerus, "Partisanen," in *Christ und Welt, op. cit.* See in particular the section titled "Der Wall der Tradition." Schomerus' subsequent articles in the same journal remain of great significance for the partisan problem.

The German soldier met the sniper in France in the autumn of 1870, and, in the following winter (1870-71), after the great victory over the regular army of Napoleon III's near Sedan on September 2. Had the war been fought according to the classic rules of war, one could expect that such a victory would have meant the end of war and the beginning of peace negotiations. Instead, the vanquished imperial government was deposed and the new republican government led by Leon Gambetta called for national resistance against the foreign invader: "an all-out war." In ever greater haste, it continually conscripted new armies and threw new masses of badly-trained soldiers onto the battlefield. In November 1870, it even had some military success in the Loire Valley. The situation of the German army had become difficult also because Germany had not taken into account all of the diplomatic aspects, and expected a rapid solution to the conflict.

The French population was aroused with patriotic fervor, and participated in the struggle against the Germans in the most desperate way. The Germans took as hostages the most visible people, the so-called notables, shot the snipers caught with guns at hand, and pressured the population with all kinds of reprisals. This gave rise to a controversy for and against the snipers, between international law jurists and official propagandists, which lasted for more than half a century. The controversies flared again in WWI, this time between Belgians and Germans. Whole libraries have been written about the problem, and even in recent years (1958-60) a panel of respected German and Belgian historians has sought to resolve at least some aspects of the complex problem of the Belgian snipers of 1914.³⁴

All of this teaches that a normative regulation of the problem of the partisan is juridically impossible, unless one wants to risk juridical formulations that do not catch the concrete state of affairs and remain mired in generic and contingent value-judgements. Since the 18th century, the traditional European bracketing of wars between states was based on very precise concepts, which although banned by the French Revolution, were restored much more effectively by the Congress of Vienna. Born during the age of absolute monarchies, these concepts dealing primarily with the bracketing of war and the individualization of the enemy, function as norms, in relations between states, when the warring sides attribute to them the same contents. In other words, it is necessary that the concept of regularity and irregularity, legality and illegality, is the same both in relations between states and within the states themselves. Otherwise, instead of

³⁴ E. Kessel, in *Historische Zeitschrift*, Vol. 191 (October 1960), pp. 385-93; Franz Petri and Peter Schoeller, "Zur Bereinigung des Franktireurproblems vom August 1914," in *Vierteljahreshefte für Zeitgeschichte*, Vol. 9 (1961), pp. 234-48.

promoting peace, interstate norms will only succeed in providing pretexts for reciprocal accusations. The simple truth is that this has been acknowledged very slowly in Europe, and only after WWI. Yet, the ideological facade of the traditional conceptual armory is still very strong. For practical reasons, states have often an interest in emphasizing the so-called classic concepts, also when, in other cases, they dismissed them as obsolete and reactionary. To this it should be added that European jurists have stubbornly repressed the image, already acknowledged since 1900, of that new developing reality.³⁵

If this is taken to be sufficient to distinguish a traditional old style European war between states from a democratic people's war, then it turns out to be even more applicable to an improvised all-out national war of liberation like the one proclaimed in September 1870 by Gambetta. Following almost all of its 19th century forerunners, the 1907 Hague Convention has sought to resolve with a compromise the problem of the snipers. It demanded certain conditions whereby an improvised fighter with an improvised uniform would be recognized as such in the sense of international law: responsible officers; firm and clearly visible badges of rank; and, above all, open display of weapons. The great conceptual obscurity of the 1907 Hague Convention and of the 1949 Geneva Conventions is great and further complicates the problem. In fact, the partisan is he who refuses to carry weapons openly, fights from ambush, and hides in a thousand ways behind the uniform stolen from the enemy or behind civilian clothing; he uses the most diverse camouflages according to circumstances. Secrecy and darkness are his strongest weapons, which he cannot honestly give up without losing that essential space of irregularity, and without ultimately ceasing to be a partisan.³⁶

³⁵ "Without being aware of it, toward the end of the 19th century European international law had lost the awareness of the spatial structure of its former order. Instead, it had adopted an increasingly more superficial notion of a universalizing process that it naively saw as a victory of European international law. It mistook the removal of Europe from the center of the earth in international law for Europe's rise to the center." See Schmitt, *The Nomos of the Earth*, *op. cit.*, p. 233.

³⁶ The confusion was total, not only in political propaganda and counter-propaganda (which is its rightful place), and not only in discussion of particularly controversial issues (such as that of the Yugoslav citizen Lazar Vracaric, who in November 1961 was arrested in Munich by German authorities), but unfortunately also in specialized publications, as soon as consciousness of the concrete concepts of European international law was lost. This can be seen in Schmid's previously mentioned dissertation, "Die volkerrechtliche Stellung des Partisanen im Kriege," *op. cit.* In some places, Rentsch is not convinced, and in some places he has let himself go astray. He would place partisans "under the protective umbrella of international law," something that the true partisan would readily accept as a supplementary weapon. See *Partisanenkampf, Erfahrungen und Lehren*, *op. cit.* Altogether, this is the result of the destruction of the *jus publicum Europeum* and its humane, rational concepts of war and enemy. The re-barbarization of the laws of war could be a supplementary chapter in the extraordinary book by F. J. P. Veale, *Advance to Barbarism* (Appleton, WI: C. C. Nelson Publishing Company, 1953). The German translation, published by Verlag K. H. Priester in Wiesbaden, is in a second edition (1962).

The Prussian military's theoretical thought understood this perfectly, without in any way underestimating the importance of guerilla warfare. That can be seen in an interesting book by a typical Prussian General Staff officer, who knew how the snipers fought during the 1870-71 war.³⁷ Baron Colmar Freiherr von der Goltz, the author, died in WWI, while leading a Turkish army under the pseudonym Pasha Goltz. With absolute objectivity and great precision, the young Prussian officer recognized the republican military leaders' enormous error during the war, and wrote: "Gambetta wanted to pursue a proper war, and unfortunately he did; because, in France at that time, a small war, a guerrilla war, would have been much more dangerous for the German army."³⁸

Eventually, the Prussian-German Supreme Command understood the nature of partisan war, but it was too late. As already mentioned, on May 6, 1944, the Wehrmacht's Supreme Command issued the first general directives concerning the struggle against partisans. Thus, before its own end, the German army came to recognize the figure of the partisan. These May 1944 directives were recognized as valid in every respect by an enemy of Germany. After WWII, the English Brigadier General Aubrey Dixon, along with Otto Heilbrunn, published a book on the partisan, which reprinted in full the text of the German directives, citing them as an exemplary model of an effective way to fight against partisans. Even the young English General Sir Reginald F. S. Denning, in his forward to the Dixon-Heilbrunn book, remarks that the 1944 German directives concerning the struggle against partisans are no less valid because they deal with the struggle of the German army against Russian partisans.³⁹

Toward the end of the war (1944-45), two formations of fighters appear in Germany, which must not be considered part of the Wehrmacht, but, rather, its antitheses: the *Volkssturm* [National Storm] and the so-called *Werwolf*. The *Volkssturm* was created by a September 25, 1944 edict as a territorial militia whose members were considered to be soldiers in the sense of national defense regulations and as combatants in the sense of the 1907 Hague Convention. Their

³⁷ Colmar Freiherr vorder Goltz, *Leon Gambetta und seine Armeen* (Berlin: F. Schneider, 1877).

³⁸ "With the further penetration of the invading army, all cadres became weaker and the supplies slower.... All of this favors the enemy's irregular combatants with some initiative. Nevertheless, Gambetta wanted the war in the grand style. The war-like gestures of its army had to be imposing, like its numerical strength, in order to justify it to the nation" (*ibid.*, p. 32). Dr. J. Hadrich (Berlin), to whom I am indebted for Goltz' book, also made me aware of the fact that the Abyssinians, in their resistance against the Mussolini's Italian army in 1935-36, were also vanquished because, instead of a partisan war, they sought to fight a war with regular troops.

³⁹ Cf. Brigadier C. Aubrey Dixon, O. B. E., and Otto Heilbrunn, *Partisanen, Strategie und Taktik des Guerrillakrieges* (Frankfurt a/M-Berlin: Bernard & Graefe Verlag für Wehrwesen, 1956), pp. XIV and 213-240.

organization, outfitting, engagement, fighting spirit, and casualties are described in the recent publication of Major-General Hans Kissel, who, beginning in November 1944 was chief of *Volkssturm* operations. Kissel reports that the Allies recognized him as a combatant, while the Russians treated the *Volkssturm* as a partisan organization and shot the prisoners. Unlike this territorial militia, the *Werwolf* was considered a partisan organization of young people. Dixon and Heilbrunn report on the outcome: "Some aspiring members of the *Werwolf* were caught by the Allies, and that ended the matter." The *Werwolf* was described as an "attempt to unleash a children's sniper war."⁴⁰ In any case, this is not the place to dwell on this matter.

After WWI, the winners disbanded the German General Staff and forbade its reestablishment in any form, in accordance with Art. 160 of the Versailles Treaty of June 28, 1919. The fact that after their common victory over Germany the winners of WWII (above all, the US and the Soviet Union), after having outlawed the war-duel of classic European international law, even proscribed and annihilated the Prussian state, it does not lack historical logic and is not inconsistent with international law. Law No. 46 of the Allied Control Commission of February 25, 1947 reads: "The Prussian state, which has always been the agency of militarism and reaction in Germany, has *de facto* ceased to exist. Guided by the intention to maintain the people's peace and security, and by the desire to ensure growth of political life in Germany on a democratic basis, the Control Commission orders the following: Art. 1: The Prussian state, with all its government and administrative structures, is dissolved."

The Partisan as a Prussian Ideal in 1813 and the Turn to Theory

It was neither a Prussian soldier, nor a reform-minded Prussian officer of the General Staff, but rather a prime minister, Otto von Bismarck, who, in 1866 "wanted to take every weapon in hand that could be provided by the nationalist movement not only in Germany, but also in Hungary and Bohemia" against the Hapsburg monarchy and Bonapartist France. To avoid succumbing, Bismarck was determined to unleash hell. He was pleased to use the classic citation *Acheronta movere* [mobilize the netherworld], even if he preferred to attribute it to his internal

⁴⁰ Hans Kissel, *Der Deutsche Volkssturm* (Frankfurt a/M: Verlag E. S. Mittler & Sohn, 1962). The information on the different treatment in the West and the East is on p. 46. The term "children's sniper war" was used by Erich F. Pruck in his review of the Kissel book in *Zeitschrift für Politik*, N. F. 9 (1962), pp. 29ff. Pruck rightly remarks that "the borders between legal combat (in the sense of the 1907 Hague Convention) and 'partisan warfare' is unclear." Cf. Dixon and Heilbrunn, *Partisanen*, *op. cit.*, p. 3, n. 24.

political opponents.⁴¹ But both the Prussian King, William I, and the chief of the Prussian General Staff, Helmuth von Moltke, were far from entertaining "infernal" plans. Such a move would have appeared uncivil and even un-Prussian. And the word *acherontic* would certainly be too violent if ascribed to the timid revolutionary attempts of the German government and of its General Staff during WWI. Besides, even Lenin's 1917 journey from Switzerland to Russia also falls within this context. Aside from everything that the Germans could have thought and planned in organizing this journey, the event must be seen in its true light, i.e., that the consequences surpassed the intention to further confirm our thesis, that the relation between Prussia and the partisan has been one of the most unfortunate.⁴²

Yet, once in its history the Prussian military state has had an acherontic moment. That was in the winter and spring of 1812-13, when an elite of General Staff officers sought to unleash and lead popular hostility against Napoleon. The German war against Napoleon was no partisan war, and it can hardly be defined as a popular war. Rather, it was, to use Ernst Forsthoff's precise words, "a legend created by political interests."⁴³ It did not take long to marshal all the elemental forces within the robust banks of state order and of regular combat

⁴¹ Cf. Otto von Bismarck, *Gedanken und Erinnerungen*, with an afterword by Ernst Friedlander (Stuttgart: Cotta, 1965), Vol. I, Ch. 20 and Vol. III-1 and Ch. 10, where the citation *Acheronta movere* serves to paint the devil on the wall. Bismarck exaggerates for obvious reasons. In reality, as a modern historian, Egmont Zechlin, claims, he was surrounded by "operational Hungarian troops" and generals such as Klapka and Turr. The officer corps of the Hungarian Legion consisted of the cream of the Hungarian aristocracy. "But Bismarck did not even shrink from welcome in the headquarters the radical socialist Czech revolutionary, friend of Bakunin, Joseph Fric. With Colonel Oreskovic of Belgrade and Minister Garasanin, he had convolved the most influential politicians of the southern Slav movement, and through Victor Emanuel, Klapka, and Turr he was in contact with the European revolutionary hero Giuseppe Garibaldi." The Tsar's conservative-reactionary general, with whom he was negotiating, telegraphed him that he would prefer a revolution to death.

⁴² Compared to this national-revolutionary line in Bismarck's politics, the revolutionary attempts of the German government and the German General Staff during WWI in Russia, in the Islamic-Israeli world, and in America appear weak and "improvised." See Egmont Zechlin, "Friedensbestrebungen und Revolutionsversuche," in *Das Parlament*, App. 20, 24 and 25 (May and June, 1961). In his accurately documented book, *Die Revolution in der Politik Bismarcks* (Göttingen: Musterschmidt Verlag, 1957), Gustav Adolf Rein concludes that: "Bismarck has highlighted the revolution in order to reveal its inner weaknesses, and he has then undertaken to resurrect the old monarchy and give it a new life" (p. 13). Unfortunately, Rein's book does not handle the real situation of 1866 in the concrete way that such an argument deserves.

⁴³ Ernst Forsthoff, *Deutsche Verfassungsgeschichte der Neuzeit*, 2nd. ed. (Stuttgart: W. Kohlhammer Verlag, 1961), p. 84. Forsthoff also defines as pure legend the opinion that the Prussian *Landwehr* — the type of troops that came closest to the bourgeois ideal of a militia — was decisive in achieving final victory. "In fact, use of the territorial militia at the beginning of the war, had serious limitations. It could not launch an attack, because its moral force and military impact were too insignificant for anything of the kind. It was not protected against confusion and panic. Only with the prolongation of the war, did its military importance grew. Under these circumstances, to claim that the territorial militia made a decisive contribution to victory belongs to the realm of fable." Ernst Rudolf Huber deals with the spring of 1813, especially with the *Landsturm* edict in his *Deutsche Verfassungsgeschichte seit 1789* (Stuttgart: W. Kohlhammer, 1957-), Vol. I, [section] 7, p. 213; see also his *Heer und Staat in der deutschen Geschichte* (Hamburg: Hanseatische Verlagsanstalt, 1938), pp. 144ff.

against the French Army. Nevertheless, this short revolutionary moment has extraordinary significance for the theory of the partisan.

At this point, one will immediately think of the famous masterpiece of the science of war, *On War*, by the Prussian General von Clausewitz, and rightly so. But at this time, Clausewitz was only a student of teachers and masters such as Scharnhorst and Gneisenau, and his book was published only after his death, in 1832. There is, however, another manifesto of the hostility against Napoleon, dated 1813, which can be listed among the most astounding documents in the whole history of the partisan: the April 21, 1813 Prussian edict concerning the territorial militia [*Landsturm*]. It is an edict signed by the Prussian king, published according to all the regulations spelled out in the collection of Prussian laws. The model that inspired it is without a shadow of doubt the Spanish *Reglamento de Partidas y Cuadrillas* of December 28, 1808, and the decree, known under the name *Curso Terrestre* of April 17, 1809. The latter ones, however, are signed personally by the monarch.⁴⁴ It is astounding to see the name of a legitimate king under such a call to partisan war. These 10 pages of the collection of 1813 Prussian laws must surely be among the most exceptional ones among collections of legal documents anywhere in the world.

Every citizen, it is claimed, has the duty to resist the invading enemy with every type of weapons. Axes, pitchforks, scythes, and hammers are explicitly recommended (in [section] 43). Every Prussian is obligated to refuse to obey *all* enemy directives, and to injure the enemy with all available means. Even if the enemy wanted to restore order, no one is authorized to obey, because in so doing one would facilitate the enemy's military operations. It is explicitly stated that "the excesses of an unrestrained mobs" are less dangerous than if the enemy were allowed to make free use of his troops. In addition, reprisals are recommended if the enemy were to oppose the partisans' initiatives. In short, this document is a *Magna Carta* for partisan war. In three places--in the introduction and in [section] 8 and [section] 52--there is clear reference to Spain and their guerilla as an "example and a model." The struggle is justified as self-defense, which "sanctifies all means" ([section] 7), including the unleashing of total chaos.

⁴⁴ It was issued as a decree of a *Junta Suprema*, because there was no legitimate monarch at the time. Cf. Fernando Solano Costa, "La Resistencia Popular en la Guerra de la Independencia: Los Guerilleros," *op. cit.*, pp. 415f. The Swiss "Everyman's Guide to Guerilla Warfare" is not an official regulation, but a work issued by the board of directors of the Swiss Non-Commissioned Officers. It would be illuminating to compare its individual directives (e.g., warning the population not to observe the directives of an enemy power) with the express regulations of the Prussian *Landsturm* edict of 1813, in order to bring to mind the similar situation, on the hand, and the technological and psychological progress, on the other.

As I have written, there was no actual German partisan war against Napoleon. The same edict concerning the territorial militia was modified three months later, on July 17, 1813, by extinguishing every acherontic flash and diminishing the figure of the partisan. Everything that followed was decided by the clash of regular armies, even if the spark of national sentiment contaminated the troops. At any rate, Napoleon could gloat that during the many years of French occupation no German civilian ever took a shot at a French uniform.

Then, what was the special significance of this short-lived Prussian decree of 1813? It represents the legitimation of the partisan as the nation's defender and, in particular, it is a special legitimation to the extent that it is based on a mentality and philosophy dominant in the Prussian capital at that time, Berlin. The Spanish guerrilla war against Napoleon, the Tyrolean rebellion of 1809, and the Russian partisan war of 1812 were autochthonous, spontaneous movements of devout Catholic or Orthodox peoples, whose religious traditions were not touched by the philosophical spirit of revolutionary France, and, in this sense, were *underdeveloped*. In an outraged letter to Napoleon's Governor-General Louis Nicolas Davout in Hamburg (dated Dec. 2, 1811), Napoleon defined the Spaniards as a bunch of superstitious, treasonous assassins, led by 300,000 monks, a people which could in no way be compared to the diligent, hard-working, and zealous Germans. In the years 1808-13, Berlin was infused with a spirit imbued with the philosophy of the French Enlightenment, so much so that it could very well be considered equal, if not superior to it.

The great philosopher, Johann Gottlieb Fichte; highly-educated and brilliant military men such as Scharnhorst, Gneisenau, and Clausewitz; and a poet who died in November 1811, Heinrich von Kleist all, characterize the enormous intellectual potential of the Prussian *intelligentsia*, ready to move at the opportune moment. The nationalism of this Berlin intellectual stratum was the patrimony of an educated elite, not just of some simple or even illiterate people. In such an atmosphere, in which an aroused national feeling blended in with a philosophical education, philosophy discovered the partisan, thus making possible its theoretical elaboration. That a theory of war was also part of this singular connection is revealed by a letter that Clausewitz sent in 1809 from Königsberg to Fichte. It was signed by an "unknown military man," and addressed to "the author of an article on Machiavelli."

In this letter, the Prussian officer respectfully teaches a lesson to the famous philosopher, claiming that Machiavelli's theory of war was too dependent on antiquity, while today, "by

stimulating individual forces, it is possible to obtain infinitely more than by trusting artificial models." The new weapons and masses, which Clausewitz had in mind in this letter, thoroughly expressed this principle, and ultimately the courage of the individual facing imminent battle is decisive, "especially in the best of all wars, when a people on its own soil is led to fight for freedom and independence."

The young Clausewitz knew the partisans from the Prussian insurrection plans of 1808-13. Between 1810 and 1811, he lectured on guerrilla warfare in the General War College in Berlin. He was not only one of the most important military experts of guerrilla warfare in the technological sense of the deployment of light troops because of their great mobility, but he also believed, along with the other reformist officers of this circle, that it was "an eminently political matter, with altogether revolutionary characteristics. To come down in favor of armed civilians, resistance and of revolt against the existing order, even when embodied in a foreign regime of occupation – all of this was a novelty for Prussia: it represents something 'dangerous,' something simultaneously outside the legal state." For us, with these words Werner Hahlweg identified the core of the matter. But he immediately added: "Of course, the revolutionary war against Napoleon, as the Prussian reformers imagined it, was never really fought." It was, at most, what Friedrich Engels called a "half-insurrectional war." Yet, the famous professional report of February 1812 remains very important for understanding the reformers' "most profound impulses" (Hans Rothfels); with the help of Gneisenau and Hermann Boyen, Clausewitz drafted it before he joined the Russian service. It is a "document of a depoliticized and dispassionate sober analysis, truly worth of a General Staff," which recalled the war experiences of the Spanish people, and sought calmly "to respond to atrocity with atrocity, violence with violence." Here, the April 1813 Prussian edict concerning the territorial militia is already recognizable.⁴⁵

Clausewitz must have been very disappointed that everything he had hoped for from the insurrection had "failed."⁴⁶ He had always considered wars of national liberation and partisans ("party followers," as he called them) to be essential parts of those forces "that explode in war,"

⁴⁵ Hahlweg, *Preussische Reformzeit und revolutionärer Krieg*, *op cit.*, pp. 54 & 56. Clausewitz's letter to Fichte is republished in Fichte's *Staatsphilosophischen Schriften*, ed. by Hans Schulz and Reinhard Strecker (Leipzig: F. Meiner, 1925), Supplement to Vol. I, pp. 59-65. On the "three declarations," see Ernst Engelberg in the introduction to *Vom Kriege* (Berlin: Verlag des Ministeriums für Nationale Verteidigung, 1957), pp. XLVII-L.

⁴⁶ Letter to Marie von Clausewitz, dated May 28, 1813: "By contrast, what seems missing is what we expected from the support of the people behind enemy lines. This is the one thing that I did not expect, and I must confess that at acknowledging it has already brought some very sad moments." See Karl Linnebach, *Karl und Marie von Clausewitz: Ein Lebensbild in Briefen und Tagebuchblättern* (Berlin: M. Warneck, 1925), p. 336.

and he had taken them into account in his theory of war. He also recognized the new "power," especially in Book 6 of *On War*, concerning the quantity of defensive means, and in the famous Chapter 6B of Book 8 concerning war as a political instrument. Yet, in his work we also find astounding claims and isolated observations full of hints, such as this passage concerning the civil war in the Vendee: that few autonomous partisans can occasionally "pretend to be considered an army."⁴⁷ Of course, no matter what reformist sentiments he entertained, he remained a professional officer of a regular army of his time, thus absolutely unable to follow his wise intuitions to their ultimate consequences. As we shall see, this happened only later, and in order for it to come about, it required an active, professional revolutionary.

Naturally, Clausewitz still thought in terms of classic categories, as when, in the "marvel of our trinity of war" he assigned to the people only the "blind natural instinct" of hatred and hostility, to the commander-in-chief and his army "courage and talent" (understood as free activities of the soul), and to the government a purely rational handling of war as a political instrument.

The frequently cited Prussian edict of April 1813 documents the moment when the partisan first appears in a new, decisive role, as a figure hitherto unrecognized by the world-spirit. It was not the will of resistance of a valiant, bellicose people, but rather education and intelligence that opened this door to the partisan and gave him a philosophically grounded legitimation. Here he received, if I may say so, his philosophical credentials and was admitted, so to say, in society. Until then, he had remained excluded. In the 17th century, he had been debased to a figure in a picaresque novel; in the 18th century, until the time of Frederick the Great, he was a *pandour* and hussar. But now, in Berlin during the years 1808-13, his discovery and his valor were recognized not only on the technological-military level, but also on the philosophical one. At least for a moment, he acquired the rank of great historical figures, thus also receiving a cultural baptism. That was an event that he never forgot. And it is decisive for our argument. The theory of the partisan, and a political *theory* of this partisan – beyond a technological-military classification – became possible only after this full accreditation in Berlin.

⁴⁷ An army is "... an armed mass in a war theater, and in one only." To say the truth, "it would be sheer pedantry to call every band of partisans that operates on its own in the most remote province an 'army'; yet, it is not proper to remain silent, and no one emphasized it, when talking about the Vendee army at war during the French Revolutionary Wars, when, often enough, it was not very strong." Clausewitz, *On War*, op. cit., pp. 280-81. Cf. also note 67 (the Algerian example).

The spark ignited by Spain that flew toward Northern Europe in 1808 received its theoretical formulation in Berlin, where its flame was reinvigorated and passed onto other hands.

Yet, this kind of triumph did not affect the people's traditional devotion toward the sovereign, rather, their political unity came out of it even stronger: the *archeront* that had broken the banks for a little while immediately re-entered within the framework of state order. After the wars of liberation, Hegel's philosophy became dominant in Prussia. It sought a systematic mediation of revolution and tradition.⁴⁸ It was considered a conservative philosophy, and it undoubtedly was. But it also succeeded in retaining the revolutionary spark, and through its interpretation of history it provided a dangerous ideological weapon, even more dangerous than Rousseau's philosophy in the Jacobins' hands. This historical-philosophical weapon fell into the hands of Karl Marx and Friedrich Engels, even if the two German scholars were more the revolution's theoreticians than its activists. Only with a professional Russian revolutionary, only with Lenin, did Marxism become, as a doctrine, today's world-historical power.

From Clausewitz to Lenin

Hans Schomerus, whom we have cited as an expert on the partisan, titles a section of his reflections (which he made available to me in the form of a manuscript) *From Empecinado to Budjonny*, i.e., from the partisan of the Spanish anti-Napoleonic guerrilla war to the organizer of the Soviet cavalry during the Bolshevik war in 1920. Primarily from the scientific-military viewpoint, such a title reveals an interesting line of development. For those of us interested in the theory of the partisan, however, this consideration seems to shift the emphasis too much on technological-military questions of the tactic and strategy of mobile warfare. It is better, instead, to keep an eye on the evolution of the concept of the political, which precisely at this point undergoes a revolutionary conversion. The classic, fixed concept of the political developed in the 18th and 19th centuries was based on the *state* understood according to European international law, and had rendered war, as seen by classic international law, a conflict carried out within a well defined framework, i.e., purely a conflict among states. Since the beginning of the 20th century, this war among states, with its precise rules, is put aside and substituted by a

⁴⁸ Joachim Ritter, *Hegel und die französische Revolution* (Cologne and Opladen: Westdeutscher Verlag, 1957). Very illuminating here is Reinhart Koselleck's claim that: "The sociological fact to connect bourgeois intelligence and the historical consciousness of Prussian officials are the same phenomenon in that they *find the nature of their state in the spirit of the state*." See Reinhart Koselleck, *Staat und Gesellschaft in Preussen 1815 bis 1848*, in the series titled *Industrielle Welt*, Vol. 1, ed. by Werner Conze (Stuttgart: Ernst Klett, 1962), p. 90.

revolutionary war among parties. For this reason, we have titled the following considerations "From Clausewitz to Lenin." Obviously, confronted with the danger of a specialized technological-military reduction, in some sense it risks a modicum of exaggeration in the opposite direction of becoming lost in ramifications and genealogical trees of a historical-philosophical kind.

Here, our sure reference point is the partisan, who frees us from general genealogies of the philosophy of history and leads us back to the reality of revolutionary development. Marx and Engels had already recognized that contemporary revolutionary war is no longer carried out with the barricade of the old days. Engels, in particular, author of many military treatises, has emphasized this at various points. He was convinced that bourgeois democracy would have bestowed on the proletariat a parliamentary majority through universal suffrage, and this would be able to transform the bourgeois social order into a classless society. Consequently, even a certain revisionism absolutely foreign to the partisan could be traced back to Marx and Engels.

Not so with Lenin. He considered recourse to violence and revolutionary war, both civil and among states, inevitable, and thus he also approved of partisan war as a necessary moment within the whole revolutionary process. Lenin was the first to become fully convinced that the partisan was a decisive figure in national and international civil war, and sought to transform it into an effective instrument of the central Communist Party leadership. As far as I can see, this appeared for the first time in an article titled "The Partisan Struggle,"⁴⁹ in the Russian periodical *The Proletarian*, dated September 30-October 13, 1906. It is a new definition of the concept of enemy and of enmity, already examined in his 1902 pamphlet *What Is To Be Done?*, which was aimed primarily against Peter Struve's *objectivism*. Thus, "the professional revolutionary begins coherently from this point on."⁵⁰

Lenin's article on the partisan deals with the tactic to be adopted in civil wars to establish socialism, and is directed against widespread social-democratic opinion at the time that a proletarian revolution, as a mass movement, would reach its objective in countries with

⁴⁹ W. I. Lenin, *Samliche Werke*, Vol. 10, 2nd ed. (Vienna: 1930), pp. 120f. I cite here the German edition of Lenin's military writings, published by a German military publisher in East Berlin, 1961: *Vom Krieg, Armee und Militarwissenschaft*, Vol. 1, pp. 294-304. It is a remarkable coincidence that George Sorel's *Reflexions sur la Violence* appeared in Paris in the same year (1906), in the periodical *Mouvement Socialiste*. A note by Rentsch (*Partisanenkampf: Erfahrungen und Lehren, op. cit.*, p. 203n.) led me to the book by Michael Prawdin, *Netschajew – von Moskau verschwiegen* (Frankfurt a/M: Athenaum, 1961), p. 176, where already in 1905 Lenin spoke of the necessity of guerrilla warfare. The text's exact tone, however, would have to be verified.

⁵⁰ Peter Scheibert, "Uber Lenins Anfange," in *Historische Zeitschrift* 182 (1956), p. 564.

parliamentary democracy, and that therefore recourse to violence was outdated. Instead, for Lenin, partisan war is inseparable from civil war: it is only a question of tactical adaptation to the various concrete situations. According to Lenin, partisan warfare is "an inevitable form of struggle," which one uses without dogmatism or prejudices, just as one uses other means, legal or illegal, peaceful or forceful, regular or irregular, according to the situation. The goal remains the communist revolution in countries all over the world. Anything contributing to this end is good and correct. Consequently, even the problem of the partisan has an easy solution: partisans guided by the communist center are freedom fighters and glorious heroes; those who shun these directives are anarchistic riffraff and enemies of humanity.

Lenin was an expert and admirer of Clausewitz,⁵¹ and he had carefully studied *On War* during WWI, transcribing since 1915 some passages in German in his notebooks, with many marginal notes in Russian, highlighted parts and exclamation marks. In so doing, he created one of the most remarkable documents of universal and intellectual history. If these passages, glosses, highlighted sections and exclamation marks are carefully examined, it is possible to grasp all of the developments of the new theory of absolute war and absolute enmity that informs the age of revolutionary war and the methods of modern cold war. What Lenin was able to learn from Clausewitz, and what he learned very well, was not only the famous formula of war as the continuation of politics. He also learned that other notion of distinguishing friend and enemy, and that this is most important because it defines not only war, but also politics. For Lenin, only revolutionary war is genuine war, because it is based on absolute enmity. Everything else is conventional play.

Lenin himself stressed the distinction between war (*Voenna*) and play (*Igrá*) in a marginal note in Chapter 23, Book II ("Key to the Land"). This is the logic operating in the

⁵¹ A German edition of Lenin's *Tetradka* on Clausewitz' *On War* was published in Berlin in 1957 by the Institute of Marxism-Leninism of the Socialist Unity Party (a.k.a. East German Communist Party). The most extensive and important presentation and analysis of the *Tetradka* is by Werner Hahlweg in an article titled "Lenin und Clausewitz," in *Archiv für Kulturgeschichte*, Vol. 36 (1954), pp. 30-39 and 357-87. Hahlweg is also the editor of the latest edition of *Vom Kriege*, *op. cit.* According to Hahlweg, Lenin's original contribution lies in that he extended Clausewitz, stuck in the initially bourgeois stage of the 1789 Revolution, to the proletarian revolution of 1917, and in recognizing that by being transformed from a conflict among states and nations to a class war, this war would have taken the place of that economic crisis that Marx and Engels hoped for. With help from the formula "war is the continuation of politics," Lenin clarified "just about all of the fundamental questions of the revolution and its unfolding: the recognition of the nature of the world war (class analysis) and the problems connected with it, such as opportunism, defense of the fatherland, the struggle for national liberation, the distinction between just and unjust war, the relation between war and peace, revolution and war, the end of imperialist wars through the working class' internal revolt, revision of the Bolshevik Party program" (Hahlweg, *op. cit.*, p. 374). It seems to me that every point that Hahlweg rightly makes here provides a touchstone for the concept of the enemy.

decisive step that sweeps away all the distinctions successfully excogitated by 18th century European international law, reinstated by the 1814-15 Congress of Vienna, that had brilliantly held up to WWI – norms whose elimination not even Clausewitz had entertained. By comparison with a war of absolute enmity, the bracketed war of traditional European international law that flowed within well defined banks following known rules is nothing more than a duel between gentlemen seeking satisfaction. To a communist like Lenin, inspired by a feeling of absolute enmity, this type of war must have appeared as mere play, in which he participated, adapting himself, from time to time to the objective situation in order to trick the adversary, although it was a play that he found contemptible and ridiculous.⁵²

The war of absolute enmity knows no bracketing. It finds its justification and meaning in this will to reach its extreme consequences. The only remaining question is this: is there a foe,⁵³ and if so, who is he? For Lenin, the answer was obvious, and his superiority over all other socialists and Marxists consisted in that he took total enmity seriously. His true foe was the class adversary – the bourgeois, the Western capitalist, and the social order in every country where he was in power. To know the enemy was the secret of Lenin's enormous effectiveness. This is why he understood the partisan so well. In the modern world, the latter had become the true irregular and, as such, the strongest negation of the existing capitalist order: he was called to realize true enmity.

The partisan's irregularity today consists not only in a military "line," as in the 18th century, when he was only a "light troop," nor does it refer to the pride of wearing the traditional uniform of a regular troop. The irregularity of the class struggle challenges not only a line, but the whole structure of the political and social order. In the soul of the professional Russian revolutionary Lenin, this new reality became philosophical consciousness. Lenin's alliance of philosophy and the partisan unleashed new and explosive forces. It provoked nothing less than the collapse of the old Eurocentric world that Napoleon had hoped to rescue and the Congress of Vienna to restore.

⁵² W. Grotian, *Lenins Anteilung zum Handeln: Theorie und Praxis so wietischer Aussenpolitik* (Cologne and Oplanden, 1962). It includes a good biography and index.

⁵³ [Tr. German does not distinguish between enemy (*Feind*), i.e., a legitimate opponent, whom one fights according to recognized rules and whom one does not discriminate against as a criminal, and a foe, i.e., a lawless opponent, whom one must fight to the death and destroy. For this reason, Schmitt was forced to distinguish between the "real enemy" and the "absolute enemy." See G. L. Ulmen, "Return of the Foe," and George Schwab, "Enemy or Foe: A Conflict of Modern Politics," in *Telos* 72 (Summer 1987), pp. 187-193 and 194-201, respectively.]

In 18th century Europe, the bracketing of regular war among states and the limiting of civil war within a state's border were concepts so peaceful that even the wise men of the *ancien régime* could not imagine the disappearance of this type of regularity, not even after the experiences of the French revolutions of 1789 and 1793. They used the language of a general horror, seeking childish comparisons. A great and courageous thinker of the *ancien régime*, Joseph de Maistre, foresaw, in an almost prophetic way, where it would have led. In a letter written in the summer of 1811,⁵⁴ he claimed that Russia was ripe for revolution, yet he hoped that it would be, as he put it, a *natural* revolution, and not one based on the European Enlightenment, such as the French. What he feared most was an *academic Pugachev*. Thus, he took pains to clarify what he considered most dangerous, i.e., an alliance of philosophical thought with the elemental forces of every insurrection. Who was Pugachev? He was the leader of a peasant and Cossack rebellion against Catherine II. He was executed in Muscovy in 1775 after having tried to pass as the empress' deceased mate. An *academic Pugachev* was that Russian who "will start a European-style revolution." According to de Maistre, that would have provoked series of horrible wars, and if things went that far, "then, I would not have the words to tell you what one would have to fear."

The vision of the intelligent aristocrat is astounding, both because he intuitively perceives the clear possibility and danger of an alliance between Western culture and Russian rebelliousness, and also because of what he does not see. Given his temporal and geographic location – St. Petersburg in the summer of 1811 – this intuition comes very close to the ideas of Prussian military reformers. Yet, de Maistre has no clue of this similarity, despite intense relations between the Prussian General Staff and the imperial court. He knew nothing of Scharnhorst, Gneisenau, and Clausewitz, names that, if related to that of Pugachev, would derail him. The profundity of a great intuition would thus be lost. All that would remain would be a *bon mot* in the style of Voltaire or even of an Antoine de Rivarol. If one then thinks in terms of the alliance between Hegel's philosophy of history and unchained mass forces, consciously realized by the professional Marxist revolutionary Lenin, then the formulation of the brilliant de Maistre would

⁵⁴ *Europa und Russland: Texte zum Problem des westeuropäischen und russischen Selbstverständnisses*, ed. by Dmitrij Tschizerskij and Dieter Groh (Darmstadt: Wissenschaftliche Buchgesellschaft, 1959), p. 61. Letter to de Rossi dated August 15 (or 27) August, 1811. On Maistre's critique and prognoses of Russia, see Dieter Groh, *Russland und das Selbstverständnis Europas: Ein Beitrag zur europäischen Geistesgeschichte* (Neuwied: Hermann Luchterhand Verlag, 1961), especially pp. 105ff. The book is important for our theme because it contains other information and descriptions of events.

shrink, evaporating into a good verbal slogan mostly intended to be pronounced during a conversation in the salons of the *ancien régime*. The language and conceptual world of bracketed war and tempered enmity were not up to the level of confronting the historical eruption of absolute enmity.

From Lenin to Mao Tse-tung

According to expert authorities, during WWII, Russian partisans succeeded in diverting approximately twenty German divisions, thereby contributing decisively to the final victory. Official Soviet historiography depicts only the glorious partisans who wrecked havoc in the hinterland of the enemy armies.⁵⁵ In the enormous Russian spaces with a front thousands of miles long, every division engaged in the German war effort was irreplaceable. Stalin's fundamental concept of partisans was that they had to fight in the enemy's rear, following the maxim: in the rear, partisans; at the front, fraternization.

Stalin succeeded in linking the strong potential of national and patriotic resistance – the essentially defensive, telluric power of self-defense against a foreign invader – with the aggressivity of the international communist world revolution. The linking of these two heterogeneous movements dominates contemporary partisan war around the world. Here, the communist element has generally had the advantage because of support from Moscow or Peking, and because of the tenacity of its objectives. The Polish partisans, who fought against the Germans during WWII, were sacrificed by Stalin in a gruesome way. The partisan struggle in Yugoslavia (1941-45) was not only a common struggle against the foreign invader, but also an equally brutal internal clash between communist and monarchist partisans. In this struggle, with Stalin's help, the Communist Party leader Tito defeated and annihilated his Yugoslav adversary, General Draža Mihailovich, who had been supported by England.

The greatest leader of contemporary revolutionary war has also become its most famous theoretician: Mao Tse-tung. As Hans Henle points out, today many of his writings have become "required reading at Western war colleges." Beginning in 1927, he had assembled precious experiences in the communist movement and then used the 1932 Japanese invasion to develop systematically all modern methods of national and international civil war. The "long march" from southern China to the Mongol border, which began in November 1934 and continued for

⁵⁵ See Boris Semenovitch Telpuchovski's book on "the Great Fatherland War" (1941-45).

over twelve thousand miles under almost unsurmountable difficulties and with enormous losses, set a whole series of precedents and gathered irreplaceable experiences of partisan struggles. The result is the Chinese Communist Party – a party of peasants and soldiers, with the partisan at its center. It is a significant coincidence that Mao completed his most important writings in 1936-38, i.e., the same years in which Spain defended itself, with a national war of liberation, from the danger of being squeezed by international communism. In this Spanish Civil War, the partisan played no leading role. In Mao's case, however, his victory over his internal adversary, the Kuomintang and general Chiang Kai-shek, was exclusively due to his experiences of the partisan war against the Japanese and the Kuomintang.

For our theme, Mao's most important theoretical formulations are round in a 1938 work titled "Problems of Strategy in Guerrilla War Against Japan."⁵⁶ Yet, some of his other writings must be taken into account in order to understand fully the military conceptions of this new Clausewitz. Actually, they are the consistent and systematic development of what had been elaborated conceptually by the Prussian officer. Clausewitz,⁵⁷ however, as Napoleon's contemporary, could not have foreseen the degree of totality reached by the revolutionary war carried out by the Chinese communist leader. The characteristic figure of Mao can be found in the following comparison: "In our war, the armed people on one side and the Red Army on the other, can be compared to the two arms of a man or, to put it more concretely, the people's morale and that of the armed nation. For this reason, the enemy is afraid."

As is well known, the "armed nation" was also the slogan of the officers of the Prussian General Staff, who organized the war against Napoleon. Clausewitz was one of them. We have already seen how at that time the vigorous national impulse of a particular intellectual class was received by the regular army. Even the most radical military thinkers at that time distinguished between war and peace, and considered war an emergency situation, clearly different from peace. As a professional officer of a regular army, Clausewitz could not have thought through the logic of the partisan, as could have professional revolutionaries such as Lenin and Mao, whose existence had always been that of professional revolutionaries. As for Mao, another concrete factor must be considered, i.e., what allowed him to come even closer than Lenin to the core of

⁵⁶ See *Selected Works of Mao Tse-Tung*, Vol. II (Peking: Foreign Languages Press, 1965), pp. 79-112.

⁵⁷ Cf. Theodor Arnold, *Der revolutionäre Krieg* (Pfaffenhofen/Ilm: Iltgau Verlag, 1961), pp. 22f and 97ff.; Hellmuth Rentsch, *Partisanenkampf: Erfahrungen und Lehren* (Frankfurt a/M: Bernard & Graefe Verlag für Wehrwesen, 1961), especially pp. 150-201; Klaus Mehnert, *Peking und Moskau* (Stuttgart: Deutsche Verlags-Anstalt, 1962), p. 567; and Hans Henle, *Mao. China und die Welt von heute* (Stuttgart: Union, 1961).

partisan problematic, by conceptually defining it in an even more complex way. In short: Mao's revolution has a more telluric foundation than Lenin's.

There are great differences between the Bolshevik avant-garde, which seized power in Russia under Lenin's leadership in October 1917, and the Chinese Communists, who finally took power in 1949, after over 20 years of war – differences in their internal organizational structure, as well as in their relation to the land and the people they conquered. The ideological controversy around the problem concerning what Marxism Mao followed, or whether he practiced a true leninism, disappears in front of the unprecedented fact of a telluric partisan of such dimensions, and it becomes equally secondary whether old Chinese philosophers had not already somehow articulated concepts similar to Mao's. It is actually a matter of a real "red elite" forged by the partisan struggle.

Ruth Fischer has clarified its essential aspect by referring to the fact that, from a national standpoint, the Russian Bolsheviks of 1917 were a minority "led by a group of theoreticians whose majority were emigres." In 1949, the Chinese Communists under Mao had already struggled for two decades on their own national soil, against an internal adversary, the Kuomintang, in an enormous partisan war. "It may have been that their provenance was the urban proletariat, similar to the Russian Bolsheviks who hailed from St. Petersburg and Moscow, but when they came to power they also brought with them experiences accumulated through the most difficult defeats, and the organizational capacity needed to 'transplant' their fundamental principles to a peasant milieu, and to further develop in new and unforeseen way."⁵⁸

Here is where lies the germ of the "ideological" differences between Russian and Chinese Communism. It can also be traced to an inner maoist contradiction that links the Marxist class enemy, with no defined space – a global foe – with one territorially limited, real, engaged in the

⁵⁸ Ruth Fischer, *Von Lenin zu Mao: Kommunismus in der Bandung-Aera* (Dusseldorf-Cologne: Eugen Diederichs Verlag, 1956), p. 155. On the Chinese example and the peasant problem, see Rentsch, *Partisanenkampf: Erfahrungen und Lehren*, op. cit., pp. 154f. On the proletariat and the peasantry, see Mehnert, *Peking und Moskau*, op. cit., pp. 179ff.; Henle, *Mao, China und die Welt von heute*, op. cit. On the significance of partisan wars, p. 102; on the red elite, pp. 150ff.; on the special Chinese line of socialism and communism, pp. 161ff. Walt W. Rostow does not deal with the decisive theme of the Chinese partisan, although he reveals the distinct traditional character of the Chinese elite in *The Prospects for Communist China* (New York and London: The Center for International Studies, Massachusetts Institute of Technology, 1954), pp. 10f, 19-21, and 136. He remarks that "Peking's leaders have a strong sense of history," p. 312. He also points out that the way of thinking of Chinese Communism is already characterized, beginning with Mao's rise to power, by mixed political terms. If this formulation is meant to be derogatory, (which is conceivable, although I am not in a position to judge) the author would have blocked out the possibility to the core of the matter, i.e., the question of the partisan and the real enemy. On the controversy concerning Mao's legend (Benjamin Schwarz and Karl A. Wittfogel), see Mehnert, *Peking und Moskau*, op. cit., p. 566, n. 12.

Chinese-Asiatic defense against capitalist colonialism. It is the antithesis of *One World*, i.e., a political unity of the earth and of its inhabitants, and a plurality of counterbalanced *Grossräumen*. The pluralistic image of a new *nomos* of the earth has been articulated in one of Mao's poems titled "Kunlun," as follows:

If I could stand above the heavens,
I would draw my sword
And cut you in three parts:
One piece for Europe,
One piece for America,
One piece left for China.
Then peace would rule the world.⁵⁹

In Mao's concrete predicament, he encountered various types of enmity, which intensified into absolute enmity: racial enmity against the white, colonial exploiters; class enmity against the capitalist bourgeoisie; national enmity against the Japanese intruders of the same race; and the growing enmity against his own connationals, during long, bitter civil wars. None of this was abolished or relativized, as one could think, but rather intensified and strengthened in that concrete situation. During WWII, Stalin successfully linked the telluric partisan of the national homeland with the class struggle of international communism. In this respect, Mao was many years ahead of Stalin. On the theoretical level, he developed the formula of war as the continuation of politics even further than Lenin.

The mental operation at the base of all this is both simple and bothersome. War finds its meaning in enmity. As a continuation of politics, it also contains, at least potentially, an element of enmity. Now, if peace contains the possibility of war (which, from experience, is unfortunately the case), it also contains a moment of potential enmity. Then the question is only whether enmity can be bracketed and regulated, i.e., whether it is relative or absolute enmity. That can be decided only by those who are waging war at their own risk and danger. For Mao, who thinks as a partisan, today's peace is only the external aspect of a real enmity. The latter is not interrupted even in the so-called cold war, which is not half war and half peace, but something adapted to the contingent situation to direct a real enmity with means different from openly violent ones. Only weak and self-deluded people can deceive themselves on this point.

The practical consequence of all of these considerations consists in establishing the quantitative relation between a regular army's role and other methods of the class struggle that

⁵⁹ [Tr. Mao Tse-tung, *Poems* (Peking: Foreign Languages Press, 1976), pp. 20-21.]

are not openly military. Here, Mao provides precise figures: revolutionary war is nine-tenths irregular rather than open war, while one-tenth is regular war. Based on it, a German General, Helmut Staedke, has defined a partisan as a fighter who carries out nine-tenths of war operations, leaving the remaining tenth to regular troops.⁶⁰ Mao certainly did not overlook the fact that this tenth is decisive for the war's positive outcome. Yet, as old traditional Europeans, we must avoid thinking in terms of conventional concepts of war and peace, which refer to 19th century bracketed war, and not to an absolute, but only to a relative and bracketed enmity.

The regular Red Army appears only when the situation is mature for establishing a communist regime. Only then does the land become occupied militarily in an open way. Of course, this does not seek a stipulation of a peace in the sense of classic international law. The practical significance of such a doctrine became clear after 1945, with the exemplary division of the defeated Germany. Military operations ceased on May 8, 1945. Defeated, Germany surrendered unconditionally. Up to now (1963), no peace agreement has been reached between Germany and the winning allies, and the borders between East and West are precisely those that American and Soviet regular troops drew between their zones of occupation in 1945. Both the 9:1 ratio between cold war and open military hostilities, as well as the division of Germany after 1945, important for world politics, are only examples meant to clarify Mao's political theory. Its core lies in the partisan, his distinctive feature is real enmity. Lenin's bolshevik theory has recognized and acknowledged the partisan. Yet, by comparison with the concrete telluric reality of the Chinese partisan, Lenin's definition of the enemy remains too intellectual and somewhat abstract. The ideological conflict between Moscow and Peking, which has become increasingly obvious, has its deepest roots in this concrete but different reality of an authentic partisan. Even here, the theory of the partisan turns out to be the key for understanding political reality.

⁶⁰ Helmut Staedke, in a speech on October 17, 1956 before the Arbeitsgemeinschaft für Wehrforschung [Committee for Weapons Research]. Especially well known in Germany is J. Hogard, "Theorie des Aufstandskrieges," in *Wehrkunde*, Vol. 4 (October 1957), pp. 533-538; see also, Colonel Charles Lacheroy, *Action Viet-Minh et Communiste en Indochina ou une leçon de "guerre révolutionnaire"* (Paris: Section de Documentation Militaire, 1955); and Arnold, *Der revolutionäre Krieg*, *op. cit.*, pp. 171 ff.

From Mao Tse-tung to Raoul Salan

Mao's fame as the most modern teacher of how to carry out a war was spread in Europe by French professional officers returning from Asia.⁶¹ In Indochina, old-style colonial war clashed with a more modern revolutionary version. There, French professional officers had risked their own skin and learned the effectiveness of carefully studied methods concerning how to conduct a subversive war, how to use mass terror, and how to apply all this to partisan wars. Their experiences made it possible for these officers to develop a theory of psychological, subversive, and insurrectional wars, concerning which there is already a voluminous literature.

This theory has been regarded as the typical product of the mentality of professional officers, especially colonels. No more need be said here about "colonels," even if it would be interesting to see whether a figure such as Clausewitz came closer to the way of thinking of a "colonel" than to that of a general. Instead, what remains interesting is this theory of the partisan and its logical development, which ends up becoming personified, during the last few years, by a general, rather than by a colonel: General Raoul Salan. In this context, for us, he is the most important figure – even more important than other generals such as Edmund Jouhaud, Maurice Challe, or Andre Zellert. His public figure has brought to light an existential conflict, i.e., a decisive one for understanding the partisan problematic, which necessarily explodes when a soldier fighting in a regular way must confront, not only occasionally but continually, in a war configured in a traditional way, a fundamentally revolutionary enemy fighting as an irregular.

As a young officer, Salan had become acquainted with the colonial war in Indochina. During WWII, he was assigned to the Colonial General Staff, and in this capacity he had been transferred to Africa. He came to Indochina in 1948 as the commander of French troops. In 1951, he became the French Republic's High Commissioner for North Vietnam, and in 1954 he led the inquiry into the defeat at Dien-Bien-Phu. In November 1958 he was named Supreme Commandant of the French armed forces in Algeria. Until then, he could be considered politically as part of the Left, and in January 1957 an obscure organization, almost a secret sect, made an attempt on his life. Yet, what he had learned in Indochina and the Algerian partisan war

⁶¹ I refer summarily to the literature cited in Arnold's *Der revolutionäre Krieg*, *op. cit.*; and Rentsch, *Partisanenkampf: Erfahrungen und Lehren*, *op. cit.*: Raymond Aron, *Paix et Guerre entre les Nations* (Paris: Callmann-Levy, 1962); Arias, *La Guerra Moderna y la Organización Internacional*, *op. cit.* See also Luis Garcia Arias, *Etudes des Phenomenes de la Guerre psychologique de l'Ecole Militaire d'Administration de Montpellier* (1959), especially Vol. 2, *Les Formes Nouvelles de la Guerre*, as well as Jacques Fauvet and Jean Planchais, *La Fronde des Generaux* (Paris: Arthaud, 1961), Claude Paillat, *Dossier Secret de l'Algerie* (Paris: Poesses de la Cite, 1962); and P. Parer and John W. Shy, *Guerrillas in the 1960s* (New York: Praeger, 1962), p. 88.

succeeded in bending him to the inexorable logic of the partisan war. The premier of the former Paris government, Pierre Pflimlin, had given him full powers. But in the decisive moment, on May 15, 1958, he supported General Charles de Gaulle, leading a public demonstration in Algiers' Forum chanting "*Vive de Gaulle!*"

Yet, he was bitterly disappointed in his hope to see the General defend unconditionally French sovereignty over Algerian territory, as guaranteed by the constitution. In 1960, his hostility toward de Gaulle became open. In January 1961, a few of Salan's friends founded the Secret Army Organization (the OAS), of which he became the recognized leader when, on April 23, he rushed to Algiers to join the officers' *putsch*. When, two days later, this effort came to naught, the OAS began to plan terrorist actions against the Algerian enemy and the Algerian civilian population, and even the French in the metropolitan territory. These actions benefited by the experiences of psychological war and of modern mass terrorism. This terrorist undertaking received its *coup de grace* in April 1962, when Salan was arrested by the French police. The trial before the highest military court in Paris began on May 15 and ended on May 23, 1962. The indictment mentioned the attempt to forcefully overthrow the legal regime and of having organized the OAS terrorist activities between April 1961 and April 1962. Since the court acknowledged extenuating circumstances, Salan was not given the death penalty, but life in prison (*détention criminelle à perpétuité*).

I have sought to remind the reader of a few important dates. There is still no history of Salan and the OAS,⁶² and it is not my intention to meddle in the deep internal conflict of the French nation by expressing opinions and passing judgments. We can, however, provide some reflections by using the already published material in order to clarify some aspects of our problem.⁶³ This history reveals various episodes that could be related to the partisan; we will refer only to one of them for purely heuristic reasons and with all due caution. The analogy between the Prussian General Staff of 1808-13, who had been impressed by Spanish guerilla war, and the French General Staff during 1950 and 1960, who had experienced the partisan war in Indochina and Algeda, is striking. There are also great differences which, however, do not

⁶² [Tr. In the meantime, several works by and about Salan have appeared, among them: Fabrice Laroche, *Salan devant l'opinion* (Paris: editions Saint-Just, 1963); Andre Figueras, *Raoul Salan. ex-general* (Paris: La Table ronde, 1965); Raoul Albin Louis Salan, *Lettres de prison*, collected and edited by Andre Figueras (Paris: La Table ronde, 1965); Raoul Albin Louis Salan, *Memoires* (Paris: Presses de la Cite, 1970); Raoul Salan, *Indochine rouge: le message d'Ho Chi Minh* (Paris: Presses de la Cite, 1975).]

⁶³ "Le Proces de Raoul Salan, compte-rendu stenographique," in *Les grands proces contemporains*, ed. by Maurice Garcon (Paris: Edition Albin Michel, 1962).

require further clarification. There is a close relation between the central problem and many individual details. Yet, one should not exaggerate and attribute an identical derivation to all the defeats of the military's theories and constructions of universal history. That would be ridiculous. Thus, the case of Prussian General Ludendorff is very different from that of the Left-Republican Salan. We are concerned only with a clarification of the theory of the partisan.

During the trial before the High Military Court, Salan remained silent. Only at the beginning, he made a rather long declaration, whose opening statement was: "I am head of the OAS. Therefore, the responsibility is entirely mine." In this declaration he complains about the fact that the witnesses he had named – among them, the very head of state, President de Gaulle – had not even been questioned, that the court proceedings were limited only to the period between April 1961 and to April 1962, i.e., between the *putsch* in Algeria and his arrest, thus overlooking the movement's true motivations and forgetting great historical events in order to reduce everything to a typical penal trial. The OAS' terrorist activities were thus reduced to the only natural answer to the measly attempt to detach from the homeland a land that others were interested in defending. His declaration ended with the words: "I must only account to those who suffered and died because they have believed in a broken promise, and to a duty that has been betrayed. From now on, I will remain silent."

Salan really kept his silence throughout the whole trial, even when confronted with the numerous and insistent questions of the public prosecutor, who regarded Salan's silence as just a tactic. After a brief hint to the "lack of logic" of Salan's silence, the public prosecutor ended up, if not to respect, at least to tolerate such a behavior, without considering it "contempt of court." When the trial was over, the president asked Salan if he had anything to add in his defense. He answered: "I will open my mouth only to scream *Vive la France!*, and to the prosecuting attorney I simply say, may God protect me!"⁶⁴

The first part of Salan's concluding reply to the president of the High Military Court foresaw a death sentence. In this situation – at the moment of his execution – he would have shouted: "*Vive la France!*" The second part was directed to the prosecuting attorney, and was meant to be oracular. It turned out to be perfectly understandable, because for the public

⁶⁴ The public prosecutor emphasizes five times the defendant's "great silence" when questioned directly. See *Le Procès de Raoul Salan, op. cit.*, pp. 108 and 157. Salan's reiteration that he would remain silent cannot be seen as an interruption of his silence (pp. 89, 152, and 157). See also his thanks to the ex-Head of State, Coty, after his depositions (p. 170). The unusual phrases of the representatives of the prosecution, without which Salan's concluding statement is incomprehensible, can be found on p. 480 of the same transcript.

prosecutor – and this is something that does not happen everyday for a public prosecutor of a secular state – Salan had suddenly touched the religious lever. He had regarded Salan's silence as arrogant and lacking in remorse, asking that no extenuating circumstances be considered. He suddenly turned to Salan, speaking as "a Christian to a Christian," and claimed that, because of his lack of remorse, he had forfeited the grace that the Christian benevolent God always grants, and thus of having earned eternal damnation. To this Salan answered with his "may God protect me!" This is an excellent example of how much sagacity and how much wisdom are injected in the course of a political trial. Here, however, we are not interested in the problem of political justice,⁶⁵ but in clarifying a series of questions that have been thrown into utter confusion by slogans such as total war, psychological war, subversive war, and insurrectional war, ending up, along this path, to deform the problem of the modern partisan.

The war in Indochina (1946-54) was the "ideal example of a fully-developed modern revolutionary war."⁶⁶ Salan had become acquainted with a modern partisan war in Indochina's forests, jungles, and rice fields. He lived through events during which Indo-Chinese rice peasants had forced a battalion of first-rate French soldiers to run away. He saw the squalor of refugees and became acquainted with Ho Chi-minh's underground organization, perfectly able to challenge the French colonial administration and substitute it. With the precision of a member of the General Staff, Salan devoted himself to study the new way to conduct a war, even in its more or less terroristic aspects. By so doing, he stumbled into what his comrades and he himself called "psychological" warfare, which, along with more properly technological-military actions, is typical of modern warfare. Here Salan could readily understand Mao's way of thinking. It is well-known, however, that he applied himself to studying also what had been written concerning the Spanish guerrilla war against Napoleon. In Algeria, Salan found himself in a situation where 400,000 well-armed French soldiers fought against 20,000 Algerian partisans, with the result that France found itself forced to renounce its sovereignty over Algeria. The Algerian population's loss of human life was about 20 times greater than that on the French side, but the amount of material used by the French was about 10 times greater than the Algerians'. In short, during his

⁶⁵ See Carl Schmitt, *Verfassungsrechtliche Aufsätze* (Berlin: Dunker & Humblot, 1958). p. 109, 5n. : CÜber die Veränderung der Wirklichkeit durch den gerichtlichen Process."

⁶⁶ Arnold, *Der revolutionäre Krieg, op. cit.*, p. 186.

whole existence as a Frenchman and a soldier, Salan had to accept the strange paradox,⁶⁷ this crazy logic that ended up embittering a brave and intelligent man to the point of driving him to attempt a counterattack.

ASPECTS AND CONCEPTS OF THE LAST STAGE

In this labyrinthine situation typical of modern partisan war, we will try to distinguish four different aspects in order to arrive at sufficiently clear concepts: the spatial aspect; the destruction of social structures; the ties with the global-political context; and finally, the technological-industrial aspect. This sequence is relatively fluid. It goes without saying that, in concrete reality, there are no isolated and independent aspects, but that only their respective relations and their functional dependence that produce a general picture, so that the discussion of each single aspect always contains at the same time references and implications for the other three. Ultimately, they all end up falling within the force-field of a technological-industrial development.

The Spatial Aspect

Completely independent of the good or ill will of men, of peaceful or hostile goals, any enhancement of human technology opens new spaces and unforeseeable alterations in traditional spatial structures. That is true not only for the external and conspicuous expansions of space, because of spacial exploration, but also for our old, terrestrial environments reserved for homes, work, culture and entertainment. Today, in the age of electric lights, long-range fuel supplies, telephones, radios, and television, the expression "the home is inviolable" establishes limitations rather different than those of the time of King John and the Magna Carta of 1215, when the lord of the manor could raise the drawbridge. The technological enhancement of human technological efficiency shatters entire normative systems, as is the case of the law of the sea in the 19th century. From the bottom of the sea, which has no lord, arose the so-called continental shelf, the space in front of the coast, as a new sphere of human action. Bunkers for atomic waste come into being in the free depths of the Pacific Ocean. Along with spatial structures, technological-

⁶⁷ Raymond Aron speaks of a strange paradox in his work *Paix et Guerre entre les nations* (Paris: Calmann-Levy, 1962), p. 245, where in the chapter titled "Determinants et Nombre," he discusses the Algerian situation. Hans Schomerus' terre "crazy logic" (*Irrsinnslogik*) can be found in the partisan story by Jan Coster, *Der Wachter an der Grenze* (Tubingen: Furehe Verlag, 1948).

industrial progress also transforms spatial orders. Law is the unity of order and orientation, and the problem of the partisan is the problem of relations between regular and irregular struggles.

As far as he is concerned, a modern soldier can have either an optimistic or a pessimistic attitude. For our problem, that could also be irrelevant. From the viewpoint of weapons technology, however, every officer of the General Staff thinks in immediately practical and rational terms. Precisely because of his war experience, the spatial aspect is also close to him theoretically. The structural variety of the so-called war theater, both terrestrial and maritime, is an old theme. Since WWI, airspace has become a new dimension,⁶⁸ thus also modifying the spacial structure of terrestrial and maritime *war theaters* as hitherto conceived. With the partisan war, a new, complex sphere of action comes into being, because the partisan does not fight on an open battlefield, on the same level of regular war, with its fronts. Rather, he forces his enemy to enter a different space. Thus he adds to the regular war theater another, more obscure dimensions – a dimension of profundity⁶⁹ – where those wearing a uniform become deadly targets. In this way, the partisan on land provides an unexpected, but no less effective analogy to a submarine at sea, which also added an unexpected deep dimension beneath the sea surface, on which old-style sea war was fought. Coming out of the underground, the partisan disturbs the conventional, regular play of forces on the open stage. Precisely because of his irregularity, he changes the dimensions not only of tactical, but also of the strategic operations of the regular armies. By exploiting the lay of the land, small partisan groups can block relatively large masses of regular troops. We have referred to the "paradox" of the Algerian example. Clausewitz had already noticed this with extreme clarity, by defining in a pregnant passage that few partisans who dominate a given space can claim the right to be called "an army."

In order to clarify the concept concretely, it is useful to remain anchored to the partisan's telluric-terrestrial character, without defining him as a land-corsair. The pirate's irregularity lacks any relation to regularity. On the contrary, the corsair gains his war booty at sea, and carries a "letter" from a state government; thus, his type of irregularity does not lack a certain tie with regularity, and up to the 1856 Paris Peace could represent a juridically recognized figure of

⁶⁸ Cf. "The Spatial Perspective of the Theater of War on Land and on Sea" and "Transformation of the Spatial Perspective of Theaters of War," in Schmitt, *The Nomos of the Earth, op. cit.*, pp. 309-313 and 313-316, respectively, as well as Ferdinand Friedenburg's Berlin dissertation, *Der Kriegsschauplatz* (1944).

⁶⁹ In *Partisanen; Strategie und Taktik des Guerrillakrieges, op. cit.*, p. 199, while not referring to the general problem of space in land or sea war, Dixon and Heilbrunn present partisan war as a struggle "deep in the enemy front." On this general spatial problem, see my book titled *Land und Meer: Eine weltgeschichtliche Betrachtung* [1942] (Cologne-Löwenich: "Hohenheim" Verlag, 1981), as well as *The Nomos of the Earth, op. cit.*, pp. 172ff.

European international law. In this sense, the corsair of sea war and the partisan of land war can be compared. There is a strong similarity and even equality because of the fact that the statement "with a partisan, one fights like a partisan" and the statement "with a corsair, one fights like a corsair and a hall" say essentially the same thing. It is also true, however, that today's partisan is something different from the corsair of land war. The elementary contraposition of land and sea remains too great. It could be that the traditional varieties of war, enmity, and booty, which have hitherto been the basis of the contraposition of land and sea in international law, one day will simply be dissolved in the crucible of technological-industrial progress. For the time being, the partisan is still connected to a concrete piece of land; he is one of earth's last sentinels – that element of world history yet to be completely destroyed.

Already the Spanish guerrilla war against Napoleon comes to full light only if inserted in the great spatial aspect of this contraposition of land and sea. England supported the Spanish partisans. A maritime power used irregular fighters of land war for its great war undertakings in order to vanquish its continental enemy. Ultimately, Napoleon was not eliminated by England, but by land powers such as Spain, Russia, Prussia, and Austria. The partisan's irregular, typically telluric way of fighting entered the service of a typically maritime world politics, which inexorably disqualified and criminalized within the law of the sea, any irregularity taking place on the sea. Different types of irregularity become concretized in the contraposition of land and sea, and certain analogies are permitted and fruitful only if the concrete particularity of the spatial aspects associated with *land* and *sea* are kept in mind. That is especially true of the analogy which interests us in order to understand the spatial aspect, i.e., how the sea power England, in its war against the land power France, used the Spanish partisan rooted in his soil who changed the theater of land war through an irregular space, and how later, in WWI, the land power Germany used the submarine as a weapon against the sea power England, thereby adding another unexpected space to the traditional space reserved for the conduct of a sea war. The former lords of the surface of the sea immediately sought to characterize the new type of warfare as irregular, criminal, and even a type of warfare typical of pirates. Today, in the age of submarines carrying Polaris missiles, anyone can see that both attitudes – Napoleon's indignation concerning the Spanish guerrillas and England's denunciation of German submarines war – operate on the same previously unforeseen conceptual level.

The Disintegration of Social Structures

An uncommon example of disintegration of social structures was experienced by the French in Indochina (1946-56), when their colonial empire collapsed. We have already recalled Ho Chi-minh's organization of the partisan war in Vietnam and Laos, where the communists used even the apolitical civilian population in their struggle. They even corralled the domestic employees of French officers and functionaries, as well as French army maintenance personnel. They extorted taxes from the civilian population, and perpetrated all types of terrorist acts in order to cause the French to respond with anti-terror repressions against the indigenous population, so that its hatred of the French grew even greater. In short, the modern form of revolutionary war deploys many methods and new unconventional means, whose broad description would go beyond the limits of our discussion. A commonwealth exists as *res publica*, as a public sphere, and is challenged any time a non-public space develops within it, and effectively disrupts this public sphere. Perhaps this indication is sufficient to demonstrate how the partisan, detached from the consciousness of the 19th century military experts, suddenly appeared at the center of a new way to make war, whose meaning and goal was the destruction of the existing social order.

This becomes obvious in the changed practice of hostage-taking. In the Franco-Prussian War, in order to protect themselves against snipers, German troops took as hostages local dignitaries: mayors, pastors, doctors, and notaries. Since social respect for such typically bourgeois figures was beyond doubt, it could be used to pressure the whole population. Precisely this bourgeois class became the real enemy in communism's revolutionary civil war. In any given situation, whoever uses such dignitaries as hostages works for the communist side. Such hostages can be so useful for the communists' objectives that, if needed, they could be provoked in order to exterminate a particular social group or drag it to its side. Schroers' book on the partisan, articulates this new reality very well. At a certain point, it is claimed that in partisan war only the partisans themselves and their closest collaborators can take hostages. Otherwise, one only creates new partisans. Conversely, for the partisan, every soldier of the regular army, every

man in uniform, is a hostage. As Schroers writes: "Every uniform must feel threatened, and thus also everything that it stands for."⁷⁰

One needs only to think about the implications of this logic of terror and counter-terror, and apply it to every kind of civil war to see clearly the disintegration of today's social structures. A few terrorists can threaten great masses. As Margret Boveri shows in a series of remarkable books, wider spaces of insecurity, fear, and general mistrust are added to the narrower space of open terror, creating a "landscape of treason." During the two world wars and after--except a couple of irrelevant cases – all Europeans have experienced that what we claim is true.⁷¹

The Global Political Context

Our third aspect, the entanglement of various global political fronts and their interdependence, is now also part of the common patrimony. The autochthonous defenders of the homeland's soil, who died for altar and hearth, the patriotic national heroes who disappeared in the forests, i.e., everything that, confronted with a foreign invasion, was the reaction of an elementary, telluric force, has in the meantime come under an international and supranational central control, which provides help and support, but only in its own rather different interests, i.e., at the service of globally aggressive goals which, according to the circumstances, it either encourages or abandons. Thus, the partisan ceases to be an essentially defensive figure in order to become a tool manipulated by a spirit of aggression seeking to revolutionize the world. He is simply burned and deprived of the motive which had led him to take up arms, and in which its telluric character was rooted, along with the legitimacy of his partisan irregularity.

⁷⁰ Schroers, *Der Partisan*, *op. cit.*, pp. 33f. Formal prohibitions concerning hostage-taking (as in Art. 34 of the Fourth Geneva Convention) are not effective in the most recent methods which, in reality, reduce whole groups to the level of hostages (p. 72).

⁷¹ Margret Boveri, *Treason in the Twentieth Century*, tr. by Jonathan Steinberg (London: Macdonald, 1961). Partisans are not the only subjects of this book. But the "abysmal confusion" of a "*landscape of treason*" renders "irreparably confused" all distinctions between legality and legitimacy: thus the identification of the partisan as a general figure is obvious. I have demonstrated this with the example of Rousseau in "Dem wahren Johann Jakob Rousseau," in *Zurcher Woche*, No. 26 (June 28-29, 1962), see notes 20, 21 and 23. From that "abysmal confusion," Armin Mohler deduces, as a historian, the thesis that "for now, we can approach the figure of the partisan ... only with a historical description. Maybe eventually, having reached a greater distance, everything will look differently. For the foreseeable future every attempt to toaster, both intellectually and poetically, such a landscape ... will only produce enigmatic fragments, highly significant for understanding their epoch." See Mohler's review of Schroers' book in *Das Historisch-Politische Buch*, Vol. 8 (1962). Of course, Mohler's thesis, and the judgment implicit in it, also concerns our attempt to develop a theory of the partisan. We are fully aware of this. Thus, it would turn out to be really pointless and irrelevant, if our categories and concepts were thought about so little, as all those hitherto expressed to reject or eliminate our concept of the political.

In some way, as an irregular fighter, the partisan has always had to lean on a more powerful, regular combatant. This aspect was always clear. The Spanish guerrilla found his legitimacy in his defensive character and in his agreement with the monarchy and the nation. He defended the national soil against a foreign invader. But Wellington was also part of the Spanish guerrilla war, and the struggle against Napoleon was pursued with English help. Full of hatred, Napoleon often recalled that England was the real instigator and the real beneficiary of the Spanish partisan war. Today, we are even more aware of these connections, because the uninterrupted growth of technological means renders the partisan dependent on the continuous help of an ally both technologically and industrially able to resupply him with the most modern weapons and machines.

The more interested third parties compete among themselves, the more the partisan retains a certain space for his own politics. That was Tito's situation in the last years of WWII. In the partisan struggles in Vietnam and Laos, the situation was complicated by the fact that within the very communist movement there had been an intensification of the clash between Soviet and Chinese politics. With Peking's support more partisans could be infiltrated into North Vietnam through Laos and, on the concrete level, for the Vietnamese communist this help was greater than Moscow's. The leader of the war of liberation against France, Ho-Chi Minh, was a follower of Moscow. However, what was decisive in choosing between Moscow and Peking, as well as all the other available alternatives, was who could provide the greater help.

In indicating these connections with world politics, Schroers' already cited book provides a very apt formulation. The author speaks of an *interested third party*. This is a clear expression. Here, this interested third party is not some banal figure, such as the proverbial third party that ultimately is the beneficiary. It is typical of the partisan's situation, and thus part of the theory about him. The powerful third party not only provides weapons and ammunitions, medical supplies, material help, and money, but he also generates the political recognition that the partisan irregularly needs in order not to be considered in the apolitical sense a thief or a pirate. This means not to sink into the criminal realm. From a longer perspective, the irregular fighter must legitimate himself with the regular, and this is why he has only two possibilities: recognition by an existing regular power, or the achievement of a new regularity through his own power. It is a very hard choice

To the extent that the partisan is motorized, he loses his own natural turf and becomes more dependent on technological-industrial means, which he needs for his struggle. This also causes the power of the interested third party to grow, so that it ultimately reaches global proportions. Thus, all these aspects of the contemporary partisan appear to flow into the technological-industrial aspect that dominates everything.

The Technological Aspect

The partisan also participates in the development and progress of modern science and technology. Today, the old partisan, whom the often mentioned 1813 Prussian *Landsturm* edict wanted to arm with a pitchfork in his hand, appears comical. The modern partisan fights with automatic rifles, hand grenades, plastic bombs, and maybe soon also with tactical atomic weapons. He is motorized and linked to an information network with underground transmitters and radar gadgetry. Airplanes supply him with weapons and food from the air. It is also true, however, that today in Vietnam (1963) he must fight against helicopters and the efforts to cut off his supplies. Both he and his enemies keep up with the rapid development of modern technology and science.

An English maritime expert called piracy the "pre-scientific stage" of sea war. Departing from that same perspective, we would have to define the partisan as the pre-scientific stage of land war, and declare this to be the only scientific definition. In reality, from a scientific viewpoint, this definition is also immediately surpassed, because the disparity between sea and land war is itself quickly sucked into the vortex of technological progress and appears to many experts to belong to an already surpassed pre-scientific stage. The dead ride fast, and if they become motorized, they move even faster. In any case, the partisan, on whose telluric character we have focused, becomes the irritant for every rational, thinking person tied to certain ends and values. He provokes nothing short of a technocratic passion. The paradox of his existence exposes an incongruity: the industrial-technological perfection of the armament of a modern regular army *vis-à-vis* the agrarian, pre-industrial primitivism of partisans, who nevertheless fight effectively. This is what had already provoked Napoleon's rage against the Spanish guerrillas, and which was bound to grow along with advancing technological development.

As long as the partisan was only a "light troop," i.e., a tactically-mobile hussar or a hunter, his theorization remained the exclusive task of military science. Only revolutionary war

made him a key figure of world history. What will happen to him in the age of atomic weapons of mass destruction? In a world organized entirely on technological bases, the old conceptions and the feudal-agrarian forms of combat, war, and enmity disappear. This is obvious. Do they disappear entirely because combat, war, and enmity are reduced to harmless social conflicts? When, according to certain optimistic convictions immanent in a world organized down to the smallest details along technological lines, regularity and rationality will have been deployed leaving no residues, the partisan may no longer be an irritant. Then, he will disappear simply of his own accord, within smooth technological-functional processes, just as a dog disappears from the freeway. For a mind that thinks only in technological terms it would simply be a matter for traffic cops, and certainly not a philosophical, moral, or juridical problem.

This would be the first aspect, the optimistic-technological one to be exact, of an exclusively technological viewpoint. It looks forward to a new world with a new man. Such expectations had already paved the way for the old Christianity and, two millennia later, in the 19th century, for socialism as a new Christianity. Neither of the two had the *efficiency* of modern technological means able to carry out total annihilation. Pure technology does not generate any theory of the partisan – as it is the case with exclusively technological reflections – but only an optimistic or pessimistic series of multivalent value judgements. As Ernst Forsthoff aptly put it, value has "its own logic," i.e., the logic of non-value and the destruction of the bearer of this non-value.⁷²

As for what concerns the prediction of a widespread technological optimism, it has always a ready answer regarding its evident judgement of value and non-value. It believes that an irresistible industrial-technological development of humanity will transpose all questions and problems, as well as all answers, all types and situations, on an altogether new level, in which the old questions will practically become as unimportant as those of the Stone Age, after there was a

⁷² See his famous article, "Die Umbildung des Verfassungsgesetzes" (1959). Those who posit a value always also posit, *eo ipso*, a non-value. The sense of this positing of non-value is the annihilation of non-value. This simple reality emerges not only in practice, as articulated in a 1920 publication, *Die Vernichtung des lebensunwerten Lebens* (although this example alone should suffice), but it was already announced at the same time, and with the same candor, in the Heinrich Rickert's *System der Philosophie*, Vol. 1, 1921, p. 17. Accordingly, there is no negative existence, only negative values; the relation to negation is the criterion for establishing that something belongs within the sphere of values, that negation is the true act of valuation. See my 1961 treatment of this matter in Carl Schmitt, Eberhard Jungel, and Sepp Schelz, *Die Tyrannei der Werte*, ed. by Sepp Schelz (Hamburg: Lutherisches Verlagshaus, 1979), pp. 9-43, and the article titled "Der Gegensatz von Gesellschaft und Gemeinschaft, als Beispiel einer zweigliedrigen Unterscheidung. Betrachtungen zur Struktur und zum Schicksal solcher Antitheses," in the *Festschrift* for Prof. Luis Legaz y Lacambra (Santiago de Compostela: 1960), Vol. 1, pp. 174ff.

shift to a superior cultural stage. Then the partisans will disappear, in the same way Stone Age hunters disappeared, unless they manage to survive by becoming assimilated to the new reality. At any rate, they will have become harmless and unimportant.

But what if this human type that has hitherto generated the partisan succeeded to adapt to the technological-industrial environment, to avail himself of the new means, and became a new type of fighter, a figure that has managed to adapt, the partisan of the industrial age? Are there guarantees that the modern means of mass destruction end up in the right hands, and that an irregular struggle is inconceivable? Today, what remains in front of the optimism of progress is the pessimism of progress, and in front of its theoretical fantasies a greater field than can be imagined. In the shadow of today's atomic balance between the world powers, under the glass cover, so to speak, of their enormous means of mass destruction, it may be possible to create a maneuvering space reserved to a bracketed war, waged with conventional weapons and means of mass destruction, concerning which the great powers could openly or secretly agree about its character. That would provoke a war controlled by these powers, and would be something like a dogfight.⁷³ It would be a matter of an apparently harmless play of an exactly calculated irregularity, and an "ideal disorder" – ideal insofar as it could be manipulated by world powers.

Next to this solution, however, there is a radically pessimistic *tabula rasa* solution proposed by the technological imagination. Naturally, in an area devastated by modern weapons of mass destruction, everything would be destroyed, friends and enemies, regular and irregular fighters. Yet, it is technologically possible that some men may survive the hell of bombs and missiles. In view of this eventuality, it would be very practical and even rationally efficient to plan what could happen after the bombing, and immediately train men that could quickly occupy the craters opened by the bombs and take over the devastated region. Then, a new type of partisan would add a new chapter to world history, with a new type of space-appropriation.

⁷³ "Finally, along with the totality of war, there is always the development, at the same time, of certain methods of clash and power confrontation that are not total. This is because, initially, each side seeks to avoid total war which, because of its very nature, implies total risk. Thus, in the period between the two world wars, the so-called military reprisals (the Corfu conflict in 1923, and the Sino-Japanese one of 1932), then the attempts to substitute economic sanctions for military initiatives on the basis of Art. 16 of the League of Nations Charter (in the Fall of 1935 against Italy), and finally, even certain methods of testing strength on foreign soil (in Spain in 1936-37), have developed in such a way as to find their exact explanation only by closely relating them to the total character of modern war. They are transitional, intermediate arrangements between total war and real peace. They receive their meaning from the fact that total war remains in the background as a possibility, and an understandable caution calls for setting precise intermediary zones. Only from this perspective can they even be understood scientifically by international law." See my article, "Totaler Feind, totaler Krieg, totaler Staat," in Carl Schmitt, *Positionen und Begriffe im Kampf mit Weimar–Genf–Versailles 1923-1939* [1940] (Berlin: Duncker & Humblot, 1988), p. 236.

Thus, our theme expands to the point of reaching planetary dimensions. It even includes interplanetary regions. Technological progress also makes possible journeys into cosmic spaces, thereby opening new dimensions for political conquests. In fact, the new spaces can and must be conquered by men. Old-style land- and sea-appropriations that human history has known up to now would have a sequel: a new type of space-appropriation. *Appropriation*, however, will be followed by *distribution* and then *production*. In this respect, despite all progress, everything remains as before. Technological progress will generate a new mode of appropriation, distribution, and production, thereby only intensifying the old questions.

In today's clash between East and West, especially the gigantic race for the incommensurably great new spaces, it is above all a question of political power over our planet, no matter how small it may appear. Only he who dominates an earth that has become so tiny will be able to appropriate and to use the new spaces. Consequently, even the new spaces are only potential battlefields, and they are such in a struggle for the domination over the earth. The famous astronauts and cosmonauts, hitherto used only as propaganda stars in the mass media (press, radio, and television), could become cosmopirates, maybe even cosmopartisans.

Legality and Legitimacy

In tracing the development of the partisan, we have run into the figure of General Salan, a very informative figure typical of the last stage of development. At the same time, it encapsulates the experiences and consequences of wars conducted by regular armies, as well as colonial, civil, and partisan wars. Salan thought all these experiences to the end, according to the ineluctable logic of the old adage: with a partisan, one fights like a partisan. He did so consistently, not only with the courage of a soldier, but also with the precision of a General Staff officer and the exactitude of a technocrat. The result was that he himself became a partisan, and ended up declaring war against his superiors and his own government.

What is the innermost core of such a fate? Salan's chief defense counsel, Maître Tixier-Vignancourt, found a formula in his closing argument of May 23, 1962 that answers our question. Regarding Salan's activity as head of the OAS, he said: "I must point out that, if at the head of the organization there had been an old militant communist rather than a great military leader, he would have acted in a way altogether different from that of General Salan."⁷⁴ This is

⁷⁴ *Le Proces de Raoul Salan, op. cit.*, p. 530.

the decisive point: a professional revolutionary would have acted differently. This professional revolutionary would have taken a position different from Salan's, and not just concerning the third party.

The development of the theory of the partisan from Clausewitz, through Lenin, to Mao has been driven by the dialectic of regular and irregular fighters, professional officers and professional revolutionaries. With the doctrine of psychological war, which French officers in Indochina took from Mao, this development is not some type of *ricorso* going back to its original point. In these matters, there is no return to the beginning. The partisan can wear the uniform and transform himself into a good, regular fighter, even into an especially heroic fighter, similar perhaps to what is said of the poacher who is able to transform himself into the best forest ranger. But all of this remains abstract. The elaboration of Mao's teachings by French career officers was somewhat abstract and, as was said also during Salan's trial, had something of an *esprit géométrique*.

The partisan can easily transform himself into a good soldier in uniform. For a good officer, on the other hand, the uniform is more than a costume. The regular soldier can take up an institutionalized profession; the irregular fighter cannot. The career officer can become the great founder of a monastic order, as did Saint Ignatius Loyola. The metamorphosis has something of pre- and sub-conventional, even a different meaning. One can vanish in the dark and transform it into a battlefield within which the power's traditional theater of operations is destroyed, and the great stage of official public opinion dislocated: all of this, however, cannot be organized when one has a technocratic intelligence. The Acheron cannot be planned and does not appear every time it is invoked, no matter how wise is the head of he who carries it out and how desperate the situation in which he finds himself.

It is not our task to guess what those intelligent and experienced officers who undertook the Algerian *putsch* of April 1961 and the OAS organizers thought they could have achieved with terrorist actions over a European population or regarding the above-mentioned interested third party. This last problem is already rather meaningful. We have already indicated that the partisan has an absolute need for legitimation if he is to remain within the political sphere, and not simply sink into that of a common criminal. The question cannot be resolved with some now common and easy antitheses, such as legality and legitimacy – in fact, precisely in this case,

legality proves to have the much stronger validity, what it was originally for a republican, i.e., the rational, progressive, and only modern form; in a word, the *highest* form of legitimacy.

I do not want to repeat what I have been saying for over thirty years about this relevant theme. Only a few remarks are needed to understand the predicament of General Salan, a republican, during the years 1958-61. The French Republic is a regime ruled by law. This is its foundation, and cannot be allowed to be destroyed by the antithesis of right and law, or by the distinction between these two concepts by considering right as the higher authority. Neither the judiciary nor the army is above the law. There is a republican legality, and that is the only form of legitimacy within the Republic. For a true republican, everything else is a series of sophisms hostile to the Republic. This is why the public prosecutor in Salan's trial took the following simple and clear position; he always appealed to the "sovereignty of the law," which is superior to every other authority or norm. Otherwise, there would be no sovereignty of the law. It transforms the irregularity of the partisan into a deadly illegality.

Confronted with this position, Salan had no other argument than to recall how he himself, on May 15, 1958, had supported General de Gaulle in reconquering legal power from the then legal government; how he committed himself, in front of his conscience and his peers, his country and his God; how now (1963) he was being deceived and betrayed about what, in May 1958, had been declared to be sacrosanct.⁷⁵ He appealed to the nation against the state, to a higher type of legitimacy against legality. Even General de Gaulle, earlier, had often spoken of traditional and national legitimacy, contaposing it to republican legality. That changed in May 1958. Not even the fact that de Gaulle's own legality had been sealed with the September 1958 referendum, and that, therefore, before that date he did not have any republican legality on his side, changed Salan's situation, and he was compelled to occupy that desperate position (desperate for a soldier) to appeal to irregularity against regularity, and to transform a regular army into a partisan organization.

By itself, however, irregularity does not create anything. It is simply illegality. To be sure, it is indisputable that today there is a crisis of law and thus of legality. The classic concept of law, whose value is only to sustain republican legality, is being challenged in theory and in practice. In Germany, the appeal to right as opposed to law, even by jurists, has become axiomatic and it is not even noticed any more. Today, non-jurists simply appeal to legitimacy

⁷⁵ *Ibid.*, p. 85.

(not legality) when they claim that they have right on their side. Salan's case, however, demonstrates that in a modern state even a challenged legality remains stronger than any other type of right. This is the result of the state's decisionist power and its ability to transform right into law. Here, it is not necessary to discuss the matter any further.⁷⁶ Maybe things will change entirely when someday the state will "wither away." In the meantime, legality remains the inevitable mode of operation of every modern state army. The legal government decides who is the enemy against whom the army must fight. Those who claim to determine who the enemy is affirm their own legality in not wanting to accept the choice of the enemy made by the ruling government.

The Real Enemy

A declaration of war always implies the identification of an enemy. That is obvious, and at the beginning of a civil war it is even more so. When Salan declared civil war, he actually addressed two different enemies: on the Algerian front, by announcing the continuation of regular and irregular war; against the French government, by launching an illegal and irregular civil war. Nothing clarifies better the dead end in which Salan found himself than an examination of this double declaration of hostility. Every war on two fronts always raises the question concerning who is to be considered the real enemy. Is it not a sign of inner conflict to have more than one real enemy? If the enemy defines us, if our identity is unambiguous, where does the doubling of the enemy come from? The enemy is not something that can be set aside for whatever reason, or that must be annihilated because of his absolute lack of value. The enemy is on the same level as I am. For this reason, I must deal with him in the course of a clash, in order to gain a measure of myself, my own limitation, and my figure.

Salan considered the Algerian partisan to be the foe. Suddenly, a worse and much more serious enemy appeared behind his back: his own government, his own superiors, his own brothers. In them, he saw a new enemy. This is the core of Salan's case. Yesterday's brother

⁷⁶ The Jacobins of the French Revolution still were aware of the sanctity of their concept of law; they were politically intelligent and courageous enough to distinguish sharply between *loi* and *mesure*, right and expediency, to define openly that measure as revolutionary, and to reject any mixtures reached by means of combinations of concepts. Unfortunately, this origin of the republican concept of law is not recognized by Karl Zeidler in *Massnamegesetz und "klassisches" Gesetz: Eine Kritik* (Karlsruhe: C. F. Muller Verlag, 1961); thus, he misses the essential problem. See gloss 3 to my 1932 monograph, "Legalität und Legitimität," in *Verfassungsrechtliche Aufsätze*, op. cit., p. 347, and the references to legality and legitimacy in the index, pp. 512-13. Roman Schnur is writing a broader work, titled *Studien zum Begriff des Gesetzes*.

turned out to be the more dangerous enemy. There must also be some confusion within the concept of the enemy, and it must be related to the theory of war. In the conclusion of our exposition, we will now attempt to clarify this matter.

A historian will always be able to find, in any particular situation, examples and parallels in world history. We have traced some parallels with the Prussian situation of 1812-13. We also have shown how the partisan obtained his cultural legitimation from the ideas and the plans of Prussian military reformers of 1808-13 and his historical credentials from the Prussian *Landsturm* edict of April 1813. Thus, it is not as strange as it might first appear if now, in order to better unravel the central question, we refer to the situation in which Prussian General Hans von York found himself in the winter of 1812-13 as a counter-example. Enormous differences immediately come to the fore: Salan was a Frenchman of left-republican extraction and a modern technocrat, while in 1812 York was a general of the royal Prussian army, who would never have thought of declaring civil war against his king and his military superiors. In view of such disparities of time and human personality, it appears immaterial and even incidental that York also fought as an officer in the colonial East Indies. Yet, this striking antithesis clarifies even better that the central question is the same. In both cases it is a matter of deciding who is the real enemy.

Decisionist exactitude dominates the functioning of every modern organization, especially every modern, regular army. In this situation, for a contemporary general the question is very clear: an absolute either-or. The dramatic alternative between legality and legitimacy is only a result of the French Revolution and of its conflicts with the legitimate monarchy restored in 1815. In a legitimate pre-revolutionary monarchy, such as the kingdom of Prussia at that time, many feudal elements remained in relations between superiors and dependants. Loyalty had not yet become something "irrational," and had not yet dissolved into a crude and predictable functionalism. At that time Prussia was already a state in a very developed sense; its army could not deny its origin during the rule of Frederick the Great, although its military reformers wanted to modernize it, rather than return to some feudal form. Yet, the ambiance of the legitimate Prussian monarchy may not appear to today's observer to be so hard and decisive, so statist and decisionist. There is no need here to deal with that. What is important is most of all not to be led astray by the climate of the various epochs and not lose sight of the core question, i.e., who is the real enemy.

In 1812, York was in charge of the Prussian division allied with Napoleon as part of the French army of General Etienne-Jacques Macdonald. In December 1812, York defected to the enemy, the Russians, and concluded with Russian General Johann von Diebitsch the Treaty of Tauroggen. In the negotiations for a settlement, Lt. Col. von Clausewitz worked for the Russian side as a mediator. York's letter, dated January 3, 1813 and addressed to his king and supreme commander, has become a famous historical document. With good reason, because the Prussian general wrote very respectfully that he had expected from the king a decision as to whether he (York) should move "against the real enemy" or whether the king condemned his general's action. In the meantime, with the same dedication, he was ready, in case of a verdict, "to await the deadly bullet against the sand piles or on the battlefield."

The term "real enemy" is worthy of Clausewitz and hits the target. In York's letter to his king this is precisely what he wrote. That the general was ready "to await the deadly bullet against the sand piles" is typical of a soldier ready to assume the responsibility of his actions, and was not any different from how General Salan was ready to shout "*Vive la France!*" in front of the execution squad in Vincennes. That York protested against total submission to the king and reserved the decision concerning who the "real enemy" was confers to his writing that peculiar sense of a tragic rebellion. York was no partisan, and it never would have occurred to him to become one. Yet, from the standpoint of the concept of the real enemy and its meaning, becoming a partisan would not have been either senseless or illogical.

Obviously, this is only a heuristic fiction, admissible only during that brief moment when some Prussian officers had raised the partisan to an ideal intuition, and thus only during that period of time that led to the *Landsturm* edict of April 13, 1813. A few months later, the idea that a Prussian officer could become a partisan, even as a heuristic fiction, would have seemed absurd, and it would have always appeared that way, at least as long as there was a Prussian army. How was it possible that the partisan, who in the 17th century had sunk to the level of a *picaro*, and in the 18th century to that of a light troop, for a moment, at the turn of the century (1812-13), could appear as a heroic figure, and eventually become, even during our own time, a key figure in world history?

The answer is that the irregularity of the partisan remains dependent on the meaning and content of a concrete regular system. After the social dissolution typical of Germany in the 17th century, a strong regularity developed in the 18th century with cabinet wars (*Kabinettkriege*).

This regularity bracketed war so strongly that it could be considered a play in which light movable troops participated irregularly, and where the enemy ended up appearing as an enemy only in the most conventional way – an adversary in a war game (*Kriegsspiel*). The Spanish guerilla war began when Napoleon, in autumn 1808, defeated the regular Spanish army. Here lies the difference with Prussia in 1806-07 which, after the defeat of its regular army, immediately concluded a humiliating peace. The Spanish partisan reestablished the seriousness of war, first against Napoleon and then, on the defensive side of the old European states, whose old regularity, now degraded to the level of a convention play, was no longer a match for the new, Napoleonic regularity, and its revolutionary potential. Thus, the enemy became once again a real enemy, and war became a real war. The partisan who defends the national soil against the foreign invader became the hero--the true hero who actually fought a real enemy. In this Clausewitz saw something new, which led him to elaborate his theory and write *On War*. When, 100 years later, the military theory of a professional revolutionary like Lenin blindly destroyed all traditional bracketing of war, the latter became an absolute war and the partisan was transformed into the bearer of absolute enmity against a foe.

From the Enemy to the Foe

In the theory of war, it is always a matter of defining enmity exactly, i.e., what gives war its meaning and character. Every attempt to bracket or limit war must be upheld by the conviction that, in relation to the concept of war, enmity is the primary concept, and that the distinction among different types of war comes after different types of enmity. Otherwise, all efforts to bracket war is a mere play that collapses at the first appearance of real enmity. After the Napoleonic wars, irregular war was dislodged from the general consciousness of European theologians, philosophers, and jurists. In fact, there were some sincere friends of peace, who saw the end of wars in the abolition and proscription of conventional war in the Hague Land War Conventions. There were jurists who held that every theory of just war is *eo ipso* just, since Thomas Aquinas had thought something similar. No one had an inkling of what the unleashing of irregular war meant. No one had thought about where the prevalence of the civil over the military would lead, if one day citizens would put on a uniform, while the partisan takes it off in order to fight without it.

This lack of thought to take reality into account has completed the destructive work of professional revolutionaries. That was a great misfortune, because with that bracketing imposed on war, European humanity would have achieved something extraordinary: the rejection of the criminalization of the opponent, i.e., the relativization of enmity, denying the existence of absolute enmity. That was really extraordinary, something incredibly human, to bring men to the point of rejecting the discrimination and denigration of their enemy.

This is precisely what today seems to have been raised once again by the figure of the partisan. As we have seen, among its criteria there is also that of the extreme intensity of political engagement. When Che Guevara claims that "the partisan is the Jesuit of war," he was thinking about the absolute nature of political engagement. The personal history of every famous partisan, beginning with *Empecinado*, confirms this fact. In enmity, he who is deprived of every right seeks his right. In enmity, he finds the meaning of his cause and of his right, after having abandoned the edifice of protection and obedience within which he previously lived, after the laceration of the normative texture of legality from which he could expect legal protection. Then, every conventional play ends. Yet, this dissolution of legal protection does not by itself make the partisan. Michael Kohlhaas, whose sense of justice transformed him into a robber and a murderer, was no partisan, because he never reached the level of the political, since he fought exclusively for his own private right and not against a foreign invader or a revolutionary cause. In such cases, irregularity is apolitical and becomes purely criminal because it loses a positive connection with a regularity present and active somewhere. This is why the partisan distinguishes himself from the leader of bandits, whether or not he has these noble sentiments. In discussing relations with the global political context, we have emphasized that the interested third party plays an essential role when it provides that reference to the regular, which the partisan's irregularity needs in order to remain within the political sphere. Now, the substance of the political is not enmity pure and simple, but the ability to distinguish between friend and enemy, and to presuppose both friend and enemy. Although the powerful third party interested in the partisan's action can think or act as egoistically as he wishes, his political interest is on the side of the partisan. This results in the birth of a political friendship, which is already a type of political recognition, even if it does not come to public or formal recognition as a fighting part or as government. The *Empecinado* had a political stature for his people, for the regular army, and for the English world power. He was neither a Michael Kohlhaas nor a Schinderhannes, whose

interested third parties were bands of malefactors. By contrast, Salan's political position foundered tragically because he became illegal on the level of domestic politics in his own fatherland as well as outside it, in the *mare magnum* of world politics, where he did not find any interested third party, but, on the contrary, he ran up against the united enemy front of anticolonialism.

Thus the partisan has a real enemy. That follows from his political character. Another limit of enmity follows from the partisan's telluric character. He defends a piece of land, with which he has an original relation. His fundamental position remains defensive, despite the growing mobility of his tactics. He behaves himself in the same way as did Joan of Arc before the clerical court. She was no partisan and fought against the English as a regular soldier. When the clerical judge asked her the question – truly a theological trap – whether she claimed that God hated the English, she answered: "I do not know whether God loves or hates the English; I only know that they must be driven out of France." Every normal partisan engaged in defending the national soil would have given a similar answer. Such a fundamentally defensive position determines also a fundamental limitation of enmity. The real enemy is not considered a foe, nor an enemy of mankind.⁷⁷

Lenin shifted the conceptual center of gravity from war to politics, i.e., to the distinction of friend and enemy. That was significant and, following Clausewitz, a logical continuation of the idea that war is a continuation of politics. But Lenin, as a professional revolutionary engaged in a global civil war, went further and turned the real enemy into a foe. Clausewitz had spoken of an absolute war, but he always presupposed the regularity of an existing state structure. He could not conceive of a state becoming the instrument of a party, and of a party that gives orders to the state. With the absolutization of the party, the partisan also became something absolute, and he was raised to the level of a bearer of absolute enmity. Today, it is not difficult to see through the conceptual artifice provoked by this change of the concept of the enemy. On the contrary, today

⁷⁷ "Such a war (which at any given time could be declared to be the last war of mankind) is of necessity unusually intense and inhuman, because, by transcending the limits of the political framework, it simultaneously degrades the enemy into moral or other categories and is forced to make of him a monster that not only must be defeated, but also destroyed. In other words, he is an enemy who no longer must be compelled only to retreat into his borders. The feasibility of such a war is particularly illustrative of the fact that war as a real possibility is still present today, and this fact is crucial for the friend-enemy antithesis and for the recognition of politics." See Carl Schmitt, *The Concept of the Political*, tr., introduced and annotated by George Schwab (Chicago: The University of Chicago Press, 1996), pp. 36-37 (translation altered).

it is much more difficult to fight that other type of absolutization of the enemy, because it seems to be immanent to the reality of the nuclear age.

Technological-industrial developments have made possible ever more powerful armaments, to the point that they are now weapons of total annihilation. This state of affairs creates an infuriating disparity between protection and obedience. Half of mankind becomes hostage to the rulers of the other half, and is equipped with atomic weapons of mass destruction. Such absolute weapons of mass destruction require a foe in order not to appear inhuman. Of course, men, rather than weapons of mass destruction annihilate other men. Already in the 17th century, the English philosopher Thomas Hobbes had understood the core of the question, and formulated it very precisely,⁷⁸ although at that time (1659) the weapons were still rather harmless. Hobbes said: man is for other men, by whom he feels threatened, much more dangerous than any animal, to the extent that man's weapons are more dangerous than the beasts' so-called natural weapons such as teeth, claws, horns, and poisons. The German philosopher Hegel added: weapons are the fighter's very essence.

Concretely, this means that extra-conventional weapons require extra-conventional men. They presuppose them, not only as a postulate of a far-distant future, but as an existing reality. Thus, the present weapons of total mass destruction or men's premeditated evil do not constitute the ultimate danger. Rather, the danger lies in the inescapability of a moral obligation. Those men who use these weapons against other men feel compelled to destroy these other men, i.e., their victims, even morally. They must brand their opponents as criminal and inhuman, as an absolute non-value, otherwise, they themselves would become criminals and monsters. The logic of value and non-value unfolds all of its destructive consequence, and forces the creation of ever newer and deeper discriminations, criminalizations, and devaluations, up to the point of the annihilation of every life unworthy of existing.

In a world in which opponents mutually consign each other to the abyss of total devaluation, the premise for physical annihilation, new types of absolute enmity must be created. Enmity will become so frightful that maybe one should no longer speak of enemy or enmity, and both concepts will be formally banned even before the work of destruction can begin. Thus, all of this will become completely abstract and absolute. It is no longer directed against an enemy, but now all that is needed is a presumed objective imposition of the highest values for which, as

⁷⁸ Thomas Hobbes, *De Homine*, IX, 3.

is well known, no price would be too high. The denial of real enmity paves the way for the destructive work of absolute enmity.

In 1914, the nations and governments of Europe stumbled into WWI without any real enmity. Real enmity arose only out of the war, which began as a conventional war among states on the basis of European international law, and ended as a global civil war of revolutionary class enmity. Who will be able to prevent the rise of unexpected new types of enmity in an analogous but much greater extent, whose fulfillment will produce unexpected new forms of a new partisan? The theoretician can do no more than retain the concepts and call things by their name. The theory of the partisan flows into the concept of the political, into the question concerning who is the real enemy and in a new *nomos* of the earth.