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From the International Law of Peace to the Global Law of Peace. The Global Order of Peace

Mădălina Virginia ANTONESCU[1]

Abstract: The 21st century society will be marked by the necessity for the state and non-state actors, as well as of the global actors, to ensure peace, security, prosperity for their nations, for their companies, and for a general state of stability at international level. Peace is an international collective right, a fundamental principle of law, in our contemporary international juridical order, a constant feature in different kind of international structures (Westphalian, proto-global, global societies), and also, a basic need for ensuring the survival of the entire human civilization. Peace is a good and a human value, and also a major premise for ensuring the high quality of human life and a healthy, renewed natural environment, as well. Peace represents also the fundamental condition for providing wealth, cooperation, progress for peoples and nations, as well as for the whole international society, as such. Our paper explores some future trends of the "peace" concept, and its meanings caused by raising the level of legal protection (from national level to the global level, in conceiving a unanimously recognized and respected legal meaning of "peace").

Keywords: *international law of peace, global order of peace, Charter of Global Principles of Peace, pacta sunt servanda.*

1. From the International Law of Peace to the Global Law of Peace (Involving State and Non-State Actors, as well as a Global Regime of Peace Principles).

The *contemporary public international law* comprises a *series of fundamental principles* related to the law of peace (as a distinct domain in the contemporary international law), which structure the international legal order at the beginning of the 21st century and which are particularly relevant for the international peace:

- The principle of non-aggression among states (no use of force or threat to use force, in inter-state relations);
- The principle of non-intervention in the internal affairs of states;

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- The principle of peaceful resolution of disputes among the states;
- The principle of international cooperation

These principles of international law, defined in the UN Charter, must be regarded as interdependent, as it is not possible to determine a hierarchy among them (Diaconu, 2002, p. 329). They are principles which express the will of sovereign states, in a Westphalian system, where there is no legislative authority above the states (Takacs & Niciu, 1976, pp. 6-7) and the international law is a consensual or coordination law (Takacs & Niciu, 1976, p. 7; Diaconu, 2002, p. 31).

The "global order of peace" cannot be mistaken for the current "UN legal order", in the sense which we will explain in the present paper, with the latter order based on the above-mentioned set of principles, defined in the Charter of the United Nations.

In our opinion, peace is a structural constant: in the Westphalian order, it is a necessity and a characteristic of sovereignty (the right of the nations to live in peace and cooperate with each other). In the global order, peace is also defined in the right to a harmonious society, as a global society of peace.

Far from considering that the *Westphalian order* is an *exclusively anarchic* order, shaped around the principle of "suspicion among states" (the principle of lack of trust and arming race among states), it is necessary to remind that *no international order and no structuring of the international power systems is possible in the absence of peace.* Even anarchy in a Westphalian system *cannot be conceived in an absolutist sense*; instead, it is allowed within certain limits, beyond which *all the states must participate in consolidating the international legal order*, *based on the set of fundamental principles of law* (many of these principles are directly connected to the imperative to maintain and consolidate peace among the nations).

In other words, the international legal order is also the direct result of international relations (hence an expression of the will of the sovereign states to maintain peace, to cooperate amongst each other, to avoid interfering in the internal affairs of other states, to observe the treaties in good faith, to solve their international disputes through peaceful means, not to base their relations on aggression).

The international contemporary law is the *result of the sovereign and harmonious will of the states* (therefore, it is derived from a Westphalian international political order). The above-mentioned fundamental principles of international law, which structure the law of peace starting with the second half of the 20th century, *are the direct result of a Westphalian order* (if we consider the will of the sovereign states that signed the UN Charter).

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Therefore, *the very UN Charter is a direct legal effect, defining a Westphalian legal order* (an order of sovereign states, equal in terms of rights and obligations).

Ever since the beginning (by being defined in the UN Charter), the (above-mentioned) principles referring to the law of peace are the legal elements of the architecture underlying the Westphalian order. Therefore, far from considering that the late 20th century Westphalian order is completely anarchic, we should pay attention to the *nuances*: the international contemporary law, in its UN Charter-defined form, is a *coordination* law par excellence, without international legislative authority, above the authority exercised by the states (Diaconu, 2002, pp. 31-32; Guilhaudis, 2005, p. 353). As emphasised in the doctrine (Takacs & Niciu, 1976, pp. 7-8), the international law is the direct result of legal relations among states, based on the principle of equality of rights and obligations, and of the sovereignty of all states. Therefore, we consider that *the international contemporary law acts as a limitation* for the *absolutist,* anarchic nature of a Westphalian political order, as an "order of suspicion and arming states".

Secondly, if we *analyse the essence* of international law principles (pacta sunt servanda, the principle of equality among all the states, the non-aggression principle, the principle of mutual cooperation among the states, the principle of peaceful resolution of disputes among the states), we can say that the *international basis, opposable erga omnes,* of the law of peace (construed as a branch of the international contemporary law) (Mazilu, 1998, pp. 152-153)[2] is formed by *defining these principles on the UN Charter.*

In our opinion, these principles limit the inherent anarchic force of other principles of international law (although the doctrine considers that setting a hierarchy among the international law principles is not permitted). We can say, however, that *the above-mentioned set of principles*, principles which are *forms of achieving peace among the nations*, in the form defined in the UN Charter, starting with the second half of the 20th century, *have the role to limit certain absolutist forms, which* fundamental principles of international law may take. Keep in mind that the principles under discussion for the risk of taking absolutist forms are also defined in the UN Charter, therefore they all have the same imperative, opposable value erga omnes.

These principles are the principle of sovereignty of states, the principle of non-intervention in internal affairs of the states and the principle of self-determination. An absolutist interpretation of these three

[2] The law of peace (as a branch of the international public law, seen as a "system of principles and rules meant to ensure the development of peaceful relations among the states") is not mistaken for the right to peace.

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principles of international law may result in a strong, real and raw form of anarchy in the Westphalian political order, including its neo-Westphalian form, at the beginning of the 21st century. At this point the order in question would be an order of the strong, sovereign states, which no longer see themselves as having "equal rights and obligations", a world in which non-involvement in the internal affairs of the states takes an absolutist form (going as far as putting up literal walls among each other), a world of the right of the peoples to decide their own fate (which can take the absolutist form of isolating a state from the international community and implementing a legal regime completely isolate from the rest of the world). In an absolutist sense, anarchy would lead to a split in the international community into a constellation of states, which would challenge any principle of international law underlying the unity, cooperation among states and universally recognized legal regimes. In the language of international relations, anarchy is an "important concept", meaning "lack of governance", as well as "lack of a central authority (not in a positive or negative sense)" (Takacs & Niciu, 1976, pp. 32-33).

Part of the doctrine accepts this "natural state of the society of states, i.e. anarchy", but at the same time it considers that it "does not necessarily exclude the order, society or community, beyond the existence of the national state" (Takacs & Niciu, 1976, p. 28). On the other hand, another segment in the doctrine of international relations claims that anarchy and governance, the international life ordered on the basis of a set of rules set and accepted by the sovereign states are incompatible (Takacs & Niciu, 1976, p. 28). The dispute among the neorealist theorists (who support the idea of the nation-state taking priority in the international order) and the neoliberals on the implications of anarchy is still open (Takacs & Niciu, 1976, p. 28).

1.1. A Global Law of peace – Is It a Discussion Topic?

An international system at the stage of forming and consolidating a "global order of peace" also entails the creation of a global law of peace. We must not mistake "the global law of peace", as a branch of the global law (specific to a society at an evolved stage, that of globalization) with the disarming law, which is only limited to studying aspects regarding the steps to discourage the arming efforts among the states.

The future ***global*** *law of peace* must stem from the current level of legal protection ensured for the international state of peace, defined in the UN Charter ("the peoples of the United Nations determined to save succeeding generations from the scourge of war", taking upon an active legal

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obligation to achieve results and acknowledging that "one of the fundamental purposes of the UN is to maintain international peace and security)" (2008, pp. 3-5).

The current international documents in the field of ***international*** *law of peace* (as a branch of a *coordinating* law, based on a Westphalian system of sovereign states) can be the legal roots of "the global law of peace", in the future. Thus, we can consider that certain multilateral documents are key-documents in shaping "a global law of peace", specific to the "global order of peace" in the second half of the 21st century. In their consolidation stage, the aforementioned documents can turn into actions taken by a global organization of peace, distinct from and superior to the current UN and will be acknowledged by the states and non-state actors.

One such document is the *Declaration on the Right of Peoples to Peace* (1997, pp. 340-341), in which the General Assembly of the United Nations acknowledges a collective dimension of the right to peace (referred to as "the right of peoples to peace"), considering that the proclamation of this right "would contribute to the efforts to strengthen the international peace and security" (1997, p. 340). At the General Assembly of the United Nations, the signing states declare that they "express the wish and the will of all the peoples to eliminate the threat of war, particularly a world nuclear catastrophe" (1997, pp. 340-341). In the *Declaration on the Right of Peoples to Peace*, the concept of "peace" receives a legal connotation, being defined as an *active legal obligation* of all the signing states to have a national and international policy aimed at fulfilling a concrete and common objective ("eliminate war from the life of the humanity, prevent a world nuclear catastrophe") (1997, p. 340). Peace is defined here as a *complex situation*, a result of "the absence of war at international level", as well as "a state of material prosperity and progress of the states", "a state of complete exercise of the rights and fundamental freedoms of the human being, as proclaimed by the UN" (1997, pp. 340-341). According to the Declaration, peace is also "a fundamental condition for maintaining the human civilization and survival of the human race" (1997, p. 341).

The global law of peace cannot exclude the above-mentioned legal relation, present (and taken upon) at the *current* level of legal protection (the international law of peace specific to a Westphalian legal order); instead, it must *take it upon and consolidate it*, at the level of the new global architecture that protects and ensure peace, architecture to be built during the second half of the 21st century.

In our opinion, the global law of peace begins with assuming and acknowledging the current legal content of the right of peoples to peace, and

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maintaining it in the global order of peace, as well. The right stated in the above-mentioned Declaration ("the sacred right of peoples to peace") entails the obligation of each state to make sure that the right of peoples to peace is protected and to assume a policy "aimed to eliminate the dangers of war, particularly nuclear war", a policy focused on "renouncing force in the international relations and on the peaceful resolution of disputes, based on the UN Charter") (1997, pp. 340-341). In our opinion, this right must be applied to the mid-21st century global policy and later, and it must be used to build a global regulatory regime, which focuses on globally protecting the "the sacred right of peoples to peace" (through a set of global institutions with competences in the field and based on a Charter of Global Principles of Peace).

Another declaration, the *Declaration on the Preparation of Societies for Life in Peace* (1978, pp. 330-332) mentions Resolution no. 95 (1) of the UN GA, dated December 11th 1946, stating that activities of planning and starting or leading a war of aggression represent a crime against peace and that "according to the Declaration on the principles of international law for the relations of friendship and cooperation among the states, (…) a war of aggression is a crime against peace" (1978, p. 330).

The global law of peace must also start from and incorporate the current concept of peace, as viewed by the international society (which is still at the stage of expanding globalization, i.e. it is a proto-global society). According to this concept, peace among nations is "the ultimate value of the humanity", being related to the "high purpose of preparing the society for peaceful coexistence and cooperation, equality, mutual trust and understanding" (1978, pp. 330-332), and the "race for arming, particularly in the nuclear field" is clearly defined as "a threat to the world peace" (1978, p. 331).

As noted by the doctrine, we currently witness "an increase in the number of international regimes, which marks the constant institutionalization of the global policy" (Young, 1989, p. 11; Held, et. al., 2004, p. 75). These regimes are "forms of global governance, distinct from the traditional views on governance", focusing on the idea of sovereign political power (Held, et. al., 2004, p. 75).

In our opinion, the global law of peace must start from an extended meaning of the concept of "global policy" (as a type of policy that also includes the security and military dimensions, as well as the economic, social, and environmental issues, pollution, human rights, drugs, terrorism, massive migrations etc.) (Held, et. al., 2004, p. 75). Therefore, we take into consideration an *expansion* of the legal regulations covering the law of peace,

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beyond the traditional military and security perspective. The global law of peace must *include global legal regimes, for the protection* of the environmental, terrestrial ecosystems, the global regime of human rights, the planet's biodiversity, regulations to control and adopt regarding the climate changes, regulations regarding the massive and global migrations and elimination of their causes, transborder pollution, regulations regarding the global legal obligations in countering urban, individual terrorism, terrorist groups, obligations taken upon by the states and controlled by global institutions in charge with the management of global peace and the global law of peace.

Thus, the global law of peace handles countering the conventional military and international security threats, through global legal regulations. Also, it will have to include a set of global legal regulations regarding *non-conventional asymmetrical threats.*

2. From a Global Order of the Balance of Terror, to a Global Order Based on the Imperative of Peace

In the doctrine of international relations, peace is defined as a negative state (as "an absence of war") (Evans & Newnham, 2001, p. 434); in this view, peace does not indicate a state of natural cooperation and trust among the states, but some sort of intermediate state, "between war and non-war", between the open conflict between states and the cessation of hostilities. We consider that this in approach, peace has a *restrictive and distorted meaning* (peace is merely a temporary state of truce, between two natural states of hostility among states). Therefore, peace occurs only in an implicitly anarchic context, dominated by fear, by a generalized state of suspicion, by the arming race, the isolation of states from one another (a state of atomization of the international system, in which the world moves successively through states of open hostility/temporary cessation of hostilities). *Peace is different from the state of non-war* (the latter being defined as "neither peace, nor war") (Evans & Newnham, 2001, p. 434). "The inexistence of a state of war does not entail the presence of a state of peace" (Evans & Newnham, 2001, p. 434), states the doctrine (on the assumption that the possession of nuclear weapons generates a state of non-war or cold war). The absence of armed conflict is merely a component of peace, but it does not fully define the latter (Evans & Newnham, 2001, p. 434-435), according to the doctrine.

Peace treaties are "multilateral legal instruments, concluded by states, in order to end a state of conflict among them, in order to set the conditions for peace, being different from the older forms of *imposing* peace" (Evans &

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Newnham, 2001, p. 434-435) (as the object of an imperial or hegemonic policy, at a certain point – such as Pax Britannica, in the 19th century, Pax Romana, in the 2nd century B.C.). According to certain authors, the 20th century (according to F.H. Hinsley, 1963, *Power and Pursuit of Peace*) is dominated by the tendency (displayed by the policies of the states) to "avoid war and maintain peace" (Evans & Newnham, 2001, p. 435). As the doctrine warns, the "Marxist notion of peaceful coexistence among nations and states" must not be mistaken for "the notion of peace", as the first term "excludes the violent conflict among the great powers, while focusing on the idea of conflict between classes and legitimating wars and revolutions for national freedom (Evans & Newnham, 2001, p. 435).

Considering the discussion above, *the global order of balance of terror* could be defined as a type of order at the stage of globalism, dominated by the "balance of threats" paradigm, which is in turn defined as a natural tendency of the states to "become allies against the foreign power which they perceive to be the greatest threat" (Smouts, Battistella & Vennesson, 2006, p. 211). Therefore, the initiators of the "balance of terror" concept (known to stem from Stephen Waltz's view (Smouts, et. al., 2006, p. 211)) insist on the fact that "the secondary powers are less interested in securing a balance among the *capacities of a dominant state*" (Smouts, et. al., 2006, p. 211) and more focused on "allying themselves against the state *perceived* as the greatest threat" to the international system as such.

For another part of the doctrine, the "balance of terror" phrase refers to the "situation in which two actors can threaten each other with destruction, in a credible manner" (Evans & Newnham, 2001, p. 54) (a definition which focuses on the capacities of the states, not on the perception of threat represented by the states themselves). In a global order based on a balance of terror (as defined above), the states are faced with a cold war situation, i.e. "each of the two states must not have the possibility to avoid the consequences of destruction, by striking first without a warning" (Evans & Newnham, 2001, pp. 54-55). The doctrine agrees that a balance of terror can also exist among non-state actors (Evans & Newnham, 2001, pp. 54-55), not only among the states, a comprehensive, flexible definition of the "balance of terror" phrase, which is compatible to the complex nature of a global order (as an order in which the state is no longer the dominant actor).

Of course, a "global order of peace" is *not mistaken for* the type of "global order based on the balance of terror", as "peace" is a far more

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complex concept than the state of "cold war" and the state of "mutual threat of destruction" (state or non-state actors).

Peace entails "the absence of a state of armed violence between political units" (Smouts, et. al., 2006, p. 414), a state of harmony and trust; peace entails mutual cooperation to maintain, strengthen, perpetuate the state of removed threat or remove the state of disharmony, of suspicion among the parties.

The global order of peace entails a global state (beyond the level of two actors, be they dominant powers) of removal/minimization/elimination of the deeds of armed violence among the state and non-state actors; it is a *complex, multi-level* order, which cannot be defined by using the traditional Westphalian terms. Instead, it also entails ensuring the removal of armed violence, the management of relations among actors at infra-state or transnational level (paramilitary groups, which act across the border, terrorist groups, areas controlled by state-like quasi-forms of terrorist groups, individual urban terrorism, massive and uncontrolled migratory flows , other forms of asymmetrical threats to regional and international peace. As a result, *in a global order of peace, the dominant actors* (hegemonies, dominant powers) *must take upon a complex task,* i.e. to impose/cooperate in order to impose peace/maintain/manage peace *at inter-state level*, as well to manage/impose peace at *infra-national and transnational level, regarding the non-state actors,* seen by the states as the greatest threats to their internal security and to the overall global system.

There can be *a unipolar global order of peace,* when a single dominant power (a single hegemonic power) *handles the double task* to impose/maintain/manage peace at all levels, both in the inter-state system and when handling the non-conventional threats (non-state actors).

In addition, there can also be a *bipolar order of peace,* when two dominant powers take upon the *double task* mentioned above.

The *multipolar global order of peace* is some sort of compromise between the tendency to involve *all* the state actors in the management/maintaining of peace, in the principle of equal rights and obligations for all states, and *setting up global regimes, by common consent* (to observe the human rights, for the joint management of climate changes, to drop the arming race, to promote dialog among nations, to diversify the dialog instruments, in order to maintain peace as a global state of absence of war). We could define the order based on the objectives and obligations taken upon by the states signing Agenda 2030 (2015), under the aegis of the UN, as a multipolar "global order of peace".

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In our opinion, "*the global order of peace*" (multipolar, but not excluding the hegemony/the two dominant powers must impose or recommend a certain behaviour for the participants in the global system) is based on the idea of consolidating *a global regulatory regime* in all the states, *a regime in which the rights of the weakest are observed, i.e. the right of the small and medium actors to peace, safety and prosperity.*

In an *advanced* global order, "peace" becomes a complex concept, which includes not only the "state of armed non-violence among the states", but also *the state of prosperity, the state of legality* (with the participants creating *global regulatory regimes*, acknowledged and applied by everyone, in terms of state actions an inactions considered to be the most adequate for maintaining/managing peace, maintaining/managing global prosperity).

Global prosperity is added to the new and extended meanings of "peace" (also regarded as a state of harmony between the human being/state/environment, as a state of non-violence of the human civilization against the environment, as a state of non-violence by an industrial and consumerist civilization, which exploits the planet, as a constructive state of regeneration, protection, preservation and passing down to the future generations a healthy, unpolluted environment).

In our view, "the global order of peace" is also defined on the basis of the "durable development" concept and of the objectives taken upon by the states, in the visionary document adopted under the aegis of the UN, Agenda 2030. It is a state of global peace seen as global assumption of responsibility by the states, when participating in building an order in which terror, poverty, hunger, injustice, discrimination among the human beings are eliminated (Agenda 2030, 2015). Thus, in the 21st century, the concept of "peace" includes multiple aspects, including a state of economic interdependence among the states, a universal expansion of democracy and of the constitutional state, a common set of values (trust in justice, freedom, fairness and observance of the human rights, up to the level of including marginalized groups, creating regimes of positive discrimination). We must also note the interdisciplinary nature of the peace studies in the contemporary society, as their primary purpose is "to analyse and understand the obstacles in the way of achieving peace and finding alternate methods to build a civil and durable transnational peace" (Griffiths, 2005, pp. 648-649).

In the global order of the 21st century, peace also means an active cooperation among the states, in order to find *solutions to global issues* (Held, et. al., 2004, pp. 74-76, 97) (climate changes), which includes taking responsibility for the adoption of *another type of civilization* ("green", based on

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recycling, non-pollution, environmental protection, protection of the planet's resources, of the unique and fragile ecosystems of the planet).

The close connection between peace and durable development is included in **Agenda 2030**, which states from its very Preamble that its purpose is also to "seek to strengthen universal peace, in larger freedom", where peace is interconnected to the objective to eliminate global poverty and to protect the planet from degradation, as well as to the objective to make sure that all the human beings enjoy the prosperity of a fulfilled life, that the principle of technological and scientific project is in harmony with nature. Peace is a primary concern in the 2030 Agenda, in the engagement of the signing states to "foster peaceful, just and inclusive societies which are free from fear and violence". The major vision presented in this document for a global order of the 21st century is that of a close connection between peace and durable development: There can be no sustainable development without peace and no peace without sustainable development" (Held, et. al., 2004, pp. 74-76, 97).

3. The Charter regarding Global Principles of Peace

We consider that, in a global order of peace, *regulatory provisions* will have to be global, as well, their enforcement being guaranteed by *a new institutional architecture of peace.* In our opinion, the new institutions in charge with issuing such global regulations will also issue *the underlying document* for the global legal order of peace (a Charter of the Global Principles of Peace, in our opinion).

Seeing the "global order of peace" as an order that guarantees the rights of the weakest (small and medium states), as well as the right of nature, of the planet Earth (the right to protection, care, respect and safety against the destructive actions of the human civilization), an order focused on isolating and discouraging destructive behaviours, the arming race, the balance of terror, we can outline a possible set of legal principles of peace, which are globally enforceable:

- The global principle of using technological, scientific innovation to improve the level of international security and to create a global environment of peace among the nations;
- The global principles of peace, through common prosperity;
- The principle of individual liability of states for actions/inactions, which seriously damage the global peace;
- The principle according on which all the states acknowledge the competence of the Global Peace Mediator, for major disputes, with transnational, regional and global implications for the global peace;

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• The principle of solving global issues through institutional and legal means, at global level;

• The principle of providing global aid (through global institutions with special competences), in case of unconventional threats against the global peace;

• The principle of protection of the planet Earth, as a legal entity in the global law of peace, through global means and institutions;

• The principle of environmental non-aggression (the states are forbidden to use aggression under any form, with negative and irreversible impact on the ecosystems of the Earth and on the quality of the environment, at transnational, regional and global level);

• The principle of solving disputes among states, among state and non-state actors, and regional organizations, through global institutions, when such disputes can severely or irrevocably damage the environment, the ecosystems of the Earth or the balance among them;

• The principle of protection of global peace, by protecting the global culture (the elements which are currently part of the "UNESCO heritage" to be undertaken and turned into artefacts of *global cultural heritage*, while improving their level of protection);

• The principle according to which all the states maintain global peace;

• The principle according to which non-state actors whose actions and influence can have a negative impact on the global environment of peace also maintain global peace (actors such as corporations, multinational NGOs, global mass media etc.);

• The principle of observing global peace by discouraging and banning terrorism, in all its forms (principle connected to the elaboration of *a Global Convention on the global definition and interdiction of terrorism)*;

• The principle of globally ceasing the arming race;

• The principle according to which competent global organizations intervene to eliminate regional and infra-regional conflicts;

• The principle of a harmonious global society.

Conclusions

Far from being an expression of the right of the strongest party, we see "the global order of peace" as *an order dominated by the principle of multilateralism in an advanced form*, at a level at which it uses the sovereign will of the states, to shape and consolidate *a global, superior level of legislation and*

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institutions, which manage *"a global law of peace",* in an manner superior to what the contemporary international law can do.

Although the states will continue to be sovereign entities in such an order, during the second half of the 21st century, given the continued proliferation and increased influence of the *non-state actors* (an asymmetrical order in terms of challenges against peace, which exceed the response possibilities of the current international law), they will have to contribute responsibly to the generation of a *global legal order that defines, ensures, maintains and manages peace at global level, with the aid of specific institutional mechanisms, with global competences (as compared to the existing ones).*

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