

Term of Art

Civil Society Statement on Nuclear Disarmament

<http://inesap.org/node/103>

Our theme today is the concept of good faith embedded in Article VI of the nuclear Non-Proliferation Treaty (NPT) and the universal disarmament obligation unanimously affirmed by the International Court of Justice (ICJ). 1 For most people who are not lawyers, the term “good faith” may sound rather vague and poetic, though its common sense meaning is clear. But it has a long history and a precise meaning in law.

This has been well explained by Judge Christopher Weeramantry, former Vice-President of the ICJ, 2007 winner of the Right Livelihood Award, and President of the International Association of Lawyers Against Nuclear Arms. In 1996 remarks marking the tenth anniversary of the ICJ’s opinion, Judge Weeramantry explained that the “traditions in relation to good faith are to be found in the ancient system of Roman Law, the system of civil law that has grown up from the Roman Law ... and all the traditional systems of law.”² Further, the concept of good faith is “amplified” in the laws of the world’s major religions, as well as in the laws of indigenous peoples.

Judge Weeramantry identified some of the legal elements of good faith as: correspondence between word and deed; no secret reservations; openness and transparency, with a complete disclosure of material facts; and a readiness to submit one’s actions to external scrutiny. In addition, good faith requires that meaningful steps be taken towards the desired goal, with no backtracking, and within a reasonable time span. Importantly: “Everyone must refrain from taking steps that militate against the goal. For example, one cannot say that one’s goal is disarmament and then take steps to increase one’s armaments in a somewhat subtle but different way.”

“Good Faith” is exactly what we mean

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“Good faith is a fundamental principle of international law, without which all international law would collapse,” Judge Mohammed Bedjaoui declared last week. President of the International Court of Justice when it gave its 1996 advisory opinion on nuclear weapons, and more recently Algerian Foreign Minister, he delivered the keynote address to a 1 May conference, “Good Faith,

International Law, and the Elimination of Nuclear Weapons: The Once and Future Contributions of the International Court of Justice,” at the Warwick Hotel in Geneva.

A major portion of Judge Bedjaoui’s address was devoted to the legal significance of the addition

of the phrase “good faith” to NPT Article VI, which requires each state party to “pursue in good faith negotiations on effective measures ... relating to nuclear disarmament”. The phrase also figures in the Court’s unanimous formulation of the obligation, based on NPT Article VI, “to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects.” He explained that general legal principles governing good-faith negotiation as applied in the NPT context include:

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sustained upkeep of the negotiation; awareness of the interests of the other party; and a persevering quest for an acceptable compromise, with a willingness to contemplate modification of one’s own position

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refraining from acts incompatible with the object and purpose of the NPT; proscription of every initiative the effect of which would be to render impossible the conclusion of the contemplated disarmament treaty

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respect for the integrity of the NPT; no selectivity regarding which provisions to implement

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a general obligation of information and communication

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prohibition of abuse of process such as fraud or deceit

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prohibition of unjustified termination of negotiations

This particular topic might be too big -- but something like:

The United States federal government should make its nuclear posture substantially more compliant with its nuclear disarmament commitments in one or more of the following ways:

- ratifying and implementing an extant treaty or extant treaties on nuclear disarmament;
- implementing a declaratory policy substantially restricting the use of its nuclear weapons or negotiating in good faith to do so;
- substantially reducing in its nuclear weapons or negotiating in good faith to do so;
- negotiating in good faith a fissile material cut-off treaty;
- negotiating in good faith a bilateral agreement with Russia reducing those countries' nuclear weapons.