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Good Faith: Essential to Nuclear Disarmament and Human Survival

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A Briefing Paper for the

United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Toward Their Total Elimination

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This paper was originally prepared by Judge Christopher G. Weeramantry for the Republic of the Marshall Islands' nuclear disarmament cases against the world's nine nuclear-armed nations at the International Court of Justice. It was also distributed as a briefing booklet at the Second Preparatory Committee for the 2015 Non-Proliferation Treaty Review Conference.

We are reissuing this paper with minor edits in light of its significance for the United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading toward their total elimination.

Good Faith: Essential to Nuclear Disarmament and Human Survival

THE PRONOUNCEMENT OF THE INTERNATIONAL COURT OF JUSTICE

Perhaps the most important matter ever handled by the International Court of Justice was the reference to it by the United Nations General Assembly of the Legality of the Threat or Use of Nuclear Weapons. Numerous states made their submissions to the Court and numerous witnesses gave evidence of the harrowing consequences of the use and testing of the bomb.

The Court was in effect deciding upon a matter concerning the very survival of humanity, for the evidence was clear that the next use of the bomb would not be on a sitting target as in Hiroshima and Nagasaki, with no possibility of retaliation. On the contrary, there was almost a certainty that a nuclear response would follow, whether from the state attacked or any other. The result would be a nuclear winter, with sunlight blotted out across the world, global crop failures and a reversion to the most primitive and debilitating form of existence for those who were unfortunate enough to survive.

This was the context against which the entire Court without a single dissentient voice pronounced that:

"There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

No higher legal pronouncement on a question of international law is possible than the unanimous opinion of the world's highest court. No greater issue can come to a court than one involving the survival of humanity. No more all-embracing and respected concept exists in international law than the concept of good faith. The obligation spelled out by the Court straddled all these aspects of fundamental importance.

Against this background, any nuclear power failing in its obligation to take meaningful steps leading to nuclear disarmament, disregarding an opinion of the world's highest tribunal and violating one of the most sacrosanct principles of international law, needs to give its most anxious consideration to the propriety of pursuing such a course of conduct.

SOURCES OF THE DUTY OF GOOD FAITH IN REGARD TO NUCLEAR DISARMAMENT

The duty of good faith in regard to nuclear disarmament is a duty stemming from three sources:

1. International law, of which good faith is a central principle;
2. Treaty obligations solemnly undertaken, as for example in the Nuclear Non-Proliferation Treaty and the Protocol to the Geneva Convention of 12th August 1949; and
3. Duties imposed by the International Court of Justice through its unanimous finding.

The nuclear powers are thus under a threefold duty to display the highest degree of good faith in taking the necessary steps towards

nuclear disarmament in all its aspects. This is a duty flowing not merely from the dictates of Humanitarian Law, which is a vital component of international law. The duty flows also from treaty obligations to which a particular sanctity attaches in international law. It flows also from a duty specially declared by the ultimate authority on questions of international law.

It could thus be stated that the duty of good faith in respect of this matter is a threefold obligation and is therefore a particularly significant obligation, the like of which one rarely sees in international law.

THE CONCEPT OF GOOD FAITH

Good faith is clearly not an empty verbal formula but is impregnated with meaning and permeates the entire fabric of law, both domestic and international. Centuries of philosophical thought have forged this concept into a bedrock principle of the law of nations, which no state can disregard without damage to its international standing.

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It goes without saying that there is no half-way house in the duty of compliance with good faith in international law. No state shows due respect for international law if it acts only in partial compliance with the solemn duty thus imposed on it. Partial compliance is a clear departure from the principle of acting in good faith. It is only efforts at full compliance that constitute fulfillment of the obligation.

Disrespect for and breach of good faith grows exponentially if, far from even partial compliance, there is total non-compliance with the obligations it imposes.

The breach grows exponentially again if, instead of even partial compliance or non-compliance, action is taken that flies in the face of the spirit underlying this cardinal concept. Partial compliance, total non-compliance and specific contrary action are three progressive stages of disregard of the concept of good faith. Sadly, what we are now witnessing is the third and most serious level of departure from good faith. On the scale of culpability, it ranks immeasurably higher than partial compliance or even non-compliance.

Contrary action currently being taken by the nuclear powers is both intensive and extensive. It embraces continued research on nuclear weapons; testing of improved versions; training of nuclear forces; increasing the range and effectiveness of nuclear weapons; deployment of nuclear weapons by land, sea and air; stationing nuclear submarines in friendly waters around the world; and much more. These actions are in positive violation of the solemn duty of good faith lying upon the nations committing these acts.

Lengthy documents could be compiled in relation to each of the activities enumerated above. They all fly in the face of the obligation of good faith in working towards nuclear disarmament, so heavily lying upon the shoulders of the nuclear powers. Furthermore, any such action on the part of any nuclear

power prompts the other nuclear powers to do likewise, thus escalating the level of departures from the duty of good faith. Such action has also, for the past few decades, prompted non-nuclear powers to seek to achieve nuclear weapons and join the so-called "nuclear club." It is still producing this effect and will continue to do so, so long as the nuclear powers do not discharge in good faith their obligations to achieve nuclear disarmament in all its aspects.

IMPORTANCE OF THE CONCEPT OF GOOD FAITH IN AMERICAN JURISPRUDENCE

The concept of good faith is not merely a central concept of international law but is a concept that permeates the entire field of legal scholarship, both international and domestic. Good faith is so vital to the proper functioning of law that it has been looked upon by judges, statesmen and legal institutes as being of paramount importance. Each one of these sources accords the highest place to good faith as a central principle in all departments of the law.

The treatment of this concept in the various legal systems of the world is so extensive that it has been briefly summarized in the Supplementary Notes appended to this Briefing Paper. Of immediate relevance to the present problem is the emphasis on good faith in modern legal systems and of particular relevance in the nuclear context is the importance accorded to good faith in American jurisprudence.

One can cite as an example an eloquent summary of the thinking of one of America's greatest judges. Arthur Corbin writing of Justice Benjamin Cardozo in the Yale Law School Faculty Series eloquently summarized the leading principle of this great jurist's philosophy, in terms that "his compass points to his guiding star of good faith in promises and justice in meeting expectations."[1] One of the most highly regarded American juristic minds of the past century thus rated the concept of good faith as the highest guiding principle in the legal firmament.

"Good faith is an obligation that cannot be circumvented..."

Moving from the judicial field to the field of legal institutions, the American Law Institute gives the highest professional and academic endorsement to the view that good faith emphasizes "faithfulness to an agreed common purpose and consistency with the justified expectations of the other party."[2]

We need go no further than such high level legal expositions of the principle of good faith. The acts in regard to nuclear weapons are a departure from the agreed common purpose and a contradiction of the justified expectations of the non-nuclear states who form the vast majority of the world.

When we leave the realm of law and enter the realm of national conduct, good faith still remains our guiding star, if we may borrow the phraseology used to describe the central position accorded to it by Justice Cardozo.

[1] Yale Law School Faculty Series, Paper 2884, 1939.
[2] Restatement Second of Contracts (section 205, cmnts a and d, 1981).

The importance of this concept in the field of national conduct cannot be better illustrated than through the reference to it by George Washington in his celebrated farewell address to the American nation on September 17, 1796. This address left good faith as a guiding principle to his compatriots not only then but in the generations to come: "Observe good faith and justice toward all nations; cultivate peace and harmony with all." The concept of good faith thus lay at the heart of the founding vision of a state which its founders hoped would by its example radiate this message outwards to other nations and peoples.

Accorded such high recognition by judges, law institutes and statesmen of the highest distinction, good faith is an obligation that cannot be circumvented, least of all when it deals with matters of such major importance. This obligation, though central to international law, accepted in treaties and spelled out by the International Court of Justice, lies shattered and in fragments. The actions currently being taken by nuclear nations have the effect of entrenching the weapon rather than dislodging it. More than twenty years after the Opinion of the Court, nuclear disarmament under strict and effective international control still remains unfulfilled.

CROSSING THE BOUNDARY BETWEEN GOOD FAITH AND BAD FAITH

We have so far dealt with various degrees of violation of the concept of good faith. What is particularly saddening is that the violations are such as to take us even out of the territory of good faith and into the territory of bad faith itself. Any one of the acts already referred to regarding development and deployment of the weapon is such a serious violation of good faith that it can well be regarded as a manifestation of bad faith.

International law comes to naught if general principles, treaty obligations and International Court opinions can be so totally disregarded. The situation is infinitely more serious if, instead of being merely disregarded, the obligation is continuously and actively contravened by resolute and determined action in total contradiction of the concept. Such regular actions are not merely occasional deviations, but recurring and planned courses of action which constitute a consistent pattern of conduct flying in the face of this principle. What emerges for thoughtful consideration by the international community is whether there has been not merely a violation of good faith but an actual manifestation of bad faith in this matter.

The American Law Institutes's Restatement of the Law of Contract contains some very pertinent observations on "bad faith." According to the restatement: "a complex catalogue of types of bad faith is impossible." It goes on to observe some types of bad faith that have been recognized in judicial decisions. Examples of special relevance

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to the matter under discussion are "evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, interference with or failure to cooperate in the other party's performance."

Had the matter been simply a question of contract law, it could clearly be argued that violations negativing and contradicting the very purpose of the undertaking would be categorized as bad faith. Treaty obligations are contractual obligations with a much greater degree of importance and solemnity attaching to them.

Having regard to the fact that the all-important final outcome is the elimination of nuclear weapons, and that the non-use of nuclear weapons is vital to the future of humanity, the conduct referred to assumes an even higher degree of importance and calls for a closer application of legal principles in the interpretation of the relevant obligations.

INTERNATIONAL LAW CEASES TO BE A WORKABLE SYSTEM IN THE ABSENCE OF GOOD FAITH

In the context of the topic under discussion it is also necessary to refer to the central role played by the concept of good faith in the theory and practice of international law. Indeed, without good faith international law would cease to exist, because it is not physical enforceability but good faith in accepting and practicing it, that gives international law its claims to be a workable and respected system. In the thinking of the eminent jurists of the 19th century, such as John Austin, international law was not a system of law properly so called because it was not physically enforceable.

What has taken the place of physical force and given international law the status of a legal system properly so called is good faith in recognizing, respecting and obeying the system. This is an obligation of all members of the international community.

What founders of modern international law, such as Hugo Grotius, sought to achieve was an international system that commanded respect and recognition, not through physical force but through good faith in complying with it, and treating it as a valid and binding legal system.

Good faith has succeeded physical force as the sheet anchor of the international legal system. Judgments of courts and treaty obligations are accorded validity and respect not because they can be physically enforced, but because good faith in respecting one's international obligations has won general recognition among the community of nations. It is thus indispensable to world order. This is what has emerged after centuries of juristic thought and centuries of human suffering.

No international legal system, either today or at any time in the future, can physically enforce its decrees, for there would never be armies at its disposal powerful enough to overcome the armies of major states. Those states for this very reason have bound themselves, as members of the community of nations, to live under the rule of international

law, showing loyalty to its basic principles including the principle of good faith. Sheer physical force is the highroad to catastrophe in this nuclear age, just as good faith is the key to human survival. It is for this reason that nations violating good faith in implementing the pronouncements of the Court would stand condemned before the community of nations as lacking in good faith and respect for international law.

The International Court itself does not have at its disposal a single soldier, sheriff or constable to enforce its decrees. Yet over 90% of the Court's orders are in fact obeyed. This is because the nation states of the world realize the importance of good faith in their adherence to international law and the decrees of the International Court.

SPECIAL IMPORTANCE OF HUMANITARIAN LAW IN OUR TIME

Respect for Humanitarian Law, which is a vital part of international law, is an absolute necessity of our time because, with the spread of nuclear weapons, humanity for the first time in its history has the power to destroy itself and all civilization with it. The self-evident fact that international law cannot be enforced by physical force against powerful nuclear states, imposes on them an even greater moral and legal responsibility to give international law the respect it demands, if the world is to live under the rule of law rather than the rule of force.

We are not merely in a situation where the obligations spelled out by the highest tribunal in the world are disregarded. We are also in a situation where the failure to discharge such obligations entails the disregard of every rule of Humanitarian Law – the prohibition of excruciating suffering, indiscriminate killing of combatants and non-combatants alike, damage to neutral states, irreversible pollution of the environment, disregard of rights of future generations, and gross birth deformities, to cite just a few of its inevitable consequences. International law cannot consciously leave open the possibility of such gross and irreparable suffering imposed on a massive scale, not accidentally but deliberately and with full knowledge of these consequences. Such suffering if deliberately caused, for whatever reason, cannot but be described as a crime against humanity.

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World War II ended with a clear assertion that acts which constitute crimes under international law merited condign punishment. Indeed, one of the principles on which World War II was fought included the punishment and redress of crimes against humanity. At the termination of World War II, the sad experiences of that war, including some of the grossest crimes against humanity ever known, led the world to resolve on establishing a new world order that would assure humanity that such crimes would not be repeated.

The nuclear weapon far exceeds in potential victims and agonizing suffering the cruelties from which World War II liberated humanity.

Reversing the effects of this victory against crass violations of international law, it threatens every value of civilization and every principle of humane conduct which took centuries of human suffering to establish.

AN HISTORICAL FLASHBACK

In the context of Humanitarian Law, a backward glance at the atrocities we hope we have left behind will be of assistance. Medieval conquerors were known to follow no rules in delivering condign punishment to those who resisted them. Jenghiz Khan for, example, is reported to have said that any village that resisted him would be completely destroyed with not a house left standing or a human being left alive.

Such cruelties that have rightly earned outright condemnation over the centuries from all civilizations, all religions and all philosophers, pale into insignificance when compared with the cruelties of the nuclear weapon. All buildings will be reduced to smithereens far more effectively than Jenghiz Khan could ever have achieved. Not only would every human being be destroyed, but all forms of life down to the last microbe. This damage would be done not merely to villages but also to vast metropolitan centers with populations of millions. The resulting pollution would also cross all barriers of time, affecting generations yet unborn. The sufferings imposed would exceed by far anything Jenghiz Khan could have contemplated. Yet there are those who condemn Jenghiz Khan but condone the bomb.

Another strange contradiction that comes to mind in this context is the fact that in the late 19th century the dum dum bullet which exploded on entering the victim's body was prohibited as being too cruel to be used among civilized nations. That prohibition still stands in a world order in which the nuclear weapon still finds a place as a weapon of war. Although it magnifies the cruelty of the dum dum bullet a million-fold, some of the very nations that outlawed the bullet retained the bomb. It is stockpiled, tested, improved and transported and is in a state of readiness for instant use.

International law in our time thus reveals an enormous lacuna in its concepts and procedures if it permits even the possibility of such a catastrophe befalling humanity in an age which claims to be enlightened.

It has been a long voyage from the lawless days of Jenghiz Khan to the time of Hugo Grotius, when the concept of a law of nations began gathering strength. When we begin this modern phase in the history of nations we see a progressive strengthening of the principles sought to be established and paradoxically a progressive worsening of the horrors of war. The missing element which brought about this contradiction was the lack of good faith in implementing the high principles that were agreed upon in theory but were violated in practice. Some landmark events in this historical process need to be briefly noted, having regard to humanity's increasing capacity to inflict the most excruciating suffering on fellow humans.

THE HIGH IDEALS ATTENDING THE EMERGENCE OF INTERNATIONAL LAW

When Hugo Grotius wrote his path-breaking work on *War and Peace* in 1625 he was seeking to leave behind the heart-rending slaughter of the Thirty Years War which raged from 1618 to 1648. His objective was to construct an international law based on equity, justice and good faith for the world of the future. The numerous new states released from the great empires who would enter into the community of nations after this war needed such an overarching legal system if they were not to be engaged in unequal military contests with the more powerful states. In the absence of such a system Grotius foresaw that the law of the jungle would prevail, with the more powerful states always asserting their will against the weak.

A world order with just a few nuclear-armed states amidst a world community where over 95% of states are non-nuclear presents exactly the sort of scenario Grotius feared and foresaw, unless the overwhelming power of the nuclear-armed states resulting from their possession of a weapon of mass cruelty can be restrained.

This caused Grotius to emphasize as a central principle of the new discipline of international law that he was seeking to create, the importance of good faith and the spirit behind the law rather than the letter of the law. Every nation must extend to others the same treatment and consideration it would expect from them. Good faith in dealing with them was central to this philosophy. Succeeding generations of international lawyers have emphasized down the centuries this principle which lies at the very heart of international law. To violate it is to violate international law at its very foundation. Likewise when the founding fathers of America, inspired by the highest philosophical ideals of the time, worked out a majestic constitution based on equality and freedom they were seeking to provide the world with an example of a national legal system based on prime values which philosophers down the ages had worked out for the governance of human society. Good faith in one's dealings with others, whether they be individual groups or nation states, was fundamental to this philosophy and the constitutional structure that was erected on it.

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We have referred already to the words of George Washington in regard to good faith through which he sought to bring the conduct of the newly emergent state into line with the highest ideals of international law.

The philosophy of the Age of Enlightenment was a rich source of inspiration picking up the wisdom of sages down the centuries, going all the way back through the principles of Roman law to the teaching of Socrates himself. Good faith in one's dealings with others was central to this philosophy and that is what the founders of the American state sought to integrate into the constitution and the policies of America.

THE PEACE CONFERENCE OF 1899

The historic Peace Conference of 1899 held at The Hague was the venue where the idea of a world court first came up for serious discussion. This conference, probably the greatest peace conference held in history till then, contemplated the unprecedented slaughter of the wars of the 19th century. It resolved to lay the foundations of a new world order that would make the 20th century a brand new century of peace. Justice and good faith among nations were foundations on which this new world order was to be based. That conference was distinctive for the reason that it bridged the gap between the world of power and the world of philosophy. The discussions and debates at this conference resonate to this day in any consideration of the principles of good faith which should govern the world order of the future. That hope soon lay in tatters because the principle of good faith was violated at its very foundations by the great nations of the time. They were seeking to extend their empires and their commercial enterprises, whatever the cost to other nations and especially to the poorer people of the world. What ensued from this violation was World War I, which produced slaughter and suffering that made the Napoleonic and other wars of the previous century pale into insignificance.

THE CONGRESS OF VERSAILLES

The American president Woodrow Wilson provided leadership in working towards a League of Nations, which would give effect to the same ideals that would make for a better world of the future. High among these was good faith.

After the slaughter of World War I the quest for a just world emerged once more at Versailles. The discussions at that conference provide important reading to all who are interested in structuring a world based on law rather than might and on the practice of good faith rather than mere professions of it. The small powers argued strongly for a world order based on justice and good faith. However, despite the initiative of President Wilson the major powers still showed reluctance to abandon a world order based on their military strength. The speeches of delegates from Belgium and Latin America are replete with pleas for a world order based on justice and good faith and with premonitions of further disaster to humanity if these pleas were ignored.

Once again this pursuit of good faith was overridden by the pursuit of power. An International Court of Justice with compulsory jurisdiction was resisted by the great powers. Good faith in international relations was submerged by military power and World War II resulted. The brutalities of this war made those of World War I pale into insignificance. Lack of good faith in observing the basic rules of international and domestic law resulted once more in human suffering on a scale the world had never seen.

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Humanity continued to advance its scale of violence in such a manner that further escalation could mean not victory for some but disaster for all.

THE PEACE CONFERENCE OF SAN FRANCISCO

This great peace conference, occurring amidst the debris of all the ideals that had guided civilization to that point of time, made a firm resolve to establish a world order of the future that would eliminate such cruelties and even the possibilities of such a descent to total brutality.

These discussions were also held in the context of the fact that the level of destruction in future warfare would far exceed anything known in the past. The nuclear weapon was now known and its handling needed the utmost good faith on the part of those who possessed it or would possess it in the future, for the weapon was so powerful that it cannot be controlled by physical force but only by the legal requirement of good faith.

The peace conference after World War II also resolved that brutalities such as had been practiced in that war would not go unpunished and that the offenders would be dealt with as those who had violated international criminal law. War crimes trials were perceived as ways in which humanity could be spared in the future from the horrendous crimes the world had just witnessed.

A new world order based on good faith and respect for the law of nations was the ideal sought to be established, in the context of the fact that time and time again, going back to the Thirty Years War and beyond, disrespect for this ideal in the dealings of states with each other had led to war after war with an ever ascending scale of brutality.

We are at this moment in the midst of this movement towards ascending scales of brutality in any future war. Indeed, with the nuclear weapon we have reached the very pinnacle of brutality beyond which humanity will not be able to survive to stage another peace conference like those of Versailles and San Francisco.

Good faith in discharging one's international obligations is the key to avoiding such a dreaded scenario. We must not permit the progress achieved during all these conferences to be consigned to the dustbin of wasted effort. If ever the nuclear weapon is used again, humanity will not be able to stage another Hague, Versailles or San Francisco. The 20th century was a century of lost opportunity to enforce the obligations of good faith and justice in international affairs. The 21st century will be a century of last opportunity, for it is the first century in human history to have dawned with humanity having the power to destroy itself. The road to disaster is the nuclear bomb and we cannot afford to have anything less than

"The road to disaster is the nuclear bomb and we cannot afford to have anything less than the utmost good faith by all nations in dealing with it."

the utmost good faith by all nations in dealing with it. We either work together in good faith to control and eliminate it now, or consign civilization to oblivion and the human race to disaster.

Laws enforceable by force of arms cannot achieve this. The legal requirement of good faith in the discharge of obligations lying upon nuclear powers can. The path is clear not only through legal principle in general, not only through treaty obligations expressly undertaken, but also through the performance of duties expressly spelled out in the unanimous decision of the International Court of Justice.

Having noted these historical stages in the strengthening of international law and the escalation of international brutality, it is now opportune to note the warnings of some of the greatest minds in the military and intellectual fields.

THE WARNINGS OF PRESIDENT EISENHOWER

President Eisenhower was in modern times one of the heads of state most knowledgeable about warfare and military matters. In his farewell address he warned the American people of the growth of the military machine and the dangers of the conjunction of an immense military establishment with large and powerful armaments. This combination could wield an unwarranted influence in the councils of government. He warned of the necessity to provide not only for today but also to protect the interest of all generations to come.

He also observed, "Disarmament with mutual honor and confidence is a continuing imperative. Together we must learn how to compose differences, not with arms, but with intellect and decent purpose." He went on to say that he was speaking "as one who has witnessed the horror and the lingering sadness of war – as one who knows that another war could utterly destroy this civilization which has been so slowly and painfully built over thousands of years…."

An American president with a greater knowledge of war and modern armaments than any other has predicted that another war could destroy civilization. The route to such destruction is the nuclear weapon. The route to its avoidance is the elimination of the weapon. The route to the elimination of the weapon is the legal requirement of good faith.

This warning from such an eminent authority needs to be heeded by all the world's statesmen and military leaders. The warning of President Eisenhower is a warning that cannot go unheeded in any country and especially in the nation over which he presided.

THE WARNINGS OF EINSTEIN AND RUSSELL

In the Russell-Einstein Manifesto two of the greatest intellects of the age issued a passionate call to humanity in regard to the need to abolish the weapon. They pointed out that "the best authorities are unanimous in saying that a war with H-bombs might possibly put an end to the human race. It is feared that if many H-bombs are used there will be universal death - sudden only for a minority,

but for the majority a slow torture of disease and disintegration." Since the Russell-Einstein warning the power of the bomb has steadily grown and the number of bombs as well as the number of those possessing the bomb has also increased.

These eminent intellects went on to say: "Here, then, is the problem which we present to you, stark and dreadful and inescapable: Shall we put an end to the human race; or shall mankind renounce war?...We appeal as human beings to human beings: Remember your humanity, and forget the rest. If you can do so, the way lies open to a new Paradise; if you cannot, there lies before you the risk of universal death."

"Shall we put an end to the human race; or shall mankind renounce war?"

If a pledge is made in good faith to pursue the objective of taking the necessary steps toward nuclear disarmament and if the consequence of not doing so is predicted so starkly by two of the world's greatest intellects, there can be no doubt whatsoever of the weight of the obligation that lies upon the nuclear powers to honor that pledge reinforced as it is by the pronouncement of the world's highest Court. Honor and respect for humanity would demand that there should not be the slightest deviation from the duty to show good faith in discharging that obligation.

THE URGENCY OF GOOD FAITH IN REGARD TO NUCLEAR ELIMINATION GROWS FROM DAY TO DAY

It is not commonly realized that the dangers under discussion in relation to nuclear weapons are growing from day to day.

Several factors are cumulatively at work in expanding the problem and bringing it closer to us. Among these are the following:

1. The number of nuclear powers has grown considerably since the Russell-Einstein warning.
2. There are states who would desire to have the weapon and are striving to acquire it.
3. Terrorist organizations are expanding their power and have vast financial resources which could enable them to access the necessary resources and expertise for acquiring a bomb.
4. A large volume of the knowledge necessary for the making of a crude nuclear weapon is already available on the Internet.
5. The necessary scientific skill for the construction of the weapon is also available including from some scientists who have worked in the past on nuclear weapons construction.
6. The raw materials for making the weapon are available from hundreds of nuclear reactors across the world and no records are kept, even by the International Atomic Energy Agency, in regard to their nuclear waste.
7. There are numerous conflicts around the world which are capable of escalating and attracting the support of a nation possessing nuclear weapons.
8. The number of nuclear reactors is steadily growing.

9. Some nations have put their defense systems on alert with what is known as Launch on Warning Capability. Their hair-triggered devices to detect incoming objects respond within seconds, and errors are possible.
10. Nuclear accident is an ever present possibility and there have been many of these that could be mistaken for a nuclear attack.[3] At least ten such incidents have occurred.
11. There have been a number of occasions in the past sixty years when the world was on the verge of nuclear war.[4]
12. Increasing numbers of suicide bombers are available for carrying out desperate attacks.
13. Nuclear stockpiles carrying thousands of weapons have not been publicly inventoried or policed.
14. Nuclear weapons are regularly being transported by air, sea and land, and accidents are always a possibility.

CONCLUSION

We are left with no other conclusion than that good faith in regard to nuclear disarmament is a basic requirement of law, of morality, of humanitarianism, and of concern for the human future. It is required by international law. It is undertaken by treaties, such as the Non-Proliferation Treaty. It is prescribed by the International Court of Justice. Neither law nor religion nor morality nor civilization can permit the slightest deviation from this duty of good faith, departure from which will make the cruelties of the past pale into insignificance.

It is imperative that every nation possessing the bomb is obligated to act in good faith in discharging this obligation of nuclear disarmament.

International law in general requires this. Treaties such as the Non-Proliferation Treaty require it. The International Court of Justice requires it. Above all, the survival of civilization demands it.

All the nuclear powers are therefore under a duty to take meaningful steps, as stated by the International Court of Justice, to achieve this object. There can be no basis for the disregard or incomplete performance of an obligation so deeply ingrained in international law, so clearly undertaken by the nuclear powers, so carefully pronounced by the International Court of Justice and so definitely determining whether humanity will flourish or perish.

SUPPLEMENTARY NOTE ON THE UNIVERSALITY OF GOOD FAITH

Though this discussion centers on good faith in the context of modern international law, it is important to note that it is a concept that goes back to the very origins of legal systems and of international law. Ancient philosophers gave much thought to ideas of the unity of all peoples bound together by good faith in their relationships. They also pointed out that without such an overriding concept the sole deciding force in international affairs was

[3] E.g.: January 17, 1966, B52 carrying H-bombs crashed while flying over Spain; January 29, 1978, Soviet nuclear power satellite crashed into a lake in North East Canada.

[4] E.g.: The Taiwan Straits Crisis, 1958; the Cuban Missile Crisis, 1962.

might.[5] Whether one goes back to classical Greece or ancient Rome, Hindu principles, Confucian thought or Buddhist philosophy, to mention a few from the ancient world, one sees the emphasis placed upon good faith as a guiding principle of international conduct.

Search where we may among various legal systems, we will find the idea of good faith integrated into them.

In classical Greece, Zeno (335–263 BCE) foresaw a world order not consisting of separate states but working as a one great city under universal law and a population living together in mutual respect and good faith. Roman law accorded great importance to bona fides as a central principle of law and communicated this to numerous legal systems of the future. The Roman Emperor Marcus Aurelius likewise thought of a common state in which citizens of all countries functioned as fellow members, living together not under a system based on physical force but on moral authority and on good faith in their relations with each other.

Hindu law spoke of the rule of Dharma or righteousness, on which Judge Nagendra Singh, Former President of the International Court of Justice, has written extensively. He drew attention to extensive commentaries on dharmishta conduct by generations of Hindu jurists reaching back three thousand years and more. Good faith by citizens towards neighbors and by sovereigns towards fellow sovereigns is an extensive part of this analysis.

Buddhism analyzed right conduct in depth in its philosophical expositions of the Noble Eightfold Path, in which right thought and right action were key elements. Action contrary to good faith and specific promises was clearly a reversal of the principles of conduct which Buddhist civilization regarded as basic.

Judaism likewise attaches great importance to integrity in one's dealings with others. This extends from the duties of rulers to the duties of the humblest tradesmen. A few quotations from the proverbs of Solomon would illustrate this: "People who promise things that they never give are like clouds and winds that bring no rain" (Proverbs 25.14); "The Lord protects honest people" (Proverbs 10.29); "The Lord hates people who use dishonest weights and measures" (Proverbs 20.10); "The righteous are like a light shining brightly" (Proverbs 13.9). Against this background, the duty of good faith in dealings with others has been commented on by the jurists down the centuries and is accorded high recognition.

Christian legal systems emphasize the sanctity of the pledged word not only in regard to agreements between sovereigns but also in the dealings of citizens with each other. The integrity of one's promises and undertakings is central to the writings on international law of Christian philosophers down the centuries. Moreover duties to one's neighbors are also a central teaching which received emphasis in the context of any vision of an international

[5] M. I. Rostovtzeff, *International Relations in the Ancient World*, E. Walsh (Ed.), (1982), pg.43

order. "Love thy neighbor as thyself," a fundamental Christian teaching, naturally elevates the duty to be faithful to one's promises and undertakings. Good faith is thus built into all Christian philosophy regarding a future world order.

Confucian philosophy lays great emphasis on the principle of Ren or loving others. The golden rule of Confucian teaching - "what you do not wish for yourself do not do to others" - naturally comprised a prohibition on acting contrary to one's promises. There was also a duty on rulers not only to observe such principles but also to motivate their subjects to do likewise. Duties such as good faith in the observance of treaties thus lay very heavily upon rulers.

Islamic international law has been a well-developed subject over several centuries. For example, the treatise of Al Shaybani, Introduction to the Law of Nations, anticipated Grotius by eight centuries. This treatise referred to the sanctity and good faith attaching to the observance of treaties, basing this rule upon passages in the Qur'an (ix; 4 and xvi; 93) and on Hadiths of the Prophet. Islamic studies of international law worked out in detail such topics as the law of treaties. In these studies emphasis was laid on the utmost good faith in the performance of treaties. Muslims were obliged to honor their treaties even with non–believers "to the end of their term" (Qur'an, ix; 4) and "not to break oaths after making them" (Qur'an, xvi; 93). Pacta sunt servanda was the underlying doctrine. The Caliph Abu Bakr, in a proclamation to his soldiers, exhorted them as follows: "Let there be no perfidy, no falsehood in your treaties with the enemy; be faithful in all things, proving yourself upright and noble and maintaining your word and promises truly.[6] As Nussbaum observes, no dispensation from treaty obligations on religious or other grounds is provided by Islamic doctrine.

More recent philosophers who gave thought to a world order based on good faith rather than force included Desiderius Erasmus (1466-1536), Thomas More (1478-1535), the Duc de Sully (1560-1641), Hugo Grotius (1583-1645), William Penn (1644-1718), Jean Jacques Rousseau (1712-1778), Immanuel Kant (1724-1804) and Leo Tolstoy (1828-1910). They specifically visualized a universal community of humanity living under a global system based on mutual friendship and understanding and not on physical force. Good faith in their relations with each other was fundamental to this vision. All these outstanding figures base their view of a new world on the concept of human beings living together in friendship and good faith under universal law.

The centrality of good faith as a basic principle of future world order has been well summarized as follows in a study of religion and international law: "Only one principle was capable of providing a credible alternative to the constant recourse to war in settling disputes. This was good faith. As an idea, it was

[6] Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: The Macmillan Company, 1954), pg. 53

adopted by nearly all ancient civilizations as a means of recognizing the integrity of promises made both within a social order and in the international realm."[7]

In short, good faith is a central concept pervading international law from its origins to the present day. It is often the sole protection we have against the rule of might and its violation is a matter of deep concern to all who work in the realm of international law. This is only a brief introduction to the universality of this concept which embodies an enormous wealth of learning out of which modern international law developed. It is a concept lying largely untapped and unimplemented in modern political thought and action.

[7] Mark W. Janis and Carolyn Maree Evans (Eds.), *Religion and International Law* (The Hague: Martinus Nijhoff Publishers), p.4

AUTHOR

Judge Christopher G. Weeramantry was a Judge of the International Court of Justice from 1991 to 2000, serving as Vice-President from 1997 to 2000. He served as a Judge of the Supreme Court of Sri Lanka from 1967 to 1972; and Professor of Law at Monash University (1972-1991). He was the President of the Weeramantry International Center for Peace Education and Research. He was a co-President of the International Association of Lawyers Against Nuclear Arms. He was also a Councilor and a Founding Member of the World Future Council. He authored many books and received numerous awards, including the UNESCO Prize for Peace Education (2006); the Right Livelihood Award (2007); and the Nuclear Age Peace Foundation's Lifetime Achievement Award (2008). Judge Weeramantry passed away on January 5, 2017. His work and his values will live on in the many lives he touched.

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