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THE PRINCIPLE OF GOOD FAITH IN INTERNATIONAL LAW: BETWEEN MORALITY AND BINDING FORCE

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Abstract

The principle of good faith (bona fides) occupies an ambiguous but indispensable position in the architecture of international law. Rooted in Roman private law and moral philosophy, it has gradually migrated into the public international legal order, acquiring normative force through treaty codification, judicial pronouncements, and state practice. This article examines the doctrinal foundations of good faith, its expression in the jurisprudence of the International Court of Justice (ICJ), its structural role in the World Trade Organization (WTO) dispute settlement framework, and its contested application in international climate negotiations. The central analytical question is whether good faith constitutes a lex lata obligation capable of independent legal enforcement or whether it remains, at its core, a moral orientation that legal systems invoke instrumentally. The article argues that good faith occupies a hybrid normative position: it is simultaneously a customary international law norm of general application, a treaty-embedded standard of conduct, and a hermeneutic principle that disciplines legal interpretation; yet its enforceability is structurally contingent on context, institutional capacity, and the will of states to submit to adjudicative scrutiny.

Keywords: good faith, *bona fides*, international law, ICJ jurisprudence, WTO, climate negotiations, *pacta sunt servanda*, treaty interpretation, estoppel, legitimate expectations

ULUSLARARASI HUKUKTA İYİ NİYET İLKESİ: AHLAK İLE BAĞLAYICI GÜÇ ARASINDA

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Özet

İyiniyet ilkesi (bona fides), uluslararası hukukun mimarisinde belirsiz ancak vazgeçilmez bir konuma sahiptir. Roma özel hukukunda ve ahlak felsefesinde köklenen bu ilke, normatif güç kazanarak uluslararası kamu hukuku düzenine yerleşmiştir. Bu makale; iyiniyetin doktrinel temellerini, Uluslararası Adalet Divanı içtihadındaki görünümlerini, DTÖ uyuşmazlık çözüm çerçevesindeki yapısal rolünü ve uluslararası iklim müzakerelerindeki tartışmalı uygulamasını incelemektedir. Temel analitik soru şudur: İyiniyet, yargısal süreçlerde bağımsız olarak uygulanabilecek bir lex lata yükümlülüğü mü oluşturmakta, yoksa hukuk sistemlerinin araçsal biçimde başvurduğu ahlaki bir yönelim olarak mı kalmaktadır? Makale, iyiniyetin melez bir normatif konuma sahip olduğunu savunmakta: söz konusu ilkenin aynı anda genel uygulamalı bir uluslararası örf ve adet hukuku normu, antlaşmalara yerleştirilmiş bir davranış standardı ve hukuki yorumu disipline eden hermenötik bir ilke olduğunu ileri sürmektedir.

Anahtar Kelimeler: iyiniyet, bona fides, uluslararası hukuk, UAD içtihadı, DTÖ, iklim müzakereleri, pacta sunt servanda (ahde vefa), antlaşma yorumu, estoppel, meşru beklentiler

I. Introduction: The Paradox of Good Faith

There is something deeply paradoxical about good faith in international law. It is one of the most frequently invoked principles in

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international legal discourse, yet one of the least precisely defined. States invoke it in diplomatic protests, treaty preambles, arbitral submissions, and international negotiations. Courts and tribunals cite it routinely. And yet, when pressed to identify the precise legal content of good faith — what it requires, what it prohibits, and what remedy follows from its breach — the international legal order tends to produce answers that are more elliptical than categorical[1].

This paradox reflects a deeper structural tension. Good faith as a *moral* concept has a long and relatively clear genealogy: it demands honesty, sincerity of intention, and the avoidance of deception or manipulation in dealings with others. As a *legal* concept, however, good faith must do something more specific and more demanding. It must identify a standard of conduct that a legal system can apply to determine rights and obligations, assess compliance, and generate consequences for violation. The transition from moral category to legal norm is not self-executing. It requires institutional mediation, doctrinal elaboration, and — crucially — a theory of enforceability.

International law presents this challenge in particularly acute form. Unlike domestic legal orders, where courts possess compulsory jurisdiction and enforcement mechanisms are generally available, the international legal system operates in an environment of sovereign equality, decentralized enforcement, and consent-based adjudication. In such a system, principles that depend on good faith for their operation risk being either rendered vacuous by the absence of enforcement or inflated into a kind of all-purpose standard that swallows more specific rules[2].

This article proceeds in seven parts. Part I introduces the central paradox of good faith in international law. Part II traces the historical and doctrinal foundations of good faith, from its Roman law origins through its reception into international legal thought. Part III analyzes the ICJ's

1 Judith Salmon, "De quelques problèmes posés par le principe de la bonne foi dans les relations internationales", Mélanges Michel Virally, Pedone, Paris, 1991, p. 391.

2 Robert Kolb, Good Faith in International Law, Hart Publishing, Oxford, 2017, pp. 3–8.

engagement with good faith as a principle of treaty law and general international law. Part IV examines the WTO framework, where good faith operates both as an interpretive tool and as a substantive standard governing the conduct of dispute settlement. Part V turns to international climate negotiations, where the principle faces its most severe stress test. Part VI offers a theoretical synthesis, drawing the line between moral expectation and legal obligation. Part VII presents the conclusions of the study.

II. Doctrinal Foundations: From Bona Fides to International Norm

2.1 Roman Law Origins and the Pre-History of the Principle

The concept of *bona fides* entered Western legal consciousness through Roman private law, where it served as a corrective standard in the law of contracts and obligations. Roman jurists distinguished between *iudicia stricti iuris* — actions governed by the strict letter of the agreement — and *iudicia bonae fidei*, in which the judge was empowered to take into account what equity and good conscience required[3]. The *actio empti*, for instance, required the seller to disclose known defects; concealment, even in the absence of an explicit warranty, could ground liability on the basis of *dolus malus* — bad faith conduct that good faith prohibited.

This formative heritage established two foundational characteristics of good faith that persist into contemporary international law. First, good faith operated *relationally*: it governed conduct between parties who stood in a relationship of recognized legal proximity. Second, it was *objective* in its juridical application: what mattered was not the subjective mental state of the parties, but whether their conduct measured up to a standard that a reasonable person would expect in the circumstances[4].

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3 Reinhard Zimmermann, The Law of Obligations: Roman Foundations of the Civilian Tradition, Clarendon Press, Oxford, 1996, pp. 677–682.

4 Paul du Plessis, Borkowski's Textbook on Roman Law, 5th Edition, Oxford University Press, Oxford, 2015, p. 299.

2.2 Reception into International Legal Thought

The reception of good faith into international legal thought proceeded through several channels. The natural law tradition, particularly as expressed in the work of Grotius, Vattel, and Wolff, treated good faith as a foundational principle of the law of nations, inseparable from the binding force of treaties. Vattel's formulation was characteristically direct: "the observance of good faith is so sacred a duty that nations, like individuals, can neither break nor evade it without violating the law of nature."[5]

Positivist international lawyers of the nineteenth and early twentieth centuries were more cautious. Austin's command theory of law, applied to international relations, left little room for principles that could not be traced to a sovereign command. And yet even positivist accounts of treaty law implicitly relied on good faith: the doctrine of *pacta sunt servanda* — that treaties are binding and must be performed — presupposes that the parties intend to be bound in good faith and will not resort to formalistic evasion to avoid their obligations[6].

The formalization of good faith in treaty law reached its contemporary expression in the 1969 Vienna Convention on the Law of Treaties (VCLT). Article 26 encodes *pacta sunt servanda* directly: "every treaty in force is binding upon the parties to it and must be performed by them in good faith." Article 31(1) requires that treaties be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[7] These provisions transformed good faith from a background moral assumption into a codified legal standard.

5 Emer de Vattel, The Law of Nations, trans. Charles Fenwick, Carnegie Institution, Washington, 1916 [1758], Book II, Ch. XV, §219.

6 Ian Sinclair, The Vienna Convention on the Law of Treaties, 2nd Edition, Manchester University Press, Manchester, 1984, p. 119.

7 Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, Arts. 26, 31(1).

III. The International Court of Justice: Good Faith as a Structuring Principle

3.1 Good Faith and Pacta Sunt Servanda

The ICJ has been the primary institutional forum for the elaboration of good faith as a principle of general international law. In the Nuclear Tests cases (1974), the Court made a statement of enduring doctrinal significance: "one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential."

This passage is remarkable for its breadth. The Court did not confine good faith to treaty performance; it asserted a general applicability to the creation and performance of legal obligations "whatever their source." The implication is that good faith operates not merely as a rule of treaty interpretation or contractual performance, but as a structural principle of the international legal order — comparable, in some respects, to principles of equity and legitimate expectations in domestic administrative law.

3.2 Unilateral Declarations and the Good Faith Obligation

The *Nuclear Tests* cases also developed the doctrine that unilateral declarations made by states in the international arena may give rise to binding legal obligations, provided they are made in good faith with the clear intention to be bound. France's unilateral statements that it would cease atmospheric nuclear testing were held to create obligations enforceable at international law[8]. This doctrine represents one of the most significant expansions of good faith beyond the treaty context.

The legal architecture here is instructive. Good faith serves as the *ground* of the legal obligation: it is precisely because states can be expected to act honestly and in accordance with their public commitments that the international legal order treats certain declarations as binding.

[8] Ibid., paras. 43–49.

The principle thus functions not merely as a standard of *performance* but as a *source* of obligation — a role that brings it closer to a general principle of law in the sense of Article 38(1)(c) of the ICJ Statute[9].

3.3 Good Faith in Treaty Interpretation

The Court's engagement with good faith as an interpretive principle has produced a substantial jurisprudence on the relationship between text, context, and purpose in treaty interpretation. In the *Kasikili/Sedudu Island* case (1999), the Court applied Article 31(1) VCLT to construe the Anglo-German Agreement of 1890 on the basis of the ordinary meaning of its terms, read in good faith in light of its object and purpose[10]. The Court resisted arguments that would have read the treaty against its plain text, affirming that good faith interpretation does not permit a party to substitute its preferred reading for the agreed text.

This interpretive discipline is significant. It suggests that good faith in treaty interpretation operates in two directions simultaneously: it prohibits textual literalism that ignores evident purpose, but it equally prohibits purposive construction that abandons the agreed text. Good faith thus serves as a *mediating* principle between competing modes of interpretation rather than an autonomous mandate for any particular result.

3.4 Estoppel and Legitimate Expectations

Perhaps the most practically significant expression of good faith in ICJ jurisprudence is the doctrine of estoppel. In *Temple of Preah Vihear* (1962), the Court held that Cambodia could rely on Thailand's long-standing acquiescence in a French-drawn map showing the temple to be on Cambodian territory[11]. The underlying principle was that good faith prohibits a state from adopting a position inconsistent with its prior representations when another state has relied on those representations to its detriment.

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9 Kolb, pp. 82–94.

10 Kasikili/Sedudu Island (Botswana/Namibia), ICJ Reports 1999, para. 20.

11 Temple of Preah Vihear (Cambodia v. Thailand), ICJ Reports 1962, pp. 32–33.

Estoppel is thus a *relational* application of good faith: it operates not as an abstract obligation of sincere dealing but as a concrete prohibition triggered by a specific constellation of conduct, reliance, and detriment. This structure helps explain why the ICJ has been cautious about expansive applications of estoppel — the doctrine requires a high threshold of clarity in the prior representation and demonstrated reliance by the party invoking it[12].

IV. Good Faith in the WTO Framework

4.1 Structural Role in the Dispute Settlement Understanding

The WTO dispute settlement system provides a rich laboratory for the study of good faith precisely because it combines a relatively dense treaty framework with a well-functioning adjudicative mechanism. The Dispute Settlement Understanding (DSU) does not expressly invoke good faith as a general principle, but both Appellate Body jurisprudence and Panel decisions have drawn on it extensively, in two distinct ways: as an interpretive tool for construing WTO agreements, and as a substantive standard governing the conduct of parties to dispute settlement proceedings[13].

In the interpretive dimension, the Appellate Body has consistently applied Article 31(1) VCLT and its good faith requirement to resolve ambiguities in WTO agreements. In *United States — Gasoline* (1996), one of the first major Appellate Body decisions, the Body affirmed that treaty text must be given its "ordinary meaning" in good faith, and that interpretation must not "add to or diminish the rights and obligations" of WTO Members[14]. This anti-derogation principle is itself an expression of good faith: parties to a treaty are presumed to have bargained for a specific balance of rights and obligations, and good faith demands that this balance be respected in interpretation.

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[12] Ian MacGibbon, "Estoppel in International Law", International and Comparative Law Quarterly, Volume: 7, Issue: 1, London, 1958, pp. 468–513.

[13] Gabrielle Marceau, "Good Faith and the WTO Dispute Settlement", Journal of World Trade, Volume: 37, Issue: 5, Geneva, 2003, pp. 987–1011.

[14] Appellate Body Report, United States — Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, 29 April 1996, p. 17.

4.2 Good Faith and Abuse of Rights

A particularly important dimension of WTO good faith jurisprudence concerns the prohibition of *abus de droit* — the abuse of rights. In the WTO context, the question has arisen most acutely in connection with the invocation of general exceptions under Article XX of the GATT[15].

In *United States — Shrimp* (1998), the Appellate Body analyzed the chapeau of Article XX as an expression of the good faith obligation. The chapeau, the Body observed, "prevents the abuse or misuse of the exceptions" and requires that measures be applied consistently with the "good faith obligations" owed to WTO trading partners[16]. This was a significant doctrinal step: it framed what had previously been understood as a textual limitation in explicitly principled terms, anchoring it to the general international law prohibition of abuse of rights.

4.3 Procedural Good Faith: Obligations in Dispute Settlement Proceedings

The WTO system has also developed a body of practice on procedural good faith — the obligation of parties to engage with dispute settlement proceedings honestly and cooperatively. Article 3.10 DSU requires that parties engage in dispute settlement "in good faith," and Article 4.3 requires the respondent to "give sympathetic consideration" to complaints[17].

Panels and the Appellate Body have interpreted these provisions to impose meaningful substantive constraints. A failure to engage in genuine consultations, the provision of misleading information during proceedings, or the pursuit of dispute settlement for purely tactical rather than genuine trade grievance purposes may each implicate good faith obligations. However, given the adversarial nature of WTO dispute

[15] General Agreement on Tariffs and Trade, 30 October 1947, 55 UNTS 194, Art. XX.
[16] Appellate Body Report, United States — Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 12 October 1998, paras. 158–159.
[17] Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2, Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, Arts. 3.10, 4.3.

settlement, Panels have been reluctant to conclude that hard-fought litigation strategy amounts to a breach of good faith absent clear evidence of improper motive[18].

V. Good Faith in Climate Negotiations: The Hardest Case

5.1 The Peculiar Architecture of International Climate Law

If the WTO represents the institutional environment most hospitable to the juridical elaboration of good faith, international climate negotiations represent the most challenging. The climate regime is characterized by a distinctive combination of features: the primary instruments are hybrid legal forms that mix binding and non-binding obligations; the parties are profoundly asymmetric in their contributions to the problem and their capacities to respond; and the subject matter involves long time horizons and deep scientific uncertainty[19].

The Paris Agreement (2015) illustrates this complexity with particular clarity. Its central mechanism — the Nationally Determined Contribution (NDC) — is a national commitment to climate action that each party prepares, communicates, and maintains. The binding force of NDCs is deliberately limited: Article 4(2) of the Agreement requires that each party "shall pursue domestic mitigation measures, with the aim of achieving the objectives of its nationally determined contribution" — a formulation that imposes a procedural obligation to pursue, but not a substantive obligation to achieve, the stated target[20].

5.2 Good Faith as the Operative Norm

In this context, good faith does significant normative work that no other legal principle can perform. The Paris Agreement's reliance on NDCs presupposes that states will set ambitious targets, pursue them with genuine effort, and engage honestly in the transparency and review processes established by the Agreement. Without these behavioral

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18 Marceau, pp. 1003–1007.

19 Daniel Bodansky/Jutta Brunnée/Lavanya Rajamani, International Climate Change Law, Oxford University Press, Oxford, 2017, pp. 201–215.

20 Paris Agreement, 12 December 2015, FCCC/CP/2015/10/Add.1, Art. 4(2).

expectations, the entire architecture collapses into a system of non-binding aspiration.

Legal scholars have argued that Article 4(2) generates a composite obligation: states are legally bound to pursue NDC implementation in good faith, and the good faith requirement has substantive bite[21]. A state that formally submits an NDC but takes no domestic measures to implement it, or that systematically pursues policies directly contradicting its stated targets, would breach the good faith obligation even if its NDC itself is not legally binding as to outcomes.

5.3 The COP Process and Procedural Good Faith

The Conference of the Parties (COP) process provides a further arena for good faith analysis. Negotiations at successive COPs — from Paris to Glasgow (COP26) and Dubai (COP28) — have been marked by disputes about whether states are engaging in good faith: blocking progress on fossil fuel language, declining to present credible implementation plans, or using procedural tactics to prevent consensus decisions on enhanced ambition[22].

These disputes illustrate the structural limits of good faith in the climate context. Unlike the ICJ or WTO Appellate Body, the COP has no adjudicative function and no power to determine that a party has breached a good faith obligation. The Paris Agreement's compliance mechanism — established under Article 15 — is explicitly "facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive."[23] Good faith here operates more as a political and reputational norm than as a justiciable legal standard.

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[21] Jutta Brunnée/Stephen Toope, Legitimacy and Legality in International Law: An Interactional Account, Cambridge University Press, Cambridge, 2010, pp. 255–268.

[22] Lavanya Rajamani, "Ambition and Differentiation in the 2015 Paris Agreement", International and Comparative Law Quarterly, Volume: 65, Issue: 2, London, 2016, pp. 493–514.

[23] Paris Agreement, Art. 15(2).

5.4 The Loss and Damage Negotiations: A Case Study

The negotiations leading to the establishment of the Loss and Damage Fund at COP27 (Sharm el-Sheikh, 2022) illustrate with particular clarity the interplay between good faith as a moral expectation and its legal limitations. Developing states, particularly Small Island Developing States and Least Developed Countries, had long argued that developed countries bore a moral and legal responsibility to compensate for climate-related loss and damage attributable to their historical emissions[24].

The eventual agreement to establish a fund was negotiated under intense pressure and represented a significant political concession. Whether it reflected good faith engagement with the underlying legal and moral claims, or a strategic concession designed to prevent collapse of the broader COP process, is a matter on which reasonable observers differ. The episode illustrates a general point: in politically contested international negotiations, good faith is simultaneously essential and structurally ambiguous.

VI. The Line Between Moral Expectation and Legal Obligation

6.1 Three Modes of Good Faith in International Law

The analysis of ICJ jurisprudence, WTO practice, and climate negotiations suggests that good faith in international law operates in at least three distinct modes, each with a different relationship to legal enforceability.

The first is good faith as a *hermeneutic principle*: the requirement, encoded in Article 31(1) VCLT, that treaty text be interpreted honestly and in accordance with its evident purpose. In this mode, good faith operates as a constraint on interpretation rather than as an independent source of obligation. A bad faith interpretation of a treaty violates the treaty itself, not merely a free-standing good faith norm.

24 Saleemul Huq et al., "Loss and Damage at COP27", Nature Climate Change, Volume: 13, London, 2023, pp. 97–99.

The second mode is good faith as a *relational standard of conduct*: the obligation, expressed in doctrines of estoppel, acquiescence, and legitimate expectations, to act consistently with prior representations on which another party has reasonably relied. In this mode, good faith generates legal consequences — the extinction of a right, the creation of a binding obligation, the prohibition of inconsistent conduct — that are directly enforceable in adjudicative proceedings.

The third mode is good faith as a *systemic principle*: the background assumption, invoked by the ICJ in *Nuclear Tests* and echoed across multiple areas of international law, that the international legal order as a whole depends on honest dealing, trust, and the sincere pursuit of cooperative objectives. In this mode, good faith is less a rule that can be violated and remedied than a *foundation condition* of the international legal order. Its normative force is real but its justiciable content is thin[25].

Of the three modes identified, this article contends that the *relational standard of conduct* — the second mode — represents the most normatively sound and doctrinally developed expression of good faith in international law. Unlike the hermeneutic principle, which remains dependent on the treaty being interpreted and cannot operate as an independent source of obligation, and unlike the systemic principle, whose justiciable content is thin, the relational standard engages directly with a specific, identifiable moral wrong: the frustration of legitimate reliance. It is this mode that most clearly answers the central question of the article — when does moral expectation become legal obligation — because it identifies the precise conditions under which the transition occurs: the existence of a representation, the reasonableness of reliance, and the presence of a detriment attributable to that reliance. The enforceability of good faith in international law is most secure, and most morally defensible, when anchored in these relational conditions.

6.2 Normative and Moral Foundations of the Three Modes

The three modes of good faith identified in the preceding section are not merely functional categories — they rest on distinct moral

[25] Kolb, pp. 115–130.

foundations that illuminate both their legal authority and their respective limitations. The *hermeneutic principle* draws its normative force from the moral duty of fidelity to shared meaning. When states negotiate and conclude a treaty, they commit to a textual expression that reflects their agreed understanding. To interpret that text in bad faith — exploiting ambiguity to defeat the evident purpose, or invoking literal meaning to escape a plain commitment — is to engage in a form of communicative deception. The wrong is not merely procedural; it strikes at the integrity of the communicative act that makes treaty-making possible. Grotius and Vattel both recognized this dimension: the binding force of treaties rests not merely on the agreement of wills but on the moral obligation to honor the meaning of one's words. The hermeneutic mode of good faith is the legal expression of this moral duty, translating the ethics of honest communication into a rule of treaty interpretation.

The *relational standard of conduct* rests on a more specific and, in many respects, more compelling moral foundation: the ethics of promise-keeping and the prohibition of induced reliance harm. When a state makes a representation — through a declaration, a course of conduct, or an acquiescence — on which another state reasonably relies, a moral relationship of obligation is created. The moral wrong of estoppel is not abstract inconsistency but the specific harm of having caused another party to alter its position on the basis of a commitment that is subsequently repudiated. This is the same moral structure that underlies promissory obligation in philosophical accounts of binding commitment: the obligation arises not merely from the words spoken but from the reliance those words foreseeably induced. In international law, the doctrine of estoppel and the recognition of binding unilateral declarations are the legal expressions of this moral structure. Their normative authority is high precisely because the moral wrong they address — frustrating another's legitimate reliance — is clear, concrete, and universally recognized.

The systemic principle draws on the broadest and most foundational moral source: the value of international cooperation itself and the conditions that make it possible. An international legal order capable of managing relations among sovereign states requires a background of mutual trust — a confidence that commitments will be honored, that negotiations will be conducted honestly, and that the rules of the system will not be systematically abused. This trust cannot be fully codified in specific rules; it is the precondition for the rules to function. The moral foundation of the systemic principle is therefore what political philosophers have called the ethics of fair cooperation: the idea that participants in a cooperative scheme have obligations of good faith toward one another that arise from their participation itself, not merely from specific bargains. The limitation of this mode, as a legal norm, is that the breadth of its moral foundation makes it difficult to translate into specific adjudicative standards. Its normative force is real — it explains why international law takes good faith seriously at all — but it functions more as a moral background condition than as an operative legal rule.

Understanding these moral foundations clarifies why the relational standard represents the most promising direction for the development of good faith as a legally operative norm. It connects a specific and widely shared moral intuition — that causing harm through deliberately frustrated reliance is wrong — to a well-developed body of doctrine capable of generating concrete legal consequences. The hermeneutic and systemic modes are indispensable to the overall architecture of good faith, but they derive their ultimate moral authority from the same source: the recognition that honest dealing, consistency, and the protection of legitimate expectations are not merely instrumental values but constitutive elements of any legal order worthy of the name.

6.3 The Enforceability Gap

The central conclusion that emerges from this analysis is the existence of what might be termed an *enforceability gap* in the principle of good faith. Good faith is normatively robust — it is clearly a principle of customary international law, it is codified in the VCLT, and it generates genuine legal obligations in specific contexts. But its general enforceability is structurally limited by features of the international legal order that no doctrinal elaboration can entirely overcome.

Three such limiting features are particularly significant. First, the *consent requirement* in international adjudication means that good faith obligations can only be enforced against states that have accepted a tribunal's jurisdiction. Second, the *standard-of-proof problem* means that establishing a breach of good faith requires evidence of subjective intention that is rarely available[26]. Third, the *political contestation problem* means that in areas like climate negotiations, the content of good faith conduct is itself disputed.

6.4 Where the Line Falls

The line between moral expectation and legal obligation does not run between a domain of "mere morality" and a domain of "real law." Rather, it runs between different institutional configurations of the same underlying principle. Good faith becomes a *legally operative* norm — capable of generating rights, obligations, and remedies in adjudicative proceedings — when it is embedded in a specific relational and institutional context: a treaty relationship between identified parties, a dispute settlement forum with jurisdiction, and a factual record permitting application of an objective standard.

When these conditions are absent, as they typically are in multilateral climate negotiations or in the general diplomacy of sovereign states, good faith retains its normative significance as a structural principle and a political-reputational standard, but it cannot bear the weight of legal enforcement. The moral expectation of sincere dealing remains, and its violation generates genuine moral and political consequences — reputational damage, erosion of trust, and the degradation of cooperative frameworks. But these are consequences of a different kind from legal liability.

VII. Conclusion

Good faith stands at the intersection of law and morality in international relations, and its ambiguity in that position is not a defect to be corrected but a structural feature to be understood. The principle

[26] Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals, Cambridge University Press, Cambridge, 1953 (repr. 2006), pp. 105–160.

transforms from moral expectation into legal obligation through a process that is neither automatic nor uniform: it requires the presence of an identified relational context, an institutional mechanism capable of applying an objective standard, and sufficient specificity in the applicable obligation to permit a determination of compliance.

The ICJ has contributed most systematically to the juridical elaboration of good faith, recognizing it as a structural principle of the international legal order, developing its relational applications through estoppel and unilateral declarations, and deploying it as an interpretive discipline in treaty construction. The WTO has advanced good faith jurisprudence in the specific context of trade law, using it to prohibit the abuse of rights and to set standards for procedural conduct in dispute settlement. International climate negotiations reveal both the indispensability and the limits of the principle: indispensable because the Paris Agreement's entire architecture presupposes honest and cooperative conduct by states; limited because the absence of adjudicative enforcement leaves good faith operating as a political norm rather than a justiciable legal standard.

The broader lesson may be this: international law's increasing reliance on good faith reflects not a confusion between law and morality but a recognition that complex cooperative regimes cannot be fully reduced to specific rules. Principles like good faith are the connective tissue of international legality, present wherever specific rules leave gaps, and enforceable wherever institutions exist to give them effect. The challenge for international lawyers is not to dissolve the tension between moral expectation and legal obligation, but to manage it — with doctrinal precision, institutional creativity, and the intellectual honesty that good faith itself demands.

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