Knapp offers a more fully developed standard of fair dealing in negotiation, one under which “neither can withdraw for an ‘unjustified’ reason, and yet ... neither will be compelled to perform if—after good faith bargaining—actual agreement cannot be reached.” Bad faith bargaining may consist of “an insistence on terms so clearly unreasonable that they could not have been advanced with any expectation of acceptance, coupled with some demonstrable advantage to be gained by ... avoiding the contemplated transaction.”


Knapp, supra note 2, at 685, 723. Iklé sets out four possible meanings of “good faith” in treaty negotiation: 1. To make it highly probably that agreement will be reached. This means concretely that a party has to lower its terms whenever the probability of reaching an agreement falls below the desired level.......2. Not to maintain a position which one feels sure will preclude agreement.... According to a more stringent variant of this second criterion, a government should not make even initial proposals which it knows to be “unacceptable” to the opponent....3. To want an agreement of the type that is being negotiated and to be eager to have one's terms ac-cepted....4. To follow certain rules of accommodation [such as the rule that concessions must be reciprocated] while negotiating.F. Iklé, supra note 165, at 111-13 (emphasis in original)
IV.8.1 - Principle of pre-contractual liability