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Abstracts

ABSTRACTS

IT DON'T COME EEZ: THE FAILURE AND FUTURE OF COASTAL STATE FISHERIES MANAGEMENT

Donna R. Christie

Early in the negotiations of the Third United Nations Conference on the Law of the Sea (UNCLOS III) there was widespread agreement that coastal states should exercise exclusive jurisdiction over fisheries in an extended economic zone (EEZ). By 1977, more than forty nations had extended sovereign or exclusive jurisdiction over fisheries to 200 miles, and by the conclusion of UNCLOS III negotiations in 1982, more than ninety nations had extended offshore jurisdiction over fisheries to 200 miles. This early consensus in the UNCLOS III negotiations, along with emerging state practice, reflected coastal states' concerns about escalation in distant water fishing, declining fish stocks, and the failure of international fisheries organizations to manage high seas fisheries effectively. This article discusses the continuing decline of the state of fisheries since the development in international law of coastal state management of fisheries within 200-mile EEZs, focusing on the role of international treaties and obligations, as well as other developments, such as market-based approaches, in improving fisheries management.

STRATEGIC MYOPIA: THE UNITED STATES, CRUISE MISSILES, AND THE MISSILE TECHNOLOGY CONTROL REGIME

Michael Dutra

Cruise missiles are one of the most serious, if overlooked, threats to the security of the United States and its ability to project power overseas. This article begins with an overview of what constitutes a cruise missile, defines the threat that such weapons pose to the United States and its interests, and discusses the motivations behind various states' pursuit of cruise missile strike capabilities. The Missile Technology Control Regime (MTCR) stands as the best tool for curbing the proliferation of cruise missiles; however, because the ballistic missile threat has long overshadowed cruise missiles, the pathways to cruise missile development and proliferation have remained largely unguarded. While some recent steps have been taken to close loopholes in the MTCR, this article analyzes the difficulties that have emerged in creating the consensus needed to tighten the relevant language in the MTCR, and the technical challenges to cruise missile non-proliferation efforts. This article concludes with a brief discussion of various policy

and legal alternatives for strengthening the MTCR and slowing the spread of cruise missiles and related technologies.

THE TIES THAT BIND: U.S. FOREIGN POLICY COMMITMENTS AND THE CONSTITUTIONALITY OF ENTRENCHING EXECUTIVE AGREEMENTS

Justin C. Danilewitz

Is it constitutional for American presidents to use executive agreements in order to "entrench" foreign policy commitments in ways that constrain the conduct of future policy? This inquiry is complicated by the lack of explicit textual reference to executive agreements in the U.S. Constitution, requiring an exploration of secondary sources of constitutional interpretation, including case law, custom, and Framers' intent. These sources lead me to argue that executive entrenchment is likely unconstitutional when it seeks to arrogate to the executive powers held concurrently with the Congress. The more challenging question, however, is not the case of "inter-branch" entrenchment, but what might be called "intra-branch" entrenchment. In the latter instance, a president might seek to obligate, not Congress, but the executive branch itself, potentially binding a future administration different from the one entering into the agreement. Can entrenchment in this instance lawfully limit the flexibility of future administrations, or would a concept such as the "last-in-time" doctrine applicable to statutory interpretation apply here as well? If the last-in-time doctrine pertains, is this so as a matter of pragmatism or of law? I argue against the constitutionality of intra-branch entrenchment of executive agreements on both realist and positivist grounds. My claim is that little can (or should) prevent the revision or repeal of a foreign commitment seen by a future administration to be in need of review. Our allies should be on notice — as some evidently already are — that supposed "entrenchment" of mutual commitments through executive agreement is no more than a myth. This is so whether they consider the American commitments to be entrenched or not.

OUTSOURCING REFUGEE PROTECTION RESPONSIBILITIES: THE SECOND LIFE OF AN UNCONSCIONABLE IDEA

Ronald C. Smith

A stark new proposal to create an international market for refugee placement has been published by the Office of the United Nations High Commissioner for Refugees. The author of the proposal presents the concept of paying other nations to relieve a country of its international obligation to provide asylum to eligible individuals as a natural outgrowth of current discussions in Europe. This article explores the proposal and its close links to a British plan to ship asylum seekers to processing centers outside United Kingdom. This article then argues that creating an international market to trade refugee protection responsibilities is both foolhardy and unconscionable: foolhardy because it is not even in the selfish best interests of nations to export this responsibility and unconscionable because even debating the concept debases one of the supreme achievements of international diplomacy, an accord reached in the chaotic aftermath of World War II that is certainly a watershed moment in collective recognition of human rights by the community of nations.