

AJIL

American Journal of International Law

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AMERICAN JOURNAL OF INTERNATIONAL LAW

Vol. 115

October 2021

No. 4

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Lead Articles

Judicialization of the Sea: Bargaining in the Shadow of UNCLOS

Sara McLaughlin Mitchell and Andrew P. Owsiak 579

Based on a comprehensive empirical analysis of maritime disputes during the twentieth century, this Article argues that international courts cast a shadow that markedly changes bargaining by potential litigating states. In particular, the filing of optional declarations under Article 287 of UNCLOS increases states' use of non-binding methods of dispute settlement, and the Article theorizes that this occurs because the declarations credibly threaten court involvement and provide more information about likely litigation outcomes. The Article's central finding is that states that file Article 287 declarations have fewer maritime claims, more peaceful negotiations, and less need for judicial dispute settlement.

Governing the Interface of U.S.-China Trade Relations

Gregory Shaffer 622

The strained U.S.-China trade relationship poses a frontal challenge to the multilateral trading system and has broad repercussions for international law. This Article addresses three dimensions of this relationship: (1) the economic dimension; (2) the geopolitical/national security dimension; and (3) the normative/social policy dimension. The Article advances a middle ground between those seeking to reinforce the World Trade Organization (WTO) system with new rules that limit the state's role in the economy, and those who reject WTO constraints in favor of a power-based system. It proposes pragmatic reforms to govern the interface of the two states' respective systems across these three dimensions to facilitate ongoing exchange while giving each country latitude to protect itself from the externalities of the other's policies. The result would be greater room for bilateral and plurilateral bargaining, but conducted within the umbrella of the multilateral system.

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AJIL (ISSN: 0002-9300) is published quarterly (January, April, July, October) in print and digitally by Cambridge University Press (One Liberty Plaza, 20th floor, New York, NY 10006) on behalf of the American Society of International Law. Periodicals postage rate paid at New York, NY, and at additional mailing offices. POSTMASTER: Send address changes in the USA, Canada, and Mexico to: *American Journal of International Law*, Cambridge University Press, Journals Fulfillment Department, One Liberty Plaza, 20th floor, New York, NY 10006. Send address changes elsewhere to *American Journal of International Law*, Cambridge University Press, Journals Fulfillment Department, UPH, Shaftesbury Road, Cambridge CB2 8BS, England.

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AJIL shall be cited according to the following example:

115 *AJIL* 219 (2021)

ISSN: 0002-9300

E-ISSN: 2161-7953

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