zones, it does not, as the Court noted, have primacy over other methods. Both equity and special circumstances can dictate the use of other means to determine the boundary. In this case the relevant geographical circumstances of the area dictated the need for the use of a different method: the bisector method. Where the decision does add to existing jurisprudence is in relation to the use of the bisector line to delimit, in part, the territorial seas of the parties. The novel aspect of this decision is that it represents the first time that the Court has had to depart from the equidistance line in the delimitation of the boundary of territorial seas under Article 15 of UNCLOS because of special circumstances.[41] It is, however, only a small departure as it is again based on geographical (special) circumstances, not a change in the interpretation of the law.

There is, however, a more contentious aspect to the judgment; that is the treatment afforded to the territorial seas of the islands. In acknowledging the right of States to claim a 12-mile territorial sea around islands and in dealing with the delimitation of the maritime boundary in the vicinity of the islands on the basis of the 12-mile limit the Court appeared to act contrary to the submissions of the parties. Honduras, in particular, stated 'that its territorial sea would not extend south of the 14° 59.8′ N parallel and this was also reflected in its final submissions'.[42] Judge Koroma, in his separate opinion, and Judge Ad Hoc Gaja, in his declaration, suggested that the effect of the decision was to do just that. These statements seem, however, to be based on the premise that any and all territorial seas a State claims are one and the same. In fact the territorial seas around the islands are distinct from the territorial sea appurtenant to the mainland, as recognized in the judgment of the Court in paragraph 264 where it noted that the islands lie more than 24 miles from the mainland, and in the following statement made as the Court turned to consider the question of delimitation of the territorial seas of the islands: 'Thus the Court leaves behind it the delimitation line based on the relevant mainland coast and turns to maritime delimitation between opposite-facing islands.'[43] There is, therefore, no extension of any territorial sea; rather there is a separate, or series of separate territorial seas which prompt the requirement for delimitation where they overlap with the territorial seas or other maritime zones of the other State to the dispute.

ELIZABETH A KIRK*

II. CASES BEFORE THE COURT

For many years the July issue of this journal has included a factual update of developments in cases before the ICJ during the previous 12 months. Recent developments in the electronic delivery of the relevant information and, in particular, the recent and very impressive upgrading of the ICJ website mean that this information is

(Judgment) [1993] ICJ Rep 74–75; *Cameroon v Nigeria* (n 21) 339, para 49; *Gulf of Maine Area* (n 19) 278, para 59.

[41] *Nicaragua v Honduras* (n 2) para 280.

[42] Koroma, separate judgment, para 20.

[43] *Nicaragua v Honduras* (n 2) para 299.

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readily available to readers of the journal at the click of a button, so to speak. Accordingly, it has been agreed that this factual update will be discontinued. However, updates on cases before the court as well as the full text of decisions and other information relevant to the functioning of the Court is available from the ICJ website at <www.icj-cij.org>.

J Craig Barker

III. APPELLATE BODY REPORT, *BRAZIL—MEASURES AFFECTING IMPORTS OF RETREADED TYRES*, ADOPTED ON 17 DECEMBER 2007

A. Introduction

International trade law and environmental law have grown exponentially over the past decades. Both areas of international law have gained in influence, complexity and relevance. The parameters of the relationship between both areas are defined by treaty language, soft law, practice and, increasingly, also by judicial decisions. The WTO dispute settlement system, in particular, has contributed, since the first Appellate Body report in *US—Gasoline*, to our understanding of how international law constrains and regulates the policy space within which States can take trade and environmental measures. Trade measures can have environmental externalities and environmental measures can have trade externalities. WTO panels and the Appellate Body have been confronted with both types of measures, even if they can only assess the legality of such measures in the light of the WTO covered agreements. Their task is to examine whether such measures are WTO-consistent, and if not, whether one of the exception clauses can justify this inconsistency. In interpreting and applying exception clauses like Article XX GATT 1994, panels and the Appellate Body need to decide how far the power of WTO Members to design their own trade and environmental policies stretches. They only have the treaty text, complemented by means of interpretation, available to make that decision. In a recent report in a dispute between Brazil and the European Communities (EC) on the GATT 1994-consistency of measures relating to certain recycled products, whose waste poses particular health and environmental risks, the Appellate Body adopted a relatively broad interpretation of Article XX GATT 1994. At first glance, the decision suggests a widening of the scope of discretion of WTO Members in adopting trade-restrictive measures for environmental and other purposes recognized in Article XX. On closer view, the reasoning of the Appellate Body is left sufficiently vague to ensure that this decision is not the final statement on the interpretation of 'necessary' in Article XX.

B. Background

On 12 June 2007, the WTO Panel in *Brazil—Measures Affecting Imports of Retreaded Tyres ('Brazil—Retreaded Tyres')* found that various Brazilian federal and State measures relating to the importation of retreaded tyres violated the GATT 1994 and could not be justified under that agreement. The EC is a net exporter of retreaded tyres.

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