

January 2020

Contribution to the report of the Secretary-General

0. Case No. -1. ) n 1+ &'ril 201(, 59raine sub%itte" a reOuest to the Tribunal for the 'res.ri'tion of 'ro#isional %easures in res'e.t of a "is'ute with the ;ussian <e"eration .on.ernin\$ the i%%unity of three 59rainian na#al #essels an" the twenty3four ser#i.e%en on boar"! The ;eOuest was %a"e 'ursuant to arti.le 2(0, 'ara\$ra'h 5, of the Con#ention, 'en"in\$ the .onstitution of an arbitral tribunal. ) n :1 \* ar.h 201(, 59raine ha" institute" arbitral 'ro.ee" in\$s un"er &ne2 =ll to the Con#ention a\$ainst the ;ussian <e"eration. The "is'ute relates to an in.i"ent on 25 No#e%ber 201,, in whi.h three 59rainian na#al #essels an" their 26 ser#i.e%en were arreste" an" "etaine" by authorities of the ;ussian <e"eration. 59raine reOueste" the Tribunal to in.i.ate 'ro#isional %easures reOuirin\$ the ;ussian <e"eration to 'ro%'tly release the three 59rainian na#al #essels an" return the% to the .usto"y of 59raine, to sus'en" .ri%inal 'ro.ee" in\$s a\$ainst the 26 "etaine" 59rainian ser#i.e%en an" refrain fro% initiatin\$ new 'ro.ee" in\$s, an" to release the 26 "etaine" 59rainian ser#i.e%en an" allow the% to return to 59raine. >y note #erbale "ate" :0 &'ril 201(, the ;ussian <e"eration infor%e" the Tribunal of its "e.ision not to 'arti.i'ate in the hearin\$ on 'ro#isional %easures in the .ase institute" by 59raine!. 1ubli. hearin\$s were hel" on 10 \* ay 201(. In its ) r"er on 'ro#isional %easures of 25 \* ay 201(, the Tribunal too9 the #iew that what o. .urre" a' 'ears to be the use of force in the .onte2t of a law enfor.e%ent o'eration rather than a %ilitary o'eration! an" thus hel" that \*rima facie the e2.e'tion set out in arti.le 2(, 'ara\$ra'h 1(b), of the Con#ention, whi.h relates to %ilitary a.ti#ities, "i" not a' 'ly an" that the &ne2 =ll arbitral tribunal woul" ha#e /uris"i.tion o#er the "is'ute sub%itte" to it. The Tribunal .onsi"ere" that the ri\$hts .lai%e" by 59raine on the basis of arti.les :2, 5,, (5 an" (+ of the Con#ention are 'lausible un"er the .ir.u%stan.es.! 1en"in\$ a "e.ision by the &ne2 =ll arbitral tribunal, the Tribunal or"ere" that the ;ussian <e"eration shoul" i%%e"iately release the three 59rainian na#al #essels, an" return the% to the .usto"y of 59raine an" i%%e"iately release the 26 "etaine" 59rainian ser#i.e%en an" allow the% to return to 59raine. The Tribunal "i" not .onsi"er it ne.essary to reOuire the ;ussian <e"eration to sus'en" .ri%inal 'ro.ee" in\$s a\$ainst the 26 "etaine" 59rainian ser#i.e%en an" refrain fro% initiatin\$ new 'ro.ee" in\$s. ?owe#er, 59raine an" the ;ussian <e"eration were or"ere" to refrain fro% ta9in\$ any a.tion whi.h %i\$ht a\$\$ra#ate or e2ten" the "is'ute sub%itte" to the &ne2 =ll arbitral tribunal.

2. Case No. -3. ) n 21 \* ay 201(, Swit8erlan" sub%itte" a reOuest to the Tribunal for the 'res.ri'tion of 'ro#isional %easures in res'e.t of a "is'ute with Ni\$eria .on.ernin\$ the arrest an" "etention of the M/T "&an Padre Pio", its .rew an" .ar\$o. The ;eOuest was %a"e 'ursuant to arti.le 2(0, 'ara\$ra'h 5, of the Con#ention, 'en"in\$ the .onstitution of an arbitral tribunal. ) n + \* ay 201(, Swit8erlan" ha" institute" arbitral 'ro.ee" in\$s a\$ainst Ni\$eria un"er &ne2 =ll to the Con#ention. The "is'ute relates to e#ents whi.h o. .urre" on 2232: January 201,, in.lu" in\$ the inter.e'tion an" arrest by the Ni\$erian na#y of the M/T "&an Padre Pio", a %otor tan9er flyin\$ the fla\$ of Swit8erlan", while it was en\$a\$e" in one of se#eral shi'3to3shi' (iSTS7) transfers of \$asoil!. In its ;eOuest, Swit8erlan" as9e" the Tribunal to or"er Ni\$eria to i%%e"iately ta9e all %easures ne.essary to ensure that all restri.tions on the liberty, se.urity an" %o#e%ent of the M/T "&an Padre Pio" her .rew an" .ar\$o are i%%e"iately lifte" to allow an" enable the% to lea#e Ni\$eria. In 'arti.ular, Swit8erlan" reOueste" that Ni\$eria shall (a) enable the M/T "&an Padre Pio" to be resu' 'lie" an" .rewe" so as to be able to lea#e, with her .ar\$o, her 'la.e of "etention an" the %ariti%e areas un"er the /uris"i.tion of Ni\$eria an" e2er.ise the free"o% of na#i\$ation (b) release the \*aster an" the three other offi.ers of the San 1a"re 1io! an" allow the% to lea#e the territory an" %ariti%e areas un"er the /uris"i.tion of Ni\$eria an" (.) to sus'en" all .ourt an" a"i%istrati#e 'ro.ee" in\$s an" refrain fro% initiatin\$ new ones whi.h %i\$ht a\$\$ra#ate or e2ten" the "is'ute sub%itte" to the &ne2 =ll arbitral tribunal. In its ) r"er, the Tribunal .onsi"ere" that at least so%e of the 'ro#isions in#o9e" by Swit8erlan" a' 'eare" to affor" a basis on whi.h the /uris"i.tion of the &ne2 =ll arbitral tribunal %i\$ht be foun"e"! an" a. .or" in\$ly .on.lu"e" that a "is'ute .on.ernin\$ the inter' retation or a' 'li.ation of the Con#en\$ i.

.ir.u%stan.es of the 'resent .ase, the arrest an" "etention of the M/T “&an Padre Pio” .oul" irre'arably 're/u"i.e the ri\$hts .lai%e" by Swit8erlan" relatin\$ to the free"o% of na#i\$ation an" the e2er.ise of e2.lusi#e /uris"i.tion o#er the #essel as its fla\$ State if the &ne2 =ll arbitral tribunal a"/u"\$es that those ri\$hts belon\$ to Swit8erlan"! an" that there is a real an" i%%inent ris9 of irre'arable 're/u"i.e to the ri\$hts of Swit8erlan" 'en"in\$ the .onstitution an" fun.tionin\$ of the &ne2 =ll arbitral tribunal!. The Tribunal or"ere" Ni\$eria to release the M/T “&an Padre Pio”, its .ar\$o an" .rew an" ensure that the M/T “&an Padre Pio” its .ar\$o an" .rew were allowe" to lea#e the territory of Ni\$eria u' on the 'ostin\$ by Swit8erlan" of finan.ial se.urity in the a%ount of 5SC 16 %illion with Ni\$eria an" the issuan.e of an un"erta9in\$ by Swit8erlan" that the .rew woul" be a#ailable an" 'resent at the .ri%inal 'ro.ee"in\$s in Ni\$eria if the &ne2 =ll arbitral tribunal foun" that Ni\$eria's a.tions in relation to the e#ent whi.h o..urre" on 2232: January 201, "i" not .onstitute a #iolation of the Con#ention.

/ . Case No. -4. The .ase relates to the "is'ute between \*auritius an" \*al"i#es .on.ernin\$ the "eli%itation of their %ariti%e boun"ary in the ln"ian ) .ean. It was sub%itte" to a s'e.ial .ha%ber of the Tribunal by notifi.ation of a s'e.ial a\$ree%ent .on.lu"e" between the 1arties on 26 Se'te%ber 201 (. &t the re0uest of the 1arties, the Tribunal, by ) r"er of 2-Se'te%ber 201 (, for%e" the S'e.ial Cha%ber un"er arti.le 15, 'ara\$ra'h 2, of the Statute. >y ) r"er "ate" 10 ) .tober 201 (, the 1resi"ent of the S'e.ial Cha%ber fi2e" ( &'ril 2020 an" ( ) .tober 2020 as the ti%e3li%its for the filin\$ of a \*e%orial by \*auritius an" a Counter3 \*e%orial by \*al"i#es, res'e.ti#ely. ) n 1, 4e.e%ber 201 (, \*al"i#es file" with the S'e.ial Cha%ber 'reli%inary ob/e.tions to the /uris"i.tion of the S'e.ial Cha%ber of the Tribunal an" to the a"%issibility of the .lai%is sub%itte" by the ;e'ubli. of \*auritius. 1ursuant to arti.le (- of the ;ules of the Tribunal, the 'ro.ee"in\$s on the %erits were sus'en"e" u'on re.ei't of the 'reli%inary ob/e.tions by the ;e\$istry. >y ) r"er of 1( 4e.e%ber 201 (, the 1resi"ent of the S'e.ial Cha%ber fi2e" 1- <ebruary 2020 as the ti%e3li%it for the filin\$ by \*auritius of written obser#ations on the 'reli%inary ob/e.tions file" by \*al"i#es, an" 1- &'ril 2020 as the ti%e3li%it for \*al"i#es to 'resent its written obser#ations in re'ly, 'ursuant to arti.le (-, 'ara\$ra'h : , of the ;ules.

+ . Case No. -.. The .ase relates to the "is'ute between Swit8erlan" an" Ni\$eria .on.ernin\$ the arrest an" "etention of the M/T “&an Padre Pio”, its .rew an" .ar\$o. The M/T “&an Padre Pio” is a %otor tan9er flyin\$ the fla\$ of Swit8erlan", whi.h was arreste" by Ni\$erian authorities while it was alle\$e"ly en\$a\$a" in shi'3to3shi' transfers of \$asoil in Ni\$eria's e2.lusi#e e.ono%i.8one. Swit8erlan" ha" 're#iously institute" arbitral 'ro.ee"in\$s a\$ainst Ni\$eria un"er &ne2 =ll to the Con#ention in relation to the arrest an" "etention of the M/T “&an Padre Pio”, its .rew an" .ar\$o. The .ase was sub%itte" to the Tribunal by notifi.ation of

