

29 DECEMBER 2021
ORDER

**THE M/T "SAN PADRE PIO" (NO. 2) CASE
(SWITZERLAND/NIGERIA)**

**AFFAIRE DU NAVIRE « SAN PADRE PIO » (NO. 2)
(SUISSE/NIGÉRIA)**

29 DECEMBER 2021
ORDONNANCE

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



YEAR 2021

29 December 2021

List of cases:
No. 29THE M/T “SAN PADRE PIO” (No. 2) CASE
(SWITZERLAND/NIGERIA)

ORDER

The President of the International Tribunal for the Law of the Sea,

Having regard to article 27 of the Statute of the Tribunal,

Having regard to articles 45 and 105 of Rules of the Tribunal,

Having regard to the Orders of the President of the Tribunal of 7 January 2020, 5 January 2021, 18 June 2021 and 10 August 2021,

Makes the following Order:

1. Whereas, on 17 December 2019, a special agreement was concluded between the Swiss Confederation (hereinafter “Switzerland”) and the Federal Republic of Nigeria (hereinafter “Nigeria”) to submit to the Tribunal their dispute concerning the arrest and detention of the *M/T “San Padre Pio”*, its crew and cargo;

2. Whereas, pursuant to the Order dated 7 January 2020, the President fixed 6 July 2020 and 6 January 2021 as the time-limits for the filing of the Memorial of Switzerland and the Counter-Memorial of Nigeria, respectively; and whereas the Memorial was filed within the prescribed time-limit;
3. Whereas, pursuant to the Order dated 5 January 2021, the President extended the time-limit for the submission of the Counter-Memorial of Nigeria to 6 April 2021; and whereas the Counter-Memorial was not filed within the extended time-limit;
4. Whereas, pursuant to the Order dated 18 June 2021, the President fixed 9 September 2021 as the date for the opening of the oral proceedings;
5. Whereas, by letter dated 30 July 2021, the Agent of Switzerland requested that “[i]n view of the ongoing implementation of a Memorandum of Understanding (MoU) concluded by Switzerland and Nigeria on 20 May 2021 regarding the issue of the M/T “San Padre Pio” ... the opening of the oral proceedings be postponed until a later date towards the end of fall 2021”; and whereas a copy of that letter was transmitted forthwith to the Agent of Nigeria;
6. Whereas on 30 July 2021 the Agent of Nigeria was invited to indicate, by 4 August 2021, Nigeria’s views with regard to Switzerland’s request for postponement of the oral proceedings; and whereas no response was received from the Agent of Nigeria by the said date;
7. Whereas, pursuant to the Order dated 10 August 2021, the President of the Tribunal, having regard to the special circumstances of the case and having sought the views of the Parties, postponed the opening of the oral proceedings until a later date to be fixed after consultations with the Parties;
8. Whereas, by letter dated 13 August 2021, the Agent of Nigeria indicated that Nigeria “oppose[d] the request of Switzerland to postpone the opening of the oral hearing of the case”, and “request[ed] that the case be formally terminated by the Tribunal” in accordance with the Memorandum of Understanding signed by Switzerland and Nigeria on 20 May 2021, a copy of which was attached to the letter; and whereas a copy of that letter was transmitted forthwith to the Agent of Switzerland;

9. Whereas, by letter dated 18 August 2021, the Agent of Switzerland stated that “Nigeria’s request for ‘termination’ of the M/T “San Padre Pio” case [was] inconsistent with the terms of paragraph 4 of the MoU” and that “Switzerland thus oppose[d] Nigeria’s request to terminate the proceedings at this time”;

10. Whereas, at the request of the President, by letters of 19 August 2021, the Parties were informed that in light of their communications, “it appear[ed] that there [was] currently no agreement between the Parties for the case to be discontinued, in accordance with article 105 of the Rules”;

11. Whereas, by letter dated 10 December 2021, the Agent of Switzerland, with reference to the Memorandum of Understanding concluded between the Parties, a copy of which was annexed to her letter, informed the Tribunal as follows:

[a]ccording to the MoU, “*the proceedings of the M/T ‘San Padre Pio’ (No. 2) case (Switzerland/Nigeria) (Case No 29) before the International Tribunal for the Law of the Sea shall be discontinued from the moment that the M/T ‘San Padre Pio’ enters the high seas, or the territorial sea or Exclusive Economic Zone of another State*”;

12. Whereas, in the said letter, the Agent of Switzerland stated that “Switzerland is pleased to inform the Tribunal that, as of 10 December 2021, the vessel M/T “*San Padre Pio*” exited the exclusive economic zone of Nigeria, and entered the exclusive economic zone of Bénin”, and that, in accordance with the terms of the Memorandum of Understanding, “Switzerland requests the Tribunal to record the discontinuance of the M/T ‘*San Padre Pio*’ (No. 2) Case (Switzerland/Nigeria) (Case No 29) in accordance with Article 105 of the ITLOS Rules and to remove the case from Tribunal’s List of cases”; and whereas a copy of the letter dated 10 December 2021 from the Agent of Switzerland was transmitted forthwith to the Agent of Nigeria;

13. Whereas, by letter dated 24 December 2021, filed in the Registry on 27 December 2021, the Agent of Nigeria indicated that, “pursuant to Paragraph 4 of the Memorandum of Understanding ... Nigeria and Switzerland have obligation to promptly notify the Tribunal of the departure of San Padre Pio from the Maritime space of Nigeria and to discontinue the case promptly”;

14. Whereas, in the said letter, the Agent of Nigeria further indicated that, "on the 10th of December, 2021, San Padre Pio was released and departed the Maritime space of Nigeria and entered the Exclusive Economic Zone of Benin Republic" and that, "[o]n this basis therefore, Nigeria has no objection whatsoever to the discontinuance of the case by the Tribunal as already notified by Switzerland"; and whereas a copy of the letter dated 24 December 2021 from the Agent of Nigeria was transmitted forthwith to the Agent of Switzerland;

15. Whereas, the Memorandum of Understanding concluded between the Parties states, in its paragraph 5, that "[f]or the sake of clarity, upon the discontinuance of these proceedings, the Provisional Measures Order dated 6th July, 2019, made in: The M/T 'San Padre Pio' case (Switzerland/Nigeria) (Case No. 27) will cease to have effect" and, in its paragraph 6, that "[t]his agreement constitutes a full and final settlement of the matter relating to the M/T 'San Padre Pio' between the Parties";

THE PRESIDENT

Places on record the discontinuance, by agreement of the Parties, of the proceedings initiated on 17 December 2019 by Switzerland and Nigeria; and

Orders that the case be removed from the List of cases.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-ninth day of December, two thousand and twenty-one, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Switzerland and to the Government of Nigeria, respectively.

(signed)

Albert J. Hoffmann,
President

(signed)

Ximena Hinrichs Oyarce,
Registrar