I. SUMMARY OF ALLEGATIONS:

1. On October 1, 1990, the Commission received a petition submitted on behalf of the following petitioners:

a. The Haitian Centre for Human Rights, Port-au-Prince, Haiti.
b. Centre Karl Leveque, Port-au-Prince, Haiti.
c. The National Coalition for Haitian Refugees, New York, N.Y., U.S.A.
d. The Haitian Refugee Center, Inc., Miami, Florida, U.S.A.
e. The Haitian Centers Council, New York, N.Y., U.S.A.
f. The Haitian-Americans United for Progress, Cambria Heights, U.S.A.
g. The Washington Office of Haiti.
h. Jeannette Gedeon.
i. Dukens Luma.[FN3]
j. Fito Jean.[FN4]
k. Unnamed Haitian Nationals who have been and are being returned to Haiti against their will.[FN5]

[FN3] Testified before the Commission on February 26, 1993, and on February 10, 1994 joined in this petition. He was asked to submit an affidavit at the hearing by the Commission. He complied with this request.
[FN4] Testified before the Commission on February 10, 1994, and was asked to submit an affidavit at the hearing by the Commission. He complied with this request, and has joined in this petition.
[FN5] Article 32(b) provides for an account of the act or situation that is denounced, specifying the place and date of the alleged violations and, if possibly, the name of the victims of such violations as well as that of any official that might have been appraised of the act or situation that was denounced.
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2. The petition alleged that Haitian boat people have been and continue to be interdicted and returned to Haiti pursuant to:

(a) the Haitian Migrant Interdiction Program established by Proclamation 4865 and Executive Order 12324 issued by then President Ronald Reagan on September 29, 1981, and
(b) a cooperative agreement between the U.S. Administration and the Duvalier regime entered on September 23, 1981, through an exchange of diplomatic notes.

3. The petition further alleged that many of these boat people had a reasonable fear that they would be persecuted if returned to Haiti, but were denied a proper forum and processing procedures for resolution of their claims. This denial was in violation of the U.S. Government's obligation not to return a refugee in any manner whatsoever to the frontiers of a territory where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. Despite promises made by the Haitian Government (in diplomatic exchange of letters) that returnees would not be punished for leaving Haiti, boat people involuntarily interdicted and returned by the United States Government have been routinely detained upon their return to Haiti.

4. On May 7, 8, and 13, 1990, forty-three (43) returnees, including some Haitians who had been detained in Immigration and Naturalization Service's (INS) Krome Detention Center in Miami, Florida, were immediately arrested by Haitian military authorities upon their arrival in Port-au-Prince. They were held in the National Penitentiary, some for longer than one week, before being released. On June 5th, 1990, another group of thirty-one (31) Haitians deported from Krome were arrested upon arrival in Haiti and they alleged, that they were told that their whereabouts would thereafter be closely monitored by the Government. Military authorities stated that at least 16 of the group were boat people. The petitioners alleged that they were informed and believed that boat people who departed in whole or in part because their lives or freedom were threatened almost always faced an even greater threat following their interdiction and forcible return to the military authorities in Haiti.

5. An affidavit of a dissident involved in organizing demonstrations against the military regime in Haiti stated that in 1987, after he decided it was too dangerous to remain in Haiti, he fled but was interdicted and returned to Haiti by the Coast Guard. He declares that: "The immigration inspector who interviewed me declared that since there was a new government, they

will return me to Haiti. They refused to admit that I had good reasons to leave Haiti and that death threats were still hanging on my head... Since my return to Haiti I have been forced to move from house to house, never sleeping in the same place in order to ensure that the Army never learns of my whereabouts and arrests me." Since the inception of the program over 361 boats carrying 21,461 Haitians have been intercepted, and only six Haitians have been allowed to come to the U.S. to file asylum claims.

6. On October 3rd, 1991, the petitioners filed an Emergency Application For Provisional OAS Action to Halt the United States' Policy of Interdicting and Deporting Haitian Refugees. It stated inter alia, that the United States Government had continued interdicting Haitian asylum seekers and expelling those who entered the United States. The interdiction policy deprives Haitians of a fair opportunity to articulate and substantiate claims for political asylum, this was concretely established by the results of the program. An interdicted Haitian's likelihood of being considered to possess a legitimate claim was approximately .005%. A Haitian who avoided interdiction and arrived in the United States had at least a 5% chance of being considered to possess a legitimate asylum claim. The strength of the asylum claims did not suddenly change once Haitian boat people got around the interdiction program, instead, what changed was the opportunity to be heard.

7. On February 6th, 1992, the petitioners filed an Emergency Application for Provisional OAS Action to Halt the United States Government's Policy of Returning Haitian Refugees Interdicted since the Military coup of September, 30, 1991. It stated that the brutal and violent military coup which ousted democratically elected President Jean-Bertrand Aristide had plunged Haiti into a cycle of political violence which had claimed over 1,500 lives. Maintenance of the interdiction program despite the coup had deprived Haitians fleeing the military junta of a fair opportunity to articulate and substantiate claims of political asylum.

8. According to information provided to the petitioners' counsel in a telephone conversation with an Immigration and Naturalization Service (INS) Press Officer on February 5th, 1992, the INS estimated that "since November of 1991, 15,081 Haitians had been interdicted." Historically only 1.8% of those Haitians permitted to present asylum claims, would actually be given asylum. See Refugee Reports, Vol. XII, No. 12, Dec. 30, 1991 at 12.) Given the ongoing violence in Haiti, the inability of the interdiction program to fairly identify those with legitimate claims of asylum, and the inability of the United States Government to meaningfully ensure that the Haitians returned would not be harmed, the Haitian Interdiction Program represented a serious violation of several provisions of international law. (Articles allegedly violated are listed in part II of this report.)

9. On February 11th, 1992, the petitioners submitted a Supplemental Filing in support of the Emergency Application filed by them on February 6th, 1992. They alleged that the United Nations Officers conducted four interviews at the United States Government's Naval base in Guantanamo, and that the interviews allegedly removed all doubt that Haitian interdictees forcibly repatriated by the United States Government had been, and would be brutalized by the military Government upon their return to Haiti. The interviewees all fled Haiti for political reasons and were afiliated with pro-Aristide parties.[FN6] They alleged that Government soldiers

were present on the docks when the interdictees were repatriated, and asked for the names and addresses of repatriated interdictees after they had been processed by the Haitian Red Cross.

[FN6] Documentary exhibits submitted of these four interviews. Three departed from Haiti in November of 1991, and the fourth in January of 1992. Their boats were intercepted by U.S. Coast Guard cutters and repatriated to Haiti. They left Haiti a second time in January of 1992, and upon being intercepted by the Coast Guard Cutters were brought to the United States Naval Base in Guantanamo.

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10. Later many of the repatriated interdictees were arrested at home. Some never made it home and were arrested at pre-established roadblocks. Several of those arrested were later found shot to death. Some were beaten in public by the military, which forced people, at gunpoint, to identify the repatriated Haitians. Others were taken to the National Penitentiary where they were beaten daily and not fed, and some were tortured to death in prison. Detainees were told by at least one prison guard that they were being tortured for having fled Haiti, and that others would suffer the same fate. Others were informed that a local judge had issued arrest warrants for repatriated interdictees because they had left Haiti and criticized the military Government.[FN7]

[FN7] For detailed facts of this case, see prior Case 10.675, Report No. 28/93, OEA/Ser.L/V/II.84 on admissibility, part I pages 1-10. The Commission found this case admissible.

II. IN THIS CONNECTION THE PETITIONERS ALLEGE VIOLATIONS OF:

a. Articles I, II, XVII, XVIII, XXIV, XXVII, of the American Declaration of the Rights and Duties of Man (American Declaration).
b. Articles 22(2)(7)(8), 24 and 25 of the American Convention on Human Rights (American Convention) as supplemented by Article 18 of the Vienna Convention on the Law of Treaties.
c. Articles 55 and 56 of the United Nations Charter (U.N. Charter)
d. Articles 3, 16(1) and 33 of the United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 (U.N. Refugee Convention)
e. The United Nations Protocol Relating to the Status of Refugees (U.N. Refugee Protocol), opened for signature January 31, 1967, entered into force for the United States November 1, 1968, 19 U.N.T.S. 6224, T.A.I.S. No. 6577.
f. Articles 8, 13(2) and 14 of the United Nations' Universal Declaration of Human Rights (Universal Declaration)
g. Customary international law which enjoins the United States from preventing the departure of people from their countries, or returning refugees to persecution or danger to life or freedom, and guaranteeing the right to an effective remedy.

III. THE PETITIONERS REQUEST:

11. During the pendency of this petition the petitioners made several requests to the Commission. Included in these requests were inter alia,[FN8] that the Commission should resolve:

a. To seek immediate, interim relief from the United States Government in the form of temporary suspension of the Haitian Migrant Interdiction program, and the deportation of interdicted Haitians to Haiti until the restoration of lawful order in Haiti, and the subsiding of the grave personal danger that now faces Haitians from random and state-sponsored violence, ("Migrant Program")
b. To declare that the Migrant Program constitutes a serious violation of internationally protected human rights, including Articles XXVII (the right to asylum,) XXIV (the right to petition,) and XVIII (the right to effective remedy) of the American Declaration of the Rights and Duties of Man.
c. In the alternative, if such relief is denied, to insist that the United States Government implement policies and procedures which ensure that the program will provide access and equal protection of the laws in the presentation and consideration of their claim to persecution and requests for asylum, and to have such claims reviewed and decided in a competent, objective and non-discriminatory manner, and to receive explanations of the basis for the decisions in their case.
d. To conduct, as soon as possible, a fact-finding visit to Haiti to evaluate the level of political violence taking place there and the ability of third-party countries to ensure the safety of Haitians forcibly repatriated.
e. To permit legal counsel to consult with the interdictees in the preparation of their requests for political asylum.
f. To reach a final decision on the merits of this case at its 87th period of Sessions in September of this year.

[FN8] See detailed petitioners' requests in id. Part II, Report No. 28/93, at 10-13.

IV. PROCEEDINGS BEFORE THE COMMISSION

12. Upon receipt of the petition of October 3rd, 1990, the Commission complied with all the procedural requirements of its Regulations. It communicated with the petitioners and the United States Government; it sent several notes to them; it studied, considered and examined all information submitted by the parties.[FN9]

[FN9] For more detailed proceedings before the Commission Id. Report No. 28/93, Part IV, at 14-17.
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13. Included in the notes sent to the United States Government was a telex dated October 4th, 1991, addressed to then United States Secretary of State James A. Baker III, during its 80th period of Sessions, which stated that: "It has decided pursuant to paragraph 4 of Resolution 1/91

of the Ad Hoc Meeting of Ministers of Foreign Affairs, entitled 'Support to the Democratic Government of Haiti,' to request that the United States Government suspend its policy of interdiction of Haitian nationals who are attempting to seek asylum in the United States and are being sent back to Haiti, because of the danger to their lives, until the situation in Haiti has been normalized."

14. On February 6th, 1992, the Commission sent a note (included in the several notes mentioned above) signed by the Chairman of the Commission to then Secretary of State James A. Baker III stating that: "The Inter-American Commission on Human Rights notes that the return of the Haitians from the United States recommenced on February 3, 1992 and that the implementation of the present policy will result in the transfer of some 12,000 Haitians. Given the uncertain situation in Haiti, the Members of the Commission unanimously and respectfully request the United States Government to suspend, for humanitarian reasons, the return of Haitians."

15. On February 26th, 1993, at a hearing held before the Commission, the petitioners argued that the petition was admissible; they requested precautionary measures; presented documentary evidence as to the health conditions of those interdictees held at Guantanamo Bay and presented three witnesses who testified before the Commission. The first witness testified as to the violence and persecution he faced before leaving Haiti to emigrate to the United States. He also gave detailed testimony as to brutality he was subjected to by the Haitian police/military after he was interdicted and returned to Haiti. He further testified that after leaving Haiti for the second time, upon arrival in the United States and upon being given a reasonable opportunity to present his claim to Immigration Authorities, he acquired refugee status in the United States.[FN10] The second witness testified as to why "in country processing" was not working in Haiti.[FN11] The third witness[FN12] leader of a recent Congressional Delegation mission to Haiti testified briefly of his most recent visit to Haiti and strongly requested that the Commission apply the human rights principles enunciated in the American Declaration of Human Rights in the resolution of this petition.

[FN10] Dukens Luma, active member of pro-Aristide party, fled Haiti twice for political reasons.
[FN11] Ann Fuller, Associate Director of National Coalition for Haitian Refugees, New York, who later established an office in Haiti.
[FN12] John Conyers, United States Congressman, Chairman of the House Government Operations Committee.

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16. On March 5th, 1993, attorneys for the United States Government appeared before the Commission and submitted arguments requesting that the Commission find the petitioners' claim inadmissible. They submitted various documents and exhibits which supported the Government's policy with regard to the Interdiction Program; press releases containing the efforts made by the Government to expedite the processing of "in country refugee claims" in Haiti, the restoration of constitutional government and the return of President Aristide to Haiti, and two declarations. One declaration was made by Bernard W. Aronson, the former Assistant Secretary of State for Inter-American Affairs which supported the Interdiction Program, and the other declaration was

made by Dudley G. Sipprelle, Consul General at the United States Embassy in Port-au-Prince, Haiti, who declared that it was determined after investigation that an interdictee who was returned to Haiti had not been persecuted upon her return.

17. On March 12th, 1993, the Commission approved a report in response to a request for precautionary measures, at a hearing held before it on February 26th, 1993, wherein it issued the following precautionary measures:

a. It called upon the United States Government to review, as a matter of urgency, its practice of stopping on the high seas vessels destined for the USA with Haitians and returning them to Haiti without affording them an opportunity to establish whether they qualify as refugees under the Protocol Relating to the Status of Refugees, or as asylum-seekers under the American Declaration of the Rights and Duties of Man.
b. It called upon the United States Government to ensure that Haitians who are already in the United States are not returned to Haiti without a determination being made as to whether they qualify for refugee status, under the Protocol Relating to the Status of Refugees, or as asylees under the American Declaration of the Rights and Duties of Man.
c. It placed itself at the disposal of the parties concerned with a view to reaching a friendly settlement of this matter on the basis of respect for the human rights recognized in the American Declaration of the Rights and Duties of Man.
d. It stated that this request is without prejudice to the final decision in this case.

18. On August 6, 1993, the Petitioners' attorney and the United States' legal adviser met at the Offices of the Commission to discuss issues relating to a resolution of the case. These issues have not been resolved.

19. On October 13th, 1993, the Commission issued the following Declaration at its 84th period of Sessions:

a. The petition is admissible in relation to the petitioners listed on page 40, Section VI, paragraph 1.[FN13]
b. The merits of the petition will be considered at the 85th period of Sessions, together with any additional submissions by the parties.
c. The Commission places itself at the disposal of the parties with a view to arriving at a friendly settlement in this case, on the basis of the respect for the human rights recognized in the American Declaration of the Rights and Duties of Man.
d. The Precautionary Measures issued by the Commission on March 12th, 1993, and referred to on page 8, Section IV, paragraph 17, of this Report, remain in force.

[FN13] Id. Report No. 28/93.

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20. On February 10, 1994, a hearing was held before the Commission at the petitioners' request. At that hearing the petitioners presented three witnesses, Dukens Luma, Fito Jean, and Pierre Esperance. Dukens Luma and Fito Jean testified at the hearing before the Commission in

relation to their experiences after they were interdicted twice by the United States Coast Guard cutter. After being interdicted the first time by the Coast Guard cutter, they were returned to Haiti without adequate interviews. They also testified that upon being interdicted a second time by the Coast Guard cutter they were taken to Guantanamo Naval Station, interviewed and later paroled into the United States.

21. Dukens Luma testified and stated in his affidavit that he fled Haiti for the first time immediately after the coup for political reasons and because of his support for President Aristide. He was being pursued by the military for his political activities and resistance to the coup. He fled from Haiti with the military in hot pursuit, fell and broke his leg, hid from them and finally left Haiti. He was interdicted by the Coast Guard cutter, who put a cast on his broken leg and then repatriated him to Haiti on the first occasion. Upon his arrival he was detained by the police, was struck at least fifteen times with a stick on the left buttock which was on the same part of his body where his leg was broken. He later escaped, was interdicted by the Coast Guard cutter, and upon being given a reasonable opportunity to present his claim he was paroled into the United States.

22. Fito Jean testified and stated in his affidavit, that he supported President Aristide and left Haiti for political reasons in November of 1992. He was being pursued by the police for his activist's actions, e.g. demonstrating against and showing resistance to the de facto regime. He was interdicted, repatriated to Haiti, and witnessed physical abuse of persons by the military who came on the bus on which he was traveling in order to ascertain who the repatriates were. When questions were asked about him, the bus driver informed the military that he worked for him and thus escaped abuse. He fled Haiti for a second time in January of 1993, was interdicted, and upon being given a reasonable opportunity to present his claim, he was paroled into the United States.

23. Pierre Esperance, Research Associate for the National Coalition for Haitian Refugees, in Port-au-Prince, Haiti, since December of 1991, testified and supplied an affidavit of his experiences as a witness to the treatment of Haitian repatriates by the police and military upon their arrival in Port-au-Prince, Haiti. His testimony revealed that as a research associate, he investigated cases of human rights abuses in Haiti which involved interviewing victims and witnesses of abuse and visiting scenes of incidents, for the purpose of intervening on behalf of victims and prisoners in urgent need of assistance. However, his principal functions also included monitoring the treatment of repatriated boat people once they disembarked in Port-au-Prince and assisted people who applied for refugee status through the United States In-Country Processing program. He stated that the refugee crisis was caused by three serious problems in Haiti, first the human rights situation there. Second, the treatment of repatriated boat people and third the in-country processing of refugees by the United States Government.

24. Pierre Esperance testified that: the current human rights situation in Haiti was critical, rape, random arrests, torture and bodies in the street were common every day occurrences. The principal targets of repression were members of popular movements, syndicates and pro-democracy activists in rural and urban centers. The perpetrators of this repression were the section chiefs, soldiers of the Haitian army and armed civilians known as attachés. The Front for the Advancement and Progress of Haiti (FRAPH) was a political party composed of attachés and supported by the army which was involved in repression throughout the country.

25. Political activists were unable to assemble or associate, except for the pro-military activists. For example, on December 27, 1993, in Cite Soleil, armed civilians and members of FRAPH "burned down" over three hundred houses in retaliation because of an attack on one of their members. Over fifty people were killed and thousands were left homeless. Last week, in Sartre, the army raided a meeting of community activists and opened fire on the house, killing 12 men. There was no punishment for these acts. The same people who committed these acts were the ones to whom the United States returned fleeing refugees.

26. He had been monitoring repatriations in Haiti since February 3rd, 1992, on the docks when the United States cutters discharged them and had monitored over twenty since then. This was the first date that people were repatriated since the coup d'etat against President Aristide. He has experienced a pattern of intimidation, threats and summary arrests on the docks against returned boat people by the Haitian army and attachés in full view of United States officials and humanitarian agencies. Prior to September of 1993, when the boats arrived at the docks, United States officials from ICP, Haitian soldiers and armed civilians, the Red Cross, the media and some human rights monitors were present and allowed on the docks. However, since September of 1993, only United States officials from ICP, the Red Cross, Haitian soldiers and armed civilians were allowed on the docks. Journalists and human rights monitors were not allowed on the docks.

27. The United States officials boarded the cutters before the repatriates disembarked to hand out personal questionnaires. After the repatriates disembarked they were required to proceed to Haitian immigration, and were interrogated by the police. After being interrogated they were seen by the Red Cross. The interrogation was done loudly and in public, in front of the armed civilians. The returnees were asked why they left Haiti, and were verbally abused by the police. On occasion the police had threatened to imprison and kill them. The police and armed civilians worked together, but it was unclear which of civilians were soldiers out of uniform or were members of FRAPH.

28. Pierre Esperance also testified that: the soldiers did not like the boat people because of the fact that they attempted to flee, which indicated that there was repression in Haiti, and reflected poorly on the army. The real reason for the interrogation was to identify people suspected of political activity. The army intimidated refugees into saying that the reason for their flight was economically motivated. Those who did not state that their flight was for economic reasons or remained silent ran the serious risk of being presumed politically active and faced arrest. The United States officials witnessed the intimidation and did nothing. The police also forced repatriates to say to the National TV and Radio, that they fled Haiti for economic reasons.

29. In each of the most recent repatriations, people had been arrested and imprisoned for up to two weeks. On December 7, ten out of 28 repatriates were arrested. They were only released at the end of the month. On December 10, six out of every 84 repatriates were arrested. Most recently, seven out of 53 were arrested on February 4, and they were still in prison.

30. Beauciault Wilman, 21 years old, was a member of the Youth Movement of Anse à Gonàve (MJA). The Organization was involved in civic instruction, alphabetization, and posting

pictures of Jean-Bertrand Aristide during the Presidential race. After the coup of 1991, members of MJA were arrested and terrorized. Mr. Wilman went into hiding in October 1991 and returned to his town on November 10, 1992. That same day, a soldier arrested him at his home and took him to the police station. On the way to the police station, the soldier told him that he was being arrested because he was involved in propaganda for President Aristide during the elections. On November 12, a soldier who knew Mr. Wilman and approved of his work permitted him to escape. Mr. Wilman went back into hiding. On November 18, he found a boat and fled the country.

31. On November 20, his boat was intercepted by the US Coast Guard. Mr. Wilman and the other passengers were returned without an interview. "Once returned, Mr. Wilman managed to get by the police at the docks and went back into hiding." On September 10, 1993, he returned to his town. On October 18, a uniformed solider and three civilians known to be former Tonton Macoutes arrested him at his house. They said: "We finally got our hands on this lavalas. You left and came back, today we will finish with you." One of the civilians slapped him repeatedly. Then they took him to the station house. There, he was asked by the Sergeant "when his dad Aristide was returning and was told that he (Wilman) had come back to post Aristide pictures." They tied his hands and legs together in a crouched position and beat him with a large club for about thirty minutes. This was done in front of soldiers and attachés. Then they locked him up for six days. His sister obtained his release by paying 2,000 Gd (US$160.00) to the Sergeant. Mr. Wilman has been in hiding since that time.

32. Pierre Esperance also testified that: Mr. Damier Cadichon, who was 42 years old, is from Marisade but has lived in Port-au-Prince for eight years. He was a member of a watch group in Delmas and of the Voter Registration Bureau (BIV) during the 1990 elections. A few days after the 1991 coup, three soldiers went to his house in the afternoon. He escaped by the backdoor before they could find him. His wife and six children remained in the house. The soldiers interrogated his wife, searched his house, and confiscated organizational papers. The family had to abandon the house thereafter. Mr. Cadichon went to a cousin's house in Sartre, north of Port-au-Prince.

33. On the afternoon of November 27, 1992, two soldiers went to his cousin's house and asked for him. Mr. Cadichon was not at home, and the soldiers left. He then went to La Gonàve to hide. There, he took a boat on November 29. On November 30, his boat was interdicted by the US Coast Guard and returned to Haiti on December 5. After his repatriation, Mr. Cadichon went back into hiding. In March 1993, he returned to his cousin's home. On May 12, 1993, two soldiers found him at his cousin's in the afternoon. They tied him up and put him in a Nissan pickup truck, took him to the "Cafeteria" (Port-au-Prince police station). There, he was beaten and tortured without being interrogated. After the beating, a lieutenant asked him questions about his political affiliations. The lieutenant called him a necklacing lavalas and jailed him. His cousin obtained his release by paying the lieutenant 2,500 Gd (US$200.00). Mr. Cadichon has been in hiding since that occasion.

34. These two examples were representative of many documented cases of repatriated boat people who had been persecuted upon their return to Haiti. That for each case which had been

investigated, there were dozens more that were undocumented because so many people were in hiding.

35. With regard to the United States in-country processing of refugees (ICP), the refugees who wished to apply to the program had to go through the same channels as everyone else. Returnees were given questionnaires on the boat. Most people did not know the destination of the questionnaires, and who might read them. Therefore, they were reluctant to put information on the questionnaires which might endanger them. People who wanted to apply to ICP had to go to specific addresses that were well known to all. They waited in line outside the building. Everyone knew the reason why they were there. Therefore, soldiers were able to easily identify them.

36. The questionnaires were difficult to complete without help. Often only 2-3 people were there to help 200 applicants complete the forms. They spoke loudly and were very indiscreet. With so many soldiers being out of uniform, this was dangerous to someone with a real problem. He has assisted some ICP applicants who came to NCHR's office. Dozens of applicants with very strong cases who had been denied refugee status, and were later arrested. Celor Josaphat was one such example.

37. Pierre Esperance testified that: Mr. Celor Josaphat is from Perodin, and was a member of the Assembly of Perodin Peasants (RPP), a civic education and alphabetization group. He was arrested in October 1991, by a section chief, Edner Odel, and a lieutenant. His house was burnt by them. He was released, went into hiding and was again arrested in November 1992. On the second occasion, "the section chief beat him so much that he broke his arm." His wife paid for his release. Mr. Josaphat came to their office in November 1992, with his arm in a cast. He (Mr. Esperance) helped him to apply for refugee status. He was interviewed in December 1992 and was denied refugee status. He made a request for reconsideration in early 1993 and was again refused refugee status.

38. In September of 1993, Mr. Josaphat went to his district. He was again arrested on November 7, 1993, by the same section chief, Edner Odel, who had broken his arm. The section chief re-broke his arm. After his release, he again asked for reconsideration with full medical documentation and was again refused.[FN14] Mr. Esperance further testified that the NCHR had documented many cases of people who had applied to ICP for refugee status and had later been persecuted while awaiting a determination of their claim. That Jean-Claude Tiofin was one such case. He was arrested in November of 1993, while leaving the ICP center in Port-au-Prince. He was beaten and jailed for several days. Mr. Esperance stated that in his own opinion, the program could not be used as the sole means for people fleeing repression to seek refuge. At all stages of the process, applicants were in danger of being identified by the army. There was no confidentiality in the process and applicants were placed at risk.

[FN14] A copy of the request for reconsideration was submitted to the Commission. In his request Mr. Josaphat stated that he was being persecuted because of his political activities with RPP, and that it was only a matter of time before he would be killed by the military.

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39. On April 12, 1994, the petitioners sent a letter to the Commission in which, inter alia, they referred the Commission to two recent articles, both of which they stated established the urgency of the need for a final resolution in this case. That on Saturday, April 2, 1994, the New York Times published an article entitled, "A Rising Tide of Political Terror Leaves Hundreds Dead in Haiti," by Howard W. French. The Article stated in part "PORT-AU-PRINCE, Haiti, March 31, Hundreds of supporters of the Rev. Jean Bertrand Aristide and other civilians have been killed in Haiti in recent months in the bloodiest wave of political terror since the army overthrew Father Aristide as President two and a half years ago. The violence accelerated this year, with 50 or more bodies turning up in the streets of this town each month. Many were badly mutilated or bore clear signs of torture. Diplomats there said the campaign, aimed at wiping out resistance to army rule, has relied on other techniques novel to Haiti, like burning down entire neighborhoods to flush out suspects and raping and kidnapping the wives and children of political organizers who are sought by the authorities."

40. The article further stated that, "In recent months, each time the United States Coast Guard has returned fleeing boat people to Haiti, plainclothes agents have pulled returnees out of Red Cross processing lines and have taken them away to be arrested. The disfigured body of one returnee, Yvon Desanges, was recently found near the airport, his eyes plucked out, a rope around his neck, his hands tied and a red handkerchief crudely marked 'President of the Red Army'." Advocates for refugees said that Mr. Desange's case appears to be one of administrative error on the part of American authorities, whom they said had cleared him for entry into the United States to pursue his case for political asylum before returning him to Haiti.

41. The article also stated that: "On Tuesday, a Haitian agent approached one returnee who had exchanged words with a Coast Guard officer and poked him deeply in the eye with two fingers in plain view of observers. Striking an increasingly defiant pose, the Haitian authorities have recently barred jail visits by diplomats and have rarely allowed journalists into the port area to witness the return of refugees. Ronald Joseph, a 28 year-old evangelical pastor who, like Joseph Y. was being hidden by foreigners, keeps with him the form letter in which he was denied asylum for lack of a "credible fear of prosecution." The letter is in a packet that also contains the pictures of bullet-ridden corpses of worshipers and associates whom he says were killed in the army's two-year pursuit of him. He stated, "the only thing I ever did was keep notes on the way people were being arrested," describing the informal human rights work he took up on his own after the 1991 coup against Father Aristide. His subsequent ordeal involved the killing of his mother, whom he said was shot when civilian militiamen couldn't find him."

42. In addition, on April 26, 1994, the petitioners sent a letter to the Commission urging it in light of the continuing deterioration of the human rights situation in Haiti and ongoing reports of abuse of Haitians forcibly repatriated by the Government of the United States without political asylum interviews, to issue a decision in this case as soon as possible. They enclosed in the letter a copy of a Department of State Unclassified Incoming Cable dated September of 1993, entitled "22 September Repatriation."

43. A summary of this cable states that: "At Port-au-Prince on 22 September a total of 297 returnees, the largest group since November of 1992. All returnees were given the refugee

application forms on the Cutter and encouraged to complete their application en route with the help of the interpreter and audiocassette instructions. REF OFFs boarded the cutter at Port-au-Prince, explained the program, vetted the applications and gave priority applicants appointments at refugee processing centers. The Immigration Police questioned returnees as usual, searched their belongings and fingerprinted them. They initially detained fifteen men but finally relented and took nine returnees to the police station... Though the ostensible purpose of questioning was to identify boat trip organizers, the interrogation [of those not detained] which took place within the hearing of EMBOFFS [U.S. Embassy Officers] and international civilian mission representatives) appeared to be a "fishing expedition for persons considered troublemakers by the police and probably designed to intimidate the returnees." (Emphasis added).

44. The cable further stated that 64, 832 were repatriated under the Amio Program. 31, 995 were repatriated since President Aristide's Departure. 6,899 were repatriated under Executive Order.

45. The petitioners stated in the letter that: "The cable does not address the fate of the nine men detained for interrogation but does confirm that the United States Government has repatriated thousands of Haitians under the Executive Order without asylum interviews."

46. On May 4, 1994, the United States Government replied to the merits of the petition. In summary it stated that: "It is of the view that the petition fails to establish any violation of the American Declaration. Furthermore, the United States believes that the interdiction program is a sound approach to the illegal migration of Haitians by sea. The policy of the United States is a lawful and humane response to illegal migration and the potential tragedy of Haitians risking their lives at sea. The United States believes that the policy of in-country refugee processing of individuals claiming refugee status coupled with direct repatriation of those Haitians who risk their lives at sea constitutes the best balance between enforcing U.S. immigration law, providing refuge to those who qualify for it under international standards and preventing loss of life on the high seas. Consequently, it respectfully requests the Commission to declare that this petition fails to establish any violation of the American Declaration."

47. On September 26, 1994, during its 87th period of Sessions, the Commission studied the case and requested that the parties submit legal arguments with regard to the application of the alleged Articles of the American Declaration as it related to the facts of the case, and made the following inquiry of the parties:

a. Article I: In relation to the right to security of the person, the meaning of "security" in the context of the American Declaration, and its application to the factual situation relied on by each party in support of its case.
b. Article II: Its meaning and application to the factual situation relied on by each party in support of its case.
c. Article XVII: Its meaning and application to the factual situation relied on by each party in support of its case.
d. Article XVIII: Its meaning and application to the factual situation relied on by each party in support of its case.

e. Article XXIV: The construction to be given to the phrase, "submit petitions to competent authorities" in contradistinction to the right to resort to the courts under Article XVIII; the relevant factual situation relied on by each party to support its case.
f. Article XXVII: The interpretation to be given to the right to asylum and in particular, the significance of the phrase, "in accordance with the laws of each country and with international agreements"; the relevant factual situation relied on by each party to support its case.

48. On January 19, 1995, the United States Government submitted its response to the Commission's request of September, 26, 1994 and indicated that it wished to have an opportunity to respond to any argumentation that the petitioners might put forward in response to the Commission's request. On February 3, the Commission received the petitioners' response to its request. On February 17, 1995, the Commission forwarded the responses of both parties to each other and requested their comments and observations within 30 days. Neither party has responded.

49. On September 13, 1995, at the Commission's 90th period of Sessions it adopted a provisional report, and sent it to the United States Government in accordance with its Regulations. On December 28, 1995, the United States Government requested that the Commission reconsider its provisional decision pursuant to Article 54 of its Regulations. At its 91st period of Sessions the Commission considered the United States Government's request for reconsideration, and decided to forward the arguments referred to in the Government's request for reconsideration to the petitioners, pursuant to Article 54 of its Regulations. The petitioners responded to this request on September 11, 1996.

V. SUBMISSIONS OF THE PARTIES

50. The United States Government submitted several responses to the petitioners' arguments, including arguments as to the inadmissibility of the petition.[FN15] In addition it submitted a detailed Response on the merits of the petition and argued the following points:[FN16]

[FN15] Id. Report No. 28/93, submissions of the parties at 17-39.
[FN16] The United States submitted a detailed response consisting of 32 pages, together with various exhibits. These exhibits are a copy of its 1994 Department of State Country Report on Haiti; an unclassified copy of a revised text entitled "Haitian Migrant Litigation," An abbreviated History; a copy of a 1992 Declaration by Dudley F. Sipprelle who was Consul General at the United States Embassy in Port-au-Prince, Haiti since 1991, who investigated and interviewed Marie Zette Joseph after she had been repatriated to Haiti on February 12, 1992, who stated that she suffered no persecution upon being returned to Haiti. The declaration also stated that between November 18, 1991 and March 30, 1992, 9,503 refugees had been repatriated on 44 U.S. Coast Guard cutters and that 1,294 repatriates had been interviewed, covering 5,000 miles and 3,744 hours had been expended in interviewing them. That monitoring activities had been on-going since March 31. As of April 16, 1992, the Embassy had interviewed 1,825 repatriates. That no credible case of reprisal against, or persecution of, a repatriate from Guantanamo Bay Naval Base by Haitian authorities directly or indirectly related to the fact of repatriation had been identified. A copy of a request for an advisory opinion submitted by the Government of

Colombia to the Inter-American Court of Human Rights concerning the Normative status of the American Declaration of the Rights and Duties of Man, Observations of the United States was also submitted with the U.S. Government's response. Also included in the response is a statement outlining the Government's policy towards the refugees, the immigration policy of the United States, in-country processing, and a response to the merits of the petition in relation to the Articles of the American Declaration of the Rights and Duties of Man which are alleged by the petitioners to have been violated. Only a summary of this response is reproduced here to address the specific Articles of the American Declaration allegedly breached by the United States Government.

RESPONSE OF THE UNITED STATES TO THE MERITS OF THE PETITION

51. The United States submits that this program is consistent with the human rights standards of the American Declaration of the Rights and Duties of Man and is a proper exercise of the United States' sovereign right to prevent illegal immigration to the United States.[FN17] Since no other country in the region has been willing to accept significant numbers of Haitians departing by sea, the only relevant options are return or admission to the United States. There is no legal duty, however, on the United States or any other nation to accept fleeing Haitians, including those with legitimate refugee claims. In light of the firm belief that bringing all interdicted Haitians to the United States would likely precipitate a massive and dangerous outflow, the United States has chosen to return Haitians to Haiti. Nonetheless, the United States has undertaken extensive efforts to afford Haitian nationals the opportunity to pursue refugee claims in a safe alternative to boat departures, through the in-country refugee processing program.

[FN17] Refers to the Interdiction of Haitians on the high seas and their repatriation to Haiti.

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52. The issue for consideration here is not whether there are human rights abuses occurring in Haiti. By all accounts, Haiti is suffering serious human rights violations under the military dictatorship, which began with the coup d'etat of September 30, 1991, overthrowing the democratically-elected government of Jean-Bertrand Aristide.[FN18] Rather, the issue for consideration here is whether the action of the United States in interdicting Haitian nationals on the high seas and repatriating them to Haiti violates Articles I (the right to life, liberty and personal security), II (the right to equality before the law), XVII (the right to recognition of juridical personality and civil rights), XVIII (the right to an effective remedy), XXIV (the right to petition), or XXVII (the right to asylum) of the American Declaration of the Rights and Duties of Man.

[FN18] At pages 1 and 2 of the Government's response.

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53. The action of the United States is both consistent with these provisions of the American Declaration and constitutes a sound approach to the illegal migration of Haitians by sea. The policy of the United States is a lawful and humane means of controlling illegal immigration by sea, a phenomenon which is exacerbated by the fact that the voyage is undertaken at great risk to life. The United States believes that the policy of in-country refugee processing of individuals claiming refugee status coupled with direct repatriation of Haitians who leave Haiti by boat and attempt unlawfully to come to the United States constitutes the best balance between providing refuge to those who qualify for it under international standards and preventing loss of life on the high seas.[FN19] Although the interdiction program was established in 1981 as part of an effort to halt the illegal entry of undocumented migrants into the United States by sea, the program has served to rescue tens of thousands of Haitians who set out from Haiti in unseaworthy vessels for a long and perilous journey to the United States.

[FN19] Id. pages 2 and 3.

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54. The United States objects, in the strongest possible terms, to the petitioners' suggestion that the interdiction of Haitians by the United States has put their lives in additional jeopardy. But for the efforts of the United States Coast Guard, countless more Haitians would have lost their lives at sea. Even with these efforts, it is estimated conservatively that since December of 1982, approximately 435 Haitians have drowned en route to the U.S. shores. Suspending interdiction would be tantamount to adopting a policy of promoting an exodus at the cost of potentially large losses of life. In total, the efforts of the United States on behalf of Haitian refugees vastly exceed those of any other government in terms of both human and financial resources. These efforts are fully consistent with the human rights standards articulated in the American Declaration.

55. The specific gravamen of petitioners' complaint is that many of the interdicted Haitians had a reasonable fear that they would be persecuted if returned to Haiti but were denied a proper forum and processing procedures for resolution of these claims, in violation of the Government's obligations with respect to refugees. Initially, the petitioners' claims asserted an inadequacy of the screening procedures employed by the Government of the United States. Now, presumably, petitioners' claims rest on the lack of any such procedure for determining which interdicted Haitians should not be returned to their country of origin.[FN20]

[FN20] Id. pages 4 to 5 for detailed argument.

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56. The Government of the United States does not dispute that petitioners meet the requirements of Article 26 of the Commission's Regulations, concerning the presentation of petitions.[FN21] A number of the allegations raised in the various submissions of the petitioners since the original petition was filed in 1990, relate to factual situations which no longer subsist. The Government of the United States expects that the Commission will find, pursuant to paragraph c of Article 35 of the Regulations of the Commission concerning preliminary

questions, that these particular grounds for the petition no longer subsist and therefore these elements of the file are effectively closed.

[FN21] See pages 5 to 16 of this report for detailed legal claims and summary of petitioners' requests, proceedings before the Commission, precautionary measures and resolutions passed by it in the case.

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57. As foreshadowed in the February 10, 1993 submission of the Government of the United States, petitioners' claims concerning the adequacy of screening of interdicted Haitians on board U.S. Coast Guard vessels and the United States' naval facility at Guantanamo Bay, Cuba, are moot since there is not now, nor has there been since the spring of 1992, screening of Haitians on board Coast Guard vessels or at Guantanamo Bay. The program of the Government of the United States of screening Haitians interdicted on the high seas for possible asylum claims which had been in place since 1981, in accordance with Presidential Proclamation 4865 of September 29, 1981 and Executive Order 12324, was suspended on May 24, 1992, in favor of direct repatriation of interdicted Haitians, pursuant to Executive Order 12807 (which replaced the earlier Executive Order).

58. Consequently, the United States believes that consideration by the Commission of the adequacy of the screening program that no longer exists would be wasteful of the Commission's time and resources as the question is moot and will admit to no useful resolution. While the Government of the United States has no current plans to reinstitute screening, should screening resume prior to final resolution of this petition, the Government of the United States will inform the Commission and reserves the right to elaborate on any relevant allegations by the petitioners prior to any Commission action on such issue.

59. Similarly, petitioners' claims with respect to the condition of Haitians held at the U.S. naval facility at Guantanamo Bay, Cuba, are also moot since the temporary housing facility which had been established there for interdicted Haitians was closed in June of 1993 and all the Haitians who were at the facility at that time were brought to the United States to pursue their asylum claims. Pursuant to paragraph c of Article 35 of the Commission's Regulations, since claims relating to the condition of Haitians at Guantanamo Bay do not subsist, this aspect of the file should be deemed closed by operation of law. As with interdicted Haitians, the United States believes that these issues are not appropriate for Commission consideration. The United States has no intention of reestablishing a migrants' facility at Guantanamo. Should this situation change prior to the final resolution of this petition, the United States will of course inform the Commission and, consequently, reserves the right to elaborate on this matter should it become relevant prior to final resolution of this petition.[FN22]

[FN22] At pages 14 to 15 of United States Response, "Withholding of Deportation."

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60. As is the case with nationals from any country, Haitians who have entered the United States or presented themselves at a land border or port of entry have available to them the asylum and withholding of deportation protections under the Immigration and Nationality Act which were described above. Contrary to the assertions of petitioners, no Haitian is excluded or deported from the United States without the opportunity for full and fair consideration of his or her refugee characteristics. Consideration is afforded with a host of procedural safeguards, including the opportunity for representation by counsel and review by administrative and judicial tribunals, which doubly ensure the sufficiency of the screening process.

61. Haitians are also extended the opportunity to present their claims for refugee status while still in their country of origin. The Government of the United States' in-country refugee processing program provides Haitians the opportunity to apply for refugee status and resettlement in the United States on that basis without having to risk their lives in a long and dangerous sea voyage. Contrary to allegations of the petitioners, Haitians with legitimate claims to refugee status have a meaningful opportunity to pursue such claims through the in-country refugee processing program established by the United States. Almost three thousand Haitians have to date been approved for refugee status under this procedure.

62. As of April 22, 1994, a total of 55,694 preliminary refugee questionnaires have been received by the United States at the three processing facilities for consideration. Of these, 13,129 cases representing 15,293 persons have been interviewed by the immigration and Naturalization Service for possible refugee admission. Of these, 2,937 persons have been approved for refugee admission into the United States and over 2,200 have already departed Haiti for the United States. This number is in addition to the approximately 10,500 Haitians paroled into the United States to pursue their asylum claims based on the asylum pre-screening process that was conducted aboard the Coast Guard cutters and at the Guantanamo Bay Naval Base. Of course, it is also in addition to the substantial number of Haitians who immigrate legally each year to the United States.

63. In 1991 alone, the United States welcomed 12,336 new Haitians from Haiti and another 35,191 gained legal status under the Immigration Reform and Control Act. In the eleven year period from 1981 through 1991, more than 185,000 Haitians were granted legal permanent residence in the United States. More nationals from Haiti were admitted for permanent residence to the United States than from all other countries except Mexico, the Philippines, the former Soviet Union and Vietnam. In fact, at the end of 1992, in terms of the number of immigrants admitted to the United States as a percentage of their native country's population, Haiti ranks fifth in the world (behind Jamaica, El Salvador, Laos and the Dominican Republic).

64. In-country processing of refugee applicants to the United States began in February, 1992. This is a program that currently is available in only three other countries in the world (Cuba, Vietnam and Russia). When the in-country refugee processing program began in February 1992, eligibility was limited to those individuals who, on account of their professions or associations, were likely targets of persecution. In May 1992, when the direct repatriation policy was adopted, the program was expanded and opened to any Haitian wishing to make a claim. At that time, a system of categories was adopted to prioritize the processing of cases. Consistent with what

petitioners have called for, new regional processing facilities were opened in Les Cayes in the south of Haiti in April, 1992 and in Cap Haitien in the north in May, 1993.

65. These centers have expanded access to the program to Haitians in rural areas who are unable to travel to Port-au-Prince. They are operated through the assistance of American joint voluntary agencies (World Relief and the United States Catholic Conference, respectively) who, among other things, assist the applicants in preparing their cases for consideration by the Immigration and Naturalization Service adjudicators. A similar function is performed by the International Organization for Migration at the facility in Port-au-Prince. The number of U.S. Embassy, INS and International Organization for Migration staff working on refugee processing is 45-60 depending on the need.[FN23]

[FN23] At pages 14 to 25 for a more detailed explanation of Refugee Protection for Haitians in asylum claims, In-country refugee processing in Haiti, the AMIO Program Agreement and the Direct Return of Haitians.

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66. Petitioners have alleged violations of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights as well as other human rights instruments and principles. As the United States is not a party to the American Convention, the Commission must look to the American Declaration for the relevant standards, as is reflected in Articles 1(2)(b) and 20(a) of its statute and Articles 26 and 51 of its Regulations. In this connection, the United States rejects the petitioners' contention that the American Declaration has acquired legally binding force by virtue of U.S. membership in the OAS and ratification of the Charter of the OAS. Because the United States has previously noted, the Declaration is not a treaty and has not acquired binding legal force.

67. This remains the view of the United States notwithstanding the Commission's decision in Case No. 2141 (United States), Res. 23/81, OEA/Ser.L/V/II.51, Doc. 48, Mar. 6, 1981, its decision in Case No. 9647 (United States), Res. 3/87, OEA/Ser. L/V/II.71, Doc. 9, rev. 1, Mar. 27, 1987, and the Advisory Opinion of the Inter-American Court of Human Rights OC-10/89 (Colombia) of July 14, 1989. Under the Charter of the OAS, the Commission has the competence and responsibility to promote observance of and respect for the standards and principles set forth in the Declaration. The United States has consistently displayed its respect for and support of the Commission in this regard, inter alia, by responding to petitions presented against it on the basis of the Declaration. But as the United States stated for the record in the OAS General Assembly following issuance of the Court's Advisory opinion:

The United States accepts and promotes the importance of the American Declaration. It is a solemn moral and political statement of the OAS MEMBER STATES, against which each member state's respect for human rights is to be evaluated and monitored, including the policies and practices of the United States. ... The United States does not believe, however, that the American Declaration has binding legal force as would an international treaty.

Statement of Deputy Legal Adviser Alan J. Kreczko before the First Committee of the 29th OAS General Assembly, Washington, D.C., on November 14, 1989, at p. 3 and the U.S. submission to the Court concerning the request for an advisory opinion.

68. The United States considers that the binding statutory and treaty standards in U.S. law upon which interdicted Haitians, advocacy groups representing them and parties in interest in this case, presented and had their claims considered in the United States courts, including the Supreme Court, are fully consonant with the principles set forth in the American Declaration. The United States denies that the interdiction and repatriation program deprives the Haitians of their right to life, right to equality before the law, to recognition of juridical personality and civil rights, to a fair trial, to petition, and to seek and receive asylum, as set forth in Articles I, II, XVII, XVIII, XXIV, and XXVII of the American Declaration.

69. Petitioners allege that the interdiction program violates Articles I (protecting the right to life, liberty and personal security), II (the right to equality before the law), XVII (the right to recognition of juridical personality and civil rights), XVIII (the right to a fair trial), XXIV (the right to petition), and XXVII (the right to asylum) because the claims of boat people cannot be effectively made or evaluated while they are exhausted, hungry, ill, malnourished, afraid, uninformed and without legal counsel on the high seas. As noted above, screening is no longer conducted on Coast Guard cutters on the high seas. Screening through the in-country refugee processing program does not even arguably involve the same potential deficiencies. Haitians may approach the in-country processing facilities at their convenience.

70. The United States notes that it is widely recognized that the right to seek asylum imposes no obligation on states to grant asylum to any particular individual or to permit the entry of an alien to pursue any asylum claim. See, e.g. A. Grahl-Madsen, The Status of Refugees in International Law, 79-107 (1972). Indeed, in regard to Haitian nationals, no other state in the hemisphere has been prepared to provide refuge to significant numbers of Haitian asylum-seekers, even on a temporary basis. Consequently, there is no obligation on the Government of the United States to allow Haitians to enter the United States to pursue asylum claims. The "right of asylum" articulated here is deliberately limited by the qualifying language "in accordance with the laws of each country and international arrangements."

71. This notion corresponds to the fact, notable during the subsequent negotiations of the 1951 United Nations' Convention Relating to the Status of Refugees and since the right to seek asylum is not commensurate with any corresponding obligation on states to grant asylum to any particular individual. It was recognized then, and continues to be so today, that control over unlawful immigration is a fundamental attribute of state sovereignty, the prerogatives of which states are unwilling to cede. The most substantial limitation that states have been willing to accept is the non-refoulement obligation of Article 33 of the Refugee Convention, which protects a refugee against return to a place of persecution. That is a limited obligation, only relevant with respect to refugees who have reached the territory of a contracting state, and does not apply to persons interdicted on the high seas. In addition, the obligation does not prevent a contracting state from sending a refugee to any place other than the country of persecution.

72. It is no accident that the 1951 Refugee Convention contains no obligation on states to provide asylum. The most specific reference is contained in Recommendation D of the Final Act of the Conference of Plenipotentiaries, which is not part of the Convention itself, where it urges states to continue to receive refugees so that they may find asylum and resettlement. This limitation was confirmed in subsequent failed efforts to supplement the Refugee Convention with a Convention on Territorial Asylum. Not only has the United States not prevented Haitians from seeking asylum elsewhere outside Haiti (e.g., in the Dominican Republic or in other countries in the region), the United States has put in place extensive means to guarantee Haitians the right to seek asylum in the United States. Haitians in the United States have full access to the domestic asylum and withholding of deportation procedures and Haitians in Haiti have full access to the in-country processing program.

73. The United States has continually reviewed and improved upon those in-country procedures, through consultations with organizations such as petitioners advocating on behalf of Haitian refugees, to provide the most expeditious consideration of bona fide refugee claims. No other country has offered Haitians such extensive opportunities to apply for asylum. Requests by the United States to other countries in the region to provide the same were unsuccessful. Petitioners' request that, prior to repatriation, there be an opportunity to pursue third country alternatives, has in fact been pursued by the United States and has proven unattainable.

74. Petitioners claim that the United States is bound to refrain from acts that would defeat the object and purpose of the American Convention, because the United States signed (but did not ratify) it. According to petitioners, this obligation is supplemented by the customary international law obligation recognized in Article 18 of the 1969 Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF. 39/27/(1969), 1155 U.N.T.S. 331. However, the obligation to refrain from acts which would defeat the object and purpose of a treaty which has been signed has no bearing on this petition. Acts prohibited under this standard are those which would render the treaty useless. The acts complained of here do not even begin to meet this standard.

75. Nonetheless, the United States' actions are entirely consistent with the object and purpose of the American Convention. Contrary to petitioners' assertions, the United States is not only preventing Haitians from leaving Haiti (Article 22 (2)), for example, by crossing the land border with the Dominican Republic, but is also providing Haitian nationals a safe and effective means of leaving their own country as well as of both seeking (Article 22(7)) and receiving asylum in the United States. While not applicable to the current situation, far from unequal treatment (Article 24), the Haitians are receiving a benefit that is not generally afforded to nationals of other countries in the possibility for in-country refugee processing. As noted above, this program is in addition, of course, to opportunities for Haitians to come to the United States through legal immigration channels.

76. The Commission's regulations do not provide for submission of petitions based on alleged violations of other legal instruments or principles. Petitioners' references to the various other legal documents -- the U.N. Charter, the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, the Universal Declaration of Human Rights and customary international law -- are similarly misplaced. Whether the United States is complying with its obligations under those instruments is not for the Commission to decide. It should be

noted in this regard that no state party to the Refugee Convention, including the last session of the Executive Committee of the United Nations High Commissioner for Refugees, which was held after the United States Supreme Court rendered its decision that the non-refoulement obligation of Article 33 does not apply with respect to Haitians interdicted on the high seas, has lodged any objection with respect to the United States' interpretation of its treaty obligation as applied to the case at hand. No other country in the region appears to take the view that it is bound to let Haitian refugees into its country.

77. Petitioners' claim that the United States has violated customary international law is equally unfounded. Evidence of a customary norm requires indication of "extensive and virtually uniform" state practice, North Continental Shelf Cases (W. Ger. v. Den; W. Ger. V. Neth.), 196 I.C.J. 3, 43, and not merely hortatory declarations of what principles should be adopted as ideals. Jean v. Nelson, 727 F.2d at 964 n. 4; 7 Encyclopedia of Pub. Int'l 62, 63 (1984). It is not enough that certain international declarations espouse a general rule, for custom must derive from the repetition of acts by the community of states as a whole taken out of a sense of legal obligation. Other than their unsubstantiated assertion, petitioners have pointed to no evidence suggesting the existence of such widespread and concordant practice regarding the obligation of states to refugees outside their borders.

78. To reach the level of a customary norm, state practice "must also be such, or be carried out in such a way, as to be evidence that this practice is rendered obligatory by the existence of a rule of law requiring it." 196 I.C.J at 44. Even to the extent that some states may have followed the practice suggested by petitioners, petitioners have failed to demonstrate the existence of a rule of international law to which states worldwide feel bound. The United States stated this position clearly on the record at the 1989 meeting of the Executive Committee of the U.N. High Commissioner for Refugees. Executive Committee of the High Commissioner's Program, Summary Record of the 42nd Meeting at 16, U.N. Doc. A/Ac.96/SR/42 (1989). No disagreement with this view was expressed.

79. Petitioners' reliance on the Universal Declaration of Human Rights and the United Nations Charter also is misplaced. The Declaration, which was adopted by the General Assembly of the United Nations in 1948 (G.A. Res. 217, 3 U.N. GAOR, U.N. Doc. 1/777 (1948)), is a non-binding resolution. "It is not a Treaty; it is not and does not purport to be a statement of law or of legal obligation." XIX Bulletin, Department of State, No. 494, Dec. 1948, p. 751 (quoted in 5 Whiteman, Digest of International Law 243 (1965). The Universal Declaration is authoritative only in so far as it reflects customary international law; as noted above, there is no relevant customary international law. While the United Nations Charter is a treaty, the provisions cited by petitioners (Articles 55 & 56) are far too general to create binding legal obligations with respect to the specific rights asserted in this case.

80. Far from constituting a violation of the rights of Haitian nationals, the United States' actions on behalf of Haitians through the interdiction program and in-country refugee processing have saved many Haitian lives, have established secure and regular migration channels for qualified Haitians to come to the United States without risking their lives at sea, have enforced United States immigration law, and have avoided the potential humanitarian tragedy of a massive seaborne surge from Haiti. Presuming that the Commission does not enter into this question with

prejudgments, the United States believes that it has presented a compelling case that the United States has upheld the humanitarian efforts to restore democracy to Haiti and to ensure respect for the human rights of all Haitian citizens.

PETITIONERS' REPLY TO THE U.S. GOVERNMENT'S RESPONSE TO PETITION

81. The petitioners made several submissions which contained a number of arguments as to admissibility[FN24] of the petition and with regard to violations by the United States Government of the various international human rights instruments contained in part III of this report. In addition the petitioners submitted a Reply to the United States Government's Response to the petition and argued the following:[FN25]

[FN24] Id. Report No. 28/93, submissions of the parties, at 17-39.
[FN25] The petitioners' reply is summarized here.

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82. There is no other evidence before the Commission in this case that other countries have violated their obligations under international law when processing Haitian asylum and refugee claims. No other country has joined the USG's interdiction program, nor has any other country initiated its own interdiction program. The very fact that it is well known that Haitians are "suffering serious human rights violations under the military dictatorship" adds urgency to this petition and the need for the USG to provide full, fair and non-discriminatory asylum processing for Haitians fleeing their country. The United States Government offers no evidence in support of the claim that "only a small percentage of Haitians wishing to leave Haiti are in fact bona fide refugees." Petitioners have never objected to any efforts which the United States Government may undertake to save and rescue people at sea. This petition has nothing to do with saving and rescuing people at sea. It instead challenges the United States Government's policy of forcibly returning people to a country where serious human rights violations are widespread without providing fair, full and non-discriminatory asylum interviews in compliance with international law.

83. A government cannot avoid Commission review of an illegal policy by simply changing the policy every few months. While it stopped providing any interviews to interdicted Haitians in April 1992, a change in policy is also challenged by petitioners in several submissions and hearings before the Commission, as repeatedly stated by President Clinton and other high United States Government officials, its policy is constantly under review and changing. The question remains whether the United States Government's policies challenged in this petition have been lawful. In fact, its policy for the moment is to again provide brief interviews on vessels on the high seas, forcibly return the vast majority of Haitians, refuse to admit any interdicted Haitians into the United States, refuse to provide legal counsel to assist Haitians before their interviews, and refuse to provide judicial review of any aspect of the process or decisions reached. A final Commission decision regarding the United States Government's initial policy of inadequate interviews and its later policy of completely denying interviews will hopefully guide the conduct of the United States Government and other Governments in their present and future policies and practices.

84. The United States Government admits that out of 55,694 applicants as of April 1994, only 15,293 had been interviewed and only 2,937 were granted refugee visas. As the United States Government concedes, in yet another change in policy, it now only processes certain limited categories of applicants in Haiti for refugee visas, senior and mid-level Aristide government officials, etc. Petitioners' several submissions and testimony have shown the inadequacy and dangers under current conditions in Haiti of the in-country processing system. Finally, at the request of the United States Government and other Governments, there is currently no commercial travel in or out of Haiti. This poses major obstacles for even the few Haitians the United States has granted refugee status to leave the country. Whatever its intentions, the "in-country processing program" cannot excuse the United States' unlawful interdiction program.

85. While the United States Government claims that the Haitians it has repatriated have no problems when returned to Haiti, many Haitians returned are detained, the United States Government agrees that Embassy officers have recently been denied access to detainees and the United States has not been able to substantiate the reports of alleged persecution upon return. While the United States Government now claims that only the boat owners and smugglers are detained upon return, a 1993 U.S. Department of State cable we submitted to the Commission on April 26, 1994, clearly states Haitian authorities "questioned all returnees as usual. ... The interrogation ... appeared to be a fishing expedition for persons considered troublemakers by the police and probably designed to intimidate returnees."

86. Petitioners' submission of April 12, 1994, also contains evidence of harm suffered by Haitians forcibly repatriated by the United States Government, including the sworn declarations of Fito Jean and Dukens Luma, who testified before the Commission at its last sessions. The testimony and sworn declaration of Pierre Esperance also described the persecution faced by Haitians repatriated on U.S. Coast Guard vessels. As the United States Government admits "it cannot ensure the safety of all repatriated Haitians. Only the Haitian authorities have the power to provide those guarantees." The United States Government certainly knows that "Haitian authorities" do not use their power to guarantee fundamental rights. Haitians risk their lives to flee precisely because of the brutal power wielded by the Haitian authorities that the United States Government suggests may protect returnees delivered back to Haiti by U.S. Coast Guard vessels.

87. The United States Government argues that there is no legal duty on the United States to accept fleeing Haitians, including those with legitimate refugee claims. For the reasons expressed in our previous submissions and stated in the Interim Measure resolution issued by the Commission in February 1993, we respectfully disagree. The interdiction of Haitian nationals and their forced return to Haiti without a full and fair opportunity to have their refugee claims considered violates the various Articles of the Declaration, American Convention, the other international human rights instruments and customary international law. Contrary to the position of the United States Government, the American Declaration has acquired legally binding force by virtue of U.S. membership in the OAS and ratification of the Charter of the OAS. See. e.g. Case No. 2141 (United States Res. 23/81, OEA/Ser.L/V/II.52, Doc. 48, Mar. 6, 1981, and the Advisory Opinion of the Inter-American Court of Human Rights OC-10/89 (Colombia) of July 14, 1989.

88. Customary international law in this case has been violated because there has been extensive and virtually uniform adoption of the policy of non-refoulement throughout the world. The policy of interdicting Haitians based on their national origin (while, coincidentally, liberally admitting others, such as Cuban nationals), and forcibly returning them to Haiti without asylum interviews of any sort, clearly violated the principle of non-refoulement.

89. While the United States Government urged the military de facto government in Haiti to comply with OAS and the United Nations resolutions, it has not complied with the communications from this Commission regarding the conduct of its interdiction program. While the United States Government condemned "in principle and in practice" the former British policy of interdicting and repatriating Vietnamese boat people fleeing to Hong Kong, New York Times, Jan. 25, 1990, p. A6, it has initiated its own interdiction and forced repatriation program aimed at only one group of people: poor, black Haitians. It cannot be doubted that the majority of these Haitians are fleeing political violence, bloodshed, death and disappearances. Since this petition was filed, the United States Government has had four years to modify its policies and make them consistent with international law and norms of legal and moral conduct.

90. It has failed to do so, instead coming before this Commission defending its illegal conduct as a program to "save" and "rescue" Haitians fleeing their country. Few Haitians, and certainly none who have provided sworn declarations and testimony in this case, would describe the interdiction and forced return experience as being "saved" or "rescued." Once again we urgently request that the Commission reach a final decision on the merits of this case. We hope that its final decision addresses the United States Government pre-1992 policy of providing so-called "interviews" on U.S. Coast Guard vessels before it forcibly returned over 99% of all interdicted Haitians, and its post 1992 policy of not providing asylum interviews at all.

THE GOVERNMENT'S REPLY TO THE COMMISSION'S INQUIRY 9/26/94

91. The United States Government submitted its reply[FN26] to the Commission's inquiry concerning the meaning and applicability of the articles of the American Declaration allegedly violated in relation to the facts of the case and stated the following:

[FN26] The Government submitted a detailed reply consisting of 27 pages. However, only a summary is reproduced here.

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92. Since the filing of the United States' merits brief on May 4, 1994, there have been a number of significant developments both in the United States' Haiti migrants policy and in Haiti itself, most notably the restoration of democracy to Haiti. These developments have alternatively rendered this petition moot or inadmissible for failure to exhaust domestic remedies, as is articulated more fully in the attached memorandum. Moreover, the U.S. Government is of the view that the petition fails to establish any violation of the American Declaration. The majority of the provisions of the American Declaration cited by petitioners simply are not relevant to the facts of this case.

93. The article that is relevant to the Haitian interdiction program (Article XXVII concerning the right to asylum) does not require that the United States admit fleeing Haitians into the United States or preclude the United States from repatriating Haitians to Haiti, even those who may have a legitimate fear of persecution. The United States believes that the interdiction program is a sound approach to the illegal migration of Haitians by sea. The policy of the United States has been and continues to be a lawful and humane response to illegal migration and the potential tragedy of Haitians risking their lives at sea. The U.S. Government respectfully requests the Commission, in the alternative, to declare that this petition is moot, inadmissible or that it fails to establish any violation of the American Declaration.

94. During the period from the announcement of the suspension of the direct repatriation policy until the return of President Aristide to Haiti, more than 20,0000 Haitians were intercepted by the Coast Guard and brought to safe haven. As of January 11, 1995, more than 16,000 Haitians had voluntarily returned to Haiti from Guantanamo. The United States believes that with the removal of the coup leaders, the restoration of democracy, and the improved security situation throughout the country, there are few, if any, Haitians who cannot return to Haiti in safety. On December 29, 1994, United States officials at Guantanamo Bay announced to the remaining Haitians that if they chose to return voluntarily to Haiti prior to January 5, they would be eligible to receive enhanced repatriation benefits, including a stipend of $200 Haitian dollars (approximately $80 U.S.) and eligibility for a jobs program. They were informed that virtually all Haitians would be returning to Haiti in light of the improved conditions there, although persons who believed they still could not return in safety would have an opportunity to be heard.

95. Roughly 670 of the then-remaining Haitians chose to avail themselves of these benefits. On January 5, the United States began to repatriate the remaining Haitians to Haiti. As part of that process, each Haitian who wanted it was afforded an individual opportunity to express any concerns about returning to Haiti. Officials of the Immigration and Naturalization service are evaluating these concerns, in light of country conditions in Haiti, and will not send back to Haiti at this time any Haitian who there are substantial grounds for believing that --notwithstanding the changed circumstances in Haiti-- the Haitian will face serious harm, for reasons related to the Haitian's individual circumstances but not related to personal disputes, if he or she was returned to Haiti. As of January 17, 60 cases were being held for further review following interviews with INS officials.

96. Meaning of "Security" in Article I[FN27] - Article I of the Declaration underwent a number of substantial changes prior to its final articulation. The negotiating record on this article strongly suggests that the right to security as petitioners apparently perceive it is not what the formulators of the American Declaration had in mind. The original Juridical Committee draft contained separate articles on the right to life (inspired by the American Declaration of Independence) and the right to personal liberty, and contained no article on security of the person. The Juridical Committee's self-explanatory annex noted the value of affirming this fundamental right in a general form, leaving for subsequent disposition the definition of the special aspects of the right and restrictions of which it is necessarily the subject. The changes made by the Juridical Committee's revised project to these two articles are not material to the present discussion.

[FN27] The United States Government stated that it reviewed the Travaux Préparatoires of the Declaration. The full submission of its historical background is omitted here.

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97. Application to the facts of this case- The United States maintains that the protection of life, liberty and security of the person is a solemn principle which should guide the actions of all states. In keeping with this principle, we continue to strive towards the full realization of personal security for individuals everywhere. Nonetheless, the right to security of the person as understood in the American Declaration simply is not relevant to the factual situation of the Haitian Interdiction program. The right to security of the person does not create an obligation on states to provide admission to persons fleeing their country by sea or preclude their repatriation, even in the case of a bona fide refugee. Nor does it require that safe haven be provided. As discussed in our May 4 submission, the United States has no evidence to indicate that repatriated Haitians were subjected to abuse or harassment as a result of their status as repatriated interdictees. In its monitoring of repatriates, the United States found no evidence of systemic persecution of returned boat people. The physical integrity of interdicted Haitians simply is not negatively affected by United States actions.

98. Taking rescued and interdicted Haitians to Guantanamo Bay for safe haven maximizes the security of these persons. Haitians are not being deprived of their liberty at Guantanamo Bay as they are free to return to Haiti or to go on to any other country that will accept them. While their movement in Guantanamo is restricted, this is necessary due to the requirements of operating a military facility in hostile territory. The safety of the Haitians requires that they not be free to roam beyond the perimeter of the camps where there are mine-fields and other hazards. By providing an accessible in-country processing procedure in Haiti, the United States created the possibility for Haitians with a genuine fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion to be resettled in the United States without having to risk their lives at sea or by crossing the border into the Dominican Republic. No other country offered such a means of protecting the life, liberty and security of Haitians.

99. Meaning of Article II - The right to equality before the law was viewed by the drafters of the American Declaration as perhaps the most important as it "qualified" all the other rights (Explanatory Annex to the Preliminary Draft of the Declaration, p, 72), is "implicit" in all the others (ibid, p. 103), and constitutes the theoretical underpinning on which all the other rights rest. The right to equality is in essence, a derivative right since first there must be a substantive right -- for example embodied in a law -- and then it must be applied so that all persons are equal before that law. This right does not necessarily prohibit different treatment, for example of foreigners as compared to nationals. In sum, the right to equality before the law is a right to equality with respect to the application of the substantive rights articulated in the Declaration as fundamental rights. Consequently, the Commission must first consider what rights articulated in the American Declaration apply to the situation of the Haitian interdiction program, the meaning of those rights as applied to this context, and then assess whether those substantive rights are being applied consistent with the prescription of Article II. As was stated in the introduction to

this submission, the United States believes that the only right articulated in the American Declaration that is relevant to the Haitian interdiction program is the right to asylum of Article XXVII. Consequently, in the view of the United States, the Commission's inquiry should focus on what is called for by Article XXVII and then whether the right to asylum articulated there is being applied consistently with Article II's right to equality before the law.

100. Moreover, even with respect to particular rights, Article II, like comparable articles in other human rights instruments, "does not forbid every difference in treatment in the exercise of rights and freedoms recognized..." in the Declaration, provided that the difference is objective and reasonable. Case Relating to Aspects of Laws on the Use of Languages in Education in Belgium, 1EHRR 252.

101. Application to the facts of this case - The United States reaffirms the goals established in Article II of the Declaration. Equality before the law remains deeply embedded in our national jurisprudence as one of the fundamental tenets of the United States legal system. United States jurisprudence on this point is succinctly summarized by the American Law Institute in its Restatement (Third) of the Foreign Relations Law of the United States (1987). Section 722 of the Restatement follows:

(a) An alien in the United States is entitled to the guarantees of the Constitution other than those expressly reserved for citizens.
(b) Under subsection (1), an alien in the United States may not be denied the equal protection of the laws, but equal protection does not preclude reasonable distinctions between aliens and citizens, or between different categories of aliens.

102. The legal rights of aliens as described in the Restatement is further articulated in several opinions of the United States Supreme Court. Through these decisions, the United States recognized a commitment under the Fifth and Fourteenth Amendments of our Constitution which hold that the Government must extend equal protection of the laws to all persons "within the jurisdiction" of the United States. Plyler v. Doe, 457 U.S. 202 (1982). The law is also clear that the U.S. Government does not have a legal obligation under the Constitution to afford equal protection of the laws to persons outside the jurisdiction of the United States. United States ex. rel. Turner v. Williams, 194 U.S. 279, 292 (1904); Matthews v. Diaz, 426 U.S. 67, 79 (1976). In Diaz, the United States Supreme Court noted that: "A host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify the attributes and benefits for one class not accorded to the other ...The whole of Title 8 of the United States Code, regulating aliens and nationality, is founded on the legitimacy of distinguishing between citizens and aliens. A variety of other federal statutes provide for disparate treatment of aliens and citizens." 426 U.S. 67, 78.

103. The policy of the United States in this regard is consistent with the Restatement and with the principles set forth in Article II of the Declaration. The United States believes that its immigration and refugee laws treat aliens in a fair, consistent and judicious fashion. Indeed, as a country of immigrants, the United States values aliens and has some of the broadest protections for aliens of any country in the world. The United States must consider political and economic

factors unique in Haiti in determining the best way to honor the commitments created by the Refugee Convention and all other applicable laws.

104. Notwithstanding the legal analysis that there is no right for Haitians or nationals of any other country to enter the United States or to avoid repatriation, it may also be noted that the actions of the United States do not single out Haitians alone. The United States adopted a policy with respect to aliens seeking to enter the United States illegally by sea. That policy is enshrined in Presidential Proclamation 4865 of September 29, 1981, FR 28829, 46 Fed Reg. 48,107, and Executive Order 12807 of May 1992, superseding Executive Order 12324 of September 29, 1981 and reflects the fact that there is no right of aliens without proper documentation to enter the United States. Those documents do not by their terms or in practice distinguish on the basis of any of the factors enumerated in Article II. Chinese aliens seeking to enter the United States illegally by sea, when intercepted by the United States Coast Guard, are similarly precluded from entering the United States by means of cooperation with other transit countries, whenever possible. Chinese aliens who claim, in that context, that they fear persecution upon return to China are not necessarily brought to the United States to pursue an asylum claim. Instead their claims are reviewed by either host country officials, officials of the United States Immigration and Naturalization Service, or officials of the United Nations High Commissioner for Refugees.

105. Cuban nationals found at sea, since August of this year, have also been brought to the safe haven facility at Guantanamo Bay, and some have moved on to the safe haven facility in Panama. Some Cuban nationals have been admitted to the United States, for reasons related to the particular long-term circumstances in their country which are not relevant in the case of Haitian nationals. The United States is not aware of claims by nationals of any other country intercepted at sea for asylum in the United States.

106. Distinctions in the treatment of these groups of aliens are permissible in the first instance since there is no underlying right here which must be applied in an equal fashion. The distinctions made by the United States in the treatment of these groups of aliens are reasonably related to different conditions in their countries of origin and to corresponding different policies of the United States with respect to these countries. Such distinctions are wholly permissible exercises of governmental policy making, and do not warrant challenge on the basis of impermissible discrimination.

107. Meaning of Article XVII and its application to the factual situation - After reviewing the negotiating history of this Article, the United States is at a loss as to the relevance of this Article to the Haitian interdiction program. It is not at all apparent what issue is raised by this Article in the United States' policy and actions. It is not apparent what possible denial of juridical personality could be involved here. It is also not apparent what basic civil rights could be at issue. The United States cannot meaningfully address the application of Article XVII to the facts of this case. Nonetheless, the United States recognizes and fully complies as a general proposition with the principle articulated in Article XVII. All people possess a natural right to exercise those civil rights inherent in the human condition. Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (1966). The United States views the recognition of basic civil rights upheld in Article XVII as a necessary element of democratic society to which all OAS member states are committed.

108. While it is incontrovertible that all people maintain basic civil rights, Article XVII does not mean that all states are obliged to accord the same measure of civil rights to all individuals wherever they may be located as they provide to their own citizens. The United States has protected and continues to protect in our national courts the basic civil rights of all United States nationals and all people located "within the jurisdiction" of our national boundaries. Plyler v. Doe, supra. At the same time, we decline to recognize, as the petitioners apparently do, that a state possesses a legal obligation to extend civil rights protections established in their domestic law, or under the various human rights treaties, to aliens outside its borders without a clear expression of that intent. Sale v. Haitian Centers Council, 113 S. Ct. 2549, 2565. This is so even when there is contact between United States authorities and those foreign nationals outside the United States, for example on board Coast Guard cutters or at the U.S. naval facility at Guantanamo Bay, Cuba. It is not at all apparent what civil rights are raised by these actions in any case. As noted, the entire concept of safe haven is to provide voluntary shelter to those persons who feel that they need it.

109. Meaning of Article XVIII - Article XVIII is based on Articles XI (right to protection against arbitrary imprisonment) and XII (right to a fair trial) of the Juridical Committee's Preliminary Draft Text. Article XI of the original draft stated, among other things, that every person accused of a crime shall have the right to a prompt trial and to adequate ("humane" in the Juridical Committee's final draft) treatment during the time of detention. Article XII stated that every person accused of a crime shall have the right to have his case ventilated before an impartial and public audience ("to a legal, impartial and public hearing of the case" in the Juridical Committee's final draft), to be confronted with witnesses, and to be judged by tribunals established in accordance with law in force at the time the act was committed ("and to be judged by the law in force at the time the act was committed and by previously established tribunals" in the Juridical Committee's final draft). Both of these Articles were addressed to the situation of a person accused of a crime and, in that sense, are not relevant to the present discussion. The revised draft of the Sixth Commission's Working Group became the approved text. This Article does not require the courts to reach a certain outcome with respect to the alleged denial of legal rights. Instead, Article XVIII is addressed to ensuring that there is a procedure available to ensure respect for legal rights.

110. Application to the facts of this case - The United States has, and is firmly committed to maintaining, a fair and efficient judicial system capable of determining an individual's legal rights. Judicial protection of individual rights represents one of the most important and respected functions of the United States legal system. First, however, there must be an underlying right. As repeatedly demonstrated by the courts of the United States in their consideration of the various claims raised by the petitioners over the years related to the Haitian interdiction program, aliens outside the United States have no general rights under U.S. law to be admitted to the United States except as provided in U.S. Immigration law. More specifically, aliens outside the U.S. have no rights to alleged procedural protections in the consideration of their claims to asylum, or to avoid repatriation to their homes, even in the face of persecution at the hands of their governments. This proposition was firmly and conclusively established by the United States Supreme Court in Sale. The Court made clear that neither U.S. Immigration law Sec. 243(h) (of the Immigration and Nationality Act) nor Article 33 of the Refugee Convention require

admission to the U.S. or preclude repatriation to Haiti of Haitian nationals encountered by United States officials outside the United States. Since these legal rights do not exist under U.S. law, there is no right for the courts to secure.

111. Nor, to our knowledge, do other OAS member states interpret Article XVIII as requiring their authorities to admit non-nationals for the purpose of pursuing asylum claims or to provide extraterritorial procedures. Petitioners claim that they have been denied rights with respect to the conditions of their treatment at Guantanamo are not cognizable under United States law. There is no authoritative U.S. court precedent supporting petitioners' claims. (The Eastern District of New York decision was limited to those Haitians who had been screened-in under the former screening policy, which pre-dated the Supreme Court's Sale decision and the rationale is no longer valid in light of the Supreme Court's holding. The Second Circuit Court of Appeals decision and the District Court's orders were vacated and no longer serve as precedent.) In the litigation currently pending in the Eleventh Circuit Court of Appeals, Petitioners allege, inter alia, violation of constitutional rights in the treatment of Haitians at Guantanamo with respect to the question of their admission to the United States and repatriation to Haiti. Even in the absence of an underlying right, there has been ample opportunity for recourse to the courts. Petitioners have had repeated, exhaustive and continuing access to U.S. courts to assert alleged denials of their legal rights and comprehensive and thorough consideration of their claims by U.S. tribunals of all levels. (See the litigation history in U.S. tribunals appended to the United States' May 4 submission and the history of the current litigation reference in the opening of this submission.) There has been no denial of process here.

112. Meaning of Article XXIV - Article XXIV derives from Article VII of the Juridical Committee's Preliminary draft text, which states, in essence, that every person has the right, exercised by individual or collective action, to present petitions to the government for the redress of offenses or concerning whatever other matter of public or private interest. It is clear from the Juridical Committee's discussion that the right at issue here is clearly broader than the right to resort to the courts in Article XVIII; while Article XVIII is addressed to the redress of legal rights by judicial authorities, Article XXIV is addressed to petitioning the polity more generally, in the sense of stimulating public debate on an issue or holding public officials accountable in a public policy sense for their actions or lack thereof or calling the attention of authorities to an issue. Petitioning to a competent authority, from this perspective, therefore, could be anything from petitioning in the media or writing a letter to an elected or appointed official either individually or on behalf of a group to call attention to an issue. This Article would be satisfied by recourse to the courts.

113. Application to the facts of this case - Article XXIV does not require the creation of special procedures for aliens outside the territory of the United States and consequently is not relevant to the Haitian interdiction program. The petitioners in this case, not simply during the pendency of this proceeding before the Commission, but since the inception of the Haitian interdiction program in 1981, by the United States, have exercised, without restriction, their right to petition concerning this program. Petitioners have brought the issue of the Haitian interdiction program to the attention of the American public and United States officials through every available mechanism and to every competent authority in the United States. They have utilized the media in all its forms (print, radio and television); they have petitioned United States officials

in every branch -- the legislature, the executive and the judiciary -- and at all levels of government through written correspondence, face to face meetings, public hearings, legislative initiatives, individual and group legal challenges and they have even focused international attention on the Haitian interdiction program.

114. Petitioners have not been impeded in any of these efforts by the Government of the United States. Petitioners have been and continue to be received, listened to and responded to by United States officials in all of these various fora. Petitioners have without a doubt, successfully engaged the American public and United States officials in an on-going debate about the Haitian interdiction policy. It is fair to say, petitioners have influenced that policy over the years in a meaningful way. Other interest groups have played a vital role in focusing national attention on an issue of concern and in representing the interests of their constituency. The fact that petitioners' policy views have not been endorsed in every respect by the Government of the United States, or by a majority of the American people, does not mean that petitioners' rights have been violated, and their right to petition has been violated by the United States. The United States appreciates the positive role that the petitioners have played in the debate over the interdiction policy as it has evolved in the nearly 15 years of its existence. The United States expects that the petitioners will continue to advocate on behalf of its constituency in the years to come, even with the fundamental changes that have occurred in Haiti. The United States welcomes the continuing discussion.

115. Meaning of Article XXVII - concerning the right to asylum, first appeared in the Sixth Commission Working Group's text and had been promoted by the delegation of Bolivia. The Working Group's text did not contain the phrase "in accordance with the laws of each country" but did include the phrase "in accordance with international agreements." The latter phrase was included in the proposal submitted by the delegation of Bolivia in document CB-163/C. VI-9 to the Sixth Commission. The significance of the inclusion of the phrase "in accordance with the laws of each country," is explicitly to recognize and preserve state sovereignty over questions of immigration, even concerning the question of admission of refugees. As was apparent in the subsequent negotiating record of the 1951 United Nations Convention Relating to the Status of Refugees, the lack of a duty of admission of refugees contemplates the possibility that a refugee would be left in a place of persecution since most refugee flows are cross border flows of refugees seeking asylum in neighboring countries.

116. The phrase "in accordance ... with international agreements," while not clear from the negotiating record, suggests an unwillingness in the context of the American Declaration to take on any international legal obligation beyond what had already been, or would be, assumed in the context of binding international negotiations. While the 1951 Refugee Convention post-dates the American Convention, there was already a long tradition of international agreements concerning asylum in the Latin American region, beginning with Title II of the Treaty on International Penal Law, Montevideo, 23 January 1889 and including the Havana Convention fixing the Rules to be observed for the Granting of Asylum of 20 February 1928 [132 LNTS 323,] the Montevideo Convention on Political Asylum of 26 December, 1933 and the Montevideo Treaty on Political Asylum of 4 August 1939. These agreements reflect the uniquely Latin approach to asylum, focused on the notions of diplomatic and territorial asylum, and have not been adopted by the United States. The United States adheres to the approach enshrined in the 1951 Refugee

Convention. While it is not at all clear that the Latin asylum tradition would require anything other than what United States practice reflects, the United States is not a party to and therefore is not bound by the Latin asylum conventions. They therefore provide no guidance for the current case.

117. In European jurisprudence, prior to the adoption of the 1951 Refugee Convention, there were a number of international refugee agreements, none of which required the admission of a refugee from outside the territory, none of which precluded the repatriation of a refuge who had not yet landed in the national territory, and none of which had the United States ratified. These agreements are not relevant to a discussion of the standard at issue in Article XXVII, as applied to the facts of this case.

118. It should also be noted that the right to receive asylum in foreign territory is a vague right that is not specific to any particular state. It does not create an obligation on any particular state to provide asylum to a person in pursuit thereof. The formulation reflects the historical notions expressed by Atle Grahl-Madsen in his seminal work on refugee law, that the right to asylum is a right for the individual to assert against the state of origin, e.g. that the state must permit the individual to leave and a right for the state of asylum to assert against the state of origin, e.g. that the state of asylum has the right to grant asylum to foreign nationals. Grahl-Madsen, The Status of Refugees in International law, (A.W. Sijthoff-Leyden, (1966) (See in particular, the discussion of the Right of Asylum, Vol. II, pp.3-193)). This can be most easily understood in the traditional international law sense that a person is the responsibility of a state and its subject, and consequently it is the right of the individual (or another state) as asserted against his state of origin that had to be protected by human rights law. This view of the meaning of the right to asylum of Article XXVII is reflected in the Commission's jurisprudence in Resolution No. 6/82, Case 7898 (Cuba) of March, 1982, and Resolution No. 6/82, Case 7602 (Cuba) also of March 8, 1982, both of which involved the Commission finding violations of Article XXVII in the cases of Cuban nationals who were prevented by the Cuban Government from leaving Cuba.

119. Application to the facts of this case - The Haitian interdiction program of the United States, in each of its forms since the initiation of this proceeding, has been and continues to be consistent with the right to seek and receive asylum in other countries in Article XXVII of the American Declaration. As was made clear in the preceding discussion of the meaning of Article XXVII, the right to seek and receive asylum under the Declaration is to be implemented in accordance with national law. As fully articulated in the merits brief submitted by the United States on May 4, 1994, United States law on the question of the "right to asylum" of Haitians interdicted at sea pursuant to the Haitian interdiction program is perfectly clear; Haitians interdicted by the United States at sea are not entitled to enter the United States or to avoid repatriation to Haiti, even if they are refugees under the standards of the 1951 Refugee Convention or the standards of U.S. law.

120. Haitians within the United States have not been and will not be sent back to Haiti without an opportunity to raise and have adjudicated by competent authorities any asylum claim they wish to make. Any United States action to provide additional asylum avenues to interdicted Haitians -- such as the safe haven at Guantanamo Bay and the refugee screening that was conducted for Haitians at different times on Coast Guard cutters, at Guantanamo Bay, on the

Naval Ship Comfort in Jamaican territorial waters, and even within Haiti itself -- has been and continues to be wholly discretionary under both U.S. domestic and international law. These additional benefits that have been provided to interdicted Haitians over the years are just that -- additional benefits, and not the source of binding legal obligation or standards.

121. The United States policy regarding interdiction and repatriation of Haitian nationals has been and continues to be consistent with human rights standards articulated in the American Declaration of the Rights and Duties of Man. It has protected the lives of Haitians at sea, afforded both temporary protection outside the United States and permanent resettlement in the United States to countless Haitians in need of such protection, and provided a humane approach to addressing attempts to enter the United States in violation of United States immigration law. This policy further allows the United States to retain within the political branches the power to implement the foreign policy which eventually restored democracy and human rights in Haiti. The United States maintains that the Commission should affirm that the interdiction and repatriation policy is acceptable under and consistent with the humanitarian principles expressed in the Declaration.

PETITIONERS' REPLY[FN28] TO COMMISSION'S INQUIRY

[FN28] Petitioners submitted a 19 page reply. A summary is reproduced here.

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122. Meaning of Article I - The right to "security" is also found in the American Convention on Human Rights at Article 7(1). "Every person has the right to personal liberty and security." The Universal Declaration on Human Rights at Article 3, Article 9(1) of the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The Inter-American Commission found a violation of Article I's security guarantee "where a Minister of the Interior sends a message to a man for whose arrest a warrant has been issued saying, on behalf of the National Guard, that if he surrenders to the warrant, they were not guaranteeing his life". International Law of Human Rights, 142, citing Case 2509 (Panama) AR 1979/80,63. Article I protects the right to "life, liberty and the security" of all persons. The right to "life" appears to mean the right not to have one's life arbitrarily ended. The right to "liberty" appears to apply to the right to freedom from arbitrary detention. The right to "security" appears to mean the right to be free from arbitrary arrest and danger or risk of personal harm or injury.

123. Application of Article I - The United States Government (USG) has argued that its interdiction program "save[s] Haitian lives at sea," and is really a humanitarian "rescue" program. USG, Note May 4, 1994 (hereinafter "USG Note"), p.3. Petitioners have never objected to any efforts the USG may undertake to save and rescue people at sea. This petition challenges the USG's policy of forcibly interdicting and returning people to a country where serious human rights violations were widespread without providing fair, full and non-discriminatory asylum interviews in compliance with international law.[FN29] During this period intercepted Haitians were often provided only superficial interviews or no interviews at all. The declaration of David I. states in part: "Our boat left on February 7, 1989, with 179 people aboard. Seven hours later, at 10:50 a.m. the American Coast Guard intercepted us. They forced us to board their ship. They

stated that if we didn't get on board they would beat us to get us to board. They forced us to get on their boat. They, set fire to our boat. From the minute we boarded, they did not ask us any questions. There were no immigration inspectors who asked us any questions. We were returned to Port-au-Prince on February 9, 1989." Declaration of David I.. Petition Exhibit 5.1-3 (emphasis added).

[FN29] Petitioners reiterated facts of conditions in Haiti during the period of this case, and U.S. interdiction policy.

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124. The Declaration of Salomon P.., states in part: "[W]e were intercepted by the Coast Guard and returned to Port-au-Prince on April 2, 1989. They burned our boat. They told us they were bringing us to Miami. While we were on board they asked us why we left [Haiti], This question was put to us as a group. We [then] found out that we were heading for Port-au-Prince. They burned our clothes, our shoes. Some people returned shoe-less to Port-au-Prince. I was one of them." Declaration of Salomon P.. Petition Exhibit 5 (emphasis added). The declaration of Guerresony D., states in relevant part: [The USG] Coast Guard intercepted the boat two days after we left. .. [Without asking any questions they stuffed us into an American Coast Guard boat. During this operation, they were people who suffered blows..., there were people whose clothes were ripped off of them because they resisted I didn't speak to any person .. American or Haitian .. who came to talk aboard the Coast Guard boat until it returned to the wharf in Port-au-Prince on March 9, 1989." Declaration of Guerresony D., Petition Exhibit 5 (emphasis added).

125. The declaration of Monel A.. states in relevant part: "After three days the U.S. Coast Guard intercepted us. They sank our boat. They put us on the cutter, they told us they would take us to Miami. Aboard the boat, they asked us what made us leave. This question was put to us as a group. We thought we were going to Miami, but on April 2, we found ourselves on the Port-au-Prince piers in the middle of the armed conflict between the Leopards and the Presidential Guard." Declaration of Monel A, Exhibit 5 of Petition (emphasis added).[FN30]

[FN30] According to sworn declarations on file in the case of Haitian Refugee Center v. Baker, No. 91-2635-CIV-Atkins (C.D.Fla.1991). INS personnel interviewed Haitian interdictees while they were sick, exhausted and malnourished; interviews routinely lasted only a few minutes, much of which was taken up in translation; the interviewers were often hostile, failed to identify themselves or their purpose, refused to follow up on explanations of political persecution and some interviewers told the interdictees that no matter what they said, they would be returned to Haiti.

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126. Dukens Luma, who testified before the Commission on February 26, 1993, stated that: "After being interdicted the first time, we were picked up by the U.S. Coast Guard and briefly questioned. The interview did not go well. I was weak and not feeling well. My leg was causing me extreme pain. Neither the American interviewer nor the Haitian interpreter identified themselves to me. I was afraid of them, because I did not understand who they were... When they

asked me why I left Haiti, I said that I left because of political problems. I told them of the dangers there for persons like me and how I broke my leg fleeing from the military. I wanted to tell them more about the MPP (Mouvement Peyizan Papaye, "Papaye Peasant Movement") and other political activities that caused me to be in trouble with the military government but I was cut off. The interview only lasted about three minutes total."

127. Despite promises made by the Haitian Government (in diplomatic exchange of letters) that returnees would not be punished for leaving Haiti, boat people involuntarily interdicted and returned by the United States Government have been routinely detained upon their return to Haiti. On May 7, 8, and 13, 1990, forty-three (43) returnees, including some Haitians who had been detained in INS's Krome detention Center in Miami, Florida, were immediately arrested and detained in the National Penitentiary by Haitian military authorities upon their arrival in Port-au-Prince. On June 5, 1990, another group of thirty one (31) Haitians deported from Krome were arrested upon arrival in Haiti and alleged that they were told that their whereabouts would thereafter be closely monitored by the Government.[FN31]

[FN31] "Haiti Insight", Vol.3, No.4, June, 1990, p.1. See also Statement of Jean L. included in the testimony of Jocelyn McCalla, Executive Director, National Coalition for Haitian Refugees before the Subcomm. on Immigration, Refugees, and Int'l Law of the House Judiciary Comm. Petition Exhibit 7, note 10, p.105.

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128. The United States Government (USG) has denied Haitian refugees their right to "security" under Article I of the American Declaration. First, the USG's interdiction program does not have a reason prescribed by law for detaining Haitians in international waters, destroying their vessels and forcing their return to a dangerous situation in Haiti without interviews to determine their refugee status. International law does not prescribe refoulement, international law forbids it. See discussion on non-refoulement under Article XXVII of this submission. Second, the USG has failed to follow the procedures prescribed by law. Both before and after the issuance of the 1992 Kennebunkport Order, the USG failed to provide proper interviews to determine whether repatriation would result in refoulement. Many of the interdicted Haitians were not questioned at all concerning their asylum claims. Others were questioned as a group. Others, like Dukens Luma, were interviewed for only a few minutes but their interviews ended when they began talking about their reasons for requesting asylum.

129. Meaning of Article II, the Right to Equality before the law - This right has been defined as "the right of everyone to equal protection of the law without discrimination." Bjorn Stormorken and Leo Zwaak, Human Rights Terminology in International Law: A Thesaurus, (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1988) This right has been defined as "the right of everyone to equal protection of the law without discrimination." This right is found in the American Convention at Article 24: "All persons are equal before the law." Consequently, they are entitled, without discrimination, "to equal protection of the law." Similar language is found in the Universal Declaration at Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection

against any discrimination in violation of this Declaration and against any incitement to such discrimination."[FN32]

[FN32] In ICP Article 26, it is proclaimed that "All persons are equal before the law and are entitled to the equal protection of the law. In this respect, the law shall prohibit any discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

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130. The right to equality before the law means not that the substantive provisions of the law will be the same for everyone, but that the application of the law should be equal for all without discrimination. This is shown in the travaux préparatoires of the ICPR. "The provision was intended to ensure equality, not identity, of treatment, and would not preclude reasonable differentiations between individuals or groups of individuals." Annotation on the Text of the Draft International Covenant on Human Rights, 10. U.N. GOAR, Annexes (Agenda item 28, pt. II) 1, 61, U.N. Doc. A/2929 (1955).

131. Application of Article II - The USG has denied Haitian refugees their rights under Article II of the American Declaration. The USG has afforded Haitian refugees unequal treatment compared to other groups of refugees in similar circumstances. In the 1980 Refugee Act, the United States amended the Immigration and Nationality Act (INA), among other things, repealed the ideological and geographic limitations that had previously favored refugees fleeing from Communism or from countries in the Middle East and redefined "refugee" to conform with the definitions used in the United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Vialet, J, Brief History of United States Immigration Policy, Specialist in US Library of Congress; Paper No.88-713 EPW, 25 Nov. 1988; printed by the Committee on the Judiciary of the House of Representatives, 8th edition, (April 1989); Government Printing Office, Washington D.C. 1989, p. 425.

132. The United States based Lawyers Committee for Human Rights reported in 1990 that: "[t]he interdiction program is part of a pattern of discrimination practiced against Haitians by the U.S. Government since the late 1970's. Through improper screening and arbitrary detention, the Government has consistently demonstrated its bias against Haitians." Lawyers' Committee for Human Rights, Refugee Refoulement: the Forced Return of Haitians under the U.S.-Haitian Interdiction Agreement (March 1990).

133. While Haiti is a land steeped in political violence, the United States Government has found only six (6) out of 21,000 Haitian boat people whom it did not forcibly return to Haiti, and allowed to claim political asylum in the United States. At the same time the United States Government determined that over 50% of all Nicaraguans had a legitimate claim to political asylum. The United States Government also determined that the vast majority of asylum seekers from Communist countries possess a legitimate claim to asylum.

134. In a domestic case called Molaire v. Smith, 743 F.Supp. 839 (S.D.Fla.1990), the Court stated that the INS had "routinely engaged in underhand tactics in dealing with Haitians seeking

asylum in the United States and had singled them out for special discriminatory treatment. Repeatedly the Court and other Federal Courts had found that INS had engaged in illegal practices and policies with respect to Haitians..." Ten Case Abstracts, 6 Int.J of Refugee L. 110, 115 (1994).

135. In November, December, and January of 1991-92, the Immigration and Naturalization Service estimates that 15,081 Haitians were interdicted.[FN33] Of the 10,459 supposedly interviewed, 9,058 (87.6%) were determined to be immediately deportable. Id. Only 1,401 (13.4% were "screened in" -- that is, determined by INS interviewing officers to have a plausible claim for asylum. Id. of those Haitians permitted to present asylum claims, historically only 1.8% are actually granted asylum. See Refugee Reports, Vol. XII, No. 12, Dec. 30, 1991, at 12. This figure appears shockingly low to international human rights groups, which have reported over 1,500 deaths, 300 arrests, and the wholesale persecution of pro-Aristide movement which forced over 200,000 people into hiding. See Amnesty International, Haiti, The Human Rights Tragedy: Human Rights Violations Since the Coup, January 1992 at 5-6. Human rights groups estimate that the number of Haitians with colorable claims to refugee status was closer to 60% or 70% of those interdicted. See San Francisco Lawyer's Committee for Urban Affairs, Haitian Refugees: Current Facts and Prevailing Law, Feb.3, 1992 at 2.n.1. No reasonable differentiation exists between Haitian refugees and refugees from any other country. Nevertheless, the USG routinely discriminated against interdicted Haitians while welcoming refugees from other countries, including tens of thousands from Cuba.

[FN33] These numbers were obtained in a telephone interview with an INS Press Officer, on February 5, 1992.

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136. Meaning and application of Article XVII - This important right relates to the legal status of persons. In discussing the American Convention, then vice-chair of the Inter-American Commission, Marco Gorando Monroy Cabra, wrote that juridical personality includes the right to civil status and legal capacity. Rights and Duties Established by the American Convention on Human Rights, 30 Am. U.L. R. 21. 25 (1981). Unlike the other international instruments, the American Declaration specifically includes the right to "enjoy the basic civil rights." In summarily rejecting applications for asylum, the United States is ignoring the "basic civil rights" of refugees at sea who have a right "to be recognized everywhere as person[s] having rights." The USG has denied Haitian refugees rights under Article XVII of the American Declaration. The USG has failed to recognize that laws even apply to Haitians fleeing persecution. The USG has denied that Haitians even qualify for internationally recognized rights and that they wish to exercise their right to life. These refugees also want to exercise their right to petition for and receive asylum, their right to non-refoulement, their right to equality before the law, and their right to a fair trial. The USG denies the juridical personality of Haitian refugees by denying a meaningful opportunity to exercise these rights.

137. Meaning and Application of Article XVIII - This right is found in the American Convention Article 8(1) and Article 14 of the ICPR. The USG has denied Haitian refugees their rights under Article XVIII of the American Declaration. While Article XVIII states that "[e]very

person may resort to the courts to ensure respect for his legal rights," the USG has offered interdicted Haitians no access to the courts to ensure respect for their legal rights. Nor has the USG provided interdicted Haitians a "simple, brief procedure whereby the courts will protect [them] from acts of authority that, to [their] prejudice, violate any fundamental ... rights." On the contrary the USG has convinced the United States Supreme Court that the United States courts have no authority to extend protections to interdicted Haitians.

138. Meaning and application of Article XXIV - The American Declaration proclaims that "[e]very person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon." The Commission requests that petitioners construe the phrase, "submit petitions to competent authorities" in contradistinction to the right to resort to the courts under Article XVIII. This right is unique to the American Declaration. In the other international instruments there is a right to petition a supranational human rights body. In this case, Haitian boat people have a right to petition "competent authorities" the USG, such as the USG's Immigration and Naturalization Service and to have their petitions considered in a meaningful way. The right to resort to the courts under Article XVIII of the American Declaration differs from the right to submit petitions to any competent authority under Article XXIV in that competent authorities include agencies of the USG and inter-governmental organizations.

139. The USG has clearly denied Haitian refugees their right under Article XXIV to submit "petitions to any competent authority," and their "right to obtain a prompt decision thereon." It is undisputed that interdicted Haitian boat people wanted to submit petitions to the USG for recognition as refugees, but the USG denied them the right to petition before forcibly repatriating them to Haiti. This is true both of the pre-Kennenbunkport policy (pre-May 24, 1992 policy) of forced repatriation with superficial, group or no interviews and the Kennebunkport policy (post-May 24, 1992 policy) of forced repatriation with no opportunity to petition competent authorities within the USG.

140. Meaning and application of Article XXVII, the Right to Seek and Receive Asylum[FN34]-International Agreements - The Commission specifically requests argument on the significance of the phrase "in accordance with the laws of each country and with international agreements." In summary this language means that Haitians interdicted and detained by the USG have the right to "seek" and to "receive" asylum in a manner consistent with international agreements" and "the laws" of the United States. In its Preamble, the 1951 Convention Relating to the Status of Refugees assured refugees the widest possible exercise of their fundamental rights and freedoms, and non-refoulement constitutes the most fundamental of these rights. Lowenstein International Human Rights Clinic, Aliens and the Duty of Nonrefoulement: Haitian Centers Council v. McNary, 6 Harv. Human Rts.J.1, 14 (1993). Non-refoulement "is one of the few rights considered non-derogable-no state acceding to the Convention or Protocol may enter any reservation..." Id. Article 33.1 of the Convention Relating to the Status of Refugees proclaims: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion."

[FN34] A summary of the petitioners argument is reproduced here.

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141. International law prohibits State action beyond a State's borders that violate other rights regarded as fundamental. The United Nations Human Rights Committee has held, that a State party may be accountable under Article 2(1) of the 1966 International Covenant on Civil and Political Rights for violations of the rights recognized in the ICCPR committed by its agents in the territory of another State, whether with or without the acquiescence of the government of that State. The Committee determined that the qualification "subject to its jurisdiction," contained in article 29(1) of the Covenant, does not refer to the place where the violation occurs but to the relationship between the individual and the State concerned. The European Commission on Human Rights has concluded that States' obligations under the European Convention on Human Rights extend to "all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad." P. Sieghart, The International Law of Human Rights 58 (1983).

142. Goodwin-Gill, a leading expert on the international law on refugees, writes: "There is substantial, if not conclusive authority that [non-refoulement] is binding on all states, independently of specific assent." Id. at 97. No formal or informal opposition to the principle on non-refoulement is to be found. General Assembly resolutions concerning non-refoulement have been adopted by consensus. Goodwin-Gill concludes that: "Freedom to grant or to refuse permanent asylum remains, but save in exceptional circumstances, states do not enjoy the right to return refugees to persecution or any situation of personal danger. Protection against the immediate eventuality is the responsibility of the country of first refuge. In so far as a state is required to grant that protection, the minimum content of which is non-refoulement through time, it is required also to treat the refugee in accordance with such standards as will permit an appropriated solution, whether voluntary repatriation, local integration, or resettlement in another country." The Refugee in International Law, 69 (Oxford; Clarendon Press, 1983) at 122-23.

143. Procedural Obligations Attached to the Right of Asylum - Under the Geneva Convention, the right to seek asylum constitutes, at least, the right to advance a claim. Richard Plender, The Present State of Research Carried out by the English Speaking Section of the Centre for Studies and Research, Center for Studies and Research in International Law and International Relations: The right of Asylum, page 82 (1980). Plender writes: "The right to advance a claim has little practical content if States are entirely at liberty to determine, in their absolute discretion, how that claim must be advanced and how it may be considered. One must be cautious in asserting that international law imposes limitations on the freedom of States to select the appropriate procedure for the determination of claims, according to their own conditions and in view of their own legal systems; but it appears possible to identify some minimal restrictions on the latitude enjoyed by States in this matter..." Plender identifies an obligation to establish a determination procedure. Id. This procedure should "ensure the impartial and equitable application of the principles [regarding determination of refugee status]..., some special system of semi-judicial machinery should be created, with appropriate constitution, procedure and terms of reference." Id. at 83.

144. The process should include "personal interviews of claimants by officers" who assess the credibility of persons claiming refugee status. Id. at 84. The second obligation is described as follows: "[B]order officials to whom a claim of refugee status is addressed should respect the principle of non-refoulement and refer the claim to a higher authority. ... Officials typically engaged in port-of-entry tasks should not also be adjudicating refugee claims. The claims must be sent to a higher authority." Id. Plender also identifies an obligation to allow an appeal. Applicants whom a state initially rejects "should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial..." Id. at 87. Guy S. Goodwin-Gill writes: [States are] required ... to treat the refugee in accordance with such standards as will permit an appropriate solution, whether voluntary repatriation, local integration, or resettlement in another country." Refugee in International Law at 122-23.

145. Laws of the United States - In the 1980 Refugee Act, the United States amended the Immigration and Nationality Act (INA) and, among other things, redefined "refugee" to conform with the definitions used in the United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Under the USG's 1980 Act (and the Refugee Conventions) governments are to consider whether an individual has a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." INA Section 101(a)(42)(A). If the person is determined to be a "refugee," whose "life or freedom would be threatened in [his/her] country on account of race, religion, nationality, membership in a particular social group, or political opinion," domestic law states that the USG "shall not deport or return" the refugee to the country where s/he faces persecution.

146. Until recently the USG vigorously supported the principle of non-refoulement. Aliens and the Duty of Nonrefoulement at 15. However, despite the USG's long standing commitment to nonrefoulement, the USG justified its Haitian interdiction program on the ground that Article 33's protections do not extend to refugees located outside the United States. Even if it is true, as the United States Supreme Court decided, that the President possesses inherent constitutional authority to turn back from the USG's gates any alien, such a power does not authorize the interdiction and summary return of refugees who are far from, and by no means necessarily heading for, the United States. The USG's interdiction program had the effect of prohibiting the Haitians from gaining entry into the Bahamas, Jamaica, Cuba, Mexico, the Cayman Islands, or any other country in which they might seek safe haven. It has never been established how many of the interdicted Haitians were headed for the United States. The Justice Department's own Office of Legal Counsel stated in 1981 that "experience suggests that" only "two-thirds of the [Haitian] vessels are headed toward the United States." Proposed Interdiction of Haitian Flag Vessels, 5 Op. Off. Legal Counsel 242-43 (1981).

147. Petitioners have already submitted a copy of the Sale v. Haitian Centers Council in which the United States Supreme Court upheld the USG's position thereby failing to uphold the principle of non-refoulement and conferring "domestic authority" on the decision to violate international law. In the absence of any domestic remedy, the responsibility of the United States is beyond dispute. As Guy s. Goodwin-Gill writes: [I]it is not the U.S. Supreme Court which alone is responsible for the violation of international law. Rather, it is the system of administration as a whole, beginning with the executive acts of the President, that has produced

the result contrary to the principle of non-refoulement. "The guarantee of non-refoulement for refugees is a specific and fundamental protection, independent from the question of admission or the grant of asylum." Guy S. Goodwin-Gill, The Haitian Refoulement Case: A Comment, 6 Int. J. Refugee L. 103, 109 (1994).

VI. THE ISSUE

148. The issue which this case presents is whether the Government of the United States has violated the articles of the American Declaration of the Rights and Duties of Man as alleged by the petitioners.

VII. COMMISSION'S ANALYSIS

149. The petitioners allege violations by the United States Government of several international human rights instruments. The controlling instrument is the American Declaration of the Sights and Duties of Man.[FN35] The United States is a signatory to the American Convention on Human Rights, but has not ratified the same.

[FN35] For member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization. "Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," Advisory Opinion of the Inter-American Court of Human Rights, OC-10/89, July 14,1989, page 49, paragraph 45.
See also "Other Treaties" subject to the Advisory Jurisdiction of the Court Art. 64 American Convention on Human Rights, Advisory Opinion of the Inter-American Court of Human Rights, OC-1/82 of September 24, 1982, page 55. The Court by unanimous vote held that, the advisory jurisdiction of the Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever the principal purpose of such a treaty is, and whether or not non-member States of the Inter-American system are or have the right to become parties.

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150. The Articles of the American Declaration of the Rights and Duties of Man allegedly violated are the following:

a. Article I, which provides: "Every human being has the right to life, liberty and the security of his person."
b. Article II provides: "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor."

c. Article XVII provides: "Every person has the right to be recognized everywhere as a person having rights and obligation, and to enjoy the basic civil rights."
d. Article XVIII provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority, that to his prejudice, violate any fundamental constitutional rights."
e. Article XXIV provides: "Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon."
f. Article XXVII provides: "Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements."

151. It is convenient to begin with an analysis of Article XXVII of the American Declaration. Article XXVII of the American Declaration is entitled "Right of Asylum." This Article outlines two criteria which are cumulative and both of which must be satisfied in order for the right to exist. The first criterion is that the right to seek and receive asylum on foreign territory must be in "accordance with the laws of each country," that is the country in which asylum is sought. The second criterion is that the right to seek asylum in foreign territory must be "in accordance with international agreements."

152. The travaux préparatoires show that the first draft in the Article did not have the phrase "in accordance with the laws of each country." That phrase was added in the Sixth Session of the Sixth Commission's of the Inter-American Juridical Committee at the Ninth International Conference of American States in Bogota in 1948, and discussed in the Seventh session of the Sixth Commission, to preserve the states sovereignty in questions of asylum.

153. The effect of the dual cumulative criteria in Article XXVII is that if the right is established in international but not in domestic law, it is not a right which is recognized by Article XXVII of the Declaration.

154. The Commission observes that Article 22(7) of the American Convention on Human Rights, which was adopted twenty one years after the American Declaration, has a formulation similar to Article XXVII of the American Declaration. Article 22(7) provides: "Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes."

155. The Commission will now address the question of the application of the two criteria and will deal first with the criterion of conformity with "international agreements." The relevant international agreement is the Convention Relating to the Status of Refugees 1951 and the 1967 Protocol Relating to the Status of Refugees to which the United States is a party. The Convention establishes certain criteria for the qualification of a person as a "refugee." The Commission believes that international law has developed to a level at which there is recognition of a right of a person seeking refuge to a hearing in order to determine whether that person meets the criteria in the Convention.

156. An important provision of the 1951 Convention is Article 33(1) which provides that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." The Supreme Court of the United States, in the case of Sale, Acting Commissioner, Immigration and Naturalization Service, Et.. Al. v. Haitian Centers Council, INC., Et. Al., No. 92-344, decided June 21, 1993, construed this provision as not being applicable in a situation where a person is returned from the high seas to the territory from which he or she fled. Specifically, the Supreme Court held that the principle of non-refoulement in Article 33 did not apply to the Haitians interdicted on the high seas and not in the United States' territory.

157. The Commission does not agree with this finding. The Commission shares the view advanced by the United Nations High Commissioner for Refugees in its Amicus Curiae brief in its argument before the Supreme Court, that Article 33 had no geographical limitations.

158. However, the finding by the Commission that the United States Government has breached its treaty obligations in respect of Article 33 does not resolve the issue as to whether the United States Government is in breach of Article XXVII of the American Declaration because the cumulative effect of the dual criteria in that Article is that, for the right to seek and receive asylum in foreign territory to exist, it must not only be in accordance with international agreements, but in accordance with the domestic laws of the country in which refuge is sought.

159. After several judicial hearings in respect of the Haitian boat people the United States' domestic law in this matter was finally settled by the Supreme Court in the case of Sale, Acting Commissioner, Immigration and Naturalization Service, Et.. Al. v. Haitian Centers Council, INC., Et. Al., No. 92-344, decided June 21, 1993. In its reply of January 19, 1995, to the Commission's specific question on the meaning of the phrase "in accordance with the laws of each country," the United States Government stated that: "As fully articulated in the merits brief submitted by the United States on May 4, 1994, United States law on the question of the 'right to asylum' of Haitians is perfectly clear: Haitians interdicted by the United States at sea are not entitled to enter the United States or to avoid repatriation to Haiti, even if they are refugees under the standards of the 1951 Refugee Convention or the standards of U.S. law." This statement derives from the Supreme Court's decision in the Sale case. However, under the United States domestic law Haitians and other refugees who have made it to the United States shores are entitled to "seek" asylum in accordance with United States law. But there is no mandatory grant of "asylum." Asylum is only granted to refugees who meet the criteria of a "refugee" under United States domestic law and its international obligations.

160. The Commission has noted that both prior to and subsequent to the Supreme Court's decision the United States recognized and acknowledged the right of Haitian refugees to seek and receive asylum in the United States.[FN36] This is found in the United States Government's argument on page 2 of its submission of January 19, 1995, in which it states that:

On May 8, 1994, President Clinton announced his decision to end the policy of directly repatriating, without an opportunity to present a refugee claim, Haitians interdicted at sea by the

United States Coast Guard, in light of the deteriorating human rights conditions in Haiti. The United States entered into agreements with some nations in the Latin America region to permit the processing for refugee status within their territory or territorial waters of Haitians interdicted at sea. With the assistance of the United Nations High Commissioner for Refugees, in June of this year, the United States began processing interdicted Haitians aboard the U.S. Naval Ship Comfort within Jamaican territorial waters for refugee status and resettlement in the United States. The numbers of Haitians fleeing Haiti by sea soon overwhelmed the capacity of the United States to process their claims on board the Comfort and in the beginning of July, President Clinton announced the decision to provide safe haven for all interdicted Haitians desiring protection at either the U.S. Naval Station at Guantanamo Bay, Cuba or at other safe haven facilities in the region. To this end the United States entered safe haven agreements with a number of countries in the region.

[FN36] See Executive Order 12324 ..."no person who is a refugee will be returned without his consent... the Attorney General, in consultation with the secretaries of State and Transportation shall take appropriate steps to ensure the fair enforcement of our laws relating to immigration and the strict observance of our international obligations concerning those who genuinely flee persecution in their homeland." Executive Order 12807 issued by President Bush in part stated that: "the Attorney General, in his unreviewable discretion, may decide that a person who is refugee will not be returned without his consent."

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161. The Commission has also noted that the petitioners in their reply of February 2nd, 1995 to the Commission, in response to the Commission's question on the meaning of Article XXVII stated that: "Even if it is true, as the United States Supreme Court decided, that the President possesses inherent constitutional authority to turn back from the United States Government's gates any alien, such a power does not authorize the interdiction and summary return of refugees who are far from, and by no means necessarily heading to the United States. The United States Government's interdiction program had the effect of prohibiting the Haitians from gaining entry into The Bahamas, Jamaica, Cuba, Mexico, the Cayman Islands, or any other country in which they might seek safe haven. It has never been established how many of the interdicted Haitians were headed for the United States. The Justice Department's own Office of Legal Counsel stated in 1981, 'experience suggests that' only 'two thirds of the [Haitian] vessels are headed toward the United States.' Proposed Interdiction of Haitian Flag Vessels, 5 Op. Off. Legal Counsel 242, 243 (1981)."

162. It is noted that Article XXVII provides for a right to seek and receive asylum in "foreign territory." A question however arises, whether the action of the United States in interdicting Haitians on the high seas is not in breach of their right under Article XXVII of the American Declaration to seek and receive asylum in some foreign territory other than the United States. This statement from the petitioners has not been contested or contradicted by the United States. The Commission has noted that subsequent to the coup ousting President Aristide from office on September 30, 1991, during the interdiction period, Hatian refugees exercised their right to seek and receive asylum in other foreign territories, such as the Dominican Republic, Jamaica,

Bahamas, Cuba, (provided asylum to 3, 851 Haitians during 1992) Venezuela, Suriname, Honduras, the Turks and Caico Islands and other Latin American countries.[FN37]

[FN37] Office of the United Nations High Commissioner for Refugees, UNHCR Activities Financed By Voluntary Funds: Report For 1991-1992 and Budget for 1993, Part IV. the Americas: North America; Latin America and the Caribbean, Submitted by the High Commissioner, A/AC.96/793 (Part IV); and UNHCR Activities Financed By Voluntary Funds: Report For 1992-1993, and Budget for 1994, Part IV. The Americas: North America; Latin America and the Caribbean. Submitted by the High Commissioner, A/AC.96/808 (Part IV)-------

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163. The Commission finds that the United States summarily interdicted and repatriated Haitian refugees to Haiti without making an adequate determination of their status, and without granting them a hearing to ascertain whether they qualified as "refugees." The Commission also finds that the dual criteria test of the right to "seek" and "receive" asylum as provided by Articles XXVII in "foreign territory" (in accordance with the laws of each country and with international agreements) of the American Declaration has been satisfied. Therefore, the Commission finds that the United States breached Article XXVII of the American Declaration when it summarily interdicted, and repatriated Jeanette Gedeon, Dukens Luma, Fito Jean, and unnamed Haitians to Haiti, and prevented them from exercising their right to seek and receive asylum in foreign territory as provided by the American Declaration.

164. Article I of the American Declaration provides that: "Every human being has the right to life, liberty, and the security of the person."[FN38] In construing this Article with regard to the "right to life," the petitioners cite numerous instances of violence directed toward the Haitians who were repatriated to Haiti and in particular the statements contained in four interviews conducted by the United Nations officers with Haitians at the United States Naval Base, in Guantanamo and referred to in Part I, page 4, paragraphs 9 and 10 of this report. Petitioners alleged (paragraph 10) that "the interviews allegedly removed all doubt that the Haitian interdictees forcibly repatriated by the United States Government have been, and will be brutalized by the military government upon their return to Haiti."

[FN38] The Fifth Amendment to the Constitution of the United States of America 1787, provides: "No person shall...; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...."

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165. Petitioners further alleged that these interviews stated that: "The Government soldiers were present at the docks when the Haitian interdictees were repatriated; that their names and addresses were requested after they had been processed by the Haitian Red Cross. Later many of the repatriated interdictees were arrested at home. Others never made it home and were arrested at pre-established roadblocks. Several were found shot to death, and some were beaten in public by the military, which forced people at gunpoint to identify the repatriated Haitians. Others were

taken to the National Penitentiary where they were beaten daily and not fed, and some were tortured to death in prison. Detainees were told by at least one prison guard that they were being tortured for having fled Haiti, and that others would suffer the same fate. Others were informed that a local judge had issued arrest warrants for repatriated interdictees because they had left Haiti and criticized the military."

166. The Commission finds that the evidence establishes that the above described acts of violence in paragraph 4, were committed by the military in Haiti or upon its orders, after the Haitian refugees were interdicted and repatriated back to Haiti by the United States. The Commission has noted the petitioners' argument that on June 6, 1984, a boat carrying 70 to 89 Haitians sank as it was being boarded by the Coast Guard. Six bodies were recovered including that of an INS interpreter, and as many as 23 were unaccounted for and presumed drowned. On November 11, 1988, two persons drowned while the Coast Guard attempted to interdict the Sea Eagle. The craft sank after a four-man team of Coast Guard and INS officials boarded it. The policy of attempting to stop, board and/or tow fully loaded or overloaded crafts in poor conditions on the high seas is inherently a high risk operation which not only jeopardizes many lives, but has resulted in the loss of human life.

167. The Commission has noted the petitioners argument that by exposing the Haitian refugees to the genuine and foreseeable risk of death, the United States Government's policy of interdiction and repatriation clearly violated their right to life protected by Article I. The Commission has also noted the international case law which provides that if a State party extradites a person within its jurisdiction in circumstances, and if, as a result, there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant.[FN39] The United States in its submissions has argued that the interdiction of the boats carrying Haitian refugees rescued and saved lives, because the boats were unseaworthy and since December of 1982 approximately 435 Haitians have drowned en route to U.S. shores.[FN40]

[FN39] See Soering v. United Kingdom, 161 Eur.Ct.H.R. (ser.A) (1989). The European Court was construing Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provided that: "No one shall be subjected to torture or inhuman or degrading treatment or punishment." The Court held that "Contracting Parties [are not absolved] from responsibility under Article 3 for all and any foreseeable consequences of extradition suffered outside their jurisdiction. Id. at para. 83, 86 (emphasis added). See also N.g. v. Canada, U.N. Human Rights Committee, 1994, at 203, where the Committee followed the reasoning in the Soering case, in construing Article 7 of the United Nations Covenant on Civil and Political Rights. In both of these cases extradition was sought by the demanding states, where the defendants were subject to the death penalty for murder crimes. In Soering the European court concluded that the "death row phenomenon" in the United States was violative of Article 3, and in N.G's case, death by gas asphyxiation would be violative of Article 7 of the Covenant on Civil and Political Rights which is similar to Article 3.
[FN40] U.S. Response, dated May 4, 1994.

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168. The Commission has also noted that in the United States response prior to the Supreme Court's decision and its interdiction policy that the refugees were brought to Guantanamo Naval Station. Subsequent to the Supreme Court's decision the United States sought the assistance of other countries and "began processing interdicted Haitians aboard the U.S. Naval Ship Comfort within Jamaican territorial waters for refugee status and resettlement in the United States, and later other refugees were brought to Guantanamo Naval Station, or at other safe haven facilities in the region."[FN41] The Commission therefore finds that the United States has breached the right to life of those unnamed Haitian refugees identified by the petitioners in its submissions who were interdicted by the United States, repatriated to Haiti, and later lost their lives after being identified as "repatriates" pursuant to Article I of the American Declaration.[FN42]

[FN41] U.S. submission dated January 19, 1995, at 2.

[FN42] See petitioners submissions where dead repatriates were identified, and Testimony of four Haitian interdictees who were repatriated to Haiti. Interviews were conducted by officers of the United Nations.

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169. With regard to the "right to liberty" as provided by Article I of the American Declaration of the Rights and Duties of Man, the Commission finds that the act of interdicting the Haitians in vessels on the high seas constituted a breach of the Haitians' right to liberty within the terms of Article I of the American Declaration. The Commission therefore finds that the right to liberty of Jeannette Gedeon, Dukens Luma, Fito Jean, the four Haitians who were interviewed at the United States Naval Base at Guantanamo, and other unnamed Haitians was breached by the United States Government.

170. The petitioners also alleged violation of Article I of the American Declaration of the Rights and Duties of Man which refers to the "right to security of the person." Article I provides: "Every human being has the right to life, liberty and the security of his person." This right is defined as "a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation."[FN43] The petitioners' evidence is compelling and establishes that the security of the persons of both named and unnamed Haitians who were repatriated to Haiti against their will were violated upon their return to Haiti. This is clearly illustrated by the evidence before the Commission of the four Haitians who were interviewed at the United States Naval Station at Guantanamo and the testimony of Dukens Luma, Fito Jean, and Pierre Esperance.

[FN43] Id. Black's Law Dictionary at 1523. See also 1 BI.Comm. 129. Sanderson v. Hunt, 76 S.W. 179, 25 Ky.L.Rep. 626.

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171. The Commission therefore finds that the United States Government's act of interdicting Haitians on the high seas, placing them in vessels under their jurisdiction, returning them to Haiti, and leaving them exposed to acts of brutality by the Haitian military and its supporters constitutes a breach of the right to security of the Haitian refugees. Based on the testimony and

evidence presented to the Commission by Dukens Luma, Fito Jean, Pierre Esperance, and the four interviewees who were interviewed by the Office of the United Nations High Commission for Refugees,[FN44] some of these repatriates were arrested, detained, imprisoned and suffered violence at the hands of the Haitian military upon their return to Haiti. The Commission however, limits this breach of the "right to security of the person" to Dukens Luma, the four interviewees at Guantanamo, and some unnamed Haitians. The petitioners have not proved that the right to "security of the person" of Jeannette Gedeon has been violated.

[FN44] See Chapter IV, "Proceedings Before the Commission," pages 9-13.

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172. With regard to Article II, the "right to equality before the law," the petitioners argued in their petition,[FN45]that the interdiction program clearly violated international law and blatantly discriminated against Haitian people who make up a small percentage of those seeking asylum in the United States but are the only group subject to an interdiction program. It further discriminated by failing to provide Haitians with anything close to a fair opportunity to present their claims of persecution. They stated that the Miami Herald reported on September 28, 1990, that the United States Government picked up 16 Cubans from waters off the Florida coast. "All the Cubans were reported to be in good health and were brought to the United States and turned over to the Immigration and Naturalization Service," their names were even listed in the Herald. At the same time, the report stated that, "a fishing vessel with 136 Haitians was turned back to Haiti by a Coast Guard cutter that encountered the vessel 500 miles southeast of Miami..." That the racial and national origin discrimination practiced by the United States Government is plain.

[FN45] Id at 18 of petition.

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173. Petitioners argued[FN46] that Article II of the American Declaration stated above, provides that: "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." The petitioners also referred to Article 3 of the United Nations Convention Relating to the Status of Refugees.[FN47] Article 3 provides that: "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin."

[FN46] February 2, 1995.
[FN47] Id. Report No. 28/93, Case No. 10.675, part V at 21.

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174. In reviewing the petitioners' and the United States Government's arguments, both parties in response to the Commission's inquiry, concede that the "right to equal protection of the law" is a right that attaches in the application of a substantive right without discrimination, and not that the substantive aspects of the law will be the same for everyone. Petitioners argued that, "this is shown in the travaux préparatoires of the ICPR," and that "the provision was intended to ensure

equality, not identity, of treatment, and would not preclude reasonable differentiations between individuals or groups of individuals."[FN48]

[FN48] Annotation on the Text of the Draft International Covenants on Human Rights, 10. U.N. GOAR Annexes (Agenda Item 28, pt. (II)) 1, 61, U.N. Doc. A/2929 (1955).

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175. The Government argued that the United States does not discriminate against Haitians and that they were treated more favorably than other aliens and that from 1981 to 1991, more than 185,000 of them gained legal status with the exception of Mexico, the Philippines, the former Soviet Union and Vietnam. The petitioners on the other hand argued that the United States Government has found only (6) of out 21,000 Haitian boat people whom it did not forcibly return to Haiti. It has found 50% of all Nicaraguans to have a legitimate claim to political asylum and that the vast majority of asylum seekers from Communist countries including Cuba, possessed a legitimate claim to asylum. They argued that even the United States Government in-country processing resulted in discrimination against Haitians.

176. The petitioners also relied strongly on the case of Molaire v. Smith 743 F. Supp. 839 (S.D.Fla. 1990), in which the Court stated that the INS had "routinely engaged in underhand tactics in dealing with Haitians seeking asylum in the United States and had singled them out for special discriminatory treatment;" and further argued that "repeatedly the Court and other Federal Courts had found that INS had engaged in illegal practices and policies with respect to Haitians..." The petitioners cited ten Case Abstracts, 6 Int.J. of Refugee L. 110, 115 (1004), to substantiate their claim of discrimination exercised by the United States over Haitian refugees.

177. The Commission finds that the United States Government has violated the right to equality before the law with respect to the following matters:

(a) The interdiction of Haitians on the high seas in contradistinction to the position of Cubans and nationals of other countries who so far from being interdicted are favorably treated by being brought into the United States by the United States Coast Guard.
(b) The failure to grant Haitians interdicted on the high seas any hearing, or any adequate hearing as to their claim for refugee status; in contradistinction to cuban asylum seekers and nationals of other countries who are intercepted on the high seas and brought to the United States for their claims to be processed by the United States Immigration and Naturalization Service.

178. The Commission wishes to point out that a breach of Article II arises not only in the application of a substantive right but also in respect of any unreasonable differentiation in respect of the actual treatment of persons belonging to the same class or category. Thus, the finding that the Haitians have a substantive right to asylum under Article XXVII does not preclude a finding of a breach of Article II in respect of unreasonable differentiation in the treatment of Haitians and nationals of other countries seeking refuge in the United States. The Commission finds that the "right to equality before the law" as provided by Article II of the American Declaration was breached by the United States with regard to Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo and unnamed Haitians.

179. With regard to the right allegedly violated in Article XVII of the American Declaration, the Commission does not find any violation of Article XVII of the American Declaration.

180. With regard to Article XVIII of the American Declaration, the Commission does not agree with the United States that this right is confined to persons accused of crimes. The Commission finds that some of the petitioners (Haitian refugees) who landed on the shores of the United States were able to resort to the courts of the United States, in an effort to vindicate their rights, as is evidenced by the several cases instituted in the United States. The Commission finds however, that Jeannette Gedeon, Dukens Luma, Fito Jean and the unnamed Hatian Nationals were unable to resort to the courts in the United States to vindicate their rights because they were summarily interdicted and repatriated to Haiti without being given an opportunity to exercise their rights. Therefore, the Commission finds that the United States breached Article XVIII of the American Declaration in respect of Jeannette Gedeon, Dukens Luma, Fito Jean and the unnamed Haitian Nationals who were interdicted and summarily repatriated to Haiti.

181. With regard to Article XXIV of the American Declaration, the Commission feels that this Article is wider in scope than Article XVIII which is confined to the courts in respect of legal rights. On the basis of the evidence, the Commission finds no breach of this Article.

182. On November 6, 1996, the Commission transmitted a copy of its decision on the merits of the case to the United States Government. On January 3, 1997, the United States responded by letter and stated the following:

The United States Government has long been one of the strongest supporters of the Commission. We are also a strong supporter of democracy and human rights in Haiti, and a leading contributor to UN and OAS operations in Haiti designed to foster peace, stability and the protection of human rights.

We must respectfully disagree with the conclusions reached by the Commission in this case. I will not here repeat the response of the United States to each allegation made in this case. Our views were set forth in detail in our lengthy submissions to the Commission, and, we believe, demonstrated why the actions of the United States did not contravene any human rights standards contained in the American Declaration of the Rights and Duties of Man. In particular, our submissions demonstrated that there is no basis for interpreting those human rights standards to require the U.S. to admit fleeing Haitians into the United States. Nor do those standards preclude the United States from repatriating the migrants to Haiti.

My government also believes that the Commission's analysis is legally flawed. For example, it was error to hold that the 1967 Protocol to the UN Convention on the Status of Refugees applies to Haitian migrants interdicted on the high seas. It was also error to interpret the non-refoulement obligation to require high seas interdictees to receive the same hearing on their asylum claims as they would receive if they were present within the territory of the interdicting state and to hold that one group of intending immigrants is entitled to receive the more preferential treatment given another group. Moreover, there is no basis in law to hold the U.S. liable for acts and omissions of another government with respect to that government's own citizens.

The United States Government has been and remains deeply committed to restoring democracy in Haiti, to saving human lives and to the fair treatment of genuine refugees. We believe that our actions were consistent with those goals and violated no human rights obligations. However, for the reasons explained here and detailed in our previous submissions to the Commission, we can find no basis on which to agree with the Commission's decision and thus will not comply with its demand to pay compensation.

THEREFORE:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS FINDS THAT,

183. The United States has breached the "right to life" pursuant to Article I of the American Declaration, of unnamed Haitian refugees identified by the petitioners who were interdicted and repatriated to Haiti by the United States.

184. The United States has breached the "right to liberty" contained in Article I of the American Declaration with regard to the Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo, and Unnamed Haitian Interdictees.

185. The United States has breached the "right to security of the person" referred to in Article I of the American Declaration with regard to Dukens Luma, the four interviewees at Guantanamo, and Unnamed Haitian Interdictees.

186. The United States has breached the "right to equality before the law" as provided by Article II of the American Declaration with regard to Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo, and Unnamed Haitian Interdictees.

187. The United States has breached the "right to resort to the courts" to ensure respect for the legal rights of Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo, and Unnamed Haitian Interdictees pursuant to Article XVIII of the American Declaration.

188. The United States has breached the right to "seek and receive asylum" as provided by Article XXVII of the American Declaration with regard to Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo, and Unnamed Haitian Interdictees.

THE COMMISSION RECOMMENDS THAT:

189. The United States must provide adequate compensation to the victims for the breaches mentioned in paragraphs 183-188, above, and inform the appropriate authorities of its decision.

190. In conformity with the requirement established in Article 54(5) of its Regulations, the Commission has decided that this Report be published in its Annual Report to the General Assembly.