



REPORT N° 47/96

CASE 11.436

VICTIMS OF THE TUGBOAT "13 DE MARZO" vs. CUBA

October 16, 1996

I. BACKGROUND

1. On July 19, 1994, the Inter-American Commission on Human Rights received a complaint stating that in the early morning hours of July 13, 1994, four boats belonging to the Cuban State and equipped with water hoses attacked an old tugboat that was fleeing Cuba with 72 people on board. The incident occurred seven miles off the Cuban coast, opposite the port of Havana. The complaint also indicates that the Cuban State boats attacked the runaway tug with their prows with the intention of sinking it, while at the same time spraying everyone on the deck of the boat, including women and children, with pressurized water. The pleas of the women and children to stop the attack were in vain, and the old boat--named "13 de Marzo"--sank, with a toll of 41 deaths, including ten minors. Thirty-one people survived the events of July 13, 1994.

2. On February 28, 1995, the Inter-American Commission on Human Rights received another complaint concerning the same events, which was added to Case File No. 11.436, in accordance with Article 40.2 of its Regulations.

II. PROCEEDING BEFORE THE COMMISSION

3. The Commission, by letter of March 7, 1995, initiated the proceeding on the matter and asked the Cuban Government to provide information on the events subject of said communication, as well as any relevant factors that would enable it to determine whether all remedies under domestic jurisdiction had been exhausted.

4. In a letter dated 23 March 1995, the Cuban Interests Section transmitted to the Commission a copy of the remarks by President Fidel Castro to the Cuban communication media and an official communique by the Ministry of the Interior mentioning the events of July 13, 1994.

5. On March 30, 1995, the aforementioned documents were transmitted to the petitioners, who sent their observations on May 4, 1995. These were transmitted to the Cuban Interests Section on May 10 of the same year.

6. The petitioners asked to be heard by the Inter-American Commission on Human Rights during its 90th Regular Session. Consequently, the Commission extended an invitation to the petitioners and representatives of the Cuban Interest Section, to present their

arguments concerning the events in the present case. Said hearing took place on September 7, 1995. The petitioners--*Movimiento Cuba 21*--were represented by Lic. Sergio Ramos, Lic. Guillermo Toledo, Dr. Belquis Rodríguez, and Mr. Jan Fernández. The Inter-American Commission on Human Rights also heard the testimony of two of the survivors, Arquímedes Lebrigio and José Alberto Hernández. The Cuban Interest Section did not send any representative.

7. The petitioners' arguments in said hearing were submitted to the Commission in writing on August 31, 1995. The Commission, by letter of September 20, 1995, forwarded said documentation to the Cuban Interest Section and gave it 60 days to submit its comments thereon.

8. On February 2, 1996, the petitioners asked the Inter-American Commission on Human Rights for a report including the respective findings, pursuant to Article 46.2 of its Regulations.

9. The Commission, in a letter of March 27, 1996, again asked the Cuban Government for information, allotting it a period of 30 days to comply.

10. At its 92nd Regular Session, the Inter-American Commission on Human Rights approved Confidential Report No. 16/96, which was sent to the Government of Cuba on May 3, 1996, so that it might make whatever observations it deemed pertinent within three months of the transmittal date.

11. The Cuban Government did not respond to Confidential Report No. 16/96, approved by the Inter-American Commission on Human Rights during its 92nd regular session.

III. **DENOUNCED EVENTS**

According to the information provided to the Inter-American Commission on Human Rights, the events that occurred are the following:

A. **Sinking of the tug "13 de Marzo"**

12. On July 13, 1994, at approximately 3:00 a.m., 72 Cuban nationals who were attempting to leave the island for the United States put out to sea from the port of Havana in an old tugboat named "13 de Marzo". The boat used for the escape belonged to the Maritime Services Enterprise of the Ministry of Transportation.

13. According to eyewitnesses who survived the disaster, no sooner had the tug "13 de Marzo" set off from the Cuban port than two boats from the same state enterprise began pursuing it. About 45 minutes into the trip, when the tug was seven miles away from the Cuban coast--in a place known as "La Poceta"--two other boats belonging to said enterprise appeared, equipped with tanks and water hoses, proceeded to attack the old tug. "Polargo 2," one of the boats belonging to the Cuban state enterprise, blocked the old tug "13 de Marzo" in the front, while the other, "Polargo 5," attacked from behind, splitting the stern. The two other government boats positioned themselves on either side and sprayed everyone on deck with pressurized water, using their hoses.

14. The pleas of the women and children on the deck of the tug "13 de Marzo" did nothing to stop the attack. The boat sank, with a toll of 41 dead. Many people perished because the jets of water directed at everyone on deck forced them to seek refuge in the engine room. The survivors also affirmed that the crews of the four Cuban government boats were dressed in civilian clothes and that they did not help them when they were sinking.

15. Later, Cuban Coast Guard cutters arrived and rescued 31 survivors. After being

rescued, the survivors were taken to the Cuban Coast guard post of Jaimanitas, which is located west of Havana. From there, they were taken to the Villa Marista Detention Center, which also serves as State Security Headquarters. The women and children were released and the men were held.

16. The victims who died in the incident of July 13, 1994 are: Leonardo Notario Góngora (27), Marta Tacoronte Vega (36), Caridad Leyva Tacoronte (36), Yausel Eugenio Pérez Tacoronte (11), Mayulis Méndez Tacoronte (17), Odalys Muñoz García (21), Pilar Almanza Romero (30), Yaser Perodín Almanza (11), Manuel Sánchez Callol (58), Juliana Enriquez Carrasana (23), Helen Martínez Enríquez (6 months), Reynaldo Marrero (45), Joel García Suárez (24), Juan Mario Gutiérrez García (10), Ernesto Alfonso Joureiro (25), Amado González Raices (50), Lázaro Borges Priel (34), Liset Alvarez Guerra (24), Yisel Borges Alvarez (4), Guillermo Cruz Martínez (46), Fidelio Ramel Prieto-Hernández (51), Rosa María Alcalde Preig (47), Yaltamira Anaya Carrasco (22), José Carlos Nicole Anaya (3), María Carrasco Anaya (44), Julia Caridad Ruiz Blanco (35), Angel René Abreu Ruiz (3), Jorge Arquímedes Lebrijio Flores (28), Eduardo Suárez Esquivel (39), Elicer Suárez Plascencia, Omar Rodríguez Suárez (33), Miralis Fernández Rodríguez (28), Cindy Rodríguez Fernández (2), José Gregorio Balmaceda Castillo (24), Rigoberto Feut González (31), Midalis Sanabria Cabrera (19), and four others who could not be identified.

17. The surviving victims are: Mayda Tacoronte Verga (28), Milena Labrada Tacoronte (3), Román Lugo Martínez (30), Daysi Martínez Findore (26), Tacney Estévez Martínez (3), Susana Rojas Martínez (8), Raúl Muñoz García (23), Janette Hernández Gutiérrez (19), Modesto Almanza Romero (28), Fran González Vásquez (21), Daniel González Hernández (21), Sergio Perodín Pérez (38), Sergio Perodín Almanza (7), Gustavo Guillermo Martínez Gutiérrez (38), Yandi Gustavo Martínez Hidalgo (9), José Fabián Valdés (17), Eugenio Fuentes Díaz (36), Juan Gustavo Bargaza del Pino (42), Juan Fidel González Salinas (42), Reynaldo Marrero Canarana (16), Daniel Prieto Suárez (22), Iván Prieto Suárez (26), Jorge Luis Cuba Suárez (23), María Victoria García Suárez (28), Arquímedes Venancio Lebrijio Gamboa (52), Yaussany Tuero Sierra (20), Pedro Francisco Garijo Galego (31), Julio César Domínguez Alcalde (33), Armando Morales Piloto (38), Juan Bernardo Varela Amaro, and Jorge Alberto Hernández Avila (33).

B. Refusal of the Cuban Government to recover the victims' bodies

18. In the days following the tragedy, relatives of the victims who had drowned asked the Cuban authorities to recover the bodies from the bottom of the sea. The official response was that there were no special divers available to recover the bodies.

19. The nonprofit organization "Hermanos al Rescate" (Brothers to the Rescue)--which is dedicated to rescuing Cuban boat people trying to escape from the island--asked the Cuban Government for permission to fly over the spot where the events took place, to help recover the bodies, but the request was immediately denied. To date, none of the drowning victims' bodies has been recovered by the Cuban authorities, despite the fact that the sinking of the tug "13 de Marzo" occurred in Cuban territorial waters.

IV. ACTIONS TAKEN BY THE CUBAN STATE

20. On March 23, 1995, the Cuban Interest Section sent the Inter-American Commission on Human Rights an English copy of the Official Statement of the Ministry of the Interior, describing the investigations carried out by the Cuban Government. The title of said statement indicated that the "Ministry of the Interior reports on the accident caused by the illegal attempt to leave the country."

21. Said statement indicated that "The investigations carried out by the competent [Cuban] authorities into the incident that occurred on the morning of July 13 [1994], in which

a tug belonging to the Maritime Services Enterprise of the Ministry of Transportation sunk seven miles north of the port of Havana, revealed that the disaster occurred as a result of a collision between said tug and another from the same company that was trying to capture it."

22. "The tug '13 de Marzo' was stolen by a group of people from the dock where it was moored. Before taking the tug, the leaders of the group intending to leave the country illegally, disabled the port's communications system. There was a report concerning the boat, which indicated the existence of leaks. The perpetrators were aware of this and irresponsibly failed to repair the boat before going ahead with the escape."

23. "In the attempt to stop the robbery, three boats from the Maritime Services Enterprise of the Ministry of Transportation (MITRANS) tried to intercept the tug. This was the cause of the unfortunate accident that led to the sinking of the tug [13 de Marzo]. Coast guard units patrolling the area near the place where the events occurred immediately joined the three MITRANS ships in a rescue operation to save the victims of the disaster."

24. "Because of the navigating conditions and the rough seas (Force 3) during the early morning hours, only 31 people were saved. The survivors of the disaster were taken to shore at the port, where they received medical treatment. The other members of the group vanished. The main leader has been incarcerated."

25. "This unfortunate accident demonstrates once again how unscrupulous individuals take the lives of many people, including women and children, because of their wish to emigrate illegally from our country and to be welcomed as heroes by the United States, despite the fact that the American authorities--as we all know--deny them visas to travel in a normal manner."

V. **POSITION OF THE PARTIES**

A. **The Cuban Government**

26. In a letter dated March 23, 1995, the Cuban Government sent the Inter-American Commission on Human Rights a copy of the speech of President Fidel Castro to the Cuban news media on August 5, 1994. In this speech, the Cuban Head of State spoke of the events of July 13, 1994 as follows: "...it [the United States] wants at all costs to undermine the country's economic effort, as part of its overall plan to destroy the Revolution. Radio broadcasts, subversive propaganda, all of this is spearheaded from outside and is encouraged abroad. But, to be sure, this concrete fact--this phenomenon--has been much more clearly in evidence in recent weeks, starting with the accident involving the tug '13 de Marzo'. I believe that one of the most infamous and most grossly cynical acts of the United States Government occurred because of this accident."

27. "(...) As soon as news of the tug accident arrived, a thorough and exhaustive investigation was immediately carried out, based on information provided by the survivors, those who had been rescued, what each of them said; based on the information provided by some of those responsible for the seizure of the boat; the meticulous, detailed information provided by each of those who were on the tugs concerning each of the events that occurred, and as the facts became known, they were reported. Three reports were prepared, as more data were collected, exactly on what had occurred. (...) and it was they, the tug workers, who, as soon as they realized that the seizure of the tug--in this case the theft, the stealing of the tug--had occurred, acted swiftly to prevent them from taking the tug."

28. "Those who took the tug had accomplices, among them the one who had the key to the padlock, and they had the skipper of another tug. They destroyed the communications, and the tug workers were not even able to communicate with the coast guard; the coast guard learned of it later. All of this occurred within about an hour and 20 minutes, from the time

they took the boat until it was sunk. They tried to prevent the departure, and the boat they took, the stolen boat even collided with one of the boats that was trying to prevent it from leaving, there at the entrance to the bay, and this tug and the others kept trying somehow to stop the tug, to prevent it from being stolen. The Coast Guard, informed later, received instructions to go to the place where these events were taking place, but it all happened very quickly."

29. "We know exactly what happened: one boat positioned itself in front to try to slow the speed, another boat positioned itself behind, and another boat went to the side, but none of the crews had the intention of sinking that boat. They were attempting something very difficult, actually, that is, to stop a boat. All of this happened at night, on a dark night, in rough seas; in these conditions they were trying to stop it until the Coast Guard patrol boats arrived. This is how the accident happened: the one that went behind collided with the stern--and sailors and everyone who knows anything about the sea will realize that this is perfectly possible--of the stolen tug, the one that had been taken, with the 13 de Marzo, and that is how the collision occurred that led to the sinking; that's how it was; it was really an accident, and this was thoroughly investigated by the authorities, the Ministry of the Interior investigated and there was not the slightest intention to sink the boat. What are we going to do with those workers who did not want them to steal their boat, who made a truly patriotic effort, we might say, to stop them from stealing the boat? What are we going to say to them? Listen, let them steal the boat, don't worry about the boat, and they went out to try--even though it was not their job--to keep them from stealing the boat."

30. "The Coast Guard had nothing to do with it, they arrived there a few minutes after the accident. The tugs that were trying to stop the robbery threw them the lifesavers they had, a few lifesavers. They had boarded a tug that had at least one leak, in very poor condition for doing that; it was tremendously irresponsible, that tug would have sunk even if there hadn't been a collision."

31. "They had only a few lifesavers--those tugs are small, they have only a few crew members--they threw the lifesavers they had and pulled some out, even some crew members, and with some danger, because there was the risk that they would seize their own tugs. The Griffing patrol ships arrived with a lot more equipment, many more lifesavers, much more experience, and pulled 25 people from the water; between the tugs and the patrol ships they pulled 31 people from the water. But it was all a deplorable, grievous, unfortunate accident. We are all distressed that it happened."

32. "The workers' behavior was exemplary, there's no denying it, because they tried to stop them from stealing the boat. What are we to say to them now, let them steal the boats, their livelihood? The actions of the Coast Guard crews were irreproachable, they saved 25 lives. So, this is what happened and as soon as information became available, more details were given. Three reports were prepared concerning the incident. However, the tug accident became the raw material for a terrible campaign against our country; it became the raw material for a campaign of disgusting slander, truly disgusting, and the United States Government was a willing participant, because, without finding out what happened and how it happened, it blamed the Cuban authorities for sinking the boat. With incredible perfidy, it said: 'Government ships.' In a socialist state everything belongs to the State: buses, trains, boats, merchant ships, tugs, but they are operated by civilians, and the authorities were represented there essentially by the Coast Guard patrols."

33. "But I saw a great deal of perfidy in the attempt to describe the ships as 'government' ships, because what they meant to say is that the Government was responsible for sinking the boat. They also issued statements, angry speeches in the Senate, warnings against committing these brutal acts, they called it 'brutal'; but it was all meaningless, for in fact the authorities had saved 25 lives. What was the reason for this? It was revealed, they not only launched a libelous campaign but also wanted to take the matter to the United

Nations as part of the scheme and the strategy they were formulating, because they want to intervene in other countries through these international organizations. The idea is clear, the intentions, starting that way, and to continue agitating."

34. "The Coast Guard received a complete explanation from the Ministry of the Interior about what to do to avoid accidents, to avoid the use of weapons if at all possible; they actually told them: 'Do not use any weapons.' But, in fact, for a patrol boat to stop a ship at night, when things have already reached a certain point, is practically impossible." "The Coast Guard crew received numerous instructions about how to handle this problem, and besides, what for?--because we don't have any special need to stop a departing boat."

35. "(...) There will always be time in history to hold each individual responsible for his actions. To demand investigations! When we investigated ourselves first, without anyone demanding it, and no one can demand it, because only our conscience, our duty, and our sense of responsibility can demand and do demand that we conduct an investigation in any case of this type; but, then, to demand investigations!"

36. "How do they reward our effort to obey the law every time an accident occurs, by accusing us of being murderers, accusing us, even, of stowing corpses? They spread gossip, rumors that corpses were stowed away, they accuse us of being keepers of corpses." "What they did because of the accident of the tug 13 de Marzo was to give the order to steal as many boats here as can be stolen. I actually believe that tug was stolen on July 13. But by July 26, a boat was stolen, one of the ones they usually use to transport passengers from Casablanca, which carry 10,000 or 12,000 people every day."

B. The petitioners

37. In their response of May 4, 1995, the petitioners stated *inter alia* that "The people [who were attempting to leave Cuba] went directly to the tug '13 de Marzo' without doing anything else. The alleged damage to the communications systems of the state-owned Empresa Mambisa de Navegación is untrue. All of the enterprise's communications system were intact. Moreover, the other tugs had their radio communication systems intact and were under the control of the Government personnel who were operating them. This means that they could easily have informed the authorities and received instructions from their control centers or from the Cuban Coast Guard and Navy corps."

38. "Upon departing, the passengers in the boat '13 de Marzo' saw two tugs, in the dark, on either side of the outlet from Havana Bay. The survivors indicate that as soon as they passed them, they started their pursuit, spraying water on them with their hoses to flood them and sink them. The speed of the other tugs' reaction should be noted. This means that their basic crew was already on board and ready to set out. Notice that Castro himself acknowledges and admits that there was a tug at the mouth of the bay that tried to stop the departure and that the others kept trying to stop it. Castro himself says that the entire incident, from the departure to the rescue of the victims 7 miles off the Cuban coast took one (1) hour and twenty (20) minutes. This supports the theory of the prior preparation of the other ships, i.e, that there was an ambush, and that the Cuban Government knew in advance of the escape plan, and perhaps to give a warning to prevent people from getting in the habit of taking ships to flee the country in search of freedom. The massacre was premeditated."

39. "One of the acts reported by all of the survivors was the fact that almost as soon as they left the mouth of the Bay of Havana, the two heavy-draft, iron tugs made by Polaca began to spray water on the old tug '13 de Marzo' to try to flood it and sink it. Castro claims that the tug was leaking. If this were true, the operators of the other tugs knew it, so why did they spray it with water if not to sink it even faster? This is not the way to stop a ship in flight, as Castro alleges, but rather to sink it."

40. "The pursuing tugs were new, larger, made of iron, and faster. The fleeing tug, the '13 de Marzo,' was old, made in the 40s, slower, smaller, and made of wood. Logically, it had everything to lose in a deliberate collision with the tugs pursuing it." "Castro speaks of a 'collision' at the mouth of the bay and another on the open sea. However, the survivors' report indicates that the '13 de Marzo' was hit by several of the tugs pursuing them. In her testimony, survivor Janet Hernández tells us that the MININT tugs started bumping into their sides. It was seven miles off the Cuban coast, after losing the captain, who was thrown overboard by the impact of the jets of water, that one of the fugitives stopped the boat's engines. It was then that the largest of the tugs pursuing them rammed the '13 de Marzo' in the stern and split it; and then returned to the charge and rammed the bow, causing it to sink. If it had been a random accident, it would have received only one hit, but not two serious, separate blows, with time elapsing between the two. Moreover, anyone with a little knowledge of navigation and logic will realize that objects in water do not stop abruptly, but come to a gradual stop. Consequently, this was a 'collision' that could have been avoided. This barrage of hits and these attacking boats prove that the sinking was intentional."

41. "It is widely and publicly known that the coasts opposite Havana Bay are constantly patrolled by Soviet-made type p-4 or p-6, high-speed torpedo boats, or 'TURYA' type gunboats (commonly known as Griffings). These boats are capable of reaching speeds of 40 to 50 knots. If, as Castro claims, they appeared on the scene and remained at a distance, why did they not act rapidly to stop the action of the attacking tugs? This comes up in the survivors' reports and demonstrates the complicity of the military authorities in these macabre acts."

42. "The survivors' report reveals that despite the victims' pleas to stop trying to sink them, showing them the children on board, they continued their macabre persecution by spraying water on the deck, to the point that they forced the women and children to seek shelter in the cabins because of the danger of being thrown into the sea by the pressure of the jets of water. When the boat sank after the collisions, 40 people were trapped in there, 23 of them children. Had they been able to remain on deck, many would have been saved."

43. "The survivors also describe how those who were able to jump into the sea received no help from the tug crews. On the contrary, they began circling at a high speed around the people in the water to create whirlpools and thus drown them. The survivors say that it was not until the 'Griffing' patrol boat and another small boat arrived that they were pulled from the sea. The tug crews were indifferent to those who were drowning, looking on and enjoying the Dante-esque spectacle, the work of their villainy."

44. "It should be pointed out that those who were rescued and/or survived were taken to the headquarters of Castro's political police, the Department of State Security, in the gloomy 'Villa Marista' torture center. However, none of the aggressors was punished or tried by the courts of law, despite the crime committed. On the following day, the women were released, but not the men. The women told the international press what happened, as stated in our reports to you."

45. "A few days later the Cuban Government claimed that it could not go down to investigate the blows sustained by the sunken boat, or recover the bodies, because it lacked the necessary equipment and personnel. We refute this claim because the Cuban armed forces have frogmen units that were well trained by the former Soviet Union. It also refused the offer of Cuban exiles who are qualified for this work, and it even prevented the service organization Brothers to the Rescue from approaching the spot where the incident occurred to help rescue victims and recover bodies."

46. "In his public appearance, Castro covered up for the murderers by applauding this act as a true patriotic effort, claiming that none of the crew members intended to sink the boat. It should be pointed out that if it was not murder, then it was negligence; nevertheless,

none of the aggressors was tried in court; instead, they were absolved and applauded by the Cuban Head of State. The Cuban Criminal Code states that negligence does not excuse the commission of a crime (Article 48), and punishes it with sentences of 5 to 8 years."

47. "Assessing the facts and pursuant to the Cuban Criminal Code, the perpetrators of these acts committed the crimes of major destruction (Article 195), violation of the rules of navigation or maritime traffic (Article 209), murder (Article 36), crimes violating international law (Article 123), and, above all, genocide (Article 124, subparagraph 2)."

48. "In his appearance, Castro affirmed that it was perfidious to call the ships Government ships, because what they meant to say by this is that the Government was responsible for sinking the boat, and he pointed out that they were operated by civilians. With this argument, the Cuban Head of State tried to excuse his Government. However, if we look at how the State is structured internally, we realize that every activity is under centralized State control."

49. "According to the Socialist Political Constitution of 1976, the means of production are state-controlled (Articles 15, 16 and 17) and the economy is centralized. Everyone who works for state enterprises is an employee of the Government. Within each state enterprise there are two types of controls: (a) management control, exercised by the director, and (b) political control, which is the responsibility of the Secretary of the Communist Party for that enterprise. The Communist Party is the country's only legal party (Article 5 of the Constitution). A third important factor in these enterprises is the presence of members of the security police, who are in the Party's employ and who serve as agents or informants of the Department of State Security."

50. "Another aspect that Castro did not mention is that there are certain enterprises that are classified as strategic and are therefore military reserves of the Revolutionary Armed Forces, such as Civil Aviation and Maritime Transport. The Maritime Navigation Enterprises are Armed Forces reserves and are chiefly coordinated by and attached to the security agencies and armed forces of the Cuban State."

51. "One interesting fact is that the survivors identified the attacking tugs as belonging to MININT (Ministry of the Interior). This Ministry's functions encompass police and state security matters, as well as the organs of repression of the Cuban State. It is obvious that the crime was committed by the repressive forces of the dictatorship. Moreover, centralism is one of the characteristics of the system. No major decision can be taken without the approval of Castro or of a high-level Government agency. This case is no exception, given the presence of the surveillance element and the type of organization involved. This act had to have been planned and directed by high-level Government agencies."

52. "There are behavioral factors that support this argument. It is the custom of the Cuban State, when it is carrying out acts of repudiation and aggression against dissidents (witness the case of the poet María Elena Cruz Varela) to use agents of the Department of State Security dressed in civilian clothes, along with cadres from the Communist Party and the Young Communists Union. This attack against defenseless civilians was planned, orchestrated and directed by the Communist Party and State Security and involved the direct participation of both."

53. At the hearing before the Inter-American Commission on Human Rights on September 7, 1995, the petitioners stated *inter alia* that "We have no doubt whatsoever that on the morning of July 13, 1994, the 72 people who left Havana Bay by seizing the old wooden tug and who were fleeing Cuba in search of the liberty denied them there, were pursued and their vessel rammed by three of the Cuban State's most modern tugs; and this occurred as soon as they left the bay. While they were executing these maneuvers, they also sprayed jets of water on the people who were on the deck of the tug '13 de Marzo,' who

pleaded that there were children on board, to stop spraying them with water and stop ramming their boat, that they were giving up and returning to Cuba. Finally, at a distance of 7 miles from the Cuban coast, a blow to the stern caused the tug '13 de Marzo' to sink."

54. "To complete the spectacle, the Cuban State tugs circled around the people who were still afloat, creating whirlpools so that they sank, and continued spraying them with jets of water. The death toll of this abominable crime, of this genocide, was 41 people, including several children. Three days after the incident, some of the 31 survivors were rescued by other Cuban State ships and not by the tugs. The first thing the Cuban State did was to arrest these survivors and, on the second day, release the women and children. Of particular note is the testimony given in Havana by survivor María Victoria García Suárez after her release. WSCV Channel 51 managed to get the interview out of Cuba. The television images of this woman crying and accusing the Cuban Government moved the public. María Victoria García Suárez, who is still in Cuba, told how she lost her husband, her 10 year-old son, her brother, and three uncles and two cousins."

55. "Then, other eyewitnesses in Cuba, such as Janet Hernández, overcame their fear of government repression and told the outside world the truth about the incident. It should be pointed out to this distinguished Commission that the survivors' testimonies, given on different dates and in different places, are consistent, which proves the absolute truth of the crime committed by the Cuban Government."

56. "The first reaction of the Cuban Government through its representative in the Cuban Interest Section in Washington, D.C., Mr. Rafael Dausá, was to describe the survivors' testimonies as 'science fiction.' On July 15, 1994, the Cuban Government, through Mr. Dausá, said that the tug '13 de Marzo' was '9 years old and no longer used because of its appalling condition.' 'It was no miracle,' Dausá said. 'It sank because of its poor mechanical condition. The irresponsible attitude of these pirates caused the accident.' (See the article from the newspaper 'El Nuevo Herald de Florida' of Saturday, July 16, 1994)."

57. "That same day, July 16, 1994, the Cuban Government changed its version of the previous day in a statement issued by the Ministry of the Interior, stating that an investigation had been conducted, which revealed that the tug '13 de Marzo' had sunk because of a collision with another tug that was trying to catch up with it. The statement went on to say that the leaders of the group attempting to flee Cuba illegally had destroyed the port communications system of the Interior Ministry's Maritime Services Enterprise, the owner of the tug '13 de Marzo,' that the tug had a leak, and that those responsible for the incident knew it, which made them irresponsible for not fixing this problem before continuing with the escape. It also said that in an effort to prevent the theft, three tugs tried to intercept the '13 de Marzo' and it was then that the unfortunate accident occurred that caused the latter to sink."

58. "According to the statement of the Ministry of the Interior, two coast guard ships that were on patrol in the area joined the three tugs in a rescue operation to save the victims of the accident. The statement concludes by blaming those who were fleeing Cuba in the tug '13 de Marzo' for the 'alleged' accident."

59. "Following this statement announcing the investigation of the incident by the Cuban Ministry of the Interior, the Cuban Government maintained official silence on the matter, except for a few statements of the Chief of the Army, Raúl Castro, on July 26, 1994, in which he repeated the official version in order to show that the sinking was accidental. On August 5, 1995, the Cuban Head of State, Fidel Castro Ruíz, held a press conference as a result of the disturbances against his government by more than 30,000 Cubans in Havana that day. In this interview, he enlarged upon the events involving the sunken tug and confirmed the Government's version. The transcript of this interview is the one submitted to this distinguished Commission by the Cuban Government, together with the brief note on the

investigation of the incident by the Cuban Ministry of the Interior."

60. "In this interview, Fidel Castro elaborated on the Cuban Government's version of what happened to the tug '13 de Marzo'. In it, he distorted certain facts, concealed others, and generally lied about what actually happened. The first thing that jumps out is his statement--incredible from any perspective--that his Government conducted a thorough and exhaustive investigation. How can it be believed that two days after the events occurred, that is, in so short a time, his Government could have conducted a thorough and exhaustive investigation? Can any sensible person believe that the simple statement issued by the Ministry of the Interior concerning the investigation it conducted was the product of a thorough and exhaustive investigation?"

61. "Moreover, on August 5, 1994, when Fidel Castro again spoke of the events involving the tug '13 de Marzo', 23 days had elapsed since its sinking. Is it possible that an exhaustive and thorough investigation could be conducted of an event of such a magnitude as the sinking of said tug 7 miles off the Cuban coast? Where is the seriousness, the responsibility, and the sensitivity of a government and of a leader who dare to lie publicly in this manner, in a case where 41 innocent people lie dead at the bottom of the sea? So far, we have not seen this thorough and exhaustive investigation carried out by the Cuban Government. We don't know if the Cuban Government has made anything else public."

62. "A thorough and exhaustive investigation would have involved raising the tug '13 de Marzo' and delivering the bodies to their relatives. If the Cuban Government was unable, because of its resources to raise the sunken tug, then it could have requested help from other governments and international organizations. The Cuban Government can still demonstrate its good faith and its 'alleged' interest in the truth by allowing international organizations, such as this distinguished Commission, to conduct an independent investigation both outside and within Cuban territory and attempt to raise the tug '13 de Marzo'. This distinguished Commission should note that the Cuban Government, through its Ministry of the Interior and its Head of State, in its version of what happened, remains silent about the jets of water that the men on the three pursuing tugs sprayed on those who were sinking in the tug '13 de Marzo'. The Cuban Government should be asked why it remained silent about this matter, when all of the survivors relate this fact. Or is it perhaps that the Cuban leaders realized that admitting this truth would cast doubt on their claim that the sinking of the '13 de Marzo' was accidental?"

63. "The Cuban Government should be asked what it meant when it said that the tug crews "kept trying somehow to stop the tug, to prevent it from being stolen..." Aren't these expressions a veiled attempt to conceal the facts, that the manner of stopping them was to attack the tug '13 de Marzo' and spray its occupants with jets of water?"

64. "How can the Cuban Government and its leader be believed when they say that those who were fleeing in the tug destroyed the company's port communications and that this is why the Coast Guard learned of it later? What this is supposed to suggest is that the people who were on the three pursuing tugs were unable to communicate from shore with the Coast Guard, so they were the ones who stopped the tug that sank. The claim that the Coast Guard learned of it later contradicts the report of the survivors that the Coast Guard ships were following the '13 de Marzo' as soon as it left the bay."

65. "The Cuban leader should be asked what he meant by the statement 'the Coast Guard learned of it later.' By what means and from whom did they learn of it? How much time after the tug '13 de Marzo' left the port was the Coast Guard informed? Obviously, a thorough and exhaustive investigation could not leave these and many other questions unanswered. Furthermore, it slipped the Cuban Government's mind that the Coast Guard naval units have radios on their ships and that the tugs also have radios to communicate with other vessels or their bases on shore. Here is another of the Cuban Government's lies."

66. "Although Fidel Castro tried to establish that the operators of the three pursuing tugs were civilian employees of Empresas Mambisas de Navegación and that they were acting in their own interest, in our petition of May 4, 1995 to this distinguished Commission, we clearly show that the men at the helm of those tugs were State Security employees. We reach this conclusion not only because of the nature of the Cuban system, but also because the survivors' testified that it was so. These same State Security employees, dressed as civilians, are members of the 'Swift Action Brigades' that the Cuban Government sends into the streets with weapons and clubs to beat dissidents."

VI. **QUESTIONS RAISED IN THIS CASE**

67. The other question to be resolved is whether the sinking of the Tugboat "13 de Marzo" took place with the support or tolerance of the public authorities or whether the latter acted in such a way that the violation occurred for want of prevention or with impunity. That is, the Inter-American Commission on Human Rights must determine whether the Cuban State is internationally liable for the deaths of the 41 people who were trying to flee the country on the morning of July 13, 1994.

VII. **GENERAL CONSIDERATIONS**

A. **Considerations regarding the formal requirements of admissibility**

68. The Inter-American Commission on Human Rights has handled this case in accordance with the provisions of Chapter III of its Regulations. Article 51 of said chapter states that "The Commission shall receive and shall examine petitions containing a complaint about alleged violations of the human rights enshrined in the American Declaration of the Rights and Duties of Man in respect of member States of the Organization which are not signatories of the American Convention on Human Rights."

69. The above statement leads the Inter-American Commission on Human Rights to conclude that it is competent to hear this case as it involves violations of rights enshrined in the American Declaration of the Rights and Duties of Man: Article I on the Right to Life and Personal Integrity; Article VIII, Right of Residence and Movement; and Article XVIII, Right to Justice.

70. The procedure followed in this case is that provided for by Article 52 of the Regulations of the Inter-American Commission on Human Rights, which states: "The procedure applicable to petitions concerning member States of the Organization which are not signatories of the American Convention on Human Rights shall be that established in the General Provisions contained in Chapter I, Title II; in Articles 32-43 of these Regulations, and in the articles indicated below."

71. The presentation of the petition satisfies the formal requirements of admissibility set forth in Article 32 of the Regulations of the Inter-American Commission on Human Rights, the procedure provided for in Article 34 of the same regulatory text having been exhausted. Likewise, the claim is not pending in another international settlement proceeding, nor is it the repetition of a prior petition already examined by the Commission.

72. Regarding the remedies under domestic law, the Inter-American Commission on Human Rights considers that in the present case, the provisions of Article 37(1) of its Regulations have been fulfilled, that is, said remedies have been applied for and exhausted in accordance with the generally recognized principles of international law. This is inferred from

the information provided by the Cuban Government on March 23, 1995. According to the Official Statement of the Ministry of the Interior, "the investigations carried out by the competent authorities concerning the events that occurred in the early morning hours of July 13, [1994] (...) revealed that the disaster occurred as a result of a collision between said tug and another from the same company that was trying to capture it." (...) "This was the cause of the unfortunate accident that led to the sinking of the tug [13 de Marzo]." "Because of the navigating conditions and the rough seas (Force 3) during the early morning hours, only 31 people were saved."

B. Considerations regarding the facts denounced and analysis of the evidence

73. In the present case, documents have been submitted that provide information on the facts denounced, which facts were moreover made public knowledge by the international press. Among the documents submitted to the Inter-American Commission on Human Rights is the following testimonial evidence of persons who were present at the site of the events and at the time they occurred on July 13, 1994: Arquímedes Lebrigio and José Alberto Hernández (surviving witnesses who appeared before the Inter-American Commission on Human Rights during its 90th Regular Session, September 7, 1995),^[1] María Victoria García Suarez, Jeanette Hernández Gutierrez (survivors).^[2]

74. The statements of the eyewitnesses show that on July 13, 1994, between 3:00 and 4:00 a.m., a tug called "13 de Marzo" left the port of Havana, Cuba, headed for the United States, and that there were 72 people on board, including a number of minors.

75. The surviving witnesses concur in stating that they were overtaken and surrounded by four boats when they were seven miles off the Cuban coast, and that the latter turned jets of water on them--on everyone on deck--using the tanks with which they were equipped. The women who were on deck showed them the children to prevent the attack with the water hoses from continuing. Moreover, two of the ships rammed the tug on the port and starboard sides, causing it to sink. The survivors agree that while the disaster was occurring, the crews of the four ships did not help them. Later, Cuban Coast Guard cutters arrived to rescue the survivors of the wreck.

D. Considerations regarding the international responsibility of the Cuban State

76. Having established the facts as they occurred on the morning of July 13, 1994, the Inter-American Commission on Human Rights considers it necessary to determine whether the Cuban State is internationally responsible for the deaths of the 41 victims who died in said shipwreck. The basic elements for establishing international liability can be summarized as follows:^[3]

I) An act or omission exists which violates an obligation established by a rule of current international law.

II) The illegal act must be imputable to the State.

III) Damage or harm must have occurred as a result of the illegal act.

I) *EXISTENCE OF AN ACT OR OMISSION THAT VIOLATES AN OBLIGATION ESTABLISHED BY A RULE OF INTERNATIONAL LAW*

77. The Inter-American Commission on Human Rights must state, first of all, that the obligation of respecting and protecting human rights is an obligation *erga omnes*, i.e., one

that the Cuban State must assume--like all other member states of the OAS, whether or not they are signatories of the American Convention on Human Rights--toward the inter-American community as a whole, and toward all individuals subject to its jurisdiction, as direct beneficiaries of the human rights recognized by the American Declaration of the Rights and Duties of Man. Said international instrument, while not binding, embodies general principles and rules of customary international law.

78. The jurist and former Judge of the Inter-American Court of Human Rights, Dr. Asdrúbal Aguiar confirms the foregoing, pointing out that, "Within the inter-American system, as is true of its European counterpart and the United Nations universal system itself, the general obligation exists which calls for *the respect of the basic rights of man* by states. This obligation is inferred from the preamble and, among others, from Articles 3.k, 16, 17, 32, 44, 45, 46 and 136 of the Charter of the Organization of American States, in consonance with the precepts of the American Declaration of the Rights and Duties of Man."^[4] The "obligations assumed by each member state toward the inter-American community, represented by its organizations and toward each and every one of the member states of the Union (...) are obligations *erga omnes*; which may be inferred from Preamble of the Charter of the OAS, wherein the states express their confidence that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice, based on respect for the basic rights of man." (emphasis supplex).^[5]

79. Another point that the Inter-American Commission on Human Rights must stress is that the right to life, understood as a basic right of human beings enshrined in the American Declaration and in various international instruments of regional and universal scope, has the status of *jus cogens*. That is, it is a peremptory rule of international law, and, therefore, cannot be derogable. The concept of *jus cogens* is derived from a higher order of norms established in ancient times and which cannot be contravened by the laws of man or of nations. The norms of *jus cogens* have been described by public law specialists as those which encompass public international order. These are the rules that have been accepted, either explicitly in a treaty or tacitly by custom, as necessary to protect the public interest of the society of nations or to maintain levels of public morality recognized by them.^[6]

80. Having established the value and importance of the basic rights enshrined in the American Declaration of the Rights and Duties of Man, the Inter-American Commission on Human Rights considers it essential to determine whether, in this case, the Cuban State committed acts or omissions that violate the first of the rights enshrined in the Declaration: the right to life.

81. In the case sub lite, all of the witnesses concur in stating that upon leaving the port of Havana--in the tug 13 de Marzo--on the morning of July 13, 1994, they were pursued and attacked by four Cuban boats. According to the survivors, said boats, equipped with tanks, sprayed jets of water on everyone who was on the deck, and also rammed the port and starboard sides. Said attacks caused the sinking of the tug "13 de Marzo", with a death toll of 41.

82. The evidence clearly shows that the sinking of the tug "13 de Marzo" was not an accident but rather a premeditated, intentional act. In fact, Jorge Hernández, a survivor of the events that occurred on July 13, 1994, states that, "After leaving the pier, boat No. 2 rammed them" and once out to "sea they began to be attacked by boats No. 2, No. 3 and No. 5." That "the tug they were in was hit on the port and starboard sides" and that "they attacked them with jets of water." "After the last attack, the boat sank because the stern was destroyed." Finally, "the tugs did not help them" but rather "they told them to keep swimming toward the coast guard cutters." For his part, Arquímedes Lebrigio stated that "when the boat weighed anchor, he was below deck and could see that there was no leak anywhere" and "when he went onto the deck of the boat he saw that the stern and the bow were smashed."

María Victoria García Suarez states that "that's when we saw that two firefighting tugs were coming after us," "they hit the sides and then they began to shoot water at us." "Then we kept going and told them not to harm us, that there were children on board and we showed them the children and they kept shooting water." "Later we saw two more [tugs] about seven miles out and they positioned themselves one on each side: one in front, another in back, and one on each side" and "then all four started shooting us with water and one of the boats rammed us...." Finally, the witness states that "there were the four tugs--the ones that were sinking us--and we asked them to save us, to take us on board, that there were children, and what they did was laugh...."

83. Finally, Jeanette Hernández Gutierrez states that "When we were leaving the Bay we saw two tugs that were shut down, at the mouth of the Bay. They let us leave, but afterwards came the streams from the water hoses, they were constant, the streams, they wouldn't stop, knowing that there were children." "When we were seven miles out, we saw them speed up and they came alongside" and "began bumping us," "we held up the children and they saw them and we began to shout to them please... please don't do this and they paid no attention...." "They never spoke to us over the loud speaker to tell us to stop or anything." Jeanette went on to say that "they put a tug behind us, the biggest one (...) they went up over our stern and split the back part of the boat in half...." "When that happened... the boat was adrift because the captain, whose name was Fidencio Ramel, they knocked him down with the jets of water--they knocked him into the sea." "This is how they sunk us: the tug that split our stern moved to the front, came up over the bow and split it." Lastly, she states that "the tugs backed away, they moved back a few meters, but they did not throw us lifesavers--nothing; they did not give us any kind of help."

84. The Inter-American Commission on Human Rights must point out that while it is true that the intent and premeditation of those responsible for sinking the tug "13 de Marzo" has been fully demonstrated, it is also true that said intent is irrelevant in determining the international liability of the Cuban State. The basic issue in this case is to determine whether the violation of the right to life was committed by cubans agents with the support or tolerance of the State, or whether the latter acted in such a way that the violation occurred for want of prevention or with impunity.

85. The Inter-American Court of Human Rights--whose case law enshrines general principles of customary international law--points out that "The duty of prevention encompasses all means of a legal, political, administrative and cultural nature that promote the protection of human rights and which ensure that any violations thereof are effectively considered and prosecuted as illegal acts which, as such, may entail penalties for those who commit them, as well as the obligation of compensating the victims for their harmful consequences."^[7]

86. The Inter-American Commission on Human Rights considers that the Cuban State took no steps to reasonably prevent the events that occurred on the morning of July 13, 1994. Moreover, the Cuban State not only allowed such grievous events to go unpunished, it also encourages their repetition by describing the actions taken by the crews of the boats that sunk the tug "13 de Marzo" as "truly patriotic efforts." In fact, the Cuban Head of State said in his response of March 23, 1995, that "the Ministry of the Interior investigated and there was not the slightest intention to sink the boat. What are we going to do with those workers who did not want them to steal their boat, who made a truly patriotic effort, we might say, to stop them from stealing the boat from them? What are we going to say to them? Listen, let the boat be stolen, don't worry about the boat...."

87. It is obvious, moreover, that there was no judicial investigation of this case and that the political organs headed by the Cuban Head of State hastened to absolve of all responsibility the employees who attempted to recover the tug "13 de Marzo."

88. The Inter-American Commission on Human Rights considers that the Cuban State could have prevented the deaths of the 41 victims and the psychological trauma inflicted on the 31 people who survived the sinking of the tug "13 de Marzo". This is entirely because the manner in which the victims of the tug tried to leave the country is not an isolated phenomenon, but, on the contrary, is one that has been repeating itself and intensifying with every passing year. Indeed, the Inter-American Commission on Human Rights in its 1994 Annual Report stated that:

The sources of information indicate that in 1993 a total of 3,656 people reached the United States on rafts, the rough estimate being that these were the one in three who set out and actually made it. This number grew appreciably in the course of 1994, especially after the beginning of August when the Cuban coastguard and police allowed the mass departure from the island of all who were prepared to put to sea in hastily readied craft. The actual figure calculated to the IACHR in the course of 1994 was 30,000.[8]

89. It is clear, then, that the effort to leave the country on the tug "13 de Marzo" was not an isolated phenomenon, and, therefore, it is not acceptable for the Cuban Head of State to say that "the Coast Guard had nothing to do with it, they arrived there several minutes after the accident." Consequently, the Inter-American Commission on Human Rights considers that in the case sub lite, the first element of international liability is present, as the acts perpetrated by the four boats that sank the tug "13 de Marzo" violated two of the rights enshrined in the American Declaration of the Rights and Duties of Man, the right to life (Article 1) and the right of movement (Article VIII).

90. Regarding the violation of the right of movement, Article VIII of the American Declaration states that "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will." The doctrine of the Inter-American Commission on Human Rights concerning the right of movement very clearly indicates that "the right of every person to live in his own homeland, to leave it and to return to it when he so desires is a basic right recognized by all international instruments for the protection of human rights." [9] The foregoing is confirmed by Article 13(2) of the Universal Declaration of Human Rights, which states that "Every person has the right to leave any country, including his own, and to return to his country."

91. The acts that caused the sinking of the tug "13 de Marzo" prevented the 72 people on board from freely leaving Cuba. The Inter-American Commission on Human Rights considers the method used by said individuals irrelevant in the present case, as the laws in force, the ruling political system and the critical situation of human rights in that country forced them to take desperate measures to achieve their main objective: to flee Cuba. Indeed, in its analysis of Cuban legislation on the right of movement in its 1994 Annual Report, the Inter-American Commission on Human Rights stated that:

Cuban legislation does not recognize an individual's right to leave his country and to return to it, since to do so citizens have to have a permit that is granted by the administrative authorities on a discretionary basis. Despite the fact that the Cuban authorities have simplified the procedures, there are still problems connected with the granting or denial of permits on political grounds. What is serious about the matter is that when the Cuban authorities deny an exit permit, no appeal is allowed.[10]

92. The last rule of current international law violated by the Cuban State is the right to justice enshrined in Article XVIII of the American Declaration of the Rights and Duties of Man. Said rule states that "Every person may appeal to the courts to assert his rights. Moreover, he is entitled to a simple and brief proceeding whereby the judiciary protects him

against acts of authority that violate, to his detriment, any of the basic constitutional rights."

93. The Inter-American Commission on Human Rights does not have the information that would enable it to determine whether the survivors of the disaster applied to the courts to denounce the events of July 13, 1994; however, as these are crimes which constitute an attempt on the basic rights of the individual, they should be officially investigated in fulfillment of the state's duty to safeguard public order. According to the Inter-American Court of Human Rights, the obligation to investigate "must be viewed seriously and not as a mere formality destined beforehand to be futile. It must have a direction and be undertaken by the State as its own legal duty and not as a simple effort on the part of private interests, which depends on the legal initiative of the victim or his family or on the private contribution of evidence, without the public authority effectively seeking the truth."^[11]

94. In the case *sub lite*, the investigations officially carried out by the Cuban State led to the conclusion that the events that occurred on the morning of July 13, 1994, in which 41 people perished, resulted from an accident for which no one was responsible. The Cuban Head of State, Fidel Castro, in his speech to the press on August 5, 1994, described how the investigations into the deaths of the 41 people were carried out: "As soon as news of the tug accident arrived, a thorough and exhaustive investigation was immediately carried out, based on information provided by the survivors, those who had been rescued, what each of them said; based on the information provided by some of those responsible for the seizure of the boat; the meticulous, detailed information provided by each of those who were on the tugs concerning each of the events that occurred."

95. The Inter-American Commission on Human Rights considers that the investigation conducted by the Cuban State may not have been exhaustive enough if it is borne in mind that the sunken ship-- whose engine room contained the bodies of many of the individuals who perished in the wreck--was not rescued, nor were the bodies lying on the ocean floor retrieved.

96. It is obvious--in the opinion of the Inter-American Commission on Human Rights--that the Cuban State did not undertake the investigations in this case seriously and as its own legal duty. The result of this is the impunity in which it is held. Consequently, the Commission considers that the Cuban State, by omission, violated the right to justice enshrined in Article XVIII of the American Declaration of the Rights and Duties of Man.

II. THE ILLEGAL ACT MUST BE IMPUTABLE TO THE STATE

97. To determine whether the serious incident that occurred on the morning of July 13, 1994 are imputable to the Cuban State as a juridical person, the Inter-American Commission on Human Rights considers it necessary to analyze and establish the identify of the perpetrators of the incident. In this context, it is essential that the information provided by the Cuban Government be taken into consideration.

98. First, we have the Official Statement of the Ministry of the Interior, which states: "The investigations carried out by the competent authorities into the incident that occurred on the morning of July 13, 1994, in which a tug belonging to the Maritime Services Enterprise of the Ministry of Transportation sunk seven miles north of the port of Havana, revealed that the disaster occurred as a result of a collision between said tug and another from the same company that was trying to capture it."

99. The Cuban Head of State said in his statements to the press that "...without finding out what happened, it blamed the Cuban authorities for sinking the boat. With incredible perfidy, it said: 'Government ships.' In a socialist state everything belongs to the State: buses, trains, boats, merchant ships, tugs, but they are operated by civilians, and the

authorities were represented there essentially by the Coast Guard patrols." Further on, Castro repeated, "But I saw a great deal of perfidy in the attempt to describe the ships as 'Government' ships, because what they meant to say is that the Government was responsible for sinking the boat."

100. In response to the Government's statement, the petitioners stated that "With this argument, the Cuban Head of State tried to excuse his Government. However, if we look at how the State is structured internally, we realize that every activity is under centralized State control." They also said, that "according to the Socialist Political Constitution of 1976, the means of production are state-controlled (Articles 15, 16 and 17) and the economy is centralized. Everyone who works for state enterprises is an employee of the Government. Within each state enterprise there are two types of controls: (a) management control, exercised by the director, and (b) political control, which is the responsibility of the Secretary of the Communist Party for that enterprise. The Communist Party is the country's only legal party (Article 5 of the Constitution). A third important factor in these enterprises is the presence of members of the security police, who are in the Party's employ."

101. Having evaluated the position of both parties, the Inter-American Commission on Human Rights must state that it has been shown that the crews that operated the four boats that sank the tug "13 de Marzo" were employees of the Maritime Services Enterprise of the Ministry of Transportation. Moreover, the assertion of the petitioners that all labor activity is centralized and subordinated to the Government Party is a point that has been confirmed by the Inter-American Commission on Human Rights. In its 1994 Annual Report, the Commission stated that:

...the Inter-American Commission on Human Rights continued receiving information about the excessive control the Cuban State exercised over its citizens, control which, for ideological reasons, is exercised in the daily life of each person and is manifested specially in the work centers. What happens is that "reliability" in the labor field is a determining factor in defining the "suitability" of each worker; this reliability includes the political aspects and the worker's attitude to the defense or requirements of the management of the place of work, the Government or the Party. The Commission was also informed that workers--before or after being hired--are normally subject to checks by the Committees for the Defense of the Revolution, the Technical Investigation Department or even the Party, in order to ascertain whether they fall into the "reliable" category. If it is determined that a worker is not reliable he will be let go, regardless of years of experience, service or other qualities. What is serious about this is that assessments to the effect that individuals are "not reliable" are not appealable.

102. It has been amply demonstrated then that those who sunk [the tug] and caused the deaths of 41 people were employees of a Cuban State enterprise subordinated de facto and de jure to the requirements of the Governing Party. As a consequence, the events that occurred in the early morning hours on July 13, 1994, are attributable to the Cuban State as a juridical person. Moreover, the Cuban State was seriously at fault for having failed to establish the identity of those responsible and punishing them so that such terrible events might never occur again.

III. DAMAGE OR HARM MUST HAVE OCCURRED AS A RESULT OF THE ILLEGAL ACT

103. In the opinion of the Inter-American Commission on Human Rights, the damages caused by the illegal acts committed by the Cuban State are the following: (a) irreparable physical harm, consisting of the deaths of the 41 people shipwrecked on the tug "13 de Marzo"; (b) the emotional and psychological distress inflicted on the relatives of the victims and survivors, consisting of emotional suffering due to the loss of loved ones, the

trauma caused by the incident, and the impossibility of recovering the bodies for proper burial. Added to this is the knowledge that they did not receive justice, i.e., that the deaths caused by Cuban State employees remain unpunished; and (c) physical damage, consisting of the loss of income and indirect damages.

104. Consequently, the Inter-American Commission on Human Rights considers that the Cuban State is under obligation to make reparations for the damages caused and compensate the families of the victims and survivors of the tug "13 de Marzo".

VIII. CONCLUSIONS

105. The Cuban State is responsible for violating the right to life (Article 1 of the American Declaration of the Rights and Duties of Man) of the 41 people who were shipwrecked and perished as a result of the sinking of the tug "13 de Marzo", which events occurred seven miles off the Cuban coast on July 13, 1994. The persons who died that morning are: Leonardo Notario Góngora, Marta Tacoronte Vega, Caridad Leyva Tacoronte, Yausel Eugenio Pérez Tacoronte, Mayulis Méndez Tacoronte, Odalys Muñoz García, Pilar Almanza Romero, Yaser Perodín Almanza, Manuel Sánchez Callol, Juliana Enriquez Carrasana, Helen Martínez Enríquez, Reynaldo Marrero, Joel García Suárez, Juan Mario Gutiérrez García, Ernesto Alfonso Joureiro, Amado Gonzáles Raices, Lázaro Borges Priel, Liset Alvarez Guerra, Yisel Borges Alvarez, Guillermo Cruz Martínez, Fidelio Ramel Prieto-Hernández, Rosa María Alcalde Preig, Yaltamira Anaya Carrasco, José Carlos Nicole Anaya, María Carrasco Anaya, Julia Caridad Ruiz Blanco, Angel René Abreu Ruiz, Jorge Arquímedes Lebrigio Flores, Eduardo Suárez Esquivel, Elicer Suárez Plascencia, Omar Rodríguez Suárez, Miralis Fernández Rodríguez, Cindy Rodríguez Fernández, José Gregorio Balmaceda Castillo, Rigoberto Feut Gonzáles, Midalis Sanabria Cabrera, and four other victims who could not be identified.

106. The Cuban State is responsible for violating the personal integrity (Article 1 of the American Declaration) of the 31 persons who survived the sinking of the tug "13 de Marzo", as a consequence of the emotional trauma it caused. The surviving victims are: Mayda Tacoronte Verga, Milena Labrada Tacoronte, Román Lugo Martínez, Daysi Martínez Findore, Tacney Estévez Martínez, Susana Rojas Martínez, Raúl Muñoz García, Janette Hernández Gutiérrez, Modesto Almanza Romero, Fran Gonzáles Vásquez, Daniel Gonzáles Hernández, Sergio Perodín Pérez, Sergio Perodín Almanza, Gustavo Guillermo Martínez Gutiérrez, Yandi Gustavo Martínez Hidalgo, José Fabián Valdés, Eugenio Fuentes Díaz, Juan Gustavo Bargaza del Pino, Juan Fidel Gonzáles Salinas, Reynaldo Marrero Canarana, Daniel Prieto Suárez, Iván Prieto Suárez, Jorge Luis Cuba Suárez, María Victoria García Suárez, Arquímedes Venancio Lebrigio Gamboa, Yaussany Tuero Sierra, Pedro Francisco Garijo Galego, Julio César Domínguez Alcalde, Armando Morales Piloto, Juan Bernardo Varela Amaro, and Jorge Alberto Hernández Avila.

107. The Cuban State is responsible for violating the right to freedom of movement and the right to a fair trial of the 72 people who attempted to flee Cuba, rights upheld in articles VIII and XVIII of the American Declaration of the Rights and Duties of Man.

IX. RECOMMENDATIONS

108. It is recommended that the Cuban State conduct an exhaustive investigation in order to identify, prosecute and punish those responsible for sinking the tug "13 de Marzo", which event caused the deaths of 41 people.

109. It is recommended that the Cuban State recover the sunken boat and the remains of the victims and hand them over to their relatives.

110. It is recommended that the Cuban State pay fair compensation to the surviving victims and to the families of the dead for physical and nonphysical damages, including

emotional distress.

Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

111. To forward the present report to the Cuban State and to the petitioner.

112. To publish the present report in the Annual Report to the General Assembly of the OAS, pursuant to Article 53(3) and (4) of its Regulations, inasmuch as the Cuban State never replied to Confidential Report N° 16/96 of May 3, 1996.

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[1] It should be pointed out that the Cuban Government was invited to attend this hearing, but the Interests Section did not send any representative.

[2] Jorge Alberto Hernández: At 4:00 in the morning of July 13, 1994, a group of men, women and children put out to sea for the purpose of emigrating to the United States. After leaving the pier tug [boat] No. 2 rammed them but without causing any damage. So they continued until they were out to sea, where they began to be rammed by tugs No. 2, No. 3, and No. 5. The tug [boat] they were in was hit on the port and starboard sides. They attacked them with jets of water and threw extinguishers at them. Since they couldn't stop them, they decided to sink the tug. Then, one of the tugs rammed them in front, despite the fact that the people--when the spotlights were turned on them--showed them that they there were children on board. After the last attack, the boat sank because they had destroyed the stern. After sinking them, the tugs kept spraying jets of water on the people who were swimming and trying to save themselves. Later, the rescue operation began. All the while there was a [Cuban] coast guard cutter observing the situation, without doing anything about it. The tugs did not help them, they told them to keep swimming toward the coast guard cutters. Some climbed aboard [the coast guard ship], but some children who were in a crate were killed when it ran over them.

Arquímedes Lebrigio: Says that he was pressured by the Cuban Government to say that the [tug] boat sprang a leak as soon as it left the shore. When the boat weighed anchor, the [witness] was below deck and could see that there was no leak anywhere. When he went onto the deck of the boat, he saw that the stern and the bow were smashed. The ones who were attacking them told them that the tug was sinking, to which they replied that it was not so and that if they wanted to, they could go all the way to China. That before using it, the helm of the tug was repaired, but not the frame. The tug they used was good compared to the others. And that he lost a son, but the body was never returned to him.

María Victoria García Suarez: We were leaving the country in a tug at three o'clock in the morning. We got off all right, but afterwards they told us women and children to go on deck. Some of us went, the bigger kids, and that's when we saw that two firefighting tugs were coming after us. They hit the sides and then began to shoot water--pressurized water--at us. Then we kept going and told them not to harm us, that there were children on board and we showed them the children and they kept shooting water. Later we saw two more [tugs] about seven miles out and they positioned themselves one on each side: one in front, another in back, and one on each side. And then, all four started shooting water at us and one of the boats rammed us and also shot water at the side of the boat; they were shooting water to make [the boat] capsize, and then they had to close the cabin to keep the engine from getting wet... Then the ones on the side started ramming us and hitting us until they split the right side and turned it, and that's when the boat sank. *Who was in the boats that were chasing you?* Well, there was the captain, the engineer, friends and relatives. *Who was in the boat that was chasing you? Who were they?* The ones who were chasing us were in civilian clothes, many of them weren't wearing a shirt either. There were four, four boats. *Did they order you to halt? What were they trying to do when they sprayed water?* No, they never told us to stop. Then what they did was to shoot water at us. Then the time came when we saw that we could not go on because it was going to be fatal and we stopped because the water was getting in. Then we stopped and we told them: "Look, we're turning back, we have already stopped, and they saw that we had stopped, and it was then that they split the side

and turned the boat around." *When they turned you around, what happened to you?* Those of us on deck, we all went under and the boat sank immediately, but those of us in the water tried to get to the surface. It was very deep. I was carrying my son, I was holding him, I did not let go of him and then I pulled him up, but I don't know how to swim, then I came up but I went under again. Then when I came up there was a woman who had drowned, she was floating beside me, then I grabbed her and carried my son--the waves were high--then I couldn't... I couldn't, he had already drowned... *How old was the boy?* He was ten, he would have been eleven on August 2. He had already drowned, then I stayed with him, when I saw that he had drowned I kept holding him, because I saw that he no longer had the strength to resist, then I had to get him out because he might be saved. *How did you get out of the water?* At that point I lost the boy, I couldn't with him, it was very dark. Then afterwards we held onto the red wood, and then I saw when the GRIFI was coming... *What is the GRIFI?* The GRIFI is the Coast Guard, the boarder guard, and then before the GRIFI came there were the four tugs--the ones that were sinking us--and we asked them to save us, to take us on board, that there were children, and what they did was laugh and told us that if we wanted to save ourselves, to ask the GRIFI for help, that they were going to save us. That's when the GRIFI came and the GRIFI threw us ropes with lifesavers and then we were pulled out.

Jeanette Hernández Gutierrez: When we boarded everything was fine; there was no one, nothing to frighten us, no obstacle. When we were leaving the Bay we saw two tugs that were shut down, at the mouth of the Bay. They let us leave, but afterwards came the streams from the water hoses, they were constant, the streams, they wouldn't stop, knowing that there were children. When we left we realized that... there were people on the jetty, it seemed that there was activity--you understand--on the wall of the jetty, it seemed that there was activity. I suppose they saw everything, at least the beginning of what happened. When we were seven miles out, they kept far away from us, but with the water hoses, under pressure, which is a terrible force, we were holding the children for fear that they would fall, the men behind us to keep us from falling, but so that they would see that there were children and women we had to go up, so that they would realize this and not commit any murder or anything. When we were seven miles out, we saw them speed up and they came alongside, and since the Cuban coast was no longer visible--because nothing could be seen now, not the lights on the jetty, not the beacon, nothing was visible--it must have been seven or ten miles more or less, as they say. They began bumping us. We were afraid for the children, not for ourselves because if we were lost it would not matter to us, but there were children, and children from five months and older. We held the children up and they saw them and we began to shout to them please... please don't do this, and they paid no attention. A guy who was with us, Román--he's a prisoner now--even called out to one of the ones operating the tugs and the water hose: Hey buddy, calm down, don't do this. Look, there are kids here... and he showed him his stepdaughter who is three years old, and if someone hadn't taken the girl from him--if he hadn't put her down--they would have killed her, with the jets of water. They never fired a shot, but they never spoke to us over the loud speaker to tell us to stop or anything. They just let us leave the bay and attacked us seven miles out, where there were no witnesses--for, as you know, out in the open sea there are no witnesses. When they saw that, that they were bumping us and all that, they put a tug behind us, the biggest one... the biggest of the tugs, it was green with a red stripe---a red stripe--they went up over our stern and split the back part of the boat in half. Then, right about then, two men fell in the water, one of them my husband, and Román, the guy who called out to them not to shoot because there were children. When that happened... the boat was adrift because the captain, whose name was Fidencio Ramel, they knocked him down with the jets of water--they knocked him into the sea. He disappeared, all of a sudden, and when Raúl, he's the one they put in charge, saw that we were adrift, he got up and went running up there. He had some idea about how to steer. Then, doing his best, he tried to help us---no---to save us, because the boat now had so much water because of the jets of water, because they were shooting it straight into the hold---right in there---, in the faces of the children. The children even had to keep their head down, because it's not easy to breathe or swallow it, at least not for children, no. We were already... we knew that we were going to sink because there was something I had a feeling about, that they were going to kill us, because if they weren't they would have stopped. Raúl stopped the engine, our engine, and when they saw that it stopped, it infuriated them and it didn't matter that Raúl had done this. This is how they sunk us: the tug that split our stern moved to the front, came up over the bow and split it. That is, now there was no way of keeping that tug afloat; it sank because it was full of water. Everyone who was in the hold, there were about 72 of us. Mostly children and women. The smallest number who died were men; but they did all they could to save these people too. Many of the people who went up on deck, when this disaster happened that sank us, were floating in the water, but the tugs backed away, they moved back a few meters, but they did not throw us lifesavers--nothing; they did not give us any kind of help. Only one tug threw lifesavers, but far away from us so that we could not get them. Then, when that boat split our stern, a box fell into the water, a wooden box, a few meters away, only a few meters... eh, now that I'm out--you see--because when we were in the water the box looked very far away and many people could not get to it; and the swirl from the boat

pulled it under. And there was my sister-in-law, Pilar Amanza Romero, her son Yasel Perudín Amanza--the boy--, and her uncle Cayol was in the hold, Manuel Cayol. Those are three of my relatives I lost. Then my husband, seeing this--imagine--he went crazy, and my brother-in-law, too, with the other child. Then we went looking for the other boy, but when we were going out, I felt when they were pulling me from the boat that the boy, the other boy who died, was hugging my foot... eh!... holding my foot and when they pulled me out and I was trying to get hold of him my tennis shoe came off and he and it were both lost, I could not get hold of him; it was terrible. Then when I saw my brother-in-law who was coming out with Sergito, the youngest, the tiniest one, I felt relieved because at least one was left to me. Then I grabbed him and we stayed with him. I saw the GRIFI, it was the only one that helped us, that threw us lifesavers; but the tugs stayed there without doing anything. But later, a speedboat arrived and picked up six or seven people, there was even one girl who looked like a little toad blown up with so much water, but her mama tried to save her and she recovered, she was three years old. After seeing that, we stayed there until dawn on the GRIFI and when I got on board the GRIFI I started insulting them, I told them that they were murderers, that they did not take pity on children, that here (in this country) they say that children, old people have a lot of privileges, but they even let old people die, and many children--almost twenty-three children died--. This is something, the people were outraged, people were desperate to get news--something--to know about those bodies trapped there in the hold. Roberto Robaina said that we knew that the boat was damaged when we left the port. Do you think that we would risk the lives of women and children with a damaged boat, knowing that there was such a long way to go? Then they say that the boat was one of the port's relics, that it was from the Second World War. It's true, it was very old, it was made of wood, but it had just been repaired; even when I went to Villa Marista, to take clean clothes to my husband and my brother-in-law, while I was there I asked them why did the newspaper say that the boat capsized, sank, that it was negligence on our parts? I told them it wasn't so. They got angry and they all called me a counterrevolutionary, and I accepted it... But I asked them in Villa Marista, what about the people who sunk us, the ones who murdered us, our sons, our relatives? Because there are children who lost their mothers, my nephew, for example...

[3] Manual de Derecho Internacional Público (International Public Law Manual), Max Sorensen, Economic Culture Fund, Mexico City, 1985, p. 508. Said elements of international liability are also formulated by Eduardo Jiménez de Aréchaga in his work, Derecho Internacional Público (International Public Law), Volume IV, p. 34, University Culture Foundation, 1991.

[4] Asdrúbal Aguiar, La Responsabilidad Internacional del Estado por Violación de Derechos Humanos (The International Liability of the State for the Violation of Human Rights), in Estudios Básicos de Derechos Humanos (Basic Human Rights Studies), IIDH, Volume I, p. 127, paragraph 25, San José, Costa Rica, 1994.

[5] *Ibid*, p. 127, paragraph 27.

[6] See Sir Ian Sinclair, The Vienna Convention on the Law of the Treaties, Manchester University Press, 1973, p. 208. The concept of *jus cogens* is enshrined in Article 53 of the Vienna Convention on the Law of the Treaties, which states that "A Treaty shall be null and void if, when it is signed, it is in conflict with a peremptory rule of general international law. For the purposes of this Convention, a peremptory rule of international law is a rule accepted and recognized by the entire community of nations as a rule that cannot be repealed and that can be changed only by another rule of general international law subsequent to the first, but general in nature."

[7] Inter-American Court of Human Rights, Judgment in the Velásquez Rodríguez case, July 29, 1988, pp. 71-72, paragraph 175.

[8] IACHR, 1994 Annual Report, OEA/Ser.L/V/II.88, February 17, 1995, p. 163.

[9] IACHR, Diez Años de Actividades 1971-1981, General Secretariat of the Organization of American States, Washington, D.C., 1982, p. 327.

[10] IACHR, 1994 Annual Report, p. 162.

[11] Inter-American Court of Human Rights, Judgment in the Velásquez Rodríguez Case, July 29, 1988, pp. 72-73, paragraph 177.