

Buenos Aires, 26 February 2015.

In this Court

**Case No. 777/2015**, styled: “*Fernández de Kirchner Cristina y otros s/encubrimiento*” [on cover-up] registered with Clerk’s Office No. 5 of this Court;

**Background**

These proceedings were initiated as a result of the accusation made on 14 January 2015, within the framework of Case No. 3446/2012, entitled “*Velazco, Carlos Alfredo y otros por abuso de autoridad y violación de los deberes de funcionario público*” [on abuse of authority and breach of the duties of public officials] –Court No. 4 in Federal Criminal and Correctional Matters for the City of Buenos Aires, Clerk’s Office No. 8 – by Alberto Nisman, General Prosecutor in charge of the Prosecutorial Investigation Unit dealing with the bombings of 18 July 1994 against the AMIA building. In his accusation, said Prosecutor informed about the existence of an alleged “*criminal plan*” purportedly intended to give impunity to the Iranian nationals accused in that case – who are fugitives since 2007 – in order for them to be able to escape the investigation and be released from any measures taken by the Argentine courts with jurisdiction over the case.

As stated in such accusation, the scheme was allegedly carried out by “*high authorities of the Argentine federal government, with the cooperation of third parties, which entails a criminal action that constitutes, a priori, the following offences: aggravated cover-up, prevention or hindrance of the performance of official duties, and breach of the duties incumbent upon public officials (Sections 277 (1) and (3), 241 (2) and 248 of the Criminal Code).*”

**Preliminary Considerations**

First, it bears noting that this Court is fully aware of the widespread and major – domestic and international – public and institutional repercussion of the accusation made by Alberto Nisman, in his capacity as General Prosecutor in charge of the Prosecutorial Investigation Unit dealing with the bombings of 18 July 1994 against the AMIA bombings, which has been the starting point of these proceedings.

It is, in itself, extremely serious for a federal prosecutor in charge of criminal matters to accuse the Republic’s top government officials, but this case is even more significant and high-profile because of the alleged connection between the purported scheme reported and the most serious terrorist attack to have been carried out in the Argentine Republic: the bombings against the buildings of the Argentine Jewish Mutual Association (AMIA) and the Delegation of Argentine-Israeli Associations (DAIA) which left 85 persons dead and at least 51, due to the explosion triggered in front of the building located in Pasteur No. 633, City of Buenos Aires, where those entities carried out their operations, and whose investigations was led by the accusing Prosecutor who, regrettably, has passed away.

The event reported came under public scrutiny and a number of conjectures and hypotheses have been formulated as clearly shown by the coverage given to the issue by both domestic and international print, audio and visual media from the very moment when General Prosecutor Nisman disclosed the accusation, which coverage became more intense upon the tragic death of the Prosecutor.

Within that context, after the Chief Judge of the Court of Appeals in Federal Criminal and Correctional Matters settled the issue of jurisdiction that arose between this Court and Court No. 4, Prosecutor **Gerardo Pollicita**, in charge of Federal Prosecutor's Office No. 11, in replying to the notice given to him pursuant to the provisions of section 180 of the Argentine Code of Criminal Procedure, filed a **request for the investigation stage of the proceedings to begin** (cfr. pages 317/351).

The importance of this procedural step, within the context of any court proceedings, is known in the legal practice because it **defines the subject under analysis** or the **factual issue**; in other words, it defines the limits of the allegedly criminal act that will be submitted to the court.

In this case, the clarity of the explanation and the accuracy of the definition of the hypothesis that Mr. Pollicita has put forward in his brief is particularly relevant as he highlights the most important aspects of Mr. Nisman's accusation and sets out the core of the indictment which he has deemed to be of significance in terms of criminal law.

This also makes it possible to dismiss any speculation or conjecture about this issue, especially if we consider the impact on and the implications for domestic and international public opinion that the accusation has.

The representative of the Public Prosecutor's Office, on the basis of the events reported by Nisman, has requested an investigation into *"the existence of a criminal plan designed to give impunity to the accused Iranian nationals in the case referred to by the prosecutor, so that they may escape the investigation and be released from the measures taken by the Argentine courts"*.

According to the Prosecutor, the scheme was orchestrated and set into motion by high authorities of the Argentine federal government (the Argentine President, Ms. Cristina Fernández de Kirchner and the Argentine Minister of Foreign Affairs and Worship, Mr. Hector Timerman) with the cooperation of various individuals (including: Luis Ángel D'Elia, Fernando Luis Esteche, Jorge Alejandro "Yussuf" Khalil, Andrés Larroque, Héctor Luis Yrimia and Ramón Allan Héctor Bogado).

In sum, Mr. Pollicita has emphatically limited the subject-matter of the proceedings in stating that: *"[i]n particular, the accusation states that the accused purportedly performed sufficient actions in order for the Iranian nationals identified as being liable for the AMIA bombings to be released from responsibility and be exempted from any measures adopted by the Argentine courts."*

*First, through the creation of a body – known as "Truth Commission" – having the power to perform functions that are exclusively incumbent upon the courts, as a substitute*

*for the court with jurisdiction over the case and the representative of the Public Prosecutor's Office.*

*Second, through the sending of a notice to Interpol informing about the agreement and the creation of such Commission, in order for such international organization to remove the red notices relating to the arrest warrants against five of the individuals indicted in the AMIA Case" (page 342 overleaf).*

From this perspective, Mr. Pollicita considered that the event reported – in line with the position adopted in the accusation – constitutes the offenses provided for in sections 277 (1) and (3); 241 (2) and 248 of the Argentine Criminal Code. This explains the decision to adopt one of the options established in section 180 of the Argentine Code of Criminal Procedure (request for the investigation stage of the proceedings to begin) and not the other (dismissal of the accusation).

Notwithstanding the foregoing, the head of Prosecutor's Office No. 11 has eloquently maintained that both the definition of the event and its classification as an offense were *"(exclusively) based on the elements that are available thus far and that were provided in the accusation"* (page 317).

In view of the foregoing and considering the subsequent incorporation of various pieces of evidence into the file—which were not available when the Prosecutor made his submission— this Court **states here, in advance** and after analyzing such pieces of evidence and the evidence produced when the accusation was made, that **they do not justify the initiation of criminal proceedings** since—as will be explained below— **not only do they fail to provide a basis for classifying the actions described as an alleged scheme to "cover up" and/or "hinder the investigation" into the AMIA bombings with a view to giving impunity to the accused Iranian nationals, but they are completely contrary to the allegation of the purported "criminal plan"**.

As a consequence, contrary to the arguments presented by the representative of the Public Prosecutor's Office, the **dismissal of the accusation** is in order in this case due to the fact that **the actions reported may not be classified as an offence** (section 180, third paragraph of the Argentine Code of Criminal Procedure).

With respect to the purported effects and scope of the creation of the **"Truth Commission"**, provided for in paragraph five of the Memorandum of Understanding, it is worth mentioning that all the hypotheses, conjectures and assumptions presented in the accusation on this point in order to affirm that the aim was to "release the accused Iranian nationals from criminal liability" and "redirect the investigation towards new culprits" is completely inconsistent with an essential principle of a democratic Criminal Law; that is, that there be a **commencement of consummation** of the scheme, which –as will be shown– is far from being the case.

As is publicly known, the Memorandum of Understanding was not approved, did not enter into force and, furthermore, was subsequently declared unconstitutional. Therefore, not only is it true that none of the legal effects established therein in relation to the purported future creation of the "Truth Commission" came to pass, but also neither of

the State Parties were able to implement the aspects provided for in such international agreement.

Thus all the alleged procedures, dealings and negotiations which, as stated in the accusation, were purportedly carried out by different persons who are not part of any public office – which are reflected in the wiretaps that were provided as evidence – are – at best – related to a stage prior to the commencement of the consummation which is required, as previously noted, under Criminal Law in order for them to be involved within the framework of the criminal hypothesis presented and the items of evidence gathered do not, even by way of hypothesis, allow them to be subsumed under or connected with an alleged criminal plan created by the highest authorities of the Argentine Republic who participate in the formation of the will of the State within the context of the execution of international agreements with other countries.

Indeed, the context of those alleged actions committed by individuals always refers to the non-punishable section of the criminal path, since they only reveal, from the accuser's perspective, alleged understandings or ideas aimed at directing or guiding an alleged criminal decision by the Argentine State which cannot even be seriously said to amount to preparatory acts which may eventually entail the commencement of consummation.

In addition to this clear issue, we must bear in mind the astonishing inversion of the importance of the roles that the creation of any criminal plan entails. The alleged secondary accomplices – under the hypothesis formulated – are the masterminds behind the creation and preparation of an alleged criminal plan to be implemented by the highest authorities of the Argentine government, which defies the logic arising from the most fundamental principles of perpetration and involvement under criminal law.

Indeed, the accusation intends persons who have been described as mere collaborators, who have nothing to do with the control and execution of acts of government to be actually considered as the masterminds behind a criminal plan aimed at disassociating or benefiting the accused Iranians, which was implemented by none other than the President of the Argentine Republic and her Foreign Minister.

As will be shown below, the alleged creation of a criminal plan which, as stated in the accusation, is allegedly evidenced by the wiretaps produced as evidence does not derive, in any way whatsoever, from the real and formal actions carried out by the highest authorities of the Argentine Republic in the exercise of statutory and constitutional powers, in particular, as regards the repeatedly mentioned *removal of the red notices* relating to the arrest warrants against five of the accused Iranians, to which the accusation refers.

Let us move to a more detailed analysis of each of the two criminal hypotheses put forward by the Prosecutor in his request for the investigation stage of the proceedings to begin.

#### **I) First accusation**

It is clearly stated in the original accusation –and the Prosecutor who initiated the criminal action clearly understands– that one of the two reasons for the accusations relating to the cover-up (and the other crimes relating to it) has been the creation of a **“Truth Commission”** within the framework of the Memorandum of Understanding entered into on 27 January 2014 between Argentina and Iran.

The “Truth Commission” is addressed in arts. 1 to 5 of such Memorandum. The Spanish version of the Memorandum, an official copy of which has been submitted to and is kept at the Clerk’s Office, states as follows:

*“1. Establecimiento de la Comisión. Se creará una Comisión de la Verdad compuesta por juristas internacionales para analizar toda la documentación presentada por las autoridades judiciales de la Argentina y de la República Islámica de Irán. La Comisión estará compuesta por cinco (5) comisionados y dos (2) miembros designados por cada país, seleccionados conforme a su reconocido prestigio legal internacional. Estos no podrán ser nacionales de ninguno de los dos países. Ambos países acordarán conjuntamente respecto a un jurista internacional con alto standard moral y prestigio legal, quien actuará como presidente de la Comisión.”*

*“2. Reglas de Procedimiento. Luego de consultar a las partes, la Comisión establecerá sus reglas de procedimiento que serán aprobadas por las partes.”*

*“3. Intercambio de Información. Una vez que la Comisión haya sido establecida, las autoridades de Irán y de la Argentina se enviarán entre ellas y a la Comisión la evidencia y la información que se posee sobre la causa AMIA. Los comisionados llevarán adelante una revisión detallada de la evidencia relativa a cada uno de los acusados; la Comisión podrá consultar a las partes a fin de completar la información.”*

*“4. Informe de la Comisión. Luego de haber analizado la información recibida de ambas partes y efectuado consultas con las partes e individuos, la Comisión expresará su visión y emitirá un informe con recomendaciones sobre cómo proceder con el caso en el marco de la ley y regulaciones de ambas partes. Ambas partes tendrán en cuenta estas recomendaciones en sus acciones futuras.”*

*“5. Audiencia. La Comisión y las autoridades judiciales argentinas e iraníes se encontrarán en Teherán para proceder a interrogar a aquellas personas respecto de las cuales Interpol ha emitido una notificación roja. La Comisión tendrá autoridad para realizar preguntas a los representantes de cada parte. Cada parte tiene el derecho de dar explicaciones o presentar nueva documentación durante los encuentros.”*

[“1. Establishment of the Commission. A truth commission of International lawyers will be appointed to analyze all the documentation presented by the judicial authorities of Argentina and the Islamic Republic of Iran. The Commission will be formed by five (5) commissioners, two (2) members designated by each country selected according to their international recognized legal character. They cannot be a national of either country. Both countries will jointly agree upon an international lawyer of high moral and legal character, who will act as the president of the commission.”

“2. Rules of Procedure. After consultation with the parties, the commission will establish its rules of procedures to be approved by both parties.”

"3. Exchange of Information. Once the commission is established the authorities of Iran and Argentina will deliver to each other and the commission, evidence and information that are being held about the AMIA case. The commissioners will conduct a thorough review of the evidences related to each accused person; the commission may consult with the parties to complete its information."

"4. Commission Report. The Commission having analyzed the information received from both parties and conducting deliberations with the parties and individuals, will express views and issue a report with recommendations on how to proceed with the case within the framework of laws and regulations of both parties. Both parties will take into account these recommendations in their future actions".

"5. Hearing. The Commission, the Argentine and Iranian judicial authorities will meet in Tehran to proceed to questioning of whom Interpol has issued a red notice. The Commission will have authority to pose questions to the representatives of either side, each side has the right to give explanations or submit new documents during the meetings."]

Furthermore, it was established that the Commission would begin its work upon entry into force of the Memorandum, which was not challenged by either of the parties.

In this respect, Article 6 of the Memorandum clearly states:

*"6. Entrada en vigencia. Este acuerdo será remitido a los órganos relevantes de cada país, ya sean el Congreso, el Parlamento u otros cuerpos, para su ratificación o aprobación de conformidad con sus leyes. Este acuerdo entrará en vigencia después del intercambio de la última nota verbal informando que los requisitos internos para su aprobación o ratificación han sido cumplimentados."*

**["6. Entry into force. This agreement will be submitted to the relevant organs of each country, being congress, parliament or other bodies, for its ratification or approval in accordance with their laws. This agreement will enter into force after exchange of the last verbal note informing that the internal requirements for its approval or ratification have been exhausted."]**

In the view of Mr Nisman, this issue is of vital importance:

*"Another key fact that leads to the final impunity of the accused is the actual participation of the 'Truth Commission', the purpose of which is to receive and assess – when the time comes – new evidence as well as to put forward a new hypothesis under which the Iranian nationals are not accused, thus legitimating the diversion of the investigation. The commission will analyze a new false version, a truth artificially formulated by the unscrupulous masterminds of this sinister plan..."* (cfr. p. 17, see also, pp. 60, 266 and 281, and the like).

Now, this first criminal hypothesis which, according to the Public Prosecutor's Office, would amount to a cover-up operation **is clearly and fatally flawed**. Such flaw consists in the fact that there has been **no commencement of the consummation of the**

**crime**, in light of the **irrefutable fact** that the abovementioned agreement, which revolves around the formation of a Truth Commission, **never entered into force**.

That the Agreement did not enter into force (and thus, **the ensuing lack of legal effects, including criminal ones**) has been **referred to**, not just once but several times, by **Prosecutor Nisman himself** in his accusation, which is quite striking since his acknowledgment in this regard would certainly amount to a kind of rebuttal of his own arguments, in relation to this first accusation.

Indeed, on page 16 of his accusation, Mr Nisman himself stated, in this respect, that the Memorandum provided for a procedure for application which began with the following steps:

*“(1) that both countries internally ratify the terms of the agreement; (2) that they mutually exchange notes notifying such ratification [...] more than a year and a half has passed since the execution of the Memorandum and not even the first step was completed. [As of 14 January 2015] Iran has not given notice of its ratification of the agreement yet”.*

Mr Nisman further refers to this issue on page 36 of his accusation:

*“However, to date, and although more than a year and a half has elapsed since its signature, notwithstanding the several statements made by the Persian officials, Iran has not formally communicated any kind of internal approval of the agreement. As a consequence, there has been no exchange of verbal notes, which marks the entry into force of the memorandum (item 6).”*

He revisits this point once again on page 121:

*“In fact, Iran never granted its approval. [...] Specifically, to date [14 January 2015] there has been no exchange of diplomatic notes and, consequently, the treaty has not entered into force” (see also page 180).*

In this connection, reference should also be made to the **judgment of 15 May 2014** rendered by the **Court of Appeals in Federal Criminal and Correctional Matters, Division I**, which declared the **unconstitutionality of the Memorandum** and states, in this regard, that:

*“It is true that, as of this date, the Memorandum of Understanding, as an international legal instrument, has not entered into full force yet. Iran is yet to comply with the internal requirements established by its laws in order for the agreement to be duly ratified”.*

[...]

*“Thus, it is true that the actual entry into force of the agreement would only take place upon final enactment by both countries of the laws ratifying the treaty, through the relevant acts of the respective Branches and, lastly, upon exchange of the relevant ratifications [...] Only if the Islamic Republic of Iran approves the Memorandum, as our National Congress did, and if the diplomatic letters referred to in the Memorandum are submitted will the Memorandum enter into force and its*

*provisions be able to be enforced, producing all effects specified therein in relation to the rights and obligations provided for under such agreement” (Court of Appeals in Federal Criminal and Correctional Matters, Division I, File No. 3184/2013 “AMIA s/ Amparo-Ley 16.986”, Court No. 6 – Clerk’s Office No. 11, decided: 15/5/2014, published at www.cij.gov.ar).*

Therefore, there is no doubt in this respect.

What is more, the accusation and the documentary evidence submitted together with it clearly show the sole reason why, after two years, the Agreement was totally frustrated and abandoned even before becoming effective.

This was expressly mentioned several times by Nisman himself in his lengthy original submission.

Page 13: *“Since Interpol declared that the red notices against the accused for the AMIA case would remain in effect [on 15 March 2013], the Islamic Republic of Iran removed the agreement from its congressional agenda and, to this date [14 January 2015], it has not officially announced its internal approval”.*

Page 60: *“When this goal [the removal of the red notices] was frustrated by the intervention of third parties to the manoeuvre (Interpol), Iran lost its willingness to cooperate...”.*

Pages 86/7: *“The consequence of this discouraging blow to Iran [Interpol’s letter of 15 March 2013] was that the treaty was never discussed in Parliament [in Iran] and seemed to be left out of the Iranian legislative agenda”.*

Page 114: *“This accounts for an obvious fact: Iran’s withdrawal. Ever since Interpol communicated that the notices would not be removed, Iran suspended the internal procedure for agreement ratification, withdrawing it from Parliament [...] thus deferring its implementation indefinitely.”*

Page 121: *“In fact, Iran never granted its approval. Once again, the validity of red notices – when the contrary had been agreed upon – was fundamental upon making a decision.”*

This means that **expectations for the Agreement, which had been entered into in late January 2013, to enter into force lasted only for a few weeks, since Iran, according to the claimant himself, lost all interest in the matter after the release of the official communiqué of Interpol a month and a half later, on 15 March 2013. Indeed, almost two years later, no progress has been observed in connection therewith.**

Unfortunately, the accusation of Mr. Nisman states nothing in this respect at p. 280, the section in which he was supposed to discuss the legal arguments that support this criminal hypothesis, which proposes that the cover-up crime consists of the mere acts of drafting and



signing the Agreement that would establish the Truth Commission, in spite of the fact that the instrument itself never entered into force and was abandoned by one of the parties almost two years ago.

In other words, the following question arises:

**How can a legal instrument that never entered into force be deemed an actual favour or any type of help offered -in this particular case- to fugitives escaping the Argentine Justice?**

**When a legal transaction (specifically the creation, at least in formal terms, of a Truth Commission which, in this case, falls within the field of international law) is frustrated and fails to have any sort of effects due to the very nature of the negotiations and diplomatic relations between States, can it still have any legal consequences? The answer is no - Particularly not in the field of criminal law.**

It is clear that, even if the Prosecutor's theory were true, and even in the worst case scenario, the "plan" (as repeatedly mentioned throughout the initial brief) never went beyond the preparatory stage and never reached what is known in criminal law as the "initial stage of commission of a crime." In this case, the crime would be the alleged cover-up, which, as unanimously held by Argentine scholars, would have been committed immediately.

It is worth remembering that **there is a difference between ideas and/or preparatory actions, on the one hand, and crimes, on the other. This distinction helps differentiate democratic systems from authoritarian regimes:** Dictatorships do not recognize this difference, and the full punitive power of the State is concentrated in punishing both crimes and possible preparatory actions, as well as ideas or even suggested criminal actions. In criminal law, this is known as "the criminal law of the enemy" - and it is clearly unconstitutional.

From a different perspective, it is also worth posing the following question: Based on the hypothesis of the claimant, **how far was the cover-up crime from materializing? Undoubtedly, it was very far from materialization.** Indeed, in order to pose a "formal risk" -an "actual risk" would be an even more far-fetched hypothesis- to the administration of justice in Argentina, **the legal instrument at issue should have at least completed the steps required for it to enter into force - which, as has been seen in the last two years, has is not the case.**

This argument bears a strictly logical relation with two evident and clear questions:

First, if the Agreement (seen as another step towards the entry into force of the Memorandum), including its provisions on the Truth Commission which are clearly mentioned in its text, had had the slightest criminal nuance, **this should have been reported by the AMIA Prosecutorial Investigation Unit** shortly after its signature **two years ago**, or at least after obtaining the approval of the Argentine Congress, which enacted it into a law one month later. None of this happened.

Second, **the same course of action should have been adopted by the officials of the Federal Criminal Courts** who studied and participated in the action for the protection of

constitutional rights (*amparo*) filed in order to declare the Memorandum unconstitutional. **Neither the acting Judge, nor the incumbent Prosecutor or the Federal Court of Appeals in question objected to the creation of the Truth Commission as a criminal act** - without prejudice to the strong critics and objections they did have with respect to the strategy implemented in connection with the abovementioned Agreement.

Finally, it is also worth noting that in the hypothetical case that, "in the future," there reappeared a sudden interest in completing the work left unfinished in order to render the Agreement effective, such task would not be possible, since the Superior Court has declared in its decision of 15 May 2015 that the entire Memorandum of Understanding is unconstitutional, further ordering in Section (2) of such decision that:

"As a preventive measure, [...] the Argentine Executive (Ministry of Foreign Affairs, International Trade and Worship) be informed of the content hereof in order to **halt the entry into force of the Memorandum of Understanding** approved by Law No. 26843, for as long as any appeals may be filed against this decision (Articles 195, 204, 232 and related articles of the Argentine Code of Civil and Commercial Procedure)." (Emphasis added)

In conclusion, based on the foregoing, it can be affirmed that:

- 1) The Memorandum of Understanding never entered into force.
- 2) Not only one but several of the steps set forth in the Memorandum itself for it to enter into force failed to be fulfilled.
- 3) With respect to the creation of the "Truth Commission," such Commission never came into being and thus had no legal effects of any type, since its existence was fully dependent on the entry into force of the Memorandum.
- 4) Almost two years ago, Iran lost all interest in the effectiveness of the Agreement, after noticing that Argentina would never agree to the removal of the red notices of Interpol.
- 5) Neither the AMIA Prosecutorial Investigation Unit nor the Judges that decided on the action for the protection of constitutional rights (*amparo*) described the signature of the Memorandum or its approval by the Argentine Congress as a criminal act.
- 6) In this context, which is already very unfavourable for the hypothesis of the Prosecutor, it is also worth noting that the Memorandum was declared unconstitutional even before it entered into force.
- 7) The abovementioned decision of the Federal Court of Appeals ordered the Argentine Executive not to implement the Memorandum of Understanding.

**To put it simply, the creature conceived within the framework of the Memorandum of Understanding -that is, the "Truth Commission"- was never born. Two years have passed since then. Moreover, six months ago this creature was declared unconstitutional - and finally buried.**

**In this context, any cover-up hypothesis is unfounded. Not only from a factual perspective, but also – and fundamentally – from a legal point of view.**

The only certainty about the first accusation filed by late Mr. Nisman, and held by Mr. Pollicita, is that the alleged **crime was never committed**. Indeed, the alleged acts of plotting and preparation (the existence of which is assumed on the basis of intercepted telephone calls and newspaper articles, which I will discuss below) are by no means punishable by the criminal laws of a democracy – however disagreeable, alarming, offensive or outraging we may deem them or the persons who committed them.

## **II) On the second accusation**

The text of the original accusation, as well as the request for the commencement of investigation proceedings, reflects beyond any doubts that the key issue of the accusation is the one relative to the **“red notices” of Interpol**, which had been –and continue to be– targeted against five out of the eight Iranians accused in the AMIA case.

Mr. Nisman refers to these notices almost **one hundred and fifty** times. This is understandable considering that all of his investigational work as head of the AMIA Prosecutorial Investigation Unit has been primarily focused on these notices. Indeed, it was an achievement of the Argentine Public Prosecutor’s Office to have its claims accepted by the Federal Justice and, after their acceptance, to have them acknowledged by Interpol, which finally issued the relevant arrest warrants. The Claimant spared no detail about this process, which was riddled with obstacles and resistance, particularly by the Iranian government.

*“...in practice, the only obstacles to the impunity that the accused Iranian nationals actually enjoy were the Interpol red notices, which have the ability to hinder their transnational mobility.” (cf. p. 13)*

*“Iranian authorities were only interested in the removal of Interpol’s red notices on five Iranian nationals, who play very important roles in Iranian political life. [...] the Iranian interest in the ratification of the agreement vanished into thin air when the red notices were not removed, as agreed upon.” (p. 86)*

*“They [the Iranian authorities] only signed the Memorandum of Understanding as it had been agreed that that would suffice to remove the red notices. They were not concerned about the accusations by Argentina, but merely about the ability of their officials to travel around the world with no restrictions.” (p. 100)*

*“Thus, their interest in signing the document [the Memorandum of Understanding], as will be shown later, did not revolve around trade between the States but around the removal of Interpol’s red notices relating to their officials.” (p.101)*

*“[...] removing the red notices was the main interest of the Iranian authorities in this agreement [...].” (p. 107)*

*“... [F]rom the beginning of these negotiations, the Iranian party was especially interested in removing Interpol’s red notices, and the purpose of that was to favour the five affected parties, particularly the then Minister Vahidi. In fact, the evidence does not reveal any other interests from Tehran as specific as these ones.” (p. 109)*

In this respect, there is no doubt that the main issue, from a criminal perspective, is the fact that the Argentine Government, based on a decision taken by the Argentine President within the framework of the negotiations with the Iranian Government, offered to favour the accused Iranians targeted with arrest warrants for the AMIA case, by having the Argentine Foreign Minister request INTERPOL to remove its red notices, which prevented the accused Iranians to travel outside Iran (cf. p. 60, 107 and 121).

According to Mr. Nisman, this is the reason why the final text of the Memorandum entered into on 27 January 2013 contained only one immediately effective article –Article 7–, which provided for a joint notice to be sent by the Foreign Ministers of both countries to Interpol in order to inform the organization about the signature of the Agreement, with the alleged illegitimate purpose of obtaining the removal of the red notices and not “to comply with the requirements of Interpol in connection with this case.” (See p. 13)

The criminal plan that, according to Mr. Nisman, had been designed by the Argentine Government seemed to be unexpectedly frustrated by the timely, brave and uncompromising position adopted by the authorities of Interpol, particularly its highest authority, **Secretary General Ronald Noble**, who opposed the request in spite of the constant pressure of Foreign Minister Timerman, who insisted on him reviewing his position and removing the red notices.

Let us analyze the concrete allegations made –not once but fifteen times– by the head of the AMIA Prosecutorial Investigation Unit throughout his extensive accusation brief:

1. Page 13: *“Surprisingly and unexpectedly for those who orchestrated the cover-up, Interpol stated that there was an attempt to get it involved in an issue with which it had nothing to do and stepped in just in time to avoid the removal of the arrest alerts. It will be shown that such participation represented an unexpected obstacle for the perpetrators of the cover-up. Timerman was unable to honour what he had promised during the secret negotiations with Iran, which caused the Iranian nationals to complain.”*

2. Page 14: *“we would like to clearly point out two revealing conclusions [...]. The first of those conclusions is that there is no doubt about the fact that Foreign Minister Timerman promised that the red notices would be removed. Timerman did not keep his promise, not because he did not want to but because Interpol prevented him from doing so. [...] [T]he Minister returned to the fray in September [this is a mistaken fact, since it should read “May”, cf. p. 212] and November 2013, with the clear intention of convincing Ronald Noble to give in and authorize the removal of the notices, on the grounds that the agreement between the parties had continued to move forward, but – fortunately – he failed to do it once again.”*

3. Page 15 in fine: *“Now, the evidence presented in the accusation shows [...] the timely intervention of Interpol, which kept the red notices effective [...]”*

4. Page 60: *“Iran was lured to the scheme by the promise made by the Argentine Foreign Minister that Argentina would allow the removal of the red notices then and currently enforceable against five of its nationals. [...] When this goal was frustrated by the intervention of third parties to the manoeuvre (Interpol), Iran lost its willingness to cooperate [...]”*

5. Page 87: *“This shows the importance given by Iran to [the removal of] the red notices, which [...] could not be complied with –as proven by the evidence– due to the actions of Interpol.”*

6. Page 96: *“These conversations reveal five fundamental issues: [...] 5) The secret agreement entered by Foreign Minister Timerman to remove Interpol red notices, his failed efforts to achieve such purpose and the subsequent Iranian frustration as police search priorities persisted.”*

7. Page 107: *“[...] removing the red notices was the main interest of the Iranian authorities in this agreement and Foreign Minister Timerman accepted and contributed to it. He did his best to get Interpol to contribute to achieving this goal [...]. Interpol's diligent and, at the same time, unexpected –for the perpetrators – attitude, more specifically the Secretary General's, Ronald Noble, prevented it.”*

8. Page 113: *“The truth is that the criminal intention to guarantee the impunity of the top five accused parties searched by the police in relation to the AMIA case met an unexpected obstacle. On 15 March 2013, the International Criminal Police Organization (Interpol) sent a letter to Foreign Minister Timerman, which was signed by Joel Sollier ...”*

9. Page 114: *“In effect, the delay in ratifying the Memorandum by the Iranian government, and its reluctance to do so, can be explained by the fact that Foreign Minister Timerman was unable to fulfil the secret commitment undertaken in relation to the removal of the red notices by Interpol, which were not removed.”*

10. Page 115: *“As months went by and, especially, after a communication by Interpol stating that red notices would continue to be effective, Tehran realized that the Argentine Foreign Minister had been prevented from fulfilling his promises due to reasons beyond his control, and expressed its unease in this regard.”*

11. Page 120: *“[...] also during November of that year, Timerman continued trying to solve the problem of the unexpected subsistence of red notices. He met with Noble again, to whom he informed about the continued negotiations between both countries over the Memorandum [...] The intention was clear: with his visit, Timerman was trying to convince Ronald Noble of the fact that the conflict with Iran over the AMIA case was already being channelled through the Memorandum of Understanding, in order for him to agree to remove the red notices.”*

12. Page 121: *“In fact, Iran never granted its approval [for the Memorandum of Understanding]. Once again, the validity of red notices – when the contrary had been agreed upon – was fundamental upon making a decision. [...] The determination of the international police agency to abide by the law hindered this first goal of the criminal plot...”*

13. Page 175: *“It is evident that Timerman’s task, following instructions of the President, was to negotiate the removal of Interpol’s red notices, since this was of utmost interest for Iran to sign the agreement. The International Criminal Police Organization (Interpol) respect for legality frustrated this first criminal goal of the perpetrators of the impunity plan.”*

14. *“When, fortunately, Interpol timely intervened to prevent the removal of the priority red notices [on 15 March 2013] [...], Foreign Minister Timerman carried out new actions to favour the criminal plan and, in May 2013, met with Interpol Secretary General, Ronald Noble, in Lyon, France, in order to get Interpol to take into consideration the bilateral agreement and, consequently, to accept to remove the above-mentioned red notices, although he publicly informed otherwise.”*

15. Page 213: *“The Minister [Mr. Timerman] made additional contributions to the plan and, in November 2012, he met with Noble again, whom he informed about the continuation of negotiations between both countries with regard to the Memorandum [...]. The intention was clear: to inform Noble that the Memorandum of Understanding between both countries was making progress, which was a subtle and indirect way of asking Interpol to review their stance and accept to remove the red notices affecting the Iranian nationals.”*

It should be noted that, **not one single clue or piece of evidence has been submitted to support** this serious and direct accusation made – and I insist – not only one but fifteen times throughout the Prosecutor's brief.

**There exist no documents, declarations or intercepted telephone calls to support this accusation**, which is clearly one of the pillars of the brief filed by the –unfortunately–

deceased Mr. Nisman against Foreign Minister Timerman for his alleged attitude with respect to Interpol.

This is particularly disturbing when Mr. Nisman notes the times (including the specific dates) that Mr. Timerman travelled to the international headquarters of Interpol to meet Mr. Noble, in May and November 2013.

What evidence does Mr. Nisman have to prove that, in those meetings, the Argentine Foreign Minister exercised pressure on Interpol for them to remove the red notices? There is none.

This is a grave accusation that has no supporting evidence. Moreover, it has been specifically and categorically refuted by the Secretary General of Interpol, Ronald Noble, as will be shown below.

Thus, each of the fifteen times Mr. Nisman makes this accusation, the grounds for it are mere speculation or different series of events, which constitute by no means sufficient evidence to support his words.

Still, this is not the most curious aspect of this issue.

After the submission of the accusation (which was filed by Mr. Nisman with a Federal Court on 14 Wednesday 2015, four days before his lamentable death), Ronald Noble – Secretary General of Interpol from November 2000 to November 2014, who has a long career in the US law enforcement forces – wrote a letter (sent by e-mail) to Minister Timerman.

A copy of such e-mail was timely submitted as proof (cf. Annex 11 of the brief, pp. 386/419), both the original English version and a true translation in Spanish.

This is the message that Minister Timerman showed and read publicly in a press conference on Thursday 15 January, the day after the filing of the accusation.

In that e-mail, Noble tells Timerman the following:

*"I write to make clear your position and that of the Government of Argentina in relation to the INTERPOL Red Notices issued in connection to the 1994 terrorist bombing of the Israeli-Argentine Mutual Association (AMIA) that killed 85 people and injured hundreds of others."*

**"While I was INTERPOL Secretary General, on each occasion that you and I spoke with and saw one another in relation to the INTERPOL Red Notices issued in connection to the AMIA case, you stated that INTERPOL should keep the Red Notices in force. Your position and that of the Argentinean government was consistent and unwavering."**

*"I specifically recall when we spoke on the telephone following the media reports in Argentina and Iran that falsely implied that the Memorandum of Understanding entered into between Argentina and Iran in January 2013 affected the validity of the INTERPOL Red Notices. I made clear to you orally and later in writing that INTERPOL welcomed any efforts by Argentina and Iran to cooperate on the AMIA case. You [Hector Timerman] asked that INTERPOL state in writing whether the Red Notices remained unchanged, valid and in effect. On 13 March 2013, INTERPOL's General Counsel stated unequivocally in writing that the validity and status of the Red Notices remained unaffected."*

*“In May 2013, you visited INTERPOL Headquarters to identify ways in which INTERPOL and Argentina could reinforce their cooperation on police matters. Once again, the issue of AMIA and the INTERPOL Red Notices were raised by you. You asked that INTERPOL make clear that any efforts on the part of Argentina and Iran to cooperate on the AMIA case in concrete ways should not affect the validity of the INTERPOL Red Notices. You expressly stated that Argentina’s President, Cristina Fernández de Kirchner, you as Minister of Foreign Affairs and the entire government of Argentina remained 100% committed to the INTERPOL Red Notices remaining in effect.”*

*“On 26 November 2013, you visited INTERPOL Headquarters and you updated me and INTERPOL on the developments with regard to the implementation of the Memorandum of Understanding entered into between Iran and Argentina in January 2013. You reiterated that the Government of Argentina’s position that the INTERPOL Red Notices should remain in effect rests unchanged; they should remain valid.”*

*“Finally, just last November 2014 during INTERPOL’s General Assembly in Monaco, you reaffirmed your personal and the Government of Argentina’s commitment to the INTERPOL Red Notices remaining in effect while at the same time trying to do everything in your power to make sure that real progress was made in this investigation. I recall how passionately you spoke once again of the victims and their loved ones who have suffered so deeply and who deserve to see the investigation advance and those responsible for this deadly terrorist attack brought to justice.”*

*“I am currently traveling, but I remain available to respond to the questions of any journalist on this issue. I can be reached at [...], but please do not make my email address public for obvious reasons”.*

*“Kind regards, Ronald K. Noble INTERPOL Secretary General For the years (November 2000 – November 2014)”.*

Hector Timerman’s visits to Interpol were corroborated as the very same accusation filed by Mr. Nisman makes reference to both the visit of 30 May 2013 (cf. p. 212) and 26 November 2013 (cf. pp. 120 and 213), in case there were any doubts as to those visits and the truthfulness and identity of the writer of such letter.

Noble reaffirmed and deepened his position later in two interviews with the press, one for “*Página 12*” newspaper and another one for “*The Wall Street Journal*”.

Hence, the very same official on whom Mr. Nisman repeatedly based several aspects of his theory, according to which it was not Argentina but Interpol which kept the red notices in effect, categorically denied the accusation almost without delay, and clearly stated, in a most emphatic manner, that **things did not happen as Nisman had stated, but exactly the other way round**. That is to say, Argentina has always been consistent and unwavering in all its communications – whether in writing, by phone or face to face – in that the status of the red notices in respect of the Iranian fugitives should be kept strictly unchanged by Interpol.

This explains the lack of evidence of Mr. Nisman’s accusation in respect of this crucial aspect of his brief: not only did the facts not occur as claimed by the Prosecutorial Unit fifteen times – on no grounds – in the accusation brief, but the declarations and the



documents, apart from Argentina's official position before, during, and after the signature of the Memorandum, are conclusive in that they clearly show that things happened exactly the other way round.

However, the evidentiary aspects in relation to this point do not end here since the express request that, according to the highest authority of Interpol, was made by Foreign Minister Timerman is also reflected in the letter **sent by the Argentine Foreign Ministry on 15 February 2013** (that is to say, two weeks after the signature of the Memorandum) together with a notice to Interpol informing of the signature of such agreement. Such letter is included as Annex 7.

The letter, signed by Hector Timerman in his capacity as Minister of Foreign Affairs and Worship of the Argentine Republic, states the following:

*"Mr. Secretary General:"*

*"I have the honour of writing to you in order to inform INTERPOL that, on 27 January 2013, the Argentine Republic and the Islamic Republic of Iran signed a Memorandum of Understanding on matters related to the terrorist bombing of the AMIA building in Buenos Aires on 18 July 1994, a copy of which is attached hereto. This document is currently being considered by the relevant bodies of both countries in order to determine its approval in keeping with their respective laws, which is why it has not yet entered into force".*

*"On the other hand, according to the applicable rules, any modifications to the international arrest warrants which were timely issued to INTERPOL from Argentina in relation to the serious crimes investigated in the AMIA case may only be made by the Argentine judge with authority over such case, Mr. Rodolfo Canicoba Corral [...] Hence, the signature of the Memorandum of Understanding, its potential approval by the relevant bodies of both countries, and its subsequent entry into force have no effect whatsoever on the applicable criminal procedure, nor on the status of the abovementioned international arrest warrants".*

It is worth clarifying that this Court was informed in this case file, through a note by the Secretariat for International Coordination and Cooperation of the Ministry of Foreign Affairs, kept at the Secretariat and dated 25 February, that the abovementioned letter to Interpol was the only message sent in this matter (cf. Note: SECIN No. 44/2015, attached documentation dossier).

In effect, as informed by Secretary General Noble in his letter, it has been established in the case file that the request made by Foreign Minister Timerman for Interpol to state in writing its position in relation to this point **was answered** through an official communication that such organization sent to the Argentine Ministry of Foreign Affairs and Worship on **15 March 2013**.

The communication was signed in Lyon, France (where the headquarters of the organization are located) by the **Counsel of Legal Affairs of Interpol, Joël Sollier**, and states the following:

*"Dear Minister H. Timerman,"*

*"I am addressing you in connection with the recent memorandum of understanding signed between the Argentine Republic and the Islamic Republic of Iran concerning issues related to the terrorist attack against the AMIA headquarters which took place in Buenos Aires on 18 July 1994".*

*"The Office of Legal Affairs of INTERPOL's General Secretariat states that **said agreement implies no change whatsoever in the status of the red notices published in connection with the crimes investigated in the AMIA case**".*

*"In this regard, the Office of Legal Affairs considers that the referred to agreement is a positive development for the investigation of the case".*

*"We remain at your disposal to provide our collaboration within the framework of such case".*

This triple evidentiary confirmation, which is conclusive in itself, perfectly matches all the public statements made by the Argentine Government, not only to Interpol but also in several international fora, press conferences, and interviews.

This was not overlooked by late Prosecutor Nisman. However, he gave the opposite meaning to the large number of statements made by the Argentine Government insisting that the red notices should remain in effect: according to Mr. Nisman, such statements had actually been a distraction to cover the handover of the AMIA case to the Iranian regime

It is also worth pointing out that Mr. Nisman was aware of the existence and the content of the Interpol letter of 15 March 2013.

In fact, he makes reference to that letter on pp. 113/4 of his brief. The letter, in principle, did not affect his version as it could be seen as an action taken by Interpol of its own accord "in response to the pressure exerted by Argentina to remove the red notices".

The attached letter of the Argentine Foreign Ministry of 15 February 2013, signed by Timerman, is a different matter. Were the AMIA Prosecutorial Unit and Mr. Nisman unaware of the existence of such official note despite the fact that more than two years had elapsed since it was sent? Is it possible that Mr. Nisman did not consider it important if he was actually aware of it?

In order to answer these questions, it is worth pointing out that, after the filing of the accusation by Mr. Nisman with a Federal Court on 14 January 2015, and immediately after Foreign Minister Timerman disclosed Ronald Noble's letter to the public, "La Nacion" newspaper published, in its paper edition of 16 January, some statements made by Mr. Alberto Nisman concerning the content of the letter written by the Secretary General of Interpol on the issue of the red notices, which gave a completely different version from that submitted by Nisman. This logically drew the attention of the media.

Hernan Cappiello, a journalist of the abovementioned newspaper, wrote that, in order to rebut Ronald Noble's letter, the content of which was never challenged by Nisman, the Prosecutor explained that:

*"...[O]ne thing is an arrest warrant, which is issued by a judge and which Interpol has no authority to remove, and another thing is a red notice, which is issued by Interpol upon*

*acceptance of an international arrest warrant and communicated to its delegations throughout the world, and which allows for the arrest of the suspect”.*

Therefore, Nisman reached the following conclusion:

*“Timerman could never request Interpol to maintain the warrants in force because Interpol has not authority over that; it only has power over the red notices” (cf. “La Nacion” newspaper, article by Hernan Cappiello entitled “Que el imputado Timerman hable ante el juez” [Indictee Timerman should talk before the Judge], paper edition, Friday 16 January 2015, also available on [www.lanacion.com](http://www.lanacion.com)).*

The statements made by Mr. Nisman become relevant on account of his tragic death two days after making such statements.

But once again, his argumentative line directly collides with the documents in the file.

The note attached to the Memorandum notice, drafted by the Argentine Ministry of Foreign Affairs and Worship on 15 February 2013, is conclusive in that it refers to the fact that the acting judge is the only one entitled to modify the arrest orders issued against Iranian fugitives (as Mr. Nisman acknowledged in the interview) and it is also conclusive in that it states that, according to Argentina's position, the "future entry into force" of the Agreement "does not change, in any way, the applicable criminal procedure or the status of international arrest warrants referred to above", clearly and unequivocally making reference to red notices as the maximum status of Interpol requests when faced with international arrest warrants –cf. Art. 73 et seq. of the Rules on the Processing of Data, Spanish version, III/IRPD/2011 (2014)-

In addition to this, we should also remember here, there are the statements made by Noble in his letter, the official report by the Legal Counsel of Interpol, at the request precisely of Foreign Minister Timerman, which are coincident in the sense that the Argentine demand logically referred to the maintenance of the "red notices" or, which is the same, to the "status of international arrest warrants".

To make matters worse, following this attempt by Mr. Nisman to defend his position, which was published in the newspaper *La Nación* on Friday 16 January, another journalist, Raúl Kollmann interviewed Ronald Noble –domiciled in Dubai- via email, and such interview was published in the newspaper *Página 12* on Sunday 18 January ("What Nisman says is not true" <http://www.pagina12.com.ar/diario/elpais/subnotas/264222-71187-2015-01-18.html>).

In such interview, when asked specifically if the Argentine Government had ever tried to cancel Interpol red notices in respect of the Iranian fugitives, he answered:

*"Prosecutor Nisman's statement is false. No official of the Argentine Government has ever tried to cancel the Interpol red notices. In the last two days, I have been completely surprised to hear such false statements attributed to Mr. Nisman, who I knew, in his accusation. On the contrary, Mr. Nisman, the Argentine Foreign Minister, Héctor Timerman, and each Government official who I met with and talked about this topic, always had the same view: Interpol red notices against the Iranian citizens had to remain in effect".*

Upon being asked if with the execution of the Memorandum the Argentine Government intended to find a way to prosecute the Iranian suspects in the AMIA case, he answered:

*“Yes, I am a hundred percent convinced that Argentine Foreign Minister Héctor Timerman and the Argentine Government wanted to find a way to prosecute the Iranian citizens, for whom Interpol issued red alerts, in the AMIA case”.*

When asked why Interpol considers that the execution of the Agreement is a step forward, he replied:

*“[...] It was acknowledged that it had not been possible to make progress in Prosecutor Nisman’s efforts to prosecute those individuals for whom red alerts had been issued. Precisely for that reason, Interpol and me, Interpol Secretary General, considered that it was necessary to promote an initiative that moved the case forward. The victims and their relatives deserve that the case moves forward in order to try to take the culprits to Court”.*

The journalist that interviewed Interpol Secretary General voluntarily appeared before this Court to submit a copy of the emails he exchanged with Mr. Noble (entered on pp. 458/460) from where it is possible to take the English version of the paragraphs cited above:

*“The statement attributed to Mr. Nisman is false. No government official in the Argentine government ever tried to cancel the INTERPOL Red Notices. In the last two days, I have been very surprised to hear such a false allegation attributed to Mr. Nisman whom I know. To the contrary, Mr. Nisman, Argentine Foreign Minister Hector Timerman, and each Argentine government official with whom I met on this topic had the same position – INTERPOL Red Notices against the Iranian nationals should remain in effect.”*

*“Yes. I am 100 percent convinced that Argentine Foreign Minister Hector Timerman and the Argentine government wanted to find a way to bring the Iranian nationals for whom INTERPOL Red Notices had been issued to trial in the AMIA case.”*

*“Argentina’s Foreign Minister, Hector Timerman, recognized that no meaningful progress was being made in Prosecutor Nisman’s efforts to bring those for whom Red Notices had been issued to trial.”*

And there is another interesting sentence:

*“Therefore, as you can see, the decision whether to delete or cancel a Red Notice rests entirely with the country that requested INTERPOL to issue the Red Notice”.*

These statements have been confirmed, in very similar terms, in the American newspaper *The Wall Street Journal*, in a news article by the journalist Taos Turner, published on Monday 19 January (available in English on <http://www.wsj.com/articles/prosecutor-who-accused-argentinas-president-of-iran-cover-up-found-dead-1421673152>).

In such article, there are also on the record statements made by Ronald Noble:

*"I can say with 100% certainty, not a scintilla of doubt, that Foreign Minister [Héctor] Timerman and the Argentine government have been steadfast, persistent and unwavering that the Interpol's red notices be issued, remain in effect and not be suspended or removed".*

It is interesting, then, to summarize the sequence of events that took place during the second fortnight of January 2015:

- ⇒ **Wednesday 14 January**, Mr. Nisman filed his "accusation" with this Court. In the evening, he visited the politics TV programme "A Dos Voces" and talked about it, which had a strong impact at both national and international levels.
- ⇒ **Thursday 15 January**, at a press conference, Foreign Minister Timerman shows and publicly reads the letter sent by Ronald Noble.
- ⇒ **Friday 16 January**, Mr. Nisman tried to underestimate Mr. Noble's statements, through a news article signed by Hernán Cappiello and published in "La Nación".
- ⇒ **Saturday January 17**, the newspaper "Página 12" published Mr. Noble's denial (the front page reads "Interpol does not believe in Nisman").
- ⇒ **Sunday 18 January**, Raúl Kollmann publishes the interview with Ronald Noble, in which he destroys even Nisman's defense attempt of January 16.
- ⇒ **Monday January 19**, Mr. Nisman had to appear in the Argentine Congress to explain his accusation and the elements gathered (it is worth noting that in the last month neither the AMIA Prosecutorial Investigation Unit nor the acting Prosecutor have submitted new elements).

As it is publicly known, this sequence of events was surprisingly broken when Mr. Nisman was found dead in his apartment on Sunday 18 January, having died, as was reported, that same day at midday.

Let us continue analyzing the case.

Another relevant issue, on which the Prosecution's hypothesis relies, is the apparent unreasonable text of Article 7 of the Memorandum, as it justifies the notification of the Agreement to Interpol before its entry into force "in compliance with the requirements of Interpol in relation to this case".

In this sense, in his accusation Mr. Nisman states that as per Interpol's rules no requirements were to be fulfilled in connection with the execution of an Agreement as the one signed between Argentina and Iran:

*"The evidence gathered shows that Salehi had agreed with Timerman that the execution of the Memorandum of Understanding would cause the removal of the red notices. For that reason, Article 7 -referred to the notification to Interpol- was the only operative provision. The only one that could be immediately implemented..."*  
(cf. p. 113).

*"Notification of the execution of the agreement to an exclusively police body having no interference or interest in treaties or agreements between its member states, as is the case of Interpol, had the sole purpose of removing the red notices against Iranian fugitives"* (cf. 113, see also pp. 109-110).

Now, such expression does not really refer to an Interpol general rule but, rather, to a particular situation "in relation to this case", where precisely Interpol and, specially, its Secretary General, Ronald Noble, in the years before the execution of the Agreement, drove praiseworthy initiatives to try to unlock the situation related to the situation of Iranian fugitives within the framework of the AMIA case and the inflexible position of the parties: Argentina, with a permanent and invariable demand that the fugitives be taken to trial and undergo the initial interrogation before the Argentine Federal judge acting in the case; Iran, firmly refusing not only to give a response to such demand but also having a critical and denying attitude as regards the participation of its agents in the 1994 attack.

Mr. Nisman, once more, surprisingly says nothing about these efforts, which were promoted by Interpol, which this Judge is knowledgeable about from the documents in Annex 5 of the writing submitted by the Argentine Treasury Procurer.

Three Interpol official communications are included there. It is worth quoting their relevant parts:

**First official press release of Interpol, dated 14 September 2009**

"INTERPOL Chief to meet Iranian and Argentinean officials to encourage co-operation on AMIA terrorist bombing investigation. LYON, France.

INTERPOL Secretary General Ronald K. Noble will meet separately with officials from Iran and Argentina in an effort to facilitate a direct dialogue between those nations regarding the 1994 terrorist bombing [...] Secretary General Noble has been encouraged by both Iran and the Argentinean prosecutor to engage in shuttle diplomacy in an effort to help both parties co-operate in this matter.

[...]

Both Iran and Argentina are valued members of INTERPOL and share a wide range of common concerns in our global efforts to combat terrorism and other serious international crimes," said Secretary General Noble.

[...] INTERPOL's goal is therefore to help break the deadlock in co-operation that exists and to find a way both for evidence to be obtained and for the AMIA terrorist bombing investigation and prosecution to move forward," added Mr. Noble.

Cases involving challenges to or disputes around the issuance of Red Notices are the rare exception, not the rule. Last year, 3,126 Red Notices were issued without controversy.

INTERPOL's strength is that when differences occur between our member countries, we are determined to find a resolution while maintaining impartiality and keeping our focus on enhancing international co-operation by police and law enforcement authorities," Secretary General Noble concluded."

#### **Second official Interpol press release of 3 November 2009**

INTERPOL chief proposes a way to unblock AMIA terror probe  
"Under a proposal put forward by INTERPOL Secretary General Ronald K. Noble, INTERPOL is to offer to Argentinean and Iranian authorities that they meet together at INTERPOL's General Secretariat Headquarters in Lyon, France in order to consider having a third country handle the judicial proceedings relating to the 1994 terrorist bombing of the Israeli-Argentine Mutual Association (AMIA) centre in Buenos Aires that killed 85 people and injured hundreds".

"Secretary General Noble's proposal is part of INTERPOL's continued efforts to facilitate a direct dialogue between Iran and Argentina regarding the AMIA terrorist attack. In September, Mr Noble traveled to Teheran to meet with Iranian officials handling the AMIA matter, and on Monday he convened a meeting at INTERPOL's General Secretariat headquarters with a delegation led by the Argentinian prosecutor assigned to this case, Alberto Nisman".

"In this respect Secretary General Noble has been encouraged by both Iran and the Argentinian prosecutor to engage in a form of "shuttle diplomacy" in an effort to help both parties co-operate in this matter".

Both Argentinian and Iranian officials have very strong opinions on this matter which are frequently reported in the media".

INTERPOL's goal is to implement the decision of its General Assembly on this matter and to help break the deadlock in co-operation that exists between Argentina and Iran by putting forward a concrete proposal for both parties to consider and for the AMIA terrorist bombing investigation to move forward.

"At this time however INTERPOL has no intention of asking any specific third country to help unblock this situation. Any such proposal would require both Iran and Argentina to be formally consulted and to agree. No such formal consultation or agreement has occurred as of yet," added the head of INTERPOL.



⇒ **Third official release of March 10, 2010 by Interpol**

*“INTERPOL hosts a meeting between Argentina and Iran, in order to facilitate discussions on the terrorist attack against the AMIA 15 years ago”. Lyon (France).*

*“On March 10, 2010, representatives of Argentina and Iran met for the first time since 2007 at INTERPOL headquarters. The initiative is a part of the continuous efforts made by the international police organization, in order to make progress in the debate on the judicial procedure in relation to the 1994 terrorist attack against the Argentine Israeli Mutual Assistance Association (AMIA), located in the city of Buenos Aires, which resulted in 85 dead and hundreds injured”.*

*“Although it seems that significant progress was not made at the meeting, INTERPOL remains committed to try to resolve the dispute between two of its member countries in relation to the pending charges”.*

*“ [...] we will continue to encourage discussion in relation to this case, and we believe that we are now approaching a phase, acceptable to both parties, in which INTERPOL can assist in resolving the deadlock that has persisted so far as regards cooperation’, stated Ronald Noble, Secretary General of INTERPOL”.*

*“In the opinion of this Organization, progress can be made if Iran and Argentina continue to meet in different contexts. For example, at the meeting held on March 10, 2010, the participants discussed the practical proposal to designate INTERPOL as the channel for the exchange of information between both countries. At the end of the meeting even this proposal seemed unacceptable. Countries frequently prefer to resort to diplomatic channels”.*

*“However, after subsequent discussions, INTERPOL is confident that it has found an acceptable way of becoming the channel for the exchange of information relating to the case, which is satisfactory both for Argentina and Iran”.*

Nothing of the sort appears in the submittal initiating these proceedings.

Is it that the AMIA Prosecutor’s Office and Mr. Nisman were unaware of these efforts, if from one of these releases it appears that he travelled to Lyon to participate in at least one of such meetings?

It is remarkable that the long submittal initiating this record does not make any reference whatsoever to this relevant chapter in the history of the international conflict generally, and to the situation of the Iranian fugitives, especially *vis à vis* Interpol.

Most of all, where these commendable efforts by Interpol gave rise to the message that **the President of Argentina gave at the United Nations on September 24, 2010**, where, precisely, she offered Iran the possibility to choose a third country, which was rejected by the latter. This is something that Mr. Nisman does show in his report (page 58), but without describing the background, which shows a common effort between Interpol and Argentina since several years before, to try to break the deadlock in the progress of the AMIA case.

These initiatives by Interpol, surrounding the case, which clearly caused it to become a mediator in the history of the conflict between both States, not only clearly explain and justify delivering the Memorandum to such organization, but also enable us to understand the reason why Interpol, not one but several times, publicly showed its support to the signature of the Agreement, as it saw such Agreement as a valid attempt to break the

impasse existing since 2007 between two member States in the organization. Interpol was actively involved in exploring ways to resolve the tension. This provides a reason to notify the Agreement to the organization, and for the latter's expressions of satisfaction for the progress made by both countries in trying to unravel the situation.

Besides, it is also clear from the wording of **Article 81, paragraph 2 of the Interpol Rules**, that the only authority that can cancel a notice to the Interpol headquarters is:

**"The National Central Bureau [...] that requested the notice"**, that is, without any doubt, **Interpol Argentina**, which, under its own internal regulations, obviously, could only do so upon request from the court hearing the case (see Article 81 and associated provisions, *"Interpol Rules on the Processing of Data"* III/IRPD/GA/2011, Office of Legal Affairs, Spanish version).

The Prosecutor Mr. Nisman, in his long submittal, does not even once mention, cite or review the rules governing the issue, in spite of their relevance to the matter.

He only repeats comments by an alleged Iranian "expert" (see page 112) and a word of protest from Minister Salehi, of March 2013 (see page 112), after the official release by Interpol's Office of Legal Affairs on the 15<sup>th</sup> day of that month and year, which did nothing by scrupulously follow the regulations applying to the case. This is the only item with which he was able to support his case.

This final thing, if anything else was needed, was specifically confirmed by no one else than the person who was Secretary General of Interpol from 2000 to 2014, Ronald Noble, at a recent press interview.

Mr. Noble dispelled any doubt as to who has authority to cancel a red notice.

Indeed, asked as to who could do this, the former Secretary General of Interpol replied:

*"The competent court authority who requested the red notice via the Interpol bureau of the requesting country has the power to request cancellation of the notice. In the case of the AMIA, the court hearing the case has to address the request to Interpol's bureau in Buenos Aires, who will contact the general headquarters and cause the red notice to be deleted. With the court order, Interpol has the duty to call off the red notice"* (Newspaper 'Página 12', edition of Sunday January 18, 2015, note by Raúl Kollmann, "what Nisman says is untrue" <http://www.pagina12.com.ar/diario/elpais/subnotas/264222-71187-2015-01-18.html>).

The original version of these paragraphs from Ronald Noble's letter is the following:

*"In order for an INTERPOL Red Notice to be canceled, the relevant judicial authority which requested the issuance of the Red Notice via the relevant INTERPOL National Central Bureau must request that National Central Bureau to cancel de INTERPOL Red Notice."*

*"In the AMIA case, the judge overseeing the AMIA investigation would request or direct INTERPOL National Central Bureau (NCB) Buenos Aires to take steps to cancel the INTERPOL Red Notices in question. NCB Buenos Aires would contact INTERPOL General Secretariat Headquarters in Lyon, France and advise INTERPOL that the relevant Red Notice(s) be deleted from*

INTERPOL's databases" (see copy of the relevant e-mail message, see presentation by Raúl Kollmann).

So here we have another matter that collapses the Prosecutor's case, and not only reinforces the national government's case on this item, but is also fully consistent with the specific reference to the item represented by Mr. Timerman in his note of February 15, 2013 to Interpol, to the same effect.

Finally, from the initial presentation itself it appears that Mr. Nisman was perfectly aware of the fact that the red notices, far from having been endangered, questioned or cancelled, remained undisturbed in their status of maximum priority.

Indeed, as Mr. Nisman himself describes on page 86, and repeats on pages 113-114,

*"... The [AMIA] Prosecution Unit has become aware of travel abroad by the accused, on which occasions they risked being arrested [...] Thus, in May this year [he refers to 2014], representatives of the Republic of Korea consulted about the implications of a possible invitation to the accused Mohsen Rezaei to visit such country, so the undersigned immediately gave notice to Interpol, requesting that the international capture warrant be fulfilled if the visit occurred ...".*

In both citations, that of page 86 and pages 113-114, Mr. Nisman cites, as evidence of his sayings, an "Official Letter by the Ministry of Foreign Affairs and Worship of May 9, 2014".

This official letter was accompanied as documentary evidence by the head of the AMIA Prosecutor's Office, and is kept in safe custody at the clerk's office.

On May 9, 2014, the Director of International Legal Assistance at the Foreign Ministry, Horacio Basabe, reports to the court in the AMIA case that an " ... officer of the Embassy of the Republic of Korea consulted with one of the Directors at this Ministry about the Argentine position in the event that the Republic of Korea invited the Iranian citizen Mohsen Rezaei to visit the country. This Foreign Ministry replied that [...] in the event of a visit by such Iranian citizen, the Argentine Republic will immediately request compliance with the Extradition Treaty ..."

"This shows", writes Mr. Nisman on page 86, "that, as said, although the red notices have not managed – for the time being – to cause the accused to be arrested, they clearly affect such persons, since they continue to be an obstacle that hinders their transnational mobility".

But it also shows that the party who took the initiative in making Argentina's position known upon a query by Korea **was not Nisman but the Foreign Ministry**: the official letter from the AMIA Prosecutor's Office to Interpol is dated **May 12, 2014**; the letter from the Foreign Ministry to the court in the case is dated **May 9, 2014**. Neither is this explained in the submittal initiating these proceedings.

It also shows, for the purposes of this decision, that **there were no changes in the status of the arrest warrants with Interpol red notices, and that the position of the**

Argentine government, concerning the continuing effect of the capture warrants against the Iranian fugitives, remained unchanged from 2007 to date.

**III) About the evidence of certain alleged preparatory actions**

What has been said so far is sufficient to dismiss the submittal.

**It is clear that none of the two hypotheses of a criminal offence, represented by Prosecutor Pollicita in his brief, can be minimally supported: the first ("Truth Commission"), because the alleged offence was never committed; and the second (cancellation of "red notices"), because the evidence, far from minimally supporting the Prosecutor's version, belies it clearly and absolutely, and also leads to conclude that no criminal offence has been committed.**

This leaves a number of circumstances without any criminal relevance described by Mr. Nisman, which, in the worst of cases, could be merely considered as preparatory acts (of that unsuccessful cover-up offence), which are not punishable.

**Even though they are excessive and unnecessary to make a decision in this case, because of the public repercussion of the case, I consider the review of such acts relevant.**

**a) The "Aleppo summit" as "starting point" of the impunity plan.**

In actual fact the submittal does indicate, again and again, as a starting point allegedly valid as evidence, the message that Minister Timerman allegedly transmitted to his Iranian counterpart, as early as January 2011, at a half-secret and half-reserved meeting in the city of Aleppo, Syria, that the Argentine government had lost all interest in prosecuting the persons allegedly responsible for the bombings in 1992 and 1994, and instead endeavored to reestablish full relations between both States.

As Mr. Nisman says in his brief:

Page 10: "...Between October 2010 and January 2011 the Argentine government presided over by Cristina Fernandez made a 180 degree turn in relation to its views upon the AMIA case. Indeed, in January 2011 Hector Timerman visited the Syrian city of Aleppo and secretly met his Iranian counterpart, Alí Akbar Salehi, to whom he said that the Argentine authorities were prepared to abandon the investigation of the AMIA case and any claim for cooperation and justice, so as to promote a geopolitical approach and reestablish full commercial relations between both countries".

Page 11: *"It will also be demonstrated that Minister of Foreign Affairs Salehi took notice of such offer and reported it to the then President Ahmadinejad stating that "... Argentina is no longer interested in clarifying the two attacks... instead it prefers to improve its trade relations with Iran. This is the first time that a State that has suffered an act of aggression implores an aggressor State tossing an agreement under which the aggressors will be given impunity."*

Page 46: *"...in January 2011, Hector Timerman gave up the Argentine claim for justice and offered him to make an arrangement to leave the bombing accusations aside and resume bilateral trade..."*

Page 68: *"...the Aleppo summit is the first concrete and verified proof that the highest ranking officials of the Argentine Government accused herein had taken the decision of abandoning the legitimate attempt to prosecute the Iranian nationals accused of the AMIA bombing, with a view to facilitating direct trading exchanges at the State level –among other goals–, even when this implied executing a plan to cover up for the indictees. According to the evidence gathered so far, this decision had been secretly informed to the Iranian authorities by none other than Argentine Foreign Minister Timerman, in January 2011, in Aleppo."*

Page 202: *"Specifically, by a presidential order, Timerman separated from the official committee [...] to head to the Syrian city of Aleppo, where he held secretly a meeting with the Iranian Foreign Minister, Ali Salehi. There he communicated the following message: —...Argentina is no longer interested in clarifying the two attacks...instead it prefers to improve economic relations with Iran..."*

Let us then analyze this point.

In the first place, the fact that the Argentine Foreign Minister had eventually met his Iranian counterpart, on the date and place described in detail on page 65 of Nisman's accusation ("*La cumbre de Alepo*"), is not a crime itself.

Neither is the fact that, on whatever grounds, the Argentine Ministry of Foreign Affairs and Worship had, supposedly, decided on that meeting to be "secret," or not to be publicly known, or not to give any statements in relation thereto.

In conclusion, the only point that is relevant to this analysis is to sustain, and deem demonstrated, as Nisman did in its accusation, that during the allegedly "secret summit," the Argentine Foreign Minister, as a starting point for the "plan" purported for the future commission of cover-up, had informed the disposition of the Argentine Government to conspire with Iran against the Argentine Judge and the Argentine Prosecutor so that accusations and arrest warrants on Iranian fugitives "would be eliminated at one stroke" (as Nisman said).

Remember so far, and beforehand, that it is not easy to stand an accusation like this. This would be contrary to the Argentine State policy pursued at least until 2003, publicly held ever since then, and to date. To top it all, the allegedly messenger, Hector Timerman, besides being none other than the Argentine Minister of Foreign Affairs and Worship, has always been a well-known and active member of the Jewish Community in our country. Then, the reckless affirmation of Nisman in this respect is not only contrary to the inflexible public position of the Argentine Government for the last ten years towards truth and justice, but also to the belonging of the presumptive author to the community that had been the main addressee and victim of the worst bombing ever perpetrated on our country.

Without going any further, with respect to Foreign Minister Timerman, on 28 April 2014, there were Warsaw Ghetto Uprising commemorations around the world. The main event is held every year in Jerusalem, at Yad Vashem, the living memorial to the Holocaust. At last year's ceremony, the highest governmental authorities of the State of Israel, its President and Prime Minister, entered into the place escorted by a foreign embassy official, who paid flower tribute on behalf of his country. That foreign embassy official was of Jewish origin and was Hector Timerman. Victoria Ginzberg's article on that ceremony, dated 29 April 2014, published by "Página 12" newspaper may be checked for reference. Something this Magistrate needs not do. That day I was present among the audience for having been invited by the institution as lecturer, to take part in a seminar, and attend such a moving ceremony.

Then, what are the pieces of evidence produced to this Court that might support such a serious accusation?

The answer is: only one. And that is the testimony of a well-known journalist, unfortunately already dead, José Eliashev, written in the form of newspaper article and later ratified by him.

Let us carefully and thoroughly analyze Eliashev's statements.

The newspaper article on which this serious accusation is grounded was published in "Perfil" newspaper on 26 March 2011 (a copy thereof is kept at the Court Clerk's Office).

There, the aforementioned journalist told that:

*"The administration of Cristina Fernandez was willing to de facto suspend the investigations into the terrorist attacks of 1992 and 1994 [...] as revealed by a document so far kept secret, recently furnished by the Foreign Minister of the Islamic Republic of Iran Ali Akbar Salehi to President Mahmud Ajmedineyad."*

*"To the Iranian diplomacy, Argentine investigations would have been closed. The Iranian Foreign Minister affirms in his report to President Ajmedineyad that*

*«Argentina is no longer interested in clarifying the two attacks... instead it prefers to improve its trade relations with Iran».*

*“The secret report [...] has been accessed by PERFIL since the foreign ministries of several countries have already started analyzing it...”*

This journalistic report later reads as follows:

*“According to the conclusions drawn by the Iranian Intelligence Service, which Tehran’s Foreign Department makes its own, the Argentine Government would have refused to bring to court the current Minister of Defense, Ahmad Vahidi, and other Iranian officials suspected of complicity in such terrorist episodes.”*

*“The Iranian Foreign Ministry considers that if these issues are set aside, both countries may face a brand new stage that can allow them to overcome two decades of sheer coldness...”*

*“The Iranian secret report, leaked abroad by media opposing Tehran’s regime, underscores the interest of the fundamentalist regime in la situation of the minister of defense, Vahidi...”*

*“In his recommendations to Ajmedineyad, Foreign Minister Salehi proposes authorizing his Argentinean counterpart to request the revocation of the arrest warrants petitioned by the Government from Interpol against Vahidi and other prominent figures of the Iranian regime.”*

*“The report that has transpired sustains that the Iranian intelligence thinks it a fact already that, even if a third party should secretly demand the extradition of Vahedi, Argentina would dismiss such request. The accused Minister of Defense can already travel abroad without any problems, because the issue of the attacks against Argentina has been largely forgotten worldwide and hardly anyone shows much of an interest in it, let alone Interpol.”*

*“...[I]n his proposal to Ajmedineyad, the Iranian Foreign Minister believes that his country has an opportunity to take advantage of the fact that public opinion can barely remember those attacks that took place almost 20 years ago and that the current state of affairs seems ideal to re-launch a new period of friendship between both governments.”*

In turn, the second journalistic report by Eliashev as quoted by the Prosecutor’s Office, on 2 April 2013, also published in “Perfil”, provides little or no contribution to the matter, since it merely states that:

*“Last Saturday this newspaper unveiled certain details of a document prepared at the Iranian Foreign Ministry [...] it is impossible to publicly reveal the source where they have originated. Nobody is obliged to follow them to the letter, of course, but the person who undersigns them is therefore risking their reputation in support of what is being announced.”*

So let us now make clear what the aforementioned journalist saw:

Eliashev was quickly summoned by the AMIA Prosecution Office so as to account for his statements. Thus, on 28 April 2013, Eliashev rendered his testimony before Mr. Nisman.

At first sight, the extent of the record, twelve pages, allows the reader to raise expectations about the clarification of several items and aspects developed within the journalistic sphere.

It was imperative to ask the witness not only about his source (as it did occur), but also to inquire him at least about what nationality his source was; where he came into contact with such source; what country the report written in English to which he had access (since it was not the original proper) was from; if the English translation was an original or subsequent rendering; if the "secret report" had any official letterhead or coat of arms; if it had a date; if it bore a signature and seal (apart from the identity of its undersigning party); if the witness copied *verbatim* the phrase appearing between inverted commas in the journalistic report or if it was a reconstruction of his memory or his own interpretation or inference from what was stated therein; how long he was in contact with said report (for he evidently could not get a copy); why he sustains that it is the Iranian intelligence pronouncing an opinion in the report if, in the same story, the journalist says that it could have been some members of said country's Foreign Ministry the ones who actually drafted the report; if the words used could be literally taken from the Argentine party or if it was an interpretation or inference made by the Iranian counterpart; if the person authoring the secret report actually attended the meeting or was just told about it...

Unfortunately, none of these issues could be made clear at said testimonial deposition. On such occasion, Eliashev will expound on his long professional career, on the source-checking procedures implemented by the newspaper where he works, on his relationship and involvement with the story of those two bombings, on his relationships with both victims and witnesses, as he gave his opinion on the acquittal rendered by the TOF 3 in the main case, as well as the work of both judges and prosecutors in the case; he also tells the story of Andrew Graham Yoll's exile, criticizes the Argentine national government, justifies U.S. president Obama's stance towards international politics, explains his thesis on president Fernandez de Kirchner's double talk in her relationships with the Jewish community and the Israel State, on the one hand, and with nations such as Iran, Syria and Libya, on the other, the role played by Venezuela in this game of international politics, among many other topics... which have not at all helped to make the witness account for his statements.

Moreover, the little information he expresses about it will not only fail to clarify any of questions described above, but it will also bring about further uneasiness and uncertainty about what it is that the journalist actually saw.

In fact, the beginning is a promising one, since as a matter of fact, when asked about the journalistic report in question, Eliashev ratified the same in all of its terms (p. 131.189 overleaf). Only four pages later can we retrieve something else, when he affirms that to write



that report "... [he] pondered, after having a heated inner debate as a journalist, and being personally enquired in depth by my editors, that, as we say in this profession, not at all was it any fishy but it was a true and credible piece of information, the authentication of which does not lie with journalists but with the Judiciary and the political power." (p. 131.191 overleaf).

Somewhere later, he is asked "whether he can provide the press releases he referred to," to which he replied: "I cannot provide but the following: the disclosure of minister Timerman's meetings with the Syrian authorities came to my hands, not in Farsi language but in English. I am perfectly bilingual in my command of English..."

Then he was asked "how such press release reached him and in what language it was written," to which he answered: "for now I can only say that it is not a press release," and he later on added on this issue: "[w]hy get surprised at a document, obviously written in Iranians' mother tongue, Farsi, being leaked, translated into some other languages, as there are many hypotheses, French, English, German, Hebrew, and the information transpires Iranian frontiers. Regarding the documentation issue, this is all I can tell." (p. 131.192).

Now, let us pass on to the core question. In relation to this, the witness said:

*"My article accounts for a report from the Iranian Foreign Ministry to president Ahmedinejad, a typical intergovernmental «paper», where the official in charge of conducting such country's regime's foreign affairs makes a suggestion to their president that on the basis of the pieces of evidence in possession of the Iranian Foreign Ministry, it corresponds to move on to an important agreement with Argentina because the Iranian Foreign Ministry says, as they themselves say, that these current circumstances are ideal for Argentineans to get round to turning the page over in regard to Argentine-Iranian relationships."* (p. 131.192).

This, sworn under oath by Mr. Eliashev, is **clearly different from what he affirmed in his journalistic report**. It should be borne in mind that from this sworn statement, should the content of the "paper" be true, should it be rightly interpreted by the Iranian official from his Argentinean counterpart, and should it have been an accurate and correct translation from Farsi into English, the content thereof does not reveal anything actually substantial: Argentina would wish "to turn the page over" in bilateral relationships, and for such purpose, it should correspond -as stated in the "paper"- to move on to an important agreement.

Nothing did Eliashev say about it, nor was he ever asked by Mr. Nisman about the serious statements said journalist made in his report, especially about the paragraph he wrote between inverted commas and that Nisman will endlessly repeat in his report, thus assuming it is true ("Argentina is no longer interested in finding a solution to those two bombings, but it does prefer instead to improve its economic relationships with Iran"), or about the disclosures whereby minister Vahedi could freely circulate, which in addition, right in that passage, Eliashev does not attribute it directly to the Foreign Ministry but to the "Iranian intelligence," therefore we do not know whether it was just one or several documents, or if

Eliashev in fact did see an intelligence report replicating the content of such “intergovernmental paper.”

Under these conditions, **it is impossible to accept as an element of evidentiary value** what Mr. Nisman thinks is the “beginning of the plot of the impunity plan.”

In fact, **we do not have that document, nor do we know who wrote it, or when, or where. We do not know how it came out of its purported country of origin. Neither do we know who took it out from its original situation. Nor where it was taken, or who translated it into English. We do not know whether it was a copy, or an original of the “report”. We do not know its precise content, if it gathered some literal phrases or if it was the interpretation or conclusions of someone who took part in the meeting. And to crown it all, also, the notorious and alarming deficiencies and vacuums the testimonial deposition referred to above was plagued with.**

To cap it all, Mr. Nisman’s report itself, in regard to it, brings up another purported piece of “evidence” consisting in the offering of impunity, based on the research work by another journalist, **Gabriel Levinas**. As a matter of fact, the report expressly states, in relation to the purported meeting of Argentine-Iranian foreign ministers held in January 2011 in Aleppo:

*“According to journalist Gabriel Levinas, who claimed to have accessed “unofficial sources of Israel’s Foreign Ministry” [...] Timerman would have assured ‘...I am here on accurate orders of our president to try to find or seek a solution to the AMIA case. Times and humors of our country is an issue to be resolved internally’...” (cfr. p. 65).*

This other source, apart from the fact that, again, it is a mere intelligence report, to cap it all from a foreign country, with a barely significant evidentiary value, far from double-checking the version of such purported “offering of impunity” presented by Eliashev in the newspaper “Perfil”, **actually refutes it**, since what Levinas takes as a supposed statement made by Timerman can be perfectly understood in the sense that, at length, the Memorandum of Understanding was signed (“try to find or seek a solution to the AMIA case”), which, indeed, brought on some negative consequences in the “times and humors of our country.”

Moreover, this version provided by journalist Levinas, **is much closer to the briefer and wiser version provided by witness Eliashev before the UFI AMIA**, when he sustained, under oath this time around, that the Iranian Foreign Ministry sustained that: *“it corresponds to move on to an important agreement with Argentina because [...] these circumstances are ideal for Argentines to get round to turn the page over in regard to Argentine-Iranian relationships.”*

Ultimately, for all these reasons, and hereby dismissing as inconsistent, brittle, and contradictory the only prosecution piece of evidence presented by the Prosecutor’s Office, i.e. the purported “starting point” of the “cover-up plan” coming from an offering made by

the Argentine foreign minister to his Iranian counterpart in January 2011 in order to “relinquish the prosecution of the perpetrators of AMIA bombings” or in order to “erase at a stroke” all of the actions and records taken in the case, it does not have a single piece of evidence supporting it.

**b) The prosecutor’s version of the “secret agreement” due to the removal of red notices.**

In Mr. Nisman’s report, he insists on the existence of a sort of secret agreement between the foreign ministers of both countries, and the provisions of which would actually state what the accusation so longs for: that Argentina should consent to the removals in the red notices of the Iranian fugitives.

As we have already discussed above, there is no single piece of evidence that indicates so, quite on the contrary, both the historical stance of the Argentine government, and Timerman’s note to Interpol dated February 2013, as well as Sollier’s note dated March 2013, and Noble’s letter of January 2015 dismiss such accusation.

The only thing still standing of said castle of speculations and accusations made by the unfortunately late Mr. Nisman are two journalistic reports, which we are discussing below.

The first one is not a report from Argentina, but from the official Iranian news agency (IRNA), which reproduced the statements made by the Iranian Foreign Minister Salehi on 19 March 2013, who would, in the accusation’s words, have said:

*“The contents of the Iran-Argentina agreement in relation to the AMIA issue will be made public in due time and the matter [involving Iranian indictees] is included and we are pursuing it.”*

This is correct, as it was expounded on mass media. But there is problem for this to serve as a demonstration of the existence of a “secret agreement.”

In fact, when turning to the journalistic sources that reproduced in English the press release of the agency IRNA, under headline quoted by Mr. Nisman e.g. on p. 116 *in fine*, (“*Tehran insists accord with Argentina includes Interpol lifting red notices against Iranian suspects*”), the paragraph immediately foregoing the one Nisman quotes and repeats reads as follows:

*“[Minister] Salehi assured that Iran is [...] working jointly with the Argentine government to resolve the question, based on the memorandum signed by representatives from the two governments” (see <http://en.mercopress.com/2013/03/19/tehran-insists-accord-with-argentina-includes-interpol-lifting-red-notices-against-iranian-suspects>).*

Therefore, there is no doubt that the Iranian official is, in both paragraphs, making reference to one and the same document: the memorandum signed on 27 January 2013.

That the Iranian regime, for domestic policy reasons, based on censorship, or so as to not have to provide any kind of explanations whatsoever, has not wanted to officially disclose, two months later, the contents of the memorandum, is not an issue of being any relevance hereto, but it surely has to do with what has always been such regime’s strategy:

to seek to remove said red notices, and then, to leave the agreement abandoned to its own luck with no Iranian national ever having to testify before any Argentine judge.

And the other journalistic report whereon the accusation is based in order to seek to find a "secret agreement" laying bare the Argentine government's intentions is provided by another quotation from a newspaper, which does not correspond to the reality informed by mass media.

In fact, on p. 143 of the accusation, Mr. Nisman holds:

*"In addition to that there is another episode disclosing the existence of secret pacts between both parties. There were certain signs that called into question the fact that the meetings were actually going to be held in Tehran, even if they did not even amount to actual criminal defense statement answering to charges for Argentine law. Indeed, the spokesperson of the Iranian Foreign Ministry, Ramin Mehmanparast, declared: '...The issue of the criminal defense statement of an Iranian offender [by Vahidi] is absolutely false... those who do not feel at ease with this agreement seem to spread this kind of news'..."*

In fact, Mr. Nisman affirmed on such occasion the existence of a secret pact between Salehi and Timerman whereby it was agreed that Ahmad Vahidi should never attend such hearings, which, besides those journalistic comments, arose from a phone-tapping taken between Yussuf Khalil and Luis D'Elia, on 12 February 2013, where they actually made a comment about the report published by the news website "Infobae" on that very day ("*Iran rechazó la indagatoria de su ministro de Defensa*"), where D'Elia wonders if such information may smell "fishy" just before one day before the scheduled parliamentary debate, to which Khalil answers that it does not, that it is "arranged beforehand," that it "was discussed before," and that it "is even deeper," (cfr. p. 145).

All this issue starts from an original confusion. Let us see the sequence since the tracking of the journalistic reports in question.

According to the agency EFE, on **30 January 2013**, i.e., three days after the approval of the memorandum, the Argentine Foreign Minister Hector Timerman sustained in his statements made for the radio station "La Red" that the agreement opening the possibility to inquire in Iran the individuals required by the Argentine Judiciary meant "a significant breakthrough" for "it was the first time that the Iranian suspects were going to appear and sit before an Argentine judge." When asked by the journalist, Timerman added: "*I made sure that the Iranian Minister of Defense, Ahmad Vahidi, should be one of the inquired individuals,*" with these expressions then inserted in the headline of the press release issued by the news agency ("*El canciller argentino asegura que el ministro de defensa iraní declarará por AMIA,*" [http://noticias.lainformacion.com/policia-y-justicia/terrorismo/el-canciller-argentino-asegura-que-el-ministro-de-defensa-irani-declarara-por-amia\\_4trBRx5w8mxF4gtxrCTYU6/](http://noticias.lainformacion.com/policia-y-justicia/terrorismo/el-canciller-argentino-asegura-que-el-ministro-de-defensa-irani-declarara-por-amia_4trBRx5w8mxF4gtxrCTYU6/)).

Now, the following act in this sequence was a press release from the agency *France Presse* dated **12 February 2013**, quoted by Mr. Nisman himself. There, the headline of the press release reads, “*Irán rechaza interrogatorios de oficiales en la causa por el Atentado*” (<http://www.globalpost.com/dispatch/news/afp/130212/iran-rejects-grilling-officials-argentina-bomb-probe>).

There it is recalled that in previous statements, “*foreign minister Timerman had said that seven Iranians subject to an international arrest warrant were going to be inquired by an Argentine judge in Tehran in relation to the bombing.*”

Timerman, according to AFP, claimed (as we have seen) to have made sure that the Iranian Minister of Defense Ahmed Vahidi “*should be present when the [Argentinean] judge inquires the suspects and that we will also attend such interrogatories.*”

It was as a result of such statements made by the Argentine Foreign Minister that on **12 February 2013**, the Iranian regime’s spokesperson, Mehmanparast expressly stated: “*The matter of questioning some of the Iranian officials is a sheer lie...*”).

The same press release can be seen in the news agency Reuters (<http://www.alarabiya.net/articles/2013/02/12/265933.html>).

That is to say, at no time, as opposed to Nisman’s statements, did Iran’s spokesperson mention Vahidi. He directly denied that the interrogatories are ever going to take place. Any one of them (of those officials subject to red notices). In keeping with the stance already expounded on the fact that the only thing the Iranian regime cared for and on the secrecy kept by the Iranian regime in relation to the characteristics and scopes of the Agreement.

Hence the misunderstanding. Infobae, on that very day, headlined “*Irán rechazó la indagatoria de su ministro de defensa*” [“Iran rejected the questioning of its minister of Defense”] (<http://www.infobae.com/2013/02/12/696040-causa-amia-iran-rechazo-la-indagatoria-su-ministro-defensa>), thus causing the Iranian spokesperson to say something he did not.

Therefore, all the conversation between Khalil and D’Elia, where the former boasted about having privileged information, was about inaccurate information, and therefore shows the faint degree of reliability that the comments made by these two individuals had so as to be submitted as valid pieces of evidence in court.

In regard to the Iranian regime’s secrecy about the Agreement with Argentina, therein represented by Hector Timerman, see for instance, that in the original report itself, on p. 181, the Iranian newspaper “*Tehran Times*”, in its issue of 29 September 2013, releases some pieces of news about the Memorandum issue, but for that, according to Mr. Nisman,

*“...it took the agency [...] TELAM as the sole source of this news. Incredible. The Persian newspaper «Tehran Times», one of the most important tones in Iran, on informing about a decision adopted by the government of its country, referred as sole source to the official news agency of another country, Argentina (“Argentina says Irán committed to probing 1994*

*bombing”, Tehran Times, 29/09/2013; “Timerman ratificó la aprobación del memorándum de entendimiento con Irán y un nuevo encuentro”, Télam, 28/09/2013)”.*

And Mr. Nisman wonders:

*How come the source is not an Iranian one? How come for a governmental act decided and produced in Tehran the source of the “Tehran Times” has been TELAM?”*

The answer, now based on all the evidence at sight, is clear: the Iranian regime was only interested in removing Interpol’s arrest warrants. In their political cost-benefit analyses, they speculated with a swift achievement in this issue, and then they were going to refuse any kind of advance in this negotiation, thus keeping secrecy before public opinion in relation to the other items contained in the Agreement, which placed Iranian regime at an uneasy situation, as they would have to “negotiate” with an Argentine foreign minister of Jewish origin, on behalf of a government that has “insulted” Iranians for ten years at the UN, and when “admitting” that a federal judge, after years of invectives y grievances towards the Argentine Judiciary, would travel to Tehran in order to inquire nothing less than top members of Iran’s political establishment.

Said sole Iranian objective was, in turn, Argentina’s ace to make Iran sit to negotiate the Agreement. It was clear from the very beginning that without red notices, there would be no possibility of any progress whatsoever in the case. Hence, far from what Mr. Nisman claims, the Argentine Foreign Minister repeatedly told Interpol that said red notices should be kept, as Ronald Noble recalls, “no matter what,” and this is exactly what happened, thus leading to the abandonment of all kind of interests of the Iranians in the Memorandum, as early as in March 2013, when they realized that what –not without clumsiness, not without negligence- they bet, was never going to happen.

### **c) Phone taps and their evidentiary value**

The accusation of Prosecutor Nisman, who sadly died a few days later, is largely based on wiretapped telephone conversations intercepted over the last years. The ones offered as incriminating evidence date from late 2011 until late 2013.

In order to analyze the phone taps, with which I intend to conclude my analysis of evidentiary and factual issues, I will comment them one by one from the point of view of the alleged liability attributed to each of the indicted by the Public Prosecutor’s Office.

I will state once again that all this discussion is, in a way, redundant, since the wiretapped conversations are, at worst, but bits of a mere plan or preparation, which is not punishable by law and, failing the existence of proof of a cover-up, fall outside of the adjudicatory power of the criminal courts.

I will begin this analysis by discussing the weakest link in the accusation from the point of view of involvement, which is undoubtedly the Argentine Congress Representative Andrés Larroque.

⇒ **Andrés Larroque**

As early as on page 202, Dr. Nisman accuses Larroque, an “ardent follower of the President”, of having:

*“...[served] as a link, liaising between her and the unlawful participants in the cover-up plan. The need to have a liaison is evident,” says Nisman. “... it was essential to have an extremely trustworthy person who could justify his personal acquaintance [...] and that person was Larroque.”*

Then on page 261 is the paragraph that deals with Larroque, where the same premise is used: Larroque as a link with the President.

Next, on page 262, Mr. Nisman brings up two irrelevant conversations for the accusation, which, at most, only reveal Larroque’s acquaintance with Yussuf Khalil with regard to issues completely irrelevant to the serious accusation under consideration.

After analysing all the available transcripts of wiretapped conversations and reading Dr. Nisman's accusation of Larroque, all that is left is a series of conversations that took place between 16 and 18 November 2012.

All that emerges out of the wiretapped conversations from those three days (see pp. 189, 194, 197, 226, 262/4) is connected with the Israeli-Palestinian conflict and the comings and goings surrounding the public statements, expressions of support and the tone of the expressions condemning the policy of the State of Israel.

In that context, on 17 November, Yussuf Khalil, the most prominent member of the Muslim community in Buenos Aires and a delegate of the regime in Argentina, had a meeting with Luis D'Elia and Andrés Larroque over this issue. At that meeting, D'Elia and Larroque asked Khalil to forward a message to the government of Iran.

Prosecutor Nisman claims that Larroque’s “message” allegedly has something to do with the “plan” he describes. However, this allegation is blatantly disproved, not only by the general context of these conversations, but also by one of the tapped conversations, where Khalil says that “... with all the turmoil going on in Palestine, the Government are asking me something, so they have me going to and fro...” The listener asked whether or not he had met with Larroque, to which Khalil replied: “Well, we sat together and gave me a message I have to forward to the embassy. I went to the embassy and delivered the message, but I had to go the embassy, all the way to Martinez.” (pages 410, overleaf, of the exhibit containing the telephone taps).

Else than that, what transpires is that both D'Elia and Larroque asked Khalil not to join the street demonstrations against Israel over the situation in Palestine; also, according to Khalil, if “Israel should invade Palestine”, Larroque's political organization would join the protests (see page 197).

The whole conversation revolves around that particular context and that particular topic.

Larroque's only other appearance in the thousands of lines of transcripts is on 14 May 2013, where Khalil, speaking with a Mr. Heshmat about business issues involving the Chamber of Commerce, told him that he had spoken with D'Elia, who said that he had forwarded his business proposal to Larroque for discussion with the President (see pages 92 and 263 of Dr. Nisman's accusation).

And that is all. There is no further evidence involving Larroque. The only thing that is available is a series of comments showing Larroque's acquaintance with D'Elia and Khalil, but only because of his political activity and the role he plays within the official party. Nothing else.

It should be noted that Larroque's voice has not been recorded even once throughout the years in which the Prosecutor's Office intercepted telephone calls.

Thus, it is relevant to ask how has Mr. Larroque been involved in this serious accusation. If the reason is that Nisman stretched to find a material link with the highest executive authority in the country, he missed the target, as the absence of any evidence or reason to believe that Mr. Larroque is involved in the alleged "plan" is striking.

#### ⇒ **The President of the Argentine Republic**

As to President Fernandez de Kirchner, the situation is equally shocking on account of the absence of evidence supporting the serious accusation brought by Mr. Nisman.

As has been previously stated, the strategy followed by the prosecutor in his accusation has been to ignore all the statements made, stances taken, expressions made and official decisions taken by the President of the Argentine Republic since she took office, all of which have been extremely consistent with the goal of finding the truth and obtaining justice in the case of the AMIA bombings.

All of which is evidenced in Nisman's accusation and is generally acknowledged. For him, however, it has all been but a "mise en scène", a charade aimed at covering up a murky, shameful, hidden agenda.

Additionally, in the case of president Fernandez de Kirchner, the imaginative leap must be even longer, since her public stance on this issue has also been consistent with her political activity since 1994 onwards.

This means that, if Mr. Nisman's accusation were true, one would have to accept that a political figure who currently exercises the executive power, who, for 20 years has been consistent in the search for truth and justice for the victims of the bombings, conceives of turning her back on her own convictions and orders her subordinates to betray those values, her country, and, more importantly, the victims who are still waiting for truth and justice.

And so it turns out that, absent the Manichean interpretation of the President's official stance and the involvement of Representative Larroque, all that is left to discredit the President's long-standing commitment, pursuant to the paragraph starting on page 199, is three telephone conversations in which the President of the Argentine Republic is mentioned for some reason.



The first dates from **28 January 2013**. One day after the Agreement was signed, an excited pro-Iran Muslim activist Khalil had a telephone conversation with the alleged spy Allan Bogado, and here I will quote Mr. Nisman:

Page 134: "...[T]hey commented on the concerns voiced by Khalil over Timerman's performance in the negotiations: "...I fear he may not be able to fake it ... he doesn't even understand it...". But these fears did not matter because it was "orders, orders, and orders", suggesting that the foreign minister simply followed orders from President Fernandez" (both comments were made by the alleged spy accused of inside dealing Allan Bogado).

As can be seen, this is a completely harmless comment of no consequence or relevance for the purpose of supporting the Prosecutor's accusation, since the conversation revolved around the signing of the Memorandum of Understanding and that, in Bogado's opinion, it was the President who promoted the negotiations that led onto the signing of the Memorandum.

The second wiretapped conversation that, according to Prosecutor Nisman, complicates the President, took place on **20 May 2013**. But it is a conversation between pro-Iran leaders Khalil and D'Elia in which they explored the possibility of generating business between Argentina and Iran, and there is nothing in it connected with the serious accusations made by Prosecutor Nisman.

In that conversation, D'Elia told Khalil that he had had a meeting with Minister of Federal Planning Julio de Vido, in which, according to D'Elia, Department of Federal Planning was willing to "send people from [Argentine state-owned oil company] YPF" together with both speakers "to make business there", and that they would be "very interested in trading their thing for grain and beef over there", although D'Elia told Khalil of a "political problem", which was, predictably and consistent with Argentina's official stance, "if [Iran] approved the memorandum," to which Khalil replied "yes, Luis, that's for sure", but that in that country "[the memorandum] was being delayed because of that", that is, because of the permanence of red notices (by that time Iran had already rejected complying with the steps provided for in the Memorandum).

Thus far, far from being affected, the Argentine Government is strengthened, as it remains inflexible even in the face of the possibility of generating business, which would possibly be welcome by the country.

The talk between Khalil and D'Elia has this finale: D'Elia tells Khalil that "the meeting took place because it was the Boss who asked for it... [...] we're at the top level" (see page 94/5 of Mr. Nisman's accusation, repeated at pages 117, 206 and 230).

Despite the fact that it is doubtful whether the meeting had been "asked for by the Boss" because the day before D'Elia had told Khalil that he had "spoken to Julio" (De Vido) and that De Vido had called him for a meeting, this comment does not change anything. The prosecutor's claim that out of this meeting and this business proposal, with the official

acquiescence, emerged a murky chain of contacts starting from fugitive Rabbani, Khalil, and D'Elia, then De Vido or Larroque, and from there to the President, cannot be supported before a court of justice, especially in light of the striking lack of evidence.

The last telephone call in which mention is made of the President was on **6 February 2013**, in which the alleged "spy" accused of insider dealings by the Intelligence Department itself, Allan Bogado, told Khalil, one week after the Agreement was signed, his impression that the relationship between the government and the Muslim community was going smoothly, that "*the la Campora guys*" wanted to "*cling on to a deal with you*", that "*there are a lot of issues which we have to put together*", that "*we have to work on a 10-year horizon*", that "*let's hope we have good news in a year and a half from now*", and that "*we are ok, on an international level, we're ok*".

To that, Khalil seemed to object that "*you should keep a close eye on that*", making reference to the Memorandum. And Bogado replied: "*sure, but rest assured that **this is deal has been closed high up***". But Khalil, who represents the interests of Iran and is aware of the plans to cancel red notices, insisted to Bogado "*ok, but follow up on it, I know what I'm telling you ... because I can hear the other side too (laughter) you hear one side, I can hear the other*" (cf. page 191, repeated on pages 200 and 250).

And so we end up in the same place as in the other previous causes. The dialogue is scarcely convincing, the language used is vague and obscure, there is a disagreement between both speakers as to what the true position of the Argentine Government is with respect the memorandum, and on top of that, one of the speakers turned out to be a false spy, being criminally accused. The thing speaks for itself.

In sum, we can state that, based on all the evidence collected in this case so far and produced by the now deceased Prosecutor, after a painstaking analysis of the Prosecutor's accusation, after careful consideration of the journalistic articles and intelligence reports cited, after perusing each of the transcripts of the wiretapped conversations available (from which no involvement from any national government official can be inferred), I conclude that **there is no evidence, not even slight evidence, that suggests that the current President of the Argentine Republic was involved in –at least– the planning or preparation (and thus not criminally punishable) of the serious crime of covering up, of which she was accused and for which she was required to be interrogated.** As explained earlier, there has been no such crime, in neither of the two hypothesis put forward by Mr. Pollicita in his information.

⇒ **Hector Timerman**

After a thorough analysis of the telephone conversations produced as alleged incriminating evidence, a curious situation exists with regard to Hector Timerman.

All along the thousands of lines of conversations wiretapped for several years, **there is no mention or reference to any action or participation of the Argentine foreign minister**

**or anyone working for his Department.** There is no mention of the Argentine Foreign Ministry being involved in what Nisman called “*a de facto parallel diplomacy*” (page 193).

But this is not what is peculiar about Mr. Timerman.

What is peculiar is that, every time the unlikely characters involved in the conversations, i.e., D’Elia, Esteche, Bogado and Yrimia, plus the pro-Iran agent Khalil, made reference to Hector Timerman, they did it only to revile him, scorn him, discriminate against him and criticize him.

If anything can be inferred from the phone taps, is that Timerman, and by extension, **“the real diplomacy”**, far from being their ally, **were precisely the rival to be defeated.**

They faced the same obstacle when they tried to make business deals within the Ministry of Federal Planning and they were told that they had to approve the Memorandum to allow the Argentine Judiciary to question the Iranian fugitives as a prerequisite.

The phone taps also clearly reveal the **frustration** of these pro-Iran agents, at **the inflexibility of the “real diplomacy” in pursuing the goals set by Argentina in this negotiation (bringing the Iranian fugitives before the competent judge in order to get the trial out of its stalemate) and in the striking failure to attain Iran’s only goal, i.e. cancelling the red notices).**

I will mention just a few of these references (in chronological order) to Hector Timerman, which do nothing but praise him, and I will quote Nisman’s accusation:

28 January 2013: Bogado, following the signature of the Memorandum: “... *can you imagine what your friend Timerman now looks like to his community (likely) Remember I told you, don't worry, I fear he may not be able to fake it... he doesn't understand it...*” (quoted above).

11 May 2013: Khalil: “*There’s a bit of anxiety over there [...] some of the comments weren't well received. I think this fucking Jew screwed it up*” (page 116, repeated at 194/195 and 213).

20 May 2013: Khalil: “*De Vido has to know that Timerman hasn't delivered as agreed, this is clear, he simply hasn't delivered...*” (page 7, repeated at 94/5, 117,206 and 230).

Thus, since the only item of evidence –apt to be brought to a court of justice– there was to support the idea of a murky business pursued by the Argentine foreign minister in the “*Aleppo summit*” has been brought down; since the groundless claim of Prosecutor Nisman that Timerman would have required Interpol to cancel red notices has been completely disproved; since a number of inaccurate interpretations of several journalistic articles that tended to support the Prosecutor’s accusation, the existence of “secret dealings” where Argentina had given up on its search for justice; and since **the wiretapped conversations, far from complicating Timerman, actually vindicate him** and the personnel of his Ministry; I conclude that, in the two previous cases, **there is no evidence whatsoever or reason to believe the Prosecutor’s offensive and humiliating accusation that Hector Timerman has even instigated or paved the way for a cover-up of the AMIA bombings.**

⇒ **Luis D'Elia**

Luis D'Elia's situation is discussed in particular by Mr. Nisman on page 218 et seq.

It is widely known that he expresses a great admiration for Iran, and has become, at least in the last ten years, an ardent supporter of all the initiatives made by Iran, including the country's staunch defence, denying any involvement with the AMIA bombings in 1994.

His public appearances in this regard have been many. In November 2006, his affinity with Iran cost him the position he held in the Federal Government, when he bluntly claimed that the court's accusation against Iranian fugitives was false (page 222 of the accusation).

From then on, D'Elia was no longer a public official, though everybody knows that he kept on attending ceremonies at the Government House quite frequently and that he is still connected (on and off) with the Government Party in the world of politics.

With this in mind, we can now move on to analyze whether the elements that stand out in this case throw any light on any incriminating evidence suggesting that a cover-up operation was being concocted, prompted or prepared (a crime that, as has been pointed out, did not exist).

The only element we actually have are the wire tapings. After having analyzed them carefully, especially those mentioned in particular by Prosecutor Nisman in his accusation, the conclusions are:

-D'Elia, from 2011 to 2013, had access to offices and government officials such as Julio de Vido and Andrés Larroque, with whom he gets on well.

-On certain occasions, he was the Argentine Government's spokesperson with Khalil, accounting for the Argentine Government's position in connection with the Memorandum, and now and again Khalil also passed on to him Iran's complaints and frustrations given how inflexible Argentina was in connection with the red notices (pages 145, 157 and 160 of the Annex, pages 94/5 of Prosecutor Nisman's accusation).

-He shared with Khalil, and coordinated with Larroque, the public attitude of the Islamic community, of D'Elia's own organization (which Larroque was part of) vis-a-vis the Israeli-Palestine conflict (cfr. pages 189, 194, 197, 226, 262).

-On several occasions he passed on messages to and from Larroque (concerning the Palestine conflict, cfr. Page 189, or potential business with Iran, cfr. Pages 92 and 263) and to and from De Vido (in connection with future business with Iran), and possibly from other people too, to the President of the Islamic Community and pro-Iran agent, Khalil.

In one conversation in particular, which Prosecutor Nisman has quoted very often, dated September 27, 2013, D'Elia seems anxious to convey a message from the Government to Khalil which actually does concern the Memorandum. In that wiretapping, D'Elia says he has "*an urgent message from the Argentine Government for the people over there [...] no message is more important than this [...] look, this is really serious, ok?....*". In the next tapping Khalil

disclosed the alleged message: the Government “needs the Iranian Government to announce, together with the Government of Argentina, tomorrow [September 28, 2013] the “Truth Commission” at the meeting of the Foreign Ministers {...}, and to set a date, in January, for the Argentine Judge to travel to Teheran [...]the meeting needs to be summoned in a rush because Cristina has requested it...”. According to Khalil, the request conveyed by D’Elía was “a sign of good will {...} in connection with the Argentine Government {...} before the elections” which would be taking place after a month (cfr. Page 208-9 of Prosecutor Nisman’s accusation).

This is a clear example of what has been said herein. Regardless of the fact that we do not know who sent that message through D’Elía (it would not be surprising to find out that it was “agent” Bogado’s idea), the truth is that such “Parallel De facto Diplomacy”, according to Prosecutor Nisman, shows how clumsy and naïve it is, so much so that not even Khalil himself took such a crazy message seriously. How could anybody assume that the Iranian Parliament would adopt the Memorandum overnight, after six months of not having done anything, that there was time to exchange diplomatic notes, to make the Agreement effective and make the announcements requested? Nothing of the sort happened at the Foreign Ministers meeting the next day (cfr. Pages 34 and 119 of Prosecutor Nisman’s accusation).

-As regards the other people denounced herein, there is no proof that D’Elía is connected or is in touch with Bogado, Esteche, or Yrimia. Only with Khalil, with whom he spoke on several occasions. There is no connection either with Timerman or with the Foreign Office. And as regards the President, regardless of what he boasted of, from the wire tappings there is no evidence showing that he was ever directly in touch with her, whether personally or over the phone.

And that is it. Despite the fact that he sympathizes with and advocates for the Iranian Government, despite his trips to that country, his personal contacts with the fugitives, and despite the fact that telephones were tapped during several years trying to find incriminating evidence, **in D’Elía’s case there seems to be no evidence showing that he might be mixed up in the concoction, instigation or preparation of any future cover-up operation of the AMIA bombings.**

⇒ **Yussuf Khalil**

His phone was tapped by the AMIA Prosecutorial Investigation Unit during many years.

An important leader of the Islamic community in the country, the hundreds of wire tappings show that he has always strongly advocated for the Iranian cause. He is closely connected with the Iranian Charge of Affairs in the country (that Khalil calls “the embassy”), has influence over the top official at that office, receives and manages funds sent by Iran for different purposes and activities germane to the Islamic cause in Argentina. He manages different business, has different affairs with other local Islamic religious centers and/or communities and over the years has had close ties with Rabbani (functionally reporting to

him), one of the fugitives in the AMIA case who, now in Iran, is permanently contacting Khalil, giving him instructions, orders, and receiving reports and requests.

Indeed, something is particularly disturbing and that is that Khalil's acquaintance with fugitive Rabbani seems to be very natural. Rabbani lives in Iran and is a fugitive in the AMIA case. As was said, Khalil gets his instructions from him and sends him reports and keeps him posted about the Argentine scenario. No matter how despicable all this may sound to us, in itself it constitutes no crime at all.

On the other hand, Khalil had many interlocutors from 2011 to 2013, almost all of them were members of his community, and he also spoke often to D'Elia, Bogado, Esteche and, on one occasion, in 2014, to Yrimia, about all sorts of issues.

Many of Khalil's pertinent wire tapings have been reproduced upon dealing with the other co-indictees (they all actually spoke with Khalil over the phone) or in the rest of the presentation.

Now, the significance of Khalil's conversations and the fact that they sound most alarming should be toned down upon realizing, on more than one occasion, that he is sure that his conversations are being tapped by the SIDE (the intelligence agency). For instance, among others:

On December 17, 2012, Khalil says over the phone: *"OKDK, you call me, will you? My phone is obviously not working well, oh it is being so, so very much tapped... everything leaks through it, a real strainer it is"* (page 428 of the Annex).

In another conversation, dated November 18, 2012, Khalil is speaking to somebody else and at a given point says *"...don't make me speak over the phone, you jerk, now don't get me speaking over the phone, come on"* (cfr. pages 409 and 418 of the Annex).

The most graphic conversation may have taken place that same day, when Khalil, talking to Esteche, this was on **November 18, 2012**, says:

*"...now wait a minute, wait a minute, all of you, intelligence services, Mossad, CIA, all of you, let me talk in peace with my friend Fernando Esteche, this is Yussef Khalil here, I beg you not to cut me off because I cannot get through..."*. And then he says to Esteche *"there you are, I told them to leave us alone"*. And the person who was on the other side of the line answered: *"Oh no, they won't"* (cfr. Page 411 of the Annex).

Further, on February 12, 2013, in another conversation with D'Elia, we hear again: *"I cannot use the phone, this fucking phone is tapped and yours is even more tapped than mine..."* (cfr. Page 371 of the Annex).

Indeed, anything said by this indictee is very relative where the concoction, instigation or preparation (not punishable) of a cover-up operation, a crime, is concerned - a crime which was never committed.

⇒ **Ramón Allan Bogado**

"Allan" Bogado's first relevant appearance in the telephone conversations tapped through Yussuf Khalil's line dates back to November 22. After that, he made a second

Comentado [V1]:

appearance on January 28, 2013, i.e. a day after the Memorandum was signed. He will be speaking to Khalil on two other occasions, on February 6 and 25. And then again on May 24, 2013, and twice on June 1 and 2, and the last time will be on October 7 that same year.

All along these conversations, this slippery character appears to have great influence and lots of contacts at the very top of the national government, even with the President of Argentina, and appears to have privileged information from that source, partaking of trips abroad, and all this he would do while functionally reporting to the Intelligence Agency (Secretaría de Inteligencia).

In the first wiretapping, **November 22, 2012**, "Allan" told Khalil that he had travelled "to the Triple Frontera (the Tripoint or Tri-Border Area)" (cfr. Page 241 of Prosecutor Nisman's accusation)

During the next call, on **January 28, 2013**, we see him siding with one sector of the national administration (the sector that opposes Timerman and the Foreign Office). He tells Khalil, in connection with the signing of the Memorandum: "Take it easy, we've won, i.e., we one this move, I told you, you were not sure about me, but what is we worked so hard at this, you to know that I was at Geneva a month ago", and he advises Khalil: "keep quiet ten days". Then "Allan" will tell Khalil: "you must not forget, listen, that I **the trip I made to New York I met with the cousins from the other side, OK?....**" making an obscure reference to somebody, some person or entity representing the Jewish community (cfr. Wire Tappings Annex, pages 323/5).

Khalil must have been impressed. With contacts "from the other side" and the trip to New York, and being personally involved in inter-government negotiations, in Geneva, Switzerland ...

However, by merely looking up the **Registro Nacional de Migraciones (the National Migrations Register)**, checking out Bogado's Argentine identity document number, we see that this character **did not left the country not even once during the last ten years** (the last time he left the country was on Nov. 13, 2002, at the Yacyretá crossing, in the province of Misiones, where Bogado comes from). The UFI AMIA (the AMIA Prosecutorial Investigation Unit) could surely have checked this out too.

So much so.

On **February 6** "Allan" reiterates the idea voiced in his previous call ("*we should make progress there, that's a relevant line there ...*") and thereupon boasts about his alleged political contacts with the party in office: "*the «La Campora» guys have also approached me [...] they want to find a way to approach you ...*".

At least until mid-2014, they never "approached" him. Had they succeeded, we would have found that out through Khalil's mobile phone which was tapped.

This is the conversation where "Allan" tells Khalil that what they were up to, their business, "*had been taken care of at the very top, take it easy*" (cfr. pages 298/9 of the wire tappings dossier).

The conversation of **February 25, 2013** is certainly illustrative. Bogado calls Khalil and says: *"I've heard something ...I was told at the Casa [as the Intelligence Agency is referred to] that Interpol will be removing the red notice against our friends ..."*

And Khalil answered impromptu: *"¿was it removed?"*

And Bogado, now more sure of himself, answered: *"[Interpol] will be removing it now".*

Khalil, quite relieved after so many months of frustrations and bad news due to the work by the "actual diplomacy", burst out: *"you don't say! Fortunately..."*

Exactly two years passed since Bogado's announcement. The gossip, which became a certainty, never existed.

Now to the talk held between Bogado the "spy" and Khalil on **24 May 2013**.

While talking with his interlocutor, Bogado boasts again of his alleged close links with the "La Campora" group, through an activity of his which, besides being impossible to prove, is quite hard to believe. At one point Khalil asks Bogado whether *"he is going to the event tomorrow"* (on 25 May, at the Plaza de Mayo), to which Bogado replies: *"Yes, I'm going with the guys from 'La Campora'"*. As Khalil says *"I'll be on stage and see you there"*, Bogado seems to backpedal when he replies: *"OK... I'll be there at 11, I'll take 20 minutes to get things organized, and at one I have to go because the last part is long [...] I have to make sure that the column of 'La Campora' gets very close to the stage ..."*.

And then Bogado changes the subject: *"Let me tell you this, the President's got the flue and is running a fucking high fever [...] we'll have to see if she can talk tomorrow"*.

In this regard, two issues should be mentioned: first, the next day the President, in the event commemorating the Independence Day at the Plaza de Mayo, was so elated that she even danced on stage. Second, Bogado made a one-year mistake in his comment, since what "Allan" said is what all newspaper reports commented on the President's health and speculated whether or not she would speak in the event of 25 May 2012.

The talk of 1 June is where Bogado goes back to "us" and the "long-term work", and that is where Khalil and Bogado harshly and extensively criticized Prosecutor Nisman's work, and Bogado ventured that he knew that *"another hypothesis will come up"* which would leave him high and dry. A forecast that, once more and as we saw, never materialized (cf. pp. 111/116 of the Annex on phone-tapping).

And the last one is that of **7 October 2013**. It is where "Allan" seeks to impress, once again, unsuspecting Khalil, boasting again about his close relationship with the political power, as he supposedly had first-hand information about the health of the President of the Republic, when he said that she *"has a clot, ... it is pretty sure that she'll undergo surgery [...]* She finds it difficult to laugh, but she has everything else under control [...] she realized this on Saturday when she began working out [...] it's when your hand goes to sleep, you know? [...] they thought it was a heart problem and ran..." (he continues providing alleged details). And he concludes: *"She was admitted an hour and a half ago"* (cf. fs 649/651).



However, the information on the President's health issues had already been made known to the public **the night before** by the presidential spokesman, at a press conference, as was published in all web media that same day (see, for instance, 6/10/13, Clarín web, "*Largas horas de incertidumbres, versiones y rumores*", available at [www.clarin.com/politica/Largas-horas-incertidumbre-versiones-rumores.html](http://www.clarin.com/politica/Largas-horas-incertidumbre-versiones-rumores.html)).

And the next day, the day of the talk between Bogado and Khalil, the Fundación Falaloro issued a detailed official medical report at noon, which was also reproduced by all the media (see <http://www.ambito.com/noticia.asp?id=710272>).

In short, the "privileged information" which Bogado had was a fabrication of profuse and detailed previous reports on the subject.

And I saved for last the conversation of 2 June 2013. It is worth copying it verbatim:

Khalil: "*Two things... what do you think about the change that occurred in the government? The removal of 'the woman'*" [referring to the outgoing Minister of Security, Nilda Garre].

Allan: "*There was no change*".

Khalil: "*How so? Were the ministers not removed?*"

Allan: "*But there was a change of names, not of situation*".

Khalil: "*No, no, but the change of name, especially that of the 'woman', what do you think about it?*"

Allan: "*Mmm... for us... for those who work where I work, it is difficult. For them, where they are, it's the same...*"

Khalil: "*Ah, OK.... I want to talk to you sometime tomorrow*"

Allan: "*OK, yes. I'll say this clearly, our Director of Interior was there because he is dating the daughter of the woman who was removed from office...*" (Quoted in p. 239 of Nisman's submission).

Despite the fact that this last titbit of information, previously published by the magazine "Noticias", also proved to be false, "Allan" Bogado expressed himself in such a way that he seems to be part of or working for the Intelligence Secretariat, and Nisman establishes so in several sections of his submission based on this reference made by "Allan" himself and on three other comments by Khalil and Esteche regarding Bogado and his alleged close links with "The House", "25 de Mayo" or the "SIDE" (cf. p. 201, in which he is defined as "*a member of the Intelligence Secretariat of the Presidency of the Republic*"; which was reiterated on p. 237, p. 238 and p. 240 of the original opinion).

However, not only did the Intelligence Secretariat, by official letter signed by Oscar J. Parrilli, on 20 January, officially inform that Ramón Allan Bogado "*is not and has never been a member of the permanent staff, contract staff, the cabinet or temporary staff*" of such Secretariat of the Argentine Republic (cf. p. 158), but also it revealed that "*on 12 November 2014 the Intelligence Secretariat filed a criminal complaint in order to clarify the possible commission of the crime of 'influence peddling' by Mr. Alan BOGADO, who, not being a member of the staff of the Secretariat, introduced himself to officials from the National Administration of Customs as a member of this Secretariat, according to the circumstances that were proved in*

*Preliminary Investigation No. 04/14 [...] which complaint was filed with the Federal Criminal and Correctional Court No. 9 ...". In addition, it was also exposed that a Criminal Oral Trial Court for this city, in a case where the alleged crime of extortion is under investigation, on 7 August 2013, sent an official letter to the Intelligence Secretariat to request information on "whether Ramón Allan BOGADO, Argentine Id. No. 21,546,820, provides services for that office, and, if so, he must appear before this Court [...] to testify ...".*

Copies of the contents of the criminal complaint filed against Bogado with the Federal Court were attached, regarding which I will only state that the fact involving Bogado would have allegedly taken place on 24 October 2014 (cf. Annex 15 of the submission, pp. 458/460). It should be added that, pursuant to an actuarial certification, the case is being tried as of this date.

Thus, as his comments, announcements and predictions are discussed in more detail, the alleged virtues of Bogado the "spy", that air of important and influential person who rubs shoulders with the highest political power referents, completely vanished, transforming the aforementioned character in little more than a rogue, a cheat that cannot be taken seriously in any way.

In short, in this case the behaviour of a person with these characteristics cannot be taken seriously when analyzing if he could have been part of the alleged (not punishable) hatching, instigation or planning of a criminal cover-up, for a crime which, in addition, was never committed.

⇒ **Hector Yrimia**

Mr. Hector Yrimia only participates in a brief telephone conversation, rather late, on 23 April 2014 (cf. p. 484 of the Annex on phone-tapping).

However, his name and his role for four months in the AMIA case (he was the Assistant Prosecutor from the day after the bombing, i.e. 18 July 1994, to 23 November of that same year, when he resigned to become Trial Judge for some years, currently exercising the legal profession, cf. p. 137 of Nisman's opinion) were subject to comments by two other interlocutors, Khalil and Esteche.

In this regard, there is a first and isolated reference to Yrimia in a talk that Khalil had on 4 November 2012 with another member of his community. There, he says that "*I have a few other things to tell you [...] I had a chat with the Prosecutor [...] not the current one, the former prosecutor...*"; later in that same conversation, he again makes reference to him as "*... the Prosecutor of the case*" and further states that "*... the one who introduced me to him is Fernando*", i.e. Esteche is the person who contacted Yrimia.

Very well, we know so far that Khalil reportedly met, in November 2012, with Hector Yrimia, through Fernando Esteche, and that Khalil was predictably aware that Yrimia had been a prosecutor in the AMIA case.

Does this alleged meeting have any relevance as circumstantial evidence? To answer this question, we need to carefully read the entire conversation between Mr. Khalil and a Mr. Abdul Karim, which covers six transcription pages in full (cf. pages 453/458).

So, those six pages show that the meeting with Mr. Yrimia caused some unease in Mr. Khalil, as the first thing he tells his interlocutor is, “*there are lots of things I have to tell you [...], we need to redefine our work, all our work [...] we have to see who are with us and who are not [...], but also there are many old friends we thought were working in a given way and now. . .*” He seems to be talking about work issues within the Islamic community.

And then he adds: “. . . *the guy I met directly told me yes, we, somebody is a friend of ‘the House,’ it’s not. . . , it’s. . . not ‘the House,’ it’s not from ‘the House,’ but he is a friend of ‘the House,’ he comes here and we give him the information. . .*” It seems that Mr. Khalil is surprised because somebody he believed belonged to “the House,” i.e. the Intelligence Secretariat, is actually a “friend” of “the House,” but he is not part of it. I cannot but imagine here that Mr. Yrimia, at his meeting with Mr. Khalil, explained him that his “old friend,” “Allan,” did not belong to the Intelligence Secretariat.

Beyond this, in this conversation there are references mainly to community internal relations and there is no mention at all of the AMIA case, the relationship between Argentina and Iran or any other point of interest with the issues which gave rise to these proceedings.

Then there are references to Mr. Yrimia by Esteche, which I will discuss when addressing the situation of this other co-indictee.

To see Mr. Yrimia in action again we have to jump forward in time more than a year, as this lawyer is in action since 19 January 2014, and from that moment on he has been a direct or indirect main character in a series of phone tapings which took place on 20 and 24 January 2014 and on 11 February 2014.

The starting point was on **19 January 2014**. At that point, Mr. Khalil tells another member of his community, Mr. Abdul Karim, that that day he talked “. . . *to the former judge and former prosecutor of the AMIA case, Mr. Yrimia [...] we met for 2 hours. . . We started talking about the problems we have in the community. . . and I told him that we used to have some kind of relationship with the [Catholic] Church, which has now been lost. . . They used to receive some of us, some were invited to different places in the government and we are no longer invited. . . the guy, in a nutshell, is the political operator of Francis here, in the country, follow me? [...] we have to start working on the religious matter. . . I mean, the ties between religious people. . . [Mr. Yrimia] tells me ‘I’ll take care of that with Poli’ [Buenos Aires Archbishop Mario Poli, who succeeded the current Pope] [Mr. Yrimia] tells me, ‘I will be in the Vatican between February 1<sup>st</sup> and 11<sup>th</sup>, because there is a meeting [...] representatives who will be there to see Francis; are you following me so far? [...] So I arranged that you [...] will be received in the Vatican [...] this week I will get together with the No. 1, the boss of this man [Mr. Yrimia]. . . [...] he gave me the name. . . it’s all Masonry, huh. . .*”

When Mr. Abdul asked Mr. Khalil how he managed to get all of this, how he made these contacts, how he met Mr. Yrimia, Mr. Khalil answered:

*“Do you remember that guy who once approached us and then stopped meeting us, as we didn’t pay attention to him? [that is obviously Mr. Yrimia, with whom he had no further contacts for more than a year].*

Abdul says: *“I don’t remember. Who?”*

Mr. Khalil answers: *“the one Fernando [Esteche] brought.”* There is no doubt that Mr. Khalil is talking about Mr. Yrimia.

Mr. Abdul seems to be asking if Yrimia was a member of the Intelligence Secretariat: *“Who? That people you told me about? [...] Do they belong to that group?”*

Mr. Khalil answers: *“No, they are. . ., I don’t know if they belong to that group directly, the guy. . . [Mr. Yrimia], but. . . they belong to the Vatican’s Intelligence, you know, I’ll say it straightforward, the guy [Yrimia] revealed that.”*

Mr. Abdul closes: *“Well, it’s OK. . . so you’ll meet again with the other guy, I mean, their boss”* [in reference to the person Mr. Yrimia reports to].

And Mr. Khalil concludes: *“With his [Mr. Yrimia’s] boss, but of course I asked permission from the Zafir to meet this guy. . .”* (cf. back of page 521, Phone Tappings Exhibit).

The next day, 20 January 2014, there is the only phone communication tapped in which Mr. Yrimia participates. In it, Mr. Khalil and the lawyer arranged a personal meeting at the lawyer’s office, so that Mr. Yrimia “introduced him to the people here” to then “go to the Embassy,” i.e. Iran’s Chargé d’affaires’ Office, with the purpose of advancing the inter-religious approach promoted by Mr. Khalil the day before.

From that point on, the rest of the conversations were about this matter and Islamic community matters, i.e. matters which have nothing to do with the serious charges put forward in the original accusation.

And that is all regarding Mr. Yrimia. **All these conversations, from the first to the last one, are absolutely alien to the charges put forward by Mr. Nisman.** Quite on the contrary, Mr. Yrimia presented himself, in his law firm in the middle of this city’s downtown area, as a manager of no other than. . . the Vatican and Pope Francis!, with access to Archbishop Poli. He also mentioned a lot of things which seem to suggest that he knows whereof he speaks.

Not to mention the statement that Mr. Yrimia would be a member of the Intelligence Secretariat, dismissed by Mr. Khalil himself (*“he belongs to the Vatican’s intelligence, the guy told me”*) and which Nisman tried to base on a statement of false spy Bogado, when at some point he said, regarding Mr. Yrimia, *“that one is my employee.”* We do not know what he meant; now we know that Mr. Bogado does not belong to the Intelligence Secretariat.

As explained in the previous paragraphs, this is another case **with no serious elements compromising Mr. Yrimia in this accusation. To the contrary, his interventions, in 2012 and 2014, show him as somebody who has nothing to do with** an alleged planning, instigation or (not punishable) preparation of a concealment crime, with respect to a crime which, top of it, has not been committed.

⇒ **Fernando Esteche**

Mr. Esteche is a public figure, not exempt from controversy, known for having been the leader of “Quebracho” organization for many years. Sentenced to full-term prison by a Federal Oral Court, this is a person who, as phone tapings show, keeps a strong connection with the Islamic community, has travelled many times to Iran, and according to one of the conversations, received a monthly payment from the community, in exchange for his “services.” I am talking about the time when Mr. Khalil said this: “. . . *Fernando [Esteche] is receiving funds from the people working with Heshmat. . . they are giving him fixed resources every month. . . as an employee. . .*” (cf. p. 251 of the accusation).

On the other hand, as I have already explained, there are conversations in which Esteche, talking to Mr. Khalil, is sure that both of them are being heard through phone tapings, as shown in the conversation of 18 November 2012, a fairly early date:

*“...[W]ait a second, hold on, intelligence services, Mossad, CIA, everybody, please let me talk to my friend Fernando Esteche, I'm Yussef Khalil, please do not hang my phone, as I cannot get through. . . .”* Then he tells Mr. Esteche, *“it's done, I've asked them to let us work in peace,”* and his interlocutor answered: *“No, they won't”* (cf. page 411 of the Exhibit).

So, we have a man with a lot of political practice, who leads a group, with serious judicial problems, who knows that their conversations could be being heard, one can expect him to be cautious in his conversations.

Nevertheless, Mr. Esteche appeared in the only conversation in which he participates, and which could be considered compromising, making a strange proposal to Mr. Khalil regarding the AMIA case.

This way, one month after the contact where they boast about their phones tapped, on **18 December 2012**, Mr. Esteche talks to Mr. Khalil about Mr. Yrimia, but in a surprisingly different manner as to what really happened (as we have just seen), before and after, between Mr. Khalil and the lawyer.

There, Esteche starts telling Mr. Khalil something that would have sounded like music to Mr. Khalil's ears: *“they want to build a new AMIA enemy, the new responsible party for the AMIA issue; it's a need they have, they will want to build consensus on this.”*

Mr. Khalil: *“Fine.”*

Mr. Esteche: *“they cannot blame the Israelis, so they will have to. . . a connection with local fascists. . . which is outside.”*

Mr. Khalil: *“Fine, fine.”*

[...]

Mr. Esteche: *“. . . that can be changed afterwards, you could say for example. . . the AMIA prosecutor belongs to them, Mr. Yrimia. . . who was removed from the AMIA case, if you can. . . one thing you can generate. . . [telling Mr. Yrimia] I want you to give me the information you have on the AMIA case, is that possible or not? What are you willing to provide?, for example.*

Mr. Khalil: *“Fine.”*

Mr. Esteche: "So that. . . that could be something really specific for any of the different positions of. . . a third country, or whatever, any of the things to be decided will be useful, as it's information."

Mr. Khalil: "Fine."

(cf. pages 354/356 of the Phone Tappings Exhibit).

This is certainly about false and delirious statements. None of that was true, and it is likely that Mr. Esteche's source has been once again the indescribable "Allan," who also seems to have deceived the leader of "Quebracho" (Mr. Esteche, in this very same conversation, told Mr. Khalil: ". . . «Allan» could solve this, if this is an intelligence interest. . .")

Moreover, this conversation shows some tension in Mr. Khalil. Mr. Khalil is not comfortable with Mr. Esteche's statements. His statements, while Mr. Esteche communicates his delirious proposal, were, in the four cases, a brief "fine." Maybe he does not trust his interlocutor, who he reports to and what his interests are. Mr. Khalil does not make any single remark, addition, question or proposal.

It is not only that. It is evident that he did not follow Mr. Esteche's advice. Because Mr. Esteche tries to incite Mr. Khalil through these "ideas" at the end of 2012, and he would only meet Mr. Yrimia long afterwards, in January 2014 (clarifying in an already-mentioned conversation that he had not seen him again since that previous, innocent meeting of 4 November 2012), and in connection with matters which, as we have seen, had nothing to do with the AMIA affair.

All in all, these statements made by Mr. Esteche, in only one conversation, which were made by a figure who is controversial by himself, with judicial problems, retained by the Islamic community, manager of multiple interests, some of which conflict with each other (as being an extreme leftist supporter and a businessman at the same time, as shown by the tappings; a rebel and an official supporter at the same time; a political opponent with —failed— plans to be near "intelligence" areas; an anarchist and an Islamist at the same time), could be considered despicable or condemnable, but they did not amount to anything but some kind of delirious "instigation," which cannot frankly be taken seriously, especially considering that the indictment was aimed at an alleged planning or (not punishable) instigation of a concealment crime, which has never been committed.

And I say not punishable instigation, because as all national and international scholars consistently hold, the alleged instigator, i.e. the one "creating the intention" in the offender's head, to be punishable, has to convince first the instigated person (in our case, Mr. Khalil) to make a given action, which, as we have seen, has not happened; second, the instigated party (Mr. Khalil) must start their own steps towards committing the crime (preparatory acts which are not yet punishable) which also failed to happen in this case, and finally reach the stage where the crime has started to be committed, so as to criminally punish the instigator. This means that punishing instigation depends absolutely on the crime of the offender; without a crime, there is no punishable instigation, and therefore,

even if we accepted the best scenario from the prosecutor's perspective, we are not in front of a case which authorizes the exercise of the criminal jurisdiction.

**IV) Another version of events according to the AMIA Prosecutorial Investigation Unit.**

Although all of the above would by itself be more than enough to dismiss the submission that led to the opening of this case file, which alleges the commission of crimes prosecutable by the State, on 23 February the Clerk's Office received an official letter from the authorities currently in charge of the AMIA Prosecutorial Investigation Unit, with attached documentation, for inclusion in these proceedings.

The documentation begins with a record drafted on 20 February by Soledad Castro, Clerk to the Unit, in which she reports the following:

*"...The existence of a set of documents signed by Alberto Nisman, of which -at least- five of the Clerks working for the Unit -Sebastián Ferrante, Vanesa Alfaro, Fernando Comparato, Armando Antao Cortez and Fernando Scorpaniti- and the undersigned [...] Prosecutor Alberto Nisman wanted to ask the Executive Branch to request the Security Council of the UN. through appropriate channels, to trigger mandatory mechanisms [...] and demand that the Islamic Republic of Iran detain, with a view to extradition [...] The negotiations between the authorities of the Islamic Republic of Iran and Argentina that led to the signing of the Memorandum of Understanding of 27 January 2013 created [...] a scenario adverse to the channel pursued, as the mandatory approach proposed -in a way- was contrary to the understanding reached. Consequently, [Mr. Nisman] decided to postpone the presentation of this alternative and decided that two documents derived from that base idea should be prepared. The first one was conceived in case the Islamic Republic of Iran ratified the Memorandum. The second one, in case that did not happen [...] the preparation of the report that was finally presented on 14 January 2015 before the Court[...] these events took place after the first versions of these documents [...] However, to provide for any contingency, Mr Nisman had left two drafts signed, one in case the Agreement was ratified by Iran and another one in case it was not. Both [...] dated as of December 2014 [...] left the last pages of each of these drafts initialed, dated January 2015, without specifying the exact date..."*

The AMIA Prosecutorial Investigation Unit delivered certified copies of these last two documents, signed on all pages and at the foot of the last page by Mr. Alberto Nisman, Attorney General. As certified by Ms Castro, the late Prosecutor then signed them between December and January, fully within the same time frame as the preparation, drafting, signing and presentation of the brief that initiated these proceedings.

Therefore, as the same person signed those documents and this submission, i.e. Prosecutor General Nisman, serving in the same capacity, i.e. in relation to the AMIA Prosecutorial Investigation Unit and around the same dates, it was to be expected that all these texts, in terms of contents and scope, should be fully consistent and integrated with one another..

Surprisingly, this has not been the case.

In the two (identical) documents recently submitted, Mr Nisman not only makes no reference to imminent or recent presentation of the report against the highest authorities of the Executive Branch but also, over the course of the pages, **presents a diametrically opposed position**, in that he makes comments that are very positive as regards the State policy of the Argentine Government since 2004, he praises all speeches delivered by the two successive presidents every year before the UN, and he considers that the offer to have a trial in a third country (2010) and the signature of the Memorandum (2013), two initiatives of the Executive Branch, were an understandable consequence of the “erosion” effect achieved by the Iranians due to their intransigence and refusal to cooperate with progress in the AMIA case, thus leading the Argentine Government, as Mr Nisman goes on to say, to gradually reduce its demands, for the sake of achieving the long-standing objective: to bring the accused before a judge and thus move the case closer to trial.

This is what Mr Nisman states in the other two documents:

*“[...] the central objective of the Judiciary, of the relatives of the victims and of the Argentine Government was to have the accused detained in order to allow for their subsequent trial, of course with all guarantees afforded by the Argentine Constitution”.*

[...]

*“Argentina’s demand: that the accused be brought into the proceedings”.*

*“The highest authorities of our country [...] –and, subsequently, President Cristina Fernandez, headed the demand, within the context of the United Nations Organization, for the Islamic Republic of Iran to accept Argentine jurisdiction and allow those accused of taking part in the bombing to be brought to justice...”.*

[...]

*“In 2008, also at the United Nations, President Cristina Fernández, stated: «...I ask the Islamic Republic of Iran, in keeping with the rules of international law, to agree to the Argentine Judiciary trying in public, transparent trials and with all the guarantees of a democratic system, the citizens who have been accused (...) in my country those citizens will have a fair, public and oral trial, with all guarantees under the laws of the Argentine Republic and with the control of the international community –inevitably so, which is also very good in view of the gravity of the events-, thus guaranteeing for the Islamic Republic of Iran that the trial will be governed by equity, justice and truth»”.*

*“President Fernández then added: «So once again I issue a call –in keeping with international law and above all because attitudes that pave the way for justice are the true testimony to our respect for the truth, for justice and for liberties- for Iran to accept this request by the Argentine Judiciary, which has also been accepted by Interpol and which will certainly contribute to ensure truth for all, not only for Argentines but for the whole international community, at a time in which truth and*



justice prove elusive at the international level» (*Address during the 63<sup>rd</sup> session of the United Nations General Assembly, New York, 23 September 2008, A/63/PV.5.*)”

“In 2009, upon taking the floor before the UN General Assembly, the President stated «...In 2007, the then President (Néstor) Kirchner at this Assembly asked the Islamic Republic of Iran to agree to the extradition of some of its officials sought by the Argentine courts in order to duly investigate and establish responsibilities in connection with this serious attack. Last year, also here, once again I asked the authorities of the Islamic Republic of Iran to agree to this request, mentioning that constitutional guarantees prevailed in my country and that no one is considered guilty until so declared by a final court decision; this is something that applies to my whole country, where freedoms are protected and there is an administration of justice. However, instead of that, this year one of those officials whose extradition was sought by the prosecutor acting in the case was promoted to Minister»”.

“During that same address, the President also stated: «... as President of the Argentine Republic, I will repeat this request for the extradition of the officials which the Argentine courts seek on the grounds of their alleged responsibilities to be granted; not for them to be sentenced but for them to be tried, giving them an opportunity to avail themselves of all rights and guarantees enjoyed by all Argentine and foreign nationals in Argentina; these are guarantees given by democracy; besides, this Government has made the absolute defence of human rights part of its institutional and historical DNA » (*Address during the 64<sup>th</sup> session of the United Nations General Assembly, New York, 23 September 2009, A/64/PV.4.*)”

[...]

“Now, in 2010 [...] **and in view of the lack of results**, President Cristina Fernández stated: «this time I will not ask for the fourth time for something which would obviously lead to nothing, but I will make an offer to the Islamic Republic of Iran so that, if it does not trust the Argentine courts as it has said, claiming that a decision has already been made in advance and that there will not be the required neutrality, both countries choose by agreement a third country offering due process guarantees, where international observers may be present, where UN delegates may take part, in order to bring to justice this terrible attack on the AMIA Jewish centre in Argentina» (*Address during the 65<sup>th</sup> session of the United Nations General Assembly, New York, 24 September 2010, A/65/PV.14.*)”.

“In 2011, at the General Assembly, President Cristina Fernández publicly announced a message from the Iranian Foreign Ministry expressing their intention to cooperate and initiate constructive dialogue with Argentina in order to help find the truth in relation to the attack. According to the President, the message itself was no «satisfaction of our claim, which as I have clearly said, is for justice». She stated that Argentina could not and should not reject the dialogue offered, but that that «does not in any way mean that the Argentine Republic is setting aside the requests of its courts in relation to the trial of

those allegedly responsible for the attack. On the other hand, we could not possibly do that, because that is a matter for judges and prosecutors». *She also added that the dialogue should be constructive, candid, and not a mere «delaying or distracting tactic» (Address during the 66<sup>th</sup> session of the United Nations General Assembly, New York, 21 September 2011, A/66/PV.11)».*

*“2012 came and the cooperation offered did not take place. Again, [...] in her address, President Cristina Fernández referred to the AMIA case. She said that this time she had received a request from Iran for a bilateral meeting between both foreign ministries in order to engage in dialogue and she added that Iran had stated its willingness to cooperate in solving the case. She talked about concrete results and stated: If there are proposals from the Islamic Republic of Iran to advance in a way other than that proposed by Argentina (...) as a member of a representative, republican and federative country I shall refer any such proposal to the representatives to the Argentine Parliament. This matter is far too important to be solved only by the Executive Branch, even though it is entrusted with representation for and conduct of foreign affairs. But this is not just any typical foreign affairs case, this is an event that has marked the history of the Argentine people and which has also gone down in the history of international terrorism»”.*

*“Then, addressing the relatives of the victims, she added «... I especially want the relatives of the victims to have certainty, as I feel a particular commitment to them. For six years I was a member of the Bicameral Committee for the follow-up of the two attacks, the bombing of the Israeli Embassy and the AMIA bombing. I was always highly critical of the way the investigation was being conducted, so I think I have authority to speak to the relatives of the victims, as they are really the ones who most need answers about what happened there and about who is responsible. I want you to be certain that this president will not make any decision on proposals without first consulting with those who have been primarily the direct victims here ...» (Address during the 67<sup>th</sup> session of the United Nations General Assembly, New York, 25 September 2012)”.*

*“In 2013, the President again referred to the AMIA case in her address to the UN General Assembly on the occasion of its 68<sup>th</sup> period of session. By then, not only had the «Memorandum of Understanding» been signed between the Argentine and Iranian governments, but also there was a particular situation in view of the long-standing delaying and obstructionist position of the Iranian authorities in relation to this case, as had again been made evident: while in the case of the Argentine Republic the agreement had already been enacted as a law by the Argentine Congress seven months earlier, the Islamic Republic of Iran had not yet formally notified any such steps, so the factual basis for the exchange of diplomatic notes that would have signaled the entry into force of the agreement was missing”.*

*“On that occasion, President Cristina Fernández stated: «...Now we are waiting for them to tell us if the agreement has been approved or when it is going to be approved, and*

we are also waiting to have a date for the establishment of the joint committee, and a date for the Argentine judge to travel to Tehran (...) I say this in order for our deep faith in the rules of International Law and **for our patience not to be mistaken for ingenuity or stupidity**. We think sufficient time has elapsed, and **we want answers**. **The victims deserve this** and I think the Islamic Republic of Iran itself deserves it, if it really wants to show the world that there is a different government and that there are different actions» (*Address during the 67<sup>th</sup> session of the United Nations General Assembly, New York, 24 September 2013*)."

"Finally, in 2014, the President [...] again referred to the AMIA case in her address during the 69<sup>th</sup> session of the United Nations General Assembly. She stated that «... the government headed by President Néstor Kirchner was the one that went furthest and did most to find out who the true culprits were, not only by declassifying all intelligence files in my country, not only because he created a Special Prosecutorial Investigation Unit, but also because when in 2006 the Argentine Judiciary accused Iranian citizens of being involved in the AMIA bombing, he was the only President, then to be followed by me, who had the courage to propose to the Islamic Republic of Iran, to ask that it should cooperate with the investigation. This request was made at different times starting in 2007. 2007, 2008, 2009, 2010, 2011, until the Islamic Republic of Iran finally agreed, because before that we could not even have that on the agenda; Iran agreed to a bilateral meeting that later took place and led to the signature by both countries of a **memorandum of understanding** on judicial cooperation. **What for? In order to get the Iranian citizens that were accused and of course lived in Tehran, in Iran, to give a declaration in court**» (*Address to the United Nations General Assembly, New York, 24 September 2014*)."

"That same day, President Cristina Fernández also took the floor during the meeting of the UN Security Council, and made remarks along similar lines: «... in 2006, the Argentine Judiciary, within the context of the creation of a Special Prosecutorial Investigation Unit at the behest of President Néstor Kirchner in order to enable in-depth investigation of the bombing which had taken place, I repeat, in 1994. This year has marked 20 years since the attack and it has not yet been possible to bring those responsible to trial. Based on the investigation by the prosecutor, the judge hearing the case decided to accuse eight Iranian citizens living in Tehran. Since then, President Kirchner first and then I myself, from 2007 to 2012, asked the Islamic Republic of Iran for cooperation in order to be able to question the accused. We also offered alternatives –as in the Lockerbie case- such as a third country for the trial. Finally, in 2012, the Iranian Foreign Minister proposed a bilateral meeting and that led –in 2013- to a Memorandum of Understanding for Judicial Cooperation between both countries, for the sole purpose of the Iranian nationals being able to give a declaration in court; the Argentine judicial system does not provide for in absentia

judgments, the accused must be questioned, tried and this is key to respect the Constitution and fundamental rights »”.

*“A connected reading of the demands made by President Néstor Kirchner and President Cristina Fernández before the United Nations General Assembly since 2007 evidently reveals that the fundamental objective of the demands initially was **to cause the Islamic Republic of Iran to refer to the jurisdiction of Argentine courts the Iranian nationals accused in connection with the AMIA case**”.*

*“The unbroken reluctance on the part of Iran to satisfy this legitimate demand somehow managed to erode to a remarkable extent the expectations of the Argentine Government in recent years and, as a result, the demands made subsequently reflected constraints that led them to contract, so to speak. In this context, the offer to hold the trial in a third country and in the presence of international observers somehow represents greater flexibility as compared to the initial demand”*

*“However, even against that background, the goal pursued was for Iran to backtrack and submit the accused to our jurisdiction, i.e. to our laws, our courts and our investigation”.*

*“Finally, **the treaty signed** with the Islamic Republic of Iran **again lowers the demands** and cuts them down to a manifestly less ambitious goal than the initial demand with which President Néstor Kirchner inaugurated this remarkable political decision to petition before the international community, legitimately and strategically using the international for a and public opinion in order to expose the inadmissible Iranian position, thus turning international discredit into a legitimate pressure factor in furtherance of this objective: **to bring the accused Iranians into the proceedings in order to advance in the trial** of the individuals judicially found to have responsibilities in the AMIA bombing”.*

*“**This bilateral instrument can only aspire**, in the best-case scenario and with the friendliest interpretation of its terms, **to enable the Argentine judicial authorities to participate, in Iranian territory, in an interrogatory** headed by the “truth commission” created by the treaty and composed –precisely- of members appointed by the executive branches of both countries, which is authorized to interview only five of the eight accused individuals whose extradition Iran has rejected. In this context and taking into account the original demand stated by President Kirchner at the UN, the Memorandum pursues a remarkably downgraded and not therefore more viable” (italics added in all preceding paragraphs. Cf. document “**Executive Branch requested to take steps for immediate intervention by the UN Security Council**” (see attached documentation).*

In view of the above, I deem it expedient to refrain from comment here.

All that remains for me to say is that if there was any doubt as to what to do with the submission giving rise to these proceedings, it is cleared by the latter point.

As regards my functions, as a Judge I have a duty to cause the law to be respected. I believe all of the above is sufficient, from a legal point of view, for a resolution to be entered.

On a personal note, my interactions and familiarity with Mr Nisman, his work (which we shared) to fight Anti-Semitism and Shoah negationism, his dedication, with virtues and defects, over the course of ten years, to deal solely with the terrible event of 1994, his daily task of having to look face to face at the *absolute Anti-Semitic evil* that ravaged 85 Argentine families, deserve my respect. In particular, because it is very difficult to deal with absolute evil through the Judiciary. It leads to constant feelings of indignation and powerlessness. It is an enormous task like no other, and personally draining, one for which a prosecutor or judge can never be prepared. From that perspective, based on my daily work since 2004 dealing with State terrorism I recognize the work of Alberto Nisman, who probably, like everyone else, has made mistakes, and perhaps some serious mistakes. However, that does not detract from paying tribute to him or from a fond memory now that he is unfortunately no longer with us. I wish to publicly express my heartfelt condolences to his family, to his loved ones and to his work colleagues.

#### **V) Possibility of an offence prosecutable by the State**

The contents of the intercepted phone calls rather than the deployment of a criminal plan to cover up and/or obstruct the investigation into the AMIA attack reveal an apparent illegal activity on the part of Ramón Allan Bogado, ranging from influence peddling to false pretences with regard to his personal status and the performance of acts without legitimate authority; although this has not gone as far as to extend to the officials heading the government, it does justify a criminal investigation centered within the framework of case 11.503/2014, being dealt with by Clerk's Office No. 18 of Court No. 9, in the context of which the Intelligence Secretariat itself has reported Ramón Allan Héctor on the grounds of possible commission of the crime of "influence peddling", since he allegedly went to see officials of the National Customs Administration and claimed that he was an official of that agency.

Finally, in view of all of the above, I have resolved as follows:

**I- To dismiss** the complaint that initiated these proceedings, on the grounds of nonexistence of crime (section 180, para. 3 of the Argentine Code of Criminal Procedure).

**II- To forward certified copies** of the pertinent parts of this file and of the transcript of the secret phone call interceptions to the Federal Criminal and Correctional Court No. 9, Clerk's Office No. 18, for them to be added as specified in section v) above to case file n° 11.503/2014, in the context of which Ramón Allan Héctor Bogado is being investigated in connection with the purported commission of crimes prosecutable by the State.

**III-** That this be notified to any appropriate parties, if necessary, by means of an urgent notice including a copy of the decision and allowing for service outside court days. Given on this date, so ordered.

Before me:

Notice issued on even date herewith. **CERTIFIED.-**

Prosecution agent notified and signed on ; **CERTIFIED.-**

Forwarded to Criminal and Correctional Appeals Court of the City of Buenos Aires for court assignment on . **CERTIFIED.-**