SUBMISSION OF INDICTMENT

Your Honor:

I, Gerardo Pollicita, Prosecutor responsible for National Federal Criminal and Correctional Court No. 11, do hereby come before Your Honor in cause No. 777/2015, entitled ***Fernández de Kirchner, Cristina et al. re. Accessory after the Fact (art. 277)*** in the register of Clerk No. 5 of the Court under your worthy care, in the exercise of the power accorded me pursuant to the provisions set forth in art. 180 of the CPPN [*Código Procesal Penal de la Nación* – National Code of Criminal Procedure] in accordance with which it is my duty to formulate the corresponding indictment.

In this regard, it is necessary to state that, in accordance with the requirements expressly stated in the aforementioned provision, the same must be based purely and exclusively on those elements of proof available at the present time and which were set forth in the criminal complaint.

Consequently, it will be necessary to initiate an appropriate investigation with the objective of proving – based on such evidence as is gradually accumulated, and in accordance with the provisions of art. 193 of the aforementioned law – the existence of a criminal act and, consequently, whether those responsible may be subject to criminal prosecution in connection with it.

For this purpose and with due regard for formality, it shall from the outset be necessary to include a thematic index linked to the various issues under consideration in order to facilitate the reading of the present document.

I. DESCRIPTION OF THE ACCUSED

Initially, the following individuals are named in the complaint that gave rise to the present action: Mrs. ***Cristina Fernández de Kirchner*** (the Nation's President), Messrs. ***Héctor Marcos Timerman*** (Minister of Foreign Affairs and Worship), ***Andrés Larroque*** (National Legislative Deputy), ***Jorge Alejandro***

"Yussuf" Khalil, Héctor Luis Yrimia (former Federal Prosecutor), ***Luis Ángel D'Elia, Fernando Esteche,*** and an individual identified as ***"Allan"*** who could be ***Ramón Allan Héctor Bogado***.

This, in accordance with the parameters of the initial submission, is without prejudice to any criminal liability that may have been incurred by other persons participating – with knowledge of its true implication – in the preparation, negotiation, implementation and completion of the criminal conspiracy that is the subject of the complaint.

II. PURPOSE

The present action is based on the complaint dated January 14, 2015, written by Dr. Alberto Nisman, then chief prosecutor of the *Unidad Investigación* [Investigation Unit] of the attack perpetrated on July 18, 1994, against the headquarters of the AMIA [*Asociación Mutual Israelita Argentina* – Argentine Israelite Mutual Association], for the purpose or ordering an investigation into the existence of a criminal conspiracy aimed at granting immunity to suspects of Iranian nationality accused in the cause overseen by the complainant, so that they could evade the investigation and remove themselves from the reach of Argentine justice.

This conspiracy was orchestrated and implemented by senior figures in the Argentine national government, with the collaboration of third parties, in what amounts to the elements constituting the criminal acts, as stated in the complaint, of the crimes of aggravated accessory after the fact through personal influence, obstruction or interference with official procedure, and breach of official duty (art. 277 para. 1 and 3, art. 241 para. 2 and art. 248 of the *Código Penal del la Nación* [National Criminal Code]).

In this vein, Dr. Nisman stated that the decision to conceal individuals of Iranian origin who have been accused of the terrorist attack of July 18, 1994, was taken by Dr. Cristina Fernández de Kirchner, the head of the National Executive

Branch, and implemented mainly by the Minister of Foreign Affairs and Worship, Mr. Héctor Timerman.

In addition, he stated in his submission that the evidence examined reveals active involvement in the cover-up by a number of individuals having varying degrees of participation and responsibility, the extent of which the investigation still needed to establish, among whom he mentioned: Luis Ángel D'Elia, Fernando Luis Esteche, Jorge Alejandro "Yussuf" Khalil, Andrés Larroque, Héctor Luis Yrimia, and an individual identified as "Allan," who could be Ramón Allan Héctor Bogado; and also that it was not possible to discount the involvement of other officials and/or individuals in the conspiracy that is the subject of the complaint.

III. REGARDING THE RELEVANT FACTS

(a) Background

The purpose of this subsection is to describe the background described by Dr. Alberto Nisman in connection with the AMIA cause, and its various participants, in order to contextualize the purpose of the present complaint and the ultimate responsibility borne by those indicted herein.

As he stated in items III(a) and (b) (p. 28 *et seq.* of the complaint) the Argentine legal authorities determined that the decision to attack the headquarters of the AMIA in 1994 had been taken by the highest authorities of the Iranian government, who planned the implementation of the attack and entrusted the execution of the same to the Lebanese terrorist organization Hezbollah.

As a consequence of this, international and domestic warrants were eventually issued for the arrest of ***Ali Akbar Hashemi Bahramani Rafsanjani*** (former President of the Islamic Republic of Iran), ***Ali Akbar Velayati*** (former Minister of Foreign Affairs), ***Ali Fallahijan*** (former Minister of Intelligence), ***Mohsen Rezai*** (former Commander of the Revolutionary Guard), ***Ahmad Vahidi*** (former Commander of the Al Quds Force and former

Minister of Defense), ***Mohsen Rabbani*** (former Cultural Attaché at the Iranian Embassy in Argentina), ***Ahmad Reza Asghari*** (former Third Secretary of the Iranian Embassy in Argentina), and of ***Hadi Soleimanpour*** (former Ambassador of the Republic of Iran to our country).

In connection with this, since 2007 Red Notices, signifying the highest-priority searches registered by Interpol, have been in place specifically against Fallahijan, Rezai, Vahidi, Rabbani and Asghari. This resulted from a decision made by the Executive Committee of that international organization, based on a recommendation made by the Secretary General of that organization in response to a corresponding request by our country.

Based on these charges, the Argentine Republic has for many years been demanding from the Islamic Republic of Iran, so far fruitlessly, both the arrest for extradition purposes of those Iranians against whom the complaint has been filed, and cooperation in the cause investigating the attack on the headquarters of the AMIA.

By contrast, the Iranian government has all the while maintained the unshakable position that any type of collaboration with our country in the context of the matter in question would be subject to a commitment by the Argentine legal authorities not to prosecute the officials and/or citizens of that country.

In this respect, a review of the bilateral relationship provides a clear demonstration of the lack of cooperation shown by the Iranian authorities regarding the investigation into the attack, which is consistent with the strategy historically pursued by the Tehran regime, which consists of denying any connection between its citizens and the attack on the AMIA headquarters.

Indeed, the Iranian authorities have utilized Argentine citizens favorable to the thinking of the regime and at the same time having links to the

Argentine government, such as Luis D'Delia, Fernando Esteche and Jorge "Yussuf" Khalil, in order to propose an agreement for the purpose of settling the matter of the attack.

In effect, evidence has been found that reveals that that agreement was similar to the Memorandum of Understanding eventually signed by Foreign Minister Timerman, which fact D'Elia recalled in a conversation with Khalil, on which occasion he stated that "… It's similar to the one they proposed to us during the first trip to Tehran, do you remember?…" (Conversation of 01/27/13, telephone no. 11-3315-6908, File B-1009-2013-01-27-174637-12, CD 266).

Similarly, it should be stated that in September 2007, the then spokesman of the Iranian Ministry of Foreign Affairs, Mohammad Ali Hosseini, issued the following offer: "As a humanitarian act and in order to shed light on the facts of this tragedy, the Islamic Republic has taken the preemptive step of announcing the establishment of a bilateral legal commission with Argentina, despite the absence of any agreement between the parties and the inherent differences between the legal structures of the two countries" (*see* "*Irán reaccionó con agravios al pedido de Néstor Kirchner*" [Iran reacts with insult to request by Néstor Kirchner"] article, *Infobae*, 09/27/2007).

In light of this situation, the complainant emphasized in his submission (*see* point III(c) from pp. 50 to 55 *et seq.* of the complaint) the unshakable position taken by Dr. Néstor Kirchner, who during his presidency not only took the matter to the General Assembly of the United Nations Organization, but ***categorically rejected*** all offers from Iran aimed at reaching a politically negotiated solution to this purely legal question, which situation is reflected in the corroborating testimonies given by former Cabinet Chief Alberto Fernández, former Foreign Ministers Rafael Bielsa and Jorge Taiana, and former Deputy Foreign Minister Roberto García Moritán, who described agreements proposed by Iran that were flatly rejected by the former President of Argentina.

Indeed, as is demonstrated in the complaint, not long after the arrest warrants against the Iranian citizens had been issued, Dr. [Nestor] Kirchner rejected an agreement proposed by Iran which, as testified to by officials familiar with the events, was very similar to the memorandum eventually signed by Héctor Timerman in Ethiopia ("*Irán le ofreció un acuerdo igual a Néstor Kirchner, pero lo rechazó*" [Iran offered the same agreement to Néstor Kirchner but he rejected it], *Infobae*, 02/14/2013; "*Duro cruce de acusaciones entre Timerman y García Moritán*" [Harsh exchange of accusations between Timerman and García Moritán], *La Nación*, 02/19/2013; "*Alberto Fernández: Néstor Kirchner siempre se negó a un acuerdo con Irán*" [Alberto Fernández: Néstor Kirchner always refused to do a deal with Iran], *Iprofesional*, 02/20/2013).

The existence of this fact was confirmed by the then Deputy Foreign Minister between 2005 and 2008, Roberto García Moritán, and by the then Cabinet Chief, Alberto Fernández – in other words, two senior officials in the government of Néstor Kirchner who, in light of their respective positions in the National Executive Branch, were directly involved in addressing these questions.

García Moritán asserted that the Iranians had offered an agreement that "also consisted of nine points and was quite similar to the current agreement" and which, "because of its nuances had the same spirit." ("Iran offered the same agreement to Néstor Kirchner but he rejected it," *Infobae*, 02/14/2013).

For his part, Alberto Fernández asserted that "there was an Iranian offer to initiate discussions and find a means of settling the issue. But Kirchner always refused… Kirchner never accepted doing these things…" ("Alberto Fernández: Néstor Kirchner always refused to do a deal with Iran," *Iprofesional*, 02/20/2013).

So it was that bilateral relations were for many years characterized by Iranian indifference to Argentine claims contrasting with our country's firm resolve not to engage in any binding agreement without first obtaining cooperation from Tehran – that is, the rendition of the accused in order for them to be tried under Argentine law.

Moreover, and on each occasion that the government of the Islamic Republic of Iran, through statements by its officials and/or by other means, attempted to discredit the investigation into the AMIA case, issuing condemnations against officials involved in the inquiry, and particularly when indictments filed against them in Iran were publicized, the government of President Néstor Kirchner never failed to repudiate those attacks, requesting adequate explanations through the appropriate diplomatic channels, as an effective means of protecting and supporting the operations of Argentine justice.

Similarly, on the domestic level, Néstor Kirchner constantly maintained his support for the legal cause, to the point of dismissing a member of his own government from office, as was the case with Luis D'Elia, who in November 2006 led a protest against the decision by Dr. Rodolfo Canicoba Corral to order the arrest of Iranian officials suspected of participating in the attack, as a consequence of which then National Undersecretary of *Tierras para el Hábitat Social* [Lands for Social Housing] was removed by the former President, who simultaneously ordered the recall of the Venezuelan Ambassador to Argentina, Roger Capella, for having participated in the same protest.

To summarize, Nisman concluded that during his entire mandate – and one might say for as long as he remained alive – former President Néstor Kirchner was consistent in his position with respect to the AMIA case: strongly worded protests against Iran for its failure to cooperate in the case, and a determination to reject any Iranian proposals involving the sidelining of the conclusions of the Argentine legal authorities, while at the same time supporting the actions taken by the latter in the investigation into the attack on the AMIA headquarters. However, as demonstrated by what subsequently occurred, all of this became forgotten within a short period of his death.

(b) The Cover-Up

1. Regarding its initiation

A key moment in the plan that is the subject of the complaint was the death, on October 27, 2010, of former President Néstor Kirchner who, as has been shown, maintained a very firm position with respect to the Iranians' responsibility for the attack against the AMIA headquarters.

In this regard, Dr. Nisman stated that: "Thus far, we have demonstrated the consistency of the official Argentine position maintained with respect to the AMIA cause over the course of many years, during the entirety of Néstor Kirchner's term of office, and during part of Cristina Fernández's term of office until, as we shall see, there was a radical change in national policy which was linked – as this complaint argues – to the decision made by the President, and implemented mainly by her Foreign Minister Héctor Marcos Timerman, together with a number of third parties, to implement a cover-up that would allow the suspects of Iranian nationality to evade and/or remove themselves from the reach of justice, in order to facilitate geopolitical rapprochement and commercial exchange at the State level with the Islamic Republic of Iran. Judging from the evidence gathered, these are the principal but not the only reasons" (*see* p. 59 of the complaint).

He went on to claim that between October 2010 and January 2011 – in other words, just three months later – the Argentine government led by Cristina Fernández executed a 180-degree turn regarding its opinion of the AMIA cause, with the alleged intention of reestablishing international relations with Iran, which had been obstructed by the arrest warrants that, though issued, had never been executed (*see* point IV(a) on p. 61 *et seq.* of the complaint).

Despite this, the complainant emphasized that neither the President's decision to reestablish relations with the Islamic Republic of Iran nor the change in policy on this topic on the part of the government or its officials – which matters pertain exclusively and completely to the province of the Executive Branch, which has the constitutional power to agree to and sign treaties and enter into negotiations in order to maintain good relations with foreign powers (*see* arts. 99 sections 1 and 11 of the National Constitution) – were the subject of the complaint.

However, he then went on to state that the Judicial Branch is obliged to intervene when the execution of certain acts involves the commission of a crime, even when those acts fall within constitutionally-awarded powers.

Consequently, it was the complainant's understanding that, hidden behind an objective that could be regarded as lawful, such as the reestablishment of full diplomatic and commercial relations with Iran, and aside from the fact that it was the appropriate authorities that had participated in the rapprochement, the criminally problematic act was the suppression by criminal means of the objective of obtaining justice for the attack on the AMIA headquarters.

Accordingly, in point IV(a)(1) of his complaint, the complainant stated that the first indication reflecting a decision to proceed with the cover-up occurred in January 2011, when the Argentine Foreign Minister departed from the entourage accompanying the Nation's President during a visit to the United Arab Emirates, Kuwait, Qatar and Turkey, to attend meetings in the Republic of Syria.

Specifically, on January 23, 2011 Timerman arrived in Damascus, where he met with Syrian Foreign Minister Walid Al-Mohalem, and subsequently traveled to Aleppo, where he had an interview with President Bashar Al-Assad.

Now, despite the fact that the Ministry of Foreign Affairs and Worship issued a press release providing information on the

meeting between our Foreign Minister and the Syrian President and his Minister of Foreign Affairs, the complaint refers to the existence of a public newswire issued by the official Syrian news agency SANA, reporting that on January 23, 2011, the Syrian Foreign Minister had met with his Argentine and Iranian counterparts, one following the other, and that the next day both foreign ministers traveled to the city of Aleppo, where they met with President Al-Assad (*see* "*Encuentro entre el Presidente de Siria Bashar Al-Assad y el canciller argentino Héctor Timerman*" [Meeting between Syrian President Bashar Al-Assad and Argentine Foreign Minister Héctor Timerman], *Prensa Islámica*, Source: SANA, 01/24/2011. *See also* information provided by the official agency TELAM "*Argentina and Siria fortalecieron las relaciones*" [Argentina and Syria strengthen relations], *Telam*, 01/25/2011).

According to Dr. Nisman, several facts corroborate the then Minister of Foreign Affairs of Iran Ali Akbar Salehi's secret participation in that summit, on which occasion Timerman would have informed him that the Argentine political authorities were prepared to quash the investigation into the AMIA case, along with any demand for cooperation and justice, in order to promote a diplomatic rapprochement and reestablish full relations between the two States (pp. 131,189–131,194 of the AMIA cause; Pepe Eliaschev, "*Argentina negocia con Irán dejar de lado la investigación de los atentados*" [Argentina negotiates with Iran to set aside the investigation into the attacks], *Diario Perfil*, 03/26/2011, pp. 130,911–130,913 of the AMIA cause; Pepe Eliaschev, "*Polémica en torno a la negociación secreta entre Argentina e Irán*" [Controversy over secret negotiations between Argentina and Iran], *Diario Perfil*, 04/02/2011.)

Moreover, regarding that meeting, the journalist Gabriel Levinas mentioned that he had received confirmation from "sources" in the Israeli Foreign Ministry, who had confirmed to him that: "… The meeting was attended by the Argentine delegation accompanying Timerman and consisted of Ambassador Ahuad and two officials from Argentine intelligence, and from the Syrian side, Foreign Minister Mohalem and President Bashar Al-Assad. But, contrary to what was reported by the media at that time, also attending that meeting and representing

Iran were the diplomat Walid Almohalem and Foreign Minister Ali Akbar Salehi. Once the introductions had concluded, in which all present participated, the conversation, lasting for a little more than an hour, turned into a 'one on one' between Salehi and Timerman, in order to address the main topic …" (Gabriel Levinas, *El Pequeño Timerman* [Little Timerman] Editorial B, Grupo Zeta, Buenos Aires, 2013, pp. 244 & 281).

In addition, Levinas added that, from what he was able to reconstruct from Israeli sources, Timerman had stated that "… I am here under strict orders from our president to try to seek or find a solution to the AMIA cause. Our country's temperament and humor are matters we will resolve internally …" (Gabriel Levinas, *op. cit.*, pp. 246 & 281).

Consequently, Foreign Minister Salehi – as the complainant's investigation establishes – took note of the offer and communicated it to then President Ahmadinejad, informing him that "… Argentina is no longer interested in resolving those two attacks … but rather prefers to improve commercial relations with Iran."

Meanwhile, on the same topic, journalist José Ricardo Eliaschev reported having obtained a copy of a secret document prepared by Foreign Minister Salehi and addressed to the then Iranian President Mahmoud Ahmadinejad, which offered details and conclusions regarding the meeting, and particularly the fact that the government of Cristina Fernández was prepared to suspend the investigations into the terrorist attacks perpetrated in 1992 and 1994 in order to make progress in commercial relations (*see* pp. 131,189–131,194 of the AMIA cause and Pepe Eliaschev, "Argentina negotiates with Iran to set aside the investigation into the attacks," *Diario Perfil*, 03/26/2011, pp. 130,911–130,913 and Pepe Eliaschev, "Controversy over secret negotiations between Argentina and Iran," *Diario Perfil*, 02/04/2011).

Thus, regarding matters relevant here, the complainant affirmed that "… based on all of the evidence outlined above,

the Aleppo summit represents the first item of concrete and corroborated evidence attesting to the existence of a decision made by officials at the highest levels of the Argentine government, who are accused of abandoning the lawful endeavor of bringing the Iranians indicted by the courts in the AMIA cause to trial, in order to promote, among other things, direct State-level trade, even though this involved preparing a plan to protect the accused. In light of the evidence uncovered to date, that decision was secretly communicated to the Iranian authorities by Foreign Minister Timerman himself in Aleppo in January 2011" (*see* p. 68 of the complaint).

2. On the negotiations

Beginning in January 2011, a period of negotiation began between the Argentine and Iranian governments, during which both parties made signals indicative of the goal being pursued.

This aspect of the matter is expanded on in point IV(a)(3) of the complaint (*see* p. 71 *et seq.* of the complaint), where it states that, "Despite diligent efforts to keep these criminal schemes covered up, information came to light and incidents occurred evincing the development and growth of the criminal scheme during that year-and-a-half of secret meetings.

"These refer to situations known to the public, which do not reveal their true significance when examined in isolation, but that when analyzed as a whole, linked together, and in light of the cover-up that is the subject of this complaint, take on their true form, as they demonstrate the steps that were taken down the path of crime, as well as the preparations made to release information relating to the bilateral rapprochement at the most opportune moment."

The aforementioned subsection states that the first clue was provided by the article published by José "Pepe" Eliaschev in the newspaper *Perfil* regarding the meeting in

Aleppo and the decision to quash the legal proceedings in order to restore commercial relations, which, although categorically denied by Timerman, was definitively confirmed by Iranian Foreign Minister Salehi, who had been personally involved in the negotiation process, when he publicly acknowledged in February 2013 that the negotiations had lasted two years. Specifically, he stated that: "… we met over a two-year period with Argentine Foreign Minister Héctor Timerman" ("*Irán ratificó su adhesión plena al memorándum con Argentina*" [Iran ratifies full adherence with the memorandum with Argentina], *Página 12*, 02/12/13; "Foreign Minister: Iran, Argentina adhere to agreement on AMIA case," *Iran Daily Brief*, 02/14/13; "*El Canciller de Irán dice que negoció durante dos años el acuerdo con Argentina*" [Iranian Foreign Minister states that he negotiated agreement with Argentina over a two-year period], *Clarín*, 02/12/2013; "Salehi: Iran, Argentina adhere to agreement on AMIA case," IRNA, 02/12/2013).

According to the submission, the second clue came on the eve of the 17th anniversary of the attack on the AMIA headquarters, when the Iranian press reported on a communiqué from the Foreign Ministry of that country dated July 16, 2011, in which he declared himself "willing to engage in constructive dialog" and "to cooperate with the Argentine government, within the bounds of the law and mutual respect, in order to bring full clarity to the legal investigation to help ensure that it does not take a wrong turn" (*see* "*Irán, dispuesto a cooperar con Argentina por atentado contra AMIA de 1994*" [Iran, prepared to cooperate with Argentina on 1994 attack against AMIA], *El Comunal*, 07/16/2011).

It is noteworthy that the offer of cooperation appeared out of context and, that in light of the scheme against which the complaint was filed, it can be understood as a gesture made within the context of the ongoing negotiations between the two governments.

Responding to this gesture, on July 17, 2011, the Argentine Foreign Ministry issued a communiqué in which it was announced that it had learned in the press of the announcement by the Iranian Foreign Ministry and that it awaited official notification in connection with the offer of cooperation.

In that respect, it stated that "… despite powerful attacks against Argentine legal proceedings, and without demanding any clarification of the implications of the announcement – as the Ministry of Foreign Affairs of our nation would have done at other times when dealing with these kinds of statements – Foreign Minister Timerman stated that the proposal 'would be an unprecedented and very positive step.' (Ministry of Foreign Affairs and Worship, Press Report No. 336/11, 07/17/2011.) Today it is evident that the groundwork was being laid for the cover-up of a crime against humanity" (*see* p. 75 of the complaint).

According to the theory developed therein, the third clue came two months later at the opening of the 66th General Assembly of the United Nations on September 22, 2011. On that occasion, for the first time since 2009, the President instructed the then Ambassador to that body, Jorge Argüello, to remain in his seat while the then President of the Islamic Republic of Iran, Mahmoud Ahmadinejad, was delivering his speech (*see* "*La AMIA reclamó que la delegación argentina abandone la ONU cuando hable el presidente de Irán*" [AMIA called for the Argentine delegation to walk out of the United Nations for the President of Iran's speech], *La Prensa*, 09/11/2012; Leonardo Mindez, "*AMIA: Con otro gesto oficial se confirmó el giro ante Irán*" [AMIA: Another official gesture confirms change of direction on Iran], *Clarín*, 09/23/2011; Gabriel Levinas, *op. cit.*, pp. 173, 189, 208, 20 and 279).

This position, he concludes, which contrasts with the president's decision in previous years to withdraw the Argentine delegation from the floor and refuse to attend the speeches given by Ahmadinejad, can only be understood in light of the negotiations being secretly maintained by both countries with a view to settling the matter which is the subject of the complaint.

Another circumstance taken into consideration by the complainant occurred in September 2012 when, for the first time in many years, the Office of the President of the Nation decided not to invite any of the community leaders of the local Jewish institutions to form part of the Argentine delegation traveling to the 67th General Assembly of the United Nations, something which is the more remarkable when

it is borne in mind that this was the very occasion on which Dr. Fernández de Kirchner officially announced her decision to "initiate" a dialogue with Iran with respect to the AMIA case (*see* Guillermo Borger, typescript of the plenary session of the commissions in the Honorable Senate of the Nation of February 13, 2013).

Indeed, on September 25, 2012, the President of the Nation, Cristina Fernández de Kirchner, announced in the General Assembly of the United Nations that she had instructed her Foreign Minister Héctor Timerman to begin the process of negotiation with Iran regarding the AMIA case and that she would respond to a request from Iran submitted seven days earlier.

On that occasion, the President gave the following assurances to the victims and the relatives of the victims: "let there be no doubt that this President will not take any decision with respect to any proposal put to her without FIRST consulting with those who have been the direct victims of this. And, at the same time, also with those political parties having parliamentary representation in my country, because this matter cannot be settled by a single political entity …" (*see* pp. 79–80 of the complaint)

That announcement was followed by a series of events that, when analyzed together with those mentioned above, led the Prosecutor responsible for investigating the AMIA case to put forward the theory upon which this document is based.

Let us see: after the presidential announcement, the Argentine Foreign Ministry and the Iranian Ministry of Foreign Affairs issued a joint communiqué in which it was announced that both ministries would undertake to explore legal mechanisms that would not run counter to the legal systems of Argentina and Iran (Ministry of Foreign Affairs and Worship, Press release 313/12, 09/27/2012).

That first communiqué was followed by others in which "the Foreign Ministry acknowledged the holding of brief meetings between both parties, but said nothing specific with respect to the content of the discussions nor the scope of the

issues being negotiated (Press Releases of the Ministry of Foreign Affairs and Worship dated 9/27/12 — No. 313/12; 10/29/12 — No. 353/12-; 10/31/12 — No. 360/12-; 12/1/12 — No. 391/12; 1/7/13 — No. 002/13)."

According to Nisman, the Argentine authorities have not provided the slightest scrap of information regarding what was discussed in those meetings. He also stated that, when asked by the Prosecutor General, Timerman's ministry responded that "since it was a question of ongoing diplomatic negotiations between states, the parties have agreed to keep the contents confidential while the negotiations last" (letter dated November 5, 2012, footnoted on p. 132,805 of the AMIA cause and Note No. 2194 dated November 8, 2012 in File DIAJU No. 7102/11 of the Ministry of Foreign Affairs and Worship, as cited by the complainant).

In connection with this, he concluded that, making use of the prerogative of secrecy typical of diplomatic activity, hiding behind the confidentiality permitted for certain meetings, Foreign Minister Timerman withheld news of these dealings, because he was in no position to make them public, as he was negotiating a cover-up, and publicity and public oversight was the greatest enemy.

Meanwhile, the complaint shows clearly that, while these diplomatic negotiations were ongoing, the impunity plan was progressing simultaneously via parallel channels of communication and negotiation with Iran, giving rise at that moment to a fundamental element of the criminal conspiracy which consisted – as will be shown below – in steering the investigation toward a new and false theory incriminating innocent third parties and essentially exonerating the Iranians. The endeavors engaged the active participation of Jorge Khalil, Fernando Esteche, Héctor Yrimia, and the individual known as "Allan."

Ultimately, in his opinion, it was obvious from the facts related above that the negotiations regarding the matter in question were initiated in secret by both parties and were ongoing for the course of a year and a half, until a public announcement was made of the "initiation" of discussions, the content and scope of which have remained secret, before ending with the signing, on January 27, 2013, of the Memorandum of Understanding, which actually accomplished nothing more than revealing the criminal conspiracy to assist the accused Iranians in evading the reach of Argentine justice.

3. The reasons for the cover-up

In this regard, and without going into complex legal details, it should be stated that legally the elements of the crime of accessory after the fact do not require establishing the interests that may have motivated the perpetrator to behave in such a manner.

Nonetheless, analyzing the circumstances and evidentiary material obtained regarding the objectives that motivated the parties contributes to providing a full understanding of the criminal conspiracy that is the subject of the complaint, and particularly of the steps taken by the various actors in connection with the same.

In this respect, and as explained by Dr. Nisman, it seems obvious that the rapprochement which led to the signing of the Memorandum was not suggested by Iran, but that it was the Argentine authorities who fostered the rapprochement, with the goal of implementing the scheme that is the subject of the complaint.

Regarding the Iranian authorities, it is also worth stating that the only thing which has concerned them is the removal of the Interpol Red Notices hanging over five of their citizens, all of them individuals of great influence in Iranian politics.

The facts alleged in complaint therefore reveal that while the Red Notices have not so far resulted in the arrest of

the accused, they clearly affect them, since they remain an obstacle that complicates their ability to travel abroad and prevents the full enjoyment of the de facto immunity they currently enjoy.

Moreover, Iran's interest in connection with the ratification of the agreement evaporated when the Red Notices failed to be removed, as demonstrated by the complainant in his submission.

As he states, it is enough to note that on March 10, 2013, the Memorandum of Understanding was brought before the Iranian Parliament for approval, but only a week later, on March 15, Interpol reaffirmed that the Red Notices would remain in force, resulting the following day in Foreign Minister Salehi publicly expressing his dissatisfaction at the decision made by the International Criminal Police Organization, and clarifying that, as set forth in the agreement, the very signing of the agreement required Interpol to remove the Red Notices.

The consequence of this dispiriting reverse for Iran was that the treaty was never debated in Parliament and apparently remained off the Iranian legislative agenda (Carlos Pagni, "*El kirchnerismo, en el peor de los mundos*" [Kirchnerism in the worst of all worlds], *La Nación*, 05/30/13; "Memorandum with Argentina reaches Iranian parliament," *Europa Press*, 03/11/2013; Raúl Kollmann, "*Con novedades semana a semana*" [News from week to week], *Página 12*, 03/24/13; Article No. LA/35678-47-3.1 EGI/tsa, Legal Reception Desk, General Secretariat, International Criminal Police Organization, 03/15/2013; Ministry of Foreign Affairs and Worship, Communiqué No. 044/13 of 03/15/2013; IRNA, "*Salehi: Irán y Argentina trabajan conjuntamente para resolver las acusaciones sobre la AMIA*" [Salehi: Iran and Argentina work together to resolve the charges relating to the AMIA], 03/18/2013; "*Irán asegura que el acuerdo con Argentina incluye retirar las 'notas rojas' de Interpol*" [Iran gives assurances that the agreement with Argentina includes withdrawal of Interpol's 'Red Notices'], *La Nación*, 03/18/2013).

The aforementioned sequence of events reveals the importance that the issue of the Red Notices had for the Iranian party, which is also apparent in

the words of Foreign Minister Salehi, which reveal his government's disappointment at Interpol's role.

On the other hand, and turning now to the interests of the Argentine party, there is ample evidence to reveal a powerful underlying commercial interest in the proven criminal acts directed at securing impunity, all of which point to a reestablishment of commercial relations at the State level.

Indeed, the results of the numerous telephone wiretaps cited by Nisman have made it possible to appreciate the aforementioned interest, as well as the fact that these topics were addressed through parallel channels of communication and negotiation established with Tehran in order to develop the cover-up.

The knowledge that the participants had of this underlying interest, is evidenced, for example, by the conversation held by Fernando Esteche, prior to the signing of the Memorandum and before it became public, that negotiations were ongoing in Switzerland, during which he stated that: "… the guys want to restore relations … they're going to do it … multidimensionally. I'm telling you, at the government level, at the State level … this has to do with establishing relations between both States …" (Conversation of 12/18/12, telephone no. 11-3315-6908, File B-1009-2012-12-18-183332-8, CD 226).

Another telephone conversation supporting this point is the one between Jorge Khalil and the Iranian entrepreneur Heshmatollah Rahnema, when the latter informed him of an interest in improving commercial relations between private parties, to which Khalil responded by explaining to him that he had expressed his concerns to Luis D'Elia, who for his part had reported them to National Legislative Deputy Andrés "*Cuervo*" [Crow] Larroque, who promised to discuss it with the President of the Nation (Conversation of 14/05/2013, telephone no. 11-3238-4699, File B-1009-2013-05-14-131007-12.wav, CD 0025).

The same line of argument is reinforced by events occurring a few days after the return from Iran of the regime's local agent, Jorge Khalil, and after various conversations in which he updated Luis D'Elia on the messages from Tehran:

* On May 15, 2013, when they asked Khalil as a matter of urgency to contact D'Elia, who was "in the President's office." D'Elia put the call on speakerphone and clarified that an official was listening but stated more specifically that: "… I'm with a friend who is listening and who I won't name …" Then, having clarified the interest of powerful local players in reestablishing commercial relations between the two States, they discussed the possibility of delegations from both countries meeting in Caracas, in Beirut, or elsewhere in the Gulf – as proposed by the Iranians – in order to reestablish commercial relations on a government-to-government basis.

* On May 19 and 20, 2013, calls were recorded discussing the meeting between Luis D'Elia and the Minister of Federal Planning, Public Investment and Services, the architect Julio De Vido, in which they discussed issues relating to the reestablishment of relations between the countries (*see* Conversation of 20/5/2013, telephone no. 11-3238-4699, File B-1009-2013-05-20-114842-2, CD 31).

D'Elia took responsibility for informing Khalil of the details of that meeting, and the latter transmitted these to the Iranian fugitive Mohsen Rabbani, who in light of his political standing participated directly in the negotiations with his protectors and was kept permanently abreast of developments in the relationship (Conversation of 5/28/13, telephone no. 11-3238-4699, File B-1009-2013-05-28-155549-2, CD 39, respectively).

This being the case, it is obvious that the Iranians only signed the Memorandum of Understanding after having agreed that it would be sufficient for the Interpol Red Notices to be removed and thereby permit their

indicted officials to travel freely around the world, while the inner circle of the Argentine government sought to reestablish full relations with Iran, for which purpose it was essential to proceed with approving that document – and thus was created the cover-up that is the subject of the complaint.

4. The Memorandum of Understanding

The visible result of the negotiations, both secret and public, was the Memorandum of Understanding signed on January 27, 2013, in Ethiopia, and while the official story was that this constituted an instrument that enabled progress to be made in the investigations regarding the fugitives, the truth is that, as established by Dr. Nisman, this was actually the means selected by the parties to bring about the criminal conspiracy they had been negotiating over a period of two years, and the contents of which would take effect once this scheme had been implemented.

This being the case, it is necessary for the purposes of present indictment to analyze whether the agreement between the Iranian representatives and the Argentine authorities went beyond the letter of the memorandum in order to complete the conspiracy that is the subject of the complaint.

In this regard, the complaint states and proves that this was the case because the memorandum provides mechanisms to remove the Interpol Red Notices, because it enters into effect over succeeding stages without any fixed time periods, thereby permitting an indefinite prolongation of its effective dates, even though no real progress is being made, because the conclusions of the "*Comisión de la Verdad*" [Truth Commission] created in the memorandum had already been agreed upon beforehand, and its proceedings would allow for the introduction of a new theory supported by false evidence.

As will be shown below, the document contains numerous resources and options for obstructing the discovery of the truth, as required by its authors and executors, due to by the enormous amount of variables involved in a scheme of such vast sophistication.

The Interpol Red Notices and the scope of Point Seven of the Memorandum

In section IV(c) of his submission (p. 103 *et seq.* of the complaint), Dr. Nisman stated that:

Of the eight individuals of Iranian nationality who are named in domestic and international arrest warrants in connection with the AMIA case, five have Interpol's maximum search priority (Red Notices), and these individuals have significant influence on the Iranian political scene.

The evidence obtained indicates that there had been prior negotiations and agreements between the parties with respect to removing Interpol's Red Notices, particularly bearing in mind– as shown by the evidence – that this commitment constituted the chief concern of the Iranian authorities regarding this agreement, and Foreign Minister Timerman accepted the intentions of his counterpart.

Despite his public utterances to the contrary, it is obvious that to speak the truth would have implied admitting his participation in the plan that had been hatched. Quite aside from this being incompatible with our country's claim for justice, this would have significant repercussions on the international stage. For this reason – as the facts reveal – the Foreign Minister took steps in an attempt to secure the removal of the Red Notices, and consequently satisfy the Iranian aspirations, but these did not have the expected reception at Interpol.

The seventh provision of the Memorandum of Understanding was the starting point for enabling the removal of these notices, which is to say the first step in guaranteeing the impunity of the accused.

Accordingly, he stated that the scheme to remove the Interpol Red Notices was subtly incorporated into the text of the agreement, particularly in point 7 which states that: "Having been signed, this agreement shall be jointly submitted by both foreign ministers to the General Secretary of

Interpol in compliance with the requirements made by Interpol in connection with this case."

The drafting of the article, which was the only one in the treaty that became effective upon signing, raised suspicions, and in the event was a source of concern to a number of sectors regarding the possible removal of the Red Notices.

Despite the efforts made by government officials to hide this objective, there is revealing evidence to support the view that the aforementioned point seven of the agreement implied the removal of the Red Notices.

In this regard, one need only note the interpretation made by Iran of the aforementioned point in the agreement, in reading the statement by the Iranian official press agency (IRNA) under the headline "Memorandum of Understanding signed between Iran and Argentina: Great diplomatic success."

Another element revealing the impression that the same made in that country is the legal analysis of the text of the agreement performed by the Iranian specialist in international law, Mohammad Hossein Mahdavi, in which he states that: "The purpose of the article [point 7 of the memorandum] was in fact that the two parties would jointly point out to INTERPOL that the differences between them regarding the AMIA case, which led to the appearance of certain people on the organization's red alert list, had been resolved through mutual cooperation, and INTERPOL could therefore void this list…" (Mohammad Hossein Mahdavi, *"Memorandum of Understanding signed between Iran and Argentina: Great diplomatic success,"* IRNA, 2/7/2013).

This interpretation was unquestionably endorsed by statements made by Foreign Minister Salehi – himself a signatory to the treaty – when, as reported by the IRNA news agency, he stated that: "according to the agreement signed by both countries, Interpol (International Police) must withdraw the charges against the Iranian officials," and he criticized Interpol for having

asserted that these remained in force (IRNA, “Salehi: Iran, Argentina work together to resolve the charges relating to the AMIA,” 03/18/2013; “Iran gives assurances that the agreement with Argentina includes withdrawal of Interpol’s ‘red notices’”, *La Nación*, March 18, 2013; “Tehran insists that accord with Argentina includes Interpol lifting red notices against Iranian suspects”, *Mercopress*, 03/19/2013).

As the Iranian Foreign Minister made abundantly clear, it was hoped that even without coming into effect, the agreement would nonetheless serve to remove the Interpol Red Notices and thereby effectively result in the suspects evading Argentine justice.

However, based on the foregoing, Nisman concluded that Salehi had agreed with Timerman that the removal of the Red Notices would occur simply with the signing of the memorandum of understanding, and that this is the only explanation for the seventh article – referring to the communication with Interpol – being made effective and, consequently being the only one that could and had to be enacted immediately, while the remaining points in the agreement required the ratification of both parties, the exchange of diplomatic notes, and the treaty entering into effect for those to be satisfied.

He reiterates that the issuance of notification of the signing of the agreement to an exclusively police body having no involvement or interest whatsoever in treaties or undertakings between its member States, such as is the case with Interpol, had the sole purpose of securing the removal of the Red Notices naming the Iranian fugitives.

Despite this, the objective of securing the impunity of the five high-priority suspects in connection with the AMIA cause was frustrated by the reception that was given to the communication of the agreement sent to the aforementioned international organization.

On March 15, 2013, the International Criminal Police Organization – Interpol – sent a letter to Foreign Minister Timerman signed

by Jöel Sollier, Legal Counsel of the institution, which stated, in reference to the memorandum of understanding, that: "… the Office of Legal Affairs of the INTERPOL General Secretariat considers that this agreement does not imply any change in the status of the Red Notices issued in connection with the crimes investigated in the AMIA cause …" Memo No. LA/35678-47/3.1/EGI/tsa, Office of Legal Counsel, General Secretariat, International Criminal Police Organization, 03/15/2013).

Subsequently, in May 2013, the Argentine Foreign Minister met with the Secretary General of Interpol, Mr. Ronald Noble, in Lyon, France. The Ministry of Foreign Affairs and Worship issued a statement confirming: "… During the meeting, Secretary General Noble reaffirmed the terms expressed by the Interpol's Legal Counsel in the March 15 letter, to the effect that the Memorandum of Understanding with Iran does not in any way affect the status of the Red Notices issued by Interpol at Argentina's request…" (Press Release no. 122/13 of 05/30/2013). Meanwhile, Interpol confirmed this same information in an official statement (Interpol, "Argentine foreign minister's visit to Interpol focuses on collaboration with international police," 05/30/2013).

Finally, the complainant states with respect to this issue that the delay and reluctance of the Iranian government in ratifying the memorandum – to the extent of removing it from the Parliament where it had been included on the agenda of matters to be addressed – reflected the fact that Foreign Minister Timerman was prevented from complying with the secret undertaking he had entered into with respect to the Interpol Red Notices, which should have been withdrawn but were not, which development caused profound unease among the Iranian authorities (in this context, note the following conversations with Khalil, *viz.*: Conversation of 5/11/2013, telephone no. 11-3238-4699, File B-1009-2013-05-11-083146-8.wav, CD 0022; Conversations of 05/15/2013, telephone no.

11-3238-4699, File B-1009-2013-05-15-100907-10, CD 26; File B-1009- 2013-05-15-101055-4, CD 26 and Conversation of 21/05/2013 telephone no. 11-3238-4699, File 2542, CD 32 and Carlos Pagni, "Kirchnerism in the worst of all worlds," *La Nación*, 05/30/2013; "*Timerman estimó que en el próximo mes and medio el parlamento iraní aprobará el acuerdo por la AMIA*" [Timerman believes that the Iranian Parliament will approve the AMIA agreement within a month and a half], *Télam*, 04/18/13; "*Ultimátum oficial a Irán: Espero que en un mes aprueben el memorándum*" [Official ultimatum to Iran: I hope that they will approve the memorandum within a month], *Infobae*, 04/18/2013; "*Reclaman a Irán el aval al acuerdo*" [Iran called on to approve the agreement], *Clarín*, 04/19/2013).

Despite Iran's reluctance, the Argentine authorities continued making efforts to secure ratification of the agreement, given the interests of several of its highest officials in continuing with the agreed-upon plan.

Accordingly, in April 2013 Timerman declared that: "I expect that it will have been approved within the next month, month and a half … the longer it takes them, the more questions there will be about their intentions. We did our part and we're waiting for Iran to do its part" ("Timerman believes that the Iranian Parliament will approve the AMIA agreement within a month and a half," *Télam*, 04/18/13; "*Cuánto más tarde Irán en aprobar el memorando, más dudas va a generar*" [The longer Iran takes to approve the memorandum, the more questions are raised], *Ámbito Financiero*, 04/18/13; "Official ultimatum to Iran: I hope that they will approve the memorandum within a month", *Infobae*, 04/18/2013; "Iran called on to approve the agreement," *Clarín*, 04/19/2013). On that occasion, the Foreign Minister explained that once the Iranian Parliament returned from its legislative recess it would prioritize discussion of the annual budget and "then comes the treaty with Argentina" ("Timerman confía en que Irán firmará el pacto en un mes" [Timerman confident that Iran will sign the agreement in a month], *La Gaceta*, 04/19/2013). That month, month and a half, has already lasted over a year.

It is in this context that we should interpret the statements contained in the President's speech delivered on the occasion of the opening of the 68th General Assembly of the United Nations on September 24, 2013, when she declared – taking obvious advantage of the change of government authorities in Iran – that the appropriate amount of time had passed, that Argentina had already approved the agreement, and that

it was now its counterpart's turn (Speech of Cristina Fernández, 68th General Assembly of the United Nations, September 24, 2013).

This demand issued in the international organization resulted in a meeting between the foreign ministers that was held on September 28, 2013, in the New York headquarters of the United Nations, which – as subsequently established and as shall be demonstrated below – amounted to a piece of stage management prompted by the President and her Foreign Minister in an effort to show progress was being made in the relationship.

Having received no word of the hoped-for ratification, on November 20 and 21, 2013, Foreign Minister Timerman declared that he had submitted a new proposal to the Iranian representatives, within the framework of the cover-up scheme, at meetings held in Zürich, in which he attempted to make progress on the issue of the statements of the accused (Ministry of Foreign Affairs and Worship, Press Release No. 279/13, Press statement read by Foreign Minister Timerman at the Casa Rosada, November 24, 2013

On that occasion it was also reported that Timerman had informed his counterpart Javad Zarif – the new Iranian Foreign Minister – that the interpretation that the arrest warrants regarding the accused remained valid was not made by Argentina, but was a matter determined purely and exclusively by Interpol, a measure that was no more than an attempt to justify his failure to comply with his undertaking to remove the Red Notices (*see* Martín Dinatale, "*La negociación con irán, empantanada por la lista de Interpol*" [The negotiations with Iran mired by Interpol list], *La Nación,* 12/08/2013).

Moreover, Timerman also took another step in November 2013 in an attempt to comply with what had been agreed to, for which purpose he once again met with Noble, whom he informed of the ongoing negotiations between both countries in connection with the memorandum (see Interpol, Press Release: "World security, focus of visit to INTERPOL by the Argentine Minister of Foreign Affairs," Lyon, France, 11/26/2013) and which could have had no

purpose other than to make clear that the dispute with Iran over the AMIA case was already being addressed via the Memorandum of Understanding, in order that provisions could be made – as the next logical step – for the removal of the Red Notices.

To conclude, an analysis of the present question allowed Dr. Nisman to make the following assertions: 1) Iran's interest centered on the removal of the Red Notices; 2) Timerman's task, on the orders of the President, was to arrange for the removal of the notices; 3) Interpol's adherence to legality – which proved impervious to the underlying intentions of the Argentine authorities – frustrated that aim; and 4) The ongoing validity of those notices did not imply the frustration of the impunity plan, since the parties responsible for the scheme provided various avenues for helping the accused Iranians evade Argentine justice.

Point Five of the Memorandum of Understanding and the implications of the "Truth Commission"

Point IV(c)(1)(b) of the initial submission (p. 122 *et seq.*) explains how the agreement signed between Argentina and Iran has a number of avenues for ensuring the impunity of those accused of the attack on the AMIA headquarters, and for which purposes the plan was given the flexibility and adaptability necessary to address various scenarios.

In the present subsection, I will expand on the various points that the complainant, supported by evidence collected and various judicial opinions, formulates in connection with point 5 of the agreement, which establishes what is known as the "Truth Commission." In the first place, it will be necessary to detail the criticisms regarding the number of suspects to be interviewed and the possibility of their disassociating themselves from responsibility (point a). We will then cover criticism in connection with interference into the investigation carried out in our country, with the resulting opportunity to fabricate an alternative theory (point b), and we

will conclude with a number of general critical remarks which the complainant made in connection with the memorandum in question (point c).

a) In connection with the first question, he stated that the truth commission established in point 5 of the impugned document has, among its functions, that of interviewing only the five indicted Iranian nationals having Interpol Red Notices, in the presence of Iranian and Argentine legal authorities and of representatives from both States.

It should be noted with respect to the eight accused Iranian nationals whose declarations have been ordered in the cause that point 5 of the agreement governing the "Tehran Hearings" only included those indicted parties having Interpol Red Notices, the removal of which – as has been explained – was essential for Iran, and had been agreed to.

There is no logical explanation for the Argentine authorities having accepted that hearings would only take place in connection with individuals whose Red Notices could be removed, setting aside the other indicted Iranian nationals with existing search warrants ordered by Federal Judge, Dr. Rodolfo Canicoba Corral.

Therefore, the manner in which point 5 of the memorandum has been drafted makes it clear that the suspects without Interpol Red Notices (Rafsanjani, Velayati and Soleimanpour) have no incentive whatsoever to present themselves to the legal authorities, thereby preserving the *de facto* impunity they currently enjoy.

Ultimately, had there actually been a will to submit the accused to the course of Argentine justice – as was argued in order to justify the agreement to the public – it would have included all of the individuals involved, and proper declarations would have been arranged for all of them, in accordance with Argentine law, and not simply interviews, and solely for those with Interpol Red Notices.

In addition, as can be established from a straightforward reading of the agreement, no provision was made for the possibility of the Argentine legal authorities being responsible for conducting the interview, nor was any provision made for the application of Argentine procedural standards, aside from which there was no possibility of the judge being able to arrest all or any of the accused as a consequence of what might arise in the interviews.

Finally, and in so far as this aspect of the criticism is concerned, Nisman asserted that this presentation of the accused to the "Truth Commission" and the Argentine judge provided another means of arguing that there were no longer any legal rationales for maintaining the Interpol Red Notices, because they could maintain that they had appeared at a trial, which measure could effectively allow them to disassociate themselves from any culpability that could eventually attach to them in the future.

b. As described above, the complaint criticized the establishment of a Commission with powers of a legal nature that, it is suspected, would exonerate the Iranians, which in his perspective constituted the crime of accessory after the fact through personal influence.

This being the case, the "Commission," to which broad powers were effectively assigned in order to establish the culpability of the accused, would be constituted, among others by Iranian representatives who have systematically denied Argentine legal accusations in the context of the AMIA cause.

Dr. Nisman said as much in his submission, when he stated that "the conclusions of the so-called 'Truth Commission' … had been previously agreed upon by the signatories …"; that the fomer would not allow any progress to be made in the cause "because its implementation consists of three successive stages of undefined duration, allowing its effective period to be prolonged indefinitely without making any real progress;" and that "its proceedings allow for the introduction of a new, false theory, supported by fabricated evidence."

He specifically warned of "a change of theory and a redirecting of the legal investigation into the AMIA case toward 'new suspects' based on false evidence aimed at definitively and fraudulently exonerating the accused Iranians," which would take place via "recommendations" by the "Truth Commission" which the Argentine State was committed to follow.

In connection with this, he unhesitatingly asserted that the criminal conspiracy had accorded the "Truth Commission" a key role with the purpose of securing the exoneration of the indicted Iranians, it having been created with the aim of undermining the investigation carried out by the Argentine legal authorities and redirecting the investigation toward new perpetrators.

The complainant believed that this goal was not manifest from a reading of the Memorandum, which is why it was decided that the conclusions of the commission would not be binding, given that this would have revealed the criminal conspiracy, although this was practically the case, since both governments undertook to align "their future actions" with any discoveries and recommendations made by the commission established therein.

As will be shown in this section, as reflected in greater detail below, that it was on that point that the evidence revealed that the authors of and accomplices to the scheme had planned and progressed toward the fabrication of an alternative false theory of the case as a part of the criminal conspiracy in order to divert the investigation toward other individuals and definitively separate the Iranian nationals from any connection with the attack, thereby creating a "Truth Commission" whose conclusions would be decided beforehand and would guarantee the agreed-upon impunity.

In effect, what emerges from the complaint is that the Argentine counterpart to the agreement was perfectly certain that its signing implied a search for a party responsible for the

attack other than themselves, meaning that they had specifically agreed with the Argentine authorities to secure the impunity of the accused.

Recognition of this state of affairs was recorded in a conversation on the day of the signing of the Memorandum of Understanding in which it was stated: "… someone's going to get egg on their face here …," which the Iranian agent Jorge Khalil acknowledged by saying: "Obviously, this has already been arranged," but he made clear that it wasn't the Iranians who would suffer: "How will it turn out for our side, dude? I mean, we're seated at the table …" (Conversation of 1/27/2013, telephone no. 11-3315-6908, File B-1009-2013-01-27-113208-14, CD 266).

A clear assessment of this document and its true scope was contained in the analysis performed by Chamber I of the National Federal Criminal and Correctional Appellate Court at the time the Memorandum of Understanding was declared unconstitutional (CCCF, Chamber I, CFP 3184/2013/CA1 "*AMIA re. Amparo Law 16*, , 05/15/2014, Court No. 6, Clerk of Court No. 11).

Indeed, the latter raised serious questions in connection with the establishment of a Commission which did not have the characteristics of a real "Truth Commission" and whose composition was not clearly established, but to which a number of broad powers of a legal nature were conferred, in violation of the rules of due process, particularly with respect to the absence of involvement of victims of the attack and the representative of the Public Prosecutor's Office.

According to the reasoning of the Federal Appellate Court, the provisions of the agreement granted the Commission the power to give "recommendations" that would have to be taken into consideration with regard to the status of the parties involved, despite the fact that the Public Prosecutor's Office and the Judicial Branch of the Nation had categorically rejected this point, and despite the support given to them by such an international organization as Interpol through the issuance of the red warnings.

Moreover, the prosecutor of the Federal Court of Criminal Cassation, Dr. Raúl PLEÉ, involved himself in the same matter, in the same manner as that of the aforementioned judgment, providing a similar warning in his statement regarding "the creation of a 'Commission' with quasi-legal powers, with the right to carry out inquiries and reach quasi-decisions in connection with the case, with powers to interview all of the parties, including the Judge of the cause and the Prosecutor participating in it, and with a grant of sufficient authority to provide 'recommendations' regarding how they should act or rule in the matter."

The foregoing, which itself provides evidence of an unconstitutional act due to its encroachment into the powers of the Judicial Branch and the Public Prosecutor's Office, is linked to the theory submitted by Dr. Nisman that this was effectively part of some prearranged stage-managed process to ensure that the impunity of the Iranians involved in the attack on the AMIA could be secured through the actions of that Commission.

This is also consistent with the statements made by Judges Farah and Ballestero in respect of the fact that the agreement with Iran does not improve the current status of the AMIA cause, but represents a danger to the prosecution of the matter, since it ignores a significant element, which is that of taking the diplomatic steps necessary to ensure that the Islamic Republic of Iran provides a response to the enormous number of requests for cooperation made by the Argentine legal authorities (*see* opinion of Dr. Farah, Subheading Three, point I, p. 14; and opinion of Dr. Ballestero, point XVI, pp. 89–90).

c) With respect to this question, in his submission, Dr. Nisman emphasized the fact that the bilateral agreement contains numerous mechanisms that, in his judgment, were not the result of any incompetence by those who drafted it, but to the contrary, of their expertise, in affording the Memorandum a convoluted implementation process requiring verification of an extremely protracted series of procedures,

some of them impossible to fulfill in light of the incompatibility between the two countries' respective legislative systems, before an indicted Iranian national could be arraigned before an Argentine court, namely that: 1) both countries domestically ratify the terms of the agreement; 2) there is a mutual exchange of diplomatic memos reporting the aforementioned ratification; 3) each of the signatories proceeds to select individuals of recognized legal standing and personal probity to form part of the "Truth Commission"; 4) those selected accept that appointment; 5) a fifth member of the commission is selected by both parties and by common consent; 6) the members of the Commission draft the procedural regulations by which they would be governed; 7) information on the cause is requested; 8) the required information is sent and translated; 9) each of the members of the commission analyzes the evidence submitted; 10) they meet to issue recommendations; 11) the signatories are notified of these recommendations; 12) a date is set to hold the hearings; 13) the accused are served notice to appear; and 14) they in fact appear for questioning which, as shall be demonstrated, fails to meet the minimum requirements for it to be considered a declaration.

Faced with this situation, he says that it need only be noted that a reasonable period of time had passed since the signing of the Memorandum without the first step being taken, and that this reflected the fact that the terms of the agreement harbored underlying criminal activity, and had been drafted in such a manner that it was very simple to delay compliance for an indefinite period.

For that reason he believed that in order to guarantee the immunity of the Iranian fugitives, the agreement stipulated a process that rested on the impossibility of its provisions ever being applied, owing to the intricacy of the procedure, which would ultimately lead nowhere and which succeeded only in diluting accusations and enabling exoneration, all of which was helped along by an interminable succession of as-yet-undefined steps and a complete absence of any deadlines to guide its implementation.

Dr. Nisman in effect asserted that the memorandum made no provision for any dates or times. No deadlines were specified for the establishment of the commission, nor for it to

issue its procedural rules, nor for the submission of evidence and information, nor for the preparation of the report, nor for the holding of the hearings in Tehran. Nothing at all. Nothing in this agreement has any deadline, and this reflects the fact that the only thing of importance within it is the fact that it allows the accused to be aided and concealed, guaranteeing their impunity. For that reason the agreement guarantees neither law nor process; it guarantees only impunity.

Indeed, in the proposal of November 2013, Foreign Minister Timerman stated that he was seeking to establish a period of one year in order for "…the mandate of the memorandum to expire…." However, it in fact stipulated that said period would begin to take effect as soon as the commission had been established, which made a known period conditional on an uncertain occurrence or circumstance without any time period to govern it. In other words, it amounted to nothing. This was yet another attempt to hide the impunity mechanisms in the plan. Needless to say, as of today Iran has yet to respond to the suposed proposal (Ministry of Foreign Affairs and Worship, Press Release No. 279/13, "Press statement read by Foreign Minister Timerman in the Casa Rosada on Sunday, November 24, at 2100," 11/24/2013).

In short, this omission of the time periods and the intricacy of the procedures provided, are also a passport to impunity, since they allow the claim to be made that there was an agreement between the parties which therefore makes it politically viable to restore full relations between the two States, without actually solving the AMIA issue."

(c) Steps taken to implement the scheme that is the subject of the complaint

This part of the submission is based on the theory developed by Dr. Nisman in point V of his complaint (see p. 150 *et seq.* of the same).

In it, the aforementioned complainant asserts that in order to obtain the impunity of the Iranians accused of attacking the headquarters of the AMIA, and which was enabled by the signing of the Memorandum of Understanding with the provisions described above, the criminal conspiracy which is the subject of the complaint required significant contributions made by persons who, in view of their involvement in such a complex matter, proved indispensable in attaining the hoped-for goal, and which involved formulating new theories in connection with the attack, waging a smear campaign to undermine the investigation in order to justify that new version, manipulating victims and their relatives, and utilizing parallel means of negotiation alongside formal diplomatic channels.

New theory of the attack on the AMIA headquarters

As explained in the complaint, the scheme to free the Iranians out from under the accusation issued and endorsed by the Argentine legal authorities not only made provision for liberating the current fugitives from the cause, but also for invented perpetrators to take their place in order to close the circle of impunity, no matter what the cost.

At this stage, it is worth recalling that one of the key elements in the scheme was the creation of a new criminal theory providing an alternative explanation for the attack, and which was aimed at redirecting the investigation towards the “new perpetrators,” a solution that has always been proposed and requested by the Islamic Republic of Iran.

That said, looking more deeply into this question, the existence of an intelligence unit reporting directly to the Office of the Nation’s President has been demonstrated, to which the individual identified as “Allan” belonged, and which resulted in the creation of a new enemy, of a new theory that permitted another explanation for the attack, which would somehow exonerate the Iranian citizens.

With this objective in mind, and in hopes of according credibility to the theory, those responsible utilized Fernando Esteche to contact Dr. Héctor Yrimia, who in his capacity as Federal Prosecutor in the investigation into the AMIA case soon became involved in an effort to find objective evidence relating to the cause that would convert falsehood into something credible.

In this context, the complainant stated that in November 2012 – that is, before the memorandum was signed – those involved in the cover-up were already working on the fabrication of the "new perpetrators" of the attack, who of course had nothing to do with Iran. As part of this endeavor, Jorge "Yussuf" Khalil had already met with Dr. Héctor Luis Yrimia. This is how he described it: "… I have a couple of things to tell you … I had a talk with the prosecutor … The prosecutor of the cause … the one that was there previously, not the one that is there now … The one who knows is the one I'm telling you about … the prosecutor of the cause …" He then indicated that the contact with Yrimia came from Fernando Esteche: "… And Fernando is the one who put me there" (Conversation of 11/04/12, telephone no. 11-3315-6908, File B-1009-2012-11-04-130024-6, CD 182).

These conversations reveal the link between Dr. Yrimia and the aforementioned group, which state of affairs is confirmed when it is recalled that in one of the recorded conversations "Allan" states that "… Yrimia is my employee … he's involved in almost everything, you see?… (Conversation of 7/10/2013, telephone no. 11-3238-4699, File B-1009-2013-10-07-141519-20, CD 171).

Regarding the creation of a new, false theory, which was required to shift the accusation away from the accused Iranians, Fernando Esteche stated in a conversation that: "… they want to create a new enemy for AMIA, a new perpetrator of the AMIA, for example, it's something they need to build up, they'll want to start building a consensus about this …" and from the conversation that follows, it can be established that this task has been made the responsibility of the *Secretaría de Inteligencia* [Intelligence Secretariat], or at least one of its units. In building this "new enemy,"

since “they won’t be able to say it was the Israelis” – as for obvious reasons that would not be credible – they had to fabricate a false theory, and they even discussed implicating a “local fascist connection” (Conversation of 12/18/2012, telephone no. 11-3315-6908, File B-1009-2012-12-18-183332-8, CD 226).

At a time when neither the courts nor the relatives and victims of the attack knew what was taking place in the negotiations between Argentina and Iran, these “operatives” knew perfectly well that there would be a change in theory and that the investigation would be redirected toward “new suspects,” who would replace the accused Iranians based on false evidence.

The objective of generating this fabricated theory and redirecting the investigation was as follows: “… the essence of the matter, the core of the matter … is Iran’s innocence…,” and it was also said that: “… it’s Iran’s innocence with the community’s innocence as a local connection …” (Conversation of 02/14/2013, telephone no. 11-3315-6908, File B-1009-2013-02-14-164341-10, CD 284).

That is why they planned: “… to fabricate a new enemy for AMIA, the new perpetrator of the AMIA …,” and they acknowledged that the parties to the cover-up “… are going to propose whitewashing with you…,” in allusion to the Iranians (Conversation of 12/18/2012, telephone no. 11-3315-6908, File B-1009-2012-12-18-183332-8, CD 226). Likewise, it was said: “… I think we’re going to do our own clean-up …” Conversation of 06/01/2013, telephone no. 11-3964-0799, File 224753, CD 0086).

Thus, various ideas concerning possible alternative versions are considered in the recorded conversations, for example: “they won’t be able to say that it was the Israelis;” blame could be placed on “a local fascist connection;” or “… they’re claiming that they themselves were behind the attack on themselves. So, it is going forward, and so we begin to weave another variant …;” or “… if the truck fails, forget about it, then everything fails … not only would it fail, but it would come back to bite us …” (Conversation of 12/18/2012, telephone no. 11-3315-6908, File B-

1009-2012-12-18-183332-8, CD 226, Conversation of 02/13/2013, telephone no. 11-3315-6908, File B-1009-2013-02-13-184206-28, CD 283 and Conversation of 02/14/13, telephone no. 11-3315-6908, File B1009-2013-02-14-164341-10, CD 284).

That conversation again shows how everything had been agreed to in advance. When the alternative of the "new hypothesis" appeared: "…if the truck fails, forget about it, then everything fails … not only would it fail, but it would come back to bite us …," Khalil said: "it's done… Are you getting me?… it's done, I can't talk, tell you anything in advance, but EVEYTHING IS ALREADY DONE" (Conversation of 02/14/13, telephone no. 11-3315-6908, File B-1009-2013-02-14-164341-10, CD 284; capitals supplied).

On this basis, it is obvious that those responsible for the ploy knew that the "Truth Commission" had not been created for any investigative purpose whatsoever, but only to legitimize the lie that was being fabricated and for which the aforementioned group was responsible.

What effectively emerges from the complaint is that the Argentine party to the agreement was perfectly clear that the price of its signature was the finding of a perpetrator of the attack, and that it would not be them, since they had specifically agreed on the impunity of the accused with the Argentine authorities.

Once one becomes aware of this circumstance, so much more revealing is the conversation recorded on the day of the signing of the Memorandum of Understanding in which it was stated that: "… someone's going to get egg on their face here …" while being quite certain that it would not be the country he served since "… Obviously, this has already been arranged… How will it turn out for our side, dude? I mean, we're seated at the table …" (Conversation of 1/27/2013, telephone no. 11-3315-6908, File B-1009-2013-01-27-113208-14, CD 266).

In addition, as the complaint states, those responsible for this part of the plan were quite certain that no sooner would this new theory appear than Dr. Nisman would be wrongfooted "… because he never saw it, him, the evidence … what's coming now … it's convincing evidence …" (Conversation of 06/01/2013, telephone no. 11-3238-4699, File B-1009-2013-06-01-224726-18, CD 43).

By way of conclusion, Dr. Nisman makes a revealing assertion on the subject when he states that "the responsibilities were to be determined on the basis of the perpetrators' political and international geopolitical needs. What the evidence indicated was of little importance. Everything was taken care of: the AMIA case would be used as a pawn to satisfy geopolitical interests on the new global chessboard …" (see p. 136 of the complaint).

The Motivation for the Cover-up that is the Subject of the Complaint

Other elements addressed in the complaint as constituting part of the *iter criminis* were what the complainant described as the disrepute campaign (point V(a) of the complaint), and the deceipt campaign (point V(b) of the same).

In his opinion, the first of these consisted of a media and communications strategy that allowed a delicate topic to be introduced into society without revealing the criminal aim it carried within.

The second required the signing of the Memorandum without prior consultation with the relatives and victims of the attack.

In this vein, he asserts the existence of a campaign to undermine the current legal investigation into the AMIA case, in an attempt to publicly present and lend credibility to the "new theories" and the "new perpetrators" of the attack, a measure that would eventually permit the definitive exoneration of the accused Iranians.

In this way the idea was inculcated – including in speeches given both by the Foreign Minister and by the President – that the legal cause regarding the attack had been paralyzed for some years, and in doing so a strategic attempt was made to shift public opinion toward the view that the memorandum provided the only opportunity to make progress in the cause (in connection with this, *see* the typescript of the Plenary Sessions of the Commissions on Foreign Affairs, Constitutional and Legal Matters and Criminal Affairs in the Chamber of Senators held on February 13, 2013, and the speech by Cristina Fernández, 68th General Assembly of the United Nations, September 24, 2013).

Within the context of this media campaign to promote the fabricated plan, the complaint draws special attention to the fallacious assertions made by Foreign Minister Timerman during the parliamentary debate on the Memorandum.

In connection with this, it is necessary to reproduce two citations provided by Dr. Nisman. The first is that in which the Foreign Minister stated that: "… For the first time, there is a commitment in writing from Iran… so that the "AMIA" cause may escape from the total paralysis in which it currently lies. I repeat, the total paralysis in which it currently lies …" Later he clarified that he was referring to the "… ongoing legal proceedings, there has been no progress of any type in recent years" and he informed the legislators: "You will be the ones to decide if the cause progresses or if it remains paralyzed" and then he added, "The cause has been paralyzed since 2006" and, "Remember that 19 years have passed without any significant progress having been made" (Typescript of the Plenary Sessions of the Commissions on Foreign Affairs, Constitutional and Legal Matters and Criminal Affairs in the Chamber of Senators held on February 13, 2013).

The second allusion is that which was made when, in attempting to justify the Truth Commission, Timerman made inaccurate assertions regarding the extradition proceedings of the former Iranian ambassador in Argentina at the time of the attack, Hadi Soleimanpour, by the British authorities.

In fact, at the plenary session of Senate committees, on February 13, 2013, Minister Timerman stated that "… the extradition request ordered by Argentina for the former Iranian ambassador Hadi Soleimanpour was dismissed by the British courts due to inexistent evidence … Interpol refused to issue a red note because it considered that he had already been detained and exonerated and released for lack of evidence… that the evidence submitted by the judge then presiding over the case, Doctor Galeano, in requesting the extradition of the former Iranian ambassador at the time of the attack was dismissed because, according to the legal authorities of a third country, in this case, the United Kingdom, they were not even sufficient to begin extradition proceedings…" (Typescript of the Plenary Sessions of the Commissions on Foreign Affairs, Constitutional and Legal Matters and Criminal Affairs in the Chamber of Senators held on February 13, 2013).

In short, Timerman stated that the "lack of evidence," that the "inexistent evidence" had led the "legal authorities of a third country" specifically, the "British courts" to exonerate and release the Persian diplomat and that, in addition, had led Interpol to refuse to issue a new Red Notice with respect to this individual when a new international arrest warrant was issued against him following a new indictment by Dr. Rodolfo Canicoba Corral.

In this regard, the complainant asserted that the foregoing statement was not a reflection of what in fact occurred. In doing so, he stated that at the time of Hadi Soleimanpour's arrest in 2003, the Iranian diplomat requested and was granted bail in order to await the extradition proceedings outside of prison.

At that time, the British judge carried out a number of assessments regarding the evidentiary situation, but stated that it was premature to pronounce judgment on the matter, since the Argentine legal authorities had two months to make a formal extradition request and submit the evidence in the case. In other words, the

case was entering the provisional detention phase and the extradition proceedings themselves had yet to begin.

Although the Argentine legal authorities complied with their part, when the moment came the Undersecretary of State of the United Kingdom decided not to permit Soleimanpour's extradition proceedings, given that the case could not proceed for political reasons not stated in the decision, and due to a legal privilege set forth in the extradition treaty governing the case.

To summarize, the failure to secure the extradition of Soleimanpour at that moment was due to a political, not a judicial decision, and it was not based on a lack of solid evidentiary support for the accusation, as the public was led to believe, but on undisclosed political reasons which resulted in that decision. Soleimanpour was not exonerated by the English courts, as was claimed.

This circumstance was also noted and discussed *in extenso* by the Federal Appellate Court and set forth in the judgment which declared both the Memorandum of Understanding with Iran and its approval law to be unconstitutional (*see* opinion of Dr. Eduardo G. Farah, CCCF, Chamber I, CFP 3184/2013/CA1 *AMIA re. Amparo Law 16,986*, 05/15/2014, Court No. 6, Clerk of Court No. 11.

The second question I must discuss is that relating to the manipulation of the victims and relatives of the victims of the attack which Dr. Nisman describes as "The deceipt campaign."

The complainant therefore asserts that implementation of the criminal conspiract not only called for a media campaign but also involved the Memorandum being signed without prior consultation with the relatives and victims of the attack, despite the promise made earlier by the President.

Consequently, faced by the initial rejection of the Jewish community on learning of the signing of the memorandum, Timerman immediately attempted to reverse

this reaction and strenuously sought the support of the Jewish institutions. When interviewed, leaders of that community even stated that Timerman had confided to them that: "I need this because otherwise they'll throw me out … I need the photo…" (Gabriel Levinas, *op. cit.*, pp. 249–50 & 283).

It was in this context that a false promise was made to the effect that an attempt would be made to incorporate an appendix to the agreement in which, as requested by the Jewish organizations, it would be specified that, among other things, the hearings in Tehran would consist of investigations in accordance with Argentine law, and that the procedure set forth in the agreement did not involve the removal of the Interpol Red Notices.

However, the Foreign Minister subsequently denied having made any undertaking to the victims, relatives and community leaders with respect to arranging for the aforementioned appendix to the agreement, which situation corroborates the notion that Timerman's rapprochement was simply to give the public an impression of concern that did not reflect what was actually occurring.

Dr. Nisman cited numerous and varied references in connection with this issue, to which I refer readers in the interest of brevity and in keeping with the purpose and scope of this overview (*see* pp. 168–74 of the complaint).

To summarize, Dr. Nisman asserted that in order to implement the agreement with Iran and to secure the impunity of the accused, it was necessary to go back on the promise of prior consultation with respect to any agreement as well as the commitment to secure an appendix to the agreement. The impression was given that an attempt would be made to find consensus across the political spectrum in order to proceed with an agreement, but in the event numerous and lengthy rulings running counter to the memorandum were ignored. And, as will be shown in the next subsection, stage management was deployed in order to demonstrate false diplomatic progress to the Argentine public.

Parallel Diplomacy

This issue was addressed in the complaint, in which it was asserted that in, view of its complexity the scheme that is its subject required both parallel unofficial channels of communication and negotiation, and specific, efficient and reliable means of pursuing the actual goal of the rapprochement in the formal diplomatic negotiations: impunity of the Iranians accused in the AMIA case.

In connection with this, the initial submissions cited numerous pieces of evidence that corroborate the existence of channels of communication and negotiation parallel to and interconnected with the official, one which facilitated contact between Tehran and Buenos Aires for the purpose of accomplishing the illegal objective.

According to the complaint, the evidence uncovered a group of individuals closely linked to officials and former officials of both governments, who secretly undertook the actions both strategically and substantively necessary to progress with the planned illegal objective.

Among these should be mentioned the active participation of Luis Ángel D'Elia, Fernando Luis Esteche, Jorge Alejandro "Yussuf" Khalil, National Legislative Deputy Andrés Larroque, Héctor Luis Yrimia, and the individual identified as "Allan," who performed intelligence duties for the government and who could be Ramón Héctor Allan Bogado, whether this is his actual name or that used by him in his intelligence activities.

These individuals, all of whom were implicated in the cover-up scheme, were themselves connected, and it need only be noted that Jorge "Yussuf" Khalil was frequently in touch with D'Elia, with Esteche, with "Allan", with Yrimia, and that he met with Larroque on a number of occasions.

Moreover, "Allan" and Yrimia had close ties and were introduced to Khalil by Fernando Esteche, which implies that he knew them beforehand.

Finally, no eloquent proof is required to link D'Elia with Larroque, D'Elia with Esteche and Larroque with Esteche, since these connections are notorious and common knowledge.

As a result, a complaint was filed to the effect that the activity carried out through these channels of communication and negotiation effectively constituted *de facto* parallel diplomacy, and even prior to the signing of the "Memorandum of Understanding" in November 2012 negotiations were taking place outside diplomatic channels, that is to say by means other than the meetings being simultaneously held in Switzerland.

In other words, while the formal diplomacy was being carried out in the Swiss Confederation, secret messages were simultaneously being transmitted between Tehran and Buenos Aires by other means. As Jorge "Yussuf" Khalil explained: "… I've just come from La Matanza where I recently had a meeting with Luis D'Elia and *el Cuervo* Larroque, the one from *La Cámpora* [a pro-Kirchner political youth organization] … who called me early because they wanted to talk with me, since they had a message for the government to give … And I'm now off to see Martínez to deliver the message, at the Ambassador's residence …," referring to the Iranian Chargé d'affaires in Argentina, the highest official authority in this country (Conversation of 11/17/2012, telephone no. 11-3315-6908, File B-1009-2012-11-17-104846-10.wav, CD 195).

This same sequence of events was described in another telephone conversation: "… I came back from Martínez at eleven o'clock at night … I went to La Matanza, I was talking with *Cuervo* Larroque and with D'Elia …from there I had to go to the ambassador's house to talk with the ambassador to give him a message they sent me …" and he added, "Larroque … sat down with me and gave me a message that I have to give to the embassy. I went to the embassy and gave them what I had, but I didn't only go to the embassy, I had to go to Martínez …" As Khalil explained with respect to his relationship with the Argentine authorities, "… I'm not working for them, I'm working for our people, for our embassy … they sent me to do something, since I'm the link …" (Conversation of

11/18/2012, telephone no. 11-3315-6908, File B-1009-2012-11-18-100116-6, CD 196).

Similarly, the complaint makes clear that these parallel channels had been utilized to arrange measures and positions that facilitated progress in the impunity plan in various ways.

For example, in November 2012 both Luis D'Elia and Andrés Larroque requested Khalil not to join a protest march organized by left-wing parties in defense of the "Palestinian cause," and also that he desist from issuing rebukes and complaints, because this type of activity could have repercussions on the new bilateral relationship and above all on cementing the agreement that was about to take place.

Khalil explained it this way: "… we don't want to do something that causes irritation … we don't want to irritate the Argentine government … I'm not going to do anything to irritate the Argentine government …" And he added, "we're creating a bigger problem for ourselves …" alluding to the rumors relating to the AMIA attack, and that all of this merited caution. Khalil understood the risk of participating in these actions: "… I imagine that the 'Trotskyites' are going to start broadcasting messages against the government, which is something I don't want …" (Conversation of 11/16/2012, telephone no. 11-3315-6908, File B-1009-2012-11-16-225813-2, CD 194). The cover-up required that all possible precautions be taken.

Along the same lines, Khalil added: "… This morning I had a meeting with the government people, and they asked me not to go to the meeting …" and they told him: "… stop making trouble, because the subject of … can have repercussions on our ongoing relations, the conversations we're having in Geneva …" (Conversation of 11/17/2012, telephone no. 11-3315-6908, File B-1009-2012-11-17-183444-8, CD 195). He therefore decided that: "… So I don't want any of us who represent the Islamic Republic in one way or another, such as all of you, such as Ghaleb, such as me, such as

anyone from Flores and from our community, to go to any of these events; we won't participate, as long as Israel doesn't invade … We're building a front, not with the Trotskyites or the leftists, but with the Kirchnerists, La Cámpora, and all those who will be in this with us. I've already discussed this with Larroque and D'Elia…" (Conversation of 11/17/2012, telephone no. 11-3315-6908, File B-1009-2012-11-17-183444-8, CD 195).

As he repeated: "…we're not doing any demonstrations here, because we're in the middle of negotiating with the government … I called that meeting, but then I cancelled it … because in light of the negotiations that are ongoing between Iran and Argentina, we don't want to be seen to be meddling. Besides, this was a request from the government. I was talking with D'Elia and with *Cuervo* Larroque and they asked me to do this and I got the message to Safir … and Safir told me the same thing …'let's not do anything that might bother them' …" (Conversation of 11/18/2012, telephone no. 11-3315-6908, File B-1009-2012-11-18-095153-16, CD 196).

In a subsequent conversation with Fernando Esteche, he said: "… On Saturday I went to *el gordo*'s [fatty's] house. I talked with *el gordo* and in front of me he called *Cuervo*, and put us on speakerphone …*Cuervo*, I'm with Yussuf bla bla bla … I'm telling him what you told me to tell him, eh?" It should be clarified that *el gordo* and *Cuervo* are allusions to Luis D'Elia and Andrés Larroque, respectively (Conversation of 11/19/2012, telephone no. 11-3315-6908, File B-1009-11-19-121034-16, CD 197).

This last sequence demonstrates that both Larroque and D'Elia contributed to ensuring and maintaining the best possible climate between the parties, with the goal of implementing the cover-up ordered by the President and carried out by Héctor Timerman.

In addition, and as revealed by the complaint, these channels were also utilized to send updated information to Mohsen Rabbani, one of those accused in the attack on the AMIA, with respect to various aspects of the plan designed to conceal him (*see*, for example, Conversation of 05/28/13, telephone no. 11-3238-4699, File B-1009-2013-05-28-155549-2, CD 39 and Conversation of 05/28/13, telephone no. 11-3238-4699, File B-1009-2013-05-28-155549-2, CD 39).

The operation of the parallel diplomacy was never more apparent than in connection with the meeting of foreign ministers held on September 28, 2013, which originated in the demands made by Dr. Fernández de Kirchner at the 68th session of the General Assembly of the United Nations.

As asserted by Dr. Nisman, by order of the President and the Foreign Minister, on Friday, September 27, 2013, the day before the aforementioned diplomatic meeting, Luis D'Elia called Jorge "Yussuf" Khalil stating that: "… I have an urgent message from the Argentine government, to go by there urgently, before tomorrow … I'm in the [Presidential Palace] now … Let's go to the Embassy … There's nothing more important than this, believe me …" (Conversation of 09/27/13, telephone no. 11-3238-4699, File B-1009-2013-09-27-103753-14, CD 161).

The Office of the President of the Nation urgently wanted to contact Tehran a day before the meeting between the Ministers of Foreign Affairs, and through unofficial channels. The message was not transmitted by the Palacio San Martín [Argentine Foreign Ministry] to the office of the Iranian Foreign Minister. Hector Timerman did not communicate with Mohammad Javad Zarif Khonsari. It could not be done that way. The message instead left the Presidential office of Dr. Fernández, reached Luis D'Elia, thence to Jorge "Yussuf" Khalil, the Iranian Charge d'affaires in Buenos Aires, and from there to Tehran.

Indeed, Jorge “Yussuf” Khalil called the Iranian Embassy and stated that he needed to see the chargé d’affaires urgently: “… I need to speak with him for fifteen minutes, I need to give him a message … It’s urgent … urgent … it’s about the Argentine government, they sent him a message… they just called from the [Presidential Palace].” (Conversation of 09/27/13, telephone number 11-3238-4699, File B-1009-2013-09-27-104209-26, CD 161).

The chain of “intermediaries” was activated at the request of the highest levels of the government, and the motive [sic] Khalil explained it as follows: “…needs the Iranian government, together with the Argentine government, to announce the establishment of the ‘Truth Commission’ tomorrow … that they please announce it jointly at the meeting tomorrow … that the meeting date of the ‘Truth Commission’ be set and also the day, in January, on which the Argentine judge can travel to Tehran …” (Conversation of 09/27/13, telephone number 11-3238-4699, File B-1009-2013-09-115448-6, CD 161). As D’Elia emphasized: “… that they both announce it tomorrow …” (Conversation of 09/27/13, telephone number 11-3238-4699, File B-1009-2013-09-27-114113-28, CD 161).

After this, a meeting was agreed to between Timerman and the newly appointed Iranian Foreign Minister Mohammad Javad Zarif Khonsari, on September 28, 2013 at the United Nations headquarters in New York, and which, based on the aforementioned evidence was stage-managed to persuade the public that something really was being negotiated and/or that Argentine diplomacy was obtaining results as a consequence of the public demand made by the president, in addition to the approaching legislative elections.

Ultimately, the sequence of events around the aforementioned diplomatic meeting simply serves to confirm how the plan that had been hatched constantly relied on parallel channels of communication, which proved indispensable in implementing the illicit aim being pursued.

Both this episode and the others analyzed throughout his complaint by Dr. Nisman allowed him to reach the conclusion that the actions of the Foreign Minister had been no more than media windowdressing, since everything was known beforehand. Everything had been previously prepared, negotiated and misrepresented – in secret. As he demonstrated, these parallel and para-official channels have been extremely important in implementing the cover-up that is the subject of this indictment.

IV. LEGAL CLASSIFICATION

a) Introduction

With respect to the information set forth above, it is appropriate to incorporate into this analysis the possible criminal legal relevance of the actions regarding which Prosecutor General Dr. Alberto Nisman filed the complaint, the investigation of which is hereby initiated by means of this legal action.

Notwithstanding the result of the investigative proceeding and any new elements that may be incorporated into the cause, the *prima facie* applicable legal framework is that of **aggravated accessory after the fact through personal influence owing to the particular gravity of the predicate offense and owing to the status of those public officials who meet that description** (art. 277, sections 1, 3(a) and 3(d) of the Criminal Code).

In addition, in specifying the legal framework of the facts, the complainant stated that these could fit within the offenses of **obstruction or interference with official procedure, and breach of official duty** (arts. [sic] 241, sections 2 and 248 of the Criminal Code).

b) Accessory after the fact

This offense provides a penalty of between six months and three years of imprisonment for "any individual who, after the commission of a crime perpetrated by another … Assists someone in evading official investigations or

distancing him or herself from the actions of the same" (sec. 1), with aggravated commission resulting in "double the minimum and maximum penalty, when … the predicate offense involved an especially grave crime, such that the minimum penalty would be in excess of three years' imprisonment" (sec. 3(a)) or "in the event that the perpetrator is a public official" (sec. 3(d)).

In this case, based on the theory set forth in the complaint, Cristina Fernández de Kirchner, Héctor Timerman, Luis D'Elia, Fernando Esteche, Jorge Khalil, Andrés Larroque, Héctor Yrimia, and an individual identified as "Allan" undertook actions to assist those accused of having perpetrated an especially grave crime (the terrorist attack against the AMIA) committed by others (the accused Iranians) to evade the investigation being carried out before Court No. 6 of this jurisdiction and the AMIA Prosecution Unit, as well as to discharge themselves from the international arrest warrants issued regarding some of them.

The complaint effectively states that those indicted herein carried out concerted actions to exonerate the Iranians identified as responsible for blowing up the AMIA and to allow the latter to discharge themselves from the course of justice.

First, through the creation of a body known as the "Truth Commission," with powers to assume strictly legal functions, replacing the duly-appointed judge of the cause and the representative of the Public Prosecutor's Office.

Second, by notifying Interpol of the agreement and the establishment of the aforementioned Commission, for the purpose of obtaining the removal of the Red Notices requesting the arrest of five of those indicted in the AMIA cause.

Below is an analysis of the possible criminal relevance of the hypothesis submitted in the complaint in the light of objective and subjective elements of the criminal offense of accessory after the fact through

personal influence, without prejudice to the results of further proceedings in this cause.

1) Objective elements

The crime of accessory after the fact, of whatever type, requires two basic elements, namely *the commission of an underlying crime* and *involvement after its consummation without a previous promise*.

With respect to the underlying crime, in other words the terrorist attack committed against the AMIA on July 18, 1994, the question has been sufficiently examined in the context of the cause through which the cover-up of that same is being investigated, in the sense that it is not necessary for a guilty verdict to be issued in order to regard the existence of an underlying crime as having been demonstrated (*see, e.g.*, Cause 43,859, appeal of Galeano, Juan José *et al.* in the case of *Galeano, Juan José et al. re. misappropriation of public funds and others*, case file 9789/2000, *ad hoc* Chamber I, Federal Court No. 4, Clerk No. 8, issued 03/19/10).

In connection with involvement subsequent to the crime, there is no doubt whatsoever that the defendants had no participation in the original act and that their alleged contribution does not reflect any prior promise, meaning that it is appropriate to establish the element of accessory after the fact through personal influence as being applicable to this case.

With respect to the nature of the relationship that the beneficiary or beneficiaries should have with respect to the parties to the cover-up, Buompadre states that the concept of "another" embraces not only a convicted party, but also anyone who may have been involved or is suspected of having participated in the commission of a crime, including an unknown fugitive (Jorge E. BUOMPADRE, *DERECHO PENAL* [*Criminal Law*], Special Section, edited by Mario A. Viera, 2003, vol. III, p. 458), which element presents no obstacle in this case

since the concealed persons are those stated in the prosecutor's indictment and in the arrest warrants of the participating judge.

With respect to the heart of the element, as it may be interpreted from the law described above, it consists of rendering assistance to someone in the sense of collaborating with them in such a manner as to facilitate or make it possible for that person to succeed in evading investigation or the action of the authorities (Andrés D'Alessio, *CÓDIGO PENAL DE LA NACIÓN. COMENTADO Y ANOTADO* [*National Criminal Code: With Commentary and Annotations*], Special Section, La Ley, 2009, p. 1390).

In other words, this provides for a single type of behavior, that of assisting, which can include assisting to evade official investigations or assisting to disassociate an individual from the possibility of prosecution (BUOMPADRE, *op. cit.*, p. 457).

Either way, the assistance encompasses all affirmative acts consisting of helping, contributing, collaborating, facilitating, providing means, taking steps to confuse the authorities, etc., for the purpose of allowing the beneficiary to evade the investigation being carried out, or to disassociate the criminal from the possibility of prosecution (BUOMPADRE, *op. cit.*, p. 457).

In the present case, aside from the fact that the assistance itself was, according to the complaint, directed at securing the immunity of those involved in the attack, the acts may be differentiated between those aiming to procure exemption from culpability (*see* point *infra*) or those directed at avoiding arrest for the purpose of being made available to the appropriate authorities (*see* point *infra*).

Assistance in evading the investigation

In this event, what the law sanctions is the act of deviating or disassociating an individual from an investigation being carried out or proposed to be carried out by the authorities, in other words when the party to the cover-up carries out an action tending to hide a third party, preventing him or her from being discovered and held accountable for the act (BUOMPADRE, *op. cit.*, p. 459).

In light of the claims set forth in the complaint, a series of acts were carried out in this case, particularly the establishment of the so-called "Truth Commission," which were aimed at disassociating the Iranians accused in the AMIA cause and the creation of a false theory of the case of sufficient depth to allow them to evade any type of culpability.

The complaint questions the establishment of a Commission with sufficient legal authority as to raise suspicions it will discharge the Iranians, which in his opinion constitutes the crime of accessory after the fact through personal influence.

This is the case since the "Commission," on which broad powers were effectively conferred allowing it to establish the responsibility of the accused, would be constituted by, among others, the same Iranian representatives who had systematically rejected the Argentine legal claims in the context of the AMIA cause.

Dr. Nisman stated as much in his submission when he declared that "the conclusions of the so-called 'Truth Commission' … had already been arranged beforehand between the signatories;" that the latter would not allow any progress to be made in the cause in question "because its implementation consists of so many successive stages of undefined duration, allowing its effective period to be prolonged indefinitely without making any real progress;" and that "its proceedings allowed for the introduction of a new false theory supported by fabricated evidence."

In particular, he warned of "a change of theory and a redirecting of the legal investigation into the AMIA case toward 'new suspects' based on false evidence aimed at definitively and fraudulently removing the accused Iranians [from the cause]," which would be implemented via the "recommendations" of the "Truth Commission" whose judgments the Argentine State would be obliged to observe.

The points set forth in the complaint are complemented by the analysis carried out by Chamber I of the National Federal Criminal and Correctional Appellate Court

at the time the Memorandum of Understanding was declared unconstitutional (CCCF, Chamber I, CFP 3184/2013/CA1 *AMIA re. Amparo Law 16,986*, Court No. 6, Clerk of Court No. 11, 05/15/14).

Indeed, the latter raised serious questions about the establishment of a Commission which did not have the features of a real "Truth Commission" and whose composition was not clearly established, but to which a number of broad powers of a legal nature were conferred in violation of the rules of due process, particularly with respect to the absence of involvement of victims of the attack and the representative of the Public Prosecutor's Office.

According to the reasoning of the Federal Appellate Court, the provisions of the agreement granted the Commission the power to give "recommendations" that would have to be taken into consideration with regard to the status of the parties involved, despite the fact that the Public Prosecutor's Office and the Judicial Branch of the Nation had categorically rejected this point and despite the support given to them by such an international organization such as Interpol through the issuance of the red warnings.

Moreover, the prosecutor of the Federal Court of Criminal Cassation, Dr. Raúl PLEÉ, involved himself in the same matter, in the same manner as that of the aforementioned judgment, providing a similar warning in his statement regarding "the creation of a 'Commission' with quasi-legal powers, with the right to carry out inquiries and reach quasi-decisions in connection with the case, with powers to interview all of the parties, including the Judge of the cause and the Prosecutor participating in it, and with a grant of sufficient authority to provide 'recommendations' regarding how they should act or rule in the matter."

The foregoing, which itself provides evidence of an unconstitutional act due to its encroachment into the powers of the Judicial Branch and the Public Prosecutor's Office, is linked to the theory submitted by Dr. Nisman that this was effectively part of some prearranged stage-managed process to ensure that the impunity of the Iranians involved in the attack on the AMIA could be secured through the actions of that Commission.

This is also consistent with the statements made by Judges Farah and Ballestero in respect of the fact that the agreement with Iran does not improve the current status of the AMIA cause, but represents a danger to the prosecution of the matter, since it ignores a significant element, which is that of taking the diplomatic steps necessary to ensure that the Islamic Republic of Iran provides a response to the enormous number of requests for cooperation made

by the Argentine legal authorities (*see* opinion of Dr. Farah, Subheading Three, point I, p. 14; and opinion of Dr. Ballestero, point XVI, pp. 89–90).

Assistance in evading the course of justice

This situation – in other words, distancing the individual from the actions of the authorities – refers to impeding, evading, assisting the individual to avoid arrest, regardless of whether or not his or her arrest has been ordered (BUOMPADRE, *op. cit.*, p. 459).

In interpreting this regulation, it has been stated that "the *prima facie* applicable legal framework is that of aggravated accessory after the fact through personal influence – art. 277 sec. 1(a), Criminal Code – and the behavior exhibited by the accused is having assisted in evading an arrest warrant issued in respect of a third party who was a fugitive" (CCCF, Chamber II, "P.L.A", issued 12/15/03).

On this basis, Prosecutor NISMAN arrived at the interpretation that the operative and immediate notification of the Memorandum of Understanding was the excuse for requesting Interpol to remove the Red Notices, this being understood as assistance directed at avoiding the arrest of the fugitives.

A similar line of reasoning can be seen in the judgment of the aforementioned Federal Appellate Court in stating that "The immediate communication with Interpol raises the possibility of an action in detriment to the effective jurisdiction of the judge in the cause" (opinion of Dr. Farah, p. 24).

The fact is that, as Dr. Nisman stated, “the only impediments to effective impunity for the indicted Iranians have been the Interpol Red Notices, which have served to restrict their international mobility. It is for that reason that the parties agreed that they should be lifted – hence the existence of point 7 of the Memorandum. It is the only point that was to apply with immediate effect, the only point that had to become effective without any need for the agreement to be ratified. Drafted in those terms, it is completely lacking in any logical explanation. It can therefore be seen that the removal of the Red Notices was the first and most significant step secretly agreed to between Salehi and Timerman toward the definitive exoneration of the accused.”

2) Subjective elements

As set forth in the text of the law, the perpetrator must be aware of the existence of an underlying crime and that he or she is assisting in evading the reach of justice (Edgardo Alberto DONNA, *Derecho Penal* [Criminal Law], Special Section, vol. III, Rubinzal-Culzoni Editores, Santa Fe, 2012).

In the present case, it is claimed in the complaint that the Memorandum and, particularly, the establishment of the “Truth Commission” and the immediate notification of Interpol were acts aimed at ensuring that those involved could evade the investigation and the reach of justice.

Where this is concerned, Dr. Nisman bases himself on conversations that, from his point of view, alluded to the true intentions of the Commission, which was that of exempting the Iranians from culpability and creating a new theory with respect to the events, to which specific references have been made in the earlier sections of this document.

The circumstantial evidence demonstrating the actual intentions of those involved is also contained in specific acts, such as, for example, the circumstance of having given the name “Truth Commission” to a

body that had nothing to do with the meaning of such a legal institution, and which in fact provided inaccurate information at the time it defended approval of the draft legislation (*see* the opinion of Judge Farah, Subheading Six, Point I, pp. 26–37, and Point II, pp. 37–44).

Indeed, the judgment of the Federal Apellate Court explains on the one hand that "Truth Commissions" operate in the context of institutional weakness and with the express participation of the victims – elements not applicable in this case – and on the other hand that inaccurate background information was given regarding an extradition request rejected by the United Kingdom for political reasons (not legal reasons, as was alleged) and the supposed state of paralysis of the cause, which does not match the actual situation of the case file.

3) Completion

Doctrine is practically unanimous in declaring that it is irrelevant whether or not the intended aim of the person rendering the assistance was accomplished. Accessory after the fact is a crime of pure activity, presenting specific danger, perpetrated instantaneously and having permanent effects, so that completion of the same coincides with the perpetration of the defined criminal offense, without it being necessary for the intended aim to be accomplished: the evasion by the beneficiary of investigation by the authorities or his or her disassociation from the prosecution of the latter (Andrés D'Alessio, *CÓDIGO PENAL DE LA NACIÓN. COMENTADO Y ANOTADO*, Special Section, La Ley, 2009, p. 1390; Jorge E. BUOMPADRE, *DERECHO PENAL*, Special Section, edited by Mario A. Viera, 2003, vol. III, p. 460; David BAIGÚN & Eugenio R. ZAFFARONI, *Código Penal y normas complementarias. Análisis doctrinal y jurisprudencial* [The Criminal Code and Complementary Regulations: Doctrinal and Jurisprudential Analysis], vol. II, p. 156; Carlos CREUS, *Derecho penal* [Criminal Law], Special Section, vol. II, 6th edn., Ed. Astrea, Buenos Aires, 1999, p. 353).

Hence, any "assistance" offered by the establishment of the "Commission" and the notification of Interpol to secure the release of the

accused from culpability is sufficient to complete the criminal offense since, as interpreted by the doctrine, it is not necessary to attain the hoped-for goal which, as the complainant states, was in this case frustrated by the refusal by Interpol to remove the Red Notices.

In other words, the perpetration of acts described as “assistance” instantly completes the criminal offense, since as far as the legislature is concerned it is sufficient for there to be risk of harm to the legal concept of the “administration of justice” as a consequence of the behavior of the party obstructing the task of investigating criminal acts and punishing their perpetrators.

The fact is that activities connected with the administration of justice in identifying individual perpetrators and participants in crimes may be disturbed by the actions of the parties to a cover-up (CREUS, *op. cit.*, p. 339).

In view of the foregoing, as stated at the beginning of this document and as must be reiterated here, it is necessary to initiate an investigation that, by means of the investigatory procedures to be proposed below, serves to attain a degree of knowledge sufficient to corroborate or discard the effective existence of the factual and legal grounds set forth in the preceding paragraphs.

In its capacity as the initial act in an investigative record, the criminal complaint provides an unproven hypothetical version of the existence of a certain event, thereby providing justification for the opening of the investigation by means of an indictment.

Finally, what is here being submitted is the initiation of an investigation having the aim set forth in the procedural rule, which is, among other things, “to verify the existence of a criminal act through those proceedings that are conducive to discovering the truth” (art. 193, sections (a) and (b) of the CPPN).

c) <u>Obstruction or interference with official procedure and breach of official duty</u>

At the moment he defined the legal framework of the facts, the complainant also pointed out other offenses that could be applicable to the facts, aside from the legal relationship and extending the same considerations to it with respect to the provisional character of the conceptual construction thereby elaborated.

On the one hand, he stated that the actions fitted the description of the concept of obstruction or interference with official procedure (art. 241, sec. 2, of the Civil Code), which sanctions "any party impeding or obstructing a public official complying with an act pertaining to his or her functions," owing to the fact that these constituted an attack against the free exercise of public office, which in this case related to legal activity in connection with the AMIA case.

Moreover, in the cases of those accused who exercise the role of public official, one or more of the actions attributed to them are encompassed by the criminal offense set forth in art. 248 of the code in question, which penalizes any "public official issuing resolutions or orders contrary to the constitutions or national or provincial laws, or executing existing orders or resolutions of that type, or failing to execute laws with which it is incumbent on him or her to comply," by virtue of the specific official duties of each position that have been neglected in the course of the events related herein.

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