

*"2006 – Year in Homage to Dr. Ramón Carrillo"*



**Ministry of Justice  
and Human Rights**

MESSAGE 1913/06

"Addition of Chapter VI – ILLEGAL TERRORIST ORGANIZATIONS AND TERRORIST FINANCING to the Criminal Code".

Docket PE-449/06, referred by the President of the Nation, Dr. Néstor Kirchner, to the Honorable Senate on December 20, 2006.

**National Executive Branch**

BUENOS AIRES, DECEMBER 20, 2006

To the Honorable National Congress:

Please find enclosed, for your consideration, a bill intended to amend the CRIMINAL CODE, in order to reflect provisions oriented to penalize illegal terrorist organizations and financing of terrorism.

ARGENTINA, in its long-lasting efforts to promote the peace, security and sustainable development of all nations, has assumed various international commitments toward strengthening the fight against international terrorism and, particularly, the various forms of financing of terrorism.

ARGENTINA approved UNITED NATIONS SECURITY COUNCIL Resolution 1373 dated September 28, 2001, by means of Decree 1235 dated October 5, 2001.

ARGENTINA approved the International Convention for the Suppression of the Financing of Terrorism adopted by the UNITED NATIONS GENERAL ASSEMBLY on December 9, 1999, by means of Law 26,024 .

In 2000, ARGENTINA was admitted as Full Member of the Financial Action Task Force (FATF) on Money Laundering, and of the Financial Action Task Force of South America (GAFISUD), and has since then participated in the mutual monitoring processes implemented by those entities through the 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing.

At the inaugural session of the IV Summit of the Americas in Mar del Plata, as President of Argentina I said: "It is vital that there is consensus on fight against terrorism. For Argentina, all acts of terrorism are criminal and unjustifiable. There is no racial, religious, ideological or any other reason that may possibly justify the murdering of innocent civilians. The Argentine people have a deep feeling of sympathy with the victims of terrorism and their families.

We ourselves were victims of the terrorist actions perpetrated against the Israel Embassy and AMIA in Buenos Aires, and so we commit our continued support to search for the truth and fight against terrorism".

More recently, in my address to the UNITED NATIONS GENERAL ASSEMBLY I remarked: "Argentina considers that all acts of terrorism are criminal and unjustifiable and accepts no argument supporting such methodology. Two outrageous attacks took place in Argentina in the 90s, those against the Israel Embassy and the offices of the Israelite Argentine Mutual Association (AMIA), that have shocked our people, and despite the many years gone by since then, we continue striving to find the truth so that their perpetrators may be punished. We believe that in order to successfully deal with such a criminal threat, a multilateral action must be taken in the long-run through lawful means".

"The respect for human rights, the international humanitarian law and the refugee law is essential, as is the international cooperation and legal assistance to enforce counter-terrorist legislation. If global terrorism is fought back by violating human rights, the only winner will be terrorism".

ARGENTINA is determined to actively participate in the regulatory and institutional standardization process fostered by the international community. Specifically, our country is working toward the adoption of international recommendations and regulations.

Particularly with respect to the suppression of terrorist financing actions, and as a direct consequence of the enactment of Law 26,024, ARGENTINA must establish a criminal typification under which the activities of collection and provision of funds for use in terrorist actions are severely punished. In so doing, ARGENTINA will be following FATF Special Recommendation II on criminalizing the financing of terrorism and associated money laundering.

In technical terms, the international regulatory harmonization in matters of terrorist financing requires that:

- a) Terrorist financing be described as an autonomous offence, no longer subject to the rules of criminal participation (accessory to a crime, articles 45 and 46 of the CRIMINAL CODE);
- b) The terrorist financier be criminalized, whether or not the offence so financed actually takes place (Cfr. article 1 a) and b) of the UNITED

NATIONS SECURITY COUNCIL Resolution 1373/01; article 2 of the International Convention for the Suppression of the Financing of Terrorism approved by Law 26,024; FATF Special Recommendation II).

Such process of legal and institutional harmonization, aimed at suppressing the financing of terrorism, requires that the most rational mechanism to comply with the international commitments assumed be selected, so that the incorporation of a new type of crime does not alter the logical structure of the Argentine CRIMINAL CODE.

To such end, the bill:

- a) defines the concept of terrorism as an aggravated illegal association ("illegal terrorist association" ) by adding a new article to the CRIMINAL CODE (article 213 *ter*);
- b) charges both the individual who funds an illegal terrorist organization and that who provides funding to a member of that organization for the commission of a crime (article 213 *quater*).

The illegal association has been long defined in the CRIMINAL CODE. The current wording of article 210 dates back to 1921, as Law 23,077 of 1984 reinstated that original wording. Through said amendment, the definition of aggravated illegal association was added under article 210 *bis*.

Said legal concept has been defined by the law-maker in order to protect the public order (Title VIII of the CRIMINAL CODE), for which purpose actions in preparation for crimes are rendered punishable if perceived to be a threat to third-parties, and therefore detrimental to that legally protected interest.

For an illegal association to exist, as viewed by the courts all along these years, the following constituent elements must be present:

- 1) agreement among individuals (more than three) toward the fulfillment of a criminal purpose;
- 2) some form of decision making structure;
- 3) a given action plan, and
- 4) continued membership.

Even though the concept of illegal association has been the subject of criticism in that it has the potential of eroding the principle of privacy and in that

it has been excessively used in preliminary investigation efforts to support preventive detention, its constitutional nature is not currently questioned.

For all these reasons, the concept of illegal association is perceived as the most appropriate to approach terrorism under the domestic legislation.

Chapter VI "Illegal terrorist organizations and terrorist financing" has been added to the CRIMINAL CODE, as part of the protection afforded under its more comprehensive Title VIII.

This highlights the need that illegal terrorist organizations be a specific subgroup of the larger group comprised by aggravated illegal associations which, in turn, are within the gender of illegal associations, currently existing.

From the perspective of the Comparative Criminal Law, the approach to terrorism as an aggravated illegal association was adopted by the German Criminal Code (StGB) under paragraph 129a, Terrorist Organizations, as part of Section Seven on Crimes Against Public Order, as a form of criminal policy response to the terrorist events of the 70s, then the 1986 and 2003 amendments were enacted in line with the international harmonization process. Currently, such provision establishes a penalty of up to ten (10) years imprisonment for anyone who founds or is a member of such organization and/or supports it.

In terms of domestic legislation worth noting is the precedent laid by Law 25,241 on "reduction of penalties to whoever contributes to the investigation of terrorist actions", a special investigation technique in cases involving repentants.

Let's now focus more specifically on the proposal referred to your consideration.

The most outstanding feature of the illegal terrorist organization under the new article 213 *ter* is that it specifically purports to terrify population or force a government or an international organization to do or refrain from doing something, through the commission of crimes. What is penalized here, the same as in article 210 of the CRIMINAL CODE, is the fact of taking part of an illegal association.

Even though such outstanding feature must be present, it is not sufficient to distinguish an illegal terrorist organization from other criminal associations; accordingly, certain other constituents have been determined to be essential to ascertain the existence of an illegal terrorist organization. These are:

- a) existence of an action plan oriented toward disseminating ethnical, religious or political hatred;
- b) operation as an international network;
- c) availability of war weapons, explosives, chemical or bacteriological agents or any other means capable of threatening the life or integrity of an undetermined number of persons.

The requirements above mentioned constitute standards that prevent to measure with the same yardstick the case of associations or organizations which, even if they do carry out criminal actions, lack of the aggravating elements set by the international regulations on terrorism.

Having accurately defined the meaning of illegal terrorist organization, here follow some comments in the field of terrorist financing.

The bill covers acts of terrorist financing under article 213 *quater*, punishing the collection or provision of assets or funds, through whatever means, knowing that those assets or funds will be used, in whole or in part, to finance an illegal terrorist organization of the types described in article 213 *ter*, or a member of those organizations for the commission of one of the crimes for which they have been set up, whether or not such crimes ultimately occur.

The new article 213 *quater* establishes then two distinct penalties, depending on whether or not criminal actions have started to be committed: a penalty of FIVE (5) to FIFTEEN (15) years confinement or imprisonment for acts of financing irrespective of whether the crime has been committed or not; however, if the crime starts to be carried out or is fully accomplished, an aggravated penalty applies, to be established on the basis of the participation rules foreseen in articles 45 and 48 of the CRIMINAL CODE. As these rules apply only if a more severe penalty would result, the penalty of FIVE (5) to FIFTEEN (15) years imprisonment established for the autonomous crime of terrorist financing serves as the floor in all such cases where a lower penalty would result from the rules contained in articles 45 and 48.

Once the definition of the crime above analyzed is incorporated to the CRIMINAL CODE, it will be necessary that the provisions of Law 25246 governing the operation of the FINANCIAL INTELLIGENCE UNIT (Chapter II) and the Administrative Criminal Regime for money laundering crimes (article 278, section 1, of the CRIMINAL CODE) be amended accordingly to reflect the crime of terrorist financing (article 213 *quater* of the CRIMINAL CODE). In this respect, article 6 has been amended, empowering the FINANCIAL INTELLIGENCE UNIT to deal also with cases of terrorist financing (section 2, article 6 as amended). Furthermore, terrorist financing crime has been listed as a money laundering predicate offence (section 1, paragraph h, of article 6 as amended), as recommended by the Financial Action Task Force and Egmont Group, thereby expanding the mandate of the Financial Intelligence Units into the field of terrorist financing.

Also listed as a money laundering predicate offence are the activities of illegal terrorist organizations under article 213 *ter* of the CRIMINAL CODE (section 1, paragraph c), of article 6 as amended). Similarly, article 13, section 2 and article 19 have been amended to reflect the reference to terrorist financing.

Finally, concerning the Administrative Criminal Regime, article 23, section 1) of said law has been amended to impose a fine to any legal entity that has collected or provided assets or money for use by any member of a terrorist organization as provided in the new article 213 *quater* of the CRIMINAL CODE.

All of the above are sufficient grounds for enacting the bill being referred.

Yours respectfully,

MESSAGE 1913

Dr. Alberto Angel Fernández

Chief Minister

Dr Alberto Juan Bautista Iribarne

Minister of Justice and Human Rights

**National Executive Branch**

BE IT ENACTED BY THE SENATE AND HOUSE OF  
REPRESENTATIVES OF ARGENTINA IN CONGRESS  
ASSEMBLED,

**ARTICLE 1:** The CRIMINAL CODE is hereby added, under Title VIII of the Second Book, the following chapter: "Chapter VI. Illegal Terrorist Organizations and Terrorist Financing".

**ARTICLE 2:** The CRIMINAL CODE is hereby added, under Chapter VI of Title VIII of the Second Book, the following article:

"ARTICLE 213 *ter*. A penalty of FIVE (5) to TWENTY (20) years confinement or imprisonment shall be imposed to anyone taking part of an illegal association that specifically purports, through the commission of crimes, to terrify population or compel a government or an international organization to do or abstain from doing any act, provided the following can be evidenced:

- a) existence of an action plan oriented toward disseminating ethnical, religious or political hatred;
- b) operation as an international network;
- c) availability of war weapons, explosives, chemical or bacteriological agents or any other means capable of threatening the life or integrity of an undetermined number of persons.

The minimum penalty applicable to founders or leaders of such an organization will be TEN (10) years confinement or imprisonment".

**ARTICLE 3:** The CRIMINAL CODE is hereby added, under Chapter VI of Title VIII of the Second Book, the following article:

"ARTICLE 213 *quater*. A penalty of FIVE (5) to FIFTEEN (15) years confinement or imprisonment, unless a more severe penalty would result from the rules of articles 45 and 48, to anyone collecting or providing assets or funds, through whatever means, knowing that those assets or funds will be used, in

whole or in part, to finance an illegal terrorist organization of the types described in article 213 *ter*, or a member of those organizations for the commission of one of the crimes for which they have been set up, whether or not such crimes ultimately occur".

**ARTICLE 4:** Article 6 of Law 25246 is hereby amended to read as follows:

"ARTICLE 6: The FINANCIAL INTELLIGENCE UNIT shall be responsible for analyzing, processing and reporting information so as to prevent:

1) Money laundering (article 278, section 1, of the CRIMINAL CODE) having as predicate offences any the following:

- a) illicit trafficking in narcotic drugs (Law 23737);
- b) illicit arms trafficking (Law 22415);
- c) activities conducted by illegal associations in the terms of article 210 *bis* of the CRIMINAL CODE and by illegal terrorist organizations in the terms of article 213 *ter* of the CRIMINAL CODE;
- d) illicit acts committed by illegal associations (article 210 of the CRIMINAL CODE) set up to commit crimes with political or racial ends;
- e) fraud against Government (article 174, section 5, of the CRIMINAL CODE);
- f) offences against Government as established in Chapters VI, VII, IX and IX *bis* of Title XI of the Second Book of the CRIMINAL CODE;
- g) child prostitution and child pornography, as established in articles 125, 125 *bis*, 127 *bis* and 128 of the CRIMINAL CODE;
- h) terrorist financing (article 213 *quater* of the CRIMINAL CODE).

2) Terrorist financing (article 213 *quater* of the CRIMINAL CODE)".

**ARTICLE 5:** Section 2 of article 13 of Law 25246 is hereby amended to read as follows:

"2) Direct the investigation of acts, activities or transactions which, in accordance with this law, may be deemed money laundering or terrorist financing activities as provided in article 6 of this law and, if applicable, make any findings available to the Public Ministry of the Nation for the adoption of pertinent actions".

**ARTICLE 6:** Article 19 of Law 25246 is hereby amended to read as follows:

"ARTICLE 19: If the FINANCIAL INTELLIGENCE UNIT has completed the investigation of the reported transaction and there is sufficient evidence to establish it as a suspected money laundering or terrorist financing activity under this law, notice thereof shall be given to the Public Ministry of the Nation in order to determine whether or not a criminal action is appropriate".

**ARTICLE 7:** Section 1 of article 23 of Law 25246 is hereby amended to read as follows:

"1) A penalty of TWO (2) to TEN (10) times the value of the assets that are the subject matter of the offence, shall apply to any legal entity the governing body of which shall have applied assets of criminal source possibly intending that they be viewed as of lawful source, in the terms of article 278, section 1), of the CRIMINAL CODE, or shall have collected or provided assets or funds for use by any member of an illegal terrorist organization, in the terms of article 213 *quater* of the CRIMINAL CODE. A crime shall be deemed to exist when the threshold established by the former of above referred provisions shall have been exceeded, even if the various interrelated events that would have together exceeded such threshold had been committed by different individuals, with no agreement among them, and therefore not subject to criminal prosecution".

**ARTICLE 8:** Notice hereof be given to the NATIONAL EXECUTIVE BRANCH.

**Dr. Alberto Angel Fernández**

Chief Minister

**Dr Alberto Juan Bautista Iribarne**

Minister of Justice and Human Rights