



RESEARCH PAPER

Analysis of the Defense of Insanity in International Criminal Law

¹Ali Ajmal, and ²Faiza Rasool

1. Visiting Faculty, University Law College, University of the Punjab, Lahore, Punjab, Pakistan

2. Consultant Psychologist, Ali Ajmal Clinic, Lahore, Punjab, Pakistan

Corresponding Author forensicanalysis007@gmail.com

ABSTRACT

The objective of this study is to analyze the defense of insanity in international criminal law. The insanity defense is an affirmative defense. Article 31(1)(a) of the Rome Statute 2002 deals with the defense of insanity in international criminal law. The legal doctrinal analysis approach was adopted to study the defense of insanity in international criminal law. The findings suggest that insanity defense is allowed in the International Criminal Court and is dealt with likewise in most of the national jurisdictions across the world. The jurisprudence developed on the insanity defense in international criminal law reflects the important role of medical evidence and expert opinion in deciding the pleas of insanity. However, the criteria for the insanity defense given in 31(1)(a) of the Rome Statute 2002 need to be amended considering the latest developments in mental health and behavioral sciences.

Keywords: Criminal, Defense, International, Insanity, Law

Introduction

The insanity defense, which is a defense against the criminal responsibility of a person, was first formally recognized in international law in Article 31(1)(a) of the Rome Statute, 2002. Before the enactment of the Rome Statute, the defense of insanity existed in international law, but there was no statutory provision (Chifflet & Freckelton, 2022). The International Criminal Court is the first permanent and independent international court to conduct investigations and prosecute offenders guilty of certain crimes (Laden, 2013). According to Article 31(1)(a) of the Rome Statute, 2002, a person shall not be liable for his action(s) if, at the time of his action(s), he was suffering from such a mental condition that diminished his mental capacity so much so that he became unable to know and/or appreciate the nature of his act(s) or to control himself. This criterion of insanity defense given in the Rome Statute, 2002, is the same criterion which is adopted by most countries in the world (Ajmal et al., 2023c).

Literature Review

The International Criminal Court has jurisdiction over certain crimes. It can exercise its jurisdiction subject to the fulfillment of certain conditions, i.e., when national courts are unable and/or unwilling to prosecute the offenders or when the UNSC or the states parties to its statute refer a matter to the court. The ICC is an international judicial personality and can exercise its jurisdiction over the states which are parties to the Rome Statute or any state which accepts the jurisdiction of this court by special agreement (Article 5, Rome Statute of the International Criminal Court, 2002).

International criminal law believes in the individual responsibility of a criminal rather than organizational responsibility for the crimes committed. It is the individuals who shall be accountable for the crimes committed by them if found guilty. However, the accused can defend themselves against the charges framed against them by taking any of the defenses available in criminal law, which also includes the defense of insanity (Tobin, 2007). Before the enactment of the Rome Statute in 2002, the defense of insanity could not be said

to be recognized formally, as we do not see this defense in the International Tribunals (Meynen, 2022).

Criminal law, either national or international, stands on a basic principle of criminal responsibility. Fixing criminal responsibility on an accused is necessary to declare him or her guilty for the crimes committed by him or her. However, fixing criminal responsibility becomes a complicated task when the mental health of an accused is in question. Temporary or permanent abnormal mental health conditions of the accused, depending upon the condition, bar the law from fixing the criminal responsibility upon the accused (Ajmal & Rasool, 2023).

The jurisprudence developed by the ICC on the defense of insanity is limited, as the defense of insanity so far is rarely invoked in the ICC. Although the defense of insanity and the competency to stand trial are two different things, the most central feature which both share is the mental health condition of the accused. Moreover, pleas of fitness to stand trial are more common in the ICC than pleas of insanity defense. Thus, the guidance in the case of insanity pleas can be taken from the jurisprudence developed by the ICC on the fitness to stand trial since both involved the mental health condition of the accused (Ajmal et al., 2022b)

Rule 135 of the Rules of Procedure and Evidence (2005) deals with the unfitness to stand trial. It is mandatory for the court to postpone the trial of a person who is suffering from a mental condition which makes him or her unable to understand the proceedings against him or her subject to the medical opinion and the satisfaction of the court. Competency to stand a trial must be seen as an element of the right to a fair trial (*The Prosecutor v. Laurent Gbagbo and Charles Ble Goude*, 2015).

Material and Methods

The doctrinal legal research method was used to study the defense of insanity in international criminal law.

Results and Discussion

Criteria for Insanity Defense Under the Rome Statute, 2002

Article 31(1)(a) of the Rome Statute deals with the defense of insanity. There are certain criteria of legal insanity. Accordingly, a person shall not be liable for his criminal action(s) if, at the time of his action(s), he was suffering from such a mental condition that diminished his mental capacity so much so that he became unable to know and/or appreciate the nature of his act(s) or to control himself (Article 31(1), Rome Statute of the International Criminal Court, 2002).

At the Time of Commission of the Offense

The defense of insanity given in Article 31(1) of the Rome Statute is limited to the mental condition(s) of an accused at the time of the offense. The mental condition of an accused before or after the commission of a crime is out of the scope of the defense of insanity under the Rome Statute. This is how the national jurisdictions across the world deal with the defense of insanity, as in the national jurisdictions the scope of the insanity defense is limited to the mental condition of the accused at the time of committing a crime (Ajmal et al., 2023b).

Destruction of Mental Capacity Due to Mental Condition

There must be the destruction of the mental capacity of an accused due to his or her abnormal mental condition to avail the defense of insanity (Article 31(1)(a), Rome Statute of the International Criminal Court, 2002). However, the statute does not specify or explain the destruction of mental capacity due to the mental condition of an accused. The general criterion for legal insanity is the substantial loss of perception and/or cognition of the accused (Ajmal & Rasool, 2024b).

Unable to Appreciate the Unlawfulness and/or Control the Conduct

According to Article 31(1)(a) of the Rome Statute, to avail of the defense of insanity, the mental condition(s) of an accused must be so deteriorated that he or she is not able to appreciate the illegality of his or her conduct and/or must not be able to control his or her actions due to his or her mental condition. This criterion of insanity defense given in the Rome Statute is the same as the criterion of insanity defense given in M'Naughton's Rule (Ajmal et al., 2022b).

Proof in Insanity Plea

Although it is not mentioned in the Rome Statute, 2002, or in the Rules of Procedure and Evidence, 2005, about the standard and burden of proof in insanity pleas, it was decided by the ICC in the Ongwen Case that to secure the conviction of an accused, the prosecution has to prove the relevant important facts beyond the reasonable shadow of doubt (*The Prosecutor v. Dominic Ongwen*, 2019). In ICTY, the appeals chamber specified that the burden of proof in the pleas of insanity defense and diminished capacity lies with the defense. It is the accused who has to prove it on the balance of probabilities of the standard of evidence that, at the time of the offense, he was having an abnormal mental health condition (*Prosecutor v. Delalic, Mucic, Delic, Landzo*, 2001). As a standard practice across the national jurisdictions in the world, the burden of proof in the plea of insanity is on the accused, as the accused must prove his or her legal insanity on a certain standard of evidence (Ajmal & Rasool, 2024a).

Medical Examination in Insanity Plea

The medical examination of an accused pleading insanity is held under Rule 135 of the Rules of Procedure and Evidence (2005). The trial chamber can order a mental health evaluation of an accused on the request of defense or prosecution. Moreover, the trial chamber may order a mental health examination of an accused on its own. For the mental health evaluation of an accused, the evaluation must be carried out by one or more experts. In the cases where the mental health defenses were taken, the ICC relied on the forensic medical evaluations of the accused to determine the legal insanity of the accused (Meynen, 2022). The practice of the ICC to determine the legal insanity of an accused is aligned with the statutory requirement and the practice of national jurisdictions across the world, which rely on the medical opinion of the relevant experts to determine the legal insanity of an accused (Ajmal et al., 2023a).

Forensic evaluations of the accused being tried by the ICC have certain challenges. Collecting and analyzing collateral information relevant to forensic evaluations of the accused is one of the challenges to forensic mental health evaluations. Moreover, the mental health professionals trained and practicing in different jurisdictions have different professional guidelines, which further complicates the procedure of forensic mental health evaluations (Hiromoto & Sparr, 2023).

Expert Witnesses in Insanity Pleas

The practice of presenting and admissibility of expert witnesses when the mental health of the accused is involved can be seen in the ICC as obvious from the Ongwen Case,

Landzo Case, Gbagbo Case, Hadzic Case, etc. where the parties presented expert witnesses to further their stances (*The Prosecutor v. Dominic Ongwen*, 2021; *The Prosecutor v. Laurent Gbagbo and Charles Ble Goude*, 2015; *Prosecutor v. Goran Hadzic*, 2015; *Prosecutor v. Delalic, Mucic, Delic, Landzo*, 2001). This practice of the ICC is aligned with the practice of presenting expert witnesses in the national courts in insanity pleas from both sides, i.e., the prosecution and the defense. The court itself can call expert witnesses to assist the court in deciding the matters where the pleas of insanity are taken. The experts who evaluate the mental health condition(s) of an accused, pleading insanity, must be examined by the party who presented the experts and then cross-examined by the opposing party (Ajmal et al., 2022a).

Diminished Capacity

The Rule of Procedure and Evidence 145(2)(a) (2005) provides that substantial diminished mental capacity can be considered a mitigating factor. Diminished responsibility in international criminal law as a defense was first seen in the Landzo Case (2001). It was the first time that the ICTY considered this defense, which potentially smoothed the implementation of the insanity defense in international proceedings. The defense of diminished responsibility, unlike the defense of insanity, was interpreted as a partial defense against the criminal liability of an offender. It can serve as a mitigatory factor and be relevant in the imposition of the sentence (*Prosecutor v. Delalic, Mucic, Delic, Landzo*, 2001).

The defense of diminished capacity is allowed when there is substantial impairment in the mental capacity of a person which is sufficient to be considered a mitigating factor. In the Landzo Case (2001), the trial chamber focused on his inability to control his actions rather than his inability to know or appreciate the wrongfulness of his actions in the defense of diminished responsibility. Moreover, in this case, the role of expert opinion and medical evidence in the defense of diminished capacity was also considered and interpreted (Chifflet & Freckelton, 2022).

Ongwen Case

The Ongwen case was the first case in which the accused raised the defense of insanity before the ICC. This case is unique in the development of relevant jurisprudence on the defense of insanity, as in this case, for the first time, the defense of insanity was raised after the enactment of the Rome Statute. Dominic Ongwen, a former commander of the Lord Resistance Army of Uganda, was sentenced to 25 years of imprisonment by the International Criminal Court. Ongwen unsuccessfully raised the defense of insanity, unfitness to plead, diminished responsibility due to mental illness, duress, and the cumulative effects of mental illness and duress. However, the pleas were rejected, and Ongwen was sentenced to 25 years imprisonment on 61 counts, including murder, rape, and torture. The court concluded that Ongwen was not suffering from mental illness at the time of his crimes. The conclusion of the court was based on the mental health examination of Ongwen by qualified mental health professionals. The Ongwen Case is the first precedent on the defense of insanity in the ICC (Hiromoto & Sparr, 2023).

Recommendations

International criminal law recognizes the doctrine of insanity defense against the criminal liability of a person. The International Criminal Court accepts the defense of insanity under Article 31(1)(a) of the Rome Statute, 2002. However, the implementation of insanity defense in the international criminal court has some inherent hurdles, which makes its implementation a bit difficult and different than in the national jurisdictions due to the political, legal, and international scenarios. These hurdles can be overcome by making international forensic practice more conducive to being able to work under the existing international criminal court's structure. The training of relevant stakeholders and research

on the subject can be beneficial to meeting the much-needed objectives. There is a need to train and hire full-time mental health professionals for the forensic mental health evaluations of the accused being tried by the ICC.

The criteria of insanity given in 31(1)(a) of the Rome Statute 2002 must be revised and reformulated considering the advancements in the fields of mental health and behavioral sciences by adopting multidisciplinary approaches. The expression of the 'destruction of mental capacity' is not only ambiguous but unscientific too. The complete loss of mental capacity is not possible and is not relevant either (Ajmal & Rasool, 2023). Moreover, terms such as 'mental disease' and 'mental defect' are unscientific and derogatory terms which are no longer in use in the literature of mental health and/or behavioral sciences. These terms must be amended and substituted by the expression 'mental disorder'.

There is a general suspicion about the defense of insanity in the legal fraternity, which is based on misperceived notions which must be tackled at international as well as national levels. Many in the legal fraternity see the defense of insanity as not important, if not all relevant, which is a hurdle in the way of the implementation of this defense in letter and spirit. Even during the process of drafting the Rome Statute, the defense of insanity was not given its due importance (Xavier, 2016). Training relevant stakeholders on the defense of insanity is highly recommended.

Conclusion

International criminal law accepts the doctrine of the defense of insanity. The jurisprudence on the defense of insanity is still developing, as this defense is rarely taken in the ICC. Like the national jurisdictions across the world, the ICC considers the mental condition(s) of the accused at the time of his or her criminal actions in determining his or her legal insanity. Medical and expert opinions play a central role in deciding the pleas of insanity in the ICC. However, the criteria for the insanity defense given in Article 31(1)(a) of the Rome Statute 2002 are ambiguous and need to be amended. Moreover, the training of the relevant stakeholders is recommended to tackle the intricacies of the defense of insanity in the international judicial scenario.

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