International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 12, Issue 4
April, 2025
Pages: 250-261

Partial Defense in International Law

Seyyed Haider Shah Mousavi

Professor of Law and Political Science at Jahan University, Qom University, Iran

E-mail: Sayedhaidar786@gmail.com

http://dx.doi.org/10.18415/ijmmu.v12i4.6739

Abstract

After the incidents of international crimes in the space of Yugoslavia and Ronda, the international organization under the name of the United Nations Security Council started to establish international criminal courts by issuing resolutions 827 and 955 and after some time, according to the decision of another resolution 52/152, the United Nations General Assembly also established the International Criminal Court in order to bring the perpetrators of international crimes to trial and condemn them to relieve the pain of the world community. However, according to national and international human rights statutes and conventions, the accused also have the rights that have been emphasized in the trial process. Among the rights that the accused is entitled to is citing defenses, including partial defense, which, if proven, does not completely absolve the accused of guilt, but rather reduces the punishment or changes the criminal title, i.e. from intentional to unintentional murder. It has also set forth a criterion for accepting this defense, which is different in countries. In some national courts, the defendant's mental health must have been significantly damaged and in some other cases, if the damage caused to the mental capacity of the accused is not significant, but due to this situation, the accused cannot control his behavior at the time of committing the crime, it is considered a defense. This is while the procedure and regulations of international criminal courts regarding partial defense have neglected not only the rights of the accused, but also the interests of the victims of the crime.

Keywords: *The Rights of the Accused; The Interests of the Victims; Partial Defense; International Criminal Courts*

Introduction

In the last few decades, the atmosphere of international law has brought remarkable performances and improvements in two fields. One of these two is human rights and the other is international criminal law. Regarding human rights, after the terrible event of the Second World War, numerous international documents and treaties such as the Geneva Quadrilateral Convention (1949), the International Covenant on Civil and Political Rights (1966), the European Convention (1950) and the American Convention (1969) human rights and protocols (1977) crystallized (Mir Mohammad Sadeghi, 2010, 45). In their shadow, many manifestations of fundamental human rights that are considered essential for the life of

mankind can be seen (Zamani, 2007, p. 279; Dickusen, 2016, p. 487). One of these manifestations is the provisions regarding the rights of the accused. But in the context of international criminal law, the focus is more on prosecuting the perpetrators who commit the most serious international crimes, against international public order, such as; Genocide, crimes against humanity, war crimes and rape (Mousizadeh, 2015, p. 83; Porba Farani, 2018, p. 7) and it is the responsibility of the international criminal courts to bring the perpetrators of these crimes to trial and condemn them, to alleviate the sufferings of the international community (Drumbl, 2007, p. 173). In this way, the atmosphere of international criminal proceedings is created by the accused and perpetrators of international crimes and the people who have suffered the most severe physical and psychological injuries during ethnic, linguistic, religious, and racial conflicts. On the one hand, it is expected that the custodians of the said courts, in line with their assigned duties, will execute justice for the victims of the crimes committed (Saeidi, 2013, p. 394). This cannot be achieved except through the legal process and punishing criminals and persons who have acted contrary to the orders or orders of the legislator (Yak Rangi, 2016, p. 44). On the other hand, the defendants also have a series of rights, and failure to comply with their rights exposes the court to accusations of injustice. One of the cases that can challenge national and international criminal justice is the claim of "partial defense" when committing a crime.

Partial defense in some countries such as England, Ireland and Queensland changes the criminal title from intentional to non-intentional murder and in some other countries such as South Africa and New South Wales and countries that are members of the Roman Germanic system, it reduces the punishment. The criterion for accepting this defense is different. Thus, in some national courts such as England, Queensland, the defendant's mental health must be significantly damaged and in some other cases, if the damage to the defendant's mental capacity is not significant, but due to this situation, the defendant cannot control his behavior at the time of committing the crime, it is considered a defense. In this sense, there are three types of partial defense in English law; loss of control, reduced responsibility and suicide pact. This defense can only be applied in the charge of murder according to section 54 of the Criminal Justice Act 2009 (Kate, 2013, p. 280-305). However, the acceptance of these defenses will make the most dangerous people in the society free from the clutches of punishment or a significant reduction of their punishment will be considered; An issue that can deprive victims of crimes of confidence in the performance of the court. The non-acceptance of this defense can also raise the doubt that the court is in sync with the interests and wishes of the victims.

This issue is also debatable from the point of view of the goals of punishment, which are mainly reflected in the national and international environment in the form of deterrence (intimidation) and retribution (Shinderman, 2013, p. 682). Deterrence (intimidation) inspired by the classical school is based on the mental ability of people at the time of committing a crime (Carlsmith, 2002, p. 284). Retribution is also based on the fact that the perpetrators of crimes deserve punishment due to their past behavior (Zaibert, 2006, p. 81), and are accountable to the government and society (Qiyasi, 2015, 6). Deterrence and punishment are based on the concept of free will. Now, although the crimes, both national and international, are so heinous and reprehensible that probably the punishments foreseen for them cannot provide deterrence or punishment in an optimal way. But in addition to that, issuing convictions without considering the partial defense and its components at the time of committing the crime, the punishment considered in the national and international criminal courts is far away from the goals of deterrence and punishment. This research, which is divided into four parts, seeks to answer the question whether national and international courts, including the first generation international criminal courts (the first part) and the second generation international criminal courts (the second part), The International Criminal Court of the third generation (the third part) in its judicial procedure or its statutes and rules of procedure and the criminal laws of Iran in the laws of punishment and procedure (the fourth part) have succeeded in respecting the rights of the accused and the victims in the field of partial defense raised by the accused?

1) Partial Defense in the First Generation of International Criminal Courts

Following the massive crimes committed by the Germans during the Second World War (1945-1939) with the enormous financial and human losses caused by the war, the idea of trial and punishment of international criminals came to mind once again. For this reason, for the first time when the war was not yet over, the Soviet Union, the United States of America and the United Kingdom emphasized their determination to punish the war criminals after the victory in the joint statement they published in Moscow on October 30. First, on August 8, 1945, the victorious governments in the war signed an agreement in London, in which the formation of a court to try the leaders of the Nazi regime was foreseen (Nuremberg Court) and then, according to the declaration of the Supreme Commander of the Allied Forces, which was issued on January 19, 1946, a court was established to deal with crimes committed in the Far East (Tokyo Court) (Khaleghi, 2009, p. 125). In none of the recently mentioned courts, "partial defense" was not foreseen at the time of committing the crime. But in spite of this issue, Rudolf Hess, who was among the leaders of the Nazi Party and appeared as a defendant at the Nuremberg Trials, claimed that he was mentally ill at the time of the crimes attributed to him in the indictment. As a result of this claim, a number of psychiatrists were appointed by the court to investigate this claim and on this basis the court declared that there was no reason to show that Rudolph Hess was not completely sane when he committed the crimes listed in the indictment (Bassiouni, 2012, p. 470). From the context of the said phrase, it can be deduced that firstly, despite the silence of the Statute, the Nuremberg Court implicitly accepted that if the insanity of the accused was proven at the time of committing the crime, it could be considered as a defense against his criminal responsibility.

Secondly, from the court's point of view, the defendant's partial defense, which includes the defendant's personality disorders, including paranoid delusions, which were confirmed by psychiatrists and are classified as psychotic disorders (noll, 2009, p.302) during the Second World War The world has not been such that he can be considered an abnormal person and be acquitted of the accusations. In this way, making the final decision in the field of personality disorders of Rudolf Hess was given to the Nuremberg Tribunal as a jurist and not a psychiatrist, he was sentenced to life imprisonment in 1946.

2) Partial Defense in the Second Generation of International Criminal Courts

The International Criminal Tribunal for Yugoslavia and Rwanda were established by UN Security Council Resolutions 827 and 955 in 1993 and 1994, respectively. Due to the fact that the International Criminal Court for Rwanda has not faced a case in the field of "partial defense" so far, the procedure of the International Criminal Court for Yugoslavia is important in this regard.

2-1) Procedure of Proceedings

In the Statute of the International Criminal Court for Yugoslavia, the defenses that the accused can invoke are not mentioned, but paragraph 58 of the report of the Secretary General of the United Nations, after which the court was established by the Security Council, clearly mentions this issue that the court decides on several defenses, such as young age or lack of mental capacity at the time of committing the crime, which prevents criminal liability[1]. Thus, it was expected that the court would mention these defenses in the rules of procedure. For this reason, in paragraph b of article 67 of the procedural code, it was established that the accused must inform the prosecutor of his intention to present any kind of defense, either in the form of reduced responsibility or lack of mental responsibility. It can be seen that the aforementioned regulation has separated the two parts of lack of mental responsibility and diminished responsibility, which are considered examples of partial defense in the laws of some countries (Sparr, 2005, p. 63). In other words, paragraph b of article 67 considers insanity and diminished responsibility as

1 - Report of Secretary General, S/257004, para. 58

two separate defenses without providing a definition of them. In a case known as Selbichi, one of the defendants, named Ezzat Landzo, raised a partial defense in the form of diminished liability at the beginning of the court hearing and in response to the accusations. In connection with Landzo's claim, five psychiatrists, one of whom was appointed by the accused, the other by the prosecutor and three by the court, after conducting investigations and long-term interviews with the accused in the prison located in The Hague and studying the information obtained from these Sessions presented their information. As a result, apart from the psychiatrist appointed by the prosecutor, who declared the accused to have no mental disorder and only to have a personality trait, other psychiatrists considered the accused to have a mental disorder in the form of reduced responsibility, which is one of the examples of partial defense but in the field of the exact type of disorder, they did not raise a single point of view. In the text of the issued decision, the trial branch defined the criterion of partial defense in the form of reduced responsibility as follows: at the time of the committed behavior, the accused must have 1- been suffering from a mental disorder, and 2- Has significantly reduced the ability of the accused to control his behavior[2] but it is not necessary that this abnormality is congenital. However, when presenting this criterion, the lower court referred to the practice of countries that have recognized this defense, such as England and Wales which stated that paragraph b of article 67 of the procedural code is considered a complete defense because the wording used in this article does not subject it to special conditions. This is despite the fact that, as mentioned, the partial defense or defense of reduced responsibility does not acquit the accused, but either reduces the punishment or changes the criminal title. In this way, the first branch proposed a new criterion for the successful outcome of a partial defense, which in principle leads to more benefits for the accused, but finally, this branch rejected Landzo's claim and declared that the psychiatrists' statements in this case were not sufficiently coherent and questionable[3]. Although the accused apparently suffers from a personality disorder, he was able to control his behavior at the time of committing the crime[4]. However, according to the reasons provided by psychiatrists, which show a picture of the accused's personality traits, the court takes this issue into consideration when determining the punishment[5].

In the appeal of the lower court, the defendant was sentenced to 15 years in prison, taking into account the abbreviated qualities. Regarding the decision issued by the court in the above case, there are several points that need to be mentioned: As mentioned in previous discussions, in the laws of different countries of the world, such as England, for many years partial defense has been recognized in the form of reduced liability, the mental health disorder of loss of control while committing a crime. However, in the said decision, only the criterion of lack of control over the behavior was accepted and thus, the partial defense was narrowly defined in the form of reduced liability. Regarding the lack of coherence between the opinions of psychiatrists, which is reflected in the verdict, it should be pointed out that four psychiatrists accepted the partial defense of the accused in the form of reduced responsibility and did not reach a single conclusion regarding its type; A subject that cannot doubt the principle of partial defense. Finally, by considering the personality characteristics of the accused when determining the punishment as an abbreviated quality, the court has included the result that is burdened on the relative partial defense in this case as well but the fact is that reducing the punishment in this way cannot reduce the responsibility of the accused in the eyes of the international community. One of the cases that the defendant's lawyers raised in their appeal was that the lower court did not define a partial defense beforehand, and this caused the defendant to not be able to prepare his defense on that basis. Although the appeals branch accepted the primary decision, it declared that a partial defense in the form of reduced liability is not considered a complete defense, contrary to what was stated in the primary decision[6]. This branch accepts that the general legal principles accepted in the Roman Germanic and Common Law systems have acted in such a way that the mentioned defense is related to the reduction of the punishment and not the defense that

2 - Prosecutor, V. Delalic, Case NO. IT -96-21 – T, 16 November 1998, Para. 1167.
3 - Ibid, para. 1182.
4 - Ibid, para. 1186.
5 - Ibid, para. 1283.
6 - prosecutor. V. Delilic, Appeal Chamber, 20 February 200, Para. 587.

leads to the complete acquittal of the accused[7]. Also, the appellate branch stated that the primary branch was not obliged to define the partial defense in advance. Therefore, from the point of view of this branch, the defendant's right to a fair trial has not been violated. While it should be pointed out that according to paragraph 1 of Article 67 of the International Criminal Court's Rules of Procedure for Yugoslavia. The prosecutor must inform the accused of the names of the witnesses he intends to summon to prove the guilt of the accused and reject the defenses made by the accused according to this article. The defendant's defenses include the defense of not being present at the scene of the crime, as well as any special defense, such as lack of mental responsibility, in which case, the defendant must provide the prosecutor with all the evidence related to these defenses, including the names of the witnesses and their places of residence. Now the question that is raised is that how can the accused and his lawyers prepare their defenses without a definition of partial defense in the court procedure? For this reason, it cannot be accepted that the right to a fair trial has not been violated. Another noteworthy issue in the decision of the appeals branch is that the branch declared that the partial defense in the form of reduced responsibility is only a matter related to the reduction of punishment. However, it is important to mention that in the international criminal law system, there is no hierarchy among the crimes foreseen in the field of humanitarian law. This means that, for example, war crimes cannot be considered lighter than crimes against humanity. Therefore, in this area, it is not possible to change the title of the crimes committed for partial defense but finally, in none of the decisions issued by the trial and appeals branches, it was not determined that if the partial defense is proved, the court is required to reduce the punishment or is only free to do so. Another case that was brought up in the International Criminal Court for Yugoslavia in connection with partial defense in the form of reduced responsibility and the defendant presented his claim in this context is the Vasilevich case[8].In this case, despite the fact that some psychiatrists confirmed his claim, the only reason accepted by the trial branch was the certificate of psychiatrists appointed by the prosecutor, who announced that the accused was committed between 4 and 5 January 1292 (that the most crimes in (occurred at that time) was not under the pressure caused by mental disorder. And for this reason, the court rejected the defendant's claim[9]. In this case, as in the previously mentioned case, it can be seen that the judges of the court have only accepted what the expert appointed by them has declared. In relation to the cases that were raised, it seems that what has reduced the probability of the partial defense being successful, regardless of the heinousness of the committed crimes, which does not affect the minds of the judges, is the wide discretion that the procedural rules have in line with The evaluation of the evidence is given to the judges.

2-2) Presenting Evidence and Examining It

According to article 21, paragraph 4 of the Statute of the International Criminal Court for Yugoslavia, the accused has a number of rights that he can enjoy during the trial process, and one of those rights is the right to cross-examine the witness who testified against him. Cross-examination is a process by which one of the parties to the proceedings questions the honesty of the witness and the truth of the statements made against her and in favor of the other party (Murphy, 1985, p. 385). In this sense, each of the judicial guardians, prosecutors, judges, as well as the defendant, can question the witnesses of the other side, and the witnesses are required to answer them. In relation to partial defense, specialists and experts in the field of psychiatry who appear as witnesses in the trial process play an important role. As mentioned in the previous discussions, in the case of Landzo, the lower division declared that expert testimony is very important in the evaluation of partial defense[10]. In Article 74 of the Rules of Procedure of the International Court of Justice, it is stated that the investigating branch can, at its own discretion or at the request of one of the parties to the proceedings, issue orders regarding the examination of the accused by experts and psychiatrists. Considering that the presentation of evidence in the court is a

7 - Ibid, Para. 59.
8 - prosecutor V. Vasilijevic, Case No. IT – 98-32-T, 29 November 2002, para. 280.
9 - Ibid, para. 295.
10 - Prosecutor V. Delalic, Trail Chamber, Ibid, paras. 1166, 1170

combination inspired by two legal systems, Common Law and Roman German (May and Wierda, 1999, p. 725), as well as the parties to the proceedings can present their witnesses or the other party's witnesses. The management of presenting evidence is the responsibility of the court, in the sense that psychiatric experts present their reasons with the permission of the court (Krug.op.cit, p. 325). In relation to the above process, one thing should be mentioned: unlike defenses such as superior order or legitimate defense, examples of partial defense are a specialized and technical issue and require entering a precise field of psychiatric information that judges often lack technical information needed in this area. And for this reason, independent evaluation of the reasons provided by them does not seem possible. In other words, this issue is more medical than legal. This is despite the fact that in the cases mentioned in the previous discussions, it was observed that the court only confirmed the opinion of the psychiatrist selected by the prosecutor and rejected the opinion of other psychiatrists. The reason for this can be found in paragraph 3 of Article 89 of the Rules of Procedure of the International Court of Justice, in which it is stipulated that the court can accept any evidence that has probative value. The reason for this can be found in paragraph 3 of Article 89 of the Rules of Procedure of the International Court of Justice, in which it is stipulated that the court can accept any evidence that has probative value. Therefore, the procedure has given a wide authority to the judges by which they can evaluate a case such as a partial defense, which has a specialized aspect, from a legal and not a medical point of view. This is the reason why the judges considered the opinion of one psychiatrist to have probative value and did not consider the opinion of several psychiatrists to have such value. It seems that the time interval between the commission of crimes and the time when the accused raises the aforementioned defense in court, which is several years, does not have any effect on the view of the judges, who have the duty to identify those responsible for serious international crimes to the world. However, if from the point of view of psychiatric sciences, the partial defense of the accused at the time of committing the crime can be considered certain, the time gap cannot be considered as a good reason for rejecting the arguments of psychiatrists by judges who do not have expertise in this field. Another issue that has challenged the defendant in the partial defense plan is the burden of proof imposed on the defendant by the judges of the International Criminal Court for Yugoslavia.

In the case of Landzo[11] as well as Vasilievich[12], the lower court declared that due to the defense proposed by the defendant, the defendant must prove the said defense and as is customary in some member countries of the common law system, the standard of proof is based on the balance of probabilities; In the sense that the accused can prove that the probability of partial defense at the time of committing the crime is higher than its impossibility. Thus, the principle is based on mental health, and if the accused claims that he was not mentally healthy at the time of committing the crime, he must prove it. While the partial defense plan can cause doubts in the minds of the judges, and as a result, the prosecutor must reject such a claim by presenting reasons. Finally, the burden of proof based on the balance of probabilities means that if the accused can create a reasonable doubt in the minds of the judges regarding his mental capacity at the time of committing the crime, and the prosecutor is also unable to remove the reasonable doubt from the minds of the judges, the sentence will be passed on the conviction of the accused.

The International Criminal Tribunal for Yugoslavia explicitly stated[13] in paragraph 3 of article 21 of its statute, which was inspired by international human rights documents, that the accused is presumed innocent until proven guilty by the prosecutor. The prosecutor is obliged to prove all the elements of the crime in such a way as to convince the judges about the guilt of the accused. The point to be mentioned in this regard is that unlike the partial defense, which is also due to the negligence of the judges of this court, no definition of it is mentioned in the procedural rules, and the first branch, when issuing the verdict, by

11 - prosecuter V. Delalic, Ibid, Paras. 1160, 1172.
12 -prosecuter V. Vasiljevic, Ibid, Para. 295.
13 - Clause 2 of Article 14 of the International Covenant, Clause 2 of Article 8 of the European Convention and Clause 2 of Article 8 of the American Convention.

referring to the secondary source of international law, defines the defense Partially presented in the form of reduced liability, in the context of the burden of proof, as long as the statute of this court, as the main source of international law approved by the United Nations Security Council, has explicitly placed the burden of proof on the prosecutor[14]. Referring to the rules in the courts of member countries of the common law system as a secondary source is considered to be disregarding the hierarchy of sources of international law on the part of an international court. The result of this situation will be that on the one hand, according to the broad powers granted to judges according to paragraph 3 of Article 89 of the Code of Procedure, the reasons presented by the accused are not considered to have probative value and on the other hand, this makes it no longer the turn of the prosecutor, as the person responsible for proving the charge, to reject the accused's claim with more reasons; an issue that can be clearly seen in the theorems of Landzo and Vasilievich. It seems that the existing procedure and procedure in the International Criminal Court for Yugoslavia is not a suitable guide for the International Criminal Court, which as a permanent institution seeks to find a balance between the accused and the interests of the victim.

3) Partial Defense in the Third Generation of the International Criminal Court[15]

3-1) Defense in the Form of Dismissed Liability

The International Criminal Court is the first permanent international court to deal with international crimes (genocide, crimes against humanity, war crimes and crimes of aggression), which is headquartered in The Hague, one of the cities of the Netherlands. The statute of the aforementioned court, which consists of 13 chapters and 128 articles (Vakil, 2010, 357) in an international conference, according to the decision of the United Nations General Assembly Resolution 152/52 (Shahbazi, 2010, 267) on July 15, 1998. Approval of 120 countries voted in favor, 7 voted against (China, Iraq, Israel, Libya, Qatar, America and Yemen) and with 21 abstentions were approved and from July 1, 2002, with its approval by 60 countries, it came into existence and started working (Joyner, 1387, 137). Among the things mentioned in the statute are the obstacles to criminal responsibility, one of which is dedicated to the lack of mental responsibility at the time of committing the crime. In Article 31 of the Statute of the International Criminal Court, for the first time, the issue of defenses was foreseen in international criminal law and they were considered as obstacles to criminal responsibility, which are considered a complete defense (Dinstein, 1996, p. 272). This means that if proven, it will lead to the acquittal of the accused. Among these defenses that are raised in part 1 of paragraph 1 of article 31 is the defense of mental disorder, which is stated as follows: "The accused is suffering from a mental illness or defect in such a way that he loses his awareness of the nature of the behavior or the illegality of the behavior or is unable to control his behavior" What is foreseen in this provision is consistent with Magnaughton's rule, which was proposed in 1843 in England in relation to the defense of insanity and then accepted in the member countries of the Common Law (Yeo, 2008, p. 243). According to the terms contained in the article, the lack of mental ability must have reached such a degree that it strongly affects a person's alertness or control over his behavior (Janjac, 2013, p. 31). However, in the statute of the International Criminal Court, they did not consider partial defense as one of the defenses, because in the design of defenses such as the defense of mental disorder in Article 31 of the statute, the term destruction is used, but in the partial defense (diminished responsibility), the mental capacity of the accused does not disappear completely. Therefore, the statute of the International Criminal Court has not accepted partial defense.

To compensate for this issue, Article 78, Paragraph 1 of the Statute stipulates that the court must consider the individual circumstances of the convicted person, regardless of the severity of the crime committed. Article 145 of the Rules of Procedure of the Court also obliges the judges to take into account all the aggravating circumstances and mitigating circumstances of the sentence when determining the

14 -. by which the prosecutor must prove that the crime committed by the defendant was committed without the defendant being entitled to defenses such as superior order, legitimate defense, or partial defense disorder.

15 - International Criminal Court

punishment, in accordance with paragraph 1 of Article 78 of the Statute. Clause 2 of Article 145 also stipulates that conditions that are not subject to the obstacles of criminal liability but significantly reduce the mental responsibility of the convict must be taken into account at the time of issuing the sentence. As a result, a person whose responsibility or, in other words, his blameworthiness is reduced by a partial defense (diminished responsibility) is presented to the world as a responsible person.

Another point is that even if the accused person's defense is proven, either in the form of insanity defense or partial defense, there are no provisions regarding keeping the acquitted person in medical centers. The reason for sending him to treatment centers is that he is still considered dangerous for society (Morse, 2011, p. 960). When the verdict of acquittal is issued, it means that the named person is still not released from the shackles of mental illness and must be treated. However, if it is proven that the conditions for sending him to the hospital do not exist, or in other words, it is determined at the time of the verdict that the mental illness of this person has disappeared, there will be no need to send him for treatment.

Perhaps it can be argued that according to the goals of punishment in international criminal law, it is based on punishment and deterrence, not rehabilitation (Henham, 2003, p. 89). This issue has been neglected by the drafters of the statute but the result will be that the acquitted person will return to the troubled area where he lived without taking any treatment, which cannot be done with other goals of international criminal law that claim peace and order. And reconciliation in such an area is harmonious.

3-2) Duties of Prosecutors and Competence of Judges

The principle of innocence is a compound term that has a special meaning. This principle is reflected as one of the progressive principles related to the acceptance of dignity and human dignity in the laws of countries and international documents and its importance is so great that it has been emphasized in national and international laws. In the word, acquittal means release, deliverance, elimination, cleansing from fault and slander (Rahmdel, 2006, 115). In Islamic law, the position of this principle is reflected in the well-known rule of "rejecting punishment due to suspicions", which has been directly and indirectly expressed in many narrations (Forotan et al., 2016, 60). In law, the principle of acquittal means "principle of criminal acquittal", "presumption of innocence", "presumption of innocence of the accused". In international criminal law, Article 66 of the Statute of the International Criminal Court has separately stated the principle of acquittal. Thus, in relation to the plan of "partial defense" by the defendant, the prosecutor must reject the defendant's claim by presenting the reason. Even if, based on the mentioned article and also the procedure left by the International Criminal Court for Yugoslavia, we cannot give such an opinion, there are other articles in the statute that strengthen this point of view. One of them is paragraph 1 of article 67 of the statute, which stipulates that no reciprocal duty is imposed on the accused in order to prove the evidence or the duty to reject it. Also, another article that can be mentioned in this regard is paragraph 1 of article 54 of the statute, which in paragraph 1 of the said article obliges the prosecutor to, during the investigation and interrogation, all the circumstances that are in favor of and against the accused. However, the executive guarantee for the presence of the prosecutor in collecting evidence to exonerate or reduce guilt is not seen in the statute (Brady, 2001, p. 412). Exculpatory evidence also includes evidence of partial defense of the accused during the commission of the crime. In paragraph 2 of article 67 of the statute, it is stated: "In addition to the other cases stipulated in this statute regarding the presentation of documents to the accused, the prosecutor must, as soon as possible, present the documents that he has or believes to be in his possession or under his control." which shows the innocence of the accused. It either mitigates his guilt or affects the credibility of the interrogation documents to be presented to the accused. In case of doubt in the application of this paragraph, the decision will be taken by the court.

In connection with this paragraph, several debatable points should be mentioned. First, the documents must be available to the prosecutor. In other words, the prosecutor's knowledge of the existence of exculpatory documents in the possession of any natural or legal person does not mean possession and control, and the prosecutor is not tasked with informing the accused of such documents. If the accused is aware of the existence of such documents, he will ask the court to issue an order to present those documents.

Second, the prosecutor must believe in the acquittal of the documents. The prosecutor has the discretion to determine this issue, while the amount of evidence collected by the research team does not allow the prosecutor to examine all the evidence. Especially considering the fact that his main duty is to prove the guilt of the accused, and in the end, the court cannot oblige the prosecutor to search for exculpatory evidence in the case.

Another question that is raised in this regard is that according to the last wording of paragraph 2 of article 67, who can doubt the application of this paragraph? According to the meaning of the phrase, not only the prosecutor, but also the accused and even the court can express their opinions about the matter. However, Article 83 of the Code of Procedure stipulates that "as soon as it becomes possible, the prosecutor can request the court to convene a meeting without the presence of the accused in order to make a decision regarding paragraph 2 of Article 67." In case of doubt in the application of paragraph 2 of Article 67, the prosecutor is not required to request such a meeting and finally, even if there is exculpatory evidence, the accused is denied access to it. It may be argued that in none of the provisions of the statute and the rules of procedure, there is no prohibition for the accused to request a meeting based on the authority of the court, according to paragraph 3 of article 64 of the statute[16].

Even if such an argument is accepted and a hearing is held at the defendant's request, it seems that the court will not make a decision in this regard until the defendant can prove that there is exculpatory evidence in the prosecutor's possession. However, the sum of these materials shows the attention of the drafters of the statute to the vast resources and facilities available to the court as an independent pillar. For this reason, bearing the burden of proof on the accused will be contrary to the above-mentioned articles. However, the thing that can reduce this desirable situation is the broad powers that have been granted to judges according to paragraph 4 of article 69 of the constitution and paragraph 2 of article 63 of the procedure, according to which each branch of the court is allowed to be relevant or admissible. Having all the evidence presented, have a free evaluation. As a result, judges are free to choose the reasons presented by psychiatrists, whether they were chosen by the accused or the prosecutor or the court decided to determine them. Despite the complex process of identifying partial defense in individuals, the origin and criteria of partial defense can be different in different countries with an argument similar to what was raised in Landzo's case. Thus, according to the existing regulations, the accused cannot hope to accept a "partial defense" in the International Criminal Court.

4) Partial Defense in Iran's Criminal Law

As stated in the introduction of this research, partial defense is different in the laws of countries; In some countries, such as England, Ireland and Queensland, it changes the criminal title from intentional to unintentional murder, and in some other countries, such as South Africa and New South Wales, and member countries of the Roman Germanic system, it reduces the punishment. Also, the criterion for accepting this defense is different. Thus, in some national courts, the defendant's mental health must be significantly damaged, and in other cases, if the damage to the mental capacity of the defendant is not significant, but due to this situation, the defendant cannot behave at the time of committing the crime. To

16 - According to this paragraph, the court must arrange for the presentation of documents that have not been presented before, so that the trial can be prepared.

control oneself is considered a defense. In Iran's criminal laws, in Article 38 of the Islamic Penal Code, one of the ways to reduce the punishment is the specific condition of the accused, such as illness, which includes mental illnesses to the extent that they do not cause a complete loss of will or rationality. However, regardless of the fact that the mitigation of the subject of this article is left to the discretion of the court, even if mitigation is considered, such a thing is not considered to reduce the responsibility of the perpetrator. Finally, it seems that Iran's criminal law, based on Article 18 of the Islamic Penal Code, has paid attention to the partial defense in the form of reduced responsibility of the accused because it obliges the court to consider the mental and psychological state of the perpetrator during the commission of the crime.

However, it can only be claimed that the aforementioned article will change people's attitude towards the perpetrator, when the court clearly mentions the relative disorder of the accused and her reduced responsibility while issuing a sentence. However, it can only be claimed that the aforementioned article will change people's attitude towards the perpetrator, when the court clearly mentions the relative disorder of the accused and his reduced responsibility while issuing a sentence. However, in Iran's criminal law, there are no regulations regarding the sending of perpetrators who have a relative disorder in discrimination or those who claim partial self-defense to medical centers.

Conclusion

After the terrible events of the Second World War, numerous international criminal courts followed each other in order to prosecute the perpetrators of international crimes and convict them, in order to achieve peace and Alleviation of the sufferings of the world community was formed in the world. They simply could not care about the interests of the victims of crimes and ignore the rights of the accused, which they enjoy according to the national and international human rights statutes and conventions. This is despite the fact that the procedures, statutes and procedures of the said courts not only show the lack of respect for the rights of the accused, but also disregard for the interests of the victims of crimes. By not accepting partial defense, international criminal courts have moved away from the goals of punishment and deterrence based on the free will of individuals.

Having regulations regarding the free examination of evidence in the atmosphere of the international criminal court proceedings means ignoring psychiatric science by judges who do not have expertise in this field and finally, the lack of provision of rules and regulations regarding the treatment of persons who are acquitted due to having a defense or whose punishment is reduced, measures have not been considered for their treatment.

According to what was stated and according to Article 123 of the Statute of the International Criminal Court, which has accepted the appeal. Necessity requires that Article 31 of the aforementioned statute be amended in two ways; The first case is the provision of a partial defense in the form of reduced liability, and the second case is to keep the regulations on the free review of evidence, allowing the judges to accept only the theories provided by psychiatrists and experts who specialize in this field. Finally, by adding regulations regarding the sending of acquitted persons to medical centers, as it exists in different countries of the world such as Iran, the path should be paved for the balance between the rights of the accused and the interests of the victim.

It is obvious that amending the regulations in the way that was proposed will make the Statute of the International Criminal Court, which has been approved by 120 countries of the world, be considered as a well-known model in protecting the interests of crime victims and the rights of the accused.

References

A. Persian Sources

1) Pourbafarani, Hassan, International Criminal Law, Tehran, Jangal-Javadane Publications, second edition, 2018.

2) Joyner, Christo Fersi, International Law in the 21st Century, translated by Kad Khodayi, Abbas; Vakil, Amir Saed, Tehran, Mizan Publications, first edition, 2008.

3) Khaleghi, Ali, Essays on International Criminal Law, Tehran, Shahr Danesh Institute of Legal Studies and Research, first edition, 2018.

4) Dixon, Martin, Introduction to International Law, translator, Zakarian, Mehdi; Kolahi, Hassan Saeed, Tehran, Khorsandi Publications, first edition, 2016.

5) Saeedi, Ahmed, Commandments from the Qur'an, Qom, Jamkaran Mosque Publications, 5th edition, 2013.

6) Shahbazi, Oramesh, The International Law System of Unity in the Same Multiplicity, Tehran, Shahr Danesh Institute of Legal Studies and Research, first edition, 2009.

7) Qiyasi, Jalaluddin; Sarikhani, Adel, Comparative study of Islamic general criminal law and subject law, vol. 3, Qom, University and Field Research Institute, first edition, 2015.

8) Musa Zadeh, Reza, Public International Law, Tehran, Mizan Publications, third edition, 2015.

9) Mir Mohammad Sadeghi, International Criminal Law, Tehran, Mizan Publications, third edition, 2019.

10) Wallace, Rebecca, international law, translator, Zamani, Seyyed Ghasem; Behramlou, Mahnaz, Tehran, Shahr Danesh Institute of Legal Studies and Research, second edition, 2017.

11) Vakil, Amir Saed, General International Law, vol.1, Tehran, Majd Publications, first edition, 2011.

12) Yag Rangi, Mohammad, Crimes against the administration of judicial justice, Tehran, Khorsandi Publications, third edition, 2016.

13) Rahmdel, Mansour, Iran's Constitution and the Principle of Innocence, Basic Laws, No. 6 and 7, 2015.

14) Froutan, Mustafa; Shakeri, Yaser, Filundi, Khalil, the principle of acquittal in the criminal law of Iran, Afghanistan and international documents, Legal Thinkers, No13, 2016.

B. Latin Sources

15) Bassiouni,Cherif (2012), Introduction to international criminal Law, Second Revised Edition, Martinus Nijhooff publishers.

16) Brady, Helen (2001), “Disclosur of Evidence” in Roy s. Lee, Hakan Friman, Sivlvia A, Fernandez de Gurmendi, herman Von Hebel and Darryl Robinson (eds), The international criminal Court: Elements of Crims and Rules of procedure and Evidence, transnational publishers inc.

17) Carlsmith, Kevin M, Darley, john M, Robinson, paul H(2002), "why we do punish? Deterrnce and just Deserts as Motives for punishment", journal of personality and social psychology, Vol. 83, p. 284-299.

18) Drumbl, Mark A (2007), Atrocity, punishment and international Law, Cambridge University Press.

19) Dinstein, Yoram(1996). War Crimes in international law, Martinus Nijhoff publishers.

20) Fitz-Gibbon, Kate (2013). "Replacing Provocation in England and Wales: Examining the Partial Defence of Loss of Control". Journal of Law and Society, Vol. 40, p. 280-305.

21) Henham, R (2003)," some issue for sentencing in the international criminal Court", International and comparative Law Quarterly. Vol. 52, p. 81-114.

22) Murphy, peter (1985), A practical Approach to Vevidence, second edition. Financial training publications.

23) Morse, Stephen J (2011)," Mental disorder and criminal Law", journal of criminal Law and Criminology, Vol. 101, p. 885-968.

24) May, Richard, Weirda. Marieke (1999)," Trends in international criminal Evidence: Nuremerg, Tokyo, The Hauge and arasha", Columbia journal of Transactional Law Association, Vol. 37, p.725-765.

25) Shinderman, Adam b (2013), The Devel's Advocate: Using Neurocientific Evidence in international criminal trials?", Brooklyn journal of international Law, Vol. 38, p. 655- 698.

26) Sparr, Landy f (2005)," mental Incapacity defenses at the war crimes tribunal: Question and controversy", The journal of the American Academy of psychiatry and the Law, Vol, 33 p.59-70.

27) Yeo, Stanley (2008)," The insanity Defense in the criminal Law of the commonwealth of Nation", Singapore journal of legal Studise, Issue December, p. 241- 263.

28) Zaibert, Leo (2006)," punishment and Revenge", Law and philosophy, Vol. 25, p. 80-118.

C. Internet Site

https://en.m.wikipedia.org/wiki/Partial_defence.