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## HUMANITARIAN LAW

Professor Röling was, thanks to his experience in Tokyo (IMT, 1946-1948), a foremost expert in humanitarian law, the law of warfare.

In fact, through his writings and e.g. his dissenting opinion at the IMT, he *inter alia* helped shaping the right balance where it concerns the individual responsibility and hence accountability of both the subordinate and the commander, as they have now been laid down in the 1998 Rome (ICC) Statute, articles 25, 28 and 33 in particular:

### Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

### Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her

failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

#### *Article 33*

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

FOR THE COMPLETE ICC STATUTE: <http://www.un.org/law/icc/statute/romefra.htm>

The ICC should be seen in the light of the 4 1949 Red Cross Conventions and their 1977 Protocols.

For an introduction: <http://www.redcross.lv/en/conventions.htm>

The protection provided by the Conventions applies to the following categories of persons:

**The First Convention** - wounded and sick members of the armed forces in the field:  
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/fe20c3d903ce27e3c125641e004a92f3>

**The Second Convention** - wounded, sick, and shipwrecked members of the armed forces at sea as well as shipwreck victims  
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/44072487ec4c213c125641e004a9977>

**The Third Convention** - prisoners of the war:  
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68>

**The Fourth Convention** - civilians in times of war:  
<http://www.icrc.org/ihl.nsf/0/6756482d86146898c125641e004aa3c5?OpenDocument>

In 1977 two additional Protocols were added,  
Protocol I relates to the Protection of Victims of International Armed Conflicts:  
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>

whereas Protocol II relates to the Protection of Victims of Non-International Armed Conflicts  
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545>

Already where it concerns these Protocols the impact of Röling's work at the IMT could be noticed. The main humanitarian law organization, of course, is the ICRC, and organization for which Röling displayed great admiration.

Its website: <http://www.icrc.org/web/eng/siteeng0.nsf/html/home!Open>

