## Contents

	Tables of cases	viii
	Table of legislation	XV
	Acknowledgements	xvii
	Abbreviations	xix
1	Introduction	1
	Context 1	
	Structure 6	
2	Srebrenica and Rwanda and the legal aftermath	8
	Introduction 8	
	Background: Rwanda 8	
	Background: Srebrenica 11	
	Legal steps taken in domestic courts 14	
	The Netherlands: Mothers of Srebrenica and	
	Nuhanović/Mustafić 18	
	Command and control within peacekeeping operations 22	
	Individual actors' responsibility for human rights	
	protection 25	
	Mustafić & Nuhanović v Karremans, Franken & Oosterveen 26	
	Article 2 of the European Convention on Human Rights:	
	the duty to investigate 28	
	Concluding remarks 30	
3	Omission liability in domestic law	32
	Introduction 32	02
	Omission liability: a definition 33	
	General perspectives in common and civil law compared 34	
	Elements required for omission liability 35	
	Degree of liability 52	
	Digiti of intomity 32	

VI	Conten	+0
VI	1 COULTER	LA

	pagahaahing anduct 51	
	peacekeeping conduct 54	
	Concluding remarks 56	
4	Scope for omission liability under international law?	5
	Introduction 57	
	Classification of the peacekeeping commanders' conduct 58	
	Command responsibility 60	
	Commission by omission 62	
	The elements of omission liability in jurisprudence 63	
	Legal and practical constraints to omission liability	
	for peacekeeping commanders 74	
	Concluding remarks 76	
5	A legal obligation to act for the peacekeeping commander?	7
	Introduction 77	
	Peacekeeping mandates and rules of engagement 78	
	Peacekeeping operations and the relationship between	
	IHL and IHRL 83	
	International Human Rights Law 86	
	International Humanitarian Law 92	
	Concluding remarks 99	
6	The peacekeeping commander as bystander:	
	A moral obligation to act?	10
	Introduction 100	
	Bystander: a definition 101	
	Bystander liability: a moral duty to act 102	
	Actus reus 104	
	Domestic law: actus reus 104	
	Presence and control or authority as approval or encouragement 105	
	Presence as an active or effective contribution	
	to the crime 108	
	International law: actus reus 110	
	Subordination as a requirement for authority? 113	
	How do authority and presence result in encouragement or	
	approval? 113	
	Substantial contribution 115	
	Domestic law: mens rea 117	
	Voluntary presence: not distancing from the crime 119	

Practical limitations to domestic adjudication of

International law: mens rea 121 Concluding remarks 127

7	The lege ferenda perspective on the legal framework of	
	peacekeeping	129
	Introduction 129	
	A failure to act: why accountability on the	
	individual level? 129	
	Failure to protect' as a separate offence in criminal law? 133	
	Civil responsibility 138	
	A separate paradigm for peacekeeping? 141	
	Concluding remarks 142	
8	Conclusion	143
	Riblio and they	148
	Bibliography	
	Index	161