

# Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
	How Trafficked Persons Commit Crimes	3
	Aims of the Book Through the Prism of Multiple Looking Glasses	5
	Terminology	10
	References	12
<b>2</b>	<b>Human Trafficking</b>	<b>15</b>
	Introduction	15
	What Is Human Trafficking: The Legal Definitions	16
	Breaking Down the Definition	20
	Framing of the Definition	20
	Action Element of the Definition	23
	Means Element of the Definition	24
	Exploitation Element of the Definition	27
	Exploitation Is Not a Crime in the Context of Directive 2011/36 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims	33
	A Few Words on the Context of Human Trafficking	35

Conclusion	38
References	40
<b>3 Rationale for the Non-liability Principle</b>	<b>45</b>
Introduction	45
Who Is a Victim of Human Trafficking: The Legal Definition	46
Examples of Trafficked Victims Held Liable	50
Criminal Law Theory	53
Human Rights Law and the Non-liability Principle	59
Human Rights Law and the Non-liability Principle:	
Dignity	60
Human Rights Law and the Non-liability Principle:	
Human Rights Instruments	61
Human Rights Law and the Non-liability Principle:	
Case Law	64
Human Rights Law and the Non-liability Principle:	
Final Points	68
Need to Fight Human Trafficking	70
Are We Impending the Rights of the Accused Traffickers?	71
Conclusion	72
References	74
<b>4 Non-liability in European and International Law</b>	<b>79</b>
Introduction	79
Article 26 of the 2005 Council of Europe Convention	80
Article 26 of the 2005 Council of Europe Convention	
and Its Drafting	80
The Content of Article 26 of the 2005 Council	
of Europe Convention	84
Article 8 of the 2011 EU Directive on Human Trafficking	84
Non-liability in International Law	86
Relation to Similar Provisions	91

Defences for Other Special Category Victims	93
Comparison with Persons in Abusive Relationships	93
Child Soldiers	96
Conclusion	98
References	99
 <b>5 Dissecting Article 26 of the 2005 Council of Europe Convention</b>	 101
Introduction	101
First Component of Article 26: “Each Party Shall, in Accordance with the Basic Principles of Their Legal System...”	103
Second Component of Article 26: “Provide for the Possibility...”	107
Third Component of Article 26: “Of Not Imposing Penalties”	108
Fourth Component of Article 26: “On Victims...”	111
Fifth Component of Article 26: “...for Their Involvement in Unlawful Activities, to the Extent That They Have Been Compelled to Do So”	113
Missing Element: Children	116
Conclusion	117
References	118
 <b>6 Dissecting Article 8 of the 2011 EU Human Trafficking Directive</b>	 121
Introduction	121
First Component of Article 8: “In Accordance with the Basic Principles of Their Legal System”	122
Second Component of Article 8: “Take Necessary Measures to Ensure Competent National Authorities Are Entitled Not to...Prosecute or Impose Penalties”	124
Third Component of Article 8: “Prosecute or Impose Penalties...for Their Involvement in Criminal Activities”	126



Fourth Component of Article 8: “On Victims of Trafficking in Human Beings”	128
Fifth Component of Article 8: “For Their Involvement in Criminal Activities Which They Have Been Compelled to Commit as a Direct Consequence of Being Subjected to Any of the Acts Referred to in Article 2”	130
Conclusion	137
References	142
<b>7 How States Have Implemented the Non-liability Provision</b>	<b>145</b>
Introduction	145
The Use of Guidance Directed at Relevant Authorities	146
A Specific Non-liability Provision	150
The Use of Existing Legislation	156
The Use of Existing Legislation: Necessity	156
The Use of Existing Legislation: Duress	160
Conclusion	164
References	166
<b>8 What Thwarts the Use of the Non-liability Provision?</b>	<b>169</b>
Introduction	169
Ideal Victim Theory	170
Ideal Victim Theory: First Characteristic	171
Ideal Victim Theory: Second Characteristic	174
Ideal Victim Theory: Third Characteristic	175
Ideal Victim Theory: Fourth Characteristic	176
Ideal Victim Theory: Fifth Characteristic	177
How Do Perceptions About a Trafficked Person Impact the Application of the Non-liability Principle	179
Victim’s Perceptions: The Other Barriers for Using the Non-liability Provision	181
Modern Slavery Can Harm Victims	182
Distinguishing Between Victim and Perpetrator: How Do We Move Beyond the Binary Perceptions of Victim Versus the Criminal?	186

Take into Account Advice from Civil Societies	190
Conclusion	191
References	193
<b>9 An Alternative Provision</b>	<b>197</b>
Introduction	197
What Happened to the Protection?	202
What Can Be Done to Improve the Law?	203
References	206
<b>Index</b>	<b>209</b>