

**OPINION OF THE CAHDI ON PARLIAMENTARY ASSEMBLY
RECOMMENDATION 1523 (2001) ON DOMESTIC SLAVERY**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 22nd and 23rd meetings in Strasbourg respectively on 11-12 September 2001 and on 4-5 March 2002. The agenda of both meetings included an item on "Decisions of the Committee of Ministers concerning the CAHDI".
2. In the framework of this item, pursuant to the Council of Ministers' decision at their 762nd meeting (Strasbourg, 5 September 2001), the CAHDI examined Parliamentary Assembly Recommendation 1523 (2001) on Domestic Slavery and, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, concentrated on what it understood to be the public international law issues connected with the Recommendation, and adopted the following

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3. The CAHDI welcomes the adoption by the Parliamentary Assembly of Recommendation 1523 (2001) which acknowledges the seriousness of the issue of domestic slavery and the need to deal with it appropriately in order to prevent this phenomenon and to protect the victims' rights.
4. In certain circumstances, States may have a positive obligation in relation to such matters by virtue of Articles 3 and 4 of the European Convention on Human Rights. The CAHDI points out that the European Court of Human Rights has recently held that domestic legislation providing for State immunity in respect of disputes between a diplomatic mission and the members of staff of the mission does not infringe Article 6(1).
5. With regard to *paragraphs 8 and 10, iv* concerning the possible amendment of the Vienna Convention on Diplomatic Relations of 1961 (VC), since the VC is a universal multilateral treaty, member States of the Council of Europe cannot undertake any amendments thereof.
6. The CAHDI stresses that the VC is a key element for the stability of diplomatic relations. Any question of amendment thereto is therefore a sensitive matter and would have to be carefully considered.
7. Excluding immunity for *all* offences committed by diplomats in the sphere of their private life as suggested by the Parliamentary Assembly would amount in practice to reduce the scope of immunities granted under international law to functional immunity and thus put at stake the legitimate interest of the international community in facilitating international relations between States.

8. In any event, the CAHDI notes that the VC does not grant immunity to international civil servants although they do enjoy some degree of immunity by virtue of other instruments, e.g. headquarters agreements, specific conventions on privileges and immunities, etc.
9. The CAHDI recognises that diplomatic immunities may represent an obstacle for the prosecution of the authors of offences connected with domestic slavery. However, such immunities do not exempt the persons enjoying them from the duty to respect the laws and regulations of the receiving State and could not be considered incompatible with the provisions of the ECHR.
10. Moreover, the CAHDI notes that under the VC the receiving State may request the sending State to waive the immunity of a diplomat or any other member of the staff of the mission to allow them to be prosecuted where appropriate and, if such waiver is not granted, may declare the individual concerned persona non grata or not acceptable and expel him or her.
11. Further, the CAHDI wishes to recall that the VC does not exclude the authorities of receiving State from exerting other methods of control over diplomats and other staff of missions in their territory and dealing with abuses in a way which is fully compatible with the VC. Such methods could include, for instance, devising procedures for the exchange of information between Ministries of Foreign Affairs regarding mistreatment of domestic employees and abuses of immunities and privileges in relation thereto so that, where necessary, the diplomat concerned could be declared persona non grata as provided by the VC, or a residence permit for the domestic servant could be withheld (e.g. on applying for entry).
12. The CAHDI would like to stress furthermore that according to the VC, the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State and, therefore, States should be encouraged to exercise such jurisdiction to prosecute offences connected with domestic slavery.
13. In view of the above, the CAHDI concludes that in order to tackle the problem of domestic slavery, amending the VC is not a realistic solution nor is it advisable on policy grounds, and that the focus should be put on making use of the possibilities that the VC and international co-operation mechanisms offer.