

# The Challenge of Providing High Quality, Low Cost Legal Aid for Asylum Seekers and Refugees: Students on the Frontline of Refugee Protection

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## A. Introduction

The purpose of this article is to provide an overview of the legal aid regimes in the Central European and Baltic States (CEBS) with an emphasis on the current distribution of protection resources<sup>1</sup> throughout the CEBS and to discuss recent developments and potential protection trends.

In addition this article will explore how the recent study on legal aid for asylum seekers and refugees<sup>2</sup> entitled 'Legal Aid for Asylum Seekers and Refugees in Selected States', which examines the quality and cost-effectiveness of legal aid structures for asylum seekers and refugees in the European Union (EU), CEBS and other selected countries,<sup>3</sup> can provide some insight into possible solutions for future development.

Finally, it is the purpose of this article to discuss the development and relevance of refugee law clinics as a means to complement and/or supplement existing legal aid and refugee protection structures in the future.

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<sup>1</sup> Protection resources include material, financial, know-how and human resources.

<sup>2</sup> See K. Anagnost et al., *Legal Aid for Asylum Seekers and Refugees in Selected States*.

<sup>3</sup> The legal aid study focused on the ten central European and Baltic States (CEBS), EU, EFTA, Andorra, Monaco, San Marino, Stability Pact, CIS, Cyprus, Malta, Turkey, in addition to Australia, Brazil, India, Japan, Nigeria, Saudi Arabia, South Africa, Thailand, USA.

## **B. Brief Overview of Legal Aid in the CEBS**

Legal aid for asylum seekers and refugees remains a major challenge in the CEBS. Affordable legal aid that is both accessible and of high quality is being provided by a select few inter-, non- and governmental agencies, however this is often not enough.<sup>4</sup> Protection resources such as capacity, funds and time are scarce commodities throughout the region and they are often expended without being replenished.

Accession to the EU,<sup>5</sup> in particular the implementation of the EU's 1995 Resolution on Minimum Guarantees for Asylum Procedures,<sup>6</sup> has brought the question of legal aid for asylum seekers and refugees to the forefront of the discussion.<sup>7</sup> The development of high quality, low cost legal aid structures remains a low priority.

### ***I. Developing protection systems***

The majority of the CEBS are currently designated as 'transit countries', states that are normally travelled through by asylum seekers towards their intended country of asylum. Asylum applications remain below that of the average for EU Member States, for example. In some CEBS over 40 per cent of all asylum applicants drop out of the asylum procedure prematurely. In others there are no recognized refugees. These are trends that are expected to change as the CEBS move closer towards membership in the EU.

States are obligated to provide forms of legal aid to asylum seekers and refugees, but in most states the form of legal aid is neither specified nor is the qualification of the aid provider. In many cases funding for legal aid is not guaranteed by the state. These issues will be discussed in more detail below.

### ***II. Protection providers***

In the CEBS the responsibility for providing this legal aid ultimately falls on the shoulders of the primary source of care, the asylum and refugee attorney. It is the asylum and refugee attorney who spends the extra hours researching each case and reviewing the country of origin information and the rationale behind a negative decision. This is a time consuming process undertaken by someone who already has an additional caseload. Furthermore, the typical asylum and refugee attorney in the

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<sup>4</sup> Funding for legal aid in the CEBS comes mainly from the UNHCR.

<sup>5</sup> Which includes the implementation of the elements of the EU *acquis* on asylum.

<sup>6</sup> Para 13.2 of the EU's 1995 Resolution on Minimum Guarantees stipulates the right of an asylum seeker to legal aid during the procedure.

<sup>7</sup> The 1999–2000 Phare Horizontal Asylum Programme (PHA), one of the many accession tools, has as a focus the improvement of legal aid structures and capacities in the CEBS. During the course of the PHA the legal aid structures were analyzed and it became clear that many states were unaware of their obligations to provide legal aid.

CEBS sometimes faces severe earnings discrepancies compared with attorneys in other fields. The current economic situation in the CEBS has given rise to a number of seemingly contradictory priorities.

The funding for such a necessary process has been partially taken on by a number of CEBS governments, but once again, economic realities have limited the extent to which a state can effectively provide such legal aid. Non-governmental organizations (NGOs) have filled this gap, taking on elements of legal aid and social support for asylum seekers and refugees.

NGOs, with UNHCR support, shoulder the bulk of the protection work. A number of networks exist to provide additional support<sup>8</sup> but funding remains the greatest barrier to the continued provision of quality legal aid.<sup>9</sup>

### ***III. Scarce protection resources and limited capacities***

The largest contributor of ‘protection resources’ towards legal aid is the UNHCR, whose offices in the CEBS provide the majority of the direct or indirect financial and/or other support.<sup>10</sup> The UNHCR, however, will not maintain this level of support indefinitely, so other protection sources need to be found.<sup>11</sup> The EU and EU Member States have only begun to recognize the need for increased investment in legal aid structures for the CEBS.<sup>12</sup> Current resource providers are shifting their focus and at the present moment the budgets of the CEBS do not provide substantial support for legal aid.<sup>13</sup> An interim solution will need to be found until additional resources can be found and states’ budgets effectively reflect their obligation to provide legal aid.

Different measures have been undertaken by a number of actors in order to increase the capacity of the CEBS regarding the provision of legal aid for asylum seekers and refugees. One such approach, following the model offered by a number of North American universities, utilizes a bountiful resource, which for the most part remains overlooked and untapped in the CEBS: university law students.

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<sup>8</sup> The Asylum Rights Support Initiative (ARSI) is a legal aid network including Austrian, Bulgarian, Czech, Hungarian, Lithuanian, Romanian, Slovak and Slovene NGOs. The European Council for Refugees and Exiles (ECRE), an umbrella organization made up of EU NGOs, began a CEBS forum known as CEFTRAN which has been dormant since 1998. ECRE also provides occasional training through its legal network (ELENA).

<sup>9</sup> State support is also not forthcoming, see *infra*.

<sup>10</sup> The UNHCR maintains offices in each of the CEBS.

<sup>11</sup> Since 1997 the UNHCR has encouraged legal aid providers to begin to diversify their funding base, sending joint proposals to the EU Odysseus, EIDHR and ERF programmes for consideration.

<sup>12</sup> In contrast, the EU and EU Member States combined have invested over 20 million Euro towards the development of border regimes.

<sup>13</sup> Individual state legal aid providers and ARSI partners have submitted applications for funding to the Odysseus and EIDHR programmes respectively.

## C. Preliminary Results of the Legal Aid Study<sup>14</sup>

The legal aid study came about in early 1999 at a Phare Horizontal Asylum (PHA) workshop dealing with the implementation of the EU *acquis* on asylum. CEBS representatives were asked to provide an overview of their protection systems, refugee status determination procedures and to highlight the forms of legal aid, the main providers and protection resources. After a few moments of silence the first delegation mentioned that legal aid is provided mainly by NGOs and funded by UNHCR. The second delegation mentioned the same, as did the third.<sup>15</sup> This came as a surprise to the EU Member State lecturers present as there had been an expectation that the state would play a more active role in the funding and provision of legal aid throughout the asylum procedure.<sup>16</sup>

It was felt by those present that a more comprehensive study would need to be undertaken to review the state of the art of legal aid in the CEBS in order to raise the awareness of the issue.

### I. Methodology

The study began with an analysis of the legal framework in each CEBS and determined the nature of legal aid provided (information, counselling, representation) and at what stage of the asylum procedure this aid is provided.<sup>17</sup> The study broke down the asylum systems in the CEBS into three main 'procedural elements':

1. pre-procedure (access to territory, reception);
2. procedure (airport/border, 1st, 2nd instance decisions, accelerated procedures);
3. post-procedure (integration, voluntary repatriation, other status, deportation).

In order to determine the quality of the legal aid provided, the study looked at the potential legal aid providers: attorneys, advocates, lawyers, counselors, advisors and students.<sup>18</sup> Finally the study reviewed the obligation of the state to fund or otherwise provide legal aid.

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<sup>14</sup> These results should be seen as 'draft' results. The final results will be released once all data has been analyzed.

<sup>15</sup> NGOs were not invited to the event.

<sup>16</sup> The situation in most EU Member States reflects a larger role for the state regarding financing and providing legal aid. Austria is a notable exception to this rule.

<sup>17</sup> The study was extended from ten to 50 countries in order to increase the pool of comparative data.

<sup>18</sup> The EU's Resolution on Minimum Guarantees para 13.2 mentions access to 'legal advisors or counselors'. Specific details regarding the quality of the aid or the training of the provider are notably absent.

## **II. Trends and recent developments**

The following trends were noted in the CEBS<sup>19</sup>

1. states which border the EU are becoming countries of destination;<sup>20</sup>
2. although the overall number of asylum applications in European countries has decreased, the CEBS have either experienced an increase or a decrease in applications at a rate which is less than the European average;<sup>21</sup>
3. recognition rates are low and appeals are common;<sup>22</sup>
4. legal aid in some form is mentioned in the legal framework of each state;<sup>23</sup>
5. the nature of legal aid is not specifically mentioned;<sup>24</sup>
6. the educational background and quality of the legal aid provider is not specified;
7. training is expensive and provided to practitioners once they are in the workforce;<sup>25</sup>
8. in most cases there is mention of state funded legal aid but there is no mention of the extent to which funding will be made available;<sup>26</sup>
9. states are reluctant to fund NGOs;<sup>27</sup>
10. NGOs handle an inordinate amount of cases with limited resources;
11. refugee law clinics have substantially contributed to reducing the case loads of NGOs;<sup>28</sup>
12. NGOs receive most of their protection resources from the UNHCR;<sup>29</sup>
13. minimum standards for legal aid provision are non-existent.<sup>30</sup>

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<sup>19</sup> While 50 states are included in the study, for the sake of the specific needs of the CEBS the trends listed here will be limited to this data grouping.

<sup>20</sup> The percentage of asylum seekers leaving the procedure prematurely is also decreasing.

<sup>21</sup> According to the CEBS and the EU refugee authorities and the UNHCR (exact statistics for Austria are not made available).

<sup>22</sup> Ibid.

<sup>23</sup> For example the Czech Republic, Hungary, Latvia and Slovenia have all implemented new asylum laws since 1997 with specific legal aid provisions.

<sup>24</sup> This might change in Hungary as a new provision is being discussed that will detail the nature of legal aid and the qualification of the provider.

<sup>25</sup> Another preliminary finding of the study is that the rate of retention for decision takers in the CEBS is under 40 per cent over a two year period, this is well below the average in the EU.

<sup>26</sup> States have also not increased funding to refugee authorities.

<sup>27</sup> This has less to do with quality as with a misunderstanding of the role of the NGO in the asylum system. This trend is fortunately changing in most of the CEBS.

<sup>28</sup> Lithuania, Slovak Republic and Slovenia are the only CEBS without functioning refugee law clinics or internship programmes which provide legal aid.

<sup>29</sup> This is more or less universal throughout the CEBS. Material and financial resources as well as know how comes primarily from the UNHCR. Financial support from EU Member States and the ECRE members is equally low.

<sup>30</sup> Outside of the UNHCR monitoring quality control standards are absent. Law office management training is also absent.

Alarm bells begin to ring when one looks more closely at the current trends in the EU regarding asylum system harmonization and a common EU protection system. Asylum applications will surely increase proportionally in the CEBS while the legal aid structures remain overwhelmed. An increase in applications will certainly affect the quality of decisions taken as well as the quality of legal aid provided.

The preliminary results of the study do point to some positive developments, namely the willingness of decision-takers to undergo additional credibility assessment training and a greater appreciation of the legal aid provided by NGOs. One trend that should be mentioned is an increase in the number of refugee law clinics and the positive effect that they are having on national legal aid structures throughout the CEBS.

## **D. Role of Refugee Law Clinics**

Refugee law clinics (or clinics as they are known) represent a cost effective way to provide high quality legal aid to asylum seekers and refugees.<sup>31</sup> They are based on the model offered in many North American universities where law students study the theoretical elements of domestic and international refugee law and apply this theory in practice through protection work as a legal aid assistant/extern under the supervision of an attorney or lawyer working with 'live clients': asylum seekers and refugees. This allows students to provide direct legal aid to asylum seekers and refugees or support services to NGOs, attorneys and lawyers who provide legal aid and increases the capacity and efficiency of domestic protection resources.<sup>32</sup>

### ***I. Clinics as protection and education***

Working side-by-side with a practising asylum lawyer also exposes the student to the day-to-day difficulties which the average attorney faces, consequently the student and the attorney share the satisfaction by providing basic and more sophisticated humanitarian protection. The support provided to the asylum seeker or refugee by the student also shows a certain degree of respect and dignity towards a human being whose life has been threatened, who has been forced to flee his or her country and who is faced with the daunting task of accepting these experiences and starting over. Such support is priceless and such an opportunity is unique.

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<sup>31</sup> For a more comprehensive look at clinical legal education see A. McCutcheon, 'University Legal Aid Clinics: A Growing International Presence with Manifold Benefits' in (1998) *Journal of Legal Education*, at p. 58.

<sup>32</sup> In addition to providing free legal assistance, many clinics monitor conditions at refugee centres and detention centres, report on the living conditions of Romany communities, and provide year-long training in human rights to secondary school students. Others have been active in organizing conferences on legal education for universities in the CEBS.

After an intensive and comprehensive theoretical course on national and international aspects of refugee and asylum law, students, supervised by a qualified and recognized attorney, are introduced to an asylum seeker, 'client', and the specifics of his or her case. Students may be expected to interview the client, research the facts of the case including the relevant country of origin information and the preliminary decision of the first instance, find an interpreter, prepare the briefing notes and case file, or perform any number of other tasks, which go into the preparation of an asylum application or appeal. In many clinics the student assists the asylum and refugee attorney either directly or indirectly as he or she prepares the case.

In addition to encouraging good humanitarian attitudes,<sup>33</sup> enhancing the student's protection interest and strengthening necessary lawyering skills, this combination of theory and practice gives the participating student a complete overview of the national protection scheme and domestic asylum system<sup>34</sup> (legislation, actors, practice) and further provides insight into the complex and demanding field of refugee law.

## ***II. Some benchmarks***

Clinics need to be fully associated with a university, its law faculty and board of study. Clinics should strive to provide high quality, low cost legal aid to asylum seekers and refugees. In addition a clinic should be run by a manager, supervising lawyer and university professor who take ownership for the clinic. There should be active student support and enrollment, the clinic should be a fixed element in the law school curricula, it should also have reasonable access to client base, identified sources of funding and receive active support from NGOs, law firms and other protection organizations.

## ***III. Comparisons ...***

Clinics in North America supplement or complement domestic protection and legal aid structures (the oldest is over 20 years old). They are supported by active and well-endowed university structures, established NGOs, well-trained professors, lawyers with decades of refugee law experience and active, dedicated students. They are also properly organized and managed similar to a law office. It is no wonder that the UNHCR conserves its protection resources in North America and plays more the role of monitor in these states. The quality of service provided has not been questioned to date.

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<sup>33</sup> For example, during the humanitarian evacuation of Kosovar refugees to Poland, the Jagiellonian University human rights clinic assisted by briefing those Kosovars wishing to voluntarily return home concerning the situation in Kosovo, as well as the legal ramifications should they choose to remain in Poland.

<sup>34</sup> In fact, during 1998, a clinic in Poland was responsible for successfully supporting two precedence-setting cases related to asylum seekers.

In the CEBS and CIS clinics are new actors on the scene (the Jagiellonian University human rights clinic in Cracow created four years ago is the oldest). Since 1997 Cracow has been joined by Warsaw as the only other refugee law clinic in Poland, Budapest (with two ELTE& KLTE), Győr and Debrecen have developed in Hungary, Prague (Charles University) in the Czech Republic, the University of Latvia in Riga, Concordia International University in Tallinn Estonia, Moldova State University in Chisinau and a number of other developing legal aid and refugee law programmes in the region, too young to be yet determined as clinics.

These clinics lack the well endowed university structures, established NGOs and professors and lawyers with decades of refugee law experience that their North American counterparts have.<sup>35</sup> As mentioned above, standards for legal aid do not exist. In general, clinics are not poorly managed but they simply lack skilled, well-trained managers. They do have committed and dedicated professors, students and lawyers.

Clinics have been praised by national decision-takers and the UNHCR offices for their attention to detail and high quality.<sup>36</sup> One remaining concern is that without basic standards unguided clinics run the risk of taking cases which fall out of the scope of the clinic, thus bringing non-refugees into the asylum procedure.

#### ***IV. ... and co-operation***

An interesting fusion of North American and CEBS legal aid providers has developed over the past 12 months.<sup>37</sup> Concerned with the state of affairs regarding legal aid in the CEBS, legal aid and university resource persons from both regions<sup>38</sup> have met in two refugee law clinic working seminars.<sup>39</sup> The seminars have focused on developing a set of legal aid provision and management standards as well as to draft a model refugee law course curriculum<sup>40</sup> and resource package.<sup>41</sup> The result of these developments have been published in the second half of 2000<sup>42</sup> and further clinic development is planned for the year 2001 in the EU and the CIS.

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<sup>35</sup> For an overview of the refugee law clinic experience in North America see R. Wilson, 'Clinical Legal Education for Human Rights Advocates' in *Human Rights Education in the Twenty-First Century* (1997).

<sup>36</sup> The high quality of the appeals drafted by students in Hungary and Poland has done much to dispel the initial skepticism exhibited by the Ministry of Interior toward the students.

<sup>37</sup> These meetings have been sponsored by the UNHCR and the Constitutional and Legal Policy Institute (COLPI), a member of the Soros network.

<sup>38</sup> Western European actors were also invited but did not attend.

<sup>39</sup> Both seminars took place in Cracow, hosted in part by the Jagiellonian clinic, the COLPI and the UNHCR.

<sup>40</sup> See Annex infra.

<sup>41</sup> The Hungarian Helsinki Committee, the Czech NGO OPU, the Lawyers Committee for Human Rights, Catholic Charities and the UNHCR are working on the set of standards.

<sup>42</sup> In the form of a Regional Seminar hosted by the Hungarian Helsinki Committee, the COLPI and the UNHCR.



### ***V. Maintaining the protection interest***

The UNHCR's protection interest is its core and lifeblood. Regarding legal aid for asylum seekers, it would be difficult to find a national context anywhere in the world where the UNHCR does not play some role, be it as an element of the national status determination procedure, training of officials and/or legal aid providers, or as a monitor of the quality of aid and decisions taken.

Quality is a concern, cost is an issue. An overcrowded national legal aid structure reduces quality and raises costs, therefore streamlining is important. Low quality legal aid will lead to poor decision taking, asylum seekers may be sent back to situations of persecution, remain in detention or otherwise be placed in situations where the dignity of the individual is compromised. Unguided legal aid, from any provider, is a grave mistake. Therefore, as a protection solution, clinics fall within the direct protection interest of UNHCR to guarantee high quality, low cost legal aid.

The future development of the protection interest of states and other actors will depend on the extent to which they have been effectively exposed to refugee law and asylum culture. Poorly structured this will have negative ramifications in the decision taking process, the provision of legal aid and integration of refugees.

As a means of advancing refugee law and asylum culture, clinics place refugee law courses in the yearly course selection and curricula of the host university. This provides an opportunity to reach a large audience with minimal investment. Furthermore, in keeping with the UNHCR's advancement of refugee law and asylum culture policy, clinics fall within the scope of UNHCR's Excomm 51:

‘... underlining the need to develop practical applications of refugee law and principles and the importance of training courses in refugee law and protection ...’<sup>43</sup>

### ***VI. Complementarity of the clinics***

As a legal aid solution the clinics are an inexpensive complement to existing legal aid structures. Clinics provide their service for free or for a minimal fee and have only the fixed costs that are common in most NGOs and law offices. As a long term legal aid solution clinics train and integrate the next generation of asylum system practitioners<sup>44</sup> at a fraction of the price were this training to take place at the workforce level.<sup>45</sup>

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<sup>43</sup> 1988 Executive Committee 39th Session No. 51 ‘Promotion and Dissemination of Refugee Law’.

<sup>44</sup> The students who took part in the clinics have gone on to intern *inter alia* at the Council of Europe's Directorate of Legal Affairs Ad Hoc Committee on Asylum, Refugees, and Stateless Persons; Foreign Ministries; UNDP; and UNHCR.

<sup>45</sup> At the current rate every dollar invested in training one decision-taker on the basics of the refugee definition would be equal to training three clinic students on the same topic.

The activities of the refugee law clinics have shown that, with relatively little money, a credible legal assistance programme can be developed, which can serve to provide a boost to badly needed legal assistance in the short-term and at the same time, ensure that there is a systematic development of skills and competencies of potential actors in their respective asylum system on a long-term basis.

## **E. Summary and Conclusions**

The preliminary findings of the study have not revealed that we have reached a point of no return regarding the legal aid in the CEBS. At the same time there is an urgent need to strengthen existing legal aid structures in a co-ordinated and focused manner. The current round of EU and bi-lateral funding, however, provides little support for the legal aid structures in the CEBS. Domestic funding remains low.

### ***I. Protecting refugees through quality representation and decision taking***

According to some, this lack of funding will continue to translate into poor decisions and reduced quality of legal aid. This is a direct threat to the asylum seekers and is an abuse of the international protection framework. Increased funding and a particular attention to supervision and quality should provide the solutions over the long-term. This will have to be preceded by an increase in interest and concern in legal aid for asylum seekers and refugees in the CEBS as well as short term measures to improve and/or maintain the current level of quality legal aid.

As a potential solution refugee law clinics offer the student an opportunity to develop important humanitarian characteristics and sensitivity to human rights issues. Also, the student has the possibility of applying the theory of asylum seeker and refugee protection in practice while learning a number of necessary qualitative and quantitative skills. Clinics also expose the student, in many instances for the first time, to the notion of voluntary or *pro bono* legal aid for those in need. Clinics will therefore instill humanitarian principles and quality support at an early stage in the future decision-takers' career.

### ***II. Potential protection solution for the CEBS***

The clinic approach has potential in the CEBS, a region experiencing an increase in asylum applications and in need of further capacity for the provision of effective and quality legal aid for asylum seekers and refugees. It is, however, a long-term approach that should be aimed at providing some immediate protection support with a view to developing a well-educated and experienced field of young asylum and refugee attorneys in each of the CEBS. This approach will take time and will vary from state to state. It is an approach that needs to be observed, tested, and evaluated

as it grows. The results and lessons learned can be shared with other regions in order to help develop their protection capacities. It is an approach that will require a great deal of support from a number of actors, most notably from the students, lawyers and professors who make up the clinics.

As trends develop we hope that these lessons learned will continue to create and sponsor similar growth throughout Europe. Many see the clinics as not only a way to increase access to legal aid, but also a very effective tool towards its more just and fair application. The real success of the clinics will be the extent to which these clinics educate the next generation of refugee and asylum law attorneys who complement and improve existing protection structures.

### ***III. Necessary developments***

It is important that existing legal frameworks continue to develop and encourage students to play an important role in the process. Restrictive laws will hinder this development, and therefore other measures should be found to guarantee quality legal aid. Financial support and interest from other agencies is key in this process.

### ***IV. A potential European protection solution***

Protection issues are different throughout Europe. The CEBS, as both transit countries and countries of asylum, have more or less newly developed legislative frameworks and practice. It has been recognized that the CEBS currently face certain economic constraints and a shortage of well trained refugee lawyers who are able to function within these systems as providers of legal aid or as decision takers. This may be the reason why clinics have developed more rapidly in the CEBS. In addition, the pending entry into the EU of many of the CEBS adds another level of complexity to their asylum systems. Therefore, clinics in the CEBS are ideally poised to provide the next generation of lawyers with the training they need to operate in a more sophisticated asylum system.

The countries of the CIS are transit countries and/or recipients of mass influxes of asylum seekers. In addition, their asylum systems are in the first stage of development. Legislative framework and practice, if any, are in their infancy. Regarding the strengthening of current protection capacity, the needs are more short-term, whereas the creation of well-trained lawyers is a long-term aim. Therefore clinics could be used to train a large number of decision takers to handle the current need with an overall goal of providing the developing asylum systems with the necessary practitioners.

Western European/EU states have more sophisticated asylum systems with long-standing traditions of refugee protection and practice. Legal aid is normally provided by state authorities and supplemented by NGO support. According to some, the quality of decision taking and legal aid is sometimes in question in a number of states. In addition, legal aid in Western Europe is expensive. Clinics have the opportunity to complement the current legal aid structures and provide a pool of well-trained refugee lawyers and/or decision-takers.

As high quality, low cost legal aid for asylum seekers and refugees remains a universal challenge, the clinic concept remains one such way to meet the growing protection needs in countries around the globe. Careful research and analysis of the protection needs of each country will be the key to determine whether a refugee law clinic has a place in the national protection scheme.

**Annex: A Model Curriculum for Refugee Law Courses and Legal Clinics**

This outline can be used for a course aimed at students in their penultimate year of an (undergraduate) programme in law who have already had basic courses in public international law, European and/or international human rights law and national administrative law. It is designed to prepare the students for work in a refugee law clinic during their final year of studies, i.e. to prepare the students for the representation of asylum seekers before administrative authorities and courts under the supervision of an academic advisor and a practicing attorney.

As part of the clinic, students should have the opportunity to interview clients, research the human rights record of the country of origin, develop documentary and testimonial records showing that the client either suffered past persecution or will suffer future persecution if forced to return; maintain case files; locate and prepare witnesses; draft legal briefs; and, where allowed by national regulations, represent the client. The preparatory course aims at equipping the students for all of these tasks, many of which are also relevant for legal work in areas other than refugee law.

While this preparatory course was developed in a Central and Eastern European context, the model can be used with minor modifications in other parts of Europe and the world. It may have to be updated, in particular with regard to the rapidly evolving EU *acquis* on asylum.

The course should be taught either in units of two hours per week over an entire academic year or in units of four hours per week over one full semester. Ideally, the units on lawyering skills should be taught in parallel to the theoretical parts, rather than at the end of the course. In particular for the units on practical skills, it may be useful to bring in practicing attorneys and/or experienced staff of UNHCR or other NGOs as guest lecturers.

The model curriculum was drafted by participants of a conference on Refugee and Asylum Law Legal Clinics, organized by the Jagiellonian University Refugee Law Clinic and UNHCR in Cracow, Poland, in May 2000 and further developed by participants of a conference on Legal Aid 2000: Challenges Facing Legal Aid Providers – Refugee Law Clinics as a Protection Solution, organised by the Hungarian Helsinki Committee and UNHCR in Budapest, Hungary, in December 2000. Questions and comments can be addressed to Professor Dr Boldizsár Nagy, ELTE University Budapest (<nagyboldi@ludens.elte.hu>) and Professor Dr Frank Emmert, Concordia International University Estonia (<frankemmert@ciue.edu.ee>).

**A. PART I: THE MISSION OF A REFUGEE LAW CLINIC****I. Clinic Mission, Introduction and Overview of Refugee Law**

- Mission statement and aims of the clinic
- History of population movements; immigrants, migrants, internally displaced persons; and refugees
- Institutions and actors in international human rights and refugee law, including the UN Covenants, the CAT, the Cartagena Declaration, etc.
- The interface between (public) international law and national law
- Development of refugee law and main instruments of protection
- Overview of national legal framework, institutions and actors

## B. PART II: REFUGEE LAW

### I. Principles and Concepts of Refugee Law

- Asylum
- Non-refoulement
- Protection
- Family unity
- Non-discrimination
- Durable solutions
- International co-operation

### II. The 1951 Refugee Convention

- The definition of 'refugee': Article 1A2
- Exclusion clauses
- Persecution and agents of persecution
- Well-founded fear of persecution; objective versus subjective elements
- Five grounds: race, religion, nationality, social group, political opinion
- Vulnerable groups
- Cessation and cancellation
- Recognition as 'refugee'
- Rights of recognized refugees

### III. Other Forms and Instruments of Protection

- The Universal Declaration on Human Rights
- The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The UN Convention on the Rights of the Child
- UNHCR mandate refugees, 'B-status', subsidiary protection, humanitarian status
- Temporary protection
- Minimum standards in times of war

### IV. The Council of Europe System and its Relevance for the Protection of Refugees

- The European Court of Human Rights
- The European Convention on Human Rights and Fundamental Freedoms and relevant case law (Articles 3, 5, 8, etc.)
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the work of the CPT

### V. Obligations of Member States of the European Union and the Evolving EU *Acquis* on Asylum

- EU law versus national law
- The Schengen and Dublin Agreements (1985–1999)
- The Joint Position on the Harmonised Application of the Definition of the Term 'Refugee' (1996)
- Manifestly unfounded claims, safe third countries, safe countries of origin (1992 London resolutions and conclusions)
- Council Resolution on Minimum Guarantees (1995)

- Council Resolution on Unaccompanied Minors (1997)
- The Five-Year-Window: Amsterdam, Vienna Action Plan, Tampere, Scoreboard
- The draft Directive on Minimum Standards on Procedures in Member States (September 2000)
- The accession process and the implications of EU enlargement
- The readmission agreements with the CEECs

VI. Overview of National Procedures: Domestic Legislation and Practice, Re-admission Agreements, Relevant Law of Neighbouring States, Administrative Regulations, Procedures and Substance

- Domestic legal framework
- Powers and responsibilities of the administration and courts
- Pre-procedure: access to the territory, legal aid
- The procedure(s) for the determination of refugee status
- Post-procedure after recognition, integration support
- Alternative status: Article 3 ECHR/CAT, humanitarian grounds
- Post-procedure after non-recognition, deportation
- Legal remedies
- Status and treatment of internally displaced persons
- Lessons to be learned from neighbouring countries

C. PART III: LAWYERING SKILLS

I. Theoretical Preparation

- Mission statement and scope of the legal clinic
- Important elements of the organization of a clinic
- Legal aid in the national context: Information, counselling, representation
- Preparation of legal briefs
- Submission of a case, working with national authorities
- Office/clinic management
- File management, confidentiality, data protection
- Time management
- Cross cultural issues
- Stress management
- Treatment of vulnerable groups and persons with special needs
- Bringing a case to the ECHR
- Fundraising
- Career development

II. Clinical Seminars

- Outreach and first meetings with clients
- Counselling
- Working with vulnerable groups, PTSD training
- Interviewing techniques
- Credibility assessment
- Selection of cases
- Researching country of origin information: finding, evaluating, applying information

- Researching other precedents and other persuasive sources
- Preparation of legal briefs
- Oral representation of clients before the administrative authorities and courts (Moot Court)