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OUT OF AFRICA: TOWARD REGIONAL SOLUTIONS FOR INTERNAL DISPLACEMENT

INTRODUCTION

A startling 830,000 people were internally displaced¹ in 2011 as a consequence of the Arab Spring² uprisings that transformed the political landscape of the Arab region.³ That number represents a six-fold increase in displacement⁴ from the previous year.⁵ The displaced population rose even more

1. This Note adopts the definition of internally displaced persons (“IDPs”) used by both the United Nations (“U.N.”) and the African Union (“AU”). According to that definition, IDPs are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.” UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT ¶ 2 (2d ed. 2004) [hereinafter GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT], available at <https://docs.unocha.org/sites/dms/Documents/GuidingPrinciplesDispl.pdf>. While it is not binding law, this instrument is recognized to “reflect and [be] consistent with international human rights law and international humanitarian law.” *Id.* ¶ 3.

2. The term “Arab Spring” is widely used to refer to the popular uprisings that spread through the Middle East and North Africa beginning in February 2011 with the revolution in Tunisia. See Adrien K. Wing, *The “Arab Fall”: The Future of Women’s Rights*, 18 U.C. DAVIS J. INT’L L. & POL’Y 445 (2012). The uprisings have been described as “regional grassroots movements seeking democracy and greater respect for human rights.” *Id.* at 446; see also Fouad Ajami, *The Arab Spring at One: A Year of Living Dangerously*, 91 FOREIGN AFF. 56, 56 (2012) (discussing the Arab Spring more generally).

3. Press Release, Internal Displacement Monitoring Ctr., Conflicts Worldwide Uproot Millions; Six-Fold Increase in Middle East (Apr. 19, 2012) [hereinafter Conflicts Worldwide Uproot Millions], available at <http://www.internal-displacement.org/publications/global-overview-press-release-2011.pdf>. “Arab region” is used here to refer to the area comprised of “the diverse nations of the Middle East and North African region.” Wing, *supra* note 2, at 447.

4. This Note uses the definition of displacement generally utilized in related literature, which defines one who is “displaced” as one who has been involuntarily or forcibly moved from one’s area of habitual residence. See, e.g., Maria Stavropoulou, *The Right Not to Be Displaced*, 9 AM. U.J. INT’L L. & POL’Y 689, 690 (1993–94).

5. Conflicts Worldwide Uproot Millions, *supra* note 3.

sharply amid ongoing regional conflict during 2012,⁶ with 2.5 million people newly displaced throughout the Middle East and North Africa.⁷ By early 2013, the International Rescue Committee reported that the situation in the Middle East had become “a human displacement tragedy,” with the Syrian Arab Republic (“Syria”) experiencing the most extreme and ongoing displacement crisis.⁸

Indeed, the number of internally displaced persons (“IDPs”) within Syria has grown dramatically since March 2011, when civil unrest in the country began. During the course of 2012, as the conflict escalated into a recognized civil war,⁹ displacement in Syria rose over twelve times—from an estimated 200,000 displaced at the beginning of the year¹⁰ to a reported 2.5 million displaced by the year’s end.¹¹ By July 2013, more than 4.25

6. *Internally Displaced Persons in Syria*, INTERNAL DISPLACEMENT MONITORING CTR., <http://www.internal-displacement.org/countries/syria> (last visited Aug. 30, 2013).

7. *Internally Displaced Figures*, U.N. HIGH COMM’R FOR REFUGEES [UNHCR], <http://www.unhcr.org/pages/49c3646c23.html> (last visited Nov. 14, 2013).

8. Press Release, Int’l Rescue Comm., Syria Displacement Crisis Worsens as Protracted Humanitarian Emergency Looms (Jan. 14, 2013), <http://www.rescue.org/press-releases/syria-displacement-crisis-worsens-protracted-humanitarian-emergency-looms-15091>.

9. On July 15, 2012, the International Committee of the Red Cross announced that the conflict had evolved significantly and its scale had reached such proportions that it could be considered a civil war. Accordingly, “hostilities between these parties wherever they may occur in Syria are subject to the rules of international humanitarian law.” *Syria: ICRC and Syrian Arab Red Crescent Maintain Aid Effort amid Increased Fighting*, INT’L COMM. OF THE RED CROSS [ICRC] (July 17, 2012), <http://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>. For more on the influence of this announcement, see Neil MacFarquhar, *Syria Denies Attack on Civilians, in Crisis Seen as Civil War*, N.Y. TIMES (July 15, 2012), <http://www.nytimes.com/2012/07/16/world/middleeast/syria-denies-use-of-heavy-weapons-in-deadly-village-fight.html>.

10. *Syria: A Full-Scale Displacement and Humanitarian Crisis with No Solutions in Sight*, INTERNAL DISPLACEMENT MONITORING CTR. 4 (July 31, 2012), [http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8474B2AE5164B7DAC1257A4C004B6634/\\$file/syria-overview-july2012.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/8474B2AE5164B7DAC1257A4C004B6634/$file/syria-overview-july2012.pdf) [hereinafter *Syria: A Full-Scale Crisis*].

11. *Internally Displaced Persons in Syria*, *supra* note 6.

million Syrians, or roughly 20% of the population,¹² were displaced within the country.¹³ Multiple United Nations agencies were then reporting on the urgent humanitarian needs of Syria's IDPs,¹⁴ and the crisis was dubbed the world's worst humanitarian emergency.¹⁵

Toward the end of 2013, the Internal Displacement Monitoring Centre was reporting an internal displacement figure upwards of 6 million Syrians,¹⁶ a staggering figure amounting to more than a quarter of the Syrian population.¹⁷ With no apparent end to the conflict in sight at the time of writing,¹⁸ displacement was expected to continue to increase¹⁹ and the situation for those already displaced was expected to worsen.²⁰

12. The reported population of Syria was 21.9 million at the time of writing. *Internally Displaced Persons in Syria*, *supra* note 6.

13. 2013 UNHCR Country Operations Profile—Syrian Arab Republic, UNHCR, <http://www.unhcr.org/pages/49e486a76.html> (last visited Nov. 13, 2013) [hereinafter *UNHCR Country Operations Profile—Syria*]; see also Mark Tran, *Millions of Syrians in Need of Food as War Devastates Food Production*, *GUARDIAN* (July 5, 2013), <http://www.guardian.co.uk/world/2013/jul/05/syrian-food-aid-war>. Although this was the latest estimate at the time of writing, it is acknowledged that “accurate figures on internal displacement are increasingly difficult to ascertain due to government imposed restrictions preventing international agencies from reaching displaced populations” in Syria. *Internally Displaced Persons in Syria*, *supra* note 6.

14. In addition to the World Food Programme (“WFP”) and Food and Agriculture Organization of the U.N. (“FAO”) (discussed *infra* note 16), the World Health Organization reported that Syrian authorities had “increasingly blocked delivery of medicine and medical supplies around the country . . . even as health needs [were] escalating for people trapped in two years of conflict.” Hania Mourtada & Nick Cumming-Bruce, *State of Siege in Syrian City Is Blocking Humanitarian Aid, Health Officials Say*, *N.Y. TIMES* (July 5, 2013), <http://www.nytimes.com/2013/07/06/world/middleeast/syria.html>.

15. Tran, *supra* note 13.

16. *Syria: A Full-Scale Crisis*, *supra* note 10.

17. *Internally Displaced Persons in Syria*, *supra* note 6.

18. *Syria: A Regional Crisis*, COMM’N ON SYRIAN REFUGEES, INT’L RESCUE COMMITTEE (Jan. 2013), *available at* <http://www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf>; see also JEREMY M. SHARP & CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., RL33487, *ARMED CONFLICT IN SYRIA: U.S. AND INTERNATIONAL RESPONSE 2* (2013), *available at* <http://fpc.state.gov/documents/organization/195385.pdf>.

19. Erin Banco, *U.N. Reports Increased Number of Displaced People*, *N.Y. TIMES* (June 18, 2013), <http://www.nytimes.com/2013/06/19/world/middleeast/un-reports-increased->

The Syrian authorities' response to the displacement crisis within the country's borders has been wholly inadequate throughout the two and a half years of conflict.²¹ Despite ongoing international recognition of the severity of the displacement crisis,²² for the first year of the conflict the Syrian government "refused to acknowledge that the country faced a humanitarian

number-of-displaced-people.html. See also *Conflicts Worldwide Uproot Millions*, *supra* note 3.

20. In June 2013, U.N. FAO/WFP reported that "[i]f the present conflict continues the food security prospects for 2014 could be worse than they are now." *FAO/WFP Crop and Food Security Assessment Mission to the Syrian Arab Republic*, FOOD & AGRIC. ORG./WORLD FOOD PROGRAMME 8 (July 5, 2013), available at <http://reliefweb.int/report/syrian-arab-republic/faowfp-crop-and-food-security-assessment-mission-syrian-arab-republic>. It was also reported that by the end of 2013, the disaster could likely leave half the country's population in need of urgent aid. Tran, *supra* note 13.

21. For instance, in February 2012 the U.N. General Assembly adopted a resolution condemning the Syrian authorities' human rights abuses and violent acts against civilians and requesting it cease interference with the delivery of humanitarian aid. G.A. Res. 66/253, U.N. Doc. A/RES/66/253 (Feb. 16, 2012). In June 2013, the U.N. Human Rights Council reported that government forces and affiliated militia were continuing to commit war crimes and crimes against humanity, including the inhumane act of forcible transfer and the targeting of IDPs. U.N. Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 23d Sess., May 27–June 14, 2013, ¶¶ 34–35, U.N. Doc. A/HRC/23/58 (June 4, 2013). The Syrian "government's historic inability to tackle displacement within the country" has been noted in this regard as well. Press Release, Internal Displacement Monitoring Ctr., Internal Displacement Adds Critical Dimension to the Syria Debate (Aug. 16, 2012), available at [http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/9D8B8577B60AF792C1257A5D00441674/\\$file/syria-press-release-aug2012.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/9D8B8577B60AF792C1257A5D00441674/$file/syria-press-release-aug2012.pdf).

22. Throughout the crisis the international press and prominent international humanitarian organizations have consistently and frequently reported on the dire conditions and drawn attention to the crisis. For example, in August 2012, the U.N. Special Rapporteur on the Human Rights of IDPs called for the protection and assistance of current IDPs and a resolution to the conflict to prevent further displacement. *Syria: Severe Internal Displacement Crisis Due to Disregard for Human Rights and Humanitarian Law*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (Aug. 9, 2012), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12425&LangID=E> [hereinafter *Syria: Severe Internal Displacement Crisis*]. This plea has since been made repeatedly with increasing frequency and force by U.N. bodies and officials. See, e.g., *U.N. Security Council Urges All Sides in Syrian Crisis to Immediately Provide Access for Humanitarian Aid*, UN NEWS CTR. (Oct. 2, 2013), <http://www.un.org/apps/news/story.asp?NewsID=46174> [hereinafter *U.N. Security Council Urges All Sides*].

crisis or protection needs.”²³ Throughout the unrest, the Syrian government has consistently failed to fully cooperate with aid-giving organizations and other international actors, stymying these organizations’ efforts to provide relief to Syria’s IDPs.²⁴

In the absence of a U.N. Security Council (“Security Council”) decision to intervene,²⁵ the international community’s ability to

23. *Syria: A Full-Scale Crisis*, *supra* note 10, at 7.

24. *Id.* at 10. In June 2013, the U.N. Office for the Coordination of Humanitarian Assistance reported that, “despite significant improvements in recent months, aid delivery continues to face various obstacles due to insecurity, bureaucratic constraints and insufficient partnerships [with local organizations].” UN OCHA, REVISED SYRIA HUMANITARIAN ASSISTANCE RESPONSE PLAN (SHARP) (Jan.–Dec. 2013), *available at* <http://www.unocha.org/cap/appeals/revised-syria-humanitarian-assistance-response-plan-sharp-january-december-2013>. In October 2013, the U.N. Security Council, “[g]ravelly alarmed, . . . called on Damascus to take immediate steps to facilitate the expansion of humanitarian relief operations, and lift bureaucratic impediments and other obstacles. . . . Further, the Council urged all parties, in particular the Syrian authorities, to take all appropriate steps to facilitate the efforts of the UN, its specialized agencies and all humanitarian actors engaged in relief activities, to provide immediate humanitarian assistance to the affected people in Syria.” *U.N. Security Council Urges All Sides*, *supra* note 22.

25. During the first year of the conflict, it was reported that “[t]he United Nations Security Council has been unable to agree on any actions other than issuing weak statements of condemnation.” Neil MacFarquhar, *Arab League Votes to Suspend Syria over Crackdown*, N.Y. TIMES (Nov. 12, 2011), <http://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html>. This has slowly changed. Following reports of a chemical weapons attack in August 2013, the Security Council unanimously adopted Resolution 2118, which “called for the elimination of the country’s chemical weapons.” *UN Security Council Agrees to Rid Syria of Chemical Weapons, Endorses Peace Process*, UN NEWS CTR. (Sept. 27, 2013), *available at* <http://www.un.org/apps/news/story.asp?NewsID=46103&Cr=Syria&Cr1=>. The Council, *inter alia*, “*endorse[d]* . . . the expeditious destruction of the Syrian Arab Republic’s chemical weapons programme” and “*call[ed]* for the convening, as soon as possible, of an international conference on Syria to implement the Geneva Communique.” Security Council Res. 2118, ¶¶ 3, 17, U.N. Doc. S/RES/2118 (Sept. 27, 2013). The Geneva Communique is a proposed political settlement to the Syrian conflict, developed and endorsed in June 2013 by “the UN-backed Action Group for Syria . . . [, which] comprised the UN, Arab League and EU; China, France, Russia, the UK and the US; and Turkey, Iraq, Kuwait and Qatar.” The Communique proposes a political settlement to the conflict, with certain conditions. For more, see *Q&A: Geneva II Peace Conference*, BBC (Nov. 5, 2013), <http://www.bbc.co.uk/news/world-middle-east-24628442>. The international peace conference called for in Reso-

help displaced Syrians has been limited to humanitarian assistance.²⁶ Indeed, attempts by international organizations and U.N. agencies to render humanitarian assistance adequate to meet the needs of displaced populations have continued to hinge crucially on the cooperation of Syrian authorities.²⁷ The Office of the U.N. High Commissioner for Refugees (“UNHCR”), for instance, was able to provide only limited assistance to IDPs in Syria during 2012 and 2013, with access to crucial areas of the country restricted by the Syrian government.²⁸ Outside states have also been reluctant to intervene.²⁹ Due to all of

lution 2118 to implement the Communique has become known as “Geneva II” and has faced delay due to noncooperation regarding which parties will attend. Assad’s regime had not confirmed attendance at the time of writing. *Id.* However on November 11, 2013, the Opposition voted to

attend peace talks . . . in Geneva if certain conditions were met, including full access for delivery of humanitarian aid and the release of prisoners. . . . Few say they believe that the Geneva talks will yield a solution, yet those talks remain the focus of international diplomacy . . . The United States and Russia had hoped to hold talks by year’s end, but no date has been set.

Anne Barnard & Hwaida Saad, *Leading Syrian Opposition Group, Yielding to Pressure, Votes to Join Peace Talks*, N.Y. TIMES (Nov. 11, 2013), <http://www.nytimes.com/2013/11/12/world/middleeast/syria.html>.

26. Pursuant to the U.N. Charter (“Charter”), only the Security Council is authorized to use force or seek political solutions. Article 42 of the Charter authorizes the Council to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” U.N. Charter art. 42. As of early November 2013, the Security Council had not voted to make such an intervention.

27. Unless the sovereign state consents, generally, IDPs cannot receive assistance from international humanitarian organizations. Patrick Schmidt, *The Process and Prospects for the UN Guiding Principles on Internal Displacement to Become Customary International Law*, 35 GEO. J. INT’L L. 483, 489–90 (2004).

28. *UNHCR Country Operations Profile—Syria*, *supra* note 13. This aid is provided “within the framework of the UN Syria Humanitarian Response Plan and in collaboration with the Syrian Arab Red Crescent.” *Id.* In April 2013, UNHCR reported having reached a “breaking point” due to lack of funds to provide assistance to the millions fleeing their homes in Syria. *Syrian Refugee Crisis Worsens with Aid Efforts Grossly Underfunded*, UN Warns, UN NEWS CTR. (Apr. 9, 2013), <http://www.un.org/apps/news/story.asp?NewsID=44602&Cr=syria&Cr1>.

29. “The growing influence of radical Islamist fighters and divisions among rebel forces have made Western powers reluctant to intervene directly in a conflict that has killed more than 100,000 people and driven millions from

these complexities, the protection and assistance needs of Syrian IDPs have remained unmet.³⁰

The state's inability or unwillingness to protect its displaced, and the inability or unwillingness of the international community to sufficiently assist,³¹ is not unique to Syria among instances of armed conflict.³² The dire displacement situation in Syria therefore presents an opportunity to consider the development of international legal protections that could more effectively assist those displaced due to internal armed conflict. Recent activity of the African Union ("AU"), the leading regional organization on the African continent, offers an innovative example of one such solution: framing the protection of and assistance to IDPs as a regional responsibility.

On December 6, 2012, the African Union Convention for the Protection and Assistance of Internally Displaced Persons (the "Kampala Convention" or the "Convention")³³ entered into force.³⁴ Upon ratification, the Kampala Convention became the

their homes." Yara Bayoumy, *Arab League Backs Syria Peace Talks, Urges Opposition to Go*, REUTERS (Nov. 4, 2013), <http://www.reuters.com/article/2013/11/04/us-syria-crisis-arabs-idUSBRE9A30EQ20131104>.

30. *Syria: A Full-Scale Crisis*, *supra* note 10.

31. As is the case with Syria, outside states are commonly hesitant to intervene for humanitarian purposes due to complex "geopolitical concerns." Roberta Cohen, *The International Response to Darfur*, FORCED MIGRATION REV. 23, 8 (2005) [hereinafter Cohen, *International Response*] (arguing that the nonintervention in Darfur is typical, as generally "wider interests stymie humanitarian intervention").

32. *Id.* (establishing that the lack of governmental or outside assistance to IDPs in Darfur is not uncommon to the situation experienced by IDPs displaced through armed conflict elsewhere). Indeed, IDPs commonly remain inadequately protected by their home state as well as by the international community. *Id.* (in the context of Darfur); *see also* Anne-Christine Eriksson, *Protecting Internally Displaced Persons in Kosovo* (Inter-Univ. Comm. on Int'l Migration, Rosemarie Rogers Working Paper Series No. 3, 1999), *available at* http://web.mit.edu/cis/www/migration/pubs/rrwp/3_protectIDPs.html (in the context of the Kosovo displacement crisis).

33. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa [Kampala Convention], *opened for signature* Oct. 22, 2009 (entered into force Dec. 6, 2012), *available at* <http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

34. The fifteenth state to ratify was Swaziland—joining Benin, Burkina Faso, Central African Republic, Chad, Gambia, Gabon, Guinea-Bissau, Lesotho, Niger, Nigeria, Sierra Leone, Togo, and Zambia—to bring the Conven-

world's first legally-binding instrument³⁵ to define the responsibilities of states toward IDPs.³⁶ The Convention establishes active involvement on the part of the AU and reflects a general conception of internal displacement as a regional problem requiring the cooperation of myriad regional actors. The Convention in this way envisions a solution to the common situation of a state's inability or unwillingness to independently meet the needs of its IDPs that calls on the involvement of neighboring states parties, local civil society organizations, and the AU itself.³⁷ The AU has been widely hailed for this development.³⁸

This Note argues that the Kampala Convention could serve as a template for the League of Arab States (the "Arab League" or the "League")³⁹ to adopt a regional solution to internal dis-

tion into force pursuant to the procedures established in the Convention. *See Africa Takes the Lead! World's First Continental Treaty to Protect Those Forced to Flee Comes into Force*, INTERNAL DISPLACEMENT MONITORING CTR. (Dec. 6, 2012), [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E20670B6C7BFA0E7C1257ACB0062F15B/\\$file/kc-press-release-en.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E20670B6C7BFA0E7C1257ACB0062F15B/$file/kc-press-release-en.pdf) [hereinafter *Africa Takes the Lead*]; *Kampala Convention*, INTERNAL DISPLACEMENT MONITORING CTR., <http://www.internal-displacement.org/kampala-convention> [hereinafter *Kampala Convention*, IDMC]; *Kampala Convention*, *supra* note 33, art. 17(1).

35. In 2008, the General Assembly of the Organization of American States passed a resolution encouraging states to enhance protection efforts for IDPs. While this is a development deserving of accolades, it is important to note in this context that the language of the resolution is normative. The Assembly "urge[d] member states to consider using the Guiding Principles on Internal Displacement, prepared by the Special Representative of the United Nations Secretary-General on Internally Displaced Persons, as a basis for their plans, policies, and programs in support of such persons." Organization of American States [OAS], G.A. Res. 2417, OAS Doc. AG/RES. 2417 (XXXVIII-O/08) (June 3, 2008).

36. *Africa Takes the Lead*, *supra* note 34.

37. *Kampala Convention*, *supra* note 33, art. 8.

38. *See, e.g.*, Anna Taylor, Matthew Lopas & Sarone Solomon, *Updates from the Regional Human Rights Systems*, 19 HUM. RTS. BRIEF 47, 47-48 (2011); Allehone Mulugeta Abebe, *The African Union Convention on Internally Displaced Persons: Its Codification, Background, Scope, and Enforcement Challenges*, REFUGEE SURVEY Q., Sept. 2010, at 28; Andrew Solomon, *Introductory Note to African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, 49 I.L.M. 83, 84 (2010).

39. The Arab League has been chosen for this example as it is considered the most prominent regional organization in the Arab region. *See* Marco Pin-fari, *Nothing but Failure?: The Arab League and the Gulf Cooperation Council as Mediators in Middle Eastern Conflicts*, (Crisis States Research Ctr.,

placement for instances in which reliance on national resources or international intervention leaves IDPs insufficiently protected or provided for, as is currently the situation in Syria.⁴⁰ It is argued that the Arab League should employ a similar approach to that taken by the AU and create a convention that frames internal displacement as a regional problem with a regional solution. Such an approach may prevent future large-scale displacement crises and, absent prevention, better protect and assist those who do become displaced.

Part I of this Note provides background on the current legal framework applicable to IDPs and examines the implications of a regional solution to the problem of internal displacement. Part II explores the regional conditions, provisions, and limitations of the Kampala Convention. Part III considers transferring the AU's approach to the Arab region through implemen-

Working Paper No. 45, 2009), available at <http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries2/WP452.pdf>.

40. Syria is one of twenty-two Arab League member states and has since November 2011 been temporarily suspended from the League:

Syria has been suspended from the Arab League over its failure to end the bloodshed caused by brutal government crackdowns on pro-democracy protests in a move that will increase the international pressure on President Bashar al-Assad. At an emergency session of its 22 member states in Cairo to discuss the crisis, the league decided to exclude Syria until it implements the terms of an earlier agreed peace deal to stop the violence. The league also agreed to impose economic and political sanctions on Syria over its failure to stop the violence.

The decision was made with the support of eighteen of the twenty-one other Arab League member states. David Batty & Jack Shenker, *Syria Suspended from Arab League*, GUARDIAN (Nov. 12, 2011), <http://www.theguardian.com/world/2011/nov/12/syria-suspended-arab-league>. However, it is understood that the action taken against Syria “does not amount to a full suspension of membership from the regional body.” *Arab League Decides to Suspend Syria*, AL JAZEERA (Nov. 13, 2011), <http://www.aljazeera.com/news/middleeast/2011/11/201111121342948333.html>. Indeed, the Arab League has continued to take an active role in trying to negotiate an end to the conflict. “Arab League foreign ministers gathered in Cairo on Sunday to push the Syrian opposition to attend the proposed Geneva II peace conference.” *Report: Arab League to Press Syria Opposition Over Peace Talks*, RELIEFWEB (Nov. 3, 2013), <http://reliefweb.int/report/syrian-arab-republic/arab-league-press-syria-opposition-over-peace-talks>; see, e.g., Bayoumy, *supra* note 29.

tation of a similar convention by the Arab League. The Note concludes with the suggestion that a convention that addresses internal displacement in the Arab region by framing it as a regional issue, deserving of a regional solution, would well serve the Arab League as a viable alternative to the current options for providing protection and assistance to the region's IDPs.

I. BACKGROUND

A. *The Legal Framework for Protection of IDPs*

The absence of an international legal framework applicable to IDPs reveals the unique and relatively invisible position in which internally displaced persons exist. Although IDPs and refugees often face similar factual conditions and require similar kinds of assistance, the two groups are classified separately under international law, legally distinct by virtue of their differing relationships with their states of nationality or habitual residence.⁴¹

The transboundary nature of the situation of refugees imposes a responsibility on the international community to meet refugees' needs.⁴² A refugee is a person who is, *inter alia*, displaced "outside the country of his nationality."⁴³ The act of crossing the border takes that person out of the sovereignty of his home state and implicates international law.⁴⁴ In contrast, IDPs are, by definition, displaced within the borders of their home state.⁴⁵ As such, under traditional notions of sovereignty,

41. See, e.g., Won Kidane, *Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention*, 44 VAND. J. TRANSN'T'L L. 1 (2011).

42. See generally Brian Barbour & Brian Gorlick, *Embracing the Responsibility to Protect: A Repertoire of Measures Including Asylum for Potential Victims*, 20 INT'L J. REFUGEE L. 533 (2008).

43. The U.N. defines a refugee as:

any person who . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Convention Relating to the Status of Refugees art. 1(A)(2), *opened for signature* July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention].

44. See generally Barbour & Gorlick, *supra* note 42.

45. See GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, *supra* note 1.

the home state retains primary responsibility for IDPs needs.⁴⁶ Very often, however, conditions within the home state have caused the displacement, so the home state is unable or unwilling to meet those needs.⁴⁷ Nonetheless, because IDPs remain within their state, they do not become the concern of international law as do refugees.⁴⁸

While this legal difference does not prohibit international humanitarian organizations from assisting IDPs, it does limit the extent to which these organizations can help.⁴⁹ The dearth of protection afforded IDPs led former U.N. Secretary-General Kofi Annan to call internal displacement “the great tragedy of our times,” and IDPs “among the most vulnerable of the human family.”⁵⁰

In the early 1990s, as internal displacement became more widespread, the U.N. authorized the U.N. Special Representative of the Secretary-General on IDPs to establish an “appropriate normative framework” that would state the current norms and rights of IDPs and obligations of states toward them.⁵¹ This framework became the Guiding Principles on Internal Displacement (“Guiding Principles”) and articulated for

46. Flavia Giustiniani, *New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention*, 39 DENV. J. INT'L L. & POL'Y 347, 348 (2011).

47. Kidane, *supra* note 41, at 45.

48. Elizabeth E. Ruddick, *The Continuing Constraint of Sovereignty: International Law, International Protection, and the Internally Displaced*, 77 B.U. L. REV. 429, 440, 452 (1997).

49. For example, UNHCR was mandated by the U.N. General Assembly in 1950 to provide protection and assistance to refugees when host governments cannot sufficiently do so. Internally displaced persons were not included in the mandate. Refugee Convention, *supra* note 43. Since 1972, UNHCR has been extended authority by the General Assembly to assist IDPs on an ad hoc basis when the country requires assistance. Roberta Cohen, *Humanitarian Imperatives Are Transforming Sovereignty*, 16 ILSA Q. 14, 15 (2008) [hereinafter Cohen, *Humanitarian Imperatives*]. This practical implication of the distinct legal status for IDPs is rooted in “deference to traditional notions of sovereignty.” *Id.*

50. Jan Egeland, foreword to GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, *supra* note 1.

51. Representative of the Secretary-General, *Internally Displaced Persons: Rep. of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission on Human Rights Resolution 1997/39*, ¶ 2, Comm'n on Human Rights, U.N. Doc. E/CN.4/1998/53 (Feb. 11, 1998) (by Francis M. Deng).

the first time rights of states toward IDPs.⁵² The Guiding Principles are recognized as a significant step in the evolution of a doctrine of international protection for IDPs and they remain the most important articulation of this protection on an international scale.⁵³ In 2005, the U.N. World Summit Outcome document endorsed the Guiding Principles⁵⁴ and expressed “resolve to take effective measures to increase the protection of internally displaced persons.”⁵⁵ However, neither the World Summit Outcome document nor the Guiding Principles are binding on member states.⁵⁶

As such, while refugees have been accorded international protection for over sixty years,⁵⁷ IDPs continue to occupy a lacuna of legal protection. No similar binding international framework articulating standards for the protection and assistance of IDPs yet exists⁵⁸ despite the increased visibility of the plight of IDPs during the past decade. Indeed, amid this ongoing chasm of legal protection, the last decade has seen more people displaced than ever before.⁵⁹ The world now has almost twice as many IDPs as refugees.⁶⁰ For example, by summer 2013, the number of displaced persons within Syria was rough-

52. *Id.*

53. *Id.*

54. 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Sept. 16, 2005) [hereinafter 2005 World Summit Outcome]. For more on this, see ALEX J. BELLAMY, RESPONSIBILITY TO PROTECT: THE GLOBAL EFFORT TO END MASS ATROCITIES 133 (2009).

55. 2005 World Summit Outcome, *supra* note 54, ¶ 132. This wording was confirmed in a General Assembly resolution. G.A. Res. 60/1, ¶ 8, U.N. Doc. A/RES/60/168 (Mar. 7, 2006). See also Cohen, *Humanitarian Imperatives*, *supra* note 49, at 18 (referring to the World Summit Outcome, *supra* note 54).

56. Like all U.N. General Assembly resolutions, the World Summit Outcome is not a legally binding document, but “is more appropriately considered a political commitment.” Saira Mohamed, *Taking Stock of the Responsibility to Protect*, 48 STAN. J. INT'L L. 319, 328–29 & n.57 (2012); Giustiniani, *supra* note 46, at 349.

57. Since 1951, the U.N. has recognized refugees as a special legal category possessing certain rights and owed certain obligations by the international community. Refugee Convention, *supra* note 43.

58. Barbour & Gorlick, *supra* note 42, at 555.

59. See *Global Overview 2011: People Internally Displaced by Armed Conflict and Violence*, INTERNAL DISPLACEMENT MONITORING CTR. (Apr. 2012), <http://www.internal-displacement.org/publications/global-overview-2011> [hereinafter *Global Overview*]; see also Cohen, *Humanitarian Imperatives*, *supra* note 49.

60. Schmidt, *supra* note 27, at 485.

ly four times the number of Syrians who fled the country as refugees.⁶¹ The growth in the number of IDPs emphasizes that the consideration of where the legal responsibility for this population falls requires serious attention and should be prioritized.

B. The Role of Regional Organizations

One forum suited to address legal responsibility for IDPs is regional organizations. Regional organizations have long served an important role in the international community.⁶² The U.N. Charter (the “Charter”) encourages an active role for regional organizations, contemplating a relationship of support and coexistence between regional organizations and the international U.N. system.⁶³ The Charter does not define regional organizations, but the term as used is generally interpreted broadly to “focus appropriately on function rather than form.”⁶⁴ One scholar has made this term more tangible, offering an interpretation of the regional arrangements contemplated by the Charter as “less-than-global, state-based entities or associations that need not be treaty-based and that may include geographically, politically, or economically oriented organizations.”⁶⁵ The U.N. Secretary-General recently called attention to the primacy of the role the Charter envisioned for regional organizations, noting that “[t]he architects of the United Na-

61. While at least two million Syrians were estimated to be internally displaced by January 2013, 600,000 Syrians had fled Syria into neighboring countries by the same date. Anne Barnard, *Dozens of Civilians Are Said to Be Killed by Syrian Airstrikes*, N.Y. TIMES (Jan. 14, 2013), <http://www.nytimes.com/2013/01/15/world/middleeast/syria-launches-deadly-airstrikes-in-damascus-suburbs.html>.

62. U.N. Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect: Rep. of the Secretary-General*, ¶ 2, U.N. Doc. A/65/877-S/2011/393 (June 27, 2011) [hereinafter Secretary-General’s Report on R2P].

63. Article 52 of the U.N. Charter encourages “the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.” U.N. Charter art. 52.

64. James Hickey, *Challenges to Security Council Monopoly Power over the Use of Force in Enforcement Actions: The Case of Regional Organizations*, 10 INT’L LEGAL THEORY 69, 78 (2004).

65. *Id.*

tions accorded a prominent place to regional arrangements in their vision of the new world body.”⁶⁶ He emphasized that this original conception of regional organizations envisioned in the Charter has been realized, with these organizations playing an increasingly significant role in the world order.⁶⁷

In addition to highlighting the importance of regional organizations generally, in recent years the U.N. has specifically recognized regional organizations as well-positioned to provide an alternative to action by the Security Council or U.N. General Assembly.⁶⁸ The Secretary-General also emphasized specifically that the Charter “underline[s] the value of ongoing working relationships among global, regional and sub-regional organizations for prevention and protection purposes.”⁶⁹ Indeed, in the early twenty-first century, the U.N. has explicitly noted the crucial role regional organizations play in the maintenance of international peace and security.⁷⁰ With numerous controversial examples of instances in which the Security Council did or did not resolve to intervene “in time” to adequately protect a population,⁷¹ an approach that would not require the same political and diplomatic considerations as those faced by the Security Council is attractive.⁷² A regional approach could thus

66. Secretary-General’s Report on R2P, *supra* note 62, ¶ 2.

67. *Id.* ¶ 2.

68. *Id.* ¶ 2.

69. *Id.* ¶ 5.

70. As one example, member states at the 2005 World Outcome Summit “[r]ecogniz[ed] the important contribution to peace and security by regional organizations.” 2005 World Summit Outcome, *supra* note 54, ¶ 93. The Secretary-General has since emphasized this recognition given in the World Summit Outcome. Secretary-General’s Report on R2P, *supra* note 62, ¶ 3.

71. For discussion of examples, see, e.g., Wed Nanda, *The Future under International Law of the Responsibility to Protect after Libya and Syria*, 21 MICH. ST. J. INT’L L. 1 (2013); Alison Des Forges & Timothy Longman, *Legal Responses to Genocide in Rwanda*, in MY NEIGHBOR, MY ENEMY: JUSTICE AND THE COMMUNITY IN THE AFTERMATH OF MASS ATROCITY 49–68 (Eric Stover & Harvey M. Weinstein eds., 2004) (discussing the inaction of the international community and the OAU during the genocide in Rwanda in 1994); Simon Chesterman, “Leading from Behind”: *The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya*, 25 ETHICS & INT’L AFF. 279, 279–85 (2011).

72. This aligns with the statement of member states in the 2005 World Summit Outcome document:

The international community, through the United Nations, also has the responsibility to . . . help protect populations from genocide, war

serve as an alternative to reliance on the Security Council to act to maintain or restore international peace and security. The high-level recognition of this both suggests and contributes to the increasingly visible, active position that regional organizations are seen to play in preventing conflict and protecting populations in the contemporary world.⁷³

This is in line with a regionalist approach. Scholars advocating for regionalism, who take the view that regions are “significant in their own right, and not merely derivative of state power or global processes,”⁷⁴ have presented and defended the position that regional institutions are singularly positioned to bring about certain change that no other institution or actor could.⁷⁵ These scholars suggest that regional institutions can be important and powerful forces for social and political change due to the unique character of regions as both local and international.⁷⁶

An illustrative example of regional organizations’ capacity to spearhead solutions to contemporary problems is provided by the leadership role that regional organizations are taking in creating disaster response policy and addressing issues arising

crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

2005 World Summit Outcome, *supra* note 54, ¶139.

73. Cilja Harders & Matteo Legrenzi, *Introduction* to BEYOND REGIONALISM: REGIONAL COOPERATION, REGIONALISM AND REGIONALIZATION IN THE MIDDLE EAST 1 (Cilja Harders & Matteo Legrenzi eds., 2008).

74. *Id.*

75. *Id.*

76. *Id.*

from migration due to climate change.⁷⁷ Natural disasters and climate change are two conspicuous examples that highlight the fact that states in a particular region are often faced concurrently with “similar environmental phenomena and hazards.”⁷⁸ Regional organizations therefore may be best positioned to lead discussions on appropriate, vernacular solutions tailored to these vernacular problems, which will best serve the region, its states, and its populations.⁷⁹ For the same reasons, a regional organization would be well situated to address internal displacement, whether due to change in the political or natural climate. As is poignantly demonstrated by the widespread displacement caused by conflict arising out of the Arab Spring uprisings, the same factors may be the force for change in many states throughout a region, making a regional organi-

77.

One particular area where regional organizations seem to be playing a leading role is in the relationship between migration and climate change. Regional processes to deal with labor migration and climate change. Regional processes to deal with labor migration have been increasing in importance over the past decade or so . . . [Likewise, w]ith growing recognition of the potential effects of climate change, regional organizations are becoming aware that they have particular roles to play in policy discussions. Regions are more likely to face similar environmental phenomena and hazards and if (or when) people are forced to leave their countries because of the effects of climate change, they are likely to turn first to nearby countries.

Elizabeth Ferris & Daniel Petz, *In the Neighborhood: The Growing Role of Regional Organizations in Disaster Risk Management*, BROOKINGS INST. (Feb. 2013), <http://www.brookings.edu/research/reports/2013/02/regional-organizations-disaster-risk-ferris>, at 3. Authors Ferris and Petz conclude their study by arguing that their

research has shown that in almost all regions of the world, regional organizations are playing increasingly active roles in disaster risk management. While each region has unique characteristics that shape the nature and activities of its regional bodies, it seems as if they all (or almost all) see value in working together to prevent disasters and to a lesser extent to respond to disasters occurring in the region.

Id. at 25.

78. *Id.* at 3.

79. Ferris & Petz, *supra* note 77, at 1–4. See also KATHERINE HAVER & CONOR FOLEY, INTERNATIONAL DIALOGUE ON STRENGTHENING PARTNERSHIP IN DISASTER RESPONSE: BACKGROUND PAPER 2 (Oct. 2011), available at <http://www.ifrc.org/PageFiles/93533/Background%20paper%202.pdf>.

zation a fitting venue for crafting well-tailored solutions. While these conflicts may be contained within a state, they affect the region as a whole.⁸⁰

Regional approaches to regional phenomena also bring important indirect benefits. One theory holds that “functional regional cooperation on specific issues can contribute to peace and security, . . . [as] cooperation between countries on specific practical issues can lead to cooperation on broader issues, leading to decreasing likelihood of conflict between the countries and eventually to the development of regional identities.”⁸¹ This would seem an especially valuable consequence for regional organizations plagued by disharmony.⁸² Harnessing such cooperation will be of increasing import in the contemporary era in which the value of regional institutions is garnering much attention.⁸³

It may be possible to counter the advocacy of a regional approach to internal displacement with the Responsibility to Protect or “R2P” doctrine.⁸⁴ While there was much discussion in the early twenty-first century of an emerging customary norm recognizing the international community’s “responsibility to protect” the citizens of a state when the state has failed to do so, the doctrine has not been utilized consistently or successfully.⁸⁵ It remains an issue of debate whether an international responsibility to step in would be beneficial to the international community,⁸⁶ but it is clear that a reliable R2P framework has

80. In early October, the Security Council “voiced ‘deep concern’ at the consequences of the refugee crisis caused by the conflict, ‘which has a destabilizing impact on the entire region.’” *U.N. Security Council Urges All Sides*, *supra* note 22.

81. This is called a functionalist approach. *See, e.g.*, Ferris & Petz, *supra* note 77, at 2; *see also* Louise Fawcett, *Exploring Regional Domains: A Comparative History of Regionalism*, 80 INT’L AFF. 429, 431 (2004).

82. *See infra* Parts III.A and III.B.2 for more on the Arab League’s reputation for weak leadership amid intra-regional noncooperation.

83. *See* Amitav Acharya & Alastair Iain Johnston, *Comparing Regional Institutions: An Introduction*, in CRAFTING COOPERATION: REGIONAL INTERNATIONAL INSTITUTIONS IN COMPARATIVE PERSPECTIVE 1–31 (Amitav Acharya & Alastair Iain Johnston eds., 2007).

84. For background on R2P, *see generally*, Barbour & Gorlick, *supra* note 42.

85. *See* Cohen, *International Response*, *supra* note 31, at 7.

86. Scholars have argued that “a well-defined, coordinated response where states and the international community of actors including the U.N., regional and sub-regional actors and civil society take responsibility according to an

yet to crystallize.⁸⁷ The applicability of the doctrine to situations of internal displacement also remains unclear.⁸⁸ The R2P doctrine thus requires further elucidation and clarification of existing misconceptions about its use before it is considered as a viable option to assist IDPs.⁸⁹

With no indication that the R2P doctrine will solidify in the near future,⁹⁰ an additional benefit of a regional approach to IDP protection may be to punt the thorny question of whether and to what degree a responsibility on the part of the international community as a whole to care for a sovereign state's nationals exists. A regional response provides an alternative; with responsibility for IDPs rendered an intraregional duty, the controversial and nebulous R2P issue may be sidestepped altogether.⁹¹

II. THE AU'S APPROACH TO INTERNAL DISPLACEMENT: AN EMPHASIS ON REGIONAL COOPERATION

A. The Kampala Convention: Context, Characterizing Conditions, and Limitations

An examination of the background, objectives, and key provisions of the Convention sheds light on the conditions that gave rise to an atmosphere ripe for its creation and illustrates what aspects of this approach could be utilized for successful transfer beyond the AU.

1. The Context: Africa and the African Union

As the Kampala Convention necessarily reflects values of the AU, exploring the context of the AU's history and character is

established R2P framework" is necessary to meet the shortcomings of state response to humanitarian disasters in the twenty-first century world order. Barbour & Gorlick, *supra* note 42, at 560.

87. See Edward C. Luck, *The Responsible Sovereign and the Responsibility to Protect*, in 1 ANNUAL REVIEW OF UNITED NATIONS AFFAIRS 1-xxxiii to 1-xliii (Joachim W. Müller & Karl P. Sauvant eds., 2006–2007).

88. See, e.g., Cohen, *International Response*, *supra* note 31, at 7.

89. Barbour & Gorlick, *supra* note 42, at 555.

90. See Nanda, *supra* note 71. The effectiveness of an R2P framework is also hindered by logistics, with no "international enforcement machinery" in place to offer protection or assistance to IDPs. Cohen, *International Response*, *supra* note 31, at 8.

91. Barbour & Gorlick, *supra* note 42.

an essential starting place to further an understanding of the foundations for this instrument. The AU was established in 2001 as the successor to the Organization of African Unity (“OAU”),⁹² amid recognition by OAU member states of a need for a regional organization better suited to serve the goals of a developing, post-colonial continent.⁹³ With the signing of the Constitutive Act, the AU became Africa’s premier intergovernmental organization, with fifty-four state parties as of November 2013.⁹⁴

The moment in which the AU was established shaped its objectives as reflected in the structure and substance of the Constitutive Act, which in turn informed the Kampala Convention. The AU was conceived of in the immediate post-Cold War years, during which time regional organizations shifted with the changing global order in the aftermath of several significant regional crises.⁹⁵

Regional organizations formed during the Cold War were predominantly established to protect the member states from “external threats,” with the principal of sovereignty reigning supreme.⁹⁶ Regional organizations established during the mid- and late-twentieth century accordingly prioritized “collective defense” over all other considerations.⁹⁷ After the Cold War, however, this focus changed dramatically amid new recognition of intraregional threats⁹⁸ and a related emphasis on the re-

92. “Established in 1963, the OAU had as its main goal the elimination of colonization in Africa and the promotion of unity and solidarity among African states for the betterment of its peoples.” Stacy-Ann Elvy, *Theories of State Compliance with International Law: Assessing the African Union’s Ability to Ensure State Compliance with the African Charter and the Constitutive Act*, 41 GA. J. INT’L & COMP. L. 75, 82 (2012).

93. *The Organization of African Unity*, DEP’T OF INT’L RELATIONS & COOPERATION, <http://www.dfa.gov.za/foreign/Multilateral/africa/oau.htm> (last visited Jan. 19, 2013) (S. Afr.).

94. Morocco is the only African nation that is not an active member of the AU. *AU in a Nutshell*, AFR. UNION, <http://www.au.int/en/about/nutshell> (last visited Nov. 14, 2013).

95. These crises include those in Rwanda, Yugoslavia, and Kosovo during the 1990s. See Cohen, *Humanitarian Imperatives*, *supra* note 49, at 14; see also Davis Brown, *The Role of Regional Organizations in Stopping Civil Wars*, 41 A.F. L. Rev. 255, 250 (1997).

96. Brown, *supra* note 95, at 251.

97. *Id.* at 241–42.

98. *Id.* at 250.

sponsibility of sovereign states toward each other.⁹⁹ While the principle of nonintervention by a member state in the internal affairs of another had been a central tenet on which regional organizations had formerly been based,¹⁰⁰ following the Cold War “regional and global security perspectives” radically shifted toward a focus on preserving and fostering the relationships *between* the states in a region.¹⁰¹

The AU was created during this shift, and the Constitutive Act indeed reflects an emphasis on strengthening intraregional responsibility.¹⁰² Whereas the OAU was primarily concerned with securing independent identities for the former colonies, the Constitutive Act evidences an attempt on the part of the AU to limit sovereignty “by defining sovereignty in terms of a state’s willingness and capacity to provide protection to its nationals.”¹⁰³ Reconceptualizing the role of the regional organization in this way allowed the AU to address and seek to “improve the normative framework for protecting and assisting displaced persons . . . [and] strengthen [the] institutions” involved.¹⁰⁴

Indeed, particular provisions of the Constitutive Act reveal the notion that regional solutions to internal problems were deemed well within the AU’s scope of concern. Most significantly, Article 4(h) codifies “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”¹⁰⁵ Questions surround the scope and definition of this intervention power,¹⁰⁶ as neither the Constitu-

99. See Cohen, *Humanitarian Imperatives*, *supra* note 49.

100. Brown, *supra* note 95, at 237.

101. *Id.* at 251.

102. “Regional organizations now no longer needed for collective defense have begun to assert a new role in collective security by stopping civil wars and helping (or making) combatants achieve peace,” thus “the role of regional organizations in preventing or stopping internal conflicts has expanded.” *Id.* at 236–37.

103. Dyani-Mhango Ntombizozuko, *Reflections on the African Union’s Right to Intervene*, 38 BROOKLYN J. INT’L L. 1, 11 (2012).

104. Abebe, *supra* note 38.

105. *Constitutive Act*, AFR. UNION art. 4(h) (July 11, 2000), available at http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm.

106. Some scholars have argued that the AU’s “right” of intervention is more properly interpreted to be a duty:

tive Act nor subsequent treaties or documents define the substance of the right or the procedure to follow when invoking it.¹⁰⁷ Further, there has not yet been an occasion for the judicial organ of the AU to interpret the scope of the intervention power.¹⁰⁸

At the time of writing, the AU had not exercised its Article 4(h) power to intervene in a member state without that state's

[A] "right" implies that the AU does not have to intervene when circumstances that pertain to crimes against humanity, war crimes, and genocide occur. A legal duty, on the other hand, may create legal consequences for the AU if it fails to execute its obligation to intervene as compared to a discretionary "right to intervene."

Ntombizozuko, *supra* note 103, at 12–13 (citing Nsongurua Udombana, *When Neutrality Is a Sin: The Darfur Crisis and the Crisis of a Humanitarian Intervention in Sudan*, 27 HUM. RTS. Q. 1149, 1157 n.42 (2005)).

107. Ntombizozuko provided an overview of the issues related to interpreting the intervention power:

It is unclear whether the AU Assembly may first conduct an investigation before determining if an intervention is necessary, or whether it needs to first decide to intervene before finding out if indeed international crimes were committed in a member state. Article 4(h) requires that there must be a commission of an international crime to necessitate an intervention . . . There is no institution operational yet to interpret Article 4(h) of the Constitutive Act or the AU Assembly's decision to intervene or not to intervene. The African Court of Justice [the AU institution with subject matter jurisdiction over the interpretation and application of the Constitutive Act; any question of international law; all acts, decisions, regulations, and directives of AU organs; and circumstances that would constitute a breach of an obligation owed to a state party or the AU] is not yet operational . . . [but] will be helpful in interpreting Article 4(h) to ascertain the meaning of intervention . . . The Constitutive Act provides that if the organ responsible for its interpretation is not operational, the AU Assembly can assume such function as long as the decision reaches a two-thirds majority. This may be problematic, especially when it comes to deciding on the meaning of the right to intervene, as the AU Assembly may be embroiled in disagreements . . . There has not been an instance where the meaning of the AU's right to intervention has been questioned in practical terms. One hopes that when that time comes the African Court of Justice will be fully operational.

Ntombizozuko, *supra* note 103, at 14–17.

108. The African Court of Justice would have jurisdiction over this question of jurisdiction, but is not yet fully operational. *See id.* at 15–17.

consent.¹⁰⁹ Scholars posit that this is due to logistical and ideological hindrances; logistical, as the AU Assembly normally meets only twice a year and assembly decisions require at least a two-thirds majority vote of all members,¹¹⁰ and ideological, “given the continent’s traditional reluctance to endorse interventionism.”¹¹¹ As such, the use of the Article 4(h) authority would be both “time-consuming and fraught with political obstacles.”¹¹² By this understanding, intervention pursuant to Article 4(h) “may not happen at all or may happen too late.”¹¹³

Other scholars have suggested that the provision’s lack of use indicates that the AU remains uncomfortable with circumventing state sovereignty, and that it remains unclear whether the “AU Assembly has, in fact, changed its stance of non-intervention in internal armed conflicts.”¹¹⁴ However, the existence of this provision suggests that the drafters at least desired intraregional responsibility to coexist with sovereignty, to allow for the possibility¹¹⁵ of intervention when deemed necessary.¹¹⁶

2. Key Provisions of the Kampala Convention

From early in the organization’s existence, there was commitment on the part of the AU to work to relieve the situation of Africa’s displaced.¹¹⁷ The Kampala Convention accordingly reflects the AU’s foundational principles. The Convention fundamentally “reaffirm[s] the principle of the respect for sover-

109. *Id.* at 43–44. However the AU has exercised its right to intervene through the consent of the member state involved (pursuant to Article 4(j)) on at least three occasions: “in Burundi to build peace, intervened in Darfur to enable the establishment of a more robust U.N. peace operation and to monitor the humanitarian crisis effectively, and intervened in Somalia to coordinate efforts to advance the cause of peace.” *Id.* at 33.

110. *Constitutive Act*, *supra* note 105, art. 7(1).

111. Bellamy, *supra* note 54, at 78–79, *quoted in* Ntombizozuko, *supra* note 103, at 44.

112. Bellamy, *supra* note 54, at 78–79, *quoted in* Ntombizozuko, *supra* note 103, at 44.

113. Ntombizozuko, *supra* note 103, at 44.

114. *Id.*

115. For more on the discussion of whether the authority to intervene is more properly considered a right or a duty, see *supra* note 106.

116. Solomon, *supra* note 38.

117. Chaloka Beyani, *Recent Developments: The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa*, 50 J. AFR. L. 187, 189–90 (2006).

eign equality” among member states,¹¹⁸ and makes clear that nothing within it is intended to supersede the notion that states retain primary responsibility for the persons within their borders.¹¹⁹ However, the Convention’s substance and structure also suggest that the AU recognized the benefits for regional accountability that exists prominently alongside this emphasis on sovereign equality. As indicated by the first objective “to promote and strengthen regional and national measures”¹²⁰ for preventing displacement and assisting and protecting IDPs, the AU sought to introduce this notion on regional cooperation as a buttress to national action.¹²¹

The Convention strikes this balance by framing states parties’ substantive obligations not as individual duties the state owes only to its IDPs, but as responsibilities that states owe as part of a network of regional actors.¹²² For instance, states parties are obligated to extend adequate humanitarian assistance where appropriate to communities in need,¹²³ and when unable to provide sufficient support to their own IDPs, states parties are obligated to request assistance from relevant regional actors.¹²⁴ They are required to cooperate with those actors who subsequently render assistance.¹²⁵ In this they must “allow rapid and unimpeded passage of all relief consignments, equipment and personnel” to the internally displaced; sovereignty is given no place in that arrangement.¹²⁶ States parties are further required to provide resources to assist and protect other states’ IDPs when assistance is requested by that other state or by the Conference of States Parties,¹²⁷ as well as to protect IDPs regardless of the cause of displacement.¹²⁸ Upon ratifica-

118. Kampala Convention, *supra* note 33, pmb1.

119. *Id.* art. 5(1), (12), art. 7(2).

120. *Id.* art. 2(a).

121. *See* Giustiniani, *supra* note 46.

122. For instance, states parties must “ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizers and personnel.” Kampala Convention, *supra* note 33, art. 3(1)(j).

123. *Id.* art. 9(2)(b).

124. *Id.* art. 5(6).

125. *Id.* art. 5(6).

126. *Id.* art. 5(7).

127. *Id.* arts. 6(1), (2).

128. Kampala Convention, *supra* note 33, art. 9(1)(a). One can imagine a regional twist to this obligation; for instance, it would require a state to ren-

tion, states parties are required to implement the obligations into domestic laws and policies,¹²⁹ including incorporating the Convention's substantive obligations into relevant legislation¹³⁰ as well as creating "an authority or body" that will be "responsible for . . . cooperating with relevant international organizations or agencies, and civil society organizations, where no such authority or body exists."¹³¹

The Convention also codifies the obligations of a wide range of other regional actors. One objective of the Convention is to "provide for the respective obligations, responsibilities, and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and the protection of, and assistance to, internally displaced persons."¹³²

Additionally, the Kampala Convention specifically articulates the role and obligations of the AU vis-à-vis internal displacement in Africa.¹³³ First, the Convention incorporates the Constitutive Act's intervention power, and gives the AU a right to intervene either upon request of two-thirds of the AU Assembly in situations deemed "grave circumstances,"¹³⁴ or upon unilateral request by a state party "to restore peace and security."¹³⁵ The AU is also obligated to provide necessary support to states parties in the prevention of displacement and in the protection of IDPs in the form of coordinating the mobilization of resources and collaborating with international organizations, states parties, civil society organizations ("CSOs"), and humanitarian organizations.¹³⁶

der protection to IDPs uprooted in its territory due to conflict in a neighboring state.

129. *Id.* art. 3(2).

130. *Id.* art. 3(2)(a).

131. *Id.* art. 3(2)(b).

132. *Id.* art. 2(1)(e). For instance, Article 6 establishes the obligations of international organizations and humanitarian agencies are established; Article 7 addresses members of armed groups (who "shall be held criminally responsible for their acts which violate the rights of IDPs under international law and national law"); Article 10 addresses the duties of private stakeholders causing displacement through development projects. *See id.* arts. 6, 7, 10.

133. *Id.* art. 8.

134. *Id.* art. 8(1). Grave circumstances are therein defined as war crimes, genocide, and crimes against humanity. *Id.*

135. *Id.* art. 8(2).

136. Kampala Convention, *supra* note 33, art. 8(3).

Through all of these provisions, the Convention communicates the AU's position that meeting the needs of IDPs involves a web of cooperating regional actors.¹³⁷ The Convention articulates duties that recognize a multi-layered support system of states, non-state actors, and the AU by which this understanding is made manifest. In light of the increased reliance on and noted benefits of regional organizations,¹³⁸ the AU has taken a logical and forward-looking approach to a problem that remained unsolvable when traditionally considered to be a purely national responsibility.

3. Limitations of the Convention

However groundbreaking the Convention may be, the inevitable limitations of the Convention illustrate the downsides of a regionally cooperative approach to the protection and assistance of IDPs. Noteworthy potential limitations are the hesitancy of states to ratify, the questionable strength of the Convention's enforcement mechanism, and the effectiveness of the AU's intervention power.

The majority of signatories to the Convention had yet to ratify the document at the time of publication, and over two-thirds of AU member states had neither signed nor ratified.¹³⁹ Political unpopularity at the state level and the large financial commitments that accompany ratification are understood to be primary reasons for states' reluctance to sign or ratify the Convention.¹⁴⁰ The political climate in many states is such that displacement is not prioritized on the national agenda.¹⁴¹ In other cases, the Convention has been seen as politically unpopular due to the positive obligations it places upon ratifying states.¹⁴² Specifically, the obligation to bring national laws into compliance (which could be expensive or represent a major

137. For more on the drafting process of the Kampala Convention, see Giustiniani, *supra* note 46.

138. Ferris & Petz, *supra* note 77.

139. Twenty of the thirty-five AU member states that had signed the Convention had not ratified it as of January 2013. *Kampala Convention*, IDMC, *supra* note 34.

140. See Giustiniani, *supra* note 46.

141. Taylor, Lopas & Soloman, *supra* note 38, at 48.

142. *Id.*

change in policy),¹⁴³ the obligation to prevent displacement from private development projects,¹⁴⁴ and the obligation to provide reparations upon displacement¹⁴⁵ all serve as obstacles to ratification.

A second limitation is the concern that the Convention does not have the strong enforcement mechanisms necessary to ensure compliance with its guidelines.¹⁴⁶ Scholars have commented that the Convention will hinge on compliance at the national level as well as on effective oversight by the AU.¹⁴⁷ Yet, it has been argued that the Convention's oversight system is weak, and that the AU will not be able to compel compliance.¹⁴⁸ Indeed, while the Convention has certain oversight functions in place, it is not clear what power the AU has to compel compliance.

For instance, the Convention obligates states parties to implement measures at the national level "for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to IDPs,"¹⁴⁹ and for the establishment of "a Conference of States Parties . . . to monitor and review the im-

143. Many states parties of the Convention simply do not have the financial assets that ratification would require to bring national laws into compliance with the Convention's obligations. *Id.*

144. Kampala Convention, *supra* note 33, art. 10.

145. *Id.* art. 12.

146. Lauren Groth, *Engendering Protection: An Analysis of the 2009 Kampala Convention and Its Provisions for Internally Displaced Women*, 23 INT'L J. REFUGEE L. 221, 251 (2011); Giustiniani, *supra* note 46, at 370. A similar weakness in the Constitutive Act has also been highlighted; scholars have suggested that "the Constitutive Act should be revised to more effectively ensure state compliance" with its principles and the principles of the AU Charter. Elvy, *supra* note 92, at 88.

147. Abebe, *supra* note 38, at 52; Giustiniani, *supra* note 46, at 370; Ferris & Petz, *supra* note 77.

148. Giustiniani, *supra* note 46, at 370. It has also been noted that it may not be possible to force compliance by non-state actors who are not parties to the Convention but who are nonetheless the subject of obligations within it. These include international organizations and humanitarian agencies who are the subjects of Article 6, and members of armed groups who are the subjects of Article 7. *Analysis: African IDP Convention Fills a Void in Humanitarian Law*, IRIN (Oct. 27, 2009), <http://www.irinnews.org/report/86762/analysis-african-idp-convention-fills-a-void-in-humanitarian-law>.

149. Kampala Convention, *supra* note 33, art. 9(2)(m). This may be done pursuant to assistance by international organizations, humanitarian agencies, CSOs, and other regional actors. *Id.* art. 9(3).

plementation of the objectives of the Convention,”¹⁵⁰ which would meet regularly pursuant to AU facilitation.¹⁵¹ This provision further obligates states to “enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.”¹⁵² This system is of obvious practical import; with no oversight function, states that ratify the Convention have no incentive to take the challenging and costly steps to implement the provisions into national laws. An oversight function ensures that there are repercussions for states that do not comply.¹⁵³ Such provisions accordingly help to facilitate the Convention and to provide necessary support to encourage its implementation.¹⁵⁴ It remains to be seen whether states will comply with their obligations post-ratification and, if not, whether the oversight system in place will effectively compel compliance. If these concerns are realized, the ability of the Convention to accomplish its goals would be jeopardized.

Finally, the effect of the AU’s intervention power pursuant to Article 4(h) of the Constitutive Act and incorporated into Article 8 of the Kampala Convention has been questioned.¹⁵⁵ What is clear is that there are specific limits to the intervention power: it may only be exercised in cases of crimes against humanity, war crimes, and genocide,¹⁵⁶ and any intervention would first depend on the AU being willing and able to facilitate the intervention.¹⁵⁷ As noted above, the intervention power has yet

150. *Id.* art. 14(1).

151. *Id.* art. 14(3).

152. *Id.* art. 14(2).

153. As stated by the president of the International Committee of the Red Cross, Jakob Kellenberger, “[t]he crucial challenge now is . . . ensuring that once the convention is signed and ratified by as many states as possible, it is actually implemented and respected. States must now take concrete steps to implement the convention into their own national legislation and regulation systems, and develop plans of action to address issues of displacement.” *Analysis: African IDP Convention*, *supra* note 148.

154. *See* Giustiniani, *supra* note 46.

155. Kampala Convention, *supra* note 33, art. 8.

156. But the Constitutive Act does not define these crimes. It seems the drafters intended the definitions of these international crimes to mirror the definitions already codified in statutes of the ICTY, ICTR, and the Rome Statute. Ntombizozuko, *supra* note 103, at 13–14 (restating an explanation by Tiyanjana Maluwa, AU’s counsel the drafting process, provided in Tiyanjana Maluwa, *The OAU/African Union and International Law: Mapping New Boundaries or Revisiting Old Terrain?*, 98 ASIL PROC. 232, 236 (2004)).

157. Ntombizozuko, *supra* note 103, 20–24.

to be exercised,¹⁵⁸ and the right of intervention has not been defined in either the Constitutive Act or the Kampala Convention.¹⁵⁹ Critics argue that the intervention authority has been left too vague, and will require clarification before it can be put to effective use.¹⁶⁰ If this is so, it could hinder the effective functioning of one of the most innovative provisions of the Convention.

B. The Prevalence of Internal Displacement and Regional Cooperation

Several influential conditions present in Africa while the Kampala Convention was under consideration can be viewed as significant to the instrument's creation and eventual ratification. Specifically, the prevalence of internal displacement in Africa and the cooperation between member states, the U.N., and other regional actors were determinative of the Convention's viability.¹⁶¹

1. The Prevalence of Internal Displacement Across Africa

The drafters have indicated that the Convention was formed amidst recognition of the need to address the disproportionate number of IDPs in Africa, in light of the gap in protection due

158. "The AU has not yet exercised its right to intervene as envisaged in Article 4(h) of the Constitutive Act, which does not require the consent of member states," though the AU has exercised interventions with the state's consent. *Id.* at 43–44. For more on this generally, see *id.*

159. See *infra* Part II.A.1. Thus far, the "assumption has been that the AU's right to intervene can be equated to the use of force. This assumption is based on the fact that, in order to exercise this right, the AU has made provisions for the establishment of an armed force whose responsibility includes intervention as contemplated in the Constitutive Act. Less intrusive means of intervention are listed outside this right." Ntombizozuko, *supra* note 103, at 17.

160. "Further, the AU may be barred from exercising this right as it appears that the principles of sovereignty, non-interference, and territorial integrity of the AU member states are interpreted restrictively. The AU must deal with these issues before an attempt to exercise the right to intervene is made." *Id.* at 1.

161. This list is not meant to be exhaustive. There are many other factors that contributed to the AU's ability to create the Convention in 2009 and to its ratification in late 2012, but these stand out to the author as noteworthy and, at least, a starting point.

to the absence of a binding international legal regime.¹⁶² While displacement exists in every region of the globe,¹⁶³ the problem is more widespread in Africa than on any other continent.¹⁶⁴ As a continent, Africa had the highest number of internally displaced persons in the years leading up to the AU Executive Council order to draft the Convention.¹⁶⁵ IDPs also vastly outnumber refugees in Africa.¹⁶⁶ Displacement thus permeates life on the continent in a way that it does not in other areas where the issue is not as prevalent, and the issue was familiar and tangible to heads of state and the drafters in a way that it may not have been in a region not experiencing the phenomenon on such a large scale.¹⁶⁷

Recognition of the severity of internal displacement on the continent was accordingly a major impetus behind the Convention.¹⁶⁸ Indeed, as expressed in the Explanatory Note to the Convention, states parties created the document “conscious of the fact that the African continent has the largest number of refugees, internally displaced persons, and returnees.”¹⁶⁹ A perception of the commonality of internal displacement in Africa appears to have fostered the framing of internal displace-

162. *Explanatory Note on the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*, AFR. UNION, [http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/5A1FC4CC9028079DC12577450048DE13/\\$file/Kampala%20Convention%20-%20Explanatory%20Note.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/5A1FC4CC9028079DC12577450048DE13/$file/Kampala%20Convention%20-%20Explanatory%20Note.pdf) (last visited Jan. 18, 2013) [hereinafter *Explanatory Note*].

163. In addition to Africa, there are IDPs in countries on every inhabited continent of the globe. Colombia is the country with the most IDPs (with around 4 million IDPs), followed by Iraq (with an estimated 2.5 million IDPs), Turkey (with over a million IDPs), and India (with an estimated 500,000 IDPs). *Global Overview*, *supra* note 59, at 8–9.

164. At least twenty-seven of Africa’s fifty-four countries have internally displaced persons, with at least 40% of the world’s 28.8 million IDPs located in African countries. *Africa*, FORCED MIGRATION ONLINE, <http://www.forcedmigration.org/browse/regional/africa.htm> (last visited Aug. 20, 2013); *see also* *Kampala Convention*, IDMC, *supra* note 34.

165. *Africa*, FORCED MIGRATION ONLINE, *supra* note 164. For more on the drafting process, see *infra* Part II.A.1.

166. *Analysis: African IDP Convention*, *supra* note 148.

167. Giustiniani, *supra* note 46.

168. Solomon, *supra* note 38, at 83–84. Indeed, the preamble presents the Convention as a vernacular solution for a problem that disproportionately affects Africa. *Kampala Convention*, *supra* note 33, pmbl.

169. *Explanatory Note*, *supra* note 162. This document is nonbinding.

ment as a distinctly African problem, which likely facilitated the cooperation necessary to bring the Convention into being.¹⁷⁰ It is difficult to say whether the Convention would have garnered the same political support without such widespread awareness resulting from its omnipresence.

2. Cooperation Between African States, the U.N., and Other Regional Actors

Cooperation between African States and outside actors was also influential in the creation of the Convention. Although initiated by the AU Executive Council and coordinated by the AU Secretariat, the Kampala Convention was created during a five-year process involving a comprehensive team of AU member states, U.N. representatives, legal experts, and a variety of civil society and regional organizations.¹⁷¹

The AU ensured that the project had the support, participation, and commentary of a wide range of regional actors.¹⁷² Indeed, the drafting and negotiation of the terms of the Convention were inclusive and cooperative processes, characterized by the involvement and input of partner organizations and experts.¹⁷³ UNHCR was involved and provided support throughout the process.¹⁷⁴ CSOs were included in the negotiations, offering comments on issues felt to be inadequately addressed in initial drafts.¹⁷⁵ NGOs had (limited) involvement as well.¹⁷⁶

170. *See id.*

171. Solomon, *supra* note 38, at 85 n.2. The African Union Executive Council created the team in response to a decision in 2004 for the AU Commission to collaborate with relevant cooperating partners to ensure that IDPs would be provided with appropriate legal protection. Abebe, *supra* note 38, at 32.

172. Abebe, *supra* note 38, at 33 (the author comments that involving outside actors in this process was “notable”).

173. *Id.* at 31–41.

174. Volker Türk, *Restructuring Refuge and Settlement: Responding to the Global Dynamics of Displacement*, 28 REFUGE 117, 124 (2011).

175. Forced Displacement, Citizenship and Statelessness in Africa: Report of a Civil Society Consultation on African Union Mechanisms and the Protection of Refugees, Internally Displaced Persons and Citizenship Rights 6–9 (Kampala, Uganda, Oct. 19–20, 2009), *available at* http://www.afrimap.org/english/images/research_pdf/ConsultativeMeeting.102009.pdf.

176. On the role of NGOs, one scholar comments, “NGOs participated in the drafting process both within the framework of the Consultative Group and also by providing a written submission. It should, however, be stated that the role of NGOs was considerably limited,” as “very few African NGOs . . . have

NGOs and CSOs both play a vital role in assisting and protecting IDPs in the field in Africa¹⁷⁷ and are thus well situated to comment on the problem. Indeed, these organizations may be in a position to best represent the needs of IDPs and to make sure the IDPs' position is heard.¹⁷⁸ The inclusion of these groups demonstrates the AU's pragmatic approach to the creation of a Convention well suited to address the realities of displacement on the continent.

The AU also invited legal experts, acting in an independent capacity, to comment on the initial draft of the Convention.¹⁷⁹ Later drafts drew heavily upon their suggestions for structure and content.¹⁸⁰ The input of these experts included robust debate on the balance between the notions of state sovereignty, regional responsibility, and intervention.¹⁸¹ The contributions of these experts were significant; their suggestions directly resulted in broadening the AU's oversight role to allow for intervention during "grave circumstances" causing displacement.¹⁸² The inclusion of this provision highlights the value of a collaborative drafting process that draws on the input of a variety of experts and represents various perspectives.¹⁸³

Additionally, the U.N. proffered much support of the AU's development and leadership in Africa, which was significant to the formation of the collaborative climate in which the Convention was created.¹⁸⁴ Even prior to the drafting process, the U.N. had encouraged the AU to craft regional solutions to displace-

sufficient expertise in humanitarian and forced displacement areas." Abebe, *supra* note 38, at 36.

177. See Elizabeth Ferris, "The Role of Civil Society in Ending Displacement and Peacebuilding" [Speech], BROOKINGS INSTITUTION, Mar. 13, 2008, available at <http://www.brookings.edu/research/speeches/2008/03/13-civil-society-ferris>.

178. "In some countries . . . [CSOs] play very important roles in monitoring IDP situations and often serve as fora for IDPs to make their voices heard. In some cases, [CSOs] are given formal roles in supporting solutions for IDPs." *Id.*

179. Abebe, *supra* note 38, at 36.

180. *Id.*

181. *Id.* at 35.

182. Kampala Convention, *supra* note 33, art. 8.

183. See Giustiniani, *supra* note 46.

184. In 2005, for instance, the U.N. committed to partnering with the AU to bring positive developments to the continent. World Summit Outcome, *supra* note 54.

ment in Africa.¹⁸⁵ And in 2006, the U.N. and the AU entered into a partnership to promote the AU; the U.N. Secretary-General and the AU Commission Chairperson signed a declaration, the main objective of which was “to enhance the capacity of the AU Commission and African sub-regional organizations to act as effective U.N. partners in addressing the challenges to human security in Africa.”¹⁸⁶ The AU took the official position in these discussions that the U.N. system as a whole would benefit from the AU taking primary responsibility for “certain tasks on the African continent.”¹⁸⁷ The agreement reveals a perceived “common commitment” to assist in “advancing Africa’s development and regional integration.”¹⁸⁸ This support of the U.N. provided legitimacy to the AU as it grew into its role as a regional organization.

The Kampala Convention shows that the AU addressed the continent’s displacement issues with a regional approach, imposing duties on states parties to seek the assistance of other states and regional actors when independently unable to meet the needs of the displaced, as well as duties on myriad non-state actors. In addition, the AU was granted authority to intervene in grave circumstances affecting the security of IDPs.¹⁸⁹

While this cooperative approach has limitations, the interconnected web of accountability which it weaves for regional actors makes it possible that future crises will be prevented and that the protection and assistance needs of those already

185. For example, in a 2001 Report to the Security Council, the U.N. Secretary-General endorsed a regional solution to the issue of refugees and IDPs in Africa: “The response to this challenge should take into account the linkages that exist between the countries in the sub-region.” U.N. Secretary-General, *Report of the Secretary-General on the Issue of Refugees and Internally Displaced Persons Pursuant to the Resolution 1346*, U.N. Doc. S/2001/513 (May 23, 2001), ¶¶ 3–4.

186. *Enhancing UN-AU Cooperation: A Framework for the Ten-Year Capacity Building Programme for the African Union*, G.A. Res. 61/630, U.N. Doc. A/RES/61/630, Annex (Dec. 12, 2006) [hereinafter *Enhancing UN-AU Cooperation*]. In the 2005 World Summit Outcome, the member states agreed to the development and implementation of a ten-year plan for capacity building with the AU. 2005 World Summit Outcome, *supra* note 54.

187. *Enhancing UN-AU Cooperation*, *supra* note 186.

188. *Id.*

189. As discussed above, this is pursuant to certain procedures; intervention is by either the Assembly’s decision or by request of a state party for assistance. See Kampala Convention, *supra* note 33, art. 8(1), (2).

displaced will be better met. It remains to be seen whether this approach will provide an effective alternative to traditional methods of protection. In the meantime, its very existence is beneficial to the building of intraregional cooperation, accountability, and self-sufficiency in Africa.

III. OUT OF AFRICA: TRANSFERRING THE REGIONAL APPROACH TO THE LEAGUE OF ARAB STATES

This approach to internal displacement, still nascent in Africa, has yet to be utilized by other regional organizations.¹⁹⁰ This section will apply the factors identified above to the current internal displacement crisis in Syria. It will argue that despite differences in the regions and the regional organizations involved, a cooperative approach would be viable for the Arab League as well, and, if adopted, could provide relief for contemporary displacement crises such as the one currently ongoing in Syria.

A. *The Arab League's Characterizing Principles and Objectives*

It was argued above that the foundational principles and characteristics of the AU were influential in the creation of the Kampala Convention and are reflected in its substantive provisions.¹⁹¹ The principles and nature of the Arab League would likewise influence the character of an IDP convention and are thus relevant to the present inquiry.

The Arab League was founded in 1945¹⁹² and is the world's oldest existing regional organization.¹⁹³ Comprised of twenty-two member states,¹⁹⁴ it is the Arab region's most prominent

190. As noted, the Assembly of the Organization of American States passed a non-binding resolution encouraging member states to consider adjusting national laws to better protect and assist IDPs. *See supra* note 35.

191. *See supra* Part II.A.

192. *See* Pact of the League of Arab States, Mar. 22, 1945, 70 U.N.T.S. 248, 252 [hereinafter "Arab League Pact"].

193. Pinfari, *supra* note 39.

194. As discussed *supra* note 40, Syria has been suspended since late 2011, following an Arab League resolution to suspend the country if the government failed to cease violent activity against civilians. *See* Batty & Shenker, *supra* note 40; MacFarquhar, *Arab League Votes to Suspend Syria over Crackdown*, *supra* note 25. The Arab League has nonetheless maintained involvement with seeking a solution to the Syrian conflict. *See* Bayoumy, *supra* note 29.

and significant regional organization.¹⁹⁵ The League was founded following the Second World War, as states of the region struggled to emerge from the hegemony of colonizing European powers.¹⁹⁶ It was created as “part of a broad and ambitious political project,” in a moment in which some involved envisioned “the creation of a single Arab state.”¹⁹⁷ The organization grew out of a time in which the region was seeking to redefine itself, and in that sought both “unity and independence.”¹⁹⁸ Indeed, the foundational document, the Pact of the League of Arab States (the “Pact”), states that the organization was established to “draw closer the relations between member states.”¹⁹⁹ Going forward, League members were “to consider in a general way the affairs and interests of the Arab countries.”²⁰⁰

Contrasting with this quest for unity is the Pact’s more prominent emphasis on the principle of sovereignty.²⁰¹ The preamble reveals this dichotomy between cooperation and independence. While states were to “direct their efforts toward the goal of the welfare of all the Arab States, their common weal,” that endeavor was to be undertaken only upon a “basis of respect for the independence and sovereignty” of member states.²⁰² And while the Pact provides for a Council with some oversight function to give binding judgments on disputes between two states, those decisions only bind the states that accept them.²⁰³ This is one indication that the states parties sought to retain independent authority at the expense of regional coexistence,²⁰⁴ a characterizing focus on sovereignty that has remained in the intervening decades.²⁰⁵

195. David Romano & Lucy Brown, *Regional Organizations, Regional Identities and Minorities: The Arabs and the Kurdish Question*, in BEYOND REGIONALISM, *supra* note 73, at 157, 157.

196. I. Pogany, *The League of Arab States: An Overview*, 21 BIHAR L.J. 41, 41 (1989).

197. Pinfari, *supra* note 39, at 1.

198. Pogany, *supra* note 196.

199. Arab League Pact, *supra* note 192, art. 2.

200. *Id.*

201. As reflected in several articles of the Pact. See, e.g., *id.* arts. 18, 20; see also Romano & Brown, *supra* note 195, at 157.

202. Arab League Pact, *supra* note 192, pmb.

203. Romano & Brown, *supra* note 195.

204. Pogany, *supra* note 196.

205. Romano & Brown, *supra* note 195.

It has been argued that one explanation for the continued, near-constant conflict in the Arab region may be this presence of both sovereignty and pan-Arabism²⁰⁶ in the agenda of the Arab League.²⁰⁷ This dichotomy may cause “role conflict,” stymying the development of a regional identity and thereby contributing to regional conflict.²⁰⁸ Regardless of the merits of that position, this dual agenda should not be deemed fatal to the creation of a regional framework to address regional problems such as internal displacement.

As explored above, the AU has sought to emphasize cooperation without sacrificing respect for sovereignty,²⁰⁹ demonstrating that advancing a regional approach to internal displacement need not come at the expense of relinquishing an emphasis on independence. It follows that while the Arab League has historically and contemporarily emphasized the sovereignty of its member states, such a stance would not necessarily be dispositive of a viable regional framework to address issues facing the region. The League could thus incorporate a focus on cooperation without losing its emphasis on sovereignty and independence. This approach may appeal simultaneously to the strong sense of sovereign equality and to pan-Arabism.²¹⁰

206. The term “pan-Arabism” is used generally to refer to “a social and political movement that supported the unification of the Arab world,” which emerged around the turn of the twentieth century and was tied to the quest for independence from colonizing powers. For background on pan-Arabism and its influence on geopolitical concerns since the mid-twentieth century, see Bassam Tibi, *The Fundamentalist Challenge to the Secular Order in the Middle East*, 23 FLETCHER F. WORLD AFF. 191 (1999). The author notes that “[o]n a regional level, the Arab states as outlined in the Arab League’s charter have sought to achieve the political goal of pan-Arabism: the pursuit of Arab unity.” *Id.* at 191.

207. Michael Barnett, *Institutions, Roles, and Disorder: The Case of the Arab States System*, 37 INT’L STUDIES Q. 271, 282–84 (1993).

208. *Id.*

209. *See supra* Part II.A.

210. It is recalled that the AU drafters have been clear that the Convention is not intended to undermine the notion that states retain primary responsibility for their nationals; it is also recalled that the Article 8 intervention power may only be triggered upon consent of the state at issue or by two-thirds of the Assembly members. Further, as discussed below, there is some indication that the recent Arab Spring uprisings have occasioned change to the role the Arab League seeks to play in the region. *See infra* Part III.C.

B. Key Principles and Limitations of an Arab League Convention on Internal Displacement

1. Provisions of a Regional Approach to Protecting and Assisting IDPs in the Arab Region and Application to the Current Situation in Syria

For an effective convention to address the problem of internal displacement in the Arab region, the Arab League should replicate the provisions that have been essential to the regional approach of the Kampala Convention. Specifically, the League should build into the document provisions emphasizing cooperation between and among state parties and other regional actors,²¹¹ and establish a right of intervention for the AU in cases of genocide, war crimes, and crimes against humanity, similar to those provisions within the Kampala Convention.²¹²

If Syria was a party to a similar Arab League convention for the protection and assistance of IDPs, it would be obligated to bring its national laws into compliance with the convention and to fulfill those obligations in the case of displacement. For instance, Syria would have a duty to fully cooperate with aid-giving organizations. Neighboring states parties would be obligated to assist if requested by Syria to help meet the needs of IDPs. In the event that the Syrian government proved unable to provide sufficient protection and assistance, the Arab League would have the authority to facilitate assistance and support from non-state actors, and to intervene on behalf of the displaced if the situation was deemed, by the other member states or by an established council, to be of such grave circumstance to warrant intervention.²¹³

211. The emphasis on regional cooperation is manifested in the Kampala Convention in such substantive provisions as the obligations upon the states parties to, *inter alia*, seek assistance of other states and humanitarian agencies when unable to provide adequately for their own IDPs (art. 5(6)); to provide that assistance when requested (art. 6(1), (2)); and to participate in the Conference of the States Parties oversight mechanism (art. 14). As noted above, the Convention emphasized that these provisions were not intended to detract from the territorial integrity and primary responsibility of states for their own populations (see arts. 5(1), 5(12), 7(2)). Kampala Convention, *supra* note 33.

212. Kampala Convention, *supra* note 33, art. 8(1).

213. Kampala Convention, *supra* note 33, arts. 1–9.

In the current situation, Syria would likely be found in violation of its substantive obligations to assist and protect its IDPs. Both sides of the conflict would be in violation of Article 7, which prohibits members of armed groups during armed conflict from, *inter alia*, “hampering the provision of protection and assistance to internally displaced persons under any circumstances,” “impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons,” and “attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.”²¹⁴ It is unclear whether either the Syrian government’s reaction or that of opposition forces would differ if the country were under a legal obligation to cooperate with humanitarian actors seeking to render assistance. Further, the confirmed use of chemical weapons in Syria²¹⁵ would meet the threshold for a

214. Syria’s continuing non-cooperation with humanitarian agencies would be a direct violation of Article 5(6) and Article 7 of the Kampala Convention. *See supra* note 24 (regarding the non-cooperation on the part of Syrian authorities to aid-giving organizations); Kampala Convention, *supra* note 33, art. 7(6)(b), (g), (h).

215. In August 2013, U.N. Secretary-General Ban Ki-moon commissioned a team of inspectors to determine whether evidence corroborated reports that chemical weapons had been used during the conflict in Syria. Following the team’s investigations, a U.N. Report was issued which “confirmed that a deadly chemical arms attack caused a mass killing in Syria [in August] and for the first time provided extensive forensic details of the weapons used, which strongly implicated the Syrian government.” Rick Gladstone & C.J. Chivers, *Forensic Details in U.N. Report Point to Assad’s Use of Gas*, N.Y. TIMES (Sept. 16, 2013), <http://www.nytimes.com/2013/09/17/world/europe/syria-united-nations.html>. In remarks to the press following his Security Council briefing on the Report, the Secretary-General stated, “The findings are beyond doubt and beyond the pale. This is a war crime.” *Id.* In a note accompanying the published Report, the Secretary-General conveys

profound shock and regret at the conclusion that chemical weapons were used on a relatively large scale, resulting in numerous casualties, particularly among civilians and including many children. The Secretary-General condemns in the strongest possible terms the use of chemical weapons and believes that this act is a war crime and grave violation of the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare and other relevant rules of customary international law . . . The Secretary-General reiterates that any use of

finding of grave circumstances warranting intervention by the Arab League.²¹⁶ Whether actual or effective intervention followed would hinge on decisive and cooperative action by the Arab League delegates,²¹⁷ as well as on the existence of sufficient resources and will on the part of the Arab League to use force for this purpose.²¹⁸

Such a convention would add a critical alternative to the current inadequate options for the displaced in Syria. It would obligate Syria, its fellow Arab states, and the Arab League to adequately provide for the IDPs whose needs currently are severely unaddressed.²¹⁹ As there have been documented violations of international criminal law,²²⁰ the League could exercise a right of intervention (if codified) and use force to intervene to

chemical weapons by anyone under any circumstances is a grave violation of international law.

U.N. Secretary-General, Note accompanying the Rep. on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 Aug. 2013, submitted by the Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic (Sept. 13, 2013), *available at* http://www.un.org/disarmament/content/slideshow/Secretary_General_Report_of_CW_Investigation.pdf; *see also* *UN Official Says Chemical Weapons Inspectors Begin Destroying Syrian Stockpile, Machinery*, WASH. POST (Oct. 6, 2013), http://www.washingtonpost.com/world/middle_east/un-official-says-chemical-weapons-inspectors-begin-destroying-syrian-stockpile-machinery/2013/10/06/c166f608-2e70-11e3-9ddd-bdd3022f66ee_story.html.

216. *See, e.g.*, Neil MacFarquhar, *Commissioner Urges Action on Syria*, N.Y. TIMES (Jan. 18, 2013), <http://www.nytimes.com/2013/01/19/world/middleeast/united-nations-commissioner-urges-action-on-syria.html>. (This conclusion is made assuming that an identical right of intervention to that in the Kampala Convention was codified by the Arab League, which would—as discussed—authorize the organization to intervene in instances of war crimes, genocide, and crimes against humanity. Kampala Convention, *supra* note 33, art. 8(1)).

217. The Arab League's Pact requires at least majority vote. Arab League Pact, *supra* note 192, art. 7(1). The AU *Constitutive Act* establishes a two-thirds majority of voting members to agree to a decision, *supra* note 105, art. 7(1).

218. As is the case with the AU's intervention power. *See* Ntombizozuko, *supra* note 103, at 43–48.

219. Elizabeth Ferris, Kemal Kirişçi & Salman Shaikh, *Syrian Crisis: Massive Displacement, Dire Needs and a Shortage of Solutions*, BROOKINGS INST. (Sept. 18, 2013), <http://www.brookings.edu/research/reports/2013/09/18-syria-humanitarian-political-crisis-ferris-shaikh-kirisci>.

220. *See* Gladstone & Chivers, *Forensic Details in U.N. Report Point to Assad's Use of Gas*, *supra* note 215.

protect IDPs suffering from these violations. While it is impossible to know if any substantive protections afforded by such a convention would be effective if applied to the current situation in Syria, it would at least provide an alternative to the bleak options that now exist.

2. Learning from the Kampala Convention's Limitations

The first limitation of the Kampala Convention discussed above was states' reluctance to ratify. Unpacking the likely reasons behind that reluctance promotes an understanding of the ways a regional approach could be improved upon when transferred beyond the AU. The hesitation among AU member states to ratify the Convention has been attributed to political hesitations with regard to certain obligations that would result, such as compensating the displaced and the obligation to bring national guidelines into compliance, which may be costly and unpopular domestically.²²¹ Concern over the requisite financial resources and weak political will necessary to bring domestic laws into compliance with a convention's guidelines could be expected to hinder ratification;²²² few Arab states currently have domestic provisions to protect the displaced.²²³ The Arab League would therefore likely face hesitations due to economic hindrances and political hesitations related to requiring these domestic changes, which would hold up the ratification process.²²⁴ To counter that, the League could encourage states to replicate steps taken during the AU's ratification process, intended to induce ratification without sacrificing substance. For instance, ratification in the Gambia was subsequent to an initiative to inform national assembly members about the substance and expected benefits of the Convention.²²⁵ In the face of certain hesitations, the Arab League would better ensure ratification by maintaining involvement and support in this way in all steps of the process.

221. Kampala Convention, *supra* note 33, art. 12 (compliance); *id.* art. 3(2) (defining the obligation to bring national policies and laws into alignment with the obligations under the Convention).

222. Taylor, Lopas & Solomon, *supra* note 38, at 48; *see also supra* Part II.A.3.

223. Khadija Elmadmad, *An Arab Convention on Forced Migration: Desirability and Possibilities*, 3 INT'L J. REFUGEE L. 461, 462 (1991).

224. *See, e.g.*, Taylor, Lopas & Solomon, *supra* note 38.

225. *Id.* at 48.

The impact of the convention would hinge on states parties' compliance, and in the face of a state party's noncompliance, on the Arab League's ability to compel compliance via an oversight function. The Arab League should therefore incorporate a strong oversight function to avoid possible limits on its ability to ensure compliance with an IDP convention. Critics have voiced concern that the oversight function of the Kampala Convention may be weak.²²⁶ While the Arab League's Council does have monitoring functions and can issue binding judgments, those decisions only bind the states that accept them.²²⁷ A provision that requires ratifying states to consent to being bound by an oversight body might render this a non-issue. It is noteworthy that the oversight mechanism in the Kampala Convention²²⁸ does not appear in previous African conventions; the provision was negotiated for the first time at the AU summit at which the Convention was adopted.²²⁹ This suggests that the Arab League could incorporate a more strict oversight mechanism than that articulated in previous League documents and in the Pact.

Finally, a right of intervention similar to that codified in the Kampala Convention would likely be problematic for the Arab League, steeped as the organization is in an emphasis on state sovereignty. To cure the issue of vagueness, for which the AU's intervention power has been criticized, it would be beneficial for the League to define the intervention right and to detail the scope, procedures, and substance of that right. It also bears keeping in mind that, while the intervention provision of the Kampala Convention is based in the intervention right codified in the AU's Constitutive Act, the provision in the Convention is seen to be an expansion of the authority as it appears in the Constitutive Act.²³⁰ A similarly activist approach could be employed by the drafters of an Arab League IDP convention to create an effective right of intervention on the part of the League that has no precedent in prior League documents.

In light of these potential obstacles, the Arab League should proactively seek to incorporate measures to strengthen the pos-

226. See, e.g., Giustiniani, *supra* note 46, at 370.

227. Romano & Brown, *supra* note 195.

228. Kampala Convention, *supra* note 33, art. 14.

229. Abebe, *supra* note 38, at 52.

230. See *Constitutive Act*, *supra* note 105, art. 4(h); see also *supra* Part II.B.1-2.

sibility that such a convention would be drafted, widely supported, and subsequently abided. Following the lead of the AU provides a solid starting point for such an approach.

C. The Prevalence of Internal Displacement and Regional Cooperation

Despite real ideological and practical hurdles that the Arab League would face in the crafting of an instrument to address internal displacement with a regional framework, the prevalence of internal displacement in the Arab League and the cooperation between member states, the U.N., and other regional actors would work in the League's favor and could bolster the possibility of successfully developing such a document.

1. The Prevalence of Internal Displacement in the Arab Region

The degree to which internal displacement exists in Africa was shown to have been of major importance to the AU's ability to create and encourage ratification of the Kampala Convention.²³¹ This prevalence allowed the AU to couch the discussion of displacement in terms of the phenomenon as an "African problem" and the Convention as an African solution. However, it is worth noting that the Convention was crafted amid a downward trend in African displacement.²³² While Africa continues to have the highest number of displaced persons, the continent has seen the number of displaced drop since 2004.²³³ So while displacement has to a large degree been characterized as an "African problem," that characterization does not need to become an excuse for this issue to not be taken up by other regions' organizations.

Indeed, the Arab League could at this point adopt the issue of internal displacement as an Arab regional problem. Throughout much of the twentieth century, many states in the region experienced displacement due to ongoing wars and unrest.²³⁴ Indeed, most of the states in the League experienced phenome-

231. See *supra* Part II.C.

232. *Global Overview*, *supra* note 59, at 15.

233. *Id.*

234. Elmadmad, *supra* note 223, 462–65.

na of displacement at some point toward the end of the twentieth century.²³⁵

And, unfortunately, the case could be made that internal displacement is becoming a twenty-first century “Arab region problem.” In the first decade of the twenty-first century, the number of IDPs tripled in the region due to multiple armed conflicts.²³⁶ The Middle East and North Africa experienced the highest percentage of increase in internal displacement of any region in 2012, with the number rising more than 40% that year and continuing to rise drastically throughout 2013.²³⁷ Indeed, the situation of internal displacement is more prevalent now in the states of the Arab League than perhaps ever before.

As the historic visibility of displacement in Africa allowed the AU to prioritize seeking a solution to the displacement problem, the Arab League should re-conceptualize the current displacement crisis as an Arab problem, requiring cooperative, inclusive regional prioritization. Most states in the Arab region have experienced displacement relatively recently, with the last few years seeing an increase in displacement affecting the entire region. The Arab region is therefore situated to use this bleak situation as an opportunity to productively bind together to find a common solution to this now-common problem.

2. Cooperation Between Arab States, the U.N., and Other Regional Actors

Cooperation between member states and with international organizations and non-state actors was central to the approach taken by the AU to successfully draft the Kampala Convention and bring it into force.²³⁸ Unfortunately, the Arab League has not benefited from a positive reputation for cooperation.²³⁹ The

235. *Id.* at 463–46 (highlighting the displacement experienced in Egypt, Tunisia, Libya, Sudan, Ethiopia, Somalia, Iraq, Kuwait, Saudi Arabia, Jordan, Lebanon, and Syria in the last decades of the twentieth century, making the point that displacement has been a reality for many in the region).

236. *Global Overview*, *supra* note 59, at 72.

237. *Internally Displaced Figures*, UNHCR, *supra* note 7.

238. *See supra* Part II.B.2.

239. Indeed, the Arab League is widely considered to be riddled with shortcomings that severely inhibit proper functioning. Some even consider the League an outright “failure.” *See, e.g.*, Michael Barnett & Etel Solingen, *Designed to Fail or Failure to Design? The Origins and Legacy of the Arab League*, in CRAFTING COOPERATION, *supra* note 83, at 180, 180–220.

League is considered problematic and unique, elements that may be characteristic of a region shaped by instability and a lack of cohesion;²⁴⁰ the states that comprise the organization are seen to have “deep-rooted ideological” differences.²⁴¹ In contrast to newer regional organizations, the League has been characterized as incapable or at least unwilling to work as a force for change and cooperation in the region.²⁴² It has been argued that this is due in part to the League’s founding “principle of membership deriv[ing] from an ethnic nationalist identity—being Arab—rather than civic or geographic inclusion within a region,”²⁴³ which has effectively prevented the League from being a progressive, unifying influence.²⁴⁴

The Arab League’s reputation for a lack of cohesion among members²⁴⁵ evokes concern that the League would be unable or unwilling to serve as a driving force to lead and guide the drafting process, as the AU did in bringing the Kampala Convention to fruition, and to subsequently ensure its effectiveness. Indeed, during its seventy-year existence, the Arab League has proved consistently weak in steering the Arab region in any particular collective direction.²⁴⁶ Most relevantly, certain examples tend to indicate the League’s ineffective efforts to halt

240. See, e.g., Barnett, *supra* note 207.

241. *Id.*

242. See Pinfari, *supra* note 39.

243. See Romano & Brown, *supra* note 195.

244. In this regard, the leadership of the League has been criticized in the past for failing to take an active role in solving crises affecting the region. This criticism was vividly portrayed in an article in the *Lebanon Daily Star* in 2005, condemning the repeated inaction of the Arab League leaders, thus “allowing crisis after crisis in the Arab world to go completely unaddressed . . . [T]ime after time, LAS has been guilty of extreme negligence and irresponsibility. Such inaction defies the notion of Arab cooperation, the ideal upon which the Arab League was created.” *Id.* at 161.

245. As one scholar has noted, “The Arab League has mainly been a political bloc, albeit ineffective in presenting or generating a unified, integrated Arab front.” Michael Fakhri, *Images of the Arab World and Middle East: Debate about Development and Regional Integration*, 28 WIS. INT’L L.J. 391, 399–400 (2010).

246. Brown, *supra* note 95, at 241–42. Brown provides one illustrative example: when Member State Iraq violated Pact provisions by invading fellow Member State Kuwait, “[l]eague action was limited to condemning Iraqi aggression, demanding withdrawal, and reaffirming Kuwait’s sovereignty.” *Id.* at 241.

the Syrian uprising. In November 2011, for instance, the League drafted a peace plan requiring the Syrian government to cease hostilities.²⁴⁷ Syrian authorities accepted the plan, but recommenced hostilities again the next day.²⁴⁸ In response, the League “deployed observers . . . but their mission came to an abrupt end when a month later the Gulf countries pulled their members out,” citing the mission’s inability to bring “the perpetrators to account.”²⁴⁹ The League’s response to this breach may raise concerns about the League’s ability to effectively lead the region toward signature and ratification of such an instrument and to subsequently compel compliance.

However, pertinent recent examples also demonstrate active League involvement in seeking a solution to the Syrian conflict, which suggests that the League may be growing into a new role in the region.²⁵⁰ For example, the Arab League members have voted to suspend Syria’s membership in the League for the state’s violence toward civilians.²⁵¹ The suspension allegedly resulted from delegates, “[a]larmed by the region-spanning upheaval of the Arab Spring demonstrations,” who sought “to head off another factional war like Libya’s, in which the group took the unprecedented step of approving international intervention.”²⁵² The League was commended for the decision,²⁵³ with the action hailed as signaling a shift within the League:

In acting against Syria, a core member of the Arab League, the group took [a] bold step beyond what had been a long tradition of avoiding controversy . . . Previously, when the Arab League was more of a dictators’ club, cautious members . . .

247. See *Syria: A Full-Scale Crisis*, *supra* note 10, at 11.

248. *Id.*

249. *Id.*

250. “In acting against Syria, a core member of the Arab League, the group took [a] bold step beyond what had been a long tradition of avoiding controversy.” MacFarquhar, *Arab League Votes to Suspend Syria over Crackdown*, *supra* note 25.

251. *Id.*

252. *Id.*

253. President Obama issued a statement commending the League for the decision to suspend: “After the Assad regime flagrantly failed to keep its commitments, the Arab League has demonstrated leadership in its effort to end the crisis and hold the Syrian government accountable.” *Id.*

put the brakes on any activism. But the uprisings appear to be rewriting that formula.²⁵⁴

Following the decision to suspend Syria, the Arab League Chairman stated that the League's goal was "to find a solution to the problem within an Arab framework;" the suspension was reportedly an attempt by the League "to walk a tightrope between bringing pressure to bear without bringing foreign military intervention."²⁵⁵ With such intent, the League reveals a determination to act effectively as a cooperative body for the good of the region, without relying on outside actors. Another Arab League diplomat involved in the decision told the press that the League did not want "some sort of a blank check that is given to the Security Council to try to take this issue in hand . . . [Rather, there is the belief that] if the regime comes under intense pressure from the Arab side, then [the regime] will make some changes."²⁵⁶ Accordingly, the decision by League member states to suspend Syria showcases a more activist organization than it has traditionally proven to be.

Further, and most significantly here, the League couched the decision to suspend as a regional response intended to bring about a regional solution to halt a perceived regional harm. This mirrors the approach taken by the AU in creating a convention to address displacement in Africa. Finally, the League has demonstrated its ability for sustained engagement in bringing about a solution to this regional harm. Indeed, the League has been actively engaged in negotiating a political end to the Syrian conflict and has been committed throughout to ensuring that both sides of the conflict participate in the Geneva II peace talks.²⁵⁷

254. *Id.*

255. MacFarquhar, *Arab League Votes to Suspend Syria over Crackdown*, *supra* note 25.

256. *Id.*

257.

Arab states formally endorsed proposed peace talks to end the Syrian civil war that have been delayed by disputes between world powers and divisions among the opposition. A final communique after an emergency meeting of Arab League foreign ministers on Sunday called on the opposition swiftly to form a delegation under the leadership of the mainstream Syrian National Coalition, to attend the Geneva 2 talks. The Arab League's position indicated Gulf rivals Qatar and Saudi Arabia—who have backed different rebel groups

These examples showcase willingness on the part of Arab League member states to hold their regional neighbors accountable and to distance member states not acting in accordance with their norms. This is also an example of the regional organization deciding to take action instead of waiting on international support. It has been suggested that this represents a new stage in the League's role in the region.²⁵⁸ That remains to be seen. But, while it is still far from certain whether it would be possible to create a regional convention to prevent internal displacement and to protect and assist IDPs in the Arab region, these recent developments in the Arab League provide at least some suggestion that the atmosphere within the League may be well suited to consider the drafting of such a regional framework with an inclusive and cooperative approach. Such a convention would go a long way toward reinforcing the emergence of a new Arab regional approach in which member states view each other as cooperative partners sharing similar experiences.

If the AU's experience with the Kampala Convention is any indication, the inclusion of legal experts and regional CSOs in all stages of the process would prove critical to the Arab League's successful creation of a pragmatic IDP convention well tailored to the region's displacement concerns.²⁵⁹ The participation of independent legal experts would provide alternate perspectives that may prove beneficial to the League in seeking to overcome any obstacles that may be experienced due to the

fighting President Bashar Al Assad—had put their differences aside to urge opposition chief Ahmad Jarba to head to Geneva . . . The Geneva talks are meant to bring Syria's warring sides to the negotiating table . . . Syria's Foreign Ministry reiterated on Sunday that it must be up to Syrians alone "to choose their leadership and political future without political interference."

The Arab League, however, said only pressure from major powers could ensure a successful outcome in Geneva. In its communique it "reaffirmed the Arab position that demands the necessity of the required international guarantees to supervise and ensure the success of a peaceful solution at the Geneva 2 conference." *Arab League Backs Geneva 2 Peace Talks*, NATIONAL (Nov. 4, 2013), <http://www.thenational.ae/world/middle-east/arab-league-backs-geneva-2-peace-talks#ixzz2keDeSSrB>; see also *Arab League to Press Syria Opposition over Peace Talks*, *supra* note 40.

258. MacFarquhar, *Arab League Votes to Suspend Syria over Crackdown*, *supra* note 25.

259. See *supra* Part II.B.2.

League's traditional emphasis on sovereignty; these experts would be useful in the negotiation of substantive provisions, such as whether the convention should incorporate a right of League intervention, and if so, in what situations.²⁶⁰ The inclusion of CSOs and NGOs could ensure that the provisions respond to the needs of the region's IDPs.²⁶¹ Incorporating and giving a voice to these non-state actors would also importantly reveal that the League was taking a truly cooperative regional approach to the issue of displacement.

The U.N.'s support of the Arab League in this endeavor would also be highly beneficial. As demonstrated, the AU received significant support from the U.N. throughout the evolution of the Kampala Convention; that support has been noted as crucial to achieving the end result.²⁶² There is no indication that the U.N. would not likewise support the Arab League in undertaking a similar drafting and negotiation process. Indeed, throughout the Syrian conflict, the U.N. has called attention to the plight of Syrian IDPs and appealed to the relevant parties to provide protection and assistance.²⁶³ The U.N. has also officially endorsed the Arab League's efforts to cease conflict in

260. As discussed *supra* in Part II.B.3, the legal experts utilized by the AU had a large influence on the substantive provisions and encouraged the incorporation of a right of AU intervention in grave circumstances; this provision clearly implicates territorial integrity and state sovereignty. The legal experts that participated in the drafting of the Kampala Convention debated this issue robustly. *Id.*

261. For instance, the on-the-ground nature of CSOs render these organizations well suited and well equipped to

monitor conditions of return, local integration or resettlement to another part of the country for IDPs; conduct inquiries into reports of violations of IDPs' human rights; investigate complaints particularly regarding compensation or restitution for property, and discrimination against returnees; monitor and report on the implementation of peace agreements with particular regard to their provisions for durable solutions; and advise the government on the rights of IDPs.

Ferris, *supra* note 177.

262. Abebe, *supra* note 38.

263. In a prominent example, the U.N. Special Rapporteur on the Human Rights of IDPs in August 2012 "called upon all Syrian authorities and parties to the conflict" to protect and assist IDPs, specifically urging the parties to pay due "attention to the Guiding Principles on Internal Displacement," and "remind[ing] parties to the conflict that IDPs are entitled to the rights and freedoms afforded to them under international law irrespective of their legal status." *Syria: Severe Internal Displacement Crisis*, *supra* note 22.

Syria and to provide assistance to the country's civilians.²⁶⁴ Additionally, the U.N. has been instrumental in serving as a forum for the negotiation of a political solution to the conflict; in September 2013, the Security Council unanimously called for the Geneva II peace talks and various U.N. entities have subsequently supported the work of relevant actors, including the Arab League, in orchestrating that conference.²⁶⁵ This U.N. involvement suggests that the Arab League would be able to rely on this critical pillar of support as it pursued the creation of a convention to address internal displacement in the Arab region.

The above analysis suggests that, despite the Arab League's fundamental emphasis on sovereignty and a traditional lack of intraregional cooperation, significant factors such as the current prevalence of displacement throughout the region and the recent action taken by the Arab League indicate that it would be possible at this time for the Arab League to draft an inclusive convention addressing the concerns of a variety of regional actors and reflecting a shift toward regional cooperation and accountability.

CONCLUSION

This Note has examined factors present during the formation of the Kampala Convention and applied them to the context of the Arab League to consider whether transferring a regional approach beyond Africa could be a viable solution to internal displacement crises in the Arab region. Some aspects of the Arab League make the creation and ratification of such a convention unlikely, such as the emphasis on sovereignty over regional unity and the characteristic disharmony between member states. However, it was argued that the current prevalence of the issue of displacement, the apparent cooperation of international institutions, and recent indications that the Arab League may be taking a new, more robust leadership role in the region

264. This assistance has been provided since at least February 2012, when the U.N. General Assembly adopted a resolution confirming its support of the League's efforts. G.A. Res. 66/253A, U.N. Doc A/RES/66/253A (Feb. 16, 2012). See also Press Release, General Assembly, Top UN Human Rights Official Says Member States 'Must Act Now' to Protect Syrian People, as Violent Crackdown Continues, in Briefing to General Assembly, U.N. Press Release GA/11206 (Feb. 13, 2012).

265. For information on this process, see *supra* note 25.

counteract these factors. Therefore, the time is ripe for the development of such a convention.

To increase the chance of success (in the form of cooperation during drafting, speedy and widespread ratification, and ultimate compliance with the provisions of such a convention), drafters should include a provision that would create a regional web of accountability between states, non-state actors, and the Arab League itself, as appeared in the Kampala Convention. The League should also replicate the AU's inclusive negotiation and drafting process, to encourage the input of the regional actors most in touch with the needs of IDPs. This inclusion would also be good regional policy and may bolster the chance of compliance with the convention once implemented.

The perception that the Kampala Convention was a solution to a uniquely African problem has been a powerful concept, which carried weight with international organizations, non-state actors, and member states alike. Accordingly, the actors involved focused on the particular characteristics, trends, and causes of displacement in Africa to arrive at a document tailored to the regional conditions of the phenomenon. Creating a similar convention, the Arab League could seek to reconfigure the issue of displacement as one that is also a problem experienced uniquely in the Arab region. Thus framed, intraregional support for such a legal regime may be garnered and a convention that responds to the vernacular particularities of Arab internal displacement may develop.

The most likely obstacle to the creation of such a convention by the Arab League may be the organization's traditional focus on sovereignty at the expense of intraregional cooperation. However, recent activity of the League suggests that member states are starting to hold each other accountable to regional action and norms. In such a climate, delegates may well be willing to consider a cooperative approach to displacement that emphasizes regional accountability rather than individual state sovereignty.

The AU has demonstrated that a regional approach to the problem of internal displacement is possible. While it remains to be seen how effective the Kampala Convention will be, the Convention serves as a model for other regional organizations to take the regional approach out of Africa and adapt it to fit the vernacular conditions of displacement in other regions.

Most immediately, the Arab League would do well to heed the AU's example.

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