CONFLICT PREVENTION, MANAGEMENT, AND RESOLUTION: AFRICA—REGIONAL STRATEGIES FOR THE PREVENTION OF DISPLACEMENT AND PROTECTION OF DISPLACED PERSONS: THE CASES OF THE OAU, ECOWAS, SADC, AND IGAD

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I. INTRODUCTION

Over the past ten years the international humanitarian protection regime for displaced persons has been strengthened by, for example, the emergence of protective guidelines for internally displaced persons (IDPs).[1] Ironically, during the same period, many states have in theory and practice failed to respect the norms of various protective regimes.[2] During times of interstate and intrastate armed conflict or mass social unrest (e.g., gross violations of human

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1. *See* Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39: Guiding Principles on Internal Displacement. U.N. Commission on Human Rights, 54th Sess., Agenda Item 9(d), at 1, U.N. Doc. E/CN.4/1998/53/Add.2 (1998) [hereinafter Guiding Principles on Internal Displacement].

2. These include international human rights, humanitarian and refugee law norms, and the emerging protective regime for IDPs.

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rights),[3] combatants and other perpetrators have generally ignored universal refugee, human rights, and humanitarian protective norms. This has not only exacerbated Africa's refugee and IDP dilemma, but also resulted in an incalculable number of war crimes and crimes against humanity being committed against civilians, humanitarian workers, peacekeepers and combatants. As a result, African people, and more specifically women and children, have suffered the greatest indignity,[4] and to make matters worse, the international community has yet to forward a viable solution to the problem.

In the absence of the international politics of the Cold War, Africa's geo-political stock has greatly devalued, and its former stockbrokers have not been genuinely interested in finding new ways to proactively re-engage and reinvest. They have simply ignored the need to re-conceptualize the nature of their relationships with African states, which has mistakenly caused many Western policy-makers to be convinced that they have no strategic interests in Africa. Others like the United States purport to have an African policy. During the Clinton Administration one commentator noted that "[s]tripped of its Clintonian rhetorical veneer," U.S. policy toward Africa is "extractive commercial, limited security and selective humanitarianism—remain the cardinal ordinances of US foreign policy towards the continent."[5] It is yet to be seen whether the Bush Administration will adopt a more progressive policy toward Africa. Although U.S. Secretary of State Colin Powell claims to have a keen interest in African issues, his designee for Assistant Secretary of State for African Affairs will serve as the first indicator of his genuineness. Such policy is in theory and practice cosmetic and instituted to pacify domestic constituencies. This may explain why, similar to the United States, many countries refuse to provide genuine *human* resources (e.g., peace-keepers and peace-enforcers) to avert conflict and alleviate human suffering in Africa when there is no overriding domestic strategic interest. The cases of Liberia, Somalia, Rwanda, Burundi, and Sierra Leone clearly show that the risks involved with saving African lives in Africa far

3. This article will primarily focus on internal armed conflict. The terms internal armed conflict, internal conflict, and war are used interchangeably.

4. *See* Duane Bratt, *Peace over Justice: Developing a Framework for UN Peacekeeping Operations in Internal Conflicts*, 5 GLOBAL GOVERNANCE 63 (1999); *see generally* J. Oloka-Onyango, *The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of the Refugee and Internally Displaced Women in Africa*, 24 DENVER J. INT'L L. & POL'Y 349 (1996).

5. Chris Alden, *From Neglect to 'Virtual Engagement': The United States and its New Paradigm for Africa*, 99 AFR. AFF. 355, 368 (2000).

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outweigh the benefits. Furthermore, the case of Kosovo unmistakably demonstrates that, unless people of European descent are threatened with death or suffering on a grand scale the "more civilized" nations of the North, and the international organizations which they control, are reluctant to expend human and tangible resources to save lives. This is especially true with respect to the "Dark Continent," where the international community spent $0.11 a day per refugee in Rwanda and Sierra Leone, compared to an approximate $1.50 a day per refugee in Kosovo.[6] Such disparities lead one to conclude that race and geo-politics are as much determining factors as national strategic interests when it comes to international peace and security, especially as it relates to Africa.

Notwithstanding, perhaps, European and American forces should not be employed for peace-keeping in Africa, but rather provide tangible resources such as logistics, reconnaissance, and communications support to African peace-enforcers, as the records of the former in Africa are at best dismal. On this point, one analyst comments,

> It seems that every peacekeeping operation has had its share of horror stories: US soldiers offending Muslim values by skinny-dipping in Somalia; Canadians torturing and murdering Somali civilians; Dutch peacekeepers 'luring Bosnian children into a field to check for land mines by throwing sweets into the area'; and UNTAC's Bulgarian contingent becoming involved in prostitution and smuggling. Although professional conduct should be a fundamental part of all peacekeeping operations, its importance is greater in internal conflicts because of the greater level of civilian interaction. In cases of delivering humanitarian assistance or conducting elections, the peacekeeping force must establish a high level of trust with the target country's civilians, and this trust can be destroyed for the entire force because of deplorable acts by a few peacekeepers.[7]

Given the enormous problems that European and American U.N. peacekeepers have had in Africa, and considering the demonstrably high degree of reluctance of western governments to take part in future peace-keeping activities on the continent, African governments must take the leadership role in dealing with the brutal realities

6. *See* Karen DeYoung, *Generosity Shrinks in an Age of Prosperity*, WASH. POST, Nov. 25, 1999, at A01.

7. Bratt, *supra* note 4, at 72 (quoting *Dutch Inquiry into PK Misconduct*, INT'L PEACEKEEPING NEWS (May 1995) <http://csf.colorado.edu/dfax/ipn/ipn09.htm#T0091>.

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of African conflict.[8] As the peace negotiations in Burundi illustrate, when western nations disagree with African regional actors,[9] "they are often unwilling to defer to the African consensus."[10] Therefore, perhaps more so than at any other time in the past, African governments need to be committed to establishing and enhancing local, sub-regional, and regional mechanisms to prevent, manage, and resolve conflict in Africa.

The present Article seeks to examine the preparedness of certain African regional actors to protect displaced persons in times of armed conflict, and to prescribe formulas to strengthen the capabilities of such actors. The objective is to assess the conflict maintenance capacities of African regional actors and their partners to provide physical and legal protection to displaced persons in times of armed conflict, and likewise to recommend strategies to increase protection.[11] I argue that African regional actors have a significant role to play in protecting the rights of displaced persons, but in order to effectively prevent, manage, and resolve conflict they must develop and institute new, and strengthen and adhere to pre-existing protective mechanisms and legal instruments. Such analyses are important due to the growing numbers of refugees and other persons of concern,[12] which according to the Office of the U.N. High Commissioner for Refugees stands at approximately 6.3 million in Africa out of a global figure of 21.5 mil-

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8. *See Recommendations of the Brookings Institution/UNHCR/OAU Workshop on Internal Displacement in Africa*, Addis Ababa, Ethiopia, Oct. 19-20, 1998; *see generally* UNHCR, THE STATE OF THE WORLD'S REFUGEES: A HUMANITARIAN AGENDA (1997) <http://www.unhcr.ch/refworld/pub/state/97/toc.htm>.

9. A regional actor may be defined as any regional organization, agency, entity, or arrangement made up of and empowered by states to represent their interests, whether economic, political, military, social, cultural, or religious.

10. Stephen R. Weissman, *Preventing Genocide in Burundi: Lessons from International Diplomacy*, U.S. INST. OF PEACE, 1998, No. 22 at 19.

11. Protection may broadly be defined as a concept which "encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e., human rights law, international humanitarian law and refugee law)." International Committee of the Red Cross (ICRC) Background Paper for the 3rd Workshop on Protection, held in Geneva, Jan. 18-20, 1999. This includes physical and legal protection, as well as the specific rights and obligations provided for in general human rights and humanitarian law and the OAU Refugee Convention for the benefit of refugees and other persons of concern.

12. The term "other persons of concern" is a notion frequently used by UNHCR to refer to specific groups of persons not falling within the ordinary mandate of UNHCR including asylum-seekers, returnees, IDPs, and stateless persons. For further information see UNHCR, 1998 GLOBAL REPORT: ACHIEVEMENTS AND IMPACT (1998) <http://www.unhcr.ch/fdrs/gr98/toc.htm>, and UNHCR, THE STATE OF THE WORLD'S REFUGEES: A HUMANITARIAN AGENDA (1997) <http://www.unhcr.ch/refworld/pub/state/97/toc.htm>.

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lion.[13] As Cohen and Deng observe, the plight of African refugees and IDPs "not only poses a humanitarian challenge but also threatens the security and stability of countries, regions, and through a chain effect, the international system of which they are an integral part."[14]

In this context, the Article first analyzes the key components of an effective conflict maintenance system; secondly, critically assesses the conflict prevention, management, and resolution capacities of the Organization of African Unity (OAU), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the Intergovernmental Authority on Development (IGAD); finally, it offers comprehensive suggestions and solutions to moniter and avert population displacement and protect displaced persons. The fields of inquiry are conflict and security studies, public international law, political science, and international relations. The scope of the study is limited to an appraisal of the protection policies and capacities of such regional actors in internal conflicts,[15] the general character of their relations with the United Nations (U.N.), and more specifically their association with the U.N. High Commissioner for Refugees (UNHCR), the U.N. Development Program (UNDP), and the U.N. High Commissioner for Human Rights (UNHCHR).

Considering the vast amount of literature on the subject, the numerous issues, and the various perspectives that this topic engenders, the foregoing description is modest given the enormity of the problem, and the method, though capacious, is sagacious. The general nature of the Article is *prescriptive* rather than *investigative*, as it is generally recognized by academics and practitioners alike that the root causes of population displacement in Africa are related to internal conflict. As the former Director of the OAU Bureau for Refugees, Displaced Persons and Humanitarian Affairs observed, the situation of refugees and displaced persons may be attributed to armed conflicts, civil strife, political and ethnic intolerance, human rights abuses, natural disasters, or calamities and poverty.[16] Hence, an elucidation

13. This figure is as of January 1, 1999. For further information see UNHCR website <http://www.unhcr.ch>, or REFWORLD CD-ROM, UNHCR, Geneva, July 1999 edition.

14. Roberta Cohen & Francis M. Deng, *Introduction*, *in* THE FORSAKEN PEOPLE: CASE STUDIES OF THE INTERNALLY DISPLACED 1 (Roberta Cohen & Francis M. Deng eds., 1998).

15. Due to space limitations the scope of the Article has been limited; however, it should be noted that the basic argument of the Article is equally applicable to regionalized internal conflict (e.g., the DRC and Angola) and interstate conflict (e.g., Ethiopian/Eritrea).

16. *See* E.M. Ngung, *The Role of Regional and Sub-Regional Organizations in Situations of Conflict and Displacement*, 18 REFUGEE SURV. Q. 97 (1999).

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of the causes of such conflict in the context of forcibly displaced persons would only detract from an analysis of the protection capacities and strategies of African regional actors to prevent displacement and protect refugees and IDPs.

The term displaced persons is used to make reference to refugees, internally displaced persons and other persons of concern[17] who have been displaced due to internal deadly conflict, gross violations of human rights, militarism, socio-economic inequalities, and lack of good governance and democratic institutions.[18] Special attention will not be given to any category of displacement as the analysis is primarily concerned with examining the institutional capacities of African regional actors to protect displaced persons in times of war.[19] The focal point of discussion, however, will center on internal deadly conflict, since it has been responsible for producing the greatest number of conflict-related fatalities and forcibly displaced persons over the past several years.[20]

The underlying concept of regional collective protection connotes the inability of a state to protect its citizenry. Hence, inquiries into the causes of deadly conflict and their progeny, coerced popula-

17. For the purposes of this Article the term "refugee" shall be defined as "every person who, owing to a 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, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, art.1(1), 8 I.L.M. 1288. The term "internally displaced person" shall be defined as "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." Report of the Representative of the Secretary-General, *supra* note 1, at Annex.

18. It is important to note that Ms. Ogata, the U.N. High Commissioner for Refugees, indicated at the Formal Session of the Security Council that no organization is responsible for the security of people who have fled their homes but not crossed a border. *See* Anonymous, *Africa's Moment Under the UN's Gaze*, THE ECONOMIST, Feb. 5, 2000, at 41. However, "notwithstanding the fact that UNHCR does not have a general competence to deal with internally displaced persons, it may, under certain conditions, become involved in activities on behalf of particular groups." Note on International Protection, Executive Committee of the High Commissioner's Programme, 50th Sess., at para. 44, U.N. Doc. A/AC.96/914 (1999).

19. The terms forcibly displaced persons, displaced persons, and displaced are used interchangeably.

20. *See generally* Carnegie Commission on Preventing Deadly Conflict, PREVENTING DEADLY CONFLICT: FINAL REPORT WITH EXECUTIVE SUMMARY (Carnegie Corp. of New York 1997).

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tion movements, are generally state-centered,[21] meaning that the problem of refugees and IDPs in Africa is often viewed by academics and policy-makers alike as one that only concerns states that are directly affected by displaced persons, as opposed to sub-regional, regional, and international state actors. As a result, state-centric approaches do not provide adequate insight into how third party intermediaries (e.g., the United Nations or OAU) may provide protection to displaced persons during times of armed conflict. This is particularly true when the primary culprit is the government of a state (e.g., Iraq), or when a government has collapsed due to armed conflict and is unable to maintain itself in power or protect its citizens (e.g., Liberia and Sierra Leone), or likewise, when a government does not exist (e.g., Somalia). In these scenarios, state-centric analyses become moot because the state can no longer be viewed as the referent object of protection. State-centered approaches fall under the rubric of conflict prevention as they seek to address conflict at its root, by averting conflict altogether through, for example, structural or institutional reform. The concepts of conflict management and resolution, however, are broadly concerned with stopping conflict once it has begun and, in this context, preventing mass population movements. Hence, the challenge is to determine how external third party actors, specifically African regional actors, can provide physical and legal protections, food, shelter, and rapid medical attention to displaced persons in crisis situations.

The following section will discuss the concepts of conflict prevention, management, and resolution as separate but interdependent components and processes of a comprehensive conflict maintenance system, which African states and regional actors must institute in order to provide ample protection to displaced persons.

II. CONFLICT MAINTENANCE AS A PREVENTIVE AND PROTECTIVE STRATEGY

The most effective and sustainable way to prevent coerced population movements and protect displaced persons is to establish comprehensive conflict maintenance systems at the local, national, regional, and international levels. A comprehensive conflict maintenance system is one that has three functional objectives: conflict pre-

21. The terms state-centered and state-centric will be used interchangeably. They refer to overly structural and or institutional approaches to conflict management that do not give due attention to contingent factors, i.e., individual political actors.

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vention, management, and resolution (see Table 1 below). Again, the aims are neither static nor separate but rather are interdependent processes, which form a unique and sometimes intelligible continuum. Although there are wide spectrums of opinion regarding the precise meanings of the concepts of conflict prevention, management, and resolution, it is more useful to define them in political and operational terms.

The political aim of conflict prevention should be to avert conflict altogether, or at the least to defuse it in its initial stages, with trust-building, coalition building, and negotiated settlements being key objectives.[22] From an operational standpoint this may be done in a variety of ways, most notably through traditional and untraditional preventive diplomacy or preventive deployment.[23] The displacement objective should be to ensure that adequate state protection exists for populations affected by conflict. No conflict prevention mechanism can be sustained, however, in the absence of viable early warning and risk assessment systems.[24] Information attainment and analysis are perhaps the most important functions of any conflict maintenance system and are crucial for crisis prevention, as they provide decision-makers with crucial information to enable them to take decisive actions before conflict escalates resulting in coerced population movements.

Conflict management is the most important conflict maintenance process because it is the one most integral to the physical and legal protection of displaced people, and in this context works to prevent the escalation of refugee flows and IDPs. The political objective of conflict management is to promote trust and confidence, and with respect to displaced persons, ensure peace, security, and stability to allow for voluntary repatriation and internal replacement.[25] The displacement aim should be to minimize the escalation of conflict and provide humanitarian assistance and other case specific solutions. The operational objective should be to establish order through in-

22. For more on this issue, see generally Jeremy Levitt, *Pre-Intervention Trust-Building, African States and Enforcing the Peace: The Case of ECOWAS in Liberia and Sierra Leone*, 24 LIBERIAN STUD. J., 1 (1999).

23. Preventive diplomacy may be defined as communicative action aimed at forestalling conflict. Preventive deployment consists of dispatching non-armed and impartial support personnel into a zone of crisis in order to enhance the vitality of diplomatic processes.

24. For more on this issue, see generally PREVENTIVE MEASURES: BUILDING RISK ASSESSMENT AND CRISIS EARLY WARNING SYSTEMS (John L. Davies & Ted Robert Gurr eds., 1998).

25. Internal replacement refers to the return of IDPs to their places of habitual residence.

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tense preventive diplomacy, coercive sanctions, peacekeeping, and peace-enforcement or humanitarian intervention. This requires political will and resources because in situations of armed conflict the human and tangible risks may be costly.

Conflict resolution is the last conflict maintenance process and represents the linchpin to sustainable peace. The political objective of conflict resolution should be to maintain and sustain peace by building and re-building civil society and state institutions to allow for transparency and accountability. The displacement aim should be to negotiate agreements on the return of displaced persons to their home states and/or places of habitual residence. Therefore, the operational objectives likewise should be first to monitor impartially cease-fire agreements and other accords, and also to preserve peace and security to allow for repatriation, demobilization, and the development of civil society and government structures, including political and judicial processes to bring about justice and reconciliation.

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Table 1

Phases of Conflict Reduction and Protective Strategies

Stages	Conflict Maintenance Processes	Political Objectives	Political Functions	Operational Objectives	Operational Functions	Displacement Objectives
1 →	Conflict Prevention	Conflict Aversion	Preventive Diplomacy & Deployment	Promoting Trust	Cease-fire or Negotiated Settlement	Ensuring State Protection to Affected Civilian Populations
2 →	Conflict Management	Security and Stability	Valid Mandate: Peace-Keeping Peace-Enforcement	Establishing Order	Protection of Displaced and Warfare Containment	Minimizing the Escalation of Conflict: Humanitarian Assistance & Durable Solutions
3 →	Conflict Resolution	Sustainable Peace Re-integration	Post Conflict Peace-building	Maintaining Order	Monitor Cease-Fire & Accords Civil Society Capacity-building Demobilization	Negotiate Agreements on the Return of Displaced Persons

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While the primary purpose for establishing a conflict maintenance system is to avert conflict, the underlying aim of conflict aversion is to safeguard the rights of people by minimizing the effects of conflict upon them. Hence, any viable conflict maintenance system must be principally concerned with protecting war-affected populations. The effectiveness of such systems will ultimately be judged according to their ability to safeguard internationally recognized rights. The three internationally recognized regimes for the protection of displaced persons are the following: *human rights law*, specifically the 1948 Universal Declaration of Human Rights,[26] the 1966 International Covenant on Civil and Political Rights,[27] the 1966 International Covenant on Economic, Social and Cultural Rights,[28] and in Africa, the 1981 African Charter on Human and Peoples Rights;[29] *humanitarian law*, which comprises the four Geneva Conventions of 1949 and the two Additional Protocols of 1977;[30] *refugee law*, as enumerated in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol,[31] the 1954 U.N. Convention Relating to the Status of Stateless Persons,[32] the 1961 U.N. Convention on the Reduction of Statelessness,[33] and in Africa, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.[34] Additionally, there is an emerging protection regime on IDPs, particularly the Guiding Principles on Internal Displacement, facilitated by the Representative of the U.N. Secretary-General on Internally Displaced Persons.[35] These instruments provide for basic protection including, but not limited to, physical protection, food, shelter, clothing, and the integrity of the person and the family as the most fundamental social unit.[36]

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26. *See* G.A. Res. 217A(III), at 71, U.N. Doc. A/810 (1948).

27. *See* Dec. 16, 1966, 999 U.N.T.S. 171.

28. *See* Dec. 16, 1966, 993 U.N.T.S. 3.

29. *See* June 27, 1981, 21 INT'L LEGAL MATERIALS 58.

30. *See* Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Aug 12, 1949 6 U.S.T. 3316, 75 U.N.T.S. 135; Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. [2 Protocols] June 8, 1977, 1125 U.N.T.S. 3; June 8, 1977, 1125 U.N.T.S. 609.

31. *See* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150; [protocol] Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

32. *See* Sept. 28, 1954, 360 U.N.T.S. 130.

33. *See* Aug. 30, 1961, 989 U.N.T.S. 175.

34. *See* Sept. 10, 1969, 1001 U.N.T.S. 45.

35. *See* Guiding Principles on Internal Displacement, *supra* note 1.

36. *See* Francis M. Deng, *The International Protection of the Internally Displaced*, INT'L J. REFUGEE L. 74, 81 (Special Issue 1995).

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As one analyst notes, states unquestionably "constitute the primary nexus when it comes to security for individuals and groups."[37] When states fail or are unable to prevent, manage, or resolve internal conflict and fulfill their principal function of providing protection to civilians from rebels and insurgents (e.g., Liberia, Sierra Leone, and Angola), they may be responsible for committing illegal acts. Beyani highlights four principles, which are of particular relevance in this regard:[38]

(a) A State is only liable for the wrongful acts of rebels if it was at fault in failing to prevent or suppress the rebellion as such. The liability of the State is qualified because rebels hold no official position in the State and they are beyond the control of the State.[39]

(b) Although no arbitral tribunal has ever found a State guilty of negligence to prevent a rebellion, there is clear inference in the decisions of certain tribunals that the defendant State would only have been liable if it had failed to take steps to prevent a rebellion that was reasonably foreseeable.[40]

(c) A State is under a duty to act with diligence or to take reasonable steps to suppress a rebellion. The method of doing so falls within the discretion of the State and may involve the proportionate use of force or a negotiated settlement with the rebels.

(d) A successful rebel movement is responsible for illegal acts committed by its forces during the conflict and assumes responsibility for the wrongful acts of the State.[41]

The above principles only concern states' liability for failure to forestall the wrongful acts of insurgents; however, they are especially relevant to the legal obligations of governments to safeguard the well-being and rights of displaced persons during armed conflict.[42] The international protective regime would also appear to require that states provide protections to the citizens of foreign countries engulfed in war or impacted by some other malady.[43] For example, the OAU Refugee Convention of 1969 contains three key principles concerning

37. G. Sorensen, *Individual Security and National Security: The State Remains the Principal Problem*, SECURITY DIALOGUE, Vol. 27, No. 4 (1996).

38. Chaloka Beyani, *State Responsibility for the Prevention and Resolution of Forced Population Displacements*, INT'L. J. REFUGEE L. 130, 140 (Special Issue 1995).

39. *See* Sambaggio Case (Italy v. Venez.) 10 R.I.A.A. 499 (Mixed Cl. Comm'n. Italy-Venez. 1903).

40. *See* Ziat and Ben Kiran claim (Gr. Brit. v. Spain) 2 R.I.A.A. 729, 730; Home Missionary Society Claim (U.S. v. U.K.) 1920, R.I.A.A. iv, 42, 44.

41. *See* Short v. Iran (U.S. v. Iran) 16 Iran-U.S. Cl. Trib. Rep. 76 (1987).

42. *See* Beyani, *supra* note 38, at 138.

43. *See id.*

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refugees: the individual's right to seek asylum; the right of *non-refoulement*; and the concept of voluntary repatriation.[44] Article 1(2) of the Convention "widens the term refugee and includes people who are displaced as a result of warfare or other civil disorder; as well as due to the conditions of famine and natural catastrophes."[45] Regardless of whether coerced population movements are a manifestation of the acts of rebels, repressive regimes, or alternative forms of civil strife, under international law, states have a *de jure* obligation to act reasonably to protect the rights of their citizens and in certain instances those of *other states*. When states fail to act responsibly or are inhibited from taking appropriate action, under international law, the international community as a whole is obliged to take corrective action.[46] This contention is also supported by Principle 5 of the *Guiding Principles on Internal Displacement*, which states that "all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to the displacement of persons."[47]

Customary international law comprises standards that are binding upon all states, most notably the right to life, self-determination, the prohibitions against slavery, genocide, torture, cruel, inhumane, and degrading treatment, and racial and systematic patterns of discrimination.[48] Customary international law also embodies stronger protective norms referred to as *jus cogens*, which are peremptory norms accepted and recognized by the international community as norms from which no derogation is permitted and that can be modified only by a subsequent norm of general character. These norms sit atop the hierarchy of international law, pre-empting both conflicting treaties and customary international law,[49] and constituting *erga omnes* obligations—universal obligations and responsibilities upon states

44. *See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, supra* note 17, at art. 2, 5.

45. Ram. C. Chhangani, *African Refugee Law: Problems and Prospects*, 53 INAUGURAL LECTURE SERIES 9 (1992).

46. *See* Barcelona Traction Case (Belgium v. Spain), 1970 I.C.J. Rep. 3 para 33-34 (Second Phase).

47. Guiding Principles on Internal Displacement, *supra* note 1, Section 2, Principle 5. *See also* Roberta Cohen, *International Standards to Protect Internally Displaced Persons*, REFUGEE SURV. Q., Vol. 18, No. 1, 38-43 (1999).

48. *See* The Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 64, 1155 U.N.T.S. 331.

49. *See* W.D. Verwey, *Humanitarian Intervention Under International Law*, 32 NETHERLANDS INT'L L. REV., 357, 418 (1985).

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to ensure that such norms are not violated.[50] If or when they are violated, states may employ lawful means to remedy the situation, which may for example include preventive diplomacy, peace-keeping, and humanitarian intervention.[51] Today, states may no longer hide behind the cloaks of state sovereignty, noninterference, and territorial integrity. The law *de lege lata* appears to permit humanitarian intervention to protect displaced persons in three instances: when there are human rights abuses in a state that are so egregious as to violate the *jus cogens* norms of international law; when a state has collapsed and is withering into a state of anarchy; and when intervention is necessary to safeguard democracy when a democratic government has been violently and illegally dislodged against the will of its domestic population.[52] Although the above criteria concern the customary international law doctrine of humanitarian intervention and hence unilateral-collective action by states (i.e., collective action without U.N. Security Council authorization), the United Nations may likewise invoke a right to humanitarian intervention by taking action under Chapter 7 of the U.N. Charter. When states cannot or will not protect displaced persons (e.g., Liberia, Somalia, Sudan, Rwanda, Angola, Mozambique, and Sierra Leone), the responsibility to do so falls on the whole of the international community. The responsibility exists, even if it requires interfering in the internal affairs of states and breaching classical notions of state sovereignty, non-interference, and territorial integrity. In Africa, there are several examples of humanitarian intervention by regional actors (e.g., ECOWAS in Liberia, Sierra Leone, and Guinea-Bissau, MISAB in the Central African Republic (CAR), and SADC in Lesotho) and the United Nations (e.g., Liberia, Somalia, Rwanda, Sierra Leone and CAR). With exception to the SADC intervention in Lesotho, all of these interventions were supported by the whole of the international community.

The international community, the United Nations in particular, has a gloomy record of safeguarding the rights of forcibly displaced

50. *See* Barcelona Traction Case (Belgium v. Spain), *supra* note 46.

51. Humanitarian intervention can be taken to mean intervention in a state involving the threat of force (U.N. action in Haiti) or use of force (U.N. action in Iraq and Somalia or ECOWAS action in Liberia and Sierra Leone), where the intervenor deploys armed forces and, at the least, makes clear that it is willing to use force if its operation is resisted as it attempts to alleviate conditions in which a substantial part of the population of a state is threatened with death or suffering on a grand scale. *See* Jeremy Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Case of ECOWAS in Liberia and Sierra Leone*, 12 TEMP. INT'L & COMP. L.J. 333 (1998).

52. *See* Levitt, *supra* note 51, at 336-37.

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persons in Africa. Conversely, African states have a far better record in this regard; for example, refugees from Liberia, Angola, and Mozambique have all enjoyed relative safety and security in Guinea, Côte d'Ivoire, Zambia, and Malawi, respectively. On this point, Michael Platzer aptly comments that "Africa, in fact, hosts more refugees and internally displaced persons than any other continent in the world."[53] The OAU Convention and the Cartenga Declaration may in part explain the greater generosity of African and Latin American governments in accepting victims of war and persecution.[54] African states have also demonstrated a keen willingness to take a leadership role in the prevention, management, and resolution of African conflict. Hence, when states (i.e., the international community) fail to fulfill their *erga omes* obligations by safe-guarding the rights of displaced persons in Africa, questions concerning states' responsibility to take preventive and protective action become moot. Perhaps the more appropriate question should be who is interested in and best suited in this regard? The cases of Liberia, Sierra Leone, Central African Republic, Guinea-Bissau, and Lesotho arguably show that Africans are the most committed and best suited to safeguard the rights of Africans.[55] The latter cases also illustrate, however, that Africans lack the resources and logistical capacities to provide adequate protection.

The following three sections will examine the capability of African regional actors to provide physical and legal protection to displaced people, and discuss how those organizations and the United Nations and its specialized agencies, notably UNHCR, UNHCHR, and UNDP, and other international organizations can work together to enhance their protective mandates.

53. Michael Platzer, *Temporary Protection of a Persecuted People, in* INTERNATIONAL LAW AND ETHNIC CONFLICT 282 (David Wippman ed., 1998).

54. *See id.*

55. This view is supported by several delegations at the Regional Meeting on Refugees Issues in the Great Lakes, held in Kampala, Uganda, May 8-9, 1998, who observed that regional multinational forces might prove more effective than international forces as a means of maintaining peace and security in areas of conflict. *See* Recommendations of the OAU/UNHCR Regional Meeting on Refugee Issues in the Great Lakes, Adopted at the OAU/UNHCR Regional Meeting on Refugee Issues in the Great Lakes, Kampala, Uganda, May 8-9, 1998.

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III. THE ORGANISATION OF AFRICAN UNITY (OAU)

A. Conflict Prevention

Conflict prevention should be the first phase of any comprehensive conflict maintenance system.[56] Crisis early warning and risk assessment are the most essential components of any viable conflict preventive scheme, and preventive diplomacy and deployment are the most important *functional* features of conflict prevention. Most African states and regional actors do not have conflict early warning and risk assessment capabilities. Nonetheless, this has not deterred them from engaging in preventive diplomacy, deployment, and peacekeeping. Today, African regional actors like the OAU are attempting to develop systematic conflict prevention capacities. In the past, the majority of their time was spent "dealing with the effects of conflict, rather than preventing situations of tension from growing into full blown conflict."[57]

African leaders have had to rely on preventive diplomacy and peace-enforcement as the primary means of conflict mitigation, the former being most applicable prior to armed conflict and the latter when it has reached an intolerable state. Yet, it is the period between these two stages when displaced persons are most vulnerable. Thus, rapid preventive deployment (with an operational capacity to upgrade to peace-keeping) may serve as a deterrent to and buffer between low intensity conflict and full blown warfare, which is the primary cause of displacement. In light of this, conflict prevention must not be seen as an independent process, but rather as one which is inextricably linked to conflict management and resolution. On this issue, one analyst notes that the "distinction between conflict resolution/management and conflict prevention is not clear-cut, but that these involve instruments that are part of a continuum of activities which are undertaken at different points of the life cycle of a conflict."[58]

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56. *See generally* BREAKING CYCLES OF VIOLENCE: CONFLICT PREVENTION IN INTRASTATE CRISIS (Janie Leatherman et al. eds., 1999).

57. Christopher J. Bakwesegha, *The Role of the Organisation of African Unity in Conflict Prevention,* INT'L J. REFUGEE L. 207, 216 (Special Issue 1995).

58. Klaas van Walraven, *Inter-governmental Organisation and Preventing Conflicts: Political Practice Since the End of the Cold War, in* EARLY WARNING AND CONFLICT PREVENTION 19, 21 (Klaas van Walraven ed., 1998).

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Arguably, the OAU has been the most active African regional actor in the area of conflict prevention.[59] It has been more operative in African preventive diplomacy than the ECOWAS, SADC, IGAD, United Nations, and donor nations. For example, OAU's diplomatic efforts in the Congo (Brazzaville) "helped mediate a peace treaty between the opposing sides in a conflict resulting from disputed general elections."[60] Moreover, its labors in Rwanda enlisted support from the former President of Tanzania and eminent African statesman, Julius Nyerere, which eventually led to the Arusha Accord in 1993.[61] Notwithstanding, there is no international consensus as to its effectiveness in this area.

Since the end of the Cold War the OAU has arguably employed the art with mixed outcomes in Angola, Burundi, Comoros, Congo (Brazzaville), Rwanda, Liberia, Somalia, Sierra Leone, and Western Sahara. In 1993, it established a Mechanism for Conflict Prevention, Management and Resolution (MCPMR) to employ a systems approach to conflict maintenance.[62] The primary objective of the Mechanism is to anticipate and prevent conflicts.[63] The MCPMR is built around a Central Organ with the Secretary-General and Secretariat as its operational arm, and is composed of the states' members of the Bureau of the Assembly of the Heads of State and Government as well as Ministers and Ambassadors accredited to the OAU, who are elected annually.[64] The Mechanism has been preoccupied with conflict prevention through preventive diplomacy as opposed to conflict management and resolution, because averting conflict is far less expensive than attempting to forestall it.

According to OAU Secretary-General Salim Ahmed Salim, in times of armed conflict the primary aim of the Mechanism is to "undertake peace-making and peace-building functions in order to facilitate conflict resolution, and it could mount and deploy civilian and military missions of observation and monitoring of limited scope and

59. *See, e.g.*, Ogenga Otunnu, *Conflict and Conflict Resolution*, REFUGE, Dec. 1997, at 1.

60. Report of the Cairo Consultation, *The OAU Mechanism for Conflict Prevention, Management and Resolution*, Cairo, Egypt, May 7-11, 1994, p. 18 [hereinafter Report of the Cairo Consultation].

61. *See id.*

62. *See Declaration of the Assembly of Heads of State and Government on the Establishment, Within the OAU of a Mechanism for Conflict Prevention, Management and Resolution*, Cairo, Egypt, June 1993, Provision 15 [hereinafter *Declaration of the Assembly*].

63. *See id.*

64. *See Declaration of the Assembly*, *supra* note 62, Provisions 17-18.

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duration."[65] As previously alluded to, however, the OAU is hindered by its lack of an operable intelligence gathering and evaluation capacity, and thus "the OAU will need an effective early-warning system to support the MCPMR."[66] Without such a capacity the MCPMR lacks empirical legitimacy and functional operability, both of which are needed to enable OAU decision-makers to make sound decisions and take decisive action.

Although the OAU intends to develop early warning and risk assessment capacities,[67] its inability to adequately predict and respond to conflict has, in contravention of the spirit of the OAU Refugee Convention of 1969, inhibited its ability to provide protection to displaced persons and prevent population displacement. The main purpose of the OAU Convention is to establish a firm legal standard for refugees and ensure their safety and security, thus decreasing the likelihood of mass population displacement.[68] However, this principal function cannot be fulfilled unless host states and humanitarian actors are supplied with sound information about the location, direction, number, and immediate needs of refugees and internally displaced persons. The failure of the OAU to develop such capabilities has greatly hindered its ability to assist displaced people and others affected by armed conflict.

Similarly, preventive deployment of civilian and military missions of observation and monitoring requires reliable intelligence, reconnaissance, and logistics capacities. Preventive deployment is not peace-keeping, but rather an extension of preventive diplomacy, which typically follows low intensity conflict but *precedes* high intensity warfare. Intelligence gathering, logistical planning, and conflict deterrence are major aims of preventive deployment. Although the OAU lacks such abilities, its relatively successful observation mission in Burundi in December of 1993,[69] illustrates its willingness and ability to launch preventive deployment missions. Hence, when the OAU develops early warning, risk assessment, and logistical capabilities, it will be in a stronger position to protect displaced persons and will attain greater legitimacy and trust from its Member States, bilateral do-

65. Salim Ahmed Salim, *The Role of Regional Organisations in Preventive Action, in* PREVENTIVE DIPLOMACY 100, 104 (Kevin M. Cahill ed., 1996).

66. Salim, *supra* note 65, at 117.

67. *See* OAU EARLY WARNING SYSTEM ON CONFLICT SITUATION IN AFRICA (Samuel Bassey Ibok & William G. Nhara eds., 1996).

68. *See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, Addis Ababa, Ethiopia, Sept. 10, 1969; 1000 U.N.T.S. 46 (entered into force June 20, 1974).

69. *See* Report of the Cairo Consultation, *supra* note 60, at 19.

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nors, and other regional actors concerning its standing as an authentic peace broker.

B. Conflict Management

It has historically been the practice of the Member States of the OAU to strictly adhere to the international law principles of state sovereignty, territorial integrity, non-interference in the internal affairs of states, and inviolability of inherited borders. The consent and cooperation of parties to a conflict has been a prerequisite to peacekeeping and peace-enforcement.[70] As a result, the OAU has refrained from employing coercive methods to forestall internal conflict. This practice has had serious ramifications for the protection of IDPs in particular, where the "primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities."[71] However, the complex nature of internal conflict has meant that domestic authorities have not always been the ideal patrons of IDPs.[72] Perhaps the greatest shortcoming of the OAU, with exception to intensified preventive diplomacy, has been its incapacity to deal with the effects of conflict—i.e., manage conflict—as evidenced by its 1981 mission in Chad.[73] Nevertheless, the institution of the OAU MCPMR appears to be the first step toward developing such a capacity.

Provision 9 of the Declaration establishing the MCPMR states that "[c]onflicts have forced millions of our people into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope."[74] Consequently, forcibly displaced persons were clearly a key consideration in the establishment of the MCPMR. Moreover, Provision 15 of the Declaration states that in times of armed conflict the Mechanism will be responsible for undertaking "peace-making and peace-building functions" in order to facilitate the resolution of conflict.[75] Since the MCPMR does not define the terms "peace-making and peace-building," Provision 15 of

70. *See* GINO J. NALDI, THE ORGANISATION OF AFRICAN UNITY: AN ANALYSIS OF ITS ROLE 18 (2nd ed. 1999).

71. *Guiding Principles on Internal Displacement*, *supra* note 1, principle 25 § 1(iv).

72. *See* presentation by Chief Segun Olusola, *Application of the Guiding Principles in Africa: the Issue of Sovereignty*, REFUGEE SURV. Q., Vol. 18, No.1 (1999).

73. C.O.C. AMATE, INSIDE THE OAU: PAN-AFRICANISM IN PRACTICE 181-189 (1986).

74. *Declaration of the Assembly*, *supra* note 62, at provision 9.

75. *Id.* provision 15.

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the Declaration gives some guidance as to their scope within the field of conflict prevention, management, and resolution:

> In this respect, civilian and military missions of observation and monitoring of limited scope and duration may be mounted and deployed. In setting these objectives, we are fully convinced that prompt and decisive action in these spheres will, in the first instance, prevent the emergence of conflicts, and where they do inevitably occur, stop them from degenerating into intense or generalised conflicts. Emphasis on *anticipatory* and *preventive measures*, and concerted action in *peace-making* and *peace-building* will obviate the need to resort to the complex and resource-demanding peace-keeping operations. . . .[76]

Under Provision 15 it thus appears that peace-making and peace-building fall somewhere between conflict prevention and conflict management. Although there is no concurrence among scholars and practitioners as to the exact meanings of the terms peace-making, peace-building, and peace-keeping, the above passage suggests that the OAU established the MCPMR to engage in conflict prevention and resolution rather than management. Nonetheless the OAU empowered the MCPMR to "prevent or manage and ultimately resolve conflicts when and where they occur,"[77] or stated differently, "stop [conflict from] degenerating into intense or generalised conflicts,"[78] which would inevitably require action that falls within the rubric of conflict management (see Table 1 above). The OAU, however, has yet to specify what type of action this may entail. Furthermore, taken together, Provisions 15 and 16 of the Declaration indicate that peace-keeping is an unpopular conflict maintenance option, which if pursued, should only be conducted under the auspices of the United Nations.[79] Hence a dichotomy exists in the sense that the OAU sanctioned the MCPMR to stop conflict and protect displaced persons on the one hand, but has discouraged it from doing so on the other. Moreover, the MCPMR does not have the requisite human and tangible resources to prevent coerced population movements or to protect displaced persons. Therefore, with exception to intensified preventive diplomacy, the OAU clearly has no viable conflict management capability. Nonetheless, it is taking measures to strengthen its capacity to act and build upon the example contained in the newly established ECOWAS Mechanism according to which the

76. *Id.* (emphasis added).

77. *Id.* provision 12.

78. *Id.* provision 15.

79. *See id.* provisions 15, 16.

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OAU Secretary-General encourages member states to "act effectively to prevent, manage or settle deadly conflicts in Africa when deemed necessary."[80]

In order for the OAU to effectively manage conflict and ensure that its member states understand and fulfill their legal obligations under the OAU Refugee Convention, it will need to reconsider its political position vis-à-vis the new international system of peace and security. Its classical and conservative adherence to the international principles of state sovereignty, territorial integrity, and non-interference, must be revisited. This means that "nothing short of an overhaul of the Charter of the OAU will cure the anomalies afflicting the organization,"[81] which will require progressive political leadership and vision—assets that it does not have in abundance.

It will also need to develop an enforcement regime and capacity or likewise enter into partnerships with states or regional actors that can carry out peace-keeping and peace-enforcement functions on its behalf. Unless the OAU is able to make changes along these lines, it will be unable to ensure compliance with any other legal regime (e.g., international humanitarian, human rights, and refugee law) aimed at protecting the rights of refugees and internally displaced persons. Consequently, displaced persons will not receive the protections to which they are legally entitled, and the OAU's ability to curb conflict will remain minimal. As a result, Member States will continue to question its capacity to genuinely mitigate conflict or act as a conflict broker.

C. Conflict Resolution

The OAU has demonstrated its willingness and ability to engage in conflict resolution. It has partaken in various post-conflict peace-building activities including confidence-building measures, with varying degrees of success in Angola, Burundi, Rwanda, Somalia, and Western Sahara, and the monitoring of elections in the Comoros, Liberia, and Sierra Leone. Although the OAU's budget is insufficient compared to the needs of the African continent, it has been arguably successful at mobilizing resources and calling attention to issues of international concern. For example, during the OAU Council of Minis-

80. Jakkie Cilliers, *Regional African Peacekeeping Capacity: Mythical Construct or Essential Tool?*, AFR. SECURITY REV., Vol. 8, No. 4, at 27 (1999).

81. P. Mweti Munya, *The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation*, 19 B.C. THIRD WORLD L.J. 591 (1999).

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ters Sixty-Sixth Ordinary Session in Harare, Zimbabwe, in May 1997, the Council of Ministers decided to firmly condemn the overthrow of the democratically elected government of President Ahmed Tijan Kabbah of Sierra Leone and called "for the immediate restoration of constitutional order [and appealed] to the leaders of ECOWAS to assist the people of Sierra Leone to restore constitutional order to the country."[82] In like manner, the OAU appealed to the United Nations and the whole of the international community not to recognize the illegal junta in Sierra Leone. In October of the same year, the U.N. Security Council adopted Resolution 1132, which placed a petroleum and arms embargo on the country and imposed travel restrictions on the military junta and their families.[83] Moreover, the resolution permitted ECOWAS to enforce its terms.[84] OAU action in this respect must not be ignored, as it signals significant political maturity, and demonstrates its ability and commitment to utilize its resources and leverage to curb international public opinion to safeguard democratic institutions and forestall conflict.[85] Its outspokenness in the case of Sierra Leone represents a precedent and perhaps a shift in policy in this regard. Notwithstanding, the OAU's history of inaction has lead many analysts to argue that it has failed to put theory into practice on issues concerning state's responsibility, human rights, and the rule of law,[86] and as a result, has been generally ineffective in the area of conflict resolution.[87] The fact remains that the OAU, like NATO and the United Nations, is an organization made up of and directed by its Member States, and not a supranational entity entrusted with powers to police its members. Ultimately, it will represent the interests of its members and likewise be shaped by their mores, values, and characteristics. This may explain why, at times, the OAU's policies appear protective and conservative on the one hand, and transparent and liberal on the other. Such a dichotomy is the manifestation of the various political characteristics of its leaders, ranging from autocratic, militaristic, and neo-patrimonial, to democratic. Until the OAU be-

82. *Organisation of African Unity Council of Ministers Sixty-Sixth Ordinary Session,* Harare, Zimbabwe, May 28-30, 1997, at 18, Draft Decisions CM/Draft/Dec. (LXVI) Rev. 1 (1997).

83. *See* S.C. Res. 1132, U.N. SCOR, 3822th mtg., U.N. Doc. S/RES/1132 (1997).

84. *See id.*

85. However, international advocacy should only be seen as one of several tactical means to resolve conflict.

86. *See, e.g.*, Osita C. Eze, *The Organisation of African Unity and Human Rights: Twenty-Five Years After*, 14 NIG. J. INT'L AFF. 163-64 (1988). *See also* Joe Oloka-Onyango, *The Place and Role of the OAU Bureau for Refugees*, 6 INT'L J. REFUGEE L. 34, 39 (1994).

87. *See generally* P. Mweti Munya, *supra* note 81.

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comes consistent in the way that it adheres to domestic and international laws and norms, refugees and IDPs and returnees in Africa will not receive the protections for which they are legally and morally entitled.

IV. SUB-REGIONAL ORGANIZATIONS AND CONFLICT MAINTENANCE: ECOWAS, SADC, AND IGAD

A. Conflict Prevention

The ECOWAS, SADC, and IGAD have the same conflict preventive disabilities as the OAU because they too lack early warning and risk assessment capacities. The IGAD, and to some extent ECOWAS, lack reconnaissance and logistical capacities, whereas SADC has access to such capabilities and other military assets through South Africa, and to some extent Zimbabwe. Nevertheless, there are no provisions in the SADC Organ for Politics, Defense and Security (1995),[88] the SADC Protocol on Politics, Defense and Security in the Southern African Development Community (SADC) Region (1997),[89] or the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (MCPMRPS) (1998),[90] that make specific reference to refugees and internally displaced persons. Conversely, in theory, the IGAD has demonstrated its commitment to protecting the rights of displaced persons by adopting the following: the IGAD Strategy Framework (1996); IGAD Program on Conflict Prevention, Resolution and Management (1998);[91] Proposal for the Enhancement of IGAD's Emergency Pre-

88. *See The Southern African Development Community (SADC) Organ for Politics, Defence and Security*, Gaborone, Botswana, June 28, 1996, *compiled in* AFRICA: SELECTED DOCUMENTS ON POLITICAL, SECURITY, HUMANITARIAN AND ECONOMIC ISSUES, INSTITUTE FOR STRATEGIC STUDIES UNIVERSITY OF PRETORIA, at 32-35, Ad hoc Publicaton No 33 (Nov. 1996) [hereinafter *SADC Organ*]. Among other things, the Organ was established to maintain peace and security and protect the people of Southern Africa from the brutal effects of conflict.

89. *See Protocol on Politics, Defence and Security in the Southern African Development Community (SADC) Region, compiled in* AFRICAN LEGAL MATERIALS, AFR. J. INT'L & COMP. L., Mar. 1999, at 197 [hereinafter *SADC Protocol*]. The purpose of the Protocol is to give effect to the objectives of the SADC Organ including provision for peace-keeping and peace-making activities.

90. *See ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security*, Meeting of Ministers of Defense, Internal Affairs and Security, Banjul, 23-24 July 1998, adopted by the Meeting of Heads of State at Abuja 30-31 October 1998, *compiled in* AFRICAN LEGAL MATERIALS, AFR. J. INT'L & COMP. L., Mar. 1999, at 148 [hereinafter *ECOWAS Mechanism*]. I also refer to the above as the ECOWAS Mechanism and the MCPMRPS.

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paredness and Response Capacity for Humanitarian Emergencies within the IGAD Sub-Region (1999).

Nevertheless, it could be argued that other provisions in the ECOWAS and SADC mechanisms, which emphasize human rights and humanitarian law, are intended to "cover" or take into consideration the plight of displaced populations. Furthermore, Provisions 8(d) and 9 of the Grand Bay (Mauritius) Declaration and Plan of Action which was adopted at the OAU First Ministerial Conference on Human Rights in Africa emphasize the importance of population displacement in Africa.[92] This, however, does not alter the fact that the ECOWAS and SADC charters, subsequent protocols, and other instruments do not make specific reference to refugees or internally displaced persons. In this regard, even though IGAD's protective capacity is still in an embryonic stage, the specific references in its instruments to IDPs and refugees demonstrate its commitment to the latter, and should serve as an example for the ECOWAS and SADC.

SADC has been the least effective African regional actor in the areas of preventive diplomacy and deployment. Its botched intervention in Lesotho[93] and its failed peace-making efforts in the Democratic Republic of the Congo (DRC) represent the only authentic SADC attempts to forestall conflict.[94] On the other hand, ECOWAS's diplomatic and military missions in Liberia, Sierra Leone, and Guinea-Bissau were arguably better. In this respect, Ramcharan comments that

> ECOWAS must be credited with one of the first attempts in the history of international peace-keeping at the use of peace-keeping forces for preventive purposes, something that was later to earn the United Nations credit with its preventive deployment in the Former Yugoslav Republic of Macedonia (FYOM).[95]

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91. *Intergovernmental Authority on Development (IGAD), Programme on Conflict Prevention, Resolution and Management (1998)* (visited Sept. 29, 1999) <http://www.igad.org/press10.htm> [hereinafter *IGAD*]. The IGAD Program was introduced to build capacity, create an early warning mechanism, share its post-conflict peace-building experiences, and co-ordinate efforts to promote a culture of peace and tolerance. The IGAD does not envisage itself engaging in operable conflict management.

92. *See Declaration and Plan of Action, OAU First Ministerial Conference on Human Rights in Africa*, 12-16 Apr 1999, Grand Bay (Mauritius), OAU DOC. CONF/HRA/DECL (I) (Apr 16, 1999).

93. *See generally* Jakkie Cilliers, *supra* note 80, at 28.

94. *See generally* Maxi van Aardt, *The SADC Organ for Politics, Defence and Security: Challenges for Regional Community Building*, S. AFR. J. INT'L. AFF., Winter 1997, at 144 (for an interesting analysis of some of the inherent institutional problems in the SADC Organ).

95. B.G. Ramcharan, *Cooperation between the U.N. and Regional/Sub-Regional Organisations in Internal Conflicts: The Case of Liberia*, 4 AFR. Y.B. INT'L L. 3, 8-9 (1996).

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In the case of Liberia, however, it may be argued that ECOWAS prolonged the Liberian Civil War (1989-1997) causing more harm than good to displaced persons.[96] Alternatively, its intervention in Sierra Leone saved thousands of lives by providing a buffer between the combatants and hundreds of thousands of forcibly displaced persons. Still, ECOWAS has not succeeded in forestalling conflict by purely diplomatic means (e.g., Guinea-Bissau), which may signal a fault in its conflict prevention capacity or may be a result of the harsh brand of conflicts with which it has been forced to contend. Similarly, although IGAD has been intimately involved in conflict mediation in Somalia and Sudan,[97] the "on again, off again" dynamics of those conflicts raise questions about IGAD's conflict prevention capacity in the area of preventive diplomacy. In view of this, the ECOWAS, SADC, and IGAD need to work diligently to strengthen their capabilities in this area.

B. Conflict Management

As previously mentioned, conflict management is the most important conflict maintenance process with respect to the protection of displaced persons.[98] Lately, the OAU and IGAD have become more concerned with developing and enhancing their conflict prevention capabilities, as both of them are in the process of establishing conflict early warning and risk assessment capabilities. In the past, African regional actors have engaged in peace-keeping to monitor cease-fires (e.g., OAU in Rwanda and Burundi), and partaken in peace-enforcement operations (e.g., SADC in Lesotho) and humanitarian interventions (e.g., ECOWAS in Liberia, Sierra Leone, and Guinea-Bissau) in order to halt warfare, restore democracy, and establish security and stability in troubled states.

ECOWAS has far more experience protecting displaced persons via peace-keeping and peace-enforcement than the OAU, SADC, and IGAD combined.[99] Its Cease-Fire Monitoring Group (ECOMOG) has evolved from an ad hoc grouping of states into a permanent humanitarian enforcement mechanism, the MCPMRPS.

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96. Funmi Olonisakin & Emmanuel Kwesi Aning, *Humanitarian Intervention and Human Rights: The Contradictions in ECOMOG*, INT'L J. HUM. RTS., Spring 1999, at 22.

97. Knife Abraham, *The Role of Regional and Sub-regional Organisations: Statement by the Inter-Governmental Authority on Development (IGAD)*, 18 REFUGEE SURV. Q. 102, 106 (1999).

98. *See infra* Introduction.

99. Since IGAD does not have a genuine conflict management capacity (with exception to intense preventive diplomacy) it will not be discussed in this section. *See IGAD*, *supra* note 91.

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The MCPMRPS may evolve to be the most comprehensive conflict management mechanism on the African continent. The most salient features of the MCPMRPS concerning displaced persons are found in Articles 17 and 18. Article 17 calls for the establishment of a Mediation and Security Council (MSC), which in times of crisis will be "empowered to take decisions on issues of regional peace and security on behalf of the Authority of Heads of State and Government."[100] More specifically, however, Article 18 of the MCPMRPS states that the MSC may "authorise all forms of interventions, including the decision to deploy political and military missions."[101] Similarly, Article 46 states that in internal conflict situations that are sustained and maintained from within, the Mediation and Security Council may employ military missions when circumstances exist that threaten to trigger humanitarian disaster,[102] pose a serious threat to peace and security in the sub-region,[103] and erupt following the overthrow or attempted overthrow of a democratically-elected government.[104] Under Article 45, the MCPMRPS "military instrument will be a standby force, which shall be called ECOMOG."[105] Hence, from the above provisions it is clear that under ECOWAS law, ECOMOG may lawfully be dispatched in times of armed conflict to safeguard displaced persons.

ECOWAS's consolidation of political and operational control into one body, the Mediation and Security Council, will undoubtedly result in its rendering more timely assistance to refugees and internally displaced persons. Likewise, the guiding criteria in Article 46 are tailored broadly enough to include preventive enforcement missions aimed at averting the conditions responsible for producing displaced persons amidst, for example, low intensity armed conflict. From a legal, political, and perhaps military perspective, when the MCPMRPS is fully instituted it will have the most sophisticated conflict management capacity on the African continent. If the present capability of ECOWAS is measured by its recent operation in Guinea-Bissau, however, its operational proficiency clearly must evolve to complement the theoretical ambitions of the MCPMRPS. Still, with the advent of democracy in West Africa's only hegemony,

100. *ECOWAS Mechanism*, *supra* note 90, art. 17.
101. *Id.* art. 18.
102. *See id.* art. 46 (i).
103. *See id.* art. 46 (ii)
104. *See id.* art. 46(iii).
105. *Id.* art. 45.

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Nigeria, and the coming of the MCPMRPS, it is clear that ECOWAS will strengthen its collective framework and improve its capability if legitimacy, efficiency, and accountability are key indicators of its future development.[106]

The SADC Organ for Politics, Defence and Security (Organ) is the foremost conflict management mechanism in Southern Africa. Similar to ECOWAS's MCPMRPS, it does not explicitly make reference to refugees and internally displaced persons; however, a cursory glance at the objectives of the Organ shows that its framers had the latter in mind. For example, one of the principal goals of the Organ is "to protect the people [of Southern Africa] and safeguard the development of the region, against instability arising from the breakdown of law and order, intrastate conflict and external aggression."[107] Similarly, it seeks to encourage the observance of universal human rights as enumerated in the Charters and Conventions of the OAU and the United Nations.[108] In circumstances where diplomacy cannot avert armed conflict, Provision (g) of the Organ provides for the adoption of a Protocol on Peace, Security and Conflict Resolution, to guide the organ in this respect.[109] The Protocol was adopted by the SADC in June 1995. Similar to the Organ, however, the Protocol also fails to make reference to and provide specific protections to forcibly displaced persons. Nonetheless, it empowers the Organ to employ *peace-keeping* forces in order to achieve sustainable peace and security.[110] Moreover, akin to the MCPMRPS, the Protocol offers broad criteria upon which regional intervention could be taken in internal conflict situations, namely the following: large-scale violence between sections of the population of a State, or between the State and/or its armed or para-military forces and sections of the population;[111] a threat to the legitimate authority of the government (such as a military coup by armed or para-military forces);[112] a condition of civil war or insurgency;[113] and any crisis that could threaten the peace and secu-

106. Funmi Olonisakin & Jeremy Levitt, *Regional Security and the Challenges of Democratization in Africa: TheCase of ECOWAS and SADC*, CAMBRIDGE REV. INT'L. AFF., Autumn/Winter 1999, at 73.

107. *SADC Organ*, *supra* note 88, provision (a).

108. *See id.* provision (h).

109. *See id.* provision (g).

110. *See SADC Protocol*, *supra* note 89, art. 2(I).

111. *Id.* arts. 5(2)(1)(a-d).

112. *Id.* art. 5(2)(1)(b).

113. *Id.* art. 5(2)(1)(c).

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rity of other Member States.[114] Furthermore, it states that in internal conflict situations the "Organ shall respond to an invitation by a member country to become involved in mediating a conflict within its borders."[115]

Nevertheless, there is an overarching non-interventionist tone to the Protocol, which may be a result of geopolitical tensions and rivalry between Zimbabwe and South Africa, as neither country subscribes to the idea of extending the other authority to invade its territory during times of conflict. Whatever the case may be, under the terms of the Protocol, SADC may not take enforcement action to avert conflict or likewise prevent coerced population movements and safeguard displaced populations without the consent of the government of the state in crisis. As alluded to earlier, this type of policy would appear to be counter-productive when the state is the referent object of oppression. In this sense, SADC's institutional commitment to prevent forced population movements and protect displaced populations is questionable, and certainly lags behind the ECOWAS's, in part due to the Protocol's state-centric focus. Additionally, given the problems that South Africa had maintaining peace and order in Lesotho, it would also appear to be less efficient than ECOWAS at launching peace-keeping operations.[116] Nevertheless, with South Africa at the helm, SADC currently possesses the greatest functional and operational peace-keeping and peace-enforcement capacity in Africa.

C. Conflict Resolution

The OAU, ECOWAS, SADC, and IGAD have engaged in conflict resolution with varying degrees of success. The OAU and ECOWAS would appear to be the most active in this respect. However, again, due to the technological and military assets at its disposal, SADC would appear to have the greatest capability to engage in long-term conflict resolution. Yet, if its leaders can learn from the mistakes of the OAU, ECOWAS, and SADC, IGAD will be in a position to become an effective conflict resolution broker. Notwithstanding, all four suffer from limited resources, a difficulty which has heavily impacted their ability to fruitfully engage in this area.

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114. *Id.* art. 5(2)(1)(d).

115. *Id.* art. 5(2)(2).

116. *See generally* Willie Breytenbach, *Failure of Security Co-operation in SADC: The Suspension of the Organ for Politics, Defense and Security*, S. AFR. J. INT'L. AFF., Summer 2000, at 91-95.

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Again, the ECOWAS has been the most operative regional actor in conflict resolution. In contrast, SADC has only had to deal with the crisis in Lesotho in 1998. Recent developments in the DRC, however, are bound to test its conflict resolution capabilities. Similarly, IGAD's conflict resolution capacity is untested, as it has focused the majority of its attention on conflict prevention, through preventive diplomacy and the institution of a Conflict Early Warning and Early Response Mechanism. Still, it has engaged in laudable mediation efforts in the ongoing conflicts in Somalia and the Sudan.[117]

The ECOWAS has engaged in post conflict peace-building activities in Liberia, Sierra Leone, and Guinea-Bissau. In all three situations it conducted security, demobilization, reintegration, repatriation, election monitoring functions, and confidence-building measures and post-conflict reconstruction and development activities. Although warfare has come to an end in Liberia and Sierra Leone and hundreds of thousands of displaced persons have begun to repatriate and return to their places of habitual residence, the ECOWAS has not yet established structures that bring about genuine justice and reconciliation. Similar to the OAU, SADC, and IGAD, ECOWAS has been preoccupied with creating the necessary conditions for democratization through free and fair elections rather than dealing with the societal manifestations of warfare. In this context, it has adopted a Western approach to peace-making and fallen victim to the contradictions of liberal democracy, as evidenced by its support for the 7 July 1999 Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone.[118] The agreement essentially empowers war criminals to rule over war victims by giving them *de jure* authority, i.e., key cabinet positions in government. It subverts the domestic populations' right to self-determination and abridges their domestic and international right to bring claims against combatants for war crimes and crimes against humanity by granting the former general amnesty.[119] Throughout West Africa and the Continent, no judicial mechanisms exist for civilians to bring such claims, and it does not appear that ECOWAS plans to introduce one any timein the near future. Conflict resolution

117. *See* IGAD Programme on Conflict, Prevention, Resolution, and Management, Background Section (1999) <http://www.igad.org/press10.htm>.

118. *See* Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999, U.N. Doc. S/1999/777, 1999.

119. *See id.* However, the amnesty is domestic in nature and will not protect them from being prosecuted under international law for genocide, war crimes, and crimes against humanity.

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of this nature is by design cosmetic, and to the extent that history can shed light on future events, conflict will inevitably resume in Sierra Leone, as warlords have no interest in or respect for the rule of law.

ECOWAS, however, is not unique is this regard since the OAU, SADC, and IGAD have yet to institute judicial mechanisms which empower war victims to bring claims against combatants for war crimes. Accordingly, there is no African mechanism that permits individual refugees to bring claims against host state governments or combatants for violating their human rights. Until such structures are instituted, the international community should question the authenticity of African governments and regional actors to tackle problems associated with the plight of displaced persons.

V. ENHANCING AFRICA'S PROTECTIVE AND PREVENTIVE CAPACITIES IN THE NEW MILLENNIUM: THE WAY FORWARD

A. Preventing Conflict and Promoting Trust

There is no simple remedy for conflict once it manifests. Every conflict is unique. Political will and resources aside, peace ultimately depends on whether or not the parties in conflict want it. In the final analysis, peace must be internally driven. Once internal governance and preventive structures break down, conflict prevention ultimately depends on the willingness of opposing parties to accept external diplomatic intervention. Absent such commitment, warfare and its offspring, coerced population movements, may be unavoidable. As early intervention is the easiest way to avert conflict, African states and regional actors must be resolute in their commitment to institute the necessary mechanisms to engage in fruitful conflict prevention. As the discussion above highlights, they appear to be making some progress in this area, although their ability to reliably forecast conflict and proffer rapid diplomatic responses is weak. As a result, they must commit more resources to building conflict early warning, risk assessment, and rapid diplomatic deployment capabilities.

The UNHCR is in a strong position to qualitatively assist African regional actors in enhancing their protective capacities. Although it currently spends over forty percent of its resources in Africa,[120] it

120. *See* Sadako Ogata, United Nations High Commissioner for Refugees, *Promoting Peace and Security: Humanitarian Assistance to Refugees in Africa*, Briefing at the Formal Session of the Security Council (July 26, 1999).

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needs to play "a more visible advocacy role in order to convince state actors to adhere to refugee protection principles, by building principles and guidelines into the sub-regional institutional framework, and providing material and technical support to refugee related institutional mechanism."[121] In this regard, it should enter into and update on a biannual basis humanitarian based memorandums of understanding with African regional organizations, which clearly delineate their commitment to safeguarding the rights of refugees and IDPs. The Memorandums of Understanding (MOU) that the UNHCR concluded with SADC in July 1996 and IGAD in November 1997 are seminal examples in this regard.[122] These MOUs, however, are weak in that they do not include provisions that state the organization's commitment to adhere to the international protection regime (i.e., international human rights, humanitarian, and refugee law). Rule of law issues need to be featured prominently in future agreements. Pursuant to their respective articles on supplementary arrangements,[123] the SADC and IGAD Memorandums should be amended accordingly.

Moreover, the UNHCR should seek to replicate and institute its Country Information Project (COIP) and International Refugee Electronic Network (IRENE), whose purpose is to gather and share information regarding conditions in potential refugee-producing states, in the OAU, ECOWAS, SADC, and IGAD.[124] At the very least, the UNHCR could work with the OAU to establish such a capacity within the MCPMR and to support the creation of a continent-wide information sharing system with satellite offices in each of the sub-regional organizations. This suggestion comports with the recommendation adopted at the OAU/UNHCR meeting in Khartoum, Sudan, in December 1998, which concluded that the OAU should strengthen its early warning system with the assistance of the United Nations to enable it to better monitor humanitarian developments

121. *UNHCR Policy Framework for Africa 2000-2001*, UNHCR Africa Bureau (2000).

122. Memorandum of Understanding between The Southern African Development Community and The United Nations High Commissioner for Refugees, Gaborone, Botswana, July 25, 1996; Memorandum of Understanding between the Intergovernmental Authority for Development and the United Nations Commissioner for Refugees, Djibouti, Djibouti, June 19, 1997.

123. These agreements allow the organizations to enter into supplementary arrangements within the scope of the Memorandums by amending them by mutual agreement between the Contracting Parties.

124. *See generally* Hiram A. Ruiz, *Emergencies: International Response to Refugee Flows and Complex Emergencies*, INT'L J. REFUGEE L. 148, 157 (July 1995) (Special Issue: Organisation of African Unity/United Nations High Commissioner for Refugees Addis Ababa Symposium on Refugees and Forced Population Displacements in African 8-10 September 1995).

HeinOnline -- 11 Duke J. Comp. & Int'l L. 69 2001

and crises and inform its member states.[125] Such a system would also increase the UNHCR's preventive capacity by allowing it to attain, transfer and exchange information throughout the continent.

Although it might attempt too ambitious a goal, the UNHCR could assist in the creation of *Humanitarian Reaction Units* in the OAU, ECOWAS, SADC, and IGAD, similar to its Emergency Preparedness and Response Section (EPRS), which consists of fewer than ten EPRS officers.[126] The EPRS has a number of tools at its disposal.[127] The overall purpose of these officers is to "monitor regional developments, establish contingency plans, develop operational procedures for emergencies, identify training needs for personnel assigned to work on emergencies, and, most importantly, [they] are deployed to the field to lead needs-assessment missions and emergency response teams as necessary."[128] As indicated earlier, preventive deployment of this nature is important in that it demonstrates the intervenors' commitment to build trust and resolve crisis by peaceful means. It also allows for the gathering of vital information and data on the conditions and needs of displaced populations. The UNHCR could also enter into operable memorandums of understanding with African regional actors, which would allow personnel deployment for standby EPRS operations and in addition serve as liaisons between the UNHCR and their respective organizations. These actors could also seek to embark on joint missions with the EPRS or other U.N. personnel in order to establish a nexus between national, regional, and international efforts to prevent or minimize the effects of conflict on civilian populaces.

Taken together, early warning/risk assessment and preventive diplomacy/deployment are the most viable ways to forestall and minimize conflict. Early warning and risk assessment processes do not prevent coerced population movements, but rather inform operational processes aimed at this objective. In like manner, preventive deployment (emergency preparedness) is not practicable, wanting sound and reliable information and resources. In order to prevent conflict effectively, mechanisms that consolidate all four processes must be instituted. Most importantly, however, issues related to re-

125. Khartoum Recommendations of the OAU Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa, Khartoum, Sudan, Dec. 13-14, 1998, (on file with Duke Journal. of Comparative & International Law).

126. *See* Ruiz, *supra* note 124, at 157.

127. *See id.* at 155.

128. *See id.*

HeinOnline -- 11 Duke J. Comp. & Int'l L. 70 2001

sources and operational logistics are moot, unless African leaders garner the political will to take action.

B. Managing Conflict and Establishing Order

The role of regional actors in conflict management is to provide a remedy for the failure of the domestic system to protect civilians in times of armed conflict. In this context, as previously stated, the most challenging task for African regional actors is the physical and legal protection of displaced persons and the prevention of refugee flows. The OAU, ECOWAS, IGAD, and to a lesser extent SADC, however, are hindered by a lack of resources, reconnaissance and logistics capabilities, command and control organization, and technical legal support. Until recently, the UNHCR, UNDP, and the donor community were not aggressive in seeking ways to assist African regional organizations to strengthen their protective capacities. Even the High Commissioner for Refugees has remarked that there is "a perception disparity in the assistance given, to displaced persons from Kosovo, as opposed to that given to African."[129] This reality, coupled with increasing donor fatigue, has meant that displaced persons have not received the requisite amount of protection to which they are legally entitled. It is therefore evident that domestic and international politics have taken precedence over the rule of law, that is, states' obligations to render timely and adequate assistance to African refugees and IDPs. Hence, the tragic events in Liberia, Rwanda, and Burundi in the early 1990s, and Sierra Leone, Guinea-Bissau, DRC, and Niger in the late 1990s, demonstrate that the international community has failed to fulfill its *erga omnes* obligation to safeguard the rights of displaced persons and other war-affected populations in Africa.

Therefore, Africans should, in partnership with external actors, take the leadership role in the management of African conflicts. In order for the OAU to minimize the effects of war on civilian populations, it must work with states toward restructuring Africa's collective security framework. Existing structures must be revamped in order to maximize the capabilities of African states. This may entail subregional organizations entering into bilateral agreements with donor states to assist them in strengthening their peace-making capabilities.[130] In this context, the OAU should establish an autonomous

129. Ogata, *supra* note 120.

130. The United States' African Crisis Response Initiative is one example in this respect. *See generally* Jeremy Levitt, *The African Crisis Response Initiative: A General Survey*, 28 AFR. INSIGHT 3/4, at 100 (1998).

HeinOnline -- 11 Duke J. Comp. & Int'l L. 71 2001

OAU Organ on Peace and Security (the "Organ"), which would assume absolute political and legal oversight and jurisdiction over all enforcement operations in and outside of Africa. From this view, the relevant sub-regional actor whose Member State is a target for intervention would be primarily, but not entirely, responsible for conducting and leading all operations.[131] Command and control responsibilities, however, would be shared between the Organ and sub-regional actor. Under this scheme, the Organ would be able to bypass the OAU's bureaucracy and take decisive action when needed. Likewise, there would be no need for the OAU to develop a peace-keeping and peace-enforcement capacity, as sub-regional actors would be responsible for mounting all operations. On this point, several delegations at the OAU/UNHCR Regional Meeting on Refugee Issues in the Great Lakes in Kampala, Uganda, in May 1998 "observed that regional multinational forces might prove more effective than international forces as a means of maintaining peace and security in areas of conflict."[132] Furthermore, Recommendation Twelve of the Addis Ababa Document supports this contention by calling for an "effective response to the refugee problem on a regional basis" and, stating that "where emergencies are beyond humanitarian action alone, the necessary political initiatives may also require a regional approach."[133] A collective security framework of this type would provide for greater accountability and legitimacy in and outside of Africa. It would also prevent sub-regional actors from being unduly influenced by the foreign policy objectives of regional hegemonies (e.g., Nigeria/ECOWAS and South Africa/SADC) because African states from throughout the continent would (via the Organ) take part in decisions to employ force.

African regional actors also need to develop an African-based humanitarian enforcement doctrine, including operational guidelines for robust peace-keeping, i.e. peace-enforcement, that may necessitate defensive military elements, which would take into consideration the geopolitics of the Continent and the dynamics of African conflict.

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131. In certain instances, regional collective humanitarian intervention in internal conflicts appears to be supported under customary international law. *See also* Jeremy Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone*, 12 TEMP. INT'L & COMP. L.J. 2, 1998.

132. OAU/UNHCR Secretariat Report, Regional Meeting on Refugee Issues in the Great Lakes, Kampala, Uganda, May 8-9, 1998.

133. The Addis Ababa Document on Refugees and Forced Population Displacements in Africa, Recommendation Twelve, Addis Ababa, Ethiopia, Sept. 8-10, 1994. Adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa.

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Furthermore, the UNHCR, ICRC, U.N. Department of Peacekeeping Operations (DPKO) and the U.N. Office for the Coordination of Humanitarian Affairs (OCHA), should work with African regional organizations to create a code of conduct for forces participating in peace-keeping and peace-enforcement operations.[134] The DPKO should consult with African military experts to replicate and modify its newly devised code of conduct (instituted in 1997) to account for the dynamics of African conflict, so that African military commanders have incentive to use it as a training tool.[135] Similarly, African leaders should work with the DPKO and the UNHCR to codify protection principles in their respective conflict management and early warning mechanisms (e.g., the ECOWAS MCPMRPS and SADC Organ). IGAD should give due consideration to this issue as it develops its conflict early warning and early response mechanism.

Because the presence of armed elements among civilian refugee populations is currently a serious problem, an African humanitarian enforcement doctrine could also be used to guide and empower African regional actors to safeguard the welfare of displaced persons in flight and protect them from infiltration when encamped. The experiences (lessons learned and best practices) of African regional actors in Liberia, Sierra Leone, Guinea-Bissau, Central African Republic, Lesotho, and currently the DRC should be documented and utilized for the creation of such a doctrine. Consequently, the UNHCR, UNHCHR, and UNDP should work with African regional actors and refugee hosting states to develop the aforementioned doctrine and assist them in developing comprehensive pre-entry encampment screening systems. In order to "preserve the civilian and humanitarian character of refugee camps and settlements,"[136] states in consonance with the OAU, sub-regional actors, and UNHCR must "take necessary measures by separating armed elements' from civilian populations,"[137] and disarm the latter before they enter into countries of asylum.

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134. This view is shared by Bianfer Nowrojee, *UN and African Regional Responsibility to Provide Human Rights Protection to the Internally Displaced: Learning Lesson from the Experience of UNDP in Kenya*, 18 REFUGEE SURV. Q. 1, 55-56 (1999).

135. The U.N. Code of Conduct for Blue Helmets is listed in UN CHRONICLE, No. 3, 1997, at 40-41.

136. UNHCR Report, OAU Experts and Ministerial Meetings on Refugees, Returnees and Displaced Persons in Africa, Dec. 10-14, 1998, Khartoum Sudan, Recommendations, Provision 9, Annex 3 BR/COM/Rec.I (I) (on file with Duke Journal of Comparative & International Law).

137. *Id.*

HeinOnline -- 11 Duke J. Comp. & Int'l L. 73 2001

The UNHCR, UNHCHR, ICRC, and UNDP should also work together to establish and sponsor the promotion of human rights law, humanitarian law, and refugee law programs for African policy makers and lawyers, especially those on active duty in regional organizations. They should also render support in the areas of "emergency management and provision of humanitarian assistance."[138] The OAU, ECOWAS, SADC, and IGAD have very small legal affairs divisions and the majority of their legal staff are not formally trained in public international law. Public international lawyers are needed to inform decision-making processes especially on issues related to humanitarian, human rights, and refugee law and the law of the use of force. Knowledge of and adherence to the rule of law is crucial for the sanctity of humanitarian missions and hence the safety and protection of displaced persons and peace-enforcers alike.

C. Resolving Conflict and Maintaining Peace and Stability

In general, African regional actors have poor conflict resolution capacities, and displaced persons and other civilian victims of war are without judicial remedies. Often the rights of civilian populations are dually violated by inadequate or non-existent national, regional, and international judicial systems. As one analyst notes, "African troops sent to restore peace have been in many cases responsible for human rights violations themselves, including killings, torture, rape and arms trading with rebel groups."[139] In response, the "OAU has failed to put in place adequate protections to guard against such abuses."[140] Although individuals and non-governmental organizations (NGOs) are entitled to file human rights claims with the African Commission on Human and Peoples' Rights (Commission), it essentially has no power to act unilaterally or the authority to bind states to its decisions.[141] All of the Commission's findings and recommendations must be forwarded to the Authority of Heads of State and Government (AHSG) for consideration.[142] This means that the "decisions of the Commission are subject to the approval of the OAU, a political

138. *Id.* at Provision 25.

139. Nowrojee, *supra* note 134, at 58.

140. *Id.*

141. *See* The African Charter on Human and Peoples' Rights, adopted on June 27, 1981, in Nairobi, Kenya, by the OAU. It entered into force on October 21, 1986. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. The African Commission was founded in 1987 to promote and protect human rights in Africa. It was established under Article 30 of the African Charter.

142. *See* The African Charter on Human and Peoples' Rights, *supra* note 141, at art. 58-59.

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body."[143] As a result, the Commission is defunct because its political and judicial authority is contingent on the approval of the political elite. Likewise, the Protocols establishing the ECOWAS Community Court of Justice (1991)[144] and the OAU African Court on Human and Peoples' Rights (1998)[145] have not been fully ratified. Notwithstanding the absence of approval from the state concerned, the OAU Court lacks the jurisdictional authority to adjudicate claims from individuals and NGOs,[146] whereas the ECOWAS Court has no competency to adjudicate individual claims, but only those brought by states.[147] Thus, similar to the Commission, its jurisdictional mandate is subject to the approval of politicians who may be the very source of oppression. Hence, African war victims have no judicial recourse and are subject to the reconciliatory mandates of their rulers.

This trend may change with the coming of the International Criminal Court, which was established in Rome on July 18, 1998.[148] The jurisdiction of the Court is limited to heinous crimes of concern to the international community as a whole, including genocide, crimes against humanity, war crimes, and the crime of aggression.[149] However, the court does not have original jurisdiction and will only act after a national legal system either has failed to carry out its obligation to investigate and prosecute or is otherwise unwilling to do so.[150] Nevertheless, African leaders should work to insure that regional judicial mechanisms are in place and accessible to complainants. If African governments fail to establish and empower structures to meet these objectives they will inadvertently be subjecting themselves to international, as opposed to regional, judicial intervention in their internal affairs. In this context, the UNHCHR, UNHCR, UNDP,

143. Evelyn A. Ankuma, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 24 (Martinus Nijhoff Publishers, 1996).

144. *See* art. 18, ECOWAS, 14th Sess., Protocol A/P.1/7/91 (1991), 30 I.L.M. 1241 (1991).

145. Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, OAU Doc. LEG/MIN/AFCHPR/PROT.1 rev.2 (1997).

146. *See id.* art. 6(5).

147. *See* ECOWAS Protocol, *supra* note 144, at art. 9 (1-3).

148. Rome Statute of the International Criminal Court. Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF.183/9 (July 17, 1998), 37 I.L.M. 999 (1998). At the time of this writing, there are ninety-five signatories to the Treaty of Establishing the International Criminal Court. It has received seven out of sixty ratification's necessary for it to enter into force. *See also* M. Cherif Bassiouni, *The International Criminal Court in Historical Perspective*, 1999 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 55 (2000).

149. *See* Rome Statute of the International Criminal Court, *supra* note 148, at art. 5.

150. *See id.* art. 17(1)(a).

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ICRC and the International Commission of Jurists (ICJ) should work with them to establish and strengthen their national and regional judicial capacities and simultaneously seek to bring justice to those responsible for committing war crimes and crimes against humanity.[151] That said, it must not be forgotten that intergovernmental organizations like the UNHCR "cannot end humanitarian violations or internal conflicts, nor can [they] rebuild shattered legal systems or prosecute war criminals" as these issues "demand regionally-focused and internationally-supported responses."[152]

UN Secretary-General Kofi Annan has commented that combatants should be held criminally and "financially liable for their victims under international law where civilians are made the deliberate target of aggression, and that international legal machinery be developed to facilitate efforts to find, attach and seize the assets of transgressing parties and their leaders."[153] Moreover, he urges states to prosecute persons under their authority for "grave breaches of international humanitarian law on the basis of the principle of universal jurisdiction,"[154] which from the Author's perspective would seem most practicable under the aegis of sub-regional and regional organizations. Durable peace, reconciliation, and respect for the rule of law would seem to lie on the principle of international accountability for war crimes and crimes against humanity, in which the UNHCR should have a keen interest given the potential impact on large-scale voluntary repatriation and the safe return of displaced persons. At the very least, the UNHCR should work with community-based organizations and associations to establish grass roots reconciliatory mechanisms in war-torn societies and institute community education programs on basic refugee law principles in refugee hosting communities.

The OAU, ECOWAS, IGAD, and to a lesser extent the SADC, lack the institutional capabilities to perform important post-war functions. For example, none of them have stand-alone demining pro-

151. For a excellent article that examines the pros and cons of the prosecutorial processes of national courts and ad hoc international tribunals to deal with war crimes and cremes against humanity, *see* Yacob Haile-Mariam, *The Quest for Justice and Reconciliation: The International Tribunal for Rwanda and the Ethiopian High Court*, 22 HASTINGS INT'L & COMP. L. REV.56 (1999).

152. United Nations General Assembly Executive Committee of the High Commissioner's Programme, 47th Sess., *Note on International Protection*, Provision 16, U.N. Doc. A/AC.96/863 (1996).

153. *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, U.N. Doc. S/1999/957 (1999).

154. *Id.*

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grams or post-conflict rehabilitation and re-integration mechanisms. Instead, they rely on the United Nations, donor states and other non-governmental actors to provide such services. They also lack the technical sophistication to conduct large-scale demobilization and disarmament operations. Therefore, the organizations should work with the U.N. Department for Disarmament Affairs (UNDA) and U.N. Institute for Disarmament Research (UNIDIR) to develop such a capacity. Failure to demobilize and disarm combatants can lead to unfettered warfare (e.g., Sierra Leone in the post Lome Peace Agreement environment) and have serious human rights implications for refugees and IDPs. Therefore, the effect of the OAU Refugee Convention could be enhanced and complemented with a code of conduct for non-state actor belligerents, which would highlight principles enshrined in the Convention and relevant humanitarian law instruments like the four Geneva Conventions of 1949 and their subsequent protocols. This suggestion comports with the Addis Ababa Document Recommendation Four, which urged "all parties in armed conflict to respect the principles and norms of humanitarian law."[155]

African regional organizations must also become resolute in providing humanitarian safe passage for refugees and IDPs seeking to return to their countries and places of habitual residence. The concept of voluntary repatriation requires that the necessary conditions for repatriation be in place, namely, a cessation of conflict and a secure and stable environment. Similarly, in times of peace it may take several years for refugees to repatriate, if at all, and therefore it is important that they continue to receive all of the protections to which they are legally entitled, including physical, material, legal, and psychosocial security.[156] Equally important, however, is the "establishment of education and vocational training programs in refugee camps; and the introduction of campaigns to ensure that refugees have a proper knowledge of their rights and obligations under national, regional and international law."[157] In this regard, the ICRC, ICJ, UNHCR, UNDP, and the U. N. Children's Fund (UNICEF) could work together to es-

155. The Addis Ababa Document on Refugees and Forced Population Displacements in Africa, Recommendation Four, Addis Ababa, Ethiopia (8-10 September 1994). Adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa.

156. *See* Jeff Crisp, *Refugees in Africa: patterns, problems and policy issues*, Paper prepared for *Dimensions of Vulnerability*, a conference organized by Coventry University African Studies Center and African Studies Association of the United Kingdom, Coventry University, 16 Sept. 1999 (on file with Duke Journal of Comparative & International Law).

157. OAU/UNHCR Regional Meeting on Refugee Issues in the Great Lakes, *supra* note 132.

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tablish Refugee Awareness Programs (RAP) that would empower refugees to be vigilant and productive in their places of asylum.

In closing, African regional actors in partnership with the UNHCR, UNHCHR, and UNDP need to develop post-war refugee tracking and monitoring capabilities to insure that refugees are being cared for properly. They should therefore dispatch on a systematic but ad hoc basis post-conflict maintenance observation units to monitor the conditions of displaced persons and other civilians in post-war states.

VI. CONCLUSION

There is no doubt that the regime for the international protection of refugees, IDPs, and other persons of concern has come under unprecedented pressure, and "much needs to be done, on a global scale, to revitalize refugee protection."[158] Displaced persons in Africa are an endangered class. Whilst human rights and humanitarian and refugee protective norms provide some protections for persons during armed conflict, "international humanitarian law is not a fertile source of norms for the protection of persons fleeing armed conflict who seek protection outside their country of origin."[159] Equally troubling is the fact that African regional organizations appear to lack the capability to institute comprehensive conflict maintenance systems, and that a large cross section of the international community has turned their back on the dilemma of displaced populations in Africa. As a result refugees and IDPs in Africa suffer in three major ways. First, they lack sufficient international legal protections (this is especially true IDPs). Second, African states and regional actors have yet to raise and put forth the necessary resources to thoroughly establish conflict maintenance systems. As a result, there are no viable regional mechanisms to protect displaced persons and prevent the influx of refugee flows in states. Finally, the international community has failed to proffer adequate resources to safeguard the rights and well-being of displaced populations in Africa, in many instances resulting in suffering on a grand scale and death to the members of those populations.

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158. United Nations General Assembly Executive Committee of the High Commissioner's Programme, 50th Sess., *Note on International Protection*, Provision 62, U.N. Doc. A/AC.96/914 (1999).

159. Karoline Kerber, *International humanitarian Law as a Source of Protection for Refugees from Areas of Armed Conflict*, 16 REFUGE: CANADA'S PERIODICAL ON REFUGEES 6, 7 (1997).

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Conflict early warning/risk assessment, preventive diplomacy/deployment, peace-keeping/peace-enforcement and post conflict peace building are unequivocal imperatives that African states and regional actors must be able to engage in order to satisfactorily safeguard the rights of displaced persons. The UNHCR should work with African regional actors to develop mechanisms that reliably forecast conflict—perhaps sub-regionally or through the OAU's MCPMR. The UNHCR's EPRS should also seek to embark on joint missions with African regional organizations to enhance inter-organizational cooperation in ascertaining crisis situations. African regional organizations should also consider developing a permanent African security mechanism along the lines of the aforementioned OAU Organ on Peace and Security to coordinate the regional security needs of the continent. In this context, sub-regional actors like the ECOWAS, SADC, and IGAD should take the leadership role in their respective regions in all major humanitarian operations, especially those that entail the use of force. Nevertheless, the latter should work with the former to develop systems that identify and separate combatants from civilians during asylum application processes and disarm and demobilize them in order to provide for a secure and stable environment ripe for re-integration.

The international community, including the United Nations, must cease engaging in international political cronyism, by placing the needs of other nations above those of the African continent. With few exceptions, the post Cold War historical record reveals that Western nations are unwilling to expend vast resources to save African lives (e.g., those in Liberia, Somalia, Rwanda, and Sierra Leone) where there are no overwhelming strategic interests (like the U.S. interests in Haiti or Western interests in Kosovo). Thus, Africans must move beyond sexy clichés and genuinely take it upon themselves to proffer African solutions for African problems, because the events of the last decade shows that the rest of the world is not proactively concerned. Hence, it is vital that the OAU aggressively seeks to build meaningful partnerships with the various sub-regional organizations and continue to mobilize resources, and harmonize and harness the conflict maintenance capabilities of the Continent.

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