

Not a Target: Ensuring the Protection of Aid Workers

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*How to Update the Law of War to Address
New Challenges on Today's Battlefields?*
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Summary

Violence against aid workers has become a major concern for most humanitarian agencies. At the same time, compliance with and respect for international humanitarian law (IHL) is deteriorating. Irregular warfare, meaning governments fighting armed groups mostly in their own territory, has become the norm. These modern wars pose a challenge to the enforcement of international law. The prevailing culture of impunity stimulates non-compliance with IHL for all conflict parties. As long as they are being targeted, aid agencies cannot effectively operate and help the most vulnerable. This is why the law protecting humanitarians needs to be standardized and better reporting and monitoring mechanisms are required.

1.1 Introduction

Violence against aid workers has become an increasing challenge for humanitarian organizations in conflict regions. In 2016, there were 199 major attacks against aid workers, of whom 73 were killed, 63 wounded, and 63 kidnapped.¹ The same year, cases of gang rape in South Sudan and deliberate attacks against medical centres and convoys in Syria drew significant media attention.

The protection of aid workers is a pressing is-

sue, not only in the humanitarian scene, but also in the international political arena. In May 2016, the United Nations (UN) Security Council adopted a resolution condemning attacks against health workers and facilities.² Only a few months earlier, Action against Hunger started a campaign calling for a Special Rapporteur mandated by the UN to safeguard aid workers.³ In December 2016 the UN General Assembly adopted a resolution urging all to respect the law and better protect humanitarian personnel.⁴

Enforcing the legal framework is the responsibility of respective governments. Yet, some governments are unwilling or unable to provide this protection.

Enforcing the legal framework that protects aid workers continues to be a major challenge because it is the responsibility of respective governments.⁵ Yet, some governments are unwilling or unable to provide this protection. When governments are on the side of the attacker they will always lack political will to hold themselves accountable. In order to better assure the safety of humanitarian aid workers, better reporting and monitoring mechanisms are needed. Only then will the laws have a deterrent effect and improve the safety of aid workers.

¹ Humanitarian Outcomes, 'Aid Worker Security Database' (2017) <<https://aidworkersecurity.org/incidents>> accessed 9 August 2017.

² UNSC Res 2286 (3 May 2016) On Protection of the Wounded and Sick, Medical Personnel and Humanitarian Personnel in Armed Conflict. S/RES/2286 (2016).

³ Action Contre La Faim (2015), 'Ensuring the Protection Aid Workers: Why a Special Mandate Holder is Necessary.' Discussion Paper <<http://www.actioncontrelafaim.org/en/content/ensuring-protection-aid-workers-why-special-mandate-holder-necessary>> accessed 9 May 2017.

⁴ UNGA Res 71/129 (8 December 2016) Safety and security of humanitarian personnel and protection of United Nations personnel A/RES/71/129.

⁵ UNSC Res 1894 (11 November 2009) On the Protection of Civilians in Armed Conflict. S/RES/1894 (2009).

1.2 Why humanitarians are being attacked

Relief workers are targeted for numerous reasons. With a rising number of asymmetrical conflicts, the nature of warfare is changing. Traditional command chains are treated with disregard. Civilians, including humanitarian personnel, are used as human shields. Violence may occur in or around areas in which aid is distributed, such as refugee camps or health centres. These places are sometimes used by rebels to merge with the civilian population. As a consequence, government troops may not be able or willing to differentiate between civilian refugees and rebels.

Irregular wars are characterized by a high degree of criminality. Chaotic situations may benefit groups that can take advantage of the prevailing instability. Humanitarian organizations, on the other hand, aim to enhance stability. The conflicting objectives can provoke violence.

Aid agencies may also compete with rebels for the loyalty of the civilian

population. Providing alternative sources of public goods, such as healthcare, is a strategy of opposition groups to gather popular support.

Critics claim that humanitarian aid has become more politicized in recent years. When rebels perceive aid workers to be biased and a government tool, they are more likely to become hostile. In Afghanistan, for example, violence against western aid workers was connected with the general anti-west notions of the Taliban fighters.

Financial incentives also motivate attacks. Insurgencies are expensive and even ideological fighters need a basic income. The kidnapping of international personnel and subsequent ransom demands serve as a lucrative income. Skills needed from doc-

tors or other specialized workers also motivate abductions of professional staff.

Perpetrators have a number of reasons as to why to attack aid workers. To understand these dynamics and to improve the security of aid workers, it is vital to keep track of each incident.

1.3 Different Legal Frameworks and Weak Judicial Systems

Aid workers generally enjoy a somewhat privileged status in international law. However, this status is greatly determined by organizational affiliation, nationality, and whether they are operating in an on-going armed conflict.

In non-conflict settings, aid agencies and their staff are usually subject to domestic criminal law plus universal Human Rights treaties. Domestic law greatly varies among countries and usually does not protect aid workers in specific terms. This can be

Prosecution by domestic courts may always fall short during humanitarian emergencies due to non-functioning judicial systems.

highly problematic as domestic law may even discriminate against aid workers. In Syria

for example, offering medical treatment to anyone who is part of the opposition is considered to be material support of the resistance.

The special protection of aid workers under IHL may give the impression that aid workers are better and more universally protected in conflict settings. However, as required by the Geneva Conventions, States are primarily responsible for bringing violators to justice. Thus, with a weak local judiciary system, the protection may not transform into actual prosecution of perpetrators.

Humanitarian agencies usually operate either in conflict settings, health emergencies or provide relief after natural disasters. Inherently, these operations always take place when a country is unable

to manage the humanitarian needs of its own population, indicating a weak or fragile government. Thus, prosecution by domestic courts may always fall short during humanitarian emergencies due to non-functioning judicial systems.

1.3.1 Who are aid workers?

Aid workers always have the status of civilians because they are non-combatants that are not official representatives of either conflict party. The Geneva Conventions (1949, Article 3), describe civilians as «Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause ...» Although aid workers may serve actively in conflicts, the crucial distinction is that they do not carry weapons.

Defining the term aid worker was avoided for some time as the focus was laid on defining the action of humanitarian assistance. According to the OECD, humanitarian action «saves lives, alleviates suffering and maintains human dignity following conflict, shocks and natural disasters.»⁶ However, it remains unclear who is entitled to deliver such assistance.

The Aid Work Security Database gives a more specific but non-universal definition of aid workers as: «the employees and associated personnel of not-for-profit aid agencies ... that provide material and technical assistance in humanitarian relief contexts. This includes both emergency relief and multi-mandated ... organizations ... and does not include UN peacekeeping personnel, human rights

workers, election monitors or purely political, religious, or advocacy organizations.»⁷

The definition of the personnel is decisive and problematic at the same time. The status of missionary agencies as well as private contractors, such as security firms, remains controversial. Are, for example, private suppliers of aid agencies to be equally protected as aid workers? What about security staff protecting aid workers?

1.3.2 How and when does IHL protect aid workers?

The rules on paper are explicit: Attacks against humanitarians are forbidden. Wars have rules and protecting those who seek to provide humanitarian assistance is vital. Regrettably, there has been a decline in respect for international law and humanitarian principles.

The legal system protecting humanitarians in conflicts is rooted in the protection of civilians in armed conflicts as described in The Hague and Geneva conventions and their additional protocols, commonly referred to as IHL.⁸ These conventions do not mention humanitarians specifically, as they only address the legal protection of civilians. Only with the 1998 Rome statute were intentional attacks against humanitarian personnel institutionalized as war crimes.⁹

In any active conflict, IHL applies as the decisive legal framework. Although it applies to every con-

Wars have rules and protecting those who seek to provide humanitarian assistance is vital.

⁶ Organization for economic co-operation and development (OECD), Development cooperation directorate, development finance statistics (2017).

⁷ Humanitarian Outcomes (2017) <<https://aidworkersecurity.org/>> accessed 9 May 2017.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (8 June 1977), 1125 UNTS 3, art 48; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (8 June 1977) 1125 UNTS 609, art 13.

⁹ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, art 8(2)(b)(iii) and(e)(iii).

flict, not every situation in a conflict is subject to IHL. Only if an action is connected to the conflict itself, for example when a member of an armed group attacks an aid worker, may IHL be applied. Some crimes may be committed because the fragile conflict situation simply offers convenient opportunities. When neither perpetrator nor victim belong to one of the conflict parties, IHL assumes violence as being unrelated to the conflict. Humanitarians operate in a grey zone: If there was no conflict, there would be no need for humanitarian assistance in the first place, making violence against aid workers not feasible. IHL does not give a clear answer to this puzzle.

United Nations personnel and affiliates are offered exceptional legal protection.¹⁰ Furthermore, under the First Geneva Convention, the Red Cross (and its variations) emblem enjoys special legal status.¹¹ IHL also provides more protection for some groups of aid workers, such as medical staff. The ambiguous legal reality makes the institutional affiliation of aid workers pivotal, creating a hierarchy among the humanitarian system. The lack of a uniform and internationally accepted definition of what constitutes a humanitarian aid worker is likely a reason why standardizing their protection has long been neglected.

Therefore, the humanitarian community should deal with the question of who is a humanitarian to eventually pave the way for modifying the legal

body as to protect the status of all aid workers in a non-discriminatory manner.

1.4 Really a mounting trend?

The pitfall of unreliable data

Information concerning violence against aid workers is patchy, and consequently no comprehensive dataset exists. Attacks on health care workers are among the most extensively reported. The World Health Organization (WHO) recognized

the problem of underreported attacks and started its own data gathering programme. However, they neither managed to standardize reporting procedures nor bring the various humanitarian actors together. Meanwhile, more than ten other independent organizations are simultaneously gathering their own data on attacks against health care.¹² Some of them are limited to the countries in which they operate, others, such as Amnesty International, are working with a more holistic approach. The numbers provided show great discrepancies among all actors.

Humanitarian Outcomes manages the only existing international database on attacks against all humanitarian personnel.¹³ Its data, depicted in the two graphs, show increasing trends for all attack types and a striking peak on attacks against domestic aid workers.¹⁴ Information is either collected through

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¹⁰ Convention on the Safety of United Nations and Associated Personnel (adopted 9 December 1994) 2051 UNTS 363; Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel (concluded on 8 December 2005) 2689 UNTS 59.

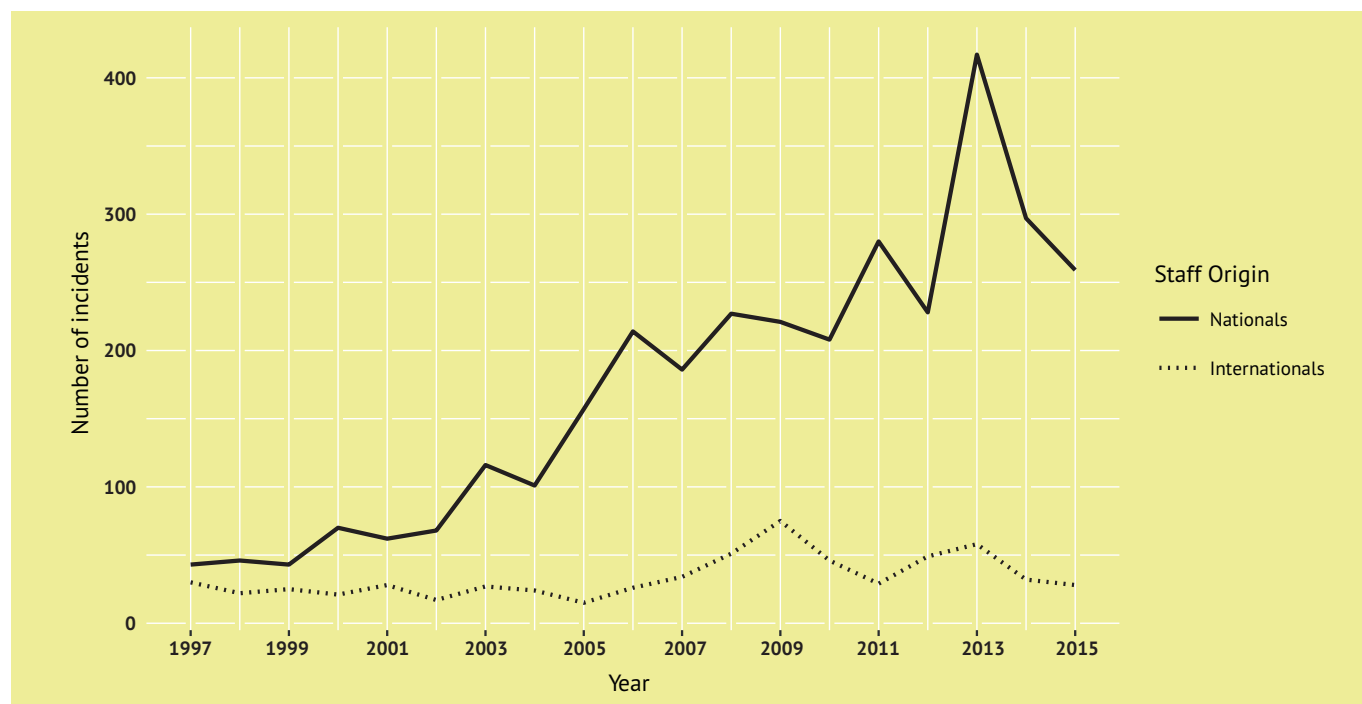
¹¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I) (concluded 12 August 1949) 75 UNTS 31.

¹² Amongst others: Safeguarding Health in Conflict Coalition, Center for Strategic and International Studies, PLOS Medicine, Merlin, Médecins Sans Frontières International, Afghanistan Analyst Network, Pack Health Worker Team, Amnesty International, Violations Documentation Center in Syria, Human Rights Watch, Physicians for Human Rights.

¹³ Humanitarian Outcomes (2017), < <https://aidworkersecurity.org> > last accessed 9 May 2017.

¹⁴ International Committee for the Red Cross (2011): 'Health Care in Danger: A Sixteen-Country Study. Report.' <<https://www.icrc.org/eng/resources/documents/report/hcid-report-2011-08-10.htm>> accessed > last accessed 9 May 2017.

Affected Staff, domestics vs. internationals origin



systematic media filtering or voluntarily provided by aid organizations yet without standardized procedure. The data only captures serious events, such as deaths, serious injuries and kidnappings for a prolonged period. Demand for the dataset is high as it gets cited in almost every publication or report related to the security issue of humanitarians.

However, inferences based on these statistics can be misleading because of issues concerning the quantity and quality of the data. Concerns of quantity highlight the lack of control variables as well as the non-comprehensive coverage. A rise of attacks may merely reflect the higher absolute number of aid staff deployed. In addition, aid agencies typically send more national personnel into the field. Furthermore, other mechanisms like the severity of a conflict, general violence against civilians, behaviour of aid workers, and so

on might provoke more attacks. With the voluntary reporting procedure, the information is subject to the goodwill of the respective agency to share its data - leading to severe gaps in coverage.

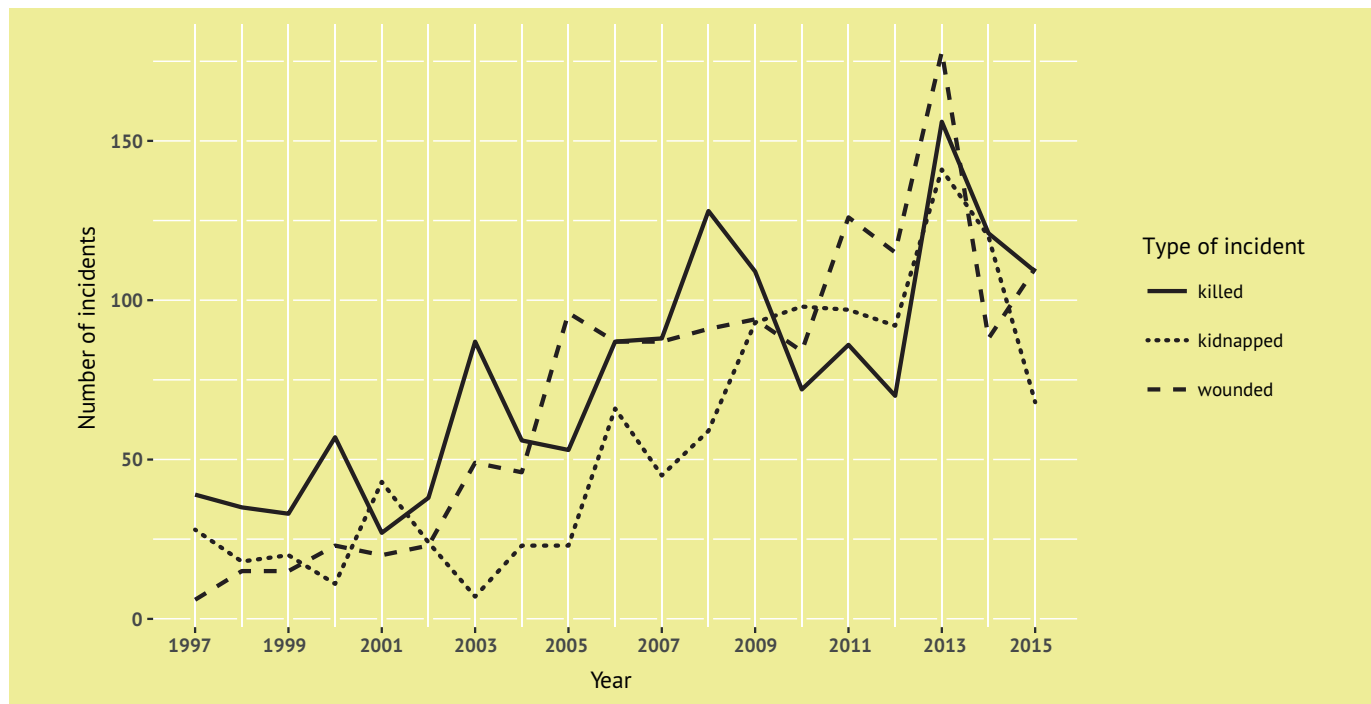
Their internal survey among female humanitarians found that over fifty percent of respondents experienced some sort of sexual assault during their work.

Only with a sound evidence base will it be possible to prepare effective response to the problem and establish a reliable early warning system.

Another neglected issue concerns gender based violence. The gender of victims is underreported, and rape is not an available reporting option. Concerned women from the humanitarian sector founded the Humanitarian Women's Network (HWN). Their internal survey among female humanitarians found that over fifty percent of respondents experienced some sort of sexual assault during their work.

On the quality side, the pitfalls are due to a lack of reporting and recording in the data-gathering process. Firstly, reliability is affected because the reporting process for aid agencies is not standardized.

Killed, wounded or kidnapped?



The varying wealth of information provided reflects that some agencies take their reporting duties more seriously than others. Secondly, researchers gather information about unreported incidents through media reports. Yet, in conflict affected countries, journalists might not be able to name perpetrators and numbers or origins of victims because media is controlled by the government. Cross-referencing with data from other institutions sheds light on the massive discrepancies. For example, in a 16-country case study, the ICRC found more than twice as many attacks against medical personnel than indicated by the database of Humanitarian Outcomes.¹⁵

1.5 The way forward: Better reporting mechanisms

A centralized monitoring and oversight entity should gather this highly-desired data and contribute to the

improvement of our knowledge and understanding about the actual situation on the ground. Why is a comprehensive and accurate dataset so important? Only with a sound evidence base will it be possible to prepare effective response to the problem and establish a reliable early warning system. Furthermore, the more reliable the evidence, the harder it will be for governments to sustain impunity for perpetrators.

Other actors urged the UN to take action, for example by creating a special rapporteur or agency. This seems less suitable because of the highly-politicized nature of the UN itself. Negotiations with member states can be arduous, and cultural sensitivities, such as gender based issues, might not get passed.

In June 2017, the International NGO Safety Organisation launched the Conflict & Humanitarian Data Centre initiative.¹⁶ It aims to build a global database with reports about all sorts of security incidents.

The speech shows Switzerland's devotion and commitment to improve the protection for humanitarians.

¹⁵ Ibid.

¹⁶ The initiative is co-funded by the UK, German and Dutch Governments.

Staff of registered organizations can file reports directly into the database and cross-verify entries of others. While this initiative is notable, key challenges about the quality of the data remain as self-reports may still be biased and not standardized.

The international community should tackle the problem with more tangible measures. It is not enough when organizations only self-report incidents. High quality data includes pictures, testimonies of eye-witnesses and forensics. Self-reporting from field staff is hardly sufficient to build the case and ensure the quality of the data. This is why trained experts should investigate each incident. Affected governments that are going through a humanitarian crisis in their territory should be consolidated. The accuracy of the data as well as compliance with IHL depends heavily on their cooperation. Better data and evidence helps to build the case about each incident and place the issue on the international agenda.

1.6 The role of Switzerland

Switzerland has a longstanding humanitarian tradition. With Geneva as a hub for humanitarian organizations, Switzerland is one of the world's most important centres of international cooperation.

In October 2016 federal councillor and foreign minister Didier Burkhalter delivered his opening speech for the Centre of Competence on Humanitarian Negotiation in Geneva¹⁷ stressing that «Switzerland will never accept the bombings of hospitals or of humanitarian convoys as a new normal ... And this is why we remain committed to helping ensure

that there will be no impunity for the most serious crimes under international law.»¹⁸

The speech shows Switzerland's devotion and commitment to improve the protection for humanitarians.

Switzerland should take a leading role in this issue in order to move from promises to tangible actions. First, negotiations about defining who constitutes a humanitarian should be pursued. This would pave the way to harmonize the law in a non-discriminatory manner for all humanitarians. This needs strong cooperation between the ICRC and UN member states. Switzerland with its longstanding tradition in humanitarian diplomacy could act as an intermediary in bringing these actors together.

Second, field staff and experts should decide on how to standardize reporting procedures and how to grant a team of expert investigators access to the incident side. As Frontline Negotiations focus lies on the exchange and analysis of experiences within the humanitarian field, the centre has the capacity to connect various humanitarian actors and would provide an ideal platform for this discussion. Eventually, a new or already existing data initiative could be mandated to administer a database.

1.7 Conclusion

The rising trend in violence against aid workers shows that respect for IHL is declining. Problematically, there is no clear definition of humanitarian aid workers and the legal system protects aid workers in a hierarchical manner by offering more specific protection to certain groups of humanitarians.

¹⁷ The centre is a joint venture between the ICRC, the UN's Refugee Agency (UNHCR), the World Food Programme (WFP) and the Centre for Humanitarian Dialogue and officially supported by the Swiss Federal Department of Foreign Affairs.

¹⁸ Didier Burkhalter, '«Translating a beautiful vision into a necessary reality» - Opening of the Centre of Competence on Humanitarian Negotiation in Geneva' (Address by Federal Councillor Didier Burkhalter at the opening of the Centre of Competence on Humanitarian Negotiation in Geneva [Geneva, 25 December 2016]), <<https://www.admin.ch/gov/en/start/documentation/speeches/speeches-given-by-federal-councillors.msg-id-64242.html>> last accessed 9 May 2017.

In addition, better reporting and monitoring mechanisms should be implemented in order to press for compliance with IHL and its justice mechanisms.

Ultimately, experts from law and ethics should first draw an internationally recognized definition of «humanitarian aid worker». In a second step, reporting procedures of incidents on violence against aid workers should be standardized. This requires opening up a dialogue between humanitarian actors and bringing them to the same negotiation table. More concretely, the following practical reforms are recommended:

- Humanitarian actors and legal experts should draw a universal definition for the term «humanitarian». This would pave the way to harmonize the law protecting aid workers in a non-discriminatory manner with equal protection for all.
- The humanitarian community should make an effort to standardize reporting procedures on incidents of violence against aid workers. The data gathering mechanism should go beyond self-reports from affected organizations or evidence based purely on media reports. An expert team should investigate each incident.
- Frontline Negotiations or any other established actor from within the humanitarian community could serve as a platform for negotiations.
- Switzerland, with its longstanding humanitarian tradition, should take a leading role in that endeavour and coordinate negotiations among key humanitarian actors.

Better evidence will help to keep the issue on the multilateral agenda and raise awareness among key decision makers.

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