GUIDELINES ON INVESTIGATING IN ARMED CONFLICT: LAW, POLICY AND GOOD PRACTICE

Geneva Academy of International Humanitarian Law and Human Rights
in partnership with the ICRC
• Importance of investigations into violations of IHL
  • Accountability
  • Prevention
  • Redress

• A duty to investigate?
  • Legal obligation
  • Other reasons to investigate
  • Military discipline
  • Effectiveness of operations
  • Policy
PROBLEM

- Lack of clear standards in IHL
  - Implicit obligations
  - Lack of detailed standards
  - Relationship IHL/IHRL

- Differences in domestic systems
  - Common/civil law
  - Terminology
  - Triggers and standards applicable

- Administrative v Criminal Investigations
- Individual v State Responsibility
• Drafting Process
  • 5 Expert Meetings
    • Senior government lawyers, military lawyers, academics, and civil society organisations
    • Representation of regions affected by armed conflict
  • Research
  • Expert consultations
FORMAT OF THE GUIDELINES

• ‘Law, Policy, and Good Practice’

• Background

• Terminology

• Guidelines and Commentary
  I. Triggering Process
  II. Criminal Investigations
  III. Administrative Investigations
  IV. Policy-Related Violations
  V. Legal Advisors
Importance of first stages

- Routine recording of information surrounding operations (e.g. operation planning, after action reviews)
- Incident reporting
- Internal reporting
- Commander’s role on the scene of an incident
KEY FINDINGS

Assessment stage

• Receiving and assessing credibility of allegations
• Who is an appropriate authority?
• Decisions as to whether to proceed with investigations
KEY FINDINGS

Criminal/administrative divide

• Prior focus on criminal investigations
• Role of administrative investigations in suppressing violations (e.g. ‘disciplinary’ investigations, boards of inquiry, systemic investigations)
• Systemic issues and violations of IHL (e.g. weapons malfunction, supply error to detention centres)
State responsibility

- Responsibility for violations of international law
- Assessing for State responsibility in the investigative process?
- Remedial action