

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

BACKGROUND

- 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

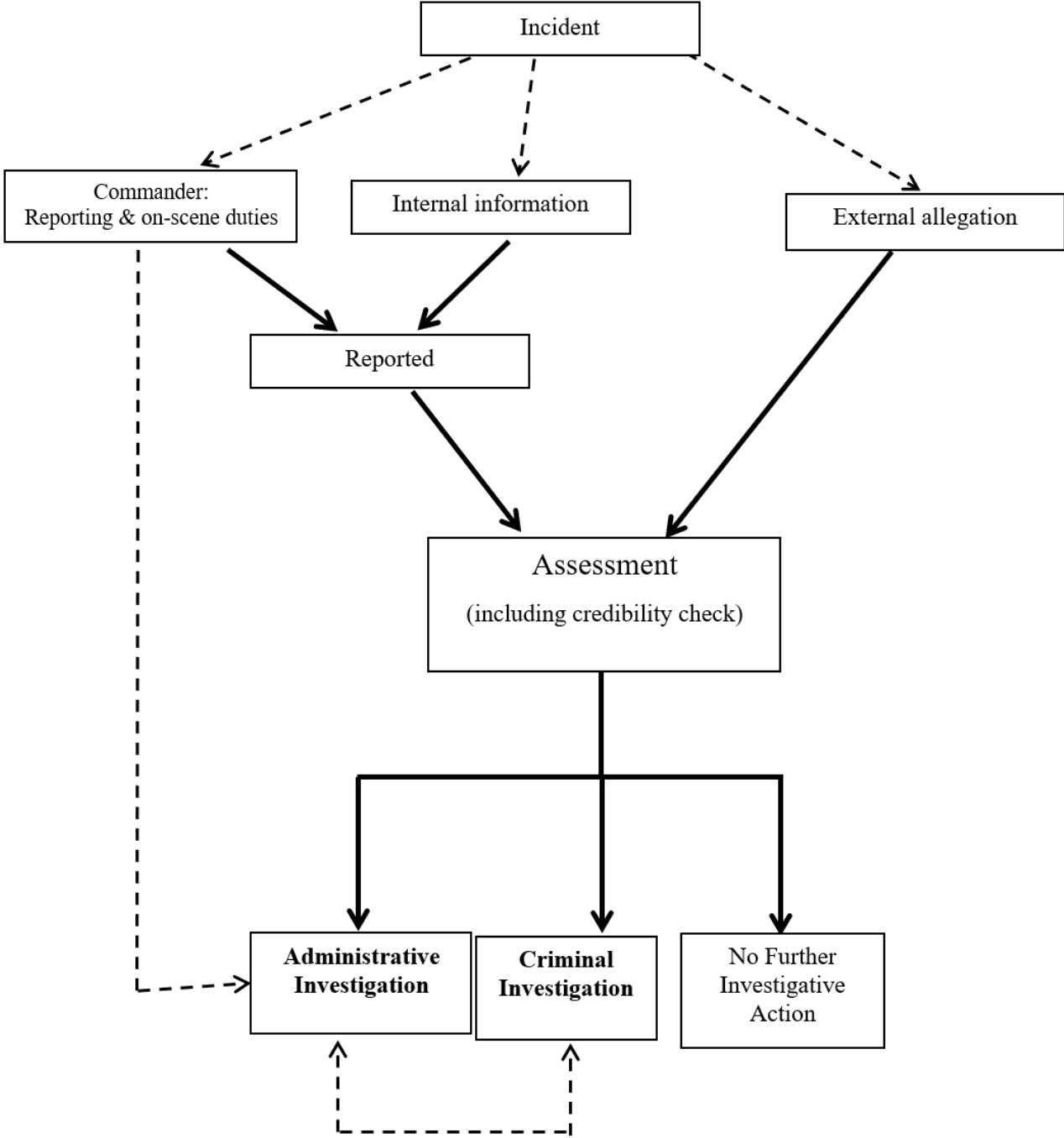
NATURE OF THE PROCESS

- 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

FLOWCHART



KEY FINDINGS

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*)

KEY FINDINGS

State responsibility

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