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International legal standards for collecting evidence in war crimes cases

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Abstract: The aim of the study is to conduct a comprehensive comparative review of international standards for the collection of evidence in war crime cases, as well as their actual implementation in different legal and operational environments. A key element of the study was a doctrinal/legal assessment of internationally binding standards on authenticity, admissibility, and chain of custody, which were compiled into a matrix to facilitate cross-jurisdictional comparisons. Procedural reconstruction provided step-by-step documentation of investigative activities in 34 cases to demonstrate how different jurisdictions collected, documented and preserved evidence, and how well they maintained the integrity of the chain of custody. Compliance audits based on four criteria of completeness, reproducibility, authenticity, and transparency revealed systematic shortcomings in investigations. These included difficulties with digital forensic evidence, the transfer of materials across borders, and the maintenance of institutional integrity. These findings emphasize the need to harmonise international and national procedures and strengthen institutional integrity. They also point to the need for standard field documentation protocols that will enhance the reliability and admissibility of evidence in war crime cases. Furthermore, the findings will contribute to the development of evidence-based international legal doctrine and provide practical recommendations on how to enhance the reliability and admissibility of evidence in war crimes prosecutions.

Keywords: International Criminal Law, War Crimes, Evidentiary Standards, Chain of Custody, Digital Evidence, Institutional Integrity

1. Introduction

The investigation of war crimes constitutes a fundamental mechanism of international criminal justice, enabling the attribution of individual responsibility for serious violations of international humanitarian law and supporting accountability at both international and domestic levels⁶. The effectiveness of such investigations depends on the ability of competent authorities to collect, preserve, and evaluate evidence in accordance with established legal standards governing authenticity, admissibility, and procedural reliability⁷. Although an extensive body of

⁶ LOSHYTSKYI, M.; YUNIN, O.; KYSLENKO, D.; TYCHNA, B.; DOTSENKO, O. "International legal standards for documentation and investigation of war crimes", *Clío. Revista de Historia, Ciencias Humanas y Pensamiento Crítico*, 2025, pp. 1818–1855. <https://doi.org/10.5281/zenodo.15598036>

⁷ PETRACHKOV, O.; KYSLENKO, D.; MYKHAYLOV, V.; SHOSTAK, R.; POLYVANIUK, V. "Motivation of military specialists to engage physical training during the legal regime of

international law regulates the investigation and prosecution of war crimes, the practical implementation of evidentiary standards remains uneven across different institutional and operational contexts⁸. This variability reflects not only differences between jurisdictions, but also the coexistence of multiple normative layers governing evidentiary processes, including treaty obligations, court-specific procedural frameworks, and non-binding operational guidance.

At the level of treaty law, instruments such as the Geneva Conventions and their Additional Protocols establish obligations to investigate and prosecute serious violations, thereby creating the legal foundation for evidentiary activity⁹. At the level of treaty law, instruments such as the Geneva Conventions and their Additional Protocols establish obligations to investigate and prosecute serious violations, thereby creating the legal foundation for evidentiary activity. However, these provisions do not prescribe detailed technical rules for the collection or preservation of evidence. In contrast, the Rome Statute of the International Criminal Court, together with its Rules of Procedure and Evidence, provides a structured procedural framework governing the admissibility, evaluation, and disclosure of evidence within a judicial setting. Complementing these binding norms, the Berkeley Protocol on Digital Open Source Investigations provides operational guidance addressing the practical challenges of evidence collection, particularly in relation to digital and open-source materials¹⁰. The interaction between these normative layers generates structural challenges in the translation of legal standards into investigative practice. In particular, the absence of harmonized mechanisms for integrating treaty-based obligations, procedural rules, and operational guidelines leads to variability in documentation practices, chain-of-custody management, and evidentiary traceability¹¹. These challenges are especially pronounced in conflict-affected environments, where investigative authorities operate under conditions of limited access to crime scenes, reliance on digital evidence, and the necessity of cross-border cooperation.

Existing scholarship has addressed individual aspects of these challenges, including institutional constraints, forensic methodologies, testimonial reliability, and the use of digital evidence. However, these strands of research remain largely fragmented, with limited integration between doctrinal legal analysis and the empirical reconstruction of investigative practices¹². As a result, there is a lack of comprehensive frameworks capable of explaining how international evidentiary standards function across heterogeneous legal and institutional environments¹³.

martial law”, *Journal of Physical Education and Sport*, v. 24, n. 6, 2024, pp. 1457-1464. <https://doi.org/10.7752/jpes.2024.06165>

⁸ AL-BILLEH, T.; AL-HAMMOURI, A.; KHASHASHNEH, T.; MAKHMARI, M. A.; KALBANI, H. A. “Digital evidence in human rights violations and international criminal justice”, *Journal of Human Rights Culture and Legal System*, v. 4, n. 3, 2024, pp. 842-871. <https://doi.org/10.53955/jhcls.v4i3.446>

⁹ KHAN, S. A.; FURULY, J. G.; VOLD, H. B.; TAHSEEN, R.; DANG-NGUYEN, D. “Online Multimedia Verification with Computational Tools and OSINT: Russia-Ukraine Conflict Case Studies”, arXiv:2310.01978, 2023. <https://doi.org/10.48550/arxiv.2310.01978>

¹⁰ KYSLENKO, D.; PODLIEHAIEV, K.; ZARUBEI, V.; KUZMICHOVA-KYSLENKO, E.; RYMARCHUK, O. “Types of corruption crimes in sports in the countries of the European Union”, *Retos*, v. 55, 2024, pp. 249-258. <https://doi.org/10.47197/retos.v55.103482>

¹¹ UNITED NATIONS. *The Berkeley Protocol on Digital Open Source Investigations*. UN-iLibrary, 2025. Available at: <https://www.un-ilibrary.org/content/books/9789210053433> (accessed on 8 January 2026).

¹² ABEDIN, A.; BAIS, A.; BUNTAIN, C.; COURCHESNE, L.; McQUINN, B.; TAYLOR, M. E.; ULLAH, M. “A Call to Arms: AI Should be Critical for Social Media Analysis of Conflict Zones”, arXiv arXiv:2311.00810, 2023. <https://doi.org/10.48550/arxiv.2311.00810>

¹³ TYMOSHKO, V. “Legal principles of pre-trial investigation war crimes”, *Visegrad Journal on Human Rights*, v. 3, 2024, pp. 190-197. <https://doi.org/10.61345/1339-7915.2024.3.28>

The scientific novelty of this study lies in its integrative methodological approach, which combines doctrinal analysis of international legal norms with a systematic reconstruction of investigative procedures derived from a dataset of 34 documented war crimes investigations conducted across different institutional contexts. By linking normative standards with their operational application, the study provides a dual-level analysis that captures both the formal articulation of evidentiary principles and their practical implementation¹⁴.

The aim of this study is to conduct a comparative analysis of international standards governing the collection and preservation of evidence in war crimes investigations and to assess their implementation across diverse legal and operational environments. To achieve this aim, the study pursues the following objectives: (1) to systematize the normative framework regulating evidentiary processes in war crimes investigations; (2) to reconstruct investigative procedures across international, domestic, and mandate-based institutional settings; (3) to evaluate the degree of alignment between legal standards and investigative practice; and (4) to identify structural factors affecting evidentiary reliability, traceability, and procedural coherence.

2. Literature review

The investigation of war crimes has generated a substantial body of interdisciplinary scholarship spanning international criminal law, forensic science, human rights practice, and conflict studies. Despite this diversity, existing research remains fragmented in terms of analytical frameworks and methodological integration. In particular, doctrinal legal analysis and empirical examination of investigative practices have largely developed in parallel, resulting in a limited understanding of how evidentiary standards operate across different institutional contexts.

To address this fragmentation, the literature may be structured into five interrelated domains: (1) institutional and jurisdictional frameworks; (2) forensic documentation and evidentiary protocols; (3) testimonial evidence and reliability; (4) digital and open-source evidence; and (5) the influence of political and institutional conditions on evidentiary integrity. While each of these domains contributes important insights, their analytical disconnection limits the development of a coherent understanding of evidentiary systems in war crimes investigations.

2.1. Institutional and jurisdictional constraints

A significant strand of scholarship in international criminal law has focused on the role of institutional capacity and jurisdictional design in shaping the effectiveness of war crimes investigations. Cassese and Gaeta¹⁵ emphasize that the ability to meet international standards of evidence is closely linked to the functional capacity of domestic legal systems, particularly in relation to investigative infrastructure and prosecutorial independence. Similarly, Schabas¹⁶ highlights that

¹⁴ ABLAMSKYI, S.; TCHOBO, D. L.; ROMANIUK, V.; ŠIMIĆ, G.; ILCHYSHYN, N. "Assessing the responsibilities of the International Criminal Court in the investigation of war crimes in Ukraine", *Novum Jus*, v. 17, n. 2, 2023, pp. 353–374. <https://doi.org/10.14718/novumjus.2023.17.2.14>

¹⁵ CASSESE, A.; GAETA, P.; BAIG, L.; FAN, M.; GOSNELL, C.; WHITING, A. *Cassese's international criminal law* (3rd ed.). Oxford University Press, 2013. Available at: <https://searchlibrary.ohchr.org/record/13831> (accessed on 8 January 2026).

¹⁶ SCHABAS, W.A. *An introduction to the International Criminal Court* (5th ed.). Cambridge University Press, 2017. Available at: https://assets.cambridge.org/97811071/33709/frontmatter/9781107133709_frontmatter.pdf (accessed on 8 January 2026).

the reliability of evidentiary processes presupposes the existence of formalized institutional mechanisms aligned with international procedural standards.

These contributions underscore the structural preconditions necessary for effective investigations. However, they remain primarily doctrinal in nature and do not systematically assess how evidentiary standards are operationalized within different investigative environments. Nazarko¹⁷ further identifies institutional fragmentation and overlapping mandates as persistent obstacles in domestic war crimes prosecutions, particularly in transitional justice contexts. Yet, the relationship between institutional structure and the practical implementation of evidentiary standards remains insufficiently examined.

2.2. Forensic documentation and operational protocols

Another body of literature addresses the procedural dimension of evidence collection in conflict environments. Shepitko and Shepitko¹⁸ demonstrate the tension between formally codified evidentiary rules and the operational constraints encountered in active conflict zones, where access to crime scenes, preservation of materials, and documentation procedures are often compromised. Practice developed within international tribunals, including the ICTY and ICTR, has contributed to the gradual standardization of evidentiary protocols, particularly with respect to documentation and chain-of-custody procedures.

While this literature provides valuable insights into procedural standardization, it remains largely descriptive and does not offer systematic comparative analysis across different institutional contexts. In particular, there is limited examination of how such protocols are adapted, modified, or inconsistently applied in domestic and non-judicial investigative settings.

2.3. Testimonial evidence and reliability

The reliability of testimonial evidence has been examined from both legal and interdisciplinary perspectives. Tinning¹⁹ conceptualizes survivor testimony as shaped by the dynamics of trauma, memory, and post-conflict narrative reconstruction, highlighting the inherent variability of testimonial accounts. From a doctrinal perspective, Cryer, Robinson, and Vasiliev²⁰ emphasize that international criminal tribunals address inconsistencies in testimony through evidentiary rules and judicial reasoning, distinguishing between admissibility and evidentiary weight.

Although these approaches contribute to understanding the complexity of testimonial evidence, they rarely engage with the procedural dimension of how testimony is collected, documented, and preserved within investigative processes. As a result, the interaction between testimonial reliability and evidentiary admissibility within different institutional frameworks remains underexplored.

¹⁷ NAZARKO, A. "Legal Tug-of-War: The institutional challenges of the domestic prosecution of war crimes in Ukraine", *Analytical and Comparative Jurisprudence*, v. 6, 2023, pp. 697-701. <https://doi.org/10.24144/2788-6018.2023.06.120>

¹⁸ SHEPITKO, V.; SHEPITKO, M. "Fixation of evidentiary information on the war crimes, committed in Ukraine", *Archives of Criminology and Forensic Sciences*, v. 7, n. 1, 2023, pp. 51-60. <https://doi.org/10.32353/acfs.7.2023.03>

¹⁹ TINNING, K. "Protocol No. 008. Solidarity, vulnerability, and the survivor testimony as a post war battlefield of memory", *Holocaust Studies*, v. 28, n. 4, 2021, pp. 458-482. <https://doi.org/10.1080/17504902.2021.1976562>

²⁰ CRYER, R.; ROBINSON, D.; VASILIEV, S. *An introduction to international criminal law and procedure* (4th ed.). Cambridge University Press, 2019. Available at: <https://research.birmingham.ac.uk/en/publications/an-introduction-to-international-criminal-law-and-procedure/> (accessed on 8 January 2026).

2.4. Digital and open source evidence

The increasing reliance on digital and open-source information has generated a growing body of scholarship addressing evidentiary challenges in contemporary conflict settings. Aksamitowska²¹ and AL-BILLEH et al.²² identify key difficulties associated with digital evidence, including issues of authentication, metadata preservation, and chain-of-custody continuity across jurisdictions.

The Berkeley Protocol on Digital Open Source Investigations provides a comprehensive operational framework for the collection, verification, and preservation of digital evidence, establishing guidelines for ensuring evidentiary integrity in non-traditional investigative environments. However, while such instruments offer practical guidance, existing scholarship has not sufficiently examined how these standards are implemented across different institutional mandates, nor how digital evidence is integrated into formal judicial processes.

Importantly, literature that does not directly address evidentiary processes in criminal investigations—such as analyses focused on attribution of responsibility under international law without procedural relevance—has limited applicability to the present study and is therefore not considered central to the analytical framework.

2.5. Political context and institutional integrity

The broader political and institutional context within which investigations are conducted also plays a critical role in shaping evidentiary processes. Ansorg and Kurtenbach²³ demonstrate that political arrangements, including amnesty regimes, may restrict access to evidence or limit investigative capacity. Bassiouni²⁴ emphasizes the importance of political will and institutional integrity as prerequisites for effective prosecution, linking evidentiary reliability to broader governance structures.

Policy-oriented research, including studies by international organizations, has further explored issues of institutional accountability, corruption, and internal control mechanisms. However, these analyses rarely engage directly with evidentiary standards or their procedural implementation, resulting in a conceptual gap between institutional analysis and doctrinal legal frameworks.

2.6. Identified research gap

The existing literature reveals several persistent limitations in the study of evidentiary practices in war crimes investigations.²⁵ First, there is a lack of

²¹ AKSAMITOWSKA, K. "Digital evidence in domestic core international crimes prosecutions: Lessons learned from Germany, Sweden, Finland and the Netherlands", *Journal of International Criminal Justice*, v. 19, n. 1, 2021, pp. 189–211. <https://doi.org/10.1093/jicj/mqab035>

²² AL-BILLEH, T.; AL-HAMMOURI, A.; KHASHASHNEH, T.; MAKHMARI, M. A.; KALBANI, H. A. "Digital evidence in human rights violations and international criminal justice". 2024. *Ibid.*

²³ ANSORG, N.; KURTENBACH, S. "Promoting Peace and Impunity? Amnesty Laws after War in El Salvador and beyond", *Journal of Global Security Studies*, v. 8, n. 2, 2023, art. ogad010. <https://doi.org/10.1093/jogss/ogad010>

²⁴ BASSIOUNI, M. C.; SCHABAS, W.; AMBOS, K. (Eds.). *International criminal evidence at the International Criminal Court: A defense perspective*. International Criminal Law Series. Brill, 2024, 389 p. Available at: <https://profiles.wustl.edu/en/publications/international-criminal-evidence-at-the-international-criminal-cou/> (accessed on 8 January 2026).

²⁵ SCHABAS, W. A. *An introduction to the International Criminal Court* (5th ed.). Cambridge University Press, 2017. *Ibid.*

systematic differentiation between the distinct normative layers that regulate evidentiary processes, including: (a) treaty-based obligations; (b) court-specific procedural frameworks; (c) mandate-based investigative mechanisms; and (d) soft-law operational instruments. While these sources are frequently analyzed individually, their functional interaction remains insufficiently examined.²⁶

Second, there is limited integration between doctrinal legal analysis and the empirical reconstruction of investigative practices. Although doctrinal scholarship defines evidentiary standards in abstract terms, it rarely evaluates how these standards are operationalized in practice, particularly in conflict-affected environments characterized by institutional and logistical constraints.^{27,28}

Third, comparative assessments of evidentiary practices across different institutional mandates remain underdeveloped. In particular, there is a lack of research examining how evidentiary standards are applied at the intersection of international judicial bodies, domestic prosecutorial systems, and non-judicial investigative mechanisms, and how these differences affect evidentiary reliability, traceability, and admissibility.^{29,30}

To address these gaps, the present study develops an integrated analytical framework combining a normative correspondence matrix of international evidentiary standards with a systematic reconstruction of 34 investigations conducted across distinct institutional contexts. This approach enables a dual-level analysis that captures both the formal articulation of legal norms and their operational translation into investigative practice, thereby providing a more coherent understanding of evidentiary systems in war crimes investigations.

2.7. Author's declaration regarding the use of generative AI tools

The author states that generative artificial intelligence (AI) tools did not assist with creating substantive legal analyses; interpreting legal authority; developing the research method; conducting a doctrinal review; reconstructing procedural aspects; nor drawing conclusions as to this work product.

A limited number of language AI tools were utilized for the sole purpose of linguistic editing (i.e., grammar correction & stylistic clarification), during select drafting phases. The author was solely responsible for all substantive legal analysis; the selection of legal authority; all coding processes; creation of matrices; and comparative analyses. The author is fully accountable for the content, accuracy of legal interpretations, and academic integrity of the manuscript.

3. Methods

This study adopts an integrated methodological framework combining doctrinal legal analysis with systematic procedural reconstruction of investigative practices. The purpose of this approach is to examine not only the formal articulation of evidentiary standards within international law, but also their operational implementation across different institutional environments. By linking normative

²⁶ KONONENKO, N.; PATSKAN, V.; HROMOVA, M.; UTKINA, H.; MYKHAILO, S. "International guidelines for managing investigation and collection of evidence of war crimes", *Cuestiones Políticas*, v. 40, n. 72, 2022, pp. 670–689. <https://doi.org/10.46398/cuestpol.4072.39>

²⁷ CRYER, R.; ROBINSON, D.; VASILIEV, S. *An introduction to international criminal law and procedure* (4th ed.). 2019. *Ibid.*

²⁸ AKSAMITOWSKA, K. "Digital evidence in domestic core international crimes prosecutions". 2021. *Ibid.*

²⁹ BASSIOUNI, M. C.; SCHABAS, W.; AMBOS, K. (EDS.). *International criminal evidence at the International Criminal Court: A defense perspective*. International Criminal Law Series. Brill, 2024. *Ibid.*

³⁰ NAZARKO, A. "Legal Tug-of-War: The institutional challenges of the domestic prosecution of war crimes in Ukraine". 2023. *Ibid.*

analysis with empirically grounded reconstruction, the study enables a structured evaluation of evidentiary reliability, traceability, and procedural coherence.

The methodological design follows a four-stage analytical sequence: (1) normative mapping of legal standards; (2) procedural reconstruction of investigative practices; (3) comparative analytical coding; and (4) compliance-oriented synthesis. This structure ensures a direct analytical connection between legal norms, reconstructed investigative processes, and the findings presented in the Results section.

3.1. Research design and analytical logic

The research design is structured to ensure methodological transparency and reproducibility through a sequential analytical process.

Stage 1: Normative Mapping.

This stage identifies and systematizes international legal instruments and procedural frameworks relevant to evidentiary processes in war crimes investigations. The selection of norms is limited to those that: (1) establish obligations to investigate and collect evidence; (2) regulate evidentiary admissibility or evaluation; or (3) govern cooperation and transfer of evidentiary materials across jurisdictions. The output of this stage is a Normative Correspondence Matrix (Annex I), which maps each legal provision to specific evidentiary functions.

Stage 2: Procedural Reconstruction.

A dataset of 34 investigations is reconstructed based on publicly available and verifiable sources, including judicial decisions, prosecutorial reports, United Nations documentation, and institutional records. Each case is deconstructed into sequential procedural steps, including authorization of investigative actions, methods of evidence collection, documentation practices, chain-of-custody management, and mechanisms of evidence transfer.

Stage 3: Structured Comparative Coding.

Reconstructed cases are subjected to structured qualitative coding based on predefined analytical categories derived from Stage 1. Coding enables systematic comparison across cases and identification of patterns of convergence and divergence in evidentiary practices.

Stage 4: Compliance-Oriented Synthesis.

The coded data are evaluated against four operational criteria: completeness, reproducibility, authentication safeguards, and procedural transparency. This stage produces a comparative assessment of the degree to which investigative practices align with internationally recognized evidentiary standards.

This staged design ensures that all findings presented in Sections 4 and 5 are directly traceable to the methodological process, thereby addressing concerns regarding analytical transparency.^{31,32}

3.2. Normative scope and conceptual clarifications

To avoid doctrinal ambiguity, this study distinguishes between different categories of legal norms based on their function within evidentiary processes.

First, obligation-generating norms (e.g., Geneva Conventions grave breaches provisions) establish the duty to investigate and prosecute, thereby creating the legal basis for evidentiary activity. These norms do not regulate evidentiary

³¹ BASSIOUNI, M. C.; SCHABAS, W.; AMBOS, K. (Eds.). *International criminal evidence at the International Criminal Court: A defense perspective*. 2024. Ibid.

³² CRYER, R.; ROBINSON, D.; VASILIEV, S. *An introduction to international criminal law and procedure* (4th ed.). 2019. Ibid.

procedures directly but define the conditions under which investigations must be initiated.³³

Second, procedural evidentiary norms (e.g., Articles 54 and 69 of the Rome Statute and ICC Rules of Procedure and Evidence) govern the collection, evaluation, and admissibility of evidence within judicial proceedings.

Third, facilitative cooperation norms (e.g., Article 88 of Additional Protocol I) regulate the transfer of evidentiary materials between jurisdictions. In this study, the term “transfer guidance” refers specifically to procedural and operational requirements governing cross-border evidence exchange, including documentation standards, continuity of chain of custody, authentication requirements, and admissibility conditions in receiving jurisdictions.

With regard to Common Article 3 of the Geneva Conventions, its inclusion in the analysis is limited to its role as a substantive threshold norm applicable to non-international armed conflicts. It is not treated as a source of evidentiary standards. Rather, it is used solely to illustrate how certain legal provisions define categories of conduct that trigger investigative obligations. The study does not rely on Common Article 3 as a procedural or evidentiary framework, thereby avoiding doctrinal conflation between non-international and international armed conflict regimes. For the purposes of this study, “transfer guidance” is understood as the set of procedural and operational requirements governing the cross-border movement of evidentiary materials, including documentation standards, chain-of-custody continuity, authentication procedures, and admissibility conditions in receiving jurisdictions.

3.3. Investigative authority models

The empirical analysis is structured around four investigative contexts representing distinct institutional mandates: (1) International Criminal Court (ICC) – judicial investigations conducted under the Rome Statute by the Office of the Prosecutor; (2) Bosnia and Herzegovina – domestic prosecutions conducted within national criminal procedure frameworks; (3) Ukraine – domestic investigations supported by international cooperation mechanisms; (4) United Nations-mandated mechanisms (Syria – IIIM) – non-judicial investigative bodies tasked with evidence collection and preservation. These models differ in terms of legal authority, procedural regulation, admissibility frameworks, and evidentiary objectives. The ICC serves as a benchmark for formalized evidentiary procedures, while domestic and mandate-based mechanisms provide comparative insight into hybrid and non-judicial evidentiary systems.

3.4. Sampling strategy and source transparency

The sampling strategy consists of two interconnected components: normative sampling and empirical sampling.

3.4.1. Normative sampling

A total of 39 legal and procedural instruments were selected, including 21 binding legal sources and 18 operational or methodological frameworks. Selection criteria required direct relevance to evidentiary processes, specifically in relation to collection, preservation, admissibility, or transfer of evidence. All sources are fully listed and systematized in Annex I.

³³ CASSESE, A.; GAETA, P.; BAIG, L.; FAN, M.; GOSNELL, C.; WHITING, A. Cassese’s international criminal law (3rd ed.). 2013. Ibid.

3.4.2. Empirical sampling (34 Cases)

The empirical dataset consists of 34 reconstructed investigations conducted between 2010 and 2024 across the four institutional contexts identified above.

3.4.3. Selection criteria

Cases were selected on the basis of four cumulative criteria: the availability of verifiable procedural documentation, the representation of distinct institutional mandates, the presence of multiple categories of evidence (including physical, digital, testimonial, and documentary forms), and the traceability of procedural steps, including collection, documentation, transfer, and preservation.

3.4.4. Transparency and replicability

To address reviewer concerns regarding disclosure, all cases are explicitly documented in Annex II, which provides source references for each case; type of documentation used; jurisdiction and institutional framework; categories of evidence analyzed; procedural elements reconstructed.

Each case is assigned a unique identifier (C1–C34), ensuring traceability between empirical data, coding outputs, and analytical conclusions.^{34,35}

3.5. Coding framework and analytical variables

The analytical framework is based on structured qualitative coding using predefined categories derived from the normative mapping stage.

Four primary coding dimensions are applied: (1) Authenticity safeguards – presence of verification mechanisms (e.g., signatures, hash verification, source validation); (2) Admissibility-related features – compliance with procedural requirements relevant to judicial evaluation; (3) Chain-of-custody documentation – continuity and traceability of evidence handling; (4) Procedural transparency – completeness and clarity of documentation enabling external verification.^{36,37}

Example of Coding Application (Illustrative Case)

Case C12 (Ukraine – domestic investigation):

Evidence type: digital video + witness testimony.

Collection: recorded by first responder, transferred to prosecutorial authority.

Coding results:

Authenticity: present (metadata preserved, hash verification applied).

Admissibility: partially present (formal documentation but incomplete judicial authorization record).

Chain of custody: complete (documented transfer stages).

Transparency: high (full procedural logs available).

This coding structure allows direct comparison across cases and ensures that analytical conclusions are derived from systematically evaluated empirical data rather than descriptive interpretation.

³⁴ KONONENKO, N.; PATSKAN, V.; HROMOVA, M.; UTKINA, H.; MYKHAILO, S. "International guidelines for managing investigation and collection of evidence of war crimes". 2022. Ibid.

³⁵ CRYER, R.; ROBINSON, D.; VASILIEV, S. An introduction to international criminal law and procedure (4th ed.). 2019. Ibid.

³⁶ KONONENKO, N.; PATSKAN, V.; HROMOVA, M.; UTKINA, H.; MYKHAILO, S. "International guidelines for managing investigation and collection of evidence of war crimes". 2022. Ibid.

³⁷ AKSAMITOWSKA, K. "Digital evidence in domestic core international crimes prosecutions: Lessons learned from germany, sweden, finland and the netherlands". 2021. Ibid.

3.6. Research instruments and replicability

To ensure analytical reproducibility, the study employed Microsoft Excel for the construction of normative matrices and comparative tables, NVivo for structured qualitative coding of procedural data, diagrammatic tools for visualizing investigative workflows and chain-of-custody models, and digital verification simulations for modelling authentication processes in relation to digital evidence.

4. Results

The Results section presents the findings derived from the structured qualitative coding of 34 reconstructed investigations (C1–C34), as described in Section 3. The analysis is organized according to the four evidentiary dimensions defined in the methodological framework: authenticity safeguards, admissibility-related features, chain-of-custody documentation, and procedural transparency. All findings are directly derived from the coded dataset and are fully traceable to Annex II.

4.1. Regulatory and procedural framework for international evidence

The normative mapping conducted in Stage 1 identified four core evidentiary requirements consistently reflected across the analyzed legal and procedural instruments: (1) authenticity, (2) admissibility, (3) continuity of chain of custody, and (4) procedural transparency.

Procedural evidentiary standards within the International Criminal Court framework are primarily grounded in Articles 54 and 69 of the Rome Statute and further operationalized through Rules 63–66 of the ICC Rules of Procedure and Evidence. These provisions establish requirements for systematic evidence collection, verification, disclosure, and evaluation within a judicial setting.

Operational guidance on digital evidence management is detailed in the Berkeley Protocol on Digital Open Source Investigations, which specifies requirements for authentication, metadata preservation, documentation of collection methods, and secure storage. The protocol emphasizes the preservation of original data, the recording of verification processes, and the maintenance of traceable documentation throughout the evidentiary lifecycle.

Across the normative dataset, “traceability of evidence” is defined as the extent to which the following elements are documented: identification of the original source, time and method of collection, preservation of metadata, storage conditions, documentation of transfers, and internal verification procedures. The analysis demonstrates that while these requirements are consistently articulated at the normative level, their procedural implementation varies across institutional contexts.^{38,39}

4.2. Reconstruction of investigative actions across institutional contexts

The reconstruction of investigative procedures across the 34 cases reveals three distinct categories of investigative authority: (1) international judicial investigations (ICC), (2) domestic prosecutorial investigations (Bosnia and Herzegovina; Ukraine), and (3) mandate-based investigative mechanisms (United Nations – IIIM Syria).

Investigations conducted by the Office of the Prosecutor of the International Criminal Court are characterized by formally structured procedural frameworks.

³⁸ SCHABAS, W. A. *An introduction to the International Criminal Court* (5th ed.). 2017. Ibid.

³⁹ BASSIOUNI, M. C.; SCHABAS, W.; AMBOS, K. (Eds.). *International criminal evidence at the International Criminal Court: A defense perspective*. 2024. Ibid.

Evidence collection activities are conducted under the authority of the Rome Statute and are subject to judicial oversight, disclosure obligations, and admissibility standards. The reconstructed cases (C1–C8) indicate consistent documentation of investigative steps, including authorization, collection, verification, and submission of evidence.

Domestic investigations in Bosnia and Herzegovina (C9–C14) and Ukraine (C15–C23) are conducted within national legal frameworks. These investigations demonstrate variability in procedural formalization. In the Ukrainian cases, documentation frequently includes digital verification measures and structured chain-of-custody records. In contrast, cases from Bosnia and Herzegovina exhibit instances of incomplete documentation of evidentiary transfer and procedural gaps in recordkeeping.

Investigations conducted by United Nations-mandated mechanisms in the Syrian context (C24–C34) are oriented toward the collection and preservation of evidence for potential future use. These investigations are not conducted within a judicial admissibility framework and therefore rely on mandate-based methodological guidelines. The reconstructed cases show that documentation practices prioritize preservation and aggregation of evidence, with variability in procedural formalization and metadata continuity.

This distinction is essential for understanding variations in investigative structure, authorization, and evidentiary documentation across the four contexts analysed. However, the degree of formalization and detail of the procedure depended on the institutional infrastructure (Table 1).

Table 1. Investigative actions by jurisdiction (legal focus).

Jurisdiction	Investigative Actions Documented	Evidence Types	Authorization Source
The Hague (ICC)	Interviews, forensic seizures, open-source collection	Physical, digital, certificates, documents	ICC mandate, court orders
Bosnia & Herzegovina	Interviews, forensic seizures	Physical, digital, certificates	National prosecutor mandate
Syria	Battlefield collection, interviews	Physical, documents	UN mandate, emergency authorization
Ukraine	Interviews, digital collection	Physical, digital, certificates, documents	UN mandate, national prosecutor authorization

Source: developed by the authors based on Office of the Prosecutor, International Criminal Court⁴⁰, Office of the Prosecutor, International Criminal Court⁴¹, OSCE Mission to Bosnia and Herzegovina⁴², International, Impartial and Independent Mechanism for Syria⁴³, Office of the United Nations High Commissioner for Human Rights.⁴⁴

⁴⁰ OFFICE OF THE PROSECUTOR, INTERNATIONAL CRIMINAL COURT. OTP Annual Report 2023, 2023. Available at: <https://www.icc-cpi.int/sites/default/files/2023-12/2023-otp-annual-report.pdf> (accessed on 8 January 2026).

⁴¹ OFFICE OF THE PROSECUTOR, INTERNATIONAL CRIMINAL COURT. OTP Annual Report 2024, 2024. Available at: <https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-04-ICC-Annual-Report-OTP-web.pdf> (accessed on 8 January 2026).

⁴² OSCE MISSION TO BOSNIA AND HERZEGOVINA. War Crimes Case Backlog Factsheet, 2023. Available at: <https://www.osce.org/sites/default/files/f/documents/2/6/558690.pdf> (accessed on 8 January 2026).

⁴³ INTERNATIONAL, IMPARTIAL AND INDEPENDENT MECHANISM FOR SYRIA. IIIM Report 2023. UNITED NATIONS, 2024. Available at: https://iiim.un.org/wp-content/uploads/2024/07/IIIM_Report_2023.pdf (accessed on 8 January 2026).

⁴⁴ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS. Killings of Civilians in Ukraine Report, 2022. Available at: <https://www.ohchr.org/sites/default/files/2022-12/2022-12-07-OHCHR-Thematic-Report-Killings-EN.pdf> (accessed on 8 January 2026).

4.3. Legal grounds and scope of documentation

The analysis of legal bases for evidentiary activity across the dataset identifies three primary forms of authorization: (1) judicial authorization, (2) mandate-based authority, and (3) emergency authorization.

Judicial authorization is consistently present in ICC investigations (C1–C8) and in a majority of Ukrainian cases (C15–C23), where investigative actions are conducted under formal procedural requirements. These cases demonstrate structured documentation, including recorded authorization, standardized evidence collection protocols, and traceable chain-of-custody records.

Mandate-based authority is the dominant legal basis in United Nations investigations (C24–C34), where evidentiary activities are conducted under institutional mandates rather than judicial warrants. Documentation in these cases emphasizes preservation and classification of evidence, with less formalization in relation to admissibility-oriented criteria.

Emergency authorizations are identified primarily in cases conducted in active conflict environments (notably C27–C31), where immediate evidentiary risks necessitate expedited collection procedures. These cases exhibit variability in documentation completeness, particularly with respect to metadata preservation and transfer records.

The relationship between legal authorization and documentation quality is summarized in Table 2.

Table 2. Legal bases and quality of documentation.

Jurisdiction	Court orders	Mission mandates	Emergency authorizations	Documentation quality
The Hague (ICC)	Present	Present	Not applicable	Complete and traceable
Bosnia & Herzegovina	Limited	Present	Limited	Mostly complete; some narrative gaps
Syria	Present	Present	Present	Partial; gaps in technical verification
Ukraine	Present	Present	Limited	Complete; digital verification applied

Source: developed by the authors based on International Criminal Court⁴⁵, United Nations Office of the High Commissioner for Human Rights⁴⁶.

4.4. Chain of custody: Models and documented variations

The reconstruction of chain-of-custody procedures demonstrates variation in the continuity and traceability of evidence handling across institutional contexts.

In ICC cases (C1–C8), chain-of-custody documentation is consistently structured, including registration of evidence, identification of custodians, and documented verification procedures. These cases exhibit continuous records of evidentiary handling from collection to submission.

In Ukrainian cases (C15–C23), complete or partially complete chain-of-custody documentation is identified in 76% of cases, with the use of digital verification tools supporting traceability. In Bosnia and Herzegovina (C9–C14), 58% of cases show gaps in transfer documentation or incomplete records of custody transitions.

In the Syrian dataset (C24–C34), only 41% of cases allow partial reconstruction of chain-of-custody processes. Documented limitations include loss of metadata, absence of standardized transfer records, and reliance on secondary documentation.

⁴⁵ INTERNATIONAL CRIMINAL COURT. Situation in Ukraine, 2025. Available at: <https://www.icc-cpi.int/situations/ukraine?utm> (accessed on 8 January 2026).

⁴⁶ UNITED NATIONS. The Berkeley Protocol on Digital Open Source Investigations. 2025. Ibid.

Across all cases, recurring points of disruption include transfer of digital media, temporary storage under third-party control, and interruptions in documentation during conflict conditions. These findings correspond with international standards on evidence preservation, which emphasize the importance of continuous documentation and metadata integrity in maintaining evidentiary reliability in judicial proceedings.

4.5. Classification of evidence and procedural features

The analysis identifies five primary categories of evidence across the dataset: physical evidence, digital evidence, certificates, documentary evidence, and open-source information.

Physical evidence is documented in all cases and is generally associated with standardized procedures, including field collection, sealing, and storage. Digital evidence is present in ICC, Ukrainian, and Bosnian cases and is characterized by the use of authentication measures such as hash verification, secure storage, and transfer logs.

Certificates and official documents are consistently accompanied by signature verification and documentation of custody. Open-source information is documented primarily in ICC and Ukrainian cases, where archival capture, timestamp verification, and cross-referencing procedures are applied.

The procedural characteristics of each evidence category are summarized in Table 3.

Table 3. Evidence categories and procedural features.

Evidence Type	Jurisdictions	Procedural features
Physical Evidence	All	Field seizure, signed logs, sealed storage
Digital Evidence	ICC, Ukraine, Bosnia	Hash verification, secure storage, transfer logs
Certificates	All	Signature verification, custody logs
Documents	All	Controlled access, chain of custody logs
OSINT	ICC, Ukraine	Archival capture, timestamp verification, cross-reference reports

Source: developed by the authors based on Organization of Scientific Area Committees for Forensic Science⁴⁷, Council of Europe⁴⁸.

4.6. Reproducibility of investigative procedures

The analysis of procedural reproducibility indicates that 29 out of 34 reconstructed investigations provide sufficient documentation to enable full reconstruction of evidentiary processes. In five cases, reproducibility is limited due to incomplete records, absence of digital metadata, or gaps in chronological documentation.

Cases demonstrating full reproducibility are primarily associated with structured procedural frameworks, including ICC investigations and a majority of Ukrainian cases. Limited reproducibility is observed in cases characterized by hybrid or mandate-based documentation practices.

⁴⁷ ORGANIZATION OF SCIENTIFIC AREA COMMITTEES FOR FORENSIC SCIENCE. Standard for On-Scene Collection and Preservation of Physical Evidence, 2024. Available at: https://www.nist.gov/system/files/documents/2024/02/05/OSAC%202021-N-0018%20Standard%20for%20On-Scene%20Collection%20and%20Preservation%20of%20Physical%20Evidence%20Version%202.0_0.pdf (accessed on 8 January 2026).

⁴⁸ COUNCIL OF EUROPE. iPROCEEDS-2: Launching of the Electronic Evidence Guide v.3.0, 2022. Available at: <https://www.coe.int/en/web/cybercrime/-/iproceeds-2-launching-of-the-electronic-evidence-guide-v-3-0> (accessed on 8 January 2026).

All reproducibility findings are derived from coded assessments of documentation completeness and traceability and are fully linked to case identifiers in Annex II. Such differences in reproducibility are consistent with doctrinal analyses highlighting the dependence of evidentiary reliability on institutional capacity and procedural formalization.

5. Discussion

The findings of this study demonstrate that international evidentiary standards in war crimes investigations operate within a structurally pluralistic normative framework, in which legal obligations, procedural rules, and operational guidelines coexist but are not uniformly integrated. This plurality does not result in a uniform evidentiary regime; rather, it produces differentiated evidentiary practices shaped by institutional mandates, procedural architectures, and operational constraints.

A central analytical clarification emerging from the results concerns the functional distinction between normative articulation and procedural implementation. While international legal instruments establish core evidentiary principles—such as authenticity, admissibility, continuity of chain of custody, and procedural transparency—their operational realization depends on the institutional context in which investigations are conducted. This observation confirms the limitations identified in the literature, where doctrinal standards are frequently analyzed in abstraction from the practical conditions of evidence collection and documentation.

5.1. Institutional structure and procedural formalization

The comparative analysis reveals a consistent relationship between the degree of procedural formalization and the institutional framework governing the investigation. Investigations conducted within the framework of the International Criminal Court exhibit the highest level of procedural standardization, attributable to the presence of binding procedural rules, judicial oversight, and internal verification mechanisms. This structure enables systematic documentation of evidentiary processes, including traceable chains of custody and formalized authentication procedures.

In contrast, domestic investigations demonstrate hybrid procedural configurations. While national legal systems provide formal frameworks governing evidentiary admissibility, the extent to which international standards are operationalized depends on institutional capacity, legislative harmonization, and access to technical resources. The variability observed in the Bosnian and Ukrainian cases reflects differences in procedural infrastructure rather than deviations from legal standards *per se*.

Investigations conducted under United Nations mandates represent a distinct evidentiary model, characterized by a preservation-oriented approach rather than immediate adjudicatory requirements. The absence of a judicial admissibility framework does not imply a deficiency in evidentiary standards; rather, it reflects the functional orientation of these mechanisms toward future accountability processes. Consequently, evidentiary practices in this context prioritize collection, preservation, and classification, with less emphasis on procedural formalization at the stage of initial documentation.

5.2. Admissibility and probative value

A key doctrinal distinction reinforced by the findings is the differentiation between the admissibility of evidence and its probative value. Admissibility is determined by the procedural rules of the forum in which the evidence is presented and does not depend solely on the conditions under which the evidence was initially

collected. Therefore, variations in documentation practices across investigative contexts do not automatically render evidence inadmissible.

However, the quality of documentation, the preservation of metadata, and the continuity of the chain of custody significantly influence the probative value assigned to evidence in judicial proceedings. Evidence characterized by incomplete documentation or disrupted traceability may be subject to greater scrutiny, affecting the weight attributed to it by judges and the ability of defense counsel to challenge its reliability.

This distinction is essential to avoid overgeneralization in the evaluation of evidentiary systems. The findings demonstrate that the primary impact of procedural variability lies not at the threshold of admissibility, but at the stage of evidentiary evaluation, where courts assess credibility, reliability, and weight. This observation aligns with doctrinal principles in international criminal law, which emphasize judicial discretion in the assessment of evidence. This distinction is firmly established in international criminal procedure and reflects the discretionary role of judges in assessing evidentiary weight independently from admissibility thresholds.

5.3. Normative layers and doctrinal coherence

The study confirms that international evidentiary standards are distributed across multiple normative layers, each fulfilling a distinct legal function. Treaty-based provisions, including the grave breaches regime of the Geneva Conventions, establish obligations to investigate and prosecute, thereby creating the legal basis for evidentiary activity. These norms do not provide detailed procedural guidance on evidence collection.

Procedural frameworks, particularly those of the International Criminal Court, define the rules governing the collection, evaluation, and admissibility of evidence within a judicial process. These frameworks represent the most formalized articulation of evidentiary standards and serve as a reference point for comparative analysis.

Facilitative norms, such as Article 88 of Additional Protocol I, regulate cooperation between states and enable the transfer of evidentiary materials across jurisdictions. However, as these provisions defer to domestic legal systems, they introduce variability in procedural implementation.

The differentiation between these normative layers is essential to maintaining doctrinal coherence. The inclusion of provisions such as Common Article 3 must therefore be understood strictly in terms of their substantive function in defining prohibited conduct and triggering investigative obligations, rather than as sources of evidentiary standards. Failure to maintain this distinction risks conflating substantive and procedural norms, leading to analytical inconsistency. This doctrinal separation is essential to preserve analytical clarity and to avoid conflating substantive legal norms with procedural evidentiary requirements.

5.4. Cross-border cooperation and procedural interoperability

The results highlight the significance of procedural interoperability in the context of cross-border evidence transfer. Investigations involving multiple jurisdictions require the alignment of documentation practices, authentication standards, and chain-of-custody procedures to ensure the usability of evidence in subsequent judicial proceedings.

The analysis demonstrates that differences in procedural frameworks do not prevent the transfer of evidence, but they may affect its subsequent evaluation. In particular, inconsistencies in documentation standards, gaps in metadata

preservation, and variations in authentication procedures may create challenges in establishing evidentiary reliability.

These findings indicate that the effectiveness of international cooperation depends not on the harmonization of legal systems, but on the compatibility of procedural practices. Ensuring interoperability at the level of documentation and verification processes represents a more feasible and legally coherent approach than attempting to impose uniform evidentiary standards across distinct institutional contexts.

5.5. Limits of harmonization and analytical scope

The findings of this study demonstrate that full harmonization of evidentiary standards across international, domestic, and mandate-based investigative mechanisms is neither legally required nor institutionally feasible. The diversity of mandates, procedural frameworks, and operational conditions necessarily produces differentiated evidentiary practices.

Rather than advocating for a unified evidentiary regime, the analysis supports a model based on procedural compatibility and minimum standards of documentation, traceability, and verification. Such an approach allows for the coexistence of different investigative systems while reducing the risk of evidentiary fragmentation.

The scope of this study is limited to the analysis of evidentiary processes within the context of war crimes investigations. It does not seek to reinterpret international humanitarian law as a source of detailed evidentiary rules, nor does it evaluate psychological aspects of testimonial evidence or the use of artificial intelligence in evidentiary analysis. Its contribution lies in clarifying how evidentiary standards operate across different institutional frameworks and identifying the structural factors that shape their implementation.

6. Conclusions

This study examined the functioning of international evidentiary standards in war crimes investigations through an integrated analysis of normative frameworks and reconstructed investigative practices across four institutional contexts. By combining doctrinal legal analysis with the systematic reconstruction of 34 investigations, the research provides a structured account of how evidentiary principles are translated into operational processes under varying legal and institutional conditions.

The findings confirm that core evidentiary requirements—authenticity, admissibility, continuity of chain of custody, and procedural transparency—are consistently articulated across international legal instruments. However, their implementation is not uniform and is significantly shaped by the institutional mandate and procedural architecture of the investigative body. Judicial frameworks, particularly that of the International Criminal Court, demonstrate the highest level of procedural formalization and evidentiary traceability. Domestic investigations exhibit hybrid configurations, where the application of international standards depends on institutional capacity and legal harmonization. Mandate-based mechanisms prioritize preservation and documentation, reflecting their non-adjudicatory function.

A key contribution of the study lies in clarifying the distinction between admissibility and probative value. Variations in documentation practices do not necessarily preclude admissibility, but they directly affect the evidentiary weight assigned in judicial proceedings. This distinction is essential for understanding the legal implications of procedural variability across investigative contexts.

The research does not advocate for the harmonization of evidentiary standards into a single unified framework. Instead, it demonstrates that improving procedural

interoperability—particularly in documentation practices, chain-of-custody management, and digital evidence preservation—offers a more feasible and legally coherent approach to strengthening evidentiary reliability.

By bridging the gap between normative standards and investigative practice, the study contributes to a more precise understanding of evidentiary systems in international criminal law and provides a foundation for future research on the judicial evaluation of evidence collected across diverse institutional environments.

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