**Session 3**

**Core Crimes II**

**War Crimes and Crime of Aggression**

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# **CRYERS – CHAPTER 12: WAR CRIMES**

## **Introduction: What is the crime of war crimes?**

### ***What are war crimes?***

A war crime = a serious violation of the laws and customs applicable in armed conflict (also known as international humanitarian law), which give rise to individual criminal responsibility under international law

* No requirement of widespread or systematic commission
* A single isolated act can constitute a war crime
* The context of armed conflict is what justifies international concern

### ***Historical development of international humanitarian war and war crimes?***

* Ancient times: laws and customs regulating warfare among diverse cultures
* 1863: Creation of the International Committee of the Red Cross + first Geneva Convention
* By Henry Dunant
* Shocked by Battle of Solferino
* Spurred codification and progressive development at international level
* 1907: Hague Regulations
* The right of belligerents to adopt means of injuring the enemy is not unlimited
* Means and methods of warfare
* Customary law
* 1949: Four Geneva Conventions
* Primarily focus on protecting civilians and those who are not active combatants
* Much = customary international law
* 1977: Two Additional Protocols
  + AP I: IAC
  + AP II: NIAC

Traditional distinctions Hague and Geneva law:

* Hague: limit methods and means of warfare
* Geneva: primarily focus on protecting civilians and others who are not active combatants

### ***Principles of IHL***

Key elements:

* Non-combatants are to be spaced from various forms of harm
* Not only civilians but also former combatants
  + E.g., prisoners-of-war and fighters rendered hors de combat because they are sick, wounded, shipwrecked or have surrendered
* Combatants must distinguish between military objectives and the civilian population, and attack only military objectives
* Principle of distinction
* In attacking military objectives, combatants must take measures to avoid or minimize collateral civilian damage and refrain from attacks that would cause excessive civilian damage
* Principle of proportionality
* Restrictions on the means and methods of war, to reduce unnecessary suffering and to maintain respect for humanitarian principles

IHL is triggered by the outbreak of armed conflict and seeks to regulate how such conflict is conducted

### ***The challenge of regulating warfare***

Saying: silent enim leges inter arma (law is silent in war)

* International criminal justice is one means of deterring violations and educating people that some basic laws apply in all circumstances
* Tension between military and humanitarian considerations permeates IHL and war crimes law
* Humanization of humanitarian law: increasing humanitarian considerations over the years
* But difficulties of asymmetric warfare against non-state actors, some of whom have no regard for humanitarian law
  + Some governments seek to deny or restrict the application of IHL
  + New problems and tensions

### ***Relationship between war crimes and IHL: Which rules of IHL constitute a criminal offence when violated?***

#### Before the Rome Statute: treaty & customary

War crimes law criminalizes only a subset of the rules of IHL

* Some offences are expressly criminalized by treaties, like the Geneva Conventions
* May be found in customary law
* Even in the absence of a treaty provision criminalizing the norm
* In Statutes ICTY and ICTR: open-ended definitions with discretion to judges to identify and apply war crimes arising from customary international law
* Deals with the criminal responsibility of individuals for serious violations of IHL

#### In the Rome Statute

Article 8(2)(a) of the ICC Statute refers to the provisions of the relevant Geneva Conventions

And

Article 8(2)(b) refers to the established framework of international law

* Consider relevant rules of IHL when interpreting the various provision
* ICC Elements of Crimes, Introduction to War Crimes, para. 2 + ICC Statute, Art. 21(1)(b)

#### Differences IHL and war crimes law?

Similar aims, but different scopes and consequences:

* IHL: addressed to governments and other parties to a conflict
* War crimes law: addressed to individuals
* IHL: sets out expected standards in armed conflict
* War crimes law: addresses the most serious crimes of concern to the international community as a whole
* IHL: violations can culminate in compensation or other satisfaction
* Violations can culminate in imprisonment of a person as a war criminal
* Similar provisions may warrant a more restrictive interpretation in the context of war crimes law, consistent with the narrower focus of war crimes law on the most serious violations, as well as general principles of criminal law (strict construction)
* Example: IHL requires that before any sentencing of protected persons, a part must provide a fair trial affording all indispensable judicial guarantees (GC Common Article 3)
  + Minor breach would mean a violation of IHL and thus requires an appropriate judicial guarantees
  + But conducting a trial with a single minor error would surely not be a war crime
    - ICC Elements of Crimes, note 59

## **Historical development / evolution of war crimes law**

* Long: national laws prosecuting war crimes
* 1940s: Nuremberg Charter
* Article 6(b): War crimes, namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners-of-war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity
* Recognized key provisions of the 1907 Hague Regulations as giving rise to individual criminal responsibility under customary law
* 1949: Four Geneva Conventions included ‘grave breach’ provisions, expressly recognizing certain violations as crimes subject to universal jurisdiction
* Now regarded as customary international law
* 1977: AP I introduced additional ‘grave breaches’
* Not all have attained recognition as customary law
* 1993-4: ICTY, ICTR Statutes included more grave breaches with open list and also including internal armed conflict
* 1998: ICC Statute contains a longer and more comprehensive list of war crimes
* But Article 8 is exhaustive
* Since the goal of the drafters was to reflect customary law rather than to create new laws, many provisions from previous instruments were excluded because of a lack of consensus on their customary law status
* Does not include all war crimes recognized in customary law
  + For example, the general prohibition on the use of chemical or biological weapons
* Article 10: the absence of a provision in the ICC Statute lists does not affects its status as existing or developing international law

### ***War crimes in internal armed conflicts***

* Traditionally, IHL nor war crimes law applied in non-international armed conflicts
* States sought to preserve latitude in putting down rebels, and they did not wish to bestow any possible recognition on rebel groups
* In Geneva Conventions:
* Common Article 3
  + Basic norms to apply even in internal armed conflict
  + No grave breaches provisions, so many concluded that violations of these provisions were not criminalized
* AP II (1977)
  + Significant expansion
  + Also no grave breaches provisions
* 1994 ICTR
* Internal conflict
* Included serious violations of Common Article 3 & AP II
  + Thus expressly recognizing a criminalization of these prohibitions
* ICTY Appeals Chamber in Tadic: the traditional stark dichotomy between international and internal conflicts
* To determine whether a norm also applies in internal armed conflict: whether there is clear and unequivocal recognition of the norm; State practice indicating an intention to criminalize the norm; the gravity of the acts; and the interest of the international community in their prohibition
  + Paras. 128-9
* ICC Rome Statute:
* Followed Tadic approach and transposed fundamental prohibitions to internal conflicts
  + Roughly half of provisions transplanted to internal conflicts
* Good reason to believe that the list of war crimes in Article 8(2)(e) falls short of the list that the Tadic test would permit
* Problem: characterization of conflict remains important (because of the international-internal distinction) and can create unnecessary complications
  + International: Article 8(2)(b)
  + Internal: Article 8(2)(e)

## **Common issues: What are issues that cut across all specific types of war crime?**

There are 4 issues that cut across all the specific types of war crime:

* Identifying an armed conflict
* It is the nexus with armed conflict (the insecure and volatile situation of armed conflict) that warrants international interest and gives rise to international jurisdiction over the crime
* Objectives existence of armed conflict
  + Even if one or both of the parties deny (or declare) the formal state of war
  + Geneva Conventions, Art. 2
* Includes not only the application of force between armed force between armed forces, but also an invasion that meets no resistance, aerial bombing, or an authorized border crossing by armed forces
* State of armed conflict continues until the general close of military operations
  + Geneva Conventions IV, Art. 6
  + does not end with each particular ceasefire
  + May be ended by a decisive close of military operations even without an agreement
* Classifying the conflict as international or non-international
* Non-international = internal armed conflict
  + Requires ‘protracted’ violence
    - Tadić, ICTY AC, para. 70
  + Distinguishing non-international armed conflict from internal disturbances and riots (Tadić, ICTY AC, para. 70; accepted ICC TC, Lubanga, paras. 534-8)
    - Threshold of intensity of the conflict
      * Protracted armed violence
        + Rather than sporadic or isolated
        + Relevant factors: seriousness of attacks, their geographic spread and temporal persistence, the mobilization of government forces, the distribution of weapons and whether the situation has attracted the attention of the UN Security Council
    - Threshold of organization of the parties
      * Organized armed groups
      * Various non-exhaustive factors: internal hierarchy, command structure, equipment and weapons, and ability to plan and carry out military operations
        + Lubanga, ICC TC, para. 537
      * AP II: only applies to armed conflicts: which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized groups which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol
        + Article 1(1)
        + Slightly higher
        + One party must be a state

Excluding group versus group conflict

* + - * + Not accepted as part of general customary international law of war crimes

ICC recognizes armed conflict entirely between armed groups

ICC Statute, Art. 8(2)(f)

ICC Statute rejects control of territory as a requirement

But can be important indicator of the intensity of the conflict

ICC Statute, Art. 8(2)(f); ICC PT, Lubanga, para. 223

Tus does not affect the interpretation of armed conflict

* State-to-state = international
  + Resort to force between the military forces of States
  + Most authorities indicate that any resort to force involving military forces amounts to armed conflict
* Issues:
  + Wars of national liberation
    - international armed conflict
    - = peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of the right of self-determination
      * Article 1(4) of AP I
        + Applies to any prosecutions based on the grave breaches regime of AP I

AP I, Art. 85

Customary status unclear

* + - On the other hand: a conflict involving local oppressed groups fighting against a discriminatory regime would seem counter-factual to describe as international
  + UN enforcement operations
  + Foreign intervention through proxy forces
    - NIAC, unless local armed groups are in fact acting on behalf of an external State
    - Overall control test of the ICTY’s Appeals Chamber to determine whether acts of an armed band could be attributed to a State (Tadic, para. 137)
      * To determine whether external involvement internationalizes a conflict
      * Instead of effective control test in first instance
        + Case concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. USA), para. 115
      * The test has been adopted by the ICC: see e.g. Lubanga, ICC TC, para. 540
      * = overall control beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations
        + Not necessary to produce evidence of specific orders or instructions relating to particular military actions
  + Invitation
    - A state is fighting armed groups on its territory and invites another State to assist
    - Remains non-international
      * Two states are not engaged in hostilities with each other
      * Katanga, ICC TC
  + Transnational conflict
    - = where a State engages in conflict with a non-State armed group on the territory of another State
    - International
      * When the armed group is affiliated with the territorial state or where the intervening State attacks the territorial State’s assets and infrastructure conflict between 2 states
    - Non-international
      * Where the intervening State engages only with the armed group, and the armed group is not affiliated with the territorial state
        + Lubanga, ICC TC, para. 541
    - An armed group cannot necessarily fulfil all of the obligations applicable in international armed conflicts, and thus the laws on non-international armed conflict are likely the most appropriate fit
* The nexus between the conduct and the armed conflict
  + Conduct must be linked to an armed conflict
    - ICC Elements of Crimes: conduct be committed in the context of and associated with an armed conflict
      * Art. 8(2)(a-f)
      * ‘in the context of’ refers to: temporal and geographic context in a broad sense
        + The conduct occurred during an armed conflict and on a territory in which there is an armed conflict
        + State of armed conflict is recognized throughout the territory, beyond the time and place of the hostilities

Tadić, ICTY AC, para. 70; Bemba Gombo, ICC TC, para. 128

* + - * ‘associated with’ refers to: specific nexus between the conduct of the perpetrator and the conflict
        + Matches ICTY requirement that the conduct be ‘closely related to’ the conflict

Tadić, ICTY AC, para. 70

* + - * + Some nexus is needed, the crime need not be committed during combat, nor need it be part of a policy or practice or in the interests of a party to the conflict

Tadić, ICTY TC, paras. 572–3

But not all criminal activity on a territory experiencing armed conflict amounts to a war crime

* + - * + The perpetrator must have acted in furtherance of or under the guise of the armed conflict

Existence of conflict played a substantial part in the perpetrator’s ability to commit a crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed

Kunarac, ICTY AC, para. 58

Factors:

status of perpetrator (for example, combatant);

status of the victim (for example, non-combatant, combatant of opposing party);

whether the act serves a goal of a military campaign;

whether it was committed in the context of the perpetrator’s official duties

ICC follows Kunarac approach

Bemba Gombo, ICC TC, para. 142

* The status of the perpetrator and the victim
* Perpetrator: not only members of armed forces or groups and their leaders
  + Fact that perpetrator is a member of an armed force is a factor in showing the nexus to armed conflict, but not a requirement
    - Akayesu, ICTR AC, paras. 444–5
  + Civilian can be perpetrator
* As long as nexus and knowledge requirements are met
  + Knowledge: must have some awareness of the armed conflict
    - Kordić, ICTY AC, para. 311
    - But for ICC, not necessary to have knowledge of the international or non-international character of the conflict
      * ICC Elements of Crimes, Introduction to War Crimes, para. 3
  + Knowledge: person must be aware of factual circumstances that established the existence of an armed conflict
    - Art. 8(2)(a)(i), Element 5
    - No legal evaluation necessary by perpetrator
      * ICC Elements of Crimes, Introduction to War Crimes, para. 3; ; Bemba Gombo, ICC TC, para. 146
    - Difficult to conceive of situations where a perpetrator’s conduct could satisfy nexus to conflict, if the perpetrator was unaware of the armed conflict so easy test
* Victim or object of the crime
  + Dependent on the war crime (actus reus)
  + Civilians who directly participate in hostilities may be targeted for the duration of their participation
    - Katanga, ICC TC, para. 789
  + Members from the same armed group or same ethnicity or nationality
    - IHL: mostly regulates conduct towards those affiliated with the enemy
      * Many war crimes require that the victims be ‘in the hands of’ or ‘in the power of’ an adverse party
        + In the power of: ICC Elements of Crimes, Art. 8(2)(b)(x) – I, Element 4
    - But contemporary conflicts more complex: same-side violations and non-state actors (ethnic conflicts) predominant
    - International humanitarian law does not contain a general rule that categorically excludes members of an armed group from protection against crimes committed by members of the same armed group
      * Rape, sexual slavery of child soldiers = war crime
      * Ntaganda, ICC AC, para. 63
      * Must still meet nexus requirement
        + Para. 68
* ‘Jurisdictional’ threshold in the ICC Statute: Application of Art. 8(1) – the plan or policy + large-scale requirement
* Article 8(1) Rome Statute: jurisdiction in respect of war crimes when committed as part of a plan or policy or as part of a large-scale commission of such crimes
  + More of an indicator to ICC as to how it ought to exercise its jurisdiction
    - To focus not on isolated war crimes but on the most serious situations
    - Even a single isolated act can constitute a war crime
  + Large-scale: synonymous with or less demanding than ‘widespread’ element of crimes against humanity
  + Plan or policy: less demanding than ‘systematic’
    - Corresponding to threshold in Article 7(2)(a)
  + In particular: indicates that this is a guide rather than a requirement
    - Situation of the DRC, ICC AC, paras. 70-1
* ICC may still act with respect to isolated war crimes which are of sufficient gravity to warrant action

## **Specific offences: what offences can constitute war crimes?**

The ICC features four lists in Article 8(2) (has considerable overlap and duplication):

1. Grave breaches of the Geneva Conventions:
2. Other serious violations of the laws and customs applicable in international armed conflict
3. Serious violations of Common Article 3
4. (e) Other serious violations of the laws and customs applicable in non-international armed conflict

List (as in the book):

1. Crimes against non-combatants

* Violence and mistreatment
  + Including civilians, prisoners-of-war and wounded or sick former combatants
  + Principle: non-combatants must be treated humanely
  + Prohibitions:
    - Murdering or willfully killing
      * ICC Statute, Art. 8(2)(a)(i) and (c)(i)
      * IAC + NIAC
        + Different terms but are the same
      * Correspond to those for the crime against humanity of murder
    - Torture, inhuman treatment, mutilation, and biological, medical or scientific experiments
      * ICC Statute, Art. 8(2)(a)(ii), (b)(x), (c)(i) and (e)(xi)
      * IAC + NIAC
      * Purpose requirement for torture: perpetrator inflicted pain or suffering ‘for such purposes as obtaining information or a confession, punishment, intimidation or coercion for any reason based on discrimination of any kind
        + ICC Elements of Crimes, Art. 8(2)(a)(ii) – 1, Element 2
        + Unlike torture as crime against humanity
      * In absence of such a purpose, the conduct could still amount to inhuman treatment
      * Experimentation elements: endangering physical or mental health or integrity of persons, not being justified by medical reasons (the treatment of the person) and not being carried out in the person’s interest
        + ICC Elements of Crimes, Art. 8(2)(a)(ii) – 3 and b(x) – 2
    - Willfully causing great suffering or serious injury to body or health
      * ICC Statute, Art. 8(2)(a)(iii)
      * Only IAC
      * Includes actions that deliberately cause long-lasting and serious harm without amounting to torture
        + Akayesu, ICTR TC, para. 502; Blaškić, ICTY TC, para. 156; Kordić, ICTY TC, para. 245
    - Committing outrages upon personal dignity, in particular humiliating and degrading treatment
      * ICC Statute, Art. 8(2)(b)(xxi) and (c)(ii)
      * IAC + NIAC
      * Broader that previous mentioned prohibitions: also covers acts which, without directly causing harm to the integrity and physical and mental wellbeing of persons, are aimed at humiliating and ridiculing them, or forcing them to perform degrading acts
        + Alekšovski, ICTY TC, , para. 56; Kunarac, ICTY TC, paras. 501–4
        + Also: Indignities against corpses or deliberately debasing prisoners by forcing them to violate religious requirements
      * Requirement: a certain objective level of seriousness
    - Various forms of sexual violence: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other sexual violence
      * ICC Statute, Art. 8(2)(b)(xxii)
        + Also confirms: sexual violence can amount to grave breaches of the Geneva Conventions
      * IAC + NIAC
      * Number of provisions to ensure the effective investigation and prosecution of such crimes, while preserving safety, dignity and privacy of victims and witnesses
        + ICC Statute, Art. 36(8)(b): judges with expertise in violence against women and children
        + Art. 42(6): advisers on sexual and gender violence and violence against children
        + Art. 44(2): staff with such expertise
        + Art. 54(1)(b): Prosecutor to respect interests of victims and witnesses and take into account sexual violence, gender violence and violence against children
        + Art. 68: protection of victims and witnesses and participation in proceedings
    - Other legal interests of protected persons
      * Liberty and mobility rights
        + Unlawful deportation, transfer or confinement of civilians

ICC Statute, Art. 8(2)(a)(vii)

IAC only

Refer to IHL to determine whether a particular act is unlawful

* + - * + Taking of hostages

ICC Statute, Art. 8(2)(a)(viii) & (c)(iii)

IAC + NIAC

* + - * Legal rights of persons
        + Punishment of protected persons without a regular trial

ICC Statute, Art. 8(2)(a)(vi) & (c)(iv)

IAC + NIAC

* + - * + To declare abolished, suspended or inadmissible the rights and actions of nationals of a hostile party

ICC Statute, Art. 8(2)(b)(xiv)

IAC only

* + - * + Difference: one focuses on conscription into forces (fighting against any party) and the other focuses on the forced breach of loyalty in fighting one's own country

Whether or not as part of military forces

ICC Elements of Crimes combine both aspects in elements of Art. 8(2)(a)(v)

* + - * Slavery and forced labor
        + Not listed in ICC Statute!
        + But recognized as war crimes in tribunal jurisprudence

Krnojelac, ICTY TC, paras. 350–60; Naletilić, ICTY TC, paras. 250–61

1. Attacks on prohibited targets: principle of distinction

* Principle of distinction = belligerents are required to distinguish between military objectives and the civilian population and objects
  + Direct operations only against military objectives
  + AP I, Art. 48
* Civilian or not?
  + In case of doubt, person shall be considered to be a civilian
    - AP I, Art. 50(1)
  + Former combatants that have surrendered, sick or wounded, or have ceased to take part in hostilities
    - AP I, Arts. 42, 48, 51(3)
  + Presence of non-civilians within civilian population does not change civilian character of population
    - AP I, Art. 50(3)
    - Must be predominantly civilian nature
      * Tadic, ICTY TC, 1997
* Civilian objects = non-military objectives
  + AP I, Art. 50(3)
  + Military objectives include:
    - Combatants, whether on or off duty
    - Objects which by their nature, location, purpose or use make an effective contribution to military action
      * And, whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage
      * AP I, Art. 52(2)
        + Customary law
* War crimes prohibitions:

1. Directing attacks against civilians or the civilian population
   * + ICC Statute, Art. 8(2)(b)(i) & (e)(i)
2. Directing attacks against civilian objects
   * + ICC Statute, Art. 8(2)(b)(ii)
3. Attacks on personnel, installations and vehicles involved in a humanitarian assistance or peacekeeping mission
   * + ICC Statute, Art. 8(2)(b)(iii) & (e)(iii)
4. Use of starvation of civilians as war method
   * + Including willfully impeding relief supplies
     + ICC Statute, Art. 8(2)(b)(xxv)
5. Tribunal jurisprudence
   * + ICTY: committing acts of violence primarily intended to spread terror among the civilian population
       - Galic, ICTY TC, paras. 87-138
       - SCSL: use of sexual violence and sexual slavery is one of the ways
         * Taylor, SCSL TC, para. 2035
     + ICC:
       - Attacking or bombarding undefended towns, villages, dwellings or building which are not military objectives
         * ICC Statute, Art. 8(2)(b)(v)
       - Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected
         * Provided they are not military objectives
         * ICC Statute, Art. 8(2)(b)(ix) & (e)(iv)
       - Directing attacks against buildings, transport and personnel using the distinctive emblems of the Geneva Conventions
         * ICC Statute, Art. 8(2)(b)(xxiv) & (e)(ii)
       - Protection of historic, religious and cultural property
         * Al Mahdi, ICC TC
6. Attacks inflicting excessive civilian damage: principle of proportionality

* = even where an attack is directed against a military objective, the anticipated civilian damage must not be disproportionate to the anticipated military advantage
  + AP I, Art. 51(5)(b)
  + ICC Statute, Article 8(2)(b)(iv)
    - Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated
  + Customary law
    - Kupreškić, ICTY TC, paras. 522–6
* Test requires assessment of:

1. The anticipated civilian damage or injury
   * See above
   * ICC Statute includes: damage to natural environment
   * ICC: damage must be widespread, long-term and severe + disproportionality test
2. The anticipated military advantage
   * See above
   * Concrete and direct overall military advantage anticipated
     + = a military advantage that is foreseeable by the perpetrator at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack
     + Elements of Crimes, note 36
       - Example anticipated advantage that is specific and foreseeable, but not temporally or geographically linked to the target: a feint *(= make a deceptive or distracting movement)*
3. Whether (a) was clearly excessive in relation to (b)
   * ICC only acts in cases that are clearly excessive
   * Very difficult issue
   * State practice: significant numbers of casualties can be inflicted in pursuit of military advantage without failing foul of the prohibition

* Margin of appreciation for decision-makers because many difficulties
* Mental elements: knowledge of the perpetator at the time of launching the attack
  + ICC Elements of Crimes, Art. 8(2)(b)(iv), para. 3; ICC Elements of Crimes, note 37, second sentence
  + Must have awareness of the extent of the anticipated harm and military advantage
  + Requires perpetrator personally completes a particular value judgment
  + Is this in line with ICC Statute?
    - Statute: accused’s awareness of facts that matter; liability not reliant on perpetrator’s personal normative evaluations
    - Art 9 ICC Statute: ICC Elements of Crimes must be consistent with the ICC Statute

1. War crimes against property

* Destruction, appropriation, seizure and pillage of property
  + ICC Statute, Art. 8(2)(a)(vi), (b)(xiii), (b)(xvi), (e)(v) & (e)(xii)
* Difference pillage and appropriation/seizure: taking for private or personal use as opposed to for military purposes
  + ICC Elements of Crimes, Art. 8(2)(b)(xvi), Element 2; ICC TC, Bemba Gombo, para. 124
  + No balancing with military necessity, since property is not taken for military reasons

1. Prohibited method and means of warfare

* Different from previous: combatants are also beneficiaries of the protections granted
* Means = prohibited weapons
  + Rationales: some weapons are inherently discriminate (cannot be used in a manner distinguishing civilian and military) & to protect combatants (some weapons cause superfluous injury or unnecessary suffering
  + Poison and poisoned weapons, asphyxiating or poisonous gases and analogous liquids, materials or devices, and dum-dum or hollow point bullets (bullets which expand or flatten easily upon impact)
    - ICC Statute, Art. 8(2)(b)(xvii); Art. 8(2)(b)(xviii); Art. 8(2)(b)(xix)
  + Also in internal armed conflict
    - ICC Statute, Art. 8(2)(e)(xiii)-(xv)
  + Chemical, biological and toxic weapons customary law
    - But excluded from Rome Statute
  + Nuclear weapons: not per se prohibited
    - Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, paras. 52 and 74
  + But: review of the question once the Statute is open for amendment at a future review conference
    - ICC Statute, Arts. 8(2)(b)(xx), 121 and 123
    - And can also constitute a war crime if they are employed in a manner contravening other prohibitions, such as prohibition on excessive attacks
  + 2017 amendments to the Rome Statute: microbial or biological agents, blinding laser weapons, and weapons that injure with fragments undetectable by X-ray
    - Resolution on amendments to Article 8 of the Rome Statute of the International Criminal Court
* Methods = prohibited tactics
  + Kill or wound a combatant who has surrendered or is otherwise hors de combat (out of the fight)
    - ICC Statute, Art. 8(2)(b)(vi)
  + Declaring that no quarter will be given = orders or announcements that no prisoners will be taken or that there will be no survivors
    - ICC Statute, Art. 8(2)(b)(xii) & (e)(x)
    - Whether publicly made or privately ordered
  + Killing or wounding treacherously a combatant adversary
    - ICC Statute, Art. 8(2)(b)(xi) & (e)(ix)
    - Treacherously = perfidy = inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord protection under the rules of IHL, with intent to betray that confidence
      * ICC Elements of Crimes, Art. 8(2)(b)(xi)
      * Deception and ruses (e.g., camouflage, mock operations, misinformation, decoys) are ok
      * Perfidy involves a false promise to bestow protection or an invitation to accord protection with an intent to betray that confidence
        + Pretending to surrender in order to attack the enemy off-guard or promising to take persons prisoner in order to massacre them once they relinquish their weapons
        + Making improper use of a flag of truce, or the flag of the military insignia and uniform of the enemy or the UN, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury

ICC Statute, Art. 8(2)(b)(vii)

* + The use of human shields
    - = to use the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations
      * ICC Statute, Art. 8(2)(b)(xxiii)
      * Covers both bringing civilians to the military targets and bringing military targets to civilians
        + AP I, Art. 51(7)
    - The fact that an adversary is illegally using human shields does not relieve the attacking force from the duty not to launch attacks causing excessive incidental harm
      * Art. 51(8), AP I
  + In NIAC: only recognizes treacherous killing and declaring no quarter

1. Protecting interests and values other than those listed above

* Transfer of population into occupied territory
  + = an occupying transferring parts of its civilian population into the territory it occupies
    - ICC Statute, Art. 8(2)(b)(viii)
  + Distinction other transfer crimes: not aimed at protecting enemy civilians who have fallen under a party’s power, but the transfer of a party’s own nationals, and does not require that the transfer be forcible
  + Purpose: to ensure respect for the temporary nature of occupation, and to prevent an occupying power from changing the demographic composition of a territory in order to make the occupation permanent
* Child soldiers
  + Conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities
    - ICC Statute, Art. 8(2)(e)(vii) & (b)(xxvi)
    - (b)(xxvi) restriction: only applies to recruitment into ‘national’ armed forces, appears to exclude armed groups
  + Protection of all children, not just adverse party’s
  + Three distinct offences: conscripting, enlisting & using children to participate actively in hostilities
    - Conscripting = forcible recruitment
    - Enlisting = ‘voluntary’ recruitment
      * Includes any conduct accepting the child as part of the militia
    - Lubanga, ICC PTC, paras. 246-7; Lubanga, ICC TC, paras. 607-18
    - Using children to participate actively in hostilities
      * Includes participation in combat
      * includes more indirect contributions to hostilities + is broader than IHL term of ‘direct participation in hostilities’, which is used to determine when a person loses civilian immunity and can be lawfully targeted
        + Lubanga, ICC TC, para. 627
      * Includes: scouting, spying, sabotage, carrying supplies to the frontline, and the use of children as decoys, couriers, or at military checkpoints
        + Lubanga, ICC AC, para. 334
  + Mental element: perpetrator knew or should have known that the persons were under the age of 15
    - ICC Elements of Crimes

# **CRYER – CHAPTER 13: AGGRESSION**

## **Introduction: What is the crime of aggression?**

The crime of aggression, or crime against peace, is committed by a leader or policy-maker of a State who participates in an act of aggression carried out by the State

* One of primary purposes of the UN
* Linked to an unlawful of a State against another State
* Aggression and state sovereignty:
* Protects state sovereignty by punishing attacks on States
* Encroaches on state sovereignty by going behind the State to make individual leaders directly accountable under IL

Historical development

* 1946: first international trial for aggression (under the name of crime against peace), Nuremberg IMT
* London Charter (setting up Nuremberg IMT), Art. 6(a)
  + Crimes against peace = the planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing
* Did not create rule law: aggressive war crime under IL since 1928 Kellogg-Briand Pact
* After in Control Council Law No. 10 & Tokyo IMT
* 1946: affirmed the principles of international law recognized by the London Charter & Nuremberg judgment
* Res. 95(1)
* 1974: UNGA Resolution 3314 definition of aggression
* Article 5.2: war of aggression = a crime against international peace. Aggression gives rise to international responsibility
* Not customary law
* 1996: ILC Draft Code of Crimes Against the Peace and Security of Mankind
* Included crime of aggression, but no definition
* Individual responsibility only incurs if the conduct of the state was a sufficiently serious violation of the prohibition in Article 2(4) of the UN Charter
* Not adopted by governments
* 1998: ICC Rome Statute
* Article 5(1)(d): aggression is in the jurisdiction of the Court
* Article 5(2): No definition yet, so no jurisdiction yet
* 2010: Kampala Review Conference of the ICC Statute
* Deletes Article 5(2)
* Set out definition of aggression and arrangements for the Court to exercise jurisdiction over it + new elements for the crime were also adopted
  + Article 8*bis*
  + Article 15*bis* and 15*ter*
  + Annex II to RC/Res. 6
* Art. 25(3*bis*): to ensure that the provision in the State on superior responsibility applies only to those leaders who are included in the definition of aggression as perpetrators of the crime
* 2017: Decision allowing Court’s jurisdiction over aggression

Definition in ICC Statute

* Crime of aggression = the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the UN
* Art. 8*bis*, ICC Statute
* Act of aggression = the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations
* Threshold: the act of aggression must be one which by its character, gravity and scale, constitutes a manifest violation of the Charter of the UN

Relationship to other crimes:

* Aggression provides an occasion for the commission of other crimes
* It is the supreme international crime
* Unlike all the other crimes:
* Crime of aggression concerns the jus ad bellum
  + Therefore raises questions of IL regarding state responsibility
* Crime of aggression can only be committed on behalf of a State and as part of a state plan or policy
  + The others may be committed by members of the armed forces of a State or by those affiliated with a state
* Aggression is considered a leadership crime and is only committed by persons in policy-making positions in a State
* ICC only international tribunal that has jurisdiction to prosecute it

## **Material elements**

The collective act of aggression by a State is the point of reference for the act of the individual perpetrator:

1. Perpetrator: By a perpetrator in a leadership position in a State

* Crime of aggression is a leadership crime: can only be committed by leaders and high-level policy-makers
* Requirement: person be in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression
  + Policy level people
* Threshold: Exact threshold of criminal responsibility is unclear
  + Somewhere between the Dictator and Supreme Commander of the military forces (if policy-level) of the nation and the common soldier
* In Nuremberg trial: some of the accused were not government or military, but industrialists (closely associated with the government)
  + But ICC: excludes persons who are not political leaders but nonetheless have power to shape and influence policy

1. Who has participated: planning, preparation, initiation or execution

* The nexus between the State’s act of aggression and the act of the individual leader or other high-level policy-maker is: planning, preparation, initiation or execution
  + Conspiracy not included in the ICC definition, unlike in Art. 6 Nuremberg Charter
* Preparation: closely linked with planning
  + Preparation for some vague future programme of aggression was not sufficient
* The collective act must have been completed in order to find criminal responsibility
  + ICC Elements of Crime, Element 3
* Modes of liability and crime of aggression
  + Regarding superior responsibility: the concept applies only to those leaders who are included in the definition of aggression as perpetrator of the crime
    - Article 25(3*bis*)
* Requirement: a policy-level accused planned, prepared, initiated or executed an act of aggression that was in fact committed, and that the accused fulfilled the elements of a mode of liability under Article 25
* Defences to the crime: the provisions of the ICC Statute for other crimes (in Article 31) will also apply to individuals charged with aggression
  + Also: arguing that the State concerned did not commit an act of aggression

1. Act of aggression: In an act of aggression by the state

* = the collective act in which the individual participates = the use of armed force by a State, or in any other manner inconsistent with the Charter of the UN
  + ICC definition, paragraph 1
  + Similar to Article 2(4) of UN Charter
  + Inconsistent with the Charter of the UN (unlawful use): any unlawful use of force by a State is defined as an act of aggression for the purpose of the ICC definition
* Examples, paragraph 2:
  + Invasion, bombardment and annexation of another State’s territory;
  + Attack on another State’s armed forces; and
  + Sending armed groups to commit aggressive acts against another State
  + Non-exhaustive list
  + But needs sensible application:
    - the reference to the list of acts qualifying as aggression ‘in accordance with’ the 1974 Resolution can be interpreted to mean that any relevant conditions and qualifications in the 1974 definition are incorporated
      * can be applied so as to import IL defences to allegations of aggressive acts
    - it is not the State’s act of aggression (whether in the 1974 list or not) which founds individual criminality, but only an act which constitutes a manifest violation of the Charter

1. International law regarding the use of force by a state & manifest violation: Which by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations

* Article 2(4) UN Charter: All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations
  + Customary
* Exceptions:
  + Individual or collective self-defence
    - Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.
      * Art. 51 UN Charter
    - Self-defence needs to be necessary and proportional
      * Case concerning Armed Activities on the Territory of the Congo, para. 147
      * Generally cannot be pre-emptive to prevent the emergence of a security threat
      * Not yet a right to self-defence against non-state actors / terrorist groups in other States where the ‘harbouring’ State are unable or unwilling to deal with the threat themselves
  + Force authorized by the UNSC acting under Chapter VII of the Charter
    - May be by UN peacekeeping or peace-enforcement missions or by coalitions of forces of States
  + Humanitarian intervention?
    - = military action taken for humanitarian purposes but without Security Council authorization and without the agreement of the State concerned
    - Remain a difficulty in defining the crime of aggression
* A manifest violation of the UN Charter
  + Not just every unlawful use of force by a State
  + by its character, gravity and scale, constitutes a manifest violation of the Charter of the UN
    - manifest = evident to the eye, mind or judgment; obvious
      * must be manifest to the Court, not simply to the aggressor or victim States
        + amended Elements
    - reference to gravity and scale: excludes obvious violations of jus ad bellum if they are of insufficient severity
    - refers to both seriousness and manifest illegality
    - but relatively unclear
  + purpose of use of force or special intent not necessary

## **Mental elements**

The amendments to the ICC Elements of Crimes adopted include two mental elements:

* Element 4: perpetrator is aware of the factual circumstances establishing the inconsistency of the use of armed force by the State with the Charter of the UN
* Element 6: the perpetrator is aware of the factual circumstances establishing the manifest violation of the Charter
* No requirement to prove that the perpetrator knew of the illegality or made a legal evaluation of the act’s consistency with the Charter or of its manifest nature
* So, if perpetrator intended to lead their country into a conflict and knew of the circumstances surrounding the conflict, it is not necessary that they knew that the conflict was unlawful

## **Prosecution of aggression in the ICC**

### ***Jurisdiction***

Two jurisdiction requirements:

1. Jurisdiction: only over crimes committed more than one year after thirty States have ratified or accepted the amendments

* Art. 16*bis*, para. 2; Art. 15*ter*, para. 2
* This occurred in 2016
* For the other crimes: the Court has jurisdiction if the alleged crime was committed by a national of a State Party or on the territory of a State Party
  + Art. 12, Rome Statute
  + No options of opting out if those conditions are met
* For aggression: States Parties have a choice as to the jurisdiction they wish to accept and there is no jurisdiction over aggression when it is committed by the nationals of a non-State Party or committed on the territory of such a State
  + If UNSC refers a situation of aggression to the Court, these requirements do not count
  + Art. 15*ter*
  + Accepting jurisdiction ad hoc under Article 12(3) still applies
* Are the nationals or territory of a State which does not accept the amendments are subject to the Court’s jurisdiction
  + amendments provide that a State Party may make a declaration that it does not accept the jurisdiction of the Court in respect of acts of aggression it commits
    - Article 15bis(4), ICC Rome Statute
  + For a State Party which has not accepted an amendment relating to the crimes subject to the Court’s jurisdiction, there will be no jurisdiction when the crime covered by the amendment is committed by that State Party’s nationals or on its territory
    - Article 121(5), ICC Statute
    - Nationals and territory of a State Part which does not accept the Kampala Amendments unaffected by the Court’s jurisdiction: this provision applies even though the amendments went wider than amendments to Article 5
  + the nationals and territory of a State Party are not exposed to the Court’s jurisdiction over the crime of aggression until the State ratifies of accepts the Kampala amendments.
  + If amendments accepted, has the choice of opting out, under Article 15*bis*
    - But only in relation to acts of aggression it commits itself
* Non-state parties:
  + Court has no jurisdiction over the crime of aggression with respect to a State that is not a party to the Statute when committed by that State’s nationals or on its territory
    - Art. 15*bis*, para. 5
    - Court cannot try any of their nationals for the crime of aggression nor any aggression committed on their territory by others
      * Unless the UNSC refers the situation to the ICC
  + The removal of States not party to the Statute from the ambit of the Court’s aggression jurisdiction involves an amendment that should have been done by the slower procedure of Article 121(4)

1. Jurisdiction: subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute

* Art. 15*bis*, para. 3; Art. 15*ter*, para. 3
* This was achieved on 14 December 2017
* Agreed to activate the ICC’s jurisdiction from 17 July 2018

### ***The role of the Security Council***

* To determine an act of aggression and hold an individual responsible for a crime of participation in a State’s act condemns the State itself, which usually is the responsibility of UNSC
* Risk that investigations undertaken by the ICC for an act of aggression without a prior Council authorization might bring about an escalation of the situation
* If: UNSC refers to the ICC a situation of aggression the ICC will have jurisdiction as for the other crimes in the Statute and there is no need for a Council determination of an act of aggression by a State
* If: a situation is referred to the Court by a State party or if the Prosecutor exercises his or her own power to begin an investigation the Prosecutor must notify the UN Secretary-General and ascertain whether the Security Council has made a determination of an act of agressino by the State concerned
* If the Council has done so, the Prosecutor may proceed with the investigation
* If no such determination has been made within 6 months of notification, the Prosecutor may proceed but must secure authorization for the investigation from the Pre-Trial Division
* UNSC may also ask for a suspension of proceedings under Article 16 in the usual way

Implications of the prosecution of aggression before the ICC:

* The determination of whether there has been an act of aggression by a State will be a necessary part of the Court’s decision on an individual’s criminal responsibility, and such determinations – by a criminal court – will be likely to have repercussions for the maintenance of international peace and security
* The Court is not the best placed to settle controversies about the content of international law on the use of force which have dogged the international community for decades.
* This leads to a related concern that the prosecution of aggression may have ‘collateral implications’ for public international law outside the context of criminal law.
* Kampala: the amendments that address the definition of the act of aggression and the crime of aggression do so for the purpose of this Statute only. The amendments shall, in accordance with article 10 of the Rome Statute, not be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.
* However, the future practice of the ICC in choosing to prosecute particular acts may, it has been argued, influence existing views of the justifiability of certain uses of force under the jus ad bellum, and the higher threshold given in the definition of the crime of aggression may seem to condone lesser uses of force by a State.
* The practical difficulties for the ICC in particular cases are likely to be severe.
* The constitution and procedures of the ICC are designed for the determination of individual, not State, responsibility.
* If the existence of ICC jurisdiction acts as a deterrent to even a few war-mongering presidents and prime ministers, it has the potential thereby to save many lives.

# ICC PRESS RELEASE – SITUATION IN UKRAINE: ICC JUDGES ISSUE ARREST WARRANTS AGAINST VLADIMIR VLADIMIROVICH PUTIN AND MARIA ALEKSEYEVNA LVOVA-BELOVA

Today, 17 March 2023, Pre-Trial Chamber II of the International Criminal Court (“ICC” or “the Court”) issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr Vladimir Vladimirovich Putin and Ms Maria Alekseyevna Lvova-Belova.

Mr Vladimir Vladimirovich Putin, President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).

* There are reasonable grounds to believe that Mr Putin bears individual criminal responsibility for the aforementioned crimes, (i) for having committed the acts directly, jointly with others and/or through others (article 25(3)(a) of the Rome Statute), and (ii) for his failure to exercise control properly over civilian and military subordinates who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility (article 28(b) of the Rome Statute).

Ms Maria Alekseyevna Lvova-Belova, Commissioner for Children’s Rights in the Office of the President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).

* the crimes were allegedly committed in Ukrainian occupied territory.
* There are reasonable grounds to believe that Ms Lvova-Belova bears individual criminal responsibility for the aforementioned crimes, for having committed the acts directly, jointly with others and/or through others (article 25(3)(a) of the Rome Statute).

Pre-Trial Chamber II considered, based on the Prosecution’s applications of 22 February 2023, that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population and that of unlawful transfer of population from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children.

The Chamber considered that the warrants are secret in order to protect victims and witnesses and also to safeguard the investigation.

Nevertheless, mindful that the conduct addressed in the present situation is allegedly ongoing, and that the public awareness of the warrants may contribute to the prevention of the further commission of crimes, the Chamber considered that it is in the interests of justice to authorize the Registry to publicly disclose the existence of the warrants, the name of the suspects, the crimes for which the warrants are issues, and the modes of liability as established by the Chamber.

# **BBC NEWS (YOUTUBE) – SATELLITE IMAGES APPEAR TO SHOW RUSSIAN ATROCITIES IN BUCHA, UKRAINE**

Russian troops pulled out of the Ukrainian town of Bucha, near Kyiv earlier this week. Since then investigators have uncovered what they say is evidence of civilian deaths at the hands of the Russian military. Ukrainian President Volodymyr Zelensky says that these are war crimes but Moscow says that the evidence has been faked.

* Satellite images appear to show bodies lying in the streets before Russian troops disappeared
* Russia: these are fabricated images with the help of western nations
* Zelensky: Russia committing genocide and war crimes
* Children killed, women raped and civilians executed

In Bucha

* Head of village and her family (husband and son): allegedly killed by Russian soldiers for helping Ukraine’s army
* In basement of building bodies of 5 men with hands tied behind their back, all shot
* People shot in the head by Russian snipers, people on bicycles, people bringing potatoes (civilians)
* Mayor says: more than 300 have been killed and still discovering more bodies
* There are still areas under Russian control and no one quite knows that is going on there

Challenges investigation and trialing war crimes Putin

* Not unlikely, but probably not in the very near future
* Trying to collect and prove this evidence directly with head of state is very challenging
* Proof of direct connection, direct orders or other ties of criminal involvement within the commission of those crimes
* International criminal justice is a slow process, despite Ukrainians wanting/needing justice (now)
* Be careful with the implication of crime of genocide
* Symbolic and emotional implication of invoking that this is a crime of genocide
* But for crime to be proved, need genocidal intent which is difficult to prove (in this case)
  + So for this time, war crimes and crimes against humanity better

# **NEW YORK TIMES – A HACK OF THE DEFENCE MINISTRY, ARMY AND STATE BANKS WAS THE LAREGST OF ITS KIND IN UKRAINE’S HISTORY**

A cyberattack against the websites of Ukraine’s defense ministry and army, as well as the interfaces of the country’s two largest banks on Tuesday, was the largest assault of its kind in the country's history and bore traces of foreign intelligence services

It is clear that it was prepared in advance, and the key goal of this attack is to destabilize, to sow panic, to do everything to create a certain chaos in the actions of Ukrainians in our country

Officials are concerned that Russia might seek to destabilize the country in other ways than military, including through cyberwarfare.

The websites and banks targeted on Tuesday evening were hit with a distributed denial-of-service attack, or DDoS, during which hackers flood the servers hosting a website until it becomes overloaded and shuts down

The head of Ukrainians Intelligence Agency’s Cyber Security Department stated that all signs pointed to Russia

* Only country that is interested in such strikes on Ukraine, especially against the background of mass panic over a possible military invasion
* The attack probably cost millions of dollars to execute
* Beyond the capabilities of individual hackers or groups
* Suck attacks are usually perpetrated by countries, they need infrastructure

Moscow denied

Mr. Vityuk said that the attack bore similarities to a mid January attack in which hackers brought down dozens of Ukrainian government websites, including Ukraine’s Ministry of Foreign Affairs.

On Tuesday, clients of the state-owned PrivatBank and Oschadbank began to complain about difficulties using teller machines and mobile phone applications. The banks confirmed the attack, but said the funds in users’ accounts had not been affected. By Tuesday evening that most services had been restored.

Pavlo Kukhta, an adviser to Ukraine’s energy minister, said in an interview that the hackers were possibly preparing for a larger attack, which could target the country’s “vulnerable” power grid

The goal is quite simple: to sow panic, show what they are capable of, test the systems and see if they are vulnerable, he said. They are poking around and looking for weaknesses.

Ukraine’s intelligence agency, the SBU, said Wednesday it had neutralized “more than 2,200 cyber attacks on state authorities and critical infrastructure in Ukraine” last year.

According to U.S. government assessments, some of the most drastic cyberattacks in the past decade were attributed to Russian actions in Ukraine — and then replicated elsewhere.

For instance, a Russian military spyware strain first identified in a hack against Ukraine’s Central Elections Commission in 2014 was found in the server of the Democratic National Committee in the United States in 2016. The following year, attacks called NotPetya started in Ukraine and later spread around the world, causing some $1 billion in damage.

Video:

* Mainly attacks on critical infrastructure and government agencies
* Goal attacking infrastructure: to destabilize
* Bank services for example, you can’t pay for fuel and groceries public reaction
* Attack government websites: citizens can’t get access to information
* Cyber attack, kind of hybrid attack, can cause lead to people feeling that state is not in control of the situation and its agencies and this can be a reason to send in troops