THE RIGHT TO LEAVE UKRAINE

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ABSTRACT

This Article argues that the Ukrainian ban on men leaving the country violates human rights, specifically the right of any person to leave any state under the International Covenant on Civil and Political Rights. As an urgent war measure, Ukraine prohibited most men from leaving. The right to leave applies to all states parties to the ICCPR and applies even during times of national crisis. It has long been held to constitute a fundamental human right. Even relatively trivial restrictions have been deemed violations. That being said, states can indeed limit the right for a small set of reasons, including national emergencies and the requirements of national (military) service. However, those limitations cannot override other rights in the ICCPOR, such as conscientious objection to military service, and the limitations must satisfy the requirements of necessity and proportionality. Since the men remaining in the country have not been drafted into military service, it does not appear that restricting their right to leave was necessary. Seemingly aware of this requirement, Ukraine informed the United Nations that it was derogating from the ICCPR during the time of national emergency, including by derogating from the right to leave. However, derogations are not permitted when they discriminate on the basis of gender. As such, Ukraine's discriminatory and unnecessary violation of the ICCPR, even with a purported procedural derogation, is not in compliance with the ICCPR. This violation could be enforced by bringing a complaint to the Human Rights Committee, but might be more effectively enforced by the European Union engaging Ukraine diplomatically. If Ukraine has any wish to join the European Union, and if human rights obligations are a foundational requirement for membership, then Ukraine will need to comply. This Article concludes that Ukraine has no valid argument for restricting men from leaving the country and is in violation of the ICCPR.

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I. INTRODUCTION

Within the overall conflict in Ukraine, one issue remains largely overlooked. More than three years into the conflict, Ukrainian men still cannot leave the country.[1] While acknowledging other significant issues in the conflict, this article argues that Ukraine violates the human rights of its male citizens by prohibiting them from leaving the country and requiring them to remain and defend it.

Shortly after the Russian invasion, Ukraine declared martial law and ordered the mobilization of defense forces.[2] Along with this mobilization, Ukraine prohibited Ukrainian men between the ages of 18 and 60 from leaving the country.[3] This ban remains in place after more than three years of fighting.[4]

However, this ban clearly violates the right of every person to leave any state, including their own, as guaranteed by the International Covenant on Civil and Political Rights (ICCPR).[5] It is true that there are exceptions and derogations to this right[6] and the Office of the UN High Commissioner for Refugees has apparently taken the position that the ban on men leaving Ukraine is an acceptable measure for national self-defense.[7] But this view is mistaken. The

[1] U.S. Embassy Kyiv, *Message for U.S. Citizens: Elimination of "Residence Abroad" Exception to Dual Citizen Departure*, (June 4, 2024), https://ua.usembassy.gov/message-for-u-s-citizens-elimination-of-residence-abroad-exception-to-dual-citizen-departure/.

[2] *See* U.N. Secretary-General, *Ukraine: Notification Under Article 4(3)*, U.N. Doc. C.N.64.2022.TREATIES-IV.4 (Depositary Notification) (Feb. 28, 2022) (reporting on the Decree of the President of Ukraine No. 63/2022, On Imposition of the State of Emergency in Certain Regions of Ukraine (Feb. 23, 2022), and on the Law of Ukraine No. 2102-IX, On Approval of the Decree of the President of Ukraine On Imposition of the State of Emergency in Certain Regions of Ukraine (Ukraine Presidential Decree No. 63/2022) (Feb. 24, 2022)) [hereinafter, Ukraine, *First Notice of Derogation*].

[3] *See* Ministry of Internal Affairs of Ukraine, *Regarding Restrictions on Crossing the Border to Leave Ukraine for Certain Categories of Citizens*, (Feb. 24, 2022), https://mvs.gov.ua/en/news/shhodo-obmezen-v-peretini-kordonu-na-viyizd-z-ukrayini-okremoyu-kategori-jeyu-gromadyan.

[4] *See id.*

[5] *See* International Covenant on Civil and Political Rights art. 12(2), Dec. 16, 1966, 999 U.N.T.S. 17 [hereinafter ICCPR].

[6] *See id.* art. 4.

[7] *See* Lorenzo Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, THE GUARDIAN (Mar. 9, 2022, 10:07 AM) https://www.theguardian.com/global-development/2022/mar/09/ukraine-urged-to-take-humane-approach-as-men-try-to-flee-war ("'We recognise that states have a right to self-defence under both the UN charter and customary

measure violates the terms of the ICCPR and Ukraine cannot justify any of the exceptions or derogations to the ICCPR, particularly because the travel ban discriminates on the basis of gender.[8] Even if this were not the case, prohibiting men from leaving the country is neither necessary nor proportionate.

This article will clarify the scope of the right to leave and its interaction with national or military service obligations, addressing Ukrainian arguments for exceptions or derogations. It will conclude that Ukraine should modify or withdraw the measure and that the EU should take the measure into consideration when deciding on Ukraine's membership.

II. THE RIGHT TO LEAVE IN HUMAN RIGHTS LAW

The ICCPR states that "Everyone shall be free to leave any country, including his own."[9] This is an essential right, necessary for the "free development of [the] individual".[10] Various special rapporteurs have consistently held that the right to leave under the ICCPR is fundamentally linked to other human rights in the Universal Declaration of Human Rights.[11] As Special Rapporteurs for the UN Commission on Human Rights, both C.L.C. Mubanga-Chipoya and Volodymyr Boutkevitch held that the right to leave is fundamental to personal liberty and, by extension, all human rights, as expressed in the Universal Declaration of Human Rights.[12] Because of the broad and fundamental nature of the right to leave any state, individuals do not need to provide a specific reason to exercise it.[13] Additionally, steps related to leaving a country, or necessary for doing so,

international law and that states may also require their citizens to perform military service under certain criteria and conditions, in line with international law,' said Matthew Saltmarsh, head of news and media at UNHCR, the UN refugee agency.").

[8] *See* Charli Carpenter, *Civilian Men Are Trapped in Ukraine*, FOREIGN POLICY (July 15, 2022, 7:00 AM), https://foreignpolicy.com/2022/07/15/ukraine-war-conscription-martial-law-men-gender-human-rights/.

[9] *See* ICCPR, *supra* note 5, at art. 12(2) ("Everyone shall be free to leave any country, including his own.").

[10] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, U.N. Doc. CCPR/C/21/Rev.1 /Add.9 (Nov. 2, 1999) para. 1 ("the liberty of movement is indispensable condition for the free development of an individual."); Batyrova & Batyrov v. Uzbekistan, Commc'n No. 1585 /2007, U.N. Doc. CCPR/C/96/D/1585/2007 (Hum. Rts Comm., July 30, 2009), para. 8.3).

[11] *See* discussion *infra* notes 12–13.

[12] *See* C.L.C. Mubanga-Chipoya (Special Rapporteur), *Analysis of the Current Trends and Developments Regarding the Right to Leave any Country Including One's Own, and to Return to One's Own Country, and Some Other Rights or Consideration Arising Therefrom*, U.N. Doc. No. E/CN.4/Sub.2/1987/10, Pt. 1, 27 (July 10, 1987); *See* Volodymyr Boutkevitch (Special Rapporteur), *Working Paper on the Right to Freedom of Movement and Related Issues*, U.N. Doc. E/CN.4/Sub.2/1997/22 (July 29, 1997).

[13] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, at para. 8 ("Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country."); Pereira Montero

are protected under article 12(2) of the ICCPR, which prohibits states from, for example, refusing passport applications, confiscating passports without due cause, or imposing disproportionate passport application fees.[14]

Despite the strength of this right, it is not absolute.[15] States may restrict the right to leave under the ICCPR for several reasons, such as protecting national security, public order, public health or morals, or the rights and freedoms of others.[16] For example, states may restrict the right to leave due to minority age,[17]

v. Uruguay, Commc'n No. 106/1981, U.N. Doc. CCPR/C/18/D/106/1981 (Hum. Rts. Comm., Mar. 31, 1983) para. 9.4; Vidal Martins v. Uruguay, Commc'n No. 57/1979, U.N. Doc CCPR /C/15/D/57/1979 (Hum. Rts. Comm., Mar. 23, 1982), para. 7); Lichtensztejn v. Uruguay, Commc'n No. 77/1980, U.N. Doc. CCPR/C/18/D/77/1980 (Hum. Rts. Comm., Mar. 31, 1983), para. 8.3; Varela Nuñez v. Uruguay, Commc'n No., 108/1981, U.N. Doc. CCPR/C/19 /D/108/1981 (Hum. Rts. Comm.,July 22, 1983), para 9.3.

[14] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, at paras. 9, 17; *Vidal Martins*, Commc'n No. 57/1979, at para. 7; *Lichtensztejn*, Commc'n No. 77/1980, at para. 8.3; *Pereira Montero*, Commc'n No. 106/1981, at para. 8; *Varela Nuñez*, Commc'n No. 108/1981, at para. 9.3; El Ghar v. Libya, Commc'n No. 1107/2002; U.N. Doc. CCPR/C/82/D /1107/2002 (Hum. Rts. Comm., Nov. 2, 2004), para. 8; El Dernawi v. Libya, Commc'n No. 1143/2002, U.N. Doc. CCPR/C/90/D/1143/2002 (Hum. Rts. Comm., Aug. 31, 2007), para. 6.2; Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Iraq*, U.N. Doc. CCPR/C/79/Add.84, para. 14 (Nov. 19, 1997); MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS, CCPR COMMENTARY 205 (2d rev. ed. 2005).

[15] *See* ICCPR, *supra* note 5, at art. 12(3) ("The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."). Note that some rights in the ICCPR are absolute, though the right to leave any state is not one of them. *See also id.*, at art. 4(2) ("No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.").

[16] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 11; Hertzberg v. Finland, Commc'n No. 61/1979, U.N. Doc. CCPR/C/15/D/61/1979 (Hum. Rts. Comm., July 25, 1980), para. 6.3; Binder v. Canada, Commc'n No. 208/1986, U.N. Doc. CCPR/C/37/D/208/1986 (Hum. Rts. Comm., Oct. 25, 1988), para 6.2; González del Río v. Peru, Commc'n No. 263/1987, U.N. Doc. CCPR/C/40/D/263/1987 (Hum. Rts. Comm., Nov. 6, 1990), para. 5.3;Celepli v. Sweden, Commc'n No. 456/1991, U.N. Doc. CCPR/C/51/D/456 /1991 (Hum. Rts. Comm., Aug. 2, 1994), para 9.2; Karker v. France, Commc'n No. 833/1998, U.N. Doc. CCPR/C/70/D/833/1998 (Hum. Rts. Comm. Oct. 26, 2000), para. 4.5. Also note that there is a procedural requirement of notification for derogation from the ICCPR, though it is not entirely clear whether failure to notify is a limited technical violation of the ICCPR or results in the invalidity of the derogation. Most likely the former. ICCPR, *supra* note 5, at art. 4(3) ("Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.")

[17] *See* NOWAK, *supra* note 14, at 268.

pending judicial proceedings,[18] the need to serve a prison sentence,[19] detention for expulsion,[20] or the refusal to pay lawfully incurred taxes.[21] A foreign invasion would certainly justify invoking derogations under national security or public order.[22]

Significantly for this analysis, states may also impose certain limitations on the right to leave to require national service.[23] In 1994, in *Peltonen v Finland*, the Human Rights Committee cited to the *travaux préparatoires* of the ICCPR, concluding that the negotiating states agreed that the Covenant "could not be claimed, inter alia, to avoid such obligations as national service."[24] ICCPR negotiators were primarily concerned with preventing the Covenant from being used to lawfully justify desertion or avoidance of service.[25] In its *Concluding*

[18] *See González del Río*, Commc'n No. 263/1987, at para. 5.3; NOWAK, *supra* note 14, at 270.

[19] *See* NOWAK, *supra* note 14, at 270.

[20] *See Celepli*, Commc'n No. 456/1991, at para. 9.2; *Karker*, Commc'n No. 833/1998, at para. 9.3.

[21] *See* NOWAK, *supra* note 14, at 270.

[22] *See* ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant … ."); Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, para. 2, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001) ("Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency.")

[23] *See* Peltonen v. Finland, Commc'n No. 492/1992, U.N. Doc. CCPR/C/51/D/492/1992 (Hum. Rts. Comm., July 29, 1994), para. 8.3, *but see* Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Russia*, para. 20, U.N. Doc. CCPR/C/79/Add.54 (July 26, 1995) [hereinafter Hum. Rts. Comm., *Concluding Observations on Russia*].

[24] *See Peltonen*, Commc'n No. 492/1992, at para. 8.3; U.N., Econ. & Soc. Council, Comm'n on Hum. Rts., 5th Sess., Summary Record of the 106th mtg. at 4, U.N. Doc. E/CN.4 /SR.106 (May 31, 1949) [hereinafter Comm'n on Hum. Rts., 5th sess., 106th mtg., ICCPR negotiations] (US speaking); U.N., Econ. & Soc. Council, Comm'n on Hum. Rts., 6th Sess., Summary Record of the 115th mtg. at para. 41, U.N. Doc. E/CN.4/SR.150 (Apr. 7, 1950) [hereinafter Comm'n on Hum. Rts., 6th sess., 115th mtg., ICCPR negotiations] (Denmark speaking); U.N., Econ. & Soc. Council, Comm'n on Hum. Rts., 6th Sess., Summary Record of the 151st mtg. at para. 4, U.N. Doc. E/CN.4/SR.151 (Apr. 10, 1950) [hereinafter Comm'n on Hum. Rts., 6th sess., 151st mtg, ICCPR negotiations] (Uruguay speaking); U.N., Econ. & Soc. Council, Comm'n on Hum. Rts., 8th Sess., Summary Record of the 315th mtg. at 12, U.N. Doc. E/CN.4/SR.315 (May 29, 1952) [hereinafter Comm'n on Hum. Rts., 8th sess., 315th mtg, ICCPR negotiations] (US speaking).

[25] *See* Comm'n on Hum. Rts., 5th sess., 106th mtg., ICCPR negotiations, *supra* note 24, at 4 (US speaking); Comm'n on Hum. Rts., 6th sess., 115th mtg., ICCPR negotiations, *supra* note 24, at para. 41 (Denmark speaking); Comm'n on Hum. Rts., 6th sess., 151st mtg., ICCPR negotiations, *supra* note 24, at para. 4 (Uruguay speaking); Comm'n on Hum. Rts., 8th sess., 315th mtg., ICCPR negotiations, *supra* note 24, at 12 (US speaking).

Observations on Russia one year after *Peltonen*, the Human Rights Committee affirmed this interpretation, expressing "regret [ ] that all individuals not having yet performed their national service are excluded in principle from enjoying their right to leave [Russia]."[26] However, by expressing "regret" the Committee did not necessarily make a definitive judgment on ICCPR obligations, and its statement of condemnation was somewhat passive (the right "could not be claimed").[27] Nevertheless, within one year, the Committee both affirmed in *Peltonen* and rejected in the Russian conclusions limitations on the right to leave based on national service obligations.[28] One can reconcile these contrasting views by assuming that the Committee objected to a blanket ban on leaving until national service was completed but accepted a more limited ban during the term of national service, comparable to restricting the right to leave during a prison sentence. Therefore, states cannot restrict the right to leave based on vague national service requirements and may only do so in narrow instances where the service is actually due or ongoing.

However, the obligation to perform national service includes an additional nuance: conscientious objection. Limitations on the right to leave under the ICCPR must align with other rights in the Covenant.[29] The Human Rights Committee recognizes conscientious objection as a right that intersects with the right to leave any state.[30] The Committee has noted that everyone has a right to refuse military participation and that a state cannot impose coercive measures to

[26] *See* Hum. Rts. Comm., *Concluding Observations on Russia*, *supra* note 23, at para. 20.

[27] *See id*.

[28] *Peltonen*, Commc'n No. 492/1992, at paras. 2.2–2.4; Hum. Rts. Comm., *Concluding Observations on Russia*, *supra* note 23, at para. 21.

[29] *See* ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations … provided that such measures are not inconsistent with their other obligations under international law …"); Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 2 ("The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant."); *id.* at para. 11 ("To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes, and must be consistent with all other rights recognized in the Covenant").

[30] *See* Jeong v. Korea, Commc'n No. 1642-1741/2007, U.N. Doc. CCPR /C/101/D/1642-1741/2007 (Hum. Rts. Comm., Apr. 27, 2011), paras. 7.3-7.4; Abdullayev v. Turkmenistan, Commc'n No. 2218/2012, U.N. Doc. CCPR/C/113/D/2218/2012 (Hum. Rts. Comm., May 19, 2015), para. 7.7; Hudaybergenov v. Turkmenistan, Commc'n No. 2221/2012, U.N. Doc. CCPR/C/115/D/2221/2012 (Hum. Rts. Comm., Dec. 22, 2015), para. 7.5; Japparow v. Turkmenistan, Comm. No. 2223/2012, U.N. Doc. CCPR/C/115/D/2223/2012 (Hum. Rts. Comm., Dec. 17, 2015), para. 7.6; Petromelidis v. Greece, Commc'n No. 3065/2017, U.N. Doc. CCPR /C/132/D/3065/2017 (Hum. Rts. Comm., Aug. 24, 2022), para. 9.3.

compel such service.[31] While the right to leave may be abridged in certain situations, it cannot be restricted as a penalty for exercising other rights.[32] Thus, a state party may not prohibit a person from leaving the country as a penalty for exercising conscientious objection to military service.[33] However, a state could, compel alternative national service instead of military service involving the use of, potentially lethal, violence,[34] provided that the alternative respected human rights and received equal credit towards any service obligation.[35] That is, the alternative service must not be designed or have the effect of coercing conscientious objectors into opting for military service, as this would undermine their right to object.[36] Thus, while a state may not punish someone for evading national service, it may restrict movement when service was due, provided there is a viable alternative for conscientious objectors. For this reason, the Human Rights Committee criticized Russia's travel limitations for failing to provide conscientious objection or alternative service options,[37] and for framing the travel limitations on the need to protect a "State secret."[38]

[31] *Jeong*, Commc'n No. 1642-1741/2007, paras. 7.3-7.4; *Abdullayev*, Commc'n No. 2218 /2012, para. 7.7; *Hudaybergenov*, Commc'n No. 2221/2012, para. 7.5; *Japparow*, Commc'n No. 2223/2012, para. 7.6; *Petromelidis*, Commc'n No. 3065/2017, para. 9.3.

[32] *See Petromelidis*, Commc'n No. 3065/2017, para. 9.8.

[33] *See id.* at para. 9.9 ("The Committee further notes that pending judicial proceedings may indeed account for restrictions on an individual's right to leave his country … In the present case, the restriction on the author's freedom to leave Greece … was imposed on the author for having legitimately exercised his right to freedom of conscience, the Committee considers that this situation violates the author's rights under article 12 (2) of the Covenant.").

[34] *See* U.N. Hum. Rts. Comm., Gen. Comment No. 22: *Article 18 (Freedom of Thought, Conscience or Religion)*, U.N. Doc. CCPR/C/21/Rev.1/Add.4, para. 11 (July 30, 1993); Yoon & Choi v. Korea, Commc'ns No. 1321/2004 & 1322/2004, U.N. Doc. CCPR/C/88/D/1321-1322/2004 (Hum. Rts. Comm., Jan. 23, 2007), para. 8.3; Atasoy & Sarkut v. Turkey, Commc'ns No. 1853/2008 & 1854/2008, UN Doc. CCPR/C/104/D/1853-1854/2008 (Hum. Rts. Comm., June 19, 2012), para. 10.4; Jong-nam Kim v. Korea, Commc'n No. 1786/2008, U.N. Doc. CCPR/C/106/D/1786/2008 (Hum. Rts. Comm., Feb. 1, 2013), para 7.3; Young-kwan Kim v. Korea, Commc'n No. 2179/2012, U.N. Doc. CCPR/C/112/D/2179/2012 (Hum. Rts Comm., Jan. 14, 2015), para. 7.4; *Petromelidis*, Commc'n No. 3065/2017, para. 9.3 ("although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with freedom of conscience.").

[35] *See Kim*, Commc'n No. 1786/2008, para. 7.4; *Petromelidis*, Commc'n No. 3065/2017, para. 9.3 (the alternative service "must be a real service to the community and compatible with respect for human rights.").

[36] *See* Foin v. France, Commc'n No. 666/1995, U.N. Doc. CCPR/C/67/D/666/1995 (Hum. Rts. Comm., Nov. 9, 1999), para 10.3 (cannot demand 24 months of non-military service in lieu of 12 months of military service to satisfy the compulsory service requirement); *See also* J. . .rvinen v. Finland, Commc'n No. 295/1988, U.N. Doc. CCPR/C/39/D/295/1988 (Hum. Rts. Comm., July 25, 1990), para 6.4.

[37] *See* Hum. Rts. Comm., *Concluding Observations on Russia*, *supra* note 23, at para. 21.

[38] *See id.* at para. 20.

Even if the limitation on leaving a state aligns with other rights in the ICCPR, it remains subject to necessity and proportionality.[39] Derogations should occur only in "exceptional circumstances".[40] Rights that do not require restriction in a given situation cannot be restricted.[41] Rights that must be restricted may only be limited by measures that are appropriate, the least intrusive, and proportionate to the situation.[42] Among other considerations, these restrictions must be limited to the time, territory, and scope relevant for the situation.[43] Manfred Nowak has

[39] *See* ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, …"); Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 14 ("it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them … restrictive measures must confirm to the principle of proportionality; they must be appropriate to achieve their protective function…"); Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, para. 4 ("A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation."); Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Israel*, U.N. Doc. CCPR/C/79/Add.93, para. 11 (Aug. 18, 1998) [hereinafter Hum. Rts. Comm., *Concluding Observations on Israel*]; Batyrova & Batyrov v. Uzbekistan, Commc'n No. 1585/2007, *supra* note 10, at para. 8.3 ("In the present case, however, the State party has not provided any such information that would point to the necessity of the restriction nor justify it in terms of its proportionality. In these circumstances, the Committee concludes that there has been a violation of article 12, paragraphs 2 and 3 of the Covenant."); NOWAK, *supra* note 14, at 274.

[40] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 11 ("Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted."); Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 13 ("In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. art 5, para. 1); the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution."); Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 2; Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, para. 2 (Aug. 31, 2001) ("Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature.").

[41] *See* Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, para. 5 ("In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (article 12) or freedom of assembly (article 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.").

[42] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 14.

[43] *See* Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, para. 2 ("Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature."); *id.* at para. 4 ("This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation

argued that any human rights derogation framed as the individual owing their own state a "debt" should be viewed with particular scrutiny.[44] These requirements of necessity and proportionality clearly apply to restrictions on the right to leave. For example, the Human Rights Committee concluded that while an arrest warrant could justify restricting the right to leave, such a restriction was impermissible if the state unduly delayed judicial proceedings.[45] The same analysis applies to travel restrictions imposed for national security. For example, the Human Rights Committee concluded that while limiting access to protected military zones is permissible, preventing foreign travel solely because a person knows state secrets is not.[46] The Human Rights Committee, in its *Concluding Observations on Russia* and the requirements of national service, implicitly noted the need for proportionality by emphasizing the "in principle" widespread and indiscriminate impact on "all individuals."[47] While the prohibition on leaving the state until fulfillment of national service is a legitimate national objective, its overbroad implementation is not proportionate.

Lastly, derogations from the ICCPR cannot be implemented in a discriminatory manner, including discrimination based on gender or sex.[48] The Human Rights Committee concluded that "it would be a clear violation of the Covenant" to restrict the right to leave based on sex.[49] Although the Committee primarily considered situations where women were prevented from leaving a

resorted to because of the emergency."); *id.* at para. 5 ("they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation.").

[44] *See* NOWAK, *supra* note 14, at 214 ("As shown by the practice of many States, governments have a keen interest in preventing their working population of certain groups … from leaving the country. It is always possible to come up with some sort of "debt" owed the State …"). Note that, though this view was expressed during his term as Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, this text was not prepared in that capacity.

[45] *See* González del Río v. Peru, Commc'n No. 263/1987, *supra* note 16, at para. 5.3. It would also be permissible to limit the right to travel to indigenous/minority regions though it would not be permissible to limit the right to travel to everyone not possessing a permit to do so; *see* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 16.

[46] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 16.

[47] *See* Hum. Rts. Comm., *Concluding Observations on Russia*, *supra* note 23, at para. 20.

[48] *See id*. at para. 18 ("The application of the restrictions permissible under article 12, paragraph 3, needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination.").

[49] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, para. 18 ("Thus, it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

state,[50] there is no reason to believe that it would conclude differently for men. After all, the Covenant explicitly states that "men and women" enjoy human rights equally.[51] This norm of non-discrimination also clearly applies during states of emergency.[52] The ICCPR states that "[i]n time of public emergency which threatens the life of the nation … the States Parties … may take measures derogating from their obligations under the [ICCPR] … provided that such measures … do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."[53]

[50] *See id.* ("In examining State reports, the Committee has on several occasions found that measures preventing women from moving freely or leaving the country by requiring them to have the consent or the escort of a male person, constitute a violation of article 12."); *see also* U.N. Hum. Rts. Comm., Gen. Comment No. 28: *Article 3 (The Equality of Rights Between Men and Women)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10, para. 16 (Mar. 29, 2000) ("As regards article 12, States parties should provide information on any legal provision or any practice which restricts women's right to freedom of movement, for example the exercise of marital powers over the wife or of parental powers over adult daughters; legal or de facto requirements which prevent women from travelling, such as the requirement of consent of a third party to the issuance of a passport or other type of travel documents to an adult woman.").

[51] Hum. Rts. Comm., Gen. Comment No. 28: *Article 3*, *supra* note 50, para. 2 ("States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.").

[52] *See id.* at para. 7 ("The equal enjoyment of human rights by women must be protected during a state of emergency (art. 4). States parties which take measures derogating from their obligations under the Covenant in time of public emergency, as provided in article 4, should provide information to the Committee with respect to the impact on the situation of women of such measures and should demonstrate that they are non-discriminatory."); Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, para. 8 ("According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. … In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.").

[53] ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.").

III. THE SITUATION IN UKRAINE

Ukraine is, of course, a party to the ICCPR and has been since 1973.[54] Upon signature and again upon ratification, Ukraine entered only one declaration that is not relevant for this discussion.[55] Ukraine is also party to the ICCPR Optional Protocol since its accession on July 25, 1991, that grants the right of individual application to the Human Rights Committee for violations.[56] Ukraine has filed only one communication regarding the Optional Protocol, recognizing the competence of the Human Rights Committee to receive and consider inter-state communications in addition to individual complaints.[57] Prior to the full invasion of the state by Russia in 2022, Ukraine had only entered notices of derogation in connection with the occupation of Crimea.[58]

On 24 February 2022, Russia invaded Ukraine.[59] Immediately following the invasion, Ukraine declared martial law[60] and filed a notice of derogation from the ICCPR for the entirety of the state.[61] The notice of derogation simply states that although the Ukrainian Constitution provides for the freedom to leave Ukraine and such right is protected under the ICCPR, the declaration of martial law "necessitates a waiver of obligations under articles 12 to 13 of the Covenant."[62] The basis for this exit ban is to "to ensure the defense of the state, maintaining combat and mobilization readiness of the Armed Forces of Ukraine and other military formations."[63] As such, Ukraine needed to mobilize the "conscription of conscripts, reservists for military service, their delivery to

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[54] UN Secretary General, Status of Treaties, *International Covenant on Civil and Political Rights*, Ch. IV. Human Rights. 4, https://treaties.un.org/Pages /ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en [hereinafter *Status of ICCPR*].

[55] *See id.* ("*Declaration made upon signature and confirmed upon ratification.*")

[56] UN Secretary General, Status of Treaties, *Optional Protocol to the International Covenant on Civil and Political Rights*, Ch. IV. Human Rights 5, https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/iv-5.en.pdf [hereinafter *Status of Optional Protocol*]; Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 1, 999 U.N.T.S. 171 [hereinafter ICCPR Optional Protocol].

[57] *See Status of Optional Protocol*, *supra* note 56 (Ukraine's communication of July 28, 1992).

[58] *See Status of ICCPR*, *supra* note 54.

[59] Yuras Karmanau et al., *Russia Invades Ukraine On Multiple Fronts In 'Brutal Act Of War'*, PBS NEWS (Feb. 24, 2022), https://www.pbs.org/newshour/world/russia-invades-ukraine-on-multiple-fronts-in-brutal-act-of-war.

[60] *See* Ukraine, *First Notice of Derogation*, *supra* note 2, at 1 (reporting on Ukraine Presidential Decree No. 63/2022).

[61] *See id.*

[62] *See id.*

[63] Volodymyr Zelenskyy, *UKAZ PREZYDENTA UKRAÏNY №69/2022 (УКАЗ ПРЕЗИДЕНТА УКРАЇНИ №69/2022) [Decree of the president of Ukraine №69/2022]* (Jan. 24, 2022), https://www.president.gov.ua/documents/692022-41413.

military units and institutions of the Armed Forces of Ukraine."[64] Therefore, in its notice of derogation, Ukraine argued that it might be necessary to impose a "special regime of entry and exit,"[65] which was subsequently implemented to impose restrictions on citizens leaving the state.[66] Ukraine explicitly foresaw that these measures would otherwise violate article 12 of the ICCPR on freedom to leave the state, which was the reason for the derogation.[67] This notice has subsequently been renewed and extended several times without amending the content. [68]

Following its notice of derogation, Ukraine promulgated regulations that prohibited men from leaving Ukraine. The Ukrainian State Border Guard Service announced that it would apply the special regime of exit as a ban prohibiting male Ukrainian citizens between the ages of 16 and 60 from leaving

[64] *See id.*

[65] *See* Ukraine Presidential Decree No. 63/2022, at para. 2, *reported at* Ukraine, *First Notice of Derogation*, *supra* note 2, at 5 ("The following measures shall be implemented in the territory defined in Article 1 of this Decree: - establishment of a special regime of entry and exit (if necessary)").

[66] *See* Ukraine, *First Notice of Derogation*, *supra* note 2, at 5; U.N. Secretary-General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.65.2022.TREATIES-IV.4 (Depositary Notification) (Feb. 28, 2022) [hereinafter Ukraine, *Second Notification of Derogation*] Other measures included, *inter alia*, compulsory labor for certain non-defense personnel to address emergency needs, a prohibition on members of the military changing residence without approval or changing to non-military national service, and seizing emergency housing for military needs.

[67] Ukraine, *Second Notification of Derogation*, *supra* note 66, at 6 ("The application of these measures necessitates a derogation from the obligations under articles 3, 8 (paragraph 3), 9, 12, 13, 17, 19, 20, 21, 22, 24, 25, 26, 27 of the Covenant and articles 4 (paragraph 3), 8, 9, 10, 11, 13, 14, 16, Articles 1, 2 of the Additional Protocol, Article 2 of Protocol No. 4 to the Convention.").

[68] *See* U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.89.2022.TREATIES-IV.4 (Depositary Notification) (Mar. 28, 2022) (extending martial law); U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C. /N.115.2002.TREATIES-IV.4 (Depositary Notification) (Apr. 29, 2022); U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.145.2022.TREATIES-IV.4 (Depositary Notification) (June 9, 2022); U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.269.2022.TREATIES-IV.4 (Depositary Notification) (Aug. 19, 2022),; U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.441.2022.TREATIES-IV.4 (Depositary Notification) (Dec. 16, 2022); U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.47.2023.TREATIES-IV.4 (Depositary Notification) (Feb. 14, 2023); U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.142.2023.TREATIES-IV.4 (Depositary Notification) (May 25, 2023),; U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.260.2023.TREATIES-IV.4 (Depositary Notification) (Aug. 30, 2023); U.N. Secretary General, *Ukraine: Notification under Article 4(3)*, U.N. Doc. C.N.476.2023.TREATIES-IV.4 (Depositary Notification) (Nov. 17, 2023).

the state.[69] The Interior Ministry confirmed this policy on Telegram and noted that the policy would remain in place throughout the term of martial law.[70] This policy was also reaffirmed by the Ukrainian Prime Minister,[71] though he suggested that this purely a decision for the military.[72] Ukraine has since modified the rules and now requires all Ukrainian men to register with the military and carry their registration document with them at all times.[73] This appears to be an initial step towards a military draft.[74] And Ukrainian women are not required to serve in the military.[75] Interestingly, the Ukrainian authorities appear to be interpreting the exit ban for men as also applying to trans women,

[69] *See* Tamara Qiblawi & Caroll Alvardo, *Ukrainian Males Aged 18-60 Are Banned from Leaving the Country, Zelensky Says in New Declaration*, CNN (24 Feb. 2022), https://edition.cnn.com/europe/live-news/ukraine-russia-news-02-24-22-intl/h_4309a4916d57670f85519210a07fb2c9/ ("The statement [of the State Border Guard Service] said that following the introduction of martial law in Ukraine, a temporary restriction had been imposed. 'In particular, it is forbidden for men aged 18-60, Ukraine citizens, to leave the borders of Ukraine,' the statement said. 'This regulation will remain in effect for the period of the legal regime of martial law. We ask the citizens to take this information into consideration.'"). Note that there is some disagreement whether the ban applies to male Ukrainian citizen under the age of 60 or 68. *See id.* ("24-year-old Andrew [said] "I can't leave now because last update was that guys from 18 to 68 … cannot leave borders of Ukraine … .")

[70] *See* Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, *supra* note 7 ("After martial law was introduced, the Ukrainian interior minister posted on the Telegram messaging app: 'Today is the moment when every Ukrainian who can protect his home must take up arms. Not just to help our soldiers, but to cleanse Ukraine of the enemy, once and for all.'")

[71] *See Zelenskyy Responds to Petition to Allow Men without Combat Experience to Leave Ukraine*, THE NEW VOICE OF UKRAINE (Aug. 16, 2022), https://english.nv.ua/nation/zelenskyy-responds-to-petition-to-allow-men-without-combat-experience-to-leave-ukraine-50263611.html ("Prime Minister Denys Shmyhal believes that while the war continues, all men should be in Ukraine.") [hereinafter New Voice of Ukraine, *Zelenskyy Responds*].

[72] *See Ukrainian Men of Fighting Age to Remain in the Country During War — PM Shmyhal*, THE NEW VOICE OF UKRAINE (May 10, 2022), https://english.nv.ua/nation/ukraines-men-to-stay-in-country-during-war-with-russia-50240880.html ("There are no plans to open the borders for men of fighting age during the period of martial law in Ukraine, Prime Minister Denys Shmyhal said in an interview with RBC-Ukraine published on May 9. 'During martial law, this (departure of men of conscription age abroad) is not foreseen,' Shmyhal said. 'It is really the military making decisions here, but I believe that while the war is going on, all men should be in Ukraine.'") [hereinafter *Ukrainian Men of Fighting Age*]. Note that the interview with the Prime Minister no longer appears in the English language version of the RBC-Ukraine website.

[73] *See* Daria Tarasova-Markina et al., *'Everyone Will Fight' Ukrainian Men Weigh Their Options as New Draft Law Comes into Effect*, CNN (May 25, 2024), https://edition.cnn.com/2024/05/25/europe/ukraine-draft-law-conscription-intl/index.html.

[74] *See id.*

[75] *See id.*

despite the fact that Ukraine recognizes their legal status as women.[76] President Zelenskyy outright rejected a petition that had been signed by 27,000 Ukrainians to lift the restriction on men leaving the state,[77] justifying the ban as the need for the "entire Ukrainian people" to defend the state, even though the ban clearly only applies to men.[78] The President has at other times also argued that the defense of the state "is the responsibility of its people."[79] Thus, the highest levels of leadership in Ukraine are aware of the policy targeting only men.[80] Nonetheless, as of yet, it does not appear that Ukraine has taken the next step of forcibly conscripting those men that are banned from leaving.[81]

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[76] *See* Lorenzo Tondo, *'I Will Not Be Held Prisoner': The Trans Women Turned Back at Ukraine's Borders*, THE GUARDIAN (Mar. 22, 2022, 7:00 AM), https://www.theguardian.com/global-development/2022/mar/22/i-will-not-be-held-prisoner-the-trans-women-turned-back-at-ukraines-borders ("Trans women are reportedly being denied passage to safer countries, despite their legal status as women and the danger posed by Russia's transphobic policies. Judis is a transgender woman whose birth certificate defines her as female … Yet, on 12 March at about 4am, after a long and humiliating search, border guards determined she was a man and prevented her passage into Poland.").

[77] *See Zelenskyy Responds to Petition to Allow Men without Combat Experience to Leave Ukraine*, THE NEW VOICE OF UKRAINE (June 11, 2022), https://english.nv.ua/nation/zelensky-responds-to-petition-to-lift-ban-on-men-leaving-ukraine-50249150.html.

[78] *See id.* ("In his response, Zelensky emphasized that the defense of Ukraine is a matter for the whole nation. 'As the president …, I note that in accordance with Article 17 of the Constitution of Ukraine, the protection of the sovereignty and territorial integrity of the state is a matter for the entire Ukrainian people,' he said. Zelensky also pointed to Article 65 of the Constitution of Ukraine, according to which the protection of the homeland, independence and territorial integrity of Ukraine is the duty of citizens, while the right to freely leave its territory may be restricted by Article 64 under martial law.").

[79] *See* Zaini Majeed, *Zelenskyy Reacts To Petition Demanding Freedom For Men Aged 18-60 To Leave Ukraine,* REPUBLIC WORLD (June 11, 2022), https://www.republicworld.com/world-news/russia-ukraine-crisis/zelenskyy-reacts-to-petition-demanding-freedom-for-men-aged-18-60-to-leave-ukraine-articleshow.html ("'Fighting for the territorial integrity of the country in Ukraine is the responsibility of its people,' Ukraine's President asserted responding to the petition."); New Voice of Ukraine, *Zelenskyy Responds*, *supra* note 71.

[80] *See, e.g., Ukrainian Men of Fighting Age*, *supra* note 72 ("This comes after, Oleksiy Arestovych, an adviser to the head of the President's Office, on May 4 told Ukrainian television's Channel 24 that a 'discussion was underway' to allow certain categories of men to travel abroad for short periods: 'Volunteers are leaving with a commitment to return. Businessmen, scientists — numerous categories need it. But this requires amendments to mobilization legislation … Discussion of this is ongoing.'").

[81] *See* Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, *supra* note 7 ("The Ukrainian government is not forcing men to fight, only remain in the country, but there are fears of enforced conscription if the violence continues."); Ashley Westerman, *Ukrainians Express Worries Over Conscription Following Russia's Invasion*, NAT'L PUB. RADIO (Aug. 15, 2022) https://www.npr.org/2022/08/15/1117605630/ukrainians-express-worries-over-conscription-following-russias-invasion ("Colonel Roman Gorbach is the head of personnel for Ukraine's ground forces. He says so far they've primarily called up men with current military contracts, previous combat experience or relevant training. And while he

There are few exceptions to the exit ban. The regulations permit single fathers, men supporting three or more children, or men supporting children with disabilities to leave.[82] Government officials who are men, such as the President himself, can travel outside of Ukraine on official duties.[83] Following a decision by the National Security and Defense Council of Ukraine, Members of Parliament and certain other government officials who would otherwise be prohibited from traveling, may leave the state with a permit for official state travel duties.[84] In addition, some male Ukrainian students studying abroad are able to leave the state.[85]

By all accounts, the measures prohibiting travel will be enforced. Ukraine has insisted that any men leaving the state in violation of the ban may be monitored by the state security services and may be eventually punished.[86] Ukrainian border guards have refused Ukrainian nationals from leaving the state[87] and Ukrainian officials have been pressuring neighboring states to return

wouldn't talk numbers, the colonel says less than 10% of conscripts who have been called up have been immediately sent to fight and that rumors that men are being randomly picked up off the street and drafted are lies.").

[82] *See* Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, *supra* note 7 ("Under Ukrainian law there are exceptions to the ban on men leaving the country. Male Ukrainian nationals can cross the border if they are financially supporting three or more children under the age of 18, are single fathers of children under 18, or have children or are guardians of children with disabilities.").

[83] *See Several Categories of Men Banned from Leaving Ukraine in 2023*, THE NEW VOICE OF UKRAINE (Jan. 24, 2023), https://english.nv.ua/nation/several-categories-of-men-banned-from-leaving-ukraine-in-2023-50299637.html.

[84] *Id.*

[85] *See Ukraine Cancels Exemption for Male Students Registered with Non-Ukrainian Universities*, THE NEW VOICE OF UKRAINE (Sep. 22, 2022), https://english.nv.ua/nation/ukraine-cancels-exemptions-for-foreign-registered-male-students-ukraine-news-50271877.html ("Commander-in-Chief of the Ukrainian Armed Forces, Valery Zaluzhny, recently asked the Defense Ministry to allow students to travel abroad. Later the Interior Ministry clarified which documents were needed for male students to travel abroad.").

[86] *See Ukrainian Men of Fighting Age*, *supra* note 72 ("Ukraine's SBU security service should take measures to verify the legality of decisions of the Ministry of Community Development, Territories and Infrastructure of Ukraine, regional and Kyiv city military administrations on the departure of Ukrainian citizens from Ukraine, including by vehicles, as well as the legality and validity of entering relevant information into the 'Shlyakh' information system. The Commander-in-Chief of the Armed Forces of Ukraine should ensure that the military administration and military commanders strictly comply with the requirements of the law when dealing with issues related to crossing the state border of Ukraine."); *see also* Jeffrey Gettleman & Monika Pronczuk, *Ukraine's Draft Dodgers Face Guilt, Shame and Reproach*, N.Y. TIMES (Apr. 11, 2022), https://www.nytimes.com/2022/04/10/world/asia/ukraine-draft-dodgers.html ("Ukrainian politicians have threatened to put draft dodgers in prison and confiscate their homes").

[87] Kyiv Post, *Men Aged 18-60 Crossing the Border: More Enter Ukraine Than Leave*, KYIV POST (Dec. 22, 2023) https://www.kyivpost.com/post/25803 ("However, it is reported that border guards daily refuse to allow about 100 people to cross the border to leave who do not qualify for a pass and do not comply with the conditions of crossing. Demchenko said that

men who escape Ukraine.[88] The UN has asked Ukraine to take a "compassionate and humane" approach to men it catches attempting to leave contrary to martial law.[89] Yet some Ukrainian politicians have gone so far as to suggest retribution against escaping men by seizing the homes that they left behind.[90] Overseas, Ukrainian embassies and consulates will refuse to renew passports of men who fail to produce documents showing permission to be abroad.[91]

As of today, approximately 6.8 million Ukrainians have fled the state, most of them women and children.[92] Those arriving in European Union member states are protected under the new innovative form of temporary protection and need not necessarily qualify as refugees or claim asylum in order to be protected.[93] In fact, Polish border guards have stated that, even though they are aware that Ukraine generally prohibits men from leaving, Poland will not prohibit men from crossing its border.[94] Ukrainian border guards will arrest Ukrainian men attempting to flee the country.[95] However, a large number of Ukrainian men

during control measures at checkpoints, border guards strictly check the documents that give grounds for letting people cross the border, and also expose people who try to use fake documents. In total, over 11 months of 2023, about 3,000 forged documents were detected at checkpoints."); *see also* Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, *supra* note 7 ("Men of conscription age, aged 18 to 60, were banned from leaving Ukraine after the Russian invasion on 24 February but there have been multiple reports of men with Ukrainian citizenship trying to cross into Hungary, Poland and Romania. It is unclear how many have been allowed to pass").

[88] Gettleman & Pronczuk, *supra* note 86 ("But if [the men illegally leaving Ukraine for Moldova] do not apply for asylum, they can be turned over to the Ukrainian authorities, who, Moldovan officials said, have been pressuring them to send the men back").

[89] Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, *supra* note 7.

[90] Gettleman & Pronczuk, *supra* note 86 ("Ukrainian politicians have threatened to put draft dodgers in prison and confiscate their homes. But within Ukrainian society, even as cities continue to be pummeled by Russian bombs, the sentiments are more divided").

[91] Olga Voitovych et al., *Zelensky Signs Law Overhauling Ukraine's Mobilization Rules*, CNN (Apr. 16, 2024), https://edition.cnn.com/2024/04/16/europe/zelensky-signs-mobilization-law-intl-latam/index.html.

[92] *Ukraine Refugee Situation*, UNHCR: OPERATIONAL DATA PORTAL, https://data.unhcr.org/en/situations/ukraine (last visited Jan. 31, 2025).

[93] William Thomas Worster, *Persons Fleeing from the War in Ukraine and the Future of Emergency Protection, Status and Rights*, 40 WIS. INT'L L.J. 423, 425–29 (2023).

[94] *See* Andrew Higgins, *At the Polish Border, Tens of Thousands of Ukrainian Refugees*, THE NEW YORK TIMES (Feb. 25, 2022), https://www.nytimes.com/2022/02/25/world/europe/ukrainian-refugees-poland.html; Gabriel Bejan et al., *Telegram, Crypto and Corruption: The Ukrainian Men Fleeing the Military Call-Up*, BALKAN INVESTIGATIVE REPORTING NETWORK (Dec. 18, 2024), https://balkaninsight.com/2024/12/18/telegram-crypto-and-corruption-the-ukrainian-men-fleeing-the-military-call-up/.

[95] *See* Tarasova-Markina et al., *supra* note 73.

have fled illegally,[96] some smuggling themselves out of Ukraine,[97] some using forged student documents.[98] According to some reports, several thousand male Ukrainian citizens have fled Ukraine despite the ban and, as noted above, some Ukrainian politicians have threatened those men with retaliation.[99] And some of these men have lost their lives trying to escape.[100]

IV. THE TRAVEL BAN VIOLATES THE RIGHT TO LEAVE

These measures do not comply with the obligations of the ICCPR regarding the right to leave. No one doubts that the situation in Ukraine constitutes a threat to the "life of the nation" and, as such, is a valid, legitimate aim for any proportionate derogation.[101] No state party to the ICCPR has objected to this basis for Ukraine's notices of derogation. However, the measures banning most men from leaving the state are not absolutely necessary or proportionate and constitute unlawful discrimination.

Calling for mandatory national service is not alone a problem, even imposing some limitations on leaving a state until such service is performed.[102] However,

[96] *See* Gettleman & Pronczuk, *supra* note 86.

[97] *See id.* ("Thousands of Ukrainian men of military age have left the country to avoid participating in the war, according to records from regional law enforcement officials and interviews with people inside and outside Ukraine. Smuggling rings in Moldova, and possibly other European countries, have been doing a brisk business. Some people have paid up to $15,000 for a secret night-time ride out of Ukraine, Moldovan officials said.")

[98] *See Ukraine Cancels Exemption for Male Students Registered with Non-Ukrainian Universities*, *supra* note 85 ("Demchenko says this decision was taken after the discovery that a large number of documents attesting to a Ukrainian's status as attending a university outside the country had been forged.")

[99] *See* Gettleman & Pronczuk, *supra* note 86.

[100] *See* Tarasova-Markina et al., *supra* note 73 ("Some are willing to risk everything trying to escape. The Border Service said that since the start of the full-scale invasion, the bodies of 32 men have been found in the Tysa River on the border with Romania and Hungary.")

[101] ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant …"); Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, at para. 2 ("Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency.")

[102] *See* Peltonen v. Finland, Commc'n No. 492/1992, *supra* note 23, at para. 8.3 ("Thus, States parties to the Covenant, whose laws institute a system of mandatory national service, may impose reasonable restrictions on the rights of individuals, who have not yet performed such service, to leave the country until service is completed, provided that all the conditions laid down in article 12, paragraph 3, are complied with.") (*citing* Comm'n on Hum. Rts., 5th sess., 106th mtg., ICCPR negotiations, *supra* note 24, at 4 (US speaking); Comm'n on Hum. Rts., 6th sess., 115th mtg., ICCPR negotiations, *supra* note 24 at para. 41 (Denmark

a blanket ban on leaving is problematic.[103] Ukraine has imposed such a blanket ban. While it makes limited exceptions for some categories of men, the ban is not directly connected with national service. In fact, as noted above, none of the men who have been prohibited from leaving have been asked to perform any national service. They appear to be held in the state in a quasi-reserve status, should they be needed. This ban is therefore more akin to the blanket ban by Russia that the Committee criticized in 1995 than the limited prohibition on desertion in *Peltonen*. As such, the ban on men leaving constitutes an infringement of the ICCPR.

In addition, the ban does not clearly permit an exception for conscientious objectors.[104] While some have speculated that, if the men were ever called into duty, they might have the option to serve in non-combat positions, these ideas remain entirely speculative and are not codified in any decree.[105] It might be that, should Ukraine ever conscript men generally, it would permit alternatives to military service for conscientious objectors. From the language of the measures and statements by officials, it does not appear that they contemplate non-military service.[106] Some officials have suggested that conscientious objectors might be assigned roles within the military that do not involve the use of violence,[107] though they would still function with the military system of discipline and have the status of combatants (thus remaining potential lawful targets by Russia military forces). And serving in a civilian status in Kyiv is a far cry from serving as a cook or driver on the front lines. Moreover, not only

speaking); Comm'n on Hum. Rts., 6th sess., 151st mtg., ICCPR negotiations, *supra* note 24 at para. 4 (Uruguay speaking); Comm'n on Hum. Rts., 8th sess., 315th mtg, ICCPR negotiations, *supra* note 24 at 12 (US speaking)). *See* Peltonen v. Finland, Commc'n No. 492/1992, *supra* note 23 at para. 8.3 ("Thus, States parties to the Covenant, whose laws institute a system of mandatory national service, may impose reasonable restrictions on the rights of individuals, who have not yet performed such service, to leave the country until service is completed, provided that all the conditions laid down in article 12, paragraph 3, are complied with.") (*citing* Comm'n on Hum. Rts., 5th sess., 106th mtg, ICCPR negotiations, *supra* note 24 at 4 (US speaking); Comm'n on Hum. Rts., 6th sess., 115th mtg, ICCPR negotiations, *supra* note 24 at para. 41 (Denmark speaking); Comm'n on Hum. Rts., 6th sess., 151st mtg, ICCPR negotiations, *supra* note 24 at para. 4 (Uruguay speaking); Comm'n on Hum. Rts., 8th sess., 315th mtg, ICCPR negotiations, supra note 24 at 12 (US speaking)).

[103] *See* Hum. Rts. Comm., *Concluding Observations on Russia*, *supra* note 23, at para. 20 ("the Committee further regrets that all individuals not having yet performance their national service are excluded in principle from enjoying their right to leave the country.")

[104] *See* Tarasova-Markina, et al., *supra* note 73.

[105] *Id.*

[106] *Id.*

[107] *See* Gettleman & Pronczuk, *Ukraine's Draft Dodgers*, *supra* note 86 ("Myroslav Hai, an official with Ukraine's military reserve, conceded, 'There are people who evade mobilization, but their share in comparison with volunteers is not so large.' Other Ukrainian officials said men ideologically or religiously opposed to war could serve in another way, for example as cooks or drivers.").

do the current measures make no exception for conscientious objectors, they also do not make any exception that would permit conscientious objectors to leave the state. It remains to be seen if Ukraine would ever refuse conscientious objector status as a penalty for any man who attempted to leave the state or retaliate against anyone claiming conscientious objector alternative service. But any speculation on the precise role remains an open question. The lack of a reliable conscientious objector option suggests that the blanket ban might further infringe on rights in the ICCPR.

Having established that the blanket ban with limited exceptions infringes the right to leave in the ICCPR, the next question is whether the derogation is necessary and proportionate.[108] There is no doubt that, again, the invasion of the state is an exceptional circumstance,[109] but a blanket ban on men leaving is not completely necessary. It is certainly not the least intrusive measure available.[110] In responding to the petition, Zelenskyy argued that the defense of the state, and the basis for the travel ban, is a "responsibility" and "duty" owed by citizens to the state,[111] which should be treated with skepticism if we follow Manfred

[108] *See* ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, …"); Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, at para. 11 ("To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes, and must be consistent with all other rights recognized in the Covenant"); Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, at paras. 4-5 ("A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation … they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation."); Hum. Rts. Comm., *Concluding Observations on Israel*, *supra* note 39, at para. 11; Batyrova & Batyrov v. Uzbekistan, Commc'n No. 1585/2007, *supra* note 10, at para. 8.3; NOWAK, *supra* note 14, at 274.

[109] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, at para. 11 ("Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted."); *id.* at para. 13 ("In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. art 5, para. 1); the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution."); Hum. Rts. Comm. Gen. Comment No. 29: *States of Emergency*, *supra* note 22 at para. 2 ("Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature.").

[110] *See generally* Council of Europe, *The Right to Leave a Country*, Issue Paper Published by the Council of Europe Commissioner for Human Rights (Dec. 2013), https://rm.coe.int/the-right-to-leave-a-country-issue-paper-published-by-the-council-of-e/16806da510.

[111] *See* New Voice of Ukraine, *Zelenskyy Responds*, *supra* note 71.

Nowak's critical views on characterizing limitations on travel as a "debt" to the state.[112] As already mentioned, no men have been called for military service who were not already in service. There does not appear a lack of volunteers for service.[113] Without an immediate need for the men to serve, the ban on leaving cannot be justified as necessary or proportionate. Having potential value to the state for national security is not sufficient for a travel ban, as the Human Rights Committee concluded in *General Comment 27* regarding holders of state secrets who cannot be prohibited from travel on that basis alone.[114] Even if it could be argued that the ban on leaving was necessary just in case the men were needed, the measure is not limited in scope. While it is only intended to remain in place during the time of martial law and there are limited exceptions for certain categories of men, it is still overly broad.[115] The drafter of the petition to lift the ban, Yulia Bulavina, asked that the ban only apply to those Ukrainian men who were "capable" of fighting and not to men with other skills who could contribute to national service more effectively from abroad.[116] What is critical about her view is that national service in many fields of work can be done from outside of Ukraine and does not necessitate a travel ban.[117] As mentioned above, even this limited request in the petition was rejected by the Ukrainian Government.[118]

Even if the measure was necessary and proportionate, with appropriate exceptions, the travel ban is still not permitted under the ICCPR because it is discriminatory against men. The ICCPR prohibits distinctions in human rights

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[112] *See* NOWAK, *supra* note 14, at 278 ("In general, the argument that the individual owes the state an obligation has been viewed skeptically because, 'As shown by the practice of many States, governments have a keen interest in preventing their working population of certain groups … from leaving the country. It is always possible to come up with some sort of "debt" owed the State …' ").

[113] *See* Tetiana Lozovenko, *Applications to Join Ukraine's New Offensive Guard Pour In*, UKRAINSKA PRAVDA (Feb. 3, 2023), https://www.pravda.com.ua/eng/news/2023/02/3/7387864/.

[114] *See* Hum. Rts. Comm., Gen. Comment No. 27: *Article 12*, *supra* note 10, at para. 16 ("These conditions would not be met, for example, if an individual were prevented from leaving a country merely on the ground that he or she is the holder of 'State secrets', or if an individual were prevented from travelling internally without a specific permit. On the other hand, the conditions could be met by restrictions on access to military zones on national security grounds or limitations on the freedom to settle in areas inhabited by indigenous or minorities communities").

[115] Qiblawi and Alvardo, *Ukrainian Males Aged 18-60 are Banned from Leaving the Country, Zelensky Says in New Declaration*, *supra* note 69.

[116] *See* New Voice of Ukraine, *Zelenskyy Responds*, *supra* note 71 ("The initiator of the document, Yulia Bulavina, said 'capable citizens should fight', and 'IT, social, creative, technical and other specialists can fight on the information front' and, in her opinion, can be more useful abroad.").

[117] *Id*.

[118] *See id*.

between men and women, even during times of emergency.[119] The measures assume that only men are capable of serving in the defense of the state. In recent studies, researchers have noted that gender norms are particularly well entrenched in Ukraine.[120] It is perhaps telling that when Zelenskyy argues that the defense of the state is the "responsibility of the entire Ukrainian people" and a "duty of Ukrainian citizens," he is actually only referring to men.[121] Yet women do serve in the Ukrainian armed forces in significant numbers, demonstrating that they are not only obviously capable of doing so, but that the Ukrainian armed forces already accepts women and makes use of their skills.[122] The application of stereotyped gender norms under cover of martial law is further reinforced by the decision to treat trans women as men, as mentioned

[119] *See* ICCPR, *supra* note 5, at art. 4(1) ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."); Hum. Rts. Comm., Gen. Comment No. 28, *supra* note 50, at para. 7 ("The equal enjoyment of human rights by women must be protected during a state of emergency (art. 4). States parties which take measures derogating from their obligations under the Covenant in time of public emergency, as provided in article 4, should provide information to the Committee with respect to the impact on the situation of women of such measures and should demonstrate that they are non-discriminatory."); Hum. Rts. Comm., Gen. Comment No. 29: *States of Emergency*, *supra* note 22, at para. 8 ("According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. … In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.").

[120] *See* Kelly Ashton, *Men in Ukraine Hold Fast to Gender Norms, Landmark Study Finds*. U.N. POPULATION FUND (Sep. 13, 2018), https://www.unfpa.org/news/men-ukraine-hold-fast-gender-norms-landmark-study-finds ("Roughly 82 per cent say that women, too, should adhere to traditional gender roles, like cooking, cleaning and caring for children.")

[121] *See Zelenskyy Responds*, *supra,* note 71. *See also* Tarasova-Markina, et al., *supra,* note 73 (using the expression "everyone," yet only referring to men).

[122] *See* Jennifer Mathers & Anna Kvit, *Ukraine War: Attitudes to Women in the Military are Changing as Thousands Serve on Front Lines*, THE CONVERSATION (Jan. 31, 2023) https://theconversation.com/ukraine-war-attitudes-to-women-in-the-military-are-changing-as-thousands-serve-on-front-lines-198195 ("Women have served in Ukraine's armed forces since the country declared its independence from the Soviet Union in 1991, but were mainly in supporting roles until the beginning of the war in 2014. They started serving in combat roles in 2016 and all military roles were opened to women in 2022. … According to Ukraine's deputy minister of defence, Hanna Maliar, by the summer of 2022 more than 50,000 women were employed by the armed forces in some capacity, with approximately 38,000 serving in uniform. Women are now with units on the front lines. Women in the armed forces are being taken as prisoners-of-war by the Russians.")

above.[123] It is true that other states discriminate between men and women for mandatory military service,[124] and while this practice is dubious in light of the general prohibition on discrimination under the ICCPR, these classifications alone do not necessarily implicate the right to leave. A state might very well permit men and women, with differing national service obligations, to travel freely. However, when a state uses its national service obligation to restrict people's right to leave, even during times of national emergency, the ICCPR demands that the restriction on leaving not discriminate between men and women.[125] And even if we agreed that discrimination against men for national service was not prohibited discrimination, the discriminatory measures against men are not necessary or proportionate, given that women can and do serve in the defense of the state.[126]

V. ENFORCEMENT OF THE RIGHT TO LEAVE

Enforcement of ICCPR protections is often problematic, but there are some strong options in this case. Ukraine is party to the ICCPR Optional Protocol, so men who are currently prohibited from travel from Ukraine could file individual complaints before the Human Rights Committee.[127] In addition, other state parties could intervene with Ukraine politically to encourage its compliance or even lodge inter-state complaints before the Committee.

In particular, the EU is especially well-positioned to press for compliance. Ukraine is currently on track for EU membership.[128] It submitted an

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[123] *See* Tondo, *Ukraine Urged to Take 'Humane' Approach as Men Try to Flee War*, *supra* note 7.

[124] *See e.g.*, Iana Fremer, *Georgia: New Defense Code Establishes System of Mandatory Military Service,* L. LIBR. CONG, (December 29, 2023) https://www.loc.gov/item/global-legal-monitor/2023-12-28/georgia-new-defense-code-establishes-system-of-mandatory-military-service/ (reporting on Law No. 3500-XIIIMS-XMP on the Defense Code (October 12, 2023) (Georgia) which abolished the prior voluntary system was arguably based on the "on the Finnish and Baltic countries models.") Note that the law applies only to men, *see* art. 55 (exempting all women who do not volunteer for service or military specialty training), and provides several social benefits during the term of service, again, only to men, *see* art. 73. There are a few exemptions for certain categories of men, *see* art. 64, such as for men who are the only sons of families where at least one member died in a Georgian armed military conflict.

[125] *See* Council of Europe, *The Right to Leave a Country*, *supra* note 110.

[126] *See In the Ukraine War, Women Are on the Front Lines and Leading Recovery,* U.N. WOMEN (Oct. 21, 2024), https://www.unwomen.org/en/news-stories/feature-story/2024/10/in-the-ukraine-war-women-are-on-the-front-lines-and-leading-recovery#_ftnref1.

[127] *See* ICCPR Optional Protocol, *supra* note 56, at art. 1.

[128] *See* Worster, *supra* note 93, at 446–47.

application[129] and received positive support.[130] Both the European Parliament[131] and the EU Council have agreed to officially open negotiations over membership.[132] Negotiations could take years, though no time limit is mandated, and admission could be very quick.[133] There are many critical issues, such as the application of Article 42 of the Treaty on European Union requiring mutual military defense, that could drag the EU into armed conflict with Russia.[134] However, in addition to many other issues, one of the central criteria for EU membership is compliance with human rights, the so-called "Copenhagen Criteria."[135] The ICCPR is certainly a relevant source of human rights

[129] *See* Andrii Sybiha, @andrii_sybiha, X [TWITTER] (Feb. 28, 2022, 5:10 PM), https://twitter.com/andrii_sybiha/status/1498329873751986176 (Deputy Head of the Ukrainian President's Office).

[130] *See EU Chief Offers Kyiv Fast Track to Bloc Membership*, DEUTSCHE WELLE (Apr. 8, 2022), https://www.dw.com/en/ukraine-eu-chief-offers-kyiv-fast-track-to-membership/a-61409635; Meabh Mc Mahon, *Ukraine Is One of Us and We Want Them in EU, Ursula Von Der Leyen Tells Euronews*, EURONEWS (May 19, 2022), https://www.euronews.com/2022/02/27/ukraine-is-one-of-us-and-we-want-them-in-eu-ursula-von-der-leyen-tells-euronews.

[131] *See* Jon Stone, *European Parliament Says Ukraine Should be Made Official Candidate for EU Membership*, INDEP. (Feb. 28, 2022), https://www.independent.co.uk/news/world/europe/ukraine-join-eu-parliament-war-b2025174.html.

[132] *See* Jessica Parker & Paul Kirby, *EU to Open Membership Talks with Ukraine and Moldova*, BBC (Dec. 14, 2023), https://www.bbc.com/news/world-europe-67722252 ("European leaders have decided to open EU membership talks with Ukraine and Moldova and to grant candidate status to Georgia. . . . Hungary has long opposed talks starting with Kyiv, but did not veto the move. . . . 26 leaders went ahead with the vote."); Angela Charlton, *Ukraine's a Step Closer to Joining the EU. Here's What it Means, and Why it Matters*, AP NEWS (Dec. 15, 2023), https://apnews.com/article/european-union-ukraine-membership-questions-45b7f723761f5e5fa7a49d7302033469.

[133] *See generally* Kochenov & Janse, *Admitting Ukraine to the EU: Article 49 TEU Is the Special Procedure*, EU L. LIVE (Mar. 30, 2022), https://eulawlive.com/op-ed-admitting-ukraine-to-the-eu-article-49-teu-is-the-special-procedure-by-dimitry-kochenov-and-ronald-janse/.

[134] *See* Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, art. 42(7), 2012 O.J. (C 326) 39 ("If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter . . . cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States which are members of it, remains the foundation of their collective defense and the forum for its implementation."). *See also* Worster, *supra* note 93, at 448–49.

[135] *See* European Union Council, Presidency Conclusions, Copenhagen, 21-22 June 1993, SN 180/1/93 REV 1 13-14 (1993) ("Membership [of the European Union] requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. . . ."); European Union, *Conditions for Membership*, EUR. UNION, https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership_en (last visited Feb. 21, 2025).

obligations.[136] The EU Council would be wise to ask Ukraine about its compliance with the ICCPR and norms on discrimination between men and women, in determining its qualification under the Copenhagen Criteria.

VI. CONCLUSION

Ukraine must modify the ban on men leaving the state. Certainly, nationals currently serving in the military can be called for service and prohibited from leaving during their service. The state could also call for volunteers from those either in the state or already abroad, and, while in service, prohibit them from leaving. In addition, the ICCPR appears to permit a state to institute a draft mechanism and even conscript nationals to serve, provided they tailor the conscription to identify those who are capable of serving and accommodate those who are conscientious objectors. Again, while these conscripts are in service, they also cannot leave the state. Of course, such prohibitions on leaving, even where justified, could not discriminate. However, Ukraine's general ban prohibiting most men from leaving the state, on the basis of gender, during the period of martial law, violates the International Covenant on Civil and Political Rights.

[136] Note that EU membership also requires compliance with the binding EU Charter on Fundamental Rights. See Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art 6(1), Dec. 13, 2007, 2007 O.J. (C 306) 13. While the Charter does not contain any general right to leave any state comparable to the right in the ICCPR, it does provide for a right of EU citizens to leave any EU member state and enter any other EU member state, see Charter of Fundamental Rights of the European Union, art 45(1), Dec. 7, 2000, 2012 O.J. (C 326) 404, ("Every citizen of the Union has the right to move and reside freely within the territory of the Member States."). Thus, should Ukraine join the EU, its exit ban would also violate Charter, and thus be subject to legal enforcement, insofar as it prohibits the new male EU citizens of Ukraine from leaving Ukraine to enter any other EU member state.