

## **Policy paper**

# **Recommendations to the Public Authorities of the Czech Republic Regarding Crimes Against Humanity and the Uyghur Genocide in the People's Republic of China**

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## I. Introduction

The Uyghurs represent a Turkic ethnic group, predominantly practicing Islam, residing primarily in the Xinjiang Uyghur Autonomous Region as part of the People's Republic of China (*hereinafter referred to as 'PRC'*). The current relationship between the Uyghur minority and the PRC is characterized by systematic violations of human rights by the PRC, reaching a level of intensity that led observers to raise concerns of ongoing crimes against humanity and arguable genocide. Since 2017, there has been extensive and systematic detention of Uyghurs, their transfer to reeducation camps and, more recently, imprisonment.<sup>1</sup> The evidence<sup>2</sup> presented suggests that in these camps located throughout the Xinjiang region, members of the Uyghur minority and other communities are being held and restricted in their personal freedoms, while being subjected to inhumane acts such as torture, rape, forced sterilization, persecution, and others. These acts are accompanied by violent cultural indoctrination while suppressing Uyghur cultural and religious identity.<sup>3</sup>

Treatment of Uyghurs and other communities<sup>4</sup> in the PRC was assessed throughout 2021 by an independent people's tribunal (*hereinafter referred to as the "Uyghur Tribunal"*), whose purpose was to examine evidence of human rights violations by the PRC against Uyghurs, particularly through the lens of the prohibition of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide of December 8, 1948.<sup>5</sup> In its verdict on December 9, 2021, the Uyghur Tribunal concluded that the PRC had committed genocide against Uyghurs through birth control measures and sterilization. Furthermore, the tribunal found evidence of torture and crimes against humanity, including deportation or forcible transfer, imprisonment or severe deprivation of physical liberty, rape and other forms of

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<sup>1</sup> WU, Huizhong a Dake KANG. Uyghur county in China has highest prison rate in the world. *The Associated Press* [online]. 2022 [cit. 2023-10-15]. Dostupné z: <https://apnews.com/article/china-terrorism-c90fcc319775278d91da70e8bbe7c226>

<sup>2</sup> Uyghur Tribunal Judgement [online]. 9th December 2021 [cit. 2023-5-11]. Available from: <https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>, specifically section 33-64.

<sup>3</sup> XIUZHONG XU, Vicky, Danielle CAVE, Dr James LEIBOLD, Kelsey MUNRO a Nathan RUSER. Uyghurs for sale. *Australian Strategic Policy Institute* [online]. 2020, 1. 3. 2020 [cit. 2022-11-20]. Available from: <https://www.aspi.org.au/report/uyghurs-sale#:~:text=Executive%20summary,led%20program%20of%20cultural%20genocide>

<sup>4</sup> The 're-education' policy of the Chinese government primarily targets the Uyghurs but they are not the only endangered minority. Among other Turkic speaking Muslim minorities are the Kazakhs, Uzbeks, Tartars, Tajiks, Kyrgyz and Hui.

<sup>5</sup> People's tribunals are legally informal non-governmental bodies established by citizens of a particular state with the purpose of examining a specific issue from a (international) legal perspective. In the field of public international law, they play an invaluable role, particularly in cases where the institutional and procedural framework of international law does not allow for the assessment of, especially, international crimes. The legitimacy of their decisions is based on the independent status and expertise of the tribunal members. The Uyghur Tribunal was established in September 2020, with Sir Geoffrey Nice, a prominent figure in international criminal law, serving as its chairman. For more information about the functioning and composition of the tribunal, please visit: <https://uyghurtribunal.com>.

sexual violence, forced sterilization, persecution, enforced disappearance, and other inhumane acts.<sup>6</sup>

The international community is gradually obtaining increasing evidence of human rights violations against Uyghurs and other communities. The evidentiary material gathered by the Uyghur Tribunal<sup>7</sup> has been further supported by findings from the United Nations High Commissioner for Human Rights<sup>8</sup>, which, through testimonies, provide proof of various forms of torture or ill-treatment. The Office has also obtained direct testimonies from several women regarding the forced insertion of intrauterine devices and coerced sterilizations. Testimonies also recount instances of sexual violence, forced medication, harsh punishments, and hours of enforced singing of patriotic songs. Various non-governmental and governmental organizations, such as the Australian Strategic Policy Institute (ASPI) and its Xinjiang Data Project<sup>9</sup> or the Xinjiang Victims Database<sup>10</sup>, are also involved in gathering evidence. They collect information about missing Uyghurs and members of other communities. It is worth noting that material known as the Xinjiang Police Files<sup>11,12</sup> has leaked from Chinese police systems. These files contain documentation of reeducation in "training centers". Photos show police officers with batons, crowds undergoing reeducation, and women in tears. The documents also mention reasons for detention, such as a ten-year sentence for the mother of a man who exhibited apparent signs of the Muslim faith in the files because he did not drink or smoke. The youngest imprisoned girl was 14 years old.

The evidence suggests that the Uyghur minority in the PRC is facing genocide and crimes against humanity, which constitute extensive and systematic violations of human rights. It is evident that the international community and individual states bear a moral and political responsibility to take effective political and legal measures to halt the violations of human rights against Uyghurs and other communities by the PRC. Although some initial steps have been taken in this regard, the current response from the international community is not sufficiently effective.

To strengthen the response from the Czech Republic, or rather the international community, this policy paper was created. It was authored by students of the Faculty of Law, Charles

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<sup>6</sup> Uyghur Tribunal Judgement [online]. 9th December 2021 [cited 2023-5-11]. Available from: <https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>, specifically section 180 and onwards.

<sup>7</sup> Uyghur Tribunal. Evidence [online]. [cited 2023-5-11]. Available from: <https://uyghurtribunal.com/statements>.

<sup>8</sup> Office of the United Nations High Commissioner. OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China [online]. 31 August 2022 [cited 2023-5-11]. Available from: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.

<sup>9</sup> The Xinjiang Data Project. *Australian Strategic Policy Institute* [online]. September 2023 [cited 2023-5-11]. Available from: <https://xjdp.aspi.org.au/>.

<sup>10</sup> Xinjiang Victims Database [online]. [cited 2023-5-11]. Available from: <https://shahit.biz/eng/>.

<sup>11</sup> Xinjiang Police Files [online]. [cited 2023-5-11]. Available from: <https://www.xinjiangpolicefiles.org/>.

<sup>12</sup> JIROUŠ, Filip. Tajné dokumenty dokládají podíl Si Ťin-pchinga na ujugurské genocidě. Online.

SINOPSIS. Available from:

<https://sinopsis.cz/tajne-dokumenty-dokladaji-podil-si-tin-pchinga-na-ujgurske-genocide/>. [cit. 2023-11-22].

University, who, as part of the course on Protection of Civil and Human Rights in the winter semester of 2022/2023, developed a series of recommendations for the authorities of the Czech Republic to enhance the protection of the human rights of Uyghurs. They build upon a series of lectures in the previous semester, featuring speakers such as Sir Geoffrey Nice, Chairman of the Uyghur Tribunal, Aldo Zamit Borda, an expert in international criminal justice, and Gulbahar Haitiwaji and Kalbinur Sidik, survivors of detention in Chinese concentration camps.

The authors<sup>13</sup> believe that the Czech Republic, as a state founded by its citizens "*as part of the family of European and global democracies*"<sup>14</sup> and one that "*embraces universally shared values of humanity*"<sup>15</sup> and is aware of its "*shared responsibility towards future generations for the fate of all life on Earth*"<sup>16</sup> has a unique opportunity to uphold these principles in addressing the suppression of Uyghur human rights. The presented policy paper aims to contribute to this purpose. The presented policy paper aims to contribute to this purpose, i.e., it is not only intended to draw attention to the suffering of Uyghurs in the PRC but also provides clear and persuasive recommendations to the public authorities of the Czech Republic. This includes the specific delineation of a legal framework for their implementation, or, where applicable, within formulations of recommendations *de lege ferenda*.

## **II. Recommendations to the Public Authorities of the Czech Republic**

In the following paragraphs, we formulate a system of recommendations to the public authorities of the Czech Republic, whose utilization the authors of this text consider suitable means to exert pressure on the PRC towards promoting the protection of human rights for the Uyghur minority. The structure of the recommendations primarily follows political instruments, which aim not only to provide a clear value-based delineation regarding the current situation but also to send a distinct political signal that the Czech Republic, as well as other EU states, regard the issue of protecting the human rights of Uyghurs and other communities as a key aspect of their relationship with the PRC. In the second segment, we propose a series of recommendations of an economic nature, capable of exerting material pressure on the Chinese political regime. In the third segment, we present potential legal

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<sup>13</sup> Although several students contributed to the original wording of the policy paper, the final version was prepared by the authors themselves.

<sup>14</sup> Constitutional Act No. 1/1993 Coll., in the wording of subsequent regulations, the Constitution of the Czech Republic. In Collection of Laws of the Czech Republic. 1993, Part 1, page 5 [cited 2023-5-11]. Available from: [https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=1/1993&typeLaw=zakon&what=Cislo\\_zakona\\_sm\\_louvy](https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=1/1993&typeLaw=zakon&what=Cislo_zakona_sm_louvy)

<sup>15</sup> Resolution No. 2/1993 Coll., of the Presidency of the Czech National Council on the Declaration of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, in the wording of subsequent regulations, the Charter of Fundamental Rights and Freedoms. In Collection of Laws of the Czech Republic. 1993, Part 1, page 17 [cited 2023-5-11]. Available from: [https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=1/1993&typeLaw=zakon&what=Cislo\\_zakona\\_sm\\_louvy](https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=1/1993&typeLaw=zakon&what=Cislo_zakona_sm_louvy)

<sup>16</sup> Ibidem.

mechanisms to hold accountable those responsible for the violations of the human rights of Uyghurs.

## **a) Political Instruments**

### **Recommendation No. 1: Condemnation of the violation of Uyghur human rights through resolutions of the chambers of the Parliament of the Czech Republic.**

We propose that the Chamber of Deputies and the Senate of the Parliament of the Czech Republic adopt a resolution condemning the violation of human rights of Uyghurs and other communities by the PRC.

#### **Justification and legal framework:**

In 2021, the Foreign Affairs Committee of the Chamber of Deputies adopted a resolution regarding the Uyghur minority.<sup>17;18</sup> In this resolution, it declared that "the foreign policy of the Czech Republic respects democracy and human rights, and the violation of these fundamental values by the PRC must be unequivocally condemned." It defined its stance against the inhumane treatment of Uyghurs and other communities and expressed concern over testimonies of inhumane treatment of the local population. In conclusion, the committee requested the government to express a clear and principled position on the gross violation of human rights in Xinjiang, which it has failed to do.

In the same year, the Senate adopted a resolution<sup>19</sup> on the future Olympic Games in the PRC, stating that there are, among other things, violations of human rights and freedoms, genocide, and crimes against humanity, particularly in the regions of Tibet and Xinjiang.<sup>20</sup>

We believe that it is necessary for the Chambers of the Parliament of the Czech Republic to adopt a resolution in accordance with Article 39 (2) of the Constitution<sup>21</sup>, in which: I. they unequivocally condemn the violation of human rights of Uyghurs and other communities by

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<sup>17</sup> Resolution of the Foreign Affairs Committee of the Parliament of the Czech Republic from the 53rd session on March 18, 2022, No. 170 on the information on the status of the Uyghur ethnic group in the People's Republic of China. In the Joint Czech-Slovak Digital Parliamentary Library. 2021 [cited 2023-5-11]. Available from: <https://www.psp.cz/sqw/text/orig2.sqw?idd=186858&pdf=1>

<sup>18</sup> Jednání zahraničního výboru Poslanecké sněmovny Parlamentu ČR o genocidě Ujgurů. *Sinopsis* [online]. 2021 [cit. 2023-10-15]. Dostupné z: <https://sinopsis.cz/jednani-zahranicniho-vyboru-poslanecke-snemovny-parlamentu-cr-o-genocide-ujguru/>

<sup>19</sup> Resolution of the Senate from the 12th session on June 10, 2021, No. 228 on the 2022 Olympic Games in the People's Republic of China and the commitments of the host country. [cited 2023-5-11]. Available from: <https://www.senat.cz/xqw/webdav/pssenat/original/99874/83842>

<sup>20</sup> KLIMEŠ, Ondřej. Peking 2008 a 2022 – olympijské hry bez olympismu. *Sinopsis* [online]. 2021 [cit. 2023-10-15]. Dostupné z: <https://sinopsis.cz/klimes-olympiada/>

<sup>21</sup> Comparison of § 70 of Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, as amended, and § 70 of Act No. 107/1999 Coll., on the Rules of Procedure of the Senate, as amended.

the PRC, II. they call on the responsible Chinese authorities to promptly remedy the situation and hold individuals and collectives accountable for the committed acts, and III. they recommend that the government and other constitutional bodies take relevant steps to improve the protection of human rights of Uyghurs and other communities. The adoption of such a resolution will express the value orientation of the foreign policy of the Czech Republic and send a clear political signal not only to the Chinese authorities but also to the Uyghurs themselves, who may feel overlooked or forgotten by the international community.

We perceive this proposed step as a continuation of the political course expressed by the Senate and the Foreign Affairs Committee of the Chamber of Deputies through the aforementioned resolutions. However, it seems appropriate to "update" the will of the plenary sessions of both chambers, as there have been personnel changes not only in the chambers but also with the formation of a new government, which in its policy statement, among other things, aimed to revise relations with the People's Republic of China.<sup>22</sup>

## **Recommendation No. 2: Investigation of the human rights situation of Uyghurs in the PRC through the instruments of the United Nations Human Rights Council (UNHRC) and the incorporation of the findings into a UNHRC resolution.**

We urge the Czech Republic to initiate an investigation into the human rights situation of Uyghurs in the PRC through the United Nations Human Rights Council and, based on the findings, propose further steps within its competence.

### **Justification and legal framework:**

In the context of its historically first presidency of the United Nations Human Rights Council<sup>23</sup>, which will last until the end of 2023, the Czech Republic has the opportunity to draw attention to human rights violations in the PRC on a global level. It would be appropriate for the Czech Republic to initiate the use of some of the Council's instruments.<sup>24</sup>

In the past, there have been efforts to initiate a debate within the Council regarding the situation in Xinjiang and the possible genocide<sup>25</sup>, but unfortunately, these efforts were

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<sup>22</sup>Government's policy statement, [online]. [cit. 2023-11-22]. Available from:

[https://www.vlada.cz/cz/programove-prohlaseni-vlady-193547/#zahranicni\\_politika](https://www.vlada.cz/cz/programove-prohlaseni-vlady-193547/#zahranicni_politika)

<sup>23</sup> The United Nations Human Rights Council oversees the respect for human rights worldwide. It conducts regular Universal Periodic Reviews in all member states and, in addition, can establish special procedures for specific themes or countries.

<sup>24</sup> Membership of the Human Rights Council for the 17th cycle, 1 January - 31 December 2023. United Nations Human Rights Council. [online]. 2023 [cit. 2023-5-11]. Available at: <https://www.ohchr.org/en/hr-bodies/hrc/current-members>

<sup>25</sup> The resolution A/HRC/51/L.6 of the United Nations Human Rights Council dated 28 September 2022 is available at the following link: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/51/L.6](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/51/L.6)



rejected<sup>26</sup> by a majority vote in October 2022. However, the Council still has the possibility to convene a special session to decide on the establishment of an independent international investigative mission.<sup>27</sup> The convening of a special session requires the support of at least 16 states, which is highly likely<sup>28</sup> given the current composition of the Council. The independent international mission would build upon the findings outlined in the non-binding report of the UN High Commissioner for Human Rights, Michelle Bachelet<sup>29</sup>, in 2022, which among other things stated that there is arbitrary and discriminatory detention of Uyghurs and other predominantly Muslim groups in the PRC.

Therefore, the Council should mandate the investigative mission to examine human rights violations, gather, consolidate, and analyze evidence, and preserve it. The investigative mission would then present the Council with up-to-date information and a comprehensive written report on its findings. Special attention should be given to whether the elements of crimes against humanity, as indicated by the report of the UN High Commissioner for Human Rights, are fulfilled.

Depending on the results of the investigation, the Council should adopt a resolution urging the Chinese government to address the identified abuses, particularly regarding human rights violations, based on the collected data.

### **Recommendation 3: Propose the adoption of a UN General Assembly resolution to suspend the PRC's membership of the UN Human Rights Council**

We request that the Czech Republic propose that the UN General Assembly adopt a resolution to suspend the PRC's membership of the UN Human Rights Council.

#### **Justification and legal framework:**

The Czech Republic, which currently holds the presidency of the Council, may submit a draft resolution to the General Assembly to suspend the PRC's membership of the Council. According to General Assembly resolution 60/251(8) of 2006, membership of the Council

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<sup>26</sup> FARGE, Emma. U.N. body rejects debate on China's treatment of Uyghur Muslims in blow to West. *Reuters* [online]. October 7, 2022 [cit. 2023-5-17] Available at: <https://www.reuters.com/world/china/un-body-rejects-historic-debate-chinas-human-rights-record-2022-10-06/>

<sup>27</sup> Special Procedures of the Human Rights Council. *United Nations High Commissioner for Human Rights* [online]. [cit. 2023-10-15]. Available from: <https://www.ohchr.org/en/special-procedures-human-rights-council/special-procedures-human-rights-council>

<sup>28</sup> Currently, there are 14 states in the United Nations Human Rights Council, which also voted on initiating a debate on the Uyghurs and other communities in October 2022. It should be noted that the overall composition has changed, and therefore, there should be two additional states among the members who would support the establishment of an investigative mission.

<sup>29</sup> Office of the United Nations High Commissioner. *OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China* [online]. 31 August 2022 [cit. 2023-5-11]. Available from: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>

may be suspended from a State that "*grossly and systematically violates human rights.*"<sup>30</sup> In order for membership to be suspended, two-thirds of the members of the UN General Assembly present must vote in favour of the proposal.

In order to convince the voting states of human rights violations against the Uyghurs and other minorities, the Czech Republic can use not only the above-mentioned decision of the Uyghur Tribunal<sup>31</sup>, but also the reports and analyses of the organisations mentioned in the introduction, which have been working for a long time to address the possible genocide of the Uyghurs and other communities. Last but not least, the Czech Republic could also rely on the report of the Office of the UN High Commissioner for Human Rights. The report mentions ill-treatment, torture and sexual abuse in the camps.<sup>32</sup> Although there is still controversy in legal terminology as to whether or not this treatment can be described with certainty as crimes against humanity, the extent of the interference with human rights can nevertheless be described as extreme. The findings of the fact-finding mission could help fulfill the conditions set out in the General Assembly resolution.

Moreover, some UN member states have already warned of possible genocide or crimes against humanity against the Uyghur minority and other communities. These include, in addition to the Senate of the Parliament of the Czech Republic, the legislatures of Canada<sup>33</sup>, Taiwan<sup>34</sup>, the Netherlands<sup>35</sup>, Great Britain<sup>36</sup>, Lithuania<sup>37</sup>, Belgium<sup>38</sup>, the USA<sup>39</sup>, Italy<sup>40</sup> and

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<sup>30</sup> General Assembly of United Nations. Resolution A/RES/60/251, 3 April 2006 [cit. 2023-5-11]. Available from: [https://www2.ohchr.org/english/bodies/hrcouncil/docs/a\\_res.60.251\\_en.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/a_res.60.251_en.pdf)

<sup>31</sup> Uyghur Tribunal Judgement [online]. 9th December 2021 [cit. 2023-5-11]. Available from: <https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>

<sup>32</sup> Office of the United Nations High Commissioner. *OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China* [online]. 31 August 2022 [cit. 2023-5-11]. Available from: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>

<sup>33</sup> Parliament of Canada, House of commons. Vote No. 56, 43rd Parliament, 2nd session [cit. 2023-5-11]. Available from: <https://www.ourcommons.ca/members/en/votes/43/2/56>

<sup>34</sup> Taiwanese Parliament Passes Genocide Resolution. *Asia Freedom Institute* [online]. January 2, 2023 [cit. 2023-5-11]. Available from: <https://asiafreedominstitute.org/news/4791/>

<sup>35</sup> Dutch parliament: China's treatment of Uyghurs is genocide. *Reuters* [online]. February 25, 2021 [cit. 2023-5-11]. Available from: <https://www.reuters.com/article/us-netherlands-china-uyghurs-idUSKBN2AP2CI>

<sup>36</sup> Uyghurs: MPs state genocide is taking place in China. *BBC News* [online]. 23 April 2021 [cit. 2023-5-11]. Available from: <https://www.bbc.com/news/uk-politics-56843368>

<sup>37</sup> Lithuanian parliament passes resolution condemning 'Uyghur genocide' in China. *Lithuanian National Television and Radio* [online]. 2021-05-20 [cit. 2023-5-11]. Available from: <https://www.lrt.lt/en/news-in-english/19/1413940/lithuanian-parliament-passes-resolution-condemning-uyghur-genocide-in-china>

<sup>38</sup> Belgian Parliament declares Uyghurs at risk of Genocide. *Inter Parliamentary Alliance on China* [online]. 15 June 2021 [cit. 2023-5-11]. Available from: <https://ipac.global/belgian-parliament-declares-uyghurs-at-risk-of-genocide/>

<sup>39</sup> POMPEO, Michael R. Determination of the Secretary of State on Atrocities in Xinjiang. *US Department of State* [online]. January 19, 2021 [cit. 2023-5-11]. Available from: <https://2017-2021-translations.state.gov/2021/01/19/determination-of-the-secretary-of-state-on-atrocities-in-xinjiang/>

<sup>40</sup> RESPINTI, Marco. Italian Parliament Condemns CCP's Crimes Against Uyghurs. *Bitter Winter* [online]. 2021-05-27 [cit. 2023-5-11]. Available from: <https://bitterwinter.org/italian-parliament-condemns-ccps-crimes-against-uyghurs/>



others.<sup>41</sup> In addition, in October 2022, a total of 50 states issued a joint statement at the United Nations expressing concern about the human rights situation of the Uyghur and other communities in Xinjiang.<sup>42</sup> Thus, more than a quarter of the states represented in the UN General Assembly have been critical of this issue in the past. The prerequisite for sufficient support to ensure the suspension of PRC's membership in the UN Human Rights Council is thus already quite noticeable at this point in the UN General Assembly.

## **b) Economic Tools**

### **Recommendation No. 4: Revision of Strategic Economic Cooperation Projects**

We urge the Czech Republic to entirely and formally discontinue its its participation in strategic economic projects such as the 14+1 Initiative<sup>43</sup>, the Belt and Road Initiative<sup>44</sup>, and other activities carried out under the strategic partnership between the Czech Republic and the PRC.<sup>45</sup>

#### **Justification and Legal Framework:**

The involvement of the Czech Republic in strategic economic projects legitimizes the communist regime in the PRC, indirectly supporting the violation of the human rights of Uyghurs and other communities. It is therefore appropriate for the Czech Republic to completely end its participation in strategic economic projects and reflect this in the upcoming revision of Czech-Chinese relations by the Ministry of Foreign Affairs (*hereinafter referred to as 'MFA'*). Other countries, such as Estonia and Latvia<sup>46</sup>, have recently withdrawn from strategic economic cooperation with the PRC, formerly known as 16+1. The Foreign

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<sup>41</sup> International Responses to the Uyghur Crisis. *Uyghur Human Rights Project* [online]. [cit. 2023-5-11]. Available from: <https://uhrp.org/responses/>

<sup>42</sup> United States Mission to the United Nations. Joint Statement on Behalf of 50 countries in UN General Assembly Third Committee on the Human Rights Situation in Xinjiang, China [online]. October 31, 2022 [cit. 2023-5-11]. Available from: <https://usun.usmission.gov/joint-statement-on-behalf-of-50-countries-in-the-un-general-assembly-third-committee-on-the-human-rights-situation-in-xinjiang-china/>

<sup>43</sup> 16+1. Embassy of the Czech Republic in Beijing [online]. [Accessed on November 18, 2022]. Available from: [https://www.mzv.cz/beijing/en/politics/mutual\\_relations/x16\\_1/index.html](https://www.mzv.cz/beijing/en/politics/mutual_relations/x16_1/index.html).

<sup>44</sup> Belt and Road Initiative. Embassy of the Czech Republic in Beijing [online]. [Accessed on November 18, 2022]. Available from: [https://www.mzv.cz/beijing/en/political\\_affairs/bilateral\\_relations/belt\\_and\\_road\\_cooperation/index.html](https://www.mzv.cz/beijing/en/political_affairs/bilateral_relations/belt_and_road_cooperation/index.html)

<sup>45</sup> Joint Statement on the Establishment of Strategic Partnership between the Czech Republic and the People's Republic of China dated March 29, 2016 [online]. [Accessed on April 29, 2023]. Available from: <http://www.zemanmilos.cz/cz/tiskova-sdeleni/spolecne-prohlaseni-o-navazani-strategickeho-partnerstvi-mezi-ce-skou-republikou-a-cinskou-lidovou-republikou-544509.htm>

<sup>46</sup> KUNDRA, Ondřej. Latvia and Estonia are Leaving the Group where Eastern Europe Negotiated with China. Czech Republic Agrees with Them, but Still Awaits Departure. *Respekt* [online]. 2022-08-12 [cited 2023-5-11]. Available from: <https://www.respekt.cz/agenda/lotyvsko-a-estonsko-opousti-skupinu-kde-vychodni-evropa-jednala-s-cinou-cesk-o-s-nimi-souhlasile-s-odchodem-jeste-vyckava>.

Affairs Committee of the Chamber of Deputies<sup>47</sup> also called on the government to reconsider the Czech Republic's participation in strategic economic projects and exit from the 14+1 platform before Estonia and Latvia's departure in May 2022.

The proposed course of action is supported by purely economic arguments as well, as it has become evident over time that the economic cooperation has been unsuccessful in meeting the expectations promised to the Czech Republic upon the establishment of the Joint Statement on the establishment of a strategic partnership between the Czech Republic and the PRC in Prague, on March 29th, 2016.<sup>48</sup> This primarily aimed to enhance economic exchange and modernization and development of the Czech industry. The established Czech-Chinese Chamber of Mutual Cooperation is now perceived as inefficient, and there has been no significant economic gain for the Czech Republic from participating in strategic economic projects. The expected investments in the Czech economy were not fulfilled, and the trade deficit with the PRC has been deepening each year.<sup>49</sup>

We consider this step necessary not only in consideration of its economic and security aspects but also due to the urgent situation of Uyghurs and other communities in the PRC. Therefore, we recommend that the reassessment of economic cooperation be diplomatically framed as a signal to the Chinese regime that its treatment of Uyghurs and other communities is entirely unacceptable and in violation of numerous fundamental international human rights commitments.

### **Recommendation No. 5: Enforcing an effective system banning the export of military equipment to the PRC**

We propose that the authorities of the Czech Republic effectively enforce the arms embargo on the PRC, issued by the European Council in 1989, and take legislative and implementation measures to maximize the restriction of military equipment exports to the PRC.

#### **Justification and legal framework:**

Given the specificity of the issue, it is appropriate to begin by stating that military equipment as such is defined in s. 5 of Act No. 38/1994 Coll., on Foreign Trade in Military Equipment, and further specified in implementing Decree No. 210/2012. In the mentioned decree, individual lists of military equipment (*hereinafter referred to as 'ME'*) are elaborated,

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<sup>47</sup> Resolution of the Foreign Affairs Committee No. 38 from the 9th session on May 19, 2022, regarding the update on the status of the 16+1 platform [cited on February 21, 2023]. Available from: <https://www.psp.cz/sqw/text/text2.sqw?idd=212306>.

<sup>48</sup> Joint Statement on the Establishment of Strategic Partnership between the Czech Republic and the People's Republic of China dated March 29, 2016 [online]. [Accessed on April 29, 2023]. Available from: <http://www.zemanmilos.cz/cz/tiskova-sdeleni/spolecne-prohlaseni-o-navazani-strategickeho-partnerstvi-mezi-ceskou-republikou-a-cinskou-lidovou-republikou-544509.htm>

<sup>49</sup> 14+1. Sinopsis [online]. 2021-02-19 (current. 2022-01-11) [cited 2023-5-11]. Available from: <https://sinopsis.cz/sinopis/16-1/>.

including various types of weapons, whose definitions are adopted from s. 2 (1) of Act No. 119/2002 Coll., the Weapons Act, in conjunction with Annex 1, Part 1, to this Act.

The Czech Republic repeatedly declares in the annual reports of the Ministry of Industry and Trade (*hereinafter referred to as 'MIT'*) that it complies not only with the non-binding declaration of the European Council on the arms embargo on imports of weapons to the PRC<sup>50</sup> but also that "[...] it respects all arms embargoes declared by the UN, EU, and the Organization for Security and Co-operation in Europe (OSCE)"<sup>51;52</sup>.

In 2014, it ratified the Arms Trade Treaty<sup>53</sup> and also adheres to the Common Position of the Council 2008/944/CFSP<sup>54;55</sup> in the annual reports, which sets out common rules for the control of exports of military technology and military equipment.<sup>56</sup> This document contains eight criteria of the EU Common Principles<sup>57</sup> and the EU Code of Conduct on Arms Exports. In this regard, the second criterion of the EU Common Principles is particularly important, which obliges it to assess the recipient country's approach to human rights compliance and to refuse the issuance of a license if there is a clear risk that exported military technology or military equipment could be used for internal repression.

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<sup>50</sup> Presidency conclusions. European Council [online]. 26 and 27 June 1989 [cit. 2022-11-29]. Available from: [https://www.consilium.europa.eu/media/20589/1989\\_june\\_-\\_madrid\\_eng.pdf](https://www.consilium.europa.eu/media/20589/1989_june_-_madrid_eng.pdf), p. 25

<sup>51</sup> Annual Report on the Control of Military Material, Civilian Firearms, and Dual-Use Goods and Technologies in the Czech Republic for the year 2021. Ministry of Industry and Trade [online]. 2022 [cited 2022-11-29]. Available from: [https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-kontroli-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojiho-uziti\\_2.pdf](https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-kontroli-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojiho-uziti_2.pdf) p. 34

<sup>52</sup> Annual Report on the Control of Military Material Export, Handguns for Civil Use, and Goods and Dual-Use Technologies in the Czech Republic for the Year 2020. Ministry of Industry and Trade [online]. 2022 [cited 2022-11-29]. Available from: <https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2021/7/Vyrocní-zpráva-za-rok-2020.pdf> p. 39

<sup>53</sup> Communication No. 36/2015 of the Ministry of Foreign Affairs regarding the conclusion of the Treaty on Trade in Arms. In the Collection of International Treaties. 2015, issue 22, p. 1 [cited 2022-11-29]. Available from: [https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=36/2015&typeLaw=mezinarodni\\_smlouva&what=Cislo\\_zakona\\_smlouvy](https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=36/2015&typeLaw=mezinarodni_smlouva&what=Cislo_zakona_smlouvy)

<sup>54</sup> Annual Report on the Control of Military Material, Small Arms for Civilian Use, and Dual-Use Goods and Technologies in the Czech Republic for the year 2021. Ministry of Industry and Trade [online]. 2022 [cited 2022-11-29]. Available from: [https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-kontroli-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojiho-uziti\\_2.pdf](https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-kontroli-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojiho-uziti_2.pdf) p. 25-26

<sup>55</sup> Annual Report on Export Control of Military Material, Small Arms for Civilian Use and Dual-Use Goods and Technologies in the Czech Republic for 2020. Ministry of Industry and Trade [online]. 2022 [cited 2022-11-29]. Available from: [https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2021/7/Vyrocní-zpráva-za-rok-2020.pdf?fbclid=IwAR2nbbxLahdBwMxni7eHd3BsyusRDUTV10gPjMBEmCN\\_mCVVSvhE0tGELc](https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2021/7/Vyrocní-zpráva-za-rok-2020.pdf?fbclid=IwAR2nbbxLahdBwMxni7eHd3BsyusRDUTV10gPjMBEmCN_mCVVSvhE0tGELc) p. 28-30

<sup>56</sup> Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment. In the Official Journal of the European Union. L 335, pp. 99-103 [online]. 2008-12-13 [cited 2023-02-20]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0944>

<sup>57</sup> The criteria were approved by the European Council in 1991 and 1992.

Despite these measures, in 2021, the MIT issued licenses for the export of military materials to the PRC with a value of nearly 17.5 million Euros, which is more than double the value of licenses issued in the previous year. Consequently, compared to 2020, the PRC moved from the 28th<sup>58</sup> to the 19th<sup>59</sup> place in terms of the share of ME items for use of export licenses out of a total of 99 entities. In 2021, the licenses specifically pertained to ME No. 10 ("*Aircraft, "lighter-than-air aircraft, "unmanned aerial vehicles" (UAVs), aircraft engines, armament and equipment for "aircraft, related equipment and components specially designed or modified for military use*") and ME No. 18 ("*Manufacturing" equipment, environmental testing equipment, and components*").<sup>60</sup>

Given the significant increase in the export volume of military material, it appears necessary to implement stricter controls on the export of military material, which would substantially strengthen human rights criteria and enable the accountability of the Chinese political regime for international crimes against the Uyghurs and other communities in this area.

The Government of the Czech Republic should, based on the statutory authorization arising from s. 4 (1) of Act No. 69/2009 Coll., on the Implementation of International Sanctions, adopt a regulation to implement the Common Position of the Council 2008/944/CFSP. The incorporation of criteria contained in the Common Position through legally binding national legislation is expected to reduce the number of issued permits and subsequent licenses to countries that do not respect human rights, or create significant pressure on administrative authorities to emphasize this aspect in their decision-making. Such a reduction is necessary for the global protection of human rights, which the Czech Republic, with a constitutional commitment to respect human rights and freedoms, should support.

Another way to achieve stricter regulation regarding the export of military material is to amend the Law on Foreign Trade in Military Material. It is advisable to specify s. 11 (1) and s. 13 (1) (c) (3), which governs the revocation of permits preceding the issuance of licenses if required by political, trade, and security interests of the Czech Republic. The legal framework should explicitly include the violation of human rights and freedoms as a ground for permit revocation in this aspect. The newly revised wordings should thus read as follows for s. 11:

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<sup>58</sup> Annual Report on Export Control of Military Material, Small Arms for Civilian Use and Dual-Use Goods and Technologies in the Czech Republic for 2021. Ministry of Industry and Trade [online]. 2022 [cit. 2022-11-29]. Available from: <https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2021/7/Vyrocní-zpráva-za-rok-2020.pdf> p. 51

<sup>59</sup> Annual Report on Export Control of Military Material, Small Arms for Civilian Use and Dual-Use Goods and Technologies in the Czech Republic for 2021. Ministry of Industry and Trade [online]. 2022 [cit. 2022-11-29]. Available from: [https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-ko-ntrole-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojího-uziti\\_2.pdf](https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-ko-ntrole-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojího-uziti_2.pdf) p. 48

<sup>60</sup> Annual Report on Export Control of Military Material, Small Arms for Civilian Use and Dual-Use Goods and Technologies in the Czech Republic for 2021. Ministry of Industry and Trade [online]. 2022 [cit. 2022-11-29]. Available from: [https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-ko-ntrole-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojího-uziti\\_2.pdf](https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-ko-ntrole-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojího-uziti_2.pdf) p. 42

*"The Ministry shall not issue a permit if the conditions for its issuance set out in §§ 7 to 9 are not met or if the issuance of the permit would endanger the foreign policy, or trade interests of the Czech Republic or public order, security, and **protection of the population and human rights**," and for s. 13: "**protection of human rights** or the foreign policy, trade, and security interests of the Czech Republic require it."*

However, Section 15(5)(g) and (i) must not be overlooked, as it regulates the end-use certificate, which is necessary for granting a license itself. According to the law, the certificate should include not only an anti-reexport clause but also information about the final use of the military material. Strict adherence to these conditions, together with the above-mentioned amendment to the legal framework, could prevent the risk of military material exported from the Czech Republic being misused to violate human rights.

**Recommendation No. 6: The Government of the Czech Republic will propose an amendment to the Act No. 38/1994 Coll., on Foreign Trade in Military Material, which will establish the obligation to issue regular annual reports on the control of military material exports.**

We propose that the government adopts a proposal for an amendment to the Act No. 38/1994 Coll., on Foreign Trade in Military Material, which will subsequently be submitted to the Chamber of Deputies. The amendment should include the statutory establishment of periodic annual reports on the control of military material exports, issued by the Ministry of Industry and Trade in collaboration with other ministries and authorities.

**Justification and legal framework:**

The MIT in cooperation with other ministries and state administration authorities annually publishes annual reports informing the general public about the control of military material exports, civilian firearms, and dual-use goods and technologies. It does so based on resolutions adopted by the government, but not on the basis of the Act on Foreign Trade in Military Material. In the mentioned law, in its fourth part, we can find provisions regulating trade control; however, we do not encounter any obligation to publish information related to export control. Therefore, the Czech Republic lacks any legal basis that would stipulate the obligation of the MIT to issue information that is essential for effective public administration control and decision-making over the key industry. This deficiency needs to be addressed, especially because the mentioned annual reports are the only source of information about conducted controls. We are missing a guarantee for the continuation of issuing annual reports that can be relied upon and referenced in case this standard is not adhered to.<sup>61</sup>

The arms industry differs from other types of industries primarily due to its potential impact on the world. To preserve peace, respect human rights, and stabilize problematic regions, it is

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<sup>61</sup> DOLEJŠÍ, Karel. *CO JSME ZASE VYVEZLI* [online]. 2006 [cit. 2023-07-31]. Available from: <https://www.advojka.cz/archiv/2006/35/co-jsme-zase-vyvezli>

crucial to emphasize stricter conditions for controlling the export of military material, especially to countries outside the EU/NATO. The Czech Republic to some extent adheres to the standards set by the EU and publishes regular reports in an attempt to inform the public about the control of military material exports. However, these reports are insufficient and lack essential information that would help readers gain a comprehensive understanding of the current situation. The lack of information from the MIT and other ministries and authorities regarding the control of military material exports hinders public discussion and criticism, which the MIT, as regularly stated in its annual reports, is receptive to.<sup>62</sup>

The annual reports lack, for example, explanations of both positive and negative opinions regarding the issuance or denial of export permits/licenses by the MFA, which is highly problematic, especially concerning the PRC and the suppression of the human rights of Uyghurs and other communities. Despite the embargo imposed on the PRC, readers of the annual reports do not find out why the MFA granted an exception in a given situation, which, although justifiable, is not explained by the ministry, leaving considerable room for speculation by the public.<sup>63</sup> Additionally, the reports do not provide information about the end-user of the exported military material. Furthermore, there is no comparison with other EU countries or precise information about the specific goods exported from the Czech Republic. The interval for publishing these reports is also problematic. The annual statistics and information hinder regular monitoring and may distort the overall picture, so it is appropriate to consider more frequent and detailed reporting.

We recommend resolving the issue of missing legal regulations and inadequate transparency in the annual reports by adopting an amendment to Act No. 38/1994 Coll., which would address these shortcomings. Such measures could have a positive impact on the effectiveness of controlling the export of military material through better-informed constitutional bodies, experts, and the public, who can serve as initiators of public discussions highlighting potential control deficiencies. This necessary stricter control could potentially contribute to reducing the volume or completely banning the export of military material to countries with political situations incompatible with democracy. We consider this essential, especially concerning countries criticized for human rights abuses, yet military material continues to be exported to them regularly, as in the case of the PRC and its treatment of the Uyghurs and other oppressed communities. Therefore, the possible form of the amendment is as follows:

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<sup>62</sup> Annual Report on Export Control of Military Material, Small Arms for Civilian Use and Dual-Use Goods and Technologies in the Czech Republic for 2021. Ministry of Industry and Trade [online]. 2022 [cit. 2022-11-29]. Available from: [https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-kontroli-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojho-uziti\\_2.pdf](https://www.mpo.cz/assets/cz/zahranicni-obchod/licencni-sprava/o-licencni-sprave/2022/8/Vyrocní-zpráva-o-kontroli-vyvozu-vojenskeho-materialu--rucnich-zbrani-pro-civilni-pouziti-a-zbozi-a-technologie-dvojho-uziti_2.pdf) p.24

<sup>63</sup> EBERLE, Jakub. *České zbrojní exporty potřebují silnější demokratickou kontrolu a vyšší transparentnost* [online]. 2019 [cit. 2023-07-31]. Available from: <https://www.iir.cz/jakub-eberle-ceske-zbrojni-exporty-potrebuji-silnejsi-demokratickou-kontrolu-a-vyssi-transparentnost>



## **PART FOUR**

### **CONTROL OF MILITARY MATERIAL TRADE IMPLEMENTATION**

#### **§ 23**

*(1) The Ministry is obliged to publish information about the control of military material exports at regular six-month intervals, with the following requirements:*

- a) The report must include information about the volume of issued permits and licenses, including the dates of individual decisions.*
- b) Information about the total and individual realized export values in monetary terms.*
- c) Details of the specific countries to which the military material was sent, including information about end-users.*
- d) Information about the positive or negative opinions of individual ministries regarding the export, along with their justifications concerning relevant international commitments.*
- e) Comparison with other countries, including changes over time.*

### **Recommendation No. 7: Supporting the Adoption and Implementation of the EU Regulation on the Ban of Imports of Forced Labor Products**

We consider it appropriate for the Czech Republic to support the adoption of the EU Regulation on the ban of products of forced labor in the European market and its subsequent application to products produced in connection with forced labor of Uyghurs and other communities in the PRC.

#### **Justification and Legal Framework:**

The Czech Republic should support, through its representation in the EU Council, the proposal for a regulation of the European Parliament and Council on the ban of products of forced labor on the Union market (2022/0269/COD)<sup>64</sup>, which is currently in the initial stage of the ordinary legislative procedure.<sup>65</sup> The adoption of this regulation has the potential to significantly help the oppressed Uyghurs and other communities whose members are subjected to forced labor in various sectors. It addresses a critical systemic issue as more than

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<sup>64</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the prohibition of products produced by forced labour on the Union market. In the Official Journal of the European Union. 2022/0269(COD) [online]. 2022-09-14 [cited 2023-02-20] Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:52022PC0453>

<sup>65</sup> Procedure 2022/0269/COD. In the Official Journal of the European Union [online]. [cit. 2023-02-20]. Available from: [https://eur-lex.europa.eu/procedure/EN/2022\\_269](https://eur-lex.europa.eu/procedure/EN/2022_269).

80 global companies<sup>66</sup> benefit from Uyghur forced labor. The USA has also taken a similar approach through the Uyghurs Forced Labor Prevention Act, although with several regulatory deviations (e.g., the general nature of the proposed regulation, which allows responding to forced labor in other parts of the world, and the problematic absence of a rebuttable presumption of goods produced with forced labor based on the region).<sup>67</sup>

The current draft regulation constructs a mechanism aimed at preventing the introduction and supply of products made with forced labor on the EU's internal market.<sup>68</sup> In the preliminary stage of investigation, as stated in Article 4 of the draft regulation, the risks of forced labor will be assessed by the authorities of member states based on a wide range of information sources, such as data from civil society organizations or risk databases focused on specific products and geographical areas. Products that raise a reasonable suspicion of being manufactured through forced labor will be subject to investigation by the relevant EU authorities.<sup>69</sup> If these authorities determine that the products were indeed produced with forced labor, they will be banned from being introduced or supplied on the internal market, and measures to withdraw them from circulation may be imposed.<sup>70</sup>

Although the current draft regulation outlines a rather complex procedure leading to the ban, especially due to the wide discretionary powers provided and the potential for delays in the process, it remains a necessary legal framework capable of addressing the economic exploitation of Uyghurs and other communities, from which both the PRC and significant global companies benefit. In conclusion, it is recommended that the Czech Republic actively seek to simplify and streamline the proposed mechanism during the legislative process.

## **Recommendation No. 8: Expansion of the Scope of Individually Sanctioned Entities**

We propose that the Czech Republic advocates for the expansion of the scope of individually sanctioned entities at the EU level, or the tightening of the existing sanction regime towards already sanctioned entities. In case the Czech Republic does not achieve intensified use of European mechanisms, it should use national sanction mechanisms subsidiarily.

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<sup>66</sup> 83 Companies linked to Uyghur forced labour. *Save Uyghur* [online]. March 10, 2020 [cit. 2023-02-21]. Available from: <https://www.saveuyghur.org/83-companies-linked-to-uyghur-forced-labor/>

<sup>67</sup> An Act to ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market, and for other purposes, Public Law No. 117-78 [online]. Dec. 23, 2021 [cit. 2023-02-21]. Available from: <https://www.govinfo.gov/content/pkg/PLAW-117publ78/uslm/PLAW-117publ78.xml>

<sup>68</sup> Article 3 of draft Regulation 2022/0269(COD).

<sup>69</sup> Article 5 of draft Regulation 2022/0269(COD).

<sup>70</sup> Article 6 of draft Regulation 2022/0269(COD).

## Justification and Legal Framework:

International restrictive measures are a significant tool for maintaining or restoring international peace and security, protecting fundamental human rights and freedoms, and combating terrorism. They typically take the form of trade restrictions, financial market restrictions, transportation restrictions, restrictions on the movement of individuals, as well as limitations on cultural and sports exchanges. The clear advantage of these sanctions is that they are precisely targeted, meaning they do not impact the entire society but directly affect specific entities responsible for the situation at hand.

The newly adopted domestic "sanctions" law, Law No. 1/2023 Coll., on Restrictive Measures against Certain Serious Actions Applied in International Relations, provides an effective sanction mechanism for the Czech Republic. This law enables the Czech Republic to submit proposals for including entities on the EU sanctions list according to s. 3 and s. 4. Emphasis is primarily placed on the actions of the MFA, which collects, verifies, and evaluates the evidence<sup>71</sup> based on which a proposal can be submitted. To include an entity on the national sanctions list, the proposal must be presented to the government.<sup>72</sup> For inclusion on the common European sanctions list, the proposal needs to be submitted to both the government and EU authorities.<sup>73</sup> Subsidiarily, targeted national restrictive measures can be utilized, based on the security and foreign policy interests of the Czech Republic, which can go beyond the scope of the achieved European sanctions consensus at the national level.<sup>74</sup> Sanctions that may be imposed on individually sanctioned entities include entry restrictions, asset freezes, and other economic limitations.<sup>75</sup>

We propose that both the EU and the Czech Republic, when imposing sanctions on specific entities, do not only target a narrow circle of subjects directly involved in human rights abuses, such as individuals in the political leadership of the PRC. Instead, sanctions should also be imposed on entities that benefit from the violence against Uyghurs and other minorities, including legal entities.

The European sanctions list already includes several entities associated with possible genocide. Currently, the European sanctions list includes: Wang Junzheng (王君正), Chen Mingguo (陈明国), Zhu Hailun (朱海仑), Wang Mingshan (王明山) (all identified as persons with significant roles within the structure concerning the Xinjiang Uyghur Autonomous Region) and the Xinjiang Production and Construction Corps (XPCC) together

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<sup>71</sup> See s. 3 (a)

<sup>72</sup> See. s. 4 (4)

<sup>73</sup> See. s. 3 (b), (c)

<sup>74</sup> See. s. 4 (5)

<sup>75</sup> Different types of sanctions. European Council Council of the European Union [online]. 2023-06-03 [cited 2023-06-18]. Available from: <https://www.consilium.europa.eu/cs/policies/sanctions/different-types/>

with Xinjiang Public Security Bureau (XPSB).<sup>7677</sup> While adding these entities to the list is a good start, this enumeration cannot be considered sufficient.

Expanding the scope of sanctioned entities should be based on available intelligence information from the Czech Republic and other EU member states. It can also draw inspiration from the U.S. sanctions list<sup>78</sup>, which includes a broader range of subjects. Among these individuals are, for instance, Shohrat Zakir (شۆھرەت زاكەر; 雪克来提·扎克尔), Peng Jiarui (彭家瑞), Sun Jinlong (孙金龙), or Alken Tuniaz, also known as Erkin Tuniyaz (ئەركىن تۇنىياز; 艾尔肯·吐尼亚孜) all linked to XPCC or XPSB.<sup>79</sup>

## **Recommendation No. 9: Submission of a Proposal to Include ByteDance on the EU Sanctions List by the Ministry of Foreign Affairs**

We recommend that the Ministry of Foreign Affairs follow the warning issued by the National Cyber and Information Security Agency (NCISA) and, based on the sanctions law, submit a proposal to the Government of the Czech Republic for the inclusion of the Chinese technology company ByteDance on the EU sanctions list or the national sanctions list.

### **Justification and Legal Framework:**

At the beginning of March 2023, the National Cyber and Information Security Agency (*hereinafter referred to as 'NCISA'*) issued a warning regarding the TikTok application, which is owned by the Chinese company ByteDance Ltd. The warning was based on concerns about potential security threats arising from the extensive collection of user data, the methods of data collection, data handling practices, and the legal and political environment in the PRC.<sup>80</sup> NCISA assessed the level of threat as high, making it essential to consider the appropriate course of action going forward.

There are several reasons why the Chinese company ByteDance, which owns the TikTok application, is problematic. For instance, in the past, the company was accused of

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<sup>76</sup> Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious violations and abuses of human rights. In Official Journal of the European Union, L 99/1, pp. 1-12. [online]. 2021-03-22 [cited 2023-02-21]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/HTML/?uri=CELEX:32021R0478>

<sup>77</sup> Council Implementing Regulation (EU) 2022/2374 of 5 December 2022 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious violations and abuses of human rights. In Official Journal of the European Union, L 314/81, pp. 81-87 [online]. 2022-12-06 [cited 2023-02-21]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/HTML/?uri=CELEX:32022R2374>

<sup>78</sup> Office of foreign assets control: Specially Designated Nationals and Blocked Persons List [online]. May 16, 2023 [cit. 2023-5-17]. Available from: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>

<sup>79</sup> SDN List by Country, Office of foreign assets control [online] [cit. 2023-5-17]. Available from: <https://www.treasury.gov/ofac/downloads/ctrylst.txt>

<sup>80</sup> The TikTok app is a security threat. National Cyber Security Bureau [online]. 8 March 2023 [cited 2023-5-17]. Available from: <https://www.nukib.cz/cs/infoservis/hrozby/1941-aplikace-tiktok-predstavuje-bezpecnostni-hrozbu/?fbclid=IwAR0bgfSI3qOAxflahnosqgOeDO4iqblxNhCZBJIbXhp74y3wC-IoQw1zEjw>

intentionally censoring any videos that inform about the suppression of human rights of the Uyghur minority and other communities using the algorithm of the app known as "Douyin," which is the Chinese sister app of TikTok.<sup>81;82</sup> Furthermore, it has been proven how the company is linked to the Chinese Communist Party.<sup>83</sup> The International Cyber Policy Centre, which falls under ASPI, concluded that the TikTok application, owned by ByteDance, engages in deeply unethical behavior in the Xinjiang region, directly supporting and enabling mass and systematic human rights violations.<sup>84</sup>

For these reasons, we propose that - in accordance with the previous recommendation - the application of Sanctions Act No. 1/2023 Coll. be implemented. This legal regulation governs the mechanism for submitting proposals to include entities on the EU sanctions list. There are several reasons for inclusion on this list, and in the case of ByteDance, it aligns with the interests of the Czech Republic in upholding international law, protecting human rights and freedoms, and promoting democracy and the rule of law.

The MFA will submit a proposal to include ByteDance on the EU sanctions list under Section 4 of the Sanctions Act. Afterwards, the government is obliged to consider the said proposal. If the government decides to submit a proposal to include the entity on the EU sanctions list, it will simultaneously include the entity on the national list. By including the entity on the national sanctions list, certain restrictive measures can be imposed against it in relation to Act No. 69/2006 Coll., on the implementation of international sanctions.

This mechanism gives the Czech Republic ample room for consideration in how it wishes to proceed concerning companies like ByteDance, which through their actions contribute to or at least minimally tolerate human rights violations. Another positive aspect of this recommendation is the political signal it sends to the EU, urging it to take action against private entities that directly or indirectly support the undemocratic regime in the PRC.

### **c) Instruments of international public law**

#### **Recommendation No. 10: Utilization of the Committee on the Elimination of Racial Discrimination**

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<sup>81</sup> TikTok owner ByteDance and Huawei are helping China's campaign to repress Uighur Muslims, report finds. *The Strait Times* [online]. 2019-11-29 [cit. 2023-04-28]. Available from: <https://www.straitstimes.com/asia/east-asia/tiktok-owner-huawei-are-helping-chinas-campaign-to-repress-uighur-muslims-report>

<sup>82</sup> NIEWENHUIS, Lucas. The difference between TikTok and Douyin. *The China Project* [online]. 2019 [cit. 2023-10-15]. Dostupné z: <https://thechinaproject.com/2019/09/25/the-difference-between-tiktok-and-douyin/>

<sup>83</sup> LEE, Rachel, Prudence LUTTRELL, Matthew JOHNSON a John GARNAUT. TikTok, ByteDance, and their ties to the Chinese Communist Party. *Scribd* [online]. 2023 [cit. 2023-10-15]. Available from: <https://www.scribd.com/document/633015202/TikTok-ByteDance-And-Their-Ties-to-the-Chinese-Communist-Party>

<sup>84</sup> FRITZ, IMPIOMBATO a RYAN. TikTok and WeChat: Curating and controlling global information flows. *The Australian Strategic Policy Institute* [online]. Report No. 37/2020 [cit. 2023-5-17]. Available from: <https://www.aspi.org.au/report/tiktok-wechat>. ISSN 2209-9689

We demand that the Czech Republic exercise its right to submit a communication to the UN Committee on the Elimination of Racial Discrimination of the UN to address all forms of racial discrimination.

## **Justification and Legal Framework:**

In connection with international conventions that form part of the universal mechanism for the protection of human rights, consideration can be given to utilizing interstate complaints to the Committee on the Elimination of Racial Discrimination, established by the Convention on the Elimination of All Forms of Racial Discrimination (*hereinafter referred to as 'Convention'*)<sup>85</sup>, to which the PRC is a signatory. The Committee on the Elimination of Racial Discrimination (*hereinafter referred to as 'Committee'*) is a UN body composed of independent experts responsible for monitoring the implementation of the Convention by its state parties. All state parties are obliged to submit periodic reports to the Committee on how these rights are being applied. States must submit reports one year after acceding to the Convention and then every two years. The Committee examines each report and presents its observations and recommendations to the state party in the form of "concluding observations." In addition to the reporting procedure, the Convention establishes three additional mechanisms through which the Committee carries out its monitoring functions. These mechanisms include the early warning procedure, consideration of interstate complaints, and consideration of individual complaints.

Article 1, paragraph 1 of this Convention contains a "broad" concept of racial discrimination, which includes, among other things, the question of the ethnic status of the discriminated person. The Convention includes general obligations under which a state should refrain from discriminatory actions. It also guarantees a range of rights to individuals. The PRC violates these obligations in relation to Uyghurs and other communities, so the Czech Republic should use the interstate complaint mechanism contained in Article 11 of the Convention. The Committee's decision could be used by domestic public authorities as a justification for taking measures against the PRC.

An individual or group of individuals who claim that their rights are being violated due to discrimination can also turn to the Committee. This institution is established in Article 14 of the Convention.<sup>86</sup> For the Committee to consider a request, the respective state must recognize its competence by ratifying the Optional Protocol. The PRC ratified the Optional

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<sup>85</sup> Decree of the Minister of Foreign Affairs of 15 August 1974 on the International Convention on the Elimination of All Forms of Racial Discrimination. Government of the Czech Republic [online]. 2023 [cited 2023-7-28]. Available from: <https://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rp/dokumenty/umluva-o-odstraneni-vsech-forem-rasove-diskriminace-19721/#>

<sup>86</sup> Individual communications. Committee on Elimination of Racial Discrimination. [online]. 2023 [cit. 2023-7-28]. Available from: <https://www.ohchr.org/en/treaty-bodies/cerd/individual-communications>



Protocol in 1981<sup>87</sup> and made a reservation to this Convention regarding Article 22 and the jurisdiction of the International Court of Justice.<sup>88</sup> Furthermore, it sought a reservation in Article 14, but it was not granted, so individuals or groups of individuals can still submit a complaint.

At the end of 2022, the Committee convened in Geneva for its regular session, where, among other issues, it expressed strong concern about the situation in the PRC.<sup>89</sup> The Committee urges and recommends that the PRC, among other things, ensure full compliance of its legal system with the Convention or investigate all crimes related to the situation in Xinjiang. Furthermore, the PRC should implement the concluding observations of the Committee on the Elimination of Racial Discrimination, the Committee against Torture, as well as the recommendations of the United Nations High Commissioner for Human Rights expressing concerns about the situation.<sup>90</sup>

## **Recommendation No. 11: Initiation of Proceedings for an Advisory Opinion at the International Court of Justice**

We propose that the Czech Republic initiates the adoption of a resolution at the UN General Assembly requesting an advisory opinion from the International Court of Justice regarding possible violations of *ius cogens* by the PRC.

### **Justification and Legal Framework:**

According to Article 96(1) of the UN Charter, the UN General Assembly is one of the privileged entities authorized to request an advisory opinion from the International Court of Justice on any legal question. The Czech Republic should leverage its membership in the UN and initiate the adoption of a resolution for such a request. In accordance with Article 65 of the Statute of the International Court of Justice, which establishes the institution of advisory opinions, the request can formulate the question of whether the PRC is violating norms of *ius cogens*. Specifically, it could inquire about crimes against humanity and genocide, and the legal consequences of a positive answer to the first part of the question.

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<sup>87</sup> Ratification Status for CERD - International Convention on the Elimination of All Forms of Racial Discrimination. United Nations Human Rights Treaty Bodies (UN Treaty Body Database) [online]. [cit. 2023-7-28]. Available from:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CERD](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CERD)

<sup>88</sup> Declarations and Reservations - International Convention on the Elimination of All Forms of Racial Discrimination. United Nations Human Rights Treaty Bodies (UN Treaty Body Database) [online]. [cit. 2023-8-10]. Available from:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en#EndDec)

<sup>89</sup> Hundred-eighth session. The Committee on the Elimination of Racial Discrimination, [online]. 2023 [cit. 2023-7-28]. Available from:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FEWU%2FCHN%2F9624&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FEWU%2FCHN%2F9624&Lang=en)

<sup>90</sup> UN experts call for decisive measures to protect fundamental freedoms in China. The Committee on the Elimination of Racial Discrimination, [online]. 2023 [cit. 2023-08-08]. Available from: <https://www.ohchr.org/en/press-releases/2020/06/un-experts-call-decisive-measures-protect-fundamental-freeds-china>

Indeed, while advisory opinions of the International Court of Justice are not legally binding, their legal and moral authority is widely recognized by the international community.<sup>91</sup> The political and legal consequences drawn from an advisory opinion lie with the requesting entity or other actors in the international community. If such a highly respected institution as the International Court of Justice were to conclude that PRC is indeed violating *ius cogens*, it would provide a strong foundation for a robust political response and unequivocal condemnation by the international community.

## **Recommendation No. 12: Utilization of Universal Jurisdiction within National Law and Coordination of Genocide Investigation among EU Member States**

We demand that the Czech Republic investigates allegations of crimes falling under the scope of universal jurisdiction, as stipulated in Section 7 (1) of Law No. 40/2009, the Criminal Code. We propose that during the investigation, the Czech Republic utilizes the opportunities for information exchange and international cooperation provided by the European Network for Genocide.

### **Justification and Legal Framework:**

Universal jurisdiction, enshrined in the Czech legal system under Section 7 (1) of the Criminal Code, allows states and international organizations to prosecute the most serious crimes regardless of the place of commission or the nationality of the perpetrator or victims. Based on the decisions of the Uyghur Tribunal<sup>92</sup>, there is reasonable suspicion of crimes committed against the Uyghurs and other communities as specified in the aforementioned Section 7 (1) of the Criminal Code. The prosecution office should initiate an investigation into suspicions of committing crimes of genocide, crimes against humanity, apartheid, and discrimination against a group of people, based on universal jurisdiction.

For more effective investigation, the Genocide Network established under the EU agency EUROJUST can be utilized, based on the Council Decision 2002/494/JHA of June 13, 2002.<sup>93</sup> The Genocide Network operates through the establishment of contact points aimed at facilitating the investigation of genocide crimes.<sup>94</sup> Genocide Network meetings are held twice

<sup>91</sup> Advisory jurisdiction. *The International Court of Justice* [online]. [cit. 2023-07-05]. Available from: <https://www.icj-cij.org/advisory-jurisdiction>

<sup>92</sup> Uyghur Tribunal Judgement [online]. 9th December 2021 [cit. 2023-5-11]. Available from: <https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>

<sup>93</sup> Council Decision of 13 June 2002 establishing a European network of contact points for persons responsible for genocide, crimes against humanity and war crimes (2002/494/JHA). In the Official Journal of the European Union, L 167 [online]. 2002-06-26 [cited 2023-02-26]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002D0494>

<sup>94</sup> CAIANELLO, Michele. The Role of the EU in the Investigation of Serious International Crimes Committed in Ukraine. Towards a New Model of Cooperation?. *European Journal of Crime, Criminal Law and Criminal Justice* [online]. 27 Dec 2022 [cit 2023-02-26] DOI: 10.1163/15718174-30030002. Available from: [https://brill.com/view/journals/eccl/30/3-4/article-p219\\_002.xml?ebody=pdf-63199](https://brill.com/view/journals/eccl/30/3-4/article-p219_002.xml?ebody=pdf-63199) p. 225

a year and are convened by the presiding member state of the EU Council. The purpose of these meetings is primarily the exchange of evidence and better coordination of law enforcement authorities from different member states. The advantage of these meetings is that not only EU member states participate but also cooperating organizations (such as the UN, Red Cross, etc.) and so-called observers (ICC, USA, Canada, etc.), which allows the use of evidence gathered by these entities.<sup>95</sup>

An inspiration for the utilization of the universal jurisdiction institute can be drawn from the case in August 2022 when two organizations, the World Uyghur Congress and the Uyghur Human Rights Project, filed a criminal complaint before the Federal Criminal Court in Buenos Aires, Argentina.<sup>96</sup> The organizations accused representatives of the PRC of crimes against humanity and genocide committed against the Uyghurs and other Turkic minorities. The prosecutors invoked the principle of universal jurisdiction enshrined in the Argentine Constitution. In Spain, there was also a prosecution against the former Chinese President, Xi Jinping, and four other Chinese officials, including former Premier Li Peng, for committing genocide in Tibet.<sup>97</sup> Therefore, investigating and prosecuting high-ranking Chinese officials through universal jurisdiction is one of the available avenues for conducting investigations into the situation of Uyghurs and other communities in the PRC at the national level.

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<sup>95</sup> Genocide Network. *European Union Agency for Criminal Justice Cooperation* [online]. Netherlands, 2023 [cit. 2023-04-14]. Available from: <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>

<sup>96</sup> KASGHARIAN, Asim. Criminal Case Filed in Argentina Over China's Treatment of Uyghurs . *Voice of America English News* [online]. August 26, 2022 [cit 2023-02-26]. Available from: <https://www.voanews.com/a/criminal-case-filed-in-argentina-over-china-s-treatment-of-uyghurs-/6718611.html>

<sup>97</sup> Spain seeks arrest of former Chinese president over Tibet. *Reuters* [online]. February 10, 2014 [cit. 2023-04-14]. Available from: <https://www.reuters.com/article/us-china-spain-idUSBREA191J520140210>