The Laogai and Violations of International Human Rights Law: A Mandate for the Laogai Charter

Melissa Pearson Fruge
THE LAOGAI AND VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW: A MANDATE FOR THE LAOGAI CHARTER

I. INTRODUCTION

The People's Republic of China ("China" or "PRC") continues to operate the Laogai. Many people residing outside of China have probably never heard of the Laogai. Or, they may think it is merely prison labor, as it is often described. The PRC defines Laogai as "reform through labor," but this definition does not portray what is happening to Laogai prisoners any more accurately than the Nazis' slogan "labor makes free" depicted what happened to concentration camp victims during World War II. The Laogai is principally a tool for communist political coercion, which operates by means of forced, or slave, labor.

Within the last few years, international publicity of the Laogai has increased and the PRC has responded by officially replacing the term "Laogai" with "prison." The reason for this change probably stems from the fact that prison labor is legal and encouraged by the United States and many

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4. Id. at 2, 8.
5. One of the most widely publicized accounts was a report shown on the CBS television program 60 Minutes, put together after Harry Wu led the CBS crew to Laogai camps in 1992. Robert L. Bernstein, Introduction to HARRY WU, BITTER WINDS: A MEMOIR OF MY YEARS IN CHINA'S GULAG (John Wiley & Sons, Inc., 1994) [hereinafter WU, BITTER WINDS]. Wu and the CBS crew posed as American corporate heads and consummated a business deal with Laogai officials, proving that China's Laogai system is used in international trade. WU, TROUBLEMAKER, supra note 1, at 112-29.
7. U.S. CONST. amend. XIII, § 1. The Thirteenth Amendment permits
other countries throughout the world. As one American legislator stated, "[t]he public will not tolerate anything that smacks of coddling criminals."9

The United States and other members of the international legal community have apparently accepted that the Laogai is prison labor and, consequently, permissible under international law.10 The PRC has escaped international legal ramifications by clothing its human rights violations under a thriving economy which benefits the PRC and other powerful nations.11 Even the International Labor Organization ("ILO"), which has over 70 years of experience in setting permissible labor standards, has basically ignored the Laogai, equating it to prison labor.12

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9. Id. Senator Phil Gramm has proposed repealing U.S. federal statutes that prohibit selling prison labor goods in the private sector. Lars-Erik Nelson, Sen. Phil Gramm: Savior of the World, DENVER POST, May 25, 1995, at B7. Senator Gramm stated that his goal is "to turn every federal prison in this country into a mini-industrial park. [He] want[s] prisoners to work 10 hours a day, six days a week." Id.


12. The ILO has requested reports from the PRC, asking the PRC government to explain why the PRC has not ratified ILO forced labor conventions (the Forced Labour Convention of 1930 and the Abolition of Forced Labour Convention of 1957), but has not otherwise attempted to pressure or publicize the problem. See INTERNATIONAL LABOUR ORGANIZATION, HANDBOOK OF PROCEDURES RELATING TO INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS 15-21 (1995) [hereinafter ILO HANDBOOK] (explaining reporting procedures for states which have not ratified ILO conventions); see also
A cursory glance at what the Laogai entails shows that it is not equivalent to prison labor. First, in order to be considered a criminal in the PRC, an affirmative act is not required. Mere thoughts or belonging to the wrong economic class are punishable. Second, prisoners are not entitled to due process before they are sentenced to the Laogai. Third, prisoners are subject to life-threatening labor conditions and brutal torture. Finally, prisoners are spiritually destroyed because they are denied freedom of expression and religion in the “mind reform through labor” component of the Laogai. Anything outside of communist ideology is strictly prohibited.

Analysis of the Laogai system reveals numerous violations of international human rights law. The PRC practices slavery and inflicts torture and other impermissible treatment on Laogai prisoners in contravention of both the Universal Declaration of Human Rights (“Declaration”) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against

infra Part II.C.

13. The International Labor Organization defines “prison labor” as:

any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.

INTERNATIONAL LABOUR ORGANIZATION, ABOLITION OF FORCED LABOUR 45 (1979).

14. See HOGANDA HARRY WU, LAOGAI 2 (Ted Slingerland trans., Westview Press 1992) [hereinafter WU, LAOGAI] (explaining the PRC leadership policy of using the Laogai, not only to punish those who have committed crimes, but to “eliminate all ‘class enemies’ and ‘anti-socialist elements.’”).

15. Id.; see also P.R.C. CONST. art. I (“Sabotage of the socialist system by any organization or individual is prohibited.”).

16. See WU, LAOGAI, supra note 14, at 7-8 (“According to Article 92 of China’s [Criminal Procedure] Code, arrested criminals must be tried and sentenced within sixty days. In reality, however, this regulation is completely ignored by the Public Security Bureau.”).

17. Id. at 27.

18. Id. at 5.

19. See generally WU, TROUBLEMAKER, supra note 1, at 49-63 (describing the mind reform component of the Laogai). A recent example of the PRC’s unwillingness to permit freedom of thought is the 1989 Tiananmen Square massacre. Id. at 15. PRC soldiers put a stop to a public democracy demonstration with violent force. Id. Thousands were killed, injured or sent to the Laogai. Id.

20. See discussion infra Part IV.
Torture.\textsuperscript{21} The human rights violations occurring in the Laogai amount to violations of \textit{jus cogens}, those fundamental international norms from which no country may derogate.\textsuperscript{22}

This comment argues that these violations of international human rights law have been overlooked.\textsuperscript{23} This comment proposes that the international community form a tribunal ("Laogai Tribunal") to engage in fact finding and proclaim the crimes of the PRC.\textsuperscript{24} The Laogai Tribunal should be accompanied by a charter ("Laogai Charter") mandating and implementing the abolition of the Laogai.\textsuperscript{25} Nations need to unify and take action, just as they did in Nuremberg after World War II.\textsuperscript{26} The Nuremberg Charter was drafted in order to establish clear principles of international law regarding the prohibition of human rights violations during times of war.\textsuperscript{27} Similarly, the Laogai Charter, proposed by this comment, is needed in order to establish international human rights law for violations during times of peace and to implement the abolition of the Laogai.

Part II of this comment describes the PRC forced labor system and gives an overview of international human rights law, including the role of the International Labor Organization in the fight against forced labor.\textsuperscript{28} Part III identifies the pertinent legal issue of whether the Laogai violates international human rights law.\textsuperscript{29} Part IV analyzes the Laogai sys-

\textsuperscript{21} The United States and China entered into a Memorandum of Understanding which refers to the Declaration as a source of authority for prohibiting the use of prison labor products in international trade, see Memorandum of Understanding, \textit{supra} note 10, but it has not been enforced, \textit{U.S. China Policy: Hearing Before the Senate Comm. on Foreign Relations, 104th Cong., 2d Sess.} (1996) (statement of Jeffrey L. Fiedler, Director, Laogai Research Foundation).

\textsuperscript{22} \textit{See discussion infra} Part IV.A.4.

\textsuperscript{23} \textit{See discussion infra} Part V.

\textsuperscript{24} \textit{See discussion infra} Part V.

\textsuperscript{25} \textit{See discussion infra} Part V.

\textsuperscript{26} \textit{See discussion infra} Part II.B.1.d. Present political circumstances will make it much more difficult to stop the human rights violations in the PRC because the PRC is a major world power with a booming economy, which the U.S. and other countries have grown dependent on—a drastically different scenario from the ending of World War II, when the Allies sought to punish the defeated Nazi Germany. \textit{See discussion infra} Part IV. This comment proposes incremental steps to stop the human rights violations of the Laogai in order to subdue the international political and economic turmoil which would likely result if the PRC was forced to abolish the Laogai. \textit{See discussion infra} Part V.

\textsuperscript{27} \textit{See discussion infra} Part II.B.1.d.

\textsuperscript{28} \textit{See discussion infra} Part II.

\textsuperscript{29} \textit{See discussion infra} Part III.
tem under international human rights law. Part V proposes that the international community should establish a charter to end the Laogai and set a momentous precedent in international human rights law.

II. BACKGROUND

A. The PRC Forced Labor System

A brief introductory note may help the reader gain a better understanding of the PRC forced labor system. First, the applicable PRC laws are not reliable indicators of how the forced labor system operates. Although the PRC claims its laws are followed, numerous credible sources have observed blatant violations amounting to disregard for PRC law. An accurate evaluation is difficult to obtain because the PRC does not permit independent observations, nor does it release relevant data. Second, available statistics and other objective data are limited for the same reasons. The following background introduces the applicable laws as well as documented observations of the functions of the PRC forced labor system.

The Chinese Communist Party established labor reform camps when it came to power in 1949, but the accompanying laws were not instituted until 1954. The labor reform system was established under the Marxist-Leninist class struggle theory with the purpose of eliminating all class enemies and anti-socialist elements. In 1957, the leader of the PRC Communist Party, Mao Tse-tung, established that

30. See discussion infra Part IV.
31. See discussion infra Part V.
32. Interview with Harry Wu, Executive Director, Laogai Foundation, in Milpitas, Cal. (Dec. 27, 1996) ("It does not matter if China has laws because they interpret them however they want to.").
34. Id.
35. Id.
36. Labor camps began to appear as early as the 1930s when the Communist Revolution began. When the Communists captured a territory, they organized labor camps which reflect essentially the same organization, management, forced labor and harsh conditions existing today. Wu, LAOGAI, supra note 14, at 54.
37. Id. at 1-3.
38. Id. at 2.
anyone who does not act or speak to further the socialist movement is an "enemy of the people." Mao's successor, Deng Xiaoping, reaffirmed the PRC's commitment to socialism, as prescribed by Marxist-Leninist thought. This line of thinking is likely to continue in the post-Deng era by Jiang Zemin, Deng's hand picked successor.

The labor reform system consists of three legally distinct categories of prisoners which comprise the Chinese labor force: (1) Laogai (convicted labor reform); (2) Laojiao (re-education through labor); and (3) Jiuye (forced job placement). The labor reform camps themselves are generally referred to as Laogaidui. The first category, Laogai, is the main portion of the PRC labor system; Laojiao is viewed as a supplemental part of Laogai, and Jiuye amounts to a derivative of Laogai and Laojiao. For purposes of this comment, Laogai will refer to the PRC labor system as a whole, unless the discussion specifically addresses one type of labor reform camp.

39. Id. Mao established "six criteria for political words and deeds" for the Chinese to follow:
   (1) words and deeds should help to unite, not to divide, the people of all ethnic groups in China; (2) they should be beneficial and not harmful to socialist transformation and socialist construction; (3) they should help to consolidate, and not undermine or weaken, the people's democratic dictatorship; (4) they should help to consolidate, not undermine or weaken, democratic centralism; (5) they should help to strengthen and not weaken the leadership of the Communist Party; and (6) they should be beneficial and not harmful to international socialist unity and the unity of all the people.

40. WU, LAOGAI, supra note 14, at 2-3. Deng Xiaoping announced "four cardinal principles" in 1978: “First of all we must uphold the socialist path; secondly, we must uphold the dictatorship of the proletariat; thirdly, we must uphold the leadership of the Communist party; fourthly, we must uphold Marxism-Leninism and Mao Zedong Thought.” Id. at 2.

41. John Leicester, Jiang Vows to Continue "Reforms," SAN JOSE MERCURY NEWS, Feb. 22, 1997, at A10. Since Deng Xiaoping's death on February 19, 1997, there has been speculation that Jiang Zemin may not have what it takes to maintain his position of leadership in the PRC. Jennifer Lin, Longtime Leader's Death Leaves China Vulnerable, SAN JOSE MERCURY NEWS, Feb. 20, 1997, at A14. There is also growing concern over social and economic disorder resulting from Deng's economic policies, such as the growing gap between rich and poor Chinese citizens. Id. However, there does not appear to be any real threat to the power base of the Communist Party and its commitment to socialist ideology. Id.

42. WU, LAOGAI, supra note 14, at 1.
43. Id.
44. Id. at 54.
1. Laogai ("Convicted Labor Reform")

Prisoners who are formally arrested, tried, and convicted of a crime are sentenced to the Laogai.45 The Laogai is governed by several PRC laws: some define crimes and others regulate the operation of the Laogai.46 The PRC Constitution provides that any threat to the socialist system is a crime.47 The PRC Criminal Law defines a crime as "an act that endangers the sovereignty and territorial integrity of the state; endangers the system of the dictatorship of the proletariat; undermines the socialist revolution and socialist construction; disrupts public order . . . and any other act that endangers society."48 Certain crimes are specifically identified, such as homicide, robbery, and arson.49 Generally, anyone who commits a crime is subject to criminal responsibility, except that minors, between the ages of fourteen and eighteen, and people who are deaf, mute, or blind may be given lighter punishments.50

Criminal responsibility requires criminals to serve their sentences by working in the Laogai.51 Article 43 of the PRC Criminal Law provides that prisoners sentenced to death must also work in the Laogai for a period of two years when "immediate execution . . . is not deemed necessary" by judicial officials.52 After the two-year period, the prisoner may have his punishment commuted if he has shown true repentance, but he will be executed if he resisted reform.53

The 1954 Act of the PRC for Reform Through Labor54 details some of the specifics of labor reform: (1) convicts work without pay; (2) work can include industrial, agricultural,
and mining activities, as well as contributions to large public-works projects such as water conservancy and road construction; and (3) labor-reform production is part of the national economic plan. In 1991, the PRC released a white paper stating that convicts are entitled to "worker protection, including limiting work to eight hours per day, time off during holidays, and food rations."

In addition, the Criminal Reform Handbook was issued to answer some general questions about the Laogai. It states that the nature of Laogai facilities are fundamentally different from prisons in other societies in that: (1) the PRC’s goal is not only to punish criminals but to reform them into “new, socialist people,” and (2) the nature of dictatorship criminal punishment determines that prisoners must be forced to labor in order to safeguard the socialist system.

The composition of the types of prisoners in the Laogai has changed over the past 40 years. In the 1950s, 80% to 90% of Laogai prisoners were people who belonged to the upper economic class, consisting mostly of landlords, rich peasants, and capitalists. In the 1960s and 1970s, the great majority of the prisoners were people thought to be counterrevolutionaries or reactionary thinkers. During the 1980s, the PRC government maintained that counterrevolutionaries made up only 10% of the prison population. At present, the PRC government claims that only 0.46% of the prison population is made up of counterrevolutionaries. Because the

56. A white paper is a document issued by the government meant to serve as an official policy statement or as an explanation regarding matters of government concern. See Cowen, supra note 45, at 196 & n.30.
57. Id.
59. Id. at 11 (citing CRIMINAL REFORM HANDBOOK 132-33 (1988)).
60. Id. at 11 (citing CRIMINAL REFORM HANDBOOK 3-4 (1988)).
61. WU, LAOGAI, supra note 14, at 61.
62. Id.
63. Id.
64. Id. at 62. However, because PRC leaders still feel that there are many enemies of the people who are disrupting the socialist order, counterrevolutionaries will continue to remain a significant portion of the prison population. Id.
People's National Congress recently removed the term "counterrevolutionary crimes" from China's Criminal Law, the PRC government will technically not jail any more "counterrevolutionaries." However, Chinese can still be prosecuted for the same acts the crime of "counterrevolution" encompassed because the crime of "counterrevolution" has not been abolished; instead, it has been replaced with the "crime against state security."

The arrests resulting in Laogai imprisonment may be divided into three categories: mass movement arrests, formal legal proceedings, and "pre-holiday" arrests. The mass movement arrests pertain to groups of people involved in a political movement, such as the suppression of the Tiananmen Democracy Movement in 1989. Those in the formal legal proceedings category have been arrested and interrogated by police and sentenced by a court. The "pre-holiday" arrests refer to the mass arrests made prior to major holidays, and are meant to demonstrate the power and stability of the government.

Laogai camps are organized in a military fashion: prisoners are divided into squadrons, companies, battalions, detachments, and general brigades. Companies are the basic unit and one company contains ten to fifteen squadrons, each headed by two squadron leaders. The two squadron leaders are prisoners appointed by the Public Security Police; one is in charge of labor production and the other leads thought reform and political education. The prisoners are kept under

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66. Id.
68. Wu, LAOGAI, supra note 14, at 62-64.
69. Id. at 62. China does not acknowledge the Tiananmen Square Massacre or permit public recognition of the event. Fong Tak-ho, China Silent as the World Remembers, HONG KONG STANDARD, June 5, 1997, at 2. While a candlelight vigil was held in Hong Kong on June 4, 1997, before sovereignty was handed back to China on July 1, 1997, it remains to be seen whether China will allow such recognition in the future. Lily Mak and Baby Sung, 55,000 Candles Burn for June 4, HONG KONG STANDARD, June 5, 1997, at 1.
70. Wu, LAOGAI, supra note 14, at 62-63.
71. Id. at 64.
72. Id. at 10.
73. Id.
74. Id.
strict surveillance twenty-four hours a day.\textsuperscript{75}

Although the living conditions vary from region to region, generally prisoners are issued one uniform and a pair of rubber or plastic shoes each year.\textsuperscript{76} Prisoners are generally allowed visits once a month for about half an hour each visit.\textsuperscript{77} Prisoners are fed three times a day, but the size of the ration depends on the prisoner's performance in thought reform and labor production.\textsuperscript{78} The food rations typically consist of corn gruel, corn bread, and, sometimes, vegetables.\textsuperscript{79} Generally prisoners start their workday at 7:00 a.m. and finish laboring at 6:30 p.m.\textsuperscript{80} After dinner they have a two-hour study period, during which they must read or listen to communist ideology.\textsuperscript{81} Prisoners who fail to accomplish their workload or progress in their educational reform may be subject to punishment involving the use of electrodes, electric cattle prods, shackles, beatings, incommunicado detention, or prolonged periods of solitary confinement.\textsuperscript{82} Capital punishment is also used.\textsuperscript{83}

2. \textit{Laojiao ("Re-education Through Labor")}

According to the 1957 Decision of the State Council Regarding the Question of Labor Re-education, Laojiao is imposed "to reform[ ] those persons who are able to work but insist on leading an idle life, violating law and discipline, or will not engage in honest pursuits."\textsuperscript{84} Chinese citizens may be subject to labor re-education if they are not found criminally liable, but are deemed to fall into one of the four following categories: (1) people who "will not engage in honest pursuits [or] involve themselves in hooliganism, commit lar-

\begin{itemize}
\item \textsuperscript{75} \textit{Id.} at 64 ("[A] prisoner has virtually no time alone.").
\item \textsuperscript{76} WU, LAOGAI, \textit{supra} note 14, at 64.
\item \textsuperscript{77} \textit{Id.} at 65.
\item \textsuperscript{78} \textit{Id.} at 65-66.
\item \textsuperscript{79} \textit{Id.} There is very little protein in their diets—no eggs or meat are provided. See \textit{id}.
\item \textsuperscript{80} \textit{Id.} at 67.
\item \textsuperscript{81} WU, LAOGAI, \textit{supra} note 14, at 67-68. Prisoners study Mao Zedong's works and socialist ideology and they hear a speech each night at 9:30 p.m. from the captain. \textit{Id}.
\item \textsuperscript{82} \textit{STATE DEPT. DISPATCH, supra} note 33, § 1(c).
\item \textsuperscript{83} \textit{Id.} § 1(e).
\item \textsuperscript{84} 1957 Decision of the State Council Regarding the Question of Rehabilitation Through Labour preamble (1957), \textit{available in LEXIS, Intlaw Library, Chinal File, Chinalaw No. 12 [hereinafter Rehabilitation Decision]}.\end{itemize}
ceny, fraud or other acts;”85 (2) people considered “counterrevolutionaries and anti-socialist reactionaries;”86 (3) government employees “who are able-bodied but have refused to work for a long period, violate discipline or jeopardized public order;”87 and (4) “persons who refuse to accept work assigned to them or the arrangement made for their employment.”88

Those subject to Laojiao are not entitled to a judicial procedure.89 City or county public security bureaus impose administrative sanctions, which should be for a term of one to three years.90 Laojiao subjects are referred to as “personnel” rather than prisoners because they have not committed crimes under PRC law.91 They are entitled to rest on Sundays and during festivals, and they are to be “appropriately paid.”92

Generally, Laojiao is organized in the same military fashion as the Laogai, except that Laojiao personnel are not subject to surveillance to the same extent as the Laogai prisoners.93 Regulations provide that food rations are to be equal to those of workers in society.94 Regulations also state that Laojiao personnel may send two letters a month and are permitted one visit per month for about half an hour each visit.95

3. Jiuye (“Forced Job Placement”)

Jiuye regulations explain that Jiuye is “a type of compulsory administrative measure designed to assist in job place-
ment and also serves the function of continuing the reform process. Its purpose is to prevent released convicts from committing repeat offenses and endangering public welfare." 96 There are two types of Jiuye subjects: (1) those who have committed an offense after being released or having escaped from a prison labor camp; and (2) those who have not been reformed. 97

Jiuye was established by the 1953 Second National Conference which set forth the policy of "keeping many and freeing few." 98 Under this policy, 70% of labor-reform prisoners were retained within the prison camp to continue working after completing their sentences. 99 Although this policy was abandoned, the same general principal was set forth in the 1981 Decision Regarding the Handling of Criminals Undergoing Labor Reform and Persons Undergoing Rehabilitation Through Labor Who Escape or Commit New Crimes. 100 This 1981 Decision provides that "criminals who have not been reformed after undergoing reform through labour shall be employed at the place of reform after the completion of their term." 101 In effect, many who are originally given Laogai or Laojiao sentences for a term actually receive life sentences because after finishing their Laogai or Laojiao sentences they are transferred to the Jiuye and are forced to continue working in the same location. 102

4. Harry Wu, Former Laogai Prisoner

The story of Harry Wu exemplifies the operation of the Laogai system. Wu was imprisoned shortly after speaking his mind in a classroom discussion during his first year in a
Wu commented that Russia’s 1956 invasion of Hungary was a violation of international law, which was considered an impermissible criticism of China’s international policy because Chairman Mao had encouraged the invasion. Wu was sent to the Laogai, where he spent the next nineteen years of his life, without being formally charged or afforded a trial. Wu was released because the PRC had a shortage of educators and he was qualified to be a teacher of geology. A few years after his release, Wu was invited to be a visiting geology scholar at the University of California at Berkeley.

Wu now resides in California, where he runs the Laogai Research Foundation. Wu has been a source of considerable data on the Laogai because he has made several undercover trips back to Laogai camps to investigate and document prisoner abuses. During his most recent trip in 1995, Wu was detained by PRC officials, without charge, for nineteen days. After he was formally informed of the charges against him, he was held forty-seven more days without the option of release on bail. During captivity, Wu was denied medication he needed for his back, stemming from an injury he received when he was crushed by a coal mining cart while laboring in the Laogai years earlier. Wu was given a limited choice of defense counsel. He was not permitted to present any evidence on his behalf during his trial, which lasted a total of four hours. Wu was convicted of stealing.

103. Wu, TROUBLEMAKER, supra note 1, at 50-52.
104. Id. at 51.
105. Id. at 54-55. For a detailed account of Wu’s imprisonment, see generally Wu, BITTER WINDS, supra note 5.
106. Wu, TROUBLEMAKER, supra note 1, at 63.
107. Id. at 75-84.
108. Id. at 134-40.
110. Id.
111. Wu was not formally charged until July 8, 1995, Steven Mufson, China Claims American Recanted, WASH. POST, July 28, 1995, at A1, and was not released until August 24, 1995, Gaura & Burdman, supra note 109, at A1.
112. Wu, TROUBLEMAKER, supra note 1, at 226. One of the security agents did give Wu an unlabeled medicine, which did not help his back; instead, it caused excessive bleeding from his nose and the blood vessels in his eyes to pop, turning the whites of his eyes black. Id. at 236-37.
113. Id. at 264-65.
114. Id. at 274.
state secrets and a sentenced to fifteen years imprisonment and expulsion from China.\textsuperscript{115} Probably because the trial received international publicity,\textsuperscript{116} Wu was allowed to serve his expulsion sentence first and was deported back to the United States, where he now resides.\textsuperscript{117}

5. \textit{Laogai Facts and Statistics}

The main reason that Harry Wu has made several trips back to Laogai camps is to obtain more data on the Laogai.\textsuperscript{118} As stated above, there are few accurate facts and statistics made public on the Laogai because the PRC Government does not officially disclose most of this information,\textsuperscript{119} and they prohibit independent monitoring of Laogai camps.\textsuperscript{120} The following are official statistics that have been released, along with estimates by more credible sources, including the U.S. State Department.

Estimates of the number of prison camps range from 1,000 to 5,000.\textsuperscript{121} There are four types of labor camps: (1) Labor Reform Discipline Production Detachments; (2) Labor Re-education Camps; (3) Forced Job Placement Camps; and (4) Juvenile Offender Disciplinary Camps.\textsuperscript{122} In addition to labor camps, there are an estimated 1,200 to 1,300 “special schools,” comprised of prisoners who are contracted out to state and foreign-owned enterprises.\textsuperscript{123}

At the end of 1994, the PRC estimated the number of Laogai personnel at 1,285,000 and the number of Jiuye prisoners at 180,000.\textsuperscript{124} However, Harry Wu estimates that in 1996 there were between six and eight million people in the Laogai, Laojiao, and Jiuye combined and approximately fifty million prisoners since the Laogai system was implemented in 1949.\textsuperscript{125}

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\begin{footnotesize}
\begin{enumerate}
\item Id. at 271, 274.
\item Id. at 250-58.
\item WU, TROUBLEMAKER, supra note 1, at 275.
\item See supra note 109 and accompanying text.
\item Cowen, supra note 45, at 204.
\item The following are official statistics that have been released, along with estimates by more credible sources, including the U.S. State Department.
\item Id. at 204-05.
\item STATE DEPT. DISPATCH, supra note 33, § 1(c); see also discussion supra Part II.A.
\item Cowen, supra note 45, at 204.
\item Id.
\item Id. at 204-05.
\item STATE DEPT. DISPATCH, supra note 33, § 1(e).
\item Harry Wu Meets Nazi Hunter, LAOGAI REPORT (Laogai Research Foundation), Sept. 1996, at 2.
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6. Products Manufactured in the Laogai

The goods produced in the Laogai are profitable for the PRC and other countries because of the low cost of labor. The goods are sold domestically and they are a component of the PRC's five year plan. Although prohibited by both Chinese and international law, Laogai goods are sold in the international market.

Human rights groups estimate that $100 million worth of Chinese prison goods have been exported annually to the U.S., including items such as steel pipe, hand tools, and animal hides. American corporations, such as Chrysler, have been accused of using products produced in the Laogai. In the early 1990s, U.S. officials attempted to combat the importation of illegal Laogai goods by banning certain products and fining at least one American corporation. In 1992, the U.S. entered into a Memorandum of Understanding ("MOU") with the PRC government in an attempt to obtain more information on the importation of Laogai goods to the U.S. However, the MOU has not been enforced and, despite President Clinton's threats to the PRC government that China's Most Favored Nation ("MFN") status would end unless the PRC complied with the MOU, Clinton has consistently renewed China's MFN status, even though there is recent evidence that Laogai goods continue to be sold in the U.S. and internationally.

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127. Cowen, supra note 45, at 196 & nn.28, 29.
128. Id. at 206-07.
129. Id.
133. Id.; see also Memorandum of Understanding, supra note 10.
7. Sale of Executed Prisoners' Organs

Body parts of Laogai prisoners are also a source of profit for the PRC.\textsuperscript{135} Executed prisoners may have their bodies or organs sold for use in transplant operations or for other purposes of Chinese medicine.\textsuperscript{136} In recent years, Chinese medicine has progressed so that successful transplants of skin, corneas, kidneys, pancreases, hearts, and lungs are now available to Chinese citizens who can afford to pay for them.\textsuperscript{137} The first official PRC document dealing with the use of prisoners' dead bodies or organs was issued in 1984.\textsuperscript{138} It provides that criminals must be executed by means of shooting and the dead bodies or organs can be used if they have not been collected by their families, if the families consent, or if the prisoners volunteered.\textsuperscript{139}

B. International Human Rights Law

1. International Human Rights Documents

International agreements and other documents are primary sources of international law.\textsuperscript{140} They create legal rights and duties on sovereign states which are either a party to, or a subject of, the document.\textsuperscript{141} Because international agreements depend on state consent for them to be binding, the international agreements discussed below are those which have been ratified by China. The Nuremberg Charter is also discussed because it is a relevant precedent to the human rights violations of the Laogai.\textsuperscript{142}

a. United Nations Charter

The United Nations Charter was one of the first documents to guarantee human rights in writing.\textsuperscript{143} Article 55 states that its purpose is to "promote... universal respect

\textsuperscript{135} LAOGAI RESEARCH FOUNDATION, COMMUNIST CHARITY 1-2 (1995).

\textsuperscript{136} Id.

\textsuperscript{137} Id.

\textsuperscript{138} Id. at 2.

\textsuperscript{139} Id. at 13.

\textsuperscript{140} MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 9 (1993).

\textsuperscript{141} Id.

\textsuperscript{142} See infra Part II.B.1.d.

for, and observance of, human rights and fundamental freedoms.” In addition, all Members are required to “pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

b. *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (“Declaration”) was promulgated by the United Nations (“UN”) in 1948. It was adopted to ensure that the lessons of Nuremberg would not be forgotten. The Declaration was initially intended as a non-binding statement of principles. However, it has evolved into a normative instrument that creates legal obligations for Member States of the UN.

The civil and political rights guaranteed by the Declaration include the following: (1) right to life, liberty, and security of person; (2) the prohibition of slavery and torture or cruel, inhuman, or degrading treatment; (3) the right not to be subjected to arbitrary arrest, detention, or exile; (4) the right to a fair trial, the presumption of innocence, and the prohibition against the application of ex post facto laws and penalties; and (5) freedom of thought, expression, religion, assembly, and movement.

The economic, social, and cultural rights include the following: (1) the right to “equal pay for equal work;” (2) the right to “just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;” (3) the right to rest, leisure, and reasonable limi-
tations of working hours;\textsuperscript{157} and (4) the right to education that is "directed to the full development of the human personality and to the strengthening of respect for human rights of fundamental freedoms."\textsuperscript{158}

c. \textit{Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment}

One of the only other international human rights instruments China has ratified is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture").\textsuperscript{159} Like many of the human rights in the Declaration, the right to be free from torture is generally viewed by the international community as a fundamental right and has attained normative status.\textsuperscript{160} The Convention Against Torture defines "torture" as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.\textsuperscript{161}

The Convention Against Torture also mandates that torture may not be justified by "internal political instability or any other public emergency."\textsuperscript{162} Moreover, "an order from a

\begin{itemize}
\item \textsuperscript{157} Id. art. 24.
\item \textsuperscript{158} Id. art. 26(2).
\item \textsuperscript{159} Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, 23 I.L.M. 1027, as modified, 24 I.L.M. 535 (1985) [hereinafter Convention Against Torture].
\item \textsuperscript{160} Siderman v. Argentina, 965 F.2d 699, 717 (9th Cir. 1992) (documenting the international consensus in favor of prohibiting torture).
\item \textsuperscript{161} Convention Against Torture, supra note 159, art.1. The Convention also prohibits acts which do not amount to torture under Article 1, "when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Id. art. 16.
\item \textsuperscript{162} Id. art. 2.
\end{itemize}
superior officer or a public authority may not be invoked as a justification of torture.”

d. The Nuremberg Charter and Tribunal

A brief discussion of Nuremberg is warranted for two reasons: (1) there are common threads that run between the concentration camps and the Laogai; and (2) the Nuremberg Tribunal and Charter was a landmark event in the development of international human rights law.

Nuremberg was a response to the unquestionably horrific acts of the Nazis during World War II. As a part of the Nazis’ systematic and cruel plan, they terrorized the countries they occupied. They used humans for medical experiments, forced masses to work as slave laborers, and murdered entire towns. The list of crimes is virtually endless.

The Allied leaders were aware of these crimes in 1940 and they issued several warnings to the Nazis; however, it was not until 1943 that Roosevelt, Churchill, and Stalin issued the Moscow Declaration calling for trial and punishment. The Nazis’ crimes were considered unique and there was no existing precedent or legal system to address them. The Allies set out to establish clear principles to “inform and guide the future acts of all nations so as to ensure what we now call basic human rights.”

The Allies adopted a modified version of a plan put forth by Lieutenant Colonel Murray C. Bernays, Chief of the Special Projects Office of the War Department. Because the number of individuals involved would make individual trials

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163. Id. State Parties are also required to provide education and information to law enforcement personnel on torture prevention. Id. art. 10. If the convention is violated, there is a complaint system provided. Id. arts. 17-21. However, enforcement is limited to investigations and reports by the committee. Convention Against Torture, supra note 159, arts. 17-21.


165. Id.

166. Id. The Jews were the Nazis’ principal target, but other victim groups included Gypsies, Jehovah’s Witnesses, and homosexuals. Id.

167. Id.

168. Id. at 835.

169. Fogelson, supra note 164, at 835.

170. Id. at 836.

171. Id. at 840-43.
too difficult, Lt. Colonel Bernays’ plan called for one trial condemning the entire Nazi system as criminal.\textsuperscript{172} The Allies had to consider how to prosecute the crimes of a government against its own nationals, which was generally thought to be outside the scope of international law.\textsuperscript{173} They decided to establish a theory of joint participation in a criminal enterprise, which included pre-war and domestic atrocities.\textsuperscript{174}

In 1945, the representatives of Great Britain, France, the Union of Soviet Socialist Republics, and the United States drafted and signed the Treaty of London.\textsuperscript{175} It included the Charter of the International Military Tribunal ("The Nuremberg Charter"), setting forth the parties' agreement on trial procedures.\textsuperscript{176}

The three major crimes established in the Nuremberg Charter were the following:

CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreement or assurances, or participation in a Common Plan or Conspiracy . . . ;

WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war . . . ;

CRIMES AGAINST HUMANITY: namely, murder extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated.\textsuperscript{177}

The evidence produced at trial revealed numerous atroci-

\begin{itemize}
\item \textsuperscript{172} Id. at 840.
\item \textsuperscript{173} Id. at 841-42.
\item \textsuperscript{174} Id. at 843.
\item \textsuperscript{175} Fogelson, supra note 164, at 845.
\item \textsuperscript{176} Id.
\item \textsuperscript{177} Charter of the International Military Tribunal, \textit{reprinted in} 1 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 11, art. 6 (1946).
\end{itemize}
ties committed by the Nazis.\textsuperscript{178} Those found guilty included organizations as well as individuals.\textsuperscript{179} Many of the individuals were tried as groups because it was considered too difficult to try each of the approximately four million involved separately.\textsuperscript{180} Some have criticized the Nuremberg Tribunal as prejudiced or illegitimate because the trial was prosecuted by World War II victors rather than independent and uninterested parties.\textsuperscript{181} However, regardless of the controversy surrounding the fairness of Nuremberg, it remains a momentous precedent.

2. Customary International Law

International custom is a second source of international law.\textsuperscript{182} Custom becomes binding international law when states implicitly consent by creating and/or applying international legal rules.\textsuperscript{183} In order for a norm to be characterized as customary international law, it must pass a two pronged test: (1) the sovereign state must indicate that it adheres to the norm; and (2) the sovereign state must adhere to the norm out of a sense of legal duty.\textsuperscript{184}

3. Jus Cogens

Many international lawyers also consider \textit{jus cogens} a third source of international law, one which does not rely on state consent.\textsuperscript{185} \textit{Jus cogens} is essentially a norm recognized by the international community that is so fundamental that it cannot be violated, even by treaty or other international agreement.\textsuperscript{186} While there may be an overlap between customary international law and \textit{jus cogens}, the difference is that, while a customary international norm rests on state consent, \textit{jus cogens} "embraces customary laws considered binding on all nations."\textsuperscript{187} \textit{Jus cogens} is best thought of as a

\begin{itemize}
\item \textsuperscript{178} For greater detail of the Nazis' crimes see generally Fogelson, \textit{supra} note 164, at 848-56.
\item \textsuperscript{179} \textit{Id.} at 855.
\item \textsuperscript{180} \textit{Id.}
\item \textsuperscript{181} \textit{Id.} at 858.
\item \textsuperscript{182} JANIS, \textit{supra} note 140, at 9.
\item \textsuperscript{183} \textit{Id.} at 42.
\item \textsuperscript{184} Karlson, \textit{supra} note 143, at 445.
\item \textsuperscript{185} JANIS, \textit{supra} note 140, at 63.
\item \textsuperscript{187} JANIS, \textit{supra} note 140, at 62-65; see also Siderman v. Argentina, 965
form of international constitutional law because it sets the foundations of the international legal system.\textsuperscript{188} A limited number of norms have attained \textit{jus cogens} status.\textsuperscript{189} They include the prohibition against official torture, genocide, slavery, murder, causing the disappearance of individuals, and prolonged arbitrary detention.\textsuperscript{190}

a. Siderman v. Argentina

Case law also evidences international human rights norms as \textit{jus cogens}.\textsuperscript{191} In \textit{Siderman v. Argentina},\textsuperscript{192} where an anti-Semitic military junta in Argentina had forcibly entered the home of Siderman and took him to a building where he was beaten and tortured for seven days with an electric cattle prod because he was Jewish, the Court held that official torture had gained the status of \textit{jus cogens}.\textsuperscript{193}

b. Filartiga v. Pena-Irala

Similarly, in \textit{Filartiga v. Pena-Irala},\textsuperscript{194} where the plaintiffs' son was kidnapped, tortured, and killed by a Paraguayan police official because of his father's political activities and beliefs, the Court held that "deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights."\textsuperscript{195}

C. \textit{International Labor Organization ("ILO")}

The ILO was created in 1946 by the Treaty of Versailles (which brought about the League of Nations) and was the

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\item\textsuperscript{188} JANIS, supra note 140, at 65.
\item\textsuperscript{189} See, e.g., Siderman, 965 F.2d at 714-16. \textit{Jus cogens} has been described as an "elite subset" of norms. \textit{Id.} at 715 (citations omitted).
\item\textsuperscript{190} \textit{Restatement (Third) of Foreign Relations Law of the United States} at 702 (1987) [hereinafter \textit{Restatement}]. This list includes those norms that have been generally accepted, and the scope and content of those norms which are generally agreed upon (as of 1987). \textit{Id.} cmt. a.
\item\textsuperscript{191} The case law examples are cases of international character decided in U.S. courts. See infra notes 332-36. U.S. case law would be considered persuasive authority to a tribunal formed to consider the legality of the Laogai, as proposed in this comment. See infra Part V.
\item\textsuperscript{192} 965 F.2d 699 (9th Cir. 1992).
\item\textsuperscript{193} Id. at 702, 717.
\item\textsuperscript{194} 630 F.2d 876 (2d Cir. 1980).
\item\textsuperscript{195} Id. at 876, 882.
\end{itemize}
\end{footnotesize}
The ILO seeks to improve working conditions by enacting international standards regarding: (1) the regulation of working hours and adequate wages; (2) regulation of labor supply; (3) prevention of unemployment; (4) protecting the worker against unsafe working conditions; (5) protecting all persons, including women, children, and the elderly; and (6) recognizing certain labor-related freedoms, such as the freedoms of equality and association.

The structure of the ILO is one of its most distinguishing and important features. It is made up of three main bodies and each has a tripartite structure consisting of government, employee, and worker members. The three main bodies include the General Conference, the Governing Body, and the International Labor Office. The ILO General Conference meets at least once a year and acts on an agenda drafted by the Director-General, with input from member states. The Conference decides on proposals for agenda items which will ultimately take the form of either an international convention or a recommendation. Any convention

199. INTERNATIONAL LABOUR ORGANIZATION CONST., supra note 196, art. 3. The General Conference meets at least once a year and is composed of four representatives of each Member state; the four representatives consist of two Government delegates, one employer representative, and one worker representative. Id. art. 3(1).
200. Id. art. 7. The Governing Body meets three times a year and has fifty-six members: twenty-eight are government delegates, fourteen are employer representatives, and fourteen are worker representatives. Id. art 7(1); ILO STRUCTURE, supra note 197.
201. ILO STRUCTURE, supra note 197. The International Labour Office is the permanent secretariat of the ILO and the focal point for the overall activities prepared under the supervision of the Governing Body. Id., arts. 8, 9. It is composed of: (1) a Director General and a staff consisting of approximately 1900 officials of over 110 nationalities who serve in their personal capacity (meaning they cannot take instructions from any government or any other authority external to the organization); and (2) approximately 600 technical experts, a research and documentation center, and a printing house issuing a broad range of studies, reports and periodicals. ILO STRUCTURE, supra note 197.
202. Id.
203. INTERNATIONAL LABOUR ORGANIZATION CONST., supra note 197, art. 19.
ratified by a two-thirds vote is communicated to the UN and binding on the Members who ratified it.\textsuperscript{204}

The ILO also has a unique supervisory system for monitoring compliance of ILO Conventions.\textsuperscript{205} The system requires each member state to produce annual reports which are reviewed by an independent Committee of Experts, the Committee on the Application of Standards, and, sometimes, by the Conference.\textsuperscript{206} The ILO also surveys states that have not ratified ILO conventions by requesting responses regarding reasons for non-ratification or compliance with ILO conventions.\textsuperscript{207} The results of these surveys are periodically summarized and published.\textsuperscript{208}

In addition to the ILO's supervisory system, the ILO has a complaint procedure.\textsuperscript{209} If a member state violates an ILO convention, a complaint may be made by any member state or an industrial association of employers or workers.\textsuperscript{210} The complaints are made to the Governing Body who may then communicate the complaint to the government against which it is made and invite that government to make a responsive statement.\textsuperscript{211} If the government makes no statement or if the

\begin{footnotes}
\footnote{204. \textit{Id.} art. 20.}
\footnote{205. American Bar Association, Section of International Law and Practice, \textit{Report to the House of Delegates: International Labor Organization Recommendation}, 30 INT'L LAW 653, 659 (1996) [hereinafter ABA Report]. The supervisory system consists of: (1) the Committee of Experts, which meets annually and reviews reports submitted by governments regarding their compliance in the conventions they have ratified; (2) the tripartite Committee on the Application of Standards, which meets during the sessions of the Conference; and (3) the Governing Body's Committee on Freedom of Association, which meets three times a year to consider complaints. \textit{Id.}}
\footnote{206. \textit{Id.} at 657.}
\footnote{207. \textit{ILO Handbook}, supra note 12, at 20. Supervision of non-ratifying states consists of asking that government to answer to the ILO regarding why it has not ratified that convention. \textit{Id.} Each member state has an obligation to report on unratified conventions under the ILO Constitution. \textit{International Labour Organization Const.}, supra note 197, art. 19(5)(e). The ILO Constitution also contains provisions pertaining to non-member states in an attempt to get them to also ratify and comply with ILO conventions. \textit{Id.} art. 19(7).}
\footnote{208. \textit{International Labour Organization Const.}, supra note 197, art. 23; see generally \textit{International Labour Organization, Abolition of Forced Labour: General Survey by the Committee of Experts on the Application of Conventions and Recommendations (1979) (hereinafter ILO Survey)} (summarizing the annual reports received by the ILO in 1978 regarding non-ratification and non-compliance with ILO forced labor conventions).}
\footnote{209. ABA Report, supra note 205, at 657.}
\footnote{210. \textit{International Labour Organization Const.}, supra note 197, art. 24, 26(1).}
\footnote{211. \textit{Id.}}
\end{footnotes}
statement is unsatisfactory, the Governing Body may publish the representation of non-observance.\textsuperscript{212} Or, the Governing Body may appoint a Commission of Inquiry to consider the complaint.\textsuperscript{213} Reports of the Commission of Inquiry are published; if the government fails to respond or follow the recommendations, then the matter may be referred to the International Court of Justice ("ICJ").\textsuperscript{214}

However, the ILO has certain weaknesses as an enforcement mechanism.\textsuperscript{215} The ILO does not have the authority to enforce compliance; it cannot condemn a government or impose penalties or sanctions.\textsuperscript{216} The ILO must rely on the power of persuasion and the use of shame tactics, such as publicizing the wrong doing.\textsuperscript{217} There is also a tendency for the ILO to become tied up in the politics of the Member states and employee/employer organizations.\textsuperscript{218} However, despite these weaknesses, the ILO has been effective in obtaining reform through public pressure, due to the ILO's abilities to investigate, monitor, and publicize abuses.\textsuperscript{219}

Human rights related to labor are firmly within the scope of the ILO's activities.\textsuperscript{220} The ILO's Constitution includes the basic principles that: (1) labor is not a commodity; (2) freedom of expression and association are essential to

\textsuperscript{212} Id. art. 25.
\textsuperscript{213} Id. art. 26. Members are obligated to give the Commission of Inquiry all of the information in their possession concerning the complaint. Id. art. 27.
\textsuperscript{214} Id. art. 29.
\textsuperscript{215} ABA Report, supra note 205, at 660.
\textsuperscript{216} The ILO supervisory system relies on the power of persistent persuasion and the mobilization of shame against governments that fail to live up to the obligations they have voluntarily undertaken. This has proved to be both a strength and a weakness. Its obvious weakness is the fact that it is not a sanction in the coercive sense known to domestic law. But that is also a strength: it does what can be done in an international system that would not tolerate a global sheriff with real power to punish sovereign governments for their failure to live up to accepted labor standards.
\textsuperscript{218} Id.
\textsuperscript{219} Id.
sustained progress; and (3) all human beings have the right to pursue their material and spiritual development in conditions of freedom, dignity, economic security, and equal opportunity.\textsuperscript{221}

One of the ILO's main human rights goals is to abolish forced labor.\textsuperscript{222} It has promulgated two major Conventions in this area: (1) the Forced Labor Convention of 1930, which requires the suppression of forced or compulsory labor in all forms;\textsuperscript{223} and (2) the Abolition of Forced Labor Convention of 1957, which prohibits the use of any form of forced or compulsory labor as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labor discipline, punishment for participation in strikes, or discrimination.\textsuperscript{224} The following are two pertinent examples demonstrating what the ILO has done to abolish forced labor internationally.

1. Abolition of Forced Labor Camps in Indonesia

In 1974, the ILO received allegations that Indonesia was in violation of the Forced Labor Convention of 1930.\textsuperscript{225} It was alleged that approximately 15,000 persons had been detained for at least ten years on the Island of Buru without trial and were forced to work, mostly on major construction projects.\textsuperscript{226} The ILO investigated the allegations in 1976 and demanded a response by the government.\textsuperscript{227} The Government undertook to settle the entire matter by 1978 through trial or release of the detainees.\textsuperscript{228} The ILO continued periodic investigations to follow up on the Government's actions, and by 1982 nearly all of the detainees were unconditionally released.\textsuperscript{229}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{221} ILO HUMAN RIGHTS, supra note 220.
\item \textsuperscript{222} INTERNATIONAL LABOUR ORGANIZATION MANDATE, supra note 196.
\item \textsuperscript{223} ILO HUMAN RIGHTS, supra note 220. 134 countries have ratified this Convention. \textit{Id}.
\item \textsuperscript{224} \textit{Id}. 120 States have ratified this Convention. \textit{Id}.
\item \textsuperscript{226} \textit{Id}.
\item \textsuperscript{227} \textit{Id}.
\item \textsuperscript{229} International Labour Organization, Observations 1982, Convention No.
2. International Program for the Elimination of Child Labor ("IPEC")

The IPEC exemplifies one of the many facets of the ILO. The ILO recognized that child labor is a huge problem that will take time to combat; in response, the ILO designed a multi-step program to address it. The primary aim of the IPEC is to strengthen national capacities to address the child labor problem by creating a worldwide movement. The IPEC targets the most intolerable forms of child labor, which include children working under forced labor conditions and in hazardous occupations.

The ILO begins at the national level by consulting with individual governments, employers' organizations, workers' organizations, other non-governmental organizations, and other relevant parties, such as universities and the media. These parties are aided to adopt measures to halt and prevent child labor. The ILO also works with parties by motivating dialogue, assessing the nature and magnitude of the problems, drafting policies, and implementing solutions.

The IPEC became operational in late 1992 when six countries (Brazil, India, Indonesia, Kenya, Thailand, and Turkey) signed a Memorandum of Understanding with the ILO. Since then, at least 19 other countries have joined in support of the program.

III. STATEMENT OF THE PROBLEM

A comparison of the applicable human rights laws with the operation of the Laogai illustrates that the PRC is violating international human rights law. The resolution of this problem is critical to international human rights law. Recent
attempts to stop the PRC’s human rights abuses have been in the context of international trade. This approach has placated some, but has failed to cure the problem. Grave human rights violations should be assessed in the context of international human rights, rather than international trade, so that clear legal principles in international human rights law may be established and strengthened.

IV. ANALYSIS

The following analysis approaches the problem identified above by comparing applicable provisions of international human rights laws with the operation of the Laogai. Relevant PRC laws are also taken into account, but not at face value—PRC laws are viewed in light of the fact that they are not accurate indicators of how the Laogai really operates. The analysis also addresses jus cogens norms because the PRC has ratified few international rights instruments, and violations of jus cogens do not depend on state consent.

A. Laogai and Violations of International Human Rights Law

1. United Nations Charter

China is one of the principal members of the United Nations and it has breached its obligations under the UN Charter. Article 55(c) of the Charter imposes an obligation on member states to “promote . . . universal respect for, and
observance of, human rights and fundamental freedoms."\textsuperscript{245} This is a broad statement, but even a narrow interpretation of Article 55(c) reveals the Laogai cannot lawfully exist under the Charter. Narrowly interpreted, "human rights and fundamental freedoms" are those human rights and freedoms which are so basic and widely accepted by the international community that they have attained the status of \textit{jus cogens}.\textsuperscript{246} A legal analysis of how the Laogai violates specific \textit{jus cogens} norms is provided below.\textsuperscript{247}

\section{Universal Declaration of Human Rights}

Many of the human rights in the Declaration have obtained status as \textit{jus cogens}, but it is not clear exactly how many of the rights have obtained such status.\textsuperscript{248} Thus, a separate analysis of the rights specifically provided for in the Declaration is warranted.

\subsection{Equal Rights}

The PRC violates the first and second articles of the Declaration which specify the basic principle that freedom and equality are bestowed upon every human being at birth.\textsuperscript{249} In China, citizens of different economic backgrounds are not considered equal.\textsuperscript{250} Rather, they are discriminated against as part of the PRC's goal to achieve a classless society in accordance with Marxist-Leninist ideology. Many prisoners have been sent to the Laogai because they were deemed members of an economic class the Chinese Government considers criminal.\textsuperscript{251} Laogai prisoners also include

\begin{itemize}
\item \textsuperscript{245} Id. art. 55(c).
\item \textsuperscript{246} \textit{Jus cogens} norms are those relatively few norms which are non-derogable. \textit{See supra} notes 185-90 and accompanying text.
\item \textsuperscript{247} \textit{See infra} Part IV.A.4.
\item \textsuperscript{248} \textit{See discussion supra} Parts II.B.1 and II.B.3.
\item \textsuperscript{249} Articles 1 and 2 of the Declaration provide that:
\begin{quote}
Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
\end{quote}
\begin{quote}
Article 2. Everyone is entitled to all the rights and freedoms set forth in this declaration, without discrimination of any kind, such as ... religion, political or other opinion, national or social origin, property, birth or other status.
\end{quote}
\textit{Declaration, supra} note 146, arts. 1, 2.
\item \textsuperscript{250} \textit{See Wu, LAOGAI, supra} note 14, at 2 (describing the PRC's policy of eliminating all "class enemies").
\item \textsuperscript{251} \textit{Harry Wu Meets Nazi Hunter, LAOGAI REPORT (Laogai Research Foun-}
those who criticized communism or practiced religion. Imprisoning citizens because of their economic status or their personal beliefs is directly contrary to the principles of freedom and equality embodied in the Declaration.

Furthermore, the PRC Government's practice of selling prisoners' organs clearly contradicts the duty to treat everyone with dignity and in the spirit of brotherhood, as provided in Articles 1 and 2 of the Declaration. There is evidence that the PRC has sold organs from prisoners who were not given due process and did not consent to donate their organs. Furthermore, there is an apparent correlation between the number of executions and the number of organ transplants; there tend to be more executions as the need for transplants rises. The method of execution may be by gunshot or by removal of life-sustaining organs from a living prisoner. For example, prisoners have had both of their kidneys removed by PRC doctors while they were still alive. If they do not die from the operation, they are shot the next day. This behavior by the PRC is blatantly contrary to the duty to treat everyone, including prisoners, with dignity and in the spirit of brotherhood under the Declaration.

Moreover, each prisoner living in the Laogai has not been afforded the rights provided in Article 2 of the Declaration, which provides that "everyone is entitled to all the rights and freedoms set forth in th[e] declaration." This means that Laogai prisoners, whether justly or unjustly imprisoned,
should not be denied the human rights guaranteed under the Declaration. The PRC Government violates this provision because it strips Laogai prisoners of the basic human rights codified in the Declaration.

b. Civil and Political Rights

1. Right to Life, Liberty, and Security of Person

Article 3 of the Declaration provides that everyone is entitled to the right to life, liberty, and security of person.\(^{260}\) The PRC violates this provision by arresting citizens and either sentencing them to the Laogai without a fair trial or summarily executing them.\(^{261}\) Those not executed immediately do not have security of person because they remain in danger of becoming a commodity in the PRC’s organ market.\(^{262}\) The PRC further threatens their lives by subjecting them to malnutrition, freezing weather, and severe beatings from prison guards.\(^{263}\)

Prisoner beatings are abusive not only because of the physical harm they inflict, but because they are usually unwarranted. For example, starving Laogai prisoners have been beaten because they stole the insides of some raw cabbages.\(^{264}\) While Harry Wu was imprisoned in the Laogai, PRC officials tortured him and broke his arm because he was caught hiding a couple of Western books.\(^{265}\) These examples

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\(^{260}\) Declaration, supra note 146, art. 3.

\(^{261}\) Wu, LAOGAI, supra note 14, at 63-64 (explaining the lack of formal legal proceedings), 70-71 (detailing capital punishment policies).

\(^{262}\) See LAOGAI RESEARCH FOUNDATION, COMMUNIST CHARITY, supra note 135, at 9-10.

\(^{263}\) Wu, BITTER WINDS, supra note 5, at 18-23 (describing a few days of Harry Wu’s experience in a Laogai camp in bitter cold weather, where he was given little clothing, no heat inside the prisoner barracks, and little food).

\(^{264}\) Id. at 24-25.

\(^{265}\) Wu, TROUBLEMAKER, supra note 1, at 59. The following is Wu’s description of his personal experience:

The Red Guards went rampaging through the storage rooms, where the prisoners’ meager belongings were kept, but I had buried my last few books, my Shakespeare and Tolstoy, my Hugo and Twain, out in a field. A year later somebody discovered them and traced them to me, and the guards and servile prisoners threw me on the ground and pranced around me like savages. This was the heart of Mao’s revolution - crazy people with clubs in their hands. One of them smashed his shovel on my left arm, breaking it just below the elbow, so that the bottom part hung limply. They made me kneel and watch as they set my books on fire - a bonfire of literature to serve Chairman Mao.
demonstrate the PRC's blatant violations of prisoners' rights to life, liberty, and security of person.

2. Prohibition of Slavery and Torture

The Declaration also prohibits slavery,\textsuperscript{266} torture, and cruel, inhuman, or degrading treatment.\textsuperscript{267} However, there have been a number of documented instances of such treatment in the Laogai.\textsuperscript{268} Hundreds of former Laogai prisoners claim that torture in the Laogai is common, and most have experienced it personally.\textsuperscript{269} The U.S. State Department has similarly reported numerous accounts of torture, including the use of electric cattle prods, shackles, and a number of other tools.\textsuperscript{270}

Moreover, prisoners are tortured in their daily working environments, as well as for purposes of punishment and coercion. A recent eye witness account confirms that Laogai prison officials continue to force prisoners into life threatening circumstances, such as processing sheepskin hides while standing naked in chest-deep vats of toxic chemicals.\textsuperscript{271}

The following summary of the methods of torture utilized in the Laogai illustrates the absence of human decency in the Laogai. First, prisoners are not given sufficient food and many die from malnutrition.\textsuperscript{272} Most are also subject to harsh living conditions, such as freezing weather and inadequate clothing or building structures.\textsuperscript{273} Second, prisoners

\textit{Id.}\textsuperscript{266}. Declaration, \supra note 146, art. 4.
\textsuperscript{267}. \textit{Id.} art. 5.
\textsuperscript{268}. See, e.g., Wu, \textsc{Laogai, supr}a note 14, at 68-70.
\textsuperscript{270}. \textsc{State Dept. Dispatch, supra note 33, § 1(c)}.
\textsuperscript{271}. Ehrenberg, \textit{supra} note 126, at 368 (describing Harry Wu's visit to the Qinghai Hide and Garment Factory (also known as Qinghai Number Five Labor Reform Detachment)).

In 1961, Harry Wu was sent to the Laogai camp where the old, weak and crippled stayed, Camp 586 in Qinghe. They were reduced to eating insects, rodents or snakes, even tree bark and prison-issued ersatz made of ground paper pulp or dried cobs of corn. Many died of dysentery and others of constipation. Hunger transformed human beings into animals, and occasionally cannibals; fighting over food occurred daily. Wu was put into solitary confinement in a 6'x3'x3' bare cement cell and came very close to starving to death.

\textit{Id.}\textsuperscript{273}. See, e.g., Wu, \textit{Bitter Winds, supr}a note 5, at 18-23.
are forced to work very long hours under dangerous conditions with little or no pay.\textsuperscript{274} Third, prisoners are subject to punishment that is grossly disproportionate to their alleged crimes.\textsuperscript{275} Finally, such punishment is often done more for purposes of showing the power of the PRC Government, rather than as a reaction to a heinous act by the prisoner,\textsuperscript{276} and is purposely degrading to the prisoner.\textsuperscript{277}

3. \textit{Due Process Rights}

The PRC Government claims it has enacted due process reforms; however, violations remain rampant.\textsuperscript{278} Due process rights under the Declaration include: (1) the right to be free from arbitrary arrest, detention, or exile; (2) the right to a fair trial; and (3) the right to be presumed innocent.\textsuperscript{279} It is difficult to estimate how many PRC prisoners have been refused these rights and imprisoned unjustly.\textsuperscript{280} In all likelihood, a large number of prisoners have been denied these rights given that the PRC Procurator General, Zhang Siqing, reported to the National People's Congress that 4,441 illegal detention cases were investigated during 1994 alone.\textsuperscript{281}

Despite the PRC's attempts to reform due process rights on paper,\textsuperscript{282} in practice, the PRC is not in compliance with the Declaration. Harry Wu's 1995 detention by PRC officials\textsuperscript{283} exemplifies that there is ample room for further reform. Even though Wu's case received international publicity, he was denied basic due process rights: Wu spent

\begin{itemize}
\item \textsuperscript{274} See discussion \textit{supra} Part II.A.1.
\item \textsuperscript{275} See \textit{Images of the Laogai}, \textit{LAOGAI REPORT} (Laogai Research Foundation), Jan. 1993 (Catholic Priest arrested as a counterrevolutionary and sentenced to 12 years); see also \textit{Images of the Laogai}, \textit{LAOGAI REPORT} (Laogai Research Foundation), Feb. 1994 (Russian language translator branded a counterrevolutionary for criticizing the communist party and sent to the Laogai for three years where he was reduced to a human skeleton from starvation and exhaustion).
\item \textsuperscript{276} See discussion \textit{supra} Part II.A.1 (discussing "pre-holiday" arrests).
\item \textsuperscript{277} PRC Releases Laogai "White Paper," \textit{LAOGAI REPORT} (Laogai Research Foundation), Jan. 1993, at 1 ("The Laogai Foundation has interviewed hundreds of people who have survived the Laogai. All of them have at one time or another been assaulted or insulted.").
\item \textsuperscript{278} \textit{STATE DEPT. DISPATCH}, \textit{supra} note 33, \S 1(d).
\item \textsuperscript{279} Declaration, \textit{supra} note 146, arts. 10,11.
\item \textsuperscript{280} See discussion \textit{supra} Part II.A (explaining the difficulty in obtaining accurate statistics).
\item \textsuperscript{281} \textit{STATE DEPT. DISPATCH}, \textit{supra} note 33, \S 1(d).
\item \textsuperscript{282} Id.
\item \textsuperscript{283} See discussion \textit{supra} Part II.A.4.
\end{itemize}
nineteen days without being charged, was denied medication he needed, was given little choice of defense counsel, and was given no opportunity to present evidence during his four-hour trial.284

Notwithstanding the steps the PRC has taken towards reform, the guarantee of due process rights is still far from secure. For example, as a result of PRC due process “reforms,” a court may appoint defense counsel if necessary, but there is no requirement to do so.285 Moreover, even if detainees are appointed defense counsel, adequate trial preparation is a problem because PRC law does not allow the appointment of counsel more than seven days before trial.286 Appointed counsel rarely fight to contest the charges brought against his or her clients.287

At trial, detainees are not entitled to a presumption of innocence288 and they have little or no opportunity to present evidence on their behalf.289 According to the 1994 PRC Administrative Procedure Law, prisoners may appeal their sentences. However, in practice, appeals are not widely used, and are not an effective means of reversing arbitrary sentences or obtaining compensation for wrongful imprisonment.290 In sum, the principle of due process has not yet been taken seriously in the PRC—even where reform has occurred on paper, it has not been effectively implemented.

4. Freedom of Speech, Religion, and Assembly

Regardless of the PRC’s recent efforts at due process re-
form, Chinese are still imprisoned for exercising another right guaranteed under the Declaration: the right to freedom of speech, religion, and assembly. The Laogai is used by the PRC government for political purposes—any Chinese citizen considered a threat to the communist system may be sent to the Laogai for “reform.” This occurred on June 4, 1989 in Tiananmen Square. Citizens engaging in peaceful democracy protests were shot in the back, children were run over by tanks, and people were pulled out of their homes and shipped to Laogai camps. Many are still unlawfully detained in some thirty-one Laogai camps. This is just one incident demonstrating how the PRC has violated its citizens’ right to freedom of thought and expression.

5. Freedom of Movement

Among the civil and political rights under the declaration is the right to freedom of movement, which the PRC frequently violates by extending the sentences of Laogai prisoners or transferring them to Jiuye (forced job placement) without cause. When transferred to Jiuye, prisoners receive essentially the same treatment as in the Laogai, except they are not as strictly supervised. Thus, many Laogai prisoners are given an unwarranted life sentence: even

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291. See, e.g., Michael Zielenziger, 1997: Year of Reckoning, SAN JOSE MERCURY NEWS, Jan. 5, 1997, at 19A. On January 1, 1997, Hong Kong demonstrators held a “New Year’s Day Democratic March,” demanding that China free political prisoners. Id. In fear, many Hong Kong residents fled prior to China's takeover of Hong Kong on July 1, 1997. Id.

292. For example, Chen Pokong was deemed a criminal by the PRC Government because he is a pro-democracy activist. Chen now makes artificial flowers in the Laogai, which are exported to the U.S. LAOGAI RESEARCH FOUNDATION, BLOODSTAINED FLOWERS: A COURAGEOUS APPEAL FROM A CHINESE PRISON 2.

293. See, e.g., WU, TROUBLEMAKER, supra note 19, at 15, 83.

294. Id. at 83. A special document was issued to the prisons where Tiananmen Square violators were sent, titled “Advanced Collective for Suppressing Rebellion and Ceasing Chaos.” Id.

295. Declaration, supra note 146, art. 13.

296. See discussion supra Part II.A.3; see also Beijing’s Old Trick, LAOGAI REPORT (Laogai Research Foundation), Feb. 1995, at 1 (“One is kept in a Laogai brigade until the authorities are convinced that he is ‘thoroughly reformed.’ Sometimes that is tantamount to a life sentence.”). For example, Hu Chiwei was sent to the Laogai as a counterrevolutionary when he was sixteen years old for criticizing PRC national policy; he was not released when he completed his five year sentence. Images of the Laogai, LAOGAI REPORT (Laogai Research Foundation), Feb. 1995, at 6.

297. See discussion supra Part II.A.3.
though they have technically served their sentences, they are prohibited from returning to their homes and families.

c. Economic, Social, and Cultural Rights

In addition to civil and political rights, Laogai prisoners are denied economic, social, and cultural rights provided for in the Declaration. These rights include: (1) the right to equal pay for equal work; (2) the right to just remuneration to permit an existence worthy of human dignity; (3) the right to rest, leisure, and reasonable limitations of working hours; and (4) the right to education which develops the human personality and strengthens respect for human rights.298

First, Laogai prisoners are given little or no pay for long hours of demanding work and are not furnished with a nutritious diet or adequate accommodations.299 It is not uncommon for prisoners to die under these conditions.300 While subjects of Jiuye and Laojiao usually have a better chance at survival, as they are sometimes paid more than Laogai prisoners,301 they are not paid enough to sustain an existence worthy of human dignity.

Second, although education is meant to be an integral part of the Laogai, the instruction and study in the Laogai is not geared toward fostering the prisoner’s intellectual or independent spirit. Rather, the “education” prisoners are forced to receive is in the form of orders to memorize and obey the teachings of the Chinese Communist Party.302 Any other studies are prohibited and prisoners caught with materials not issued by the Chinese Communist Party are severely punished or tortured.303 Such methods prohibit prisoners from studying their interests or beliefs, as well as impede their intellectual development.

As demonstrated above, the PRC has violated many, if not all, of the rights guaranteed to every human being under the Declaration. Unfortunately, the Declaration contains no mechanism to enforce violations of signatories, like the PRC, because the Declaration was originally intended as a state-

298. Declaration, supra note 146, arts. 23, 24, 26.
299. See supra notes 263-64 and accompanying text.
300. See supra notes 263-64 and accompanying text.
301. See Wu, LAOGAI, supra note 14, at 100-01, 114.
302. See supra note 81 and accompanying text.
303. See supra note 81.
ment of principles, rather than a comprehensive instrument.\textsuperscript{304} The International Covenant on Civil and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights were promulgated to provide a means of enforcement for violations of the Declaration,\textsuperscript{305} but the PRC has not signed or ratified either of them.\textsuperscript{306} This does not mean that it is permissible for the PRC to continue violating these rights. Rather, the PRC’s ratification of the Declaration imposes a duty on the PRC to abide by it.\textsuperscript{307} Furthermore, many of the rights contained in the Declaration have obtained status as \textit{jus cogens}, making them binding regardless of consent, as discussed further below in Part IV.A.4.b.\textsuperscript{308}

3. \textit{Convention Against Torture}

The Convention Against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.”\textsuperscript{309} The Convention Against Torture requires state parties to take effective action to prohibit torture.\textsuperscript{310} However, there is a weakness in the Convention Against Torture in that the definition of torture “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”\textsuperscript{311} Consequently, governments may be able to justify torture as long as it is pursuant to law.

However, despite the weakness in the language of the Convention Against Torture, the PRC is still a violator. There have been numerous accounts documenting the torture of prisoners who have not been officially charged or afforded a trial.\textsuperscript{312} In such circumstances, those tortured were not being treated subject to a lawful sanction as required under the Convention Against Torture, because it is unlawful for

\begin{footnotes}
\item[304] Karlson, \textit{supra} note 143, at 448.
\item[305] Id.
\item[307] See \textit{supra} note 149 and accompanying text. Parties to international treaties are bound by their terms. \textit{See supra} note 141 and accompanying text.
\item[308] See generally \textit{supra} notes 185-90 and accompanying text.
\item[309] Convention Against Torture, \textit{supra} note 159, art. 1.
\item[310] Id. art. 2.
\item[311] Id. art. 1.
\item[312] See generally \textit{supra} Parts IV.A.2-3.
\end{footnotes}
the PRC not to charge or afford a trial to a prisoner. The PRC could argue that it has not violated the Convention Against Torture, because any torture occurring in the Laogai is a lawful sanction and documented as such under PRC law. However, even though the Convention Against Torture does not define what a "lawful sanction" is, the word "lawful" should be construed to limit the sanction to one that is permissible under international law.

The PRC criminalizes behavior that is not only permissible, but guaranteed as a matter of right under international law, such as the expression of political thoughts and ideas. Consequently, the torture inflicted by PRC officials pursuant to those PRC laws in violation of international law should not be permitted under the Convention Against Torture. The PRC should not be able to justify torture as a lawful sanction when the PRC law mandating the sanction is itself unlawful.

4. *Customary International Law and Jus Cogens*

a. *Customary International Law*

One area where the PRC is not a violator in its operation of the Laogai is in the realm of customary international law. In order to show that the PRC is violating a norm of customary international law, it is necessary to prove: (1) the PRC has indicated it adheres to the norm; and (2) that the PRC adheres to the norm out of a sense of legal duty. The first prong is met because the PRC has indicated that it adheres to human rights norms out of a sense of legal duty by ratifying the Declaration of Human Rights and the Convention Against Torture. However, the second prong is not met. The PRC has various laws governing the Laogai which deprive Chinese citizens of the human rights they are entitled

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313. Convention Against Torture, supra note 159, art. 1 (lawful sanction); see discussion supra Part IV.A.2.b. (due process requirements).
314. The PRC might argue that if it affords Chinese citizens their due process rights, then sanctions imposed on convicts are lawful. Under the Convention Against Torture, any torture "arising only from, inherent in or incidental to lawful sanctions" is permissible. Convention Against Torture, supra note 159, art. 1.
315. See id.
316. See supra notes 291-95 and accompanying text.
318. See Declaration, supra note 146; see also Convention Against Torture, supra note 159.
to under international law. Because the PRC does not adhere to human rights norms out of a sense of legal duty, the second prong of the requisite test is not met.

b. *Jus Cogens*

Although violations of customary international law cannot be shown because the PRC does not adhere to human rights norms out of a sense of legal duty, there are a number of human rights norms considered *jus cogens*, which are binding despite state consent. Most international lawyers and scholars would agree that the Declaration has become a normative instrument, but it is not clear that all of the rights in the Declaration have attained *jus cogens* status. The Restatement in the Law of Foreign Relations ("Restatement") provides guidance in determining which human rights have attained *jus cogens* status. According to the Restatement, among the *jus cogens* norms are slavery, murder or causing the disappearance of individuals, torture or other cruel, inhuman, or degrading treatment or punishment, and prolonged arbitrary detention. Case law also evidences international human rights norms as *jus cogens*. In both *Siderman v. Argentina* and *Filartiga v. Pena-Irala*, courts declared that torture by government officials motivated by political activities and beliefs constitutes violations of *jus cogens*.

PRC officials violate *jus cogens* norms of torture, cruel, inhuman, or degrading treatment or punishment, and prolonged arbitrary detention. First, torture and other cruel, inhuman, or degrading treatment has been well-documented by the hundreds of Laogai survivors who claim they have been subject to such treatment. Their stories include being tied up and left without food and water for a day, being

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319. See discussion supra Part IV.A.2.
320. See discussion supra Part IV.A.4.a.
321. See supra notes 185-90 and accompanying text.
322. See supra notes 185-90 and accompanying text.
323. See RESTATEMENT, supra note 190.
324. Id. cmt. a.
325. 965 F.2d 699 (9th Cir. 1992).
326. 630 F.2d 876 (2d Cir. 1980).
327. See discussion supra Parts II.B.3.a.-3.b.
burned repeatedly with a lit cigar,\textsuperscript{329} and being kept in solitary confinement for years at a time.\textsuperscript{330} Many were forced to work in dangerous environments, such as asbestos mines.\textsuperscript{331} Laogai prisoners are given little or no pay for the work they are forced to perform,\textsuperscript{332} which essentially makes them slaves of the PRC. Second, prisoners are subject to prolonged arbitrary detention. Before recent legal reforms were implemented by the PRC, Chinese citizens were sometimes sent to the Laogai without being charged or afforded a trial.\textsuperscript{333} Even at present, prisoners are held for long periods of time without being formally charged.\textsuperscript{334} Furthermore, when detainees are given their right to a trial, it is at least questionable whether their convictions and subsequent imprisonment are not arbitrary because they are afforded few due process rights.

5. \textit{The Nuremberg Precedent}

The principles set forth in Nuremberg and the similarities between the Nazi concentration camps and the Laogai make Nuremberg a relevant precedent.\textsuperscript{335} Yet, as discussed below, the differences in political climates surrounding the two help explain why the international community has not reacted to the Laogai as it did to the Nazi concentration camps.\textsuperscript{336} However, a brief comparison between the Nazi concentration camps and the Laogai will help demonstrate that, despite the probable political opposition, the atrocities of the Laogai should also be met with a tribunal and charter.\textsuperscript{337}

\begin{itemize}
\item \textsuperscript{329} \textit{Well-Founded Fear of Persecution}, \textit{LAOGAI REPORT} (Laogai Research Foundation), Oct. 1994, at 6.
\item \textsuperscript{330} \textit{Images of the Laogai}, \textit{LAOGAI REPORT} (Laogai Research Foundation), Oct. 1994, at 7.
\item \textsuperscript{331} \textit{See Xinkang Asbestos Mine}, \textit{LAOGAI REPORT} (Laogai Research Foundation), Sept. 1996, at 7.
\item \textsuperscript{332} \textit{Wu, LAOGAI, supra} note 14, at 40 ("Because [the Laogai] utilizes low-wage or no-wage forced labor power, labor reform production is highly efficient and predictably very profitable.").
\item \textsuperscript{333} \textit{See discussion supra} Part II.A.4 (describing Harry Wu's experience).
\item \textsuperscript{334} \textit{See discussion supra} Part IV.A.2.b.3.
\item \textsuperscript{335} \textit{See discussion infra} Part IV.A.5.a.
\item \textsuperscript{336} \textit{See discussion infra} Part IV.A.5.c.
\item \textsuperscript{337} \textit{See discussion infra} Part V.
\end{itemize}
a. **Comparison: Nazi Concentration Camps and the Laogai**

The objectives of the Nazis and Chinese Communists are comparable. In Nazi Germany, the concentration camps were used to advance a homogenous race; in China, they are used to advance a single class society. Slave labor and killing are elements of both. The Nazis exterminated groups of victims in gas chambers and the Chinese conduct mass public executions.

One distinguishing feature of the Laogai is the number of victims. For example, in the "Kristallnacht," ninety-one people were killed in Germany in one night; contrast that with one day during the Cultural Revolution, when 1,714 people were killed in Beijing. There were approximately six million victims of the Nazi concentration camps. There are between six and eight million people in the Laogai today and in the period from 1949 to 1984, there were an estimated fifty million victims.

b. **The Nuremburg Charter Cannot Cure the Laogai**

A big difference between the concentration camps and the Laogai is that the former occurred during a time of war and, consequently, the Nuremberg Charter set forth "war crimes." Similar violations of the Laogai cannot be styled war crimes because they are not the product of war. For this reason, the Nuremberg Charter is not directly applicable to the PRC. Therefore, a specific charter should be created, establishing that the Laogai abuses are crimes.

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338. See generally *Harry Wu Meets Nazi Hunter*, LAOGAI REPORT (Laogai Research Foundation), Sept. 1996, at 2 (comparing the Laogai to concentration camps).
339. *Id.*
340. *Id.*
341. *Id.*
342. *Id.* This comparison is not meant to de-emphasize the holocaust in any way. It is meant to show that the Laogai should not be ignored.
343. *Id.*
345. See supra notes 170, 177.
346. See discussion infra Part V.B.
347. See discussion infra Part V.B.
c. Difference in the Reactions to the Laogai and Nazi Concentration Camps

The reaction of the international community to Nazi concentration camps was unprecedented; not only have violators been convicted, but it has been the subject of widespread exposure and documentation through movies, books, and museums. In the PRC, officials inflicting human rights violations remain in power and continue to criminalize innocent citizens, while the international community takes little or no action to stop the Laogai. The following may help explain the difference in treatment.

The response to the Nazis came after World War II when the Allies were victorious over the Nazis and looking for a reason to punish them. This is in stark contrast with the circumstances surrounding the Laogai. The PRC is not a nation in defeat following war. Rather, the PRC is a major world power with a strong military. Furthermore, the PRC has had a booming economy since 1978, when Deng Xiaoping imposed economic policies favoring exports. Currently, the U.S. and other countries rely on China’s exports, which tend to be inexpensive compared to products manufactured elsewhere. There is no doubt that the cheap slave labor of the Laogai has played an important part in the PRC’s economic success. These strong political and economic forces favoring the continuation of the Laogai help explain why the international legal community has not made strong efforts to

348. Wu, TROUBLEMAKER, supra note 1, at 188-90.
349. Human rights violations of the PRC have been addressed in the context of international trade and not under international human rights law. See discussion infra Part V. Threats of trade-related penalties have been ineffective. See discussion infra Part V.
350. See generally Fogelson, supra note 164.
352. Michael Zielenziger, Deng Bet on Booming Economy at Home, Healthy Exports Abroad, SAN JOSE MERCURY NEWS, Feb. 21, 1997, at A1, A8. Some experts predict that China will have the world’s largest economy by 2010. Id. at A8.
353. For example, over 60% of shoes and 50% of toys Americans purchase are from China. Id. at A1.
354. For examples of Laogai manufactured products being found in other countries, see Customs Raid Finds Laogai Products, LAOGAI REPORT (Laogai Research Foundation, Milpitas, Cal.), Jan. 1993, at 4, and Laogai Products Found in the United Kingdom, LAOGAI REPORT (Laogai Research Foundation, Milpitas, Cal.), July 1994, at 5.
stop the violations of the Laogai.

V. PROPOSAL

To date, the international community has ineffectively addressed the human rights violations of the PRC in the context of international trade. One option that might be pursued is to impose forceful trade sanctions against the PRC. However, this would not provide an adequate solution because the PRC would probably respond as it has responded to the minimal pressure the U.S. puts on the PRC every time the issue of renewal of the most-favored-nation status arises—by changing its laws on paper and not in effect.

Moreover, a more comprehensive program is necessary to ensure the PRC's compliance and to give the PRC assistance in replacing the Laogai with a system where both prisoners and workers are guaranteed fundamental human rights. This is not to suggest that the proposal that follows would not cause some political and economic disorder both in the PRC and in countries which have grown dependent on it. However, the following suggests an incremental approach, with an aim towards minimizing the amount of upheaval bound to occur when implementing any plan seeking abolition of the Laogai.

A. The First Step: Exposing the Laogai

Exposure of the Laogai should be the first step towards its abolition because the international community is uneducated about the nature of the Laogai and the extent of the abuses involved. There should be mass publicity of the Laogai to offset the opposition by the powerful nations and corporations that profit from Laogai slave labor and that would be negatively impacted by the abolition of the Laogai.

It is likely that the PRC Government would respond to increased publicity of the Laogai by attempting to pacify the international legal community. For example, the PRC might

355. See supra note 23 and accompanying text.
356. See supra notes 6, 65 and accompanying text.
357. Since the PRC has kept facts and statistics regarding the Laogai an internal secret, see supra notes 32-35 and accompanying text, there is a lack of widespread knowledge of the Laogai.
358. See supra note 11 and accompanying text.
try to legislate a legitimate penal institution.\textsuperscript{359} However, such changes on paper alone will not end the human rights abuses in the Laogai.\textsuperscript{360} Proposals for legal reform of the Laogai can be no more effective than attempts at reforming the Nazi concentration camps would have been. For this reason, the Laogai must be abolished to end the human rights violations.

Widespread exposure of the Laogai, including the dissemination of accurate facts depicting its operation, the occurring atrocities, and the number of its victims, would help gain support for its abolishment. Such exposure should also make it more difficult for the PRC and others profiting from the Laogai to deny the excessive human rights violations.

Exposure should be accomplished through media and education. As discussed below, the ILO will be instrumental because it has important contacts and experience in this area.

1. \textit{The Role of the ILO}

The ILO has successfully ended numerous instances of human rights abuses by implementing incremental plans, through its exposure of human rights abuses.\textsuperscript{361} The ILO has many partners it works with to end human rights abuses. These include universities, hospitals, workers' and employers' organizations, and the media.\textsuperscript{362} By educating and involving each of these parties, the ILO could help gain the support needed to end the Laogai.

In addition, the ILO could encourage and assist each of its partners to do what they can at their respective levels: (1) universities could help educate students; (2) hospitals could both educate medical students and inquire into organ donations originating in China; (3) workers' and employers' organizations could take steps to implement policies in their business entities to avoid the use of products from the Laogai; and (4) the media could engage in investigative reporting, documenting, and publicizing the Laogai.

\begin{itemize}
\item \textsuperscript{359} LAOGAI RESEARCH FOUNDATION, LAOGAI HANDBOOK 1 (1995) (arguing that the 1994 Prison Law was promulgated to make the Laogai appear as a legitimate prison).
\item \textsuperscript{360} See id. at 2.
\item \textsuperscript{361} See supra notes 230-37 and accompanying text.
\item \textsuperscript{362} See supra notes 230-37 and accompanying text.
\end{itemize}
2. *The Role of Harry Wu*

Harry Wu has been, and continues to be, at the forefront of efforts to stop the human rights abuses of the Laogai.\(^{363}\) Wu currently runs the Laogai Research Foundation, which has enabled him to successfully gather considerable data on the Laogai.\(^{364}\) Because Wu is an important source of accurate information on the Laogai, which is not obtainable from the PRC, such as the location of Laogai camps, the products manufactured at its camps, and how the Laogai system operates,\(^{365}\) he is needed to direct future fact finding efforts. In addition, since Wu has first hand knowledge of the Laogai and has made several public presentations, including testifying before Congress,\(^{366}\) new data compiled and exposed under the direction of Harry Wu would be viewed with credibility by citizens worldwide.

B. *Second Step: Establishing the Laogai Tribunal and Charter*

After the Laogai has been exposed, there should be sufficient public support in favor of abolishing the Laogai via the establishment of a tribunal and charter ("Laogai Tribunal" and "Laogai Charter"). However, there would also be substantial opposition to this plan from those with significant financial interests in keeping the Laogai operational.\(^{367}\) Regardless, there are strong arguments under international law showing extensive violations by the PRC.\(^{368}\) Nations should take action to set an important precedent and strengthen international human rights law.

First, United Nations members should draft an agreement convening a Laogai Tribunal and appointing a panel of judges. The panel should include seven to nine judges: one a representative of the PRC, and the others a reflection of the composition of the international community. Second, UN members should draft a Laogai Charter specifying the hu-
man rights violations pertinent to the Laogai. The crimes defined in the Laogai Charter should refer to the Declaration as a principal source of authority because the Declaration addresses the most serious human rights abuses present in the Laogai.\footnote{See discussion \textit{supra} Part IV.A.2.} The Laogai Charter should also refer to the Nuremberg Charter and relevant case law as sources of authority. Third, there should be a massive fact finding effort. This should include the identification and inspection of Laogai camps and interviews with present Laogai prisoners and Laogai survivors.

Trial should be the next step. The principal defendant should be the PRC government. Defendants should also include individual PRC government officials. However, individual defendants should be limited to the highest ranking officials because if all of the individuals involved were made defendants the trial would take decades. Trial should not be a witch-hunt or an exercise in seeking revenge. Rather, the significance of this trial would be to abolish the Laogai in an expedient manner and set an important precedent in international human rights law. Considering the facts which have been disclosed so far about the Laogai and the amount of damaging information more fact finding is likely to produce, trial should produce a verdict against the PRC. The PRC should then be ordered to abolish the Laogai.

C. \textit{Final Step: Implementing the Judgment of the Laogai Tribunal}

Significant efforts to enforce the judgment abolishing the Laogai would be required. During the implementation phase, the ILO would again play an integral role, as they have a large technical department with staff capable of performing such a task.\footnote{See \textit{supra} note 198.} In addition, the Laogai Charter should establish a committee to monitor the implementation of the judgment.

There should be measures taken at each Laogai camp identified at trial. The abolition of the Laogai should not mean automatically freeing each Laogai prisoner. The judgment should order the PRC Government to: (1) re-define crimes warranting criminal responsibility, abolishing current
provisions of PRC law criminalizing behavior permissible under international law; (2) make a determination regarding which Laogai prisoners were imprisoned for committing crimes warranting criminal responsibility; (3) afford due process to prisoners arrested for committing crimes warranting criminal responsibility, including just and proportional punishment; and (4) free all Laogai prisoners unjustly imprisoned. The result of this proposal should be an end to the Laogai, freedom to those prisoners wrongfully detained, and a meaningful precedent in international human rights law.

VI. CONCLUSION

The international legal community has established that no state may violate certain fundamental human rights of its citizens, including, but not limited to, the right to be free from arbitrary arrest and detention, slavery, torture, or other cruel, inhuman, or degrading treatment. By operating its forced labor system, the Laogai, the PRC violates each of these human rights and others. No effective action has been taken to end the Laogai because of the strong financial interests of powerful governments and private corporations. Also, the PRC has been successful at keeping the Laogai a secret. The abuses of the Laogai should be fully exposed and United Nations members should take action to end the Laogai by establishing a Laogai Tribunal and Charter. Such action is needed because, in the words of Harry Wu, "we have no right to forget all those nameless, faceless millions who are turned into ashes in Laogai camps. In no case should we forget the Laogai — not for revenge, but for the future of our children."

Melissa Pearson Frugé

371. See discussion supra Part II.B.
372. See discussion supra Part IV.