

## **A European Union investigation into transplant abuse in China**

*(Remarks prepared for delivery to a European Parliament briefing, Brussels, 16 September, 2015)*

by David Matas

### **Introduction**

The European Parliament passed a resolution in December 2013 on organ harvesting in China. That resolution, amongst other provisions, called for a full and transparent investigation by the European Union into organ transplant practices in China.<sup>1</sup>

To date no such investigation has been done or even been started. Nor are there any initiatives to start it. This component of the resolution needs to be operationalized, made real. In this talk, I want to address three points.

One is the need for a full and transparent investigation by an official body. The second is the value of having such an investigation done by the EU. Third is procedural suggestions about how such an EU investigation can happen.

The first two points have, of course, already been endorsed by the European Parliament. However, for this component resolution to be implemented, it would be useful to bear in mind why it is important.

Implementing a resolution requires more than just knowledge of the resolution. It requires a belief in the value of implementation in order to generate and sustain the political will to

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<sup>1</sup> December 12, 2013 European Parliament document number P7\_TA(2013)0603 resolution number 2013/2981,

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2013-0562+0+DOC+XML+V0//EN>

make it happen.

### **Existing investigations**

There have already been several full and transparent investigations into organ transplant practices in China. I draw your attention to these efforts:

- 1) A report former Canadian Government Minister and Parliamentarian David Kilgour and I did released in July 2006,<sup>2</sup> second version released in January 2007,<sup>3</sup> and a third version, in book form, we wrote in November 2009,<sup>4</sup> all under the title *Bloody Harvest: The Killing of Falun Gong for their Organs*;
- 2) A book of essays on the subject, published August 2012 under the title *State Organs: Transplant abuse in China*, which I co-edited with Torsten Trey, founder of the NGO, Doctors against Forced Organ Harvesting (DAFOH).<sup>5</sup> The authors, from around the world, were mostly members of this new organization;
- 3) A book by Ethan Gutmann, an American journalist based in England in August 2014 under the title *The Slaughter: Mass Killings, Organ Harvesting, and China's Secret Solution to Its Dissident Problem*;<sup>6</sup>
- 4) A Yale undergraduate thesis by Hao Wang under the title *China's Organ Transplant Industry and Falun Gong Organ Harvesting: An Economic Analysis*;<sup>7</sup>
- 5) A submission to the US Congress by Kirk Allison Director, Program in Human Rights and

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<sup>2</sup> <http://organharvestinvestigation.net/report20060706.htm>

<sup>3</sup> <http://organharvestinvestigation.net/>

<sup>4</sup> Seraphim Editions

<sup>5</sup> Seraphim Editions

<sup>6</sup> Prometheus Books

<sup>7</sup> <http://organharvestinvestigation.net/events/YALE0407.pdf>

Health, school of Public Health, University of Minnesota;<sup>8</sup>

6) Continuing investigations and reports by the NGO World Organization to Investigate Persecution against the Falun Gong;<sup>9</sup>

7) A 2013 documentary by Masha Savitz, titled *Red Reign*;<sup>10</sup>

8) A 2014 documentary by Leon Lee, titled *Human Harvest*, which won a 2015 Peabody Award;<sup>11</sup> and

9) A 2015 documentary by Ken Stone titled *Hard to Believe*.<sup>12</sup>

These many investigations all have come to the same conclusion - that there has been and continues to be widespread organ abuse in China, in particular the killing of prisoners of conscience for their organs. The primary victims are practitioners of the spiritually based set of exercises Falun Gong.

These investigations combined and even separately are full investigations. Indeed, part of the problem David Kilgour and I face in communicating our results is that the work is too full; there is too much there to communicate quickly.

These investigations are also transparent. Methodologically, one principle I and David Kilgour followed is never to rely on hearsay. Everything that we saw the reader can see. No one has to take our word for anything. Anyone who wants to see if any our conclusions

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<sup>8</sup> [http://commdocs.house.gov/committees/intlrel/hfa30146.000/hfa30146\\_0f.htm](http://commdocs.house.gov/committees/intlrel/hfa30146.000/hfa30146_0f.htm)

<sup>9</sup> <http://www.upholdjustice.org/>

<sup>10</sup> <http://redreignfilm.com/>

<sup>11</sup> <http://www.humanharvestmovie.com/>

<sup>12</sup> <http://hardtobelievmovie.com/>

or observations are supported by the evidence can check out the evidence for him or herself.

### **The need for an official investigation**

In spite of the unanimity of results and the variety of investigations, a similar investigation by an official institution would be useful, because of its official status. There are many people, understandably, who do not have the time and, in some cases, the capacity to conduct their own investigations or even assess the validity of the investigations already made. For them, a shortcut would be useful. One such shortcut would be the official imprimatur of an institution.

The response of the Government of China to the evidence of the killing of prisoners of conscience for their organs is similar to their response to evidence of more or less all human rights violations in China. We see denial, cover up, counter accusations against the interlocuteur, feigned indignation, threats of economic or political consequences, nonsensical and self contradictory evidentiary replies, claims of interference in internal affairs and suggestions of the cultural specificity of China or Asia. In some cases, there is even acknowledgement of a problem with promises to change and a request to help with the change - all the while keeping abuses in place more or less as they always were.

This kind of Chinese Communist Party effrontery is not something that just the NGO world faces. It is also the manner and matter of daily discourse between Chinese and foreign officials, officials both of governments and inter governmental entities. An official agency investigation into transplant abuse in China which comes to the same results as all the non-governmental investigations is unlikely, on its own, to produce any different response from the Communist Party of China. So why bother?

I have been on this file, attempting to stop the killing of prisoners of conscience in China for their organs, for many years. I have promoted a variety of initiatives to attempt to stop the abuse. One that has been particularly fruitful is peer pressure.

The reason I am here in Brussels this week is pursue this avenue, to attend the European Society of Transplantation Congress. I put in an abstract for a poster presentation on transplant abuse in China which was accepted under the title "Sources of Organs for Transplant in China. I and others have been attempting to mobilize peer pressure to leverage change in China.

Peer pressure has turned out to be a more effective lever for change in organ transplant abuse in China than governmental or inter governmental pressure, because the Chinese transplant profession is more sensitive to the views of their colleagues abroad than the Chinese government is to the views of other governments or inter governmental agencies. One can understand why this is so. Transplant professionals in China both learn and achieve status in their profession through contact with their colleagues abroad. Moreover, their connection with the Communist Party is a good deal more tenuous than those in the Government of China.

So the question becomes how can we mobilize change in China through peer pressure, by cutting off contact and collaboration with Chinese transplant professionals who perpetrate the abuse. The Transplantation Society developed a policy to this effect, directed specifically to China, dated November 2006.<sup>13</sup> It came out shortly after the first version of our report in July 2006. David Kilgour and I met in Sweden with Annika Tibell, then head of The Transplantation Society ethics committee, while this policy was being developed.

The Society said about the presentation of transplant studies from China at Transplantation

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<sup>13</sup> <https://www.tts.org/images/stories/pdfs/StatementMembs-ChineseTXProg.pdf>

Society meetings:

"presentations of studies involving patient data or samples from recipients of organs or tissues from executed prisoners should not be accepted".

The Society treated collaboration on studies the same way. It stated:

"Collaboration with experimental studies should only be considered if no material derived from executed prisoners or recipients of organs or tissues from executed prisoners is used in the studies."

The Society policy was to permit doctors from China to become members of the Society only if they "sign the Statement of The Transplantation Society for Membership agreeing to conduct clinical practice according to The Transplantation Society policy". When it came to clinical or pre-clinical trainees from transplant programs that use organs or tissues from executed prisoners, the policy stated that

"Care should be taken to ensure, as far as possible, that it is their intention that their clinical career will comply with the standards of practice outlined in The Transplantation Society Policy & Ethics Statement".

Professional ostracism has been a vehicle for change in China. The China Medical Tribune reported the refusal to allow 35 Chinese participants for ethical reasons to attend the World Transplant Congress in San Francisco in July 2014.<sup>14</sup> It also noted that for the 2014

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[http://www.cmt.com.cn/detail/623923.html&usg=ALkJrhj1Ume7SWS\\_04UtatL3pWKYRbFqxw](http://www.cmt.com.cn/detail/623923.html&usg=ALkJrhj1Ume7SWS_04UtatL3pWKYRbFqxw)

See Matthew Robertson, "From Attack to Defense, China Changes Narrative on Organ Harvesting" Epoch Times, November 24, 2014,

<http://m.theepochtimes.com/n3/1099775-from-attack-to-defense-china-changes-narrative-on-organ-harvesting/?sidebar=hotarticle>

Hangzhou, China transplant conference "many overseas transplant experts failed to attend". A year before, in October 2013, the China Transplant Congress, also held in Hangzhou, had a raft of foreign expert attendees.

The NGO Doctors against Forced Organ Harvesting (DAFOH) on October 20th released a statement which provided that

"we would consider it unethical for any foreign transplant professional to attend this transplant congress in Hangzhou given the rampant and unrepentant transplant abuse in China, unless the person is going with the express and sole purpose of speaking out against it."<sup>15</sup>

This statement, along with other developments, would have been a drag on overseas transplant expert attendance.

Avoiding collaboration can take the form of avoiding training. Neil Laurie, Clerk of the Queensland Parliament, by letter dated November 1, 2006, sent a petition to Stephen Robertson, the Minister of Health for the Queensland Government in Australia, asking for an investigation of the forced organ harvesting from Falun Gong. The Minister of Health, on December 1, 2006 in response, wrote that the Prince Charles Hospital has "a policy of not training any Chinese surgeon in any transplant surgical technique'.

The Prince Charles Hospital is one of the major transplant hospitals in Queensland. I have been told informally that, though no other Australian State Health Minister has issued a similar statement, other transplant hospitals in Australia now follow a similar policy.

Doctors Danovitch, Shapiro, and Lavee, in a 2011 article, wrote

"Training of Chinese transplant professionals by the international community must be conditioned on commitments that trainees will not engage, directly or indirectly,

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<sup>15</sup> <https://www.facebook.com/DAFOH/posts/730575070369993>

in the use of organs from executed prisoners."<sup>16</sup>

Yet, another form of avoiding complicity is refusal to publish research of Chinese transplant professionals using data garnered from organ transplant abuse. The Editors and Associate Editors of the journal *Liver Transplantation*, wrote in 2007 that they

"have decided that original publications dealing with clinical liver transplantation outcomes submitted to this journal should explicitly exclude the use of executed prisoners or paid donors as a source of donor organs."<sup>17</sup>

The American Journal of Transplantation issued as instructions to authors a new policy effective May 2011 which states:

"AJT will not accept manuscripts whose data derives from transplants involving organs obtained from executed prisoners. Manuscripts writing about this practice (e.g. an editorial or a report recounting the secondary consequences of this practice) may be considered at the discretion of the Editorial Board, but require a written appeal to the Board prior to submission of the manuscript."

The Danovitch, M.E. Shapiro, and J. Lavee, in the article just cited, state:

"International and national professional medical societies and journals should not accept abstracts, publications or presentations from Chinese transplant centers unless the authors clearly indicate that the data presented is in concordance with the most recent Chinese government regulations regarding transplant tourism and that executed prisoners were not the source of organs."

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<sup>16</sup> G.M. Danovitch, M.E. Shapiro, and J. Lavee "The Use of Executed Prisoners as Sources of Organ Transplants in China Must Stop" Volume 11 pages 426 428.

<sup>17</sup> Issue 13:182, 2007



The refusal to allow 35 Chinese participants for ethical reasons to attend the World Transplant Congress in San Francisco in July 2014 and failure of many overseas transplant experts to attend the Hangzhou, China transplant conference on October 2014 had a profound impact on Chinese transplant officials. Many attendees to the 2014 Hangzhou conference were likely asking where all the overseas transplant experts were. Those doctors who applied to attend and participate in the World Transplant Congress in San Francisco in July 2014 and were rejected, and their colleagues who knew they were applying to attend, also needed an explanation.

The Communist Party may have felt that they could ignore the evidence of the killing of Falun Gong for their organs. However, they could not ignore the fact that Chinese transplant doctors were denied admission to an international transplant congress or that foreign transplant doctors who had come before to China were no longer coming.

In response to this ostracism, the Communist Party/State made some changes and also issued a wide variety of contradictory statements about how the situation either is better now or would get better in the future. I have set out these statements, at length, in a talk I gave in April, 2015 in Bern, Switzerland to the International Society of Human Rights.<sup>18</sup> The bottom line driving all the remarks and changes was a desire to end the ostracism. The peer pressure of the international profession at the very least got the attention of Chinese authorities in the way that no other initiative had.

There was a Chinese transplant conference 6-8 August 2015 at East Lake in Hubei Province at the International Conference Centre. This was a conference for internationals and not the Chinese transplant conference with internationals invited. There has been no official

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<sup>18</sup> [http://www.david-kilgour.com/2015/Matas\\_04162015.pdf](http://www.david-kilgour.com/2015/Matas_04162015.pdf)

<http://endorganpillaging.org/organ-sourcing-in-china-the-official-version/>

announcement flowing from the East Lake conference which leads me to suspect that the participants did not reach a mutual agreement.

The criteria for reconnection between the Chinese and international transplant community should be these:

- a) an admission of past wrongdoing, including full disclosure of the sourcing of organ transplants in the past;
- b) a commitment to bring to justice all perpetrators of past organ transplant abuse and commencement of proceedings;
- c) expulsion from the Chinese Medical Association of transplant professionals who can not establish beyond a reasonable doubt that their sourcing of organs is proper;
- d) cooperation with an international investigation into present and past sourcing of organs for transplant;
- e) publication of present and past death penalty statistics;
- f) public access to the past and present aggregates of the four Chinese transplant registries - lung, liver, heart and kidney;
- g) full, independently verifiable transparency of current sourcing of organs for transplant;
- h) establishment of a system of traceability of sources for transplants and use of that system; and
- i) cooperation with an outside, independent verification system for compliance with international standards.

The transplant profession has been important in combating organ transplant abuse in China. Yet, we should not place more expectations on the shoulders of transplant professionals than they can realistically be expected to bear.

Transplant professionals are after all not sinologists. They are not experts in Communist Party criminality, propaganda techniques, cover up and dissimulation.

They are moreover, a constantly changing lot. They are by career transplant professionals, but not transplant organization professionals. The positions in the various organizations representing transplant professionals have new incumbents virtually every year.

When it comes to dealing with the Communist Party of China, transplant professionals are amateurs. We can not realistically expect a continually shifting cast of amateurs to solve on their own the deep seated problem in China of the killing of prisoners of conscience for their organs.

While we have to welcome the efforts they have made, ending organ transplant abuse in China is not just a transplant professional challenge. It is a human rights challenge which we all must confront.

One way of doing that is giving the international professionals trying to effect change in China the support they need. One form that support can take is an official investigation. An official investigation, even if it did no more than repeat what all the many unofficial investigations have found, would help to mobilize the international transplant profession to press for change in Chinese transplantation. We should keep in mind the impact this sort of investigation would have, not just on Communist party officials directly, but on international transplant professionals who are trying to mobilize their own profession to effect change in China.

### **The need for an EU investigation**

The European Union is not the only possible official agency which could conduct an investigation into transplant abuse in China. Yet, it is the most likely.

The Office of the United Nations High Commissioner for Human Rights has been asked by petition in 2013 to conduct an independent investigation into organ transplant abuse in China. The petition has nearly one and a half million signatures.<sup>19</sup> The Office of the High Commissioner has ignored the petition, not even officially acknowledging in writing its receipt, although we know it was received. I personally delivered the reams of paper with signatures in a trolley to the headquarters of the Office of the High Commissioner in Geneva and have pictures of the delivery.

The United Nations Committee against Torture was bolder than the Office of the High Commissioner. China is a signatory to the Convention against Torture and has to report periodically to the expert committee established under the Convention. Its most recent report is being considered in Geneva November 17 and 18.

The Committee against Torture, after considering the previous China report, recommended in 2008 that

"The State party should immediately conduct or commission an independent investigation of the claims that some Falun Gong practitioners have been subjected to torture and used for organ transplants and take measures, as appropriate, to ensure that those responsible for such abuses are prosecuted and punished."<sup>20</sup>

In the intervening seven years, the Government of China has neither conducted nor commissioned any such independent investigation. The Committee against Torture is ill placed to conduct such an investigation itself.

The United Nations rapporteurs on torture and religious intolerance have taken a similar

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<sup>19</sup> <http://www.dafoh.org/petition-to-the-united-nations/>

stance, asking in the years 2007 and 2008 for the Government of China to account for the large discrepancy between the volumes of transplants they claimed to have made and the volume of sources they were prepared to acknowledge.<sup>21</sup> The Government of China answered these queries in 2007 with silence and in 2008 with propagandistic nonsense. These rapporteurs recorded the answers, but were in no position to conduct their own investigations without an authorization from the UN Human Rights Council.

The predecessor to the UN Human Rights Council, the Human Rights Commission used to see, if not adopt, resolutions about the human rights situation in China. The Chinese government negotiated these resolutions away, offering bilateral human rights dialogue in exchange for abandonment of resolution proposals on human rights in China. All the proponents of the resolutions accepted this devil's bargain.

The dialogues have now existed for many years. And they are pointless. Canadian academic Charles Burton evaluated in April 2006 the Canada China bilateral dialogue at the request of the Canadian Ministry of Foreign Affairs. He reported that Chinese participants in the dialogues were low level officials who spent much of the time of the meetings just reading scripts, and what is more, the same scripts year after year. There was no obvious connection between these dialogues and what actually happened in China. Senior Chinese Communist officials resisted taking the dialogue seriously; they saw it as an affront to China's national dignity for China to be made to answer to foreigners for domestic policy decisions.<sup>22</sup>

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<sup>21</sup> For the 2008 report of the Rapporteur on Torture see

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/106/97/PDF/G0810697.pdf?OpenElement>

<http://spartan.ac.brocku.ca/~cburton/Assessment%20of%20the%20Canada-China%20Bilateral%20Human%20Rights%20Dialogue%2019APR06.pdf>

The Office of the United Nations High Commissioner for Human Rights unhelpfully referred us to the United Nations Office of Drugs and Crime when we met informally with their officials about the DAFOH petition. I and others accordingly went to the Office to participate in a pre-arranged meeting, which was cancelled at the last minute, after we arrived. The Office took the position through e-mail that organ transplant abuse in China did not fall within their ambit. Though their website asserts that organ trafficking falls within the ambit of the Protocol on Human Trafficking to the Convention against Transnational Organized Crime, the view of the Office, which is the Secretariat for Protocol, was that transplant tourism does not come within the definition of organ trafficking.

The run around we see from the Office of the United Nations High Commissioner for Human Rights and the United Nations Office of Drugs and Crime is, in my view, not just bureaucratic inertia and pettifoggery. They hear footsteps, of the People's Republic of China. The UN system is ill placed to confront any of its veto power members and particularly a country as large as China, which does not hesitate to throw its weight around to cover up its human rights abuses.

The World Health Organization, because of its mandate and staffing by health professionals, is informally sympathetic and aware of the problem. Formally the organization has been helping in formulating and adopting in 2008 guiding principles, a couple of which are particularly relevant to China - the principles of transparency and traceability.<sup>23</sup>

These principles are important reminders. As compelling as the many investigations have

been that China is sourcing organs improperly, ultimately the onus falls on China to establish that its sourcing of organs is proper, not on outsiders to show that something is amiss. If an EU investigation came only to this conclusion, that China has not met the onus which falls upon it to be transparent about sourcing and suggesting ways in which that transparency could happen, that would be a substantial contribution to ending the abuse.

The World Health Organization institutionally does not engage in investigations generally and is unlikely to embark on an investigation into transplant abuse in China. As well, the head of World Health Organization is a Chinese national.

Even the European Union is not immune from Chinese government pressure. However, the advantage the EU has is that China is not a member and does not have the same leverage over the EU as it does over the UN.

Moreover, the EU Parliament has already accepted in principle both the need for an investigation and assumed responsibility for producing that investigation itself. The issue here is implementation only.

## **Implementation**

How does the EU implement the resolution? From what I can figure out of the European Union structure, the European Commission could, if it wanted, either conduct or contract the investigation mandated by the Parliament. There are other studies undertaken by the Commission which the Commission has undertaken or contracted on its own initiative. One example is a Study on the Gender Aspects of the Avian Influenza Crisis in Southeast Asia contracted by the Directorate General External Relations Avian Influenza External Response Coordination.<sup>24</sup>

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<sup>24</sup> [http://eeas.europa.eu/health/pandemic\\_readiness/docs/gender\\_study\\_0608\\_en.pdf](http://eeas.europa.eu/health/pandemic_readiness/docs/gender_study_0608_en.pdf)

I have had several meetings with various Commission officials to urge the Commission to either undertake or contract the investigation mandated by Parliament on organ transplant abuse in China, but the officials with whom I met expressed no willingness to do either. Moreover, they did not consider that the Parliamentary resolution imposed an obligation on them. The Commission officials with whom I met considered themselves accountable to the Council of Ministers and not to the Parliament.

We could of course ask one or other of the various configurations of the Council of Ministers to ask the Commission to conduct or contract the investigation requested by the European Parliament. However, doing this is a roundabout way of implementing the Parliamentary resolution. It should not be necessary to get the approval of another EU body to make real what the Parliament has already decided that the EU should do.

Rather than ask another part of the EU to do what Parliament has decided that the EU should do, I suggest that the Parliament conduct the investigation itself. By doing the investigation itself, there would no need for further approval from another component of the EU.

While I do not profess any expertise in European Parliamentary procedure, it seems to me that there are a number of procedures which can allow this to happen. I can suggest three. One is a request by Parliament to a standing committee to conduct the investigation under rule 201.<sup>25</sup> A second is an own initiative investigation and report by a standing committee under rule 52. The third is the establishment by Parliament of a special temporary committee to conduct the investigation and produce the report under Rule 197.



Rule 201 (1) provides:

"Standing committees shall examine questions referred to them by Parliament or, during an adjournment of the session, by the President on behalf of the Conference of Presidents."

Rule 52(1) provides in part:

"A committee intending to draw up a report and to submit to Parliament a motion for a resolution on a subject within its competence on which neither a consultation nor a request for an opinion has been referred to it under Rule 201(1) may do so only with the authorisation of the Conference of Presidents."

Rule 197 states:

"On a proposal from the Conference of Presidents, Parliament may at any time set up special committees, whose powers, composition and term of office shall be defined at the same time as the decision to set them up is taken; their term of office may not exceed 12 months, except where Parliament extends that term on its expiry."

The composition of the Conference of Presidents is set out in Rule 26 (1). That subrule states:

"The Conference of Presidents shall consist of the President of Parliament and the Chairs of the political groups. The Chair of a political group may arrange to be represented by a member of that group."

The Parliamentary resolution on organ transplant abuse in China had 56 sponsors representing every political group except the Progressive Alliance of Socialists and Democrats. In particular, the European People's Party, PPE, the Alliance of Liberals and Democrats for Europe, ALDE, Verts/ALE, European Conservatives and Reformists, ECR, and

the Europe of freedom and direct democracy Group, EFD were all represented. The socialists did not oppose; they just abstained.

Rule 26(3) sets out what should happen in case of a division of opinion in the Conference of Presidents. That subrule states

"The Conference of Presidents shall endeavour to reach a consensus on matters referred to it. Where a consensus cannot be reached, the matter shall be put to a vote subject to a weighting based on the number of Members in each political group."

An example of a Parliamentary investigation and report is the 2007 report of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners.<sup>26</sup> The Committee was established under a predecessor to Rule 197. The rapporteur was Giovanni Claudio Fava. If the European Parliament can investigate the US, it can certainly investigate China.

It should be a simple matter for the Conference of Presidents to set up a special committee to do what the Parliament asked the EU to do, to conduct a full and transparent investigation of organ transplant abuse in China. The Government of China will of course oppose and use all the bluster it can muster. Yet, the Parliament, which has already withstood Chinese government interference in adopting the resolution, should be able to withstand that interference in implementing the resolution.

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<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>