

The World Medical Association and Chinese transplant abuse

Remarks to the International Academy of Law and Mental Health

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Abbreviations

WMA = World Medical Association
CMA = Chinese Medical Association

A. The problem

The World Medical Association (WMA) has failed to confront adequately abuse of organ transplantation in China. The Chinese Medical Association (CMA) is a member of the World Medical Association. Yet, Chinese doctors have been violating the ethical standards of the Association from the moment it joined in 1997. The Association has been looking into these violations but not doing enough about them.

Ever since China began organ transplants, it sourced the organs from prisoners without their consent, in violation of the most basic ethical standards. The first prisoners who were victims of this practice were prisoners sentenced to death. But as the demand for organs and the money to be made from transplants increased, the supply of prisoners sentenced to death was quickly exhausted. David Kilgour and I concluded in a report, the first version published July 2006, the second version published January 2007, and then a book published November 2009 all under the title *Bloody Harvest*, that Communist Party/ Chinese State moved on from prisoners sentenced to death to Falun Gong practitioners, prisoners sentenced to nothing, combining its eagerness to profit from transit tourism and its determination to eradicate what it saw as an ideological competitor.

Falun Gong is a set of exercises with a spiritual foundation, a modern update and blending of the ancient Chinese qigong exercise and spiritual Taoist and Buddhist traditions. The practice of Falun Gong began in 1992. It was banned in 1999 first by the Communist Party and then by the Chinese state after its widespread popularity led the Communist Party to fear for its ideological supremacy.

We should not need to convince anyone that killing innocents for their organs is a violation of medical ethics and human rights. So is killing prisoners sentenced to death. The Government of China denies that it is killing Falun Gong practitioners for their organs. But it acknowledges, after years of denial, that it was and is using the organs of prisoners, prisoners the Government of China says have been sentenced to death and then executed.

The debate David Kilgour and I have with the Government of China is not whether organs are coming from prisoners. It is only a debate about what sorts of prisoners are the sources of organs. But, for the ethical standards of the WMA, resolving that debate does not matter.

B. The history

The complicity of Chinese doctors in organ harvesting from prisoners has been a problem for a decade, since China joined the WMA. China first joined in 1989, but left in 1991 for failure to pay its dues. It applied to rejoin in 1997.

The WMA realized that there was a problem in China in 1997 long before the persecution of the Falun Gong began, in 1999. If the Association had acted decisively then, they might not face the problem they do now. From the very start, organ harvesting from prisoners was an issue.

The German Medical Association moved to defer the application of China to join until it was clear whether Chinese doctors took part in the transplantation of organs from prisoners. The motion was overwhelmingly defeated. Dr. Anders, Chair of the WMA Council, in one of several naive statements about China, said:

"It is important that the CMA is once again a member of the World Medical Association so that we can discuss with them the allegations that doctors in China take part in the transplantation of organs from executed prisoners which we deplore."

The Association announced in April 1998 a conference to be held later in the year in China on medical ethics and human rights spurred by reports of organs being taken from "executed and living prisoners" in China. The conference, as far as I can tell, never took place.

The Association and its Chinese members issued a joint statement also in April 1998 condemning as "illegal and completely unacceptable" the involuntary or forced removal and sale of organs. This statement by the Chinese became one of a long series of such statements made while the practice flourished, without any visible impact on the practice. Dr. Anders, in another of his naive statements, said:

"if further allegations are made about organ trafficking we can rely on the CMA to try to rectify the situation."

The WMA's Statement on Human Organ Donation and Transplantation adopted in October 2000 and revised in October 2006 declared that *"Because prisoners and other individuals in custody are not in a position to give consent freely and can be subject to coercion, their organs must not be used for transplantation except for members of their immediate family."*(1)

The Association's Statement on Tissue for Transplantation of October 2007 had an identical provision for tissues.(2)

But about China, nothing was done. There was a revival of interest in 2006. A WMA Council meeting of May 2006 in South Africa called on China "immediately" to cease the practice of using prisoners as organ donors. They demanded that their Chinese members condemn the practice and ensure that Chinese doctors are not involved in it. The resolution reiterated the old 2000 policy.

A year later, this call for immediate cessation, like the calls nine years earlier, had produced more or less nothing. The Association sent a mission to China, led by the then head of the Council of the Association, **Dr. Yoram Blachar** from Israel. The mission reported to the Association Council meeting held in May 2007. Dr. Blachar continuing to strike the naive tone set by his predecessor **Dr. Anders** and said that he was encouraged by new legislation in China prohibiting the trade in organs.

Chinese law also prohibits donation of organs without consent. In the case of Falun Gong practitioners, that law is not respected. In the case of prisoners sentenced to death, consent is not meaningful because of the coercive prison environment. In any case, consent of these prisoners is impossible to verify.

So, trade in organs is not the sole medical ethics problem China poses. Indeed, Chinese prisoners do not sell their organs. They do not even know that they are being killed for their organs. The money paid for organs in China is paid to hospitals. The problem is not trade. It is the lack of consent.

C. A precedent

The World Psychiatric Association evicted the Soviet Union for abuse of psychiatry. Psychiatrists worldwide condemned the Soviet Union by resolution in 1977. The Soviets withdrew from the Association in 1983 when it faced almost certain expulsion. The precedent is exemplary. Why is the World Medical Association not following that precedent?

As bad as it is to put people in psychiatric hospitals for their beliefs, killing people for their organs is far worse. The timidity of the WMA in the face of Chinese medical practices is deeply disturbing.

Psychiatric professor emeritus **Abraham Halpern** of New York Medical College wrote to the WMA in September 2006, making reference to the report we wrote about organ harvesting. He called on the Association to take a number of steps including the appointment of an investigative committee to visit China and the expulsion of the CMA from the WMA if the Government of China did not stop illegal organ harvesting. In that letter, he reminded the Association of the principled action of the World Psychiatric Association against the Soviet Union for the wrongful involuntary incarceration of non-mentally ill dissidents in maximum security forensic psychiatric hospitals.

He wrote a follow up letter in April 2007 asking for an emergency meeting of the Council of the WMA on the issue. In that letter he wrote that the action he recommended to the Medical Association is the type of step

"that has proven effective in the past in the Soviet Union and even in China itself in connection with stopping the wrongful incarceration in maximum security forensic institutions of non-mentally-ill dissidents in the Soviet Union and Falun Gong adherents in China."

The World Psychiatric Association eventually agreed in 1989 to readmit the Soviet Union, provided four conditions were met. They were that the Soviet Psychiatric Association: 1. acknowledge that systematic abuse of psychiatry for political purposes had taken place; 2. promise to discontinue the abuses, 3. rehabilitate the victims, and 4 democratize the psychiatric profession(3)

The conditions were conditions subsequent, not conditions precedent. The Soviet Union was readmitted pending fulfillment of conditions with a monitoring committee set up to monitor fulfillment of the conditions. If the conditions were fulfilled, membership would become unconditional. If they were not, membership would be suspended.

The Soviet Union dissolved in December 1991. The World Congress of Psychiatry meets every three years. Its next meeting after establishing Soviet Union conditional membership was scheduled for 1992. Membership of the Soviet Union in the World Psychiatric Association remained conditional until the dissolution of the Soviet Union since the World Congress never had a meeting to reconsider the issue of unconditional Soviet membership.

The World Psychiatric Association provides another example about the Falun Gong. The Chinese, like the Soviets before them, abused psychiatry to mistreat their perceived opponents, their fantasized enemies, in the case of China the Falun Gong. The World Psychiatric Association, after their reaction to the Soviet abuse, could not just ignore Chinese violations. But they succumbed to the temptation of an agreement with the Chinese.

The Association and the Chinese agreed in May 2004 that there were

"instances in which some Chinese psychiatrists failed to distinguish between spiritual-cultural beliefs and delusions, as a result of which persons were misdiagnosed and mistreated."

The parties further agreed that these instances were attributable to a "lack of training and professional skills of some psychiatrists rather than [to] systematic abuse of psychiatry." The Chinese Society of Psychiatrists agreed to take steps to "educate [its] members" about the issues that led to misdiagnosis and mistreatment and said it welcomed the World Psychiatric Association's "assistance in correcting this situation" and improving psychiatric diagnosis and treatment throughout the People's Republic of China.

Abraham Halpern, the voice of reason in all this, reacted this way: *"The allegations of psychiatric abuse in China involve mistreatment, torture, and fraudulent diagnoses in the case of large numbers of political dissidents and Falun Gong practitioners and should not be dismissed as mere 'failures in accurate diagnosis.'"*

The organ harvesting of Falun Gong practitioners is systematic and not just the failure, in a few instances, to follow appropriate transplant procedures. The numbers of organs harvested from Falun Gong practitioners, **David Kilgour** and I estimate in the tens of thousands, allow for no other description.

D. The agreement

In a news release dated 5 October 2007 the WMA announced at the annual General Assembly in Copenhagen an agreement with the CMA. The CMA agreed that organs of prisoners and other individuals in custody must not be used for transplantation, except for members of their immediate family(4).

In a letter to the WMA, the Vice President and Secretary General of the CMA, **Dr Wu Mingjiang**, said:

"We would like to inform you that after discussions in the CMA, a consensus has been reached, that is, the Chinese Medical Association agrees to the World Medical Association Statement on Human Organ Donation and Transplantation, in which it states that organs of

prisoners and other individuals in custody must not be used for transplantation, except for members of their immediate family. The CMA will, through its influence, further promote the strengthening of management of human organ transplantation and prevent possible violations of the regulations made by the Chinese Government. We also hope to work more closely with the World Medical Association and exchange information and views on the management of human organ transplantation."

Dr Edward Hill, chair of the WMA, said the announcement by the CMA was a very positive step forward and added:

"We shall now continue our dialogue with the CMA and include other national medical associations in a project to find best practice models for ethically acceptable organ procurement programs. This would help not only China and its high demand for organs, but also other regions in the world that have the same problems of coping with a severe shortage of organs."

The agreement between the World Medical Association and the CMA to end organ sourcing from prisoners in China except for prisoners donating organs to their immediate family members covered all prisoners and not just prisoners sentenced to death. This broader terminology means that, in principle, the agreement encompasses also Falun Gong practitioners who are held in detention but sentenced to nothing.

The former chair of the WMA, **Dr Yoram Blachar**, who led the WMA delegation to China, stated that differences between the two sides remained. The WMA needs to continue to press the CMA on this issue until the practice in China of killing prisoners for their organs ends entirely.

Over four years later, prisoners remain the chief source of organs in China. Transplant professionals have neither enforced nor followed the stated policy of the CMA; they have not refused to conduct transplants of organs they must know are sourced from prisoners. Nor has the CMA taken any steps to discipline members who are involved in these transplants or the preliminary prison medical examinations garnering blood and tissue type information and assessing organ health.

E. Next steps

The World Medical Association is holding its next General Assembly in Montevideo, Uruguay October 12 to 15th 2011. The Assembly needs to deal with this issue.

With the 2007 agreement, a number of concerns remain. The CMA is not a governmental entity. Its promise to avoid to avoid organ sourcing from prisoners indicates the good will of some Chinese medical doctors. However, it is not binding on the government, and is not binding on doctors in China who are not members of the CMA. The CMA cannot make decisions for the government. The Government sets the rules for associations and not vice versa. The practice of sourcing organs from prisoners, whether prisoners sentenced to death or Falun Gong practitioners, was and is tolerated by the Chinese government. **Only the Chinese government can stop this practice.**

Even if it had been the Government of China which had entered into the agreement instead of the CMA, it is questionable whether the agreement would be effective. The Chinese government has issued over time issued several laws and regulations prohibiting the selling of organs without the consent of the source. The very repetition of such laws is evidence that these laws are not effective.

The Chinese government has had a history of duplicity in this field. An example is the case of **Dr. Wang Guoqi**. On June 27, 2001, **Dr. Wang Guoqi** testified before the Subcommittee on International Operations and Human Rights of the US Congress, that organs for transplants are sourced from prisoners(5). The Chinese government called him a liar. This position was held until 2005, when for the first time Chinese officials admitted publicly that they indeed harvested organs from prisoners.

Liu Zhi, of the CMA's international department, said that the agreement with the WMA has no legal effect. He expressed the hope that the agreement would influence Chinese 500,000 doctors and government decisions. This statement minimizes the effect the

agreement might have. At the very least, the CMA can insist that its own members comply with the terms of the agreement as a precondition for continued membership in their association. The fact that the CMA has not done this indicates a less than wholehearted support for the agreement.

The agreement does not address the issues of onus and standard of proof. In many cases in China, doctors are supplied an organ and told a source, but make no independent determination whether what they are told about the source is accurate or not.

The agreement with the CMA does not mean very much if CMA doctors could claim respect for the agreement simply by turning a blind eye to practices around them. The agreement does not ensure that Chinese transplant professionals are respecting the substance of the agreement as well as its form.

There is no verification system in place to determine whether or not the agreement with the CMA is being kept. Such a verification system needs to be independent from the Government of China and the CMA itself.

There is no documentation available of the sources of organs used by CMA doctors in transplant operations. This is true on both an individual and aggregate basis. On an individual basis, there is an absence of traceability. The *World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation* set out traceability as a requirement in Guiding Principle 10.

On an aggregate basis the sources of Chinese organs are not transparent. The World Health Organization Guiding Principles 11 requires transparency of sources, open to scrutiny, while ensuring that personal anonymity of donors and recipients are protected.

The absence of transparency presents a double problem. One is the closed nature of the transplant registries. Indeed, since the 2007 WMA agreement with the CMA, the problem has gotten worse.

There are in China four separate registries compiling statistics, one each for liver, kidney, heart and lung. The Liver Transplant Registry(6) is located at Queen Mary Hospital, The University of Hong Kong, Hong Kong. The Kidney Transplant Registry(7) is located PLA (People's Liberation Army) No. 309 Hospital, Beijing. The Heart Transplant Registry(8) is located at Fuwai Cardiovascular Hospital, Chinese Academy of Medical Sciences, Beijing. The Lung Transplant Registry(9) is located at Wuxi People's Hospital, Wuxi. The Liver Transplant Registry has been in existence since 2005(10).

The China Liver Transplant Registry used to be publicly accessible, but is no longer. It has now shut down public access to statistical aggregate data on its site. Access is available only to those who have a Registry issued login name and password. The data on the other three sites is and always was accessible only to those who have registry issued login names and passwords.

At The Transplantation Society Congress in Vancouver in 2010, **Haibo Wang**, assistant director of the China Liver Transplant Registry, presented at the same session I did. I asked him why public access to the data on the Registry website was shut down and if it could be restored. His answer was that public access was shut down because people were misinterpreting the data. If anyone is to get access now, the Registry has to know first the purpose for which the data is being used and has to have some confidence that the data will not be misinterpreted.

When China took over Hong Kong from Britain, the unification was based on the principle of one country, two systems. However, when it comes to public access to aggregate statistical transplant data, there is now one country with one system.

The second transparency problem has to do with death penalty statistics. The claim of the Government of China is that the source of organs for transplants is in substance prisoners sentenced to death and then executed. According to **Deputy Health Minister Huang Jiefu**, 95% of all organs for transplants come from prisoners. Yet, the Government of China does not publish official death penalty statistics.

At the United Nations Human Rights Council Universal Periodic Review for China in February 2009, six different countries - Canada, Switzerland, United Kingdom, France, Austria, Italy - recommended

that China publish these statistics. The Government of China publicly and explicitly rejected this recommendation.

Why is the Government of China refusing to disclose both death penalty and transplant statistics? One answer is that, if these statistics became publicly accessible, the discrepancy between the number of transplants and the number of prisoners sentenced to death and executed would then become screamingly obvious. The Government of China would be hard pressed not to account for the discrepancy once it has itself disclosed it.

In China, transplant surgery has become essential for financing the medical profession and hospitals. A dramatic decrease of transplant surgeries would impose financial burden on the health care system. Without an increase in the Government funds to the health care system, it is unlikely that hospitals will cease relying on transplantation for money. While sourcing of organs and payment for organs are conceptually distinct, they are linked in fact. The need for funds pushes doctors and hospitals to increasing transplant numbers and using historically available sources, prisoners.

The CMA agreement does not bind military doctors who are not members of the CMA nor military hospitals. Yet, organ recipients recount that military doctors and hospitals are heavily involved in organ transplant surgery.

The agreement with the CMA does not change the Chinese infrastructure for organ transplants. There is no effective donation system. China began a donation system as a pilot project in eleven cities in March 2010. After one year, the system produced only 37 donations(11). There is no law allowing for organ sourcing from the brain dead but cardiac alive. The implementation of the agreement with the CMA, in the absence of an effective donation system and a brain dead law, would mean that the organs transplantation in China would be almost non-existent, an unlikely result.

The mere fact that the recipient is an immediate family member of the prisoner does not automatically mean that the prisoner has freely consented to the donation. This exception is found in the WMA's Policy on Human Organ Donation and Transplantation. However, it is not to be found in the ethical principles of the Transplantation Society. The prohibition without exception which the Transplantation Society has adopted is preferable to the prohibition with the immediate family member exception which the WMA has adopted.

Simply getting the CMA to promise is not enough. The 2007 agreement has not worked. The changes in China in transplants are more cosmetic than real.

There are two possibilities, two paths taken by the World Psychiatric Association to follow. One is simply evicting the CMA from the WMA.

No precedent is exact. The abuse in the Soviet Union with which the World Psychiatric Association was concerned was not centered in a small subspecialty of Soviet psychiatry, but rather in Soviet psychiatry as a whole.

The CMA has about 500,000 members from about two millions doctors and assistant doctors in China(12). Transplantology is one of eighty four specialties under its umbrella. Transplant professionals are a small percentage of the membership of the CMA. Evicting the CMA from the WMA would mean cutting off links between the WMA and all Chinese doctors, most of whom have nothing to do with organ transplant abuse. Such a step may be warranted if it can be established that Chinese non-transplantologists, through inaction, are complicit in organ transplant abuse; but other steps have to be tried first.

The second alternative, following a second example of the World Psychiatric Association, is to change Chinese membership from unconditional to conditional. The CMA needs to be confronted with its own commitment to uphold medical ethics. A committee would be set up to monitor compliance with the conditions.

Those conditions would include:

- a) support for publication of death penalty statistics;
- b) public access to the four transplant registries;

- c) expulsion from the CMA of transplant professionals who cannot establish beyond a reasonable doubt that their sourcing of organs is proper;
- d) establishing traceability of sources for transplants in which its members participate;
- e) promotion of the Chinese donation system;
- f) support for a law allowing the sourcing of organs from the brain dead cardiac alive; and
- g) establishment of an outside, independent verification system for compliance with the 2007 agreement.

F. The Letter

Dr. Torsten Trey, the Chief Executive Director of *Doctors Against Forced Organ Harvesting*, wrote to the WMA on May 31, 2011 expressing many of the concerns set out in this talk. **Dr. Wonchat Subhachaturas**, President of the WMA, in a letter dated July 18th, 2011, replied: *"The World Medical Association is neither suited nor permitted to do investigations in China."*

Yet, the Association could appoint a committee which is suited to engage in such an investigation. It could as well seek permission. Moreover, the help of the CMA could be enlisted in getting that permission. While such permission may be denied, it is unduly pessimistic to assume, without asking, that it would be denied.

The letter goes on to state:

"We do not take defamatory approaches; rather we offer our help to improve the ethical methods of organ procurement and to fight the causes for the high organ demand."

The letter does not state what the author considers to be a defamatory approach. **Dr. Trey** had stated in his original letter that practitioners of Falun Gong are being killed for their organs. The implication is that this statement is defamatory. Yet, for defamation to exist, the statement has to be false. This oblique dismissal of a conclusion behind which a wealth of overwhelming uncontradicted evidence stands is unworthy of the World Medical Association.

The letter sets out:

"Prof. Huang ... said that he would not get the necessary political support to change the practice of harvesting organs from executed prisoners immediately."

What has political support got to do with compliance with medical ethics? Organ transplants are done by medical practitioners, not politicians. An absence of political support is not a justification for violating medical ethics. Doctors are not excused from violating medical ethics simply because politicians would prefer that they do so.

The letter goes on to state:

"We have seen considerable progress since then. Websites offering organs from executed prisoners for sale have vanished."

Yet, websites offering organs for sale at no time in China ever indicated that the sourcing was executed prisoners. Websites offering organs for in China have diminished, it is true, but they have not vanished. For instance, the website of the *Omar Health Care Service* states:

"We, Omar Healthcare Service (OHS), are here to assist the overseas patients who intend to be treated in China by those world-famous specialists, or who are seeking a help of getting a kidney, liver or heart transplant in China. Please browse through our website to find out more information about the service we provide and contact us for more customized items. We are cooperating directly, as a service provider, with the most qualified two hospitals concerning transplantation in China: Tianjin First Central Hospital, International Cardiovascular Hospital. Those above-mentioned hospitals of which the First Central is famous for liver & kidney treatment/transplant while the International Cardiovascular for heart, with the license issued by the Ministry of National Health of the People's Republic of China, are surely where the dying-patients reborn."(13)

After clicking on "Organ transplant in China", you see this:

"As a sector of modern medical system, Chinese doctors and scientists in line with organ transplantation have been winning satisfactory achievements worldwide recognized. More and more dying patients from all directions of the world are coming to China to seek for rebirth,

of which most are survived successfully. It is true that the source of organ supply are fairly abundant in China compared with that in western countries (italics added), but the excellent skill in performing such demanding operations is no doubt an important factor for them to make decisions before leaving home for China."(14)

The website languages are **English** and **Arabic**. The World Medical Association letter further states:

"In your letter you mention pharmaceutical companies doing anti-rejection trials without verifying the source of the organs. We assume that you mean, organs used in those studies are from executed prisoners. We would appreciate to get the names of those companies, so that we would have a chance to ask them for a statement."

In a talk I gave at the parallel session to the American Transplant Congress, Philadelphia, April 30, 2011 hosted by *Doctors Against Forced Organ Harvesting* and at a poster presentation at the Congress, I provided the names of those companies and more detail about their practices than I suspect the World Medical Association could possibly want. The text of the talk can be found at the website of *Doctors Against Forced Organ Harvesting*(15). The World Medical Association indicates that they will ask the companies involved for a statement. Let's see if they do.

The letter, as part of its demonstration of "considerable progress" states, *"The CMA accepted our policy in total and, most importantly of all, we can discuss the issue."*

The WMA should not grasp at straws. There may be a temptation, to avoid a confrontation, to accept changes in China as movement in the right direction and leave it at that. It would be a mistake to succumb to that temptation.

The Chinese party-state has lied so often before, the abuse of transplant surgery has gone on now for so long, that CMA is no longer entitled to the benefit of the doubt. Only when the World Medical Association can be certain that the abuse has stopped beyond any reasonable doubt should China be allowed continued unconditional membership in the Association.

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Footnotes

(1) Paragraph 16

(2) Article 3

(3) Robin Munro "The Soviet Case: Prelude to a Global Consensus on Psychiatry and Human Rights" *Columbia Journal of Asian Law*, vol. 14, no. 1 (2000) January 2001.

(4) See Peter O'Neil "China's doctors signal retreat on organ harvest" *Canadian Medical Association Journal*, 2007 November 20; 177(11): 1341.

(5) The testimony can be found in *Harper's Magazine* for February 2002 under the title "Habeas Corpus". See also Harold Hillman, "Harvesting organs from recently executed prisoners" *British Medical Journal*, 2001 November 24; 323 (7323): 1254.

(6) <www.cltr.org>

(7) <www.csrkt.org>

(8) <www.cotr.cn>

(9) <www.cotr.cn>

(10) <<http://www.astellas.com.cn/html/en/show.asp?ClassID=11&ContentID=54&LvlID=4>>

(11) Han Manman "Organ donor pilot a failure after one year", March 18, 2011, <http://www.beijingtoday.com.cn/feature/organ-donor-pilot-a-failure-after-one-year>

(12) http://www.cma.org.cn/ensite/index/HealthcareinChina/20101115/1289827561201_1

(13) <http://cntransplant.com/>

(14) <http://cntransplant.com/index1.htm>

(15) https://www.dafoh.org/Matas_speech.php

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"Wisdom is common sense to an uncommon degree"

SAMUEL TAYLOR COLERIDGE

English poet. Born 21 Oct 1772; died 25 July 1834.