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Dear Participants: This paper reflects some very preliminary thinking about the issue of the live export of animals from Australia to the Muslim world for slaughter. These rough ideas contain many questions and few answers. Your comments will be very helpful to me as I develop this project, and I look forward to the conversation at the workshop.

Do Muslim Animals Need Saving?

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There are few requirements for meat to be considered halal, and slaughterhouses around the world have been certified as halal by many different Muslim organizations. As one of the world's largest producers of farmed animals, Australia is home to many halal slaughterhouses, and the country ships frozen halal meat globally, including to destinations across the Muslim world. Yet millions of cattle, sheep, and goats also are shipped, live, from Australia to destinations across the Muslim world each year to be slaughtered locally. The reasons for preferring locally slaughtered meat are numerous and complex, and include differing views on halal standards (and a rejection of the use of pre-slaughter stunning in particular, which is used in halal slaughterhouses in Australia); support for the local feedlot and meat processing industry (and associated higher tariffs on imported frozen meat); the lack of refrigerated facilities in some parts of the world; and the desire by some Muslims to slaughter or oversee the slaughter of an animal on certain occasions and on eid al-adha in particular.

But animals are not merely export products; they are living, sentient beings. Cattle, sheep, and goats raised in Australian pastures, grazing freely, do not transition well to a massive transport

ship in which tens of thousands of animals are condensed into a small space with feed troughs rather than pastures for a journey of up to one month. Mortality rates of two percent for sheep and one percent for cattle are considered normal. Only higher death rates will cause an investigation. On a ship carrying 70,000 sheep, 1,400 must die before a cause of death will be sought; such higher numbers are quite common. When a problem in transport arises, the results can be catastrophic. In September 2012, for example, 20,000 Australian sheep were sent to Bahrain, but the Bahraini authorities refused to allow the ship to unload because they suspected disease. Eventually, Pakistan accepted the shipment but was not told about the Bahraini rejection. After Pakistani authorities found out, they killed the sheep by beating, stabbing and burying them alive.¹ Australian animal advocates, and Animals Australia in particular, have worked to bring these brutal images to the public's attention, and have launched a campaign with the goal of ending Australian live exports.

The suffering of the animals is not confined to the long distance travel. Upon arrival, the animals are subject to the importing country's policies and norms, which may include slaughter practices that violate basic standards of animal welfare and even violate Islamic rules on the treatment of animals, yet still receive a local designation of halal. Slaughter in the recipient country may or may not include pre-slaughter stunning. The issue of stunning is a key area of contention, creating two camps: those who believe that pre-slaughter stunning reduces an animal's pain and suffering, and because it does not cause the animal's death does not jeopardize the halal status, and those who argue that stunning was never a part of traditional Islamic slaughter and is actually more harmful to the animal. Those in the latter group also sometimes express concern that stunning could kill the animal, even though it is not the intent, thus running the risk of rendering the meat not

¹ The means of killing the sheep resembles the way that Egypt killed its pig population in 2009 as a preventive measure against "swine flu."

halal. But the reasons behind the long distance transport of millions of animals from Australia to the Muslim world for slaughter each year involve much more than stunning or a rejection of it.

I am at the beginning stages of a project that will study Australia's exports to the Muslim world. The project will involve perspectives from law, religious studies, history, and economics, and will address a wide range of questions, including the fundamental but complex question of what motivates both the exporters and the importing countries. For example, do Muslim religious practices demand the local slaughter of live animals, and if so, why? What are the doctrinal arguments, and how have they changed in the past and how might they change in the future? Who are the advocates of change?

Within the field of law, broadly defined, there is a substantial amount of scholarship in the area of comparative animal law, which includes studies of the animal law regimes in jurisdictions worldwide, but very little on Muslim-majority countries. There is also a substantial amount of scholarship in the area of international animal law, which typically addresses animal issues in treaties and conventions such as the Convention on the Trade in Endangered Species (CITES), the International Convention for the Regulation of Whaling, and international trade treaties and dispute resolution mechanisms.² But these treaties and conventions mainly cover animals as members of a species (and endangered species in particular) rather than animals as individuals, and in general there is only minor attention to the welfare of individual animals in international law and thus in the scholarship on international animal law. Non-human animals do not have an equivalent of international human rights law, although there have been calls for its creation.³

² See, for example, Katie Sykes, "Globalization and the Animal Turn: How International Trade Law Contributes to Norms of Animal Protection," 5 *Transnational Environmental Law* 55-79 (2016).

³ The Universal Declaration of Animal Welfare, for example, has had only a marginal impact. See Anne Peters, "Global Animal Law: What It Is and Why We Need It," 5 *Transnational Environmental Law* 9-23 (2016).

Even without an international human rights law for animals, I am thinking about how the field of international human rights might be helpful to this project. Human rights advocacy typically operates on the basis of “naming and shaming,” with the hope that bringing international attention to a human rights violation will cause the violator to reform the abusive practices. The international human rights regime has been criticized for constructing a framework that necessarily involves a “savage,” a “victim,” and a “savior.”⁴ As applied to the issue of live exports, who plays each role? Is the animal the victim? Who is the savage—the Australian exporters, or those who carry out the slaughter of the animals? And who is the savior? The international human rights community is still not sure how to address practices that appear to have some basis in religious belief and in Islamic beliefs in particular.⁵ Do religious beliefs and practices pose the same challenges to advocates, or even greater ones, when animals are involved rather than humans?

Thinking about the issue of Australian live exports to the Muslim world from a human rights perspective raises many questions that I hope we can discuss: Are Australian animals entitled to the protection of their government, wherever the animals might be? Should Australian animals who are exported receive Australian treatment in the recipient country in a form of non-human capitulations? Do the animals sent from Australia to the Muslim world for slaughter become Muslim, and thus rightly expected to submit to the beliefs and practices of their new community? Do the animals sent from Australia to the Muslim world for slaughter become Egyptian, or Indonesian, and thus rightly expected to submit to the jurisdiction of the importing country? How do we evaluate whether those practices cause the animals suffering, or “unnecessary” suffering? Are

⁴ See Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” 42(1) *Harvard International Law Journal* 201-245 (2001).

⁵ See Naz Modirzadeh, “Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds,” 19 *Harvard Human Rights Journal* 191-233 (2006).

animals entitled to the most animal-friendly view of Islamic law?⁶ And if the animals exported become Muslim, rightly expected to submit to the beliefs and practices of their new community, do those Muslim animals need saving?⁷

Nearly all of Australia's live exports of sheep go to the Middle East. Indonesia is Australia's largest purchaser of cattle.⁸ Australia is not the only exporter of live animals for consumption (it faces competition from countries such as Brazil and Uruguay, for example) but it is a dominant market actor in terms of value and, importantly, the issue of live exports is highly contentious within Australia due to animal welfare concerns, making Australia engaged in the issue beyond economics in a way not seen among other exporters.

Australian efforts to address the welfare of its exported animals initially purported to cover an animal only until arrival at the importing port. However, after numerous investigations into the treatment of animals within the receiving countries, a new scheme was implemented in 2011 that requires exporters to prove an adequate Exporter Supply Chain Assurance System (ESCAS) before receiving an export permit. The ESCAS is supposed to provide details of the animals' care and handling all the way to the point of slaughter and ensure that the handling at all stages complies with Section Seven of the OIE (also known as the World Organization for Animal Health) Terrestrial

⁶ See, for example, Sarra Tlili, "Animals Would Follow Shafi'ism," in *Violence in Islamic Thought from the Qur'an to the Mongols* (Robert Gleave and Istvan Kristo-Nagy, eds.) (2015). In the area of international human rights law, for example, the organization Musawah has called upon the parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to adopt the views of Islamic law that are most consistent with the requirements of CEDAW. Musawah, "CEDAW and Muslim Family Laws: In Search of Common Ground" (2012).

⁷ Lila Abu-Lughod asked this provocative question about women in her 2013 book *Do Muslim Women Need Saving?* Her book is "an indictment of a mindset that has justified all manner of interference, including military invasion, in the name of rescuing women from Islam" Book cover.

⁸ In 2014, Australia exported 2,298,455 live sheep, valued at Australian \$234 million [US \$175,709,430 at current rates] FOB. The Middle East accounts for 98% of Australia's sheep exports, with Kuwait the largest customer. <http://www.mla.com.au/Prices-markets/Trends-analysis/Sheep-projections>. In 2014, Australia exported 1,294,036 cattle for feeder, slaughter, and breeding purposes combined valued at Australian \$1.294 billion FOB. Indonesia purchased 56% of this total. <http://www.livecorp.com.au/industry-information/industry-statistics/cattle-statistics>.

Animal Health Code.⁹ This new system is intended to extend protection over the animal all the way to the point of slaughter. But this is not Australian law that travels with the animals, but rather the OIE Code's standards, which provide animals far fewer protections¹⁰. For example, Australian law requires pre-slaughter stunning (as discussed below) while the OIE Code does not. Further, there is a limited amount of control any exporter can exert, even under the best of circumstances, because so much of what happens to the animals upon arrival depends on the individuals who receive them.

Australian advocacy organizations have worked to highlight the cruelty of live exports, to gain public support for their cause, and to pressure the Australian government (unsuccessfully so far) to end the trade. They also have sought to cooperate with NGOs in the receiving countries. In one of the first acts of such cooperation, in 2006, Animals Australia and several Egyptian animal advocacy groups worked together to acquire undercover footage of the treatment of Australian animals in the largest slaughterhouse in Cairo. When the results of the investigation were released in Australia, the public was outraged. The Australian government briefly suspended the trade but it soon resumed under pressure from Australian exporters. The Egyptian government did not seek to improve conditions in its slaughterhouses; its concern was merely ensuring the continuing supply of animals from Australia.

The Egyptian NGOs took another approach later in 2006 by seeking a fatwa from Shaikh of Azhar (one of the two highest religious positions in the country) Muhammad Sayyid Tantawi on the issue of the treatment of animals in slaughterhouses and during live exports. The factual scenario depicted in the question was based on Animals Australia's undercover investigation in the main Cairo slaughterhouse in 2006 and the conditions on the ships as related by Animals Australia. In the

⁹ Section Seven of the Code is available at http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/?htmfile=titre_1.7.htm

¹⁰ The OIE has 180 members, including the major importers of Australian animals.

question, Ahmed Shirbiny, an attorney and Chairperson of one of the Egyptian organizations, attempted to make the issue about more than animals:

At a time when Islam is subjected to unjust attacks that accuse it of aggressiveness, wanton disregard for human life, and destruction of the environment, highlighting Islam's concern with kindness to animals is regarded an effective subject area through which to defend against many of these wrongful accusations.

In order to achieve this lofty goal, we submit to Your Excellence two questions that call for correct answers according to Islamic law, so that the West is able to be informed of the civilized face of Islam on the matter of kindness to animals.

Because these two questions are related to violent and incorrect Islamic practices in the treatment of animals, from which one could understand that they are part of Islam, Islam could be insulted as a result.

The first question focused on slaughter practices in Egypt:

Some of the people who slaughter animals and prepare the meat for consumers in the slaughterhouses commit cruel and violent acts with the aim of debilitating the animal so that they are able to control the animal. These acts include gouging the eye of the animal, cutting the tail, cutting a tendon of the legs, and piercing its body with a knife so that it bleeds and loses strength, all of which are done to control the animal with the least amount of human effort. What is the view of Islamic law on this?

The second question deals with the transport of live animals from Australia to Egypt:

During long-distance transport between the countries of animals' rearing and the countries of their slaughter, the animals are exposed to all types of cruelty, such as hunger, thirst, and severe crowding. These types of cruelty lead to the death of some of them or their affliction with deadly diseases that affect the animal's surroundings and their meat. These results could be transmitted to human health. What is the rule of Islamic law on this? And what are the correct Islamic legal ways of transporting animals, from the perspective of the length of time and the care that must be provided to them?

Two years later, in 2008, Shirbiny received a response. The issue of slaughter proved to be a far more straightforward question, since there is a substantial body of rules on slaughter:

Islamic law requires that the animal at the time of its slaughter must be treated with kindness and with procedures that guarantee to it mercy. All of this is covered by the beneficence that the Prophet (God's peace and blessings upon Him) ordered in his authenticated saying: "God has ordered beneficence in everything, so if you kill, be as kind as possible in the killing, and if you slaughter, be as kind as possible in the slaughtering. One of you should sharpen your knife and another should make the animal to be slaughtered comfortable." (Related by Muslim). This saying of the Prophet proves that slaughter must be done with kindness and mercy to the animal, and is part of the meaning conveyed by the required beneficence pronounced in the saying.

Kindness and mercy to the animal is also understood from the requirement of sharpness of the knife that will be used in the slaughter, so that the animal is not pained by slaughter with a dull instrument. This is also what He (God's peace and

blessings upon Him) clearly shows in His saying “one should make the animal comfortable.” Fulfilling this order requires doing everything that makes the animal comfortable at the time of slaughter.

Many authenticated sayings of the Prophet show the prohibition on undertaking to sharpen or hone the instrument of slaughter in front of the animal to be slaughtered. The Prophet (God’s peace and blessings upon Him) saw a man sharpening his knife in front of the animal that was going to be slaughtered, and the Prophet forbade that, and said to the man: “Do you want to slaughter the animal twice—once by sharpening the knife in front of the animal, and the second time by cutting its throat?”

Imam Ali (May God be pleased with him) also forbade slaughtering a sheep in front of the other sheep or any other animal, so that the animal’s perceptions are not harmed at the last moment of its life.

All of this clearly shows that any action incompatible with kindness to animals or treating them any way other than with mercy at the time of slaughter—such as in the manners mentioned in detail in the question—is a forbidden and sinful act, and is inconsistent with the kindness to animals that Islam requires. This is the answer to the first question.

As for the issue of live export:

With regard to the second question, we advise that Islam’s call for kindness to animals and for treating them with mercy applies to all of the situations in which this mercy is necessary. This includes transporting animals. The transport must be done in a way that is comfortable and that ensures the animal’s safety. The means of

transport must protect against the causing of pain to the animal, threat to the life of the animal, or affliction of the animal with diseases contagious to humans or others. This rule is inferred from the saying of the Prophet (God's peace and blessings upon Him), that "Humans have the chance to perform a charitable act in their treatment of every living being." And also in His saying, Peace be upon Him: "A woman went to hell because of a cat that she had confined without leaving it any food, or allowing the cat access to bugs or fruits of the earth to eat." These two sayings of the Prophet, and others like them, show that the treatment of animals must be based upon the principle of mercy in every situation, including in the transport of them from one place to another.

Causing pain to the animal during transport as described in the letter is considered an action prohibited and forbidden in Islamic law, assuming, of course, that the situation is as described in the question.

The advocates were hoping for a clearer statement against live exports, or even some guidelines about the permissible length of transport as they asked in the question. If they had received exactly what they wanted, they would have tried to use the fatwa to convince Egyptian lawmakers and consumers to stop the import trade and the consumption of animals that arrived as a result of the trade, and neither was likely.

Animals Australia's position is that the trade is inherently cruel and should be abolished as a matter of Australian law. No improvements can ensure that a lengthy journey by ship, with all of the room for error, will provide a minimum level of animal welfare.¹¹ Ultimately, the aim of Animals Australia is to replace the live export market with the export of frozen meat bearing an Australian

¹¹ New Zealand has ceased live exports although has not yet categorically banned them.

halal designation. And Australia already exports frozen halal meat to consumers worldwide, but the Australian exporters of live animals claim that the markets that currently purchase live animals will not accept a substitution of frozen meat, for many reasons, and will look for other sources of live animals if Australia ceases to supply them.

As long as live exports are legal, Animals Australia has focused on improvements to the level of care provided to the animals upon arrival in particular. The investigations they have done from the sites of slaughter in the receiving countries have been particularly effective. In 2011, the group's investigations in Indonesia led to the nation's leading television news program, Four Corners (which is similar to 60 Minutes in the U.S.), airing an hour-long expose about the Indonesian slaughterhouses that receive Australian animals and cattle.¹²

The Four Corners program was the most significant mainstream media coverage that the live export issue had received, and it shocked the Australian public. Dr. Bidda Jones of the RSPCA Australia reviewed the broadcast footage gained by Four Corners in the Gondrong slaughterhouse on the outskirts of Jakarta and said, "It's terrible. I mean the average over the 49 animals that I've looked at is 10 cuts, 10 cuts, and some of them up to 33 cuts." Farmed animal expert Temple Grandin also watched the footage and commented, "the conditions are absolutely terrible. I mean you've got a [restraint] box designed to make a cattle fall down. That violates every humane standard there is all around the world. What I want to know is why is Meat and Livestock Australia's name [the trade group of the Australian exporters] on the side of this chute? ... This is just an absolutely horrible set-up. Now the guy's on top of the animal kicking it because he can't get

¹² The Four Corners program on Australian exports to Indonesia aired on May 30, 2011 and can be seen at http://www.abc.net.au/4corners/special_edcs/20110530/cattle/.

it to move. I'm really shocked that Meat and Livestock Australia would be involved in building facilities this terrible.”

One of the main issues that Animals Australia focuses on is the lack of stunning and the related need for competent effective stunning before slaughter. In Australia, pre-slaughter stunning is required by law and is standard and accepted practice even in kosher and halal slaughterhouses. Animals Australia's website asks “what's wrong with live export?” and answers “Most animals who are exported live for slaughter have their throats cut while fully conscious. Millions have died at sea. 37 investigations have revealed that in destination countries, many animals endure routine abuse and brutal slaughter in places where laws do not protect them from cruelty.”¹³

The Australian exporters may or may not believe in the necessity of stunning, but they know that images from slaughterhouses such as in Indonesia of a butcher with a small crude knife trying to kill a fully conscious cow with a “rough sawing action,” as the Four Corners investigation showed, are very bad for business. As a result, the exporters, through their trade group, the Meat and Livestock Association (MLA), have taken a great interest in promoting and even requiring stunning by the importing countries. They have held many training sessions and installed stunning equipment in several recipient countries, but often investigations by Animals Australia show that they are not used, for reasons that include a belief that stunning is not permissible in Islamic law.

The MLA has now taken another approach. Since Islamic scholars in Australia have approved stunning, the MLA is now working to promote this view in the recipient countries. One manifestation of this effort was a conference held in Cairo in 2014 with a diverse range of participants, including representatives from the Egyptian Ministry of Agriculture, the Egyptian animal advocacy organizations, the Australian Meat and Livestock Association, and faculty members

¹³ The Animals Australia website dedicated to the issue of live export is <http://www.banliveexport.com/>

from al-Azhar. Materials provided at the event include a booklet of fatawa, with English translations, from Kenya, Egypt, and other locations, that advise on the permissibility of stunning before slaughter. Equipped with this evidence, the expectation is that the Meat and Livestock Association now will attempt to use it to persuade recipient countries to adopt stunning—thereby removing one of the best arguments against live export that Animals Australia and other animal advocates in Australia have. If the animals upon arrival receive essentially “Australian” treatment, will the advocates lose their ability to point to a savage, or a victim, without indicting the entire practice of slaughtering animals for food, wherever it takes place?