

# **Panda Saves the Day: Implementing Panda Diplomacy to Safeguard Diplomatic Animals**

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## **Abstract**

Diplomatic animals have been used as a tool to strengthen good will among nations since ancient history. Animal species such as pandas, elephants, koalas, dogs, and various other animals are often gifted within nations. Once the animals are sent as diplomatic animals, the standard practice is such that the sending country has no ownership, claim or responsibility over those animals and does not interfere with any aftermath. These animals are then protected by the animal protection laws and policies in their new residing country.

It is essential that diplomatic animals are provided with the necessary care and facilities which were available for them in their native country. However, there are ample examples where diplomatic animals have been mistreated and neglected. For instance, Kaavan who was once considered the world's loneliest elephant was sent from Sri Lanka as a diplomatic animal to Pakistan in 1985. He was confined in an enclosure in the Islamabad Zoo together with a female elephant called Saheli. Saheli died in 2012 which deeply affected Kaavan who started showing signs of stress and aggression. As a result, the zookeepers kept him chained in isolation and poor living conditions. Kaavan was later rescued by a global campaign called 'Free the Wild' and the Islamabad High Court issued an order to immediately relocate Kaavan. Even though Kaavan was evidently suffering in the Islamabad Zoo from 2012 until he was relocated in a sanctuary in 2020, the government of Sri Lanka did not interfere with the situation since it is not appropriate as per the traditions and normative practice.

On the other hand, as per the concept of Panda Diplomacy all the Pandas in the world are owned by China and they are given to other nations as loans. It not only protects the animals which are directly sent by China, but also any off-springs that are born. The research question is whether panda diplomacy can be utilised to develop an international framework to protect the diplomatic animals against cruelty and mistreatment, mandate both nations to take due care of the animal and ensure its physical and mental well-being.

The research hypothesis is that the concept of panda diplomacy can be used as a framework to continue the duty and the responsibility of a country towards diplomatic animals, and even used as a mechanism to hold the countries liable if they have knowingly mistreated or neglected such diplomatic animals.

Thereby, the research first discusses examples of how diplomatic animals are subject to cruelty and mistreatment and the necessity of imposing the duty of care on both nations which are involved in the

diplomatic relations. The in-depth analysis of panda diplomacy is helpful in establishing a responsibility to ensure that such animals are protected with utmost care in their new locations. Thereby, the research suggests to implement an international convention to protect diplomatic animals and provides recommendations as to how to develop such an international legal obligation to prioritise the welfare of diplomatic animals without tarnishing the relations among nations.

## 1 Introduction

Gift-giving as a gesture of friendship has formed an integral part of diplomacy for centuries if not for millenia. While these gifts have often been souvenirs or valuables, it has not been uncommon to gift away live animals.<sup>1</sup> In fact, the existing literature suggests that the practice of giving away animals as diplomatic gifts started even before the Common Era.<sup>2</sup> Notwithstanding many developments taking place in the area of animal welfare,<sup>3</sup> the practice of gifting live animals as diplomatic gifts has never disappeared.

Today, the regulation of diplomatic relations between nations forms one of the major branches of International Law.<sup>4</sup> Nevertheless, diplomatic gifting of live animals and the regulation of State actions or inactions affecting their welfare has not yet been adequately recognised in any authoritative international instrument. This forms a substantial gap in international affairs, diplomatic gifting, and above all, in the commitment of the States around the world to ensure the welfare of the diplomatic animals. In this paper, the term ‘diplomatic animals’ is employed by the authors to refer to animals who are the subjects of diplomatic gifts. Addressing this gap is essential to ensure that an unwanted mental or physical suffering will not be inflicted

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<sup>1</sup> Jorg Kustermans, “Gift-Giving as a Source of International Authority” *The Chinese Journal of International Politics* (2019) 12 (3) 395 <<https://doi.org/10.1093/cjip/poz009>> accessed 21 May 2023; Richard L Smith, *Premodern Trade in World History*, Routledge (2009) 117.

<sup>2</sup> Halvard Leira and Iver B Neumann, ‘Beastly Diplomacy’ (2016) 12 *The Hague Journal of Diplomacy* 1, 12; Ingvar Svanberg, ‘A Russian Polar Bear in Stockholm: Notes on Animal Diplomacy’ (2016) *Yearbook of the Swedish Linnaeus Society* 107, 107–109.

<sup>3</sup> Deborah Cao and Steven White (eds), *Animal Law and Welfare - International Perspectives* (Springer 2016); Stuart Harrop and David Bowles, ‘Wildlife Management, the Multilateral Trade Regime, Morals and the Welfare of Animals (1998) 1 *Journal of International Wildlife Law and Policy* 64; Marie Blosh, ‘The History of Animal Welfare Law and the Future of Animal Rights’ (LLM Thesis, The University of Western Ontario 2012).

<sup>4</sup> This area is now governed by the Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95.

upon an animal for the sake of diplomacy. This is particularly crucial since the practice around the world often shows that the animals sent away to other countries as diplomatic gifts are not living the ideal life.<sup>5</sup> They are hurt, imprisoned, isolated, and unfortunately in some situations, they are treated so badly that even death appears to be a salvation.<sup>6</sup> Such animals can only rely on the domestic legislative protection against the welfare concerns they suffer in the receiving state even though some nations have not implemented satisfactory legal provisions to protect animals in captivity. Furthermore, the sending nations cannot interfere against the suffering of these animals.

In this context, since the late 1990s, China has developed a new framework known as panda diplomacy<sup>7</sup> applicable to their popular diplomatic animal, the giant panda scientifically known as *Ailuropoda melanoleuca*. The basic premise of this framework allows China to retain ownership of all the pandas given away as diplomatic gifts. This concept has the potential to effectively and efficiently address the critical gap recognised in the preceding paragraph. However, the existing academic literature has not adequately evaluated this matter. This research paper, therefore, seeks to ascertain how panda diplomacy could be used to ensure the welfare of diplomatic animals.

The research question is whether panda diplomacy can be utilised to develop an international framework to protect the diplomatic animals against cruelty and mistreatment, mandate both nations to take due care of the animal and ensure its physical and mental well-being. The research hypothesis is that the concept of panda

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<sup>5</sup> Ingvar Svanberg, 'A Russian Polar Bear in Stockholm: Notes on Animal Diplomacy' (2016) Yearbook of the Swedish Linnaeus Society 107; 'Former Loneliest Elephant in the World: Kaavan, Reunites with Rescuers' (*Four Paws International*, 24 August 2022) <<https://www.four-paws.org/our-stories/press-releases/former-loneliest-elephant-in-the-world-kaavan-reunites-with-rescuers>> accessed 21 January 2023; Tom Grundy, 'NGO Urges China to Stop Using Pandas as Diplomatic Gifts' (*Hong Kong Free Press HKFP*, 1 March 2023) <<https://hongkongfp.com/2023/03/01/ngo-urges-china-to-stop-using-pandas-as-diplomatic-gifts/>> accessed 4 May 2023; Zoya Mateen, 'Shankar the Elephant: Plea to Send Lonely African Animal Home from India' (*BBC News*, 31 January 2022) <<https://www.bbc.com/news/world-asia-india-60150533>> accessed 14 April 2023.

<sup>6</sup> Bill Travers and Virginia McKenna, *Exploited in Captivity: One Elephant's Story* (Born Free Foundation 2016); 'Release of Kaavan from Marghazar Zoo' (*Daily Mirror*, 29 May 2020) <<https://www.dailymirror.lk/News-Features/Release-of-Kaavan-from-Marghazar-Zoo/352-189106>> accessed 3 May 2023; Asem Mustafa Awan, 'Statues at Marghazar Zoo Depict Untold Tale of Tyranny' (*The Dayspring*, 16 February 2021) <<https://www.thedayspring.com.pk/statues-at-marghazar-zoo-depict-untold-tale-of-tyranny/>> accessed 4 June 2023.

<sup>7</sup> Congressional Research Service, 'The People's Republic of China's Panda Diplomacy' (*In Focus* 2022) <<https://sgp.fas.org/crs/row/IF12122.pdf>> accessed 1 May 2023.

diplomacy can be used as a framework to continue the duty and the responsibility owed by both sending and receiving countries towards diplomatic animals to ensure that the diplomatic animals are not mistreated, and even used as a mechanism to hold the countries liable if they have knowingly mistreated or neglected such diplomatic animals. Accordingly, the authors are suggesting for an international agreement which must be signed between the two nations prior to sending a diplomatic animal. This research was conducted using the black letter approach of research based on international conventions as primary sources and books, journal articles, conference proceedings, and internet resources as secondary sources.

The paper continues under four sections. Firstly, it introduces diplomatic animals and examines the welfare concerns related to them. In the next stage, the article explains what panda diplomacy is and how it is relevant for the protection of the welfare concerns of diplomatic animals. Next section discusses the necessity to adopt an international convention to protect the welfare of diplomatic animals and thereby, proposes the provisions inspired by panda diplomacy which can be introduced to the proposed convention.

## **2 Diplomatic animals and their welfare concerns**

This section discusses the tradition of gifting animals to develop international relations between nations, and analyses how such animals are subject to cruelty and mistreatment in the receiving nations by invoking the five freedoms of animal welfare. It also concentrates on the Convention on the International Trade in Endangered Species, which is the only existing international convention providing some degree of protection to the diplomatic animals.

### **2.1 Introduction to diplomatic animals**

Animal diplomacy is the practice of gifting animals with the intention of initiating or enhancing friendly relations with other countries. The subject of this practice or the diplomatic gift involved is known as a diplomatic animal. Most commonly, the subjects of diplomatic gifts are exotic animals like pandas, elephants, koalas, or giraffes, but

there have been instances where non-exotic animals like puppies were also given away as diplomatic gifts.<sup>8</sup>

As wonderful as it sounds, animal diplomacy is a complex matter. On no account can it be equated with gifting away something material or inanimate. An animal is a living, sentient being and giving them away as a gift tends to objectify them. Therefore, it is essential to ensure that the welfare concerns of these animals are properly met irrespective of the fact that they are no longer living in their native lands.

The authors use the framework of the Five Freedoms developed by the Farm Animal Welfare Council (FAWC) in analysing the welfare concerns encountered by the diplomatic animals in this paper. The Five Freedoms framework lays down the ideal standards to ensure the physical and mental welfare of domesticated or captivated animals. It involves five basic freedoms as follows:

1. Freedom from hunger and thirst - by ready access to water and a diet to maintain health and vigour.
2. Freedom from discomfort - by providing an appropriate environment including shelter and a comfortable resting area.
3. Freedom from pain, injury, and disease - by prevention or rapid diagnosis and treatment.
4. Freedom to express normal behaviour - by providing sufficient space, proper facilities, and appropriate company of the animal's own kind.
5. Freedom from fear and distress - by ensuring conditions and treatment, which avoid mental suffering.<sup>9</sup>

These five freedoms denote nine conditions: hunger, thirst, discomfort, pain, injury, disease, expression of normal behaviour, fear, and distress.<sup>10</sup>

Animal diplomacy can potentially affect the welfare of the diplomatic animal unless the appropriate measures are taken. In light of this argument, it is meaningful to

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<sup>8</sup> Tore Fougner, 'Engaging the "Animal Question" in International Relations' (2021) 23 *International Studies Review* 862, 865.

<sup>9</sup> Steven P McCulloch, 'A Critique of FAWC's Five Freedoms as a Framework for the Analysis of Animal Welfare' (2013) 26 *Journal of Agricultural Environmental Ethics* 959, 961 citing Farm Animal Welfare Committee (FAWC).

<sup>10</sup> John Webster, *Animal Welfare: Limping Towards Eden* (UFAW 2005) 15.

ascertain how animal diplomacy could affect each one of the five freedoms recognised earlier. First freedom states that animals must have the freedom to access water and food. This freedom of the diplomatic animal could get adversely affected in two scenarios. First, the State to which the animal is gifted could be incapable of meeting the water and food requirements of the animal since it does not have the necessary funds to provide these requirements and/or recruit staff to carry out these tasks. This seems like an unlikely event, but it does not make it impossible. A country could run into bankruptcy and could therefore be compelled to prioritise government spending on other sectors than maintaining zoos. The best example is Sri Lanka which is facing an imminent risk of food shortages for its 4500 zoo animals as food prices surge by nearly 60 percent due to the economic crisis.<sup>11</sup> Second, the receiving State may not have the capability to provide the special dietary requirements of the exotic animals. For example, pandas feed almost entirely on bamboo. Providing the required amount of these special diets for the animals could be an issue for some receiving states.

The second freedom states that the animals must be provided with an appropriate environment including shelter and a comfortable resting area. The animals sent away as diplomatic gifts are not released into the natural environment in the receiving State. It cannot logically be expected either. The exotic animals in one country will not be able to adapt to the wild in another country. Therefore, the most rational option is to keep them in zoos or captivating facilities. While these facilities could never replicate the natural habitats of the diplomatic animals, the sending and receiving States must make sure that they would not cause these animals any discomfort. However, experience shows that this has not always been the case.<sup>12</sup> For example, the elephants gifted to countries experiencing harsh winters are spending half of their time indoors in steel or concrete enclosures to avoid sub-zero temperatures. This does not on any

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<sup>11</sup> Malaka Rodrigo, 'Zoo animals suffer as food prices surge amid Sri Lanka's economic crash' (Eco-Business, 19 June 2022) <<https://www.eco-business.com/news/zoo-animals-suffer-as-food-prices-surge-amid-sri-lankas-economic-crash/#~:text=Sri%20Lanka's%20main%20zoo%20is,crisis%20in%20their%20country's%20history>> accessed 07 January 2023.

<sup>12</sup> Bill Travers and Virginia McKenna, *Exploited in Captivity: One Elephant's Story* (Born Free Foundation 2016); 'Release of Kaavan from Marghazar Zoo' (*Daily Mirror*, 29 May 2020) <<https://www.dailymirror.lk/News-Features/Release-of-Kaavan-from-Marghazar-Zoo/352-189106>> accessed 3 May 2023; Asem Mustafa Awan, 'Statues at Marghazar Zoo Depict Untold Tale of Tyranny' (*The Dayspring*, 16 February 2021) <<https://www.thedayspring.com.pk/statues-at-marghazar-zoo-depict-untold-tale-of-tyranny/>> accessed 4 June 2023.

level guarantee the comfort of the massive animal born in tropical natural habitats in Africa and Asia full of warmth, freedom, and grace.<sup>13</sup>

The authors would like to discuss the third and fifth freedoms together. The third is freedom from pain, injury, and disease and the fifth is freedom from fear and distress. These two freedoms seek to ensure the physical and mental well-being of the animals. An animal sent away to another country as a diplomatic gift is separated from his loved ones, familiar environment, normal routine, and everything that he has known his whole life. Therefore, they are bound to suffer both physical and mental trauma.<sup>14</sup> Hence, it is the ethical duty of both sending and receiving States to ensure that diplomatic gifting would not cause him any mental or physical pain, injury, disease, fear, or distress. The practice around the world suggests that the states, almost one hundred percent of the instances, failed to uphold these two freedoms in their entirety. Many examples could be provided, but not to exhaust the reader, the authors will provide two examples nearly four decades apart to establish that irrespective of the advancement of the animal welfare debates, diplomatic animals still face the same tragic destiny, more or less in gravity, arguably everywhere in the world.

The first example is 'Pole-Pole', an elephant sent away from Kenya as a diplomatic gift to the United Kingdom. She was kept in a concrete enclosure most of her life and ultimately euthanised in the early 1980s through a lethal injection when she could not get to her feet.<sup>15</sup> The Born Free Foundation, a charity established to stop the exploitation and suffering of animals living in captivity fought to rescue her from her misery, but they never succeeded. Following her death, a member of the public wrote, 'I was deeply saddened by the news of the death of Pole Pole ... not because she is dead – it can only be a relief to her – but because London Zoo started killing her 15 years

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<sup>13</sup> Bill Travers and Virginia McKenna, *Exploited in Captivity: One Elephant's Story* (Born Free Foundation 2016).

<sup>14</sup> Clare Parker Fischer and L Michael Romero 'Chronic Captivity Stress in Wild Animals is Highly Species-Specific' (2018) 7 *Conservation Physiology* 1; Rachel Fobar, 'Nothing to Do, Nowhere to Go: What Happens When Elephants Live Alone' (*National Geographic* 31 January 2022) <<https://www.Nationalgeographic.com/animals/article/what-happens-when-captive-us-elephants-live-alone>> accessed 5 March 2023.

<sup>15</sup> *ibid* 23.

ago'.<sup>16</sup> These few lines, more than a thousand words, show how tragically the States failed to care for their diplomatic gifts; to stop their pain and distress.

The second example is 'Kavan', an elephant sent to Pakistan from Sri Lanka as a diplomatic gift. He was placed in a small enclosure in Islamabad Zoo with a companion, 'Saheli' who later died of sepsis. It was alleged that 'Kavan' was frequently restrained, poked with nailed bull hooks by his handlers, and gradually fallen into psychosis and obesity with infected injuries and permanent scars.<sup>17</sup> He has even been termed the 'world's loneliest elephant'. Just like in the case of 'Pole-Pole', Four Paws International, a global animal welfare organisation, fought to rescue the lonely elephant. This time, with the development of technology, many people joined their plight, including a famous singer, creating a global campaign demanding that Pakistan free the elephant. On April 25, 2020, in response to a petition filed in the Islamabad High Court, requesting the recognition of animal rights and the relocation of Kaavan, the court pronounced that neglecting the welfare and well-being of animal species, or subjecting them to unnecessary pain or suffering, directly infringes upon the fundamental right to life of humans, as guaranteed by Article 9 of the Constitution of Pakistan. The court acknowledged that Kaavan has endured unimaginable pain and suffering for the past three decades and concluded that it is imperative to relocate him to an appropriate elephant sanctuary to alleviate his suffering.<sup>18</sup> As a result, 'Kavan' was rescued in November 2020 and relocated to a sanctuary in Cambodia.<sup>19</sup>

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<sup>16</sup> *ibid.*

<sup>17</sup> 'Kaavan, the World's Loneliest Elephant, is Finally Going Free' (BBC News, 20 November 2020) <<https://www.bbc.com/news/world-asia-55060433>> accessed 06 January 2023.

<sup>18</sup> *Islamabad Wildlife Management Board through its Chairman v Metropolitan Corporation Islamabad through its Mayor & 4 others* (2020) WP No.1155/2019.

<sup>19</sup> 'Rescue Elephant Kaavan' (*Four Paws International - Animal Welfare Organisation*, 7 December 2021) <<https://www.four-paws.org/our-stories/rescues-success-stories/rescue-elephant-kaavan>> accessed 5 March 2023; 'Lonely No More: A Year after His Sensational Rescue, Elephant Kaavan Is Thriving in the Cambodian Jungle' (*Four Paws International - Animal Welfare Organisation*, 26 November 2021) <<https://www.four-paws.org/our-stories/press-releases/lonely-no-more-a-year-after-his-sensational-rescue-elephant-kaavan-is-thriving-in-the-cambodian-jungle>> accessed 5 March 2023; 'From the Loneliest to the Luckiest Elephant!' (*Four Paws International - Animal Welfare Organisation*, 30 November 2020) <<https://www.four-paws.org/our-stories/press-releases/from-the-loneliest-to-the-luckiest-elephant-kaavan-takes-off-for-cambodia>> accessed 5 March 2023; 'Former "Loneliest Elephant in the World", Kaavan, Reunites with Rescuers' (*Four Paws International - Animal Welfare Organisation*, 24 August 2022) <<https://www.four-paws.org/our-stories/press-releases/former-loneliest-elephant-in-the-world-kaavan-reunites-with-rescuers>> accessed 5 March 2023.

In neither of the above instances, the physical and mental well-being of the diplomatic animal has been met. It is owing to the people's voice that at least one of them now spends the life that he truly deserves.

The fourth freedom requires allowing the animals to express their normal behaviour. This comes particularly relevant when gifting animals like elephants who maintain complex and intimate relationships in their own societies. Elephant society is often likened to human society. They have deep bonds with the members of their herd. In their societies, the oldest cows lead the herd and discipline youngsters while female elephants look after baby elephants and teach them as they grow up.<sup>20</sup> Accordingly, duplicating the conditions required for the diplomatic animals to express their normal behaviour is tedious and comes with a lot of responsibility and challenges. The two examples cited above provide more than enough evidence to prove that the sending and receiving states of diplomatic gifts are not very successful in upholding this freedom.

While the practice demonstrates a failure on the part of the States to protect the basic freedoms of the diplomatic animals, it is important to ascertain whether such a duty exists at least in the text, i.e., in international instruments governing diplomatic gifting of animals.

## **2.2 Existing international conventions to protect diplomatic animals**

Surprisingly, this area remains mostly uncharted waters because there is no specific international legal instrument; a convention or otherwise, to govern the practice of diplomatic gifting of animals or protecting their welfare. The Universal Declaration on Animal Welfare<sup>21</sup> (hereinafter UDAW) which is yet to be adopted by the global community is the most important international instrument which recognises the welfare of animals. The UDAW has failed to grant any special protection to diplomatic animals who are mistreated and neglected, and focuses on the implementation of the

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<sup>20</sup> TB Poole, 'The Zoological Society of London Social Behaviour and Breeding Physiology of a Group of Asian Elephants at the Pinnawala Elephant Orphanage' (1997) 35 *International Zoology Yearbook* 297, 304.

<sup>21</sup> Universal Declaration on Animal Welfare (UDAW), proposed by the World Society for the Protection of Animals (WSPA) <[https://www.worldanimalprotection.ca/sites/default/files/media/ca\\_-\\_en\\_files/case\\_for\\_a\\_udaw\\_tcm22-8305.pdf](https://www.worldanimalprotection.ca/sites/default/files/media/ca_-_en_files/case_for_a_udaw_tcm22-8305.pdf)> accessed 21 May 2023.

domestic legislative framework to protect the welfare of animals. Furthermore, the Universal Declaration of the Rights of Mother Earth,<sup>22</sup> adopted at the World People's Conference on Climate Change and the Rights of Mother Earth held in Cochabamba in 2010, stipulates in Article 2(3) that animals possess individual rights safeguarding them from torture or cruel treatment by humans. Nevertheless, it is important to note that this instrument does not possess legal binding force.

The only existing instrument which has some resonance on the matter is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>23</sup> entered into force in 1975 and aims to ensure that the international trade in wildlife does not threaten wild populations of plants and animals. The CITES contains 3 appendices. Appendix I lists several species as species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but trade in them is controlled to avoid the utilisation incompatible with their survival. Appendix III contains species that are protected in at least one country which requires the assistance of other CITES Parties in controlling the trade. The most common diplomatic animals; elephants, giraffes, and pandas are included in Appendix I and II depending on the subspecies.

According to Article III of the Convention, the export of a specimen of a species included in Appendix I require the prior grant and presentation of an export permit, granted only if certain conditions are met. These conditions specify that such export (1) shall not be detrimental to the survival of the species, (2) the specimen must not have been obtained in contravention of the laws of the state of export, (3) the specimen must be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment, and (4) the Management Authority of the State of export must be satisfied that an import permit has been granted for the specimen. Similarly, the

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<sup>22</sup> Universal Declaration of Rights of Mother Earth, adopted at the World People's Conference on Climate Change and the Rights of Mother Earth, held in Cochabamba 2010 (Universal Declaration) <<https://www.garn.org/universal-declaration-for-the-rights-of-mother-earth/>> accessed 21 May 2023.

<sup>23</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force on 1 July 1975) 993 UNTS 243 (CITES). The Convention opened for signature 3 March 1973 and entered into force on 1 July, 1975. Currently there are 184 parties to the Convention.

import of a specimen requires the prior grant and presentation of an import permit and either an export permit or a re-export certificate granted only if several conditions are met. These conditions specify that (1) the import must not be detrimental to the survival of the species, (2) the recipient of a living specimen must be suitably equipped to house and care for it, and (3) the relevant authorities of the importing State must be satisfied that the specimen is not to be used for primarily commercial purposes.

Article IV of the Convention holds a similar provision regarding the species included in appendix II. Accordingly, the export of a species included in Appendix II requires the prior grant and presentation of an export permit, granted only if certain conditions are met. These conditions are that (1) the export shall not be detrimental to the survival of that species, (2) the specimen must not have been obtained in contravention of the laws of that State for the protection of fauna and flora, and (3) any living specimen shall be prepared and shipped in a manner that ensures the minimum risk of injury, damage to health or cruel treatment. It also specifies that the import of any species included in Appendix II requires the prior presentation of either an export permit or a re-export certificate but lays down no specific conditions upon which such permit shall be granted.

Three issues arise when these provisions are interpreted in light of the diplomatic gifting of animals. The first question is whether these provisions are applicable to diplomatic animals as well. As stated earlier, CITES applies to international trade in wildlife. Article 1 of CITES defines trade to mean 'export, re-export, import and introduction from the sea'. Diplomatic gifting falls within the broader spectrum of export and import and therefore, it can be argued that CITES applies to diplomatic gifts as well.

The second question is whether these provisions ensure the welfare and five freedoms of the diplomatic animals. The short answer is 'No'. The authors find these provisions to be too restricted to guarantee the adequate welfare of the diplomatic animals. They ensure that the risk of injury, damage to health, or cruel treatment will be minimised during shipping and in preparation for shipping, but these concerns in the aftermath of the shipping are not covered by the provisions. Only with regard to the species in Appendix I, CITES focuses on adequate housing and care, but with regard to the species in Appendix II, CITES is silent. Thus, it is difficult to say that CITES provides

a comprehensive framework to ensure the welfare of the diplomatic animals and to impose adequate obligations on sending and receiving States to achieve this ultimate end. However, it could be argued that CITES impliedly prohibits sending away the animals listed in Appendix I as diplomatic gifts since diplomatic gifting hardly qualifies as ‘trading in exceptional circumstances’. However, it is also questionable whether this provision has in fact prevented the member States from gifting away animals in Appendix I. For example, Sri Lanka acceded to CITES on 4<sup>th</sup> May 1979 but keeps on sending elephants as diplomatic gifts irrespective of the obligations that they have undertaken to perform. The most controversial of such incidents was the attempt of the then president in Sri Lanka to send a baby elephant to New Zealand in 2016 which was stopped following protests from animal welfare activists.<sup>24</sup>

The third question is, while CITES applies to the species listed in the appendices, is there any framework that ensures the welfare of other non-listed diplomatic animals. The answer is ‘No’. The CITES is the only international instrument which at least vaguely deals with this matter.

Accordingly, it is difficult to state that the present international law regime contains adequate equipment to ensure the welfare of diplomatic animals. This is a serious loophole. Allowing the States to use sentient beings to extend their diplomatic relations with no substantive responsibilities towards the animal so given away demonstrates an undue, self-proclaimed supremacy by men over other beings. This reverses many decades of progress attained in animal welfare and rights debates.<sup>25</sup> Therefore, it is essential that a specific framework is set according to which both sending and receiving states are equally responsible for the living being that they exchanged for the sake of strengthening their diplomatic ties.

There is one such framework which permits the sending state to continue their ownership over diplomatic animals. This is known as panda diplomacy which protects

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<sup>24</sup> ‘Protest Stops Sri Lankan Elephant Bound for Auckland Zoo from Flying’ (Stuff, 02 April 2017) <[https:// www.stuff.co.nz/national/91112747/sri-lankan-elephant-bound-for-auckland-zoo-stopped-from-flying](https://www.stuff.co.nz/national/91112747/sri-lankan-elephant-bound-for-auckland-zoo-stopped-from-flying)> accessed 13 January 2023.

<sup>25</sup> Peter Singer, *Animal Liberation* (Bodley Head 2015); Peter Singer and Tom Regan (eds), *Animal Rights and Human Obligations* (Prentice-Hall 1976); Martha C Nussbaum, *Justice for Animals: Our Collective Responsibility* (Simon and Schuster 2023).

the diplomatic pandas sent by China to other nations. Next section focuses on panda diplomacy.

### **3 Panda Diplomacy and its importance as a tool to protect diplomatic animals**

Without a doubt panda is a rare species and China has implemented strict measures to conserve pandas and their habitats following the alarming decrease in the wild population. However, this discussion focuses on the welfare of captive pandas and thereby, elaborates on panda diplomacy and how it protects the welfare of diplomatic pandas living in other states.

#### **3.1 The ecological importance and conservation of pandas in China**

Among the number of different diplomatic animals in the world, pandas are considered as one of the most valuable and rarest species. They are widely popular for their unique appearance and adorable habits.<sup>26</sup> Pandas are extremely important to biodiversity because they protect many species by acting as an umbrella species.<sup>27</sup> Found only in the temperate bamboo forests spread across the high mountains in Southwest China, Pandas became highly endangered due to hunting and habitat destruction in the early 1980s and 1990s.<sup>28</sup>

As a result of strict conservation efforts such as the prohibition on hunting pandas by enacting the Wildlife Protection Act in 1988 and establishing more than 50 panda reserves,<sup>29</sup> in 2016 the IUCN upgraded pandas from endangered to vulnerable animals on the Red List of Threatened Species.<sup>30</sup> Article 341 of the Criminal Law of China (2017) further protects all endangered species in China including pandas. It prohibits illegal catching, killing, illegal purchasing, transporting or selling of endangered

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<sup>26</sup> Ossi Nokelainen and others, 'The giant panda is cryptic' (2021) 11, 21287 Scientific Reports <<https://www.nature.com/articles/s41598-021-00742-4#article-info>> accessed 07 January 2023.

<sup>27</sup> 'Giant Panda' (World Wildlife Fund) <<https://www.worldwildlife.org/species/giant-panda>> accessed 07 January 2023.

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

<sup>30</sup> Christine Dell'Amore, 'Giant Pandas, Symbol of Conservation, Are No Longer Endangered' (National Geographic, 05 September 2016) <<https://www.nationalgeographic.com/animals/article/pandas-vulnerable-endangered-species>> accessed 10 January 2023.

wildlife species which are protected under special State Protection or their products and specifies penalties including a 10-year imprisonment and a fine.<sup>31</sup>

The recent reports indicate that there are nearly 1,864 pandas in the wild and 673 captive pandas in the world.<sup>32</sup> However, the experts share that it is essential to continue panda protection measures in China because pandas living in the wild remain susceptible to deforestation, habitat fragmentation and the impacts of climate change.<sup>33</sup>

In history, wild pandas in China were often captured and smuggled, sold or exchanged with other nations. It is reported that in 1938, the London Zoo acquired three pandas named ‘Ming’, ‘Tang’ and ‘Sung’<sup>34</sup> from animal traffickers.<sup>35</sup> However, all three of them passed away as a result of inadequate zoological knowledge and the inability to fulfil the specific eating habits of pandas.<sup>36</sup> A panda called ‘Lien Ho’ who was exchanged with the British government for a master’s degree in zoology in 1946<sup>37</sup> also passed away in 4 years.<sup>38</sup> Subsequently, in 1958, London Zoo bought another panda named ‘Chi-Chi’ who lived there until her death in 1972.<sup>39</sup>

In 1936, for the first time in history a Panda called ‘Su Lin’ arrived in the United States.<sup>40</sup> ‘Su Lin’ was forcefully captured and taken by Ruth Harkness who wanted to fulfil her husband’s dying wish of capturing and bringing a live panda to the United

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<sup>31</sup> Criminal Law of China (2017) art 341.

<sup>32</sup> Li Hongyang and Huang Zhiling, ‘Researchers boost quality of captive giant pandas’ (China Daily, 13 October 2022) <<https://www.chinadaily.com.cn/a/202210/13/WS634747f4a310fd2b29e7c1c8.html>> accessed 10 January 2023.

<sup>33</sup> Kyle Obermann, ‘China declares pandas no longer endangered – but threats persist’ (National Geographic, 01 September 2021) <<https://www.nationalgeographic.com/animals/article/pandas-are-off-chinas-endangered-list-but-threats-persist>> accessed 10 January 2023.

<sup>34</sup> Sun Wei, ‘Cambridge exhibition remembers first panda to UK’ (Global Times, 13 June 2019) <<https://www.globaltimes.cn/content/1154134.shtml>> accessed 10 January 2023; see also Paul Wilson, ‘Whipsnade during the second world war’ (Zoological Society of London, October 2015) <<https://www.zsl.org/blogs/artefact-of-the-month/whipsnade-during-the-second-world-war>> accessed 10 January 2023.

<sup>35</sup> ‘Panda Diplomacy’ (Travel China Guide, 2015) <<https://www.travelchinaguide.com/tour/panda/diplomacy.htm>> accessed 10 January 2023.

<sup>36</sup> Rory Bennett, ‘Where you’ll find Britain’s only panda and why London Zoo doesn’t have one’ (My London, 09 February 2022) <<https://www.mylondon.news/whats-on/youll-find-britains-only-panda-23035124>> accessed 10 January 2023.

<sup>37</sup> ‘Panda Diplomacy’ (n 35).

<sup>38</sup> ‘Lien Ho’ (Panda News) <[https://pandanews.org/the-pandas/15\\_lien-ho](https://pandanews.org/the-pandas/15_lien-ho)> accessed 10 January 2023.

<sup>39</sup> Bennett (n 36).

<sup>40</sup> *ibid.*

States.<sup>41</sup> It is reported that between 1936 to 1946 foreigners had taken 14 pandas from China, of which 6 were exhibited in American Zoos.<sup>42</sup> Whenever a panda in captivity would pass away, a zoo would announce the purchase of a new panda which initiated a life-threatening pattern to the wild pandas in China.<sup>43</sup> As a result, in 1946 China completely prohibited the exploitation of pandas by foreigners.<sup>44</sup> By this time, China had realised the value and rarity of pandas and hence, the diplomatic career of pandas as ambassadors of peace began in the 1950s.<sup>45</sup>

### 3.2 Introduction to panda diplomacy

Before discussing the applicability of panda diplomacy in protecting diplomatic animals, it is essential to clearly understand the context of this tool. Panda diplomacy can be simply defined as the act of sending pandas from China to other nations as a form of developing international relationships.<sup>46</sup> The unofficial history of panda diplomacy originates in AD 685 when the Empress of the Tang Dynasty gifted two pandas to Japan.<sup>47</sup> It is also reported that in 1941 the First Lady of China Madame Chiang Kai-shek gifted 'Pan-Dee' and 'Pan-Dah' to the United States in recognition of their aid to China.<sup>48</sup>

In his article titled 'China's Panda Diplomacy', Professor Wen-cheng Lin categorises the modern history of panda diplomacy into three phases. The first phase fell between 1957 to 1982, when China gifted pandas to other nations in return for foreign aid or services.<sup>49</sup> The first panda called 'Ping-Ping' was gifted to the Soviet Union in 1957, followed by 'An-An' in 1959, as a recognition of the alliance formed between the two

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<sup>41</sup> Chris Heller, 'How America fell in love with the Giant Panda' (Smithsonian Magazine, 21 September 2015) <<https://www.smithsonianmag.com/history/how-america-fell-love-giant-panda-180956692/>> accessed 10 January 2023.

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> 'History of the Giant Panda' (WWF, 08 June 2004) <<https://wwf.panda.org/?13588/history-of-the-giant-panda>> accessed 10 January 2023.

<sup>45</sup> 'Panda Diplomacy' (n 35).

<sup>46</sup> Stina Hinderson, 'Panda Diplomacy: Literally soft power?' (Bachelor's Thesis, Lund University) <<https://lup.lub.lu.se/luur/download?fileOID=8909594&func=downloadFile&recordOID=8907633>> accessed 09 January 2023.

<sup>47</sup> Wen-cheng Lin, 'China's Panda Diplomacy' (2009) <<https://www.mac.gov.tw/public/attachment/052716233690.pdf>> accessed 09 January 2023.

<sup>48</sup> 'Panda Diplomacy', (n 35).

<sup>49</sup> Lin (n 47).

nations by signing the Sino-Soviet Treaty of Friendship.<sup>50</sup> In appreciation of the support extended to China by North Korea in fighting against the ‘American Imperialists’ five pandas including ‘Dan-Dan’, ‘San-Xing’, ‘Lin-Lin’ etc., were gifted to North Korea between 1965 to 1980.<sup>51</sup>

The first pair of diplomatic pandas called ‘Ling-Ling’ and ‘Xing-Xing’ was gifted to the United States in 1972 subsequent to a meeting held between the two leaders of the nation.<sup>52</sup> Japan received four pandas from China respectively ‘Lan-Lan’ and ‘Kang-Kang’ in 1972, ‘Huan-Huan’ in 1980 and ‘Fei-Fei’ in 1982.<sup>53</sup> France received ‘Yan-Yan’ and ‘Li-Li’ in 1973, the United Kingdom received ‘Jia-Jia’ and ‘Jing-Jing’ in 1974, Germany received ‘Tian-Tian’ and ‘Bao-Bao’ in 1974, Mexico received ‘Ying-Ying’ and ‘Bei-Bei’ in 1975 and Spain received ‘Shao-Shao’ and ‘Qiang-Qiang’ in 1978.<sup>54</sup> Accordingly, China had gifted a total of 23 pandas as diplomatic animals between 1957 to 1982 to 9 countries.

There are three main observations deriving from this discussion. One observation is that even though China gifted the 23 pandas, their sole ownership belonged to the 9 countries who received them.<sup>55</sup> This is important because panda diplomacy is later developed into a tool where the ownership of pandas remains with China.

The next observation is from the animal welfare context which demonstrates that pandas have always been sent as pairs to ensure that they have companionship. China even took steps to send ‘Huan-Huan’ to Japan when ‘Lan-Lan’, the female panda of the previous pair passed away in 1979.<sup>56</sup> When ‘Kang-Kang’ passed away in 1980, a male panda ‘Fei-Fei’ was sent to accompany ‘Huan-Huan’.<sup>57</sup> However, the evidence shows that this has not always been practiced by China. For example, in the United

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<sup>50</sup> Liu Xianchen, ‘The wild and woolly history of China’s panda diplomacy’ (Sixth Tone, 20 November 2022) <<https://www.sixthtone.com/news/1011656/the-wild-and-wooly-history-of-chinas-panda-diplomacy>> accessed 09 January 2023.

<sup>51</sup> *ibid.*

<sup>52</sup> Lin (n 47).

<sup>53</sup> *ibid.*

<sup>54</sup> ‘Giant Panda going overseas’ (China Internet Information Center) <<http://www.china.org.cn/english/features/panda/37969.htm>> accessed 09 January 2023.

<sup>55</sup> William Blackstone, *Blackstone’s Commentaries on the Laws of England Book the Second - Chapter the First: Of Property in General* 1765-1769, 5,14 <[http://avalon.law.yale.edu/18th\\_century/blackstone\\_bk2ch1.asp](http://avalon.law.yale.edu/18th_century/blackstone_bk2ch1.asp)> accessed 21 May 2023.

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

States, after 'Ling-Ling' passed away in 1992 'Xing-Xing' remained alone until he was euthanised in 1999 due to kidney failure.<sup>58</sup>

Final observation is that China has selected the 9 nations strictly based on the long-term advances that can be obtained through such relations. Professor Lin further explains this as follows;

Among those seven countries in the west camp, the United States is the strongest world power, both France and the United Kingdom are permanent members in the United Nations Security Council; Japan and Germany are the second and third largest economies, respectively. In other words, Beijing sent pandas as gifts to either allies or formidable powers. Developing countries or middle powers, with the exception of Mexico and Spain, are unlikely to receive such a gift from China.<sup>59</sup>

The second phase of panda diplomacy fell between 1982 to 1994 when China started to loan pandas to other nations as commercial goods.<sup>60</sup> In 1983, China acceded to the CITES as the 63<sup>rd</sup> party to the convention and the panda was initially listed in Appendix III.<sup>61</sup> However, considering the alarming vulnerability of pandas, the Convention shifted them to Appendix I in 1984 which includes 'all species threatened with extinction which are or may be affected by trade.' As per Article II Para 1 of the CITES, trade of the species listed in Appendix I must be strictly regulated and authorised only under 'exceptional circumstances.' This prohibited China from gifting any pandas for free because free gifts cannot be considered as exceptional circumstances as required by the Convention. As an alternative, China started to rent pandas to a few selected countries namely the United States, the United Kingdom, the Netherlands, Belgium, Germany, Ireland, Mexico, Japan, Australia, and New

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<sup>58</sup> 'Ling Ling and Hsing Hsing meet the pandas' (Howstuffworks, 15 May 2012) <<https://animals.howstuffworks.com/endangered-species/enriching.htm>> accessed 10 January 2023.

<sup>59</sup> Lin (n 47).

<sup>60</sup> *ibid.*

<sup>61</sup> Kevin D. Hill, 'The Convention on International Trade in endangered Species: Fifteen Years Later' (1990) 13 (2) *Loyola of Los Angeles International and Comparative Law Review* 231.

Zealand.<sup>62</sup> However, this approach was heavily criticised by environmental organisations across the world since it continued to threaten the safety of pandas.<sup>63</sup>

Subsequently, Notification to the Parties No.477 of 23 May 1988 was issued by the CITES Secretariat which emphasised on the negative impacts to captive breeding when using pandas as exhibition loans.<sup>64</sup> It further recommended that exhibition loans of pandas ought to be limited to specimens which are not suitable for captive-breeding such as young cubs or old pandas.<sup>65</sup> Accordingly, in 1994 China ceased renting pandas to other nations as commercial goods.<sup>66</sup>

The third phase of panda diplomacy started in 1994.<sup>67</sup> Accordingly, China enters into a bilateral contract of 'mutual scientific research exchange' with the respective country and loans the pandas for an annual payment of approximately one million dollars.<sup>68</sup> The ownership of the pandas remains with China and the validity of the contract period is ten years after which the pandas must be returned to China.<sup>69</sup> During this period, if any offspring are born extra rent must be paid for two years and after that, they also must be returned to China.<sup>70</sup> This is because as per the contract, any offspring of the pandas which are loaned to other countries automatically become the property of China.<sup>71</sup> It is reported that the United States paid US\$500,000 annually for each cub.<sup>72</sup> Furthermore, the zoo must pay an extra one million dollars for the Sino-American research fund and protection for pandas.<sup>73</sup>

It is highly unlikely that developing countries can afford such high payments in exchange for pandas from China. More than the price tag, panda diplomacy represents the goodwill of China.<sup>74</sup> The selection of countries is often supported by potential

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<sup>62</sup> Lin (n 47).

<sup>63</sup> *ibid.*

<sup>64</sup> Hill (n 61).

<sup>65</sup> *ibid.*

<sup>66</sup> Lin (n 47).

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

diplomatic and political considerations.<sup>75</sup> For instance, China gifted pandas to Hong Kong which later became a territory of China.<sup>76</sup> This is one of the reasons why panda diplomacy is criticised as a tool of soft power utilised by China to maintain their political and diplomatic influence.<sup>77</sup>

However, the third phase of panda diplomacy was accepted by the CITES in Notification to the Parties No. 932 of 4 September 1996<sup>78</sup> which repealed the previous Notification No.477 of 23 May 1988. Thereby, the Notification recommends that (1) any panda exported for loan, and its offspring, remain the property of China, (2) export of such pandas must ensure positive conservation benefits, (3) exporting pandas which are suitable for breeding must be authorised ‘only in exceptional circumstances,’ (4) excess financial benefits after deducting the expenses must be reserved for the conservation of pandas in China, and (5) a memorandum of agreement defining all the conditions must be signed between the Management Authority, and the institution in China which is loaning the panda and the receiving country.<sup>79</sup> This has been the practice of sending diplomatic pandas to other nations ever since.

### **3.3 Importance of panda diplomacy in protecting diplomatic animals**

In the context of this article, panda diplomacy is considered as a measure which is capable of monitoring and protecting the pandas which are gifted to other countries. Accordingly, panda diplomacy protects pandas in several methods and fulfils animal welfare freedoms which can be summarised as follows.

First and foremost, China keeps the ownership of the animals, which denotes that if the pandas are mistreated and neglected, they can return to China. For instance, two pandas named ‘Ya-Ya’ and ‘Le-Le’ in the Memphis Zoo, were found to be malnourished and distressed.<sup>80</sup> Many animal welfare organisations urged the authorities to resend

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<sup>75</sup> *ibid.*

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

<sup>78</sup> Notification to the Parties No. 932 of 4 September 1996, Convention on International Trade in Endangered Species of Wild Fauna and Flora <<https://cites.org/sites/default/files/eng/notif/1996/932.shtml>> accessed 21 May 2023.

<sup>79</sup> Notification to the Parties No. 932 of 4 September 1996, art 3.

<sup>80</sup> ‘Media Release: Memphis Zoo’s suffering giant pandas to return home to China’ (In defense of Animals, 21 December 2022) <<https://www.idausa.org/campaign/wild-animals-and-habitats/latest->

the pandas to China upon the end of the contract in April 2023.<sup>81</sup> Accordingly, the authorities agreed, and ‘Ya-Ya’ and ‘Le-Le’ will return to China to enjoy their retirement.<sup>82</sup>

According to panda diplomacy, the ownership of pandas remains with China which also ensures that they are well-protected. This ownership indirectly mandates a duty on the receiving nation to ensure that the pandas are provided with the requirements of five freedoms including proper food and water, a comfortable shelter, proper medical care, companionship of their own species, and prevention of any mental suffering. For instance, pandas eat the shoots of a special type of bamboo to maintain their dietary needs. It is reported that ‘Jia-Jia’ and ‘Jing-Jing’ at the London Zoo received bamboo which only grew in Cornwall and transported to Paddington by train twice every week.<sup>83</sup>

Secondly, pandas must be returned to China after 10 years. This indicates that pandas have a home to return and are not forced to forever suffer in captivity in a faraway land. Animal welfare activists argue that the welfare of all diplomatic animals are affected when they are sent to other countries because they are separated from their families, familiar surroundings, living conditions and other habits. It is also possible that they will be caged in isolation for the rest of their lives similar to ‘Kaavan.’ However, the condition to return the animal after 10 years in panda diplomacy ensures that they are given the opportunity to retire in their familiar living conditions and surroundings.

It is also observed that panda diplomacy allows gifting pandas in pairs which is essential for any diplomatic animal. This is because it is important that such animals are given the opportunity to have the company of their own species. For instance, ‘Chi-Chi’ of the London Zoo was originally gifted to the Soviet Union with ‘Ping-Ping’ in 1957.<sup>84</sup> The caretakers mistook ‘Chi-Chi’ to be a male panda and returned it to China

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news/media-release-memphis-zoos-suffering-giant-pandas-to-return-home-to-china/> accessed 10 January 2023.

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

<sup>83</sup> Mena Sultan, ‘Ching Ching and Chia Chia: London Zoo’s giant pandas’ (The Guardian, 04 September 2018) <<https://www.theguardian.com/gnmeducationcentre/2018/sep/04/ching-ching-and-chia-chia-london-zoos-giant-pandas>> accessed 10 January 2023.

<sup>84</sup> Xianchen (n 50).

in exchange for ‘An-An’ in 1959.<sup>85</sup> It was later discovered that ‘Chi-Chi’ was in fact the female panda.<sup>86</sup> ‘Chi-Chi’ was then sent to Chicago Zoo where she was denied entry into the United States due to her communist background and later was bought by the London Zoo.<sup>87</sup> Subsequently, two unsuccessful efforts were made to mate ‘Chi-Chi’ with ‘An-An.’<sup>88</sup> Accordingly, panda diplomacy has given importance to the fourth freedom in animal welfare by providing the opportunity to engage in natural behaviours including mating.

Panda diplomacy also mandates that all offspring born in other nations must be returned to China after two years. The United States has returned 9 cubs to China including ‘Hua Mei’, ‘Mei Shang’, ‘Su Lin’, ‘Yun Zi’, and ‘Po’.<sup>89</sup> This ensures that the cubs are given the chance to grow up in their native land and surroundings. Furthermore, if the countries were allowed to keep the panda cubs it is possible that they are misused when they are grown. Accordingly, returning all offspring of pandas to their native country after a specific period is more fruitful in conservation efforts.

It can be argued that the annual payment, even though in this instance is extremely high, also protects the pandas to a certain level. Since the zoo is accountable to pay an amount, they must ensure that the pandas are well protected, cared for and kept fit for exhibition without abusing the animals. At the same time, the funds are used for further research and the protection of pandas in China, which is a great cause.

These are the important conditions in panda diplomacy which ensures the protection of pandas and their welfare as diplomatic animals. Accordingly, the next step is to discuss the development of an international convention to protect diplomatic animals inspired by panda diplomacy.

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<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*

<sup>88</sup> ‘Aggressive pandas separated’ (Guardian, 01 April 1966) <<https://www.theguardian.com/century/1960-1969/Story/0,,106455,00.html>> accessed 10 January 2023.

<sup>89</sup> ‘Pandas in the United States’ (Pandas International) <<https://www.pandasinternational.org/global-pandas/pandas-in-the-united-states/>> accessed 10 January 2023.

## **4 Developing an international convention to protect diplomatic animals**

This section first deliberates on the necessity of developing an international convention to protect the diplomatic animals, followed by the provisions inspired by panda diplomacy which can be included in such a convention. Subsequently, the research focuses on whether any other provisions can be added to the convention apart from those influenced by panda diplomacy. Finally, it considers the challenges in adopting such a convention and how to overcome them to better protect the diplomatic animals and their welfare.

### **4.1 Necessity of developing an international convention to protect diplomatic animals**

Prior to developing the content of an international convention inspired by panda diplomacy to protect the diplomatic animals, it is necessary to clarify why this research focuses on an international convention instead of the bilateral agreement between the sending and receiving nations as was observed in panda diplomacy.

The most important reason to recommend an international convention to protect diplomatic animals is to mandate a set of internationally accepted minimum conditions which must be fulfilled by both countries to safeguard diplomatic animals. If the agreement is bilateral and remains only between the countries, the mandatory conditions can be changed as per the requirements of the countries. For instance, if the governments of the sending countries are influenced by subsequent political benefits, friendships, and other economic advances, they might agree for conditions which would endanger the health and safety of diplomatic animals.<sup>90</sup> It is important for the sending countries to ensure that the new life of the diplomatic animals in the receiving countries is peaceful and comforting. Therefore, there must be a set of mandatory conditions which can only be imposed by an international convention to protect the welfare of diplomatic animals.

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<sup>90</sup> Suhasini Haidar, Jacob Koshy, 'As wildlife diplomacy takes wing, government considered Sri Lankan proposal for translocating gaurs' (The Hindu, 15 October 2022) <<https://www.thehindu.com/news/national/as-wildlife-diplomacy-takes-wing-government-considers-sri-lankan-proposal-for-translocating-gaurs/article66014391.ece>> accessed 13 January 2023.

Yet another reason is, to impose a universal duty on the receiving countries to protect both physical and mental well-being of diplomatic animals. As it was previously emphasised, caring for diplomatic animals is challenging for the receiving countries. The usual practice is to exchange diplomatic animals between both developed and developing nations. If the receiving country is a developed nation which possesses all the resources to provide a satisfactory life to the diplomatic animals, then they can live a good life. But, if they are sent to developing nations which do not have the money, technology, veterinary knowledge, experienced caretakers, ample space with suitable living conditions, and companions of the same species, then it cannot be guaranteed that the diplomatic animals will live a comfortable life. It is possible that in conflicting situations diplomatic animals are mistreated and neglected. Therefore, it is essential to impose a universal duty on the receiving countries which can be fulfilled by such an international convention.

At the same time, it will impose a duty of care on the sending country to ensure that they continue to monitor the health and living conditions of the diplomatic animals they have sent. Such a duty will be sensitive in nature and some countries would not want other nations to interfere with the welfare of animals living in their captivity. It can be argued that since the diplomatic animals become part of the domestic animals in captivity when they have reached their destinations, they are protected by the national legal framework.

However, it must be emphasised that the protection of animal welfare standards in each country is different. For instance, the high-ranked countries in the Animal Welfare Index such as the United Kingdom, Austria, etc. have duly incorporated the five freedoms of animal welfare into their legislative frameworks.<sup>91</sup> But, most of the developing nations and even some of the developed nations have not yet recognised such important welfare standards in their legal provisions to protect animals in captivity. An example is Sri Lanka, which has failed to recognise five freedoms of animal welfare in the proposed Animal Welfare Bill of 2022 which will be replacing

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<sup>91</sup> 'Animal Protection Index' (World Animal Protection, 2022) <<https://api.worldanimalprotection.org/#>> accessed 10 January 2023.

the 116 years old Prevention of Cruelty to Animals Ordinance, No.13 of 1907.<sup>92</sup> Therefore, the sending states cannot solely rely on the legal frameworks in the receiving states, and an international convention can carefully balance the interests of both countries and ensure that any such special incident would not tarnish the good will among the countries.

After demonstrating the necessity to adopt an international convention to protect the diplomatic animals instead of a bilateral agreement, the next step is to propose the content of such an instrument. These recommendations can be considered by the states in preparing their agreements when sending diplomatic animals to other states.

#### **4.2 Recommendations to the convention inspired by panda diplomacy**

This subsection focuses on the recommendations that are inspired by the conditions in panda diplomacy which was considered in the previous section. The authors have finalised 8 such recommendations which are discussed below.

a) The ownership of the diplomatic animals must belong to the sending state<sup>93</sup>

This means that the international convention will only permit diplomatic animals to be sent as loans, and will not allow the ownership of the animal to be transferred to the receiving state. As discussed previously, if the ownership of the diplomatic animals remains with the sending state it will provide them the authority to constantly monitor the health and living conditions of the animals. This is essential for several reasons. Firstly, this will mandate the receiving country to duly care and fulfil the welfare requirements of the diplomatic animals in their possession. Also, the sending countries are much experienced with the characteristics, patterns and habits of the diplomatic animal. Therefore, if there are any changes, they will be able to identify them and guide the receiving state to help the animal. However, it must be ensured that in providing such guidance the countries will not create any conflicts.

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<sup>92</sup> Dulki Seethawaka, 'A comparative legal analysis on the necessity of reforming animal welfare laws to prevent to captivated and domesticated animals in Sri Lanka' (2022) Thesis submitted for the degree of Master of Philosophy in Law, Faculty of Law, University of Colombo.

<sup>93</sup> Notification to the Parties No. 932 of 4 September 1996, art 3 a.

- b) Universal duty of the receiving state to look after diplomatic animals as per the five freedoms of animal welfare

While granting the ownership of the diplomatic animal to the sending country, it is also necessary to impose the duty of care on the receiving country to ensure that they duly fulfil their duties in providing the requirements in five freedoms. This will protect the welfare of animals even though the five freedoms are not implemented to protect the animals in captivity in the domestic legal frameworks of the receiving state. Furthermore, it will also encourage such countries to implement five freedoms of animal welfare to protect animals in captivity and other domestic animals.

- c) Diplomatic animals must be loaned for a specific period of time<sup>94</sup>

This recommendation allows the diplomatic animals to spend a peaceful retirement in their native lands and familiar surroundings. Such steps ensure that both nations recognise the sentience of diplomatic animals which is important for the eco-centric approach in environmental conservation. Thereby, the sending country can take measures to rehabilitate the diplomatic animals with their previous herds or groups and living conditions.

- d) Mandating the companionship of diplomatic animals

It was previously demonstrated that panda diplomacy gives prominence to companionship. However, for most of the diplomatic animals this basic necessity is a luxury that they cannot afford. As sentient beings, animals value companionship which will allow them to have a family and produce offspring.<sup>95</sup> Companionship must be allowed to all diplomatic animals irrespective of whether they are an endangered species or not. Furthermore, upon death of any companion animals, reasonable efforts must be taken to replace the void. If this is unsuccessful, the animals can be returned to the sending state considering the best interests of the animal.

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<sup>94</sup> Lin (n 47).

<sup>95</sup> TJ Bergman, 'Social Relationships and Social Knowledge' (2010) *Encyclopedia of Behavioural Neuroscience* 288.

e) Offspring of diplomatic animals must be returned after a certain period of time<sup>96</sup>

In order to ensure that offspring of diplomatic animals will not be misused, they can be returned to their native countries similar to panda diplomacy. Animals usually loosen their bonds with offspring after a specific period of time, which varies for different species.<sup>97</sup> Afterwards, the offspring must be returned to the sending country where they will get the opportunity to live in their native lands. If the time period cannot be predetermined, then veterinarians from both countries can observe the animals and decide a suitable time.

f) A reasonable annual fee must be paid by the receiving state<sup>98</sup>

Similar to panda diplomacy, such a fee can be used for the conservation of diplomatic animals in their native lands. It can even be used as a retirement fee for the diplomatic animal once it has been returned. This can be used for rehabilitating and other expenses. However, the countries in the agreement must decide on this payment which will not unduly burden the receiving state. It must also be carefully deliberated whether the payment would be of monetary value or can be exchanged for specific services as required by the sending country. If such fees are not payable by the receiving country, it is also recommended that they seek assistance by facilities such as Global Environment Facility (GEF) which requires entering into a separate formal agreement between such state and facility.

g) The decision to loan such diplomatic animals must ensure positive conservation efforts<sup>99</sup>

It was already discussed that most of the diplomatic animal species are listed in the Appendix I and II of the CITES. If such endangered or vulnerable species are used as diplomatic animals it must be guaranteed that it is to promote positive conservation

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<sup>96</sup> Notification to the Parties No. 932 of 4 September 1996, art 3 a.

<sup>97</sup> Liz Langley, 'failure to launch: These animals stay with mom for years' (National Geographic, 12 May 2018) <<https://www.nationalgeographic.com/animals/article/animals-mothers-day-parents-babies>> accessed 11 January 2023.

<sup>98</sup> Notification to the Parties No. 932 of 4 September 1996, art 3 d.

<sup>99</sup> Notification to the Parties No. 932 of 4 September 1996, art 3 b.

efforts, rather than solely concentrating on upgrading diplomatic relations between two nations.

h) Animals who are suitable for breeding can only be permitted under exceptional circumstances<sup>100</sup>

Yet again, given the value of the diplomatic animal as endangered and vulnerable species, if animals who are suitable for breeding are used as diplomatic animals, this must be permitted only under 'exceptional circumstances' as was observed relating to Notification to the Parties No. 932 of 4 September 1996 on panda loans issued by the CITES Secretariat. These are the recommendations which are inspired by panda diplomacy.

#### **4.3 Other recommendations to protect diplomatic animals which can be included in the international convention**

While conducting the research, the authors recognised a few instances which can be addressed in the proposed convention. These recommendations are not inspired from panda diplomacy but they ensure that diplomatic animals are further protected. Some of these recommendations are applicable beyond the scope of protecting the welfare of diplomatic animals, and concentrate on the practical approach and future application of the proposed convention.

a) Mandating careful selection of the receiving country and the zoo which will keep the diplomatic animal

It must not be permitted to randomly choose the receiving country and the zoo or the research facility which will house the diplomatic animal. For instance, the sending state must take all necessary precautions to ensure that the diplomatic animals are not sent to research facilities where they might have to live in extreme living conditions. The sending state must pay careful attention to the living conditions, facilities that can be provided, the qualifications of the caretakers, and any other limitations when selecting the suitable destination for the animal. It is important to ensure that the

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<sup>100</sup> Notification to the Parties No. 932 of 4 September 1996, art 3 c.

selection of the receiving state is not criticised like panda diplomacy where China has given prominence to powerful allies and developed nations.

b) Appointing an administrative committee to resolve any conflicts

This is the most important authority that must be appointed to ensure that this international convention to protect diplomatic animals will not bring negative impacts on the relationship between two nations. It is inevitable that some circumstances will bring about conflicts between nations. The administrative committee must ensure that such conflicts are resolved by balancing the interests of both states as well as the animals involved. For this purpose, the committee must be independent and it must be mandated that all Parties must comply with the recommendations given by the committee.

c) Permitting the sending state to reclaim any mistreated diplomatic animals

Regarding panda diplomacy, even though there was the ownership it was not clear whether China can demand a receiving country to return a mistreated diplomatic animal. In the example of 'Ya-Ya' and 'Le-Le' in the Memphis Zoo, it was the animal welfare organisations who lobbied and demanded the authorities to return the pandas.<sup>101</sup> Therefore, if it can be proved beyond doubt that the diplomatic animal was deliberately or negligently mistreated in the receiving country, the sending state must be permitted to demand the return of the animal, which must be complied by the receiving state.

d) Permitting the sending state to claim damages for negligent care and treatment to diplomatic animals

If there is evidence that a diplomatic animal was actually mistreated, then the sending state must be able to claim for damages, reevaluate the welfare standards of other diplomatic animals in that state and reconsider the decisions of sending diplomatic animals to such a nation. This will not tarnish the diplomatic relations between the nations, but would act as a precaution in future decision makings relating to

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<sup>101</sup> 'Media Release: Memphis Zoo's suffering giant pandas to return home to China', (n 80).

diplomatic animals. The process of claiming damages must only be decided by the administrative committee after listening to both parties.

e) Mandatory veterinary assistance and training programmes organised by the sending country

If the diplomatic animal belongs to a species which is not found in the receiving state, steps must be taken to ensure that the caretakers and veterinarians of that state possess the knowledge to care for such animals. Accordingly, it can be mandatory that the sending state conducts training workshops as part of the agreement where they must be given training in handling the animal. Furthermore, if a diplomatic animal is suffering from a sickness which cannot be cured by the veterinarians in the receiving country, they must be allowed to request help from the sending state which must be provided by the sending state.

f) The process of euthanising a diplomatic animal living in a receiving country

Euthanising a diplomatic animal which is unlikely to recover from a sickness must be agreed between both nations and commenced in the presence of the representatives of both nations. This is important because, both countries must come to a consensus that the animal in fact cannot recover and euthanising is the best possible choice to release it from its pain and suffering. However, it is recommended to complete this process within reasonable time and proposed agreement should suggest for such a limitation after consulting veterinarians and animal welfare experts. The necessity to inform the sending country is because this will limit the receiving country from euthanising diplomatic animals which are not dying. If the countries cannot reach a consensus, then they can consult the administrative committee, which can appoint independent veterinary officers to provide reports on the condition of the animal and thereby make a decision. The necessity to complete the process in the presence of representatives from both countries is to ensure that the procedure was carried out with the minimum pain and suffering to the animal and sending states cannot accuse the receiving states for malpractice.

g) Mandating the receiving country to send autopsy reports to the sending country

The ownership must be extended to demand an autopsy for all the diplomatic animals which pass away in the receiving states. This is essential to ensure that proper caretakers and veterinarians were in charge of the animals. It is possible that authorities in some of the zoos in developing nations do not conduct proper autopsy if an animal has passed away due to their faults.<sup>102</sup> However, steps must be taken so that the lives of the diplomatic animals will not be endangered by such misconduct.

These are the proposed recommendations which can be included in the international convention to protect the welfare of diplomatic animals. However, it must be noted that these are not the only provisions that can be introduced. The next stage of the research is to consider the challenges in adopting in such a convention.

#### **4.4 The challenges in adopting an international convention to protect diplomatic animals**

First and foremost, it must be ensured that the proposed international convention will not tarnish the goodwill among nations in an attempt to protect the diplomatic animals. The provisions must not be used as a medium for a sending state to interfere with the existing legal frameworks and mechanisms to protect animals in the receiving state. Hence, all the conditions in the agreement must be carefully deliberated. Furthermore, it is necessary to appoint an independent administrative committee which can provide guidance in resolving any minor or major conflict among the Parties.

Another argument is that this convention would challenge the sovereignty of the states. The authors of the research do not suggest developing an international convention which impacts the sovereignty of the Parties to it. Just like any other treaty in International Law, the proposed convention will also be voluntary. The countries could decide if they want to be a party to the convention or not. However, the existence

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<sup>102</sup> Suranjith Perera, 'Bureaucratic blunder caused hippo's death, says zoo employees' (*Daily News*, 10 November 2008) <<http://archives.dailynews.lk/2008/11/10/news11.asp>> accessed 13 January 2023; see also Thameenah Razeek, 'Curious case of Orang-Utan deaths at Dehiwala Zoo' (*Ceylon Today*, 30 April 2022) <<https://ceylontoday.lk/2022/04/30/curious-case-of-orang-utan-deaths-at-dehiwala-zoo/>> accessed 13 January 2023.

of an international convention on the matter shows the accepted international standard or benchmark regarding the welfare of diplomatic animals and any practice that falls short of these accepted standards will be wrong in the eyes of International Law. The authors expect that the States would voluntarily become parties to the proposed convention at least for the same reasons that they become parties to any international convention may it be self-interest, compliancy pull of legitimacy, reputation or the pressure from the international community let alone for the *bona fide* intention of upholding the welfare of the diplomatic animals. If the States become parties to the Convention, the authors believe that they will also respect the obligations that they have undertaken to perform. As asserted by Louis Henkin ‘almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time’.<sup>103</sup> Now that the world is slowly moving away from anthropocentric legal frameworks, the fundamental principles recognised in the Convention may even one day become the *jus cogens* principles of International Law.

Yet another challenge is that the states would not be willing to commit themselves to protect the diplomatic animals. However, it must be established that addressing the welfare concerns relating to diplomatic animals is an approach which must be considered by all nations. The proposed convention will act as a medium which guides the countries in caring for the diplomatic animals they have gifted and received and thereby ensure that diplomatic animals and their welfare are duly protected. Thereby, the international community can be encouraged to send and accept diplomatic animals only from the parties to the proposed convention.

Domestic implementation of the convention could also be problematic particularly in incorporating the convention into domestic law. The States might use the fact that the convention is not domestically implemented to disregard the international obligations that they have undertaken to perform with regard to diplomatic animals. This is not a novel or uncommon strategy. This excuse has been given by States around the world to evade their human rights obligations and it is irrational to think that it would be of any difference to the proposed convention. However, the proposed convention itself provides the opportunity for the sending state to reclaim any mistreated diplomatic

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<sup>103</sup> Louis Henkin., *How Nations Behave* (Columbia University Press 1979) 47.

animal. Therefore, even where the receiving state neglects its obligation to uphold the welfare of the diplomatic animal using dualism as an excuse, it will not adversely affect the welfare of the diplomatic animal.

These are some of the challenges that will arise when adopting the proposed convention. However, it is important to give prominence to the fact that this convention can bring about a new ray of hope for the helpless diplomatic animals which are suffering in other nations.

## **5 Conclusion**

The protection of animals is given prominence by the international community because it is duly acknowledged that animals play an important role in the biosphere. However, the path ahead is challenging and requires a careful balance between the interests of both human-beings and animals at large. For instance, it is essential to protect the welfare of animals who are entirely dependent on humans and thereby, subject to cruelty and mistreatment due to their vulnerability. One such category of animals which remain mistreated is the diplomatic animals and this research intended to propose an international convention to protect the diplomatic animals and their welfare.

The research first discussed the importance of diplomatic animals as sentient beings and how their welfare is constantly endangered by both sending and receiving states. These welfare concerns were analysed with special reference to the five freedoms of animal welfare. The authors identified the existing lacunae in the international frameworks to protect diplomatic animals. In an attempt to understand how diplomatic animals can be protected by both sending and receiving states, in the next section, the authors critically analysed panda diplomacy in China which is the act of giving diplomatic pandas as loans subject to several terms and conditions. It was also discussed how panda diplomacy is used to protect pandas living in other nations and thereby, how it can inspire a mechanism to protect diplomatic animals and their welfare.

The final discussion was divided into three sections. Firstly, the authors analysed the necessity to adopt an international convention to protect diplomatic animals in contrast to a bilateral agreement which can be signed between the two nations.

Secondly, the provisions of the proposed international convention were elaborated in two categories, (1) provisions inspired by panda diplomacy and (2) other provisions for the protection of diplomatic animals. Lastly, the authors anticipated the challenges of adopting such a convention and how to overcome them. The research demonstrated the necessity to protect the welfare of diplomatic animals which can be accomplished by adopting an international convention as proposed by the authors. Diplomatic animals are not given the choice to select the life they want, since it is decided by the governing authorities in each nation. However, it must not be used as an excuse to tamper with their lives. As humans, reasonable steps must be taken to ensure that animals are not left to suffer alone in unfamiliar lands.