Committee Secretary

Joint Standing Committee on Treaties

PO Box 6021

Parliament House

Canberra ACT 2600

24 March 2022

Dear Officer,

RE: Inquiry regarding the Agreement between Australia and Japan concerning the Facilitation of Reciprocal Access and Cooperation between the Australian Defence Force and the Self-Defence Forces of Japan

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this submission to the Joint Standing Committee on Treaties inquiry regarding *Agreement between Australia and Japan concerning the Facilitation of Reciprocal Access and Cooperation between the Australian Defence Force and the Self-Defence Forces of Japan*.

The ANU LRSJ Research Hub falls within the ANU College of Law's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are students of the ANU College of Law, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

Summary of Recommendations:

1. Include a less-than-treaty status subsidiary instrument that agrees that the death penalty will only be given as a sentence when no alternate sentence is reasonably available and that all efforts will be made by both parties to avoid the imposition of the death penalty.

2. Establish a Memorandum of Understanding between Australia and Japan to clarify and formalise a legal framework that offers a shared understanding of the meaning of 'offences' in Article XXI.

3. Clarify the requirements for 'protection of the environment' in Article XX, assessing them against current domestic environmental responsibilities.

4. Within Article XX's requirements for 'protection of the environment', encourage Australian and Japanese cooperation on increasing maritime domain awareness (MDA) in an effort to minimise national security threats via sea-lanes.

If further information is required, please contact us at anulrsjresearchhub@gmail.com.

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1. The Death Penalty

1.1 Overview of Recommendation 1

A key issue in the process and discussion of this treaty[1] has been the possibility of Australians being subject to the death penalty. We propose three possible proposals that aim to prevent the possibility of ADF personnel being subject to the death penalty. Section 1.2 of this recommendation will outline the current state of international and domestic law with regard to the death penalty. Section 1.3 will present the treaty's faults as to the death penalty. Section 1.4 will conclude by outlining our proposal and alternative possible changes.

1.2 Current Domestic and International Law

Australia formally abolished the death penalty in 2009 with the passing of the *Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act*,[2] which prohibited the reintroduction of capital punishment in any Australian jurisdiction. However, the last execution in Australia occurred in 1967.[3] In Japan, the death penalty is available under Article 475 of the Code of Criminal Procedure.[4] Further discussions surrounding the Japanese justice system and possible concerns can be found below in Recommendation 2.

Australia has international obligations regarding the abolition of the death penalty. Australia is a signatory to the *Second Optional Protocol to the International Covenant on Civil and Political Rights* (‘*Second Protocol*’),[5] which imposes a legal obligation on Australia to ensure that nobody within Australian jurisdiction is executed,[6] and that all necessary measures are taken to abolish the death penalty within the Australian jurisdiction.[7] Japan is not signatory to the Second Protocol. However, Australia and Japan are both signatory to the *International Covenant on Civil and Political Rights,*[8] which, though it does not explicitly prohibit the death penalty, is clearly

1 *Agreement Between Australia and Japan Concerning the Facilitation of Reciprocal Access and Cooperation Between the Australian Defence Force and the Self-defence Forces of Japan,* Japan-Australia, opened for signature 6 January 2022, [2022] ATNIF 2 (not yet in force) (‘*The Treaty*’).

2 *Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill 2009* (Cth).

3 ‘Ronald Ryan: The Last Man Hanged’, *National Film and Sound Archive* (Web page) <https://www.nfsa.gov.au/latest/ronald-ryan-last-man-hanged>.

4 *Code of Criminal Procedure* (Japan), art 475.

5 *Second Optional Protocol to the International Covenant on Civil and Political Rights,* opened for signature 15 December 1989, 1642 UNTS 414 (entered into force 11 July 1991).

6 Ibid art 1.

7 Ibid art 2.

8 *International Covenant on Civil and Political Rights,* opened for signature 19 December 1996, 999 UNTS 171 (entered into force 23 March 1976).

written with an abolitionist spirit. For example, Article 6 states that 'nothing in this Article shall be invoked to delay or prevent the abolition of capital punishment'.[9]

In addition to these international obligations, Australia also takes an active stance against the death penalty globally. In *Australia's Strategy for Abolition of the Death Penalty,*[10] the Department of Foreign Affairs and Trade outlined Australia's policy goal of 'abolish[ing] the death penalty where it still exists',[11] specifically through bilateral advocacy in the Indo-Pacific region.[12]

1.3 The Treaty and the Death Penalty

The current treaty does not provide adequate protection to Australians with regards to the death penalty and it is unclear whether the treaty suitably fulfils Australia's obligations under the *Second Protocol*. Article XXI sections 2(a) and 2(b) of the treaty outline the *concurrent* jurisdiction that both the Sending State and the Receiving State have over the members of the visiting force.[13] However, section 4(b) gives the Receiving State *primary* jurisdiction.[14] Given this concurrent jurisdictional arrangement, in which Australia maintains some level of jurisdiction over its service personnel in Japan, Australia has an obligation under the *Second Protocol* to protect Australians from the death penalty under this treaty.

An extended discussion on the law of sovereignty and jurisdiction in international treaties is beyond the scope of this submission. However, even if it was found that the *Second Protocol* did not extend to extra-territorial jurisdiction, Australia should still consider it vital to protect the rights of Australians within this treaty under goals outlined by the government in *Australia's Strategy for Abolition of the Death Penalty.*

Section 2 of the Annex is the primary part of the treaty that aims to protect Australians from the death penalty is. This section permits the Sending State to not aid the Receiving State in prosecuting a member of the Sending State as they are required to under Article 11 Section 5(a) if there is a sufficient likelihood the person on trial could be subject to the death penalty.[15] However, the mere ability to refuse assistance with regards to prosecution is not a significant enough measure to protect Australians from the possibility of the death penalty, particularly given Australia's international obligations outlined above.

I.4 Our Recommendation and Alternate Possible Changes

9 Ibid art 6.

10 Department of Foreign Affairs and Trade, 'Australia's Strategy for Abolition of the Death Penalty' (June 2018).

11 Ibid 3.

12 Ibid 5.

13 *The Treaty* (n 1) art XXI s 2 sub-s a-b.

14 Ibid art XXI s 4 sub-s b.

15 Ibid art XXI s 5 sub-s a.

Considering the inadequacy of the current protections under the treaty, and Australia's domestic policy and international obligations, we recommend the three possible recommendations. We acknowledge that the issue of the death penalty has hindered the progress of this treaty. Thus, we give alternate proposals, each of which with differing levels of diplomatic feasibility.

The inclusion of an additional subsection within Article XXI section 8 preventing any member of the Sending State being subject to the death penalty under the law of the Receiving State would be the most effective change in upholding Australia's obligations under the Second Protocol. International precedent for such a provision exists, such as in the Defence Cooperation Agreement between the United Kingdom and Kenya,[16] which provides that such a sentence would be instead 'commuted to a prison sentence or fine'.[17] A similar framing could be used here. This is the most preferred alteration, however we acknowledge the diplomatic difficulty of instituting such a change.

A second alternate change is the inclusion of a subsection within section 8 that limits the maximum sentence available to the Receiving State to the maximum possible penalty for the equivalent crime under the law of the Sending State. Such a proposal has the advantage of not directly undermining Japanese sovereignty by explicitly preventing a punishment only available in Japan.

A final possible change is the inclusion of a less-than-treaty status subsidiary instrument that agrees that the death penalty will only be given as a sentence when no alternate sentence is reasonably available and that all efforts will be made by both parties to avoid the imposition of the death penalty. This proposal would be the least effective in upholding Australia's international obligations and in the protection of ADF personnel - as these less-than-treaty status instruments are not legally binding. However it would likely be the most diplomatically feasible of the options, as it avoids altering the primary treaty. Thus, although not preferable to the other suggestions, it would be preferred over having no protection at all.

In conclusion, these proposals should all be considered by the committee with the goal of giving the utmost protection to ADF personnel. This concern will ultimately need to be balanced with Australia's geopolitical interest in the treaty being ratified, however given Australia's obligations under the Second Protocol, maximal diplomatic effort should be put in the inclusion of a clear and specific subsection preventing the use of the death penalty of any defence personel.

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[16] *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya concerning Defence Cooperation*, Kenya-United Kingdom, signed 27 July 2021, [2021] Kenya No. 1 < https://treaties.parliament.uk/treaty/5mhS9bSV/CP-567/Details/>.

[17] Ibid art VI s 15 sub-s h.

Recommendation 1: Include an additional subsection within Article XXI section 8 preventing any member of the Sending State being subject to the death penalty under the law of the Receiving State.

OR

Alternate Recommendation 2: Include a subsection within section 8 that limits the maximum sentence imposed by the Receiving State for crimes committed by a member of the Sending State to the maximum possible penalty for the equivalent crime under the law of the Sending State.

OR

Alternate Recommendation 3: Include a less-than-treaty status subsidiary instrument that agrees that the death penalty will only be given as a sentence when no alternate sentence is reasonably available and that all efforts will be made by both parties to avoid the imposition of the death penalty.

2. Imprecise terminology on the definition of extraterritorial offences

In Article XXI, some provisions mandate extraterritorial criminal jurisdiction over members of the visiting forces and the civilian component concerning offences committed within the Receiving State and punishable by the law of the Receiving State. Article XXI section 3B details a list of offences that would be subjected to the criminal jurisdiction of a visiting state, including offences 'relating to the security of the state' which is substantiated by 'treason against that party', 'sabotage, espionage or violation of any law relating to official secrets of that party', and 'secrets relating to the national defence of that party'.[18]

Although this article of the treaty effectively outlines the high-level procedures about jurisdictional capture and criminal procedure, it lacks clarity on how to approach differing definitions of the offences mentioned above in Australia and Japan. Due to the inherent proximity of visiting forces to military operations and intelligence, the vague definitions of crimes in the treaty widen the scope for misunderstandings of military activities that could amount to unintentional criminal offences. From a risk-management perspective, the hazard of vague definitions is increased by the political nature of these offences, consequently widening the possibility of undermining the treaty's objective of deepening security and defence relations between Australia and Japan.

2.1 Examples of definitional inconsistencies

18 *The Treaty* (n 1) art XXI.

The possible definitional inconsistencies that could arise from interconnected military activities are highlighted in these examples below.

a) Treason

Section 80.1 of Australia's Criminal Code provides detailed definitions of acts that constitute treason that distinguishes between Australian citizens and non-citizens.[19] Contrastingly, Japanese criminal law does not specifically define treason. Instead, section 2.81 of the Japanese Criminal Code mandates the 'crime of foreign mischief'.[20] This is a term that remains vague and debated in Japanese legal communities.[21]

b) Secrecy laws

Australian secrecy laws are mandated in section 70 of the *Crimes Act 1914* (Cth) ('Crimes Act'). Section 70 does not create a duty to keep information secret or confidential. Rather, the source of such a duty must be found elsewhere—most commonly in a specific secrecy provision. Section 70 of the Crimes Act makes it an offence for a Commonwealth officer to disclose 'any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of being a Commonwealth officer'.[22] On its face, this section could apply to the disclosure of any information regardless of its nature or sensitivity. A person commits an offence under the section if he or she 'publishes or communicates' any fact or document. The Crimes Act does not provide any guidance as to the meaning of the term 'publishes or communicates'.[23]

The challenges surrounding the vague nature of this section 70 is highlighted in section 79 mandating a list of 'prescribed information' that would amount to a criminal offence. Such 'prescribed information includes' communicating or allowing someone to have access to or retaining an official secret without authorisation with 'the intention of prejudicing the security or defence of the Commonwealth or a part of the Queen's dominions'—maximum penalty seven years imprisonment'.[24] The Crimes Act does not provide guidance on handling information that could involve the disclosure of relevant secrets in cooperative defence bi-lateral contexts. Hence, greater clarification is needed in standardising shared definitions of the treaty's mandate of the offence of 'violation of any law relating to official secrets of that party'.[25]

Japanese secrecy laws are mandated by the *Act on the Protection of Specially Designated Secrets*. This Act renders information within the categories of "special secrets" over three areas – defence, foreign affairs, and terrorism – to be safeguarded from public disclosure. This Act outlines disclosures of broad information, including defence information, intelligence, and

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[19] *Crimes Act 1914* s 80.1.
[20] *Japanese Criminal Cod*e s 2.81.
[21] Thisanka Siripala, 'Japan's Secretive Death Penalty Poised to Take a Back Seat During Olympic Spotlight', *The Diplomat* (online, [06 March 2019]) <https://www.theguardian.com/world/2020/jan/15/australian-journalist-scott-mcintyre-gets-suspended-sentence-over-search-for-his-children-japan>.
[22] *Crimes Act 1914* s 70.1.
[23] Ibid.
[24] *Crimes Act 1914* s 79.2.
[25] *The Treaty* (n 1) art XXI s 2 sub-s c.

research concerning weapons, ammunition, aircraft, that constitute criminal breaches of this Act. Additionally, this Act mandates important information collected regarding the protection of the lives and bodies of people, territorial integrity, or the peace and security of the international community" to be breaches of this Act. Given the close proximity of both forces with military activities with each other's respective military apparatuses, the lack in clarity of how Australian and Japanese forces will reconcile these vague and overlapping areas requires further attention.

It is also important to note that Japanese and foreign legal scholars widely criticise Japan's criminal justice system for breaching judicial independence and upholding a presumption of guilt in criminal investigations.[26] Known as 'hostage justice' (*hitojichi-shiho*), Japanese police often use prolonged interrogation methods to coerce suspects into confessing to crimes, regardless of whether suspects are guilty.[27] Police and prosecutors can detain suspects for 23 days without bail in substitute prisons.[28] These concerns are exacerbated by the frequency of prosecutors extending detention periods by filling more charges and splitting existing allegations into multiple crimes.[29] Suspects are denied legal counsel during interrogations.[30] This has raised concerns as these practices breach constitutional freedoms, including the right to freedom of speedy trial and freedom from self-incrimination.[31]

In the context of this treaty, unclear definitions of criminal offences could result in visiting forces facing difficulties in the Japanese criminal justice system. Reflecting on the treaty's objective, involvement in the Japanese criminal justice system could result in diplomatic crises that would undermine the treaty's purpose. Diplomatic tensions involving Australians in the controversial Japanese criminal justice system have attracted significant attention. In 2018, Matthew Ashton-Pete died by suicide due to psychological trauma after 20 days of hostile interrogation for suspected drug passion.[32] In 2019, sports journalist Scott McIntyre was incarcerated for 45 days before being given a suspended sentence for alleged trespassing. He was subjected to

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[26] Mark Ramseyer and Eric B. Rasmusen, 'Why is the Japanese Conviction Rate so High?' (2001) 30(1) *The Journal of Legal Studies*, 53-88

[27] Melissa Clack, 'Caught between Hope and Despair: An Analysis of the Japanese Criminal Justice System' (2003) 31(2) *Denver Journal of International Law and Policy*, 532-536

[28] Hanna Kozlowska, 'Japan's notoriously ruthless criminal justice system is getting a face lift', *Quartz* (online, [26 May 2016]) <https://qz.com/693437/japans-notoriously-ruthless-criminal-justice-system-is-getting-a-face-lift/>

[29] Gohara Nobuo, 'Japanese "Prosecutors' Justice" on Trial', *Nippon.com* (online, [15 June 2020]) <https://www.nippon.com/en/in-depth/a06802/>.

[30] Makoto Ibusuki and Lawrence Repeta, 'The Reality of the "Right to Counsel" in Japan and the Lawyers' Campaign to Change It' (2020) 18(13) *The Asia-Pacific Journal*, 1-10.

[31] Human Rights Watch, 'Call to Eliminate Japan's "Hostage Justice" System by Japanese Legal Professionals', *Human Rights Watch* (online [10 April 2019]) <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals>; *The Constitution of Japan* (Japan), art 37, 38.

[32] Matthew Herno, 'The Conditions are Barbaric: Real Stories From Japan's 'Hostage Justice' System', Tokyo Weekender (online, [25 November 2020]) <https://www.tokyoweekender.com/2020/11/not-only-ghosn-conditions-barbaric-real-stories-from-japan-hostage-justice-system-hitojishi-shiho/>.

constant interrogation in a small crowded pre-trial cell. He was permitted to shower twice a week.[33]

To realise the objective of this treaty established in the National Interest Analysis, we recommend introducing a Memorandum of Understanding (MOU) to clarify and formalise the definition of 'offences' in Article XXI. The expected benefits of introducing an MOU are greater clarity about the meaning of offences and strengthened collective understandings of extraterritorial criminal and dispute resolution proceedings if it were to occur.

The benefit of using subsidiary instruments like MOUs is that they can enter into effect without legislative approval, providing flexibility to adapt to the existing treaty. Clarifying key terminologies in this section could draw on effective examples of MOUs that clarify specifics within other bi-lateral treaties including the *Memorandum of Understanding between the Government of Australia and the Government of the Republic of Nauru on the Development Cooperation Program*[34] and the *Memorandum of understanding between the Government of the Republic of Indonesia and the Government of Australia on Cyber Cooperation*.[35]

Recommendation 2: Establish a Memorandum of Understanding between Australia and Japan to clarify and formalise a legal framework that offers a shared understanding of the meaning of 'offences' in Article XXI.

3. Clarification of the requirements for environmental protection

We recommend a clarification of the requirements for 'protection of the environment' in Article XX, assessing them against current domestic environmental responsibilities.

It is currently unclear in Article XX Section 1 whether members of the Visiting Force shall be subject to the environmental laws of the Receiving State. It should then be determined whether these environmental protection requirements are at a higher or lower standard than the currently existing domestic obligations. Under Australia's *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*'), nine matters of national environmental significance are protected, including Commonwealth marine areas.[36] Similarly, Japan's *Basic Environment Law* determines the fundamentals of the specific provisions of the various individual environmental laws.[37] It should be clarified whether the operation of the Visiting Force in a

[33] Justin McCurry, 'Australian journalist gets suspended sentence over search for his children', *The Guardian* (online, [15 January 2020]) <https://www.theguardian.com/world/2020/jan/15/australian-journalist-scott-mcintyre-gets-suspended-sentence-over-search-for-his-children-japan>.

[34] signed 25th October 2017.

[35] signed 31 August 2018.

[36] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*').

[37] *The Basic Environment Law* [Law No 91 of 1993] (Japan).

'manner consistent with the protection of the environment' is congruous with domestic environmental responsibilities.[38]

Once this is determined, Article XX should also clarify how the enforcement of environmental obligations will be regulated. Whilst section 3 of Article XX states that the Sending State shall address any damage or potential damage to the environment promptly, cooperating with the Receiving State and in accordance with the laws and regulations of the Receiving State, there is no mention of how compliance will be ensured and whether or not violations of the environmental laws will result in sanctions.[39] In Japan, for example, regulators tend to seek voluntary compliance with environmental laws before exercising their compulsory authority.[40] Similarly, in Australia, the *EPBC Act* includes criminal and civil penalties for breaches of its provisions, and when the Australian Government investigates into compliance with the *EPBC Act*, it will generally consult with the relevant local authorities.[41]

Section 3 of Article XX only states that any damages caused by the Sending State will be addressed but does not make mention of how compliance will be monitored and regulated. Currently, it may be assumed that if any disputes were to arise concerning the implementation of environmental protection measures, the Parties will aim to resolve them through consultation and negotiation.[42] However, since the requirements for environmental protection are not clearly stated, along with no mention of compliance ensurement measurements, it is important to clarify the way in which environmental obligations will be enforced and whether or not sanctions will be issued when the Receiving State's environmental laws are violated.

Recommendation 3: Clarify the requirements for 'protection of the environment' in Article XX, assessing them against current domestic environmental responsibilities.

4. Increasing Maritime Domain Awareness

As previously mentioned, one of the nine matters of national environmental significance protected under Australia's *EPBC Act* is Commonwealth marine areas. Since the Indo-Pacific is primarily a maritime environment associated with maritime security and cooperation, we also recommend that within the requirements for 'protection of the environment', reference should be made to Australian and Japanese cooperation on increasing maritime domain awareness ('MDA').

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[38] *The Treaty* (n 1) art XX s 1.
[39] *The Treaty* (n 1) art XX s 3.
[40] Hajime Kanagawa, 'Environmental law and practice in Japan: overview', *Thomas Reuters Practical Law* (Web Page, 1 March 2021) <https://uk.practicallaw.thomsonreuters.com/6-502-8920?transitionType=Default&contextData=(sc.Default)&firstPage=true>.
[41] *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
[42] *The Treaty* (n 1) art XXVIII.

MDA is critical to national security with significant economic and military implications, especially for Australia and Japan who are both Quad members.[43] Enhanced information-sharing and cooperation with encouraging greater MDA between Australia and Japan is crucial to promoting the peace and stability of the Indo-Pacific region, which comprises important sea-lines of communication.[44]

Australia, being the fifth largest shipping nation in the world in terms of tonnes of cargo shipped and distance travelled, 'has strong economic and national interests in maintaining civil maritime security within and beyond Australian waters.'[45] In Australia, the *Maritime Powers Act 2013* (Cth) provides enforcement provisions for all maritime law enforcement matters, and any maritime operations both in and beyond Australian waters must be carried out consistently with international, as well as domestic, law. Similarly, Japan, surrounded by the sea, is a maritime nation with the world's sixth largest exclusive economic zone.[46] Thus, both Australia and Japan, as maritime powers, are highly dependent on free and open ocean access, and it is in their interests to maintain safety and security in international sea lanes, thereby minimising threats to national security.

In the 2020 *Guide to Australian Maritime Security Arrangements* report, eight key maritime threats faced by Australia were identified, including 'irregular migration, illegal exploitation of natural resources, marine pollution, illicit trafficking, compromises to biodiversity, piracy and maritime terrorism.'[47] Japan, like Australia, has also identified several threats to the oceans, 'including frequent marine accidents, increasingly serious weather disasters, earthquakes and tsunamis in the ocean, marine pollution, and illegal, unreported, and unregulated (IUU) fishing that undermines the effectiveness of resource management.'[48] Hence, the national security interests of both states would benefit from cooperation in strengthening each state's MDA.

Additionally, Australia, by helping strengthen Japan's MDA would effectively expand the scope and reach of its own MDA effort, which has consistently been limited in its geographic reach given the size of Australia's maritime area of responsibility.[49] MDA is critical as a platform and framework for sharing maritime information between Australia and Japan, having the ability to affect national-level issues such as security, safety, and the economy, and being a crucial element in responses to various ocean threats, whether man-made or natural.

Thus, it is recommended that within Article XX's requirements for 'protection of the environment', reference should be made to encouraging Australian and Japanese cooperation

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[43] Dean Cheng, 'The Importance of Maritime Domain Awareness for the Indo–Pacific Quad Countries', *The Heritage Foundation* (Web Page, 6 March 2019) <https://www.heritage.org/global-politics/report/the-importance-maritime-domain-awareness-the-indo-pacific-quad-countries>.

[44] Stephen Kuper, 'Those who rule the waves, rule the world', *Defence Connect* (Web Page, 11 April 2019) <https://www.defenceconnect.com.au/maritime-antisub/3879-those-who-rule-the-waves-rule-the-world>.

[45] Australian Border Force, *Guide to Australian Maritime Security Arrangements | GAMSA* (Report, September 2020) 2 <https://www.abf.gov.au/what-we-do-subsite/files/gamsa-2020.pdf>.

[46] 'Maritime Domain Awareness (MDA)', *Earth-graphy* (Web Page) <https://earth.jaxa.jp/en/application/mda/index.html>.

[47] Australian Border Force, *Guide to Australian Maritime Security Arrangements | GAMSA* (Report, September 2020) 4 <https://www.abf.gov.au/what-we-do-subsite/files/gamsa-2020.pdf>.

[48] 'Maritime Domain Awareness (MDA)', *Earth-graphy* (Web Page) <https://earth.jaxa.jp/en/application/mda/index.html>.

[49] Peter Chalk, 'Boosting maritime domain awareness in Southeast Asia', *The Heritage Foundation* (Web Page, 13 December 2019) <https://www.aspistrategist.org.au/boosting-maritime-domain-awareness-in-southeast-asia/>.

on increasing maritime domain awareness in an effort to minimise national security threats via sea-lanes.

Recommendation 4: Within Article XX's requirements for 'protection of the environment', encourage Australian and Japanese cooperation on increasing maritime domain awareness (MDA) in an effort to minimise national security threats via sea-lanes.

4. Conclusion

In conclusion, integrating these recommendations will strengthen the realisation of the agreement in achieving the objectives outlined in the national interest test. Accordingly, introducing less-than-treaty status subsidiary instruments to clarify varying offences in Australian and Japanese jurisdiction will be advantageous for both forces. From a risk-management perspective, these subsidiary instruments are expected to reduce misunderstandings surrounding criminal definitions, extraterritorial affairs and facilitate responsible conduct in different jurisdictions. Additionally, emphasising the definition of environmental compliance clauses will strengthen both nations' international legal commitments to environmental protection, reflecting the importance of environmental security as a significant pillar in Australian and Japanese defence relations. These recommendations are expected to encourage a holistic upholding of the agreement through reducing scopes of misunderstandings and increasing cooperative efforts in environmental security.