



Political and Legal Considerations Regarding the Upgrade of US-Japan Alliance Command and Control Arrangements

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Modern military doctrine highlights the value of unified command and unity of effort as variables that enhance the efficiency of operations and improves the likelihood of achieving desired outcomes. In contrast to the strength of the US-Japan Alliance in terms of shared commitment to common objectives, Alliance mechanisms focused on the coordination of decision-making and are not optimized for unity of command and have hampered the Alliance's operational efforts.¹ As the allies struggle to find resources necessary to answer the growing military challenges posed by China and North Korea, they are pressed to augment their material force buildup with non-material investments to improve readiness. One of those investments should be in a revised command and

¹ Takuya Matsuda, "Japan's Emerging Security Strategy," *The Washington Quarterly*, Spring 2023, 46:1, p. 93

control (C2) structure that is better suited to direct Alliance capabilities should they be forced into combat. However, important political and legal considerations will prevent the Alliance from achieving full-fledged unity of command. Those impediments should not prevent the development of more efficient C2 arrangements that enable improved unity of effort but must be factored into decisions regarding improved arrangements.

The 2015 revised Guidelines for US-Japan Defense Cooperation established the Alliance Coordination Mechanism to strengthen military coordination in all phases from peacetime to contingencies. This was an improvement over the previous structure, the Bilateral Coordination Mechanism, and it was implemented to capture the lessons learned from response operations after the March 2011 triple disaster. However, there is a general consensus among US-Japan security specialists that today's challenges necessitate further reforms.² Some of the Alliance's new capabilities (for example, Japan's nascent counter-strike forces), will be absolutely reliant on improved integration of Alliance operational C2 for effective targeting and the coordination of fires. Other defense activities, including historic Alliance strengths such as anti-submarine warfare and ballistic missile defense, currently function sufficiently but could be made more effective and efficient under further integrated C2 structures.

Fortunately, this growing need for enhanced Alliance C2 functionality has emerged alongside revisions to the foundational structures underpinning the Alliance, particularly the political and legal adjustments made by the Japanese government during the period from 2015 to the present, which set the stage for the development and implementation of such reforms. These include legal provisions for collective self-defense and the acquisitions of Japanese capabilities such as long-range land-attack missiles and aircraft carriers. These further blur the distinctions that have divided Alliance activities between the legacy conceptualization of "shield and sword" functionality. Given these developments, strengthening C2 relationships within the Japan Self-Defense Force (SDF) and the US military is an obvious area to focus Alliance energy.

According to US military doctrine, "unity of command means all forces operate under a single commander with the requisite authority to direct all forces employed in pursuit of a common purpose. Unity of effort, however, requires coordination and cooperation among all forces toward

² Jeffrey Homung, "Modeling a Stronger U.S.-Japan Alliance." Center for Strategic & International Studies, Nov 2015, pp. 4, 18-9.

a commonly recognized objective, although they are not necessarily part of the same command structure. During multinational operations and interagency coordination, unity of command may not be possible, but the requirement for unity of effort becomes paramount.”³

In the post-World War II era, the US and Japan have precedent for operating forces under a unified command structure. In 1950, Prime Minister Yoshida secretly placed members of the Japan Guard Force, the predecessor of the SDF, under the command of the Supreme Commander for the Allied Powers to support United Nations activities in the Korean War. These front-line maritime forces worked close to the Korean shoreline demining coastal waters and piloted amphibious craft that landed troops during the Battle of Inchon. About two dozen of these Japanese citizens lost their lives as a part of these US-led operations.⁴ One could argue that as this precedent has never been challenged by legislative or judicial action, it, therefore, demonstrates the legality of placing SDF forces under US command. However, decisions Japanese leaders made without a public debate before Japan fully regained its post-occupation sovereignty carry little practical salience in the context of Japan’s contemporary democratic climate and an Alliance arranged on the prospects of mutual respect and more equal national contributions. Therefore, the development of Alliance mechanisms enabling improved unity of effort must be conducted with respect to contemporary political and legal considerations.

In both the US and Japan, political groups at both ends of the spectrum would object to unified command. Those on the left would worry about militarism while those on the right would object to a government yielding control of sovereign forces to a foreign command. In both nations, there would be an “approving political center”, and that center would likely be bigger in the US, a nation with decades of experience leading multinational forces into combat. In fact, it is hard to find any examples where placing US military forces under international C2 has not been controversial since the immediate post-Cold War era, a period when the possibility that US troops might be placed under United Nations command was a favorite bugbear to be attacked by mainstream conservative commentators. In today’s politically-charged American society, the issue could be rapidly re-politicized.

³ U.S. Joint Staff, *Doctrine for the Armed Forces of the United States*, Joint Publication 1, 12 July 2017, p.V-1

⁴ Archie Miyamoto, “Remembering the Korea War: Japanese Blood was Shed in the Defense of South Korea,” *Japan Forward*, 29 Jun 2021, <https://japan-forward.com/remembering-the-korean-war-japanese-blood-was-shed-in-the-defense-of-south-korea/>

Of course, US forces have been under United Nation command for more than seventy years on the Korean Peninsula despite being part of the multinational United Nations Command. In this case, the UN Security Council Resolution-mandated United Nations Command has always been an American-led military organization, but the now decades-old drive to transition operational control of forces to a Korean general has faced political barriers both in South Korea and the United States. On both sides, the arguments center on the practical requirements needed for exercising effective command and control and the political desire to maximize autonomy.

In Japan, the notion of placing SDF units under American command faces even more complex political resistance owing to two factors. First, the constitutional debates related to the principle of “*ittaiika*” (integration in the use of force with other militaries, which some legal specialists had deemed unconstitutional but was judged constitutional by the Abe cabinet in 2014) would empower the critics and political opponents.⁵ Second, this is unprecedented since the 1954 formation of the SDF. Alliance managers should assume that enacting such a change would be a political hurdle of a higher order than enacting Japan's 2015 Security Legislation. In that case, Prime Minister Abe Shinzo was able to drive the reforms through the Diet despite Japan’s largest street protests in five decades, and it seems unlikely that another leader would be able to muster the political heft to accomplish such a task unless enabled by the need to respond to a very specific crisis.⁶

Were political leaders able to somehow navigate the path to gain public support for a unified command structure, legal barriers would make it almost impossible to properly implement such arrangements. Those legal barriers would also impact the efficiency of coordinated forces and challenge the leaders seeking deeper unity of effort. Thus, either a coordination mechanism would have to account for these limitations, or lawmakers would have to pass major new legislation.

One such important consideration limiting the efficiency of coordinated operations in a crisis is tied to the authority that commanders need to initiate operations. In the United States, military action is authorized by orders from the President, and, in many circumstances, that authority is

⁵ Atsuhiko Fujishige, New Japan Self-Defense Force Missions under the “Proactive Contribution to Peace” Policy: Significance of the 2015 Legislation for Peace and Security,” CSIS Japan Chair Platform, 21 July 2016, <https://www.csis.org/analysis/new-japan-self-defense-force-missions-under-proactive-contribution-peace-policy>

⁶ Bhubhindar Singh, *Reconstructing Japan’s Security Policy: The Role of Military Crises*, Edinburgh University Press, 2020, p. 131-54

delegated to lower levels. In Japan, some SDF activities can be authorized by Cabinet decisions, but most major operational orders require Diet-level deliberation and approval.⁷ While it seems relatively safe to assume that, given a common crisis, both nations' forces will ultimately receive similar, or at least complementary, authorizations, those orders are likely to come at different speeds and with slightly different details. Thus, a commander from one ally may not be able to direct subordinate forces from the other. Similarly, intermediate commanders might have to seek clarification from their national leadership before accepting orders from an allied commander. While such issues are not a hard stop to preventing coordinated action, they will certainly impede efficiency, especially at the early stage of a crisis as it proceeds into conflict. Furthermore, unless both the Presidential order and the Diet Legislation were to provide exactly the same authorizations, true unity of command would be legally impossible.

Another legal challenge relates to military justice. Under the US system, service members fall under the legal jurisdiction of the Unified Code of Military Justice. That arrangement makes US forces accountable to their commanders and commanders accountable to civilian control. In contrast, Japan has no specific military justice system. Members of the SDF are, like any civilian, under the legal jurisdiction of domestic courts. Requiring an Allied commander to regulate the behavior of assigned units using different rules and different enforcement structures creates meaningful challenges to maintaining good order and discipline within the combined force. Further, in that scenario, the issues related to the accountability of forces to command authority would be much more significant.

The provision of Japan's constitution renouncing war has necessitated the Japanese government to develop a unique and especially nuanced approach to national defense authorities. This approach has mostly settled issues of *jus ad bellum* (the conditions under which states may resort to the use of force or to the use of armed forces in general), but the many issues related to *jus in bello* (the body of law that governs the way in which warfare is conducted) remain unaddressed. Simply put, because the Japanese constitution necessitates that the nation does not maintain war potential, lawmakers have taken little action to regulate how Japanese forces would be allowed to behave in combat situations.

⁷ James Kraska and Yusuke Saito, "The Law of Military Operations and Self-Defense in the U.S.-Japan Alliance, Summer 2020, pp. 5-6.

From a combined force perspective, these legal challenges would be particularly troubling during operations that might take place beyond Japan. This is because Japan's legal code only enables the prosecution of Japanese citizens for a specifically delineated list of crimes when the infractions are committed overseas. Offenses like murder and theft are on that list, but negligence is not, and negligence is the provision most likely to apply to a leader who fails to prevent assigned forces from carrying out activities that unnecessarily endanger civilians, destroy property, or otherwise violate the rules of war. While we can trust Japanese forces, as highly trained members of a professional force, will generally behave with the appropriate respect for human dignity, this state of affairs still poses complex challenges concerning their accountability to international humanitarian law, especially if a foreign commander were to be involved.

The 2015 revision to the SDF Law did include provisions to govern the actions of Japanese forces overseas, but those provisions do not include options to punish perpetrators of humanitarian crimes. During the July 2015 deliberation on the draft security legislation, member of the House of Councillors Kenichi Mizuno filed an official question to the Cabinet Council, "if a member of the Self-Defense Forces kills or injures a Japanese or a foreigner abroad due to gross negligence, do you think the perpetrator does not need to be held criminally accountable?" The reply noted that the new legislation, "does not provide provisions for the punishment of foreign crimes for crimes that cause death or injury due to gross negligence...There is no provision for penalties." This troubling gap calls into question the ability of a commander to hold forces accountable, and the interlinkages between authority and accountability are fundamental to military command, especially in the US system. Here, we see another consideration that makes truly unified command basically unachievable, and which must be accounted for when developing improved C2 arrangements.

In principle, there are no legal or political "show-stoppers" preventing the US-Japan Alliance from advancing toward a more unified command arrangement. This is fortunate because the development of the structures needed to improve the unity of effort among Alliance forces is absolutely essential. However, it would be almost impossible to establish and maintain a fully unified command due to current political and legal considerations. Furthermore, legal and political impediments may limit the advantages gained by increasingly integrated forces. As a result, political leaders and alliance managers should address these considerations carefully and

deliberately as they develop the revised C2 arrangements that are necessary to enable the unity of effort the Alliance will require to prevail in the combat scenarios that seem increasingly likely. C2 cannot be improved in a vacuum and, where possible, leaders should also improve the political and legal interoperability needed to enable unity of effort for Alliance operations.

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Mr. John Bradford wrote in his own personal capacity. The views and interpretations expressed by the author are solely his own.

*The **US-Japan NEXT Alliance Initiative** is a forum for bilateral dialogue, networking, and the development of joint recommendations involving a wide range of policy and technical specialists (in and out of government) to stimulate new alliance connections across foreign, security, and technology policy areas. Established by Sasakawa Peace Foundation USA with support from the Nippon Foundation, the goal is to help improve the alliance and how it serves shared interests, preparing it for emerging challenges within an increasingly complex and dynamic geostrategic environment. Launched in 2021, the Initiative includes two overlapping lines of effort: 1) Foreign & Security Policy, and 2) Technology & Innovation Connections. The Initiative is led by Sr. Director Jim Schoff.*
