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Japan and Collective Self-Defense: An American Perspective

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Japan’s policy to deny the right of collective self-defense presents an obstacle to alliance cooperation because it limits the use of force by the Self Defense Force. Over the years the U.S. and Japanese decision-makers took various means to realize security cooperation while respecting this prohibition. An evolving security environment to include rising tensions in the region challenge Japan’s security posture, and provide ample reason for Japan to do more for its own defense as well making greater regional and global security contributions.. In this regard, Japan is considering a reinterpretation of its constitution as it applies to collective self-defense. A more permissive policy—if not doing away with this prohibition completely—would enable greater cooperation and more integrated planning with the U.S., which would be welcomed by most Americans.

This self-imposed restriction on cooperation limits the efficacy of the U.S.-Japan alliance in several critical ways. First, it limits our potential and therefore detracts strength from deterrent capability. Second, it limits our ability to prepare for contingencies. Finally, and perhaps less appreciated, this overarching restraint on allied cooperation not only precludes the possibility of Japanese forces protecting U.S. forces in the case of a crisis, but it also constrains alliance contingency planning. In other words, this restriction on Japan’s military limits how we prepare for crises, and therefore detracts from our preparedness.

Addressing a conference of defense executives, President Eisenhower in 1957 spoke of the importance of planning. “Plans are worthless,” he said, “but *planning* is everything. There is a very great distinction because when you are planning for an emergency you must start with this one thing: the very definition of “emergency” is that it is unexpected; therefore it is not going to happen the way you are planning.” Eisenhower’s point emphasized the value of analysis in the planning process itself as preparation for emergencies that cannot be fully envisioned. Overarching restrictions placed on this process before it even begins, constrain our ability to prepare for contingencies.

Security policymaking is a dynamic process, one that adjusts to meet challenges presented by the environment. Furthermore, policy formulation occurs within a legal framework—international and domestic—and it is within Japan’s legal and policy arenas that an important debate is taking place of how adjustments may be made to these restrictions.

This is not the first time the right of collective self-defense has been considered in Japan. Previous governments have already taken various measures to clarify the impact of this interpretation of Japan’s constitution. Japan has taken various measures to deal with its prohibition on collective self-defense in the past, to include steps clarifying areas for cooperation, studying areas for reinterpretation, and exercising collective self-defense by another name.

Authorization of the concept is recognized by international law. Article 51 of the UN Charter authorizes all member states the use of collective self-defense declaring “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.” Put more simply, all member states have the right to use force in coming to the defense of another state under attack. Although one would consider this an inherent element of a security partnership, it is a right Japan chooses not to exercise, in the U.S.-Japan alliance or with any other nation. It is a right that no nation other than Japan declines.

The Government of Japan expressed its position on collective self-defense in 1972, reiterating it again in 1981 by stating “. . . Japan as a sovereign state inherently possesses the right of collective self-defense under international law, but the exercise of the right of *self-defense* as allowed under Article 9 of the Constitution is limited to what is minimum and necessary to defend the country, and exercise of the right of *collective self-defense* exceeds that range and therefore is not permitted under the Constitution.”

Since this formulation alliance managers have lacked an operational understanding of how to abide by Japan’s policy on collective

self-defense while at the same time making sure we were doing all that we could to secure our mutual national interests. At the political, policy and operational levels of our two governments, alliance managers were limited in their ability prepare for contingencies.

During much of the Cold War, Japan did not have the need to extend itself to the protection of others, including U.S. forces. Moreover, until the latter part of the Cold War, Japan had only a limited military capability. The restrictions on collective self-defense therefore had minor consequence. After the Cold War ended, however, Japanese policymakers were confronted with a rapidly changing security environment. In April 1996, Prime Minister Hashimoto and President Clinton met to issue their Joint Security Declaration, directing their respective governments to review the 1978 Guidelines for U.S.-Japan Defense Cooperation. Describing Japan's position during the Cold War, Prime Minister Hashimoto explained "We did not think much about a contingency situation . . . Today, however, we must consider those possibilities and consider what can be done and what cannot be done." Regarding Japan's prohibitions on collective self-defense Prime Minister Hashimoto said, "People are bogged down in conceptual discussions. But I think that there are certain things that we can do under the present Constitution. I think it is our responsibility to make clear what can and cannot be done."

This Guidelines review was essentially a task to *clarify* how the alliance could cooperate given Japan's restrictions on collective self-defense. It was *not* an effort to redefine the existing legal and policy constraints imposed on the security relationship. As a result, the revised 1997 Guidelines outlined various areas in which the alliance could work together, while respecting Japan's prohibition on collective self-defense. Though limited in our ability to cooperate, both sides gained some political clarity on how to proceed with contingency planning.

A decade later, Prime Minister Shinzo Abe commissioned a study by leading Japanese security experts, headed by Ambassador Shunji Yanai, to consider the limits imposed by the existing interpretation of the right of collective self-defense. This expert panel did not seek to *clarify* the parameters under the existing interpretation, but rather argued for a significant step toward a *reformulation* of Japan's prohibition on collective self-defense. The "Advisory Panel on Reconstruction of the Legal Basis for Security" studied four military scenarios confronting Japan's Self Defense Force that were prohibited under the existing interpretation of collective self-defense:

- Defense of U.S. vessels on the high seas;
- Interception of a ballistic missile that might be on its way to the United States;
- Use of weapons in international peace operations;
- Logistics support for the operations of other countries participating in the same operations, such as PKOs, and the integration of logistical support for the use of force.

The commission recommended *reinterpretation* to allow action in each of these scenarios. In the first two scenarios, the commission recognized these as alliance missions and considered ramifications for future alliance cooperation if the Japan Self-Defense Forces (JSDF) failed to take action. In the third scenario, Japan's growing responsibility to participate in international peace keeping operations meant that the SDF was operating with forces of other nations, and the limits on the SDF use of force was incompatible with Japan's interpretation of its Constitution. The commission again recommended a *reinterpretation* to allow the SDF to defend forces from other nations involved in the same operation. The report stated, "Basically, the Constitution should be interpreted to permit participation in such activities under collective security." Finally, in the fourth scenario—referred to as the integration of the use of force, or *ittaika*—the commission concluded that interpreting JSDF logistical support for other nations' military forces as being equal to the use of force was unreasonable and inimical to Japan's relationships with the U.S. and others. Though the recommendations of this advisory group's report were presented to Prime Minister Abe's successor in 2008, the Japanese government did not act upon its recommendations.

Japan's most extensive departure from its policy on collective self-defense is an ongoing operation in the Gulf of Aden. It is a collective self-defense action in all but name. Since 2008 Japan Self-Defense Forces have operated as a Joint Task Force of Ground Self-Defense Force (GSDF) helicopters and Japan Maritime Self-Defense Force (JMSDF) P-3s and destroyers to protect ships from piracy. This Joint Task Force is authorized to use force to prevent or defend against attack any ship, regardless of their flagged registry. Although the basis of Japan's authorization rests on the rationale of law enforcement, it demonstrates an application of collective self-defense.

The alliance is once again poised to revise the Guidelines for U.S.-Japan Defense Cooperation. At the October 3, 2013 Security Consultative Committee (SCC/2+2) meeting the ministers directed the Subcommittee for Defense Cooperation (SDC) to recommend changes to the 1997 Guidelines. Japan's consideration to adjust its interpretation on collective self-defense will shape the outcome of this second revision of the U.S.-Japan Guidelines for Defense Cooperation.

Prime Minister Abe has once again commissioned a panel of experts to review Japan's position on collective self-defense headed by Ambassador Yanai, and over this past year, the new panel of experts has reviewed the implications of Japan's current interpretation of the right of collective self-defense. Their recommendations are due by the end of the year. As a baseline, the four areas outlined in the 2008 report are likely to be included, as well as additional new insights on how to consider Japan's current defense needs.

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The alliance would benefit from a relationship without overarching restrictions on military cooperation. In an alliance where full mutual support could be possible, the relationship would indeed be strengthened in the eyes of both partners, as well as in the eyes of others.

Some in Japan argue that relaxation of the policy makes Japan vulnerable to entering conflicts that extend beyond their interests. A similar argument was raised prior to concluding the 1997 Guidelines, a warning against collaboration in bilateral contingency planning. These critics argued that bilateral planning would automatically commit Japan to execute a given plan. This is false. Operational planning, as many in Japan's security planning community have come to realize, is not a political commitment to action. While political and policy directives drive operational planning, a separate and distinct political decision is required to authorize national commitment to any plan. As the 2008 panel headed by Ambassador Yanai reported, "Japan can make policy decisions whether to participate in a particular activity in accordance with its national interests."

Should Japan decide to adjust its interpretation for collective self-defense to the four scenarios outlined in the earlier report, it would be welcome progress toward strengthening the alliance. The difficulty with framing security policy to scenarios, however, is that future challenges cannot be limited to the scenarios we may envision today. As Eisenhower astutely observed, scenarios beyond those envisioned are bound to occur.

Eisenhower's emphasis on the analytical process afforded through continuous 'planning,' however, retains its value today. Movement toward an alliance unconstrained in its ability to plan for and defend each other during emergencies, manmade or otherwise, would indeed be a great step toward strengthening the U.S.-Japan security relationship. It would also enhance Japan's contribution to regional and global security.

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