

The Military That Isn't: Legalized Anti-Militarism and Limits of Japan's Defense Policy

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Abstract

Japan's postwar security identity has been defined by anti-militarism, rooted in Article 9 of the Constitution. While existing scholarship has examined its normative foundations, erosion under regional threats, and persistence despite incremental change, little attention has been paid to its legalized dimension, in particular the formal designation of the Self-Defense Forces (SDF) as an administrative organ rather than a military. This paper argues that the SDF's legal status imposes distinctive operational constraints: it must function in a policing capacity during peacetime, requires explicit political authorization to engage in combat, and operates under positive-list regulations that sharply restrict the use of weapons. Moreover, the absence of military law and courts places discipline and accountability on individual personnel rather than institutional frameworks. These limitations hinder crisis response, coordination with allies, and the credibility of Japan's defense posture. Drawing on underutilized Japanese-language sources, including writings by former senior SDF officials, this study demonstrates how domestic legislation institutionalizes restraint, extending debates on anti-militarism and Japanese defense policy. More broadly, it shows how the legalization of domestic norms can profoundly shape foreign and defense policy, connecting literatures on legalization in International Relations and the domestic politics turn in Foreign Policy Analysis.

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Even if defense spending is increased, it will amount to nothing more than a pie in the sky unless a legal framework is established that enables the Self-Defense Forces to carry out their duties rationally.

Kunio Orita, Former General of the Japan Air Self-Defense Force, February 12, 2025¹

Introduction

Japan's postwar security policy has long been shaped by what scholars term anti-militarism. This refers to a normative and institutional aversion to the use of military force, rooted in Article 9 of the pacifist Constitution, reinforced by strong public opinion against remilitarization, and embedded in political culture through decades of policy practice. This anti-militarism has been described as both a social norm, shaping how citizens, politicians, and bureaucrats think about the legitimacy of force, and as an institutional framework that channels Japan's security policy behavior toward restraint.²

Given Japan's increasingly proactive security policies over the past decade, a growing body of work has argued that the effect of anti-militarism in Japan has been eroding.³ In the face

¹ Orita Kunio, "Jieikan Shokumu Shikkou Hou no Seitei wo [Enactment of the 'Self-Defense Officials Duty Execution Act]," *Sankei News*, February 12, 2025, <https://www.sankei.com/article/20250212-ARRJJQVALRNYLAW4ECWQ5ZOGVE/>.

² For foundational studies on anti-militarism and its effect on Japan's security policy, see Thomas U. Berger, "From Sword to Chrysanthemum: Japan's Culture of Anti-Militarism," *International Security* 17, no. 4 (1993): 119–50, <https://doi.org/10.2307/2539024>; Peter J. Katzenstein and Nobuo Okawara, "Japan's National Security: Structures, Norms, and Policies," *International Security* 17, no. 4 (1993): 84–118, <https://doi.org/10.2307/2539023>; Yasuhiro Izumikawa, "Explaining Japanese Antimilitarism," *International Security* 35, no. 2 (2010): 123–60, https://doi.org/10.1162/ISEC_a_00020.

³ Richard J. Samuels, *Securing Japan: Tokyo's Grand Strategy and the Future of East Asia* (Cornell University Press, 2007); Andrew Oros, *Japan's Security Renaissance: New Policies and Politics for the Twenty-First-Century* (Columbia University Press, 2017), <https://doi.org/10.7312/oros17260>; Karl Gustafsson et al., "Japan's Pacifism Is Dead," *Survival* 60, no. 6 (2018): 137–58, <https://doi.org/10.1080/00396338.2018.1542803>; Christopher W. Hughes, "Japan's 'Three National Security Documents' and Defense Capabilities: Reinforcing a Radical Military Trajectory," *The Journal of Japanese Studies* 50, no. 1 (2024): 155–83, <https://doi.org/10.1353/jjs.2024.a918586>.

of worsening regional threats—particularly China’s rise and its assertive actions over disputed territory, North Korea’s missile program, and the erosion of the international order following Russia’s invasion of Ukraine—Japan has implemented significant policy shifts. These include the reinterpretation of collective self-defense, the steady expansion of the Self-Defense Forces’ (SDF) international missions such as UN peacekeeping operations, substantial increases in defense spending, and the procurement of “counterstrike” capabilities for the first time in the postwar era. Under the new conservative Prime Minister Sanae Takaichi, Japan appears to be adopting an even more assertive security posture.⁴

Some scholars rightly stress the persistence of certain aspects of anti-militarism. For example, despite recent changes, Japan’s public opinion remains cautious about overly expanding the country’s defense posture, including constitutional revision that would loosen constraints on the use of force.⁵ In addition, Japan’s aging society makes it increasingly difficult to expand capabilities by recruiting sufficient numbers of young personnel or financing higher defense spending amid rising social welfare demands. These demographic and fiscal pressures continue to limit both the scope and the domestic legitimacy of military action, even as Japan’s material capabilities grow.⁶ Nevertheless, given that such factors have not prevented Japan from substantially increasing defense spending, procuring “offensive” weapons, and expanding SDF missions—and that public opinion is largely supportive of these policies—many observers argue

⁴ Tom Corben, “With Sanae Takaichi, ‘Japan Is Back’ Is Back,” *The Interpreter*, Lowy Institute, November 4, 2025, <https://www.lowyinstitute.org/the-interpreter/sanae-takaichi-japan-back-back>.

⁵ Alexandra Sakaki et al., *Reluctant Warriors : Germany, Japan, and Their U.S. Alliance Dilemma* (Brookings Institution Press, 2020), <https://doi.org/10.5040/9780815751991>; Alexandra Sakaki et al., “Germany and Japan: ‘Reluctant Warriors’ No More?,” *Asian Journal of Comparative Politics* 10, no. 3 (2025): 286–308, <https://doi.org/10.1177/20578911251326143>.

⁶ Tom Phuong Le, *Japan’s Aging Peace: Pacifism and Militarism in the Twenty-First Century* (Columbia University Press, 2021); Charles T. McClean, “Japan’s Aging Antimilitarism Is Alive and Well,” *Asia Policy* 18, no. 2 (2023): 166–68, <https://doi.org/10.1353/asp.2023.0025>.

that Japan is likely to continue pursuing a more proactive security policy as traditional anti-militarism continues to wane.⁷

However, one crucial dimension of this debate has been largely overlooked: the legal architecture that defines the SDF not as a military, but as an administrative organ of the state. This paper argues that this legal status, unchanged since the 1950s, imposes profound constraints on SDF operations. Ignoring these features of “legalized anti-militarism” risks misrepresenting Japan’s actual military capacity, its potential contributions to regional security, and even the depth of anti-militarism itself. By highlighting this neglected legal dimension, the paper seeks to demonstrate that, despite recent moves toward a more proactive security policy, the legal aspects of Japan’s anti-militarism continue to significantly shape defense policy, potentially hindering Japan’s response to regional contingencies and even jeopardizing alliance coordination.

The brief summary of the legal issues is as follows. Because Japan’s Constitution prohibits maintaining a military, the SDF is legally designated as an “administrative branch” (*gyosei kikan*), akin to civilian agencies such as the Ministry of Foreign Affairs or the National Police Agency. This status constrains its mandates and weapons use, aligning them more with police governance than conventional militaries. In practice, the SDF may operate only in a police-like capacity, using weapons solely for individual self-defense, and any transition to a military role requires a Defense Operations order—a deliberate political decision that can take hours or even days—leaving a

⁷ Ulv Hanssen, “Is Japan’s Postwar Pacifism Dead?,” *The Diplomat*, July 15, 2022, <https://thediplomat.com/2022/07/is-japans-postwar-pacifism-dead/>; Christopher W. Hughes, “Japan’s Decaying Antimilitarism Ecosystem,” *Asia Policy* 18, no. 2 (2023): 173–78, <https://doi.org/10.1353/asp.2023.0023>; Purnendra Jain, “Proactive Pacifism and Beyond: Japan’s Foreign and Security Policy Pivots to Pragmatism Replacing Idealism,” *Journal of Asian Security and International Affairs* Online First (December 2025): 23477970251403706, <https://doi.org/10.1177/23477970251403706>; Gearoid Reidy, “What’s Left of Japan’s Pacifism Meets Reality,” *The Japan Times*, December 16, 2025, <https://www.japantimes.co.jp/commentary/2025/12/16/japan/japans-pacifism-meets-reality/>.

temporal and political gap between peacetime posture and wartime authority with no rules of engagement to bridge it. Unlike militaries elsewhere, which are structurally empowered to act at all times, the SDF depends on explicit political authorization. This system impedes the SDF's ability to ensure territorial defense, respond to gray-zone activities, and counter armed attacks against Japan and the U.S.

Moreover, because the SDF is not legally classified as a military, it is not governed by military laws or subject to military courts during combat operations. This lack of a dedicated legal framework complicates maintaining discipline and morale, both of which are essential to operational effectiveness. In short, the legal status of the SDF as a non-military institution carries profound implications for its strategic and tactical functionality.

Despite its importance, as Japan expert Robert Eldridge notes, the legal statutes governing the SDF have received “little attention” among scholars.⁸ One reason is that scholars often regard the issue of SDF's legal status as marginal; many dismiss the claim that the SDF is legally not a military as “self-deception” or quibbling over “trifles,” and regard the SDF as a full-fledged military given Japan's rising defense budget, advanced capabilities, and expanding international roles, including participation in PKO missions and the partial lifting of the ban on collective self-defense.⁹ Another possible reason, as Japanese scholars of defense law suggest, is the complexity of Japan's legal framework, which remains difficult for foreign observers and

⁸ Robert D. Eldridge, “Introduction,” in *The Japan Self-Defense Forces Law : Translation, History, and Analysis*, ed. Robert D. Eldridge and Katsuhiko Musashi (Cambridge Scholars Publishing, 2019), viii–ix.

⁹ Samuels, *Securing Japan*, xiii. Also see Jeffrey W. Hornung, “Giving Japan a Military,” *The Japan Times*, June 13, 2017, <https://www.japantimes.co.jp/opinion/2017/06/13/commentary/japan-commentary/giving-japan-military/>; Gustafsson et al., “Japan's Pacifism Is Dead”; Narushige Michishita, “Myths and Realities of Japan's Security Policy,” Wilson Center, Asia Dispatches, February 18, 2020, <https://www.wilsoncenter.org/blog-post/myths-and-realities-japans-security-policy>.

practitioners to grasp.¹⁰ The legislation itself is intricate, and the profusion of government-issued interpretations further complicates understanding, and there are still no official English translations of these laws.¹¹

This paper seeks to address that gap by clarifying how Japan's legal system, treating the SDF as an administrative branch, constrains its operations. As the first paper in English to systematically examine this legal framework and its impact on SDF operations, it draws on underutilized Japanese-language sources, including writings by former senior SDF officials, who are arguably among the most qualified to assess how the legal system shapes the SDF's operations and effectiveness.

By foregrounding the legal dimension, this paper contributes to broader debates on Japanese defense policy, anti-militarism, and international politics more generally. First, it directly shapes how Japan's "military" capabilities are assessed. As scholars note, capability is not merely a matter of hardware but also of operational effectiveness.¹² The SDF's strict legal constraints limit its ability to act, a factor often overlooked in existing analyses of Japan's security policy. Just as assessments of China's People's Liberation Army (PLA) routinely account for internal limitations such as lack of combat experience, corruption, and bureaucratic rigidity, overlooking Japan's legal

¹⁰ Susumu Kumatoriya et al., "Nihon to Shogaikoku No Boei Hosei No Hikaku Kenkyu [Comparative Study of Defense Legislation in Japan and Other Countries]," *Kaikanko Senryaku Kenkyu [Japan Maritime Self-Defense Force Staff College Review]* 11, no. 1 (2021): 137,153; Seigo Iwamoto, "Jieitai to Kokusaiho No Kankeisei No Hensen - Jiko Yokusei to Hoteki Zure Wo Koete [The Evolution of the Relationship Between the Self-Defense Forces and International Law: Beyond Self-Restraint and Legal Discrepancy]," *Sandai Hogaku [Sandai Law Review]* 55, no. 2 (2021): 282.

¹¹ Eldridge explained that the lack of official translation by the Japanese government was the motivation for him to publish the book translating the SDF laws. Eldridge, "Introduction," ix.

¹² For an overview, see Javad Bakhshi and Mahmoud Efatmaneshnik, "The Interplay of Capability and Complexity in Military Context: Definitions, Challenges, and Implications," *Defence Studies* 25, no. 1 (2025): 133–62, <https://doi.org/10.1080/14702436.2024.2415715>.

constraints risks distorting our understanding of its actual military capacity.¹³ More critically, such oversight may have tangible consequences for Japan’s national security and the stability of the U.S.–Japan alliance, as will be discussed later.

Second, this paper advances our understanding of how anti-militarism shapes policy by showing that it is embedded not only in norms, political culture, and institutional structures, but also in the statutes that define the very existence and operations of the armed forces. In this sense, the fact that the legal framework governing the SDF’s status and operations has remained largely unchanged indicates that Japan’s anti-militarism—and its influence on defense policy—is more enduring than previously recognized.

Third, and more broadly, this study highlights the importance of bridging two expanding literatures in International Relations: the “legalization” of rules and norms in International Relations, and the “domestic politics turn” in Foreign Policy Analysis. Scholarship in the former has largely examined how states internalize international rules and norms, and how this process shapes foreign policy.¹⁴ The latter literature has tended to emphasize public opinion, regime type, and institutional design, while paying comparatively little attention to the role of domestic legal systems in shaping foreign policy.¹⁵ This study demonstrates, however, that norms not widely internationalized—such as anti-militarism—can also be legalized domestically and exert

¹³ Dennis J. Blasko, “PLA Weaknesses and Xi’s Concerns about PLA Capabilities,” Testimony before the U.S.-China Economic and Security Review Commission, February 7, 2019; Timothy R. Heath, *The Chinese Military’s Doubtful Combat Readiness: The People’s Liberation Army Remains Focused on Upholding Chinese Communist Party Rule, Not Preparing for War*, Expert Insights (RAND Corporation, 2025), <https://doi.org/10.7249/PEA830-1>.

¹⁴ For example, see Judith Goldstein et al., eds., *Special Issue on “Legalization and World Politics,”* International Organization, Vol. 54, No. 3 (2000).

¹⁵ Juliet Kaarbo, “A Foreign Policy Analysis Perspective on the Domestic Politics Turn in IR Theory,” *International Studies Review* 17, no. 2 (2015): 189–216, <https://doi.org/10.1111/misr.12213>; Binnur Ozkececi-Taner, “Domestic Politics and Foreign Policy,” in *Oxford Research Encyclopedia of Politics* (Oxford University Press, 2017), <https://doi.org/10.1093/acrefore/9780190228637.013.414>.

significant influence on foreign and defense policy. In doing so, it helps connect these two important strands of research.

This paper proceeds as follows. First, it describes the overview of the legal systems concerning the SDF, explaining why and how the Japanese SDF has been regarded as an administrative organ rather than a military. The second and third sections discuss how such a legal system can hinder the SDF's operations. Fourth, it addresses a counterargument regarding whether such legal restrictions are relevant in a contingency. Fifth, it briefly considers why such a legal system is persistent despite its detrimental effects on the SDF operations. Finally, the paper concludes with implications and policy recommendations.

The SDF as Administrative Branch

The legal status of the SDF as an administrative organ is clearly established under domestic laws. First, the terms “SDF” and “Ministry of Defense (MOD)” refer to the same institutional entity, with the former highlighting its operational functions and the latter emphasizing its managerial roles.¹⁶ Second, because the MOD is designated as an administrative organ under Article 3 of the National Government Organization Act (*Kokka Gyosei Soshiki Ho*), the SDF is likewise legally classified as part of the administrative branch.¹⁷

¹⁶ Japan Ministry of Defense, *Defense of Japan 2024* (2024), 245, https://www.mod.go.jp/en/publ/w_paper/wp2024/DOJ2024_EN_Full.pdf.

¹⁷ Sakuma Atsushi, “Jieitaihou ni Okeru ‘Kengen’ to ‘Konkyokihan’ (Jo) -Pojitibu Iisuto Hoshiki ni Kansuru Seiri to Kosatsu [“Authority” and ‘Normative Basis’ in the Self-Defense Forces Act (Part I): An Analysis of the Positive List Approach],” *Rippo to Chousa [Legislation and Research]*, September 20, 2024, 159–60. This point has also been clearly stated by the government. National Diet of Japan, “Dai 91 Kai Kokkai Yosai Inkaikai Dai 20 Go [91st Budget Committee of the House of Councillors, No 20],” April 3, 1980, <https://kokkai.ndl.go.jp/#/detail?minId=109115261X02019800403¤t=1>.

The SDF's legal status as an administrative branch originated from its inception. After World War II, the U.S. drafted Japan's new Constitution, banning its military to prevent future militarism, while assuming responsibility for Japan's defense. This arrangement shifted during the Korean War, which broke out in 1950, when the U.S. needed its forces elsewhere and urged Japan to create a domestic security force. Japan responded by forming the National Police Reserve (NPR) in 1950 to bolster police capabilities.¹⁸ Since the Constitution explicitly prohibits Japan from possessing a military force, the NPR was established not as a military organization but as an administrative branch "supplementing police resources."¹⁹ As the Korean War intensified, the United States increasingly sought to position Japan as a bastion against the communist threat in Asia and encouraged it to acquire greater capabilities for that purpose. This U.S. pressure led to the NPR's transformation into the National Safety Forces (NSF) in 1952, which had more manpower and capabilities.²⁰ By 1954, the NSF evolved into the SDF, retaining its administrative, quasi-police origins while expanding into land, sea, and air branches.²¹

Japan's designation of the SDF as an administrative organ places partial constraints on its material capabilities. Because the Constitution prohibits Japan from possessing "war potential" (*senryoku*), the government has maintained that the SDF's capabilities are within the "minimum necessary level" (*hitsuyo saishogen*) for self-defense, below the constitutional threshold.²² Under this doctrine, Japan has self-restricted the acquisition of certain weapons, such as long-range

¹⁸ Akihiro Sado, *The Self-Defense Forces and Postwar Politics in Japan*, trans. Makito Noda (Japan Publishing Industry Foundation for Culture, 2017), 22–23.

¹⁹ Ayako Kusunoki, "The Early Years of the Ground Self-Defense Forces, 1945–1960," in *The Japanese Ground Self-Defense Force*, ed. Robert D. Eldridge and Paul Midford (Palgrave Macmillan, 2017), 64; Sado, *The Self-Defense Forces and Postwar Politics in Japan*, 23–24.

²⁰ Sado, *The Self-Defense Forces and Postwar Politics in Japan*, 31.

²¹ Kusunoki, "The Early Years of the Ground Self-Defense Forces, 1945–1960," 90–94.

²² Samuels, *Securing Japan*, 46–47.

bombers, ICBMs, and offensive aircraft carriers, which exceed the minimum force required for defense.²³ However, the notion of “minimum necessary force” has proven highly elastic. As numerous scholars have noted, Japan has steadily acquired advanced systems, including attack submarines, quasi-light aircraft carriers, a missile defense system, and now ranks among the world’s top ten defense spenders.²⁴ In effect, the SDF’s legal framing as a non-military administrative body continues to impose certain limits on capability development, but those limits have been repeatedly stretched in practice.

However, operation-wise, the SDF’s status as an administrative organ imposes distinctive constraints, making it “decidedly different” from conventional militaries in two key respects: restrictions on the use of weapons and the absence of military-specific laws and courts.²⁵ The first distinction lies in the SDF’s tightly regulated operational authority, particularly regarding when and how it may use weapons. These constraints render the SDF more akin to a police force than a traditional military. Like police agencies, the SDF operates under a “positive list” framework, meaning that actions are prohibited by default unless explicitly authorized by law. In other words, the SDF may only undertake activities that are affirmatively permitted; it cannot act in areas where the law is silent.

This stands in stark contrast to the militaries of most other states, which operate under a “negative list” framework, meaning their actions are generally permitted unless explicitly

²³ Japan Ministry of Defense, *Defense of Japan 2024*, 210.

²⁴ Sheila A. Smith, *Japan Rearmed: The Politics of Military Power* (Harvard University Press, 2019), chap. 3; Michael J. Green, *Line of Advantage: Japan’s Grand Strategy in the Era of Abe Shinzō*, *Contemporary Asia in the World* (Columbia University Press, 2022), chap. 6.

²⁵ Masayuki Hironaka, “Jieitai Toha Nanika: Sengo No Seigun Kankei Ni Tsuite Kangaeru [What Is the Self-Defense Forces? Rethinking Civil-Military Relations in Postwar Japan],” in *Gunji to Seiji Nihon No Sentaku: Rekishi to Sekaino Shiza Kara [Military and Politics—Japan’s Choices: Historical and Global Perspectives]*, ed. Yuichi Hosoya (Bungei Shunzhu, 2019), 199.

prohibited by law or ROEs. Shigeru Ishiba, a former Defense Minister and Prime Minister of Japan, explains as follows:

The Self-Defense Forces Law says: you may do this, you may do that—but anything beyond that is strictly prohibited. That’s the idea, isn’t it? By nature, a military organization should be governed by a law written in a negative list format—that’s how it ought to be.²⁶

The SDF is arguably the only “military” in the world whose operations are regulated by such positive lists. In fact, one study examined the legislation of 85 major countries regarding the military and found that only Japan has “positive” lists regulating its military’s operations.²⁷

The rationale for this system stems directly from the SDF’s legal status. As an administrative organ, the SDF’s activities are considered “[t]he exercise of the authority of administrative organizations relating to the rights and obligations of the people,” and therefore must be governed by legislation grounded in the rule of law.²⁸ Further, because the SDF originated as an auxiliary body for a police force, the officials responsible for drafting the SDF laws were primarily police bureaucrats. Consequently, the legal framework closely mirrors “the Police Duties Execution Act,” which regulates police operations.²⁹

One notable example of positive list regulation concerns the SDF’s use of combat capabilities. Under normal circumstances, legislation permits the SDF to engage only in the “use of weapons,” not the broader “use of force.” The “use of weapons” refers to the employment of arms by the SDF personnel within a law enforcement context. This use is strictly limited to

²⁶ National Diet of Japan, “Dai 151 Kai Kokkai Anzen Hosho Inkai Dai 8 Go [151st National Security Committee of the House of Representatives, No 8],” June 14, 2001.

²⁷ Kumatoriya et al., “Nihon to Shogaikoku No Boei Hosei.”

²⁸ Joji Okuhira, “A Study on Regulations Governing Military Actions,” *NIDS Security Reports*, no. 9 (2008): 145; Sakuma, “Jieitaihou ni Okeru ‘Kengen’ to ‘Konkyokihan,’” 159–60.

²⁹ Okuhira, “A Study on Regulations Governing Military Actions,” 145.

situations involving “self-protection” (*seito boei*) or “averting present danger” (*kinkyu hinan*), the same as police officers. For example, when the SDF deals with security situations short of an armed attack by another country, such as terrorism, infiltration by guerrilla forces, and intrusions by foreign vessels, the SDF laws clearly stipulate that the Police Duties Execution Act will apply, meaning that the SDF personnel can only use weapons in the same way as police officers.³⁰

Meanwhile, the “use of force” refers to the organizational use of military operations to counter armed attacks by foreign forces.³¹ The SDF may exercise this authority only when the Japanese government issues a “Defense Operations [boei shutsudo]” order in response to armed aggression. Such an order can be enacted under two conditions: an “Armed Attack Situation” (*buryoku kogeki jitai*), involving a direct attack on Japan; or a “Survival-Threatening Situation” (*sonritsu kiki jitai*), in which an attack on a closely related country is deemed to threaten Japan’s survival.³² Under a Defense Operations order, the SDF is authorized to use force necessary for Japan’s defense, in accordance with international law and customs.³³ In this situation, the positive list for the SDF operation is removed, and it can operate on the “negative” list under international law. In other words, the SDF can operate like a “normal” military only once Defense Operations are formally activated.

³⁰ Those operations to maintain public security are called “Public Security Operation [Chian shutsudo]” for situations such as terrorism and guerrilla attacks, and “Maritime Security Operations [Kaijo keibi kodo]” for dealing with situations in the maritime realm. See Robert D. Eldridge and Katsuhiko Musashi, *The Japan Self-Defense Forces Law: Translation, History, and Analysis* (Cambridge Scholars Publishing, 2019), 113, 118.

³¹ Japan Ministry of Defense, *Defense of Japan 2016* (2016), 212, https://warp.da.ndl.go.jp/info:ndljp/pid/11591426/www.mod.go.jp/e/publ/w_paper/2016.html.

³² Japan Ministry of Defense, *Defense of Japan 2024*, 253–54.

³³ Article 88 of the SDF Laws. Eldridge and Musashi, *The Japan Self-Defense Forces Law*, 113.

To enact Defense Operations, Japan must follow a multi-step process.³⁴ First, the Prime Minister formulates a basic response plan outlining the nature of the threat, the necessity of using force, and general operational guidelines. The plan is then reviewed by the National Security Council (NSC) and must receive unanimous approval from the Cabinet. Next, the government seeks authorization from the Diet; however, in emergencies, the Prime Minister may request retroactive approval. Once the Defense Operations order is issued, the Defense Minister can authorize an “SDF mobilization order for defense operations,” formally initiating the SDF’s use of force against foreign aggression.

Meanwhile, the military in other countries does not need such explicit government authorizations to use force. Of course, other states also usually require explicit government and parliamentary authorization to declare war, but their militaries are permitted to use force in accordance with their ROEs to address sudden attacks or less intense military situations.³⁵ The difference in the legal system concerning the military operations between the SDF and the military in other countries can be summarized in Table 1.

³⁴ The discussion in this paragraph is based on the following sources. Japan Ministry of Defense, *Defense of Japan 2024*, 254; Rintaro Inoue, “Will Japan Have the Political Resolve to Use Counterstrike?,” *The Washington Quarterly* 47, no. 4 (2024): 47–48, <https://doi.org/10.1080/0163660X.2024.2435724>; Hideki Nakamura et al., *Japan’s Military Power: The True Ability of the Self-Defense Forces* (Cambridge Scholars Publishing, 2020), 20–22.

³⁵ Kengo Yasui, “Kokusaihou Ka No ROE (Rules of Engagement, Osen Kisoku) [Rules of Engagement (ROE) Under International Law],” *The Doshisha Law Review* 71, no. 7 (2020): 93–95; Kumatoriya et al., “Nihon to Shogaikoku No Boei Hosei.”

Table.1 Gap in the SDF’s Roles between “Police” and “Military”

	Peacetime	Contingencies (Armed Attack Situation/ Survival Threatening Situation)
SDF	Use of Weapons/ Positive List	Use of Force/Negative List
Military in other countries	Use of Force/Negative List	

In peacetime, the SDF operates under a positive list, resembling a police force with tightly restricted use of weapons. Only when Defense Operations are triggered—under a Survival-Threatening or Armed Attack Situation—can the SDF shift to a negative list framework, akin to conventional militaries. This creates a deliberate temporal and legal gap between its “police” and “military” roles. By contrast, most foreign militaries operate continuously under a negative list, allowing force as needed without such thresholds.

The second key distinction that sets the SDF apart from other militaries is the absence of a dedicated military law and military court. This is another logical consequence of the SDF being an administrative organ. As Sado Akihiro, an expert on the SDF history, observes, Japan does not possess a military law or military court precisely because the SDF “has not been given the legal status of a military organization.”³⁶ In the absence of military law, the responsibilities and authorities of SDF personnel are governed by general statutes, such as the SDF Law and the Criminal Code, and any misconduct is adjudicated in civilian courts. In contrast to other militaries, where military law—often grounded in international legal frameworks—distributes responsibility

³⁶ Sado, *The Self-Defense Forces and Postwar Politics in Japan*, 233.

across institutional actors, the SDF places legal accountability squarely on individual personnel, even in cases of operational error during armed conflict.³⁷

Concerning these differences, one might ask: do they actually matter? After all, once Defense Operations are enacted, the SDF can operate in ways that resemble a conventional military. So why should we be concerned? Furthermore, if SDF personnel are lawfully governed and held accountable under both the SDF Law and Japan's Criminal Code, where exactly is the problem? The next section explores the implications of police-like constraints on the SDF, followed by an examination of the absence of a dedicated system of military law and courts.

The Negative Effects of the Positive List

As discussed, the SDF operates under a positive list framework in peacetime, and shifting to a negative list system—as seen in conventional militaries—requires a specific cabinet decision to initiate Defense Operations. This structural arrangement presents three key challenges. First, police-style restrictions on the use of force under the positive list constrain the SDF's ability to effectively safeguard Japan's territorial integrity. Second, the SDF's role is severely limited in addressing gray-zone situations, which could put the U.S.-Japan alliance at risk. Third, procedural delays in transitioning to the negative list system hinder the SDF's ability to respond swiftly to attacks against Japan or its own forces. The following sections examine these issues in greater detail.

³⁷ Hironaka, "Jieitai to Ha Nanika," 189.

Dealing with Territorial Airspace/Water Violation

Between 2022 and 2024, SDF fighters scrambled approximately 700 times annually in response to foreign aircraft suspected of violating Japan's territorial airspace. As of September 2025, 49 confirmed cases of actual airspace violations have been recorded.³⁸ Under international law, states possess "complete and exclusive sovereignty" over their territorial airspace.³⁹ As former Defense Minister Satoshi Morimoto notes, such violations constitute breaches of sovereignty and should be treated as acts of national defense, not policing.⁴⁰ However, Japan officially classifies SDF responses to airspace violations as "an act to exercise *the right of policing* intended to maintain public order [emphasis added]."⁴¹ These measures reflect a police function rather than a defense posture, and thus, police-like restrictions continue to apply even when foreign aircraft encroach on Japan's airspace.⁴²

However, such restrictions make it difficult for the SDF to respond effectively to violations of Japan's territorial airspace. Under the SDF Law, when foreign aircraft encroach, the SDF may take "necessary measures" to repel them.⁴³ Yet, scrambling SDF fighters are permitted to use weapons only in self-defense or to avert present danger, the same standard applied to police officers.⁴⁴ In practice, this means that the SDF fighter can use weapons such as shooting down the aircraft only after the encroaching aircraft attacks or is clearly about to attack SDF personnel or

³⁸ Joint Staff Office, Japan, "2025 Nendo Ichi Shihanki Madeno Kinkyu Hasshin Jisshi Jokyo Ni Tsuite [Status of Airspace Interception Measures through the First Quarter of FY2025]," July 24, 2025, https://www.mod.go.jp/js/pdf/2025/p20250724_01.pdf.

³⁹ Article 1 and 2 of the Convention on International Civil Aviation. https://www2023.icao.int/publications/Documents/7300_cons.pdf

⁴⁰ Morimoto et al., *Kokubo Gun Toha Nanika? [What Is National Defense Force?]* (Gentosha, 2013), 185–86.

⁴¹ Japan Ministry of Defense, *Defense of Japan 2024*, 277.

⁴² Iwamoto, "Jieitai to Kokusaiho No Kankeisei No Hensen," 231.

⁴³ Article 84 of the SDF Law. Eldridge and Musashi, *The Japan Self-Defense Forces Law*, 109.

⁴⁴ Japan Ministry of Defense, *Defense of Japan 2024*, 258.

Japanese territory.⁴⁵ But, as former ASDF General Orita notes, it is “detached from reality (kijō no kuron)” to assume the SDF can act preemptively, as detecting such intent is nearly impossible. He argues that under current constraints, the SDF cannot use weapons to shoot down encroaching aircraft until an actual attack occurs — which may be too late.⁴⁶ Seigo Iwamoto, a Professor of International Law, summarizes the problem of legal restrictions as follows:

If a foreign military aircraft enters Japan’s territorial airspace without causing harm to intercepting [SDF] fighters or territory... such an act does not constitute legitimate self-defense or averting present danger... As a result, even if national airspace sovereignty is violated, the SDF is not legally permitted under the SDF Laws to fire upon the intruding aircraft.⁴⁷

A violation of territorial airspace can rapidly escalate from peacetime to a contingency. There is no time to enact Defense Operations once such a breach has occurred, and even if time were available, any delay would carry significant consequences. Without the Defense Operations order, the SDF remains constrained and unable to respond effectively to encroaching aircraft until it is too late. As such, the current legal framework, which treats the SDF as a police force, undermines its ability to safeguard Japan’s airspace sovereignty.

A similar problem arises in protecting the sovereignty of Japan’s territorial seas. When faced with a large number of foreign government vessels or fishing boats attempting to occupy an uninhabited island in the East China Sea, several analysts and former SDF officials have

⁴⁵ Iwamoto, “Jieitai to Kokusaiho No Kankeisei No Hensen,” 233.

⁴⁶ Orita Kunio, “Orita Kunio Moto Kusho ‘Kogeki Sareru made Buki Tsukaezu’ ‘Yurusarenai Rippo Fusakui’ [Former Air Self-Defense Force General Kunio Orita: ‘Cannot Use Weapons Until Attacked’ / ‘Legislative Inaction Is Unforgivable’],” Sankei News, September 6, 2016, <https://www.sankei.com/article/20160906-GVEYRBTS35OZHUI7MNCRRMHL4A/>.

⁴⁷ Iwamoto, “Jieitai to Kokusaiho No Kankeisei No Hensen,” 233.

questioned whether the SDF, operating under police-like restrictions, can respond effectively.⁴⁸ Again, the core issue lies in the fact that the SDF is not legally recognized as a military under domestic law and is permitted only a police-like use of weapons.

Dealing with Gray-Zone Situations

There is a strict dichotomy in how the SDF is authorized to operate: either as a police entity under domestic law or as a military force under Defense Operations. Crucially, in terms of the use of force, there is “nothing in between to address intermediate situations.”⁴⁹ If a situation does not meet the threshold for issuing Defense Operations, it must be treated as a matter of police authority. Besides, the SDF Law “clearly distinguishes between peacetime and wartime conditions,” and the procedures for transitioning from peace to crisis are so complex that “a seamless response is difficult.”⁵⁰ These legal and procedural constraints hinder the SDF’s ability to respond effectively to “gray-zone” situations — defined by the Japanese government as those occurring between peacetime and a direct armed attack against Japan.⁵¹

Take, for example, a contingency involving Taiwan. As many experts note, China could initiate such a scenario through coercive measures short of war, such as a quarantine or naval blockade.⁵² In response, Japan may designate the situation as an “Important Influence Situation,”

⁴⁸ Morimoto et al., *Kokubo Gun Toha Nanika?*, 179–81; Nakamura et al., *Japan’s Military Power*, 18–20; Tomohisa Takei, “Gray Zones and Vulnerability in the U.S.-Japan Alliance: Operational and Legal Dimensions,” *Asia Policy* 15, no. 3 (2020): 26, <https://doi.org/10.1353/asp.2020.0041>.

⁴⁹ Morimoto et al., *Kokubo Gun Toha Nanika?*, 178.

⁵⁰ Orita, “Jieikan Shokumu Shikkou Hou no Seitei wo.”

⁵¹ Takei, “Gray Zones and Vulnerability in the U.S.-Japan Alliance,” 22.

⁵² Bonny Lin et al., *How China Could Quarantine Taiwan: Mapping Out Two Possible Scenarios*, CSIS Briefs (Center for International and Strategic Studies, 2024), <https://www.csis.org/analysis/how-china-could-quarantine-taiwan-mapping-out-two-possible-scenarios>; Mark F. Cancian et al., *Lights Out? Wargaming a*

defined as a contingency short of an armed attack on Japan that, if left unaddressed, could threaten Japan's peace and security.⁵³ Under this designation, Japan can provide rear-area support to the U.S. and other partners, including search and rescue, ship inspections, and logistics.⁵⁴ However, the SDF remains restricted to police-like use of force and is prohibited from operating in combat zones.⁵⁵

A serious problem arises when a situation escalates and U.S. forces, but not Japan, come under attack by China. For the SDF to protect and engage alongside U.S. forces, Japan must declare a "Survival-Threatening situation" and then issue Defense Operations.⁵⁶ Analysts have rightly raised concerns, as this process can be time-consuming, and a "failure to respond in a timely fashion would put the alliance at risk."⁵⁷

The situation could be far more serious than many analysts assume. For instance, what would the SDF do if U.S. military vessels were attacked while Japanese SDF ships were nearby in a rear-support or search-and-rescue role? Under the Important Influence Situation, the SDF is permitted to use weapons only within police-like parameters and cannot take military actions such

Chinese Blockade of Taiwan (Center for International and Strategic Studies, 2025), <https://www.csis.org/analysis/lights-out-wargaming-chinese-blockade-taiwan>.

⁵³ Mirna Galic, "Japan's Authorities in a Taiwan Contingency: Providing Needed Clarity," War on the Rocks, October 6, 2021, <https://warontherocks.com/2021/10/japans-authorities-in-a-taiwan-contingency-providing-needed-clarity/>.

⁵⁴ Galic, "Japan's Authorities in a Taiwan Contingency."

⁵⁵ Adam P. Liff, "The U.S.-Japan Alliance and Taiwan," *Asia Policy* 17, no. 3 (2022): 149, <https://doi.org/10.1353/asp.2022.0038>.

⁵⁶ For example, see Susumu Nakamura, "The Japanese Response to a Taiwan Crisis — How to Prepare and Respond," Sasakawa Peace Foundation, June 15, 2021, https://www.spf.org/iina/en/articles/nakamura_01.html; Galic, "Japan's Authorities in a Taiwan Contingency"; Liff, "The U.S.-Japan Alliance and Taiwan," 149.

⁵⁷ James J. Przystup, *Japan—and the Alliance—Prepare to Address a Taiwan Contingency* (Hudson Institute, 2025), 30, <https://www.hudson.org/defense-strategy/japan-alliance-prepare-address-taiwan-contingency-james-przystup>. Similar concerns are expressed by Nakamura, "The Japanese Response to a Taiwan Crisis"; Jesse Johnson, "U.S. Urges Clarity on Japan's Role in Potential War over Taiwan, Report Says," *The Japan Times*, July 14, 2025, <https://www.japantimes.co.jp/news/2025/07/14/japan/us-japan-taiwan-contingency/>.

as counterattacking enemy vessels to defend U.S. ships.⁵⁸ Moreover, under the Important Influence Situation law, once combat begins, the SDF is required to evacuate, as it is prohibited from operating in a “combat zone.”⁵⁹ As Yoji Koda, a retired admiral and former MSDF Fleet commander, warns, the SDF would face a stark choice: either jeopardize the U.S.-Japan alliance by abandoning the U.S. vessels or violate domestic law by engaging in combat.⁶⁰ If the SDF withdraws, the alliance could be seriously undermined; if it intervenes, it would breach the SDF Law and other statutes, likely provoking domestic backlash — and as will be discussed later, domestic politics matter even in a contingency.

Even in cases where U.S. forces are attacked without SDF units nearby, it remains far from straightforward for Japan to authorize the SDF to fight alongside the U.S. in a timely manner. Many Japanese policymakers and SDF officials believe that declaring a “Survival-Threatening Situation”—which legally enables Japan to use force—is tantamount to a formal declaration of war (*sensen fukoku*).⁶¹ They worry that such a declaration could give China a pretext to claim that Japan is escalating the conflict, thereby legitimizing a retaliatory attack. One study notes that “there is a widely shared philosophy in the Japanese strategic community that designating a situation as an armed attack could be considered an escalation by the enemy.”⁶² Such concerns are not without

⁵⁸ Nakamura, “The Japanese Response to a Taiwan Crisis.”

⁵⁹ Japan Ministry of Defense, *Defense of Japan 2024*, 260.

⁶⁰ Yoji Koda, *Boei Sho Ni Tsugu: Moto Jieitai Genba Toppu Ga Akasu Boei Gyousei No Shittai [To the Ministry of Defense: A Former Top SDF Commander Exposes the Failures of Japan’s Defense Administration]* (Chuo Koron Shinsha, 2023), 196–98.

⁶¹ Koda, *Boei Sho Ni Tsugu*, 196; Orita, “Jieikan Shokumu Shikkou Hou no Seitei wo.”

⁶² Inoue, “Will Japan Have the Political Resolve to Use Counterstrike?,” 47–48.

basis. In fact, scholars have found that states are increasingly reluctant to formally declare war, partly because doing so could escalate ongoing conflicts.⁶³

This high political hurdle can lead to hesitation among Japanese politicians to declare a situation, further delaying the SDF's full-fledged operation to help the U.S. For example, former ASDF General Orita warns that because the declaration of situations can be seen as an escalation, "political leaders will hesitate in making such a designation."⁶⁴ Former MSDF Fleet commander Koda also expresses a similar concern, arguing that because of politicians' hesitation not to risk escalating the situation, "even in situations that would ordinarily qualify as a 'Survival-Threatening Situation,' one cannot rule out the possibility that the SDF may have to act under incomplete or inadequate orders."⁶⁵ In fact, table-top exercises on Taiwan contingency by a Japanese think tank, participants, including the former Ministers and SDF officials, tend to hesitate to declare the situation based on their concern about the risk of escalation.⁶⁶

As such, even in cases where the U.S.–Japan alliance itself is not at immediate risk of collapse, designating the appropriate legal status and providing timely assistance to the U.S. is far from straightforward. Because the SDF is legally an administrative organ, it can act only in a police-like capacity unless a formal political declaration is issued. This structural constraint could create critical delays in a contingency and, in doing so, place the alliance at risk.

⁶³ Katherine Irajpanah and Kenneth A. Schultz, "Off the Menu: Post-1945 Norms and the End of War Declarations," *Security Studies* 30, no. 4 (2021): 485–516, <https://doi.org/10.1080/09636412.2021.1979842>.

⁶⁴ Orita, "Jieikan Shokumu Shikkou Hou no Seitei wo."

⁶⁵ Koda, *Boei Sho Ni Tsugu*, 196–97.

⁶⁶ Inoue, "Will Japan Have the Political Resolve to Use Counterstrike?," 48.

Dealing with Armed Attacks against Japan

The SDF's legal status as an administrative organ can not only jeopardize the U.S.-Japan alliance but also pose direct risks to the security of SDF units and Japan itself. Consider a contingency in which the SDF, not U.S. forces, comes under attack by Chinese missiles and other naval assets. As in the previous case, without the formal enactment of Defense Operations, the SDF—constrained by police-like restrictions—would face significant difficulty in responding effectively to such aggression. In fact, Kanehara Nobukatsu, a former Deputy Director-General of the National Security Secretariat, warns that if the SDF faces China's People's Liberation Army (PLA) in the sea without Defense Operations, it can be “all too easy for the PLA to annihilate them [the SDF units] (*Chuugoku gun ni yoi ni senmetsu sare uru*).”⁶⁷ Former MSDF Commander Nakamura Hideki also emphasizes that the SDF, without authorization to use force, will be “wiped out” by enemy forces.⁶⁸

Why is the SDF unable to deal with sudden attacks? First, SDF personnel being forced to act as police officers means that, basically, they are not allowed to use weapons unless they are attacked first, because they are allowed to use weapons only for self-defense or averting present danger.⁶⁹ Having to wait until being attacked first would put the SDF in a severely disadvantaged position. As Nakamura explains, in the age of missiles, “suffering a preemptive attack is fatal as it either means sinking before you can strike back or suffering massive damage.”⁷⁰

⁶⁷ Kanehara Nobukatsu, “Jieitai kara Keishokuho no Jyubaku wo Toke [Free the Self-Defense Forces from the Spell of the Police Duties Law.],” *Sankei News*, June 2, 2025, <https://www.sankei.com/article/20250602-VZ32DCAS7RKORP3I7NFFRWCJCI/>.

⁶⁸ Nakamura et al., *Japan's Military Power*, 44.

⁶⁹ Koda, *Boei Sho Ni Tsugu*, 200.

⁷⁰ Nakamura et al., *Japan's Military Power*, 15–16.

Second, during the period between an initial enemy attack and the formal enactment of Defense Operations, the SDF is permitted to use weapons in accordance with the principle of proportionality in policing. It means that the SDF is legally constrained to employ only the minimum force necessary to neutralize an immediate threat. It places the SDF at a disadvantage in combat against foreign militaries that operate with decisive, preemptive use of force. In high-intensity conflict, the obligation to calibrate responses as if in a policing context risks delaying action, limiting escalation options, and undermining deterrence.⁷¹ Consequently, the SDF may find itself structurally disadvantaged against adversaries able to employ overwhelming force without comparable legal restraints. As one scholar aptly summarizes, since enemy soldiers will not abide by Japanese administrative law, there is no way the SDF could carry out defense if it were to strictly follow administrative regulations.⁷² Thus, Kanehara emphasizes that the constraints of the Police Duties Execution Act, binding the SDF even when facing professional combat forces of an enemy military, “place the lives of many SDF members in jeopardy.”⁷³

Sudden attacks in this context are not necessarily the same as “sneak attacks” or unexpected assaults. Even in situations with an elevated risk of military attacks, such as the one preceding the Ukraine war, pinpointing the exact timing of an assault remains challenging.⁷⁴ Whether the attacks are completely unexpected or highly anticipated, the SDF is destined to suffer disadvantage.

⁷¹ Koda, *Boei Sho Ni Tsugu*, 204.

⁷² Kokukiken Seigun Kankei Kenkyukai, ed., *Seigun Kankei Kenkyu: Aratana Bunmin Tosei No Kochiku [Civil-Military Relations Research: Building a New Framework for Civilian Control]* (Namiki Shobo, 2023), 202.

⁷³ Kanehara, “Jieitai kara Keishokuho no Jyubaku wo Toke.”

⁷⁴ Mike Eckel, “How Did Everybody Get The Ukraine Invasion Predictions So Wrong?,” *Radio Free Europe/Radio Liberty*, February 17, 2023, <https://www.rferl.org/a/russia-ukraine-invasion-predictions-wrong-intelligence/32275740.html>.

This is a problem unique to the SDF. Most other militaries do not require a cabinet decision to engage in combat because unit commanders must be able to make swift decisions in the event of an initial attack to respond effectively.⁷⁵ Accordingly, for example, the U.S. military operates under Standing Rules of Engagement (SROEs), which authorize the organized use of force not only for individual self-defense, but also for unit and national self-defense in response to sudden aggression.⁷⁶ Most other militaries have similar frameworks to address such contingencies.⁷⁷

In contrast, Japan lacks an equivalent set of SROEs to bridge the gap between the SDF's role as a police-like entity and its function as a military force. One reason for this absence is that the SDF, as an administrative branch "within the administrative chain of command," is bound by legal authority that "cannot be exceeded based on the judgment of field commanders," as one SDF official noted.⁷⁸ Therefore, to exercise capabilities beyond routine police-like restrictions, the SDF requires explicit administrative authorization—namely, a cabinet-approved Defense Operations. Former MSDF Fleet commander Koda summarizes the issue by noting that countries such as China and Russia "do not have the concept of 'Defense Operations.' Their militaries are always militaries." What this implies is that the SDF is inherently destined to experience delays in its initial response.⁷⁹

⁷⁵ Koki Sato, "Boei Hoseido Ni Okeru 'Kishu Taisho No Mondai' No Genjo to Kongo No Kento No Houkousei [Surprise Attack Management under the National Security Law System for the Present and Future]," *Defense Law Studies* 32 (2008): 111–12.

⁷⁶ Joint Staff, "Standing Rules of Engagement/ Standing Rules for the Use of Force for the U.S. Forces," Chairman of the Joint Chiefs of Staff Instruction 3121.01B, 2005, https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Joint_Staff/20-F-1436_FINAL_RELEASE.pdf.

⁷⁷ Kumatoriya et al., "Nihon to Shogaikoku No Boei Hosei."

⁷⁸ Sato, "Boei Hoseido Ni Okeru 'Kishu Taisho No Mondai,'" 113.

⁷⁹ Koda, *Boei Sho Ni Tsugu*, 199–200.

Can Japan Expedite the Process?

Some analysts argue that the severity of a contingency may accelerate Japan’s legal decision-making.⁸⁰ While urgent circumstances can indeed hasten what is typically a prolonged process, they do not resolve the structural problem. As noted, multiple steps must be completed before the government can authorize Defense Operations: gathering information, reporting to the Prime Minister, consulting the NSC, and securing Cabinet approval. Even under streamlined conditions, this process may take “a day and a half.”⁸¹ Political disagreement could cause further delays.

Even if the designation were made within a few hours, for example, the problem would remain. Scenarios such as responding to encroaching aircraft, assisting U.S. vessels under attack, or countering Chinese strikes on SDF units demand immediate action. Waiting for legal authorization risks allowing hostile forces to complete their mission, undermining the U.S.-Japan alliance, or resulting in the destruction of SDF units. Despite the government’s emphasis on a “seamless” response to contingencies, the current legal framework makes such responsiveness structurally difficult for the SDF.⁸²

In some scenarios—such as those envisioned by U.S. think tanks regarding a Taiwan contingency—China may choose to target only U.S. bases or other territories in Japan.⁸³ In such a case, Japan might have sufficient time to issue Defense Operations orders to prepare for subsequent attacks while assisting damaged U.S. facilities and personnel. However, as many Japanese analysts

⁸⁰ Johnson, “U.S. Urges Clarity on Japan’s Role in Potential War over Taiwan, Report Says.”

⁸¹ Nakamura, 38.

⁸² Cabinet Secretariat, Japan, “National Defense Strategy of Japan,” December 16, 2022, 10, https://www.mod.go.jp/j/policy/agenda/guideline/strategy/pdf/strategy_en.pdf.

⁸³ Mark F. Cancian et al., *The First Battle of the Next War: Wargaming a Chinese Invasion of Taiwan* (Center for Strategic and International Studies, 2023), <https://www.csis.org/analysis/first-battle-next-war-wargaming-chinese-invasion-taiwan>.

have pointed out, China likely knows “fully well” Japan’s legal vulnerabilities.⁸⁴ It is therefore risky to assume that events will unfold in a manner favorable to Japan’s legal limitations.

Lastly, one may ask whether Japan could issue Defense Operations orders in advance, allowing the SDF to respond whenever necessary. This is difficult for two reasons. First, although Japan may issue a Defense Operations order not only in response to an actual armed attack but also when there is a “clear danger” of one against Japan itself, this legal threshold does not apply to attacks targeting the United States or other countries.⁸⁵ Second, the criteria for determining a “clear danger” are narrowly defined, such as the fueling and erection of missiles clearly targeting Japan.⁸⁶ These signs are difficult to detect in real time, and by the time they are confirmed, it may already be too late. If the government were to issue a Defense Operations order in circumstances falling short of this threshold, it would risk criticism for violating domestic law and, by extension, the Constitution—potentially losing support in the Diet, whose approval is required for SDF operations. In addition, Japan would risk escalating the conflict, particularly given that, as discussed above, issuing Defense Operations is effectively equivalent to a declaration of war.

The Other Extreme: Legal Vacuum in Military Discipline

Recall that two key factors distinguish the SDF from other militaries. First are the operational restrictions placed on the SDF, as discussed above. Second is the absence of a dedicated military

⁸⁴ Masayuki Hironaka, “Japan-Taiwan Military Cooperation in a Taiwan Strait Crisis (Part3) -Direction of Japan-Taiwan Military Cooperation in a Taiwan Strait Crisis,” The Sasakawa Peace Foundation, April 15, 2024, <https://www.spf.org/spf-china-observer/en/document-detail050.html>.

⁸⁵ Japan Ministry of Defense, *Defense of Japan 2024*, 254.

⁸⁶ Masahiro Kurosaki, “The Dynamics of Japan’s ‘Armed Attack Initiation’ Doctrine and Anticipatory Self-Defense,” Lawfare, September 1, 2020, <https://www.lawfaremedia.org/article/dynamics-japans-armed-attack-initiation-doctrine-and-anticipatory-self-defense>.

legal system, including military law and courts, with only limited substitutes such as the SDF Law and the Criminal Code. While the former reflects excessive operational constraint, the latter highlights a lack of institutional control.

Instead of a dedicated system of military law, the SDF operates under general statutes that prescribe limited punishments for misconduct such as desertion and insubordination. However, these penalties are, in general, notably lighter than those imposed in other militaries.⁸⁷ Moreover, all cases of misconduct—including operational errors under the Defense Operations—are adjudicated by civilian courts. The absence of a proper military legal framework can hinder the SDF's effective functioning in at least three significant ways.

First, with limited punishments for misconduct under general statutes, it is difficult to regulate and deter misconduct during military operations. One notable and most significant example of such misconduct is desertion. Deserting a position during wartime can result in capital punishment, at maximum, in the U.S., for example. Meanwhile, the SDF law stipulates that deserting a position under the Defense Operations can only face up to seven years in prison at maximum.⁸⁸ This is less serious than, for example, illegally recording a movie in a theater, which can face a maximum of ten years in prison. Thus, in Japan, camripping is a more serious crime than deserting a position in wartime.⁸⁹ The former Prime Minister Ishiba warned in 2013 that “Anyone would value their life. When the moment comes, if fleeing the battlefield only results in

⁸⁷ Joji Okuhira, “Boei Shiho Seido Kento No Gendaiteki Igi: Nihon No Shorai No Hokosei [Contemporary Significance of Reviewing the Defense Justice System: The Direction of the Future of Japan],” *NIDS Security Reports* 13, no. 2 (2011): 133.

⁸⁸ Eldridge and Musashi, *The Japan Self-Defense Forces Law*, 170.

⁸⁹ Nakamura et al., *Japan's Military Power*, 189–90.

seven years of imprisonment, wouldn't most people choose that? Isn't that simply human nature?"⁹⁰

The reason for such lenient punishment can be traced back to the legal status of the SDF. Since the SDF is legally classified as an administrative organ, its personnel are treated under domestic law as civil servants rather than military personnel. As such, according to a lawmaker involved in drafting the SDF legislation, it was difficult to impose severe penalties—such as capital punishment—for desertion or other forms of misconduct. The underlying logic was: if SDF members are civilians, why should they be subject to the harshest forms of punishment for disciplinary violations?⁹¹ Therefore, the issue of desertion reflects a deeper structural problem—namely, the consequences of treating the SDF as an administrative body rather than a military institution.

Although it is difficult to predict in advance how desertion might affect SDF operations during contingencies, the case of Ukraine offers a cautionary reference. Under Ukrainian law, wartime desertion carries a sentence of up to 12 years—harsher than Japan's penalties but lighter than those in the U.S. According to one report, over 100,000 Ukrainian soldiers had deserted by December 2024 because “for some defectors, imprisonment is seen as a better option than losing their lives on the battlefield.”⁹² While Ukraine's situation is not directly comparable to Japan's, it highlights two reasons why desertion could pose an even greater challenge for the SDF.

First, Japan imposes lighter penalties for desertion than Ukraine, making the cost-benefit calculation more favorable to defection. Second, although the SDF is composed entirely of

⁹⁰ Morimoto et al., *Kokubo Gun Toha Nanika?*, 225.

⁹¹ Morimoto et al., *Kokubo Gun Toha Nanika?*, 225.

⁹² Joe Saballa, “Over 100,000 Soldiers Have Deserted Ukrainian Army: Report,” *The Defense Post*, December 2, 2024, <https://thedefensepost.com/2024/12/02/ukrainian-army-soldiers-deserted/>.

volunteers—potentially suggesting higher morale than conscripted forces—many recruits reportedly do not expect to engage in actual combat. As one analyst notes, most young SDF personnel “do not really think they will have to fight.”⁹³ Former MSDF Commander Nakamura similarly warned that, given the lenient disciplinary system, “there will likely be many SDF members who flee to save their lives” in the event of a contingency.⁹⁴ According to one report, a recent survey of newly recruited SDF personnel found that, in the event of an armed attack on Japan, only slightly more than 50% said they would fulfill their duties, while 30% were unsure and roughly 10% indicated they would resign if possible.⁹⁵ Again, it is difficult to know in advance how many SDF personnel may opt for desertion in a contingency, but the temptation is there, and there is no effective deterrent.

Furthermore, due to Japan’s rapidly aging population, the issue of desertion poses a particularly acute challenge. The SDF has approximately 247,000 active personnel—only one-ninth the size of China’s military and less than half that of South Korea. Japan’s reserve force is also limited, with just 56,000 members compared to over 3 million in South Korea and 1.6 million in Taiwan.⁹⁶ Because conscription is prohibited under the Constitution, Japan cannot replenish its forces through mandatory service. Moreover, according to the World Values Survey, only about 15% of Japanese respondents expressed willingness to fight for their country, compared to 89% in China and 77% in Taiwan.⁹⁷ Given Japan’s limited prospects to recruit through either conscription

⁹³ Kana Inagaki and Leo Lewis, “Is Japan’s Military Fit for Purpose?,” *Financial Times*, May 4, 2023, <https://www.ft.com/content/2e8dd852-47d3-4276-aabb-21bccb31dff0>.

⁹⁴ Nakamura et al., *Japan’s Military Power*, 190.

⁹⁵ Kenji Minemura, *Taiwan Yuji to Nihon No Kiki: Shu Kinpei No Shingata Toitsu Senso Shinario [A Taiwan Contingency and Japan’s Crisis: Xi Jinping’s “New-Type Unification War” Scenario]* (PHP Shinsho, 2024), 211.

⁹⁶ Le, *Japan’s Aging Peace*, 70–71, 93.

⁹⁷ Le, *Japan’s Aging Peace*, 86–87.

or voluntary enlistment, even a relatively small number of desertions could significantly impact its defense readiness.

A second way the absence of military law and court systems affects SDF operations is the difficulty of maintaining morale and discipline during wartime. One key benefit of military justice is its ability to swiftly deliver judgment and accountability during operations, helping preserve order and combat effectiveness.⁹⁸ Because Japan lacks a military court system, misconduct such as insubordination or desertion during operations must be prosecuted through civilian courts. This makes it difficult to swiftly assess and, if necessary, punish such actions during wartime.⁹⁹ It is widely recognized that the timely enforcement of military justice is essential for maintaining discipline and the efficiency of military units.¹⁰⁰ The absence of a military court system, combined with the lenient punishment for misconduct, raises concerns about Japan's ability to maintain morale and discipline within the SDF.¹⁰¹

Moreover, in the event of operational mistakes—such as the accidental shooting of civilians—primary responsibility falls on the individual who committed the act, rather than the commander who oversaw the operation. This is because SDF personnel are subject to criminal law and tried in civilian courts, not under a military legal framework. This stands in stark contrast to conventional military justice systems, which do not place sole responsibility on individual soldiers

⁹⁸ Mindia Vashakmadze, *Understanding Military Justice* (Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2010), 10, https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice_Guidebook_ENG.pdf.

⁹⁹ Benjamin Heng et al., “Military Justice in a Comparative and International Perspective: A View from the Asia Pacific,” *Journal of International Peacekeeping* 20, nos. 3–4 (2016): 136, <https://doi.org/10.1163/18754112-02003001>.

¹⁰⁰ Kyle G. Phillips, “Military Justice and the Role of the Convening Authority,” *Proceedings*, May 1, 2020, <https://www.usni.org/magazines/proceedings/2020/may/military-justice-and-role-convening-authority>.

¹⁰¹ Toshiyuki Fukutomi, “Waga Kuni Ni Okeru Gunji Saiban No Arikata: Kinnen No Kenpo Kaisei Rongi o Kento Sozai to Shite [Military Court in Japan : Focusing on the Recent Constitutional Amendment Debate],” *Defense Law Studies*, no. 38 (2014): 108.

during combat operations.¹⁰² In light of this, a former GSDF General warns that “if subordinates are held personally accountable, no one will follow orders,” and questions whether, under such conditions, “the SDF can maintain the cohesion, discipline, and morale expected of an armed organization.”¹⁰³ Another Former MSDF General also raises the alarm about individuals being responsible for operational mistakes, arguing that “it raises the question: why should one be expected to obey a captain who cannot be held accountable?”¹⁰⁴

Third, and relatedly, the fact that individual SDF personnel are held responsible for operational mistakes and judged in civilian courts by those with no operational experience may undermine their confidence and initiative, for fear of being wrongly accused. Even under the Defense Operations, SDF personnel are still treated as civil servants under domestic law. This means that, in theory, if an SDF member kills enemy personnel, they could be prosecuted for murder.¹⁰⁵ To preempt such legal dilemmas, the Japanese government has officially stated that SDF personnel will not face prosecution for actions such as killing enemy personnel, provided those actions are conducted within the scope of a Defense Operation and do not violate international

¹⁰² Hironaka, “Jieitai to Ha Nanika,” 188–89.

¹⁰³ Sankei Digital, “Jieitai ha Guntai ka. Heiwa wo Mamoru tame Kenpo Kaisei wo. Gunpo Kaigi no Seido naku ‘Taiwan Yuji’ Misue Kento subeki Hoteki Kadai [Is the Self-Defense Forces a military? Constitutional revision for the sake of peace. No system of military courts... Legal issues to consider in light of a potential Taiwan contingency],” *zakII*, August 27, 2023, <https://www.zakzak.co.jp/article/20230827-YO6BDQYAHZLKJPIIBKHWE3ADA/>.

¹⁰⁴ Sugimoto Yasushi et al., “Shiroto Saiban Kokubo ga ‘Satsujin zai’ Ippan Hotei Gunji Chishiki Naku ‘Koredeha Tatakaenai’ [Civilian trials—national defense treated as ‘murder’ Judged in ordinary courts without military expertise... “We can’t fight under these conditions.],” *The Sankei Shimbun*, August 22, 2017, <https://www.sankei.com/article/20170822-NP2K7GHQ2RLSREJDQ5U6GR66IQ/>.

¹⁰⁵ This point has been raised by several lawyers and scholars in Japan. For example, see Toshiyuki Fukutomi, “Waga Kuni Ni Okeru Gunji Shiho Seido No Kadai: Buryoku Koshi Ji o Sakugo No Hyoka Wo Tegakari Toshite [Issues of the Military Judicial System in Japan: Guideline for Judging Mistake in Armed Conflict],” *Kokusai Anzenhosho [Journal of International Security]* 39, no. 3 (2011): 50–62, https://doi.org/10.57292/kokusaianzenhosho.39.3_50; Nakamura et al., *Japan’s Military Power*, 194; Sugimoto et al., “Shiroto Saiban Kokubo ga ‘Satsujin zai.’”

law.¹⁰⁶ However, complications arise when there is doubt about whether international law has been breached—for example, in cases of accidental harm to civilians or civilian vessels. In such instances, the actions of SDF personnel would be evaluated by civilian judges with no operational experience. Several defense experts have expressed concern that these judges may lack the expertise to assess the appropriateness of military conduct, potentially leading SDF personnel to hesitate to act.¹⁰⁷ One retired ASDF officer confided, “it is too frightening to fight,” because it is far from certain that civilian judges will make the right judgment.¹⁰⁸

Problems such as desertion, morale, and discipline are common across militaries worldwide and are not, in themselves, unique to Japan. What distinguishes the SDF, however, is that its classification as an administrative branch under domestic law means there is no legal framework that treats it as a military organization. This institutional gap makes such problems uniquely difficult for Japan to manage.

Would Legal Constraints Matter in a Real Contingency?

One might argue that in an emergency, the government and the SDF would take necessary measures regardless of legal constraints, and that such restrictions would not hinder actual wartime operations. In life-and-death situations, the protection of the state and its citizens should naturally

¹⁰⁶ Shinzo Abe, “Jieitaiin Ga Shokumu Suikojo de Takokugun Heishi Wo Satsugai Shita Baai Ni Oitemo Satsujinzai Ni Towarenai Konkyo Ni Kansuru Shitumon Ni Taisuru Tobensho [Written Response to a Question Regarding the Legal Basis for Why a Self-Defense Forces Member Would Not Be Charged with Murder When Killing a Foreign Military Personnel in the Course of Duty.],” House of Representatives, the National Diet of Japan, November 15, 2016, https://www.shugiin.go.jp/internet/itdb_shitumon.nsf/html/shitumon/b192110.htm.

¹⁰⁷ Okuhira, “Boei Shiho Seido Kento No Gendaiteki Igi,” 131; Fukutomi, “Waga Kuni Ni Okeru Gunji Saiban No Arikata,” 108; Fukutomi, “Waga Kuni Ni Okeru Gunji Shiho Seido No Kadai,” 60.

¹⁰⁸ Sugimoto et al., “Shiroto Saiban Kokubo ga ‘Satsujin zai.’”

take precedence over strict adherence to legal norms. From this perspective, the legal limitations discussed above may seem inconsequential in practice.

There are three reasons to believe that Japan’s current legal framework can significantly constrain SDF operations in a contingency. First, past experience suggests that both the government and the SDF tend to prioritize legal compliance over instinctive action, even in life-or-death situations. For example, during the 1995 Great Hanshin-Awaji Earthquake, the SDF did not operate until more than four hours after the earthquake. This is because the SDF Law (Article 83) stipulated that, in principle, municipal requests were needed for the SDF to send its troops for disaster relief.¹⁰⁹ However, the governor of Hyogo Prefecture, where the quake struck, did not issue such a request for the first four hours.¹¹⁰ Takemasa Moriya, then Administrative Vice-Minister of the Defense Agency (predecessor to the Ministry of Defense), recalled that “the prevailing view [in the Defense Agency] held that, in the absence of such a request, the SDF should not be deployed.”¹¹¹ As a result, the Defense Agency did not issue an order to act, and the SDF diligently remained inactive, forced to stand by as civilians suffered. A former Commander of the GSDF stationed in Hyogo at that time recalled that, in the absence of a legal mandate, “there was no way we could operate [without the actual order].”¹¹²

The SDF’s response to airspace violations further illustrates its strict adherence to legal constraints. As of September 2025, as discussed above, there have been 49 documented cases of

¹⁰⁹ Eldridge and Musashi, *The Japan Self-Defense Forces Law*, 107–8.

¹¹⁰ Smith, *Japan Rearmed*, 96–97.

¹¹¹ Takemasa Moriya, *Nihon Boei Hiroku [The Secret Files of Japan’s National Defense]* (Shinchosha, 2013), 110.

¹¹² Social News Department of Jiji Press, “Jieitai ‘Fubi’ Kyokun ni Taisei Sasshin Sokuousei Kyouka, Houseibi mo - ‘Saigai Haken no Genten’ Hanshin Daishinsai 30 nen [Self-Defense Forces Overhaul System Based on Lessons from Past Shortcomings — Enhancing Responsiveness and Legal Frameworks on the 30th Anniversary of the Great Hanshin Earthquake, the ‘Origin of Disaster Dispatch’],” Jiji Press, January 13, 2025, <https://www.jiji.com/jc/article?k=2025011200191&g=soc>.

foreign aircraft intruding into Japan’s airspace, yet the SDF has fired “warning shots” only once in 1987.¹¹³ In all other cases, the intruding aircraft flew unimpeded alongside scrambling SDF fighters. A particularly notable example is the 1976 MiG-25 incident, in which a Russian pilot defected by breaching Japanese airspace and forcibly landing at an airport in Hokkaido, a northern prefecture of Japan.¹¹⁴ Although the intent was defection rather than aggression, this case, along with the other 48, demonstrates that even when foreign aircraft intrude or land without authorization, the SDF refrains from using weapons to shoot them down, strictly complying with legal norms.

As seen above, the SDF has demonstrated strict adherence to its legal mandate even in circumstances where human lives or the nation’s security are at risk. Kiyoshi Ogawa, a former GSDF General, underscores the SDF’s unwavering commitment to legality, claiming that “since the SDF operates under the SDF Law... they will never act [zettai ni ugokimasen] without a written order based on legal authority.”¹¹⁵

Second, even if the SDF were to engage in extra-legal action to defend U.S. forces or themselves, the institution’s deeply ingrained legalism would likely produce hesitation, operational disruption, and confusion, thereby undermining overall effectiveness. This is particularly true because individual SDF personnel are subject to prosecution for illegal acts, as discussed above. If a unit commander were to authorize extra-legal engagement, such as initiating full-scale conflict before a formal Defense Operation is declared, primary legal responsibility for killing enemy

¹¹³ Joint Staff Office, Japan, “2025 Nendo Ichi Shihanki Madeno Kinkyu Hasshin Jisshi Jokyo Ni Tsuite.”

¹¹⁴ Maya Carlin, “A Russian Pilot Defected with a MiG-25 Foxbat Fighter Jet,” *The National Interest*, November 6, 2024, <https://nationalinterest.org/blog/buzz/russian-pilot-defected-mig-25-foxbat-fighter-jet-207730/>.

¹¹⁵ Kiyoshi Ogawa, *Gouken Jieitai - Shin Jieitai Ho: Kyu Jo No Mama Demo Tatakaeru Soshiki Ni [Constitutional Self-Defense Forces of Japan: A New SDF Law Creating a Fighting Organization under Article 9]* (Wani Books, 2025), 154.

personnel—an act deemed unlawful prior to such authorization—would fall on the individual who carried it out, not the commander. Under these conditions, it is doubtful that units could maintain cohesion, discipline, or operational effectiveness.¹¹⁶ Moreover, morale may deteriorate, as personnel would be aware that their actions would contravene domestic law and potentially the spirit of the Constitution, creating a persistent fear of subsequent legal prosecution.

Third, because extra-legal measures violate domestic law and even the spirit of the Constitution, such actions risk undermining domestic support for continued operations. As discussed, issuing a Defense Operation requires Diet approval—either beforehand or immediately afterward. If the SDF were to act outside the legal framework, it could jeopardize political support in the Diet for authorizing the Defense Operation, thereby preventing the SDF from continuing its mission. As the recent cases of Ukraine and Israel show, domestic politics still matter even when states are facing grave external danger.¹¹⁷ In Japan’s case, deeply rooted anti-militarist sentiment reflects the country’s exceptionally strong tradition of civilian control—that is, the principle that elected civilian leaders hold authority over the armed forces.¹¹⁸ Accordingly, any action that appears to place the SDF beyond civilian oversight—such as an SDF official expressing views on history that diverge from the government’s position—can provoke significant domestic backlash.¹¹⁹ Let alone the SDF unilaterally using force without civilian authorization, dragging Japan into war.

¹¹⁶ Sankei Digital, “Jieitai ha Guntai ka.”

¹¹⁷ Inoue, “Will Japan Have the Political Resolve to Use Counterstrike?,” 49.

¹¹⁸ Le, *Japan’s Aging Peace*, 56.

¹¹⁹ Tobias Harris, “General Tamogami Refuses to Fade Away,” *East Asia Forum*, November 14, 2008, <https://eastasiaforum.org/2008/11/14/general-tamogami-refuses-to-fade-away/>.

That the SDF and the Japanese government cannot simply ignore the legal system in a contingency helps explain why many former Ground, Maritime, and Air SDF officials—those previously responsible for operational command—have urged the government to address legislative shortcomings, warning that without reform the SDF cannot operate effectively. This concern extends well beyond the individuals cited in this paper and is widely shared among other retired senior SDF personnel. According to a 2023 survey of retired SDF officials, only about 30 percent of former senior officers believed the SDF could fight as expected, while roughly 60 percent expressed concern that it would fall short of expectations. Among the reasons cited, the second most common—after insufficient capabilities to sustain combat operations—was legal and political constraints.¹²⁰

Why No Change?

One may wonder why Japan has not pursued reform, given the significant consequences of the SDF being legally classified as an administrative branch. The three strategic documents released in 2022 failed to address the legal foundations of SDF operations,¹²¹ and there is no visible public debate among the government or the ruling Liberal Democratic Party (LDP) about revising the legal restrictions. This is especially puzzling considering that numerous former SDF officials and

¹²⁰ Miritari Karucha Kenkyukai, *Moto Jieitaiin Wa Jieitai o Do Mite Iru Ka : Jieitai Taishokusha Ni Taisuru Ishiki Chosa, Hokokusho [How Former SDF Personnel View the Self-Defense Forces: A Survey Report on Retired Members' Attitudes]* (Seikyusha, 2024), 48–54.

¹²¹ The National Security Strategy, the National Defense Strategy, and the Defense Buildup Program.

some politicians, including former Defense Ministers, have called for reform, that the legal issues are longstanding, and that at least some lawmakers appear willing to act.¹²²

The task of thoroughly explaining Japan’s inaction on this matter has to be done elsewhere, and here I will just highlight one key reason: the perceived political cost. Amending the relevant legal restrictions demands substantial political capital, as the matter is closely tied to Japan’s Constitution as discussed above. Theoretically, transitioning from the current “positive list” system to a “negative list” system, thereby moving the SDF toward a more “normal” military posture, may be possible without constitutional revision. However, it would likely trigger debates about the constitutionality of such changes and could ultimately necessitate a formal constitutional amendment.¹²³ This is a daunting challenge for a country that has never revised its Constitution since its enactment in 1947. As a result, revising the SDF’s legal framework to adopt a negative-list system becomes a politically sensitive undertaking that is likely to draw strong domestic opposition. This is why, as one newspaper observes, “the issue has not risen to the level of a serious political agenda.”¹²⁴ Former SDF Chief of Staff Katsutoshi Kawano has lamented that many LDP lawmakers are reluctant to engage in the sensitive constitutional questions, including the positive-list issue, noting that “the debate simply does not move forward.”¹²⁵

¹²² For example, in 2022, Kihara Seiji, Deputy Chief Cabinet Secretary under the Kishida administration, emphasized that politicians must address the challenge of transitioning the SDF legal framework to a negative list system. Kokukiken Seigun Kankei Kenkyukai, *Seigun Kankei Kenkyu*, 352.

¹²³ Kokukiken Seigun Kankei Kenkyukai, *Seigun Kankei Kenkyu*, 93–94.

¹²⁴ Sankei Shimbun, “[Shucho] kenpo seko 74nen yokushiryoku habamu 9jo ha fuyo da suga shusho ha kaisei rongi wo kasoku seyo [Opinion: Seventy-Four Years After the Constitution Took Effect, Article 9 Now Undermines Deterrence — Prime Minister Suga Should Accelerate Constitutional Revision.]”, Sankei News, May 3, 2021, <https://www.sankei.com/article/20210503-GIDAQQR5ZRIIPBW4DXYXV5QEKE/>.

¹²⁵ Tanaka Issei, “Kawano Katsutoshi moto togo bakuryocho jieitai ikenron mo gokenron mo hatan [Former Joint Staff Chief Kawano Katsutoshi: Both the Unconstitutional and Constitutional Arguments About the SDF Have Collapsed.]”, Sankei News, May 14, 2022, <https://www.sankei.com/article/20220514-WGU4XPDM5MNDIKDL4ITGYVL4A/>.

As for a military court, Japan's Constitution explicitly prohibits its establishment.¹²⁶ Consequently, creating one would require a constitutional amendment, which is, again, a formidable political challenge. As an alternative to a full-fledged military court system, scholars have proposed integrating SDF personnel into the civilian judicial framework.¹²⁷ However, establishing such a system is also no easy task, as it needs extensive discussions on whether such systems should be constitutional.¹²⁸ Regarding military laws, the Japanese government could, in principle, revise the existing SDF law to align disciplinary measures more closely with international standards. However, the Japanese government has been reluctant to tackle the issue because the prevailing view among lawmakers is that “since the SDF is an administrative organization under current law, sentencing practices must ensure fairness with those applied to other national civil servants.”¹²⁹

A number of administrations, including those led by Kishida, Ishiba, and the current Takaichi government, have proposed revising the Constitution by “specifying the SDF” in Article 9 while retaining the existing paragraphs 1 and 2.¹³⁰ Although explicitly mentioning the SDF may address some left-wing criticism that its existence is unconstitutional, such a revision does not resolve the core problems identified in this paper. Simply adding a reference to the SDF leaves its legal status unchanged: it would remain an administrative organ rather than a constitutionally

¹²⁶ “Military Courts Unconstitutional,” *The Japan Times*, August 26, 2014, <https://www.japantimes.co.jp/opinion/2014/08/26/editorials/military-courts-unconstitutional/>.

¹²⁷ Okuhira, “Boei Shiho Seido Kento No Gendaiteki Igi,” 135–37.

¹²⁸ Yasushi Sugimoto et al., “Mamorenu Kiritu to Joho Yuji No Tekizentobo ‘choeki 7 Nen’ No Jitsuryoku Soshiki [A Force Without Discipline or Intelligence: Seven Years’ Imprisonment for Desertion in Combat],” *The Sankei Shimbun*, August 23, 2017, <https://www.sankei.com/article/20170823-YKEHM5VJXZJTDFP3AW4QDFMCQ4/>.

¹²⁹ Sugimoto et al., “Mamorenu Kiritu to Joho.”

¹³⁰ Kae Kawashima, “Constitutional Revision Backers Hope to Gain Supermajority | *The Asahi Shimbun*: Breaking News, Japan News and Analysis,” *The Asahi Shimbun*, February 6, 2026, <https://www.asahi.com/ajw/articles/16336609>.

recognized military. As one Japanese legal scholar notes, this type of amendment “fails to resolve any of the underlying problems [of SDF operations].”¹³¹ For constitutional revision to meaningfully address these issues, it would need to go further by removing paragraph 2, which prohibits Japan from possessing a military, and by designating the SDF as a military institution rather than an administrative one. This, however, is far more politically difficult than the revisions currently proposed by the LDP. The bottom line is that, unless Japan reforms the SDF’s legal architecture by replacing the positive-list system with a negative-list one and establishing dedicated military laws and courts, the fundamental operational problems facing the SDF will remain unaddressed, and there is currently no public debate about undertaking such reforms.

Conversely, Japan’s legal restrictions offer a revealing gauge of its actual resolve to fight. As noted, in the event of a contingency, such as a Taiwan conflict, these constraints would significantly impede SDF operations. The absence of serious efforts to revise them suggests that Japan is not sufficiently committed to being involved in a contingency to bear the political costs of the legal reform. In fact, legal reforms may serve as a more accurate indicator of Japan’s resolve to fight than defense spending or weapons acquisition. As one scholar points out, for example, Japan’s decision to increase defense spending in 2022 served as “a political statement” to communicate the government’s willingness to shoulder its share of the burden of maintaining peace to other countries.¹³² Unlike those, legal changes lack such signaling value because they are little known among allies and partners. Thus, initiating politically costly debates over legal reform signals not just burden-sharing, but a domestic shift toward genuine readiness to fight.

¹³¹ Kokukiken Seigun Kankei Kenkyukai, *Seigun Kankei Kenkyu*, 214.

¹³² Michito Tsuruoka, “Confronting the Cost of Japan’s Defense Buildup: A Conflicted Public Considers the Options,” Nippon.Com, March 24, 2023, <https://www.nippon.com/en/in-depth/d00876/>.

Conclusion

Japan's SDF is widely recognized as among the world's most capable armed forces, particularly in terms of defense spending, training, and equipment. However, these material strengths do not change the fact that, under domestic law, the SDF is classified as an administrative organization rather than a military. This legal status imposes unique and significant constraints on its operations, whether in territorial defense, responding to contingencies alongside the U.S. and other partners, or addressing armed attacks against Japan itself. The absence of dedicated military laws and courts makes it difficult to maintain discipline, morale, and operational effectiveness during contingencies.

One implication of this “legalized anti-militarism” is that, regardless of who leads Japanese politics—whether a conservative figure such as current Prime Minister Sanae Takaichi or a more liberal politician like former Prime Minister Shigeru Ishiba—the legal status of the SDF continues to make it unlikely that Japan would choose to engage in a regional conflict. Even if such a decision were made, these constraints would hinder Japan's ability to respond effectively. This is why Japan's move toward revising these legal restrictions is a critical indicator of its willingness to participate in armed conflict. At present, however, the absence of serious legislative debate on reforming the SDF's legal framework suggests that Japan's resolve to fight has yet to catch up with the scale of its material modernization efforts.

Legal reforms concerning the status of the SDF—including the shift from a positive list system to a negative list framework, and the establishment of military laws and courts—are, of course, primarily Japan's responsibility. However, this paper offers two additional policy recommendations for the U.S. and other allies and partners. First, as discussed, such reforms represent a significant political challenge within Japan. The U.S. and its partners can help create a

more conducive environment for reform by encouraging discussion of these issues and signaling the importance they attach to Japan's operational readiness. As Nakamura—cited multiple times in this paper—notes in the foreword to the English edition of his book *Nihon no Gunjiryoku* (*Japan's Military Power*), foreign countries can indeed play a role, as Japan tends to “give in to foreign pressure” and respond to “outside criticism.”¹³³ While Japan is unlikely to adjust its domestic legal framework solely in response to such signals, they may nonetheless help advance politically difficult reforms.

Second, given that legal reforms may not be enacted in the near term, the U.S. and other partners should deepen their understanding of the legal constraints under which the SDF operates. As discussed in this paper, the SDF cannot simply disregard these restrictions during a contingency; therefore, allies need to clearly understand what the SDF can and cannot do under Japanese law to ensure effective joint operations. At the moment, the SDF's legal restrictions are little known and are not taken into account outside Japan. For example, most think tank reports on Taiwan contingency scenarios published in the U.S. pay little attention to the SDF's legal limitations, often assuming that it will operate in line with U.S. expectations.¹³⁴ It contrasts with Japanese analyses, which tend to focus on the specific legal boundaries of SDF action in each scenario.¹³⁵ Even between the SDF and U.S. forces, mutual understanding remains limited, as joint training and planning exercises typically address only narrow operational contexts where legal constraints are less visible.¹³⁶ This gap is problematic. In a real contingency, the United States and

¹³³ Nakamura et al., *Japan's Military Power*, xxii.

¹³⁴ For example, see Cancian et al., *The First Battle of the Next War*.

¹³⁵ Kuni Miyake, “How U.S. and Japanese Strategists Differ in Preparation for a Taiwan Contingency,” *The Japan Times*, July 21, 2022, <https://www.japantimes.co.jp/opinion/2022/07/21/commentary/japan-commentary/taiwan-contingency/>.

¹³⁶ Koda, *Boei Sho Ni Tsugu*, 213; Ogawa, *Gouken Jieitai*, 170.

its partners may be caught off guard by Japan's inability to act as expected, potentially undermining alliance cohesion and operational effectiveness. It is therefore essential that Japan's legal restrictions be more thoroughly examined in international strategic discussions, while the Japanese government, defense planners, and scholars make greater efforts to explain these constraints to foreign counterparts.

The SDF may well be, ironically, the strongest administrative organization in the world, yet it is still not a military in the legal sense. Recognizing this distinction is a critical first step toward enabling the SDF to become a more capable and reliable partner for the U.S. and other allies in maintaining regional and global stability.