

# ISSUE BRIEF

## Executive Summary

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# Legal Assessment of the 2026 U.S.-Iran War and Implications for the Republic of Korea

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## Introduction

This Issue Brief analyzes the international legal dimensions of the military confrontation between the United States and Iran that commenced in early 2026. It evaluates the legitimacy of preemptive force, the legal status of maritime blockades in international straits, and the paradigm shift in the regulation of artificial intelligence (AI) in warfare, concluding with policy recommendations for the South Korean government.

## I. The Legality of Preemptive Military Action: Operation Epic Fury

On February 28, 2026, the United States and Israel initiated “Operation Epic Fury,” a large-scale military campaign targeting Iran’s nuclear infrastructure and political leadership. This action followed the collapse of negotiations regarding Iran’s uranium enrichment levels, which had reportedly reached a threshold capable of rapid weaponization.

- Anticipatory Self-Defense vs. UN Charter Article 51: Under Article 51 of the UN Charter, the right to self-defense is triggered by an “armed attack.” However, modern international law increasingly recognizes “anticipatory self-defense” in response to an imminent threat.
- The Webster Formula: The legality of such preemptive strikes is often measured against the “Webster Formula,” which requires the necessity of self-defense to be “instant, overwhelming, leaving no choice of means, and no moment for deliberation.”

Contested Imminence: The United States justified the strike as a means of eliminating an “imminent threat” to regional allies and U.S. personnel. Legal scholars, however, debate whether a nuclear threshold constitutes a “threat of armed attack” or whether the “imminence” was a subjective assessment by the U.S. administration.

## II. Retaliatory Strikes and the Principle of Distinction

Iran responded by targeting U.S. military installations across the Middle East and civilian energy infrastructure in neighboring states.

- **Sovereignty of Third-Party States:** Iran attacked at least 17 sites in countries such as Qatar, the UAE, and Saudi Arabia. Because many host nations did not authorize the use of their territory for the initial U.S. operation, Iran's strikes constitute a prima facie violation of the sovereignty and territorial integrity of these third-party states.
- **The Principle of Distinction:** Under the law of armed conflict (LOAC), belligerents must distinguish between military objectives and civilian objects. Iran's targeting of the Habshan gas facility (in the UAE) and various petrochemical complexes violates this core principle, as these facilities do not offer a "definite military advantage" that would justify their destruction.

## III. The Law of the Sea and the Blockade of the Strait of Hormuz

A critical escalation occurred with Iran's blockade of the Strait of Hormuz and the imposition of a \$2 million "transit fee" on vessels navigating the waterway.

- **Transit Passage vs. Innocent Passage:** While the 1982 UN Convention on the Law of the Sea (UNCLOS) provides for "transit passage" in international straits, Iran—a non-ratifying state—claims "persistent objector" status. Nevertheless, the "right of innocent passage" is firmly established in customary international law and cannot be suspended in international straits.
- **Illegality of Transit Fees:** Under UNCLOS and customary law, coastal states may levy fees only for specific services rendered, not for mere passage through territorial waters.
- **Law of Naval Warfare:** Even in a state of international armed conflict (IAC), the San Remo Manual dictates that a naval blockade must not unduly prejudice neutral states or completely close an international strait to neutral shipping. Iran's actions thus lack legal justification, even under wartime frameworks.

## IV. The Erosion of "Meaningful Human Control" in AI Warfare

The U.S. operation demonstrated a significant evolution in AI-integrated warfare, characterized by high-speed, multi-target identification and execution.

- **Automation Bias and Time Compression:** The volume of data processed by AI systems in this conflict effectively neutralized the "human-in-the-loop" (HITL) requirement. Human operators were reduced to mechanically approving AI-generated target lists, a phenomenon known as "automation bias."
- **Shift in Legal Focus:** This conflict suggests a transition from regulating individual battlefield decisions to focusing on "systemic control"—the rigorous design and pre-deployment verification of AI systems under Article 36 of the 1977 Additional Protocol I to the Geneva Conventions.

## V. Strategic Implications and Recommendations for South Korea

For South Korea, which maintains high trade and energy dependency on the region, the conflict presents an existential economic risk.

**1. Refusal of Illegal Tolls:** The ROK should align with like-minded states to reject Iran’s transit fees. Acceptance of these fees could be interpreted as “subsequent practice” that undermines established customary rights of innocent passage.

**2. Participation in Multinational Naval Operations:** The government should consider joining a multinational coalition to secure the Strait of Hormuz. However, participation must be governed by strict rules of engagement (ROE) limited to defensive escort and mine clearance to remain within the bounds of international law.

**3. Modernizing Domestic AI Frameworks:** In line with “Defense Innovation 4.0,” the ROK military must institutionalize lifecycle legal reviews for AI weaponry. This includes mandating explainable AI (XAI) to ensure that command responsibility can be legally assigned in the event of LOAC violations.

### About the Author

**Dr. Shim Sangmin** is senior research fellow at the Asan Institute for Policy Studies. Prior to his current position he worked as professor (non-tenured) at the Graduate School of Green Growth and Sustainability at KAIST from 2023 to 2025, as research fellow at the Asan Institute for Policy Studies from 2022 to 2023, as visiting research fellow at the Sejong Institute from 2021 to 2022 and as assistant professor of international law at the Korea National Diplomatic Academy (KNDA) from 2016 to 2021. He also served as visiting scholar at the Environmental Law Institute (ELI), a private think-tank that conducts research on issues of international environmental law, from 2015 to 2016. Dr. Shim’s legal educational background includes a J.S.D. degree at Stanford University, which was awarded in 2015 with his dissertation entitled, “Structuring Climate Policy in the Korean Electricity Sector: Politics, Institutions and Mitigative Capacity-Building.” He also holds a J.S.M degree at the same university, and is a graduate of Seoul National University. (B.A. & M.A. in law) An expert on international environmental law and policy, Dr. Shim is especially interested in climate change law and policy. His academic interests extend to conventional international legal issues as well, such as peace and security in the United Nations system, law of the sea, nuclear non-proliferation, human rights in North Korea and state responsibility. He also covers a variety of non-traditional security issues – energy, environmental, economic and human security.

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(‘미-이란 전쟁의 국제법적 쟁점에 대한 검토와 우리나라에의 시사점’)