

# Humanitarian Law Aspects Concerning Cultural Heritage Protection in Tourism Business: Special Reference to Jakarta Old City Area

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## ABSTRACT

Indonesia has enacted Law No. 11 of 2010 on cultural heritage and other national laws and regulations to protect cultural heritage, among others, by implementing cultural heritage ratings. Indonesia has also ratified the 1954 Den Haag Convention and its First Protocol which also regulates the protection of cultural property during armed conflict. The problem arises whether any legal correlation between the two instruments in relation to the implementation of the tourism business. This research is a secondary data-based normative research with a content analysis approach. Based on the discussion, the two instruments are related to each other and are complementary. The scope of application of Cultural Heritage Law can be expanded to protect cultural heritage, and the zoning of cultural heritage can be strengthened by using internationally recognized zones based on humanitarian law, including the international symbol for cultural property. The primary duty of the Government and business stakeholders in the tourism business is to ensure no military character in their business and keep the status of their personnel and business staff as civilian persons.

**Keywords:** *Cultural heritage, Hague convention 1954, Humanitarian law, Law No. 11 of 2010 on cultural heritage.*

## 1. INTRODUCTION

The tourism sector in Indonesia is one of state income that is very beneficial for economic growth. Opportunities generated from the tourism sector can generate job opportunities, reduce unemployment, provide a positive image for the region concerned, and increase prosperity for the surrounding area. In addition to the various advantages and positive factors resulting from business in the tourism sector, there are also risk factors in its implementation. One of these risks is when the tourism sector business must continue to be carried out in situations of armed conflict. When a conflict occurs for a long time and is protracted in nature, the tourism sector business will face a somewhat complicated situation. On the one hand, the business must continue to run because it generates income. However, on the other hand, there is a risk for the unsuccessful implementation of the business in question.

Concerning the tourism business related to cultural heritage objects, such as Jakarta's old city area, several legal obligations must be carried out by business people, both government-owned and private companies. In a peaceful situation, Law no. 11 of 2010 on Cultural Heritage has formulated what obligations must be carried out in the context of preserving cultural heritage. On the

other hand, Indonesia has also ratified The Hague Convention 1954 and its Protocol I, which regulates the protection of cultural objects during armed conflict. Indonesia has also ratified Presidential Decree No. 234/1966. The ratification was carried out without reservation. All the clauses in the agreement bind Indonesia as a party to the agreement and create an obligation on Indonesia to make implementing rules. The problem that arises, in this case, is whether there is a positive correlation between the two instruments related to the implementation of the cultural heritage tourism business.

## 2. RESULT AND DISCUSSION

### *2.1 The Meaning of Cultural Heritage/Cultural Property*

According to Law no. 11 of 2010 (hereinafter referred to as the Cultural Heritage Law), cultural heritage is a material heritage in nature located on land and/or in water that needs to be preserved because of its essential value for history, science, education, religion and/or culture through determination process. The cultural heritage can be in the form of cultural heritage objects, both natural

and manufactured; movable or immovable, in the form of a unit or group or part thereof, or the remnants of which are closely related to culture and the history of human development. In addition, what is included in the cultural heritage are cultural heritage buildings, cultural heritage structures, cultural heritage sites, and cultural heritage areas, namely geographical units that have two or more cultural heritage sites located close together and/or show distinctive spatial characteristics.

While The Hague Convention of 1954 uses the term cultural property, which includes movable and immovable objects that have essential values as cultural heritage for every human being. Such as architectural, artistic, or historical monuments, archaeological sites, groups of buildings which as a whole have historical or artistic value; works of art; manuscripts, books, and other objects of artistic, historical, or archaeological value, as well as knowledge collections and collections of important books or archives or reproductions thereof. In addition, what is included in cultural property is a building intended to preserve or exhibit movable cultural objects, including a location consisting of many cultural properties called centers containing monuments.

By looking at the definitions contained in the two legal documents, it can be concluded that both provide similar meanings. The different terminology used reflects the abstract and ideal concepts for the word "heritage," while the word "property" is more concrete, but the said terms would be strictly complementary (Frigo, 2004). However, the approach taken by each is different. The Cultural Heritage Law provides more definitive boundaries, while The Hague Convention prefers to provide an example. For example, The Hague Convention expressly stipulates that a collection of essential books or manuscripts is a cultural property. At the same time, the Cultural Conservation Law covers this matter with the meaning of cultural heritage objects. This is confirmed in the explanation of Article 18 paragraph (2), which explains that the collection referred to in the article is material evidence of cultural results, including ancient manuscripts.

The Cultural Conservation Law makes cultural heritage sites a separate classification of the five existing classifications, while The Hague Convention classifies it as the first of the three existing classifications.

## ***2.2 Scope of Application***

Although the two instruments provide a similar understanding of cultural heritage, what slightly distinguishes the two is the scope of application. The Cultural Heritage Law is a provision that regulates the preservation of cultural heritage so that the benefits can be felt for future generations. According to the Cultural Heritage Law, conservation actions are carried out in three aspects: protection, development, and utilization of cultural heritage both on land and in water. The protection aspect consists of steps to carry out safeguard, security, zoning, maintenance, and restoration. Aspects of development are applied in the form of research,

revitalization, and adaptation. Optimal utilization is intended to achieve optimal results in religion, society, education, science, culture, and tourism.

Meanwhile, The Hague Convention was formulated by recognizing that cultural heritage is often a silent victim in situations of armed conflict. The Preamble of The Hague Convention also considers the need to preserve cultural heritage, which is very important for the world community so that such heritage must receive international protection. The Hague Convention stipulates that the protection of cultural property in times of armed conflict consists of safeguarding and respecting cultural property aspects. The security aspect requires participating countries to take preparatory actions to protect cultural property located in their national territory against the consequences of armed conflict that may occur by taking actions that are deemed necessary and must be prepared in times of peace. In comparison, the respect of cultural property obliges the state party to refrain from taking actions that are expected to cause damage to cultural property during armed conflict or avoid acts of violence aimed at the cultural property directly. In addition, states parties must also prohibit, prevent, and if necessary, stop all forms of theft, looting or illegal appropriation, and acts of vandalism against cultural property. Although the provisions on the aspect of security and respect are intended to protect cultural property, there is a clause in the aspect of respect in which it is stated that the obligation of the state party to protect these cultural properties can be waived only in cases where military necessity imperatively requires the discharge of obligations.

In general, it can be concluded that the two legal instruments have a different scope of application. The Cultural Heritage Law is intended to preserve cultural heritage oriented to be enjoyed by future generations. In contrast, The Hague Convention is intended to protect cultural heritage during the armed conflict from being damaged or destroyed.

However, some provisions show the same actions in both instruments. This can be seen from: first, the classification of action. It is necessary to observe whether protective measures consisting of safeguarding and respecting cultural property in The Hague Convention are the same as protective measures consisting of safeguard, security, zoning, maintenance, and restoration measures in Cultural Heritage Law. Based on the contents of the articles in the two instruments, there are specific actions with the same intention and purpose. For example, actions that need to be taken related to theft, looting, transfer, or illegal appropriation and acts of vandalism on cultural heritage. This is included in The Hague Convention and the aspect of safeguard and security in the Cultural Heritage Law. The security aspect, for example, is aimed at safeguarding and preventing cultural heritage from being lost, damaged, or destroyed (Article 61 paragraph 1). This is further strengthened by the prohibition against partially destroying cultural heritage, stealing, transferring, separating, or moving cultural heritage abroad (Articles 66-69). The Cultural

Heritage Law even stipulates that the security measures can be carried out by the caretaker and/or special police in charge of patrolling the cultural heritage area or making reports on criminal acts related to cultural heritage and arresting suspects, and submitting them to the police. This last provision is similar to the provisions in Article 8 paragraph (4) of The Hague Convention, which stipulates that the protection of cultural objects can be carried out by armed guards or police officers who are authorized to guard or be present in the vicinity of these cultural objects, and not to be used for military purposes.

Second, the scope of application. The aspect of safeguard as regulated in Article 57 of the Cultural Heritage Law provides the right for everyone to safeguard cultural heritage in an emergency or coercive situation. According to the elucidation of Article 57, the state of emergency is a condition that threatens the preservation of cultural heritage, including war. This shows that the actual war situation has also been considered by the drafting committee of the Cultural Heritage Law as a possibility that could happen. On the other hand, concerning protecting cultural heritage, The Hague Convention has emphasized that the parties must prepare the necessary measures to protect cultural property in peacetime.

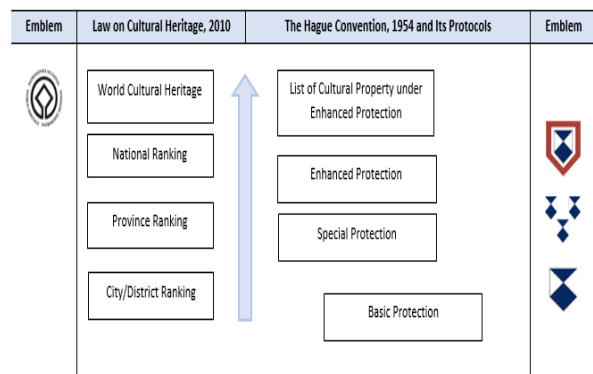
**2.3 Cultural Heritage Ranking**

Based on the Cultural Heritage Law, the Government and Local Governments can rank cultural heritage based on its importance into national ranking, provincial ranking, and district/city ranking based on the recommendation of the Cultural Conservation Expert Team. The highest ranking as a national cultural heritage must be determined by a Ministerial Decree and proposed by the government as a world cultural heritage. To determine the highest rank as a national cultural heritage, the requirements that must be met are: if the relevant cultural heritage is a form of national unity and integrity; contains the highest cultural values; rare in kind, unique in design, and few in number; as an evidence of the evolution of the nation's civilization and/or as an actual example of traditional residential areas, cultural landscapes and/or distinctive spatial uses that are threatened with extinction.

The Hague Convention has provided for the granting of special protection to cultural objects, a place of protection for movable cultural objects, or a center containing monuments if the cultural objects are located at a considerable distance from major industrial centers or important military purposes such as airports, broadcasting stations, ports, and so on. In addition, The Hague Convention also stipulates that cultural property is not used for military purposes. Special protection is given to the cultural property by registering it on the International Register of Cultural Property. The International Committee of the Red Cross (ICRC) stated that the particular protection system for cultural property under The Hague Convention was not worked. According to Rashid, Omer, and Khairy Ali, the cases in Syria and Iraq are examples of the failure of the

Convention due to the destruction of cultural objects and a large number of cases of theft (Emma Cunliffe & Lostal, 2016; Sulaf Abdullah Hama Rashid, Alaa Bahaa Omer, 2020). To deal with this, a special regulation was formed regarding cultural objects stolen or illegally exported in the Unidroit Convention (Giardini, 2018). In addition, the protection of cultural objects in times of conflict remains a concern with the formulation of the second Protocol of 1999, which formulated a new system with three conditions: the cultural objects concerned must have fundamental values for humanity that have been adequately regulated in national law and actions taken as an administrative act that recognizes the extraordinary historical and cultural value that must be granted the highest level of protection, as well as a declaration that the cultural property is not used for military purposes. Enhanced protection is given when the relevant cultural property is included in the List of Cultural Property under Enhanced Protection. The protection provided in this 1999 Protocol has been enhanced by other humanitarian law instruments such as Additional Protocol I, the Rome Statute, by accepting increasing non-international armed conflicts (Hladik, 2018).

Based on the provisions above, even though the two instruments regulate the same thing, namely a ranking of cultural heritage, they are based on different goals and interests. The Cultural Heritage Law determines the national ranking of cultural heritage, partly because the spatial use is unique and endangered. In contrast, the provincial ranking looks at the association of cultural heritage with ongoing traditions and the district/city ranking if the threat level is high and the type and amount limited. Meanwhile, The Hague Convention and its protocols focus more on ensuring that the status of the cultural object concerned remains as a civilian object. The higher the value of a cultural object, the higher guarantee, and confirmation was given that the cultural object is not used for military purposes.



**Figure 1** Rating on cultural property

**2.4 Zoning of Cultural Heritage**

The Cultural Conservation Law also stipulates provisions regarding zoning in Articles 72-74, namely the determination of the boundaries of the extent and use of space both horizontally and vertically. This zoning is intended for national cultural heritage or national cultural

heritage, including two or more provinces. The zoning system consists of the core, buffer, development, and/or support zones. Based on the explanation of Article 73 of the Cultural Heritage Law, the core zone is the main protection area to maintain an essential part of the cultural heritage. A buffer zone is an area that protects the core zone; a development zone is an area for the development of potential cultural conservation for recreational purposes, natural environment conservation area, cultural landscape, traditional cultural life, religion, and tourism. A *supporting zone* is an area designated for supporting facilities and infrastructure and general commercial and recreational activities.

The Hague Convention does not recognize a zoning system for the protected cultural property during the armed conflict but uses a distinguishing symbol to indicate protected cultural properties. This symbol is regulated in Article 6 jo. 16 paragraph (1) concerning essential protection which is manifested in the form of a shield, pointed below, per satire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle); while the distinguishing symbol for special protection is regulated in Article 16 paragraph (2) jo. Article 17 paragraph (1) is repeated three times in a triangular formation (one shield below). The provisions regarding this distinguishing symbol were later supplemented in the 1999 Protocol, which regulates enhanced protection.

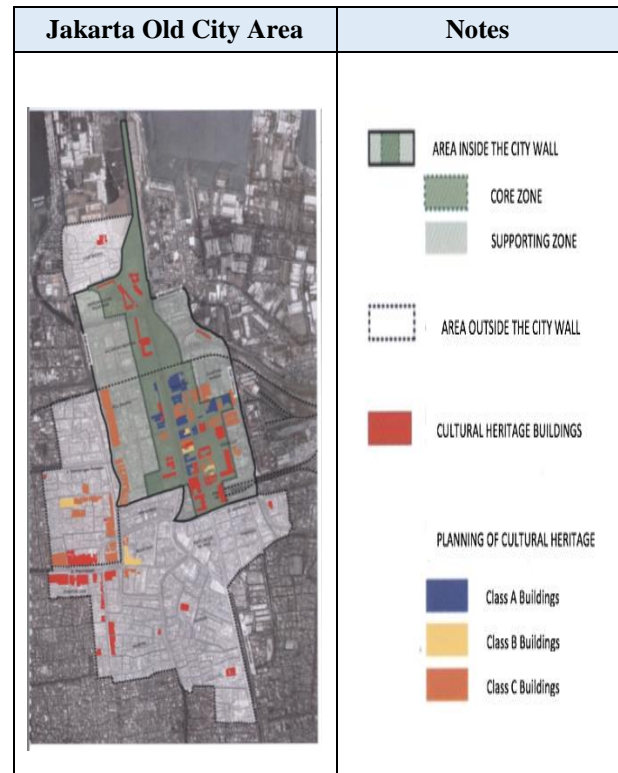
Based on the comparison of the provisions in the two instruments above, it can be seen that both have different aims and objectives. The zoning system mentioned in the Cultural Heritage Law is intended for recreational, educational, appreciative, and/or religious purposes. Meanwhile, to protect cultural objects in armed conflict, The Hague Convention and its protocol apply distinctive marking with certain international symbols. The use of this symbol will result in binding consequences for the parties to the conflict not to carry out direct attacks on cultural property as long as they are not used for military purposes.

### 2.5 Jakarta Old City Area

With regard to tourism destinations, the Local Government of Jakarta has issued Governor Regulation No. 36 of 2014 concerning the Master Plan for the Jakarta Old City area. This area covers a relatively large area, about 334 ha, which is part of the administrative areas of the Tambora, Glodok, Jembatan Lima, Pekojan, Roa Malaka, Pinangsia and Penjaringan sub-districts as part of the North Jakarta and West Jakarta administrative cities.

Based on Article 7 of the Governor's Regulation, there are two control areas, as shown in Figure 1, inside and outside the city walls, to facilitate the development and control of the old city cultural heritage area. The area inside the wall is an area with tight control. It implements a zoning system consisting of a core zone and a supporting zone, which has the primary function as an

educational function, cultural and social activities, international tourism icons, replication of the old city of Batavia, a limited business and trade center. The area inside the wall includes the Fatahillah Park area and its surroundings, the Beos Station area and its surroundings, the Kali Besar corridor and its surroundings, and the Sunda Kelapa area.



**Figure 2. Map of Cultural Heritage Buildings in Jakarta Old City Area.**

Issued by DKI Jakarta Government with Governor Regulation No. 475 of 1993

Based on the Governor's Regulation, the cultural heritage area of Jakarta's old city will be built based on several development plans. One of the regional development plans related to the topic of this paper is a commercial area development plan for offices, trade, and services (Article 17). This development is carried out without changing the essential morphological characters of the area or building. The commercial function is directed to strengthen the character of the area as a tourism and historical area. For example, in the core zone of Fatahillah Park, the development of commercial functions must support historical tourism in the old city within the city wall area, mixed functions that support tourism of historic buildings and cultural art centers, commercial functions that support marine historical tourism, and other activities that do not threaten environmental sustainability. Thus, the development of the old city area is directed at realizing the old city area as a cultural heritage area of high economic value as a tourist, business, service, and trade area while maintaining the character and historical values of the

region. To realize the development of the old city as a cultural heritage area, Jakarta Governor Decree No. 1729 of 2019 concerning the Team for the Acceleration of the Arrangement and Development of the Old Town Area was issued.

## **2.6 Government Duties**

The cultural heritage law has explicitly stated the duty for the government to protect cultural heritage by organizing disaster management in an emergency, including taking rescue actions in times of war, especially in preventing criminal acts aimed at cultural heritage, as described in the previous section. The authorities possessed by the government include the authority to determine site and area boundaries.

Obligations based on humanitarian law are not only binding on the state, organized armed groups, and soldiers, but international agreements in the field of humanitarian law that Indonesia has ratified, are also binding on every stakeholder actor, including business enterprises who carry out activities that intersect with armed conflict (ICRC, 1996). It is not easy to interpret what is meant by "carrying out activities related to armed conflict." Kolieb and Kurnadi stated that business activities could be considered related to armed conflict either directly or indirectly. Businesses that assist any kind to a party to a conflict may be considered as an activity closely related to armed conflict, even when carried out indirectly (Fauve Kurnadi, 2020). Hugo Slim explores six prominent roles of business in war: perpetrator, victim, supplier, humanitarian actor, peacebuilder, and business and conflict prevention (Slim, 2012).

Therefore, the government and tourism businesses must pay attention to several essential things in the event of an armed conflict (ICRC, 1996):

1. Ensure that there is no military character in all elements of the business being managed.
2. Take necessary protective measures: for example, placing cultural objects in a safe zone.
3. Determining the boundaries of the area of cultural objects, including the use of a distinguishing international symbol.
4. Cooperating with the Police or the Armed Forces to protect cultural property assets, including conducting internal training in the capacity to guard cultural sites/objects.
5. Make preparations if the occupying power uses assets; with a receipt, it can be asked for compensation or actions supported by modern technology, CCTV, live recording, etcetera.

Based on this, the government of DKI Jakarta and the business actors of cultural heritage in the old city of Jakarta must ensure that there is no military character in every element of their business. This guarantee covers a variety of actions, such as not using the cultural heritage area as an ammunition depot, a gathering place for soldiers, not allowing part of the area to be passed through/armed convoys, not allowing the cultural heritage area to be used as a reconnaissance pot or not

allowing business people selling goods that are indispensable in a military operation. There must also be a guarantee that the employees and staff working in the business can still maintain their status as civilians and that they do not engage in direct participation in hostilities.

Concerning the necessary efforts to protect cultural heritage, the DKI Jakarta government can expand the implementation of the Cultural Heritage Law and the 2014 Governor's Regulation; for example, by stating that the core zone and buffer zone of Jakarta old city and even the area outside the city walls, if necessary, can be declared as a demilitarized zone or non-defended locality. In this case, it is also necessary to consider using a distinction symbol, both special protection and essential protection, as a sign that the cultural heritage of the old city area is protected during armed conflict. The use of an internationally recognized symbol of cultural objects is much better. It can complement the function of demilitarized zones or non-defended localities in the old city cultural heritage area. However, the provisions regarding demilitarized zones or non-defended localities will be challenged because the location of Jakarta's old city area with Sunda Kelapa Harbor is only about 4 km. In such a situation, it was impossible to ignore the old city area as a target destination for those who would attack from the north. The Hague Convention cannot even provide special protection when the location of a cultural object is not too far from an object or location that can be a target for military attacks, including ports. In addition, the status of the old Jakarta area as a cultural icon of Jakarta can make the area a target for attack, or an area that needs to be controlled or destroyed to show a monumental victory for the opposing party because it succeeded in destroying traditions and erasing memories in the past and forming a new historical narrative. Practices like this occur in Syria, Iraq, and Mali and are referred to as "cultural engineering" or "cultural cleansing." (Mahnad, 2017).

As a preventive measure that must be prepared in times of peace, the cooperation between the DKI Jakarta government and the Police or the Indonesian National Armed Forces can also be formulated in the context of preserving cultural heritage during the conflict. The government can also expand the functions of the police stipulated in the Cultural Heritage Law not only to record criminal acts and report them but also to carry out internal training for guard duties carrying light individual weapons. It should also be emphasized that such personnel are not combatants. These weapons are not used to carry out military actions but are only used to guard cultural heritage.

In this regard, the United Nations Guiding Principles on Business and Human Rights determines guidance on preventing and addressing business-related human rights harms, including in conflict-affected areas. According to this document, companies must respect human rights in all human rights legal instruments, including the ILO Declaration on Fundamental Principles and Rights at

Work. In particular situations, they must respect other rules, including humanitarian law (Davis, 2012).

### 3. CONCLUSION

The tourism business in the cultural heritage area of Jakarta's old city during armed conflict needs to be followed up and expanded with the implementation of the Cultural Conservation Law and The Hague Convention because the two instruments are related to each other and are complementary. The scope of application of Cultural Heritage Law relating to the occurrence of armed conflict in terms of efforts to save cultural heritage can also be expanded to protect cultural heritage. Internationally recognized zones in humanitarian law can strengthen the zoning of cultural heritage under the Cultural Heritage Law, and if necessary, by applying a rating of the protection of cultural objects, including international symbols.

The actions taken by the government in the tourism business of the Jakarta Old City cultural heritage area are to ensure that there is no military character in every business element contained in the area, determining a safe zone for cultural heritage, and the boundaries of the area by The Hague Convention regulations. It also binds the government and business actors and seeks institutional cooperation in the context of safeguarding cultural heritage in situations of armed conflict.

### REFERENCES

- [1] Davis, R. (2012). The UN Guiding Principles on Business and Human Rights and conflict-affected areas: State Obligations and business responsibilities. *International Review of the Red Cross*, 887(94), 961–979. <https://doi.org/doi:10.1017/S1816383113000350>
- [2] Emma Cunliffe, N. M., & Lostal, and M. (2016). The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations. *International Journal of Cultural Property*, 23(1), 1–31.
- [3] Fauve Kurnadi, J. K. (2020). *Doing Responsible Business in Armed Conflict: Risks, Rights and Responsibilities*. Australian Red Cross and RMIT University. Retrieved from [https://www.researchgate.net/publication/351324986\\_Doing\\_Responsible\\_Business\\_in\\_Armed\\_Conflict\\_Risks\\_Rights\\_and\\_Responsibilities](https://www.researchgate.net/publication/351324986_Doing_Responsible_Business_in_Armed_Conflict_Risks_Rights_and_Responsibilities)
- [4] Frigo, M. (2004). Cultural Property v. Cultural Heritage: A “battle of concepts” in international law? *International Review of the Red Cross*, 86(854), 367–378.
- [5] Giardini, G. (2018). The Principle of International relating Restitution of Cultural Property in the 1954 Hague Convention: The Unidroit Contribution. *Uniform Law Review*, 23(1), 42–80. <https://doi.org/https://doi.org/10.1093/ulr/uny003>
- [6] Hladik, J. (2018). The Second Protocol to the 1954 Hague Convention and Progress in International Humanitarian Law. *Museum International*, 55(3–4), 44–50. <https://doi.org/https://doi.org/10.1111/j.1350-0775.2003.00436.x>
- [7] ICRC. (1996). *Business and International Humanitarian Law. An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law*. Retrieved from <https://reliefweb.int/sites/reliefweb.int/files/resources/543048595E265015C25723A003766EB-ICRC-Dec2006.pdf>
- [8] Mahnad, P. L. (2017). Protecting cultural property in Syria: New opportunities for States to enhance compliance with international law? *International Review of the Red Cross*, 99(3), 1037–1074. <https://doi.org/10.1017/S1816383118000322>
- [9] Slim, H. (2012). Business Actors in Armed Conflict: Towards a New Humanitarian Agenda. *International Review of the Red Cross*, 887(94), 911–915.
- [10] Sulaf Abdullah Hama Rashid, alaa Bahaa Omer, and A. K. A. (2020). Protection of Cultural Property in the Light of International Humanitarian Law. *Journal of Critical Reviews*, 7(6). <https://doi.org/http://dx.doi.org/10.31838/jcr.07.06.176>