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Structural Failure:
Identifying Sites of Resistance in the Partnership Between Israel and
HeidelbergCement

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A thesis submitted in partial fulfillment of the
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Arts with Honors in International Studies

TRINITY COLLEGE

Hartford, Connecticut

"...economic interests in Israel are perpetuating the occupation.

It makes it so much harder to end."

-Sam Bahour, a Palestinian businessman¹

Part I: Introduction

The Israeli concrete market is built on shaky ground. On May 8, 2011, activists from Who Profits? captured a video of a cargo truck exiting the West Bank and bringing its wares into Israel.² The truck easily passed through checkpoints and the West Bank border, something the Palestinian workers who mined its cargo were unable to do. The truck belonged to Hanson Israel, a building materials company. Who Profits? filmed its journey on an evidence-collecting mission to investigate whether the company was profiting from illegally quarried Palestinian stone. Their suspicions were confirmed. Although it was only a single truck, the clandestine movement of Palestinian natural resources into Israel was a symbol for a greater crisis of capital. Israel has extracted and collected massive amounts of Palestinian natural resources through partnerships with corporations like Heidelberg. However, organizations like Who Profits? have been documenting, publicizing, and fighting those partnerships. Through analyzing scenarios like Heidelberg's illegal trucking of Palestinian stone, it is possible to explore the relationship

¹ Ethan Bronner, "Desert's Sand and Rocks Become Precious Resources in West Bank Dispute," *New York Times*, March 7, 2009, accessed May 8, 2016, <http://www.nytimes.com/2009/03/07/world/middleeast/07westbank.html>.

² "Hanson Quarry of HeidelbergCement in the West Bank," YouTube video, posted by "Who Profits?," May 8, 2011, accessed May 8, 2016, <https://www.youtube.com/watch?v=ols86IYCuio>.

between Israel and its building materials corporate partners in terms of the paradoxical policies and faulty logic that relationship is built on.

This paper focuses on Hanson Israel, a subsidiary company of Germany-based HeidelbergCement, as a case study for how Israel uses legal permissions, incentives, and regulations for corporations to further their exploitation of Palestinian resources. This tilted legal system has disregarded the rights of the Palestinian workforce while constructively interfering with the profit incentives of Heidelberg. Constructive interference is a phenomenon where powerful waves of force intersect at their strongest points, multiplying their power. For instance, explosives used in quarrying, or demolition, are most powerful when their blast waves intersect with each other. The Israeli legal system and the profit incentives of Heidelberg mutually reinforce each other, as if they are operating on the same wavelength. The result is a corporation with the legally-granted dual powers to justify the annexation of Palestinian territories and construct Israeli settlements in their place. However, the partnership between Israel and Heidelberg being laid out clearly in the form of policies, court opinions, and corporate actions has made it more open to critique. The medium that grants their symbiotic relationship legitimacy is also a vulnerability. While Israel and HeidelbergCement use the law as a mechanism to further a mutually beneficial settler-colonial project, these laws also provide ground on which the logic and legitimacy of the project can be challenged.

Part II examines the different ways the Israeli state and Heidelberg work in tandem to achieve their interests as a settler-colonial state and capitalist entity respectively. There are three sections on land, labor, and market strength that analyze how state policies, corporate profits, and mutual complicity in human rights abuses provide means for both Israel and Heidelberg to expand their capital, including property. Part III looks at the building materials market, decisions

by the Israeli Supreme Court, and international law related to occupying powers, in order to analyze how non-profits, Palestinians, and international organizations have pushed for Palestinian rights using legal challenges. In this way, activists have exposed the illegitimacy of Israel's colonial project in cases where litigation has proved ineffective. Throughout this section are ways legal activism can strengthen other arms of the movement for Palestinian rights. The Conclusion summarizes this idea through a conceptualization of activism as a dialectic process.

Part II: Colonialism and Capitalism in Concert

Heidelberg Cement is a for-profit buildings materials corporation.³ Since 2009, they've shown a revenue increase of over 20% in what they call the "Africa-Mediterranean Basin," which includes Israel.⁴ The other countries in the Mediterranean that Heidelberg operates in are Turkey and the United Arab Emirates. They also claim to be the market leader in the eight sub-Saharan countries in Africa where they operate.⁵ These are countries undergoing large-scale infrastructure development where Heidelberg sees the potential for long-term growth. Israel's need to construct new settlements, in addition to structures like the separation wall and transportation infrastructure, has made it a lucrative market for the building materials industry. However, unlike the other countries, Israel is building infrastructure on land they have no legal claim to. In Israel, Heidelberg participates in the cement, aggregates, concrete-asphalt, and

³ "HeidelbergCement," HeidelbergCement Group, accessed May 8, 2016, <http://www.heidelbergcement.com/en/company>.

⁴ "Growth in Metropolitan Areas: Annual Report 2015," HeidelbergCement, March 17, 2016, accessed May 8, 2016, downloaded from <http://www.heidelbergcement.com/en/reports-and-presentations>, 61.

⁵ "Africa-Eastern Mediterranean Basin," HeidelbergCement, accessed May 8, 2016, <http://www.heidelbergcement.com/en/africa-eastern-mediterranean-basin>.

service industries. Heidelberg, as a global capitalist firm, has acted on the opportunities that offer the most potential for profit. From the perspective of a business seeking to maximize profit, it makes sense that Heidelberg operates in Israel and the Occupied Palestinian Territories (OPT). However, acting on the incentive of profit does not make a business' operations ethically neutral, and not all building projects are ethically equal in their impacts.

In order for Israel to build their settlements, they need materials like concrete. In order for Heidelberg to continue raising its revenue, it must continually find new construction projects to supply concrete for, or new land to quarry. The result is a cycle of expansion that continues to acquire land and labor from Palestinians. This section is intended to be a survey and analysis of the various ways that Heidelberg and Israel have used state policy to further each other's interests.

A. Land

The transfer of capital from Palestine to Israel is often discreet due to the potential for backlash against the corporations or states involved. Because of this, organizations and initiatives have been created to hold buyers and traders accountable to the legality and impacts of their supply lines. Who Profits? is a research center founded by the Coalition of Women for Peace, "a feminist organization against the occupation of Palestine and for a just peace."⁶ According to Who Profits?, Hanson Israel operates four projects in Israeli settlements in the West Bank⁷: Concrete plants in Modi'in Illit and Atarot, and an asphalt plant and aggregates quarry south of

⁶ "About CWP," Coalition of Women for Peace, accessed May 6, <http://www.coalitionofwomen.org/about-1/about/?lang=en>.

⁷ "About Who Profits?," Who Profits?, accessed May 8, 2016, <http://www.whoprofits.org/content/about-who-profits>.

Elkana.⁸ There, they have access to the rich, non-renewable natural resource of Palestinian stone. Settlement quarries provide about a quarter of Israel's total quarried product needs, and 75% of the materials extracted from settlement quarries is exported to Israel.^{9,10} This would be impossible for Heidelberg to accomplish if they were not given access to Area C, the part of the Occupied Palestinian Territories that Israel retains full power over law enforcement, planning, and infrastructure.¹¹ The Oslo Accords also divided Palestine into Area A, Area B, and Area C, each with varying levels of Palestinian autonomy. Area A, which is under the control of the Palestinian Authority (PA), takes up only 18% of the West Bank. Even these are separated by checkpoints and borders from areas controlled by Israel.¹² Area B takes up the remainder, and is under Israeli control with some marginal input from the Palestinian police. Area C is the only contiguous area of the OPT, and makes up a majority of the OPT. 70% of Area C has been allocated to be controlled by the regional councils of Israeli settlements, with no Palestinian input. A map of the Area divisions is attached as an annex to this paper.

Heidelberg benefits from access to Area C and its resources. It also contributes to the expansion of that territory. Once businesses and settlements are set up in the West Bank, a

⁸ "HeidelbergCement," Who Profits?, accessed May 8, 2016, <http://www.whoprofits.org/company/heidelbergcement>.

⁹ "HCJ 2164/09 – Yesh Din – Volunteers for Human Rights v the Commander of the IDF Forces in the West Bank," Yesh Din, September 3, 2009, accessed May 8, 2016, <http://www.yesh-din.org/en/petition-to-halt-all-israeli-quarry-and-mining-activities-in-the-west-bank-hcj-216409-yesh-din-volunteers-for-human-rights-v-the-commander-of-the-idf-forces-in-the-west-bank/>.

¹⁰ Mel Frykberg, "Israel Stripping West Bank Quarries," Electronic Intifada, May 2, 2009, accessed May 8, 2016, <https://electronicintifada.net/content/israel-stripping-west-bank-quarries/8210>.

¹¹ "Area C of the West Bank: Key Humanitarian Concerns," United Nations Office for the Coordination of Humanitarian Affairs, occupied Palestinian Territory, January 2013, accessed May 8, 2016, https://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_january_2013_english.pdf.

¹² Ehab Zahriyeh, "Maps: the occupation of the West Bank," Al Jazeera America, July 4, 2014, accessed May 8, 2016, <http://america.aljazeera.com/multimedia/2014/7/west-bank-security.html>.

network of fences surrounds them. The perimeter expands as time goes on to encompass more and more territory.¹³ By creating a presence of workers and infrastructure at the periphery of Israel's territorial claims, Heidelberg paves the way for new territorial claims; for the justification of security forces and civilian settlements. Heidelberg reported in its 2015 profit report that while Israel's economy stagnated, they were able to maintain a steady increase in profits due to "numerous infrastructure projects and a slight increase in residential construction."¹⁴ Most of Hanson Israel's activities in the West Bank are not well-documented since the organization does not provide public reports on their activity in the region. However, a Hanson concrete truck has been documented transporting concrete to the Barkan settlement in the West Bank for construction. There is also the aforementioned video taken by Who Profits? of a Hanson truck carrying quarried material from the West Bank into Tel Aviv. The construction they are referring to in their profit report is, at best, an extraction of Palestinian resources to Israel, and at worst, the underground construction of more illegal settlements.

Rather than neutrally allow Heidelberg to operate, Israel takes active measures to support their spread into the OPT. They do this despite their occupation ostensibly being a temporary measure while Palestinian society rebuilds. Israel signed the 1995 Oslo Interim Agreement (the Oslo II Accord) on September 28, 1995, promising to let Palestine build up an autonomous government "for a transitional period not exceeding five years from the date of signing the Agreement on the Gaza Strip and the Jericho Area... on May 4, 1994."¹⁵ However, the

¹³ "Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Human Rights," Human Rights Watch, January 19, 2016, accessed May 8, 2016, <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>, Summary.

¹⁴ "Annual Report 2015," HeidelbergCement, 73.

¹⁵ "1995 Oslo Interim Agreement," Israel Ministry of Foreign Affairs, September 28, 1995, accessed May 8, 2016,

occupation has continued far beyond the deadline. In fact, Israel began building its separation wall in the West Bank in 2002.¹⁶ A similar five-year transition period was promised in the first Oslo Accord, signed in 1993.¹⁷ One tool the Israeli government uses to encourage business operations and settlements in the West Bank is the designation of "National Priority Areas (NPAs)."¹⁸ NPAs receive large government subsidies towards development and education, as well as subsidized mortgages.¹⁹ This makes it easy for burgeoning business operations to attract Israeli workers and quickly develop infrastructure for operation and trade. Meanwhile, harsh Israeli policies towards Palestinian businesses and infrastructure cause many Palestinians to leave Area C,²⁰ clearing the way for Israel to acquire more territory. The difference between whose communities are allowed to build themselves up, and whose must be fled, is based in discrimination.

<http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>.

¹⁶ "Israel profile - timeline," BBC News, April 19, 2016, accessed May 8, 2016,

<http://www.bbc.com/news/world-middle-east-29123668>.

¹⁷ "Text: 1993 Declaration of Principles," BBC News, September 1993, accessed May 8, 2016,

http://news.bbc.co.uk/2/hi/in_depth/middle_east/israel_and_the_palestinians/key_documents/1682727.stm.

¹⁸ Barak Ravid, "PM's Plan Would Put Some Settlements on Map of National Priority Communities," Haaretz, December 10, 2009, accessed May 8, 2016,

<http://www.haaretz.com/pm-s-plan-would-put-some-settlements-on-map-of-national-priority-communities-1.2448>.

¹⁹ "Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories," Human Rights Watch, December 19, 2010, accessed May 8, 2016, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>.

²⁰ "Israel: Court Permits Discriminatory Evictions," Human Rights Watch, May 19, 2015, accessed May 8, 2016, <https://www.hrw.org/news/2015/05/19/israel-court-permits-discriminatory-evictions>.

Acquiring territory from a legal perspective requires more than just a physical occupation. One way Israel makes legal claims on Palestinian land is through eminent domain.²¹ Under the current laws, any land that has not been cultivated for three to ten years, depending on its distance from a community, becomes "state land." Any uncultivated land more than two-and-a-half kilometers from a built-up community also becomes state land. These laws apply to the settlements in the West Bank as well as Israel. There is almost no land more than two-and-a-half kilometers from any community in the West Bank because of the incredibly crowded conditions, so that clause is ineffective. However, Israel used claims that Palestinian land was undeveloped for a number years to seize 5,114 dunams (1264 acres) of land in the West Bank from 2005 to 2009 alone, for a total of 913,000 dunams (225,606 acres) as of April 12, 2016. This is about 16% of the West Bank. The construction of settlements just outside the Green Line is used as a tool to expand "state land." This process requires concrete and other building materials. While those materials are expended, the annexation process simultaneously expands the natural resources to which Israel has access. The process of extraction and production becomes a cycle.

These processes occur despite the Oslo Accords stating that Israel should seek to transition power of the OPT back to Palestine within five years time.²² The processes of subsuming Palestinian communities as 'state land' and building settlements, while constantly expanding the borders of Israel, implies a move towards permanent settlement. Heidelberg and its operations in the West Bank are playing an integral part in this relentless growth, not just as another business stretching Israel's territory of operations out past the Green Line, but also as a

²¹ B'Tselem, "By Hook and By Crook: Israeli Settlement Policy in the West Bank," *Journal of Palestine Studies*, Vol. 40, No. 1 (Autumn 2010), accessed May 8, 2016, http://www.jstor.org/stable/pdf/10.1525/jps.2010.xl.1.198.pdf?_=1460457644866.

²² "1993 Declaration," BBC News.

source of materials with which to construct new permanent settlements in Palestinian territory.²³ Not only is the occupation planned by the Israeli government to be permanent, they are relying on its permanence to continue annexing territory.

B. Labor

Palestinian land-owners are denied the ability to profit off their own natural resources. Because of that, Palestinian manual laborers are unable to work in their fields due to a lack of available jobs. Then, when Israeli firms enter the area and begin profiting, the Palestinians are denied the rights and protections afforded to Israeli workers. They are often coerced into working for the firms, like Heidelberg, encroaching on their territory. These industries that enable the occupation that has destroyed the Palestinian economy now act on the resulting desperation as a business opportunity. The availability of hard labor becomes one less thing the state of Israel has to worry about when planning the expansion of quarrying and concrete businesses, and by extension, the expansion of Israel. In addition, the profit produced by Palestinian labor works its way almost entirely into Israeli hands. The cycle of investment into a violent, profitable system continues.

Historically, Palestinians in the Occupied Territories have had to rely on the labor laws of the Jordanian Authority to protect their rights. They had no recourse in Israeli courts against their employers, despite living within the Occupied Territories where Israel was imposing military law. Palestinian workers were being paid lower wages, and were not accessing protections like health insurance offered by Israeli companies. Even today, there is a struggle to make sure

²³ "HeidelbergCement," Who Profits?.

Palestinian communities are educated about their new rights. One of the workers in the West Bank interviewed by Human Rights Watch, Ibrahim, was not aware until the interview that he was entitled to a minimum wage.²⁴

In 2007, the human rights group Ka LaOved brought a case to the Israeli Supreme Court arguing that Palestinians should be protected by Israeli labor laws, and that the system in place was discriminatory on the basis of ethnicity.²⁵ The Court unanimously agreed. Since the applicable law was never specified in the business contracts used as evidence, they decided they should defer to whichever law had the 'strongest ties' to the contract. Since the corporations were based in Israel for taxes and other and legal purposes, followed Israeli laws for workers living in the settlements, and some of the contracts were explicitly for the Israeli government, the law with the closest ties was clearly Israeli. Kav LaOved reports that the case took 14 years to pass. This slow movement through the Court was indicative of the Israeli government's desire to keep labor cheap in the settlements, in order to encourage Israelis to move there.²⁶

Though most of Heidelberg's business records are not public, Human Rights Watch had an enlightening email correspondence with the director of Group Communication & Investor Relations for Heidelberg, Andreas Schaller. Andreas claimed that of the 36 Hanson employees who held citizenship with the Palestinian Authority, all were paid minimum wage and were given the same benefits as Israeli employees.²⁷ This may be true. However, if it is not, it is

²⁴ "Occupation, Inc.," Human Rights Watch, Section VI.

²⁵ "HCJ 5666/03, Kav LaOved v. National Labour Court," Versa: Opinions of the Supreme Court of Israel, October 10, 2007, accessed May 8, 2016, <http://versa.cardozo.yu.edu/opinions/kav-laoved-v-national-labour-court>.

²⁶ Salwa Alenat, "Palestinian Workers in the West Bank Settlements," Kav LaOved: Worker's Hotline, March 12, 2010, <http://www.kavlaoved.org.il/en/palestinian-workers-in-the-west-bank-settlements/>.

²⁷ "Occupation, Inc.," Human Rights Watch, Annex VIII.

unlikely to ever come to light. While the Supreme Court decided in 2007 that Palestinians employed by Israeli firms were protected under Israeli labor laws, this decision has yet to be enforced. A lack of resources, confusion over which laws to apply, and a lack of available law enforcement have all been cited by government agencies as reasons firms in the settlements have not been subject to oversight.²⁸ With oversight lacking, trust is left to the companies to behave in accordance with Israeli law. In addition, Palestinians are decentivized from filing suits against their employers due to backlash. The Israeli system of work permit distribution, which grants Palestinians the ability to enter settlements to work, includes a background check for actions deemed a threat to the Israeli security. There is precedent for Palestinians having work permits denied. This essentially cuts them off from employment prospects, due to having filed suits against their Israeli employers in the past. In fact, Israeli corporations have used this as a bargaining chip, or a threat, to prevent Palestinian employees from bringing cases against them.²⁹ This is the reason Ibrahim provided when asked by the interview from Human Rights Watch if he would seek a suit against his employer.³⁰ Even when workers are able to overcome the lack of oversight, the threats, and the fear, their cases often languish in Court. Most of the lawsuits brought to court by Kav LaOved from 2008-2013 were still being discussed in court as of July 7, 2013.³¹

Even in the rare situation where Palestinian workers are aware of their rights, willing to sue, and likely to be successful, there are ways around granting Palestinian workers Israeli labor protections. In addition to the 36 employed Palestinians, Schaller claimed that Hanson employed

²⁸ Ibid., Section VI.

²⁹ Alenat, "Palestinian Workers."

³⁰ "Occupation, Inc.," Human Rights Watch, Section VI.

³¹ Alenat, "Palestinian Workers."

25 more Palestinians through subcontractors.³² This is a significant 40% of their Palestinian labor force. Hanson is under no obligation to pay any of the employees hired through Palestinian subcontractors minimum wage. For the last few decades, a culture has been created in the West Bank specifically of Israeli firms hiring contractors who then theoretically distribute the money they make from providing labor to the contracted employees.³³ However, these employers help the firms skirt accountability. Some ways they do this are by only providing their own names on employee forms, skimming part of the wages provided for themselves, or holding a high social status that prevents them from being targeted by lower-waged workers within their communities. Heidelberg is complicit in this middle-man system. As a result, they are denying fair wages and benefits to nearly half of their employed Palestinian workforce. By not addressing these loopholes, the Israeli legal system is passively responsible for allowing them to occur.

As a concrete and quarrying company, Heidelberg employs Palestinian labor in an even more malicious way than solely attracting settler investment and saving money on labor. They actually employ people to create the literal building blocks of the structures used to subsume their land. Palestinians are not just denied Israeli permits to quarry. Almost all permits to build, develop, or extract resources from land are also denied.³⁴ These prohibitions create a scenario where Palestinian workers are desperate for jobs in order to survive, and willing to work for a company profiting from the natural resources they had previously owned. The result is a self-perpetuating machine of territorial spread and economic dependence, with Palestinians forced to put in the labor necessary for it to function.

³² "Occupation, Inc.," Human Rights Watch, Annex VIII.

³³ Alenat, "Palestinian Workers."

³⁴ "West Bank and Gaza - Area C and the future of the Palestinian economy (English)," the World Bank, October 2, 2013, accessed May 8, 2016,

C. Market

The Israeli economy, the economy of settlements specifically, is premised on a strong construction industry that allows that the state to continue expanding. It is beneficial to both the state and building materials corporations, including Heidelberg, to make sure that Israeli firms are accessing as many of the resources within the Occupied Territories as possible. They avoid the alternative of letting Palestinians control their own supply lines. This allows the firms to produce goods cheaply and have a consistent market while avoiding competition, while Israel receives a larger portion of the profit produced through taxes. However, this oligopoly, or monopoly-by-state, can only be achieved through the suppression of a 'free market' that would allow Palestinian businesses to compete on equal grounds with Israeli businesses. To that end, Israel and Heidelberg have historically worked with each other in order to secure Heidelberg and similar companies access to Palestinian resources, while cutting Palestinians out of the market.

Israel is extremely selective when they grant licenses to Palestinian businesses, if they ever grant those licenses. The Palestinian Union of Stone and Marble, representing over 500 Palestinian businesses, has reported that no licenses have been issued to Palestinian quarry businesses.³⁵ Palestinian quarries that choose to operate without a license face threats of equipment confiscation, decimating the livelihood of the workers.³⁶ Often, Israel's Civil Administration holds onto a permit application indefinitely instead of outright rejecting it.³⁷

³⁵ "Israel: Businesses Should End Settlement Activity," Human Rights Watch, January 19, 2016, accessed May 8, 2016, <https://www.hrw.org/news/2016/01/19/israel-businesses-should-end-settlement-activity>.

³⁶ "Occupation, Inc.," Human Rights Watch, Section III.

³⁷ Ibid.

The designation of National Priority Areas provides tax breaks and subsidies both to Israeli businesses operating in the settlements, and to settlers that take advantage of the employment opportunities these businesses offer. The settlements that Heidelberg operates in; Modi'in Illit, Atarot, and Elkana; are all in the Jordan Valley, and were included in the new map of National Priority Areas released in 2009.³⁸ While the Jordan Valley settlements also include some Arab towns and villages, individual ministers of Israel have the exclusive right to assign funds to whichever regions or causes in their jurisdiction that they see fit.³⁹ This funding is then not reported in a centralized or publicly available location, which means I was unable to find out for certain if Heidelberg's operations had received subsidies. However, Adalah, a legal center for Arab and minority rights in Israel, believes the new system is "liable to increase inequality between Jewish and Arab towns within NPAs."⁴⁰ It is highly likely that funds are being concentrated in Jewish Israeli settlements while Arab and Palestinian communities are left to catch up on their own. If this is not the case, there would have been no need to create such an opaque, inauditable system.

The location of settlements, and by extension PRAs and settlement businesses, is intimately tied to the health and size of the Israeli market. At a Trade Office meeting in 1982, one Israeli minister explained that the location of settlements was largely based on the potential for growth and sustainability; choosing locations that could attract as many settler-workers as possible and keeping them there with bustling industry.⁴¹ Israel's Interior Ministry made similar

³⁸ Ravid, "PM's Plan."

³⁹ "Adalah Position Paper: On the Israeli Government's New Decision Classifying Communities as National Priority Areas," Adalah - The Legal Center for Arab and Minority Rights in Israel, February 2010, accessed May 8, 2016, <http://www.adalah.org/uploads/oldfiles/newsletter/eng/feb10/docs/english%20layout.pdf>.

⁴⁰ Ibid.

⁴¹ "Occupation, Inc.," human Rights Watch, Section III.

arguments and assumptions in March of 2008 about quarried materials specifically. He said that at the current rates of extraction and construction, quarries within Area C will be depleted in 38 years, transformed into concrete settlements and Israeli infrastructure.⁴² Recall that the settlements were declared by the Israeli government to last for five years in a signed document of international law.

One time Heidelberg was somewhat hampered by the state is during its attempted sale of Hanson Israel. They intended to sell Hanson to Mashab, a company of the Israeli-owned IDB Group. No reason was specifically provided by Heidelberg for the sale of a consistently profitable arm of their company. However, the sale was initiated in October 2009,⁴³ just months after a petition that March to the Israeli Supreme Court aimed at stopping the illegal quarrying of Palestinian land caused the government to freeze the construction of any new quarries until the case was settled.⁴⁴ The petition was filed by Yesh Din, an Israel-based organization that advocates for the rights of Palestinians. It makes sense that this mounting pressure would have caused Heidelberg to attempt a sale, fearing divestment or future legal restrictions. Israel's Antitrust Authority blocked the sale to Mashab on the grounds that the IDB Group already held a monopoly on cement production in Israel and controlled a significant amount of the

⁴² "High Court sanctions looting: Israeli quarries in the West Bank," B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, January 12, 2016, accessed May 8, 2016, http://www.btselem.org/settlements/20120116_hcj_ruling_on_quarries_in_wb.

⁴³ Guy Liberman, "Livnats, Dankner Want to Cement Business," Haaretz, October 20, 2009, accessed May 8, 2016, <http://www.haaretz.com/print-edition/business/livnats-dankner-want-to-cement-business-1.5799>.

⁴⁴ Yaakov Lappin, "Israel freezes expansion of West Bank quarries following High Court petition," The Jerusalem Post, May 21, 2009, accessed May 9, 2016, <http://www.jpost.com/Israel/Israel-freezes-expansion-of-West-Bank-quarries-following-High-Court-petition>.

transportation infrastructure needed to trade quarried materials.⁴⁵ They attempted to sell Hanson again in March 2011 to a company called Electra.⁴⁶ A monopoly would have raised the price of building materials for the state of Israel, so there was a vested interest in maintaining competition and not allowing Heidelberg to end their operations in Israel. On the other hand, Heidelberg has continues to profit and contribute to the construction of Israeli settlements beyond the Green Line in more ways than one. They haven't faced material harms and continue to be complicit.

In their email exchange, Human Rights Watch reveals that Heidelberg has contributed 3,250,000€ (about \$3,660,000 as of April 11, 2016) to the Civil Administration of Judea and Samaria. The Judea and Samaria Area is the Israeli government's official term for the West Bank. They paid another 430,000€ (about \$484,000) in taxes to the local municipal government of Elkana, the Shomron Regional Council. Those taxes came from their Nahal Raba quarry alone, located near Elkana.⁴⁷ This money is then used by the state to build infrastructure, houses and roads as well as fences, in order to reify their claim over what has previously been un- or under-developed territory. Even the money that is taken away from Heidelberg goes back into a system that legitimizes their business operations and allows them to exploit the resources of a colonized territory.

It is clear that Israel's strategy is to design the concrete market so that the eventual profits resulting from natural resource extraction flow to the Israeli state. Their restriction of the

⁴⁵ Ora Coren and Guy Liberman, "Antitrust Authorities Nix Sale of Hanson to IDB Group Company," Haaretz, December 21, 2009, accessed May 8, 2016, <http://www.haaretz.com/print-edition/business/antitrust-authorities-nix-sale-of-hanson-to-idb-group-company-1.1707>.

⁴⁶ Rosalind Donald, "Construction company plans cement acquisition," Global Competition Review, March 28, 2011, accessed May 6, 2016, <http://globalcompetitionreview.com/news/article/29912/construction-company-plans-cement-acquisition/>.

⁴⁷ "Occupation Inc.," Human Rights Watch, Annex VIII.

Palestinian economy creates the conditions for territorial expansion outwards through the land on which they previously made development illegal. This process creates a path for Israeli expansion that makes it impossible for Palestinians to benefit from their own quarried materials. The end result is a waiting game where Israel only has to prevent Palestinians from quarrying their own land for as long as it takes for Israel to make a legal claim to subsume that land. The Israeli waiting game has thus far been effective in maintaining the path towards their own sustainable development outlined by the Trade Office in 1984, and the Interior Ministry in 2009.

Part III: Cracks and Contradictions

Despite the efficiency with which Heidelberg and Israel work towards gaining new economic or literal ground for each other, the system is not perfect. The legal contortions necessary for their deeply inequitable partnership have left the two uncomposed, and vulnerable to disruption. Various non-profits, Israeli state entities, and individuals have used statements, Court decisions, and economic actions to point out the cracks in the legal infrastructure supporting Heidelberg and Israel's collaborations. Attempts to patch these cracks have only led to an inconsistent structure that often contradicts itself. This section shows how the logic and legitimacy of the partnership between a settler-colonial state and a global capitalist corporation has been challenged from within and without the state through examinations of the laws meant to govern their actions.

A. Market regulations

Israel has the ability to control the imports and exports of the West Bank, issue business licenses to Palestinians, and annex economically valuable territory. This means they have a unique ability to control the Palestinian market, in this case for concrete, in a way that benefits Israeli corporations like Hanson Israel. Despite this, Palestinians, international organizations, and non-profits have used these actions to critique the legitimacy of Israel's expansion and draw attention to the criminality of Israel's continued economic exploitation of the West Bank. Meanwhile, Israel's Antitrust Authority has exposed the flawed logic of claims by Israel and the United States that Israel operates a free market economy.^{48,49}

i. Illegal quarry operations

Despite the lack of licenses being issued to Palestinian quarries, many continue to operate illegally. Human Rights Watch conducted a series of interviews with Palestinian quarry owners in Beit Fajar, a town about 20 kilometers south of Bethlehem. Four of the quarry owners they interviewed were operating illegally in the Area C section of Beit Fajar.⁵⁰ One of the owner's sons, given the pseudonym Jamal, reported that they had been resubmitting permit applications monthly for years, all the while continuing to operate their quarry illegally. Another quarry owner has had his permit applications consistently denied with no explanation, despite offering to build a fence around his quarry so that it would be clear the quarry does not infringe on the territory of the nearby settlement. The refusal to provide a reason for permit denial is common practice by the Israeli government. So is the practice of holding a permit application indefinitely

⁴⁸ "The World Factbook," U.S. Central Intelligence Agency, accessed May 8, 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/is.html>.

⁴⁹ "The Israeli Economy Today," Consulate General of Israel to the Pacific Northwest San Francisco, accessed May 8, 2016, <http://embassies.gov.il/san-francisco/AboutIsrael/Economy/Pages/The-Israeli-Economy-Today.aspx>.

⁵⁰ "Occupation, Inc.," Human Rights Watch, Section III.

instead of explicitly approving or denying it. Palestinians who are found to be extracting resources from quarries have their equipment confiscated. The equipment costs large amounts of money to retrieve, and those costs can spell death for a burgeoning business.

The continued quarrying of Palestinian land in Area C by Palestinian businesses is an act of resistance to Israel's colonial project. It shows a clear lack of respect for the legitimacy and discretion of the Israeli Civil Administration, which issues quarrying permits. This sends a message to the international community that average Palestinian workers and business owners are refusing to accept the occupation as legitimate, and are operating under their own conceptions of which business operations are permissible. For example, Jamal continues to attend trade shows abroad, though he cannot produce enough stone to meet foreign demand due to the restricted schedule he works under in order to hide his operations from Israeli authorities.⁵¹ The Palestinian quarry-owners and workers are also actively engaged in the process of creating a Palestinian economy that does not rely on employment by Israeli firms. The economy based on reliance displaces Palestinians from their homes in order to find work. It contributes to the widespread poverty in the West Bank by providing Palestinians with only a small fraction of the wealth created through substandard wage laws. Samer, the pseudonym given to one of the quarry owners, said that he employed five to six Palestinians at any given time before having his equipment confiscated. Not only that, he claimed he would be able to hire at least thirty to forty more people had he not been forced to operate in secret.⁵² Creating employee networks, training skilled laborers, and investing in future infrastructure like quarrying equipment are critical steps towards creating an autonomous Palestinian economy in the future to counter the harms of the

⁵¹ Ibid.

⁵² Ibid.

occupation's restrictive market. The Palestinian shadow market for building materials is denying Israel future profits from the non-renewable resources extracted from quarries. The unethical and illegal system of denying the ability for land to be developed until it has been enveloped by settlements cannot succeed, or at least is hampered, if the resources have already been withdrawn from the land. This is doubly beneficial to the Palestinians, since the concrete and profit created from quarried stone go towards building and funding new Israeli settlements when controlled by the state of Israel.

ii. Hypocrisy of the Antitrust Authority

The Israeli Antitrust Authority blocked the sale of Hanson Concrete from HeidelbergCement to IDB Group because IDB Group already had a monopoly on cement production and transportation within Israel. Due to a growing market for concrete needed to build Israeli settlements, the deal would have handed IDB Group a captive market. The specific antitrust laws cited in the decision are not available publicly. This is because the Israeli Antitrust Authority's website only provides records of cases going back to 2011,⁵³ and the sale was blocked in 2009.⁵⁴ However, the Antitrust Authority provides the following passage to explain their Mission:⁵⁵

The Antitrust Authority and its leadership are responsible for maintaining and promoting competition in the Israeli economy. The Antitrust Authority was established in 1994 with

⁵³ "Press Releases," The Israel Antitrust Authority, accessed May 8, 2016, <http://www.antitrust.gov.il/eng/subject/182.aspx>.

⁵⁴ Ora Coren and Guy Liberman, "Antitrust Authorities."

⁵⁵ "Organizational Structure," Israel Antitrust Authority, accessed May 8, 2016, <http://www.antitrust.gov.il/eng/about/organization.aspx>.

the passage of the Antitrust Law Amendment and the addition of Article 41 to the law. The Antitrust Law provides the Director-General with various powers that make it possible to address anti-competitive behavior in all its forms. With these powers the authority makes efforts to increase and encourage competition where it exists, to create conditions for increased competition where it does not exist, to enforce the provisions of the law when they are violated, and to increase awareness of competition law.

If the Antitrust Authority's job is to maintain, promote, and encourage competition, specifically in sectors where competition does not exist, they are failing within the concrete industry. By not addressing Israel's discriminatory, ethnicity-based license distribution system, the Antitrust Authority is complicit in the monopoly of the IDB Group in the concrete production and transportation sectors, and the oligopoly of IDB Group and Heidelberg in the quarrying industry. There are many capable Palestinian business-owners who have the infrastructure, or could invest in the infrastructure if given the same NPA benefits as Israeli settlements within Area C, who are denied the ability to participate in the 'free market.' This hypocrisy exposes the false claims by Israel and the United States that Israel operates a free market, or anything resembling a meritocracy. This revelation is potentially useful for business-owners, non-profits, and international organizations who are investigating and dismantling the systems of power and oppressive policies that Israel uses to deny Palestinians access to their own natural resources, and by extension the profit and market they need to achieve autonomy in the future.

Another failure of the Antitrust Authority that provides ammunition to those arguing against the legitimacy of the occupation is the existence of IDB Group's monopoly on transport in the concrete industry. Specifically, one of IDB Group's partners, the Livnat family, "controls

interests in related industries including cargo handling for infrastructure companies."⁵⁶ Given that they have a monopoly on the transportation infrastructure needed to move quarried materials and concrete, it is difficult or impossible for new businesses to enter the market without the complicity of IDB Group. Transportation infrastructure and vehicles are needed both to sell concrete and quarried materials, and to transfer them to the location where they will be used.

Nesher is the company that currently holds a monopoly on concrete production in Israel. It is a subsidiary of CLAL Industries, which is a subsidiary of IDB Group.⁵⁷ In 2014, the Antitrust Authority ordered Nesher to break up by forcing them to sell a factory in Har Tuv that produces one-million tons of concrete a year.⁵⁸ Though this sale hasn't happened yet, it does set the precedent that the Antitrust Authority has the ability to break up monopolies in the concrete industry. Nesher was forced, at least, to lower their prices by 2%.⁵⁹ It is indicative of a tacit support for IDB Group's continued monopoly in the concrete industry that the Antitrust Authority has not attempted to break up the Livnat family's transportation monopoly, since transportation is a prerequisite to market access. The Israeli-centric positions of the Antitrust Authority on what constitutes a 'free market' expose the paradoxical policy suggestions necessary to maintain an expanding colonial occupation, while denying the ability of those slowly being annexed to sustain themselves on the resources they have access to. However, the Antitrust

⁵⁶ Ora Coren and Guy Liberman, "Antitrust Authorities."

⁵⁷ Andreas Schaller, "HeidelbergCement sells its activities in Israel," HeidelbergCement, July 30, 2009, accessed May 8, 2016, <http://www.heidelbergcement.com/en/node/1484>.

⁵⁸ "Arrangement to create a new competitor in the cement sector," Israel Antitrust Authority, July 28, 2014, accessed May 8, 2016, http://www.antitrust.gov.il/files/33259/Cement%20sector_28072014.pdf.

⁵⁹ Ora Coren, "Israeli Cement Reform Advances as Monopoly Vows Price Cut," September 18, 2014, accessed May 8, 2016, <http://www.haaretz.com/israel-news/business/.premium-1.616406>.

Authority is not the sole Israeli governmental institution struggling with these inconsistencies in their purported mission and their material actions.

B. The Israeli Supreme Court

Israel's Supreme Court (the Court) has made decisions in the past that have impeded the colonial project. Such is to be expected from a court that takes into account international laws related to occupying states, and not just domestic laws.⁶⁰ The inability of these decisions to prevent the continued illegal occupation has highlighted the disconnect between the power of jurisprudence and the actions the state is willing to take. This section explores a few specific instances related to the concrete and quarrying industries. In addition, when the Court has been complicit in the efforts of Heidelberg and other companies in tandem with the state of Israel to annex and profit from Palestinian land, their justifications have been built on faulty logic. Ultimately, the Court's disjointed relationship with the settler-colonial project, and the litigation process itself, have provided new avenues to organizers for Palestinian rights and international organizations to challenge the legitimacy of the occupation and document the criminal offenses of the state of Israel.

i. The Illegal Priority Areas System

The National Priority Area system used to exist in a different form. Until 2006, there was a centralized list of which neighborhoods were considered NPAs, instead of leaving it to individual ministers to allocate money within their regions to different sectors at their discretion.

⁶⁰ "HCJ 2056/04 Beit Sourik Village Council v. The Government of Israel," Supreme Court of Israel, accessed May 8, 2016, http://elyon1.court.gov.il/Files_ENG/04/560/020/A28/04020560.A28.pdf.

That list contained about five-hundred Jewish communities, and four Palestinian communities.⁶¹ In a landmark Court decision that took eight years to deliberate, the Court ruled unanimously in 2006 that the NPA system was discriminatory, specifically by race and nationality. This is referred to as the *High Follow-Up Committee Case*. Justice Rivlin, a Justice on the Court at the time, said the system of selecting National Priority Areas was "tainted by prohibited discrimination and unlawfully violates the right to equality, a basic right that is enshrined in our constitutional law."⁶²

The legal challenge to the NPA system came from Adalah, the Legal Center for Arab and Minority Rights in Israel; the Supreme Monitoring Committee for Arab Affairs in Israel; and the Supreme Monitoring Committee for Education Affairs in Israel.⁶³ In creating their petition to the Court, the organizations researched the socioeconomic conditions of the communities that were added to or removed from the National Priority Area list and used the discretion between wealthy Jewish communities that were included in the NPA list, and poor Arab communities that were left out, to make their case. This has provided valuable information for other organizations, domestic and international, to not only contest the validity of Israel's discriminatory development policies, but also to identify Arab communities that are being underserved and require resources beyond what the state is willing to provide in order to thrive.

After the 2006 decision by the Court, NPAs were temporarily abolished. However, on December 13, 2009, the Israeli government passed a new law titled "Defining Towns and Areas

⁶¹ "HCJ 11163/03 Supreme Monitoring Committee v. Prime Minister," Supreme Court of Israel, accessed May 8, 2016, http://elyon1.court.gov.il/files_eng/03/630/111/a18/03111630.a18.pdf.

⁶² "Supreme Monitoring Committee," Supreme Court of Israel, 190.

⁶³ "Adalah Position Paper," Adalah.

with National Priority," reviving the NPA system in its new form.⁶⁴ Adalah has pointed out that this directly contradicts the ruling from the *High Follow-Up Committee Case*, in addition to granting an additional layer of opacity since individual ministers will be allocating funds at their discretion with no required audit. The process for selecting NPAs is also highly subjective. It is based on a combination of distance from Tel Aviv, potential for economic development, and security concerns, vaguely defined. The 'security concerns' condition makes it easy for Israel to designate any settlement beyond the Green Line, or at the outer edge of Israel, as an NPA. The condition of being distant from Tel Aviv provides the state with an excuse not to designate any of the poor Palestinian communities within Israel as NPAs, despite them meeting the second condition of being economically underdeveloped.

The security concerns condition allowed every Jewish settlement in the West Bank to be considered a National Priority Area. This includes Modi'in Illit, Atarot, and Elkana, where Heidelberg operates through Hanson Israel. In this way, Heidelberg was able to benefit through the increase in workers and stipends provided by the NPA program because of the establishment of settlements it helped to legitimize through its presence.

While the actual list of NPAs is no longer explicit, the process of selecting them has become explicit. In addition, it has become apparent that the Court has little power to enforce its decisions when the Knesset decides to disregard them. This means that non-profits and individuals considering litigation to advance the rights of marginalized groups like Palestinians can choose alternate tactics, or can use litigation towards other ends like documentation and education, as Adalah did in the *High Follow-Up Committee Case*.

⁶⁴ Ibid.

ii. Faulty Jurisprudence

In 2012, Yesh Din submitted a petition to the Court requesting that it halt all quarrying activity by Israeli companies in the West Bank be halted, and stop the process of designating land for new quarries.⁶⁵ In *Yesh Din – Volunteers for Human Rights, et. al. v. Commander of the IDF Forces in the West Bank, et. al.*, abbreviated here as *Yesh Din c. Commander*, they cited Article 43 of the Hague Conventions, which requires that military commanders in occupied territories act exclusively for the benefit of the occupied population, and Article 55, which says an occupying power should be regarded as the "usufructuary of public goods," meaning the occupying power can only benefit from the natural resources of its occupied territories if they do not damage those resources. In other words, only renewable resources can be legitimately extracted from an occupied territory due to Article 55, and the profits from those resources can only be spent on things that benefit the occupied people, according to Article 43. Yesh Din made the case that because quarried materials are non-renewable resources, and the materials and money were flowing into Israel instead of back into Palestinian communities, that quarrying operations like Heidelberg's in the West Bank were illegal on both grounds under international law.

Yesh Din did mention under their claim that Israel was violating Article 55 of the Hague Regulations that there was an exception to the rule that the Court called the "principle of continuity." This meant if an occupied territory had its non-renewable resources exploited before the occupation, by a multinational corporation for example, then exploitation during the

⁶⁵ "Israel, High Court of Justice, Quarrying in an Occupied Territory," International Committee of the Red Cross, August 27, 2015, accessed May 8, 2016, <https://www.icrc.org/casebook/doc/case-study/israel-high-court-of-justice-quarrying-in-an-occupied-territory.htm>.

occupation could legally continue as long as it matched pre-occupation rates. However, while the court acknowledged this standard, they decided to create their own standard instead, which had no legal precedent. Instead, it was lifted from a book by Ruby Seibel, the former legal advisor to the Israeli Foreign Ministry.⁶⁶ They called this the 'principle of reasonableness,' and claimed it was acceptable for an occupying power to use the resources of its occupied territories "to an extent that does not lead to over-exploitation." No explicit definition of "over-exploitation" is given. The blanket ban against non-renewable resources makes easy to tell when it has been violated. The continuity principle does not set up a clear line between legal and illegal, but at least provides some quantitative basis for how much resource extraction is acceptable. The principle of continuity is completely subjective. Indeed, the Court argued that mining in occupied territories was acceptable as long as it was "implemented in a negligent manner such that they could lead to the impairment of natural resources or the exhaustion thereof."

The argumentation of the Court is marred by logical flaws. A warrant is never given for why the principle of reasonableness was preferred over the principle of continuity. The decision simply reads, "The state...presented a different interpretation," followed by a quote from Ruby Seibel's book, as well as references to the Military Manuals from the US, Britain, and Canada. The Court chose Ruby Seibel as a source for jurisprudential knowledge. There is a clear conflict of interest. The Israeli Supreme Court citing a book by a former Israeli state official, specifically citing a principle that had never been put into place as legal precedent, was a case of judicial activism where the Court intentionally created a new definition for a legally relevant term, usufructuary, in order to serve a third-party interest, the state. They chose to cite military

⁶⁶ "Towards a New Law of War Conference," Shurat Hadin - Israel Law Center, accessed May 8, 2016, downloaded from <http://www.ila-hq.org/download.cfm/docid/007E4DF2-EC00-418E-9E3892B0C2DCC08F>.

manuals from other nations as secondary supports to their new interpretation of usufructuary besides the Seibel quote. The Court made the assumption that just because other nations had done it that it was legal, without warranting why that would be true in light of their new definition's paradoxical nature. They claimed that it was acceptable to extract non-renewable natural resources from occupied territories like Atarot and Modi'in Illit as long as the process did not impair or exhaust those natural resources. They did this without addressing Yesh Din's arguments that extracting non-renewable resources is a process that inherently impairs and exhausts the resource supply; in this case, quarries. These egregious flaws combined paint a picture of a Court that at the time chose judicial activism and the protection of illegal activity in the West Bank over sound jurisprudence and deference to the international law.

The Court also disagreed with Yesh Din's Article 43 claim that the profit from quarrying operations were not being used for the benefit of the people in the Occupied Palestinian Territories. They claimed the employment that quarrying companies like Heidelberg were providing in the West Bank was a benefit to the populations in the OPT.⁶⁷ In addition, the Court claimed that the royalties paid by quarrying companies to the Civil Administrations in the OPT, which are spent on military administration, which "promotes various kinds of projects aimed to benefit the interests of the area." In other words, Israeli settlement communities were counted by the Court as communities in the occupied territories. That meant the Court only had to prove the collection of royalties from quarrying companies in the West Bank was benefiting Israeli settlements, which was true given that the money was flowing back into government programs

⁶⁷ "Israel, High Court of Justice," International Committee of the Red Cross.

like the NPA system and infrastructure projects like fences that allowed the settlements to stabilize and expand.

The Court had no valid reason to dismiss Yesh Din's Article 43 claim, but many to accept it. The employment of Palestinians is not unique to multinational corporations. If the Court stopped the illegal discrimination in license granting that prevented Palestinians from being able to operate their own quarries, the land would still be used to its capacity, barring externality concerns from the Palestinians. Even if the Court didn't take action on this issue, the incentive would exist for Israel to grant more licenses to Palestinians to maintain the size of the market for quarried materials if Israeli quarries could no longer operate in the West Bank. This means employment would have stayed constant in either world, or possibly increased in a world where more Palestinians are granted licenses, since they have access to quarries beyond the outermost Israeli settlements. Even if employment was reduced, providing employment alone does not mean companies like Heidelberg benefit the local populations in Area C in the West Bank. The harm of long-term profit loss due to resource extraction could outweigh the short-term employment benefits, especially given the poor labor conditions for Palestinians discussed earlier. In addition, there are large environmental externalities associated with quarries that were not accounted for in the decision. In 2009, The New York Times interviewed Itamar Ben David, chief environmental planner for the Society for the Conservation of Nature in Israel.⁶⁸ He said, "planning regulations and environmental assessment are less strong in the West Bank than in Israel. In Israel, nobody wants a quarry near his residential property." Israel's own State Comptroller confirmed in 2013 "that the Civil Administration's failure to properly regulate

⁶⁸ Ethan Bronner, "Desert's Sands."

abandoned quarries in Area C has led to “serious ecological and environmental harm.”⁶⁹ Third, the Court's claim that Israeli settlements count as 'local populations,' communities that are part of the occupied territories, directly contradicts the state's decision in 2009 to designate those communities as National Priority Areas, Israeli communities that need to be strengthened due to economic and security concerns. These communities currently operate on an uncertainty principle where they can act either as temporary settlements in Occupied Palestinian Territories, or as permanent parts of Israel, depending on the interests of the arm of the Israeli state identifying them.

Yesh Din's petition was ultimately unsuccessful in using Articles 55 and 43 of the Hague Conventions to stop Israeli quarry activity in the West Bank by companies such as Heidelberg. However, it revealed further layers of the paradoxical logic required to maintain the exploitative collaboration between the state and multinational corporations. This is useful information for social movements looking to target Israel or quarrying companies like Heidelberg with boycotts, divestment, or sanctions in order to pressure them into stopping their illegal activities. It is also useful for other organizations looking into using international law as a tool to regulate Israel's behavior through the Court, which could now be aware of the politically slanted definitions used by the Court for terms like 'usufructuary' or 'local population,' and the selectively cited sources the Court was willing to use in order to maintain the colonial project. Ultimately, the impacts of the Yesh Din's case against quarrying companies like Heidelberg have stretched beyond the Court. As mentioned earlier, Heidelberg attempted to sell Hanson Israel after the freeze on new quarries was implemented during this case's discussion in Court. Though they were unsuccessful, the attempt was indicative of the pressure Heidelberg had begun to feel from human rights

⁶⁹ "Occupation, Inc.," Human Rights Watch, Section III.

advocates. This is especially impressive given that this was a single case, filed from within the Israeli state, whereas challenges to their legality have also emerged from abroad.

C. International Law

As shown in the *Yesh Din v. Commander* case, Israel included binding international treaties in its domestic jurisprudence. However, the operations of the state often contradict the treaties they claim to support. Israel's policies juxtaposed with the international laws they have agreed to follow demonstrate the contradictions inherent in a modern-day settler-colonial project, and show the precise ways in which the Israeli state is failing to operate within its legal limits as an occupying power.

i. Obligations to the Rights of Palestinians

On October 3, 1991 Israel ratified the International Covenant on Civil and Political Rights (the Covenant).⁷⁰ The Covenant is a treaty designed to recognize "the inherent dignity and... the equal and inalienable rights of all members of the human family."⁷¹ Included in the treaty are the rights to freedom of movement, self-determination, and an adequate standard of living. In the ninety-ninth session of the United Nations Human Rights Committee (UNHRC),⁷² which met July 12-30, 2010, the UNHRC claimed Israel had been denying those rights to Palestinian by virtue of the separation wall they'd been building in the OPT. The UNHRC made

⁷⁰ "Summary of the Advisory Opinion of 9 July 2004," International Court of Justice, July 9, 2004, accessed May 8, 2016, <http://www.icj-cij.org/docket/files/131/1677.pdf>.

⁷¹ "International Covenant on Civil and Political Rights," United Nations Human Rights Office of the High Commissioner, accessed May 8, 2016, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷² "Consideration of reports submitted by States parties under article 40 of the Covenant | Concluding observations of the Human Rights Committee," United Nations Human Rights Committee, July 12-30, 2007.

it clear to Israel that the Covenant was to be applied in the Occupied Palestinian Territories as well as Israel proper, "contrary to the State party's position." In 2004, Israel made the claim to the United Nations International Court of Justice (the ICJ) that human rights treaties were only to be applied during peacetime, to citizens of the Israeli government, and that humanitarian law was meant for wartime.⁷³ The difference between human rights and humanitarian treaties is that human rights treaties are designed to protect people's rights normatively, while humanitarian treaties are meant to protect people's rights in conflict situations specifically.⁷⁴

The ICJ disagreed with Israel's interpretation. They cited an ICJ report from 1996 that made it clear that human rights obligations, those of the Covenant specifically, do not cease during conflict. Although some human rights treaties contain clauses that say they can be suspended during wartime, the Covenant is not one of those.⁷⁵ Israel only claimed they need to protect human rights in parts of OPT over which they did not claim permanent sovereignty. It is unclear what claim they had to disregarding the Covenant in the OPT where they had constructed settlements, or within which they were allowing businesses like Heidelberg to operate. The same claims of rights abuses brought up by the ICJ; restriction of movement, denial of self-determination, property requisition, etc.; were still applicable to Palestinians that Israel considered legally within their territory. A sovereignty claim comes with responsibilities, and Israel's attempts to distance itself from that responsibility in the ICJ came up short. Instead, they

⁷³ "Summary of the Advisory Opinion," International Court of Justice, <http://www.icj-cij.org/docket/files/131/1677.pdf>.

⁷⁴ "What is the difference between humanitarian law and human rights law?," International Committee of the Red Cross, accessed May 8, 2016, <https://www.icrc.org/eng/resources/documents/misc/5kzmuy.htm>.

⁷⁵ Ibid.

exposed themselves as a colonial project that believes they have no humanitarian obligations towards their colonized territories.

ii. Permanence of the Occupation

Israel is having an additional identity crisis on the issue of the permanence of their occupation of Palestine. Yesh Din's examination of the quarry industry helps explain the discrepancy between the temporary occupation Israel promised in the Oslo Accords and the permanent, growing project it has built.⁷⁶ In their petition, they cited Israel's National Outline Plan for Mining and Quarrying for the Construction and Paving Industry, which made estimates on the amount of quarried materials Israel would need for the following thirty years from the OPT in order to maintain their current levels of construction. This expected Israeli development timeline stretching decades into the future is at clear odds with the purported impermanence of the occupation. In addition, the same state report said that quarries within Area C alone provide for about a quarter of the quarried material consumed by Israel. Even beyond five or thirty years, Israel's ongoing construction of settlements and NPA system are creating permanent extensions of the Israeli state. The short and medium term plans for resource extraction work in tandem with the development of a permanent occupation since these settlements, and the wall being built to encompass them, are constructed by concrete made from stone quarried from Palestinian territory.

An understanding of the disparity between the occupation timeline Israel defends in treaties and the one it plans for in reality is necessary in the movement for Palestinian self-determination. Israel is not going to dissolve the occupation due to a deadline given its

⁷⁶ "Israel, High Court of Justice," International Committee of the Red Cross.

competing interest in territory acquisition and economic opportunity. In fact, the occupation fuels itself by accessing the very resources it needs to construct new settlements through the expansion of the state and the permissions granted to building materials companies to operate beyond Israel's legal borders. This means businesses must be targeted in addition to the state of Israel if the partnership between settler-colonialism and capitalism is to be disrupted.

iii. Legitimacy of Businesses in the West Bank

Multinational corporations, specifically Heidelberg and other building materials companies, act as tools of colonial expansion by legitimizing the presence of Israeli infrastructure and settlers in the West Bank, among other methods. However, the legitimacy of the corporations themselves is a prerequisite to their ability to act as legal agents of state expansion. The state requires these businesses operate legally, otherwise Israel would not be able to provide them with stipends, security, housing for workers funded by the NPA program, etc. They would also not be able to collect taxes.

The UN Guiding Principles on Businesses and Human Rights (The Guiding Principles) is a guide produced by the United Nations designed to ensure businesses within UN member states, including Israel, are respecting human rights. These businesses are also asked to actively audit their supply lines to ensure they are not violating rights either. In its complicity with the illegal occupation, and its substandard treatment of Palestinian laborers, HeidelbergCement is acting against these Guiding Principles. This means Israel is granting stipends, land, and labor to a business that is actively violating UN principles, while at the same time claiming that its settlements in areas like Atarot are legitimate due to the presence of said company, and others like it. This is a circular argument by the Israeli state that reveals how it is necessary to assume the legitimacy and legality of either the occupation or the corporations first, then using them to

derive the legality of the other. Without the initial assumption, the logic of the colonial project fails.

Although these international treaties have little ability to be enforced directly, international norms like the Guiding Principles have provided a platform for social movements to oppose multinational corporations' complicity in the expansion. One such movement is the Boycott, Divestment, and Sanctions (BDS) movement. The BDS movement is "a campaign of Boycott, Divestment and Sanctions (BDS) against Israel until it complies with international law and Palestinian rights," and was started in 2005, a year after the ICJ issued its decision declaring Israel's separation barrier in the West Bank illegal.⁷⁷ One recent example is the decision by large Norwegian firm KLP to divest from HeidelbergCement and Cemex "on the grounds of their exploitation of natural resources in occupied territory on the West Bank."⁷⁸ International pressure has continued to build against the occupation. Even the United States' representative, Samantha Powers, expressed concern in 2014 over a planned housing expansion in Elkana, where Heidelberg operates an asphalt plant and a quarry. These coordinated movements are improved by the existence of international norms and laws that provide a means to audit the actions of the state of Israel, as well as the revealing contradictions raised when organizations like Yesh Din collect evidence and challenge the state directly.

Part IV: Conclusion

⁷⁷ "Introducing the BDS Movement," BDS Movement, accessed May 8, 2016, <https://bdsmovement.net/bdsintro>.

⁷⁸ Barak Ravid, "Norwegian Insurance Giant Divests From Multinational Firms Operating in West Bank Settlements," Haaretz, June 12, 2015, accessed May 8, 2016, <http://www.haaretz.com/israel-news/.premium-1.660901>.

Though the forces of capitalist corporations and settler-colonial states can seem too powerful to overcome when working in unison, the weak logic that makes up their base leaves them vulnerable to a clean demolition. Human Rights Watch argues that businesses are functionally 'settlers' themselves, "drawn to settlements in part by low rents, favorable tax rates, government subsidies, and access to cheap Palestinian labor."⁷⁹ In this paper, I have elucidated some of the aspects that make building materials businesses specifically unique, and possibly more dangerous. They have access to large-scale infrastructure that allows them to permanently devastate land. They have legal protections that allow them to recruit Palestinian laborers, coerced by economic desperation, to an industry that enables the expansion of the Israeli state. They are able to construct entire Israeli villages where there were once only Palestinians. These are but a few examples.

I think further research should be done in how businesses can be held accountable that participate in rights abuses. KLP's divestment from Heidelberg and Cemex is certainly a positive example. However, in *Occupation, Inc.*, a Human Rights Watch Report on "how settlement businesses contribute to Israel's violations of Palestinian rights," Human Rights Watch says that they are not calling for a boycott movement. Rather, they would prefer corporations hold themselves accountable. A dreaded third alternative has seen itself play out in Modi'in Illit and

⁷⁹ "Occupation, Inc.," Human Rights Watch, Summary.

Atarot, cities where Heidelberg operates, where Palestinians have recently violently attacked Israeli settlers, in 2008⁸⁰ and 2002⁸¹ respectively.

Critical legal scholarship has been used as a chisel to widen cracks in the armor Israel's partnership with Heidelberg, and to chip away at its facades. When barriers to change are identified, strategies change to become more effective. For example, once Palestinians employed by Israeli companies won the right to the Israeli minimum wage, further organizing could be done around the issue of subcontractors, which until then had laid under the radar. If it were not for organizations like Yesh Din who expose the corruption and illogic of Israel's Supreme Court, activists might continue trying to create change through impact legislation as opposed to a multilateral approach with a greater chance of success. Activism is a dialectic process. Legal challenges to Israel's partnerships with multinational corporations like Heidelberg have consistently opened new ground on which to organize for Palestinian rights. It is becoming evident that a project built on paradoxes has the potential to be unraveled.

⁸⁰ Judy Siegel-Itzkovich and Etgar Lefkovits, "Palestinian stabs 4 in Modi'in Illit," The Jerusalem Post, December 29, 2008, accessed May 8, 2016, <http://www.jpost.com/Israel/Palestinian-stabs-4-in-Modiin-Illit>.

⁸¹ Jonathan Lis, "Palestinian Kills Boss at North J'lem Factory," Haaretz, February 28, 2002, accessed May 8, 2016, <http://www.haaretz.com/palestinian-kills-boss-at-north-j-lem-factory-1.51709>.

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Annex



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