



Al-Haq kindly accepts the Business and Human Rights Resource Centre's invitation to respond to HeidelbergCement's response to the Electronic Intifada article. The article highlighted HeidelbergCement's complicity in serious violations of international humanitarian law, which may amount to war crimes in the occupied Palestinian territory. Al-Haq commends HeidelbergCement's engagement in responding to the Business and Human Rights Resource Centre as an important step in creating a dialogue for awareness of corporate involvement in human rights violations. However, Al-Haq notes that the 50-year occupation and colonization of Palestinian territory is continuing unabated because of international and Israeli corporate interests like HeidelbergCement who exploit the armed conflict and repression of the occupied Palestinian people for commercial profit. Al-Haq further contends that the presence of companies in illegal Israeli settlements and the exploitation of Palestinian natural resources by such companies, including HeidelbergCement, constitute manifest violations of international law.

HeidelbergCement correctly points out that the "Nahal Raba quarry is located on public land in Area C." The location of the quarry, is indeed on public land of the al-Zawiya village in the occupied Palestinian territory. While admitting that the quarry is located on public land, HeidelbergCement then consistently fails to apply occupation law governing public property to the quarries. Instead, the corporation applies Article 43 of the Hague Regulations to conclude that no private ownership of the quarries is established. However, at the heart of Article 43 is the belligerent occupant's temporary *de facto* administration of the occupied territory, where the sovereign rights of the occupied territory remain vested in the ousted sovereign. In this respect, the rights of permanent sovereignty over natural and land resources, and other public immoveable properties, remain vested permanently in the occupied Palestinian population. In this vein, Israel, the belligerent occupant does not have the sovereignty or the competence to confer permanent rights in public property belonging to Palestine to corporate interests, as occupied Palestine retains full sovereignty over its natural resources. As such, HeidelbergCement holds unlawfully acquired leases in public Palestinian property.

HeidelbergCement wrongfully asserts that no expropriation has taken place, because the private ownership of the natural resources could not be determined. They then claim that the expropriation is permissible because it was not on private property. Critically, HeidelbergCement is expropriating public immoveable property--that is public immoveable quarried resources--from the occupied Palestinian territory. Immoveable natural resources represent the economic subsistence of the occupied territory and, on this basis, are heavily regulated under Article 55 of the Hague Regulations of 1907. Where there is any doubt as to the private designation of property in occupied territory, it is to be treated as public for the purpose of applying international humanitarian law. It has long been established under international law that the prohibition of pillage applies to both public and private property. For example, the authoritative Pictet Commentary considers the prohibition of pillage applicable to "all types of property, whether they belong to private persons or to communities or the State." In addition, it must be emphasized that the prohibition against pillage of both public and private property is further provided for in the jurisprudence of the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Military Tribunal at Nuremberg.



As HeidelbergCement admits, Hanson Israel/HeidelbergCement and Pioneer have exploited quarries in the occupied Palestinian territory for some 29 years. Notably, there is no statute of limitations for grave violations of international law such as war crimes including pillage. In this sense, the length of time the corporation has engaged in the unlawful act is not a mitigating factor in negating the criminal act. The occupied Palestinian population, including both public representatives and private actors are not able to fully and effectively challenge or remedy ongoing criminal acts perpetrated in occupied territory owing to the unequal power dynamic of a prolonged and repressive belligerent occupation maintained by military force. Notwithstanding, the prohibition of exploitation of the natural resources in the occupied Palestinian territory has been the subject of numerous General Assembly Resolutions (UNGA Res 51/190 1996, UNGA Res 66/225, 2012).

The 29-year quarrying activity underscores an element of permanence, which is repugnant to the temporary governance of occupied territory as advanced under Article 43 of the Hague Regulations, Article 64 of the Fourth Geneva Convention, and temporary use 'rules of usufruct' under Article 55 of the Hague Regulations. In particular, HansonIsrael/HeidelbergCement's and Pioneer's opening of new quarries in occupied territory represent a very serious infringement of Article 55 of the Hague Regulations. The objective of Article 55 is quite narrow—to maintain the functioning of existing quarries and other such public immovable properties, in order to preserve their substance, subject to the rules of usufruct and the obligation to safeguard the capital of the property for the returning sovereign. Accordingly the year-on-year depletion of non-renewable Palestinian quarried resources over a 29-year period and HeidelbergCement's involvement over the past 10 years, seriously infringes on the obligation to maintain the economic substance of the quarried resources for the use of the Palestinian State.

HeidelbergCement's claims that the company is practicing non-discrimination in relation to its sales to Palestinian consumers and providing equal employment opportunities to Palestinian and Israeli employees is absolutely irrelevant. At its most mundane, individuals cannot rely on the application of labour law to mitigate violations of international humanitarian law. In addition, Al-Haq restates its position, that HeidelbergCement's operations in the West Bank, facilitates a 'transfer in' of the Israeli settler colonial population in violation of Article 49 of the Fourth Geneva Convention. Notably, this provision represents a grave breach and war crime under international criminal law.

Al-Haq warns that companies like HeidelbergCement are systematically exploiting the occupied territory for private gain. To confirm, there is absolutely no legal provision governing the use of natural resources in occupied territory that permits foreign corporations to exploit the depletable and non-renewable natural resources of the occupied territory for private gain. The Palestinian economy is irreparably damaged by the actions of international corporations in depleting Palestinian natural resources. HeidelbergCement's payment of \$3.5 million USD in royalties from the quarried resources to Israel's Civil Administration is not disbursed for the benefit of the occupied population. This denies the right of the occupied population to economic self-determination and further provides monetary incentives for the perpetuation of the occupation. In this respect, the United Nations Security Council Resolution 2334 (2016) holds that Israel's settlements in the West Bank have 'no legal validity and constitutes a flagrant violation of international law' while calling for 'the cessation of all Israeli settlement activities', which includes, for example, the quarrying of Palestinian natural



resources in the West Bank. Further, the United Nations Human Rights Council has recently established a database on corporations that profit from Israel's unlawful settlement enterprise including natural resource exploitation in the West Bank. By continuing to operate under unlawfully held Israeli licenses in occupied Palestinian territory, HeidelbergCement is contributing to the protraction of the conflict by incentivizing the continuing occupation of Palestinian territory. In doing so HeidelbergCement risks complicity in a number of grave international humanitarian law violations, which may amount to war crimes.

Al-Haq warns that businesses operating unlawfully in occupied territory both fuel and perpetuate the occupation, causing grave human suffering. Al-Haq asks that corporations act with due diligence and comply with the United Nations Guiding Principle on Business and Human Rights. The ongoing engagement and dialogue with corporations is critical in ensuring that businesses are aware of their human rights obligations and aware of their potential complicity in war crimes in aiding and abetting illegal settlement activities.