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International Law and Racial Capitalism in Palestine: Occupation Gone Wrong or Settler Colonialism Done Right?

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Abstract

In its 2024 Advisory Opinion, the International Court of Justice found that Israel's ongoing presence as an occupying power in the Occupied Palestinian Territory (OPT) is unlawful. The Court scrutinized the existence of illegal Israeli settlements in the OPT and found, among other things, that Israel prioritizes its settlers in the allocation of water and allows them to exploit natural resources whilst denying the same opportunities to Palestinians, in violations of its obligations under international law. The Court also found that Israel discriminates against Palestinians, including on the basis of race, without however reaching a clear conclusion on the question of apartheid. Focusing on these two issues, this article offers a critique of the Advisory Opinion through the concepts of settler colonialism and racial capitalism. It demonstrates that the economy of occupation is not limited to the exploitation of natural resources, nor to the OPT. It is rather part of a broader settler colonial project aimed at facilitating capital accumulation through the elimination of the Palestinian people. The article employs the concept of racial capitalism to show the entanglement of profit-making and race-making that results in the racialization of Palestinians as inferior. Beyond Palestine, this analysis highlights challenges and opportunities for political-economic analyses of international law.

Key words

racial capitalism; settler colonialism; political economy; occupation; Palestine

1 Introduction

On 9 July 2024, following a request from the United Nations General Assembly, the International Court of Justice (ICJ) issued an Advisory Opinion on Israeli policies and practices in the Occupied Palestinian Territory (OPT).¹ According to the Court, Israel has violated the prohibition of annexing territory by force and the right of the Palestinian people to self-determination as a result of its prolonged occupation since 1967 and abuse of its position as an occupying power.² The Court thus concluded that Israel's presence in the OPT as an occupying power is unlawful and must terminate as rapidly as possible.³ The analysis of Israel's policies and practices contained in the Advisory Opinion concerns to a large extent the regime associated with illegal settlements in the West Bank, including East Jerusalem, and the differential treatment of Palestinians and settlers.⁴ This article focuses on two aspects of the Advisory Opinion: the economic activities linked to the occupation and racial discrimination. These two issues were addressed narrowly and in isolation by the ICJ. The Court remarked that Israel exploits natural resources in the OPT 'for the benefit of its own population, to the disadvantage or even exclusion of the local Palestinian population.'⁵ This finding however seemingly did not contribute to the Court's conclusion that Israeli legislations and measures that physically and juridically separate Palestinians and settlers violate Article 3 of the Convention on the Elimination of Racial Discrimination (ICERD).⁶ The ICJ also stopped short of clarifying whether Israel has violated the prohibition of apartheid specifically.⁷

By revisiting some of the Advisory Opinion's findings through the lenses of settler colonialism and racial capitalism, this article contributes to the emerging

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¹ Throughout the text, I use the term 'OPT' to refer to the Palestinian territories occupied by Israel since 1967, namely the Gaza Strip and the West Bank, including East Jerusalem.

² *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (2024) ICJ Reports 753, at paras. 179, 238, 243.

³ Ibid, para. 267.

⁴ Ibid, para. 115–156.

⁵ Ibid, para. 126.

⁶ Ibid, para. 229.

⁷ Several human rights organizations and international law experts have found that Israel has violated the prohibition of apartheid, see for example John Dugard and John Reynolds, 'Apartheid, International Law, and the Occupied Palestinian Territory' (2013) 24 *European Journal of International Law* 867; 'The Gaza Bantustan: Israeli Apartheid in the Gaza Strip' (Al Mezan Center for Human Rights 2021); 'A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid' (B'Tselem 2021); 'A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution' (Human Rights Watch 2021); 'Israel's Apartheid against Palestinians: A Cruel System of Domination and a Crime Against Humanity' (Amnesty International 2022); 'Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967' (2022) A/HRC/49/87.

academic commentary on the Advisory Opinion.⁸ The article provides a critical international law analysis that relies on these two frameworks to show that Palestine is not just the site of an illegal occupation, or an *occupation gone wrong*. Instead, it demonstrates how the illegal occupation of the OPT is the latest manifestation of *settler colonialism done right*. In this context, the racialization of Palestinians as inferior can be understood in political-economic terms through the concept of racial capitalism.

These arguments are developed as follows. Section 2 begins by questioning the traditional framing of Palestine in international law, which focuses on the occupation of the Gaza Strip and the West Bank, including East Jerusalem, since 1967. Borrowing Marks' concept of 'justificatory exceptionalism',⁹ I show that this framing is exceptional and narrow. I contrast this approach, which is reflected in the Advisory Opinion and which I refer to as *occupation gone wrong*, with insights from settler colonialism literature. Such insights reveal that Israel's illegal occupation of the OPT is the latest manifestation of a settler colonial project of elimination of the Palestinian people from the entirety of historic Palestine,¹⁰ which is thus rather a site of *settler colonialism done right*.

Despite the ICJ's focus only on the exploitation of natural resources as part of its analysis of Israel's settlement policy, Section 3 demonstrates that the economy of occupation is much broader and spans a variety of sectors. The occupation economy supports the existence of the illegal settlements and secures profits for involved economic actors, while at the same time facilitating the dispossession of the Palestinians and further colonization of their lands. Israeli law and legal institutions have a crucial role to play in upholding this system, which directly benefits the Israeli economy. A political economy analysis of the occupation unearths continuities between the modalities of the occupation economy and the economic activities that have historically supported the Zionist colonization of Palestine.

The Advisory Opinion's focus on the illegality of occupation fails to fully grasp both the settler colonial nature of the occupation and its racist character. Through the lens of racial capitalism, Section 4 illustrates the connection between economic agendas and the racial subordination of Palestinians. In this final Section, I highlight the challenges and opportunities of articulating racial capitalism in and through international law.

⁸ See for example Kai Ambos (ed), *The 2024 ICJ Advisory Opinion on the Occupied Palestinian Territory* (Verfassungsbooks, 2025); Julia Dehm et al., 'The Keys to the Door and the Tools We Inherit: Palestine, International Law and the International Court of Justice' (2026) 26 *Melbourne Journal of International Law* 1.

⁹ Susan Marks, 'Apologising for Torture' (2004) 73 *Nordic Journal of International Law* 365, at 380.

¹⁰ Throughout the text, I employ the terms 'Palestine' and 'historic Palestine' to refer to the entirety of territory of the British Mandate for Palestine which was the object of the Partition Plan (UNGA Res. 181(II), 29 November 1947).

By bringing international law in conversation with scholarship on settler colonialism and racial capitalism, this article contributes to the critique of the mainstream international law approach to the question of Palestine and to the intersectional questions of economy and race. The 2024 Advisory Opinion serves as an example of the predominant framing and is used to ground this critique. Due to this focus, this article does not elaborate on the genocide being perpetrated by Israel against the Palestinian people in the Gaza Strip.¹¹ However, the analysis is equally relevant to understand the genocide as the ultimate expression of a settler colonial project of elimination of the Palestinian people sustained by profit extraction.¹² By adding to the critical international law literature at the intersection of race, capitalism and colonialism, this article reaffirms the need to construe race as a political economy category in legal discourse and analysis.

2 The Question of Palestine in International Law: Occupation and Settler Colonialism

International lawyers aligning with the intellectual tradition of Third World Approaches to International Law (TWAIL) have long reckoned with the enduring impact of colonialism on international law and its development, yet overall few have studied settler colonialism as a distinct phenomenon.¹³ Whereas settler colonialism lacks an international legal definition,¹⁴ in settler colonial studies it is defined as 'a specific mode of domination'¹⁵ marked not just by exploitation but rather by a 'logic

¹¹ On the genocide in Gaza see for instance Nimer Sultany, 'A Threshold Crossed: On Genocidal Intent and the Duty to Prevent Genocide in Palestine' (2024) *Journal of Genocide Research* 1; Raz Segal, 'Israeli Settler Colonial Genocide' (2025) 53 *The Journal of Imperial and Commonwealth History* 182; Martin Shaw, 'Gaza and the Structure of Genocide in Palestine' (2025) 53 *The Journal of Imperial and Commonwealth History* 416; 'Our Genocide' (B'Tselem 2025); 'Destruction of Conditions of Life: A Health Analysis of the Gaza Genocide' (Physicians for Human Rights Israel 2025); 'Legal Analysis of the Conduct of Israel in Gaza Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide. Conference Room Paper of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel' (2025) A/HRC/60/CRP.3.

¹² See Francesca Albanese, 'From Economy of Occupation to Economy of Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967' (2025) A/HRC/59/23; see also Ruchir Sharma, 'The Markets Are Signalling a Clear Winner in the Middle East' *Financial Times* (14 July 2025) <https://www.ft.com/content/78b2d760-f90a-4349-b9f7-aab8b19f7b6f> (accessed 28 July 2025) reporting that Israel's is the best-performing major stock market in the world since 7 October 2023.

¹³ Some exceptions include Markus Gunneflo, 'Settler-Colonial and Anti-Colonial Legalities in Palestine' (2019) 20 *Palestine Yearbook of International Law* 171; Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (CUP, 2020) 27–28; Noura Erakat and John Reynolds, 'Settler Colonialism' in Antony Anghie et al. (eds), *Research Handbook on Third World Approaches to International Law* (TWAIL) (Edward Elgar Publishing, 2025) 46.

¹⁴ Christine Schwöbel-Patel, Nahed Samour and Michelle Burgis-Kasthala, 'International Law's Deafening Silence on Settler Colonialism' in Tor Krever et al., 'On International Law and Gaza: Critical Reflections' (2024) 12 *London Review of International Law* 217, at 236.

¹⁵ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (2nd ed, Palgrave Macmillan, 2024), at 16.

of elimination' aimed at replacing the indigenous population with settlers.¹⁶ The Zionist colonization of Palestine is today widely regarded as an example of settler colonialism,¹⁷ following in the footsteps of Palestinian thinkers who had already described it in similar terms in the 1960s and 1970s.¹⁸ Continuities between, on the one hand, the Zionism state-building efforts that culminated in 1948 in the founding of Israel and the Palestinian Nakba, and, on the other hand, the ongoing subjection of Palestinians by Israelis are highlighted by scholars of settler colonialism.¹⁹ Such continuities, however, seem to remain largely outside the purview of international law.

International law and institutions have played a significant role in both fostering and disguising the colonization of Palestine.²⁰ Until 1967, the so-called question of Palestine in international law encompassed the entirety of the territory and population of the former British Mandate over Palestine.²¹ By shifting the focus from the right of return and self-determination of the Palestinian people to the management and future status of the territories occupied by Israel in 1967, United Nations Security Council Resolution 242 allowed the erasure from collective memory of the colonial origins of the conflict.²² This also marked a shift to a 'humanitarian/managerial approach' to the question of Palestine, which implicitly legitimized Israel's presence in the OPT by focusing on 'discrete' violations by the occupying power.²³ Pushing back

¹⁶ Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006) 8 *Journal of Genocide Research* 387, at 387; see also Faye A Sayegh, *Zionist Colonialism in Palestine* (Research Center Palestine Liberation Organization, 1965) 5.

¹⁷ Wolfe (2006) 387; Patrick Wolfe, 'Purchase by Other Means: The Palestine Nakba and Zionism's Conquest of Economics' (2012) 2 *Settler Colonial Studies* 133; Lorenzo Veracini, 'Israel-Palestine Through a Settler-Colonial Studies Lens' (2019) 21 *International Journal of Postcolonial Studies* 568; David Lloyd, 'Settler Colonialism and the State of Exception: The Example of Palestine/Israel' (2012) 2 *Settler Colonial Studies* 59; Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press 2018) 120.

¹⁸ Sayegh (1965); Edward W Said, 'Zionism from the Standpoint of Its Victims' (1979) 1 *Social Text* 7.

¹⁹ Omar Jabary Salamanca et al., 'Past Is Present: Settler Colonialism in Palestine' (2012) 2 *Settler Colonial Studies* 1, 2.

²⁰ Hadeel S Abu Hussein, 'The Question of Palestine' in Antony Anghie et al. (eds), *Research Handbook on Third World Approaches to International Law (TWAIL)* (Edward Elgar Publishing, 2025) 563, at 570; also Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP, 2005) 115–195 arguing that through the Mandate System international law reproduced and entrenched colonial relations, instead of promoting decolonization; see further Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (CUP, 2023) 52–109 on how the Partition Plan inaugurated the reification of Palestine's legal subalternity; and 'Written Statement of the Organisation of Islamic Cooperation, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Request for an Advisory Opinion)' (2023), at para. 4 claiming that the establishment of the State of Israel in Mandate Palestine 'could only take place at the expense of the right of the Palestinian people to self-determination in the whole of the colonized territory'.

²¹ Gunneflo (2019) 176.

²² Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance, 1912–2017* (Profile Books, 2020) 106–107; see also Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford University Press, 2019) 87–91.

²³ Imseis (2023) 182, 185.

against this predominant narrative, Palestinians have long insisted that focusing on the occupation is not enough and that international law-based conversations should also look at settler colonialism and apartheid questions,²⁴ and more recently genocide.²⁵ A more holistic approach to the question of Palestine would provide the context which is precluded by a focus on the territories occupied in 1967 and the law of occupation's special framework that primarily governs them.²⁶

The ICJ had established Israel's breach of several of its obligations as an occupying power in the 2004 *Wall* Advisory Opinion,²⁷ which arguably already hinted at the structural and systemic character of such violations.²⁸ In the years following the 2004 Advisory Opinion, Palestinian and other scholars nevertheless argued that attention should be paid to the illegality of the occupation as a whole, rather than to specific incidents and violations.²⁹ This framing was eventually adopted in the 2024 Advisory Opinion, in which the ICJ concluded that Israel's occupation of the OPT is illegal.³⁰

While this is a significant and welcome finding, the 2024 Advisory Opinion continues to reflect a narrow understanding of the question of Palestine, focusing on the occupation but ignoring the colonial context in which it occurs. Based on how the questions posed by the United Nations General Assembly to the Court were formulated, the scope of the Advisory Opinion remained limited to the territories occupied by Israel since 1967, meaning the OPT as a 'single territorial unit' comprising the Gaza Strip, the West Bank, and East Jerusalem.³¹ As other commentators have noted, the ICJ 'did not reconcile – or even acknowledge – the tensions inherent in its exclusive focus on the OPT and its implicit or explicit acceptance of the partition and fragmentation of the Palestinian polity.'³²

²⁴ 'Advocating for Palestinian Rights in Conformity with International Law' (Civic Coalition for Palestinian Rights in Jerusalem and Birzeit University Institute of Law 2014); see also Ata R Hindi, 'Unlawful Occupations? Assessing the Legality of Occupations, Including Serious Breaches of Peremptory Norms' (2023) 4 *Third World Approaches to International Law Review* 1, at 2–3.

²⁵ See for example Sultany (2024).

²⁶ Darryl Li, 'Occupation Law and the One-State Reality' (*Jadaliyya*, 2 August 2011) <https://www.jadaliyya.com/Details/24275> (accessed 25 June 2025); Erakat and Reynolds (2025), at 54; Rabea Eghbariah, 'Toward Nakba as a Legal Concept' (2024) 124 *Columbia Law Review* 887, at 935.

²⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* (2004) ICJ Reports 136, at paras. 115–137.

²⁸ Vasuki Nesiah, 'Resistance in the Age of Empire: Occupied Discourse Pending Investigation' (2006) 27 *Third World Quarterly* 903, at 914–915.

²⁹ See Hindi (2023) for an overview of expert debates.

³⁰ ICJ Advisory Opinion (2024), at para. 261.

³¹ *Ibid*, paras. 78–79.

³² Dehm et al. (2026) 2.

This narrow focus can be thought of in terms of what Susan Marks has called 'justificatory exceptionalism'.³³ Speaking about the prohibition of torture, Marks noted that whereas human rights law offers a 'very clear rebuttal' to the claim that torture may be exceptionally justified, it 'leaves us significantly more exposed to [...] the claim that acts of torture are exceptional'.³⁴ This type of justificatory exceptionalism, for Marks, is due to 'the general tendency in international human rights law to problems, and focus on events, as distinct from social processes and conditions'.³⁵ A similar mechanism operates when international law implies that 'exploitation is work gone wrong' instead of an intrinsic feature of work under capitalism.³⁶

In the Advisory Opinion, justificatory exceptionalism is at play when the ICJ's conclusion concerning the illegality of Israel's continued presence in the OPT rests on the idea of an *occupation gone wrong* due to 'abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination'.³⁷ Only Judge Yusuf's Separate Opinion suggested that Israel is engaging in a 'colonial occupation', a concept which was used to exclude the colonization of non-European territories by European powers from the scope of application of *jus in bello* and 'to conquer foreign lands without any legal limitations'.³⁸

The justificatory exceptionalism underlying the *occupation gone wrong* paradigm is illustrated by a look at the question of settlements in the OPT, which featured prominently in the Advisory Opinion. Settler residential communities started being established in the OPT mere months after Israel took control of the remainder of historic Palestine following the Six-Day War in 1967.³⁹ It was immediately clear to Israel that pursuing a settlement policy in the OPT would be at odds with international law. Already in 1967, Theodor Meron, who was then working at the Israeli Ministry of Foreign Affairs, had warned the government that the 'colonization of conquered territory by citizens of the conquering state' would violate Article 49(6) of the Fourth

³³ Marks (2004) 380.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Susan Marks, 'Exploitation as an International Legal Concept' in Susan Marks (ed), *International Law on the Left: Re-Examining Marxist Legacies* (CUP, 2008) 281, at 300.

³⁷ ICJ Advisory Opinion (2024), at para. 261.

³⁸ ICJ Advisory Opinion (2024), Separate Opinion of Judge Yusuf, at paras. 2, 4.

³⁹ 'Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, Including East Jerusalem' (2013) A/HRC/22/63 Annex I, at 26.

Geneva Convention.⁴⁰ Nonetheless and to varying degrees, subsequent Israeli governments participated in the 'planning, construction, development, consolidation and/or encouragement' of settlements, which have continued growing.⁴¹ Even the dismantlement of settlements and evacuation of settlers from the Gaza Strip in 2005 was aimed at entrenching Israel's control of and presence in other parts of the OPT.⁴² By 2024, over 700,000 settlers were living in the West Bank, including East Jerusalem.⁴³ The ICJ confirmed that Israel's settlement policy in the OPT breaches international law.⁴⁴ However, from this perspective, the colonization of Palestinian land is only knowable and sanctioned in so far as settlements are built in occupied territory in violation of the special legal regime governing them. As Darryl Li put it:

Occupation law's assumption of the otherness of the occupied territory encourages us to treat pre-1967 Israel as a given while limiting attention to settlements and various repressive practices only as so many different 'violations.' Even when such violations are treated as systematic, they are detached from the larger context.⁴⁵

Precisely with a view of placing the Court's findings within a larger context, in the remainder of this article, I revisit parts of the Advisory Opinion. I suggest that integrating insights from settler colonialism into international law analysis offers an important lens to contextualize the occupation as the latest manifestation of the settler-colonial project of Zionist settlement in Palestine,⁴⁶ and to understand its political-economic drivers and the racial structures produced in this context. Such an analysis reveals that the case of Palestine is not simply an example of an *occupation gone wrong* but rather one of *settler colonialism done right*.

3 The Political Economy of the Occupation and Settler Colonialism

For the purposes of the 2024 Advisory Opinion, the ICJ deemed that it was required to consider 'Israel's policy in relation to settlements comprehensively.'⁴⁷ Such an

⁴⁰ Theodor Meron, 'The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War' (2017) 111 *American Journal of International Law* 357, at 358 citing Gershom Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements, 1967-1977* (Herny Holt and Company, 2007) 101 which reproduces translated excerpts of Meron's legal opinion.

⁴¹ 'Report of the Independent International Fact-Finding Mission' (2013) A/HRC/22/63, at para. 20.

⁴² Ibid, para. 27 citing former Israeli Prime Minister Ariel Sharon.

⁴³ 'Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights' (2025) A/HRC/58/73, at para. 14.

⁴⁴ ICJ Advisory Opinion (2024), at paras. 111–156; ICJ Wall Advisory Opinion (2004), at para. 120.

⁴⁵ Li (2011); see also Erakat and Reynolds (2025) 54.

⁴⁶ Abu Hussein (2025) 570.

⁴⁷ ICJ Advisory Opinion (2024), at para.111.

understanding recognizes that, rather than simply being inhabited localities, settlements 'encompass all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities' in the OPT.⁴⁸ This definition notably allows accounting for a variety of economic actors that 'have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.'⁴⁹ Questions of political economy, however, remain marginal if not absent from analyses of 'supposedly non-economic fields' of international law, including international humanitarian law.⁵⁰ Given international humanitarian law's centrality in the ICJ's analysis, it is unsurprising that the Court reckoned only to a limited extent with the economic aspects of the prolonged occupation of the OPT, dedicating ten paragraphs to the issue of the exploitation of natural resources.⁵¹

The ICJ established that Israel exploits natural resources, including water, minerals, land and stone 'for the benefit of its own population, to the disadvantage or even exclusion of the local Palestinian population.'⁵² It concluded that Israel's policy of exploitation of Palestinian natural resources is incompatible with its obligations under the law of occupation and with its obligation to respect the Palestinian people's right to permanent sovereignty over natural resources.⁵³ As other scholars have pointed out, the Court's analysis on the exploitation of natural resources in the OPT fails to acknowledge both the economic significance of these activities and the broader impact of the illegal exploitation on Palestinian life.⁵⁴ Taking this missing context into account reveals that the illegal exploitation of Palestinian natural resources analyzed in the Advisory Opinion should be located in the broader occupation economy and that the latter is part of a settler colonial project of elimination of the Palestinian people. This Section revisits the relevant parts of the Advisory Opinion in this light. After sketching the contours of the occupation economy, I focus on the exploitation of land for agricultural purposes and on the impact of the occupation economy on the Palestinian workforce, before considering the role of Israeli domestic law in facilitating these economic activities. These three aspects of the occupation economy were

⁴⁸ 'Report of the Independent International Fact-Finding Mission' (2013) A/HRC/22/63, at para. 4.

⁴⁹ Ibid, para. 96.

⁵⁰ Ntina Tzouvala, 'International Law and (the Critique of) Political Economy' (2022) 121 *South Atlantic Quarterly* 297, at 304, 309.

⁵¹ ICJ Advisory Opinion (2024), at paras. 124–133.

⁵² Ibid, para. 126.

⁵³ Ibid, para. 133.

⁵⁴ Dehm et al. (2026) 20–21.

mentioned only briefly by the ICJ. A closer look reveals their contribution to the process of elimination of the Palestinian people from their land.

3.1 *The Occupation Economy*

The Court's analysis of the exploitation of natural resources in the OPT is part of its assessment of Israel's settlement policy.⁵⁵ However, the exploitation of natural resources is only one aspect of a broader set of economic activities that support, facilitate, and profit from the Israeli occupation of the OPT and the settlement infrastructure across a number of sectors.

In 2016, the United Nations Human Rights Council resolved to set up a database of all business enterprises involved in a specified list of activities related to the Israeli settlements in the OPT, ranging from utilities and basic services to financial services, from construction to surveillance and security, from the exploitation of natural resources for business purposes to pollution and dumping of waste.⁵⁶ Economic studies use the terms 'de-agriculturalization, deindustrialization and de-development' to speak about the Palestinian economy.⁵⁷ Although '[n]o monetary value can be assigned to the distress caused by the destruction and loss of life, community, culture, shelter and homeland',⁵⁸ economic indicators show that the Israeli economy benefits from the occupation, particularly by exploiting the resource-rich Area C of the West Bank, which is key to the Palestinian economy and where the settlements are located. Conversely, the Palestinian economy is directly impoverished by the occupation.⁵⁹

Human rights organizations have collected evidence of the involvement in the occupation of businesses operating in a variety of fields, going well beyond the obvious

⁵⁵ ICJ Advisory Opinion (2024), at paras. 111–156 and specifically 124–133.

⁵⁶ 'Resolution Adopted by the Human Rights Council on 24 March 2016 - 31/36. Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan' (2016) A/HRC/RES/31/36, at para. 17 referring to the list contained in 'Report of the Independent International Fact-Finding Mission' (2013) A/HRC/22/63, at para. 96; see also 'Resolution Adopted by the Human Rights Council on 14 July 2023, 53/25: Implementation of Human Rights Council Resolution 31/36' (2023) A/HRC/RES/53/25, at para.1 with which the Human Rights Council requested yearly updates of the database.

⁵⁷ 'Report on UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory' (2022) TD/B/EX(72)/2, at para. 32; see also Sara Roy, 'The Gaza Strip: A Case of Economic De-Development' (1987) 17 *Journal of Palestine Studies* 56, where the term 'de-development' was first used; and Sara Roy, 'De-Development Revisited: Palestinian Economy and Society Since Oslo' (1999) 28 *Journal of Palestine Studies* 64.

⁵⁸ 'Economic Costs of the Israeli Occupation for the Palestinian People' (2016) A/71/174, at para. 29.

⁵⁹ Jonathan Nitzan and Shimshon Bichler, *The Global Political Economy of Israel* (Pluto Press, 2002) 120–121; 'West Bank and Gaza: Area C and the Future of the Palestinian Economy' (World Bank 2013) AUS2922; 'Economic Costs of the Israeli Occupation for the Palestinian People' (2018) A/73/201; 'Economic Costs of the Israeli Occupation for the Palestinian People: Poverty in the West Bank between 2000 and 2019' (2021) A/76/309; 'Economic Costs of the Israeli Occupation for the Palestinian People: The Toll of the Additional Restrictions in Area C, 2000–2020' (2022) A/77/295.

military surveillance and security industries,⁶⁰ to include agriculture,⁶¹ technology and telecommunications,⁶² utilities and services,⁶³ construction,⁶⁴ tourism,⁶⁵ financial services,⁶⁶ pharmaceuticals and cosmetic,⁶⁷ to mention only a few.⁶⁸ The Who Profits Research Center has been running a 'database of complicit companies', which currently lists 473 companies categorized on the basis of twelve involvement categories.⁶⁹ Francesca Albanese, United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, collected information about over a thousand corporate entities implicated in human rights violations and international crimes in the OPT, forty five of which were explicitly named in her June 2025 report.⁷⁰

All of this research suggests that a range of economic actors and activities are vital lifelines for settlements. These actors offer services that ensure the settlements' maintenance and viability in both material and economic terms. At the same time,

⁶⁰ 'Privatizing Security: Corporate Involvement in the Checkpoints' (Who Profits Research Center 2009); 'The Case of G4S: Private Security Companies and the Israeli Occupation' (Who Profits Research Center 2011); '“Big Brother” in Jerusalem's Old City: Israel's Militarized Visual Surveillance System in the Occupied East Jerusalem' (Who Profits Research Center 2018).

⁶¹ "“Made in Israel”: Agricultural Export from Occupied Territories' (Who Profits Research Center 2012); 'Agribusiness as Usual: Agricultural Technology and the Israeli Occupation' (Who Profits Research Center 2020); 'Forbidden Fruit: The Israeli Wine Industry and the Occupation' (Who Profits Research Center 2014).

⁶² 'The Cellular Companies and the Occupation' (Who Profits Research Center 2009); 'Technologies of Control: The Case of Hewlett Packard' (Who Profits Research Center 2011); 'Signal Strength: Occupied Telecommunications Sector and the Israeli Occupation' (Who Profits Research Center 2018).

⁶³ 'Crossing the Line: The Tel Aviv Jerusalem Fast Train (A1)' (Who Profits Research Center 2017); 'Dried Up: Mekorot's Involvement in the Israeli Occupation' (Who Profits Research Center 2023); Lydia de Leeuw, Max Lamb and Misa Norigami, 'Powering Injustice: Exploring the Legal Consequences for States and Corporations Involved in Supplying Energy to Israel' (SOMO 2024).

⁶⁴ 'Caterpillar: The Alternative Report' (War on Want 2005).

⁶⁵ 'Touring Israeli Settlements: Business and Pleasure for the Economy of Occupation' (Who Profits Research Center 2017); 'Destination: Occupation. Digital Tourism and Israel's Illegal Settlements in the Occupied Palestinian Territories' (Amnesty International 2019).

⁶⁶ 'A Case Study: The Norwegian Government's Pension Fund' (Who Profits Research Center 2009); 'Financing the Israeli Occupation: The Current Involvement of Israeli Banks in Israeli Settlement Activity' (Who Profits Research Center 2013); 'Financing Land Grab: The Direct Involvement of Israeli Banks in the Israeli Settlement Enterprise' (Who Profits Research Center 2017); 'Insuring Dispossession: The Complicity of Five Israeli Insurance and Pension Fund Companies in Israeli Violations of Palestinian Rights' (Who Profits Research Center 2022); 'Don't Buy into Occupation IV Report' (DBIO Coalition 2024); 'The Companies Arming Israel and Their Financiers' (PAX 2024).

⁶⁷ 'Ahava: Tracking the Trade Trail of Settlement Products' (Who Profits Research Center 2012); Orly Almi, 'Captive Economy: The Pharmaceutical Industry and the Israeli Occupation' (Who Profits Research Center 2012).

⁶⁸ For example, 'SodaStream: A Case Study for Corporate Activity in Illegal Israeli Settlements' (Who Profits Research Center 2011); 'The Land of Milk and Money: The Israeli Dairy Industry and the Occupation' (Who Profits Research Center 2015); 'Occupation, Inc. How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights' (Human Rights Watch 2016).

⁶⁹ Available at <https://www.whoprofits.org/companies/all/1> (accessed 21 August 2026).

⁷⁰ Albanese (2025), at para. 8.

settlements offer businesses unmatched opportunities for profit extraction. The result is a vicious cycle at the expense of Palestinians: 'colonization of Palestinian land leads to the construction of Israeli settlements. And settlement construction creates tremendous opportunities for capital accumulation.'⁷¹ In turn, this drives the displacement of Palestinians and their replacement with Israeli settlers,⁷² further driving colonization. This process bears the clear markers of settler colonialism, one which is characterized by a logic of elimination of the natives and their replacement with settlers. The continuities between the occupation economy in the OPT and the broader settler colonial project concerning the entirety of historic Palestine are highlighted in the discussion that follows, which focuses on agriculture, the workforce and the role of Israeli domestic law in supporting this economic system.

3.2 *Agriculture*

When discussing the exploitation of natural resources in the OPT, the ICJ paid specific attention to water, describing Israel's prioritization of water supply to settlements to the detriment of the Palestinian population.⁷³ Palestinians are forced to purchase water from Mekorot, the Israeli national water company, which charges them a higher price than it does to Israelis living on both sides of the Green Line.⁷⁴ Palestinians 'frequently suffer from restricted water supply, reduced flow and pressure, and lengthy water outages, while neighboring Israeli settlements enjoy unrestricted water supply.'⁷⁵

The ICJ briefly acknowledged that – beyond the obvious disparities related to hygiene and living standards – the unequal access to water and its differential cost for Israeli and Palestinian people bear economic consequences.⁷⁶ Indeed, the generous water allocation to settlements makes intensive farming possible there.⁷⁷ Palestinian farmers are denied access to water for their crops and animals,⁷⁸ while Israeli settlements are able to produce and often export products such as dates,⁷⁹ wine,⁸⁰ and

⁷¹ Andy Clarno, *Neoliberal Apartheid: Palestine-Israel and South Africa After 1994* (The University of Chicago Press, 2017) 121.

⁷² Albanese (2025), at paras 23–24.

⁷³ ICJ Advisory Opinion (2024), at para. 128.

⁷⁴ 'Dried Up: Mekorot's Involvement in the Israeli Occupation' (2023) 8.

⁷⁵ Ibid, 9; 'The Occupation of Water' (*Amnesty International*, 29 November 2017) <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/> (accessed 25 July 2025).

⁷⁶ ICJ Advisory Opinion (2024), at paras. 127–130.

⁷⁷ 'Parched: Israel's Policy of Water Deprivation in the West Bank' (B'Tselem 2023) 9.

⁷⁸ Ibid, 23; 'The Occupation of Water' (2017); see also Clarno (2017) 113–114 on how limited access to water is one of the factors contributing to the farming crisis affecting Palestinians in the West Bank.

⁷⁹ 'Dried Up: Mekorot's Involvement in the Israeli Occupation' (2023) 13.

⁸⁰ 'Forbidden Fruit: The Israeli Wine Industry and the Occupation' (2014) 6.

olive oil.⁸¹ Movement restrictions and Israeli export controls further prevent Palestinian farmers from marketing their products in Jerusalem and abroad.⁸² The Court did not elaborate on the consequences of the illegal allocation of water to the settlements beyond briefly noting the negative effect of 'dwindling water supplies and associated environmental degradation' on the Palestinian agricultural sector and employment opportunities.⁸³ Such consequences are however far-reaching and require further examination.

In addition to the generous supply of water for Israelis, intensive farming in the settlements is made possible by the booming business of agricultural technology (or agritech). This ensures both big profits for the economic actors involved and the displacement and dispossession of Palestinians. Agritech research and development (R&D) is often conducted by academic and business institutions in the OPT, facilitated by the Israeli government's generous subsidies.⁸⁴ In turn, 'by taking part in agricultural experiments carried out on occupied land and in partnership with settlement R&D centers, companies actively contribute to the expansion of illegal agricultural production by settlers and allow for the normalization of land grabs and dispossession.'⁸⁵ Additionally, private companies in partnership with the Israeli military apparatus, repurpose 'battle-tested' military technology for civilian agricultural use.⁸⁶ While stunting the Palestinian agriculture and economy, the settlement agricultural production has a positive impact on the Israeli economy.⁸⁷

The production and marketing of agricultural products originating from settlements also furthers ideologically and materially the settler colonial elimination of Palestinians from Palestine. Wine offers a particularly telling example of this process. The Israeli regulations on the 'export of alcoholic beverages', in force since 1977, instituted five wine regions which include not only Israel but also the occupied West Bank and the occupied Syrian Golan.⁸⁸ These zoning regulations are meant to obscure

⁸¹ Bethan McKernan, 'A Precious Resource: How Israel Uses Water to Control the West Bank' (*The Guardian*, 17 May 2023) <https://www.theguardian.com/world/2023/may/17/how-israel-uses-water-to-control-west-bank-palestine> (accessed 25 July 2025).

⁸² Clarno (2017) 114–115.

⁸³ ICJ Advisory Opinion (2024), at para. 130.

⁸⁴ 'Agribusiness as Usual: Agricultural Technology and the Israeli Occupation' (2020) 13–16.

⁸⁵ Ibid, 22.

⁸⁶ Ibid, 40–58; see generally Antony Loewenstein, *The Palestine Laboratory: How Israel Exports the Technology of Occupation around the World* (Verso, 2023) for an account of the lucrativeness of technology 'battle-tested' on Palestinians.

⁸⁷ 'Agribusiness as Usual: Agricultural Technology and the Israeli Occupation' (2020) 19–20; 'West Bank and Gaza: Area C and the Future of the Palestinian Economy' (2013) 10.

⁸⁸ Daniel Monterescu and Ariel Handel, 'Terroir and Territory on the Colonial Frontier: Making New-Old World Wine in the Holy Land' (2020) 62 *Comparative Studies in Society and History* 222, 231–233; see also 'Quality Israeli

the exact origin of the wine, which is marketed abroad as 'Made in Israel' even when it originates from wineries located in settlements.⁸⁹ Settler winemakers explicitly evoke the connection between their wineries and the broader process of asserting sovereignty over the entire land under Israeli control, by placing the industry 'into a biblical temporality of autochthony and rootedness'⁹⁰ and thus contributing to the 'colonial production of space' through wine.⁹¹

More generally, agriculture has historically been central to Zionist settler colonialism, which started out with the establishment of privately-funded 'for-profit agricultural settlements, built on bought and stolen Palestinian land and us[ing] Palestinian labour.'⁹² Still today, when the Bedouins – who have inhabited the Naqab/Negev desert for hundreds of years – try to prove ownership by demonstrating they have been cultivating the land, 'they are not only confronting a racially inflected concept of ownership that is based on modern European forms of cultivation, but they are challenging the ideological basis of their dispossession as embedded in a very particular form of nationalism.'⁹³ This is because for early Zionist thinkers, 'Jews needed to reestablish themselves as the people of the land of Palestine [...] through an attachment to the soil through acts of cultivation' while 'the people who were already there, and who had indeed been cultivating the land for generations, needed to be cast as mere tenants of the land, unable to "make the desert bloom," as the hackneyed Zionist slogan goes.'⁹⁴

As this brief discussion has shown, this logic of settler improvement is underpinned by racist ideals. It is pursued through native dispossession and continues to characterize agriculture on both sides of the Green Line.

3.3 *Workforce*

In the 2024 Advisory Opinion, workers were only briefly considered by the Court, when it noted the reduction of employment opportunities among Palestinians due to

Wine from the Golan to the Negev: Israel's Official Wine Region Map Launched' (*Israeli Ministry of Health*, 16 September 2026) <https://www.gov.il/en/pages/official-wine-region-map-launched> (accessed 13 October 2026).

⁸⁹ 'Trading with Illegal Settlements: How Foreign States and Corporations Enable Israel's Illegal Settlement Enterprise' (Stope Trade with Settlements Campaign 2025) 25; see also *Canada (Attorney General) v Kattenburg* 2021 FCA 86.

⁹⁰ Monterescu and Handel (2020) 244.

⁹¹ *Ibid.*, 253.

⁹² Nahla Abdo, 'Racial Capitalism: From British Colonialism to the Settler Colonial Apartheid State' (2024) 23 *Journal of Holy Land and Palestine Studies* 187, at 191.

⁹³ Bhandar (2018) 118.

⁹⁴ *Ibid.*

the illegal exploitation of water by Israel.⁹⁵ In practice, the impact of the occupation economy on the workforce is significant. In spite of the social stigma that this carries, the dire economic conditions and high unemployment rates in the OPT leave no choice to many Palestinians but to accept working in settlements,⁹⁶ and contribute to the Israeli economy.⁹⁷ The same economic activities that sustain and profit from the very existence of the occupation further exploit Palestinian workers, who face 'the non-application of the minimum wage and occupational safety and health requirements, as well as harassment and violence by supervisors and Israeli security force personnel.'⁹⁸ Palestinian workers are thus victims of the occupation economy on multiple levels.

A quick look at the historical context reveals that these dynamics predate the 1967 occupation. The dominant ideology at the start of the Zionist project in Palestine was Labor Zionism, which aimed at excluding Palestinians from the workforce in order to create an exclusively Jewish economy and workforce to form the basis of the nascent state.⁹⁹ Subsequent labor shortages led to the recruitment of Palestinians in the workforce. This change too both served and contributed to the Zionist settler colonial project and to the alienation of Palestinian agricultural producers from the land.¹⁰⁰ In fact, the increased seizure of Palestinian land forced Palestinians to seek employment in the Israeli labor market and their resulting absence from the land facilitated further land grabs.¹⁰¹ After 1967, these modalities were replicated vis-à-vis Palestinian workers from the OPT. Over the years, the granting and withholding of labor and work permits have been tools to control Palestinians, continuing to facilitate the expropriation and exploitation of Palestinian workers.¹⁰² To this day, the

⁹⁵ ICJ Advisory Opinion (2024), at para. 130.

⁹⁶ Ibid; see also Clarno (2017) 104–105.

⁹⁷ Shahd Hammouri, 'Systemic Economic Harm in Occupied Palestine and the Social Connections Model' (2021) 22 *The Palestine Yearbook of International Law Online* 112, at 122.

⁹⁸ 'The Situation of Workers of the Occupied Arab Territories' (International Labour Organisation 2020) ILC.109/DG/APP/2020, at para. 95; Mark Samander, 'Captive Markets Captive Lives: Palestinian Workers in Israeli Settlements' (Al-Haq 2021) 10–11; 'Report of the Independent International Fact-Finding Mission' (2013) A/HRC/22/63, at para. 95; 'Database of All Business Enterprises Involved in the Activities Detailed in Paragraph 96 of the Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, Including East Jerusalem' (2018) A/HRC/37/39, at para. 43.

⁹⁹ Ihab Maharmeh, 'Israel's Exploitation of Palestinian Labor: A Strategy of Erasure' (*Al-Shabaka*, 5 January 2025) <https://al-shabaka.org/briefs/israels-exploitation-of-palestinian-labor-a-strategy-of-erasure/> (accessed 27 May 2025); Sai Englert, 'Hebrew Labor without Hebrew Workers: The Histadrut, Palestinian Workers, and the Israeli Construction Industry' (2023) 52 *Journal of Palestine Studies* 23, at 26–27.

¹⁰⁰ Abdo (2024) 192.

¹⁰¹ Maharmeh (2025); Englert (2023) 27–28.

¹⁰² Englert (2023) 30, 31, 34; after 7 October 2023, Israel revoked all working permits for Palestinians and approximately 507,000 jobs have been lost in the OPT since then: 'Assessing Decent Employment Situation and

compounding effects of high unemployment rates, limited opportunities and space for farming, and settler attacks force Palestinians to leave rural areas for urban ones, thus allowing more of their land to be seized by settlers.¹⁰³ Thus, the exploitation of Palestinian labor and the latter's effects on land control are not new phenomena, nor ones that are confined to the OPT.

3.4 *The Role of Israeli Law*

The ICJ acknowledged in passing the role of Israeli law in the settlement policy when highlighting 'Israel's policy of providing incentives for the relocation of Israeli individuals and businesses into the West Bank, as well as for its industrial and agricultural development by settlers.'¹⁰⁴ The Court also remarked that the confiscation of Palestinian land in East Jerusalem is made possible by the application of Israeli law there.¹⁰⁵ These scant references in the Advisory Opinion do not paint a full picture of the regulatory landscape supporting the economy of occupation within the broader settler colonial structure, as part of which several domestic laws work as 'tools of legal dispossession'.¹⁰⁶

In 2018, a Basic Law of constitution-like status declared the 'Land of Israel'¹⁰⁷ as the historical homeland and nation state of the Jewish people. The latter have the exclusive right to self-determination in the land and 'Jewish settlement' is encouraged and promoted 'as a national value'.¹⁰⁸ The Basic Law elevates to constitutional status policies of land development and appropriation at the expense of Palestinians that were already pursued by state authorities, as a matter of law or policy, with the aim of achieving the 'Judaization' of the land on both sides of the Green Line.¹⁰⁹ Israeli settlements in the OPT were classified as 'National Priority Areas' (NPAs) as early as

Perspectives in the Gaza Strip and the West Bank: Briefing Note on the Occupied Palestinian Territory' (Food and Agriculture Organization of the United Nations 2024) 1.

¹⁰³ Clarno (2017) 119.

¹⁰⁴ ICJ Advisory Opinion (2024), at para. 115.

¹⁰⁵ Ibid, para. 121.

¹⁰⁶ Abu Hussein (2025) 571–572.

¹⁰⁷ While this term is undefined, the Basic Law itself makes it clear that at least part of the OPT falls within this definition: Art. 3 *Basic Law: Israel - The Nation State of the Jewish People* (5778-2018) states that 'complete and united Jerusalem' (i.e. including East Jerusalem, which is part of the OPT) is the capital of Israel, reiterating the contents of the *Basic Law: Jerusalem, Capital of Israel* (5740-1980). An English translation of the *Basic Law: Israel* (2018) is available at <https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf> (accessed 25 July 2025). An English translation of the *Basic Law: Jerusalem* (1980) is available at <https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/86610/ISR86610.pdf> (accessed 25 July 2025).

¹⁰⁸ Arts. 1 and 7 *Basic Law: Israel* (2018).

¹⁰⁹ Hassan Jabareen and Suhad Bishara, 'The Jewish Nation-State Law: Antecedents and Constitutional Implications' in *Israel's Nation State Law: Institutionalizing Discrimination* (Institute for Palestine Studies 2019), at 13.

1998.¹¹⁰ One of the stated aims of NPAs is to 'encourage population dispersal to the periphery'¹¹¹ – or, in clearer terms, to encourage settlers to appropriate more Palestinian land. The classification of settlements as NPAs entitles settlers to a series of benefits 'in the fields of housing, education, industry, agriculture, and tourism, [...] [in addition to] supplementary support given to Israeli local authorities and economic projects in the West Bank.'¹¹² Industrial benefits include generous lease reductions 'on land intended for industrial use, tourism, and trade in National Priority Area A' in addition to grants, tax benefits, and assistance in hiring workers.¹¹³ Grants, subsidies and tax benefits are also provided to settlements involved in agricultural production, including to agricultural tourist projects.¹¹⁴

Although the provision of incentives to settlers was mentioned in the Advisory Opinion,¹¹⁵ the Court did not elaborate on how Israeli legislators have encouraged and supported economic activities that form part of the occupation economy. For instance, the Income Tax Ordinance was amended in 2016 in order to extend tax benefits to settlers.¹¹⁶ Other laws and policies encourage businesses to operate in and service settlements and make it difficult for them to avoid doing so.¹¹⁷ For instance, businesses operating in settlements easily receive permits and licenses, which instead are rarely issued for providing similar services to Palestinians.¹¹⁸ Under anti-boycott legislation, 'deliberately avoiding economic, cultural or academic ties with another person or body solely because of their affinity with the State of Israel, one of its institutions or *an area under its control*'¹¹⁹ can entail a series of consequences, such as the limitation to

¹¹⁰ Eyal Hareuveni, 'By Hook and by Crook: Israeli Settlement Policy in the West Bank' (B'Tselem 2010) 38.

¹¹¹ 'New National Priority Areas Map: Increasing the Government's Ability to Reduce Socio-Economic Gaps' <https://www.gov.il/en/pages/epriorities> (accessed 25 July 2025).

¹¹² Hareuveni (2010) 37.

¹¹³ Ibid, 43; According to Who Profits, 'The Israeli Occupation Industry - Industrial Zones in the Occupied Palestinian Territory' (April 2019) <https://www.whoprofits.org/publications/report/15> (accessed 25 July 2025) in 2019, almost all industrial settlements were classified as NPAs; this is also reported by 'Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan' (2017) A/HRC/34/39, at para. 24.

¹¹⁴ Hareuveni (2010) 44.

¹¹⁵ ICJ Advisory Opinion (2024), at para. 115.

¹¹⁶ See entry 'Encouragement of Capital Investments in Settlements Law' (formally: *Amending the Income Tax Ordinance (no. 226) Law* (5776-2016)) in Yesh Din's Annexation Legislation Database available at <https://www.yesh-din.org/en/legislation/> (accessed 28 May 2025).

¹¹⁷ 'Database of All Business Enterprises' (2018) A/HRC/37/39, at para. 45 mentions amendments to the *Consumer Protection Law* (1981) and the *Prohibition in Products, Services and Entry into Places of Entertainment and Public Places Law* (2000) that prohibit businesses from 'discriminating' against Israelis living in settlements; 'Report of the Independent International Fact-Finding Mission' (2013) A/HRC/22/63, at para. 97.

¹¹⁸ 'Database of All Business Enterprises' (2018) A/HRC/37/39, at para. 44.

¹¹⁹ Art. 1 *Law Preventing Harm to the State of Israel by Means of Boycott* (2011) (emphasis added, the wording is meant to include Israeli settlements in the OPT); the Israeli Supreme Court reviewed the constitutionality of the Law and upheld it almost in its entirety, particularly in relation to its application to both Israel and Israeli settlements in the

participation in public tenders and ineligibility for benefits under the Encouragement of Capital Investments Law.¹²⁰

The ICJ also failed to acknowledge the crucial role played by the Israeli Supreme Court in furthering the occupation economy at the expense of the Palestinian people. In 1983, the Israeli Supreme Court affirmed that '[a] territory held under belligerent occupation is not an open field for economic or other exploitation', and that the occupation authorities 'may not weigh the national, economic and social interests' of the occupying power.¹²¹ Despite this decision, a later petition by an Israeli NGO demanding a halt to Israeli quarrying activities in the West Bank was rejected. In the *Quarries* case, the Israeli Supreme Court accepted the government's claim that the quarries provide livelihood and training to Palestinian workers as well as the economic development and modernization of the OPT,¹²² and that a small part of the quarrying products were used for projects in the territory under the control of the Palestinian Authority.¹²³ The Supreme Court has also consistently refused to rule on the legality of settlements, treating them as a political and non-justiciable issue.¹²⁴ By doing so, the Court has rubberstamped the occupation economy, providing it a veneer of legality.

In sum, the workings of the occupation economy are not the contingent byproduct of market forces and economic considerations. Rather, Israel's laws and legal institutions provide a regulatory architecture that actively encourages capital accumulation while pursuing the elimination of Palestinians.¹²⁵

3.5 *Settler-Colonial Continuities*

OPT, see 'Dispatches: Israeli Supreme Court Upholds "Anti-Boycott Law"' (*Human Rights Watch*, 18 April 2015) <https://www.hrw.org/news/2015/04/18/dispatches-israeli-supreme-court-upholds-anti-boycott-law> (accessed 25 July 2025). An English translation of the law is available at <https://law.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf> (accessed 25 July 2025).

¹²⁰ Arts. 3 and 4(A)(5) *Law Preventing Boycott* (2011).

¹²¹ *Jam'iat Iscan v Commander of the IDF Forces in the Area of Judea and Samaria* (1983) HCJ 393/82, at para. 13.

¹²² *Yesh Din (Volunteer for Human Rights) v The Commander of the IDF Forces in the West Bank* (2011) HCJ 2164/09, at para. 13.

¹²³ *Ibid.*, para. 12; similar arguments had already been advanced by the Supreme Court in *Naale Association for Settlement in Samaria et al v Civil Administration for Judea and Samaria et al* (2004) HCJ 9717/03, HCJ 10359/03, at para. 6, a case brought by settlements seeking to prevent the excavation of a new quarry in their vicinity due to worries that it would harm the environment and the settlers' quality of life.

¹²³ *Gavriel Bargil and others v Government of Israel and others* (1993) HCJ 4481/91, at para. 3; 'Occupation, Inc. How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights' (2016) 43 reports that 94% of the quarrying product is transferred from the settlement quarries to Israel.

¹²⁴ *Gavriel Bargil and others v. Government of Israel and others* (1993), at para. 3.

¹²⁵ More generally on Israeli law and settler colonialism see Mazen Masri, 'Colonial Imprints: Settler-Colonialism as a Fundamental Feature of Israeli Constitutional Law' (2017) 13 *International Journal of Law in Context* 388; and Hadeel S Abu Hussein, *The Struggle for Land Under Israeli Law. An Architecture of Exclusion* (Routledge, 2023).

This Section has illustrated how the exploitation of natural resources in the OPT, which was considered by the ICJ as part of its analysis of Israel's settlement policy, is but one facet of the broader occupation economy. The occupation economy spans a variety of economic activities and actors both profiting from and advancing the settler colonial process of elimination of the Palestinians.¹²⁶ While residential and industrial settlements grow, Palestinians lose access to water, land, and employment. This modality and narrative of Palestinian dispossession, supported by the Israeli legal framework, form part of a settler colonial process meant to erase Palestinian existence from the entirety of historic Palestine while affirming Zionist sovereignty over it. This confirms that Israel's settlement policy, and the associated economic activities, are not merely a case of *occupation gone wrong*, as described by the ICJ, but rather one of *settler colonialism done right*. Contextualizing the economy of the occupation in the territorial and temporal continuum of the Zionist colonization of Palestine unveils settler colonialism as an ongoing phenomenon. Casting settler colonialism as an enduring process and as a structure allows grasping the 'created trajectory of inequalities'¹²⁷ and how they have shaped current racial hierarchies between Israelis and Palestinians. The next Section investigates this process as well as the difficulties of, and opportunities for, articulating it in the language of international law by considering the ICJ's approach to the question of racial discrimination in the Advisory Opinion.

4 A Racial Capitalist System: The Economic Dimension of Racial Oppression in Palestine

After discussing Israel's settlement policy and annexation of parts of the OPT,¹²⁸ the ICJ turned its attention to Israel's discriminatory legislations and measures.¹²⁹ Even though in previous paragraphs the ICJ had specified that Israel exploits natural resources 'for the benefit of its own population, to the disadvantage or even exclusion of the local Palestinian population',¹³⁰ its analysis and conclusions on natural resources were not referenced in the Court's later discussion of whether Israel discriminates against Palestinians. The finding that 'Israel's legislation and measures that have been applicable for decades treat Palestinians differently from settlers in a wide range of

¹²⁶ See also Albanese (2025), at para. 22.

¹²⁷ E Tendayi Achiume and Devon W Carbado, 'Critical Race Theory Meets Third World Approaches to International Law' (2021) 67 *UCLA Law Review* 1462, at 1484.

¹²⁸ ICJ Advisory Opinion (2024), at paras. 111–179.

¹²⁹ Ibid, paras. 180–229.

¹³⁰ Ibid, para. 126.

fields of individual and social activity in the West Bank and East Jerusalem¹³¹ refers back to the analysis of the discriminatory residence permit policy, restrictions of movement and punitive demolitions to which Palestinians are subjected.¹³² Yet, this conclusion is decoupled from the Court's analysis of Israel's settlement policy, including the exploitation of natural resources. The latter findings seemingly played no role in grounding the ICJ's pronouncement that 'the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination' in violation of several human rights treaties.¹³³ In sum, economic and racial questions are entirely separated in the Advisory Opinion.

The Court's findings on the question of discrimination are also somewhat ambiguous. According to the Court's majority, 'Israel's legislation and measures', which 'serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities,' violate Article 3 ICERD.¹³⁴ Under this provision, states parties 'undertake to prevent, prohibit and eradicate' racial segregation and apartheid.¹³⁵ The Court did not elaborate any further on this point and the analysis remains cursory. The individual opinions of several judges reveal that the meaning of this passage was a contentious matter within the majority. Judge Tladi interprets the Court's conclusion on the violation Article 3 ICERD as 'an acceptance that the policies and practices of Israel constitute a breach of the prohibition of apartheid.'¹³⁶ Judge Nolte disagrees.¹³⁷ Similarly, Judge Iwasawa insists that the Court did not qualify 'the "separation" implemented by Israel in the West Bank between the Palestinian population and settlers' as apartheid.¹³⁸ It is not uncommon for the Court to opt for 'a phrasing which can be interpreted more than one way in order to get the decision across the line,' compromising on clarity for the sake of winning large consensus among judges with different views.¹³⁹ The Advisory Opinion evidently strikes such a compromise on the issue of apartheid. Despite these

¹³¹ Ibid, para. 228.

¹³² Ibid, paras. 192–222.

¹³³ Ibid, para. 223.

¹³⁴ Ibid, para. 229.

¹³⁵ Art. 3 ICERD.

¹³⁶ ICJ Advisory Opinion (2024), Declaration of Judge Tladi, at para. 36.

¹³⁷ Ibid, Separate Opinion of Judge Nolte, at para. 8.

¹³⁸ Ibid, Separate Opinion of Judge Iwasawa, at para. 13.

¹³⁹ Juliette McIntyre, 'Consensus, at What Cost?' (*Verfassungsblog*, 25 May 2024) <https://verfassungsblog.de/consensus-at-what-cost/> (accessed 2 June 2025).

ambiguities, this passage can arguably be interpreted at a minimum as 'an *implicit* apartheid finding going beyond segregation.'¹⁴⁰

In this section, I argue that making explicit the link between economic and racial questions is essential to strengthen and clarify the Court's conclusion regarding Israel's discriminatory practices. I first introduce the concept of racial capitalism and international law's difficulties of grappling with it. I then revisit the ICJ's findings in relation to racial discrimination in light of this concept.

4.1 *Racial Capitalism*

In addition to the framework of settler colonialism, several scholars have referred to the concept of racial capitalism in the context of Palestine,¹⁴¹ noting that 'forcible dispossession is not merely a settler colonial strategy but also a racialized process of capital accumulation.'¹⁴² For instance, Clarno draws comparisons between Israel and South Africa as settler colonial states, with attention to the relationship between colonialism and capitalism.¹⁴³ Similarly, Bhandar includes Palestine/Israel in her study of land law regimes and racial capitalism.¹⁴⁴

While racial capitalism does not have a univocal definition,¹⁴⁵ the concept highlights the connection between capital accumulation, racial discrimination and settler colonialism. Indeed, although the coinage of this term is usually attributed to Cedric Robinson,¹⁴⁶ one of its earliest uses can be found in the work of Marxist academics writing in support of the South African anti-apartheid movement in the 1970s.¹⁴⁷ Around that same time, the concept of racial capitalism was also deployed in other contexts by both scholars and activists interested in the connections between race and capitalism and the critique of settler colonialism.¹⁴⁸ As the two components

¹⁴⁰ Victor Kattan, 'Apartheid or Systemic Discrimination? A Connotative Reading of the ICJ's Advisory Opinion' (*Verfassungsblog*, 17 October 2024) <https://verfassungsblog.de/apartheid-or-systemic-discrimination/> (accessed 2 June 2025).

¹⁴¹ For instance, Johnny E Williams, David G Embrick and Yasmin Elgoharry, 'Apartheid in the Twenty-First Century: Racial Capitalism and the Struggles in Palestine' (2024) 23 *Journal of Holy Land and Palestine Studies* 239.

¹⁴² Clarno (2017) 9.

¹⁴³ *Ibid.*, 7.

¹⁴⁴ Bhandar (2018) 21–22.

¹⁴⁵ See Michael Ralph and Maya Singhal, 'Racial Capitalism' (2019) 48 *Theory and Society* 851 for an overview of different conceptualizations of the term.

¹⁴⁶ Cedric J Robinson, *Black Marxism: The Making of the Black Radical Tradition* (University of North Carolina Press, 2021 (1983)).

¹⁴⁷ Zachary Levenson and Marcel Paret, 'The Three Dialectics of Racial Capitalism: From South Africa to the U.S. and Back Again' (2023) 20 *Du Bois Review: Social Science Research on Race* 333, at 337, 340 referring to Martin Legassick and David Hemson, *Foreign Investment and the Reproduction of Racial Capitalism in South Africa* (Anti-Apartheid Movement 1976).

¹⁴⁸ Levenson and Paret (2023) 338.

of the term suggest, racial capitalism recognizes that 'racialization and capital accumulation' or 'profit-making and race-making' are mutually constitutive.¹⁴⁹ The two processes thus underpin racial capitalism. On the one hand, capital accumulation occurs through violent dispossession 'by leveraging, intensifying, and creating racial distinctions.'¹⁵⁰ On the other hand, race naturalizes the inequalities produced by capitalism and thus 'rationalize[s] the unequal distribution of resources, social power, rights, and privileges.'¹⁵¹ Racial capitalism helps shed light on the fact that race is neither natural nor real and that racism is not merely about othering and prejudices.¹⁵² Instead, race should be understood as 'a political and economic category [...] intrinsically linked to the reproduction of capitalism.'¹⁵³

At first glance, international law could be seen as a useful instrument against racial capitalism, specifically in the context of Palestine. For example, one might point to the ICERD and to the provisions of the Oslo Accords regulating access to water for Palestinians.¹⁵⁴ However, critics have pointed out that international law traditionally frames racism as differential treatment on the basis of pre-existing racial differences, positing race as a natural fact.¹⁵⁵ Because the terms 'race' or 'racial' are not explicitly defined in the international law treaties in which they appear, international legal institutions have embraced a subjective understanding of race, based on the perceptions of victims and/or perpetrators.¹⁵⁶ This reinforces the idea that racism is a matter of individual prejudice rather than a product of the political-economic process of racialization. Additionally, political-economic critiques rarely inform analyses of international humanitarian law,¹⁵⁷ which, as discussed in Section 2, has been the

¹⁴⁹ Clarno (2017) 9; Carmen Gonzalez and Athena Mutua, 'Mapping Racial Capitalism: Implications for Law' (2022) 2 *Journal of Law and Political Economy* 127, at 128.

¹⁵⁰ Justin Leroy and Destin Jenkins, 'Introduction: The Old History of Capitalism' in Justin Leroy and Destin Jenkins (eds), *Histories of Racial Capitalism* (Columbia University Press, 2021) 27, at 28.

¹⁵¹ Ibid.

¹⁵² Robert Knox, 'Subject Positions' (2021) *TWAILR: Reflections* 39/2021, at 4–5.

¹⁵³ Ntina Tzouvala, 'Full Protection and Security (for Racial Capitalism)' (2022) 25 *Journal of International Economic Law* 224, at 236; see also Gargi Bhattacharyya, *Rethinking Racial Capitalism: Questions of Reproduction and Survival* (Rowman & Littlefield, 2018) 103; and Gonzalez and Mutua (2022) 128.

¹⁵⁴ See for example Art. 40 Annex III, Interim Agreement (Oslo Accord II), <https://www.gov.il/en/pages/the-israeli-palestinian-interim-agreement-annex-iii> (accessed 28 July 2025). The provisions of the Oslo Accords concerning water, inadequate to begin with, were never implemented: 'Parched: Israel's Policy of Water Deprivation in the West Bank' (2023) 11–17.

¹⁵⁵ Robert Knox, 'International Law, Race, and Capitalism: A Marxist Perspective' (2023) 117 *AJIL Unbound* 55, at 55.

¹⁵⁶ Carola Lingaas, 'The Elephant in the Room: The Uneasy Task of Defining "Racial" in International Criminal Law' (2015) 15 *International Criminal Law Review* 485, at 490, 494; Miles Jackson, 'The Definition of Apartheid in Customary International Law and the International Convention on the Elimination of All Forms of Racial Discrimination' (2022) 71 *International & Comparative Law Quarterly* 831, at 850.

¹⁵⁷ Tzouvala (2022) 304, 309.

predominant paradigm through which international lawyers and international institutions have considered the question of Palestine. This explains the ICJ's failure to connect economic issues to its findings on racial discrimination in the Advisory Opinion.

4.2 *Revisiting the Advisory Opinion through the Lenses of Racial Capitalism*

In the 2024 Advisory Opinion, the ICJ observed that 'the expansion of settlements and of industrial zones has contributed to the pollution of freshwater and groundwater' and that the 'associated environmental degradation' has had a negative effect on the Palestinian agricultural sector and on the employability of Palestinians.¹⁵⁸ Through the lenses of racial capitalism, it is not difficult to understand these dynamics as an expression of the entanglement of race-making and profit-making at the service of settler colonialism.

With regard to environmental degradation, racial capitalism sheds light on the fact that '[w]hen capital expropriates nature, it also disrupts communities whose land is confiscated or polluted, whose means of subsistence are thereby undermined, whose livelihoods are destroyed, and/or whose labor is conscripted into capitalist processes of profit-making.'¹⁵⁹

Additionally, through the lenses of racial capitalism, the dispossession of Palestinians can be read simultaneously as an economic and racial phenomenon. As discussed in Section 3, the occupation economy features the ongoing loss of Palestinian control over the land and its resources and raw materials, which are increasingly controlled by Israeli settlers. The Palestinian working class is 'proletarianized' by being forcibly turned into an increasingly landless working class with ownership only over their labor,¹⁶⁰ which they have to sell to the settlers in order to survive.¹⁶¹ For those racialized as inferior, racial capitalism manifests through experiences such as higher levels of unemployment and underemployment than the racially privileged groups, concentration in less desirably sectors and forms of work, precarity, high levels of harassment and violence at work, and vulnerability to job loss.¹⁶² These are all markers that characterize the Palestinian working class. Even though 'a small Palestinian elite with close ties to the [Palestinian Authority] has grown

¹⁵⁸ ICJ Advisory Opinion (2024), at para. 130.

¹⁵⁹ Gonzalez and Mutua (2022) 133.

¹⁶⁰ Nitzan and Bichler (2002) 120.

¹⁶¹ Abdo (2024) 190.

¹⁶² Bhattacharyya (2018) 108–109.

rich,¹⁶³ their privileges and ties with Israeli capitalists¹⁶⁴ do not protect Palestinian capitalists from 'humiliation, land confiscations, and violent assaults.'¹⁶⁵ This class division is productive of and coterminous with racial hierarchies across historic Palestine, so that even though 'Jewish-Israelis from the lower classes may not enjoy material benefits from the occupation, [...] [they] are not at the bottom of the social hierarchy, but somewhere in the middle, above both non-Jewish citizens in Israel itself and Palestinians from the OPT.'¹⁶⁶

The ICJ did not acknowledge the structural conditions conducive to the racial oppression of Palestinians. In this manner, the identified violations – which are articulated in the technical vocabulary of international (humanitarian) law – are exceptionalized and depoliticized, leading to the normalization of the very system and processes that subordinate Palestinians.¹⁶⁷ Due to the *occupation gone wrong* framing of the Advisory Opinion, which casts Israel's acts as abuses of its position as an occupying power, the Court's focus is on 'the *abnormality* of conjunctural violence, rather than [...] [on] the *normality* of the forces – including economic and legal structures – that lurk beneath.'¹⁶⁸ Conversely, a political economy reading of race and racial discrimination may clarify the ICJ's finding concerning the violation of Article 3 ICERD by Israel.

Even though the concept of racial capitalism was used by scholars and activists in relation to the struggle against apartheid in Southern Africa, it did not make it as such into the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) adopted in 1974.¹⁶⁹ The latter does make reference to the right to work, the right to form trade unions, the expropriation of landed property, and the exploitation of labor.¹⁷⁰ The economic dimensions of racial oppression are clearly relevant yet not central to the codified definition of the crime apartheid, which according to critics 'focuses on racial domination but ignores racial

¹⁶³ Clarno (2017) 2.

¹⁶⁴ Tariq Dana, 'The Palestinian Capitalists That Have Gone Too Far' (*Al-Shabaka*, 14 January 2014) <https://al-shabaka.org/briefs/the-palestinian-capitalists-that-have-gone-too-far/> (accessed 27 May 2025).

¹⁶⁵ Clarno (2017) 98–99.

¹⁶⁶ Shir Hever, *The Political Economy of Israel's Occupation: Repression Beyond Exploitation* (Pluto Press, 2010) 179; see also Nitzan and Bichler (2002) 104; and Sai Englert, 'Settlers, Workers, and the Logic of Accumulation by Dispossession' (2020) 52 *Antipode* 1647, at 1662.

¹⁶⁷ A similar point is made by Katharine Fortin, 'Classifying the Armed Conflict in Gaza' (2024) 1–2 *Revue Belge de Droit International* 275, 277–279.

¹⁶⁸ Tor Krever, 'International Criminal Law: An Ideology Critique' (2013) 26 *Leiden Journal of International Law* 701, at 722 (emphasis in the original).

¹⁶⁹ Art. II Apartheid Convention. Jackson (2022) argues that the definition of apartheid contained in the Apartheid Convention coincides with its definition in customary international law and in Art. 3 ICERD.

¹⁷⁰ Art. II (c), (d), and (e) Apartheid Convention.

capitalism.¹⁷¹ This has led scholars to suggest overcoming the limitations of this definition and embracing a political-economic understanding of apartheid, by conceptualizing apartheid as a system of racial capitalism.¹⁷² While doctrinal scholarship has highlighted the significance of violations of economic, social and cultural rights in the context of apartheid,¹⁷³ a richer contribution to a political-economic understanding of race and racism in international law has come from critical scholars working within the intellectual traditions of TWAIL and Critical Race Theory,¹⁷⁴ as well as Marxism.¹⁷⁵

Between the 1950s and 1970s, some United Nations reports concerning the apartheid regime in South Africa and Namibia,¹⁷⁶ as well as racism in Zimbabwe,¹⁷⁷ did adopt a political-economic reading of racial discrimination. More recently, within the United Nations Human Rights Council's special procedures system, racial capitalism and the political-economic dimensions of race were explicitly spelled out by two international lawyers, Tendayi Achiume¹⁷⁸ and Francesca Albanese¹⁷⁹, in their respective roles as Special Rapporteurs. Albanese's approach is notably different from that of her predecessors, who addressed the issue of businesses profiting from Israel's

¹⁷¹ Clarno (2017) 199.

¹⁷² Ibid, 198–200; Haidar Eid and Andy Clarno, 'Rethinking Our Definition of Apartheid: Not Just a Political Regime' (*Al-Shabaka*, 27 August 2017) <https://al-shabaka.org/briefs/rethinking-our-definition-of-apartheid-not-just-a-political-regime/> (accessed 8 July 2025); Williams, Embrick and Elgoharry (2024); on the limitations of the apartheid framework with respect to Palestine see also Francesca Albanese, 'Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967' (2022) A/77/356 paras 10–11.

¹⁷³ Evelyn Schmid, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* (CUP, 2015) 143–148; Jackson (2022) 154–155.

¹⁷⁴ Chantal Thomas, 'Race as a Technology of Global Economic Governance' (2021) 67 *UCLA Law Review* 1860, at 1864–1869.

¹⁷⁵ For example, Tzouvala (2020); Knox (2023).

¹⁷⁶ 'Report of the Ad Hoc Committee on Forced Labour' (International Labour Office 1953) E/2431, at paras. 374–375, 385; Sean Gervasi, 'Industrialization, Foreign Capital and Forced Labour in South Africa' (Unit on Apartheid, Department of Political and Security Council Affairs, United Nations 1970) ST/PSCA/SER.A/10, at paras. 40–41, 44.

¹⁷⁷ Tina Tzouvala, 'Invested in Whiteness: Zimbabwe, the von Pezold Arbitration, and the Question of Race in International Law' (2022) 2 *Journal of Law and Political Economy* 226, at 244 referring to 'Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples' (1977) A/31/23/Rev.1.

¹⁷⁸ See Tendayi Achiume, 'Global Extractivism and Racial Equality: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance' (2019) A/HRC/41/54 on racial inequality and the global extractivism economy.

¹⁷⁹ Albanese (2025), at para. 91.

occupation¹⁸⁰ and the question of apartheid¹⁸¹ in isolation, failing to explicitly connect issues of race-making and profit-making.

This overview demonstrates that international law can accommodate critical interpretations of race as a political-economic category and thus a political-economic reading of racial oppression. In this light, the Advisory Opinion can be re-read as confirming that Israel has in fact instituted a system of apartheid marked at by the racial and economic subordination of the Palestinian people in the service of settler colonialism. Nevertheless, the possibility that such an interpretation may gain traction in the mainstream, particularly in a forum such as the ICJ, is limited. Indeed, the Court has consistently treated apartheid as a violation of human rights rather than as a question of racial capitalism, not only in the context of Palestine but also previously in Namibia.¹⁸² A different approach would require 'undertak[ing] the conceptual work of rejecting the whole complicity of international law in [settler] colonialism,'¹⁸³ both generally and in relation to Palestine. This might be a hurdle impossible to overcome if one considers, on the one hand, the expanding yet limited counter-hegemonic potential of international institutions such as the ICJ¹⁸⁴ and, on the other hand, international law's very complicity in both capital accumulation and racialization.¹⁸⁵ Such a shift would require no less than rejecting 'an interpretation of international law subordinated to the interests of capitalism.'¹⁸⁶

5 Conclusion

This article has offered a critique of a narrow conceptualization of the occupation reflected in the 2024 Advisory Opinion on Israeli policies and practices in the OPT rendered by the International Court of Justice. It has demonstrated that the economy of the occupation is part of a settler colonial project which is broader in both time and

¹⁸⁰ 'Situation of Human Rights in the Palestinian Territories Occupied since 1967' (2012) A/67/379; 'Situation of Human Rights in the Palestinian Territories Occupied since 1967' (2013) A/68/376.

¹⁸¹ 'Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967' (2022) A/HRC/49/87.

¹⁸² Tzouvala (2020) 161, 165 referring to *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (1971) ICJ Reports 16.

¹⁸³ Anthony Carty, 'Israel's Legal Right to Exist and the Principle of the Self-Determination of the Palestinian People?' (2013) 76 *The Modern Law Review* 158, at 176.

¹⁸⁴ Robert W Cox, 'Gramsci, Hegemony and International Relations: An Essay in Method' in Stephen Gill (ed), *Gramsci, Historical Materialism and International Relations* (CUP, 2011) 49, at 62–64.

¹⁸⁵ Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) 4 *London Review of International Law* 81, at 112; see more generally Gonzalez and Mutua (2022) 128 on the role of law in structuring the 'social, epistemic, and economic practices and hierarchies' of racial capitalism.

¹⁸⁶ Shahd Hammouri, 'Revisiting Allende's 1972 Speech at the United Nations General Assembly: Histories Repeated with a Twist' (2020): *Reflections 20/2020*, at 9 citing Salvador Allende.

space than the military occupation of the Gaza Strip and the West Bank, including East Jerusalem. The analysis has revealed the role played by economic activities in furthering settler colonialism at the expense of Palestinians, including due to the role of Israeli laws and institutions. Unveiling the structural processes that sustain the occupation reveals that a system of racial capitalism is in place in Palestine, where profit extraction is pursued alongside the dispossession and subordination of the Palestinians. This article has shown that, through the lenses of racial capitalism, the racial subordination of Palestinians appears clearly as the outcome of the entanglement of profit-making and race-making in the service of settler colonialism.

This article has also grappled with international law's opportunities and limitations in relation to settler colonialism and racial capitalism. It has demonstrated that, by scrutinizing the political-economic forces driving the occupation of Palestine, international lawyers can better articulate the racial, colonial and capitalist dimensions of the oppression of Palestinians. This is ultimately necessary to set out a blueprint for the fair decolonization of Palestine, so as to consider it not only in political and social terms but also in economic ones.¹⁸⁷

Beyond Palestine, this article hopes to contribute to the critique of a decontextualized and depoliticized approach to international law. It calls instead for a serious reckoning on the part of international lawyers with issues of settler colonialism and racial capitalism, through which legal analysis can take into account political-economic processes of racialization, including when seemingly non-economic questions are concerned. Such an approach can open up avenues for conducting research on legal issues arising from situations of armed conflict and occupation by centering economic and racial considerations.

¹⁸⁷ Clarno (2017) 200; see also Toufic Haddad, *Palestine Ltd.: Neoliberalism and Nationalism in the Occupied Territory* (Bloomsbury Publishing, 2018) 8–9 using the terms “Palestine Limited” and “Palestine Ltd.” to indicate both a truncated state with limited political and economic powers and a site for extracting returns on investments through specific political and economic arrangements.