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## Hot Topics

# Are There Double Standards in Israel's Application of the Rule of Law in the Territories?

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Amb. Alan Baker





In comments to the Institute for National Security Studies International Conference on “Changing the Rules of the Game” on January 18, 2016, U.S. Ambassador Daniel B. Shapiro referred to the rule of law in the West Bank.<sup>1</sup> He asserted that “at times there seems to be two standards of adherence to the rule of law – one for Israelis and another for Palestinians.”

Regrettably, there would appear to be a lack of understanding – whether by Ambassador Shapiro himself or by those senior State Department and White House officials who instruct him – as to the legal situation prevalent in the West Bank areas of Judea and Samaria.

Indeed, there exist *two* legal frameworks.

The one applied by Israel's Civil Administration *vis-à-vis* the Palestinian residents of Judea and Samaria is based on the international norms regarding the administration of territory occupied or administered following armed conflict and pending a peace agreement. These norms, set out in the 1907 Hague Rules and 1949 Fourth Geneva Convention, enable an administering power, in administering a hostile local population, to impose various limitations on the basic freedoms that exist in any ordinary civil legal system. All this pending a permanent peace arrangement regarding the fate of the territory.

The second legal framework covers the Israeli residents of towns, villages and other forms of settlement within the territory, who, not being part of the local Palestinian population, are subject on an *ad-personam* basis to Israeli law. As such, they are not covered by those limitations that apply solely *vis-à-vis* the local population of the territory.

Unlike the insinuations in Ambassador Shapiro's statement, this dual set of legal frameworks is not based on any double standards, but on a clear division of legal authorities dictated by both international humanitarian law and Israeli law.

Both these legal systems, whether that administered by the Civil Administration or that governing Israeli residents in the area, require strict adherence to the rule of law and the concomitant rules of natural justice. Any and every crime has to be investigated and the perpetrator brought to trial in the appropriate court of law.

Criminal procedures for investigating crimes are in the hands of the appropriate police and security authorities and are dependent on the available sources of evidence, witnesses and the like. As such, each case can only be dealt with based on its own particular circumstances. Sweeping generalizations, such as those uttered by the U.S. ambassador, are out of place.

All instances, without exception, have to be dealt with in the proper manner and with the appropriate alacrity as the specific facts of each case enable.

Therefore, the insinuations by Ambassador Shapiro regarding "unchecked vigilantism and double standards" should be rejected outright as an unjustified intrusion into Israel's legal and investigative procedures.

\* \* \*

### Notes

<sup>1</sup> Amb. Daniel Shapiro's Remarks at the Institute for National Security Studies, January 18, 2016

<http://israel.usembassy.gov/mobile//amb01182016.html>

Filed Under: [International Law, Israel, U.S. Policy](#)

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### About Amb. Alan Baker

Amb. Alan Baker is Director of the Institute for Contemporary Affairs at the Jerusalem Center and the head of the Global Law Forum. He participated in the negotiation and drafting of the Oslo Accords with the Palestinians, as well as agreements and peace treaties with Egypt, Jordan, and Lebanon. He served as legal adviser and deputy director-general of Israel's Ministry of Foreign Affairs and as Israel's ambassador to Canada.

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