



ISRAEL: HOSTAGE TO ITS SOLDIERS' CAPTORS?

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For years Israel has been subject to extortion by terrorist organizations holding Israeli soldiers and civilians hostage, with their release conditional on the release of hundreds of imprisoned members of these organizations. If there was a realistic chance of releasing its citizens by force, Israel chose that route; lacking that option, Israel consistently paid a steep price for the release of its captives. This policy was formulated over decades, starting in the late 1960s. Consequently, terrorist organizations, depending on their capabilities, were encouraged to seek operations where Israel would have no possibility of military action. They were driven to adopt a pattern of “hit and run” with their hostages to areas beyond the reach of Israel’s security services and deny Israel the ability to secure the release of hostages by force.

Among Israel’s enemies, several organizations have stood out for their use of this tactic. Once it was Jibril’s Popular Front for the Liberation of Palestine–General Command; recently it has been Hizbollah. The latter’s first such operation occurred in 1986 with the abduction of two IDF soldiers, Yosef Fink and Rahamim Alsheikh, in Beit Yahoun. The organization concealed their deaths during the five years of negotiations; in 1996, in exchange for the return of their bodies and the release of twenty South Lebanese Army soldiers, Israel released forty Hizbollah members imprisoned in al-Hiyam and 123 Hizbollah bodies. In 2000, Hizbollah abducted three IDF soldiers at Mt. Dov – Omar Souad, Benny Avraham, and Adi Avitan – and a short while later abducted Col. (ret.) Elhanan Tennenbaum. In exchange for the release of the civilian and the bodies of the three soldiers, Israel freed 36 prisoners with foreign citizenships, 400 Palestinian prisoners, and 124 bodies of Hizbollah fighters who were buried in Israel.¹

¹Rappaport, Amir, "2,101 Days", *Ma'ariv*, 29.1.2004, Preserved by The International Coalition for Missing Israeli Soldiers' archives, <http://www.mia.org.il/archive/040129mah.html>



Since the early 1990s, Hamas has tried to abduct Israeli soldiers several times in order to force Israel to release Hamas prisoners. Most incidents resulted in the soldiers' deaths during the attempt, the concealment of their bodies, and the campaign to extort from Israel the release of prisoners in exchange for revealing the location of the bodies. That was the case in the abduction and murder of Border Patrol soldier Nissim Toledano, and the soldiers Avi Sasportas and Ilan Saadon.² In addition, Hamas abducted IDF soldier Nachshon Wachsmann; in this case Israel succeeded in identifying the location where he was held, but he was killed in the course of the attempted rescue operation.

Over the past four years Israel has once again been forced to tackle the dilemma of releasing security prisoners in exchange for the release of abducted soldiers. On June 25, 2006, IDF soldier Gilad Shalit was abducted by a joint Hamas–Popular Resistance Committees cell that attacked an Israeli tank, killed two of its crew, injured a third, and retreated to Gaza with Shalit as hostage.³ Shortly thereafter, on July 12, Hizbollah abducted two IDF reservists in a complex operation that included massive artillery shelling of northern Israel. The shelling deflected attention from the well planned, pinpoint attack on the patrol along the security fence. Hizbollah killed eight soldiers and abducted two others, Eldad Regev and Ehud Goldwasser, transporting them deep into Lebanese territory.⁴

Following these abductions Israel conducted indirect negotiations with two organizations that have carried out terrorist activity against Israel for many years and categorically deny the right of its existence as a sovereign state. Since Israel does not maintain any direct contact with them, it was necessary to find a reliable mediator acceptable to both sides who could facilitate exchange deals as soon as possible and at a tolerable cost that would not include Israel's formal recognition of the organizations.

² "Chronicle of Kidnapping and Murder of Soldiers," *Ynet*, July 28, 2004, <http://www.ynet.co.il/articles/1,7340,L-2708596,00.html>.

³ Ali Waked, "Hamas Demands Freedom for Female Prisoners in Exchange for Information," *Ynet*, June 26, 2006., <http://www.ynet.co.il/articles/0,7340,L-3267670,00.html>.

⁴ Haim Isserowitz, "Hizbollah Reveals: How We Kidnapped Regev and Goldwasser," *nrg*, <http://www.nrg.co.il/online/51/ART1/607/994.html>.



ISRAEL'S DILEMMAS IN NEGOTIATING WITH HIZBOLLAH

The most recent negotiations between Israel and Hizbollah, conducted on behalf of Israel by Ofer Dekel (the former deputy director of the General Security Services), took place through the German mediator Gerhard Conrad and lasted close to two years, from August 2006 to July 2008. Among the demands presented by Hizbollah were the release of Lebanese citizens imprisoned in Israel, including one civilian and three Hizbollah fighters who were taken hostage in the Second Lebanon War, and the release of Samir Kuntar, a Lebanese Druze serving five life sentences for his participation in a terrorist attack on Israel as a member of the Popular Front for the Liberation of Palestine (PFLP). During the attack, which took place when Kuntar was fifteen, four Israelis were murdered. In addition, Hizbollah demanded the release of hundreds of non-Lebanese Palestinian and Arab prisoners.

Israel expressed willingness to release the Lebanese, but argued that Kuntar had engaged in the attack as a member of a Palestinian cell. Israel also refused to release Palestinian and other Arab prisoners to Hizbollah in an effort to deny Hizbollah leader Hassan Nasrallah any kind of legitimate standing in the Israeli-Palestinian conflict or in any other matter connected with the Arab-Israeli conflict. Israel ultimately released all the Lebanese subjects, including Kuntar. In addition, Israel delivered 199 bodies of terrorists (including eight Hizbollah dead),⁵ and a few months after the deal, it released some 200 Palestinian prisoners who were about to conclude their prison terms.⁶ Israel chose the specific prisoners and did not allow Hizbollah, despite its demand, to participate in drafting the list.

During the entire negotiations process, Hizbollah bargained over information about the fate of the hostages, all the while carefully concealing whether they were still alive or had been killed during the abduction. This tactic marked Hizbollah's conduct in every part of the negotiations with Israel. Only on July 16,

⁵ Intelligence and Terrorism Information Center, http://www.terrorism-info.org.il/malam_multimedia/Hebrew/heb_n/html/hezbollah_001.htm.

⁶ Israel Prison Service, List of Prisoner Releases, August 18, 2008, http://www.ips.gov.il/NR/rdonlyres/E401CCB9-9A84-4942-BE3E-EAF6F1E5F0A9/0/list_180808c.pdf.



2008 as the soldiers were returned did Hizbollah reveal publicly – in a dramatic and humiliating fashion – that the two abducted soldiers were in fact dead.⁷

The major dilemmas Israel was forced to confront during the negotiations with Hizbollah focused on freeing a convicted murderer who had been sentenced to multiple life sentences and on releasing living prisoners in exchange for what would likely be dead bodies. The first dilemma, regarding Samir Kuntar, whom Israel had refused to release in the past, was mostly symbolic and emotional, because for many Israelis, he symbolized the monstrosities inherent in Palestinian terrorism. In Israel, Kuntar will be remembered as the one who killed a father and his four-year old daughter on a beach where he and his fellow terrorists had fled to after attacking and murdering Israelis in a Nahariya apartment building in the middle of the night. Although Kuntar served 27 years in Israeli prisons, Hizbollah's demand for his release aroused strong feelings and a public debate in Israel, with most people feeling he should spend the rest of his life behind bars. An additional difficulty stemmed from the fear that the release of security prisoners in exchange for the bodies of dead Israeli soldiers was liable to endanger the lives of future Israeli hostages, because abductors would know that they could extract a high price from Israel even in exchange for dead bodies. Therefore, according to this view, terrorists would not bother keeping hostages alive and there would be no deterrence to prevent their being killed.

On the other hand, it was clear to Prime Minister Ehud Olmert that if negotiations with Hizbollah were not concluded, the families of the hostages would remain with doubts about the fate of their loved ones, despite the assessment that it was highly unlikely that they were still alive. Likewise, the Prime Minister was interested in avoiding a situation in which a woman would remain an *aguna* (literally, “a chained woman”; according to Jewish law, in the absence of concrete proof or eyewitness testimony, a woman remains married and is unable to remarry even if her husband is missing and presumed dead). Such is the plight of Tami Arad, wife of the missing navigator Ron Arad, whose

⁷ Intelligence and Terrorism Information Center, http://www.terrorism-info.org.il/malam_multimedia/Hebrew/heb_n/html/hezbollah_001.htm.



fate has been a mystery for 24 years. In addition, public and media pressure to conclude the deal at the required (reasonable) cost finally tipped the scales in favor of the deal, despite public distress – especially among the families of Kuntar's victims.

In concluding the negotiations, Israel was forced to pay a price that was steep in terms of symbolism and principles, but the total cost of the deal was much lower than what Nasrallah had wanted. Contrary to his hopes of extorting from Israel the release of hundreds of Palestinian prisoners, including senior personnel who had killed many Israelis, and the release of various Arab prisoners from the region, Nasrallah was forced to make do with a much smaller achievement. He was, however, successful in delivering his promise to secure the release of all Lebanese prisoners held in Israel.

From the perspective of the two years since the deal went through, it seems that its major damage was short lived and essentially symbolic. It does not seem that it had any effect on increasing Hamas demands of Israel.⁸ In the short term, the deal did not generate any increase in attempted abductions by Hizbollah or Palestinian organizations. Samir Kuntar too, who spoke passionately about his intention to continue the fight against Israel, was not assessed as being a particular threat or a significant boost to the power of the organization and its capabilities in a way liable to harm Israel's security. Thus the primary toll was emotional, which is unavoidable in this type of deal.

ISRAEL'S DILEMMAS IN NEGOTIATING WITH HAMAS

The abduction of Gilad Shalit forced Israel to begin negotiations with Hamas. Since the abduction, all Israeli attempts to identify his location and create a military option to secure his release by force have failed. Therefore, what remains is for Israel to negotiate for his release in exchange for the release of Palestinian prisoners. Thus, Israel's objective in negotiations is to keep the number of prisoners to the absolute minimum and in particular to prevent the

⁸ Meeting with Ofer Dekel, May 13, 2009.



release of prisoners identified by Israel as dangerous and/or of symbolic significance.

The first stage of the negotiations between Israel and Hamas lasted from August 2006 until March 2009, and was conducted by Ofer Dekel at the same time he was engaged in negotiations with Hizbollah. During this stage in the negotiations, conducted with Egyptian mediation, Hamas presented its starting demands: the release of 1,400 prisoners from a range of Palestinian organizations, headed by 450 prisoners serving life sentences for murdering Israelis; Israeli Arabs; residents of East Jerusalem; women; minors; and Hamas parliament members imprisoned in Israel. From the start of the negotiations Hamas insisted on being the party to determine the prisoners to be released; Israel would have no say in specifying those to be freed.

Negotiations were suspended a number of times, either when the sides reached points of disagreement that couldn't be overcome or as a result of security events not linked to the negotiations themselves. The longest suspension was caused by the Hamas takeover of the Gaza Strip in June 2007, which was seen as a threat to Israel and damaged Hamas' relations both with the Palestinian Authority and with Egypt, which was serving as mediator. After Operation Cast Lead (January 2009) and with Hamas in its new predicament, the first stage of negotiations was resumed under Egyptian auspices with the intention of concluding them. In mid-March 2009, Israeli and Hamas delegations met in Cairo and with active Egyptian arbitration conducted intensive indirect negotiations, with the Egyptian mediators shuttling between the adjacent delegation rooms in order to bring the negotiations to an end with a signed agreement. In addition to Dekel, the Israeli delegation in Cairo included the head of Israel's General Security Services Yuval Diskin. Prime Minister Olmert authorized them to close the deal while taking advantage of the maximum flexibility Israel was willing to consider. On Hamas' side were Mahmoud a-Zahar, a member of Hamas' political bureau; a representative of General Secretary Khaled Mashal; Ahmed Jabari, the head of the organization's military wing, which is holding Shalit; and Jabari's deputy.



The negotiations in Cairo focused primarily on the names of the 450 prisoners Hamas was hoping to secure from Israel. Israel agreed to the release of 325 of the people on the list; of these, it demanded that 140 be deported abroad. Israel categorically refused to release 125 “heavyweight” prisoners, sentenced to life in prison for their responsibility for the deaths of hundreds of Israelis in terrorist activities starting in the early 1990s, in particular during the second intifada. In addition, among them were Arab citizens of Israel; Israel on principle refused to discuss their fate with Hamas. That was also the case of East Jerusalem residents (although as a last minute gesture Diskin agreed to the release of six East Jerusalem residents and their deportation once all the other issues were resolved and a deal was signed). For Hamas these 125 were at the top of the list, and it also wanted to establish a precedent by including Israeli Arabs and East Jerusalem residents as part of the deal. Despite the public pressure on Israel to conclude the affair and secure Shalit’s release, Prime Minister Olmert viewed the release of these 125 prisoners as an unacceptable condition. Hamas refused to respond to the Israeli offer, and negotiations were suspended until July 2009.

Negotiations were renewed and entered their second stage after Binyamin Netanyahu assumed office as Prime Minister. Haggai Hadas, formerly a senior Mossad official, was appointed to conduct the negotiations on behalf of Netanyahu. The Egyptian mediation was exchanged for German mediation under the direction of Gerhard Conrad, who had proven his professionalism after having brought the last deal with Hizbollah to a successful conclusion.

From the details that have been published in the media, it seems that at this stage the two sides have agreed to the framework of the agreement. The deal-in-the-making would involve a total release of 1,000 Palestinian prisoners, 450 of whom would be agreed on by Israel and Hamas and released in a first step in exchange for the release of Shalit. At the second stage, Israel would release another 550 prisoners who would be picked by Israel exclusively. The latter



would be released as a gesture to Abu Mazen and Egypt. This list would also include women and children.⁹

In October 2009 and as a trust-building measure, Hamas released a videotape that offered the first visual sign of life of the abducted soldier. In exchange, Israel released 21 female prisoners to Hamas in the West Bank and Gaza Strip. And as is wont in Israel, especially in recent years, the second stage of the negotiations was also accompanied by close Israeli media coverage, which generally took a stance favoring a rapid end to the affair.

Around November 2009, the prevailing impression was that negotiations were heading towards a successful conclusion, but in December there were reports that the sides had again hit an impasse because of fundamental gaps regarding the release of the same 125 “heavyweight” prisoners and the expulsion abroad or to the Gaza Strip of about one hundred of the other prisoners to be released. Yet despite the deadlock in the talks, public statements by officials on both sides seem to indicate that no one has given up on the negotiations.¹⁰ The reason for this feeling may be that the gaps between the sides are not seen as unbridgeable or because neither side is interested in being accused of having torpedoed the deal; the sides seem to be waiting to renew the talks under better circumstances.¹¹

In contrast to the relatively low cost Israel had to pay Hizbollah for the return of the IDF deceased soldiers, the cost of the deal with Hamas is much higher and more complex, both because of the large number of prisoners and because of the severity of the crimes attributed to these prisoners. The dilemmas facing the decision makers in Israel, first and foremost Prime Minister Netanyahu, in responding to the Hamas demands lie both in the field of security and in

⁹ Aviad Glikman, "State to Court: 980 Prisoners to be Released in Exchange for Shalit," *Ynet*, November 29, 2009, <http://www.ynet.co.il/articles/0,7340,L-3812449,00.html>.

¹⁰ Amos Harel, "By the end of the month, the negotiations to release Shalit will be renewed," *Haaretz*, February 17, 2010; Ron Ben Yishai, "Shalit deal: Hamas' turn to sweat," *Ynet*, January 9, 2010. <http://www.ynet.co.il/articles/0,7340,L-3831540,00.html>

¹¹ Isabel Kershner, "Netanyahu Plays Down Talk of a Prisoner Exchange," *New York Times*, November 24, 2009, <http://www.nytimes.com/2009/11/25/world/middleeast/25mideast.html>.



principles, and also touch on Israel's international image as a state that does not give in to terrorism.

From the point of view of security, there is a risk that many of the prisoners demanded by Hamas, with proven leadership and operational skills, are liable immediately upon their release to lead aggressive terrorist cells once again. Similarly, the demand to release many of them to their homes in the West Bank is liable to strengthen both Hamas' political status and its operational military infrastructure in the bitter contest with Fatah, in particular over control of the West Bank.

In addition, the release of dozens of senior prisoners responsible for the murder of Israelis who served only a few years in Israeli prisons (especially those jailed during the second intifada and sentenced to life in prison) might well encourage future murderers. Such a mass release would of course also represent a severe blow to the Israeli public in general and the many bereaved families in particular. Furthermore, Prime Minister Netanyahu has long portrayed himself and Israel under his leadership as engaged in an uncompromising war on terrorism; he is considered one of the major proponents of this policy. This consideration is especially prominent in light of the global campaign against fundamentalist Islamic terrorism. Netanyahu's signature on an agreement that will be seen as surrendering to Hamas is liable to be interpreted as serving the forces supporting global terrorism.

On the other hand, the life of a combat soldier captured by the enemy hangs in the balance. This is part of the Israeli ethos and the country's tradition, whereby the nation does not abandon a hostage in the hands of his abductors and leaves no stone unturned to release him as rapidly as possible. Preserving this core value has moral and ethical importance of the highest degree for the Israeli public in general and in particular for the families of soldiers, called on to bear the security burden and serve in the IDF regular and reserve forces.



Looking at the other side of the table, there are disagreements at the top Hamas levels whether to accept the deal offered by Israel under the conditions approved by Israel's security cabinet in December 2009 or to reject it and thereby block the release of 1000 prisoners and wait for a possible change in Israel's policy on the matter. While Hamas is attentive to the desires of the Palestinian public in general and in particular to those of its supporters in the Gaza Strip pining to be reunited with at least some of their imprisoned sons and daughters, the Palestinian public supporting the deal does not have the power to influence the organization – especially those opposed to accepting the terms laid down by Israel – to change its position. At this stage the voice of the opponents appears stronger than the voice of those in the leadership who are willing to content themselves with an historic achievement of the release of so large a number of prisoners. The latter apparently presume that in the future they will be able to bring additional pressure to bear on Israel by abducting other soldiers and civilians.

If and when the exchange deal is ultimately carried out, Israel's overall security is not likely to be affected dramatically, despite the high emotional and symbolic price tag involved in releasing Palestinian prisoners under these circumstances. In exchange, the traditional Israeli value of not abandoning its fighters in enemy hands and the ethos of mutual responsibility will be strengthened; their importance to Israel's security is no less than the price that will likely have to be paid.

Indeed, such deals are a part of the range of calculated risks Israel is forced to assume in its ongoing battle against terrorism. This deal, like its predecessors, is not expected to tip the balance of power between the sides. Nonetheless, in light of the serious dilemmas aroused during the negotiations, and the security, political, moral, and public components involved, the need to define principles for making decisions has become more urgent. An official national commission headed by Justice Shamgar has been charged with formulating a principled position on the issue.



CONCLUSION

The two sets of negotiations Israel has conducted in the last four years with Hizbollah and Hamas have different implications regarding whether Israel will face more abductions in the future. With regard to Hizbollah, scores have been settled: all remaining Lebanese prisoners were released in the deal signed in the summer of 2008. By contrast, even if a deal between Israel and Hamas is concluded, some 6000 Palestinian prisoners will still be left in Israeli prisons. Hizbollah, which continues to abet Palestinian organizations in acts of terrorism against Israel, is liable to be tempted to stage abductions in order to make a demonstration of this support. The temptation to return to the abduction scenario might also grow stronger if there is another outbreak of military hostilities between Hizbollah and Israel, but the cost of abductions, especially in light of the circumstances surrounding the outbreak of the Second Lebanon War, is clear to the leaders and may deter them.

There is no doubt that should a deal for Shalit be concluded, the photographs of released Palestinian prisoners will earn Hamas many propaganda points. This may increase the already strong drive among Palestinian organizations to abduct more Israelis – soldiers and civilians – in order to recreate the achievement and secure the release of prisoners still incarcerated in Israel. At the same time, Hamas and other Palestinian organizations such as Islamic Jihad and rogue cells from Fatah or various global jihadists trying to abduct Israelis are not expected to suddenly abandon their efforts. The issue of releasing prisoners is always on their agenda, as are attempts to wear down the Israeli public and humiliate Israel's government.

The pomp, circumstance, and media celebration attending prisoner exchange deals can be expected to boost the ongoing desire of Palestinian organizations to abduct Israelis and feed the competitive spirit among them. Rival organizations are committed to the goal of proving to Hamas that their militancy is preferable to Hamas' approach, especially if the latter, at least at this stage, restrain its military activity directed at Israel from the Gaza Strip and attempts to secure the release of Palestinian prisoners through negotiations.



Will the price Hizbollah extorted from Israel for the return of the bodies of Ehud Goldwasser and Eldad Regev encourage future abductions, even killings, as the organizations know Israel will pay even for dead bodies? Alternately, will a high price of Palestinian prisoners, including those involved in the murder of Israelis, released in return for a live captive Israeli soldier, arouse a new and rising wave of attempted abductions? These questions cannot be answered unequivocally. Nevertheless, it is clear that the problem of thousands of Palestinian prisoners imprisoned in Israel will continue to be a sizzling coal amid all the other components of the conflict awaiting resolution. It may be that this issue must be solved as part of the comprehensive negotiations between Israel and its Palestinian counterparts, perhaps under the rubric of humanitarian concerns, but this must be on condition that it occurs on the political level rather than the military channel. Whatever conclusions and recommendations are ultimately suggested by the Shamgar Commission, which is currently debating the principles of Israeli policy in future bargaining situations, it is clear that the real test will lie in the ability of Israeli governments to implement them in practice and withstand the anticipated pressure of families, the media, and the public in general to secure the release of hostages even at the cost of releasing many security prisoners, as happened many times in the past.