

## The Shalit Dilemma-Should Israel Trade Terrorists for His Freedom

### Reading 1

Over the last 30 years, Israel has released about 7,000 Palestinian prisoners to secure freedom for 19 Israelis and to retrieve the bodies of eight others. A number of diplomatic efforts have been made to secure the release of Israeli IDF personnel following their capture by enemy forces.

In 1985, Israel released 1,150 prisoners in exchange for three Israeli soldiers captured in Lebanon. Then-Defense Minister Yitzhak Rabin defended the deal. "When no military option exists," he said, "there is no choice but to enter negotiations and pay a price."

On July 16, 2008, Hezbollah transferred the coffins of two captured Israeli soldiers, Ehud Goldwasser and Eldad Regev, in exchange for incarcerated Palestine Liberation Front militant Samir Kuntar, who was convicted of murder in Israel, four Hezbollah militants, and bodies of about 200 other Lebanese and Palestinian militants captured by Israel.

*Wikipedia*

### Reading Two

**Gilad Shalit** (Hebrew: גלעד שליט, born 28 August 1986) is an Israeli soldier who was captured on 25 June 2006 by Palestinian militants in a cross-border raid. He was abducted through the Kerem Shalom crossing (in Israel), and has been held as a prisoner in the Gaza Strip by Hamas since.

Shalit, 19 years old at the time of his capture, held the rank of corporal in the IDF's Armor Corps at the time of his abduction, but has since been promoted to staff sergeant. He was the first Israeli soldier captured by Palestinian militants since Nachshon Wachsman in 1994.<sup>[</sup>

Hamas has refused requests from the International Committee of the Red Cross to allow the ICRC to visit Shalit. In exchange for his release, Hamas is demanding the release of 1,000 Palestinian prisoners held in Israel, including many convicted of deadly terrorist attacks against Israelis. The United Nations Fact Finding Mission on the Gaza Conflict, which released a report in September 2009, called for Shalit to be released.

*Wikipedia*

### Reading Three

Yossi Zur's son was on his way back from school on a March day in 2003. But Asaf, then 16, never made it home. The Haifa city bus he was on was blown up by a Hamas suicide bomber, in an attack that killed 17 people and wounded 53. Mr. Zur is one of the activists at the forefront of a campaign to try to stop Israel from reaching a deal with Hamas that would involve the release of between 900 and 1,000 Palestinian prisoners in exchange for one Israeli soldier, Sgt. Gilad Shalit. And as the negotiations wear on, the Israeli public is showing mixed feelings over whether it feels like a wise trade.

"I believe that releasing so many terrorists is going to do a lot of harm, most probably by creating a new wave of terrorism," he adds, "and we know many of these terrorists go back to the same kind of activity after they are released." Zur and other bereaved-parents' groups made an appeal to Israel's Supreme Court this week, requesting that the list of prisoners being considered for release be made public.

The Supreme Court rejected the request and sided with the security establishment, agreeing only to release the number of prisoners under consideration. The groups who had filed the request decried the decision as "disappointing and undemocratic."

At the same time, many Israelis have rallied around Shalit's fate and express support for his family members, who have become regular figures on the nightly news over the past few years – but especially so in the last few weeks. Various polls have indicated that a majority of Israelis support some kind of a prisoner exchange in return for Shalit.

*Christian Science Monitor, December 2009*

#### **Reading Four**

"When Abraham heard that his kinsman had been captured, he gathered up his disciples and householders, three hundred and eighteen in number, and pursued them to Dan." (*Genesis 14:14*)

#### **Reading Five**

Pidyon Shevuyim takes precedence over supporting the poor or clothing them. There is no greater mitzvah than Pidyon Shevuyim, for the problems of the captive include the problems of the hungry, the thirsty, the naked, and [s/he] who is in mortal danger. [One] who ignores the need to redeem captives transgresses the following [commandments]: "Do not harden your heart or shut your hand against your needy kinsman" (Deuteronomy 15:7) "Do not stand idly by the blood of your neighbor" (Leviticus 19:16) "You shall not rule ruthlessly over him in your sight" (Leviticus 25:53) "You shall surely open your hand to him" (Deuteronomy 15:8) "Love your neighbor as yourself" (Leviticus 19:18) "Rescue those who are drawn to death" (Proverbs 24:11) and many other injunctions like these. But there is no mitzvah greater than Pidyon Shevuyim.

*Maimonides Halchos Matanos Leniyim 8/10*

#### **Reading Six**

Inhabitants of a town who have raised funds to build a synagogue but who see that performing another mitzvah requires the money they have collected, should donate the money toward that mitzvah. If they purchased stones and beams (for building the synagogue) they should not sell them in order to perform another mitzvah except Pidyon Shevuyim. Even if they have brought the stones (to the building site) and laid their foundation, and if they have carved the beams, and prepared everything for the building they may sell all the materials for Pidyon Shevuyim. But if they have completed the building, they need not sell the synagogue, but must raise more money (for Pidyon Shevuyim) from the community.

### **Reading Seven**

"Captives may not be ransomed in excess of their actual worth, on account of the benefit of the society (Mipnei Tikkun Olam)." *Mishna, Talmud Gittin, 45A*

They asked what is the meaning of this reason "for the benefit of society"? Does it mean that this prohibition was enacted for the sake of avoiding a burden on the community (the community would become impoverished by having to ransom captives). Or perhaps it means that the prohibition was enacted so that (idolaters) will not be encouraged to capture more people and bring them to ransom. *Talmud Gittin 45 A*

### **Reading Eight**

We do not redeem the captives for more than their value due to the benefit of society-so that enemies will not seek to pursue others to capture. *Maimonides Hilchos Matanos Enyim 9/12*

### **Reading Nine**

A person is allowed to redeem himself for whatever he wants to pay. Also a Torah scholar or a community leader can be redeemed with a larger sum *Code of Jewish Law, Yore Deah 252/4*

### **Reading Ten**

Rabbi Meir, became universally acknowledged as the leading authority on Talmud and Jewish law, and many communities in France, Italy and Germany frequently turned to him for instruction and guidance in all religious matters and on various points of law

Those days were full of persecution for the Jews of Germany, and they lived in constant fear for their property and life. In 1286 Rabbi Meir took his entire family and set out for the Land of Israel, together with a group of well-to-do friends. In the Land of Israel they hoped to continue their work in behalf of their persecuted brethren. However, while passing through Lombardy, Rabbi Meir was recognized by an apostate Jew who was accompanying the archbishop of Mainz. The archbishop had Rabbi Meir arrested and taken back to Germany. There by order of King Rudolph, Rabbi Meir was imprisoned in the fortress of Ensisheim and held for ransom. The king knew that the Jews would give away their last mark to redeem their beloved Rabbi, and indeed the sum of 20,000 marks was raised for Rabbi Meir's freedom. Rabbi Meir, however, forbade his friends and followers to pay any ransom for him. In his selflessness he knew that once ransom were paid for him, every noted Rabbi in Germany would be arrested and held for ransom by the greedy and cruel German rulers of those days. Thus Rabbi Meir preferred to remain in prison, and even die there, in order to save many others from a similar fate.

For seven years Rabbi Meir remained a prisoner in that fortress until he died there. During this time his disciples were permitted to meet with him, and he was even able to compose several of his works within the prison walls. When he died in the year 1293, his body was not surrendered until 14 years later, when a heavy ransom was paid by a generous Jew, Alexander Suskind Wimpfen of Frankfort. In return Alexander Suskind requested only that after his own death his body should be laid to rest by the side of the saintly Rabbi Meir. His wish was carried

out when he died a year later, and in the ancient Jewish cemetery of Worms two tombstones stood erected side by side, one for the great and saintly Rabbi Meir ben Baruch, and the other for Alexander Suskind Wimpfen of Frankfort. *Chabad.org*

### **Reading Eleven**

Rabbi Yehoshua Be Chanaya went to the great city of Rome they told him there is one boy in prison with beautiful eyes and fine appearance. He went to the entrance of the prison and recited the verse "who has given Jacob over for spoil and Israel to plunder" {Isaiah 42:24}. The boy answered "is it not Hashem..we have sinned against him and our fathers did not want to go in his ways and they did not listen to his Torah" .... Rabbi Yehoshua be Chanuya said "I am certain the boy will render legal decisions in Israel..I am not budging from here until I have redeemed him He did not budge until he redeemed him with a large amount of money. And it was not more than a short time before he became a Torah authority in Israel. *Talmud Gittin 58A*

### **Reading Twelve**

When there is a threat to life we redeem a captive for more than they are worth.

*Tosafos, Talmud Gittin 58A*

### **Reading Thirteen**

"The rule that we do not redeem prisoners for more than their value does not apply to Giliad Shalit" contends Rav Nachum Sheinen, a dayan on the Jerusalem Rabbinical Court. "its clear that Shalit's life is constantly in danger therefore it's a case of Pikuach Nefesh. The Shluchan Aruch says any time you delay redeeming a captive when its possible to advance the process it is as if blood is being spilled"

How do you answer the claim that realizing terrorists will only lead to greater bloodshed later ?  
"we must differentiate between a clear cut case of Pikuach Nefesh in the future. I am convinced that if a swap does not take place they will kill Shalit.

*Mispahcha Magazine/December 30, 2009*

### **Reading Fourteen**

Rationally speaking, the case against such a deal appears superior, and staunch opponents include Israel's national security adviser and the head of Mossad, as well as many (not all) relatives of victims of previous terror attacks. A 2008 study [reported](#) that out of over 10,000 Palestinian prisoners Israel has freed since 1985, over 50 percent have resumed terrorist activity. In a more specific case, the study cited evidence that the 400 Palestinian prisoners and five others Israel released in a 2004 trade with Hezbollah, in return for a kidnapped Israeli civilian and the corpses of three soldiers, had subsequently been responsible for the murder of at least 35 Israelis. *Israel's Shalit Dilemma, David Hornik/Pajamas Media*

### **Reading Fifteen**

Rav Yaakov Kaminetzsky, argues that Israel has been in a constant state of war from a Halachic perspective since the establishment of the state. Rav Yaakov accordingly ruled in 1970 that it was forbidden to ransom the great Rav Yitzchak Hutner, who was being held captive by Arab terrorists who had hijacked the airplane on which he was a passenger. There was a suggestion to offer a huge sum to ransom Rav Hutner, since Tosafot (Gittin 58a) permit paying an exorbitant sum to save a great Rav. Rav Yaakov ruled that Tosafot's permission applies only during peacetime. Since Israel's ongoing struggle with terrorism constitutes a war, Rav Yaakov felt it was forbidden to ransom even one as great as Rav Hutner. indeed, Rav Yuval Sherlow noted that terrorists wage war in a fundamentally different manner than mankind has heretofore experienced. The military response necessarily must also differ, and we cannot gauge the morality of such responses using the paradigms of "conventional wars." The bottom line, however, is that this struggle is defined as war even if it differs from wars waged in prior generations. *Rabbi Jacters Halacha files*

### **Reading Sixteen**

A Jew was held hostage and they agreed to free him for 76 prisoners. This was at the same time when the US had a similar agreement with the Soviet Union, but they exchanged 5 prisoners for two. Here they gave up 76.

According to Halacha, there is place for debate. Since we discussing a life threatening situation for one Jew, and they must give many to redeem him, there must be deliberation on this, how many to give etc. When they celebrated this agreement they did not say who the prisoners where, they were not in jail for minor crimes, but due to terrorism and they have blood on their hands. Until now they did not release terrorists, so not to capitulate to terror, now they are freeing terrorists

The diplomats could not be stopped, so they began to find excuses and explanations for their actions. When they were asked a simple question, "if they must be freed why the secret,?", they could of answered this reason or another.....We are talking about something were there can be no regrets. 76 terrorists are free, Rachamana Leslan, there is no reason to think they will not be involved in terror again, G-d forbid.

*The Rebbe, Farbrengen Bamidbar, 1978*

### **Reading Seventeen**

The security situation has deteriorated, there are places where Jews are in real danger, Jews are being killed, nothing it being done to capture the terrorists, they are worried what the world will say, and they wantt o look like peace loving people. And when they capture terrorists they exchange them for hundreds of them for a few Jews. From a Halachic perspective there is room for discussion, Jews are being held, each one is "Olam Maleh-A whole universe". However

when its decided to exchange hundreds of terrorists, they did not investigate under what conditions it is permissible to release them, not even from a security perspective. For some of the terrorists that have been released have been caught again in terrorist attacks

*The Rebbe, Farbrengen Veyeshev, 1988*

### **Reading Eighteen**

As of now, it seems ministers Ehud Barak, Dan Meridor, Eli Yishai and also Chief of Staff Gabi Ashkenazi are in favor of the deal. Mosad Chief, Meir Dagan on the other hand, is said to be against it. Director of Shin Bet, Yuval Diskin, said he did not think it would be a wise decision to allow "VIP" terrorists back to the West Bank, due to the security risk this might involve.

*Yediot, December 21, 2009*

### **Modern Rabbinical Responsa**

#### **Reading Nineteen**

The Rabbis said that we do not redeem prisoners for more than their value. This principle is when they are demanding money. However when they threatening lives, for instance to free terrorists, it is permitted to release them and fulfill the Mitzvah Pidyum Shevuim. Even though its possible that they will return to terror. We should trust in Hashem that there be no danger. We cannot stand by as our brothers blood could be spilled, our brothers who are being held hostage. *Responsa of Rabbi Yehoshua Aronof*

There is another issue, the moral of the soldiers. When a soldier knows that if he falls in to the hands of the enemy the State will redeem him he will be willing to lay done his life. However if we say that "we will not pay more than their value (Gittin)" then a soldier may retreat instead putting his life at risk during battle, who and can judge what kind of damage this may do to the nations security. Therefore I do not think the government contravened Halacha by making the exchange. *Responsa Rabbi Chaim Dovid Ben Moshe*

#### **Reading 19**

It has already been ruled in Shluchan Aruch "we do not redeem captives for more than their value, due to Tikkun Olom, so the enemy will not kidnap more". Its simple that the enemy is demanding hundreds and thousands of terrorists for a small number of soldiers

The long experience with freeing prisoners, from the establishment of the State has taught us that the freed prisoners return to acts of terror ,therefore it is prohibited to release them.

Freeing prisoners could cause a lowering of the moral of soldiers since they endanger their lives to take capture the terrorists, they may say their hearts "is it worthwhile to endanger my life to capture a terrorist that will be released soon" *Ydion Sanhedrin*