

# A Mixed Blessing: Hamas, Israel, and the Recent Prisoner Exchange

Yoram Schweitzer

What is known as the Shalit deal between the Israeli government and Hamas, which saw the return of Gilad Shalit to Israel on October 18, 2011 and the mass release of Palestinian security prisoners, among them prisoners serving life sentences for the murder of Israelis,<sup>1</sup> raised anew some fundamental issues that inevitably accompany deals of this sort between Israel and terrorist groups. Unlike in 1985 with the Jibril deal, when Israel released 1,150 Palestinian prisoners in exchange for three Israeli soldiers and whose high cost is reminiscent of the most recent swap, the price Israel paid in October 2011 was extensively and publicly debated. In addition to the cost itself, the reason for the heated discussion lay in the open, multi-channeled media coverage and the nature of contemporary public discourse. Hamas, whose negotiators were well aware of prisoner exchange precedents between Israel and terrorist organizations that had held soldiers and civilians in captivity, foremost among them the Jibril exchange model, presented the results of the deal as an historic victory for the Palestinian people.<sup>2</sup> For their part, spokespersons for the Israeli government claimed that although the deal was a bitter pill for Israel to swallow, Hamas was in fact forced to make significant concessions it had previously refused to make and accept certain conditions insisted upon by Israel. The spokespersons claimed that with this in mind and under existing circumstances, this was the best deal possible.<sup>3</sup>

Yoram Schweitzer is a senior research associate and director of the Terrorism and Low Intensity Conflict Program at INSS.

The purpose of this essay is to examine the achievements as well as the costs that the two parties to the deal had to pay, which on the face of it seems like an exclusive Hamas victory. Thus, it is important to underscore the price Hamas paid in the exchange and the criticism leveled at it on the intra-Palestinian arena, despite the immense joy surrounding the prisoner release. It is similarly important to point to Israel's achievements in the negotiations – primarily regarding damage control – which joined the central achievement of freeing the captured soldier and bringing him home. It must also be kept in mind that the deal was only one of a host of local and regional interests in the greater Israel-Hamas dynamic, and between the principal parties and the states and organizations active in the region that affected and were affected by the entire process.

### **Toward the Exchange**

The agreement between Israel and Hamas, signed in October 2011 and brokered by Egypt, ended the difficult, enervating negotiations that lasted five and a half years, marked by various ups and downs and even periods when communication between the sides broke off entirely. In March 2009, there were intensive negotiations in Cairo with Egyptian mediation between an Israeli delegation headed by Ofer Dekel, the coordinator on behalf of then-Prime Minister Ehud Olmert, and Yuval Diskin, then head of the General Security Services (GSS), and senior Hamas representatives. Those talks resulted in an agreement-in-principle on a list of 325 out of the 450 prisoners Hamas sought to release.

At that time two basic disagreements came to the fore: the first vis-à-vis the 125 “heavy” prisoners, i.e., those responsible for numerous Israeli fatalities and symbols of the Palestinian struggle (including prisoners who planned some of the large scale attacks before and during the second intifada), women who had been sentenced to life in prison, Israeli Arabs, and residents of East Jerusalem.<sup>4</sup> The second disagreement focused on the question of expulsion.<sup>5</sup> Some nine months later, in November-December 2009, following several months when there were no contacts between the parties, Haggai Hadas, the new coordinator on behalf of Prime Minister Netanyahu, with the help of the new German mediator, Gerhard Konrad, reached a final outline that was ready to be signed. However, then too some issues remained unresolved, especially with regard to a certain category of prisoners and the number of those who would not be allowed

to return to their homes. These outstanding points prevented conclusion of the agreement and the negotiations again were deadlocked.<sup>6</sup>

The May 2011 appointment of David Meidan as the Prime Minister's new coordinator, the tightened relationship between senior officials in the Egyptian security services of the the post-Mubarak and Omar Suleiman era on the one hand, and senior Hamas representatives on the other, and the growing instability in the Arab world all created new constraints for both the Hamas and Israeli leaderships, and spurred the sides to hold several rounds of negotiations in Cairo during August-October 2011. The conclusion of these negotiations was made possible in large part because of the flexibility on both sides, manifested in Hamas' agreement to concede its longstanding demand to release all the "heavy" prisoners from Israeli prisons and willingness to accept the expulsion of a significant number of the released prisoners from the West Bank, some to the Gaza Strip and some abroad.<sup>7</sup> For its part, Israel overturned its refusal regarding the release of Israeli Arabs and agreed to free additional prisoners from the "most wanted" list.

The agreement signed in Cairo stipulated that in exchange for the release of the Israeli soldier, prisoners would be released in two stages. In the first stage, on October 18, 2011, Gilad Shalit was freed along with 477 male and female prisoners whose names were agreed on by Hamas and Israel. In the second stage, which took place on December 18, 2011, 550 additional Palestinians who were chosen by Israel alone were released. Most were figures of lesser importance who had been sentenced to relatively short prison terms or were nearing their release date. There were no Hamas members among them, most were Fatah members, and 180 prisoners were without organizational affiliation (see box, p. 26). Contrary to the extensive media interest in the first stage of the deal, the second stage drew relatively little media attention, both on the Israeli and the Palestinian sides.

## **Hamas: Achievements, Failures, and Criticism**

### *Hamas Achievements*

The agreement provided Hamas first and foremost with temporary prestige, important primarily but not only for Palestinian public opinion, and extending beyond the intra-Palestinian arena as well. For the first time in its history, Hamas held a living captured soldier for an extended

### Prisoners Released in the Shalit Affair

October 2009: 20 female prisoners were released from Israeli prisons in exchange for a videotape of Gilad Shalit.

- 16 of the prisoners, aged 15-26, had been sentenced for "minor" crimes (e.g., attempted murder, possession of a knife, membership in an illegal association), and 4 others were awaiting the end of their legal proceedings.
- Most were scheduled to be released in 2009 and 2010.
- Their organizational affiliations were as follows: 7 were active in the PFLP, 6 in Hamas, 5 in the Islamic Jihad, and 2 in Fatah.<sup>1</sup>

October 18, 2011, Stage 1 of the exchange: 477 prisoners were released – 450 men and 27 women.

- 247 prisoners were released to their homes, as follows: 131 returned to the Gaza Strip, 110 to the West Bank (including East Jerusalem), and 6 to Israel within the Green Line. Security limitations, including compulsory registration with the police and prohibition from entering Israel proper, were imposed on 55 (i.e., half) of the prisoners released to the West Bank.
- 206 prisoners were expelled, 163 to the Gaza Strip and 43 abroad.
- Of the 110 returning to the West Bank, 57 were affiliated with Hamas and the rest with other organizations (including Islamic Jihad, Fatah, and the Popular Resistance Committees). Of the prisoners expelled abroad, 41 belonged to Hamas.
- 27 female prisoners were released – 24 to the West Bank (including East Jerusalem) and 1 to Israel, and 2 were expelled abroad.
- 303 of the released had been sentenced to life terms. 330 of the prisoners were sentenced in connection with the murder of Israelis. The 477 prisoners were responsible for attacks and bombings in which 569 Israelis were murdered.<sup>2</sup>

December 18, 2011, Stage 2 of the exchange: 550 prisoners were released.

- 300 were Fatah members, 50 Popular Front members, 20 Democratic Front members, and 180 were without organizational affiliation.<sup>3</sup>
- 510 of the prisoners returned home to the West Bank (including East Jerusalem), 39 returned home to the Gaza Strip, and 1 returned home to Jordan.
- A total of 9 female prisoners were released in the second stage of the exchange.

Note: The figures that appear here, as well as the figures given throughout article, are based on data received from the Amnesties and Pardons unit in the Ministry of Justice, considered by the author to be the most reliable source.

1 Ehud Ya'ari, "The Heroine of the Palestinian Deal: The Prisoner Who Gave Birth in Prison," *Channel 2 News*, September 30, 2009.

2 Shuki Taussig, "Gilad Shalit in the Headlines," *Ha'ayin Hashvi'it*, October 14, 2011, [http://www.the7eye.org.il/PaperReview/Pages/141011\\_Potential\\_vulnerabilities.aspx](http://www.the7eye.org.il/PaperReview/Pages/141011_Potential_vulnerabilities.aspx).

3 Walla! News editorial, "Shalit Deal Complete: 550 Prisoners Released from Israel," *Walla*, December 19, 2011, <http://news.walla.co.il/?w=/2689/1886550>.

period and foiled Israel's attempts to discover his whereabouts, making it impossible to free him via a military operation. Hamas thereby forced the Israeli government to negotiate and free over one thousand security prisoners in order to bring a single soldier home alive.

Specifically, Hamas could point to the following achievements:<sup>8</sup>

- a. The release of a total of 1,027 male and female prisoners<sup>9</sup> in exchange for one Israeli soldier. This created an unprecedented balance regarding the price of a single Israeli captive.<sup>10</sup>
- b. Of those released, 303 prisoners, both male and female, were sentenced to life in prison; 148 were sentenced to several life terms, and 20 were sentenced to more than 10 consecutive life sentences each.
- c. The release of prisoners, sentenced to varying prison terms, whom Israel had initially opposed including in the list of prisoners to be freed, among them convicted murderers from the second intifada who had served only a few years of their sentences.
- d. The release of 7 Israeli Arabs (6 of them in the first stage of the exchange) and 16 residents of East Jerusalem (14 of them released in the first stage of the exchange).

An examination of these achievements indicates that Hamas' primary gain was its success in forcing Israel to concede some of the principles presented by Israeli decision makers during the negotiations process as red lines, just as in the past Israeli leaders had declared there were red lines the government would not cross. In addition, Hamas gained other successes, difficult to quantify empirically, including diverting a disproportionate amount of time and attention of Israeli political leaders, commanders, and security and intelligence personnel for routine work on this tactical subject, notwithstanding Israel's host of strategic challenges. Moreover, through its conduct, Israel indirectly granted Hamas greater importance beyond its actual significance: first, by upgrading its position vis-à-vis Israel's entire range of considerations; second, by stepping up attempts at international mediation, which led to courting senior Hamas officials to help end the affair; third, in light of Hamas' successful abduction and Israel's helplessness, by granting Hamas points on the inter-Palestinian arena over its major political rivals, primarily Fatah and the Palestinian Authority; fourth, by granting partial temporary immunity to senior Hamas personnel involved in the

negotiations (during Shalit's captivity some senior Hamas operatives were assassinated, but none from the organization's negotiating team); fifth, by arousing friction between segments of Israeli society for and against the deal; and, finally, by wracking the nerves of Israel's citizens, for whom the fact that a soldier was held captive by an enemy with as cruel an image as held by Hamas represented an open wound and source of constant worry.

Another aspect that marked the second stage of the deal and contributed to Hamas' winning image was the shaky relationship between the PA and the current Israeli government. It was agreed long before through the German mediator that for this stage, Israel alone would determine the identity of the prisoners released. Israel sought to have this move double as an Israeli gesture toward President Husni Mubarak of Egypt and PA leader Abu Mazen. This would ostensibly downplay Hamas' success and create the impression of an independent political achievement for the PA in having secured the release of a larger number of prisoners than freed by Hamas. However, since then Mubarak was removed from power and relations between Abu Mazen and the current Israeli government are at an all time low because of the unilateral steps taken by the PA in the UN. Consequently, Prime Minister Netanyahu refused to make any gesture toward Abu Mazen and consult his representatives about the prisoners to be freed. This dulled the move meant to give points to the PA in its struggle against Hamas for the hearts and minds of Palestinian voters who are scheduled to go to the polls in May 2012 to choose their leadership.

### *Hamas Failures*

Throughout the years of negotiations, senior Hamas officials solemnly declared their resolute refusal to buckle under Israeli pressure and concede any of their demands. For example, Khalil al-Haya said, "There will be no Shalit deal until the Israeli occupation meets Hamas' demands."<sup>11</sup> Similarly, senior members of the Popular Resistance (who took part in Shalit's abduction) announced that Shalit would not see his family until all their demands were met.<sup>12</sup> However, despite these declarations and the successes described above, Hamas negotiators were forced to concede some of the principles they had declared inviolable in order to free their prisoners, including:

- a. *Reducing the number of prisoners freed:* Hamas conceded at least 50 of the 125 names it had for years insisted on releasing in this swap, first and foremost individuals it had defined as symbols of the struggle, such as Abbas Sayyad (sentenced to 35 life terms), Abdullah Barghouti (sentenced to 67 life terms), Hassan Salameh (sentenced to 38 life terms), Ibrahim Hammad (his trial for the murder of 90 Israelis is still ongoing and he has not yet been sentenced), Marwan Barghouti (Fatah's most notorious prisoner, sentenced to five life terms), and Ahmad Sadat (Secretary General of the Popular Front, sentenced to 30 life terms).<sup>13</sup>
  - b. *Expulsion from the West Bank to the Gaza Strip and abroad:* The number of prisoners who did not return home as part of this swap is higher than in the past – 163 were expelled to the Gaza Strip and 43 abroad. The conditions of release for these prisoners have turned the Gaza Strip into a jail of sorts for them.
  - c. *Prisoner limitations and conditions:* It was agreed that the freed prisoners would stay in the Gaza Strip and would not be able to return to their homes in the West Bank for periods ranging from three to 20 years (depending on the GSS assessment of their risk level). Afterwards, they will be able to return to the West Bank, gradually, on condition they have demonstrated good behavior,<sup>14</sup> i.e., have not been involved in terrorism in any form. Similarly, there are security limitations on the prisoners released to their homes in Israel: they will not be allowed to enter the West Bank. Prisoners released to the West Bank are obligated to report to local police stations according to a prearranged schedule.
- In addition to the total cost one may add the heavy pressure exerted by Israel on the Gaza Strip, for which Gaza Strip residents paid dearly, both in terms of their welfare and in the form of hundreds of deaths as a direct or indirect result of the abduction of Shalit and the prolonged negotiations over his release.

### ***Criticism of Hamas***

As the deal was signed and the first stage carried out, Hamas leaders such as Ismail Haniyeh hurried to take credit for the organization's successes and use the festive mass welcome rallies for the prisoners to declare that the prisoner exchange was an historic achievement and that it was "a strategic turning point in the struggle against the Zionist enemy."<sup>15</sup> Haniyeh went so far as to claim that the achievement was not that of



Gaza Strip residents alone, but also those of the West Bank, Jerusalem, the 1948 areas, and even the Golan Heights.<sup>16</sup>

However, alongside the self-congratulatory aura, some disgruntled voices emerged from the Palestinian camp. These were sounded by those unhappy with the final results of the exchange because it did not meet the sweeping promises that had been made publicly by Hamas spokesmen throughout the negotiations, and by those who also questioned the steep cost exacted by Israel of the Palestinians throughout Shalit's time in captivity. For example, senior PA officials criticized Hamas for not standing firm on principles it had declared as categorical. Issa Karaka, the PA's Minister for Prisoner Affairs, said that "unfortunately, the negotiations should have centered more on the political, symbolic, and national meaning represented by senior leaders such as Marwan Barghouti and Ahmad Sadat."<sup>17</sup> Similar sentiments were expressed by Riyad al-Maliki, the Foreign Minister of the Palestinian government in the West Bank, who said that although "we are very happy about the release of the 1,027 prisoners, we are very disappointed that some of them will move to Gaza or abroad and will not be allowed to return to their families in the West Bank."<sup>18</sup> Chairman of the Palestinian Prisoner Club Kadoura Fares agreed, and in further criticism stated that he does not understand how Hamas could have agreed to leave Palestinian prisoners who had already served 20 or more years of their life sentences in jail. He added, "Expulsion is a punishment. If they try to sell to the Palestinian people that expulsion is an achievement, well, I'm not buying it." Fares even mocked Hamas directly when he expressed his bitterness at the confusion at times among Hamas' negotiators about the number of female prisoners in Israeli prisons: "I thought that if it took Hamas five years to negotiate they'd at least know all the details. I'm really very surprised that they don't know the precise number of female prisoners."<sup>19</sup> In addition, prisoners who were not included in the swap were vocal in their dissatisfaction. One of the most veteran prisoners not to be freed, Karim Yunis, convicted in 1983 of the murder of the soldier Avraham Bromberg, wrote an irate letter to the Hamas government protesting the organization's conduct, and stated emphatically that "this is a knife in the back." He expressed outrage that he was not included in the list, which in his eyes was politically oriented and insufficient.<sup>20</sup>



Joining this domestic criticism was criticism from without. Alongside the praise, the international Arab press also voiced criticism of the exchange. For example, *a-Sharq al-Awsat* quoted Yusef Sharqawi, an analyst and political activist, who said that “unfortunately, the deal bears the fingerprints of the Israeli intelligence services responsible for the terms of the deal.” Sharqawi claimed he would have “preferred a different deal, but Hamas silences any criticism leveled against it.”<sup>21</sup> Other publicists questioned “the historic achievement Khaled Mashal keeps talking about” and stated that without the inclusion of senior members of the resistance movements, such as Hassan Salameh, Abdullah Barghouti, Abbas Sayyad, Ibrahim Hammad, and Marwan Barghouti, the exchange could not be called “historic.” The expulsion of many prisoners from the West Bank, alongside Israel’s refusal to swear it wouldn’t assassinate the released prisoners in the future, made the deal problematic.<sup>22</sup>

An examination of these voices from the Palestinian street, the Palestinian leadership, and the Arab press indicates that the primary criticism of Hamas was its agreement to the expulsion of many of the freed West Bank prisoners to the Gaza Strip and abroad, a decision seen as a direct assault on the Palestinian ethos of return to the land.<sup>23</sup>

Hamas attempted to confront the criticism leveled against it on the respective fronts. Abu Obeyda, the spokesman for the military wing of Hamas, was forced to explain why Hamas did not achieve all of its demands and spoke of the difficult conditions under which Hamas representatives were operating. Sallah Aruri, one of the founders of the military wing of Hamas and a Hamas negotiations representative, spoke of complaints against the movement by relatives of those prisoners who were not freed.<sup>24</sup> Mahmoud a-Zahar, a Hamas senior official who was involved in the deal through its last stages, claimed that Abu Mazen demanded the release of Gilad Shalit in exchange for lifting the siege on the Gaza Strip without the release of any prisoners at all; accordingly, “all of Abu Mazen’s achievements in negotiations with Israel do not equal Hamas’ achievement in this exchange” and thus he was in no position to criticize the deal.<sup>25</sup> However, despite the attempts at public diplomacy and propaganda, unidentified Hamas sources admitted that many Hamas members were shocked by the concessions made by the organization in recent months: “Despite the great joy, one can see dissatisfaction on people’s faces.”<sup>26</sup> It is quite possible that some of the

criticism is politically motivated, as Hamas achievements are a thorn in the side of Fatah or the PA, or that it stems from the bitterness of families whose relatives were not included on the list, among them Hamas stalwarts. Nonetheless, the criticism clearly expresses an atmosphere of protest against the sectarianism displayed by Hamas in choosing the prisoners to be freed, despite the explicit promises for a sweeping release of all senior prisoners from all the various organizations.<sup>27</sup>

### Israel: Costs, Achievements, and Criticism

#### *Costs to Israel*

Israel agreed to pay a significant cost, which included:

- a. The release of an unprecedented number of convicted murderers, among them many murderers sentenced to numerous consecutive life sentences.
- b. The release of murderers, both men and women, who were notorious symbols for their involvement in painful attacks indelibly inscribed in the nation's memory of the bloody history of the Israeli-Palestinian conflict.
- c. The release of Israeli Arabs, thereby allowing Hamas to gain popularity and status as the only organization capable of bringing about their release, which is not a regular legal option for criminal murderers (i.e., not terrorists), either Jew or Arab, or Jewish security prisoners (such as Ami Popper,<sup>28</sup> Yoram Shkolnik,<sup>29</sup> and others) regarding sentence commutation.
- d. Encouragement of further abductions by terrorist organizations.
- e. A potential risk for escalated terrorism due to the return of skilled terrorists to the arena.
- f. Over the five and a half years Israel incurred various additional costs, which went beyond the tactical surrender and display of weakness, as a result of not having a military option to free Shalit. The intensive and disproportionate preoccupation with the issue and the investment of resources exposed Israel's limited ability to force Hamas to free the captured soldier. This situation granted Hamas much political and propaganda gain and positioned it as a partner of significant standing in talks with many elements in the world, including leading European nations such as Germany and France, and Middle Eastern nations such as Egypt, Qatar, and others. The prolonged negotiations and the delay in closing the deal cost Israel dearly in the deeper rift

in the intra-Israeli discourse, which reached its climax on the eve of the signing of the agreement, generating doubts among many Israelis in the leadership's ability to make a sound decision and in the Prime Minister's moral authority. Doubts were raised about the validity of the fundamental values of today's Israeli society, such as mutual responsibility and the obligation to redeem captives. These joined the long suffering of the captured soldier and his relatives and the wrenching of Israel's nerves over a drawn out period. By contrast one could present the advantage that the extended time frame allowed Israel to prove it is not prepared to pay any price, something that forced Hamas to soften its intransigence and cede some of its demands.

### *Israel's Achievements*

Indeed, Israel could point to the following achievements:

- a. Israel did not free a significant number (about 50) of the most senior prisoners whose names were given by Hamas throughout the negotiations as an essential, non-negotiable condition for the release of Shalit.
- b. Israel succeeded in setting a framework for the agreement that anyone released and subsequently arrested again for terrorist activity would have the crimes for which s/he had already been tried and sentenced reapplied, and that his/her sentence would be extended by the sentences previously meted out.
- c. Israel stipulated the return of those expelled to the Gaza Strip or abroad to their homes in the West Bank according to terms set by the GSS, on condition that they would never again be involved with terrorism.
- d. Israel alone determined the identity of the prisoners released in the second stage of the exchange.

The most important Israeli achievement lies in the fact that unlike the May 1985 Jibril exchange, in which Israel paid the full price demanded by Jibril (except for 37 prominent prisoners Israel took off the list at the last moment<sup>30</sup>), Israel ultimately managed to minimize the security risk of the current exchange by imposing limitations and conditions that are likely to deter some of the released from engaging in terrorism again (table 1). Control over determining whether these conditions are met remains in Israeli hands, such that if necessary Israel can punish these individuals with the full legal backing of the agreement. In addition, Israel also

**Table 1.** Terms of the 1985 Jibril exchange and the 2011 Hamas exchange

	1985 Jibril exchange	2011 Hamas exchange
The number of prisoners released	1,150 – of which some 150 were imprisoned in the Ansar camp, some 640 in Israeli prisons, and some 360 were foreign prisoners	1,027 male and female prisoners
Prisoners released to the Gaza Strip	79 prisoners	333 prisoners – 170 returned to their homes, 163 were expelled
Prisoners released to the West Bank	475 prisoners	620 male and female prisoners – of them, 110 were released in the first stage of the exchange
Prisoners released to East Jerusalem		16 male and female prisoners
Israeli Arabs released	41 prisoners	7 prisoners
Women released		36 prisoners – of them, 27 prisoners were released in the first stage of the exchange
Prisoners released abroad	Some 360 prisoners returned home	
Prisoners expelled abroad		43 male and female prisoners
Prisoners defined as “having blood on their hands”	80 prisoners	454 male and female prisoners – of them, 414 prisoners were released in the first stage of the exchange

managed to insert into the agreement security limitations imposed both on the prisoners expelled from the West Bank and on the prisoners who returned there: they are under Israeli intelligence surveillance and are aware that family reunification and return home depend on a demonstration of good behavior and abstention from terrorism. The subjection of the prisoners freed to their homes to the security limitations imposed on them – manifested in their having to report to their local police stations – is a significant tool, not only because it touches on the former prisoners’ natural desire to return to their land and homes, thereby also serving as a moderating influence on their conduct and ensuring that they do not return to terrorist activity, but also demonstrates the sovereignty of the Israeli legal system and actually bears out the effectiveness of Israel’s deterrence.<sup>31</sup>

### *Criticism of the Exchange in Israel*

The criticism in Israel of the exchange obviously reflected the feelings of those opposed to the deal, but it also emerged from political opposition elements that criticized the Prime Minister for his conduct and attacked him for doing the exact opposite of what he expressed in former vehement statements that condemned any agreements that included concessions to terrorism. The critics said that in his speeches Netanyahu tried to head off the criticism: he, who had been one of the sharpest critics of deals with terrorists (his adamant criticism of the Jibril exchange stands out in particular), justified his current decision by saying that only a few prisoners were returning to the West Bank, and those who did would be under constant Israeli intelligence surveillance.<sup>32</sup> Criticism made by government ministers included that of Uzi Landau, who voted against the deal in the government debate and said, "We all pray that Gilad Shalit comes home safe and sound, but the exchange is a huge victory for the terrorists and damages Israeli deterrence and security."<sup>33</sup> Other criticism sounded both by coalition and opposition figures related to the damage to Israel's strategic deterrence by the exchange and the victory given to Hamas. Opposition leader Tzipi Livni said that "Israel has been weakened by the exchange." According to Livni, the Prime Minister was pushed into making this "leadership decision" and "the people of Israel forced the decision to free Gilad on the government."<sup>34</sup> After the exchange, various publicists expressed their dismay over the number of "heavy" prisoners freed,<sup>35</sup> and particularly strong criticism came from bereaved families whose relatives were the victims of terrorism planned or aided by prisoners who were freed.<sup>36</sup>

The government ministers who supported the exchange rushed to counter the public criticism and publicly express their support. Minister of Defense Ehud Barak declared that the defense establishment fully supported the decision and would act to the best of its ability to make sure that no threat to the citizens of Israel would be realized. Minister of the Interior Eli Yishai noted that this was a very difficult and complex yet correct decision.<sup>37</sup> Prime Minister Netanyahu, who presented the proposed agreement for government approval, defended his decision by laying out the difficulties the government had to confront, such as the general framework outlined by the previous government and the long, exhausting negotiations that despite efforts by the government in prior

years failed to achieve an agreement. However, according to Netanyahu, the last weeks of the summer of 2011 brought about a renewal of the negotiations, this time via the mediation of the Egyptian government. Cognizant of the existing tension between the desire to bring an abducted soldier (or citizen) home and the need to protect Israel's citizens, he gave explicit instructions to uphold vital principles and guidelines regarding the security of the State of Israel and also to bring the soldier home. Netanyahu averred that the agreement expressed the right balance among all the considerations: this was the best agreement that could be reached at this time.<sup>38</sup>

### Conclusion

After a negotiations process that lasted five and a half years, Israel and Hamas signed an agreement brokered by Egypt that resulted in the release of more than 1,000 prisoners. This constituted an undeniable victory for Hamas. Given that Israeli governments had no option other than to negotiate with Hamas via mediators in order to free the captured soldier held in Gaza, all that was left to do was to minimize the cost, and this is what the Israeli government representatives did during the entire process. For its part, Hamas took advantage both of its success in hiding Shalit's whereabouts from Israel's intelligence services and of the extended negotiations in order to exploit them fully to their advantage and thereby achieve some secondary successes. One, Hamas conducted tough negotiations alongside psychological warfare designed to exhaust the Israeli side, embarrass the Israeli government, and hurt the Israeli public, whose extreme sensitivity to the lives of captured soldiers is well known. Two, Hamas used the approaches by various state entities and other mediators working to effect the exchange to establish its standing as a legitimate, relevant actor in the local and regional political arena. Three, the organization's senior members who were involved in the negotiations received at least a temporary insurance policy on their lives. Moreover, Israel's attempts to pressure Hamas by linking the blockade on Gaza – imposed without any relationship to Shalit's abduction – with the rapid conclusion of the negotiations failed. While the blockade has taken a severe economic toll of Hamas and Gaza Strip residents and affected their daily lives, it has also helped Hamas paint Israel as a state that behaves inhumanely towards non-affiliated Palestinians in Gaza and boost the efforts to delegitimize Israel.

Given the host of contributing elements, the exchange does not represent a classic zero-sum game, even though many of the gains made by Hamas are the costs paid by Israel, and vice versa. For example, the cost Israel paid instilled an understanding in Palestinian society and among Palestinian organizations, first and foremost Hamas, that the only way to effect the release of almost five thousand security prisoners still jailed in Israel is by using the abduction weapon. This cost is liable to emerge as worse than the potential threat mentioned by Israelis opposed to the exchange, namely that it would lead to more victims of terrorist acts, perpetrated by released prisoners returning to terrorist activities. On the other hand, Israel succeeded in fulfilling the unwritten contract the state has with its soldiers and their parents that it would do everything it could to bring its soldiers back should they fall into enemy hands. This obligation has a moral value that while not quantifiable, is priceless in terms of maintaining the ethos of responsibility on behalf of the society and self-sacrifice in the IDF. In addition, Israel's success in imposing conditions for return to the West Bank on those expelled to the Gaza Strip and abroad, and in creating the fear among them that they may be prevented from returning home and will also have to pay for their past crimes should they again engage in terrorism, may be a deterrent and reduce the risk that they will personally act against Israelis once more.

In light of the central danger – future abductions of Israelis, soldiers and civilians alike – Israel's security establishment is working hard to raise the awareness of this issue among soldiers and the greater population. In the IDF, a senior officer with the rank of brigadier general has been appointed to examine the military and operational actions needed in case of an abduction. The recommendations of the Shamgar Commission, appointed by Defense Minister Barak to formulate policy principles and a new strategy of action for situations of extortionist negotiations with terrorist organizations holding Israeli hostages, were submitted to the government. To date the Commission's report has not yet been made public, and it is unclear how this and/or future Israeli governments that may have to confront such situations during their terms in office will implement the Commission's findings. If and when the recommendations are made public, they are likely to spark a searching public debate on morality and security whose urgency was amply demonstrated by the recent prisoner exchange.



## Notes

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- 1 Yoram Schweitzer, "The Israel-Hamas Prisoner Exchange: From Tactical Failure to Strategic Challenge," *INSS Insight* No. 289, October 24, 2011, <http://www.inss.org.il/publications.php?cat=21&incat=&read=5599>.
- 2 In his speech in Gaza Ismail Haniyeh, the head of the Hamas government, declared, "The deal is a strategic turning point in the struggle against the Zionist enemy...Through resistance we freed the land and the people," *RNNNEWS*, October 18, 2011, [http://www.youtube.com/watch?v=Gp9zKih1\\_sw](http://www.youtube.com/watch?v=Gp9zKih1_sw).
- 3 "Netanyahu's Address at the Start of the Special Cabinet Meeting to Authorize the Shalit Deal," Prime Minister's Office, October 11, 2011, <http://www.pmo.gov.il/PMO/Communication/Spokesman/2011/10/spokestart111011.htm>.
- 4 Shlomo Tzezena, "A Better Deal than in the Past," *Yisrael Hayom*, October 14, 2011.
- 5 News agencies, "Report: Israel Prepared to Release Prisoners Demanded by Hamas," *NRG Maariv*, March 13, 2009, <http://www.nrg.co.il/online/1/ART1/865/697.html>.
- 6 Ronen Bergman, Itamar Eichner, and Smadar Perry, "1,027 Prisoners for Gilad," *Yediot Ahronot*, October 12, 2011.
- 7 Yoav Limor, "From Gaza to Mitzpeh Hila in Five Years," *Yisrael Hayom*, October 14, 2011.
- 8 Hamas' claim that these are precedent-setting achievements is not precise. Israeli Arabs and East Jerusalem Arabs were released for the first time in the 1985 Jibril exchange. See Yuval Yoaz, "This is how we Secured Gilad Shalit's Release: The Head of the Pardons Department Speaks," *Globes*, November 10, 2011, <http://www.globes.co.il/news/article.aspx?did=1000696315>.
- 9 This number is on top of the twenty additional female prisoners released in October 2009, in exchange for a sign of life in the form of a videotape of Gilad Shalit. The figures presented here, as well as the figures given throughout article, are based on data received from the Amnesties and Pardons unit in the Ministry of Justice, considered by the author to be the most reliable source.
- 10 While Israel paid steep prices in prior prisoner exchanges, it never before crossed the 1000:1 ratio. In the 1983 PLO exchange, Israel released 4,400 prisoners from the Ansar camp and 100 security prisoners from Israel for 6 Nahal soldiers held by the PLO (at a "cost" of 750 prisoners for every Israeli soldier). In this exchange most of the prisoners released were minor terrorists (if that) who had been captured during the First Lebanon War.
- 11 " Hamas Official: No Shalit Deal until Demands Met," *Ma'an News Agency*, January 14, 2010, <http://www.maannews.net/eng/ViewDetails.aspx?ID=254158>.

- 12 "PRC: We'll Hold Shalit until Demands Met," *Ma'an News Agency*, December 27, 2009, <http://www.maannews.net/eng/ViewDetails.aspx?ID=250062>.
- 13 Roni Sofer and Ali Wakad, "The List of Unreleased Prisoners: Murderers of the Large Attacks," *Ynet*, March 17, 2009, <http://www.ynet.co.il/articles/0,7340,L-3688058,00.html>; Barak Ravid and Hayim Levinson, "Ibrahim Hammad, Abdallah Barghouti and Marwan Barghouti Will Not Be Freed," *Haaretz*, October 11, 2011, <http://www.haaretz.co.il/news/shalit-deal/1.1521459>.
- 14 Limor, "From Gaza to Mitzpeh Hila in Five Years."
- 15 "Jubilant after Swap Deal in Gaza," *Ma'an News Agency*, October 18, 2011, <http://www.maannews.net/eng/ViewDetails.aspx?ID=430508>.
- 16 Ismail Haniyeh's speech on the prisoner exchange, note 2.
- 17 Interview with Issa Karaka, *al-Watan*, Radio Palestine, October 18, 2011, <http://www.alwatan.sy/dindex.php?idn=110603>.
- 18 "Hammas Responds to al-Maliki's Criticism about the Prisoner Exchange," October 14, 2011, <http://www.islammemo.cc/2011/10/14/135757.html>.
- 19 <http://www.palpress.co.uk/arabic/index.php?action=detail&id=24542>.
- 20 Karim Yunis' letter to Hamas, "The Popular Front for the Liberation of Palestine," October 17, 2011, [http://www.pnrb.info/?page=show\\_details&Id=1818&table=table\\_27&CatId](http://www.pnrb.info/?page=show_details&Id=1818&table=table_27&CatId).
- 21 Kafah Zaban, "Joy and Disappointment in the Palestinian Street after Publication of Prisoner List," *a-Sharq al-Awsat*, October 18, 2011, <http://www.aawsat.com/details.asp?section=4&article=645159&issueno=12009>.
- 22 Tom Perry, "Hammas Steals Abbas Thunder with Prisoner Deal," *Ma'an News Agency*, October 12, 2011, <http://www.maannews.net/eng/ViewDetails.aspx?ID=428458>.
- 23 Member of Knesset Avi Dichter, a former head of the GSS who is well versed in the Palestinian mindset, feels that expulsion is the worst punishment for Palestinians: "First of all, you are removing the terrorist from his home base, removing him from his family and friends. Then you're chucking him into Lebanon where he doesn't know any of the activists. He comes from Gaza, from one of the refugee camps, where he knew everyone, knew whom to turn to, knew who was operating whom, and so on. In Lebanon, he has to start all over again. He arrives someplace with an existing hierarchy, he has to deal with all the old lions and foxes, he has to carve out a niche for himself, and many of them never manage to fit in." Interview with Avi Dichter, October 3, 2011.
- 24 Kafah Zaban, "Resentment in Hamas about Excluding Central Names from Shalit Exchange," *a-Sharq al-Awsat*, October 16, 2011, <http://www.aawsat.com/details.asp?section=4&article=644803&issueno=12007>.
- 25 Jack Khoury, "Hammas Scoffs at Criticism of Shalit Swap: 'Abbas Couldn't have Secured such a Deal,'" *Haaretz.com*, October 16, 2011, <http://www.haaretz.com/news/diplomacy-defense/hamas-scoffs-at-criticism-of-shalit-swap-abbas-couldn-t-have-secured-such-a-deal-1.390196>.

- 26 Amit Cohen, "Israel will Act the Same Way also in Next Abduction," *NRG Maariv*, October 28, 2011, <http://www.nrg.co.il/online/1/ART2/299/799.html?hp=1&cat=875&loc=3>.
- 27 The Minister for Prisoner Affairs in the PA, Issa Karaka, said that "although I welcome it, the exchange does not include Marwan Barghouti or Ahmad Sadat or senior commanders from Hamas' ranks. See "The Exchange Is Official, Does Not Include Old Prisoners," *el-Khabar*, December 19, 2011, <http://www.elkhabar.com/ar/monde/274576.html>.
- 28 In May 1990, Ami Popper carried out a shooting attack at the Gan Havradim junction in Rishon Lezion. Seven Palestinians were killed and eleven injured. He was sentenced to seven life terms plus another 20 years in prison. In 1999, President Ezer Weizmann commuted his prison sentence to 40 years.
- 29 In March 1993, Yoram Shkolnik shot and killed a Palestinian terrorist who tried to perpetrate an attack in Sussiya and was caught by the security services. He was sentenced to life in prison. In 1997, President Ezer Weizmann commuted his sentence, and in 2001 Shkolnik was released from prison under security limitations (he was prohibited from entering the West Bank).
- 30 Interview with Kuti Mor, August 10, 2011.
- 31 Interview with a senior official in the Ministry of Justice, December 29, 2011.
- 32 Yossi Werter, "Divided Heart," *Haaretz*, October 14, 2011.
- 33 Attila Somfalvi, "Shalit Exchange Approved: Ready to Embrace Him," *Globes*, October 23, 2011, <http://www.ynet.co.il/articles/0,7340,L-4134293,00.html>.
- 34 Channel 2 News website, "Livni on the Shalit Exchange: Red Lines were Crossed, Israel is Weakened," <http://www.globes.co.il/news/article.aspx?did=1000691311>.
- 35 Ben Caspit, "The Big Winner," *Maariv*, October 21, 2011; Ben-Dror Yemini, "Systems Subverted," *Maariv*, October 14, 2011; Ben Caspit, "Shalit Exchange: Mashal is the One who should be Saluting Netanyahu," *NRG*, October 22, 2011, <http://www.nrg.co.il/online/1/ART2/297/383.html?hp=1&cat=404&loc=5>.
- 36 For example, Simo Avrahami, whose son was one of the soldiers lynched in Ramallah in 2002 (two of the perpetrators were released in the exchange), said: "I have nothing bad to say about the Shalit family. They behaved the way any family whose son was abducted is expected to behave. But I did expect the Prime Minister, Binyamin Netanyahu, and the Minister of Defense, Ehud Barak, to show some discretion and not deceive thousands of bereaved families." Yoav Zeitun, "Father of Ramallah Lynch Victim: I will sit *shiva* again," *Ynet*, October 17, 2011.
- 37 Omri Nahmias, "Shalit Deal Approved with Large Majority: 26 Ministers in Favor, 3 Opposed," *Nana*, October 12, 2011.
- 38 "Netanyahu's Address ... to Authorize the Shalit Deal," note 3.