

Shabbat Ne'edarei Tzahal



Sabbath of Remembrance for the Israeli MIAs

A Compilation of Materials for Prayer and Activism

2009 - 5770



Prepared by the Institute for Public Affairs
of the
Orthodox Union
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Kislev 5770
December 2009

Dear Rabbi and Synagogue Leader,

Parashat VaYeishev relates the story of Mechirat Yosef, the casting out of one Jewish brother, a tragic episode in Jewish history. This parasha achingly describes the heartbreak of Jacob our father who remained inconsolable for his loss. Jacob was torn by doubts and questions concerning his beloved son Joseph's fate (see Rashi, Bereishit 37, 35).

We are also torn apart by the question of where our Jewish son, Gilad Shalit, may be; our lost soldier who was abducted in 2006 during an ambush on an army post. We are terrified as we consider what conditions he might be living under. To his family, each day is a lifetime. To Klal Yisrael, the loss of even one brother makes us incomplete as Jacob's family. With the whereabouts of our Jewish son unknown, we are indeed inconsolable.

We will soon be celebrating Chanukah. An Israeli soldier is missing in the service of the defense of Israel, a contemporary hero who can certainly be compared to the heroes of Chanukah of long ago. It is unconscionable that this son is still missing and information about his whereabouts is not being provided.

Recent news of negotiations to release Gilad Shalit makes us even more painfully aware of the imperative to end his captivity and bring him home to his family. We cannot let our son languish any longer.

We ask our members to observe Shabbat Ne'edarei Tzahal for Shabbat Parashat VaYeishev until he is released. The attached information and sources have been prepared to help you formulate a program for this special Shabbat. We hope that you will join with our member synagogues across the country in observing Shabbat Ne'edarei Tzahal. In this merit may HaKadosh Baruch Hu return him to us in good health soon.

Mark Bane
Chairman

Nathan J. Diament
Director

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December 2009

WHERE IS OUR ISRAELI SOLDIER?

On June 25, 2006, Israeli soldier Gilad Shalit was abducted at a border crossing at the Gaza Strip, near the area of Kibbutz Kerem Shalom, and has been held in captivity by Hamas since. A video of Shalit was released on October 2, 2009, showing him to be alive, but he remains a prisoner in Gaza. Hamas has repeatedly denied International Committee of the Red Cross requests for access to Shalit.

Ever since the abduction took place, the government of Israel and the Shalit family have spared no effort in doing their utmost to obtain any information possible as to the fate of this missing soldier. To date, the Israeli government is negotiating for a possible prisoner swap with Hamas.

From the depths of our hearts, the parents and members of the family of the missing young soldier entreat you in the name of humanity please –

Return Our Son!

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December 2009

TALKING POINTS

Abducted St. Sgt. Gilad Shalit

- Gilad Shalit, a soldier in the Israeli army holding the rank of Staff Sergeant, was abducted by Hamas on June 25, 2006 and has been held prisoner in the Gaza Strip ever since. He has not been allowed visits by his family, the International Red Cross, or any other international body. Shalit was 19 years old at the time.
- Shalit was captured during a Hamas attack on an Israeli army post at the Kerem Shalom border crossing on the Gaza Strip. Two Israeli soldiers were killed and three others wounded during the attack.
- In early October, Israel released 20 prisoners in exchange for a short video depicting Shalit alive as of September 14, 2009. The video, along with three letters and a recorded message, are the only proof Shalit's family has of his conditions.
- Hamas must be pressured by the world community to release Gilad Shalit. Hamas has demanded the release of 1,000 Palestinian prisoners – many of whom carried out bombings and attacks on Israeli civilians – in exchange for Shalit's release.



INSTITUTE FOR PUBLIC AFFAIRS

SPECIAL ACTION ALERT

Shabbat Ne'edarei Tzahal – Shabbat Parashat Vayeishev 5770

Where are our Israeli soldiers?

Israeli soldier Gilad Shalit has been held prisoner by Hamas in the Gaza Strip since 2006. Video footage released by Hamas in early October showed him to still be alive.

On this occasion of Shabbat Parashat Vayeishev of 5770, the Institute for Public Affairs of the Orthodox Union, is urging all our members to remember this missing soldier at this important time. In 1999, legislation was passed in the House and Senate to help keep the issue of the Israeli MIAs on the front burner and to ensure that the United States government will help do all it can to secure information and the release of missing soldiers. **S. 676 in the Senate and H.R. 1175 in the House were passed in 1999. Public Law 106-89 mandates that the United States State Department must raise the plight of these missing soldiers in all discussions with relevant Middle East parties and report their findings to Congress. The law must be implemented and enforced.** Congress and the U.S. State Department must demonstrate that they understand the urgency of this human rights issue that has been allowed to languish for many years. It is unacceptable that Gilad Shalit is still being held prisoner.

We ask you to write your legislators in Washington, urging them to implement Public Law 106-89. Every avenue must be pursued on behalf of Gilad Shalit. We call on the President and the Secretary of State to identify all efforts to secure the freedom of the Israeli MIAs. For the sake of decency and respect for human life, for the sake of humanity and compassion, let these men come home at last.

Letters should be written to the elected officials below urging them to do all they can to locate and secure the return of these soldiers:

The President of the
United States
The White House
1600 Pennsylvania Ave.
N.W.
Washington, D.C. 20500

The Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Honorable (Senator)
US Senate
Washington, D.C.
20510

Honorable
(Representative)
US House of
Representatives
Washington, D.C.
20515



December 2009

**URGENT ACTION NECESSARY – SAMPLE
LETTER**

It is crucial that you join us on a full-scale advocacy effort to help bring about an end to the inhumanity of captivity and to call for the release of all Israeli MIAs and POWs. It is important to write your Senators, Members of Congress, the President and the Secretary of State urging that this issue continue to be high on the agenda in all talks with the relevant Middle East parties.

The following is a sample letter that you may choose to use or adapt in your correspondence to the President, Secretary of State, and your Representative. Send your letter to:

President of the
United States
The White House
1600 Pennsylvania
Ave. N.W.
Washington, D.C.
20500

Secretary of State
Department of State
2201 C Street,
N.W.
Washington, D.C.
20520

Honorable (Senator)
US Senate
Washington, D.C.
20510

Honorable
(Representative)
US House of
Representatives
Washington, D.C.
20515

Dear :

While efforts are underway to bring calm to the Middle East and to try to resolve many of the issues of hostility between Israel and her neighbors, another crucial issue warrants your immediate attention. This is the humanitarian issue of the abduction of St. Sgt. Gilad Shalit.

Gilad Shalit was abducted at a border crossing into the Gaza Strip on June 25, 2006 and has been a prisoner ever since. Requests by the International Committee of the Red Cross to visit this missing soldier have been repeatedly denied by Hamas.

The agony of the Shalit family is extreme. There is evidence that he is alive, but he continues to languish in prison, held by Hamas terrorists.

We urge you to do all within your means to resolve this human rights issue as mandated by Public Law 106-89 of 1999. The terrible plight of those held captive is a matter of urgency. Please find a way to respond to this appeal.

Sincerely,



The Empty Chair

On the special Shabbat that we designate as Shabbat Ne'edarei Tzahal we remember our lost Israeli soldiers who are missing in action. An empty chair should be reserved on the bimah of the synagogue and on the dais at our gala events as we celebrate Jewish life and freedom in order to remember that our Israeli brothers are still being held captive and that their families are in great pain.

Pidyon Shevuyim

Every synagogue is requested to conduct a shiur on the subject of Pidyon Shevuyim, which can be either done during Friday night Oneg Shabbat or before Mincha on Shabbat afternoon. Youth leaders should do the same for their youth groups that meet on Shabbat. Materials are attached.

On Motzei Shabbat, before youth group or synagogue social activities, every member should be encouraged to join the letter-writing campaign to their elected officials (see attached sample). Every letter to an elected official counts and will keep this important issue in the forefront. It is our responsibility to make sure that this is high on the Washington agenda. Letters to local elected officials are also very significant as a way to let them know what is important to their grass-roots constituents.

Petition

Please duplicate and have your members, students, or NCSYers sign the petition (on the following page) to the President to make sure that he gives this issue his fullest attention. You may send them out directly or return them to us so that we can send a great amount of petitions to Washington as an expression of the Orthodox Union's widespread concern.



Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148

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No. 76

Senate

REMEMBERING THE MIA'S OF SULTAN YAQUB ON THE TWENTIETH ANNIVERSARY OF THEIR CAPTURE

Mr. SCHUMER. Mr. President, I rise today to ask my colleagues to join me in remembering the Israeli soldiers captured by the Syrians during the 1982 Israeli war with Lebanon. It is with great sadness that we mark today 20 long years of anguish for their families, who continue to desperately seek information about their sons.

On June 11, 1982, an Israeli unit battled with a Syrian armored unit in the Bekaa Valley in northeastern Lebanon. Sergeant Zachary Baumel, First Sergeant Zvi Feldman, and Corporal Yehudah Katz were captured by the Syrians that day. They were identified as an Israeli tank crew, and reported missing in Damascus. The Israeli tank, flying the Syrian and Palestinian flag, was greeted with cheers from bystanders.

Since that terrible day in 1982, the governments of Israel and the United States have been doing their utmost by working with the office of the International Committee of the Red Cross, the United Nations, and other international bodies to obtain any possible information about the fate of the missing soldiers. According to the Geneva Convention, Syria is responsible for the fates of the Israeli soldiers because the area in Lebanon where the soldiers disappeared was continually controlled by Syria. To this day, despite promises made by the government of Syria and by the Palestinians, very little information has been released about the condition of Zachary Baumel, Zvi Feldman, and Yehudah Katz.

Today marks the anniversary of the day that these soldiers were reported missing in action. Twenty painful years have passed since their families have seen their sons, and still Syria has not revealed their whereabouts nor provided any information as to their condition.

One of these missing soldiers, Zachary Baumel, is an American citizen from my home of Brooklyn, New York. An ardent basketball fan, Zachary began his studies at the Hebrew School in Boro Park. In 1979, he moved to Israel with other family members and continued his education at Yeshivat Hesder, where religious studies are integrated with army service. When the war with Lebanon began, Zachary was completing his military service and was looking forward to attending Hebrew University, where he had been accepted to study psychology. But fate decreed otherwise and on June 11, 1982, he disappeared with Zvi Feldman and Yehudah Katz.

During the 106th Congress, I co-sponsored and helped to pass Public Law 106-89, which specifies that the State Department must raise the plight of these missing soldiers in all relevant discussions and report findings to Congress regarding developments in the Middle East. We need to know that every avenue has been pursued in order to help bring about the speedy return of these young men. Therefore, I strongly feel that we must be sure to continue the full implementation of Public Law 106-89, so that information about these men can be brought to light.

Zachary's parents Yonah and Miriam Baumel have been relentless in their pursuit of information about Zachary and his compatriots. I have worked closely with

the Baumels, as well as the Union of Orthodox Jewish Congregations of America, the American Coalition for Missing Israeli Soldiers, and the MIA Task Force of the Conference of Presidents of Major American Jewish Organizations. These groups have been at the forefront of this pursuit of justice. I want to recognize their good work and ask my colleagues to join me in supporting their efforts. For two decades these families have been without their children. Answers are long overdue.

I am not only saddened by the plight of Zachary Baumel, Zvi Feldman, and Yehudah Katz, but I am disheartened and angered by the fact that even as we have continued to search for answers about their welfare, we have been forced to add more names to the list of those for who we have no knowledge of their location, health, or safety.

IDF Soldier Guy Chever disappeared without a trace from his army base in the Golan on August 17th, 1997. Almost three years later, Colonel Elchanan Tanenbaum was kidnapped by Hezbollah while on a business trip in Europe on October 15th, 2000. Left behind are two more families who simply do not know what has become of their loved ones.

And at this time, I feel it is also appropriate to speak not only of those who remain missing, but for those who were unfairly taken from their families never to return. I am speaking of course of Sergeant Adi Avitan of Tiberias, Staff Sergeant Binyamin Avraham of Bnei Brak, and Staff Sergeant Omar Souad of Salma.

In a clear-cut violation of international law, these three Israeli soldiers were abducted by Hezbollah on October 7, 2000 while on operational duty along the border fence in the Dov Mountain range along Israel's border with Lebanon. It is believed that they were wounded during the incident.

According to an investigation by the IDF Northern Command, Hezbollah terrorists set two roadside bombs, then crossed through a gate near the fence, pulled the three soldiers out of their jeep and fired anti-armor missiles at the empty vehicle. The soldiers were then taken by the terrorists to the Lebanese side of the border. Although the United States called on Syria to assist in the timely release of these three soldiers, no information was given as to their conditions or whereabouts. The International Red Cross had also been requested to intervene by attempting to arrange for a visit with the three kidnapped IDF soldiers in order to ascertain their status.

After much soul searching and heartache, it was determined that the return of these men to their homes and loved ones could no longer be hoped for. Their families have grieved, and my heart goes out to them. The hope I hold now is that we will not allow the families of those who remain missing to suffer in the same way.

The agony of the families of these kidnapped Israeli soldiers is extreme. They have not heard a word regarding the fate of their sons who are being held captive for political ransom. We must pledge to do our utmost to bring these soldiers home, for the same of peace, decency and humanity.

**He who blessed our ancestors,
Abraham, Isaac and Jacob, Joseph,
Moses, Aaron, David and Solomon,
may He bless, preserve and protect
the captive and missing soldiers of
the Israel Defense Forces including:**

Gilad ben Aviva (Shalit);

**May He rescue them from captivity
and speedily restore them in peace,
in the merit of the prayers of this
holy assemblage who pray for them.**

**May the Holy One, Blessed Be He,
show them mercy, increase their
strength, remove their pain and send
them a recovery of body and spirit,
may He return them to the bosom of
their families [on the Sabbath; The
Sabbath prohibits us from crying out,
may salvation come speedily,] swiftly
and soon. Now let us respond:
Amen.**

A service of the Orthodox Union

**מי שברך אבותינו אברהם יצחק ויעקב
יוסף משה ואהרון דוד ושלמה
הוא יברך וישמור וינצור את
נעדרי צבא ההגנה לישראל ושבויו
ובתוכם:**

טילש אביבה בן גלעד

**יפדם משבים ויחזירם בשלום בקרוב
בעבור שכל הקהל הקדוש הזה מתפללים
בעבורם**

**בשכר זה הקב"ה ימלא עליהם רחמים
ירבה כוחם ויבטל צערם וישלח להם
רפואת הנפש ורפואת הגוף ויחזירם לחיק
משפחותם
(לשבת : שבת היא מלזעוק וישועה
קרובה לבוא)
השתא בעגלא ובזמן קריב ונאמר אמן.**



Pidyon Shevuyim

A Compendium of Sources

for

Shiurim and Drashot





EXCHANGING TERRORISTS FOR HOSTAGES: A HALACHIC PERSPECTIVE

Prepared by Rabbi Jacob J. Schacter

1. גרסוני, "בדין שוים לאי התלכה" הדרוש (תש"ל), 27-37

J. David Bleich, Contemporary Halakhic Problems I (1977), 18-כ

א. בלאק, "שחרור שוים גמורה בני צדוקה" מחנים 3' (תש"ל), 113-16

A.I. Kilav, "Releasing Terrorists"; Crossroads I (1987), 201-10

א. וינר, "תמורה לאדם להכניס צדקו בספק ספק כדו להפיל"

חברו מסכנה ודאית; שמעון (אלול-תמוז), 5-50

א. קרימן, "ה'גדל תלמוז תורה יותר מהפלא נבואה?"; שמעון

(ג' - ניסן, תש"ל), 89-92

ג. רוזנשטיין, "שחרור מחבלים תמורה שוים - התלכה";

תורה שגדל פה לא (1990), 26f

7. מל"ס הלכות חטאות ע"ש בק"ס

מציאין בו המעות. קנו אבנים וקודות לא ימכחם לדבר מצוה אלא לפדיון שבוים. אעפ שהביאו את האבנים וגדרום ואת הקודות ופסלזה והתקנו הכל לבגין מכרין הכל לפדיון שבוים בלבד. אבל אם בנו תנח לא ימכרו את בית הכנסת אלא יגבו לפדיון מן הצבור: יב אין פודין את השבוים בותר על דמיהן מפני תקן העולם. שלא יהיו האויבים חופין אחריהם לשבותם ואין מברידין את השבוים מפני תקן העולם שלא יהיו האויבים מכבידין עליהן את העול ומרכים בשמדתן:

דרי זה מותר: יפדיון שבוים קודם לפרנסת עניים ולכסותן. ואין לך מצוה גדולה כפדיון שבוים שהשבויה דרי הוא בכלל הרעבים והצמאים והעוזמים ועומד בסכנת נפשות. והמעלים עיניו מפדיונו דרי זה עובר על לא תאמין את לבבך ולא תקפויין את ירך ועל לא תעמוד על דם רעך ועל לא ירדנו בפרך לעיניך. ובטל מצות פתח תפתח את ירך לו. ומצות וחי אחיך עמך. ואהבת לרעך כמוך. והצל לקוחים למות והרכה דברים כאלו. ואין לך מצוה רבה כפדיון שבוים: יא אנשי העיר שגבו מעות לבגין בית הכנסת ובא להן דבר מצוה

ג' ע"ן נח

הציתום באש: ח"ד מעשה ברבי יהושע בן חנניה שהלך לכך גדול שברוכי אמרו לו תינתק אחד יש בבית האסורים יפה עינים ושיב חזי וקוצנותו סדורות לו תחלים הלך ועמד על פתח בית האסורים אמר מי נתן למשימה יעקב ישראל לבחוזים ענה אותו תינתק ואמר הלא ה' זו רמאנו לו ולא אבו בדרכיו הלך ולא שבעו בחרותו אמר מבמחני בו שמרה הוראה בישראל העבודה שאיני זו מכאן עד שאפדנו בכל מצון שפוסקין עליו אמרו לא זו משם עד שפראו במצון הרבה ולא היו ימים מעטין עד שהורה הוראה בישראל ומצו רבי ישמעאל בן אלישע אמר רב מעשה בבנו ובבתו של ר' ישמעאל בן אלישע שנשבו

יורה דעה סי' ק"ל

פתחי תשובה

סי' כ' ועיין במשנה בגדי כהנים חלק א"ח סימן ח' מ"ט כוס: (ד) יותר. ע"י האל אכנס כשם שמי נחלם ליושע דמקום דאיכא למיחש לקטול פודין ועיין במשנה די אלוטו סימן מ"ג שלא כהן כן אלא דאילו כעומד לכינס אין פודין יותר מכדי דמיו דמיוצא קמא שנתפסת פתח הניזקין לא קאי אליבא דאמרי פ"ט וכו' במשנה מסר' לנזילין סימן ס"ז כ"א שמיס נפסס כמסיס כמסיס ע"ש עם זונה אם זריכין להסרין עליו משום כרבה להלן נשאו וסאיב ע"פ הדין אין זריכין שאין פודין את השכנים יותר מל"ד אך מסני חילול הכס יתירו עליו ממון כרבה ע"ש. ועיין בספר כפי סק"כ כי כשם כגאון מסר' ק שמעלם ממנו דברי מוספת בגיטין סי' ל' דאם ניקשו להכניס פודין ע"ש (ומ"ש כפי' שם ראי' לוס דברי המעלים פניו ממדיון שכנים פונד על לא תמנוד על דם רעך והכי' כי בא"ח סוס"י פרי"ז דמגלות לא מפשה חייב ליתן כל ממנו ע"ש ללו ראי' ה"א למ"ש לפיל סי' ק"ז סי' ד' כשם כמ"ג ומ"ו חות יחיר דדוקא בלא מפשה שיש בו מפשה ע"ש אך במשנה כנסת יחזקאל סימן ל"ח הסיג ע"ש משום דכאי תירוצא דסכת נפשות לא שייך אלא אם מפשה משום דחזקא דנכורה אבל לקטולא דלא לגרמי הסכרה להיפך דאם כפי' פודין ירשו להרוג את השכנים כדי שיפדו יותר מל"ד וגם יגרמו וירשו להרוג וכו' למ"ש כרמב"ם ופ"ט עממא דלא לגרמי שפיר כהן מסר' לנזילין שאין הקהל זריכין מפשה ח"ס את השכנים אף כפי' יותר מל"ד ומה שכתב דמשום חילול הכס יש להקטל לפדות סינו לפי דברי"ף והר"ש כוונתו יכו. וכמא עוד דכל זה במדינת אחרות שנותנים עין בממון ושיוין עממא דגרמי אכל במדינת אלו אשר תלי"ת לא כן הוא. צריך שיון רב אם אין חייבים לפדות נפש מיראל כפי' כל ממון וע"י ספק למעשה בלאחד שיכח כהנר המסרס קרוב לפי דלריכין לפור עליו משום אך הקדושים יתנו הערכה כפי שישימו עליהם הכרטיס והמותר מקום סקל עיין שם :

תוספות ע"פ נח

כל ממון שפוסקין עליו. כי איכא סכנת נפשות פודין שצ"ח יותר על כדי דמיהן כדאמרינן בפרק השולח (ע"ל דף מד.) גבי מוכר עלמו ואת בניו לעובדי טוכבים, כ"ש הכא דאיכא קטולא אי נמי משום דמפסלג בחכמה ה"ה: **אבל** בשטר קנה. ארשה גמי קאי כדמוכח

סכרי דנשיין לא אישקא את כסעם משום דחזקא דנכורה או דלא לגרמי להכי י"ל קום ל' סכרי דנשיין לא אישקא את כסעם משום דחזקא דנכורה או דלא לגרמי להכי י"ל קום ל' כפי' יותר מל"ד ומה שכתב דמשום חילול הכס יש להקטל לפדות סינו לפי דברי"ף והר"ש כוונתו יכו. וכמא עוד דכל זה במדינת אחרות שנותנים עין בממון ושיוין עממא דגרמי אכל במדינת אלו אשר תלי"ת לא כן הוא. צריך שיון רב אם אין חייבים לפדות נפש מיראל כפי' כל ממון וע"י ספק למעשה בלאחד שיכח כהנר המסרס קרוב לפי דלריכין לפור עליו משום אך הקדושים יתנו הערכה כפי שישימו עליהם הכרטיס והמותר מקום סקל עיין שם :

א"ח כ"ה יחזקאל סי' א"ח

ב"ח דשקיה: להבוא חזקת בהזקק לפי שהיה חולב ברכה ח"ג כשח חרובן כשה לא כחה דלא ליגרם סכ"כ. ויש לשייך למה לא הביא בגמ' דהבוא חרובן ההזקק והכנת נפשות שרץ וגם למה לא הביא בהניזקין חרובן הכס כשח חרובן ט' פ"כ כלי ספק דהנה הוא תירוצא דסכת נפשות ט' ש"ך אם עממא דחזקא דנכורה ונגד סכנת נפשות כל ישראל תחייבים ליתן כל רב להם לקיים לא תמנוד על דם רעך מש"כ למעמא דלא ליגרמי פרה"י שלא יוסחו עממא דנשייא וליגרמי ט' זה הסברא חזקא את כנסתו נפשות שרץ י"ל להרוג הבניין כדי שיפדו יותר מל"ד וגם יורשו ודע להזקק"ל :

א"ח כ"ה

פרק ז

הרבה ח העולה אינו יוצא מעיר סקלפו לעולם כר אפילו כל ישראל זריכין לחשותו אינו יוצא משם לעולם כר והרד ענבו למיתה :

הוסיף רבינו ספס למה אינו יוצא הלא פקוח נפש חמה כל מטעם שכתורה ומכ"כ פקוח נפש דכל ישראל ואסמך תוכיח, רק דנגד כסעם אין לו להוסיף אחרי מטעם יוצר כסעם, חוקר כליות ולב הוא אחד כי אם יחס לכב הגואל להרע אין לו משפט מוח, חו אין יכולים כ"ד להמיתו, וכיון שהותר דמו לגואל הכס אין לו להכניס עמו כספך סכנה עבור הלל חב"ד מסכנה ודאי, ק נראה, וטובה חזה דלא כהג"ק בשם ירושלמי דהרומם שהובא ככ"ס פ"ק א' דחייב להכניס עמו כספך סכנה ומירושלמי נוטיה אינו שוכח להשייך הסב ט :

רמב"ם הלכות חצות ושבת ה"ג פ"ג

ח העולה אינו יוצא מעיר סקלפו לעולם. ואפילו לדבר מצוה או לעדות בין עדות ממון בין עדות נפשות. ואפילו להציל נפש בעדותו או להציל מיד העובד כוכבים או מיד הגור או מיד הדליקה ומן המפולת. אפילו כל ישראל צריכין לחשותו כיוצא בן צרויה אינו יוצא משם לעולם עד שות הכוזן הגדול. ואם יצא תתיר עצמו למיתה כמו שביארנו :

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Releasing Terrorists
Rav Avraham I. HaLevi Kilav

A. Redemption of Captives at More Than Their Value

The Talmud (Git. 45a) states, “We do not redeem captives for more than their value. This is an enactment for the protection of society”. Two possible reasons are suggested for this prohibition. The first is to prevent the impoverishment of the community. The second is that “they not be encouraged to capture more”. Rashi explains that if the captive has a rich relative, the first reason allows him to redeem his relative, as the burden will not fall on the community. According to the second reason, it is forbidden, in order to discourage similar acts in the future.

C. Releasing Terrorists in Return for Hostages

Is it permissible, or obligatory, to free jailed terrorists, including convicted murderers, in order to obtain the release of hostages? Is it permissible to exchange prisoners of war after the cessation of hostilities, even where, one Israeli soldier is exchanged for thousands of enemy soldiers?

1. The “Value” of a Captive

The first question is whether the exchange of human beings is considered to be “more than their value”. The Maharam Lublin (*Responsa*, 15) writes; “Although the slave trade no longer exists, and therefore there is no price on human beings, we nonetheless appraise according to the value that (the man) is worth in a place where there are slaves, for we have not found any opinion in the commentators that the law today is different from Talmudic times.” On the other hand, the Radbaz (*New Responsa*, 40) states that the accepted price for the ransoming of non-Jewish captives should be the standard and not the slave price. He argues that

“since the reason is to discourage future abductions, and we see that they do not seek out Jews but take anyone they can, it is permissible to pay the amount paid for non-Jewish captives. Allow the Jews (to do as they are accustomed to), for they are charitable (people) descended from charitable (people). But it is not right to redeem them for more than non-Jewish captives, for then there is the danger that they will seek out Jews who offer more to redeem their captives. Furthermore, there is then (the problem of) public impoverishment.”

Accordingly, if it is common practice to exchange people for people, it is permissible to do so. Possibly the Maharam would agree as well. His statement only applies to a monetary evaluation. If the practice is to trade one captive for another, that is a fair estimate of the captive’s value. If the terrorists demand more people than is common practice, it will be forbidden according to all opinions.

2. Encouraging Future Abductions

This question appears to depend on the reasons for the prohibition. We must first understand the disagreement between the two reasons.

The opinion that we seek to discourage future abductions does not consider public impoverishment to be a sufficient consideration in a case of captivity. This is true not only according to the opinion that the case is one where there exists danger to the life of the captive. (see below). Even if there is no immediate mortal danger, captivity by definition is dangerous, and therefore financial considerations are not relevant. Conversely, the opinion that fears public impoverishment does not consider the risk of encouraging future abductions to be a sufficient reason for the prohibition, because we should not worry about possible future consequences when a Jew is presently in certain danger. Similar considerations are evident in the statement of the *Hagahot Maimoniot (Hilchot Melachim, ch.4)* that one is obligated to save his fellow from certain danger even if he incurs a measure of risk in doing so.

Therefore, according to the reason of public impoverishment, prisoners may be released in order to free the hostages, as there is no immediate financial cost, and the danger of future consequences need not be considered. If the prohibition is based on the need to discourage future abductions, it will be prohibited to release terrorists, as experience has shown that this will surely encourage more abductions in the future.

In the previous section, we saw that the majority of authorities adopt the reason of discouraging future abductions, with only the Ran, Bach, and Maharshah disagreeing. Hence, we should not release terrorists under such conditions.

3. In Cases of Danger to Life

The Maharshal (Git. op. cit.) argues that the discussion in the Talmud does not apply to a case where the captive may die if not redeemed. If there is danger to life, all agree that he should be redeemed regardless. This would seem to be self-evident. Could financial considerations possibly suspend the obligation to save life?

This seems to be supported by the Radbaz (op. cit.), who mentions the danger of apostasy, forced desecration of Shabbat, and maltreatment “worse than death” as reasons to permit redemption at any price. If these are sufficient reasons, surely mortal danger is sufficient. The Maharam Lublin, however, disagrees. “There is not a single authority who (has ruled) that we are obligated to redeem him for more than his value (even) if they wish to kill him.”²

The Maharam’s statement apparently contradicts an explicit statement of the Tosafot (Git. 58a, s.v. “*Kol mammon*”). “If there is mortal danger, we redeem captives for more than their value, as we see in *Gittin*, (ch. 4) in the case of one who sold himself and his children to non-Jews; all the more so here where there is death.” However, it appears that the Tosafot is referring to war captives taken by the Romans to be sold in Rome. The sale of the Jewish prisoners was one of the punishments imposed by Rome on the defeated enemy. Therefore, there is no fear of future abductions of the same sort. The Romans wished to preserve law and order. The Talmud (Git. 55b) states that Roman law decreed the death penalty for the murder of a Jew. Similarly, the danger of future abductions is not relevant in the case of one who has sold himself, as it is not a case of abduction at all; rather he sold himself. Hence, the Tosafot conclude that the reason of impoverishment alone should not prevent the saving of a life. In a case where there is danger of future repetition, it is possible that we do not redeem even one who is in danger of being killed.

4. A Distinction Between Releasing Terrorists and Prisoner Exchange

Furthermore, in the case where the terrorists will return to carry out acts of murder and sabotage after their release, exchanging them poses an immediate danger to life; therefore, it is prohibited to do so, even according to the reason of impoverishment. In this case, the danger is present immediately on their release. A further consideration is that other terrorists will be emboldened by the knowledge that, if caught, they will soon be freed through an exchange.

2. Possibly, the Maharam’s opinion is dependent on his accepting the reason of discouraging future abductions, i.e. future danger. It follows that we should not increase the danger in the future in order to eliminate it now. The Maharshal, on the other hand, accepts the reason of public impoverishment; hence mortal danger outweighs financial considerations. cf. *Responsa K’nesset Yechezkel*, 38.

Furthermore, we are in a continual state of war with the terrorists, and it is a principle of war that we do not allow danger to soldiers to be an overwhelming factor in military decisions (cf. Ramban, *Commentary to the Torah*, end of *Parshat Shoftim*).

Therefore, because of the future danger, we should not release terrorists and murderers in return for hostages, even on a one-to-one basis. This however does not apply to prisoner exchange at the end of a war, for two reasons. 1) It is common practice among the nations of the world to exchange all prisoners at the end of hostilities. 2) The risk of future danger is not present.

The conclusions of this article are intended as tentative suggestions, and not as practical halachic rulings, which should be received from recognized halachic authorities. May God save us from every danger.

THE ESSENCE OF PIDYON SHEVUYIM

A. Talmud, Tractate Baba Kamma, 117b

A certain man had a purse of money deposited with him for the redemption of captives. Being attacked by thieves, he took it and handed it over to them. He was thereupon summoned before Rava who nevertheless declared him exempt [from punishment]. Abaye said to him: "Was not that man rescuing himself by means of another man's money?" He replied: "There could hardly be a case of redeeming captives more pressing than this."

הוא נברא דהוה מפקד נביה ארנקא דפריון שבויים סליקו גנבי עילויה שקלה יהבה ניהליהו ארא לקמיה (ב) דרבא פטריה א"ל אבוי והא מציל עצמו בממון חבירו הוא א"ל איך לך פדיון שבויים גדול מזה :

B. Talmud, Tractate Baba Batra, 8a – 8b

Ifra Hormiz the mother of King Shapur sent a chest of gold coins to Rav Yosef, with the request that it should be used for carrying out some very important religious precept. R. Yosef was trying hard to think what such a precept could be, when Abaye said to him, "Since Rav Shmuel b. Judah has laid down the law that money for charity is not to be levied from orphans even for the redemption of captives, we may conclude that the redemption of captives is a religious duty of great importance." (See Tosafot)

Famine is harder than the sword; this again can be demonstrated either by observation, the proof being that the one causes [prolonged] suffering, but the other not, or, if you prefer, from the Scripture, from the verse, "They that be slain by the sword are better than they that be slain with hunger" (Lamentations 4:9). Captivity is harder than all, because it includes the sufferings of all."

Rava asked Rabbah b. Mari: "From where is the maxim of the Rabbis derived that the redemption of captives is a religious duty of great importance?" – He replied: "From the verse, "And it shall come to pass if they ask you, "Where shall we go forth," then you shall tell them, "Thus said the Lord: Such as are for death, to death, and such as are for the sword, to the sword and such as are for famine, to the famine, and such as are for captivity, to captivity" (Jeremiah 15:2). [Commenting on this] R. Yohanan said, "Each punishment mentioned in this verse is more severe than the one before. The sword is worse than death: this I can demonstrate either from Scripture, or, if you prefer, from observation. The proof from observation is that the sword deforms but death does not deform; the proof from Scripture is in the verse, "Precious in the eyes of the Lord is the death of his faithful" (Psalm 116:15).

איפרא הורמיו אימיה דשבור מלכא שדרה ארנקא דדינני לקמיה דרב יוסף אמרה ליהוי למצוה רבה ויחב רב יוסף זקא מעיין בה מא מצוה רבה א"ל אבוי מדחני רב שמואל בר יהודה אין פוסקין צדקה על היתומים אפילו לפדיון שבויים ישמע מצוה פדיון שבויים מצוה רבה היא אמר ליה רבא לרבה בר מרי מצוה הא מילתא דאמר רבנן דפריון שבויים מצוה רבה היא א"ל דכתיב °והיה כי יאמרו אליך אנה נצא ואמרת אליהם כה אמר ה' אשר למות ואשר לחרב לחרב ואשר לרעב לרעב ואשר לשבי לשבי ואמר רבי יוחנן כל המאורח בפסוק זה קשה מתכירו דרב קשה מצוה * אי בעית אימא קרא ואי בעית אימא סברא אי בעית אימא סברא האי קא מינוול והאי לא קא מינוול ואבעיא קרא °יקך בעיני ה' המורה לחסדיי רעב קשה מדרב איבעית אימא (ב) סברא האי קא מצטער והאי לא קא מצטער איבעית אימא קרא °שבויים הוה חללי רב מהללי רעב שבי [קשה מכולם] ורטלו אתנהו ביה:

C. Comment of Tosafot on 8b:

“The Redemption of Captives is a religious duty of great importance”: And yet, we read (a similar text in) Tractate Megillah 27a, where it says that one may not sell a Torah scroll except for the purpose of enabling people to study Torah or helping a woman get married. And nowhere does it mention that one may also sell a Torah scroll in order to finance the redemption of captives! Why? Because this is so obvious that they (the Rabbis) did not even have to state it.

פדיון שבוים מטה רבה. והא דאמר בפרק בני העיר (עילה דף
מ"י) אין מוכרין ס"ת אלא ללמוד תורה ולשאל אשה ולא
קמי פדיון שבוים שמה מילתא דפשיטא היא ולא אנטריך למיחזי:

D. Maimonides, Mishneh Torah, “Slaves” 2:7

7. If one who sells himself into slavery to a heathen cannot afford to redeem himself, his kinsman must redeem him. The obligation devolves upon the relations in the order of their proximity, as it is said: *Or his uncle, or his uncle's son, may redeem him* (Lev. 25:49).

The courts compel his kinsman to redeem him in order that he may not become intermingled with the heathen.

If the kinsmen do not redeem him, or if they cannot afford it, the obligation rests upon each and every Israelite to redeem him.

ז הנמכר לעכרים אם לא השיגה ידו לגאול קרוביו פודין
אותו וקרוב קרוב קודם שנאמר או דודו או בן דודו
יגאלנו. וב"ד כופין את קרוביו לפדותו שלא ימטע
בעכרים. לא פדאוהו קרוביו או שאין ידם משנת מצוה
על כל אדם מישראל לפדותו.

THE IMPORTANCE OF THIS MITZVAH

A. Talmud, Tractate Baba Batra, 3b

Ravina asked Rav Ashi: “Suppose money [for a synagogue] has been collected and is ready for us, is there still a risk?” He replied: “They may be called on to redeem captives and use it for that purpose.” (Ravina asked further): “Suppose the bricks are already piled up and the lathes trimmed and the beams ready, what are we to say?” He replied: “It can happen that money is suddenly required for the redemption of captives, and they may sell the material for that purpose.” “If they could do that,” (he said), “they could do the same even if they had already built the synagogue!” He answered: “People do not sell their dwelling places.”

B. Maimonides, “Gifts to the Poor” 8:10

10. The ransoming of captives has precedence over the feeding and clothing of the poor. Indeed there is no religious duty more meritorious than the ransoming of captives, for not only is the captive included in the generality of the hungry, the thirsty, and the naked, but his very life is in jeopardy. He who turns his eyes away from ransoming him, transgresses the commandments *Thou shalt not harden thy heart, nor shut thy hand* (Deut. 15:7), *Neither shalt thou stand idly by the blood of thy neighbor* (Lev. 19:16), and *He shall not rule with rigor over him in thy sights* (Lev. 25:53). Moreover, he nullifies the commandments *Thou shalt surely open thy hand unto him* (Deut. 15:8), *That thy brother may live with thee* (Lev. 25:36), *Thou shalt love thy neighbor as thyself* (Lev. 19:18), *Deliver them that are drawn unto death* (Prov. 24:11), and many other admonitions like these. To sum up, there is no religious duty greater than the ransoming of captives.

11. If the people of the city, having collected money for the building of a synagogue, find themselves confronted with a matter of religious duty, they must divert the money to the latter. If they had already bought stones and beams, they may not sell them in order to fulfill the religious duty, unless it be the ransoming of captives. Even if they have already brought in the stones and set them up and the beams and planed them, and thus made everything ready for construction, they must nevertheless sell everything, but only if for the ransoming of captives. If, however, they have already completed the erection of the building, they may not sell the synagogue, but should rather make a new collection from the community for the redemption of those captives.

C. Yosef Karo, Shulchan Aruch, Yoreh De'ah 252 “The Laws of Tzedakah”

The freeing of captives takes precedence over feeding and clothing poor people. There is no commandment greater than freeing of captives; therefore, any money which is collected for another purpose may be diverted in order to free captives. And even if money was collected in order to build a synagogue, and they have already purchased the wood and stones needed, and set them aside for the building, (so that it is forbidden to use these building materials for any other purpose), it is permissible to sell them in order to free captives. But, if they have already built the synagogue, they may not sell it.