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## **War and terrorism in Jewish law**

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REDEEMING CAPTIVES

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## REDEEMING CAPTIVES

*Some Thoughts on the Halakhah*

Moshe Zemer

Corporal Gilad Shalit was captured by Hamas on the border of the Gaza strip on June 25, 2006, 979 days ago. His father, Noam Shalit has met on behalf of his son with heads of State who have visited in Israel and abroad. Gilad has been kept in isolation and allowed to receive only one of many letters sent to him, through the intervention of French President Nicholas Sarkozy. Shalit has not been allowed visits by the International Red Cross as required by the Geneva Convention on prisoners of war. In the meanwhile his 23<sup>rd</sup> and 24<sup>th</sup> birthdays have passed while incarcerated.

There are contrasting views as to the extent that we must go to ransom prisoners. According to Maimonides, there are many *mitzvot* that we must fulfill in our relationship with our fellows: we must feed the hungry and thirsty, clothe the naked, the save those who are in danger of death. The Rambam states: "There is no precept greater than the redemption of captives, since a captive falls into all these categories of hungry and thirsty and naked and danger of death. Those who close their eyes to redeeming him transgress the command.....'do not stand idly beside the blood of your fellow' and nullify the precept 'love your fellow as yourself'" (Lev. 19:18). Yosef Caro emphasized the urgency of release. "Every moment one puts off redeeming captives, where it is possible to do so sooner, is like shedding blood." (*Shulhan Arukh Y.D. 2*) If redeeming captives is so vital a precept, it would seem to be our duty to do so at any cost. Yet, the Mishnah holds that "captives should not be ransomed for more than their value, as a precaution for the general good." (Gittin 4:6)

How do we determine the value of a human being? It may be suggested that one check the price at a slave market. This would appear doubtful in the Jewish tradition. More likely our sages would rely on the passage from the Book of Psalms (Ps. 8:8) "What is man that you are mindful of him and the son of man that you care for him."

Meir of Rothenberg, who was seventy-one years old, refused to allow the transaction for himself, proclaiming that the principal: "Not to redeem captives for more than their value" applied to himself. As a result, he languished in prison for the last seven years of his life. The sixteenth century Polish Rabbi Solomon Luria, confirms the details of this case as follows: "I have heard that the Maharam of Rothenburg, *zichrono l'vracha*, was held in the fortress of Ensisheim in the Upper Alsace for a number of years. The prince demanded a large sum from the communities

who were willing to ransom him. But he would not let them do so, for he said: 'One does not ransom captives for more than their value.'

The ransom which the Palestinians have demanded is the release of hundreds of their prisoners whom the Israel Defense Force has captured. The Israel cabinet has decided not to release those Palestinian prisoners with 'blood on their hands,' who have killed innocent civilians by blowing up busses or other acts of terror. Those who have murdered will very likely murder again if released. Eminent authorities are divided on this issue of the amount of ransom that may be paid. Jewish captive faces imminent death. Nahmanides rejected the opinion that when the Jewish captive faces imminent death "one redeems them for whatever sum can redeem them." Meir ben Gedaliah (1558 – 1616) of Lublin agreed with this position (*Responsa Maharam Lublin*, Responsa # 15). In the halakhic debate as to the reasonable price to be paid for the redemption of a captive, in the 16<sup>th</sup> century David ben Zimra wrote that the criterion should be the actual situation in the world. He ruled that it was not proper to redeem Jewish captives "for more than captives of other nations."

According to the halakhah, we must do our utmost to fulfill the meritorious commandment of ransoming Jewish captives. Nevertheless, there is a limit. We must not endanger others by releasing these terrorists. We must attempt to determine whether submitting to extortion will encourage the terrorists to continue and capture other victims. The cruel choice between the two approaches - ransoming captives at any price or protecting the community has led to a third alternative. Specially trained armed forces made attempts to free hostages. In 1994 a young soldier, Nachshon Wachsmann, was held prisoner. The attempt of the special unit to free him failed. His captors shot him. His mother stated that she would wish that her son's murderers go free in order to save Gilad Shalit. We all remember the tragic event of the Olympic Games in Munich. The attempt to save the Israeli sportsmen ended in their death. Supreme Court Justice Emeritus, Mishal Heshin, wrote that our unwritten code of military ethics, makes it imperative not to leave a wounded soldier in the field. This is almost universally accepted, even though it may result in the death of the medic who is treating him. In the situation of the captive, when all of the alternatives are dangerous and unacceptable, what can we do? How do we find the inner strength to continue the struggle?

When all else seems to fail, let us turn in prayer to God, our *Shutaf* in the work of creation and pray to God that we may indeed succeed and praise the Divine One, who strengthens us in this joint endeavor. Blessed Are You, *Adonai*, redeemer of captives.