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Agunah Day as the aftermath of war

While Jewish law bends over backwards to resolve this human tragedy, by wisely loosening the strictures of proof of death ordinarily demanded by Jewish law.

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RABBI PROF. Michael J. Broyde delivers an address about the Tripartite Agreement at an event in 2019. (photo credit: RACHEL LEVMORE)

As the drums of war are heard across the world, it is difficult to speak about societal issues that may pale in comparison. For as real people are fighting for their lives and country, as refugees are struggling to escape the war zone, it can feel disrespectful to focus on other problems.

Nevertheless, the Talmud (Tamid 32a) teaches us: “Who is wise? One who sees what is to come”. Alongside the terrible and terrifying results of war and death, destruction, wounds both physical and emotional, there are results which are slowly

uncovered in war's aftermath. Looking through a Jewish lens, we can find the unbearable plight of the classic agunah (a woman who cannot remarry because she remains legally bound to her husband).

When a man does not return from war, when his whereabouts are unknown, when he is reported missing in action, when his fate is undetermined, his wife enters a state of limbo. In Jewish law, she has the status of an agunah. Is she a widow or is she a married woman?

Ruin is heaped upon calamity. While Jewish law bends over backwards to resolve this human tragedy, by wisely loosening the strictures of proof of death ordinarily demanded by Jewish law, it is a very difficult undertaking. The rabbis cannot necessarily find a way to free every agunah, lacking evidence of her husband's death.

Recent generations have experienced this heartbreak. In November 2019, as reported by Tzvi Joffe, "Collection of Bergen-Belsen 'agunot' rabbinic rulings to be auctioned off," *Jerusalem Post*, November 27, 2019, the Jewish world was shocked with a chilling reminder of the holocaust. As reported: "The rabbis of the Bergen-Belsen rabbinical court were the first to collect testimonies from Holocaust survivors right after World War II." What compounded the horrific reality of the extermination of Jews was the inability of many of the survivors to remarry as the women were considered to be in a state of agunah and the men an agun.

Page after page of proceedings of a court set up literally on the ashes of fellow Jews, documented rabbinical court judges following Jewish law in gathering testimony of horrible deaths that occurred, in order to establish that the surviving spouse was free to remarry. Agunah is so terrible a state that immediately following World War II, the rabbis set out to release agunot so that each could rebuild a life.

Not only did women in the European diaspora suffer this fate. Following the establishment of Israel, the INS Dakar submarine disappeared in waters unknown on January 25, 1968. All 69 crew members were lost at sea. After struggling for thirteen years with the circumstances of the submarine's vanishing without a trace, chief rabbi Shlomo Goren issued a halachic ruling freeing the wives of sixteen crew members. In March 1981, he decreed that the wives were free to remarry under Jewish law. Finally, in 1999, the wreckage of the submarine was discovered off the coast of Crete, its entire crew dead.

Jews in the US tragically experienced the added emotional anguish of agunah, with the September 11, 2001 terrorist attacks on New York's Twin towers. As was reported by Rabbi Yona Reiss, former director of the Beth Din of America (BDA), in the BDA's monumental book *Contending with Catastrophe* (ed. Michael J. Broyde), thirteen women found themselves as agunot and one man as an agun. Through

many months of diligent and exhausting research of the individual circumstances of each case, as well as innovative adjudication within Jewish law, the BDA freed the agunot that came before them, allowing them to reach closure and rebuild their lives.

There are lessons here to be applied. In a mature manner, Jewish society can grapple with this issue as Jewish law has already done so. Since the times of the Bible, soldiers going off to war have arranged a conditional get for their respective wives, should they go missing in action. On an institutional level, the IDF official document, "Instructions to give a get," was drawn up in 1948 by the first military chief rabbi, Shlomo Goren. However, for various reasons it has only been used in a sparing manner. It is time for it to be implemented as a matter of fact.

Furthermore, on an individual level, all marrying couples can arrange a conditional marriage which would prevent a woman from becoming an agunah should the need arise. The Tripartite Agreement, authored by Rabbi Prof. Michael J. Broyde, provides several mechanisms, including a conditional get. When bound together these mechanisms provide a strong halachic basis for the freeing of a future agunah. Hundreds of responsible couples have signed the agreement at their Orthodox wedding ceremony. Realistically, this should be instituted as standard procedure prior to the chuppah (wedding canopy) ceremony, celebrating the love and commitment of the couple to each other.

Jewish leaders have used their intellect to find solutions to real-life problems in all spheres. The Jewish spirit allows us to be aware of our precarious position as Jews and as humans, while simultaneously living life to its fullest and pushing forward to a better future.

In answer to the question in the Mishna (Avot 2:9): "What is the straight path a person should follow?" Rabbi Shimon says: "To see what is to come". The Mishnaic axiom together with the Talmudic, combined with the lessons learned from history, instructs us to prepare ourselves by averting the tragedy of the agunah.

International Agunah Day falls yearly on Ta'anit Esther and this year will be on Wednesday, March 16, 2022.

The writer is the director of the Agunah and Get-Refusal Prevention Project of Young Israel in Israel (iyim.org.il/prenup) and the Jewish Agency. She holds a PhD in rabbinic law, is an author of the "Agreement for Mutual Respect" and is the first female rabbinical court advocate to sit on the Israel Commission for the Appointment of Rabbinical Court Judges.