Recent years have witnessed a tremendous expansion of research and legal activity regarding the issue of missing persons. The United Nations, with the International Committee of the Red Cross (ICRC) taking the lead, has undertaken considerable work on this problem, mainly in the wake of armed conflicts, such as, for example, the Kosovo War (1998–1999), the Rwandan genocide in 1994, and the Syrian civil war that erupted early in the twenty-first century. Operating on the basic premise that situations in which there are large numbers of disappeared or missing persons can lead to unrest, failures in conflict resolution, or even a resumption of hostilities, in 2006, the United Nations General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance.[[1]](#footnote-1)

The unique nature of the missing as a subject for research lies in the complex definition of the concept of a “missing person,” which differs from those of “deceased” or “living” persons. The ICRC, currently the largest body entrusted with the search for missing persons, defines a missing person as follows: “A ‘missing person’ is anyone unaccounted for as a result of an armed conflict or a situation of internal violence.”[[2]](#footnote-2) In view of this definition, the authorities assume that a missing person is deceased in most cases, and that the role of the authorities is to establish the fact of that individual’s death.

However, the social or sociological definition of a missing person differs from the official one. From the sociological perspective, a missing person reflects a social situation in which an individual is absent from his or her customary social circles for such an extent of time that others within these circles come to define that absence as a problem; one serious enough to cause them to undertake various search activities for the missing person.[[3]](#footnote-3)

**The twentieth century as a turning point in international and Jewish law**

The modern era accompanied by the rise of the nation states carved out of larger political entities led to a significant worsening of the missing persons phenomenon. First, the dramatic social changes that occurred in this period, such as the great migrations of the nineteenth and twentieth centuries, intensified the problem. Furthermore, improvements in modes of communication and methods of identification, together with a strengthening of national affiliations, precipitated an expansion of “search and locate” activities around missing persons. Thus, the issue of missing persons was transformed from a family or community problem into one demanding action at a national and symbolic level.

Several approaches have evolved to address the phenomenon of the missing from a normative aspect. In this study, I will examine two of these: international law and *halacha* (Jewish law). In terms of international law, from the end of the First World War through the 1950s, several laws and international conventions were formulated to deal with the phenomenon of large-scale missing persons situations. The Third Geneva Convention sought to address these situations by obligating captors to treat and report the locations of prisoners of war, which is evidence of the reality of missing persons as an acute problem that arises in theaters of war. At the end of the Second World War, the World Jewish Congress urged the United Nations to adopt the convention on the Declaration of Death of Missing Persons as binding international law to which many states would become signatories.

In addition, the issue of the proper treatment of the missing was discussed in the context of their commemoration. After the First World War, many countries, first among them the United Kingdom, built monuments such as of the Tomb of the Unknown Warrior. As George Mosse has observed, a Tomb of the Unknown Warrior represents the relationship between a citizen and the nation-state, and the nameless, faceless death of the citizen, a phenomenon that renders the individual into a missing person; such monuments are a symbol of sacrifice for the homeland.[[4]](#footnote-4)

Concurrently, Jewish law was also evolving, and needed a solution to the growing problem of the missing—initially after the First World War, in which many Jewish soldiers served and were among the missing, and also in the light of the losses suffered by the civilian population. The dilemma of how to deal with the missing would, of course, intensify exponentially in the wake of the Holocaust. The Nazis’ deliberate murder and systematic disappearing of people and information, and their intentional concealment of killing sites and of related documentation resulted in the post-war problem of Jewish missing persons becoming an acute and unprecedented one.

The question of missing persons in the wake of the Holocaust had an impact first and foremost on personal status. In particular, it gave rise to a very widespread problem whereby many female survivors had become *Agunot* [women who were unable to obtain divorces under Jewish law because their husbands were missing, but their deaths could not be proven] that the rabbis needed to address. However, other issues, including the reciting of *Kaddish* [the Jewish prayer for the dead] for the missing, what should be done in terms of missing persons’ property and guardianship of their children, were also widely discussed in terms of *halacha*. In coming to terms with these questions, the rabbis also studied the normative situation in international law regarding missing persons, as well as new methods of communication, and the activities of international missing persons search authorities. Through these, the rabbis sought to address a variety of challenges facing them.

In this proposed study, I intend to examine the intersections between these two legal pathways, of normative and *halachic* law and ask:

1. What was the extent of the influence of international law on Jewish law (*halacha*) regarding missing persons in the twentieth century?

2. How did Jews influence international law regarding missing persons?

3. What were the different tools that shaped each of the methods used to deal with the issue of missing persons, and what do they teach us about the basic assumptions of each system?

The choice to deal with the issue of missing persons—a somewhat vague and challenging topic for the law, but a painful and very real issue for society—as a point of intersection and representation between these two legal systems may provide important insights into the fields of human rights, gender, memory, and commemoration.

By understanding the ability of societies to construct narratives around the absences caused by the missing, including by formulating coping strategies and finding solutions to these absences, we can broaden our view of, and shed light on, the ways in which societies function during times of crisis.

1. https://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx [NB This link does not work] [↑](#footnote-ref-1)
2. The missing: ICRC Progress report. Geneva, 2006 [↑](#footnote-ref-2)
3. Payne Malcolm, Understanding ‘Going Missing’: Issues for social work and social services. The British Journal of Social Work, 25(3), (1 June 1995): 333-348 [↑](#footnote-ref-3)
4. Mosse, George L. “National Cemeteries and National Revival: The Cult of the Fallen Soldiers in Germany.” *Journal of Contemporary History* 14, no. 1 (1979): 1–20. http://www.jstor.org/stable/260225. [↑](#footnote-ref-4)