

Muammar Gaddafi and the Englewood Eruv

Muammar Gaddafi's September 2009 visit to New York raised a serious question in regard to the validity of the Englewood, New Jersey Eruv. The Libyan Ambassador to the United Nations resides in the heart of the Englewood Orthodox Jewish community. During the summer of 2009, in anticipation of Gaddafi's possible visit to the Libyan property in Englewood in September, extensive work was done on the property. The fences and gates that surrounded the property were temporarily removed, raising a serious question concerning the validity of the Englewood Eruv. The fences were not utilized as part of the Eruv – what could have the problem have been? For an explanation, we must first explain the concepts of Eruv Chatzeirot and Sechirat Reshut.

Eruv Chatzeirot

Even after a proper community eruv has been constructed and the area encompassed is thereby rendered a reshut hayachid, one may still not carry within it on Shabbat. Despite the fact that it is permitted on a Torah level to carry from one reshut hayachid (one's house) to another (in our case, the outside area enclosed by the eruv), Chazal prohibited this in many cases. Similarly, this rabbinic prohibition often precludes carrying from one household to another even within the same building. For example, this prohibition applies to an apartment building with at least two observant families. In such situations, it is required to make an eruv chatzeirot (referred to by Chazal as an eruv) in order to permit carrying.

An eruv chatzeirot (literally "mixing the courtyards") consists of every household in the reshut hayachid contributing some bread to the collective group of households. The bread is stored in one of the houses within the encompassed area. The Halachah then views the participants as if they all live in that one house, removing even the rabbinical prohibition against carrying (see Shulchan Aruch, Orach Chaim 366:1).

The Gemara (Shabbat 14b) records that King Shlomo instituted this requirement and a heavenly voice acknowledged the profound wisdom in it. The reason for this rule, as explained by the Rambam (Hilchot Eruvin 1:4), is that otherwise people would become confused about the laws of carrying. The process of the eruv chatzeirot is designed to familiarize the community with the laws of carrying. This goal seems to be a reason for the time-honored practice of storing the eruv chatzeirot in the synagogue (see Rama, O.C. 366:3). Rav Elazar Meyer Teitz told this author that his father, Rav Pinchas Teitz (of Elizabeth, New Jersey), prominently displayed the eruv in a place within the synagogue where it was easily seen, noting that this was commonly done in Europe. Another advantage of storing the eruv in the synagogue is that community members have full access to the eruv, which is an important requirement (see Rav Moshe Shternbach's Teshuvot Vehanhagot 1:250).

In practice, we do not require every household in a reshut hayachid to contribute some bread for the purpose of the eruv. Instead, everyone in the community is granted a portion of the eruv by the process known as zachin le'adam shelo befanav, acquiring

something on behalf of another person (see Shulchan Aruch, O.C. 366:9-10,15). This is accomplished by one person handing another the eruv food and the second person lifting the eruv into the air. It is lifted with the intention of acquiring the eruv on behalf of all present and future residents of the area encompassed by the eruv.

A blessing ("al mitzvat eruv") is recited prior to the procedure of acquiring the eruv on behalf of the community. Then, the formula of "behadein eruva" is recited, explaining the eruv's intended purpose (see Shulchan Aruch, Orach Chaim 366:15).

Sechirat Reshut

The procedure of eruv chatzeirot is effective solely for Jews who believe in the Oral Law and thus believe in the efficacy of an eruv. However, one must rent the apartments, homes, and common areas (such as streets and parks) from every non-Jewish and non-believing Jewish residents of the reshut hayachid. This procedure is known as sechirat reshut.

Renting every non-Jewish house within the tzurot hapetach is a virtually impossible task to accomplish in a community eruv. Fortunately, Halachah provides an alternative method of performing the sechirat reshut (see Shulchan Aruch, O.C. 391:1). The Jewish community may rent the entire enclosed area from the head of the city (sar ha'ir) or from one to whom this leader has delegated his authority. The Shulchan Aruch rules that the head of the city has the halachic ability to rent out not just the public property within the tzurot hapetach, but also the homes of its residents. His ability to rent out private homes stems from his right to quarter soldiers and military equipment in those homes during a time of war without consulting the residents.

The United States Constitution (Amendment 3) forbids quartering soldiers under most circumstances. Nonetheless, the Tikvat Zechariah (pp. 39-40), discussing the possibility of constructing an eruv in St. Louis in the 1890s, rules that a city government in America does have the right to lease private homes for sechirat reshut. He reasons that local governments may search and inspect private homes, in addition to maintaining the right to expropriate private land for public use (eminent domain).

Others, including Rav Hershel Schachter (in a lecture at Yeshiva University), strongly question this reasoning. They point out that the right of eminent domain is rarely used and is quite difficult to apply. According to their opinion, it is forbidden to carry on Shabbat (even within an eruv) from one's home to the private property of a non-Jew or non-observant Jew. Nonetheless, they acknowledge that the mayor and police do possess the authority to close the public areas of the city. One should consult his rabbi regarding which opinion to follow.

It is often unclear who is the appropriate authority to lease the area from (see Mishnah Berurah 391:18). In order to avoid this problem, rabbis usually perform sechirat reshut from a number of local authorities, such as the mayor and the police chief. A particularly interesting situation occurred when Rav Barry Freundel of Congregation Keshet Israel

(Washington, D.C.) established an eruv for his community. Due to the ambiguous nature of Washington's municipal authorities, Rav Freundel told this author that he performed sechirat reshut from United States President George Bush and Washington Mayor Marion Berry, along with the heads of the police and city council.

Rav Zvi Lieberman told me that when he created the Eruv for the Edgeware section of London he conducted the sechirat reshut with the representative of the Queen of England for his area, in addition to other government officials. Rav Lieberman told me that the land in England is formally under the control of the queen and thus conducting the sechirat reshut with the representative of the queen serves to further strengthen the validity of the Eruv.

When expanding a community eruv, care must be taken to ensure that the sechirat reshut includes the expanded areas. In addition, sechirat reshut should not be allowed to expire. Many authorities require renewing sechirat reshut when the non-Jewish official from whom it was performed leaves his office. The Netivot Shabbat (37:28 and notes 96-99) cites these authorities, but he argues that sechirat reshut remains effective in democracies even when the government changes. He reasons that a newly elected government is bound by agreements made by its predecessors. In practice, Jewish communities today usually do not renew sechirat reshut every time the town government changes (also see Har Tzvi, Orach Chaim 17), although Rav Mordechai Willig informs me that he makes an effort to renew the sechirat reshut for the Riverdale, New York Eruv when there is a change in local government leadership (Rav Willig serves as the Rav of the Young Israel of Riverdale).

Foreign Embassies, Libya and the Englewood Eruv

The Netivot Shabbat (chapter 37, note 93) notes that all would agree that the mayor and police cannot rent out a foreign embassy located within a city, as international law recognizes it as sovereign territory of the nation it represents. Thus, according to this opinion it would be forbidden to carry into a foreign embassy even in an area encompassed by an eruv, such as Jerusalem or Washington, on Shabbat.

Prior to the summer of 2009 the Libyan property did not pose a problem for the Englewood Eruv since it was fenced in and was thereby excluded from the Eruv. However, when the fences came down in 2009, the Englewood Eruv became “exposed” (Nifratz L’Makom Assur) to the Libyan property. This meant that the rabbis of Englewood would have had to conduct a sechirat reshut with Muammar Gaddafi or his representative in order for the Englewood Eruv to be valid!

Seeing that it was highly unlikely that we would be able to obtain the cooperation of Libyan officials, I (in my role as the Rav HaMachshir of the Englewood Eruv) consulted Rav Mordechai Willig, the Poseik for the Englewood Eruv. He told me that he confronted the same issue with the residence of the Russian ambassador to the United Nations located within the Riverdale Eruv.

Rav Willig informed us that he consulted with Professor Louis Henkin, son of the great Poseik Rav Yosef Eliyahu Henkin, who was a world renowned expert on international law. Professor Henkin explained that foreign embassies are not technically defined as foreign territory. Under normal circumstances, local authorities grant the embassies a great deal of autonomy as a courtesy. Thus, police would not usually enter a foreign embassy. However, in case of a serious emergency such as a fire, local officials do enter embassy property even if the foreign representatives protest such entrance. Local authorities would not be able to do so if the embassy area was truly foreign territory. Attorney Michael Wildes, formerly the mayor of Englewood, confirmed (in a personal conversation) that this is accurate and current information.

Conclusion

Embassy property is included in the sechirat reshut granted by the local authorities, since it is not technically defined as foreign territory (at least in the United States; it might differ elsewhere, such as in Israel where the author of Netivot Shabbat resides). Accordingly, the removal of the fences on the Libyan property in Englewood did not impinge on the validity of the Englewood Eruv and no separate sechirat reshut with Libyan officials was required. Although this situation had a pleasant resolution, it highlights the need for Rabbanim and Eruv inspectors to remain steadfast and vigilant in being alert to possible problems that might arise in the Eruv. Sometimes the challenges emerge from the least expected situations and locations.