

## ERUVIN DAF 62 - CONTEMPORARY 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 resident 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. Democratic countries forbid quartering soldiers under most circumstances. Nonetheless, the *Tikvat Zechariah* (pp. 39-40, cited in *The Contemporary Eruv* pp. 115-117), 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. Rav Kenneth Auman of Brooklyn, New York informed this author that the Satmar Rebbe was willing to create an *eruv* in the Williamsburg section of Brooklyn for the Shabbat of Sukkot, were it not for the problem of making a community wide *sechirat reshut* in a democracy. Rav Yosef Shalom Elyashiv is also quoted (*The Laws of an Eruv*, p. 156) as seriously questioning the validity of a community wide *sechirat reshut* in a democracy. Nonetheless, Rav Zvi Pesach Frank (*Teshuvot Har Zvi* O.C. 2:17) indicates that a *sechirat reshut* in a democracy is even more valid than one conducted with a totalitarian regime. A government that is (in the iconic words of Abraham Lincoln in the Gettysburg Address) "of the people, by the people and for the people" is indeed the people's government. Thus, a *sechirat reshut* from a government leader is fundamentally a rental conducted by the official on behalf of the people. It is for this reason, rules Rav Zvi Pesach, that in a democracy the *sechirat reshut* need not be renewed when a new leader is installed in office. One should consult his rabbi regarding which opinion to follow.

The *Netivot Shabbat* (ch. 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, it would be forbidden to carry into a foreign embassy even in an area encompassed by an *eruv*, such as Jerusalem or Washington D.C., on Shabbat.

In fact, Muammar Gaddafi's September 2009 visit to New York raised a serious question in regards 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. These fences served to exclude the ambassador's residence from the *eruv*, thus ensuring that a *sechirat reshut* would not have to be performed with the Libyan officials. Rav Willig informed us that he had consulted with Professor Louis Henkin, son of the great *posek*, Rav Yosef Eliyahu Henkin, 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.

### ***With Which Government Official Should the Sechirat Reshut be Performed?***

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 often perform *sechirat reshut* from a number of local authorities, such as the mayor and the police chief. A particularly interesting situation occurred when Congregation Kesher Israel of Washington, D.C. established an *eruv* for the community. Due to the ambiguous nature of Washington's municipal authorities, the community performed *sechirat reshut* with United States President George Bush and Washington Mayor Marion Berry, along with the heads of the police and city council.

Rav Mordechai Willig told this author that he prefers to perform a *sechirat reshut* with the chief of the fire department, as the fire department enjoys the right to enter a home without warning in case of a fire emergency. Rav Moshe Heinemann mentioned (in a talk delivered to a convention of the National Council of Young Israel rabbis) that when he created the community *eruv* in Baltimore, at the insistence request of a local Rav, he also conducted a *sechirat reshut* with the governor of the State of Maryland.

Rav Zvi Lieberman also told this author 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 reports 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 to Edgeware further strengthens the validity of the *eruv*.

### ***Expiration of a Sechirat Reshut***

In addition, a community *sechirat reshut* should not be allowed to expire. Unfortunately, this author has encountered more than one community where the local rabbinate unwittingly let the community's *sechirat reshut* expire without renewal. This invalidates the whole *eruv*. When conducting the *sechirat reshut* for the greater Teaneck *eruv*, this author rented the area for twenty years (in conformity with Rav Schachter's standards; other *posekim* permit a *sechirat reshut* of a much longer duration). In addition, I stipulated that the *sechirat reshut* would automatically renew in case we forgot to update the *sechirat reshut*. Rav Willig told this author that this would be effective as a backup.

Many authorities require the renewal of the *sechirat reshut* when the non-Jewish official with whom it was performed leaves 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 the *sechirat reshut* every time the town government changes (also see *Mishnah Berurah* 382:26 and the aforementioned *Teshuvot Har Tzvi*, O.C. 17), although Rav Mordechai Willig informed this author that he makes an effort to renew the *sechirat reshut* for the Riverdale, New York *eruv* when there is a change in the local borough president.

### ***Sechirat Reshut and Expanding the Eruv***

When expanding a community *eruv*, care must be taken to ensure that the *sechirat reshut* includes the expanded areas. It is for this reason that it is worthwhile to rent the entire area from the government official rather than the area encompassed by the borders of the *eruv*.

Once, when this author was inspecting a community *eruv*, I discovered that a tiny portion of the *eruv* juts into the neighboring town from which a *sechirat reshut* was not performed. This disqualified the entire *eruv* since it is *nifratz l'makom ha'asur lo*, exposed to an area in which it is forbidden to carry. It is for this reason that this author prefers to conduct a *sechirat reshut* with a county executive. Both Rav Schachter and Rav Willig permit performing a *sechirat reshut* with a county executive. This author knows of at least six counties in the United States that were “rented” in such a manner.