Whose Rights Are They, Anyway?- A Study of Religious Freedom in Israel and Its Possible Limitations
A Limud of Masorti Israel -The Rav Siach program

(with thanks to Dr. Shaiya Rothberg of the Conservative Yeshiva, creator of “The Torah of Human Rights”)

In honor of International Human Rights Day, Dec. 10, this study will look at one of the most difficult questions raised: what do we do when the rights of two people come into conflict with one another? In Israel, this issue has come up numerous times in the last few months, including with regards to the Masorti Kotel and regarding controversial statements made by state-funded rabbis, most recently Jerusalem Chief Rabbi Shlomo Amar and the incoming IDF Chief Rabbi Eyal Karim.

This study sheet will look at the notion of human rights as well as the question of whether there is an “ideal” of religious expression in Israel for Jews and all other religions, specifically as they pertain to the question of the Muezzin Law and Jewish religious expression on the Temple Mount.

- The Temple Mount- Since the Six-Day War, when all of Jerusalem came under Israeli control, Israel has maintained that the Waqf (Islamic religious authority) has control over the Temple Mount. Among the laws that Israel has enacted in order to maintain a status quo and in an attempt to maintain calm in Jerusalem is that Jews are not allowed to pray on the Temple Mount or even to be seen with religious objects (including kipot, siddurim, etc.) The government has made this decision in order to prevent Muslims from believing that their religious freedoms on the Temple Mount will not be infringed by an attempt by Jews to rebuild the Temple. Jewish proponents of the Temple Mount argue that their rights are infringed because they are forbidden from worshipping at Judaism’s holiest spot.

- “The Muezzin Law”- the Knesset has approved in the first reading a law aimed to forbid religious institutions from using loudspeakers. This law specifically addresses complaints that mosques use loudspeakers to announce the *adhan*, the call to prayer, as early as 4:00 am. In order to protect residents’ “rights” to quiet during certain hours (among other considerations), the “rights” of the Muslim communities to announce their prayer as they see fit are being curbed.
Does Judaism Have a Concept of Human Rights?

There is no explicit doctrine of human rights laid out in the Torah or elsewhere in the Jewish library. However, there is a concept of human dignity, derived from the notion that all human beings are created in the image of God.

Rabbi Professor Nahum Rakover, Bar Ilan University, Former Deputy Attorney General

The value of “human dignity” (lit. the honor due to humanity) was recognized (by classic Jewish sources) as deriving from the honor due to the Creator, and the humiliation of man was seen as disregarding the Divine image in man. Dishonor to an individual is even seen as dishonoring all of humanity, because harming one person is bad for all people. Because all of humanity was created by God, the concept of human dignity extends to Jews and non-Jews as one. Even the criminal is included in the family of humanity, and he too is to be defended from humiliation. Dignity of the individual was seen as a supreme value not only in regards to morals, but was even granted a special place as a legal norm that has the ability to nullify other laws, when they conflict with the notion of human dignity.

Rabbi Chaim Hirschensohn, in his vision for how Jewish law should govern the Jewish State (written during the pre-State period), writes that the commitment to human rights must be a product of the Jewish commitment to accept international principles and universal values. He sees a commitment to international law as a form of Kiddush Hashem, sanctifying God’s name, by having the Jewish state accept international law even when it is not explicitly demanded in traditional halacha.
Rabbi Chaim Hirschensohn, Early 20th Century Religious Zionist Thinker

(1) It is also forbidden to violate international law that was covenanted upon in the covenants of peoples [about] how to act in war, and God forbid that Israel should be considered in the eyes of the nations as wild-men murdering people in opposition to international laws and in opposition to the laws of civilization…

Therefore, whatever has been accepted as international law, particularly when Israel is a signatory, becomes a matter of Jewish law as well. This law includes the following three requirements:

Universal Declaration of Human Rights

- **Article 3** Everyone has the right to life, liberty and security of person.
- **Article 18** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- **Article 19** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Questions for Discussion

1. Do you agree with Hirschenson’s reasoning? Does Israel have a responsibility to maintain an international concept of human rights in order for the Jewish state to “look good” in the eyes of the world? Do Israel’s obligations change in light of the various human rights violations that occur throughout the world?

2. Both Rakover and Hirschenson (in his book *Malki BaKodesh*) claim that deference to human dignity or human rights can even override a precept of Jewish law. Are there dangers to this claim? Should there be exceptions? Should civil law (in Israel or elsewhere) be based on this?

3. What metrics are available, if any, to determine how to negotiate between two potential “violations” of human rights?
Case Studies: Religious Freedom in Israel

Isaiah 56:7

I will bring them to My sacred mount And let them rejoice in My house of prayer. Their burnt offerings and sacrifices Shall be welcome on My altar; For My House shall be called A house of prayer for all peoples.

Question for Discussion:

What is the meaning of the above verse? Does God’s “House” refer to the Temple Mount, to Jerusalem, or to all of Israel? Should Israel allow special allowances for all types of religious practice because of the special role it plays in so many world religions?

Supreme Court Ruling on Jewish Prayer on the Temple Mount, April 2004

All the parties involved agree that every Jew has a right to go up to the Temple Mount and to pray there. This is an extension of the freedom of religion and freedom of expression. Nobody disputes that this right extends to the plaintiff as well. However, like every human right, the right of access to the Temple Mount is not an inalienable right. It may be limited. Yet, a hostile population cannot have a veto when somebody demands to exercise their rights. That said, there is a need to consider the unique situation of the Temple Mount. Indeed, because it is such an important religious place it is such a sensitive topic...insensitive to the place’s needs and lack of consideration to its unique meaning could lead to riots in Israel and around the world, potentially harming both individuals and the public good. We thus rule that (the police) may limit the rights of (Jewish) prayer on the Temple Mount in light of its extreme sensitivity.
For years I adopted a passive and unhurried stance that refrained from attempting a full speed ascent of the mountain. I tried to focus on creating a yearning for the City of David as a central concept at the very base of the Jewish People’s existence, and the Western Wall as a focal point for the longings of generations for the Sacred. The bullets that sought to put an end to the life of Yehuda Glick pierced my own heart. The violation of a Jew’s right to pray on the Temple Mount cannot continue. Democratic society, which fights for human rights, should defend us from terrorism, which seeks to erode human rights and freedom of worship.

I believe that this struggle should be led by human rights organizations. Not right-wing organizations, which seek to conquer the mountain by force, and not by organizations preaching hatred of foreigners and minorities. Jerusalem must defend itself against the evil forces burning within it. Religious leaders should fight for the rights of all people and for safe guarding all people made in the image of God. Members of human rights organizations (who are not necessarily Jewish or religious) should fight for the right of every person, including Jews, to fulfill their faith and pray to God in his place of worship.

For years now, a struggle has been going on for control of the mountain. However, two weeks ago, the rules of the game were shattered. The assault on Yehuda Glick, who has tirelessly campaigned for permission to alight to the Temple Mount, has made it clear to all that the loss of Israeli sovereignty on the Temple Mount is a symbol of the loss of control in Jerusalem and throughout the country.

Rabbi Benny Lau - Rabbi of Haramban Congregation in Jerusalem.
Rav Kook, Orot
The Third Temple, the place of Israel’s light, will not be built through victory, not by a call to defeat another, a call to overcome an adversary, but rather through its deserved majesty, in the spirit of beauty and holiness, with many nations searching for God at Mount Zion (referring to the Temple Mount, not the peak that is currently called Mount Zion), through their own internal recognition that this is the proper way to express the majesty, the majesty of the just and wise King. All the world will want to worship under His flag out of love and the exaltation of the soul.

Questions for Discussion:
1. What rights are being pitted against each other in the decision to allow or disallow Jewish prayer on the Temple Mount?
2. The Supreme Court, Rabbi Benny Lau, and Rav Kook all agree that there is a Jewish right to pray on the Temple Mount. What are the steps that they believe must be taken in order for Jews to enact that right? (Note: Rav Kook was specifically discussing the rebuilding of the Temple and not the right to prayer.) What steps must be avoided even in promoting Jewish prayer at the mount?

The Muezzin Law

The Muezzin Law suggests that the general public’s right to not have religious messages (including the call to prayer) broadcast in the public sphere overrides the Muslim community’s right to pray as they see fit. By limiting the mosques’ uses of loudspeakers, is the government limiting Isaiah’s vision as God’s house for all people? Do Muslims have the right to broadcast their call to prayer at all hours of the day? Does it matter if the mosque is situated in a primarily Muslim area or in a mixed area?