

## An Answer to the Edward Snowden Debate: Meeting the United Nations Criteria for Political Asylum or Refugee Status

After spending the past week-and-a-half in a transit section of Moscow's Sheremetyevo International Airport, the world's most famous asylum seeker, Edward Snowden, continues to evade capture and prosecution by the United States. Reportedly, Snowden has applied for refugee status and asylum in more than 20 nations and has only recently received word from two countries, Venezuela and Nicaragua, that his requests have been approved (Sanchez & Galeano, 2013). In addressing the decision to accept Snowden, President Maduro of Venezuela stated, "As head of state, the government of the Bolivarian Republic of Venezuela decided to offer humanitarian asylum to the young American Edward Snowden so that he can live without persecution from the empire" (Sanchez & Galeano, 2013). Despite President Maduro's announcement, it yet remains debatable for many analysts whether Snowden meets the criteria for political asylum or refugee status by the United Nations.

One week after leaving Hong Kong in fear of being apprehended by U.S. authorities, the former NSA employee and whistleblower released his first statement in which he said, "Although I am convicted of nothing, [the U.S.] has unilaterally revoked my passport, leaving me a stateless person" (YOU.S.DESK,

2013). In referring to himself as a "stateless" individual, some confusion has unnecessarily arisen regarding whether Snowden's case is a matter of political asylum or refugee status. To clarify the issue, political asylum and refugee status are legal protections for people who have left their home country for their own safety and are afraid to return (Bray, 2013). The only difference between political asylum and refugee status concerns the whereabouts of the person seeking legal protection. When an individual like Edward Snowden is outside the country for which he is seeking legal protection, Venezuela, for example, he must apply for refugee status. Once he is in Venezuela, however, his avenue for legal protection becomes a case of applying for political asylum. Either way, with the granting of political asylum or refugee status, an individual like Snowden would receive the same legal protections.

Political asylum and refugee status, on the international level, are both governed by the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. As such, these two international legal instruments have been adopted within the framework of the United Nations (Moussalli, 1992). When read together, a general definition of the refugee emerges and, thereby, the definitive U.N. criteria for determining whether or

not an individual like Edward Snowden can be granted political asylum or refugee status is provided:

any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion.

Stateless persons may also be refugees in this sense, where country of origin (citizenship) is understood as "country of former habitual residence." (Goodwin-Gill, 2008)

In directly evaluating whether Snowden meets the United Nations' criteria according to the definition of a refugee, the whistleblower is unable to make any legitimate claims on the basis of well-founded fear of persecution for reasons of race, religion, nationality, or membership of a particular group. The only possible basis for meeting the criteria of the United Nations' for refugee status would, therefore, concern Snowden's fear of persecution for his political opinions or his claim of being a stateless individual.

The latter claim can be readily dismissed by virtue of the definition of statelessness provided by the United Nations. More specifically, the United Nations defines statelessness as: "any person who is not considered as a national by any state through

its nationality legislation or constitution" (UNHCR, 2007). An individual becomes stateless in one or more ways that do not apply to Edward Snowden: state dissolution, decolonization, conflicts of laws where an individual is born to a father and mother of different nationalities, arbitrary deprivation of nationality by the state, and various forms of governmental discrimination (UNHCR, 2007). Simply put, despite his expatriation, Snowden is still a citizen of the United States, and as such, he does not satisfy the definition of statelessness as set forth by the United Nations.

With respect to qualifying Snowden's claim of refugee status according to a well-founded fear of persecution for reasons of political opinion, the whistleblower appears to have a viable case. In his own words, Snowden sees himself as a whistleblower whose "freedom and safety" are under threat for revealing the truth (YOU.S.DESK, 2013). Further, Snowden believes that if he were returned to the United States he would face serious harm for his political opinions - specifically, that the American public and citizens of the world should be informed of massive U.S. government intrusion on privacy rights (Human Rights Watch, 2013). On both of these accounts, Snowden's contentions and claims seem far from unreasonable or illogical.

Despite revelations that the NSA has reportedly overstepped its constitutional (Fourth Amendment) limitations in respecting the privacy rights of millions of American citizens, the United States Department of Justice insists on ignoring any possibility of government wrongdoing (London & Kishore, 2013). Equally disturbing, political commentary by Washington bureaucrats and their media allies has taken on the types of rhetoric and vocal tones characteristic of a lynch mob. Washingtonians, in this respect, have forgone any acknowledgement of the possibility that Snowden acted out of conscience for the good of American society. At the same time, the most basic and fundamental of all legal rights, the presumption of innocence, has been thrown out the window in favor of charging Snowden with espionage - a crime potentially punishable by death (London & Kishore, 2013). In this "blood in the water" political atmosphere, the chances of Snowden receiving a fair and impartial trial in the United States appear slim to none. Snowden's fear of persecution for his political opinion is obviously well-founded. And as such, he certainly seems to meet the criteria of the United Nations for refugee status and eventual political asylum.

As a matter of tempering discussion, international law recognizes that it is sometimes necessary and justifiable, in the name of public interest, for individuals or groups of actors

to expose wrongdoings and/or secrets of states. In particular, it may be "necessary to expose and protect against serious human rights violations, including overreaching or unjustifiable surveillance" (Human Rights Watch, 2013). The United States government not only has some serious questions to answer from its citizens but also the international community. From the American people, Washington needs to explain its indiscriminate collection of data and justification for the hypothetical usefulness of the data against potential future threats (Human Rights Watch, 2013). For nations like Germany and other European countries, the U.S. government needs to come clean and explain why it has been using advanced technology to spy on America's supposed allies. All considered, much remains to be discussed and debated regarding the necessity and justifiability of Snowden's whistleblowing in the name of international law. Affirmative findings would seem to add leverage to Snowden's claims of meeting the U.N. criteria for political asylum and/or refugee status.

In conclusion, despite President Maduro's recent announcement of approval of Edward Snowden's request for refugee status and eventual political asylum, the debate continues for many analysts as to whether or not Snowden meets the United Nations criteria for such status. Nevertheless, it does appear

reasonable to conclude that Edward Snowden leaked NSA data as a matter of political opinion and conscience. Even more, the hard line rhetoric and "guilty before proven innocent" stance by the Obama Administration, the Department of Justice, and the allied media raise serious questions and doubts as to whether Snowden could ever receive a fair and impartial trial in the United States. All considered, a compelling argument emerges to support the claim that Edward Snowden, the NSA whistleblower, meets the U.N. criteria for political asylum and refugee status with his legitimate and reasonable fear of persecution for his political opinion.

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