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THE BLOG 06/26/2013 06:47 pm ET | Updated Aug 26, 2013

Ironic Choice of Asylum for Self-Proclaimed Government Critic



By Sandra A. Grossman, Esq.

It seems that former NSA contractor and now international fugitive Edward Snowden didn't do his homework on where in the world to apply for asylum. His choice of Ecuador as a safe haven stands in stark contrast to President Rafael Correa's war on the free press and refusal to endure dissent of any kind. Perhaps the Committee to Protect Journalists (CPJ) put it best today when it aptly [noted](#) that "Snowden's travels trace a path of government hypocrisy." Indeed, the countries that have touched this international scandal, places such as Russia, Ecuador, and China, are not known for their openness to political dissent. Snowden's choices for refuge from the United States, a country he claims will persecute him, cast doubt on his purported fight for citizens' rights as well as call into question whether or not he would actually meet the requirements for qualifying for asylum under international law.

In the case of Ecuador, since President Correa took office in 2007, scores of Ecuadorian journalists have suffered public insults, criminal complaints filed against them by the government, the shuttering of media sources, and the imposition of an official editorial line. Independent organizations such as the [Inter American Press Association](#), the [Committee to Protect Journalists](#), and [Reporters without Borders](#), among numerous others throughout the world, have documented the rapid deterioration of press freedom in Ecuador.

Ironically, Ecuador has had its own share of international scandals involving refugees fleeing



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complaint against a former client of mine, Mr. Emilio Palacio, the opinions editor of [El Universo](#) newspaper in Ecuador. President Correa asserted that an article published by Mr. Palacio damaged his honor and prestige. (Ecuador is one of the last remaining countries in the western hemisphere to criminalize expression offensive to public officials in what are known in the region as “desacato” laws.) In a series of highly irregular judicial decisions, Mr. Palacio and the owners of El Universo were sentenced to three-year prison terms and a total of U.S. \$40 million in damages, a punishment that led to widespread international condemnation. Though President Correa eventually issued a “[pardon](#)” to Mr. Palacio, the damage was done. The conviction against Mr. Palacio remains and serves as a constant reminder to Mr. Palacio and other journalists to watch their words or face massive civil and criminal penalties in Ecuador. Fortunately for Mr. Palacio, the United States [granted](#) him asylum on August 17, 2012.

Now what chances does Mr. Snowden have of obtaining asylum in Ecuador or, for that matter, anywhere else in the world? Given President Correa’s [historically aggressive](#) stance towards the United States and his desire to paint himself as a protector of foreign “whistleblowers,” Mr. Snowden’s chances in Ecuador may be pretty good. Nonetheless, were his qualifications for asylum to be considered in a non-political, legalistic manner, it is highly questionable whether he would qualify as a persecuted individual.

The right of persons to seek asylum is codified in both international and domestic law. The [1951 Refugee Convention and the 1967 Protocol to the Refugee Convention](#), to which Ecuador is a party, define a refugee as someone who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” While any country has the right to prosecute its own citizens under laws that are fairly administered and applied, if an asylum applicant can show that he or she is being singled out and denied due process under the country of origin’s laws, the applicant may also have a valid asylum claim.

In Mr. Palacio’s case, for example, we successfully argued to the [United States Citizenship and Immigration Services](#) that he was being prosecuted due to his political opinion under laws which violated his basic human right to freedom of expression. In Mr. Snowden’s case, the U.S. Government has charged him with violating American espionage laws by revealing secret information on intelligence-gathering, a criminal law of general applicability. Surely Mr



international asylum laws, he would also need to show that his prosecution in the United States would be for political reasons.

Additionally, Snowden may be excluded from qualifying for asylum if his actions constitute a serious non-political crime. According to the [United Nations Handbook for Determining Refugee Status under the 1951 Convention](#), the purpose of this bar to asylum is to protect communities from admitting a person who has committed a serious crime and is simply trying to escape prosecution in his own country. The Handbook acknowledges that discerning serious non-political crimes is difficult but “regard should be given... to the nature and purpose [of the crime], i.e., whether it has been committed out of genuine political motives and not merely personal reasons or gain.” Again, while Mr. Snowden’s motives may have been political, the Handbook requires balancing the nature of the offense committed and the degree of persecution feared. Mr. Snowden must show that the United States would deny him due process and the ability to defend himself: a difficult contention to say the least.

Mr. Snowden’s choice to seek asylum in a country that is known for persecuting those who dare to criticize their government, discredits his claims that he has acted in support of citizens’ rights. It also bolsters the U.S. government’s stance that he is not a persecuted individual, worthy of the protections of asylum, but rather, a criminal fleeing the consequences of having broken the law in the United States.

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