

Summer July 15, 2013

# RIGHT TO ASYLUM UNDER INTERNATIONAL HUMAN RIGHTS LAW AND EDWARD SNOWDEN CASE

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The institution of asylum is as young as the human civilization itself but that still grapples with the question of twin inalienable rights such as right to leave and right to return under international human rights law whereunder Universal Declaration of Human Rights (UDHR) together with other human rights instruments ordained in an ecclesiastical language. It is, indeed, UDHR that eloquently and opulently declares under its Article 13 that everyone has the right to freedom of movement and residence within the borders of each state and everyone has the right to leave any country, including his own, and to return to his country whereas under Article 14 of the UDHR everyone has the right to seek and to enjoy in other countries asylum from persecution provided that this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations Organization. Thus, right to asylum and its lawful enjoyment cannot be cribbed in power, politics and prejudice infested with national security and terrorism in derogation of international rule of law and all its ancillaries, collaterals and incidentals designed to create a just world order.

Edward Snowden, the U.S. citizen and whistle-blower who got holed up inside the transit zone of a Moscow airport wherefrom he filed twenty seven requests in two phases for asylum around the world as he refers himself as stateless person owing to the revocation of his passport by his country of origin, intending to have home outside the US. Whereas Russian administration insisted that Snowden could stay only on the condition that he must muzzle himself against the U.S though many other countries like Brazil, India, Poland responded in a big no while others such as Ecuador, Ireland, Norway are of the view that Snowden would have to physically enter onto their soil for properly filing political asylum application. The rest of the countries are taking their time to reply or maintaining wait and watch policy as they do not wish to antagonize US. But here lies question of international law and remedies available thereunder for such intractable issues. **Guy Goodwin-Gill**, a professor of International Refugee Law at Oxford University and former legal adviser to the U.N. High Commissioner for Refugees, says *“politics is the dominant factor in Snowden’s case. International law allows him to apply anywhere he wants to, but it’s up to individual countries to accept him. Many of those he has reportedly approached have existing bilateral extradition treaties with the U.S.”* Many other nation-states might simply not intend to jeopardize their ties and transactions with Washington by inviting a deserter whistle-blower.

The instant voluntary confinement of Mr. Snowden should not be confused whether this is an issue of refugee status or an issue of asylum whereupon **Goodwin-Gill** says. *“They may as well find it actually convenient to confuse these two because it is politically embarrassing. A transit zone is, of course, always part of the territory of the state in which it’s placed. It’s a myth that it is somehow not part of the state. It’s very often the case that states will establish these transit zones in order to reduce the legal rights and entitlements of individuals in transit. All states play these little games with jurisdiction.”* Invariably all international airports have these zones where stateless persons, refugees and others with volatile immigration status languish to be admitted to the country or deported or repatriated to their country of origin. Generally, the airlines are entrusted with the responsibility to look after such refugees and detainees who have

been there in these transit-zones but many of them have allegedly been parsimonious on food and medicine. Many transit-zones in and around the international airports around the world are notorious for being merely the detention facilities in contravention of universal human rights norms and guarantees duly recognized by the civilized nations. They are consisted merely in most cases of one or two rooms without any ratio of detainees and facilities. Detainees in such spaces are deprived of any access to the outside world owing to the reasons of national security, homeland integrity and terrorism. The countries like Bulgaria, Romania and the Slovak Republic are considered to be the worst transit zones in the world wherein detainees and refugees are deprived of any legal assistance regarding filing an asylum claim or seeking refugee status under international refugee law and human rights.

There have been instances in the past many people have been confined to such zones for a period that exceeds more than twenty years including Moscow Sheremetyevo Airport. One such transit-zone dweller was Iranian refugee Mehran Karimi Nasseri who remained in Terminal One of France's *Charles de Gaulle* Airport for almost seventeen long years. However, when a refugee technically enters only in a transit zone, he is regarded as if he has not arrived in the country and considerable numbers of countries in world take this position just to ward off any responsibility to protect under international law. However, the European Court of Human Rights rejected this position as it is in derogation of human rights norms and nuances whereas a majority of countries have enormously expanded their transit-zones to accommodate refugees while still maintaining the right to repatriate and deport them to their origins but legal eagles somehow still pose transitional and jurisdictional challenges with regard to rights of the detainees, status of a transit-zone as floating area assident to an airport and discretionary rights of the national authorities in the wake of such situations.

International Law stipulates in 1951 UN Convention Relating to the Status of Refugees with its Additional Protocol of 1967 (hereinafter referred to as convention) under its Article 28 which specifically ordained that contracting states must accord *sympathetic consideration* to those who are unable to obtain a travel document from the country of their lawful residence whereas Article 31 protects such persons or refugees who enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence and contracting states shall not impose penalties, on account of their such illegal entry or presence and shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country. However, it would be inappropriate for Russian authorities either repatriate, deport, expel or extradite him to US or Hong Kong that too in contravention of Articles 1 and 33 of the Convention which prohibit expulsion or return under well-established doctrine of *non-refoulement* whereunder no person or refugee in any manner whatsoever be sent to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion as he is fleeing persecution and threat to his life.

It is, therefore, axiomatic that the US in the instant case happens to be on the wrong side of the argument and that is contrary to its advocacy of democracy of free speech, due process of

judicial remedies and human rights constitutionalism evolved by the US Supreme Court since its inception. US security interests, foreign policy imperatives and technological superiority cannot be achieved by tracking even phone calls of its ordinary citizens and of other people elsewhere in utter disregard of international human rights law. On the other hand, it is, indeed, equally distressing to witness that India has rejected his asylum application despite its growing stature among the comity of nations and adopted a lackadaisical approach that does not behove of an independent and sovereign nation's foreign policy architecture. Snowden did not divulge anything new as such practices are also employed even by the weakest regimes around the world but what is important that is the issue of preserving the majesty of international rule of law, maintaining the dignity and respect of international law and its institutions by granting asylum to Snowden.

Submitted By

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