SANCTUARY IN THE 21ST CENTURY: THE UNIQUE ASYLUM EXCEPTION TO THE EXTRADITION RULE

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INTRODUCTION

In Victor Hugo’s seminal novel *The Hunchback of Notre Dame*, the heroine of the story, the gypsy Esmeralda, is accused of attempted murder and sentenced to death by hanging.¹ As she approaches the gallows, the titular character Quasimodo rescues her and spirits her away to the Notre Dame cathedral, thereby invoking for her the protection of sanctuary and saving Esmeralda’s life.²

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2. *Id.*
Sanctuary is the ancient judicial construct under which a foreign sovereign or religious order may accept a person seeking protection from persecution in his home country.\(^3\) While there is anecdotal evidence that the early Egyptian, Greek, and Hebrew societies recognized the right to sanctuary, the form of this protection that we understand today was codified much later in history, and survives today as the right of asylum.

Just as Voltaire fled to England,\(^4\) Descartes to the Netherlands,\(^5\) and Hobbes to France,\(^6\) many preeminent men and women that history remembers flee from their home countries and seek the sanctuary and protection of a different nation. While the majority of asylum applicants are fleeing persecution based upon their personal religious beliefs, ethnicities, race, sexual orientation, or political views, a smaller number of asylum seekers are fleeing criminal prosecution for acts they committed in their home country. These individuals typically seek asylum because they do not view their acts as criminal (but rather feel they are patriotic or legal) and instead feel that their government is purposefully and unfairly persecuting them because of political motivations. By fleeing to another county and receiving asylum protection, the individual is free to enjoy the rights and privileges accorded to the citizens of the asylum-granting country such as the right to live, work, travel, and often, to continue engaging in the political activity.

Due to the political nature of a number of asylum claims, asylum has become the exception rather than the rule for international relations. The rule is *extradition* or the legal process by which a foreign country delivers a fleeing citizen to his home country upon request from the home country.\(^7\) Countries enter into extradition agreements with each other in order to contractually prevent the very guarantee that asylum offers; that is, safe passage and safe harbor in the foreign country and


protection from the reach of the individual’s home country. A country that receives an asylum request is not required to grant the request and in fact many asylum requests are denied. If the second country denies the request, the individual’s home country will then officially initiate the extradition process in order to bring the person back to the home country to undergo legal and/or criminal proceedings.

This fascinating relationship between asylum and extradition is often played out in a high-stakes and dramatic fashion on the global stage. In 2005, the famed chess champion Bobby Fischer was granted asylum in Iceland after making several highly controversial anti-American statements.8 In 2012, Wikileaks Founder Julian Assange sought and received asylum from Ecuador after he leaked many of the U.S.’s most sensitive military-related documents including diplomatic cables, confidential security protocols, and Guantanamo Bay files.9 Most recently in 2013, U.S. citizen Edward Snowden occupied much of the international news when he leaked several classified National Security Administration (NSA) documents and traveled to Russia where he sought and received a temporary grant of asylum.10

The decision to grant or withhold asylum carries far-reaching and long-lasting consequences for diplomatic relationships, geo-political concerns, and the efficacy and legitimacy of international agreements and treaties. Because of these highly important ramifications, a closer examination of the implications of both granting and denying asylum and extradition must be examined. To do so, Part I of this article provides a brief description of the origin of extradition. Part II explains the history and development of the legal process for asylum. Part III outlines the recent case of Edward Snowden and how his asylum grant from Russia illustrates the interplay between the commitment to extradite citizens and

the decision to offer legal protection in the form of asylum. Finally, Part IV discusses how asylum affects international relations in the context of extradition treaties, diplomatic relations, and future agreements among nations.

Although originally conceived in churches and written into canon law, the right of sanctuary has transformed into the internationally accepted and protected right of asylum. Extradition agreements work to contractually prevent countries from exercising their abilities as independent sovereigns to grant asylum to foreign citizens. By examining the political mechanisms by which national leaders decide whether to abide by an extradition agreement or to offer the protection of their borders, we can begin to understand how sovereigns make the critical decision between offering sanctuary to a foreign national or offering extradition to a foreign country.

I. RENDER UNTO CAESAR THE THINGS THAT ARE CAESAR’S: A BRIEF HISTORY OF THE ORIGIN AND DEVELOPMENT OF EXTRADITION POLICY

Extradition is the recognized procedure by which one sovereign, after receiving a request from a second sovereign, returns a fugitive individual to the jurisdiction of the second sovereign.\textsuperscript{11} Due to the logistical and legal complexities involved in such an undertaking, extradition in the contemporary world is officially governed by formal treaties executed between two nations. To better understand the present-day extradition mechanisms, the following sections provide a brief history of extradition as well as summaries of extradition agreements between countries that are relevant to this inquiry.

A. The Origin of Extradition as the Law of the Land

The existence of extradition agreements dates back to the ancient beginning of formal diplomacy.\textsuperscript{12} The peace treaty signed between Ramses II of Egypt and the Hittite Prince Hattusili III in 1280 BC, a


\textsuperscript{12} Ivan Anthony Shearer, EXTRADITION IN INTERNATIONAL LAW 5 (1971).
document described as the oldest written diplomatic agreement in history, contains parameters for returning criminals found in one territory to the jurisdiction of the other.\textsuperscript{13} Centuries later, the Roman Empire agreed to extradition pacts among its many provinces,\textsuperscript{14} and the practice also made its way to Western Europe in 1174 AD as evidenced by an agreement between King Henry II of England and King William of Scotland.\textsuperscript{15}

Later historical eras also contain records of treaties that include extradition provisions, but the extent to which these provisions were actually effectuated is still to be decided. Many international law historians are of the opinion that any extradition of foreign citizens to their respective sovereigns that occurred took place notwithstanding any specific treaty obligations, but instead were part of a separate agreement between two nations that usually involved political dissidents as opposed to criminals.\textsuperscript{16} Conversely, in present time, politically motivated crimes are seldom extraditable as demonstrated by the decision of the Italian court in 1934 to refuse the extradition request for the assassins of Yugoslavian King Alexander – an act deemed politically motivated by the court.\textsuperscript{17}

B. Present-day Extradition Treaty Agreements

Turning to the contemporary state of extradition, it is helpful to examine the treaties the U.S. has in place with the nations who played a leading role or who were heavily involved in the Edward Snowden scandal: Ecuador and Russia.\textsuperscript{18}

\begin{thebibliography}{99}
\bibitem{13} Id.
\bibitem{16} Shearer, \textit{supra} note 12.
\bibitem{17} Claire Suddath, \textit{A Brief History of Extraditions}, \textit{TIME} (Sept. 30, 2009), available at http://content.time.com/time/world/article/0,8599,1926810,00.html.
\bibitem{18} Edward Snowden applied for asylum to more than 20 countries, but only those countries that seriously considered his application are discussed in this article.
\end{thebibliography}
i. The United States’s [Nonexistent] Extradition Treaty with Russia

The American tradition of extraditing foreign criminals to their home countries dates back to 1794 with the Jay Treaty that was signed between the newly formed United States and Great Britain, though this treaty expressly limited extradition to criminals accused of murder or forgery. 19 At the time of this article’s publication, the U.S. maintained extradition treaties with more than 100 countries including Australia, Ecuador, Spain, Canada, Colombia, the United Kingdom, Kenya, Liberia, and Iraq. 20

Conspicuous by its absence from this list is Russia, the country that ultimately granted temporary asylum to Edward Snowden. It was precisely this nonexistence of a formal and recognized U.S.-Russia extradition treaty that was the source of the confusion and uncertainty surrounding how the Snowden controversy would play out between two of the leading global superpowers. The confusion stemmed from the existence of an 1887 agreement that was executed between the (at that time) tsarist Russian Empire and the United States. 21 The treaty formally took effect in 1893, but its present-day status remains nebulous as relations between the two countries have warmed and cooled so frequently and so severely in the century that has passed since it came into force. 21 The intervening century between 1893 and the present bore witness to the U.S. and Russia’s infamous Space Race, the rise and collapse of the Soviet Union, the Khrushchev Thaw, and other events that alternatively rocked and stabilized their relationship.

Perhaps due to this waxing and waning nature of the U.S.-Russia relationship, representatives from both countries were unable to pinpoint

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21. See id.
either when the 1893 treaty became obsolete or when it was reaffirmed by a post-tsarist Russian government. During the media speculation surrounding whether Russia would grant Mr. Snowden asylum, a U.S. Department of State official commented that it has been the U.S.’s longstanding position that the country does not have an extradition treaty with Russia currently in force.  

ii. The United States’ Extradition Treaty with Ecuador

As explained in further detail below in Part IV, Ecuador, according to its president Rafael Correa, never truly entertained the possibility of granting Snowden asylum in abrogation of its treaty with the United States. However, if the nation had considered Snowden’s application, it may have been required to do so through the lens and according to the parameters of its aforementioned extradition treaty.

The U.S.-Ecuador Extradition Treaty was signed in Quito, Ecuador on June 28, 1872, and went into force in November 1873. The Treaty provides that both countries agree to deliver to each other persons found in their respective territories that have been accused or convicted of murder, rape, arson, piracy, burglary, forgery, counterfeiting, or embezzlement.

Importantly, the Treaty specifically exempts from this list of enumerated offenses crimes that are of a political character. As discussed in greater detail below, the inclusion of this political character exemption provides a ready-made loophole that countries can utilize to avoid their extradition treaty obligations in order to grant asylum to foreign nationals.

At this point, it can be highlighted that even when an extradition treaty is in place, such as between the U.S. and Ecuador, the logistical process of extraditing a foreign national can take years or even decades. For example, in 1964 U.S. authorities discovered that New York City resident Ms. Hermine Braunsteiner Ryan had worked as a guard at the
Nazi concentration camp Ravensbrück. The U.S. government immediately stripped Ms. Ryan of her U.S. citizenship but the quick processing of her case ended there. Almost a decade later Ms. Ryan became the first (former) U.S. citizen to be extradited for war crimes when she finally arrived in West Germany in 1981 where the German court sentenced her to life in prison. In the interim, Ms. Ryan remained in the U.S. while the U.S. and German governments coordinated her legal proceedings and travel arrangements.

As Ms. Ryan’s case perfectly illustrates, the extradition of a foreign citizen – when agreed to – is not a quick remedy for what ails the foreign country demanding the individual’s return. Conversely, the grant of asylum effectuates an immediate remedy as described in further detail in the following section.

II. “I WAS A STRANGER AND YOU WELCOMED ME”: A BRIEF HISTORY OF SANCTUARY AND ITS DEVELOPMENT INTO THE LAW OF ASYLUM

As an ancient canonical tradition, the right of sanctuary has likely existed in one form or another for more than one thousand years, but the shortage of preserved historical church documents that specifically reference sanctuary contributes to the ongoing mystery surrounding its precise origin. From its beginning in the churches to its modern codification in international law, sanctuary has developed from an informal process effectuated by touching hallowed ground, into a formalized application procedure that requires many forms, fees, and navigation through multiple bureaucratic and diplomatic channels. The following discussion chronicles how this church practice became a firmly established and internationally recognized human right.

28. See id.
A. Gift from the Ancients: the Origin of Sanctuary from the 4th Century to 2014

The accepted theory amongst historical scholars studying the subject is that the practice of offering sanctuary to persecuted victims was first officially embraced by a territory ruler during the 4th century C.E. when Emperor Constantine took the throne of the Roman Empire. While the specific year of the Emperor’s adoption of sanctuary is still in dispute, the two prevailing theories are that sanctuary was officially propounded in either Constantine’s Edict of Toleration (303 C.E.) or in 324 C.E. Regardless of the exact date of its origin with Constantine, sanctuary was formally codified in the Theodosian Law Code of 392 C.E. This law limited sanctuary to only those refugees who were able to physically breach the four walls of a Christian church, and specifically excluded embezzlers, debtors, heretics, Jews, and apostates. Approximately 50 years later in 450 C.E., the ruler Theodosious the Younger allowed sanctuary to be obtained if the refugee set foot upon any of the area between the churchyard walls or its possessions such as cloisters, cemeteries, and the bishop’s or priest’s housing.

The parameters of sanctuary continued to change in subsequent centuries, with Catholic Church councils helping to solidify its requirements through official statements on church policies. For example, the Council of Orange in 511 formally prohibited anyone from “removing by force from churches those who fled to them” and in the 7th century the Council of Toledo established the policy that excommunication was the penalty for violating the safety of sanctuary.

The actual feat of receiving protection through sanctuary in a church became easier as the practice spread throughout medieval Europe. Churches began affixing large and ornate sanctuary knockers to the front doors of their chapels in order to assist refugees; one need only touch the

30. Id.
31. Id.
32. Id.
33. Id.
34. Id.
35. Id. at 56.
knocker to be shielded from arrest and punishment.\textsuperscript{36} Interestingly, as sanctuary became more easily obtainable, rulers of nations began to clash with the church rulers when efforts to restore the king’s peace were frustrated by bishops who provided sanctuary to accused criminals.\textsuperscript{37} To the Catholic Church, its power to provide sanctuary derived from God and therefore superseded any conflicting power claimed by the royal state.\textsuperscript{38} Accordingly, state officers were prohibited from pursuing sanctuary seekers onto the Church grounds, and violence within the borders of the Church’s property was strictly forbidden.\textsuperscript{39}

In medieval Europe, a grant of sanctuary did not offer indefinite protection from the law. Rather, after the sanctuary seeker presented his case to the bishop, the bishop would decree how long the seeker would be permitted to remain in the church (a period that usually ranged from three to forty days) and could also prescribe a spiritual punishment or penitential discipline.\textsuperscript{40} Once the allotted sanctuary period expired, the bishop would meet with the king’s representatives to receive royal guarantees that private punishment or vengeance executed by the Crown would not be visited upon the sanctuary seeker upon departure from the church.\textsuperscript{41}

However, as medieval societies continued to progress, rules began including sanctuary protections in their own laws and of their own accord. For example, in 680 King Ine of Wessex allowed for sanctuary to be an alternative to punishment or death for crimes committed in his kingdom, and in 1070, William the Conqueror declared that if the refugee did not ultimately come to an agreement with his accusers, the refugee would be required to appear before royal authorities, confess the crime, and abjure the realm, meaning take on self-imposed exile.\textsuperscript{42} Subsequent rulers continued to adopt elaborate provisions, rules, and privileges for sanctuary, thereby contributing to the growing body of

\textsuperscript{37} See id.
\textsuperscript{38} Id. at 57.
\textsuperscript{39} See id.
\textsuperscript{40} Id. at 56-57.
\textsuperscript{41} Id.
\textsuperscript{42} Id. at 60-61.
acceptable practices for handling accused criminals who flee their country.43

B. Opening Church Doors to the Rest of the World: Modern-day Asylum Law

While the Catholic Church continued to be the fountainhead of sanctuary protection, by the time the Reformation occurred in Britain and Europe, judicial systems had advanced to the point that accused criminals no longer felt the same dire need to escape the unfair persecution of the state.44 The adoption of the Magna Carta in 1215 secured trial by jury for accused criminals, thereby giving kings confidence to assure their people that accused persons would be dealt with in a safe and reasonable manner - and therefore fleeing to churchyards was not necessary to ensure one’s safety until one’s innocence could be proven.45

Because of these new legal processing methods that protected victims from the strong arm of the state, rulers sought cooperation from church heads – specifically popes – in order to limit the use and availability of sanctuary as a means to avoid all criminal justice.46 For instance, in 1486 King Henry VII obtained a papal decree from Pope Innocent VIII that confirmed sanctuary seekers could not return to sanctuary if they committed crimes after departing from the church.47 However, it is interesting to note that members of the English royal court did not hesitate to seek sanctuary in Westminster Abbey during the War of the Roses.48

Later centuries continued to witness conflicts between churches and thrones over sanctuary protections. To the state, sanctuary interfered with the administration of justice and offered a perverse incentive for subjects of the realm to commit crimes yet go unpunished. To the Catholic Church, the power to grant sanctuary was a divinely enshrined and protected right of the Church. In 1727, Pope Benedict XIII told secular

43. See id. at 58, 63.
44. See id. at 64.
45. Id.
46. Id.
47. Id.
48. Id. at 67.
officers that they would be excommunicated if they violated sanctuary protection but in turn he prohibited thieves, assassins, counterfeiters, and political offenders from receiving a grant of sanctuary. However, the Catholic Church ultimately relaxed its excommunication punishment and dropped it entirely from ecclesiastical law in the 1919 Code of Canon Law.49

Beginning in the 20th century and continuing to the present, sanctuary exists in codified laws as asylum, and sanctuary seekers are alternatively referred to as refugees or asylees. Asylum protection has been written into the immigration and nationality laws of many countries and is also formalized in international agreements such as the United Nations Refugee Convention and Protocol. To provide a comprehensive understanding of Edward Snowden’s legal processing as he fled the United States, examinations of the asylum laws of Russia and Ecuador are provided in the following section. This section also discusses the tenets of the aforementioned UN Convention on Refugees.

i. Russia’s Asylum Law

In Russia, asylum seekers are referred to as refugees for the purposes of legal processing, and there are two pieces of Russian legislation that address the needs of this population: a provision of the Russian Constitution (the Law of Forced Migrants)50 and the Law on Refugees.51 The Russian Constitution specifically grants foreign nationals the right to seek political asylum in Russia.52 The Law of Forced Migrants normalized the immigration procedure for nationals of the former Soviet Union who sought asylum in Russia after the Union collapse.53

49. Id.
52. KONSTITUTSIA ROSSIISKOI FEDERATSII [KONST.RF] [Constitution] art. 63 (Russ.).
The Law of Refugees is the predominant legislation that outlines the requirements and processes for asylum seekers and, amongst other provisions, defines an asylum seeker as:

a person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.\(^\text{54}\)

The Russian government enacted these laws between 1993 and 1995, and with small exceptions for slight amendments, these statutes remain the governing authority for obtaining asylum in Russia today.

Pursuant to these laws, Russia allows foreign nationals to apply for three different types of asylum: refugee status, temporary asylum, and political asylum.\(^\text{55}\) The key factor that differentiates the three types is the period of asylum each type grants, with refugee status conferring up to three years (though the status is reviewed and may be revoked ever year), political asylum conferring permanent refugee status, and temporary asylum conferring status in one-year increments that may be renewed on an indefinite basis.\(^\text{56}\)

To receive a grant of asylum, the refugee must apply for this benefit with one of the regional Ministry of Interior offices of the Russian Federation Migration Services (FMS) government agency within 24 hours of entering the country if the refugee entered the country illegally.\(^\text{57}\) While the failure to comply with this timeframe can be overlooked in light of extraordinary circumstances, failing to abide by it can serve as the basis of the denial of the asylum application (but there is no timeframe requirement for those who legally enter Russia).\(^\text{58}\) The asylum application must detail the reason the refugee is fleeing the home

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\(^{55}\) Tom Balmforth, Explainer: How Do You Get Asylum In Russia?, RADIO FREE EUROPE RADIO LIBERTY (July 26, 2013), http://www.rferl.org/content/explainer-russia-asylum/25057895.html.

\(^{56}\) Id.


\(^{58}\) Id. art. 5.1, ¶ 3.
country and also why the FMS should approve the application. Upon receipt of the application, the FMS conducts a Refugee Status Determination, which includes a mandatory interview with the applicant and can last up to one year. 59

If the FMS approves the asylum application, the refugee will receive a Russian travel document and refugee ID card. Additionally, while the Russian authorities only approve refugee status for up to three years, this status is renewable on an annual basis and the refugee is immediately eligible to apply for Russian citizenship upon approval of the asylum application. 60 If the FMS denies the application, the applicant has the right to appeal the case in the Russian courts. Once the appeal process ends, if the applicant is still unsuccessful the Department of Passport and Visa Registration commences deportation proceedings against the applicant. 61

ii. Ecuador’s Asylum Law

In Ecuador, the right to asylum is codified in the country’s very constitution. The Ecuador constitution dedicates an entire article to the subject of asylum. Specifically, Article 41 states:

[Persons’] rights to asylum and sanctuary are recognized, in accordance with the law and international human rights instruments. Persons who have been granted asylum or sanctuary shall benefit from special protection guaranteeing the full exercise of their rights. The State shall respect and guarantee the principle of non-return, in addition to humanitarian and legal emergency assistance. Persons requesting asylum or sanctuary shall not be penalized or prosecuted for having entered the country or for remaining in a situation of irregularity. The State, in exceptional cases and when the circumstances justify it, shall recognize the refugee status of a collective group, in accordance with the law. 62

Ecuador has become one of the most sought-after destinations for asylum seekers around the world. Although its own country is one of the

59. Id. art. 3.3.
60. Id. art. 7.9.
61. Id.
62. CONST. (2008), art XLI (Ecuador).
geographically smallest in the South American continent, Ecuador is home to more than 110,000 asylum seekers and recognized refugees as of January 2012.63

The nation’s asylum application process is informal in comparison to that of Russia. Asylum seekers are ultimately trying to receive refugee status designation from the Ecuadorian government. The application procedure requires asylees to apply for recognized refugee status within 15 business days of entering the country and their applications must contain a statement outlining the reason(s) for seeking asylum.64 The asylee must prove that he/she possesses a well-founded fear of persecution based upon race, religion, nationality, membership in a social group, or political opinion and, due to this fear, is unable to avail her/himself of the protection of the asylee’s home country.65 If the asylee’s application is approved, Ecuador will recognize the asylee’s official status as a refugee and provide the person with work and travel authorization.66

iii. 1951 UN Refugee Convention

This multilateral international treaty, which is signed by both Russia and Ecuador, outlines who may qualify as an asylum seeker and establishes the responsibilities of the signatory nations when granting asylum. The Convention defines an asylee seeker in the same manner as Ecuador and Russia (who modeled their own definition after the Convention).67 By signing the treaty, the participating countries agree to cooperate with the United Nations High Commissioner for Refugees in the implementation of the treaty’s provisions and to inform the United Nations Secretary-General when the countries adopt their own national laws regarding refugees.68 Participating countries also agree that the

64. Id.
65. Id.
66. Id.
68. Id.
international treaty principle of reciprocity, whereby the granting of a right to a second country’s citizens is conditioned upon the second country extending that right to the first country’s citizens, does not apply to refugees.69

Although outside the scope of the instant discussion, it is interesting to note that the asylum application process in the United States is very similar to that of Russia and Ecuador – and that the three countries have all welcomed asylum seekers accused of similar crimes in their home countries. As explained in further detail in the subsequent section, the case of Edward Snowden is hardly unique. Rather, Mr. Snowden is merely the most recent illustration of how the unique interplay between extradition agreements and asylum treaties affect international relationships and expectations.

III. EDWARD SNOWDEN’S ASYLUM EXPERIENCE AND THE EVENTS LEADING TO HIS RELOCATION TO RUSSIA

After Wikileaks rocked the country and the world with its electronic exposure of an unprecedented amount of sensitive U.S. government secrets, it was difficult to imagine a person gaining as much media attention for public disclosures of documents as did Wikileaks co-founder, Mr. Assange. However, a mere three years later the global press outlets once again enjoyed headline news with the coverage of Edward Snowden – a former U.S. intelligence analyst alternatively described as a whistleblower, hero, traitor, and patriot.

Before Mr. Snowden was catapulted into the global spotlight, he was an employee of the defense contractor firm Booz-Allen Hamilton and placed at the National Security Agency (NSA). However, his life dramatically changed on May 20, 2013, the day he began the process of releasing the U.S. government’s confidential documents to the world. On that day, Mr. Snowden traveled to Hong Kong and brought with him four laptops that he used to access the government’s classified information.70 The following day on June 1, 2013, Mr. Snowden began his series of

69. Id.
exclusive interviews with *The Guardian* reporters Glenn Greenwald and Ewen Maskill who traveled to Hong Kong to conduct the interviews.\(^{71}\)

On June 5, 2013, the reporters published a secret court order that Mr. Snowden had previously obtained which showed that departments of the U.S. government forced the telecommunication company Verizon to give the government millions of Americans’ phone records.\(^{72}\) On June 6, 2013, the reporters revealed that the NSA has implemented a program called Prism, which gives the government agency access to data on Americans that is collected and held by Google, Apple, Facebook, and other internet-based companies.\(^ {73}\) And on June 7, 2013, the reporters exposed the internal NSA information-gathering tool referred to as Boundless Informant.\(^ {74}\)

Up to this date, Mr. Snowden had only disclosed his identity to the reporters, but on June 9, 2013, he decided to reveal himself as the infamous NSA leaker.\(^ {75}\) As soon as his identity and whereabouts were revealed, the U.S. government began clamoring for his swift return to the country, culminating in Congress’s official request for his extradition from Hong Kong and the filing of espionage charges against him on June 21, 2013.\(^ {76}\)

Mr. Snowden continued to reside in Hong Kong for the next two weeks and also continued to expose more and more secret government surveillance programs such as the fact that the NSA has been hacking Chinese and Hong Kong computer systems since 2009, and that U.S. judges have signed broad court orders allowing the NSA to use evidence collected without warrants in legal proceedings against Americans.\(^ {77}\) On June 23, 2013, he departed Hong Kong for Moscow, Russia, landing at the international Sheremetyevo airport.\(^ {78}\) He had originally planned to only briefly stop in Moscow in order to board a connecting flight into Havana, Cuba, but upon hearing that Hong Kong allowed him to depart

\(^{71}\) Id.
\(^{72}\) Id.
\(^{73}\) Id.
\(^{74}\) Id.
\(^{75}\) Id.
\(^{76}\) Id.
\(^{77}\) Id.
\(^{78}\) Id.
the city, the U.S. Department of State canceled Mr. Snowden’s passport, thereby preventing him from engaging in further international travel.\textsuperscript{79}

During his month-long stay in Russia’s airport, Mr. Snowden filed more than twenty asylum applications to different countries including China, Austria, Finland, India, Spain, and Switzerland.\textsuperscript{80} Four countries offered him permanent asylum: Bolivia, Ecuador, Nicaragua, and Venezuela.\textsuperscript{81} However, Mr. Snowden chose to apply for temporary asylum in Russia because he did not feel he would be able to safely travel to any Latin American country, since Bolivian President Evo Morales’s flight from Russia to Bolivia had been rerouted and denied airspace in France, Spain, and Italy due to suspicions that Mr. Snowden was on board.\textsuperscript{82}

Once Russian Federal Migration Services authorities confirmed that Mr. Snowden filed his asylum application, a spokesman for Russian President Vladimir Putin publically stated that Putin conditioned the grant of temporary asylum upon Mr. Snowden’s promise to stop harming the United States by discontinuing his release of its government secrets.\textsuperscript{83} After Mr. Snowden agreed to this condition, the FMS approved his asylum application and he received a one-year temporary grant of asylum that may be extended on an annual and indefinite basis.\textsuperscript{84} On August 1, 2013, thirty-nine days after arriving at the Sheremetyevo airport, Mr.

\textsuperscript{79} Id.


Snowden finally departed the airport and officially entered the country.\textsuperscript{85} He currently resides at an undisclosed Russian address.\textsuperscript{86}

IV. \textbf{HOW EDWARD SNOWDEN’S LEAKS CREATED A FLOOD OF CONTROVERSY: THE INTERNATIONAL RELATIONS IMPLICATIONS THAT STEM FROM THE PERCEIVED ASYLUM-EXTRADITION CONTRADICTION}

The United States government roundly condemned Russia for extending temporary asylum to Mr. Snowden, with the White House calling the decision “extremely disappointing,”\textsuperscript{87} and members of Congress echoed these sentiments albeit with more colorful phrases such as Senator Schumer’s statement, “Russia has stabbed us in the back [and] each day that Mr. Snowden is allowed to roam free is another twist of the knife.”\textsuperscript{88} Additionally, in the wake of the asylum grant the White House cancelled its upcoming summit with Russia, citing that the decision to provide Mr. Snowden with asylum is a signal that the Kremlin is not ready to discuss future cooperation with the United States.\textsuperscript{89}

The cancellation of this summit is a clear illustration of the international relations implications of granting asylum in the face of an extradition agreement – the relations between the two countries invariably cool at least for a short period of time. However, it is interesting to note that, at least in the case of U.S.-Russia relations, the cool period may be short but the Russian memory is long. Some commentators have speculated that the actual reason driving Russia’s

\begin{itemize}
  \item \textsuperscript{85} Radia, \textit{supra} note 83.
  \item \textsuperscript{86} Catherine Shoichet & Dana Ford, \textit{Edward Snowden Tells NBC: I’m a Patriot}, CNN (May 29, 2013), \textit{available at} \url{http://www.cnn.com/2014/05/28/us/edward-snowden-interview/index.html}.
  \item \textsuperscript{87} Justin Sink, \textit{White House ‘Extremely Disappointed’ in Russia for Granting Snowden Asylum}, \textit{The Hill} (Aug. 1, 2013), \url{http://thehill.com/homenews/administration/315033-white-house-extremely-disappointed-in-russia-over-snowden-asylum}.
  \item \textsuperscript{89} \textit{Id.}.
\end{itemize}
grant of asylum was *not* adherence to its asylum laws and related international agreements, but rather the decision stemmed from the desire to give the U.S. a bit of its own medicine.  

The pages of U.S.-Russian history are rife with examples of the former denying the latter’s extradition requests, including several high-profile cases similar to that of Mr. Snowden. For example, in 2002 Chechen rebel leader Ilyas Akhmadov, whom Russia labeled a terrorist and charged with organizing terrorist camps and leading thousands of armed rebels, sought asylum in the United States. When Russia called for his immediate extradition, the U.S. responded by expediting Mr. Akhmadov’s asylum case through the immigration courts where his application was ultimately granted.

Mr. Akhmadov is but one example in a long line of cases where the U.S. ultimately denied Russian extradition requests for citizens accused of the same crimes against their country as Mr. Snowden. Summarizing each case would require volumes, but it is worth highlighting just one more example of an extradition denial, that of Russian defector, Mr. Kirill Alekseev. Mr. Alekseev fled his post as Soviet trade representative in Mexico in 1947 and entered the U.S. where he subsequently condemned his home country and referred to it as a “hell of dictatorship.” Upon learning of Mr. Alekseev’s desertion of his post and slander of his country, Russia (though at the time part of the Soviet Union) sent an official extradition request for Mr. Alekseev to the U.S. and stated that he was charged with treason, treachery, embezzlement, and other crimes. The U.S. State Department rejected the extradition request, citing that, in the opinion of the Department, it is a well-established principle of international law that no right to extradition exists apart from treaty and there is no extradition treaty between the United States and the Soviet Union.

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91. Id.
92. Id.
93. Mr. Alekseev’s name has alternately been spelled Alexeyev and Alexeiev.
94. Peralta, supra note 90.
95. Id.
96. Id.
Russian officials specifically referenced past U.S. denials of extradition requests, in particular that of Mr. Akhmadov, during its decision making process regarding Mr. Snowden’s asylum application. A spokesperson from Russia’s Interior Ministry accused the U.S. of implementing a “double standard” by demanding Mr. Snowden’s extradition and pointed the country’s own refusals of Russia’s extradition requests in the last decade. After Russia granted the temporary asylum, the nation publically stated it did not desire for Mr. Snowden’s situation to harm bilateral relations. However, President Obama’s subsequent cancellation of the nations’ planned summit seems to indicate that the blow had already been dealt.

In the case of Russia, it seems possible that it was national pride and a desire to, in its leadership eyes, beat the U.S. at its own game of extradition denials which governed the country’s decision to grant Mr. Snowden asylum – rather than a strict and pointed adherence to its obligations as a signatory of the UN Refugee Convention. This conclusion is bolstered by the absence of any public statements from Russian officials that cite the country’s responsibilities pursuant to the UN Refugee Convention as its reason for granting asylum. As the UN Refugee Convention would have served as a ready-made and convenient justification for extending asylum to Snowden, the fact that Russia did not rely upon the UN provisions indicates these provisions did not play a meaningful role in the decision-making process.

However, it is also possible that completely different geo-political considerations greatly influenced Russia’s decision on the Snowden matter. For example, President Putin has been an ongoing and vocal supporter of Syrian President Assad in the country’s civil war, whereas President Obama supports the Syrian rebels’ cause in an equally vocal

98. Id.
99. Id.
100. Id.
manner.101 The two leaders have shared disagreements on this issue in the past, and a portion of the cancelled summit was actually reserved in order to discuss the Syrian controversy.102 Moreover, it is also conceivable that President Putin was still suspicious that the U.S. government had financed or otherwise supported the recent unprecedented amount of street protests orchestrated by the Russian middle class after President Putin’s latest election.103 Prompted by these suspicions, President Putin had closed the Russian U.S. AID office for the first time in the history of its existence,104 and it is not unbelievable that he was still seeking ways to even the score with the U.S. for this perceived offense – and that Mr. Snowden’s asylum application presented a perfect opportunity. Regardless of Russia’s actual motivations for its decision to extend asylum protection to Mr. Snowden, it is clear that the country did not overly concern itself with the possible repercussions of doing so.

Conversely, the potential consequences that extending asylum to Mr. Snowden could have on bilateral relations with the U.S. was certainly at the forefront of the discussion of this issue in Ecuador. When international press syndicates revealed that Mr. Snowden applied for asylum in Ecuador, the country’s Foreign Minister Ricardo Patiño originally released statements that gave the impression Ecuador would approve the application. Mr. Patiño stated, “The government of Ecuador puts principles above [political and commercial] interests, in this case human rights,”105 and many news commentators predicted Ecuador would extend asylum to Mr. Snowden since it was already housing Wikileaks co-founder Julian Assange at its embassy in London.106


102. Id.


104. Id.


106. Id.
However, after a phone call from U.S. Vice President Joe Biden, Ecuador President Rafael Correa seemed to change his mind about the issue. During the conversation, the Vice President informed President Correa that, should Mr. Snowden receive asylum in Ecuador, relations between the two nations would “strongly deteriorate.” President Correa then assured the Vice President that should Mr. Snowden come to Ecuador, the U.S. would be the first to know and their interests would be respected while Ecuador evaluated his asylum application.

President Correa intimated that the Vice President’s advice that extending asylum to Mr. Snowden would harmfully effect U.S.-Ecuador relations was a factor worthy of consideration in evaluating Mr. Snowden’s request for asylum. It is no wonder that the impact on U.S.-Ecuador relations would be considered during this inquiry, given the fact that international trade between the two countries amounted to more than $17 billion in 2012 alone. Additionally, at that time the Ecuadorian embassy in Washington, D.C. had been ardently lobbying for expanded trade privileges with the U.S. under the U.S.’s Generalized System of Preferences program that authorizes duty-free trade for certain goods from certain countries. The embassy was attempting to secure duty-free trade for Ecuador’s roses, broccoli, and artichokes industries, which sustain tens of thousands of jobs in that country. Given those current trade concerns, it is not outside the realm of possibility that President Correa backtracked on his position on Mr. Snowden in the hope that doing so would lead the U.S. to fast-track its expansion of his country’s trade benefits.

108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
CONCLUSION

Russia’s and Ecuador’s approaches to the Snowden issue and how the two countries respectively handled the question of whether to extend asylum to him clearly illustrate that while Mr. Snowden was obviously the key figure in the middle of this international controversy, in many ways he was arguably a pawn in a chess game between nations. Russia granted Mr. Snowden asylum in the face of U.S. threats of detrimental geopolitical implications, whereas Ecuador declined to issue the asylum invitation for fear of facing retaliatory trade-related consequences.

Mr. Snowden’s circumstances perfectly exemplify how international extradition agreements and nations’ own asylum laws cannot truly co-exist and that one must always trump the other. Since the ultimate decision to return or to protect will not turn on any single factor, in the context of future cases of high-profile refugees such as Mr. Assange and Mr. Snowden, the world will simply have to wait to see if a country will invoke the ancient practice of sanctuary or embrace the modern policy of extradition.