

CHAPTER III

THE DYNAMICS OF U.S.-RUSSIA RELATIONS TOWARDS SNOWDEN ASYLUM

This chapter will focus on the study of the background of Edward Snowden as a former employee of NSA and the leaking of NSA's classified information by Snowden. The political dynamics of U.S. to extradite Snowden from Russia and the interest behind Russian government decision to grant Snowden's asylum request will be explained in this chapter.

A. Edward Snowden's Background

Edward Joseph Snowden is a former employee of National Security Agency (NSA). He was accused for leaking NSA's classified information and became U.S.'s most wanted person. The leaking was about classified surveillance program of NSA that seemed to be violating the privacy of the citizens, such as PRISM (Privacy in Mobile Information and Communication Systems) and XKeyscore. Those programs were classified because it consisted of internet data and personal data using surveillance programs which according to Snowden, were violating the privacy rights. (Harding, 2014)

There are abundant of sources which give the information and evidence in which Snowden admit that he leaked the classified information. In a book "No Place to Hide" written by Glenn Greenwald, a journalist of The Guardian, he wrote about his meeting with Snowden regarding a "top secret U.S. government document". In his book stated (Greenwald, 2014):

"Within fifteen minutes, my computer sounded a bell-like chime, signaling that he had signed on. Slightly nervous, I clicked on his name and typed "hello." He answered, and I found myself speaking directly to someone who I assumed had, at that point, revealed a number of

secret documents about US surveillance programs and who wanted to reveal more.

Right off the bat, I told him I was absolutely committed to the story. "I'm willing to do what I have to do to report this," I said. The source—whose name, place of employment, age, and all other attributes were still unknown to me—asked if I would come to Hong Kong to meet him. I did not ask why he was in Hong Kong; I wanted to avoid appearing to be fishing for information.

Indeed, from the start I decided I would let him take the lead. If he wanted me to know why he was in Hong Kong, he would tell me. And if he wanted me to know what documents he had and planned to provide me, he would tell me that, too. This passive posture was difficult for me. As a former litigator and current journalist, I'm accustomed to aggressive questioning when I want answers, and I had hundreds of things I wanted to ask."

In that statements, it is shown that “the source”, which referred to Snowden admit that he possessed a top secret document of U.S. surveillance program and was willing to reveal and expose the document. According to Snowden, the reason he leaked and exposed the classified information was because he was disappointed with the U.S. security agencies for violating the privacy of internet data using. He argued that everyone should know that the action taken by the government, NSA to be specific, to gather the information from internet data using by using their surveillance program and cooperating with U.S.’s biggest IT company is violating public privacy.

B. The Diplomacy of the U.S. to Extradite Snowden

According to the U.S. government, what Snowden committed was a crime of espionage. He is charged with two

violations against 1917 Espionage Act (Finn & Horwitz, 2013):

“...unauthorized communication of national defense information. ...willful communication of classified communications intelligence information to an unauthorized person.”

“To convey information with intent to interfere with the operation or success of the armed forces of the United States or to promote the success of its enemies. This was punishable by death or by imprisonment for not more than 30 years or both.

To convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies when the United States is at war, to cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or to willfully obstruct the recruiting or enlistment service of the United States. This was punishable by a maximum fine of \$10,000 or by imprisonment not more than 20 years or both.”

After the U.S. government announced the charges against him, Snowden fled to Hong Kong along with Glenn Greenwald— a journalist of The Guardian, Laura Poitras, and a WikiLeaks activist Sarah Harrison. He planned to expose the classified information of U.S. surveillance programs in Hong Kong. The U.S. has requested the government of Hong Kong to extradite Snowden as soon as he arrived in Hong Kong.



Figure 3.1
*Edward Snowden (Courtesy of The Guardian)*¹¹

The U.S. and Hong Kong actually have an extradition treaty that was signed a year after Hong Kong's transition from British to Chinese rule. However, with the charges by the U.S. against Snowden; "theft of government property, unauthorized communication of national defence information, and willful communication of classified communications intelligence to an unauthorized person", which are not specifically cited in the treaty, Hong Kong must charge Snowden with equal crime to have the authority to arrest and extradite Snowden from Hong Kong. According to Hong Kong's extradition system, there must be a diplomatic approach in requesting an extradition so that Hong Kong could proceed the request. However, there were debates among government lawyers regarding the legal standing whether to extradite Snowden or not since the government of Hong Kong did not charge Snowden with equal crime as the U.S. has. (nytimes, 2013)

After did what he did in Hong Kong, in the late June 2013, Snowden landed at Moscow's Sheremetyevo Airport

¹¹ Retrieved November 17, 2018 from https://cdn4.img.sputniknews.com/images/102175/32/102175326_0.jpg

and his arrival became controversial to the Kremlin and the White House. (Pifer, 2013) Not long after Snowden's arrival in Moscow, the U.S. Secretary of State, John Kerry reached out to Russian Minister of Foreign Affairs Sergei Lavrov to demand Snowden's extradition. However, the negotiation seemed to be failed since there is no agreement on asylum between the U.S. and Russia. It means that Russia has no legal obligation and to arrest or to extradite Snowden. On the other hands, Snowden could not go anywhere since the U.S. government has cancelled his passport.

During his time in Moscow, Snowden was reported that he filed asylum request to many countries which some of them gave positive responses, and some others rejected the request. The countries are Austria, Bolivia, Brazil, China, Cuba, Ecuador, Finland, France, Germany, Iceland, India, Ireland, Italy, the Netherlands, Nicaragua, Norway, Poland, Russia, Spain, Switzerland, and Venezuela. The process of Snowden's asylum request became a consideration for some countries he requested to, but it was not easy for Snowden to get the asylum because there are requirements which Snowden did not pass, such as Snowden has to be in the country's soil to request the asylum. (Harding, 2014)

Here are the responses of the 21 countries regarding Snowden's asylum request application (The Guardian, 2013):

1. Austria

According to the Federal Agency for Immigration and Asylum procedures, Snowden's asylum request is legally invalid because the request was not filed from Austrian soil as it should have.

2. Bolivia

In an official statement of Bolivian President Evo Morales in a television, Bolivia did not receive the request, but it was willing to consider and even offer the asylum request to Snowden if asked.

3. Brazil

The request was filed and received but according to Brazilian Foreign Ministry spokesman, Brazil would not grant or even respond Snowden's asylum request.

4. China

As well as Bolivia, China did not receive the asylum request.

5. Cuba

The request was filed and received to Cuba, but the Cuban government did not respond Snowden's asylum request.

6. Ecuador

The Ecuadorian government did not grant Snowden's asylum request because the request was not filed from Ecuadorian soil. Also, since Snowden's passport has been cancelled by the U.S. government, according to Ecuadorian President Rafael Correa, Ecuador could not authorized travel document for Snowden to leave Moscow.

7. Finland

According to Finnish government, Finland could not grant Snowden's asylum because Snowden filed the request in Finnish Embassy in Moscow which according to Finnish law, asylum request must be applied in Finland.

8. France

As well as Bolivia and China, the government of France did not receive any asylum request from Snowden.

9. Germany

According to German Foreign Minister, Guido Westweller, the request would be reviewed but the possibility was low for the German government to grant Snowden's asylum request because according to the law, the request must be filed in German.

10. Iceland

As well as Cuba, Iceland did not respond the asylum request.

11. India

The asylum request was filed, received, and reviewed. However, according to India's Foreign Ministry spokesman, Syed Akbaruddin, India has made its decision to not grant Snowden's asylum.

12. Ireland

Ireland did not grant Snowden's asylum because according to Irish law, Snowden must be in Ireland to apply for asylum.

13. Italy

Emma Bonino, Foreign Minister of Italy said that an asylum request should be presented in person in Italian soil, therefore, Snowden's asylum could not be granted.

14. The Netherlands

The Dutch government could not grant Snowden's asylum while he was abroad.

15. Nicaragua

As well as Bolivia, according to Nicaraguan President Daniel Ortega, Nicaragua would like to offer Snowden an asylum.

16. Norway

The Norwegian government has received the asylum request applied by Snowden. However, according to the law, Snowden must apply his asylum in Norwegian soil. Even though the law said so, the request was reviewed by the Norwegian government, but with no promises that it will be granted.

17. Poland

The request was rejected because it was not fulfill the requirements.

18. Russia

Snowden applied his asylum request to the Russia's Federal Migration Service on June 16. Moreover, by the end of June, Snowden applied his asylum request to the Russian Foreign Affairs. However, after Russian President Vladimir Putin gave his statement regarding

Snowden's asylum where he has to stop "harming" the U.S., Snowden withdrawn his asylum application from Russia.

19. Spain

According to Spanish Foreign Minister Jose Garcia Margallo, the request was rejected because it was not filed in Spain.

20. Switzerland

As well as any other countries' law on asylum, the reason why the government of Switzerland could not grant Snowden's asylum was because the application was not filed in its soil.

21. Venezuela

As well as Bolivia and Nicaragua, Venezuelan President Nicolas Maduro offered Snowden an asylum in his statement in Moscow, "What he did was tell a great truth in an effort to prevent wars. He deserves protection under international law and humanitarian law." (The Guardian, 2013) However, the Venezuelan government did not receive any asylum request from Snowden.

Snowden stayed at the Shremetyevo airport while requesting his asylum until July 2. There were debates in the Russian government whether to give Snowden the protection he seek or not. Especially after President Putin delivered his statement where Snowden has to stop harming the U.S., Snowden withdrawn his request to seek protection from the Russian government, then reapplied his asylum request on July 12. After a month staying at Russian airport and attempting to find another place to seek protection, in August, Russia granted the temporary asylum request for Snowden to stay in Moscow for a year– which will expire on July 31, 2014. (Kuchin, 2013)

C. The Interest of Russian Government

There are several factors why the Russian government granted Snowden's asylum request. One of them is the interest

of Russia in improving and strengthening its intelligence. By giving Snowden protection, Russia could obtain intelligence information from the U.S. top secret surveillance programs. After granted Snowden's asylum and brought him out from the airport, the Russian parliament invited Snowden to help investigating an IT company that based in the U.S. whether it has giving the White House the information of Russian citizens or not.

In 2014, Snowden explained that there are some secret programs of NSA in which it has been cooperating with other intelligent agencies from other countries in obtaining the information. In order to prove his explanation, Snowden made an archive which contained secret documents of the program called PROJECT BULLRUN. It was a program where NSA has been cooperating with Government Communications Headquarters (GCHQ), an intelligent agency based in England. According to Snowden, this program was used by NSA and GCHQ to hack the encrypted documents where they manipulated their partner companies to secure its system with false codes where it actually opened an untraceable path for NSA and GCHQ to access information from around the world. Not only the programs included in the PROJECT BULLRUN, but there are also some other programs such as OLYMPIA, MUSCULAR, and EGOTISTICAL GIRAFFE which used to bug particular companies such as Google and Yahoo to obtain access to information. The documents made by Snowden showed that NSA was involved in espionage and violated the private informations of any party. (Greenwald, 2014) After getting information from Snowden about NSA surveillance programs, the Russian intelligent agency started improving and strengthening its system in order to avoid their secret informations to leak. It was stated by a source from The Federal Protective Service (FSO) that Russia's Security Agency then made an order for electric typing machines with the aim to prevent any information from leaking within computer hardwares. The source also stated that the use of paper documents will be implemented and optimized

regarding to a report saying that Dmitry Medvedev were bugged when he went to London for G20 summit in 2009. (BBC Indonesia, 2013)

Another factor which considered by the Russian government in granting Snowden's asylum is human rights. The government of Russia considering the fact that Snowden was a foreigner who fled from his charges given by the U.S. court under the Espionage Act, and that he needed a protection. This consideration to grant Snowden's asylum was based on the Universal Declaration of Human Rights 1948 (UDHR, 1948):

Article 14 paragraph (1):

“Everyone has the right to seek and enjoy in other countries asylum from persecution.”

and the UN General Assembly Declaration on Territorial Asylum 1967 (UN, 1967):

“The General Assembly,

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitle to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has

committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.”

Based on the legal instruments above, the right of a person is limited only to seek and to enjoy asylum, not to obtain it. Therefore, a state does not have an obligation to grant an asylum request. However, if a state grants an asylum, it is considered as an act within the exercise of its sovereignty. Russia, in granting Snowden's request, was considered as an act of honoring the Universal Declaration of Human Rights 1948 and the Declaration on Territorial Asylum 1967. It was also considered as an act of implementing its authority as a sovereign state by granting Snowden's asylum without explaining its motives to any party, especially the U.S. as Snowden's origin state. However, the decision of Russia to grant Snowden's asylum request and give him a temporary asylum for a year was like "pouring gasoline on the fire" to the U.S.-Russia relations. This was a sign that any attempt of the U.S. to extradite Snowden was failed ever since Snowden got his protection from Moscow.