

NOMINATION FOR THE NOBEL PEACE PRIZE 2014:

EDWARD JOSEPH SNOWDEN

NOMINATOR:

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BACKGROUND AND RATIONALE:

1. Edward J. Snowden has made the greatest contribution to international peace

Based on the criteria in Alfred Nobel's will, Edward J. Snowden (born 21 June 1983) is *"the person who has done the most or the best work for fraternity among peoples, the abolition or reduction of standing armies and for the holding and promotion of peace congresses"*.

2. Why Snowden deserves the Peace Prize

Edward Snowden has succeeded in casting a sharp and uncomfortable light on a number of major national and global issues that affect the whole of society. His actions and statements have made it possible for politicians, journalists and citizens around the world to think through and debate questions concerning the growing global military surveillance of civil society in a more informed, specific and open way. The disclosure of mass surveillance affects various aspects of society and has triggered strong reactions from very diverse quarters. From his forced exile in Russia, Snowden himself has participated in this debate in a reflective and consistent manner. This commands respect.

Snowden has succeeded in establishing a complex yet peaceful global discourse about the relationship between, on one hand, the extensive build-up of global military intelligence for a basically good cause (counter-terrorism), and on the other hand, democracy and the core values of constitutional government. He has cast a spotlight on the risk of misuse of intelligence power. Informed public debate is important for progress in international peace efforts, including by fostering confidence in actors who want to promote international peace and security. Snowden has therefore made a significant contribution to the prerequisites for "fraternity among peoples".

Although Snowden's conduct is controversial, both legally and politically, he has achieved significant international recognition. For example, in 2013 he was number one on *Foreign Policy* magazine's list of 100 Leading Global Thinkers. The *Guardian* named him Person of the Year in 2013, and he was second, behind the new pope, in *TIME* magazine's Person of the Year ranking. He was also chosen by British public television's Channel 4 to deliver the 2013 Alternative Christmas Message. On 1 January 2014, the *New York Times* published an editorial commending Snowden as an important whistle-blower who has "done his country a great service" by bringing to light the abuse of intelligence systems by the US National Security Agency (NSA).

Snowden has rightly turned the focus on these issues, but the problem goes much deeper. His disclosures raise the question of whether the entire civilian foundation of democracy and the rule of law is at risk of destruction by a seemingly boundless mass intelligence apparatus – particularly if a gigantic amount of data is collected and abused for purposes other than counter-terrorism. The documents that Snowden has brought to light suggest that such abuse has already

happened on a significant scale, to the detriment of, for instance, international environmental cooperation. Civil society's self-censorship and withdrawal may be the first indicator of growing distrust and insecurity. A small but thought-provoking example can be found in the report by the Norwegian Board of Technology and the Norwegian Data Protection Authority, *Personvern 2014 – Tilstand og trender* [Protection of personal data 2014 – Current status and trends], which reported that many Norwegians have started to limit or modify their use of the Internet.

Based on the available documentation, it can be concluded that there has been a massive *build-up of military intelligence* over the past decade, in which legitimate *civilian rights and interests* have been subordinated. Global military surveillance seems to be penetrating ever deeper into civil society, in more and more countries, targeting institutions, elected heads of state, industry, and private citizens. The distinction between civil society and the military is being erased covertly. This is Snowden's main message. It is worth noting that in practice the United States has not wavered from its political-military doctrine of a permanent "global war on terrorism". For the NSA and its partners, rule of law mechanisms such as the public gazetting of new legislation and the separation of powers have been replaced or supplemented by secret laws and secret "judges" and "courts", as Snowden has shown. I use quotation marks because "secret judges and courts" is an oxymoron – a constitutional anomaly. Nevertheless, politicians seem to accept this situation.

The overall increase in surveillance – which is probably advancing rapidly in other countries, such as Russia and China, as well – can be likened to the military rearmament of "standing armies" in Nobel's sense, considering the enormous potential for damage that the widespread illegal use, destruction or manipulation of computer systems could have in modern society.

It therefore ought to be in Alfred Nobel's spirit to convene international conferences ("peace congresses") with a view to promoting *disarmament* and internationally binding *regulation* of the vast surveillance capacity in the world. Snowden's actions have laid a necessary foundation for this to happen, assuming sufficient political will and courage. What more can be expected of a worthy prize-winner?

I hope that the Nobel Committee will recognise the unique opportunity it has to place the next milestone marking the way forward.

3. Possible objections to Snowden's candidacy

Certain objections to Snowden's critical focus on the NSA and on the problematic aspects of global military surveillance may potentially weaken his candidacy. They can be grouped into three broad categories.

3.1 One objection is that the revelations presented by Snowden and circulated in the media have put other people's lives and safety at risk, albeit indirectly, in that terrorists now know more about how the NSA works and can therefore avoid detection more easily in some cases. This accusation has been quite vague, and it has not been generally accepted, not even by those experienced politicians and surveillance operators who have publicly voiced an opinion. By its very nature this claim is difficult to disprove, but it is so loosely substantiated that it does not outweigh the advantages to society of an informed public debate and the possibility of remedial actions in Nobel's spirit (see section 2 above). By contrast, no one has claimed that Snowden's disclosures have undermined or will undermine serious *peace work*, and it is the latter aspect that is the most significant in terms of the Peace Prize.

3.2 Another hitherto unsubstantiated claim is that Snowden was working as a spy for Russia and that he received assistance from Russia to escape. Both notions have been dismissed outright as baseless allegations by the chair of the United States Senate Select Committee on Intelligence,

Dianne Feinstein (*Huffington Post*, 28 January 2014). Feinstein has, however, been highly critical of Snowden's violation of the law, calling his actions an "act of treason" (see section 3.3).

3.3 The seemingly strongest argument against Snowden as a worthy Nobel Peace Prize winner is that he has committed serious criminal offences. There is no doubt that he acted in violation of his employment contract and United States criminal law provisions when he deliberately gained access to a large amount of top secret material with the intention of leaking evidence of unlawful surveillance. The United States has charged Snowden with grave breaches of the Espionage Act. I will now provide a brief explanation of why this does not constitute a serious obstacle or objection to Snowden's candidacy.

In order to understand Snowden's actions and assess them from a legal and moral standpoint, it is essential to understand the difference between national criminal law provisions and national criminal procedural rules, on the one hand, and possible constraints, principles and guarantees under constitutional or international law in favour of the individual, on the other. Only by looking at the entire picture can one judge Snowden's actions from a legal and moral perspective. The Nobel Committee should make this assessment, which in reality is not as difficult as it might seem at first glance.

Alfred Nobel sought to promote international congresses and peaceful international collaboration, in particular on disarmament. Accordingly, the Nobel Committee must attach prime importance to international and human rights law, as opposed to the national criminal law of, say, Sweden or any other nation. This important principle was recognised by the Nobel Committee in 1936, when it awarded the Peace Prize to the German writer and whistle-blower Carl von Ossietzky. During the Weimar Republic, Ossietzky informed the world about Germany's illegal military rearmament. As a result of this brave attempt to bring attention to a dangerous development, he was convicted in 1931 of treason and espionage, in what was at that time still a democracy. When the Nazis came to power and were able to make use of the armament that was well under way, Ossietzky was held in detention, starved, and ill-treated until he died. For Ossietzky, the Peace Prize came several years too late. And while it also came too late to exert an influence on the course of international events, it nevertheless set an important precedent.

Alfred Nobel also strived to ensure that peace work took place within a framework of humanitarianism and international law. Two principles of international law are particularly relevant and important in relation to the assessment of Snowden's worthiness as a candidate for the Peace Prize:

1) The individual's personal *duty* to refuse to be a party to what may constitute a serious violation of international law or human rights norms. This groundbreaking legal principle was established during the Nuremberg trials in the wake of World War Two; it has been accepted by the United Nations and still applies in relation to individual responsibility for crimes under international law. By extension, this entails a moral obligation on the part of the individual to prevent or limit potential damage, such as by informing society about a dangerous or harmful development that otherwise would not have been known or taken seriously.

2) The universal human rights principle that the individual has certain fundamental *rights* regardless of the State's national laws, including the right to privacy and protection of personal data, but also to freedom of expression.

Freedom of expression includes the right to communicate information and opinions about all aspects of the way the State is run, unless criminal liability for such communication can be justified on the basis of other compelling considerations. Criminal law liability according to domestic legislation thus needs to be justifiable also when balanced against freedom of expression that includes "the seeking of truth, the promotion of democracy and the individual's freedom to form opinions", to borrow the wording from Norway's own revised constitutional provision on

freedom of expression (§ 100). If a legitimate purpose of the disclosure was the seeking of truth, or the safeguarding of preconditions for democracy, or the free and substantiated formation of opinions in society, it is far from given that violation of confidentiality would necessarily be unlawful or constitute a serious offence in a democratic society based on law. International human rights law also requires that a balance be struck between these considerations.

Hence it should be clear that the assessment of Snowden's actions, in light of human rights and international law, represents a fairly ordinary case. The need for prosecution and punishment based on national criminal law must be assessed under the lawful criteria for interference in freedom of expression. The correct legal point of departure is that Snowden's politically motivated disclosures through public mass media enjoy strong protection, especially when the disclosed information has great public value, while the State's interest in keeping the information secret is undermined by the fact that the leaked information has indicated cases of abuse of power. Human rights norms dictate that the specific conflicting interests and concerns must be carefully weighed against one another. Based on what we know about Snowden's political motives and the important public interests related to the specific revelations, there is little to suggest that he could have been punished in a European country without the European Court of Human Rights finding this in contravention of the European Convention on Human Rights under Article 10 and/or Article 3 (in the latter case depending on the sentence). For the same reason, under present circumstances, it is unlikely that Snowden could lawfully be extradited to the United States from a Member State of the Council of Europe that is party to the European Convention on Human Rights, given the protection against extradition pursuant to Article 3 of the Convention.

Snowden's problem is that in the United States he is not able to invoke human rights and the general public interest to defend himself against charges under the Espionage Act. The criminal proceedings that have been instituted against him therefore also violate elementary principles of fair trial. For the same reason he faces *disproportionately severe punishment*.

For many of the same reasons, Snowden also meets the criteria in Article 1 of the United Nations Refugee Convention and must therefore be regarded as a refugee according to the Convention. He has the right to seek and enjoy asylum (cf. also Article 14 of the Universal Declaration of Human Rights), while the United States, as his home country, is not entitled to consider the reception of such an application as a hostile or unfriendly act by another country. Article 1F(b) of the Refugee Convention, regarding exclusion from refugee status on the basis of a serious non-political crime, does not exclude Snowden from such status, precisely because his actions are non-violent and are clearly a *political* act in the sense of the provision.

The Nobel Committee can therefore be assured that Edward J. Snowden is a highly worthy candidate for the Nobel Peace Prize 2014.

Yours sincerely,

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Original: Norwegian