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**A Report on The Public Impact of the Snowden
Revelations in New Zealand**

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The Public Impact of the Snowden Revelations in New Zealand

Executive Summary

In New Zealand, Edward Snowden's revelations about the extraordinary scope of the NSA's surveillance capabilities and the facilitating role of the Five Eyes alliance converged with growing public concerns about the GCSB Amendment and Related Legislation Bill before Parliament in 2013. This generated an intense and sustained debate about surveillance policy. It was a debate in which Prime Minister John Key has actively participated. While apparently unable to clearly demonstrate that Snowden's claims concerning mass surveillance in New Zealand are wrong, John Key's vigorous stance helped to counter the political and diplomatic fallout in the short term. In September 2014, John Key led the ruling National Party to an emphatic election victory. In October 2014, New Zealand won a much-coveted seat on the UN Security Council. However, the longer-term impact of Snowden's revelations on New Zealand and its current government is harder to predict.

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The Public Impact of the Snowden Revelations in New Zealand

Introduction

This report is divided into four parts. In the first part, the Snowden revelations are related to the context of New Zealand's intelligence community and its activities. In the second part, the first phase of what turned out to be a prolonged debate on surveillance policy – centering on Kim Dotcom and the GCSB Amendment and Related Legislation Bill – is considered. The third part of the report encompasses a new phase of the New Zealand debate following Snowden's claims about the involvement of GCSB in mass surveillance programmes. The fourth and final section examines both the domestic and international impact of Snowden's NSA disclosures in New Zealand.

I The Magnitude of the National Security Agency (NSA) Revelations

The post 9/11 era has witnessed a significant expansion of American resources devoted to intelligence gathering. However, the extent of this trend was not fully apparent until a former National Security Agency (NSA) contractor, Edward Snowden, surfaced in Hong Kong in May 2013 with thousands of highly classified intelligence documents in his possession. Starting on 5 June, 2013, Mr. Snowden began to leak documents to the public through selected media outlets and has continued to do so ever since. According to Daniel Ellsberg, "there has not been in American history a more important leak than Edward Snowden's release of NSA material—and that definitely includes the Pentagon Papers 40 years ago."¹ The ongoing publication of leaked documents has revealed the scope of NSA's signals intelligence collection within the US on citizens and non-citizens alike, including wholesale phone tapping and internet monitoring, and provided evidence of a little known global surveillance apparatus run by the United States' NSA in close cooperation with its Five Eyes partners: Australia, Canada, UK and New Zealand.²

The Intelligence Community in New Zealand

New Zealand is a sparsely populated and geographically isolated democratic society. Compared with many Western countries, New Zealand has a relatively small and uncomplicated intelligence community.³ New Zealand's civilian intelligence

I wish to acknowledge and thank Ms Laura Southgate, a Ph.D. student in the Department of Politics at the University of Otago, for her excellent research assistance in the preparation of this report.

¹ Daniel Ellsberg, "Edward Snowden: saving us from the United Stasi of America" *The Guardian*, 10 June 2013: <http://www.theguardian.com/commentisfree/2013/jun/10/edward-snowden-united-stasi-america>

² Glenn Greenwald and Ewen MacAskill, "Boundless Informant: the NSA's secret tool to track global surveillance data" *The Guardian*, 8 June 2013: <http://www.theguardian.com/world/2013/jun/08/nsa-boundless-informant-global-datamining>

³ Jim Rolfe, "New Zealand: Small Community, Central Control" in Daniel Baldino (ed) *Democratic Oversight of Intelligence Services* (Annandale: The Federation Press, 2010), p.109

community is administered by the Office of the Prime Minister and the Cabinet Strategy Subcommittee on Intelligence and Security (CSSIS). Key agencies include the New Zealand Security Intelligence Service (NZSIS), the Government Communication Security Bureau (GCSB) and the National Assessments Bureau (NAB).⁴ The NZSIS is responsible for advising the government on matters relating to New Zealand's national security interests. While the NZSIS focuses mainly on domestic security intelligence, it also has a role in collecting foreign intelligence. NZSIS' budget for 2012-2013 was around NZ\$37.5 million.⁵ The GCSB has a dual function in foreign signals intelligence collection and counter-intelligence operations. This agency has two communication interception stations: the high frequency radio interception station at Tangimoana, near Palmerston North, and the satellite communications interception station at Waihopai, near Blenheim. The National Cyber Security Centre (NCSC) has been located with the GCSB since its establishment in 2011.⁶ In 2012-2013, the GCSB budget was reported to be NZ\$67.9 million.⁷ The NAB is responsible for collecting and interpreting information on external concerns and developments. Located in the Department of the Prime Minister and Cabinet (DPMC), NAB provides analysis and assessment, based on public and intelligence sources, to inform government decision-making, but it does not provide policy advice. NAB has a budget of approximately NZ\$3.5 million.⁸

Intelligence Accountability and Oversight in New Zealand before 2011

New Zealand society is based on the political and legal traditions derived from the Westminster parliamentary model of governance. Accountability and oversight involves both parliamentary and official bodies. The current framework was shaped by the Official Information Act (OIA) of 1982, which gave the New Zealand public the right to access information held by public institutions, and the 1993 Privacy Act that provided comprehensive legislation to protect an individual's privacy.⁹ The Act is supposed to safeguard all forms of personal information. The Act also applies when a foreign agency wants to conduct surveillance in New Zealand¹⁰ and places restrictions on information transferred outside of New Zealand.¹¹ This legislation highlighted the hitherto limited parliamentary scrutiny of the intelligence community and led to the establishment in 1996 of the Intelligence and Security Committee of Parliament. This Committee was given the task of reviewing the activities of the NZSIS and the GCSB. The five-strong committee consists of the Prime Minister as

⁴ *ibid.*, pp. 109-110

⁵ New Zealand Security Intelligence Service (NZSIS) *Annual Report*, For the year ended 30 June 2013, New Zealand Government, Wellington, p.31: <http://www.security.govt.nz/assets/media/annual-reports/nzsis-ar13.pdf>

⁶ Government Communications Security Bureau (GCSB), New Zealand Intelligence Community, [nzic.govt.nz: http://www.nzic.govt.nz/about-us/gcsb/](http://www.nzic.govt.nz/about-us/gcsb/)

⁷ GCSB Annual Report, For the year ended 30 June 2013, New Zealand Government, Wellington, p. 29: <http://www.gcsb.govt.nz/assets/GCSB-Annual-Reports/GCSB-Annual-Report-2013.pdf>

⁸ National Assessment Bureau (NAB), New Zealand Intelligence Community, [nzic.govt.nz: http://www.nzic.govt.nz/about-us/nab/](http://www.nzic.govt.nz/about-us/nab/)

⁹ Valerie Redmond, "I spy with my not so little eye: A comparison of surveillance law in the United States and New Zealand," *Fordham International Law Journal*, Vol. 37, no. 3 (2014), pp.752-3

¹⁰ Redmond, 2014, p.755

¹¹ Redmond, 2014, p.757

Chair, the Leader of the Opposition, two members nominated by the Prime Minister and one member nominated by the Leader of the Opposition in consultation with all parties in Parliament.¹² Oversight is also provided by three other entities. First, the Commissioner of Security Warrants is an office established in 1999. Appointed by the Governor-General on the recommendation of the Prime Minister, the Commissioner's role is to advise the Prime Minister (the Minister in charge of the NZSIS and GCSB) on domestic interception warrants and to issue them jointly with the Prime Minister.¹³ Second, the Inspector-General of Intelligence and Security (IGIS) is responsible for reviewing any matter relating to the NZSIS or GCSB where New Zealand citizens have been or may have adversely affected or New Zealand laws contravened. Established in 1996, the IGIS is appointed by the Governor-General on the recommendation of the Prime Minister. The IGIS is required to have previously held office as a judge of the High Court of New Zealand.¹⁴ Third, the Office of the Privacy Commissioner is statutorily independent and holds an oversight function in relation to the intelligence community. Amongst other things, the Commissioner investigates complaints that personal information has been accessed or treated by intelligence agencies (most generally the NZSIS) in ways that were not consistent with the 1993 Privacy Act.¹⁵

New Zealand's Participation in the Five Eyes Intelligence Agreement

Historically, New Zealand and a number of English-speaking governments have cooperated in the realm of intelligence. Cooperation in signals intelligence officially began in the early stages of the Cold War in March 1946 with the signing of the United Kingdom-United States of America (UKUSA) Agreement.¹⁶ This bilateral agreement, initially prompted by the perceived threat of the Soviet Union, grew into a multilateral arrangement as the Cold War deepened. In 1948, Canada joined the intelligence sharing arrangement. Australia and New Zealand followed suit in the 1950s. These five states, also known as 'Five Eyes', engaged in intelligence collection operations for each other. During the Cold War, the five states shared intelligence on the Soviet Union, the People's Republic of China and several eastern European countries (known as Exotics).¹⁷ They also exchanged intelligence data in a number of Cold War conflicts such as in Iran, Vietnam and Chile. Over the course of several decades during the Cold War, the Five Eyes states developed what was called ECHELON, a surveillance network to monitor the military and diplomatic communications of the Soviet Union and its Eastern bloc allies.¹⁸

¹² Jim Rolfe, "New Zealand: Small Community, Central Control" in Daniel Baldino (ed) *Democratic Oversight of Intelligence Services* (Annandale: The Federation Press, 2010), pp.113-114

¹³ *ibid.* p. 115

¹⁴ *ibid.* p. 114

¹⁵ *ibid.* p. 114

¹⁶ Nicky Hager, "Exposing the Global Surveillance System," *Covert Action Quarterly* (Winter 1996/1997)

¹⁷ Richard Aldrich, "Allied code-breakers co-operate -- but not always" *The Guardian*, 24 June 2010: <http://www.theguardian.com/world/2010/jun/24/intelligence-sharing-codebreakers-agreement-ukusa>

¹⁸ "What you need to know about Echelon" *BBC News*, 29 May 2001: <http://news.bbc.co.uk/2/hi/sci/tech/1357513.stm>

By the end of the 20th century, following the end of the Cold War and the advent of deepening globalisation, the ECHELON surveillance network had evolved into a global system capable of intercepting massive amounts of private communications, including telephone calls, fax, email and other data traffic.¹⁹ A detailed description of ECHELON was provided by New Zealand journalist Nicky Hager in a 1996 book titled *Secret Power—New Zealand’s Role in the International Spy Network*,²⁰ which was cited by the European Parliament in a 1998 report titled “An Appraisal of the Technology of Political Control”.²¹ According to Hager, ECHELON is an international intelligence gathering system designed and coordinated by the NSA. Designed primarily for non-military targets, including governments, organisations, businesses and individuals,²² ECHELON apparently has the capability to intercept large quantities of ordinary email and telephone communications carried over the world’s telecommunications networks.²³

The NSA designed the ECHELON system to interconnect the process of collecting information within the Five Eyes alliance.²⁴ Incoming data is directly processed through a system of keyword associations relating to member agencies. This means, for example, considerable amounts of the intelligence collected by the GCSB is not screened in New Zealand, but sent directly to the headquarters of the agency concerned.²⁵ Consequently, the Global Communications Security Bureau (GCSB), Government Communications Headquarters (GCHQ), Communications Security Establishment Canada (CSEC) and Australian Signals Directorate (ASD) are component parts of what is an integrated NSA led - international intelligence operation.²⁶ The full scope of this intelligence sharing arrangement has not always been clear. In the mid-1980s, it was reported in the media that the serious political rift between New Zealand and the US over Wellington’s decision to embrace a non-nuclear security policy had, amongst other things, ended the exchange of intelligence between the two countries. However, this account was incorrect. The intelligence links between the GCSB and NSA continued at a time of strained government-to-government relations.²⁷ In fact, moves to deepen intelligence links between the two countries increased in the following decade.²⁸

In August 2004, the NSA requested a new, permanent position in Wellington that would be attached to the US Embassy. In a government cable, the then United States Ambassador to New Zealand, Charles Swindells, approved this request. He

¹⁹ Gerhard Schmid, “Report on the existence of a global system for the interception of private and commercial communications” (ECHELON interception system) 2001/2098(INI), European Parliament Session Document, 11 July 2001

²⁰ Nicky Hager, *Secret Power – New Zealand’s Role in the International Spy Network* (Nelson: Craig Potton, 1996)

²¹ “An Appraisal of the Technology of Political Control”, STOA Interim Study, Executive Summary, European Parliament, September 1998: http://web.archive.org/web/19990417064814/http://www.europarl.eu.int/dg4/stoa/en/publi/166499/exe_csum.htm

²² Hager, 1996/1997

²³ Hager, 1996/1997

²⁴ Hager, 1996/1997

²⁵ Hager, 1996/1997

²⁶ Hager, 1996/1997

²⁷ Hager, 1996/1997

²⁸ Hager, 1996/1997

argued that the potential benefits of the requested facility far outweighed the costs of any additional administrative burden.²⁹ The Ambassador maintained that the new NSA facility would advance US interests in New Zealand by improving cooperation on vital signals intelligence matters, an area where the US and New Zealand had already worked closely and profitably.³⁰ In 2006, a highly classified 1985-6 GCSB annual report detailing its cooperation with the NSA was accidentally released.³¹ This document highlighted New Zealand's concern over possible exclusion from the Five Eyes alliance after anti-nuclear legislation was introduced in Wellington.³² In a secret government cable, the then Prime Minister, Helen Clark, worried that the release of the GCSB document would undermine New Zealand's credentials as an independent and non-aligned actor.³³ The cable stated that "the PM values the intelligence relationship very highly. It has ensured that New Zealand still has some access and influence in Washington while allowing Clark to maintain the Labour Party's public ambivalence about the US at home".³⁴

Thus, New Zealand has had a long history of participating in an intelligence sharing arrangement known as the Five Eyes alliance. It began during the first decade of the Cold War and has extended into the third decade of the post-Cold War era.³⁵ Successive elected governments have continued New Zealand's participation presumably because the benefits of doing so were seen to outweigh the costs. It is not difficult to understand that assessment. The reciprocal nature of this intelligence sharing arrangement generally meant that New Zealand has gained access to far more information on which to base its own decisions than would otherwise be available. Rather than eroding New Zealand's sovereignty, participation in the Five Eyes partnership has been seen by decision-makers as enhancing the country's capacity to conduct an independent foreign policy. As related, New Zealand's involvement in the Five Eyes alliance did not prevent the adoption of a non-nuclear security policy in the mid-1980s. At the same time, New Zealand felt free to strongly oppose the US-led invasion of Iraq in 2003. It is striking in this context that Helen Clark – a forceful advocate of the non-nuclear security policy that split the ANZUS alliance in 1986 – became a Prime Minister (1999-2008) who, by all accounts, was an enthusiastic consumer of the intelligence Five Eyes produced and led the Labour Government that passed the GCSB Act of 2003.

II New Zealand's Surveillance Debate: Kim Dotcom and the GCSB Amendment Bill

²⁹“NSDD-38 Request for New Position in Wellington,” Secret Wellington 000662, Ref: State 138636, E.O. 12958, August 4, 2004

³⁰ ³⁰“NSDD-38 Request for New Position in Wellington,” 2004

³¹ “Lange’s Last Laugh,” 2006

³² “Lange’s Last Laugh,” 2006

³³ “Lange’s Last Laugh,” 2006

³⁴ “Lange’s Last Laugh,” 2006

³⁵ Margaret Warner, “An exclusive club: The five countries that don’t spy on each other” *PBS Newshour*, October 25, 2013: <http://www.pbs.org/newshour/rundown/an-exclusive-club-the-five-countries-that-dont-spy-on-each-other/>

Public concerns about surveillance policy in New Zealand became evident before the Snowden Revelations. The triggering event was the arrest of Kim Dotcom, founder of the 'Mega Upload' file-sharing website, and three business associates on 20 January 2012. Dotcom's arrest occurred during a high-profile armed raid on his home, which involved 76 officers and two helicopters.³⁶ Two weeks earlier, on 5 January 2012, indictments were filed in Virginia, USA, against Dotcom and some other 'Mega Upload' executives involving alleged crimes relating to online piracy, including racketeering, conspiring to commit copyright infringement, and conspiring to commit money laundering.³⁷ The raid on Dotcom's home had been conducted by the New Zealand Police and the United States Federal Bureau of Investigation (FBI).

In the legal case that followed, it was revealed that "warrants used in the raid were illegal because they were used to seize material that was irrelevant to the investigation, that the FBI had illegally copied the contents of computer hard drives seized in the raid, and that the GCSB had unlawfully spied on Dotcom prior to the raid, supplying information to the police relating to his movements and personal communications".³⁸ Since Dotcom was granted New Zealand residency in 2010, he was legally entitled to protection from GCSB surveillance under the terms of GCSB Act's statutory framework. As a consequence of the GCSB's illegal spying, New Zealand Prime Minister John Key commissioned Cabinet Secretary Rebecca Kitteridge to carry out a review of compliance systems and processes at the GCSB in March 2013,³⁹ which culminated in the release of the Kitteridge Report. The report found that there were "underlying problems within GCSB, concerning GCSB's structure, management of its information, capability and capacity".⁴⁰ The report revealed 55 cases of unlawful GCSB surveillance over nine years, involving 88 New Zealand residents and permanent residents.⁴¹ The report also recommended that external oversight be strengthened.⁴²

Prime Minister John Key acknowledged "this review will knock public confidence in the GCSB," but he said one of the central findings of the Kitteridge Report concerned the inadequacy of the GCSB Act 2003. "The act governing the GCSB is not fit for purpose and probably never has been," Mr. Key said.⁴³ As a response to the Kitteridge Report, New Zealand Prime Minister John Key announced on 8 May 2013 the GCSB Amendment and Related Legislation Bill (hereafter the GCSB Amendment Bill), which would extend the powers of the GCSB to collect information on New

³⁶ "Editorial: Kim Dotcom sets off year of fireworks for politicians" *New Zealand Herald*, December 27, 2012: http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=10856144

³⁷ "Justice Department Charges Leaders of Megaupload with Widespread Online Copyright Infringement", The United States Department of Justice, *Justice News*, Office of Public Affairs, January 19, 2012: <http://www.justice.gov/opa/pr/justice-department-charges-leaders-megaupload-widespread-online-copyright-infringement>

³⁸ Joe Burton, "Small states and cyber security: The case of New Zealand," *Political Science*, vol.65, no.2 (2013), 232

³⁹ John Roughan, *John Key: Portrait of a Prime Minister* (London: Penguin, 2014)

⁴⁰ Rebecca Kitteridge, "Review of Compliance at the Government Communications Security Bureau,"

p.6

⁴¹ Kitteridge, p.18

⁴² Kitteridge, p.6

⁴³ Imogen Crispe and Thomas Mead, "The GCSB Report: an in depth look" *3 News*, 9 April 2013: <http://www.3news.co.nz/politics/the-gcsb-report-an-in-depth-look-2013040918>

Zealanders for the use of other government departments including the New Zealand Police, New Zealand Defence Force (NZDF) and the New Zealand Security Intelligence Service (NZSIS).⁴⁴ According to this Bill, the GCSB would have three main functions. First, the GCSB would continue to collect foreign intelligence, but under the new legislation it could conduct surveillance on New Zealand citizens or permanent residents in prescribed circumstances with a warrant.⁴⁵ Second, it would give the GCSB a legal mandate to assist the police, the NZDF and NZSIS with their work and therefore expanded the operational range of the organisation. Third, the legislation would extend the GCSB's cyber-security role to include protecting private-sector cyber systems,⁴⁶ a development that had the potential to significantly increase the government's ability to monitor the Internet in relation to New Zealand. At the same time, the GCSB under the changes was still able to provide and receive information from other intelligence agencies within ECHELON.⁴⁷ This arrangement created a potential loophole in surveillance law whereby the New Zealand government could circumvent its own laws by sharing information with other countries.⁴⁸

The GCSB Amendment Bill sparked considerable controversy in the New Zealand Parliament, the media, and the general public. In Parliament, the Bill encountered fierce opposition. Grant Robertson, the then Deputy Labour Leader, observed:

"New Zealanders have lost their faith in the intelligence and security agencies of this country, and I believe that that is a direct result of the way that the Prime Minister has undertaken his duties as the person whom we as New Zealanders have, on our behalf, in charge of those agencies. He has got that oversight and he is not performing properly. New Zealanders are worried about their privacy, they are worried about whether their details are available to Governments overseas, and this Government wants to ram legislation through this committee in a way that I do not believe many New Zealanders would accept. We need better oversight of our intelligence agencies"⁴⁹

Dr. Russel Norman, Co-Leader of the Green Party, was equally scathing:

"In other jurisdictions parliamentary oversight is taken a lot more seriously than it is in New Zealand. In New Zealand we see that the Prime Minister, who is also the Minister responsible for the intelligence services, chairs the committee—an immediate conflict of interest. Then we have two other Ministers sitting on the committee—a majority of the committee are

⁴⁴ "Government Communications Security Bureau and Related Legislation Amendment Bill", *New Zealand Parliament*, 20 August 2013: http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL12122_1/government-communications-security-bureau-and-related-legislation

⁴⁵ Redmond, 2014, p.759

⁴⁶ Audrey Young, "GCSB bill passes after final reading" *The New Zealand Herald*, 21 August 2013: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11112152

⁴⁷ Redmond, 2014, p.768

⁴⁸ Redmond, 2014, p.769

⁴⁹ New Zealand Parliament, Intelligence and Security Committee - Membership, 13 June 2013, Volume 691, p.11134

Ministers. So the executive has given itself authority and a majority on the committee that is meant to oversee the executive's operations of the intelligence services. It is obviously not a serious kind of oversight....likewise, the Inspector-General of Intelligence and Security, who is also meant to provide some kind of oversight, should be an Officer of Parliament. Instead, essentially the Inspector-General works with the executive. The Inspector-General should be an Officer of Parliament, like the Auditor-General or like the Parliamentary Commissioner for the Environment, who report to Parliament rather than to the executive. If we want to have proper oversight of these agencies, then we need to set up proper oversight functions".⁵⁰

Phil Goff, former Labour Leader, did not believe that the GCSB Amendment Bill addressed the shortcomings in oversight identified in the Kitteridge Report and said a Labour-led government would conduct an inquiry into New Zealand's intelligence services:

"We needed an inquiry because this legislation and its associated bill came about because of abuse of power by the GCSB. They came about because there are not sufficient safeguards on how the GCSB exercises its authority. In our fraternal parliaments in Australia, Canada, and the United Kingdom, they do not put the Minister in charge of the agency on the committee that oversees that. They keep Ministers off. But we have our Prime Minister chairing the Intelligence and Security Committee, setting the agenda, and very rarely calling it together and we call that a safeguard against the abuse of powers of the GCSB".⁵¹

However, John Key, the Prime Minister and the Minister responsible for the GCSB and NZSIS, insisted that the GCSB Bill was not "a revolution in the way New Zealand conducts its intelligence operations" and said if he could disclose some of the briefings he had had about security risks to New Zealand, it would "cut dead"⁵² some of the opposition to the legislation:

"I have access to evidence that shows that without the Government Communications Security Bureau (GCSB) and the SIS, our national security would be vulnerable. There are threats our Government needs to protect New Zealanders from. Those threats are real and ever-present and we underestimate them at our peril".⁵³

Mr. Key added that others "may play politics with the security and lives of New Zealanders, but I cannot and I do not and I will not."⁵⁴ The Prime Minister

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² Audrey Young, "GCSB bill passes after final reading" *New Zealand Herald*, August 21, 2013: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11112152

⁵³ Government Communications Security Bureau and Related Legislation Amendment Bill, Inspector-General of Intelligence and Security Amendment Bill, Intelligence and Security Committee Amendment Bill — Third Readings, Sitting date: 21 August 2013

⁵⁴ John Key cited in Audrey Young, "GCSB bill passes after final reading" *New Zealand Herald*, August 21, 2013: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11112152

maintained the new legislation would “put in place a stronger oversight regime that will go some way to rebuilding public confidence in the GCSB”.⁵⁵ He also claimed that the GCSB Amendment Bill “actually tightens, not widens, the existing regime”.⁵⁶ The GCSB Amendment Bill was passed into law at its third reading by a vote of 61 to 59, a margin of just two votes.

Outside Parliament, the GCSB Amendment Bill was the subject of major public concern. It was widely feared that the legislation effectively allowed the GCSB to engage in wholesale spying on New Zealanders.⁵⁷ One opinion poll taken after the passing of the legislation found 75 per cent of respondents were concerned about the changes.⁵⁸ Another opinion poll conducted by TV3, and cited by Labour MP Phil Goff in Parliament, found that 40 per cent of New Zealanders did not have trust and confidence in the GCSB.⁵⁹ Shortly before the passage of the legislation, opponents of the GCSB Amendment Bill on 27 July 2013 staged nationwide protests in eleven major towns and cities.⁶⁰ There were also a substantial number of critical as well as supportive media editorials on the GCSB legislation.⁶¹

Media coverage, amongst other things, highlighted the issue of the GCSB’s access to ‘metadata’, which includes the duration and time of calls between numbers, sender and recipient of emails, time of emails and the location of information.⁶² Protection under the GCSB Amendment Act is only extended to private communications and does not extend to metadata or to conversations that could ‘reasonably’ be expected to be intercepted.⁶³ This is despite the fact that metadata encompasses personal information and can build a more detailed profile than listening in to actual content.⁶⁴ Concerns have also been raised regarding the term ‘private communication’ in the GCSB Amendment Act. Under the Act, a communication can only be ‘private’, and therefore protected from interception, if one of the parties has a ‘reasonable expectation’ that their communication will not be intercepted.⁶⁵ A ‘reasonable expectation’ in this context is not about privacy in the wider meaning of

⁵⁵ Anna Crowe, “EU Parliament slams New Zealand for being part of NSA mass surveillance,” *Privacy International*, 15 February, 2014

⁵⁶ Audrey Young, “GCSB bill passes after final reading,” *The New Zealand Herald*, 21 August, 2013

⁵⁷ ‘New Zealand passes bill allowing domestic spying,’ *ABC News*, August 22, 2013

⁵⁸ ‘New Zealand passes bill allowing domestic spying,’ *ABC News*, August 22, 2013

⁵⁹ New Zealand Parliament, Intelligence and Security Committee - Membership, 13 June 2013, Volume 691, Page 11134

⁶⁰ Rob Kidd and Francesca Lee “Thousands join rally against GCSB” *The Dominion Post*, 27 July 2013: <http://www.stuff.co.nz/dominion-post/news/politics/8972321/Thousands-join-rally-against-GCSB>

⁶¹ “Editorial: Spy bill needs more checks and balances” *The Dominion Post*, 27 July 2013: <http://www.stuff.co.nz/dominion-post/comment/editorials/8969381/Editorial-Spy-bill-needs-more-checks-and-balances>; “Editorial, Complex GCSB bill so loose it's dangerous” *Sunday Star Times*, 18 August 2013: See also Bryce Edwards, “Political Round-up: A marvellous GCSB debate” *The New Zealand Herald*, 19 August 2013:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11110908

⁶² Glenn Greenwald and Spencer Ackerman, “NSA collected US email records in bulk for more than two years under Obama,” *The Guardian*, 27 June 2013

⁶³ Andrea Vance, “Demystifying the GCSB bill,” *Stuff News*, 20 August, 2013

⁶⁴ Ewen Macaskill and Gabriel Dance, “The NSA Files,” *The Guardian*, 01 November, 2013

⁶⁵ Dennis Tegg, “Is warrant-less spying on New Zealanders lawful?” *Scoop Independent News*, 22 August 2014

the term or loss of privacy.⁶⁶ Defining the term in the GCSB Amendment Act requires a much narrower and focused enquiry as to whether the communication will be intercepted. It is irrelevant whether the interception occurs overseas or within New Zealand.⁶⁷ As such, some commentators argue that warrantless surveillance of New Zealanders by the GCSB is entirely possible.⁶⁸

III The Snowden Revelations and New Zealand

In June 2013, less than two months after the release of the Kitteridge report, a series of leaks of classified documents by former NSA contractor Edward Snowden rocked the Obama administration and served to intensify the growing debate about surveillance policy in New Zealand. It was revealed that the NSA has gathered two types of information – metadata, which can be defined as the footprint of electronic device use⁶⁹ and content data. Signals intercept programmes such as PRISM and X-KEYSCORE have radically improved the surveillance capabilities of the NSA and enabled the US government to collect personal data on a massive scale.⁷⁰ Amongst other things, the NSA has been harvesting phone records from some of the world's leading ICT companies and tapping into global fibre-optic cables to monitor electronic communications.⁷¹ While such activities have apparently violated US domestic law and constitutional guarantees on the right to privacy, leaked NSA documents show the organization remains determined to expand its surveillance so that it could “gather intelligence on anyone, anytime, anywhere.”⁷² Moreover, leaked NSA documents indicate that much of the information generated by mass surveillance has little connection with the NSA's core mission of national security.

These disclosures have had direct ramifications for New Zealand. In particular, they have highlighted the close links and coordination between the NSA and its counterpart organisations, GCHQ in the UK, the CSEC, the ASD, and the GCSB in New Zealand. Snowden revealed that the NSA had provided some funding for the UK's GCHQ organisation. In February 2014, New Zealand Parliament's Intelligence and Security Committee questioned the GCSB and NZSIS over allegations of funding from the United States. However, both the GCSB and NZSIS refused to answer these

⁶⁶ Dennis Tegg, “Is warrant-less spying on New Zealanders lawful?” *Scoop Independent News*, 22 August 2014

⁶⁷ Dennis Tegg, “Is warrant-less spying on New Zealanders lawful?” *Scoop Independent News*, 22 August 2014

⁶⁸ Dennis Tegg, “Is warrant-less spying on New Zealanders lawful?” *Scoop Independent News*, 22 August 2014

⁶⁹ Ben Grubb and James Massola, “What is ‘metadata’ and should you worry if yours is stored by law?”

The Sydney Morning Herald, 6 August 2014: <http://www.smh.com.au/digital-life/digital-life-news/what-is-metadata-and-should-you-worry-if-yours-is-stored-by-law-20140806-100zac.html>

⁷⁰ Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA and the Surveillance State* (London: Hamish Hamilton, 2014), p.153; Paul Buchanan, “Snowden Leaks sure to catch NZ out” *The New Zealand Herald*, 3 December 2013:

http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11165857

⁷¹ Joe Burton, “Small states and cyber security: The case of New Zealand,” *Political Science*, vol. 65, no. 2 (2013), p.233

⁷² James Risen and Laura Poitras, “N.S.A. Report Outlined Goals for More Power” *The New York Times*, 22 November 2013: http://www.nytimes.com/2013/11/23/us/politics/nsa-report-outlined-goals-for-more-power.html?_r=0

questions and refused to confirm or deny whether funding was received.⁷³ The intelligence agencies also refused to confirm or deny whether they awarded a contract to Palantir Technologies.⁷⁴ One New Zealand Green Party committee member argued that the fact that agencies could not give a straight 'no' proved what many suspected about US funding.⁷⁵

Snowden indicated that the NSA had advised the GCSB to find or create loopholes in New Zealand law to enable widespread spying.⁷⁶ In testimony to the European Parliament, Snowden revealed that the NSA puts pressure on other countries to change laws to create legal gaps through which mass surveillance could be carried out.⁷⁷ At the same time, Snowden's leaks pinpointed some of the targets of Five Eyes' signals intelligence collection efforts. These included the private telephones of German Chancellor Angela Merkel and Indonesian Prime Minister Susilo Bambang Yudhoyono, the email systems of the Brazilian Ministry of Energy and Mining, Mexican politicians, Arab dictators, Malaysian government agencies and Chinese telecommunication firms.⁷⁸ Such revelations led to strong diplomatic protests, most notably from German Chancellor Angela Merkel, who said "spying amongst friends" was "unacceptable" and compared the NSA with the Stasi.⁷⁹

In February 2014, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs condemned New Zealand for its involvement in mass surveillance as part of the Five Eyes alliance.⁸⁰ The Committee found that New Zealand had been involved on a large scale in mass surveillance of electronic communications, had actively cooperated with the US and may have exchanged with other members personal data of European Union (EU) citizens transferred from the EU.⁸¹ The Committee's finding was that, because of the GCSB's integration into the NSA spying network, the EU does not trust New Zealand laws.⁸² In New Zealand, the fallout from the Snowden revelations focused the attention of the New Zealand public on the role of the GCSB, the GCSB's relationship with the NSA and the impact this has had on New Zealand's political autonomy.⁸³

David Shearer, the then Leader of the Labour opposition party, said the Key Government had missed a major political opportunity:

⁷³ Andrea Vance, "Spies mum over cash US questions," *Stuff News*, 24 February 2014

⁷⁴ Andrea Vance, "Spies mum over cash US questions," *Stuff News*, 24 February 2014

⁷⁵ Andrea Vance, "Spies mum over cash US questions," *Stuff News*, 24 February 2014

⁷⁶ "Snowden says US aids NZ spying," *Otago Daily Times*, 11 March 2014

⁷⁷ "Snowden says US aids NZ spying," *Otago Daily Times*, 11 March 2014

⁷⁸ Paul Buchanan, "Snowden Leaks sure to catch NZ out" *The New Zealand Herald*, 3 December 2013: http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11165857

⁷⁹ Luke Baker and Andreas Rinke, "Merkel frosty on the U.S. over 'unacceptable' spying allegations" *Reuters*, 24 October 2013: <http://www.reuters.com/article/2013/10/24/us-eu-summit-idUSBRE99N0BJ20131024>; Ian Traynor and Paul Lewis, "Merkel compared NSA to Stasi in heated encounter with Obama," *The Guardian*, 17 December 2013: <http://www.theguardian.com/world/2013/dec/17/merkel-compares-nsa-stasi-obama>

⁸⁰ Anna Crowe, "EU Parliament slams New Zealand for being part of NSA mass surveillance," 2014

⁸¹ Anna Crowe, "EU Parliament slams New Zealand for being part of NSA mass surveillance," 2014

⁸² Anna Crowe, "EU Parliament slams New Zealand for being part of NSA mass surveillance," 2014

⁸³ Burton, p.234

The revelations of Bradley Manning and Edward Snowden have created global disquiet... We could have seized the chance to thoroughly investigate how our intelligence sector works in an increasingly global environment.⁸⁴

Dr. Russel Norman, the Co-Leader of the opposition Green Party, raised questions about the national accountability of the GCSB:

What we discovered from the Snowden revelations is that the GCSB, which is presumably the agency, is providing vast amounts of data to the National Security Agency. In the information that has been revealed by Snowden, we now know that New Zealand is one of the sources of all the data that is provided to the National Security Agency about internet traffic, phone traffic, and all the rest of it, and presumably the GCSB is providing that information, which largely comes out of Waihopai, to that agency.⁸⁵

Several academics entered the national debate on intelligence. According to Professor Kevin Clements, the question facing all New Zealanders after the Snowden revelations is "Who guards the guards?" In his view, the global war on terror had dramatically expanded state power while simultaneously eroding individual liberties and it was appropriate, therefore, that New Zealand should now "have a Commission of inquiry to reevaluate the value of the Five Eyes security arrangement and ask whether New Zealand's foreign policy is enhanced or diminished by it"⁸⁶. In a similar vein, Professor Sarah Joseph argued Snowden had demonstrated that the post-9/11 environment had provided political cover for the massive expansion of state spying activities.⁸⁷ The impact of Snowden's revelations on individual civil liberties was also a source of concern to Professor Greg Dawes in at least two ways. First, while the NSA only claims to be collecting data on non-Americans, that "includes most of us, since almost all our online data at some point passes through servers in the United States." Second, the British GCHQ "has already been receiving information from the American spy programme. So it is likely our government has been doing the same".⁸⁸

Newspaper editorials in New Zealand also responded in a largely critical fashion to the ramifications of the Snowden leaks. *The Dominion Post* observed:

Serious questions remain and Key has failed to answer them. Snowden is not a traitor, as former Government Communications Security Bureau head Bruce Ferguson claims. In fact, he is a hero of democracy, who, at his own peril, revealed a staggering worldwide bugging machine that clearly threatens our liberties.⁸⁹

⁸⁴ Government Communications Security Bureau Amendment Bill, Inspector-General of Intelligence and Security Amendment Bill, Intelligence and Security Committee Amendment Bill — Third Readings, Sitting date: 21 August 2013

⁸⁵ New Zealand Parliament Hansard Debate Volume 692, Week 50 - Tuesday, 6 August 2013, Sitting date: 06 August 2013. Volume: 692; p.12293

⁸⁶ Kevin P. Clements, "Safety possible without surveillance" *Otago Daily Times*, 5 June, 2014

⁸⁷ Sarah Joseph, "Stakes rise in spying exposure" *Otago Daily Times* 28 November, 2013

⁸⁸ Greg Dawes, "Time to show the door to any spies inside" *Otago Daily Times* 12 June, 2013

⁸⁹ "Editorial: Cautious voters should assume the worst," *The Dominion Post* 17 September, 2013

An editorial in the *Otago Daily Times* struck an equally robust line:

New Zealanders need to be reassured they are not being monitored, except in the extreme cases where terrorist activity is suspected. Casual monitoring of citizens in the hope of uncovering something of interest is reprehensible.⁹⁰

Meanwhile, an editorial in the *Waikato Times* had this to say about the meaning of the Snowden revelations:

The public airing of details about Prism, a massive internet surveillance programme secretly operated by the United States Government, is in a different league...The NSA doubtless believes it does nothing wrong, either, when it covertly collects information on tens of millions of US citizens from their phone calls and emails and by tapping into Google, Facebook, Microsoft, and Apple...But evidence is mounting that the war on terrorism has become a pretext for the insidious broadening of government prying.⁹¹

Despite such criticisms, Prime Minister John Key said he had no concerns about Snowden's revelations and that they would not challenge "the integrity of GCSB".⁹² He justified changes to the 2003 legislation by saying that some people in New Zealand were being trained by the al-Qaeda terrorist organisation in such places as the Yemen.⁹³ The reality, Key noted, is that "we [New Zealanders] live in a global environment where there are real threats".⁹⁴ And he believed it would be wrong to believe there are no New Zealanders with links to terrorist organisations.⁹⁵ Dr. Jim Veitch, an intelligence specialist, publicly supported the Prime Minister's claim and described the GCSB Amendment legislation as a logical response to radical changes in surveillance technology, claiming it was no longer possible to "distinguish between internal and external intelligence in the way that once was possible".⁹⁶ While the occasional newspaper editorial also supported the security justification for expanding GCSB,⁹⁷ much of the debate that took place over surveillance in New

⁹⁰ "Casual monitoring reprehensible," *Otago Daily Times* 28 October, 2013

⁹¹ Editorial: Time to query state prying," *Waikato Times* 12 June, 2013:

<http://www.stuff.co.nz/waikato-times/opinion/editorials/8784077/Editorial-Time-to-query-state-prying>

⁹² "NSA tells NZ spies: 'Sniff it all'" *Stuff News*, 15 May 2014:

<http://www.stuff.co.nz/national/politics/10046942/NSA-tells-NZ-spies-Sniff-it-all>

⁹³ Rebecca Quilliam and Claire Trevett, "PM justifies spy bill: Kiwis trained by al-Qaeda" *The New Zealand Herald*, Aug 1, 2013:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10906592

⁹⁴ John Key cited in Rebecca Quilliam and Claire Trevett, "PM justifies spy bill: Kiwis trained by al-Qaeda" *The New Zealand Herald*, Aug 1, 2013:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10906592

⁹⁵ Laura Heathcote and Felix Marwick, "Spy laws needed because of al-Qaeda – PM" *Farming Show*, Aug 1, 2013: <http://www.farmingshow.com/news/nbp01/1729548009-spy-laws-needed-because-of-al-qaeda---pm>

⁹⁶ Audrey Young, "Academic up against heavies on GCSB bill" *The New Zealand Herald*, July 6, 2013: http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=10895052

⁹⁷ Scott Inglis, "Editorial: Security must take priority over concerns about privacy," *Bay of Plenty Times*, 27 September 2014: http://www.nzherald.co.nz/bay-of-plenty-times/news/article.cfm?c_id=1503343&objectid=1133259

Zealand after Snowden seemed to be dominated by expressions of concern or opposition.

However, Prime Minister Key insisted on television that “most New Zealanders” understood and accepted his government’s position on the GCSB bill. He condemned the vocal opposition to the legislation as coming from “experts who are not experts and really do not know what they are talking about.”⁹⁸ Prime Minister Key was reported as describing the strong opposition of the New Zealand Law Society to the GCSB legislation as completely wrong.⁹⁹ In a submission on the proposed bill, the Law Society, amongst other things, argued: “It seems that the underlying objective of the legislation is to give the GCSB powers it previously lacked: the power to conduct surveillance on New Zealand citizens and residents.”¹⁰⁰ The InternetNZ party also raised serious concerns about the GCSB Amendment bill claiming that its enhanced powers were too broad. In its submission, InternetNZ said it supported the provisions of the bill that addressed cyber security of New Zealand’s information infrastructure but questioned whether such a function should be located within an intelligence agency.¹⁰¹ But such concerns seemed to be given little serious consideration by the New Zealand government.

In a much quoted comment at a National Party press conference on 10 August 2013, Mr. Key bluntly told journalist Rebecca Wright that New Zealanders care more about snapper quotas (for fishing) than the GCSB bill.¹⁰² In a subsequent interview with John Campbell, Prime Minister Key expanded on his assessment of public opinion in New Zealand by noting the government had received “124 submissions on the GCSB Bill and 30,000 on snapper [fishing quotas].”¹⁰³ In other words, the New Zealand Prime Minister was saying that while the GCSB legislation and the Snowden revelations were making the headlines, those concerns were not generally shared by the wider public. He also contended that “if people aren’t doing something wrong, then it’s very unlikely they would be falling within the [expanded] remit of the GCSB’s activities.”¹⁰⁴ He also said there was considerable “confusion” over the GCSB legislation¹⁰⁵ and that the new changes to the agency did not amount to “mass surveillance” of the country. The Prime Minister told the *New Zealand Herald*

⁹⁸ *Campbell Live*, TV3, 13 August 2013: <http://www.3news.co.nz/tvshows/campbelllive/an-expert-who-supports-the-gcsb-bill-2013081319#ixzz3He9lnMbT>

⁹⁹ Bill Bennett, “GCSB bill too important to rush” *NetHui 2013*, 10 July 2013: <http://2013.nethui.org.nz/2013/07/nethui-2013-gcsb-bill-too-important-to-rush>

¹⁰⁰ New Zealand Law Society cited in Audrey Young, “Law Society slams spy agency bill” *The New Zealand Herald*, 24 June 2013:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10892498

¹⁰¹ InternetNZ cited in Audrey Young, “Law Society slams spy agency bill” *The New Zealand Herald*, 24 June 2013: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10892498

¹⁰² John Key, *Campbell Live*, TV3, 13 August 2013:

<http://www.3news.co.nz/tvshows/campbelllive/an-expert-who-supports-the-gcsb-bill-2013081319#ixzz3He9lnMbT>

¹⁰³ Karol, “Key vs Campbell: the transcript”, *The Standard*, August 15, 2013:

<http://thestandard.org.nz/key-vs-campbell-the-transcript/>

¹⁰⁴ John Key cited in Audrey Young, “Spy bill: ‘This isn’t playtime’- Key”, *The New Zealand Herald*, June 25, 2013: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10892844

¹⁰⁵ John Key, *Campbell Live*, TV3, 13 August 2013: <http://www.3news.co.nz/tvshows/campbelllive/an-expert-who-supports-the-gcsb-bill-2013081319#ixzz3He9lnMbT>

newspaper that both he and the Director of GCSB would resign if the intelligence agency was subsequently found to have conducted mass surveillance.¹⁰⁶

After the passage of the GCSB Amendment Bill on 21 August 2013, the steady and cumulative impact of the continuing Snowden revelations helped keep intelligence related concerns on the political table in New Zealand. In April 2014, Prime Minister Key announced the appointment of lawyer Cheryl Gwyn as the new IGIS.¹⁰⁷ Ms. Gwyn took up her appointment on 5 May and succeeded the outgoing Inspector-General, the Honourable R. Andrew McGechan QC. In July 2014, the New Zealand government appointed the first ever Deputy Inspector-General of Intelligence and Security, Mr. Ben Keith.¹⁰⁸ This appointment was part of the process of strengthening the oversight capabilities of the Inspector-General's office following amendments to the Inspector-General of Intelligence and Security Act 1996 in September 2013. Under these amendments, the Inspector-General would be supported by a newly created Advisory Panel consisting of three members, one of whom would be Ms. Gwyn.¹⁰⁹

The bolstering of the IGIS's oversight team coincided with a critical performance review of the New Zealand Intelligence Community (NZIC) published by the State Services Commission in early July 2014. The report found that the national security and intelligence priorities were inadequately defined and that basic systems were weak and required attention.¹¹⁰ The report also confirmed that, following Snowden revelations, it was difficult to determine exactly how much faith the public had in New Zealand intelligence agencies.¹¹¹ The report said NZIC objectives should include attempts to work together effectively, act within legal compliance and improve its public mandate.¹¹² The latter observation may be linked to a poll taken in June 2014, which showed that 71.6% of New Zealanders believed that United States spy agencies are gathering data on them.¹¹³

Spy Claims and Dirty Politics Allegations

In August 2014, a document was released showing a United States NSA engineer had visited New Zealand in February 2013 to discuss with GCSB officials how to intercept

¹⁰⁶ John Key's pledge cited in Audrey Young, "Key: I'll resign if GCSB conducts mass surveillance", *The New Zealand Herald*, 20 August 2013:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11111384

¹⁰⁷ "New Inspector-General of Intelligence and Security Appointed", New Zealand Intelligence Community, nzic.govt.nz: <http://nzic.govt.nz/resources/>

¹⁰⁸ "Deputy Inspector-General Intelligence named", Press Release: New Zealand Government, 2 July 2014: <http://www.scoop.co.nz/stories/PA1407/S00050/deputy-inspector-general-intelligence-named.htm>

¹⁰⁹ "Inspector-General of Intelligence and Security: Advisory Panel members appointed", Media Releases, Rt Hon John Key, 23 October 2014: <http://www.igis.govt.nz/announcements/>

¹¹⁰ Peter Bushnell and Garry Wilson, "Performance Improvement Framework: Review of the agencies in the core New Zealand Intelligence Community (NZIC)," Unclassified Summary, July 2014, p.6

¹¹¹ Bushnell and Wilson, "Performance Improvement Framework," p.9

¹¹² Bushnell and Wilson, "Performance Improvement Framework," pp.6-7

¹¹³ Dennis Tegg, "Is warrant-less spying on New Zealanders lawful?" *Scoop Independent News*, 22 August, 2014

electronic traffic on the Southern Cross fibre optic cable,¹¹⁴ a trans-Pacific telecommunications network which connects New Zealand to the rest of the world. New Zealand lawyer, Denis Tegg, found a reference to the engineer's visit in NSA documents, stating that the engineer was in New Zealand for technical discussions regarding a future GCSB Special Source Operations (SSO) site.¹¹⁵ These SSO sites reportedly have the capacity to tap into countries' fibre optic cables so that phone calls, internet and email use can be intercepted and monitored. According to Edward Snowden, the SSO is a division of the NSA. An interception point on the Southern Cross cable would therefore mean that all of New Zealand's international communications could be accessed. It was further argued that such a major policy decision could only have been authorised by the Prime Minister, the Minister responsible for the NZSIS and GCSB. Notwithstanding these claims, John Key firmly denied that any such programme operated in New Zealand, or that there was any intention of introducing one.¹¹⁶ According to Green Party co-Leader, Dr. Russel Norman, "data collection on this scale would represent a massive expansion in the capabilities of the GCSB and shows just how close the relationship is between New Zealand and US spy agencies".¹¹⁷

The Prime Minister, the NZSIS and GCSB were again brought to the attention of the New Zealand public in late August 2014. Five weeks prior to New Zealand party elections, investigative journalist Nicky Hager released a book detailing what he called the 'dirty politics' of the National Party, led by John Key.¹¹⁸ One of the allegations made by Hager is that a member of Key's staff alerted a right-wing blogger, Mr. Cameron Slater, to request, under the Official Information Act (OIA), confidential NZSIS documents about a briefing former Labour leader, Mr. Phil Goff, was given in 2011 (following some controversy over whether the then Labour leader had been briefed or not briefed by the NZSIS over alleged spying in Christchurch by Israeli 'backpackers').¹¹⁹ According to Nicky Hager, Mr. Slater immediately made an OIA request and the confidential NZSIS briefing notes were declassified the same day as the OIA request from Mr. Slater was lodged. Normally, information requested under the OIA takes a statutory twenty days, and if related to a sensitive matter, can take much longer.¹²⁰ Documents such as SIS briefing notes are not usually released to the public.¹²¹ As a consequence, Mr. Hager alleged Prime Minister John Key abused his position as Minister in charge of the NZSIS to embarrass his major political opponent just months before an election.¹²² Following these claims, John Key and his senior staff were subpoenaed by the IGIS to give evidence to an

¹¹⁴ Liz Banas, "Govt call to account for spy claims", *Radio New Zealand News*, 1 August 2014: <http://www.radionz.co.nz/news/national/251191/govt-called-to-account-for-spy-claims>

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ James Henderson, "Key must "come clean" on NSA/GCSB fibre optic cable interception," *Techday*, 04 August 2014

¹¹⁸ Nicky Hager, *Dirty Politics* (Nelson: Craig Potton Publishing, 2014)

¹¹⁹ Andrea Vance, "SIS gave blogger first dibs on papers" *Stuff News*, 16 August 2014:

<http://www.stuff.co.nz/national/politics/10389804/SIS-gave-blogger-first-dibs-on-papers-release>; Chris Keall, "PM lying over Hager's SIS allegation – Goff", *National Business Review (NBR)*, August 17, 2014: <http://www.nbr.co.nz/article/pm-lying-over-hagers-sis-allegation-%E2%80%94-goff-ck-160952>

¹²⁰ Hager, 2014, p.29

¹²¹ *ibid.*

¹²² Hager, 2014, p.30

inquiry.¹²³ A poll taken following the *Dirty Politics* book found that 41 per cent said they did believe John Key over the SIS briefing, while 44 per cent said they did not, with 14 per cent undecided.¹²⁴

Snowden and Greenwald: 'The Moment of Truth'

The public disclosure of unauthorised surveillance by the GCSB before 2013 had at least one almost immediate political repercussion. In March 2014, Kim Dotcom founded the Internet Party, a New Zealand political party which pledged to stop mass surveillance of New Zealanders by the government.¹²⁵ One week prior to New Zealand's general election, Dotcom's Internet Party organised 'The Moment of Truth', a live event to take place in Auckland's Town Hall on September 15. According to Dotcom, New Zealanders should "consider the fact that the nation has quietly morphed, under the leadership of Prime Minister John Key, into the political equivalent of an American slave, responding more readily to the interests that motivate the United States than to the concerns of the Kiwis".¹²⁶ In a packed Town Hall, 'The Moment of Truth' included presentations by Laila Harré, leader of the Internet Party, lawyer Robert Amsterdam, Kim Dotcom, Glenn Greenwald, an investigative journalist who has worked with Edward Snowden to release confidential surveillance documents to the media, Edward Snowden and Julian Assange, founder of Wikileaks, by live uplink. The event was perhaps indicative of the way "deep investigation of government security activity may be passing from formally constituted commissions and committees toward a version of global civil society, characterised by NGOs, civil rights lawyers, journalists and regional bodies such as the Council of Europe".¹²⁷

In the build-up to 'The Moment of Truth' event on 15 September 2014, a harsh war of words developed between John Key and Glenn Greenwald. The New Zealand Prime Minister quickly sought to discredit Glenn Greenwald and his stated intention to reveal evidence of domestic mass surveillance of New Zealanders by the GCSB. Mr. Key repeatedly described Mr. Greenwald as "Dotcom's little henchman",¹²⁸ accused Greenwald of being on Dotcom's payroll and doing "Dotcom's bidding",¹²⁹ called the Pulitzer Prize winning journalist "a loser"¹³⁰ and "a clown",¹³¹ and strongly

¹²³ Tracy Watkins, "PM may not have to front at hearing," *Stuff News*, 31 August 2014

¹²⁴ "44% don't believe Key over SIS briefing – poll," *The National Business Review*, 9 September 2014

¹²⁵ Laura Walters, "Launch day for Kim Dotcom's Internet Party," *Stuff News*, 27 March 2014

¹²⁶ Kim Dotcom, "Why New Zealand is a slave to US interests," *CNN News*, 12 September 2014

¹²⁷ Johnson *et al.* 2014, p.796

¹²⁸ Claire Trevett, Rebecca Quilliam and Derek Cheng, "He's Dotcom's little henchman: PM attacks journalist's spy claims" *The New Zealand Herald*, 13 September 2014:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11324113

¹²⁹ Adam Bennett and Claire Trevett, "Kiwis' data lodged with NSA – Greenwald" *The New Zealand Herald*, 15 September 2014:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11324685

¹³⁰ "Key: US journalist Greenwald 'a loser'" *The New Zealand Herald*, 15 September 2014:

http://www.nzherald.co.nz/national/news/video.cfm?c_id=1503075&gal_cid=1503075&gallery_id=145457

¹³¹ John Key cited in Tim Hume, "Snowden, Assange, Greenwald, Dotcom: Can this gang of four take down a PM?" *CNN*, 15 September 2014: <http://edition.cnn.com/2014/09/15/world/asia/new-zealand-dotcom-snowden-key/>

implied that Greenwald's visit to New Zealand just a week or so before the New Zealand general election was a blatant attempt to influence the outcome of the election¹³². The Prime Minister added: "There is no mass surveillance of New Zealanders by the GCSB and there never has been. Mr. Dotcom's little henchman will be proven to be incorrect because he is incorrect"¹³³. While Greenwald said he did not want "the prime minister's unbelievably reckless accusations"¹³⁴ to distract from the substantive issues, he said he had donated his standard speaker's fee to a nominated charity and "would not be paid a single penny"¹³⁵ for his work in New Zealand. He also said the idea he had suddenly developed an "urgent desire to manipulate the outcome of New Zealand's election is so frivolous that no one could really say it with a straight face"¹³⁶.

At the same time, Mr. Greenwald's arrival in New Zealand prompted Prime Minister Key to acknowledge for the first time since the GCSB controversy had begun the existence of plans for a "cable access surveillance programme".¹³⁷ Key said the government had begun work on presenting a business case for the project, which he described as a "mass cyber security protection initiative",¹³⁸ but he personally stopped the work in March 2013 because he thought it was a step too far. Key claimed that the project was replaced by a narrower initiative, described as a more limited version of mass cyber protection, with tailored functionality which an individual company or agency could deploy.¹³⁹ Anthony Briscoe, Chief Executive of Southern Cross Cables, also released a statement saying there was "no facility by the NSA, the GCSB or anyone else on the Southern Cross cable network".¹⁴⁰ But Greenwald quickly challenged Key's statement and said the Prime Minister was misleading the New Zealand public. The journalist maintained that documents provided by Edward Snowden would show that the GCSB has been involved in a mass surveillance programme code-named 'Speargun'.¹⁴¹ Greenwald also claimed that New Zealand had been spying on other democracies for economic advantage,

¹³² Adam Bennett and Claire Trevett, "Kiwis' data lodged with NSA – Greenwald" *The New Zealand Herald*, Sep 15, 2014: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11324685

¹³³ Claire Trevett, Rebecca Quilliam and Derek Cheng, "He's Dotcom's little henchman: PM attacks journalist's spy claims" *The New Zealand Herald*, Sep 13, 2014:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11324113

¹³⁴ Glenn Greenwald, Presentation, Transcript of 'The Moment of Truth', Auckland Town Hall, New Zealand, Streamed Live on 15 September 2014, p.10:

http://ia902304.us.archive.org/13/items/TranscriptMomentOfTruthAucklandNZ20140915GreenwaldSnowdenAssangeAmsterdam/Transcript_MomentOfTruth-AucklandNZ_2014-09-15_Greenwald-Snowden-Assange-Amsterdam.pdf

¹³⁵ *ibid.* p.10

¹³⁶ *ibid.* p.10

¹³⁷ John Key cited in Tim Hume, "Snowden, Assange, Greenwald, Dotcom: Can this gang of four take down a PM" *CNN*, 15 September 2014: <http://edition.cnn.com/2014/09/15/world/asia/new-zealand-dotcom-snowden-key/>

¹³⁸ "Key: US journalist Greenwald 'a loser'" *The New Zealand Herald*, 15 September 2014: http://www.nzherald.co.nz/national/news/video.cfm?c_id=1503075&gal_cid=1503075&gallery_id=145457

¹³⁹ Ryan Gallagher, "The questions for New Zealand on mass surveillance," *The Intercept*, 16 September 2014

¹⁴⁰ Anthony Briscoe cited in Tim Hume, "Snowden, Assange, Greenwald, Dotcom: Can this gang of four take down a PM" *CNN*, September 15, 2014: <http://edition.cnn.com/2014/09/15/world/asia/new-zealand-dotcom-snowden-key/>

¹⁴¹ Claire Trevett, "He's Dotcom's little henchman: PM attacks journalists spy claims," *The New Zealand Herald*, 13 September 2014

such as Brazilian energy company Petrobras.¹⁴² The Prime Minister repeated his claims stating that “when it comes to New Zealanders, there is no mass surveillance”.¹⁴³ Opposition leaders such as the then Labour Party Leader, David Cunliffe, and Green Party Co-Leaders, Metiria Turei and Russel Norman, were quite measured in their public responses to Greenwald’s serious allegations. Both the Labour and Green parties pledged, if elected to government, to review the role of the GCSB,¹⁴⁴ but also stated that they would not necessarily pull New Zealand from the Five Eyes arrangement if they were to form a government.¹⁴⁵ David Cunliffe added “New Zealand gains more than it contributes”¹⁴⁶ from the Five Eyes arrangement.

Then, in an extraordinary attempt to refute Greenwald’s claims of mass surveillance, Prime Minister Key indicated shortly before ‘The Moment of Truth’ event he was prepared to declassify highly sensitive documents to prove that the GCSB pulled the plug on plans to spy on New Zealanders.¹⁴⁷ However, the Prime Minister also stated that he would withhold the release of such documents until *after* Greenwald tried to prove there was substance to his claims.¹⁴⁸

On 15 September, the day of ‘The Moment of Truth’ event, two articles were published on *The Intercept*, an online publication directed by Glenn Greenwald. The first, written by Edward Snowden, claimed that “any statement that mass surveillance is not performed in New Zealand, or that the internet communications are not comprehensively intercepted and monitored, or that this is not intentionally and actively abetted by the GCSB, is categorically false. If you live in New Zealand, you are being watched”.¹⁴⁹ Snowden confirmed that when contracted by the NSA he routinely came across communications of New Zealanders whilst working on “XKEYSCORE,” a surveillance tool the NSA shares with the GCSB. “XKEYSCORE” allows total access to the database of communications collected in the course of mass surveillance and is used primarily for reading individual’s private correspondence.¹⁵⁰ According to Snowden, the GCSB “is directly involved in the untargeted, bulk interception and algorithmic analysis of private communications sent via internet, satellite, radio, and phone networks...mass surveillance is real and happening as we speak”.¹⁵¹

Published alongside Snowden’s article in *The Intercept* was the promised article by Glenn Greenwald. In the article, Greenwald claimed that the New Zealand

¹⁴² Michael Botur, “The GCSB does not conduct mass surveillance on Kiwis – Key,” *The New Zealand Herald*, 14 September 2014

¹⁴³ Trevett, “He’s Dotcom’s little henchman: PM attacks journalists spy claims,” 2014

¹⁴⁴ Botur, “The GCSB does not conduct mass surveillance on Kiwis – Key,” 2014

¹⁴⁵ Botur, “The GCSB does not conduct mass surveillance on Kiwis – Key,” 2014

¹⁴⁶ Botur, “The GCSB does not conduct mass surveillance on Kiwis – Key,” 2014

¹⁴⁷ Claire Trevett, “Spying claims force PM to release declassified documents,” *The New Zealand Herald*, 14 September, 2014

¹⁴⁸ Derek Cheng, “Spy case: No documents until claims verified – Key,” *The New Zealand Herald*, 14 September 2014

¹⁴⁹ Edward Snowden, “Snowden: New Zealand’s Prime Minister isn’t telling the truth about mass surveillance,” *The Intercept*, 15 September 2014

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

government secretly worked to use the enhanced powers of the August 2013 GCSB Amendment Act, passed in the wake of illegal domestic spying revelations, in order to initiate a new metadata collection program that appeared to have been designed to collect information about the communications of New Zealanders.¹⁵² According to Greenwald, top secret documents obtained by Snowden showed that the GCSB, with on-going NSA cooperation, completed Phase I of a mass surveillance program, codenamed 'Speargun', at some point in early 2013.¹⁵³ This involved the covert installation of 'cable access' equipment, which appeared to refer to surveillance of the Southern Cross cable.¹⁵⁴ Speargun then moved to Phase II, under which 'metadata probes' were to be inserted into the Southern Cross cable, and that was scheduled for mid-2013.¹⁵⁵ Greenwald contended that this was a system the GCSB actively worked to implement.¹⁵⁶ Greenwald also provided evidence of NSA planning documents, which show that completion of Speargun was awaiting the new GCSB Amendment Act.¹⁵⁷ According to Greenwald, the GCSB Amendment Act was designed to enable mass metadata collection, rather than prevent it.¹⁵⁸ In other words, Greenwald contended the "New Zealand's government's position privately was the exact opposite of what they were saying publicly."¹⁵⁹

With the publication of the articles by Snowden and Greenwald, Prime Minister Key immediately declassified four documents which he believed would confirm that the government had abandoned plans for a form of cyber protection which could encroach on the privacy of New Zealand citizens. These documents were previously classified 'secret' presumably for reasons of national well-being. The Prime Minister said there was no public interest in making the information available during the intense debate over the GCSB Amendment Bill in 2013¹⁶⁰. However, he seemed to think the allegations of mass surveillance in New Zealand by the likes of Edward Snowden and Glenn Greenwald had completely changed the situation. According to Key, Snowden and Greenwald "are deliberately attempting to damage my reputation and tell New Zealanders that I'm doing something that I'm not and I've got no option but to protect myself".¹⁶¹ Greenwald noted that Key "was not releasing...classified information for any other reason than protecting his reputation and for political gain". Certainly, Mr. Key's rapid decision to declassify and release secret documentation had the potential to "damage the security, defence, or international

¹⁵² Glenn Greenwald and Ryan Gallagher, "New Zealand launched mass surveillance project while publicly denying it," *The Intercept*, 15 September 2014

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ Tim Hume, "Snowden, Assange, Greenwald, Dotcom: Can this gang of four take down a PM?" *CNN News*, 15 September, 2014

¹⁵⁹ Glenn Greenwald, Presentation, Transcript of 'The Moment of Truth', Auckland Town Hall, New Zealand, Streamed Live on September 15 2014, p.16: http://ia902304.us.archive.org/13/items/TranscriptMomentOfTruthAucklandNZ20140915GreenwaldSnowdenAssangeAmsterdam/Transcript_MomentOfTruth-AucklandNZ_2014-09-15_Greenwald-Snowden-Assange-Amsterdam.pdf

¹⁶⁰ David Fisher, "Secret dangers of released GCSB documents" *The New Zealand Herald*, September 16, 2014: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11325743

¹⁶¹ *ibid.*

relations of New Zealand and/or friendly governments".¹⁶² In the event, the released documents shed some light, but failed to decisively settle the question of whether New Zealanders were subject to mass surveillance.

The documents confirmed the existence of a cyber-protection project called Cortex which had the limited objective of protecting government agencies and key infrastructure providers from cyber-attack.¹⁶³ In 2011, the Key government decided to build a cyber-defence system following a series of external cyber-attacks on New Zealand institutions, starting in 2009. A GCSB spokesperson subsequently sought to clarify the Cortex system by acknowledging that Speargun was a code that referred to an early core component of the cyber defence project that was later jettisoned by Prime Minister Key.¹⁶⁴ This clarification seemed to confirm the authenticity of Snowden's revelations from 'The Moment of Truth' event, in which he showed slides relating to project Speargun, whilst simultaneously casting doubt about the accuracy of Snowden's claims.¹⁶⁵

But Snowden and Greenwald responded by saying that the Key government and GCSB were deliberately conflating cyber protection with a mass surveillance capability. The four de-classified documents make no mention of the SPEARGUN capability so how do we know that the abandoned element of CORTEX system was called SPEARGUN? At 'The Moment of Truth' event, Snowden said "there are actually NSA facilities in New Zealand that the GCSB is aware of, and that means the Prime Minister is aware of, and one of them is in Auckland".¹⁶⁶ According to Snowden, Prime Minister Key's refusal to comment on XKEYSCORE was telling: "What about the GCSB's involvement in XKEYSCORE? What about New Zealand's involvement in the XKEYSCORE mass surveillance program?"¹⁶⁷ Key claimed he could not comment as XKEYSCORE is related to foreign intelligence. "But is it related to foreign intelligence", Snowden argued, "if it's collecting the communications of every man, woman and child in the country of New Zealand?"¹⁶⁸ Thus, Snowden claims that Key's government's denials about mass surveillance in New Zealand "is a careful parsing of words".¹⁶⁹ As a member of Five Eyes intelligence sharing arrangement, Snowden maintains that the GCSB is cooperating closely with its senior partner (NSA), and therefore the "NSA is doing it [mass surveillance] and then

¹⁶² Glen Greenwald cited in Toby Manhire, "Greenwald, Dotcom, Snowden and Assange take on 'adolescent' John Key," *The Guardian*, 15 September 2014: <http://www.theguardian.com/world/2014/sep/15/moment-truth-greenwald-dotcom-snowden-assange-new-zealand-john-key>

¹⁶³ David Fisher, "Secret dangers of released GCSB documents" *The New Zealand Herald*, September 16, 2014: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11325743

¹⁶⁴ Tom Pullar-Strecker, "GCSB clarifies 'Project Speargun'" *The New Zealand Herald*, 19 September 2014: <http://www.stuff.co.nz/technology/digital-living/61372504/gcsb-clarifies-project-speargun>

¹⁶⁵ *ibid.*

¹⁶⁶ Edward Snowden, Presentation, Transcript of 'The Moment of Truth', Auckland Town Hall, New Zealand, Streamed Live on 15 September 2014, p.19: http://ia902304.us.archive.org/13/items/TranscriptMomentOfTruthAucklandNZ20140915GreenwaldSnowdenAssangeAmsterdam/Transcript_MomentOfTruth-AucklandNZ_2014-09-15_Greenwald-Snowden-Assange-Amsterdam.pdf

¹⁶⁷ *ibid.* p.21

¹⁶⁸ *ibid.* p.19

¹⁶⁹ *ibid.* p.19

providing that same information to us [GCSB], so we don't have to do it domestically."¹⁷⁰

Prime Minister John Key has denied that the NSA is operating in New Zealand, but he continued his refusal to comment on XKEYSCORE.¹⁷¹ However, a former Director of the GCSB, Bruce Ferguson, admitted its agents were trained in the use of data-harvesting technology.¹⁷² Mr. Key's office also declined to explain the process for making the CORTEX project documents public, but said that the Prime Minister was not concerned about any dangers arising from their declassification. IGIS Cheryl Gwyn, in her role as intelligence watchdog, stated that

as part of her role as Inspector-General, I review whether the GCSB complies with the [legal] restrictions upon interception of New Zealanders' communications...I can advise that I have not identified any indiscriminate interception of New Zealanders' data in my work to date. I will continue to monitor these issues.¹⁷³

IV The National and International Impact of the Snowden Revelations in New Zealand

By blowing the whistle on the NSA's astonishing surveillance capabilities, Edward Snowden had hoped "to spark a worldwide debate about privacy, Internet freedom and the dangers of state surveillance".¹⁷⁴ In the case of New Zealand, the Snowden revelations intersected with growing public concerns about the GCSB Amendment bill and has generated a serious and sustained debate about surveillance policy. It was a debate in which Prime Minister Key actively participated. He rigorously challenged Snowden's disclosures about GCSB participation in an NSA-led mass surveillance programme, but so far has not disproved the authenticity of the NSA documents that Snowden produced as evidence.

Nevertheless, in the short term at least, the Prime Minister's reading of the public response to the debate that followed the Snowden revelations proved to be astute. John Key apparently believed that an uncompromising approach to the complex issues raised – given the strength of the economic record of his government and the absence of effective political opposition from the Labour and Green parties – would persuade most New Zealanders to give his National-led government the benefit of the doubt. His political judgement seemed vindicated. On 20 September 2014, Mr.

¹⁷⁰ *ibid.* p. 20

¹⁷¹ Andrea Vance, "NZ spied on allies, Greenwald claims" *The New Zealand Herald*, September 17, 2014:

<http://www.stuff.co.nz/national/politics/10505138/NZ-spied-on-allies-Greenwald-claims>

¹⁷² *ibid.*

¹⁷³ Fisher, "Key hits back at spy-law claim," 2014

¹⁷⁴ Edward Snowden cited in Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA and the Surveillance State* (London: Penguin, 2014), p.18

Key's National Party won a third term with 47 per cent of the party vote.¹⁷⁵ That gave it 60 seats in the 121 member Parliament and allowed the National Party to form a government under its leadership for a third successive term.

Immediately after its re-election, the Key government emphasised that the terrorist threat presented to New Zealand by ISIS was very real and a number of New Zealand citizens were either fighting for ISIS in Syria or were actively supporting this organisation from New Zealand. Wellington also expected an invitation to join the anti-ISIS coalition in the near future.¹⁷⁶ In the meantime, the Prime Minister signalled his intention to make a major speech on national security and to take a more robust stance on security and intelligence issues, despite the controversies involving the GCSB and the Snowden revelations during his second term.¹⁷⁷

On 6 October, 2014, Mr. Key announced a major overhaul of the security and intelligence sector. Under the new arrangements, the Prime Minister took on the new role of Minister for National Security and Intelligence and would retain strategic leadership in this sector as a whole. At the same time, the Attorney-General, Mr. Chris Finlayson became the Minister in Charge of the NZ Security Intelligence Service and Minister Responsible for the GCSB, and assumed responsibility for the day-to-day running of these agencies within the policy framework set by the Prime Minister. In addition, Mr. Key indicated he would establish and chair a new National Security Committee of Cabinet.¹⁷⁸ These changes, according to the Prime Minister, "will make our structure very similar to that seen in Australia and Great Britain" and would help New Zealand deal with "threats in the ever-changing environment."¹⁷⁹

Within days, the New Zealand government spelled out the sort of threat the country was now facing. In the wake of raids by Australian police targeting alleged Islamic State terrorists in Sydney and Brisbane, Mr. Key said a "domestic beheading" inspired by ISIS extremists could not be ruled out in New Zealand.¹⁸⁰ As an upshot, the New Zealand government raised the country's national threat level from very

¹⁷⁵ Isaac Davidson, "Final election result in: National loses majority" *The New Zealand Herald*, 5 Oct 2014:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11337042

¹⁷⁶ Reissa Su, "New Zealand PM John Key Expects Invitation to Join Fight Against ISIS" *International Business Times*, October 7, 2014: <http://au.ibtimes.com/articles/568744/20141007/new-zealand-john-key-isis-terrorism.htm#.VFqdDYfTKPz>

¹⁷⁷ Reissa Su, "New Zealand PM John Key Expects Invitation to Join Fight Against ISIS" *International Business Times*, October 7, 2014: <http://au.ibtimes.com/articles/568744/20141007/new-zealand-john-key-isis-terrorism.htm#.VFqdDYfTKPz>

¹⁷⁸ "National Security and Intelligence role created", New Zealand Government Media Statement, Scoop, 6 October 2014: <http://www.scoop.co.nz/stories/PA1410/S00026/national-security-and-intelligence-role-created.htm>; Adam Bennett, "John Key unveils new Cabinet line-up" *The New Zealand Herald*, October 5, 2014:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11337743

¹⁷⁹ "National Security and Intelligence role created", New Zealand Government Media Statement, Scoop, 6 October 2014: <http://www.scoop.co.nz/stories/PA1410/S00026/national-security-and-intelligence-role-created.htm>

¹⁸⁰ "Isis fight: NZ might join combat operations" *The New Zealand Herald*, 11 October 2014: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11340983

low to low. While previously the threat of a terrorist attack was deemed unlikely, it was now assessed as possible but not expected.¹⁸¹

Mr. Key's keenly anticipated speech on New Zealand's national security was delivered on 5 November 2014. He said "the rise of a well-resourced, globally-focused terrorist entity" like ISIS, which is "highly skilled in recruitment techniques utilising social media" was "a game changer for New Zealand".¹⁸² He identified between 30 and 40 New Zealanders who are actively engaged in advancing the ISIS cause, whether in Syria, Iraq or New Zealand. The Prime Minister also said a further 30 to 40 people potentially had terrorist links and required further investigation. In short, New Zealand no longer has "a benign threat environment".¹⁸³ But while the government would not send combat troops to directly fight ISIS, it will send 10 military planners to explore the possibility of providing military training assistance to Iraqi forces, and boosted New Zealand's humanitarian aid for Syrian and Iraqi refugees. Furthermore, Key announced several domestic measures aimed at boosting security. These included increasing the length of time the government could cancel a passport on national security grounds from one to three years; new government powers to temporarily suspend passports; broader NZSIS surveillance powers such as extending video monitoring of private property for security related activities and conducting warrantless surveillance for up to 48 hours; and increasing the funding of the NZSIS by almost NZ\$7 million.¹⁸⁴

But several observers seriously questioned the appropriateness of broadening the surveillance powers of New Zealand's intelligence agencies to counter the ISIS terrorist challenge. For one thing, the scale of the threat was disputed. Javed Khan, Vice-President of the New Zealand Federation of Islamic Associations, was surprised and alarmed by the threat outlined by John Key. He said he was aware of five to 10 people associated with Islamic State, but not the 80 or so mentioned by the Prime Minister.¹⁸⁵ Dr. Paul Buchanan, a Security Consultant, said the Government would have to be careful about correctly identifying people leaving New Zealand to fight with Islamic State: "For example, there are members of the Syrian community who for family and personal reasons have chosen to go back and may well be fighting for the Free Syrian Army which of course is backed by the West in the fight against [Syrian President] Assad".¹⁸⁶ Human rights lawyer Michael Bott broadly agreed and argued the Key government's new domestic security measures were disproportionate to the actual threat level to New Zealand and would erode personal freedoms: "If these people are to be monitored now then why do we have to...give the state more power to intrude on our lives. The changes have to be proportionate

¹⁸¹ "NZ terrorism threat level raised" *Radio New Zealand*, 13 October 2013:

<http://www.radionz.co.nz/news/political/256735/nz-terrorism-threat-level-raised>

¹⁸² John Key, Transcript, Speech to NZ Institute of International Affairs, [beehive.govt.nz](http://www.beehive.govt.nz), 5 November 2014: <http://www.beehive.govt.nz/speech/speech-nz-institute-international-affairs-0>

¹⁸³ John Key, Transcript, Speech to NZ Institute of International Affairs, [beehive.govt.nz](http://www.beehive.govt.nz), 5 November 2014: <http://www.beehive.govt.nz/speech/speech-nz-institute-international-affairs-0>

¹⁸⁴ *ibid.*

¹⁸⁵ "Fears over IS law changes dismissed" *Radio New Zealand News*, 6 November 2014:

<http://www.radionz.co.nz/news/national/258672/fears-over-is-law-changes-dismissed>

¹⁸⁶ "Govt developing policy on fighters" *Morning Report*, New Zealand National Radio, 7 November 2014: <http://www.radionz.co.nz/news/political/258793/govt-developing-policy-on-fighters>

and at this stage we haven't seen the evidence".¹⁸⁷ Similarly, Dr. Nigel Parsons, a Middle East specialist at Massey University, said it was easy to overstate the risks being posed to New Zealand by ISIS: "Once civil liberties are gone, once powers of surveillance are increased, those powers are typically difficult to roll back and those liberties are difficult to reclaim".¹⁸⁸

In the aforementioned speech by John Key on New Zealand's national security policy, the Prime Minister said international consultations, "including with our Five Eyes partners...provided a base for our decision-making". Convinced that partnership with Five Eyes "has provided New Zealand with global information on international security and intelligence issues that we could never have achieved on our own", Mr. Key maintained "Five Eyes does not cost us our independence" and "will be an important part of how we deal with the threat of ISIL at home and abroad".¹⁸⁹ But have the political costs of New Zealand participation in Five Eyes risen since the GCSB Amendment bill controversy and the Snowden revelations implicating the GCSB in NSA-led mass surveillance? The answer will depend on how the actions of the New Zealand government are viewed in a fast globalising world.

Conclusion

Until recent disclosures, New Zealand has been able, so to speak, to fly under the radar and was widely seen as relatively benign in intelligence terms. This was probably due to an awareness of the ANZUS split in the mid-1980s and New Zealand's occasional willingness to oppose US foreign policy initiatives, such as the US-led invasion of Iraq in March 2003. But Snowden's leaked documents make it clear that the intelligence relationship between New Zealand and the US (as well as those with the UK, Australia and Canada) has been much closer than generally recognised.

In October 2014, documents released by Snowden seemed to show that the GCSB was using New Zealand embassies to snoop on Pacific neighbours and trade partners. Classification codes from the NSA leaked by the Intercept website refer to activities conducted by countries in the Five Eyes intelligence alliance. Other snippets relating to New Zealand also suggested the NSA could be using the GCSB, as a Five Eyes partner, to hack into other nations' systems. One classification refers to "second party partner assisted network infiltration operations".¹⁹⁰ This all seemed to suggest the NSA and partners like the GCSB have been involved in intelligence gathering activities in friendly countries whether in the Pacific, Europe or Asia. This was either for New Zealand's own purposes or at the behest of the United States.¹⁹¹

¹⁸⁷ "Fears over IS law changes dismissed" *Radio New Zealand News*, 6 November 2014: <http://www.radionz.co.nz/news/national/258672/fears-over-is-law-changes-dismissed>

¹⁸⁸ *Ibid.*

¹⁸⁹ John Key, Transcript, Speech to NZ Institute of International Affairs, <http://www.beehive.govt.nz/speech/speech-nz-institute-international-affairs-0>

¹⁹⁰ Andrea Vance, "NZ embassies used by spies:docs" *The New Zealand Herald*, 13 October 2014: <http://www.stuff.co.nz/national/politics/10610620/NZ-embassies-used-by-spies-docs>

¹⁹¹ Willis & Galvin, "NZ Spied on Pacific neighbours – Greenwald," 2014

When asked whether New Zealand was spying on China, Glenn Greenwald confirmed that

there is probably an expectation that China has that there is some surveillance going on. China knows full well New Zealand is part of the Five Eyes alliance and they know how that functions. The extent of it, the purposes of it, would – I would think – create a lot of discomfort diplomatically.¹⁹²

Green Party's Dr. Russel Norman has similarly argued that "China would view the Five Eyes network with some concern. There is no doubt that they would view Five Eyes as an impediment to a better relationship with New Zealand".¹⁹³

Yet, in the short term at least, the diplomatic costs of the Snowden revelations for New Zealand's diplomacy do not appear to be huge. Mr. Greenwald and a number of other observers anticipated that the Snowden revelations could undermine Wellington's claim it pursued an independent foreign policy, and, amongst other things, negatively affect New Zealand's long seven year campaign to obtain a two year term on the UN Security Council.¹⁹⁴ Indeed, Prime Minister Key tacitly acknowledged this possibility by accusing Greenwald of deliberately acting against New Zealand's interests.¹⁹⁵ In the event, however, there was little evidence to support such concerns. On 16 October 2014, New Zealand, competing with two much larger countries - Spain and Turkey - for two seats on the Security Council, resoundingly won a seat by winning 145 out of 193 votes in the first ballot in New York.¹⁹⁶ New Zealand won overwhelming backing after campaigning as a voice for smaller countries and being sharply critical of the marginalisation of the UN in such crises as the Syrian civil war. The outcome seemed to indicate that New Zealand's diplomatic standing was relatively unaffected by the Snowden revelations.

However, the long term impact of the Snowden disclosures on the New Zealand government and society may be quite different. The intimacy and transparency of the New Zealand political system means that public opinion is potentially a far more powerful factor in the shaping of policy than is normally the case in larger democracies. To date, the Key government has been able to sustain its political support in the face of the controversies generated by the GCSB legislation and Snowden. But such support cannot be regarded as a permanently operating factor. There remains a wide gulf between the Prime Minister's firm denial that mass surveillance is taking place in New Zealand and Edward Snowden's equally firm insistence that it is. And it appears likely that Snowden will continue to release NSA documents for years to come that may or may not alter the balance of the argument

¹⁹² David Fisher, "Glenn Greenwald: New Zealand has spied on friends for US," *The New Zealand Herald*, 17 September, 2014

¹⁹³ Burton, 2013, 235

¹⁹⁴ Willis & Galvin, "NZ Spied on Pacific neighbours – Greenwald," 2014

¹⁹⁵ Claire Trevett, "Key slams Greenwald over potential spiking of NZ's UN bid," *The New Zealand Herald*, 18 September 2014

¹⁹⁶ Vaughan Elder, "Stunning outcome for NZ", *Otago Daily Times*, 18 October 2014: <http://www.odt.co.nz/news/national/320317/stunning-outcome-nz>

over surveillance in New Zealand. It should not be forgotten that Richard Nixon won the 1972 presidential election by a landslide, but was eventually forced from office by the cumulative impact of the Watergate revelations. Whatever one may think of the actions of Edward Snowden, and international opinion is sharply divided over him, there is little or no evidence to show that his claims about NSA surveillance are unreliable or untrue. According to Greenwald and other journalists who have worked closely with him, Snowden is “meticulous about ensuring that his credibility as a surveillance expert is maintained”.¹⁹⁷ It remains to be seen whether Snowden’s claims about mass surveillance in New Zealand will prove to be the exception to this trend.

¹⁹⁷ Glenn Greenwald, Presentation, Transcript of ‘The Moment of Truth’, Auckland Town Hall, New Zealand, Streamed Live on 15 September 2014, p.13:
http://ia902304.us.archive.org/13/items/TranscriptMomentOfTruthAucklandNZ20140915GreenwaldSnowdenAssangeAmsterdam/Transcript_MomentOfTruth-AucklandNZ_2014-09-15_Greenwald-Snowden-Assange-Amsterdam.pdf

