

# Drone Wars Strike Home

## Some political, legal and ethical implications of the War on Terror, the State of Surveillance and the killing of a New Zealander by a US Drone in Yemen.

Edited transcript of a public lecture by Dr David Small  
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Video recording available <https://www.youtube.com/watch?v=UCOneyZmiOk>

It is pleasing to see a good number of people who are concerned about the incident that sparked this, which was the announcement that in November last year (2013) a New Zealander by the name of Muslim bin John was one of those killed in a drone strike in Yemen. The official response from the Prime Minister was astonishingly ho hum, he pretty much shrugged it off, he didn't act as if he had any further questions he wanted to ask, he was totally satisfied with the little that he said he knew about it. That as far as he was concerned was the end of it. And the public didn't seem to care either. There were a few public statements and there has been a little bit that has come out recently, but there has been no massive outcry about it. By the time we found out that Muslim bin John used to be called Daryl Jones it seems like everybody had already decided that we didn't care too much about that because we didn't have muslim names, we weren't going to places like Yemen where these drone attacks were happening, so we don't really care about it.

If you compare it to for example, the outrage in Australia when Schapelle Corby got arrested and taken through the Indonesian judicial system for smuggling drugs which was a major sensational news – and we have got this guy, who possibly didn't even know that anybody thought he was doing anything wrong, who was killed, executed in this drone strike. So I am pleased that you are here today and I just want to share a few thoughts with you about some of the implications of this and how this incident draws a few things together and raises some pretty significant questions and challenges to our society and more widely.

### **Obama Promises No Civilians Will be Killed**

Tomorrow will be exactly one year since President Obama delivered a major speech on security in the United States, a significant part of which was the use of drones as a means of warfare. He defended drones saying that in contrast to other forms of warfare the use of drones constitutes quote 'the use of drones results in a course of action least likely to result in the loss of innocent life'. And he went on to say that drones would not be used indiscriminately, drones would only be used in certain circumstances.

He said "America does not take strikes when we have the ability to capture individual terrorists. Our preference is always to, detain interrogate and prosecute them. We act against terrorists who impose a continuing and imminent terrorist threat to the American people and where there are no other governments capable of effectively addressing the threat. And before any strike is taken there must be near certainty that no civilians will be hurt or killed, the highest standard we can set."

This was a year ago tomorrow. Was the Obama position, restatement sufficient to allay the fears of critics? A number of people pointed out that his position still allowed considerable wriggle room. He said that drones wouldn't be used where it was not possible to capture somebody by other means. However, if you look into the detail of the drone strikes policy that this statement is based on, you can see that the definition of what is feasible is more like what we would understand to be what is convenient.

Questions have also been raised about what constitutes an imminent threat. Some people who have been killed by drones have been under surveillance for 18 to 20 months, so there are questions about what counts as imminent and an actual threat to America, and about what kinds of actions would constitute an actual threat. There is also considerable skepticism by the very nature of the operation and the secrecy around it about the claim of "near certainty" that civilians would not be killed or injured. There are various estimates of the impacts of drones which have been used predominantly in Pakistan, Yemen and Somalia. The Bureau of Investigative Reporting estimates that since drone strikes began

they have killed 240-350 people in Yemen and between 2,500-3,500 people in Pakistan and there have been at least 273 civilian casualties.

### **Pressure Over Drones Policy**

President Obama made his speech in response to pressure that the US was under as a result of its decision to deploy drones in the way that it has. There has been continues to be pressure from international bodies like the United Nations Human Rights Commission and from US allies like the European Union who are pushing for controls on the use of drones. There is pressure from governments where drone strikes are taking place, like the government of Pakistan. And there has been incredible pressure from within the US itself. The pressure from the US is focused both on drones in general and on how those drones are deployed and operated. Questions that Americans have posed that they haven't properly had answers to include the following:

On what basis are targets for the drone strikes decided, who makes those decisions, and how can people find out about those decisions even afterwards? And the questioning in the US was really brought into focus by the killing by the American military of American citizens in drone strikes overseas. So you had a situation where US citizens overseas were killed on the express instructions of the American President in circumstances where they had not even been formally advised of what they were alleged to have done wrong, and the serious concern that this effectively amounted to extrajudicial executions on the say so of the President alone. It was only last year that the Obama administration admitted for the first time that four Americans had been killed in its drone attacks. The two most prominent of these were the killing in Yemen of Anwar Al Alwaki in September 2011. A month later his teenage son, who was trying to find out what had happened to his father, was killed in another drone attack. As a result of legal proceedings initiated in response to those killings, a New York Court has just ordered the US government to release secret papers upon which it based its legal justification for using drones to kill US citizens suspected of terrorism overseas. So this is the American response of constant pressure, constant questioning.

The incident that has brought us here, that has brought these drone strikes home, took place on the 19<sup>th</sup> November 2013 where Muslin bin John, a New Zealand citizen, and Salma Al Russi, an Australian citizen from Townsville, were killed in a US drone strike in Yemen. This was a few months after Obama's speech setting out these so called new rules that were supposed to ensure that civilians wouldn't be killed. It was also just a month before the infamous drone strike on a wedding party in Yemen that killed a significant number of civilians. It was such an outrageous breach of the no-civilian-will-be-killed policy that the families of those civilians have been paid compensation for their losses. We found out about the drone strike that killed the New Zealander earlier this year when the Prime Minister announced it. He confirmed in his announcement that New Zealand did have Muslin bin John under surveillance in New Zealand. He didn't say who had him under surveillance, but given that we now know that there were 85 New Zealanders illegally spied on by the GCSB I imagine that Muslim bin John was one of the people on that list. John Key was disturbingly relaxed about this whole incident; he didn't think there were any other questions to be asked about it.

### **The Christchurch Connection**

What we know about bin John and Al Russi is still quite sketchy. Although I understand that bin John is from Christchurch, the information about him that I've come across so far mainly comes from Australia where people who know him in connection with the Sydney Mosque describe him as 'one of the best Muslims I have ever known'. Another says 'the brother was so humble, soft spoken and gentle you could really get along with him'. Al Russi, the Australian also had New Zealand connections. In 2011 he was living in Christchurch at the time of the earthquake. He was associated with the Mosque here, just over the road from Hagley Park. Friends of mine who knew him at the time described him as a bit of a mixed up guy, you might call him a bit of a lost soul but also a very sincere and genuine person. They said that when he arrived in Christchurch he was relatively new to Islam, and one friend said that he didn't think Al Russi had been inducted into Islam in any systematic way. He had spoken openly of wanting to go to Yemen while he was here to learn more about Islam. He later moved down to Dunedin where I understand there was some tenancy tribunal ruling against him before he skipped the country. He never presented to anybody I've spoken with as a radical or anything like that. However, Al Russi was at the Christchurch Mosque and it could be that that was his undoing. In 2003, the Christchurch Mosque attracted a flurry of media attention. It was reported that a Saudi Arabian charity named Al Harrain, with alleged terrorist links was seeking to make a \$750,000 investment in the property. Coming as this did barely two years after the 9/11 attacks on the Twin Towers there was a lot of anxiety and jitters about this from many quarters. Phil Goff, speaking for the Labour Government

of the day, declared that the matter would be investigated by “the appropriate authorities’. Although the Al Harramain deal did not actually take place, the very fact that it was contemplated and drawn to public attention makes it highly likely that New Zealand’s intelligence agencies would have had that Mosque and anyone participating in it under surveillance at that point. It is hard to imagine how these agencies which had been given extra power and resources without a whole lot to focus their minds on, would have stopped having that Mosque under surveillance from that point. Given what is known then, what the Prime Minister has said, and what is known about the Mosque it’s pretty likely that New Zealand intelligence agencies were the first to begin monitoring the activities of both bin John and Al Russi. If they had come to the attention of New Zealand intelligence agencies which were engaged in the surveillance of Muslim groups, it is virtually inconceivable that this information was not then subsequently shared with the United States. Especially after the two men had traveled to Yemen. The issue of drones in themselves are a controversial one. There is a philosopher with allegedly progressive credentials (opposition to the invasion of Iraq etc...) who has argued that there is virtually no downside to drones. I think it can almost be compared to the impact of lethal injections on those campaigning against the death penalty. When the lethal injection, arrived anti-death-penalty campaigners were a bit anxious about it because of the risk that it would sanitize the whole process of execution. And I suppose to complete the analogy just as in the last few weeks some repulsive examples of the use of lethal injection in the death penalty have presented themselves. The use of drone strikes is sort of questionable even on its own terms. The basic drone strategy is to identify enemy leaders and move in and have these surgical strikes against them, and minimize civilian casualties and by decapitating the movement thereby weakening it and undermining their ability to organize attacks against you. However, the evidence is that the use of drones against Al Qaeda in the Arabian Peninsula (AQAP), the Al Qaeda branch in Yemen, does not appear to be working at all. There have been regular reports of the killing of high-ranking Al Qaeda leaders but despite (or perhaps partly because of) the drone strikes campaign, the ranks of AQAP have continued to grow rapidly. This led the satirical magazine *The Onion* to report a while back that an estimated 80% of number twos in Al Qaeda had now been killed.

### **The War on Terror**

The drone strikes and the whole campaign against Al Qaeda grew out of the broader thing that has been known as the War on Terror. This was launched by George Bush II after the attacks in September 2001. This was barely a decade after the end of the cold war. During decades of the cold war there had been the hope expressed that when the cold war was over, all the resources put into the military could be redeployed to productive use and there would be this thing that was called “the Peace Dividend”. But we never got to bank this dividend. Barely a decade after the end of the cold war, we were back into something that ticked all the boxes that the cold war ticked. It had an enemy, Al Qaeda, that was global, they could strike anywhere. In the old anti-communist rhetoric the ‘reds were under the bed’. In the war on terror, everywhere you look Al Qaeda could be under your bed, absolutely anywhere. The tactics they used, the military attacks they used on civilians were so horrific it could be argued that extraordinary measures were necessary so torture was redefined and rationalized and reapplied. Suspects were ambushed, detained and handed without trial over to countries where they could be imprisoned and tortured behind closed doors. To achieve this, there was the creation of this massive legal grey zone, this terrain between law and war. It served to provide a vast terrain for those who were prosecuting this War on Terror to claim that they had the imperative of stopping this awful threat and needed to take these extraordinary measures. The other major attraction of the war on terror is that it is almost inconceivable to contemplate an end to it; it is war without end. The war on terror gives those prosecuting it a blank cheque to wage a global campaign unrestrained by national sovereignty, the rule of law or the rules of war.

The other thing about the war on terror is that because it is global it requires everybody to be into it. The world, we are told, is only as strong as its weakest link. So even countries it could be said were not directly in the firing line had to be brought into it. Every country had to respond and sign up to the War on Terror if it was going to be advanced effectively. The War on Terror has now been officially renamed you might be interested to know – a couple of years ago now. It is now called “Overseas Contingency Operations”. So we are not supposed to talk about the War on Terror anymore but the thing we have come to know as the War on Terror is still very much intact.

One of the critical ingredients for the War on Terror is the collection of intelligence. In New Zealand we have two main intelligence agencies. One is called the Security Intelligence Service (SIS) the other is the Government Communications and Security Bureau (GCSB). The division of tasks for these

agencies is that the SIS is supposed to be focused on domestic threats. These agencies were supposed to be focused on terrorism and subversion. But in the wake of the Cold War, in 1996, there were changes to the SIS that broadened it to include threats to New Zealand's economic wellbeing. Opponents of the free trade agenda and the general neo-liberal onslaught at the time argued that this vague concept of economic well-being would be used against them. Despite denials of this, just two weeks after the new legislation was passed there was indeed an event in Christchurch that turned out to be the SIS breaking into the house of prominent opponent of the free trade agenda, Aziz Choudry. So the SIS was supposed to be domestic, the SIS is also supposed to be focused primarily on what is called human intelligence. The GCSB is focused more on electronic intelligence, electronic spying, and is supposed to be exclusively oriented towards foreign nationals. So the GCSB is more directly linked in with overseas intelligence agencies. The GCSB is responsible for running the Waihopai spybase up in Marlborough. This is a base that David Lange, when he was Prime Minister, said that he was told very little about even though he was supposed to be the person in charge of it. The GCSB was also mixed up and was really brought into the glare of publicity around the Kim Dotcom extradition. Interestingly the way that that information came out was, as has been typical for everything we have found out about our spy agencies, not through actual lines of accountability and public reporting or anything like that but instead through either accidents, or blunders or leaks.

### **New Zealand Intelligence Agencies - Accidents, Blunders and Leaks**

It is also worth reminding ourselves that the way the GCSB came into the spotlight was in the context of extradition hearings that were being held for Kim Dotcom. During those hearings, there was discussion about the meeting where it was planned to organize the raid on Dotcom's house and his lawyers asked about the identities of two people who were present at this planning meeting but were unidentified. The people in question were GCSB operatives. It was all very shady and covered up and as the questioning got closer and more insistent, the acting Prime Minister at the time, Bill English, signed a Ministerial Certificate seeking to suppress details of the GCSB involvement in that planning meeting. Fortunately, Dotcom's lawyers had smelled a rat and kept pushing until eventually their identities as GCSB agents were exposed. And with that one little thread and some extra tugging, eventually the whole sordid and unlawful involvement of the GCSB came unraveled and brought to public attention.

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And that is really the only way we can ever get information about these organizations that are supposed to protect us. By getting a thread, usually by chance, and tugging it until things start coming unraveled. If you write to these agencies and say 'could I have a copy of the file you have on me' as you are entitled to ask of any government department, they write back to you with a standard reply. (There was a period of about 18 months where they abandoned this, but apart from that, for the last several decades they have stuck with the standard reply) They say they will not only not send you your file and they will not even confirm or deny whether a file exists. Because if they were to confirm or deny there was a file, a foreign hostile power could aggregate all those responses and as a result of that data, acquire information about the way that these agencies operate and that this could be used to undermine their effectiveness. That is why you can't ever find out if they even have you under surveillance. And they are kind of right. Because if you think about what we know about these agencies all of it is to do with aggregated bits of stuff that they haven't told us but that people have found out anyway.

There are a number of characteristics of the New Zealand intelligence agencies that we know as a result of combining our information on them. The first one is that they have a particular mind set. They come from a militarist, right-wing mind set whose origins lie in the Cold War mentality. They were brought up on a diet of virulent hostility to anything with a whiff of communism, which makes them highly suspicious of any government that is basically to the left of the National Party. That mindset led them to view liberation movements, even those as thoroughly worthy as those led by Nelson Mandela in opposition to Apartheid in South Africa as terrorist and as their enemy. And they viewed people in New Zealand who supported those organizations as suspect as well. So this is the mind set they come from. There has been no mind set transfusion. Rather, there has been a continuity from that mind set; it has morphed to include Islamic fundamentalists but that is the orientation of these agencies.

The second thing is that they act without oversight. There is now an Intelligence and Security Committee; a committee of government, not a committee of Parliament. But that Intelligence and Security Committee provides effectively no oversight at all. They didn't even know, for example, that the SIS was spying on a sitting MP, Green MP Keith Locke. He (coincidentally or not) happened to be the MP in the House who was their most staunch critic, and they had him under surveillance. There is

also no redress or complaints procedure of any worth at all. There didn't used to be anything at all until 1996 when the new legislation established the office of the Inspector-General of Intelligence and Security.

The first complaint laid with the Inspector-General arose from an incident that took place just two weeks after the new legislation came into effect, when I caught two SIS agents breaking into Aziz Choudry's house – the incident I mentioned earlier. This was at the time of the APEC Trade Ministers Meeting in July 1996. A few days after the break-in, but before anyone knew that the SIS had been responsible for it, a hoax bomb was placed outside the Christchurch City Council building. In response, the Police searched Aziz's house and my house for bomb-making equipment. So Aziz and I took the first complaint through this new system of accountability. It resulted in a report from the Inspector-General in which he wouldn't even confirm or deny that the SIS were involved, but blandly asserted that no law had been broken. Two subsequent court cases, one taken by Aziz against the SIS and one taken by me against the Police, were successful in demonstrating that both agencies had broken the law, as well as showing more broadly that there was no proper complaints procedure, no accountability.

The fourth thing about these agencies is that they regularly operate outside the law. I would say they have contempt for the law. The two clearest cases are the SIS break in to Aziz Choudry's house in 1996 and the discovery that the GCSB were involved in spying on Kim Dotcom and 85 other New Zealanders when they shouldn't have been. In both these cases, the SIS in one and the GCSB in the other both claimed that they thought what they were doing was legal and that they were allowed to do it. Even if you don't accept my view that they acted with contempt for the law, you can still see that where there is any kind of grey area these agencies err against respecting the privacy of citizens. With agencies that are so secretive and have no accountability, you think they would have an obligation to err on the side of caution, to err on the side of not violating people's rights and privacy unless they were certain that they had the authority to do so. Instead, they have been helping themselves to as much intrusiveness as they could possibly argue that they could get away with. In the United States, there have been court cases which have forced the National Security Agency (the NSA) which is their equivalent of the GCSB, to release documents and Obama has been forced to release documents that his administration has relied on to justify their claim that they thought they were acting lawfully. It would be of enormous value to society if our judicial system had the courage and the power to demand that a similar process of discovery be carried out in New Zealand.

The fifth thing is that the SIS and GCSB are working in a low-risk environment. New Zealand is officially acknowledged as being at low risk of terrorist attack. But this war on terror claim that you are only as strong as your weakest link means that we are expected to go the whole hog in terms of anti-terrorist legislation and compromises of peoples' privacy and so on. This even though there is not a single case these agencies can point to where they have saved us or anyone else from the threat of an actual terrorist attack. When Algerian Ahmed Zaoui arrived in New Zealand seeking refugee status, they thought they had one – they thought they had a real live terrorist. The mainstream media gobbled it all up and absolutely swallowed it hook, line and sinker. And as that unravelled and we found out more it was revealed that Ahmed Zaoui was absolutely not a terrorist and not a threat. So the intelligence agencies are yet to deliver a result in thwarting or catching the terrorists they are supposed to be saving us from. Despite this they have been given increased power and resources. This began in 1996 with the SIS Amendment Act but it has been cranked up to another level since the attack on the Twin Towers in 2001.

#### **Five Eyes and Global Intelligence Networks**

The other thing about them, the final point I want to make about them, is that they are an integral part of this global intelligence network. And they have remained a part of that despite the official freeze on military links between New Zealand and the United States. The freeze began as a result of New Zealand's nuclear ships ban and we were officially kicked out of ANZUS in 1986 by Ronald Reagan. It sort of ended in June 2012 with the Washington Declaration. Despite that military freeze out, or some might say partly because of it, the New Zealand intelligence agencies have going hell for leather behind the scenes to prove themselves. Essentially, their message to the US was that New Zealand has to have this nuclear ships ban because the public demands that, but we can still co-operate on other things behind the scenes to prove we are fully part of your team.

One of the things that has remained consistent through all that are the activities at Waihopai which exists to predominately generate data that is plugged into the US-dominated Five Eyes Network, a global network that involves the US, Great Britain, Canada, Australia and New Zealand. I said that much of what we know about these agencies is because we have stumbled across information partly by chance. We have also had a major revelation through the leaks of Edward Snowden – the leaks that just keep on coming. Snowden’s revelations have caused extraordinary embarrassment to those whose policies and practices he has exposed. He discovered absolutely convincingly that the NSA, American equivalent of the GCSB in that it is not allowed to spy on Americans, was massively spying on Americans. It was like a junky with data that it would gather up from wherever it could, masses and masses of data, trawling through all manner of electronic records. The NSA was exposed not only for engaging in large-scale, systematic, unlawful surveillance of American citizens but also lying about the fact that it was doing it.

The leaks about the NSA are particularly important for us because the NSA is part of that Five Eyes Network which New Zealand is linked up in through the GCSB. So we are involved in that whole process as well. We feed stuff in and we get stuff out but we are very much the junior partner. We don’t call the shots. Now the Five Eyes Network is particularly important for our purposes in examining the US drones policy because the NSA provides most of the intelligence on which the drones campaign is based. Information from the NSA puts people on the Kill List.

The Kill List is the list of people that the American President decides need to be taken out in a drone strike. Like the War on Terror the Americans don’t like the sound of a “Kill List” so it has now been redefined and it is now called a “Disposition Matrix”! But although we are not supposed to talk about kill lists, I will keep on calling them that so we know what we are talking about with clear little words instead of big complicated words.

In February of this year, a very disturbing story appeared from multiple sources about the Kill List and about the NSA and about the drone strikes. It came in three different ways. One source was a drone operator, an anonymous source who was a member of what is known as the High Value Targeting Taskforce of Joint Special Operations Command (JSOC). The documents produced by the whistleblower Edward Snowden constituted the second source and the third one was a former US Airforce drone sensor operator named Brandon Bryant. And what all of these sources revealed was that a lot of the targeting for drone strikes was based on what is called “Geo-locating subjects”. This is a process of identifying the location of subjects being targeted for a drone strike that relies on data that is generated from sim cards in their mobile phones. So this data isn’t even based on the content of what people are saying on their calls. It is based on interferences made by what is known as the Metadata. Who are calls made to? Who are calls were received from? Where is the phone located. This is the sort of the information that this Geo-locating operation works by. And of course call data could include conversations with family members. It could include people giving professional advice. It could include personal support, spiritual consultation, virtually anything. But that is the basis on which these drone strikes were targeted. As one of those who exposed the practice said, “we are not going after people, we are going after their phones in the hope that the person on the other end of that missile is the bad guy”. Quite astonishing. In most countries, that standard of proof would not be enough to convict somebody of shoplifting let alone an offence that would get you executed without trial. If that standard was applied to establish guilt or innocence in New Zealand, every criminal lawyer would be behind bars cause their phones are full of conversations with people of interest to the police.

### **Who Gets Killed by Drones?**

It is worth just having a look at the issue of who gets killed in these drone strikes. There is no room in a drone strike for surrender or being taken in for questioning. The drone strike is a strategy of kill first ask questions later. After the kill has been carried out comes the task of sorting out and categorize the victims. There are three categories of drone strike victims. The first category are the people who are the actual targets of the drone strikes. Then there are the innocent civilians, the people who we are told that the US takes every step to ensure do not get killed or injured. And then there is this third category in the middle - the militant or the foot soldier; somebody who doesn’t fit the innocent civilian category, but isn’t the target, isn’t worth the cost of a multi-million dollar missile all on his own. This is the category that we are told Muslim bin John and Salma Al Russi fitted into.

After the drone strike happens, those who carried it out want to minimize the number of people who get put into the innocent civilian category. If you have young kids dressed in their best bib and tucker

going to a wedding, they are a little bit hard to put in the 'they were militants as well' category. But pretty much everybody else gets shunted into the category that Muslim bin John and Salma Al Russi have been put into, as foot soldiers or militants. In revelations about President Obama's Kill List it was discovered that the White House's official definition of a militant, of one of these foot soldiers, includes 'all military aged males in the strike zone'. That is the definition of who constitutes a militant or foot soldier.

When you look at that sort of categorization and you hear the description of Muslim bin John described as a foot soldier you have to ask yourself how did he get this label. It is entirely possible that bin John and Al Russi naively blundered their way through Yemen with ultimately fatal consequences for themselves and others. The Americans would have had their details as soon as they arrived in the country. They possibly didn't know that anybody was watching them at all and they could have been happily using their cellphones and cruising around all sorts of places with alarm bells going off in drone control headquarters while remaining completely oblivious to any of this.

So the fact that John Key doesn't have any further questions becomes more and more disturbing. I mean here are some I would like to know. When the drone strike was authorised, did the Americans know who bin John and Al Russi were? Did the Americans know that they were there, and did they know who they were there at the time this drone strike was made? Did the Americans think they were posing an imminent threat at the time? What was bin John doing at the time? If he was strapped up with a vest with explosives and walking somewhere ready to blow himself up and the drone took him out, that is one scenario. But there are countless other scenarios that could put you in the frame well short of that. What level of threat did the Americans require and what did they observe that made him an imminent threat? Could he have been captured? Why was it not feasible to capture either bin John or Al Russi? At least one of them was making regular calls back to his family back in Australia. The Americans monitor all the calls, so why couldn't they track him down through those links. Why couldn't they get somebody to go over and approach him or warn him to get out or something like that? The claim that he couldn't have been captured also seems preposterous. He is described as a foot soldier, but was he a combatant? What kind of military action did he take part in or conspire to take part in? He arrived after the drone strikes began. They were already in full swing. Would it be enough to become a target of drone strikes, for example, to go over there and support people who were opposing drone strikes of which there are a lot? It certainly shouldn't be grounds for being taken out. What gets you targeted or not excluded from being targeted? Some reports say that a group of men meeting in an area considered to be hostile can be enough. A car driving regularly in an area where it is believed militants are operating can also get you on the list. Being in possession of a cellphone that can be linked to a suspected militant - that can get you on the list to.

What we have heard from John Key is the bland statement that bin John was involved in some terrorist training camps. But that includes a very broad spectrum of possibilities as well. What counts as a terrorist training camp? What was he doing there? At one end you might categorize a permanent facility for the exclusive use of signed up military combatants for the purpose of planning military action. That could be a terrorist training camp. But by the slippage and mind set that these people operate by, a terrorist training camp could also include a facility used by a variety of groups for various purposes some of which were believed to be military planning. Attendance at one is very different from attendance at the other.

### **Drones Change Warfare**

So I would draw two broad conclusions about all of this. The first one is related to the use of drones and the second one is related to the activities of the NZ government and intelligence agencies. First of all I would argue that there are some serious issues with the use of drones. They are not just a new weapon or new weapon system, like a new helicopter or new form of explosive, or a new submarine. They are a game changer in the way conflicts are approached. They represent a low-cost and, from the drone user's point of view, a zero-casualty strategy. And one that keeps the conflict out of the public gaze. Because of those factors, the use of drones actually makes military options much easier to take. So drones can make a military option more likely to be adopted when something other than a military option could be pursued. And as we know military operations, over and above the direct killing they entail, always have consequences far beyond the immediate explosion. There is a letter from a Yemeni lawyer, Hakual Banafa who writes: "Dear Obama when a US drone missile kills a child in Yemen the father will go to war with you, guaranteed. Nothing to do with Al Qaeda."

The other thing about drones is that if one country can use them can every country use them? How would the United States feel if Cuba or North Korea or Iran decided to use drones in on US soil to take out their enemies? How would the United States feel if Russia started to use drones to take out people they didn't like in areas of conflict they were involved in? There is this kind of assumption that the US can be trusted to use drones in the way that other countries could not. And I think if you start applying that level of trust and sovereign decision making to other countries and you have a proliferation of countries using drones, things become very very problematic.

Drones are sitting in this grey area between law and war. And there are fundamental questions about them that need to be resolved that are really only just beginning to be addressed. The use of drones, more than any other form of attack, is inextricably linked to the use of intelligence agencies. There are massive questions around this whole area as these agencies all around the world have demonstrated that they cannot be trusted to act within the law. They cannot be trusted to be honest and accountable to the people whose security they are supposed to be upholding.

So, should there be a push to have drones banned like the Convention on Torture. Or similar bans on the use of landmines? Possibly not. But there should at least be an international conversation about it. And there is a conversation about it. I think New Zealand should join the growing list of people and groups and countries calling for a clear, enforceable international law to be developed to at least regulate and control the use of, if not outlaw, the use of drones. No country with aspirations, as New Zealand does, to a seat on the UN Security Council should side with the US in resisting growing calls for rules about drones.

### **Dangers of Trading in Lies**

The second concluding point is to do with New Zealand intelligence agencies. This issue has really brought into focus some serious questions that deserve answer. What information are these agencies gathering? How is the accuracy of their information being verified? What are they doing with it? And who are they giving it to? And if I could personalize this a little bit and go back to my particular story. After the break in at Aziz's place there was this item placed at the City Council buildings. It was marked 'APEC Bomb'. The bomb squad was called and they opened it up and they found inside this package an actual bomb. It had been made by somebody who had expertise in bomb making and it was all there except that the explosive had been replaced with some putty. From day one, the Police had narrowed down their suspects to just two - Aziz and me. And so they searched my house for bomb making equipment and I subsequently took legal action against them for not having grounds, proper grounds to believe they would find bomb making equipment at my house and I won. But they had me down as a bomber who had targeted an important gathering of leading politicians and officials from around the world. Do they still think I am a bomber? If I hadn't taken them to court, or if I hadn't noticed any of this going on, would the New Zealand intelligence information about me be that this guy is capable of this kind of terrorist act? And if that is what is on my file, what other countries would they give this information to?

New Zealand is a junior partner in all this. And so when New Zealand intelligence agencies think that we have found important intelligence, whether it be about Ahmed Zaoui, the APEC bomb, Kit Dotcom or the poor chap who has ended up getting killed by the drone in Yemen, they are real keen to hand that intelligence on. But there is no way for us to find out about any of this. Half the "intelligence" they are trading could be based on pretty much nothing but it still gets fed into this global network. A global network that we now know is capable of eliminating people who may not even know that they are viewed as such a serious threat. New Zealand law currently forbids us from deporting or permitting the extradition of people to countries or in circumstances where they are in danger of being subjected to practices that we find repugnant. So if a person is to be extradited or deported and they face the prospect of going back to a place where they might be executed or tortured, that is grounds for not sending them out of the country. This applies to anybody, no matter how bad they are or whether they are in the country legally. So in line with this I think there is a strong case for saying that New Zealand will not provide intelligence on New Zealanders to the US as long as they maintain their current policies and practices in the use of drones.

Furthermore I think that where we have already provided such data – and John Key is being very noncommittal about whether anyone else has been killed or anyone else is on the Kill List or in the frame – I think that we should be making some demands. If we are unable to demand that the information be deleted, we should at the very least be insisting that they do

not execute any New Zealander about whom New Zealand has provided information without checking first. Because if New Zealand is going to be providing information that the Americans are going to be using to execute New Zealanders overseas I don't want any New Zealand Prime Minister to be able to maintain, as John Key has, that it is nothing to do with him! He should be required to sign his name like President Obama does and say – yes, I approve of this killing. Then, at least, we have got some lines of accountability. And then he might be a bit more reluctant to hand our information over to a foreign power that is going to behave with such cavalier disregard for the lives and rights of people through actions like drone strikes.