



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | GENEVA

PERMANENT REPRESENTATIVE

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Ms Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ms Ana Brian Nougères

Special Rapporteur on the right to privacy

Dear Ms Khan, Mr Voule, Ms Brian Nougères,

I refer to your Joint Communication dated 8 December 2021 [Ref: OL SGP 1/2021] on Singapore's Foreign Interference (Countermeasures) Act ("FICA").

I would like to explain the reasons for the enactment of FICA and its importance to Singapore's security, and clarify your misconceptions about FICA.

The Threat of Foreign Interference

States have long sought to project their influence over other states to achieve their agendas. Such activities are to be expected. But it is not acceptable when covert and deceptive means are used to interfere with and destabilise another state. Some of the conflicts in states, which the world has witnessed in recent times, should raise our collective and grave concerns over this.

In recent times, the threat of foreign interference has risen in potential and severity. Technological advancements and the ubiquity of the Internet and social media have enabled hostile state actors to carry out foreign interference operations with increasing impunity, sophistication, speed, and impact.

We have seen an increase in foreign interference operations overseas in the form of hostile information campaigns (“HICs”). These involve the coordinated use of online tools and tactics to manipulate domestic political discourse, incite social discord, and undermine political sovereignty. Such operations were reported to have influenced electoral outcomes in states such as France, Germany, and the United States of America. They have also been used to discredit public institutions and policies, as seen from attempts to undermine trust in the European Union’s COVID-19 strategy and to spread scepticism of Western-developed vaccines.

Offline, foreign state agents have used funding and other levers to cultivate local proxies to lobby for their agendas. A former senator of Australia, for instance, was found to have advocated for a foreign state’s position on a sensitive issue, against his own political party’s stance, after having received donations from a principal from that foreign state.

As a result of foreign interference, societies have been polarised, trust in public institutions has been undermined, and democratic processes, even in established democracies, have been subverted.

Singapore’s Response to the Foreign Interference Threat

As a multi-racial and multi-religious society with high Internet penetration, Singapore is highly vulnerable to foreign interference. In fact, we have experienced such interference in recent years:

- a. Between 2016 and 2017, Singapore faced a coordinated HIC that sought to undermine our foreign policy position during a period of bilateral tensions with another state. Dormant social media accounts were activated to upload online commentaries and videos in a bid to influence sentiments among the Singaporean populace.
- b. Similarly, in 2018, an abnormal spike in negative comments about Singapore was detected on social media during another bilateral incident. Posted by anonymous accounts, those comments created an artificial impression of widespread opposition to Singapore’s positions on the incident.

Left unaddressed, such acts of foreign interference will undermine Singapore's sovereignty, social cohesion, and democracy.

FICA seeks to strengthen Singapore's ability to prevent, detect and disrupt foreign interference in our domestic politics conducted through (a) online HICs and (b) the use of local proxies. It is an important part of a suite of measures that include enhancing Singapore's interference detection and response capabilities, and fostering a more discerning citizenry to guard against manipulated online discourse. These efforts aim to preserve the right for Singaporeans to determine for ourselves how Singapore should be governed, and to maintain trust in our institutions.

Clarifications about FICA

Your concerns about FICA appear to be based on several misconceptions, particularly on **(a) the scope of FICA**; and **(b) the impact of FICA on freedom of expression**. I will address these misconceptions below:

(a) Scope of FICA

First, you expressed concern that “the expansive and vaguely worded definition of a ‘foreign principal’ may disproportionately impact members of civil society, independent journalists, academics, researchers, artists, writers and other individuals who express opinions, share information and collaborate or advocate on socio-political issues and matters of public interest.” You also said that FICA provides for “a wide range of restrictions to freedom of expression and association on vague terms related to the prevention, detection and disruption of foreign interference”.

The definition of ‘foreign principal’ in section 4 of FICA cannot be too narrow since foreign interference threats could come from different types of foreign actors. However, it does not follow that anyone who is a foreign principal or who is involved with a foreign principal should worry about being affected by FICA. What matters is the purpose and nature of the activities that are being undertaken or planned on behalf of the foreign principal and the manner in which they are carried out.

As mentioned above, FICA deals with foreign interference conducted through online HICs or local proxies, that aims to polarise society, create public disorder, manipulate our domestic politics, or undermine our political sovereignty. It is primarily concerned with covert and clandestine activities to

such ends, and not open, transparent, and attributable activities, transactions, relationships, or even criticisms.

FICA will therefore not apply to foreign individuals, businesses, publications, non-governmental organisations, and academics engaged in commentary, business transactions, news reporting, civil activities, or academic research about Singapore, that are open, transparent, and with attributed comments., as long as they are not part of an HIC. These entities can continue with their activities even if their views are critical of Singapore or the Singapore Government.

Second, you further expressed concern that FICA would cover “nearly all forms of cross-border collaboration or engagement with foreign actors, including the United Nations (“UN”), its representatives and mechanisms in the field of human rights”. Cross-border collaborations and engagements conducted in a transparent and attributable manner will not run afoul of FICA. I assure you that FICA will not apply to legitimate communications and cooperation between Singapore-based activists (Singaporean or otherwise) and the UN and its human rights representatives and mechanisms, including Special Procedures Mandate Holders. Legitimate collaborations between persons in Singapore and other UN bodies and other international organisations will similarly not be adversely affected by FICA.

Third, FICA sets out certain conditions that must be met before countermeasures can be taken, or before an offence is made out. Involvement with “foreign principals” alone is not sufficient to satisfy these conditions.

Also, some of these conditions seem to have been misunderstood:

a. You stated that “Electronic communications sent ‘on behalf of a foreign principal’ [...] will be banned where ‘it is or is likely to be’ ‘prejudicial’ to e.g. security, public health, public or tranquillity, or diminish public confidence, or is ‘directed towards a political end’ in Singapore (Article 17) [*sic*].” You also expressed concern that “restrictions to freedom of expression contained in the Act, in particular its Article 17 [*sic*] [...] may well be arbitrarily implemented to censor, punish or restrict the dissemination of information.”

Several other conditions must be met before an offence is made out under section 17(1) of FICA. Crucially, section 17(1)(d) requires there to be an element of covertness or deception; section 17 therefore does not affect communications that are open and transparent.

b. You referred to the Ministry of Home Affairs' power to issue directions to counter HICs, and suggested it was wide-ranging and arbitrary. I wish to highlight that counter-HIC directions may only be issued if all four of the following conditions are met:

- i. There is online communication activity, or the planning for such activity (sections 20(1)(a) and 21(1)(a));
- ii. The activity is or would be conducted by or on behalf of a foreign principal (sections 20(1)(b) and 21(1)(a));
- iii. The activity results in information being or likely to be published in Singapore (sections 20(1)(c) and 21(1)(b)); and
- iv. It is in the public interest to take action (sections 20(1)(d) and 21(1)(c)). "Public interest" is defined in section 7 of the Act, and the "public interest" test includes a built-in requirement of proportionality, ensuring that actions taken are necessary or expedient.

Additionally, there are appeal mechanisms in place. Any person who has been issued with counter-HIC directions may apply to the Minister for Home Affairs for reconsideration, before appealing to an independent Reviewing Tribunal. This Tribunal is chaired by a Supreme Court judge and consists of two other individuals with legal or technical expertise from outside the Government.

c. You stated that "An authority appointed by the Ministry of Home Affairs would also have the discretion to designate individuals and entities as 'politically significant', for activities 'directed in part towards a political end in Singapore', *or* where it is in the 'public interest'." This is inaccurate: both thresholds must be met, not just one or the other.

I also wish to clarify that there are two types of politically significant persons ("PSPs") – "defined PSPs" (section 14) and "designated PSPs" (sections 47 and 48). The baseline countermeasures applied to designated PSPs are less stringent (i.e. reporting requirements only) compared to those for defined PSPs (e.g. political parties, members of parliament, political office holders, election candidates and their election agents), as the latter are directly involved in Singapore's political processes.

(b) FICA's Impact on Freedom of Expression

FICA does not apply to Singaporeans expressing their views on political matters on their own accord. The right of Singaporeans to express their views on political matters will not be diminished because of FICA; in fact, this right will be strengthened as the space for debate is kept free from hostile foreign agendas.

You claimed that “one important caveat that had been inserted in one of the first versions of the Bill seems absent from the final text (‘The Bill will not apply to Singaporeans expressing political views unless they were agents of a foreign entity. Neither would it apply to foreign individuals or foreign publications reporting or commenting on Singapore politics, in an open, transparent and attributable way, even if critical of Singapore or its government.’).” You therefore suggested that “the Act may limit a wide range of legitimate expressions, including news reporting, criticism of the government, political leaders and other public figures, as well as the expression of unpopular, minority opinions”.

The “important caveat” you referred to was never in any earlier version of the Bill. You may have referred instead to a statement that was made in the Ministry of Home Affairs’ press release on 13 September 2021 announcing the First Reading of the Bill in Parliament. In any event, I can assure you that this statement remains true. During the Second Reading of the Bill in Parliament on 4 October 2021, the Minister for Home Affairs reaffirmed that such activities would not be covered by FICA.

Separately, you stated that “violations could result in up to 14 years imprisonment and fines of up to S\$100,000 (US\$74,000), depending on the offence”, and provided section 18(3) as an example. You subsequently expressed concern that “the severe penalties foreseen by the law [...] increase the risk of individuals self-censoring and deliberately deciding not to participate in or engage with cross-border networks or actors, including the UN in the field of human rights, to avoid potentially falling within the scope of this new legislation”.

There is no reason for anyone to self-censor or deliberately decide not to participate or engage with legitimate cross-border networks or actors. The penalties for offences under sections 17 to 19 are severe because they are aimed at acts of foreign interference by covert means. The thresholds for these offences are high, and the offences would have to be proven in open court. The offence under section 18, in particular, is an aggravated offence because it involves a greater degree of duplicity, in targeting another person to act against

Singapore's public interest, and has the potential to cause greater harm. Apart from sections 17 to 19, other offences have to do with non-compliance with directions, and have lower penalties.

Other Clarifications

I would also like to make two additional clarifications, in response to statements made in the Joint Communication.

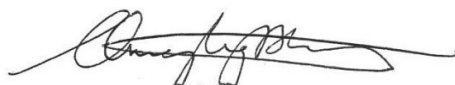
First, on your concern that FICA was passed in Parliament “after only a few hours debate”, and “without open and thorough public consultations” – the issue of foreign interference has been discussed extensively in Singapore in recent years. This includes during the Parliamentary Select Committee on deliberate online falsehoods in 2018, at a public conference on foreign interference in 2019, in various Parliamentary sittings in Singapore, and in the domestic media. Consultations with major internet companies and platforms were also conducted since 2019.

Second, your statement that “the Bill clarified that it does not apply to ‘foreign government [*sic*], a foreign public enterprise or a foreign political organisation” is incorrect. The definition of “foreign principal” in section 4 of the Act clearly includes a foreign government, a foreign public enterprise, and a foreign political organisation.

Conclusion

I hope the above clarifies your understanding of FICA and demonstrates that FICA does not contravene Singapore's international human rights obligations.

Yours sincerely,



UMEJ BHATIA

Ambassador and Permanent Representative