



Summary Report

Author: Quassim Cassam, Professor of Philosophy, University of Warwick, United Kingdom

Panel Theme: Building Democratic Resilience Amid Value Conflict

Key Issues:

Foreign interference (FI) is a complex problem to which there is no simple solution. As we develop legal tools to detect, deter, and punish FI and reflect on strategies to build resilience to FI, we are faced with a range of challenges. Of these, the difficulty of framing a definition of FI that distinguishes it from other related phenomena is especially noteworthy. Some argue that no general definition of FI is necessary. There are, however, several reasons for rising to the definitional challenge rather than bypassing it. These include the following:

- It is widely accepted that FI is distinct from legitimate foreign influence activities undertaken by foreign diplomats. If FI is distinct from foreign influence, then those who draw this distinction should be prepared to define FI in a way that makes it clear why, for example, the foreign influence activities of Canadian diplomats abroad do *not* count as FI.
- Definitions are needed national security purposes. In practice, intelligence agencies which are involved in combatting FI use their own working definitions. For them, defining FI is a practical necessity. It is tempting to say of FI that we know it when we see it even if we can't define it. In reality, the complexity and, in some cases, subtlety of FI are such that we may well *not* know it when we see it. Definitional clarity is required, especially in the grey area between FI and influence activities that do not amount to FI.
- Some, but not all, FI activities are covered by existing law. Other countries, such as the UK and Australia, have updated their laws and created new offences that reflect new and evolving forms of FI. If Canada were to do the same, there would need to be a clear legal definition of FI. In this context, a definition of FI is not optional.
- A definition is needed for educational and consciousness-raising purposes. It is easier to raise civic awareness of FI and educate the public to recognize FI tactics if one has a clear answer to the question 'what is foreign interference?' Clear answers to question of this form do not *have* to take the form of a definition (as distinct from a description), but the availability of a clear definition makes the task of consciousness-raising about FI much easier than it would be without a definition.

Assessment:

Once the importance of defining FI is granted, it becomes necessary to reflect on the constraints on a satisfactory definition and the limitations of existing definitions. A satisfactory definition of FI need not be perfect, but it needs to be fit for the various practical purposes for which the definition is employed, including those listed above. It is vital to recognize the importance of



context in defining FI. Our definition must apply to the most salient and dangerous forms of FI that we face, even if it struggles to accommodate marginal forms of FI.

Some definitions of FI are too broad and generate false positives: they result in non-FI activities being classified as FI. Others are too narrow and generate false negatives: they result genuine FI activities or tactics not being classified as FI. We should be especially concerned about *harmful* false positives and false negatives in the present geopolitical context.

When activities that ought not to be classified as FI are classified as FI, this can potentially threaten free speech or other democratic values. This is how definitional false positives can be harmful and contribute to a loss of confidence in the very democratic institutions and practices we hope to protect. For example, the Initial Report of this Commission describes FI as ‘clandestine, deceptive, or personally threatening activities by a foreign state, or those acting on its behalf, which are detrimental to the interests of Canada’.¹ This definition allows for the possibility of *contactless* FI since it is possible for a person P to act on *behalf* of a state S even if P has not been in contact with S and is not acting at its *behest* or at the behest of its representatives or agents. For P to be acting on behalf of S, it is sufficient that P acts with the intention to benefit S.

On balance, deceptive or personally threatening activities that are intended to benefit a foreign state should not be classified as FI if they are contactless, that is, if they are not directed, funded, or supervised by a foreign state. Imagine that P is a Canadian who makes the false and deceptive claim that a recent election in a foreign state S was free and fair and intends, by making this claim, to benefit the newly but corruptly elected government of S. If P is not acting at the behest of S, then this is not FI but spin or disinformation.

While we may take a dim view of P’s efforts on behalf of S, it is not obvious that that P should be prohibited in a democracy from making a misleading case for the new government of S. As noted by Jonathan Hall, KC, the UK’s Independent Reviewer of State Threat Legislation, spin is not unknown in political debate and an excessively inclusive definition of FI potentially ‘rubs against freedom of expression’.² Care should be taken to avoid this consequence.

Definitions of FI that represent it as the work of foreign states face the additional difficulty that FI can be carried out at the behest of foreign bodies that are not foreign *states*. For example, threatening activities carried out at the behest of a political party which is the governing party of a foreign state might be deemed to be foreign interference even though a political party is not a state. This problem can be solved by employing the more ontologically neutral expression ‘foreign power’ in place of ‘foreign state’ in the definition of FI.

Recommendations

1. The Initial Report’s characterization of FI should, at a minimum, be modified to make it clear that clandestine, deceptive, or personally threatening activities that are detrimental to the interests of Canada do not qualify as FI unless they are directed, funded, or supervised by a foreign power or otherwise carried out at the behest of a foreign power. The agent of FI must be a foreign power or have a substantial connection with a foreign power.

¹ *Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions*, 3 May 2024, p. 82.

² J. Hall, ‘The Foreign Hand and Foreign Interference’ ([“The Foreign Hand and Foreign Interference”](#) « [Independent Reviewer of Terrorism Legislation](#), para 55.



2. Steps should be taken to develop a consensus definition of FI in place of the multiplicity of individual definitions employed by different agencies.
3. A definition of FI is fit for purpose only if it meets the practical needs of agencies that are responsible for detecting, deterring, and punishing FI. At the same time, steps should be taken to ensure that the resulting definition is consistent with freedom of expression, freedom of the press, and other fundamental rights and freedoms of Canadians.
4. In attempting to develop a consensus definition of FI, a detailed study should be made of definitions of FI in other jurisdictions, most notably Australia and the UK. There is much to be learned from such a study (see below).

Additional remarks

The UK's National Security Act 2023 provides a framework for conceptualizing FI that may be of use to the Commission in its thinking.³ The Act introduces a new FI offence to 'create a more challenging operating environment for, and to deter and disrupt the activities of, foreign states who seek to undermine UK interests'.⁴

The three components of the new offence of FI are prohibited conduct (section 15), the foreign power condition (section 31), and an intended interference effect (section 14). Each of these notions received detailed analysis in the Act. In sum, 'a person commits an offence if (a) the person engages in prohibited conduct, (b) the foreign power condition is met in relation to the prohibited conduct, and (c) the person intends the prohibited conduct, or course of conduct of which it forms a part, to have an interference effect' (section 13). The Act also offers a definition of 'foreign power' (section 32)

The Act's hard analytical work is done in defining the three legs of the FI offence. The proposed definitions are imperfect, but they nevertheless offer a valuable starting point for reflection on FI in a Canadian context.⁵

³ [National Security Act 2023](#). For an overview of the Act's innovations, see P. F. Scott, ' "State Threats", Security, and Democracy', *Legal Studies* (2024), 44: 260-76 ([S0261387523000399jra 260..276](#)).

⁴ [Foreign interference: National Security Bill factsheet - GOV.UK](#)

⁵ On some of the definitional imperfections of the UK's National Security Act 2023, see J. Hall, 'The Foreign Hand and Foreign Interference', P. F. Scott, ' "State Threats", Security, and Democracy', and Q. Cassam, 'Foreign Interference in the National Security Act 2023 ([99+](#)) [Foreign Interference in the National Security Act 2023 | Quassim Cassam - Academia.edu](#)