

Asian Perceptions of What Is and Is Not Legal in Economic Intelligence Collection

I. Introduction

Good afternoon. My name is Doug Tsuruoka. Robert Steele of OSS Inc. has asked me to speak today on "Asian Perceptions of What Is and Is Not Legal in Economic Intelligence Collection." While I appreciate the honor, I must stress my main qualification to talk on this subject is based on my experiences as a correspondent who has worked in countries such as Japan, South Korea and Malaysia for over ten years and as a student of modern Asian history and culture at the university level.

As a journalist, I'm also aware that my work is quite different from the background of many in this room. Please forgive me, then, if I cover ground which may already be known to you or if I commit errors which would be known only to intelligence professionals.

The entire subject of the "Asian" approach to intelligence is an enormously under-reported subject--which is fraught with cultural prejudice on both sides. It is also an extremely complex subject, which I cannot hope to cover in a few minutes with adequate reference to source material.

It's my intention, therefore, to lay out certain broad themes on so-called "Asian" perceptions of the legalities involved in economic intelligence rather than focus on minute factual material.

II. Overview

Since the start of the 1990s, some in US intelligence and law enforcement have pointed to what they say is a new challenge from Asia in which established superpowers like Japan and newly emerging ones such as China are improving their competitive position through concerted campaigns to collect sensitive "economic intelligence" in advanced nations such as the United States.

The charge is that some Asian nations are not only collecting public "open source" information in ever dizzying amounts through

the productivity gains of the Information Age--but that they are also breaking US laws--engaging in industrial espionage and bribery to secure their ends.

Most recently, of course, this has been underscored by Congressional accusations that John Huang, a former assistant secretary of commerce in the Clinton Administration may have passed on sensitive US trade secrets as part of a sanctioned espionage mission ordered by China's Ministry of State Security.

In 1992, Ronald Hoffman, a senior engineer for US-based Science Applications, was arrested and eventually sentenced to a six-year prison term for selling software used in the US Strategic Defense Initiative program better known as "Star Wars." Other cases involve allegations that Japanese telecom giant Nippon Telephone and Telegraph routinely cooperated with Japanese companies that wanted to secretly access the databases of US companies doing business in Japan.

I do not wish to dwell on the merits of these cases and prefer to leave this to the US agencies charged with the responsibility for probing them.

I do, however, want to address what I feel are a number of over-simplifications which were stirred by these episodes and which have reinforced perceptions of Asians in the US as unfair economic competitors who do not hesitate to break US laws in the pursuit of economic dominance.

The real picture, as is usually the case, is much more complex--both in terms of what is happening and the perceived "threat". There is also an "Asian" view of the economic intelligence issue which needs to be understood if we are to preserve global security and stability in the next century.

To this end, I'd like to kick-off this presentation by outlining five principles which I believe apply to all Asian nations involved in the collection of economic intelligence in other countries. These principles would apply most strongly to East Asian countries like China, Japan, Taiwan and Korea--but would also find echoes in Southeast Asia and South Asia. Also let me define "economic intelligence in the most current sense that the term is used: to

include companies--as well as governments competing to acquire information.

The five principles are:

--1. Asian nations traditionally have adopted a much wider view of what constitutes useful intelligence--from an economic, political and military standpoint. Part of this springs from an old, but now perhaps outdated sense of inferiority to the West. Other aspects of the approach are traceable to the specific historic experiences of the nations involved--particularly in the case of China, Korea and Japan.

This has encouraged the development of a multi-faceted, approach to intelligence collection--which has included both legal and extra-legal ways of securing information.

--2. Most Asian nations--including Japan and China--have tended to rely on legal or "open" sources of information in amassing economic intelligence on foreign countries--though incidents of genuine industrial espionage or spying may escalate if geopolitical tensions and economic competition heats-up.

--3. Asians--based on social conditioning--are more likely to obey the collective dictates of their companies or governments in economic intelligence situations which may involve violating the laws of host nations.

--4. The Asian view of "law" or what is "legal" differs from that of the West. In the Asian mind, law is a flexible body of rules which is subject to modification by those in authority. This differs from Anglo-Saxon societies--which hold--at least in theory--that law is a separate and sacrosanct body of rules.

In this regard--decisions on illegal techniques to secure economic intelligence--are likely to be made on a "case-by-case" basis rather than as a blanket application of state or company policy--though governments such as China might target specific areas such as the acquisition of so-called "dual-use" technologies which have both civilian and military uses.

Despite US perceptions of Asians as long-term espionage conspirators who are laboring toward a darker geopolitical end, my sense is that most cases of economic espionage involving Asian

countries or companies to date, have been short-term and opportunistic in nature. These would have been the result of piecemeal decisions--based on the immediate value of the information to be gained.

If high-technology is being used in such spying, my impression is it is less sophisticated than that being used by advanced players such as France and the US. There may also be a tendency to farm out such work to freelance "consultants" or other third parties--such as freelance industrial spies, "consultants" and even computer hackers to avoid detection. The intermediaries in these cases may not even be aware the work they are doing may be for Chinese or other Asian clients.

Asians tend to be a litigious peoples. Fear of public face or embarrassment in countries like Japan have tended to make the legal system the option of last resort for settling disputes.

Conversely, Asians such as Japanese, Koreans and Chinese tend to settle disputes--when they occur--through informal means--usually employing monetary damages or other concessions out of the public eye. One example of this is while Japanese firms certainly engage in industrial espionage against one another--one rarely hears of one suing the other in the courts for redress. The same true of instances in which Japanese officials have prosecuted cases of economic espionage involving Japanese firms.

This has set the stage for a coming clash in countries like the US which have aggressive system for legal and government oversight and where such cases are prosecuted with far more frequency. The rising number of Japanese companies which have been prosecuted for theft of technological secrets in the US in recent years partly reflects the fact that many here have not adjusted to the pressures of operating under a US legal system with different cultural and regulatory premises.

6.--Where Asian companies or governments may have violated the laws of host countries in their pursuit of economic and other intelligence, they feel that they are only engaging in what countries like the US, France and Germany--have always engaged in when it comes to acquiring data essential to corporate interests or national security.

The rub is that where Asians have always understood the value of economic intelligence, the US has only come to understand national competitiveness in the 21st Century as military spying.

Having said that, this would be a good point to discuss several **Cultural Factors** which I believe are peculiar to Asian nations such as China, Japan and Korea, and which have contributed greatly in shaping Asian attitudes toward the acquisition of economic intelligence from the outside world.

Asians are heavily "pragmatic" people who have been driven through history by economic and social pressures which have been far more intense than those of large, resource-rich nations such as the United States.

If we were to distill the histories of major nations such as China, Japan, Korea and India these "pressures" could be best summarized as overpopulation, a scarcity of natural resources and arable land, frequent natural catastrophes--and--in the case of many countries--periods of protracted warfare lasting from the 19th Century through the latter part of this century.

Against the backdrop of such imperatives--is a political, military and economic challenge from the West which began in the last century and, which, in varying degrees, sparked an intense period of "westernization" in which the acquisition of western knowledge--particularly in industrial and military spheres was the only effective counter-measure against imperialist domination.

Hence, there is an Asian tendency to view knowledge acquisition on the basis of its pragmatic value--without the same ethical calibrations which western nations, until recently, claimed to exercise in collecting economic and business versus national security-related intelligence.

Some in the West use this to highlight the so-called "alien values" inherent in Asian culture which represent a threat to western civilization and the so-called "rule of law." Fears are that Asians may be more willing--as at least one best-selling US novel has suggested--to employ any means--including criminal acts--to win economic dominance. Most Asians, on the other hand, would argue

such views are neocolonialistic and are based on now discredited notions about the so-called "Moral Superiority of the West."

Most Asian intelligence professionals would complain this also presupposes that Asia--due to its different cultural dynamic--has no ethical or legal values of its own.

At the end of the day, as several Asian intelligence experts have noted to me, no nation or firm, especially one based on pragmatism, would excessively engage in acts that would do irreparable harm to its larger and more important circle of business or international relations. This is a little-understood "self-policing" side to the Chinese use of "guanxi"--or the careful conduct of human relations--which has been so villified in the current "Donorgate" scandal in the US.

From an "Asian" standpoint, it is just a long way of saying that Asia is no more a threat to the global marketplace and international security than the West already is.

Among Asian nations, there is also a cynical view of western legal concepts such as "intellectual property rights." A former Thai minister once told me that such "rights" were a throwback to Elizabethan England when rulers sought to cut themselves in on trade in lucrative products by requiring possession of royal licenses and patents.

And it is interesting to note that for all the talk of an "Asian economic challenge" in the US--more than a few Asians see in the West's defense of "intellectual property rights" a strategy to protect its technological superiority over Asia.

According to some Asian executives--the legal issue of who owns an image of Elvis Presley which can be copied from one CD to another and packed in a suitcase bound for Shanghai is the height of absurdity in emerging economies which are more concerned with the pragmatic uses of technology and material goods rather than their legal origins.

Whether such views are influencing the issue of what Asians believe is legal or is not legal in collecting economic intelligence in advanced nations is unclear. But lest anyone criticize this view of intellectual property, I recall that as a public school student in New

York City during the 1950s, I once watched a board of education-approved documentary which extolled Thomas Jefferson for bringing the tomato to America by smuggling the seeds past suspicious border guards on a trip to Italy in the 18th Century. Clearly, one nation's act of economic patriotism--to another--represents the theft of vital trade secrets.

Having said that--there are what I feel are five major cultural criteria to the so-called Asian approach to intelligence collection--which I believe can be applied generally to Asian societies throughout their history.

The approach applies to the collection of all types of intelligence--including, political, military, technological and economic intelligence.

The five cultural criteria are:

1. **The Role of Guanxi or Close Human Relations in Acquiring Economic and Other Intelligence**
2. **A Bureaucratic and Systematic Approach To Knowledge Acquisition**
3. **The Intensive Use Of Human Resources**
4. **The Use of Overseas Population Bases**
- And 5. **The Use of Intermediaries**

I will try to discuss each of these briefly:

1. The Role Of "Guanxi"

Never easy to define in English, "Guanxi" might best be described as the careful conduct and cultivation of human relations--frequently with an eye to economic benefit. Developed in ancient China and adopted by various societies from Japan and South Korea to Southeast Asia, it is an intricate system of social favors which grew out of a tight-knit agricultural society.

In this respect, guanxi's boundaries are limitless--it ensures not only personal survival--but it is also the road to power and wealth. The relations involved run the gamut from school and marriage ties to memberships in guilds and secret society organizations. It can be the source of the hot business tip--or the

inside track to a business contract. Guanxi can also be passed from generation to generation of the same family.

For our purposes, it is important to note that "guanxi" as practiced in China and all overseas Chinese communities is the most widely-used and reliable source of economic, business and political intelligence in Asia today. As such, it forms an informal information network which runs parallel to official channels and can be used to verify data issued by governments or major events reported in the world press.

Because of its informal and "invisible" nature--"guanxi" doesn't inherently involve "breaking the law" because it relies on information, which, in an Asian sense, doesn't exist or wasn't officially given. Indeed, there is a tendency in Asia to

This contrasts with written or printed data or records--which have a formal--and--hence--legal aura.

Hence, an Asian businessman with good "guanxi" could use this to informally elicit sensitive information from government bureaucrats, military and even rival companies--assuming proper discretion or "silence" is observed.

Take the theoretical case of an engineer from an Asian country who was born in the same hometown as a close friend who later becomes a military officer in charge of one of his country's strategic weapons programs. The engineer later emigrates to the US and is hired to do sensitive work for a US defense contractor. One cannot assume in such cases that sensitive information would be passed between the two if they met. But under "guanxi"--it would be almost impossible to prove if it was--without major evidence or a "leak" in the case.

Such a concept would be unacceptable in a western society which prosecutes individuals for insider trading--though many government officials, businessmen and journalists in the West use the same approach under different pretenses--but for essentially the same purpose.

The difference in Asian society, however, is that such informal channels are not only acceptable--they are the norm. It is also safe to assume that where economic intelligence on foreign countries is concerned--a great deal of data is being obtained in this fashion.

2. A Bureaucratic and Systematic Approach to Knowledge Acquisition

Both Japan and China have strong bureaucratic biases in their cultures dating back to the great imperial governments of ancient China. In the case of India, Pakistan and the Commonwealth nations,

Commonwealth nations in Asia today have intelligence departments which are little changed from the days of the communist insurgency in Malaya or the days of the British Raj in India--though some have improved on the British system.

This bureaucratic tendency pervades not only government, where various Asian nations maintain state-run intelligence departments in the military or civilian sector--but also companies where some have recently begun to develop private intelligence capabilities--though the use of such services varies widely.

But while bureaucracy brings organizational power and centralized information to the intelligence process, its obvious drawback is a certain slowness in exploiting the information obtained.

3. The Intensive Use Of Human Resources:

The manner in which Asian intelligence organizations have operated in the modern era is part of a larger Asian quest for knowledge which was dictated by historical necessity.

From an Asian view, the relentless manner with which Asia acquired learning from the West over the last two centuries was a response to fears of imperialist domination.

A key preoccupation of Chinese and Japanese reformers during the 19th Century, for instance, was in acquiring Western military technology. The high-degree of social organization employed in assimilating such knowledge--which spilled over into the modern

approach to intelligence work used by China and Japan--reflected cultures which historically have favored the intensive use of human assets in response to challenges such as overpopulation and the scarcity of natural resources.

While the technological gap between the West and Asia remained large, such Asian traits were not especially troublesome to advanced nations such as the US. But at a time of intense economic competition with countries like China and Japan, the US cannot afford to be so complacent.

Asian ability to tap extensive human assets in the collection of economic intelligence, however, should not be over-estimated. As my colleague--investigative reporter David E. Kaplan--recently stressed--it can be an extremely inefficient and tedious system of amassing information. It is as inefficient as the tendency for bureaucratic processing of information in communist societies like China and civil service-dominated societies like Japan is slow.

There are different variations on the following joke--but one version of it goes that where the Soviets might send a single agent to collect ten pieces of information--the Chinese might send ten thousand people to gather ten thousand pieces of information.

But all of this is less humorous with the advent of computer technology. One long-term question is whether Asian societies will be better at sniffing-out foreign economic, trade and military secrets by blending the new technologies of the Information Age with what the Japanese call "*ningen kankei*" and the Chinese call "*guanxi*"--the collection of intelligence through the deft use of human relations. Ten thousand Chinese armed with computers are certainly more formidable on the Internet than ten thousand Chinese armed with pencils and paper.

This brings us to a fourth aspect of the Asian approach to intelligence which is:

4. The Use of Overseas Population Bases

Communities of overseas nationals have been an integral part in acquiring knowledge about foreign lands for all Asian nations. China has used its overseas communities for this purpose since the Sung Dynasty of the 11th Century. In the US, the phenomenon has

reflected in the large communities of Japanese, South Korean, Indian, Pakistani and Southeast Asian businessmen who have set-up shop since World War II.

In most cases, these business communities have been augmented by large numbers of students, technicians and other professionals who have come to the West to receive advanced training. Where ties with home are strong--such individuals are natural sources of various kinds of "intelligence" in the nations where they reside.

But it would be a mistake to typify such communities as automatic springboards for the collection of economic intelligence on foreign countries.

In China's case, its overseas communities--despite long and intricate ties with the motherland--have traditionally been in tension or hostile to the centers of authority in Beijing. This has tended to be the case whether the rulers in Beijing were Manchus, Nationalist Chinese, Chinese communists or more recent "capitalist roaders."

Overseas Chinese guilds, benevolent societies, tongs, triads and "hometown" associations which permitted countless generations of Overseas Chinese to conceal hundreds of billions in personal wealth from the centers of government power in Beijing.

Hence, the Overseas Chinese are far from a rubber stamp for Chinese espionage directed against the United States, as some US experts have suggested. The relationships between these communities and the mainland have always been complex and are always in a state of flux.

While the existence of so many Chinese communities abroad affords the Beijing government with ready access to nations like the US--the sword is double-edged--they can just as easily serve as a base for foreign espionage activities against China.

Beijing is also aware that while many overseas Chinese have strong sentimental attachments to their ancestral hometowns and provinces and even the romantic concept of a "Chinese motherland"--this does not translate into automatic loyalty to any government which holds sway in the Chinese capital.

Ever aware of this problem, both the Chinese government and Chinese companies have developed an elaborate screening system to keep Overseas Chinese of suspect allegiance from gaining too much access to the corridors of economic, political and military power in China. Overseas Chinese from Hong Kong, Singapore or the US would each be scrutinized differently based on their points of origin, for example, in addition to their specific individual political pedigrees.

Japan was quick to adopt the Chinese tactic of using colonies of Japanese immigrants as a ready means of collecting information on foreign countries from about 1868 onwards. Such networks, where appropriate, also melded with Chinese and other secret societies in Northeast Asia--such that the Japanese were able to turn their intelligence to good effect against Tsarist Russia during the Russo-Japanese War of 1904-1905.

This accounts for the well-worn stories of "Japanese barbers" who set-up shop in places like the British fortress of Singapore and later emerged wearing the uniforms of Japanese Kempeitai or secret police officers after the city fell to General Yamashita's troops in 1942.

5. The Use of Intermediaries

The use of so-called "secret societies" in both war and peace by China and Japan has been well-documented in specialist and popular literature.

In both China and Japan this approach led to preference for intelligence work to be carried out by private individuals and groups loosely allied with the government in the same way as Elizabethan rulers contracted with "privateers" to make raids on Spanish shipping.

While the tactic has echoes in medieval and modern European history-- the difference is that China, Japan and other Asian nations have customarily used informal intelligence entities to a greater degree to support their formal government intelligence activities through modern times.

On its negative side, however, Asian use of the "secret society" has helped to fan western stereotypes of the "Conspiratorial Oriental."

of operating in a "visible world." The visible world in strongly Chinese-influenced societies like Japan and Korea requires people to maintain a proverbial "thick face and black or impenetrable heart". But "invisibility" is a form of power and freedom which can help dissolve the boundaries between governments, national financial

and the Manchus.

As human networks, such groups have always been used to collect intelligence of all sorts. This tendency is underscored by the fact that many Asian secret societies had political origins. In China

and the Manchus.

Chinese secret societies were tapped by nationalist leaders such as Dr. Sun Yat Sen in toppling Manchu rule in China at the turn of the century and were instrumental in securing both cash and arms for Sun's use. On the Korean side, similar use was made of such societies by South Korean nationalist leader Sygman Rhee--attesting to the transnational Asian character of such groups.

Japan, through its early contacts with Korea and China, and later--during an intense period of westernization and imperialist competition in Asia during the 19th and early 20th centuries--adopted the Chinese "secret society" model. This gave rise--in the later part of the 19th Century to so-called ultra-nationalist organizations such as the Black Dragon and Amur River society run by persons with close ties to the government--who were dedicated to furthering Japan's ambitions on the Asian continent.

Japan's extensive use of secret society networks in Manchuria and China through 1945, however, should not blind anyone to the fact that vast changes have taken place in Japanese society since the end of World War II. Only remnants of these pre-war Japanese patriotic societies remain, and while some continue to maintain ties

with certain conservative Japanese politicians--their once intimate association with the Japanese government has largely vanished.

But while Japan's pre-war intelligence network no longer exists, new intermediaries have taken its place. The country has managed to muddle through since the end of World War II without a formal state espionage apparatus because of the inherent ability of overseas Japanese companies and trade organizations to serve as informal intelligence gathering outposts--taking over a job that was performed by pre-war Japanese intelligence organizations.

There is also a larger truth here. Speculation about the "economic intelligence" role being played by Japanese firms and

Fierce social and economic competition within Japanese society for the best schools, jobs and living spaces--modern day manifestations of the historical and cultural factors earlier discussed, have led to the creation of a knowledge-based society--in which information is the key to having the upper hand in both personal and corporate life.

In this vein, it's possible many "conspiracy theories" about Japanese businessmen in the US have no basis in fact--but merely reflect a basic American misconception about the way Japanese conduct themselves in any competitive business situation.

I'd like to turn now to some specific countries. Unfortunately, I won't have time to detail all the approaches to economic intelligence used by all nations in the Asia-Pacific region. Much can be said about Taiwan, Singapore and South Korea as well as India and Pakistan in this regard.

But because of the time constraint, I will have to limit myself to some general notes I've written up on two major players in the region--China and Japan.

B. China

Chinese and US sources confirm that economic and technological intelligence-gathering in the US is China's number one priority. The intensity of these efforts--directed increasingly at US

technology companies--arguably exceeds that of Chinese intelligence activities in Japan, where amassing "political" data regarding Japan's intentions toward China remains Beijing's paramount concern because of China's long and sometimes hostile relations with her next-door neighbor.

Such activities in the US, however, did not begin in the lead-up to the 1996 presidential election. China, in fact, has been steadily increasing its economic intelligence activities in the US since the normalization of bilateral relations 25 years ago.

One irony behind the current "Donorgate" scandal involving former US Commerce official John Huang--is that the affair may have been an unrelated incident which called attention to existing intelligence operations in the US which the Chinese were trying to conceal.

hysteria in the United States will be much worse in five to ten years as China emerges as a more serious contender to the US. This political atmosphere will make it harder for Beijing to access US technology through legal joint ventures with US firms.

From the Chinese side, the view is also that China must learn as much as possible, and as quickly as possible, about the new technologies, lest its military be left light years behind in a future war.

Intelligence Committee in the 1970s, which first exposed the National Security Agency as a vast Cold War listening post which routinely

This contrasts sharply with Japanese trading companies who have used their vast global communications networks since the end of World War II to channel pertinent business and political data collected overseas both to the government and other Japanese companies.

Major Japanese trade organizations and Japanese companies abroad have networks in which business and other information gleaned from foreign newspapers and other "open" sources are routinely distributed through knowledge "dissemination trees". Each entity collecting the material, whether in the government or private sector, distributes the data to at least 60 other organizations throughout the country.

Western nations which boast greater regard for individualism and so-called "open" market competition, may find just one more Japanese "contradiction" in the fact that despite Japan's reputation for fierce bureaucratic and corporate rivalry--that the distribution of economic intelligence in Japan's public and private sector are so well-honed. But this reflects the degree to which the social codes and motivating forces driving Japan differ from those of the US.

Many US embassies overseas now attempt to emulate the Japanese--attempting to "brief" visiting US executives who are engaged in fierce fights for foreign contracts.

But the difference is the degree of "organic" integration with which such information is distributed on the Japanese end. While veteran US diplomats admit that it is questionable if vital economic intelligence would eventually find its way to the right place in Washington's vast policy apparatus, it's less likely pertinent data will be ignored in Japan's case--despite its bureaucratic tendencies.

A great deal of purely "economic intelligence" can be passed with reasonable speed to the cabinet level, as my own discussions with senior Japanese bureaucrats and ministers often show.

Similarly, Japanese businessmen excel in collecting legal "intelligence" as part of their normal routine of visiting foreign countries. Back in the 1950s and early 1960s, before Japan was considered a serious threat to the US, large numbers of Japanese executives were welcomed at companies such as General Electric and Parker Pen, where they were generously taken on tours of US headquarters and plants.

The Japanese, using astute powers of observation as befits a nation with a legacy of learning from the West, often emerged with

details on key manufacturing processes and were provided with industrial samples by their US hosts.

They were able to glean more about the distribution and marketing of these products by dropping in on US stores as ordinary customers.

The on-site visits helped to prepare the way for a wave of Japanese consumer products which later reached the US market, often as imitations of or refinements of existing US goods.

A frequent complaint by Taiwanese, South Korean and other Asian businessmen these days is that Japanese manufacturers hesitate to give tours of their factory floors or divulge much about their manufacturing processes to outsiders.

Mindful of the value of such visits, the Japanese do not want the tactic turned against them.

V. Conclusion

I fear I'm out of time and would like to quickly end what I have to say with a look at the future.

I believe, the entire issue of what Asians perceive as legal or not legal in economic intelligence collection will be greatly affected by events which are taking place in Asia right now.

One of them is far-reaching efforts at legal reform which are now underway in China. Having an internationally-accepted body of laws which protects and encourages foreign investment and helps China gain membership in international organizations like the WTO, may, in the long-run, will tend to discourage incidents where the laws of other nations are broken in gathering economic intelligence.

China, in many ways, is struggling with a post-Cold War syndrome of its own--making a transition from a set of fossilized and repressive legal codes fashioned during the Mao-era--to one which is more consistent with international law.

If these efforts succeed, the emergence of new legal mechanisms of accountability and due process--hopefully--will make

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Any examples set by the US in the economic intelligence arena will also be critical in the next century--as Asian nations such as China and Japan are likely to follow what they believe is the norm in collecting economic intelligence.

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