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Date: 2017

PRO GRADU THESIS

**Protecting the Right to Know in Japan:  
Social Advocacy versus the Special Secrecy Law**

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KUZINA, VIKTORIYA: Protecting the Right to Know in Japan: Social Advocacy versus the Special Secrecy Law.

Pro Gradu Thesis, 74 p., graphs 6, table 1, map 1, appendix 1  
East Asian Studies  
May 2017

Present research deals with the civil society and social advocacy in contemporary Japan. The purpose of this work is to establish the ability of the civil society groups to influence the governmental policymaking by tracking the activities of an NGO network in its resistance towards the Special Secrecy Law in a case study, which acts as a mean to examine the process of influencing.

The ability to influence is measured through a scale of strictly defined factors, such as ability to draw attention of the mass media to the problem, ability to influence the opinion polls, etc. Given thesis utilizes discourse analysis of quantitative and qualitative archival materials of the chosen NGO network and five major Japanese newspapers to examine the process and means of influencing the policymaking by studying the NGO network's activities and their outcomes, and measuring those to the set of measuring factors.

The study have found out that despite the vast grassroots support and increasing professional assistance within the civil society, the social advocacy in Japan has no influence on the governmental policymaking. Nevertheless, it has the ways to communicate the information down towards the citizens as well as communicate its concerns up to the state very clearly by maintaining a lot of channels. The NGO network does not have much back-up from non-Japanese actors, but it has a solid local support within the country.

When the attempt of the NGO network to stop the promulgation of the ambiguous and potentially dangerous law failed, the examined NGO network turned to the educational activities aiming spread of information about the law and methods of protection for Japanese NGOs operating outside Japan or working with another entities and individuals outside Japan, which might be influenced by the Special Secrecy Law. Thus, with no power to influence the policymaking, civil society in Japan has a lot of resources to create awareness and provide assistance in order to limit the impact of the law.

Present research may become of use to those who are interested in changing dynamics of the civil society in East Asian countries and in Japan in particular. The law might also be studied in a context of influencing the foreign policies of Japan, media-scape within the country or probability of changing the Constitution of Japan through adoption of the laws of a similar nature, as for example, the newly suggested Conspiracy law.

Keywords: Japan, civil society, social advocacy, the Special Secrecy Law, the right to know, case study, NGO network

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## 1 INTRODUCTION

Recent years have marked quite intense times for Japan. A number of changes and challenges awaited it on the way out of economic stagnation of 2000s within the country with the falling GDP. Marked by the set of counter measures proposed by the Prime Minister Abe, also known as Abenomics, including the raise of consumption tax, Japan fights its way back to re-establish its strong positions on the international political and business arena. Moreover, there has been an active promotion of women labor force as a rescue root for economy (Womenomics) that marks a possible beginning of shifts in social structure, while the aging tendencies and low birth rates persist. More tension and unrest has been brought into this mixture by the relocation of the Futenma Air Base that was met with resistance among the Okinawa region. And all of this predominantly took and continues to take place against the background of nuclear crisis and uncertainties after the Triple Disaster of 2011. At the same time, engaged in the preparation to the Olympics of 2020, Japan puts much of its efforts to promote its cultural uniqueness and readiness to embrace the world during the event.

In a whirlpool of these events, changes and challenges, there could be no passive spectators, weather we talk about a single individual or society in general. Almost every citizen and resident of Japan has been affected by these changes in a way: some had been physically shaken and moved by the earthquake, tsunami and Fukushima Power Plant reactor meltdown; some faced hardships as the gap between rich and poor in Japan continues to widen; some been shaken by changing policies. The list can go on. However, the important thing to understand is that at this very moment Japan is in a transition. And this transition will require lots of reorganization on every level, including adjustments in policies too. And it is the policy-making and influence on it from the civil society that has caught the interest of many researches.

Among the moves that Prime Minister Abe thought to be useful to Japanese society sits also a “proactive pacifism” appealing to collective self defense, and it calls for drastic changes – changes in the Constitution’s Article 9 considered by many to be a warranty or a peaceful life. Such a move will require enormous preparations and reorganizations. However, it does not mean that they may not take place at all, since Japanese government is working its way step-by-step by developing new policies, which could back up decisions as drastic as changing the Constitution.

Not so often policymaking becomes a center of attention of the ordinary citizens, but when it does, it highlights a number of issues both within the government and society alike, as well as provides researchers with the excellent opportunity to study such changes along with society-state dynamics and interconnection. This research, in particular, deals with a new law that can potentially become a stepping stone to the major legal changes in Japan, if not in some way influenced by non-governmental actors. And this thesis is meant to find out whether civil society in Japan is capable of influencing the policymaking.

Starting from around August-September 2013 the topic of the proposed Special Secrecy Law, or Act<sup>1</sup>, has been popping up in the headlines of the biggest Japanese newspapers. Simultaneously, Japan witnessed the massive wave of protests within the country and a rather harsh critic of the law from numerous foreign media, and most importantly from human right organizations. The proposal was able to make into a fully functional legal act already on 13<sup>th</sup> of December 2013. The process of drafting, submitting and promulgation of the Act on the Protection of Specially Designated Secrets<sup>2</sup> commonly referred to by the short title of the Special Secrecy Law<sup>3</sup>, only took mere four months after its draft was first revealed to the general publicity. Bringing the law to life involved Abe Cabinet, newly formed National Security Council and National Diet, and had been promulgated by the National Diet under number 108. The Law came into force one year later, on the 10<sup>th</sup> of December 2014.<sup>4</sup> According to this law, four types of information now comprise a body of state secrets inaccessible for anyone outside the government. In some cases it is inaccessible to public servants even within the government, unless they have direct relation to specified secret sphere. These spheres are: defense, foreign affairs, prevention of designated harmful activities (meaning counterintelligence), and prevention of terrorism.

Ever since draft of the Act on Protection of Specified Secrets has been submitted for approval to the National Diet, it has become one of the central topics for discussion. These topics will be closely examined later in this thesis. But to give a general insight to the scale of these issues, it is worth mentioning already here, that they have to do with both with

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<sup>1</sup>特定秘密保護法案, *tokutei himitsu hogohouan*

<sup>2</sup> 特定秘密の保護に関する法律, *tokutei himitsu no hogo ni kansuru houritsu*, also available in English (*Act on the Protection of Specially Designated Secrets*)

<sup>3</sup>特定秘密保護法, *tokutei himitsu hogohou*

<sup>4</sup>特定秘密の保護に関する法律施行令, *tokutei himitsu no hogo ni kansuru houritsu shikōrei*, also available in English (*Order for Enforcement of the Act on the Protection of Specially Designated Secrets*)

increasing state control that threatens to negatively impact individual human rights. Professionals in legal sphere, researchers and ordinary citizens have questioned necessity of this law for the Japanese society, hastiness and sudden urge for the fastest possible approval, as well as expressed a lot of doubts about the true purpose of the law. With several other laws regulating information protection and disclosure in many areas at place, the Special Secrecy Act adds almost nothing from the procedural point of view, duplicates many of existing regulations, and creates a lot of acute legal issues.

First of all, ambiguous wording makes it hard to determine the real scope of the Special Secrecy Law application. In fact, its usage may be easily justified in a very broad spectrum of cases and in regard to quite numerous material and non-material objects. Combined with equally vague time limits set for designating information as secret and unclear terms of prolongation, it seems that certain types of information may be forever buried in the archives, allowing to erase and manipulate historical facts and to hide “uncomfortable” governmental decisions and actions. Critics in form of numerous citizens’ and professional groups (such as Japanese Federation of Bar Associations<sup>5</sup>, the Japan Civil Liberties Union<sup>6</sup> and many more other smaller organizations) have expressed fears that the Special Secrecy Law along with other documents on information management, disclosure, and access can be used to cover up specific events or facts that may harm the image of the Japanese government within the country and on the international arena. For example, it can be used to prevent the spread of information regarding Fukushima nuclear plant disaster after 11<sup>th</sup> of March 2011, Japan Self-Defense Forces, Marine Air Station Futenma, cover up financial manipulations within government and so forth. (Repeta; McCurry)

Such state of things may pose possible restrictions on free collection, transfer and interpretation of information for journalists, media and common citizens in general, as well as damage the possibility to conduct free research. In other words, the Special Secrecy Law may impair the right to know<sup>7</sup>, which grants freedom of such activities, and which is closely related to freedom speech and press guaranteed by Chapter III of the Article 21 of the Constitution of Japan<sup>8</sup>. The exact definition of this term and explanation of how it is

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<sup>5</sup>日本弁護士連合会, *nihon bengoshi rengōkai*

<sup>6</sup>自由人権協会, *jiyuu jinken jyouka*

<sup>7</sup>知る権利, *shiru kenri*

<sup>8</sup>日本国憲法, *nihonkoku kenpou*, also available in English (see “The Constitution of Japan”)

different from the “freedom of speech” and other related terms will be provided below in methodological chapter two.

Other issues also involve problems of limiting the circle of people who will be making decisions about adding new items to the list of special secrets and have the access to classified information later on. Moreover, there is a huge black hole where the controlling body for designation of special secrets should be, despite formally present Boards of Oversight and Review of Specially Designated Secrets of both Houses. Such situation allows to suggest that Japanese government is concentrating power in hands of the Prime Minister and the Cabinet. Not only this law closes the access to information about individuals in governmental registration systems by their own will, this law also severely punishes anyone for obtaining designated classified information, even by accident. At the same time the law may grant government the right to obtain any kind of personal information about any citizen through “My Number” personal ID number system.

Due to the listed uncertainties, this Law set a crack in public opinion. While supporters of the Law cite the governmental comments on the necessity of the Law to protect Japan in an environment of raising tensions with China, North Korea and international terrorist organizations, the opponents of the law address all of the abovementioned problems which the Law has created. Thus, this research will deal with the opposition to the Special Secrecy Law, or better say the influence of the civil society on the governmental policymaking as will be shown in the case study of the NGO network in chapter four of this research. However before going analysis of the NGO network activities, chapter two will guide you through the methodological framework of this study, while chapter three will in detail discuss issues with the Special Secrecy Law mentioned in the introduction.

## Notes

### *Translation*

Given thesis deals with the analysis of legal acts and official documents. Most of the material for analysis was initially gathered and analyzed in Japanese language and the relevant original document can be found through the search engine of the official electronic database of governmental documents.<sup>9</sup> To make the material easily understandable to those who are not proficient in Japanese Language, this work provides the English versions of relevant legal translations into English. Those are taken from the English-language database created by the Ministry of Justice in Japan<sup>10</sup>. Please note, that only the Japanese language version have legal power, while English language versions are used solely to facilitate understanding. Any translation of Japanese laws shall be deemed taken from the abovementioned website if not otherwise mentioned in the body of this research.

As for other materials, some translation has been done by the authors of referred article themselves or by trusted specialist. When citing from such material, the translation shall be deemed as done by the article's author or translator mentioned in the bibliography if not otherwise stated. Due to unavailability of some materials in English language, translations have been also done by the author of this thesis. If there are no clear indication to the source and official translator or author, translations shall be deemed done by the author of this thesis.

### *Romanization*

Some of the key concepts are mentioned in the footnotes in Japanese accompanied by the traditional Hepburn romanization. It has been done to deepen the understanding of the issue by providing the concepts and terms in original language for Japanese-speakers, as well as and to help non-Japanese speakers to navigate databases in both languages should they find interest in further research in the same or related areas.

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<sup>9</sup> 電子政府の総合窓口, *denshi seifu no sougou madoguchi* (see more at <http://law.e-gov.go.jp/cgi-bin/idxsearch.cgi>)

<sup>10</sup> See more at <http://www.japaneselawtranslation.go.jp/>

### *Names*

The name order in this work follows the “given name, family name” pattern. However, Japanese names will follow Japanese tradition where the family name comes before the given name. For example, Lawrence Repeta, but Usaki (family name) Masahiro (given name).

### *Abbreviations*

The Special Secrecy Law has been mentioned under varying different names in different media because of the differences in translation. One may find it under Special Secrecy Act, Designated Secret Bill, and many other variations. In order to avoid misunderstanding, this thesis will refer to the law before promulgation as the Special Secrecy Law draft<sup>11</sup>, and after promulgation - the Special Secrecy Law<sup>12</sup>.

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<sup>11</sup> 特定秘密保護法案, *tokutei himitsu hogohouan*

<sup>12</sup> 特定秘密保護法, *tokutei himitsu hogohouan*

## **2 METHODOLOGY**

This chapter is dedicated to methodological issues of the current research. It lays down aim and research questions, as well as provides definitions of the key concepts that are repeatedly used in this study. It will guide you through the previous works in the field of social advocacy in Japan, show which niche this study occupies among other works of the similar nature and how it adds to the general body of knowledge. This chapter also explains which methods and sources were used to conduct the research and derive all the necessary data in order to carry out analysis and draw conclusions laid out in chapter five.

### **2.1 Aim and research questions**

The Special Secrecy Law has created a vast pool of problems to look into and provided for a lot of research materials and possible focuses and approaches. It is one of the major legal issues in Japan today, it has to do with the human rights, it provides a glimpse on where Japanese policymaking might be heading. But despite the heavy emphasis on legislation, current research looks into the social aspect of the situation. Namely, into the civil society and social advocacy and its capabilities.

Partially this thesis will touch upon the debates around the Law, the pro and con stand, as well as the legal issues it created. However, the main goal of this thesis is to find out whether civil society and social advocacy in Japan are able to influence governmental policymaking regarding the Special Secrecy Law. Thus, this thesis looks at the macro-level, even though discussions of the Japanese civil society mostly revolve around the grassroots activities as will be explained below.

The unrests around this controversial Law provided researchers with the excellent opportunity to do so with the freshest materials. Moreover, the contradictory conclusion of the numerous works written about the social advocacy in Japan created a fruitful soil to go into this research. Thus, by utilizing previous works on civil society and advocacy in Japan, details on which can be found in the next subchapter, and the freshest material regarding the Law itself, this work strives to analyze Japanese social advocacy in a different time span to track its development within the past decade.

However, in order to answer the main question about possibility of influence, it is necessary to understand the structure and peculiarities of the civil society in Japan, what methods it uses, and what are the outcomes of its activity so far with regard to the Special

Secrecy Law. This work will clarify how the Law came into being, what it is about, what issues it has brought up. Knowing this, it is easier to understand what kind of social activity it has triggered in response. When analyzing social advocacy, I want to see what tools have society used, why those tools have been or have not been effective in influencing governmental policy making, and what other factors have affected the outcome of these activities.

## **2.2 Theoretical framework and definitions**

This research is based on previous work on civil society in Japan by numerous authors who have provided different definitions to “civil society” in Japan, has researched it on different levels and in different spheres. Most of these previous works deal with the post-war Japan and has been published in early 2000s. This research will utilize some of their concepts and findings to establish a research framework and set limitations to it.

However, before we proceed with analysis, it is necessary to set several definitions that will be frequently used in this research. For the reason that these definitions are rather heavily loaded with meaning due to the long history of their development, passages below will establish frames for these terms in order to avoid misunderstanding and double readings on the later stages. It is also important to understand that despite relevantly the same terminology and vocabulary for description of social structures and activities, there are different connotations to some words in Japanese and English languages.

### Civil society and civil society groups

When it comes to civil society, there is a massive block of research dealing with the topic and setting the definitions for what is civil society, what actors it includes, and what spheres or niches it occupies. They may vary depending on whether we are talking about civil society in highly theoretical manner or whether we are speaking about a specific country or certain sector (e.g. environmental groups, neighborhood associations, etc.). In “Civil Society in Asia” Wayne Hudson and David Schak write that no single concept of civil society exists in European theory, and there is no consensus on what it is or how it is to be derived. (Schak and Hudson 2003, 9, 14) They also note that it is possible that “no clear model of civil society in Asia has emerged”. (Schak and Hudson 2003, 2) This point of view is shared by other researchers too. In the same manner Weller writes that the

“analysis of Asian civil society is still in a relatively early phase of articulation and is vibrant rather than precise” and that there is “no easy translation of European cases to Asian”. (Weller 2005, 2) Hudson also notes that contemporary civil society is often “confused with arrangements that initiate, enable or protect democracy, including the rule of law, freedom of the press, speech [...] even though some of these arrangements could be put in place without establishing civil society.” Moreover, in his opinion it is not clear whether civil society in Japan is a distinct sphere. (Schak and Hudson 2003, 15)

In “Japan’s Dual Civil Society” Robert Pekkanen suggests three concepts of civil society and state relations based on previous research by Salomon, Smith and Lipsky, and Putnam. Namely, civil society can be in place of the state, it can be an independent sector, or a source of social capital and civic engagement. Pekkanen also notes that “nothing is more central to the development of civil society than the framework of order provided by the state” when he writes about social advocacy in Japan (Pekkanen 2006, 6). Thus, in his view civil society in Japan incorporates features of the second and the third concept.

The same idea can be found in the introduction to the “Civil Society and Political Change in Asia” by Muthiah Alagappa, who addresses the liberal-democracy school approach that “conceives of civil society and its institutions in instruments terms vis-à-vis the state [...] and not as a distinct site for governance or reform that is independent of state”. In other words, such system of cooperation would limit but not overthrow party-state control. Alagappa defined civil society as a “distinct public sphere of organization, communication and reflective discourse, and governance among individuals and groups that take collective action to influence the state and its policies but not capture state power, and whose activities are not motivated by profit”.(Alagappa 2004, 15) This approach is shared by Schak too, who quotes Huang and Chamberlain stating that “some Asianists see civil society in Asia as a zone of interaction, cooperation and compromise, where there is tension between state and society but where they also meet”. (Schak and Hudson 2003, 2)

In the same way, Isa Duce in “Civil Society and Internet in Japan” states that civil society can be seen as a part of a state or a counterweight to it. (Duce 2007, 6) She also addresses the issues of defining civil society in general, and in Japan in particular, in terms of what kind of actors it should include, which forms of organization, which public sectors, etc. She derives definition from several previous definitions of Kaldor, Habermas, Gellner and Edwards in order to describe activities of civil groups in Japan. According to Duce, civil society is “the arena in which group actors that are distinct from the state institutions

and economic corporations participate in the public discourse about political and societal issues.” (Ducke 2007, 7) She states that civil society and its actors are “freely formed associations and institutions but do not need to have a legal organizational status”.

There are several ways in which people organize themselves for a certain type of activities. Sometimes we may even speak about a single individual as the part of civil society. For example, the largest anti-smoking NPO “TOPIC” in Japan is ran by Bungaku Watanabe alone<sup>13</sup>. However, the most common forms are non-profit organizations (NPOs) or non-governmental organizations (NGO) comprising of several members. Depending on the type of membership or the area of coverage we may speak about citizen’s groups, movements or the whole networks and the like. (Ducke 2007, 8)

In this research I focus on the NGO network as a civil society group actor in a case study. For this reason it is necessary to understand what civil society groups and NGOs in Japan are like. Shinichi Shigetomi argues that the archetypal NGO should have six attributes to be defined as such: nongovernmental, non-profit-making, voluntary, of a solid and continuing form, altruistic, and philanthropic. (Shigetomi 2002, 6) Nevertheless, he also underlines that in reality NGO may not comply with all six requirements. The set of these properties vary from situation to situation and from country to country. According to Pekkanen, civil society groups may be characterized by even lesser number of properties: organized, non-state, nonmarket sector. This definition includes all types of voluntary groups that may be larger in a scope. (Pekkanen 2006, 3-4) Moreover, Ducke also pinpoints that actors of civil society may see their activities as beneficial for all, even if they are not completely altruistic in nature or welfare related. (Ducke 2007, 8) It means that we may exclude requirements of being altruistic and philanthropic when analyzing civil society groups.

Thus, by brushing off requirements that only sometimes appear as compulsory or not appear at all, it is possible to refine the definition of a civil society group. Subsequently, in this research civil society and a civil society group will be seen as an entity that belong to a non-governmental sector; is voluntary, organized, and continuous in its nature; and may be beneficial for all, yet still may be seeking profits through its activities; with respect to the form of organization which such group have opted to (e.g. NGO, network, etc.) To

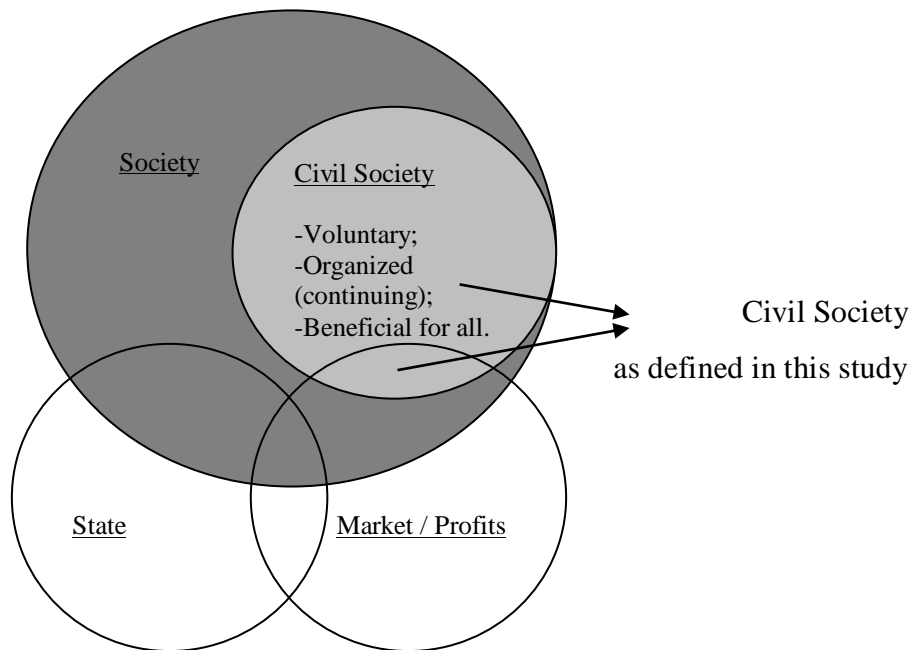
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<sup>13</sup>タバコ問題情報センター, *tabako mondai jouhou sentaa* (see more at <http://www.tbopic.org/>)

facilitate the understanding of this concept and definition, please see the table 1 and a visualization graph 1 below.

	Shigetomi	Pekkanen	Ducke
Non-state	✓	✓	✓
Non-profit	✓	✓	✗
Voluntary	✓	N/A	✓
Organized	✓	✓	✓
Altruistic	✓	N/A	N/A
Philanthropic	✓	N/A	N/A
✓ – mentioned as compulsory requirement ✗ – mentioned as not compulsory requirement N/A – not mentioned			

**Table 1.** Requirements of a civil society as defined by Shigetomi, Pekkanen, and Ducke.



**Graph 1.** Defining civil society and civil society group in this research.

Given research will focus on influence of a chosen NGO network on policymaking through the study of network's activities. In particular, this research will take a deeper look at work of the Japan NGO Action Network on the Secrecy Law (hereinafter referred to as

NANSL)<sup>14</sup>. This is, in a nutshell, an NGO comprising of other NGOs which was formed specifically to spread the information about the Law, oversee its promulgation, and provide assistance to other NGOs that might be damaged by the Law as their website states. More in-depth information on the NANSL aims, structure and activities will be provided in the case study in chapter four.

There are several reasons to why this NGO had been chosen for the case study. First of all, despite existence of other organizations that touched upon the Law and related issues, only NANSL focuses on the Law entirely. For example, such organizations as Civic Center for Information Disclosure<sup>15</sup> devote rather significant part of their activities to deal with the Secrecy Law too. However, the Law itself has never been their main focus. The reason they work with the Special Secrecy Law issues is that it falls within the sphere of their activities. The Civic Center for Information Disclosure has been operating for more than 16 years now since its establishment in 2001, long before the Secrecy Law has been thought, and before Prime Minister Abe's first term (see subchapter about chronology of promulgation and reasoning in chapter two). It is logical that the issue of infringement of the right to know relates to the information disclosure field, and thus cannot be dismissed by this organization, but there are other issues that the organization works with. For example, it addresses the newly proposed and debatable Conspiracy Law<sup>16</sup> (BRASOR). However, the main aim of this Center is the provision of relevant and useful information on laws and legal issues related to information disclosure in general.

Secondly, NANSL is an NGO that covers a lot of territory, and thus population, unlike many other civil society groups working in the same direction. There is, for instance, the Ibaraki Network requiring cancellation of the Special Secrecy Law<sup>17</sup>. Stop Special Secrecy Law Network of Miyagi<sup>18</sup> is also devoting its activities mainly to the issues of the Law. Yet their presence is within the set prefecture, while the Miyagi NPO started to also work with the upcoming law to address conspiracy. Thirdly, time-wise NANSL's

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<sup>14</sup> 秘密保護法 NGO アクションネットワーク, *himitsu hogohou NGO akushon nettowaaku* (see more at <http://nansl.org/index.html>)

<sup>15</sup> 情報公開市民センター, *jouhou koukai shimin sentaa* (see more at <http://www.jkcc.gr.jp/>)

<sup>16</sup> 共謀法, *kyoubouhou*

<sup>17</sup> 秘密保護法の廃止を求めるネットワークいばらき, *himitsu hogohou no haishi wo mitomeru nettowaaku Ibaraki* (see more at <https://himitsu-iyayo-ibarakinet.jimdo.com/>)

<sup>18</sup> STOP! 秘密保護法ネットワーク宮城, *Stop! Himitsu hogohou nettowaaku Miyagi* (see more at [https://blogs.yahoo.co.jp/m\\_h\\_network](https://blogs.yahoo.co.jp/m_h_network))

formation and activities coincides with the timeline of coming into being for the Law. Combining the factors of NANSL's focus and presence given NGO network is a perfect subject for research as it allows to look at the correlations and connections in between changes in the legislation and the network activities.

### Social advocacy from local and global perspective

There is one more thing that one should consider when talking about the civil society. That is, whether civil society will be studied from local or global perspective. Due to difficulties of deriving uniform definition and models for civil society in Asia as a result of its vast diversity from country to country, as well as differences in political structures, it is understandable why such researchers as Hasegawa in "Constructing Civil Society in Japan", above mentioned Isa Duce, Ross Mauer and Yoshio Sugimoto in a chapter on Japan in "Civil Society in Asia", and Pekkanen are concentrating on Japanese civil society from a local perspective. Each of them takes their niche and works with social society and advocacy in one chosen direction: Hasegawa with environmental movements, Duce with the Internet, Mauer and Sugimoto with historical perspective to civil society in Japan and specific "Japanese understanding" of it (Mauer and Sugimoto 2003, 222), Pekkanen with neighborhood associations.

In this regard the work of Pekkanen is essential to this research as it deals with influence of political institutions on civil society and mechanisms of its regulation. He also rules out a concept that he calls "members without advocates". According to his research, civil society in Japan has a lot of social capital, but in most cases fails to promote its interest to the level where they can influence policymaking and public debates due to lack of professionals in it which can influence the public sphere or policymaking. Author states that only 0,4% of members were professionals as of the time of his research. (Pekkanen 2006, 7-8, 26-27) His main idea is that state shapes civil society and the ways it acts, making it controllable by and cooperative with the government, and not the other way around. That is due to Japan being discouraging towards lobby-type civil society groups. (Pekkanen 2006, 6, 9) Civil initiative may reach somewhere around city level, but will never be strong enough to act on a nation level. (Pekkanen 2006, 98) Nevertheless, he pinpoints that inability to influence state on a higher level is not a sign of weakness of civil society in Japan. Due to its close integrity with society on the grassroots level it is very

solid and may be a very strong instrument. That goes in line with the theory of civil society and state cooperation.

Nevertheless, many authors who write from a local perspective also acknowledge that globalization cannot be disregarded. For example, Mouer and Sugimoto write about globalization as a factor that increased participation and pushed Japan to meet international expectations changing the domestically motivated left-wing advocacy of 1960s. (Mouer and Sugimoto 2003, 212-213) Hasegawa states that “globalization have effectively been unprecedented and continuous assault on the institutional and geographical barriers between nations demolishing obstacles to [...] information communication.” (Hasegawa 2005, 203-204) Robert Weller in an introduction to “Civil Life, Globalization, and Political Change in Asia” pinpoints that appearance of many NGOs denotes “waves of globalization that have swept the world over the time”. (Weller 2005, 12) In this regard, the research by Isa Duce, who studied issues of Japanese-Korean textbooks and mobilization of Japanese troops to Iraq, sheds the light on reaching out to local and global community by means of internet and how it can be used for opposition or cooperation. She also notes that in Japan term NGO is still mainly used for organizations “dealing with the issues on a global scale” as opposed to NPO as domestic organizations. (Duce 2007, 35)

Among works on civil society the research by Jennifer Chan is very important since it provides a totally different insight to civil society in Japan. In an introduction to “Another Japan is Possible” she argues that existing literature fails to notice emergence of Japanese advocacy NGOs and networks. In her opinion, literature on Japanese civil society revolves around arguments that civil society is a part of state; that it is in many ways unable to act as a counterweight. However, Chan also argues that advocacy in Japan has appeared as early as 1975 and became strong particularly since 1990s. (Chan 2008, 8) It is crucial to understand that unlike Pekkanen’s, her studies deal with organizations seeking international cooperation. And in her opinion “when Japanese educational system, media, and electoral politics limit the space for civic participation, NGO networks in Japan go abroad to utilize or create the space they need for solidarity meetings, countersummits, world conferences, art exhibitions, and press conferences”. (Chan 2008, 345) Thus, there is not enough space for it within Japanese civil society, and social movements seek international recognition in order to make an impact. For example, through institutionalization of a UN human rights system, for which she borrows a term of “globalization from below” from Brecher et. al. (Chan 2008, 139)

As it becomes clear from this debate, there are different takes on what are the strengths and weaknesses of Japanese civil society depending on a perspective. Still, even researchers focused on international cooperation of Japanese NGOs pinpoint existing limits to such cooperation. Chan herself writes that “although international and regional networking exists, most networking activities of Japanese advocacy NGOs remain at the national level.” Partially due to lack of resources for network building, issues of funding and staff. (Chan 2008, 40-41) Here we can see interconnection with Pekkenen’s theory about lack of professionalization within Japanese civil society. He argues that while small local groups may stay strong, international organizations face a lot of obstacle. This is the result of legal, regulatory, and financial instruments through which the state powerfully shapes the organization of civil society, creating dual civil society in Japan. (Pekkanen 2006, 7-8) Weller too writes that “NGO movement quite clearly responds to globalization”, but “in no case does globalization appear to have threatened the nation-state itself”. (Weller 2005, 14)

Each of the abovementioned researches was dealing with several entities through the chosen lens. Bringing together all of these organization to be studied from both perspectives is an overwhelming if not impossible. However, this thesis focuses on one NGO network, and thus gives us a choice of looking not from the local or global perspective on NGO network, but the other way around: to see what one NGO network can do on both levels from the perspective of this very NGO network. Thus, this research is concentrating first of all on the social advocacy within the nation-state realm. However, it will not be limited solely by viewpoint. Cooperation across the boundaries is taking place here and now, and cannot be disregarded.

But what is a social advocacy? Mouer and Sugimoto in their study of civil society development in Japan write that during 1960s-early 1970s left-wing intellectuals who argued for strengthening of Japanese civil society were labeled “civil society advocated”<sup>19</sup>. (Schak and Hudson 2003, 211) However there has been a shift to connotation and understanding of social advocacy and advocates since that time. Only two of the authors mentioned in this research have used word “advocacy”. And while Pekkanen in his work speaks about advocacy and advocates he nevertheless provides no definitions for these terms. For this reason, in my research I will use definition, provided by Chan. Advocacy

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<sup>19</sup> 市民主義者, *shimin shugisha*

means “not only the process of using information strategically to change policies, but also the strengthening of structures that foster the empowerment of the disadvantaged”. (Chan 2008, 18) One may consider journalists, scholars and ordinary citizens to comprise a group of disadvantaged negatively influences by the Special Secrecy Law.

### The right to know

While the term “right to know” may be not as familiar as, for example, “the freedom of speech”, it must be noted that the right to know is one of the basic columns that holds the roof of freedom of information by securing people’s right to “freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” as recognized by the Article 19 of the Universal Declaration of Human Rights and a number of other documents. (United Nations)

This definition was clarified by the Special Rapporteur Abid Hussain in a Special Report of 1998 dealing with promotion and protection of the right to freedom of opinion and expression, the freedom of information should be understood as "imposing a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems". The report also states in paragraph 11 of the Section A of Part III that the right for information “is not simply a converse of the right to freedom of opinion and expression but a freedom on its own”. (Hussain 1998, 4)

As it will be obvious from citations in the next sections, after establishing the definition for the freedom of information, this definition may be also applied to “the right to know”, “right to access”, “freedom of speech”, “freedom of expression” and many other terms of a similar nature as they are basically implying the same right for the freedom of information. Thus, hereinafter, when speaking about the right to know, I will refer to the abovementioned definition. Moreover, it is possible to apply this definition both internationally and within Japan, because Japan has signed and ratified the core international legislation on human rights, and the right for freedom of information accordingly. These documents and their interpretations will be explained in the following section.

## Information

The Special Reporter of United Nations, Abid Hussain, in a Report of 2000 on the promotion and protection of the right to freedom of opinion and expression, suggests to define information broadly. We read: “Information includes all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by public body or some other body) and the date of production”. (Hussain 2000, 56) The same applies also to previously classified files. The definition in the Global Principles on National Security and the Right to Information (the Tshwane Principles), “information” means any original or copy of documentary material irrespective of its physical characteristics, and any other tangible or intangible material, regardless of the form or medium in which it is held. It includes, but is not limited to, records, correspondence, facts, opinion, advice, memoranda, data, statistics, books, drawings, plans, maps, diagrams, photographs, audio or visual records, documents, emails, logbooks, samples, models, and data held in any electronic form. (“The Global Principles on National Security and the Right to Information (Tschwane Principles)” 2013, 11)

The later definition provides a little bit more clarity on types and forms of information. Nevertheless, it has no mentioning of sources. The former definition covers sources and forms, but provides very few examples of them. It meters, because in the later parts of this research when dealing with designated secret information, there will be a need to place not-documented verbal statements within the scope of this definition. For that reason I suggest to apply both definitions to an object when defining it as a piece of information. If it complies with both in terms of source, date, form and content, it may be analyzed within the context of disclosure of secret information.

### **2.3 Research structure and approaches**

On a large scale given research comprises of two parts. The first (chapter three) addresses issues of legislation with the Special Secrecy Law and problems it creates within society. Second part (chapter four) is a case study of an NGO network (Japan NGO Action Group on the Secrecy Law) aiming to analyze social advocacy and its influence on policymaking in Japan and its mechanisms: what are exactly those activities that the group performed in order to influence policymaking, and if those activities had an actual impact.

The third chapter will focus more precisely on the Special Secrecy Law itself: reasons for its development and approval, involved actors and their roles, chronology of promulgation, and the issues it brought up. For example, the biggest one is the impairment of the right to know. Not to mention questions regarding a very complicated interconnections with other laws that create a tricky, yet dense, net of protective measure for government and punitive measures against non-governmental actors. Discussion of this issues mostly relates to the situation, its perception, and interpretation within Japan.

However, this research will also include an overview and analysis of existing information about international legislation on freedom of information on one hand, and corresponding legislation in Japan on the other. Understanding of different interpretations of this right will be later incorporated in discussion of issues that followed ratification of the Special Secrecy Law. For example, issues of the vague wording, failure to control the application of this law, threat to the privacy and dangers of being subjected to punishment in accordance with this law when carrying out research or journalistic activities. This interconnection of international and Japanese legislations is crucial for understanding the argumentation of different actors and sides when addressing issues of the right to know as one of the significant human rights.

Here I try to bring numerous voices and concerns of pro and con sides into a structured net. Most of the discussed points exist in tight relation to one another. For that reason their order in this research does not represent their significance on any scale. They are put together in that particular order with the only intention to facilitate perception of the reason-outcome chains. At this stage given thesis relies on such tools as work with the archives: some of the major Japanese newspapers along with their English versions, governmental websites, Japanese Federation of Bar Associations' website, etc (see the primary data sub-chapter); comparison of interpretation of legislative concepts regarding these issues within and outside Japan, as well as comparison of opinions stated in abovementioned sources.

Chapter four is a case study of the target organization. Even though the main research question is framed in a strict “yes or no” manner, one needs to understand the processes that lead to a certain outcome. That is why the case study acts as a method to examine the process of trying to influence policymaking and civil society activism in its regard. Since other methods of studying the influence would require to process way to much quantitative information (for example to have a look at all the NGOs dealing with

the law, or go into a vast examination of archives of many publishers regarding the law, etc. - which would be more suitable for a research group), given research tries to set the limits to how much information can be processed by one person as a researcher and consumed by a single reader, and opts for discourse analysis of the limited amount of data. Thus, using a case study allows to look at the problem through the eyes of one entity, and is both feasible in time and in scope of available information about and from the organization.

This case study aims to find out whether social advocacy in Japan, represented by the target organization, is capable of influencing policymaking related to the Special Secrecy Law or not, and why so. As it was mentioned in the subchapter about the theoretical framework, this work will take a look at NGO network activities on both national and international level. Completion of the case study required, first of all, collection of the basic information about organization: its origins and history, structure, membership, main principles of operations. Second step is to take a look at activities which NGO network performed in order to familiarize ourselves with practices used by organization. Both of these tasks presume work with the archives of the organization and correlating these activities with information found in other sources, e.g. newspaper archives to see if NGO network has an influence.

Influence, its amount and strength is a rather amorphous and vague thing to measure. However, within the academic studies of the Japanese civil society that were mentioned in the previous subchapter there is a method existing to set the measuring points to the vague concept of influence. In order to measure the impact of the civil society's activities or their absence, this thesis will rely on a scale of influence suggested by Forsythe and elaborated into clearer categories later on by Isa Duce in her study of the Internet to measure a success in the issue. (Duce 2007, 63-64) These categories, or factors, differentiate in between the very early stages of getting the issue across and other practical measurable achievements. These categories, as presented by Duce, are:

- A: Getting the issue on the agenda for discussion: the issue is mentioned in a mass media.
- B: Success in promoting serious discussion: the issue is mentioned in longer or more scientific articles.
- C: Success is shifting public opinion, as expressed in public opinion polls.
- D: Success is achieving procedural or institutional change.
- E: Success in achieving substantive policy change that eliminates the problem

F: Other factors, such as recognition or criticism of activists by governments, can indicate influence.

Factor A stands somewhat apart from the rest in terms of its measurement. Evaluating factor A consists of two steps. Firstly, in order to track the ability to bring the topic to the media, one needs to analyze the topic coverage. Thus, this category will be evaluated using the archives of five major newspapers in Japan: the Asahi Shimbun, Mainichi Shimbun, Sankei Shimbun, Nikkei Shimbun, and Yomiuri Shimbun in Japanese. I will trace the occurrence of a phrase “特定秘密保護法” in each of them per month to see the dynamics of the the topic in general in between years 2013 and 2016, and compare its representation in five newspapers over four years. I will also highlight the specifics of occurrence in certain periods of time and explain what such dynamic means in relation to the situation with the Special Secrecy Law.

Secondly, and this step refferes both to catigory A and all other categories too, I take a look at the resuls of the name search of the NGO network and its member organizations in the database of five mentioned newspapers. If there are any search hits for such names withing the set span of time, I will consider the context of their appearance in order to see if they have in any way contribute to the evaluation factors, or whether they have ended up mentioned in the newspaper for some other reason. At the same time, I will go through the archive of NANSL and see what kind of entries are there and what information can be extracted from it in regard of analysis factors. Here I look for such entries as notifications about publishing or collaborations on some research, reports on held polls and alike.

In order to cross-check the information I also carry out the search of the “秘密保護法 NGO アクションネットワーク” at the websites of NANSL member organizations with the following analysis of the context to such appearances. Within the analysis of each factor we will see what role the chosen NGO has played and how actively, weather its input and impact was significant or not, why so and what does it mean in regard of the main question: does civil advocacy in Japan is capable of impacting the policy-making.

In the final fourth chapter, I will once again go through the conclusions of each section to build up an answer to the main research question and provide a concise

explanation for it. Also I will elaborate on some possible research directions basing on the findings.

## **2.4 Primary data**

The main source of information is the secondary archival data. In this regard I work with three general sources. The first one is the official documents, legislative texts and comments from the governments, both worldwide and in Japan. They store reports on development of the Secrecy Bill draft to a fully functional Special Secrecy Law if we talk about Japan, while such documentation outside of Japan provides this research with the alternative view on the issues. I rely on them when writing about interpretations as well as pro and con stand in the second chapter of this work. Relevant materials are available from governmental databases, official websites of Ministries, etc. They will contribute to assessment of changes in legislation or their absence.

The second source is the archives of the five largest Japanese newspapers. They are useful for drawing numerical and quantitative data for statistical analysis when measuring factor A and assessing the context of appearance for NANSL or its member organizations. Lastly, the third source is the English-language sources about Japan. For example, English versions of the five biggest newspapers in Japan, other English-language journals and magazines about Japan, as well as academic periodicals.

## **2.5 Rationale and value**

There are two reasons to conduct this research. One is to bring up together information about the Special Secrecy Law together in one place. A considerable number of articles explaining the nature of the Special Secrecy Law as well as the problems that it solves and creates had been accessible through the newspaper archives and on the Internet along with the official commentaries of governmental representatives, journalists, and lawyers ever since the draft of the Special Secrecy Law has been submitted. However, they are scattered all over the databases and archives, while expressed points of view on the issues of this law may greatly vary depending on the political affiliation and preferences of the source. Thus, one of the practical values of this paper lies in summarizing and concisely explaining key points of existing debates and argumentations swirling around the Special Secrecy Law. Present research will facilitate understanding of the issues that the Special

Secrecy Law has created in Japanese society and provide an in-depth look at social response through overview of the debate and a case study of an NGO network.

The second, and the main reason, to conduct this research is to test the presumption that the social advocacy in Japan is able to influence policy making. This work may be seen as continuation of numerous works on civil society mentioned in a theoretical framework section. Especially, of works by Pekkanen and Chan, since both of them dealt specifically with advocacy and conducted their research on the same topic, but from different perspectives (national vs. global). Although these authors seem to disagree about a number of points, this work will not try to collide these opinions in order to test which one is more likable. On the contrary, this thesis research will benefit from building up upon both of these works and their differences in views to track the development of the advocacy further. It provides for a better analysis of the same topic from many angles. Moreover, since both of their researches were published close to each other time-wise (Pekkanen's in 2006, Chan's in 2008), present thesis provides the glimpse on the development of relationship between the government and civil society one decade later, covering a time- and research-gap in contemporary studies of Japanese civil society and social advocacy.

### 3 ISSUES WITH THE SPECIAL SECRECY LAW

This chapter deals with the Special Secrecy Law in more details, starting from the issues of its idea origins and coming into being, and later going into problems it has created. It will explain the reasoning for approval of such law and its connection to and at many points overlapping with other normative documents which regulate information disclosure and secrecy. This chapter will also pay closer attention to unclear wording and scope of action which have a potential to grant government tools to fully get rid of some historical and political records. All these and other factors highlighted in this chapter will allow the readers to get the grip of the main problematic points that the Japan's civil society tries to change through its advocacy activities described in a case study.

#### 3.1 Coming into being of the Special Secrecy Law and its reasoning

The process coming into being of the Special Secrecy Law is rather interesting as it has to do not only with the debate around the law itself, but also with elimination of the old and establishment of new Council to deal specifically with the cases regarding classified information. Moreover, the time span of evolving is of a great interest. It is a short and a long one at the same time: what had taken roots in the first term of Prime Minister Abe carrying out the duties of the Prime Minister has been complete during his current terms.

Japan had had a security regulated organs for a very long time. As of post-war Japan, the National Defense Council that have existed since 1956 until the 1<sup>st</sup> of July 1989 to be later replaced by the Security Council<sup>20</sup>. These organs have advised to the Prime Ministers on defense related issues. However, the Security Council had been replaced, too. This time by National Security Council<sup>21</sup> proposed by the Prime Minister Abe back in 2006-2007. Nevertheless, this proposal did not evolve at that time further due to Abe's resignation. Still, the new Council formation succeeded during the term of 2012-2014. The bill to establish the new Council has been approved by both House of Representatives and the House of Councillors on the 7<sup>th</sup> of November and 27<sup>th</sup> of November 2013 respectively.

The main difference of the new Council from its predecessors is that the new Council has been shaped after the United States' model. This decision has to do with several precedents of information leakage, including cases where the United States have

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<sup>20</sup>安全保障会議, *anzen hoshō kaigi*

<sup>21</sup>国家安全保障会議, *kokka anzen hoshō kaigi*

been providers of such information. For example, on 31<sup>st</sup> of May 2005, colonel of the Self Defense Forces has leaked the information about the fire aboard Chinese vessels and the number of the vessel to a journalist of Yomiuri Shimbun.(Usaki Masahiro) Since this information has been provided by the United States within the General Security of Military Information Agreement, it can be seen as a breach of U.S. – Japan mutual agreement on defense secrets. (*Agreement between the Government of Japan and the Government of the United States of America Concerning Security Measures for the Protection of Classified Military Information*) Moreover, Japan and the United States has been tied by the General Security of Military Information Agreement according to which both countries should not disclose intelligence information shared in between countries to the third party without the agreement of the side, who has shared such information, as set in its Article 8. (*Joint Statement of the Security Consultative Committee Alliance Transformation: Advancing United States-Japan Security and Defense Cooperation*)

It might be due to such tight cooperation in between countries that Japan has adopted a new model of handling defense secrets, which makes the Special Secrecy Law a reasonable extension and addition to such cooperation in order to share intelligence information. (Usaki Masahiro) Moreover, after the incident of 2010, when the Chinese submarine had a collision with Japanese Coast Guard, video of which has been uploaded to YouTube by the Guard vessel personnel, Japan has been under a lot of criticism from the Japanese lawmakers as well. They claimed that civil servants on duty are obliged to preserve confidentiality of information obtained while performing their duties. (Ito and Aoki)

As for the official statements, the Special Secrecy Law itself addresses complicated situation in international affairs, which can be further influenced by advancement in telecommunication that poses danger of information leakage, as the Article 1 states in “Purpose” provision. (定秘密の保護に関する法律) In a video-interview at the governmental portal the Minister of State Mori Masako, who was in charge of preparation for the Law enforcement, also referred to North Korea problems and terroristic attacks in Algeria where Japanese citizens were harmed as additional factors that call for actions in intelligence sharing and information protection, like The United States and the United Kingdom do. (“特定秘密保護法とは～国民と国の安全の確保を目指して～”)

It may not be a coincidence that the establishment of the Security Council almost coincides with the approval of a Special Secrecy Law draft. If we take a closer look at the timelines of these two entities, we can see that their stories unwind in a close relation to each other. It was the old Security Council that approved the draft of the Special Secrecy Law on 25<sup>th</sup> of October 2013, but according to editorials of Asahi Shimbun, it was the National Security Council that led the Diet to pass the legislation. (“EDITORIAL: Parties Should Address Diet’s Inept Oversight of State Secrets”) The National Security Council has gathered for the first time on the 4<sup>th</sup> of December 2013, and already on the 6<sup>th</sup> of December the Special Secrecy Bill had been submitted to the National Diet to be approved into a law. On the 13<sup>th</sup> of December it was promulgated by the National Diet, and was set to come into force in a year on the 10<sup>th</sup> of December 2014.

### **3.2 Centralization of power and the life cycle of secret information**

After the approval of the law, one of the main questions that bothered experts is who or which institutions will be granted the right to execute the power of classifying and declassifying documents, pleading innocent or guilty in cases of information leakage and other cases of a similar matter. At the first glance it is a duty of the government to oversee these functions, but on a second thought that would mean usurpation of power. For that reason the government has established the Boards of Oversight and Review of Specially Designated Secrets of both Houses.

It comprises of eight members and is meant to serve as an internal, yet independent, watchdog. There are statements on the web-pages of both Houses regarding the tasks of the Board. Those are mainly to look over the conditions under which the information is being designated as a special secret or such designation being removed; and to watch over the administrative organs, their committees, and their heads that have power to designate information as a special secret, as well as to insure the safety of secret defense and foreign affairs information. (“Board of Oversight and Review of Specially Designated Secrets”; “Diet Functions-Types of Committees”) In other words, this committee should have had a power to set limits to the power of the state to designate information as secret.

Yet, despite the outer fulfillment of such requirements, the Board seems to have failed its duties from the very beginning. First of all, it is a great question if the internally set bodies can perform its duties independently. According to series of editorial of Asahi-

Shimbun in March-May 2016 the Board was failing since it was not able to judge the appropriateness of designation and to monitor the government's actions to classify or declassify information. In their report of March 30<sup>th</sup> 2015 the Board states to examine 443 cases where about 272,020 documents were designated as secret, but only few were later declassified. (“EDITORIAL: Watchdogs of State Secrets Designations Fail in First Reports”) Out of 443 cases 441 received a maximum 5 year long secrecy status, despite the recommendation to use the minimum necessary period. Moreover, the report dealt with the facts about the background checks of some officials, and only one case among 96 200 was cleared without stating any reasons for such actions. The government has the right to decline the enquiries for such clarifications. (“EDITORIAL: Abe's Report on State Secrets Gives Diet the Cold Shoulder”)

One more factor that speaks for possible concentration of power in Abe's Office is the fact the newly established Council that closely works with each ministry will report directly to the Prime Minister. According to the Ministry of foreign Affairs, the National Security Council was established “to provide a forum which will undertake strategic discussions on various national security issues on a regular basis and as necessary under the Prime Minister with a strong political leadership”. (“National Security Council (NSC)”) By doing so current government can expand its power of decision making in security related spheres, giving even more power to the Prime Minister's Office. It is also worth mentioning the current Diet is dominated by the members of the ruling Liberal Democrat Party. (“EDITORIAL: Parties Should Address Diet's Inept Oversight of State Secrets”)

There was an attempt from the opposition in December 2015 to demand submission of the items to be designated as secret to the Diet. However, the ruling coalition refused such proposal by stating that the government's administrative power should be respected from the viewpoint of separation of powers. (“EDITORIAL: Parties Should Address Diet's Inept Oversight of State Secrets”; “What Information Is Considered ‘special Secrets’ Is up to Government: Watchdogs' Reports”) Editorials of the Asahi Shimbun have described the Board as “toothless” and unable to properly perform their functions. With no other institutions able to control the designation of secrets beside the Board, there is no one in between the Prime Minister and his power to classify and declassify any information at his own disposition. Lawrence Repeta sees it as threat to freedom of the press and more broadly to people's right to know about government action” (Repeta, “Japan ' S 2013 State Secrecy Act -- The Abe Administration ' S Threat to News Reporting”)

Moreover, not only there is a problem of institutional control, there is also a “blind spot” or a “hole” in the Law itself that gives the government and the Prime Minister in particular to keep some items secret forever. The reason is the lifecycle of the secret information which remains unclear. On the one hand the law sets some quite clear-cut rules. For example, it states that the shortest possible period is used for all sorts of documents. Moreover, regardless of the type and category of information made secret, the period of secrecy should not exceed five years. On the other hand, the period of secrecy can be renewed every five years after the approval of the Ministry and reach for as long as 30 years counting from the moment of designation. That being said, it is still possible to prolong the designation up until 60 years if the head of an administrative organ could obtain the approval to do so from the Cabinet. In order to get such approval it is necessary to provide sufficient reasoning for such extension: the information has to deal with the safety of the state and the people. Still, even this period is not the final limit. In cases when information designated as secret has to do with the cryptology and human intelligence sources, the term may be prolonged. (Cabinet Secretariat and Cabinet Intelligence and research Office 2013, p. 2) There is no other stated information on what will happen to the item after this period. The Minister of State Mori stated that such documents should be declassified automatically. At this stage they will fall under the Public Records and Archive Management Act, and cannot be destroyed. (“特定秘密保護法とは～国民と国の安全の確保を目指して～”)

Since the Special Secrecy Law is rather new, at this stage it is hard to track what the life cycle of the law might turn out to be. As was mentioned in the beginning of this chapter, the first report of the Boards of Oversight and Review of Specially Designated Secrets has already set a 5-year limit to 441 out of 443 submitted cases. Only in several years we will see what will happen to these documents. However, there is some previous data about life cycles of documents made secret under the Self Defense Forces Law. (自衛隊法) According to the Lawrence repeat article, about 55 000 documents were made secret under this law in between 2006 and 2011 as “defense secrets”. Once the secrecy period expired, 34 000 of documents were destroyed and only one was de-classified and potentially could be available to publicity. (Repeta) Even though the Public Records and Archive Management Act exists in Japan and requires officials to obtain permission from the Prime

Minister to destroy documents according to Article 8(2), it is not applicable to defense secrets. (*Public Records and Archives Management Act*) It means that at least within the defense sphere there are very few, if any, former secrets available to general public due to secrecy being extended or documents being destroyed. Not only such practices concentrate a lot of power in hands of very few individuals, they also threaten preservation of historical facts and deeds. If the practice of destroying documents under the Self Defense Law is conjunct to the Special Secrecy Law, it is possible that “enormous body of secret records could be created and later destroyed, leaving little trace” (Repeta)

### **3.3 Interconnection with other laws**

It may not be clear from the first look to those who are not familiar with Japanese legislation on secrecy, but beside the abovementioned Self Defense Law, the Public Records and Archive Management Act, and U.S – Japan agreements and treaties, there are also other legislative acts already existing in Japan aimed at regulation of information handling and disclosure. At the closer look one can find that proposed provisions for the Special Secrecy Law already have their analogues in previously approved legislative acts of Japan. This subchapter will briefly explain what laws already exist in Japan and how the new Special Secrecy Law connects to or overlap with them.

On the one hand, Japan has laws to insure secrecy in a straightforward manner. They address both the mechanisms of designation and disclose, and set punitive measures for those who fail to follow. For example, Article 96 Paragraph 2 of the Self Defense Law foresees a five-year imprisonment in case of “defense secret” leakage. (自衛隊法) Moreover, the U.S.-Japan Mutual Defense Secrecy Protection Law also sets a ten-year imprisonment for leakage of "special defense secrets" according to its Article 3 if one has been proved to detect, collect or disclose such information. (*Agreement between the Government of Japan and the Government of the United States of America Concerning Security Measures for the Protection of Classified Military Information*)

There are also laws that address secrecy not directly. Yet, provide applicable mechanism to keep certain information at bay and apply measure against leakages. First of all, since 1947 Japan has its National Public Service Law that aims to “achieve maximum efficiency in the performance of public duties, guarantee citizens democratic and efficient

performance of those duties” as its general provisions section states. (国家公務員法)<sup>22</sup> Nevertheless, the text of this law incorporates what can be called “official secrecy” and sets measures to fight the breach of such secrecy. For example, in its Article 100 the Law sets an obligation to all the government employees to protect the secrets they might have obtained while performing their duties. In case of violation, Article 109 of the same Law foresees a punishment of imprisonment of up to one year and fines of up to 500 000 yen for public servants. Moreover, not only servants directly employed by the government, but anyone else may be subject to prosecution for inducing a public servant to reveal secret information regarding their work. According to Article 111 of the given Law, such actions are punishable with various measures, such as imprisonment with labor or fines, according to each respective article of the law.

Straightforward or subtle, there are numerous laws to keep information secret and to disclose it. For every restricting act there is one that bids for openness of information, creating mechanisms to inquire data from different establishments, including the government itself. For example, the Law Concerning Access to Information Held by Administrative Organs, which in its Article 5 proclaims that “the head of an Administrative Organ shall disclose said Administrative Documents (designated as secret) to the Disclosure Requester”. (*Act on Access to Information Held by Administrative Organs*) Yet it sets a bundle of limitations to what kind of information can be disclosed, and concentrates quite a lot of power in the arms of administration heads. It is almost impossible to get hold of any kind of information that was once classified under this law. And clauses (iii) and (iv) in particular makes acquisition or request for information disclosure a very hard task. The text appeals to situations where “disclosure is likely to cause harm to national security, cause damage to the relationship of mutual trust with another country or an international organization, or cause a disadvantage in negotiations with another country or an international organization”; and where “disclosure is likely to cause impediments to prevention, suppression or investigation of crimes, the maintenance of prosecutions, the execution of punishment, and other matters concerning maintenance of public safety and public order.”

In the light of the abovementioned facts and abundance of existing legislation many have questioned the necessity of the Special Secrecy Law. In the wake of the law

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<sup>22</sup> *Kokka Koumuin Hou*

promulgation, Usaki Masahiro was examining the purpose of the law in his article and has written that “there is absolutely no truth to the assumption that under existing laws public officials have frequently breached their legal duty of confidentiality or that defense secrets and special defense secrets have often been leaked through espionage.” (Usaki Masahiro) The same idea had been also voiced by the free writer Takeda Sasetsu who expressed the same doubts. While comparing the spies to cockroaches that might infest the household (the state) and legislative measures to disinfectants and repellent sprays, he asks why does any household need to by new repellent sprays if old have been proved effective. “Doesn’t buying new sprays only prove that the household is guilty of breeding cockroaches?” (武田)

What does it mean for a regular citizen? If we talk about the law in a kind of vacuum, detaching it from the other legislation of the similar kind and purpose, it is a complete to secure secrecy in many areas and potentially does good in intelligence sharing and protection. However, if we look at the Special Secrecy Law in a web of interconnections with other legislative acts in Japan, the question of whether this law adds anything extra to legislation arises. The Law adds nothing new to existing mechanisms and measure, except for one thing: this Law broadens categories of application. Not only the defense secrets, but also foreign affairs, prevention of designated harmful activities (counterintelligence), and prevention of terrorism became the area of concerns.

All this created the debate about the necessity and excessiveness of the Law. Even though when asked about the increasing concerns about the application scope, the Minister of State Mori Masako insisted that there will be no such expansion. (「特定秘密保護法とは～国民と国の安全の確保を目指して～」) Yet, it is a debatable point due to vague wording of the document, which will be examined further.

### **3.4 Vague wording, scope of action, and threat to journalism and research**

Why was the Boards of Oversight and Review of Specially Designated Secret that was discussed in the subchapter 2.1 not capable of monitoring governmental actions in designation documents as special secrets? The key factor to it is a vague wording. Both the

law itself and the reasoning given for designation of documents as secret by government do not leave many opportunities to judge cases of designation critically.

The Special Secrecy Law states that there are four categories or spheres that might fall under the designation when deemed appropriate. But how and where does one draw the line to set a limit to those categories? And how to define what is “appropriate”? Among the documents that the Board attempted to evaluate most were labeled as “information provided by foreign country”, others as “information concerning Self-Defence Forces operation plans and issues” or “information about people who have become human information sources for police”. (“EDITORIAL: Watchdogs of State Secrets Designations Fail in First Reports”; “EDITORIAL: Abe’s Report on State Secrets Gives Diet the Cold Shoulder”) With no further clarification on the nature of documents, it looks reasonable to apply secrecy to such documents according to the Law. Moreover, it allows the government to concealing almost any information they want by applying such titles. Consequently, even such hot topics as Fukushima Daiichi disaster may be excluded from public discussion by cutting off access to any related documents. According to the Minister of State Mori Masako, the government of Japan will not overuse the Law to hide “uncomfortable” information, but at the same time she argued that the Law could be applicable to the nuclear power industry, since it may be a target for terrorism. (McCurry; 「特定秘密保護法とは～国民と国の安全の確保を目指して～」)

Not only the vagueness of wording makes it difficult to examine documents or obtain information. It is also the punitive measures that can hold interested people, mainly researchers and journalists, from any attempts to do so: the punishments became harsher in comparison to the laws discussed in a previous subchapter. According to Article 23 of the Special Secrecy Law, both government officials and the inquiring side may become subject to five- to ten- years of imprisonment for any leakage from any side. (定秘密の保護に関する法律) In such situation the only possible way to stay on a safe ground is to exercise self-restraint and self-censorship. As the Lawrence Repeta argues, “how can the scope of action be defined: is all the information now deemed to be secret according to the Special Secrecy Law?” (Repeta)

Despite Article 21 of the law demanding “human rights and freedom of the press be taken into account in the application of the law”, the very next Article 22 also states that

collection of information by “any seriously unjust method” is punishable. The gathering of information should only serve “public interests”. (定秘密の保護に関する法律)

Nevertheless, there is no definition within the Law of what we may consider to be “public interest” or “seriously unjust method”, “harmful activities” and many other broad terms. Thus, it is easy to call almost any kind of activity for collection of information a “harmful activity damaging public interests or national security”. (“Japan: Amend ‘Special Secrets’ Bill to Protect Public Interest”; Repeta) In the wake of promulgation such considerations had led to inclusion to the Article 22 of the Law measures to protect the news reporting and the public right to know by giving “sufficient consideration”. (“Japan: Amend ‘Special Secrets’ Bill to Protect Public Interest”) Yet, no definition for what is deemed to be “sufficient” can be found anywhere in the text. Moreover, it is up to government to define “public interests” or “national security”.

### **3.5 Interpretation, re-interpretation and limitations**

After taking a closer look at Japanese legislation, it is also important to put it into the context of international practices in order to see, why beside mentioned issues of power usurpation, uncontrollability of application, vagueness, and threat to research and journalism, the Special Secrecy Law has been seen as flawed and why many professionals have been opposing it. As it was mentioned in the introduction, the differences in implied connotation of the some key words play central role in understanding and interpretation. This chapter will concentrate on interpretation of some crucial terms regarding freedom of information, the right to know, disclosure and other types of information handling, both internationally and within Japan. As this sub-section will show, having the same articulation of rights may lead to different interpretations (that is the case of Japan). In the beginning, this sub-chapter will briefly overview the main international principles on the openness of information. Later these international principles and practices will be compared with the corresponding principles and practices in Japan in order to analyze the specifics of interpretation.

First of all, let us take a look at Article 19 of the Universal Declaration of Human Rights, one of the major international documents. It states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and

regardless of frontiers.” (United Nations) This statement has been further elaborated into more details by Article 19(2) of the International Covenant on Civil and Political Rights. Namely, this important extension has been added: “[...] regardless of frontiers, either orally, in writing or in print, in the form of art, through any other media of his choice”. (General Assembly) From this definition we note that oral statements are seen as a source of information, thus they can be subjects to legal procedures, and the speaker can be held accountable.

Furthermore, a lot of other publications and legislative acts within the same area used exactly the same wording when formulating the principles of freedom of information, right to know and the right to access information. For example, the Johannesburg Principles of 1996 adopt the extended wording of the International Covenant on Civil and Political Rights. (“The Johannesburg Principles on National Security, Freedom of Expression and Access to Information”) Also within the European Union the right to know is based on the Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, by ensuring that “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. (*Convention for the Protection of Human Rights and Fundamental Freedoms*) American Convention on Human Rights of 1969 in Article 13(1) also runs on the wording of the United Declaration as well as Article 11 (1) of the Charter of Fundamental Rights of the European Union of 2000. (“Charter on Fundamental Rights of the European Union”; *American Convention on Human Rights*)

Moreover, The Global Principles on National Security and the right to information, also referred to as the Tshwane Principles, are very important source protecting the freedom of speech and information. It was compiled by 22 human rights organizations covering 70 countries around the world. Among the organizations that have signed these Principles, the Far East region has been represented by the Asian Forum on Human rights and Development (Forum Asia) based in Bangkok, while Japan voiced its support to these principles through the Citizen’s Association for Proposing on Legal and Other Systems on Human Rights<sup>23</sup>. According to Tshwane Principles, “Nothing [...] should be interpreted as restricting or limiting any right to information recognized under international, regional or

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<sup>23</sup> The website last updated on June 30<sup>th</sup> 2007.

national law or standards, or any provisions of national or international law that would provide greater protection for disclosures of information by public personnel or others” when trying to relate them to other standards. (“The Global Principles on National Security and the Right to Information (Tschwane Principles)”) It is worth keeping in mind though, that these Principles are only recommendations, unlike any legally enforced act. Thus, it may be taken in consideration, but does not pose an obligation to follow its statements.

Speaking of Asian-Pacific region, the ASEAN Declaration (Bangkok Declaration) in paragraph 2 of the Second Part states the “adherence to the principles of the United Nations Charter”, meaning adherence also to the Article 19 of the Universal Declaration of Human Rights with all the following amendments to it. (“The Asean Declaration (Bangkok Declaration)”) In addition, the Anti-Corruption Action Plan was endorsed by Japan on the 30<sup>th</sup> of November 2001 along with other 30 countries of the region committing to the Initiative. (“Formal Endorsement of the Anti-Corruption Action Plan for Asia-Pacific”; “ADB / OECD Anti-Corruption Initiative for Asia and the Pacific Anti-Corruption Action Plan for Asia and the Pacific”) In the Pillar 3 of the document we may find the following: “ensure that the general public and the media have freedom to receive and impart public information [...]” This statement is supported by the 12 points of the Conclusion from the Commonwealth Parliamentary Association and Commonwealth Human Right Initiative Pacific Workshop on Freedom of Information that are, however, advisory in nature. In particular, two main principles insist that “member countries should be encouraged to regard freedom of information as a legal and enforceable right” and “there should be a presumption in favour of disclosure and governments should promote a culture of openness”. (“CPA/CHRI Pacific Workshop on Freedom of Information”)

Finally, it is important to understand that despite the variety of declarations and recommendations on freedom of information within Europe, America, Asia, Pacific and so on, interpretation of the right to know always comes back to the definition provided by Universal Declaration of Human Rights. Subsequently, all the interpretations of the right to know are done in accordance with this Declaration. Article 6 of it proclaims that “everyone has the right to recognition everywhere as a person before the law”. (United Nations) In other words, these rights are individual-centered.

In Japan, however, there are differences in interpretation of the same laws which allow for a twist in a law application. This twist lies in a fact that Japan has signed and ratified a lot of international documents on protection of human rights and, as a part of it,

the right to know, but does not rush to apply them on practice. Among many documents that Japan has signed is the earlier mentioned International Covenant on Civil and Human Rights, since Japan is a member state of the United Nations. Japan has also ratified International Covenant on Civil and Political Rights. As of April 2104, the Covenant has 74 signatories and 168 parties with Japan among both signatories and parties. Japan signed the Covenant on the 30<sup>th</sup> of May 1978 and ratified it on the 21<sup>st</sup> of June 1979, thus supporting the declared principles of the right to know. (「市民的及び政治的権利に関する国際規約 (B 規約) 」)

However, signing and ratifying does not yet guarantee application. Despite setting quite a wide range of rights to obtain information for citizens, each of the abovementioned codes, convents and recommendations hold a common peculiarity within them. They still do set limits on the access to information, leaving a lot of legal definitions to be written and boundaries to their application to be set by local governments, and creating easy-to-manipulate spots within local legislations. As Veronica Taylor notes in research on the rule of Law, Japanese courts have been criticized due to their timidity in direct application of international laws. (Taylor and Haley 2004, 460)

However, Japan alone cannot be blamed on such reinterpretations and avoidance. This seems to be a common practice in many other cases. For example, the fourth Principle on Freedom of Information Legislation of Hussain's Report deals with the exceptions from the rules. Hussain suggests putting the information under a three-step test to see if the information relates to a legitimate aim listed in the law; if disclosure threatens to cause substantial harm to that aim; and, most important, if the harm to the aim is greater than the public interest in having the information. (Hussain 2000, 59) He suggests strict rules and lists on legitimate aims that justify non-disclosure, among which we may find, law enforcement, privacy, national security, commercial and other confidentiality, public or individual safety, and the effectiveness and integrity of Government decision-making processes.

The same can be found in the International Covenant on Civil and Human Rights. The paragraph (3) of the Article 19 allows certain limitations to the right to know in order to “respect the rights or reputations of others” as point (a) states; and to protect “national security or public order, or of public health or morals” as point (b) clarifies. In addition, Article 4 of the Inter-American Declaration of Principles on Freedom of Expression

“allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies”. (Organization of American States) Moreover, the Action Plan in Pillar 3 “Access to Information” also leaves regulation of disclosure and particular procedures of disclosure to the domestic law in a way that “would not compromise the effective operation of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals”. (“ADB / OECD Anti-Corruption Initiative for Asia and the Pacific Anti-Corruption Action Plan for Asia and the Pacific” 2001, 5)

Thus, we can see that protection of the country’s security and effective operation of the government as well as the non-defined possible harm represents a very solid ground to restrict access to information. Vague definitions create a situation in which those terms may be rather freely interpreted in a way beneficial for a certain actor. This may lead to abuse of power as Hussain underlines in the paragraph 46 of Section D in Part III of the earlier Special Report: “the use and abuse by Governments of anti-terrorism and national security legislation remains a grave concern. [...] many Governments use these laws to restrict freedom of opinion and expression and the right to receive and impart information.” (Hussain 1998, 13)

Speaking of Japan, all these factors are amplified by the fact of concentration on group rights as opposed to common European practices. Thus, the Special Secrecy Law combined with protection from the newly found National Security Council and emphasis on country’s self-defense necessities for a common good gives a lot of possibility for interpretations of many terms used in legislation regarding freedom and access to information. Consequently, the Special Secrecy Law undermines the Constitution in three ways: by not protecting human rights, democracy and pacifism. Usaki Masahiro even saw this mechanism as one that allows to change the Constitution’s Article 9. (Usaki Masahiro)

### **3.6 Privacy**

Article 12 of the Special Secrecy Law allows for a background checks<sup>24</sup> on the officials and employees of incorporated institution. For them it is quite hard to deny such checks, even though the law guarantees the rights to do so under the paragraph 3 of the

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<sup>24</sup> 適正評価, *Tekisei hyouka*

same article. Even though the subject of a possible check will be notified before the check, the Special Secrecy Law is still posing a threat to one's privacy. (Usaki Masahiro)

Article 13 of the Constitution provides the right to choose if one wants their private information to be shared and known, in other words, the right to privacy. However with the passage of the Special Secrecy Law and the Law about application of individual numbers the situation gets very complicated. In order to be able to use the new number ID system, the government has to tie a range of personal data, such as name, age, occupation, etc., to the number.

Thus, the government will end up with a massive block of private information easily accessible with only one credential, that is a so called "My Number" system, a citizens personal ID numbers granting access to many governmental and state services. While government does not have a right to access such data, it will take one amendment to add the access to the personal numbers when running background checks under the Special Secrecy Law. (Usaki Masahiro)

In regard of the background checks the Minister of State Mori Masako in her video interview said that such checks are not intended to go as deep as checking friendship connections, romantic affiliations, and other related information, however they are necessary to evaluate if the person can potentially leak the designated secrets. She noted that such practices have been introduced in many foreign countries, but does not specify which or when. The Minister of State underlines that only people handling designated secrets may be subjected to background checks, and only after their approval.

The accompanying background table in the video specified seven categories that may be included in a background check. Those are instances related to harmful activities and terrorism, crime and disciplinary punishments, cases of illegal information processing, cases of drug abuse, instances of psychiatric disorders, regulations regarding alcohol, and financial status and other instances related to economic situation. When talking about the harmful activities and terrorism, and when it comes to family members (spouse, parents, children, siblings, and parents and children of one's spouse) or co-residing partners, such information as the name, date of birth, citizenship and address may be retrieved for investigation purposes.

Despite emphasizing the fact that only public servants related to handling of special secrets may become subjects to background check, the borders of defining who is a public servant are very vague. In a same manner, it is unclear who should we recognize as

incorporated entity, and should civil society groups, namely NGOs and NPOs, be considered as such. If so, do NGOs working internationally be covered by the law as handling international relations information or not, and subsequently be checked member by member for possibilities of the designated secrets leaks.

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As it becomes clear from the overview of the main issues, the Special Secrecy Law has created a lot of ambiguity and hard-to-solve issues both on legislative level and within the civil society due to the core nature of the law. The main concerns have to do with the vagueness of application principles due to vagueness of the wording. With no clear instruction to what kind of information can become a designated secret the law might potentially infringe the right to access a variety of information for research and journalistic purposes, as well as limit the pool of data necessary to carry out all kinds of activities outside Japan. The situation is worsened by the threat of severe punishments for leakage of secrets and the background checks of public servants and employees of incorporated entities, breaching the right to privacy not only of any individual, but also of their families and close affiliates. Despite the official organs being set to overview the designation and declassification of information, the real state of things shows that there is no one to control the process of designation, letting the cabinet, and first of all the Prime Minister, to apply secrecy stamps on any kind of documents at their own will with no possibility to retrieve its content later on for others as the terms of prolongation are also obscure.

Such outcomes may be explained by the differences in interpretations of laws and their purpose. While Western tradition puts an individual in the center and uses the legislation to protect the rights of each and every member of the society, Japan takes a different approach and emphasizes the need for “collective self-defense”, thus putting the needs of the whole country and society over the rights of a single individual.

In order to protect the individual rights and interests of civil groups, as well as researchers and journalists, some NGOs in Japan have poured their effort and attention towards dealing with the Special Secrecy Law and its impact. Despite the short time span of promulgation many actors have managed to take a variety of actions, such going on demonstrations, writing petitions to the government, and many others, which will be discussed in details on an example of the NGO network in the case study below.



## 4 CASE STUDY

Current chapter deals with the in-depth analysis of the chosen civil advocacy group – Japan NGO Action Network on the Secrecy Law<sup>25</sup> (hereinafter referred to as NANSL). This chapter starts with a general overview of the action network and goes over its structure, aims, and main principles of operation, as well as briefly explains the nature of organizations that comprise the body of the network. After helping to familiarizing oneself with the background of the organization, this chapter moves on to analyzing NGO activities. This chapter will take a look at what kind of activities has this NGO network been carrying out and what kind of issues laid out in chapter three NANSL has addressed, based on the information available at the NANSL website and information regarding NANSL and its activities on the websites of their member organizations and cooperators. Later, the chapter will take a look at distribution of local- and global-oriented activities and what it means for the social advocacy. At last we will examine the factors of influence from A to F as described in the methodological part in order to find out at what levels the NGO has an influence and why.

### 4.1 NANSL structure and aims

Japan NGO Action Network on the Secrecy Law has been formed on the 6<sup>th</sup> of December 2013 and received an official status on the 1<sup>st</sup> of April 2014. According to the “About” page of their website, NANSL deals with the influence and the issues related to the Special Secrecy Law, and poses itself as an international cooperation network. NANSL states that it sees the proposal of the Special Secrecy Law as a “legal flaw”<sup>26</sup> and questions the deliberations of the Diet in its regard. As the organization points out in description of its intentions<sup>27</sup>, they have voiced their concerns about the matter in declarations and statements. And while the approval and coming into force of the law was still being in progress at the moment of the organization and its web-page creation, NANSL embarked on a duty of spreading the information about the issues of the Special Secrecy Law to the society, and handling the impact and problems of international cooperation NGOs and civil society activists which could be bourn from the impact of the law.

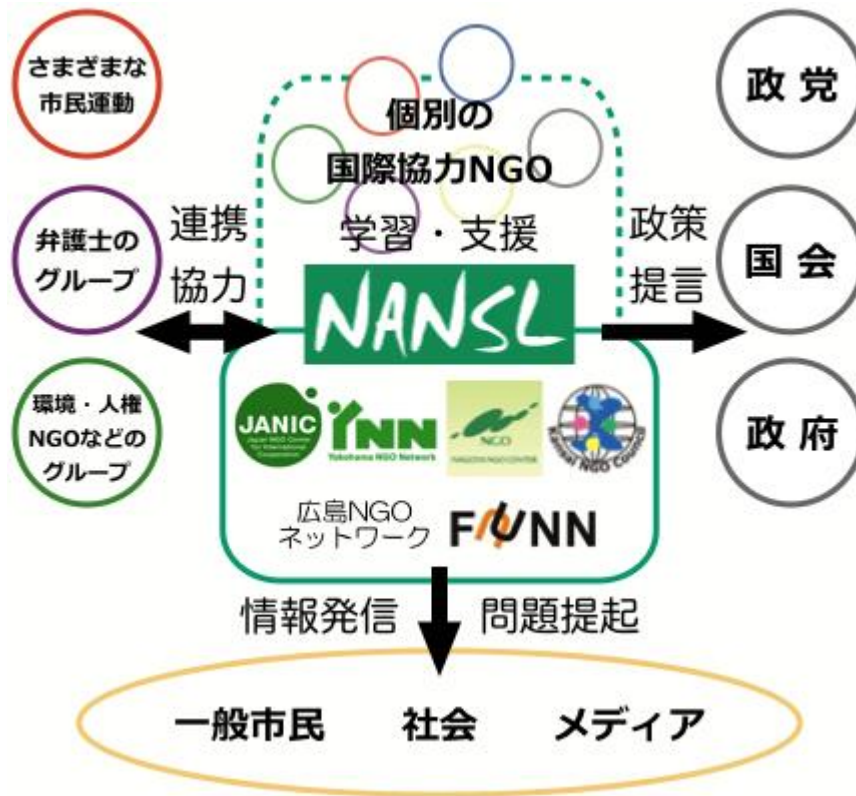
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<sup>25</sup>秘密保護法 NGO アクションネットワーク, *himitsu hogohou NGO akushon nettowaaku*

<sup>26</sup>欠陥, *kekkan*

<sup>27</sup>経緯, *kei*

NANSL lays out four directions of their activities, and those are: overseeing, providing recommendations, and protesting (or resisting)<sup>28</sup> in regard of preparations for promulgation, promulgation itself, and application of the Law; carrying out collection and sharing of information, and learning activities in order to strengthen NGO's capabilities; dealing with the damages done (by the law) to the NGOs; cooperation with civil society organizations in other spheres. In order to achieve their goals the network has opted to a structure that has a number of layers and several directions of operation and cooperation. Let us take a look at those layers and directions (explanation in English follows below.)



**Picture 1.** Structure of NANSL.

In the core of the network are eight member organizations<sup>29</sup> marked on a picture as “individual international cooperation NGOs”<sup>30</sup>. Those are: Hokkaido NGO Network Council, Japan NGO Center for International Cooperation (JANIC), Yokohama NGO network, Nagoya NGO Center, Kansai NGO Council, Hiroshima NGO Network, Fukuoka NGO Network, and Recognized NPO IVY. As one can see from this list, NANSL consists

<sup>28</sup> 抗議, *kougi*

<sup>29</sup> 構成団体, *kousei dantai*

<sup>30</sup> 個別の国際協力 NGO, *kobetsu no kokusai kyouryoku NGO*

of other entities that are also NGOs or NPOs. Moreover, and what is more interesting, those are not single NPOs and NGOs, but the whole NGO networks. Thus, in a way NANS� is a superstructure having in its base individuals who are organized by a certain cause, and part of them got to be organized in and NGO or and NPO, which in its turn forms a network of NGOs or NPOs, with the Action Network sitting atop.

To the left there is an arrow indicator of a mutual collaboration<sup>31</sup> in three directions: different citizen movements<sup>32</sup>, the group of lawyers<sup>33</sup>, environmental and human rights NGOs along with other groups<sup>34</sup>. To the right there are one-way proposed policies made by the network to political parties<sup>35</sup>, the Parliament<sup>36</sup>, and the government<sup>37</sup>. Below are three groups for whom NANS� may provide information<sup>38</sup> or explanations<sup>39</sup>: to regular citizens, firms or media. This tree-direction alignment of the structure connecting the grassroots, government, and other NGOs and professional groups has a lot of potential, and it will be explained in more details in the next subchapter.

Judging from the geographical location of the member organizations, NANS� can claim its presence in many of the infrastructural key points: the whole Hokkaido Island, all of Kansai region (that includes Wakayama, Mie, Kyoto, Nara, Osaka, Shiga, and Hyogo prefectures), Fukuoka, Hiroshima, and Kanagawa prefectures (see the map: Regions within the reach of NANS� are marked in dark grey).

From the visualization it may look like NANS� network does not have enough coverage to reach out to all the regions of Japan, and active prefectures are rather clustered here and there limiting the area of impact. However, one must remember that NANS� has JANIC as its member. It is important point, because JANIC deals with international cooperation, and consists of more than 400 NGOs in more than 100 countries around the

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<sup>31</sup> 連携協力, *renkei kyouryoku*

<sup>32</sup> 市民運動, *shimin undou*

<sup>33</sup> 弁護士グループ, *bengoshi guruupu*

<sup>34</sup> 環境・人権 NGO などのグループ, *kankyō jinken NGO nado no guruupu*

<sup>35</sup> 政党, *seitō*

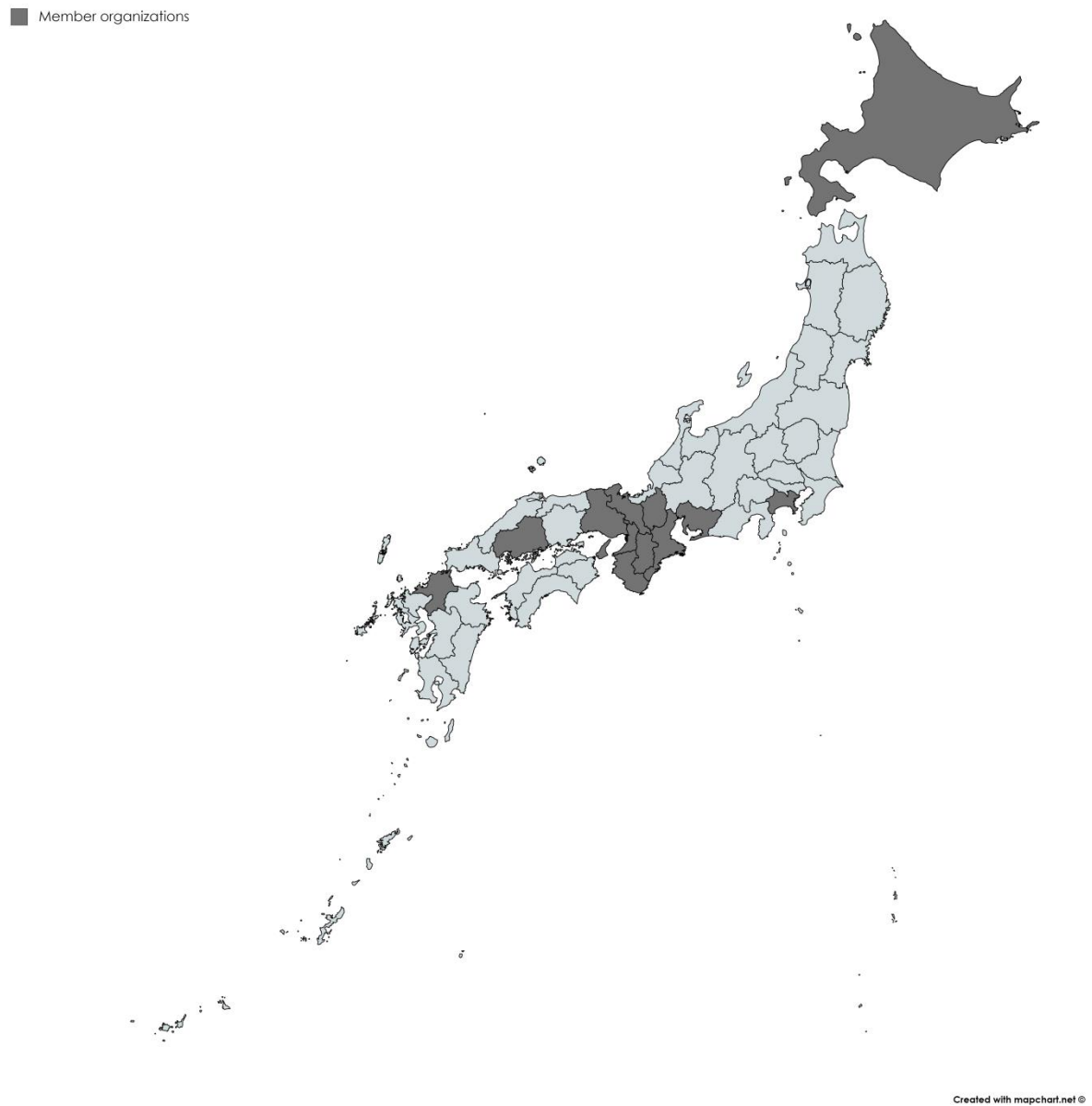
<sup>36</sup> 国会, *kokkai*

<sup>37</sup> 政府, *seifu*

<sup>38</sup> 情報発信, *jōhō hasshin*

<sup>39</sup> 問題提起, *mondai teiki*

world. JANIC's web-page states that its aim is to connect NGOs between themselves, NGOs and businesses, and all the citizens, as well as the government and municipalities.



**Map 1.** Geographical presence of NANS� in Japan.

Moreover, NANS� also include IVY, an NGO that primary deals with reducing poverty in rural areas of Cambodia, helping refugees in Japan, assisting immigrants in Japan, and helping with the Triple Disaster relief. The scope of their main activities has nothing to do with the Special Secrecy Law, but the crucial point is that IVY has been acting as a consulting entity to the Ministry of Foreign Affairs of Japan. Subsequently,

NANSL has a route and contacts to reach to governmental bodies through its members, even if it is not a legislative body.

NANSL also enjoys the company of supporting organizations<sup>40</sup>. There are more of them than member organizations, and one may find many of those dealing with international volunteer activities in poorer areas, health and education related issues, and even Chernobyl support network. Nevertheless, as one may find out from their names and direction of their activities, these organizations do not deal with the special secrecy law at all. Then why would they be mentioned at the NANSL website?

In their case “support” should be understood not in terms of providing actual physical or financial help, but in terms of approving of activities and causes of NANSL. Indeed, organizations which deal with such problems as raising the standards of living in Cambodia barely may use their member’s time and effort to relocate attention from humanitarian, education and medical help abroad towards local issues of Japan. However, having a solid supporting base may also add to the weight of NANSL as organization and its potential.

It is also important that the NGO network maintains ties with the Lawyers Association Against the Secrecy Law<sup>41</sup> that comprises solely of practicing lawyers. The initial agreement<sup>42</sup> in between these two entities has been signed on the 29<sup>th</sup> of October 2014 by representative Kaido Yuuichi from the lawyers side and by Taniyama Hirohito from the NANSL side. The agreement was initially set to last until the 31<sup>st</sup> of March 2016. However, it has been prolonged until the 31<sup>st</sup> of March 2018<sup>43</sup>.

Such collaboration aims six main activities: spreading the awareness about issues of the Special Secrecy Law; sharing information about the law in between two organizations; participation of lawyers in study groups and lectures organized by the NGO; help from the lawyers to the NGO or its affiliates in case they get arrested; provision of help and advice from lawyers in case NGO is subjected to disadvantageous handling; cooperation of NGO to raise funds in order to cover court litigations for the lawyers association (if situation unfolds that far). As a result NANSL has a great deal of professional assistance in its activities all over Japan.

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<sup>40</sup>賛同団体, *sandou dantai*

<sup>41</sup>秘密保護法対策弁護団, *hinitsu hogohou taisaku bengodan* (See more at <http://nohimituho.exblog.jp/>)

<sup>42</sup> See more at [http://nansl.org/data/agreement\\_20141029.pdf](http://nansl.org/data/agreement_20141029.pdf)

<sup>43</sup> See more at [http://nansl.org/data/agreement\\_2016\\_2017.pdf](http://nansl.org/data/agreement_2016_2017.pdf)

At this stage one may reconsider the claim by Pekkanen about the number of professionals involved in social advocacy in Japan. While lawyers technically volunteer their time and effort to cooperate with NANSL, and cannot be seen as a constant full-time staff of an NGO network, on the other hand the level of organization and people within it who have chosen to work on a problem may break the concept of low professionalization within social advocacy groups.

## **4.2 Local and global**

As it was mentioned in the methodological chapter two, given research looks on the issues of local and global cooperation through the eyes of the chosen NGO. By doing so it is possible to analyze what NANSL is doing on each of this levels and what effect it can have when talking about influencing policymaking in Japan. As we remember from the theoretical background sub-chapter, on one hand researchers agree that the pressure may be created by the civil society efforts from within the nation and state. On the other hand, with the lack of space to do so within the country due to legal and normative limitations, there are evidences that civil society and advocacy groups seek help on the international arena. How are these two approaches realized in NANSL?

Let us start from looking at how far NANSL can reach out. From the scheme of NANSL structure one can see that the network has some potential positive capacities regarding creation of pressure from the citizens. First of all, it has a massive grassroots forces in its base. By reaching out to each and every individuals in each of its member organizations NANSL has the potential to create a lot of pressure by organizing all these people to a certain type of activity. All those people could be asked to embark on a type of activity that they feel effective in impacting the situation in accordance with their own preferences. For example, to go out for a demonstration, to sign the petition, to send letters of appeal in mass to appropriate institutions, etc. Providing that all these people may opt for the same type of activity, one may assume that even if it does not instantly prompt government to change its ways, at least authorities would have to pay attention to the issue.

On the other hand there are numerous international NGOs being members, supporters and cooperators. Thus, having the channels to reach both inside the country to local citizens and governmental institutions, while also being able to reach outside the country to international organizations, NANSL has a potential to create multiple pressure

points to push its ideas forward with support from important local and international NGOs. How does NANSL use such leverage?

In order to find out whether NANSL has reached out inside or outside Japan, a search for the following keywords was done at the websites of each NGO, NPO and network comprising the target network: “特定秘密\*” and “\*アクションネットワーク”. The same has been applied for English keywords “Special Secre\*”, “Designated Secre\*”, “Secrecy Law”, “Secrecy Bill” “NANASL”, and “Japan NGO Action Network on the Secrecy Law”.

The aim of such search was to find out any bits of information even remotely related to the topic of the Special Secrecy Law and / or NANSL activities. Despite the attempt to grasp even a tiny bit of information, only one website gave a positive result. Search through other website gave zero result. For that reason the second search with the full keywords “特定秘密保護法” and “秘密保護法 NGO アクションネットワーク” was carried in hope to find exact matches out of presumption that the first search method could be for some reasons unavailable. This round also ended up with the same result, as well as the third round of manual browsing through the websites presuming that some information could be stored as images and thus being unsearchable as a text. English language search brought no results either.

With such outcome, the research proceeded with the only website with available entries: JANIC website holds three archival entries that can be found through search methods described above. It has two absolutely identical entries about the press-release of a declaration to abort development and promulgation of the Special Secrecy Law followed by the downloadable PDF-file of the declaration. The third entry is an announcement of a workshop regarding the Law held in Tokyo. These two entries will be discussed in more details further in this chapter.

However, what we can understand from this information, is that despite framing itself as an international NGO network, and even despite having a ways to reach out outside of Japan, NANSL mainly concentrates on domestic activities. There is a chance, of course, that some of its activities was not documented and reflected in the archives of NANSL itself and its affiliated organizations. While there are open channels to create a pressure outside Japan and direct this pressure towards bringing about changes within the country, they seem to be almost unused.

The only time a foreign organization shows up in connection with NANSL activities is in the request from the NANSL to abolish the Special Secrecy Law in its document dated the 9<sup>th</sup> of November 2013. There is a one and only supporter for the request marked as coming from the USA called “Seko’s photography”. Yet, there are no other indication regarding contact information. This it is virtually impossible to find out who that USA supporter is, except to try and do the web-search for such word combination. Naturally, with the 4 860 000 of hits at Google alone it is hard to establish the entity or a person behind the stated name.

One must also consider the use of language of the NGO. The website of NANSL is maintained exclusively in Japanese, and only the header includes the English translation of the NGO network name. The same can be seen in many cooperating NGOs and NPOs. Not to mention that the advertisements of the workshop announced at JANIC website was also made only in Japanese. The search of the information gives results predominantly through the Japanese language requests, thus providing zero results to those who are not proficient in Japanese language.

Thus, judging from the geographical distribution and coverage of the member organizations, composure of collaborating and supporting organizations, the structure of the NGO network, the signatories of the documents produced by it, the web searches of the archives, and the use of language, it became clear that NANSL operates mostly domestically. It maintains its open channels to reach out to international community, and always refers to itself as an international organization, but uses the means that can be navigated only by domestic actors (or people with rather high level of proficiency in Japanese language), mainly due to lack of English language (or any other language) translations, navigation bars or responses to the English search requests.

Since there are almost no mentions of an actual activities regarding the Special Secrecy Law that were carried out from outside Japan aiming any local issue with the law or the law itself, this case study will proceed with the analysis of NANSL’s domestically oriented activities and their influence on policymaking. Some of them have been already briefly mentioned above. Now let us take a deeper look at what those activities.

#### **4.3 NANSL domestic activities**

Below I will in details analyze the activities that NANSL has carried out and reflected in entries of its archive. I will also refer to the JANIC website which contains mentions of NANSL and holds the entries of their collateral activities. To give a quick highlight on what follows, it is worth saying that NANSL has been involved in submission of documents regarding the Special Secrecy Law, it has been a co-host of workshops about the law, it is distributing a booklet about the law and how to deal with its impact, and cooperating with the Ministry of Foreign Affairs of Japan.

### *Documents*

The first document that NANSL has produced is written request to not approve a Special Secrecy Law addressed to the Prime Minister Abe dated the 9<sup>th</sup> of November 2013<sup>44</sup>(*秘密保護法 NGO アクションネットワーク*). The main premise of the document is highlight of several issues that may affect peaceful international relations, and influence NGOs that work outside Japan and help people in poorer areas or areas affected by war. In the introduction the document reminds of the almost 80% resistance rate of the public comments, and proceeds with notations on a list of issues created by the law and why they are problematic.

First of all, the significant part of the document is dedicated to explanation of the four main areas that are subject to classification. The Self Defense sphere goes against the Article 9 of the Constitution of Japan threatening peaceful coexistence with other countries in the region by making it possible to carry out the collective self-defense<sup>45</sup>, which is framed as the right. Secondly, foreign security and state security spheres are too broad and crudely defined, allowing to attach this label to a lot of information. It is hard to distinguish different types of information falling under this category. The network is concerned that information about ODA support for poor areas may also fall under this umbrella term and paralyze work of the international aid organizations. Lastly, the network is afraid that the peaceful activities targeting self-defense of different groups in poor areas may fall under the haphazard definition of the terroristic activity as set by the law, and affect the work of

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<sup>44</sup>秘密保護法を制定しないことを求める国際協力 NGO の要請書, *tokutei himitsu hogohou wo seitei shinai koto wo motomeru kokusai kyouryoku NGO youseisho*

<sup>45</sup> 集団的自衛権, *shuudanteki jieiken*

international NGOs in such areas, which may lead to deterioration of peaceful connection in between the countries in the region.

Later the document explains that the rules for submission of items for classification under the Special Secrecy Law are too strict, prohibiting discussions of such items, and putting a lot of limitation and severe punishments on those who handle the documents (namely, Diet members). Going against the principle of open discussion and putting limitations on the lives of people is seen as undemocratic by the network.

The document also touches upon personal background checks. Since such checks may be run for employees of incorporated institutions, and NGO is one of such, NANSL is concerned that background checks may also be run for NGOs' and NPOs' staff. By checking not only basic information, like date of birth or address, checks go through the medical history and lifestyle habits of family members of target person too, which erodes people's privacy. Finally, The Special Secrecy Law "calls for protection of safety of the country and citizens"<sup>46</sup>, and the final part of the document concludes that in order to achieve such goal, Japan has many other peaceful ways rather than rely on armed forces. Meaning there is no need in such a law if there is no need to hide any military activities in case of peaceful handling of any disputes.

Based on such conclusions drawn from the people during the public comment session, NANSL asks the government not to approve the draft of the bill into the law. The request is signed by eight organizations of the appeal group and 94 supporting organizations from different prefectures, and one organization from the United States as it was mentioned before.

The second document that will be discussed here is a declaration to abolish the Special Secrecy Law. Its electronic version is kept not only at NANSL's website in an archive section, but also at JANIC's website. Addressed to "the press and whom it may concern" on the 10<sup>th</sup> of December 2013, only three days before the Act was officially approved, the document voices the opinions of seven member organizations of JANIC.

The very first sentence of the document in straightforward manner explains that the Law draft has a huge flaw, and thus signatories ask the government not to approve the proposal, making it the second pledge for abolition. In order to form a solid reasoning ground for such declaration, the text of the document touches upon several issues that were

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<sup>46</sup>国及び国民の安全の確保, *kuni oyobi kokumin no anzen no hogo*

explained in chapter three, the same way as the abovementioned request did. Firstly, the documents stresses that the law “limits the right to know”. Signatories strongly protest towards the fact that the Law was force-voted without holding a proper Diet discussion and without fully considering public opinion and concerns, even though the Law is placing new duties that require uppermost carefulness.

The text continues with the reminder nearly 80% of respondents during the round of public comments in between the 24<sup>th</sup> of July and the 24<sup>th</sup> of August 2014 spoke against the proposed law. All the speakers at the Fukushima public hearing, including those from the ruling party, were opposing the law or expressed serious concerns in its regard. And yet the law was forced by the House of Representatives the day following the Fukushima public hearing and by the House of Councilors the day following the Saitama public hearing. This decision was made despite the voiced opposition spreading wider every day from every sphere and every civil group. Consequently, the document proclaims that as an NGO that requires openness and transparency of governmental policymaking, they cannot help but to express the toughest objections towards such state of things with the Special Secrecy Law.

At this point the authors express the number of concerns that arise from the law approval. Firstly, there are uncertainties about limitations to the NGO’s ability to place proposals in case of information about ODA and other government related projects being classified under the law. Secondly, activities related to verification of military activities and anti-war activities will become much harder to carry out if the information about the “war and peace” is classified. Thirdly, information gathering activities may become subject to punishment. Finally, background checks of the the workers may infringe their privacy and life. Such rough-and-ready deliberations of the Diet do not consider the abovementioned fears and concerns at all.

The document continues that not only NANS� as the NGO, but also other civil groups fear to become the object of the state surveillance. Since there are no clear evidences to why such surveillance is necessary, the basis of democracy is being eroded, and the civil activity suffers shrinking, they express extreme fears about erosion of human rights. The document states that there is no need in existence of the Special Secrecy Law, and its existence cannot be improved by amendments or further application. NANS� asks not to approve the law and to discard the law completely right away. “We actively work towards the world where such international NGOs as ours will not be shrinking or

restraining themselves with self-control, and where the world peace and people dignity is protected”, concludes the document.

The third document is draft of an opinion statement as an NGO network during the public comment round<sup>47</sup>. It has been submitted on the 24<sup>th</sup> of August 2014, on the last day of public comments round. Signed at that time by only six members of the network the document voices the concerns regarding possible infringement of the international activities for the NGOs.

In the first clause the document states that the law limits the right to know, the freedom of media, and the freedom to gather information. At the same time law gives no ways to go around such limitations legally. By limiting the right to know, the law rejects the basis of democracy and threatens to destruct the base of a civil society that supports activities of different NGOs. Next the document goes over dangers of classifying information about the security and self-defense forces. If classified, it will be impossible to evaluate whether the actions taken by military were constitutional. Also once again NANSL raises questions of war zones and the future of ODA, which may be infringed by cutting the access to the information by putting it in the “international relations” category or by appealing to the right for collective self defense. In regard of the former the document vividly expresses the dangers of being unknowingly involved in a war framed as counter terroristic measures, which cannot be proven. And since this kind of problems cannot be solved by amending the law, the network calls for reworking of this legislation from scratch.

The third point of the document goes over the dangers of accidental acquisition of designated secrets by researchers due to lack of collateral agreements in between countries. There is no organization or mechanism to check whether a given piece of information has been designated as special secret within Japan for Japanese workers outside Japan or people leaving abroad. The clause also highlights how privacy of a person can be looked over in favor of military activities. As an example document addresses two cases of privacy infringement of NGO employees working in Iraq and Afghanistan, and claims that the law does not have consistency of privacy protection.

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<sup>47</sup> 「特定秘密の指定及びその解除並びに適性評価の実施に関し統一的な運用を図るための基準（仮称）

（案）」に対する意見, *tokutei himitsu no shitei oyobi sono kaijyo narabi ni tekisei hyoukaku no jisse ni kan shi touitsuteki na unyou wo hakaru tame no kijun (Kashou)(An) ni tai suru Iken.*

This document, too, goes over a threat of classifying vital information on accidents prevention as terrorism related data, thus limiting information that may save lives. NANSL argues that there should be a proper system of information sharing in place in order to give international NGOs enough freedom to safely run their activities without subjecting their employees to background checks. In line with this the document once again runs over the topic of erosion of the right to privacy for an individual and their families and friends. Not to mention that according to the law the head of any public office or private organization can request “disclosure of the necessary information”<sup>48</sup>, which may include private data. Each set of statements in regard of each clause ends with the same conclusion. No matter how much the base of the law will be revised, there is no way to escape such problems, since they arise from the very essence of the law.

As one can see from the content of the abovementioned entries all the documents in one way or another touch upon the problems and issues that have been mentioned above: centralization of power, vagueness of wording and scope of action, possible infringements of research and journalistic information gathering and “the right to know”, erosion of privacy, excessiveness of the law. It is interesting that NANSL refers to the law as flawed. And clearly states in its public comment documents, that the law cannot be fixed by amendments, because the very basis is wrong and the law should be fully rewritten, if such legislation should exist.

However, not all the issues draw the same amount of attention from NANSL. The documents mostly talk about the influence of the law on NGOs that work outside Japan with ODA. Where such information may get unavailable under “international relations” marking or even be criminalized under “terroristic activities” claims, and privacy invasion due to background checks. In such case there is a threat of classifying a lot of vital information as designated secrets, creating obstacles or fully paralyzing their work. The second fear in this regard is background checking of employees, who are technically “members of incorporated organ” subject to such checks when needed with little possibilities to refuse. All of these are due to vagueness of terminology and twists of interpretation.

In order to deal with these issues, NANSL carried out several deferent types of activities that could be generalized as workshops aiming to share the information on the

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<sup>48</sup>必要な事項の報告, *hitsuyou na jikou no houkoku*

situation and to give others the tools to withstand the possible impact of the law. Let us look closer at the target audience, involved actors, and outcomes of such activities. Below one can find an in-depth look at those activities.

### *Workshops*

The first workshop titled “Considering the Special Secrecy Law: influence on NGO and how NGOs should react”<sup>49</sup> was held on the 4<sup>th</sup> of June 2014, at Waseda Hoshien. The advertisement on the JANIC page explains that even though the resistance among the citizens has been rising since past year, the law nevertheless has been approved, and now citizens and NGO are concerned about its influence on their lives and activities. The advertisement calls to think about the obstacles one may come across and should NGO face them without limiting its usual activities. The text also states that NANS� is an organization that works towards creation of a net across the whole country. It may denote their intention to obtain more support and membership. As a cooperative entity NANS� aims to learn more about the Special Secrecy Law and NGO, and thus decided to organize learning meetings and workshops for everyone across the country.

The program of the workshop included two lectures and one workshop that focused on four case studies. The first lecture was held by the abovementioned Kaido Yuuichi, deputy general manager of the Special Secrecy Law management department of the Japan Federation of Bar Associations. His lecture was a general overview judging from its title “The Special Secrecy Law and citizens”. The second lecture held by Itou Kazuko, secretary-general of the Human Rights Now<sup>50</sup>, and was titled “The Special Secrecy Law as seen by the Human Rights NGO”.

The general title for the workshop was “Dealing with cases of effected NGOs”. It included the following case studies: acquisition of security related information outside Japan, acquisition of information related to policy proposal activities, consideration of possible background checks for NGOs, and other cases remaining unknown. Each case has been commented on by Kaido while NANS� is mentioned as a co-host.

The second workshop was held at the city of Fukuoka on the 6<sup>th</sup> of December 2014 and had almost the same title as the one held in Tokyo: “Considering international

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<sup>49</sup>秘密保護法を考えるワークショップ - - NGO にどんな影響があるの、NGO はどう対応したらいいの - , *himitsu hogohou wo knagaeru waakushoppu - NGO ni donna eikyou ga aru no, NGO ha dou taiou shitara ii no -*

<sup>50</sup> See more at: <http://hrn.or.jp/>

cooperation and the Special Secrecy Law: influence on NGOs and how NGOs should react”. The lecture about “the Special Secrecy Law, its problematic points, and influence on NGOs” by lawyer Maruyama Akiko from Fukuoka Toubu Law Firm was held at Fukuoka NGO public office and was targeting NGOs and their staff who had concerns about the influence of the law or did not understand the law thoroughly and wanted to clear things up. The lecture was followed by the group discussion. The event was held jointly by NANSL and Fukuoka NGO network. Unlike the abovementioned workshops this had a rather limited capacity of 20 people.

The third workshop titled “We shall not back away. How the civil society activism will evolve under the special secrecy law?” was held on the 16<sup>th</sup> of December 2014 at Waseda Hoshien Liberty Hall. The short description of the event at the website puts a stress over the ambiguity of the law<sup>51</sup>. The program was hosted by NANSL and the Japanese Federation of Bar Associations, and included two lectures. The first one, “The state of things around the Special Secrecy Law”, was held by Kaido. The second one, “What civil activists should to pay attention to in regard of the Special Secrecy Law”, was held by Ogawa Ryuutarou. The lectures were followed by discussion sections where NGOs could discuss with Kaido, and later everybody could exchange their opinions.

NANSL website also holds the record of the study meeting named “International NGOs and the Special Secrecy Law” held at Nagoya on the 8<sup>th</sup> of July 2014. However, the entry has no further information about the content of this event and is not linked to any other websites that could have clarifies the situation. This one may assume that the workshop could possibly be of the similar nature to those discussed above: discussing general aspects and problematic points of the law and highlighting its influence on the civil society.

As one can see, NANSL started to work towards the spread of information about the law and methods to deal with its impact in a series of events. With the help from lawyers association, the NGO network targets other international NGOs and NPOs more than single individuals at the grass root levels, and strives to educate them more on a matter. NANSL can be seen as a transferring entity that channels the public opinion up towards the state (as one will see below, NANSL has established fairly firm connections with the Ministry of Foreign Affairs of Japan) while simultaneously spreading the information on

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<sup>51</sup>曖昧さ, *aimaisa*

the matter down to the citizens, without creating friction points and opting towards more cooperative and negotiating style.

### *Cooperation with MOFA*

Finally, Finally, and probably most interestingly in light of influencing the policymaking, NANSL had held a discussion with the ministry of Foreign Affairs regarding handling of ODA related information. It is marked as the first round of discussions in year 2017 held on the 7<sup>th</sup> of April<sup>52</sup>. There were also other rounds of discussion in 2014, which indicates that this line of action is continuous in time and may have an impact.

In the course of discussion NANSL presented a report titled “Handling of the information about ODA based on principles of openness and the Special Secrecy Law”<sup>53</sup>. According to the short report of the meeting at NANSL webpage, the network independently was trying to check the classified information and find out whether some items regarding ODA have fallen under special secret designation or not. By making an enquiry to the government, they have found out there was one case of submitting military related information, one case regarding the foreign Policy Bureau, and one case of gathering private information. NANSL was specifically checking if any of these classified cases could be related to ODA or infringe activities of the international NGOs. They turned out not to be related, thus – do not infringing international NGOs in any way. Interestingly, MOFA also hold the entry about NANSL<sup>54</sup> at their website, which adds to the argument of their continuous cooperation and possibilities for further development in this area.

### *Booklet*

The last piece of crucial information on NANSL activities is creation of the manual booklet<sup>55</sup> written by Kaido with contributions from the younger group of lawyers and

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<sup>52</sup> See more at: [http://nansl.org/news\\_20170414.html](http://nansl.org/news_20170414.html)

<sup>53</sup> 特定秘密の指定における ODA 関連情報等の取り扱いについて外務省と協議しました。2016 年度第 1 回 ODA 政策協議会の報告。Tokutei himitsu no shitei ni okeru ODA kanren jouhou nado ni tsuite gaimushou to kyougikai shimashita. 2016 nendo dai ikkai ODA seisaku kyougikai no houkoku.

<sup>54</sup> See more at: <http://www.mofa.go.jp/mofaj/gaiko/oda/files/000083003.pdf>

<sup>55</sup> 秘密保護法対策マニュアル, tokutei himitsu hogohou manyuaru

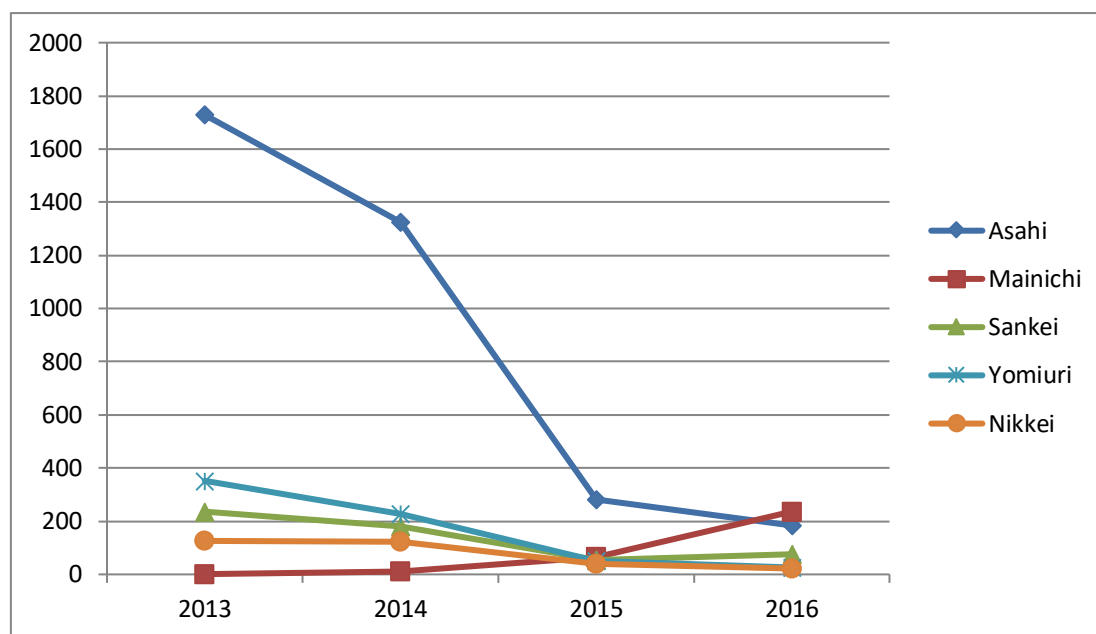
released on the 15<sup>th</sup> of May 2015. The booklet is meant to supplement the FAQ section according to NANSL recommendations on their website. The booklet consists of five chapters, each addressing the nature of the law, questions of civil activities and gathering of information, influence on public servants and whistle-blowers, and dealing with the litigations under the law respectively. The same way as workshops, this booklet is aiming the NGOs and NPOs who deal with international work at first place.

Now, how did all of these activities contribute to influence on a policymaking. Below follows to analysis of the influence factors described in methodological section based on already analyzed data from the archives of NANSL and its member organizations.

#### 4.4 Measuring influence factors

*A: Getting the issue on the agenda for discussion: the issue is mentioned in a mass media.*

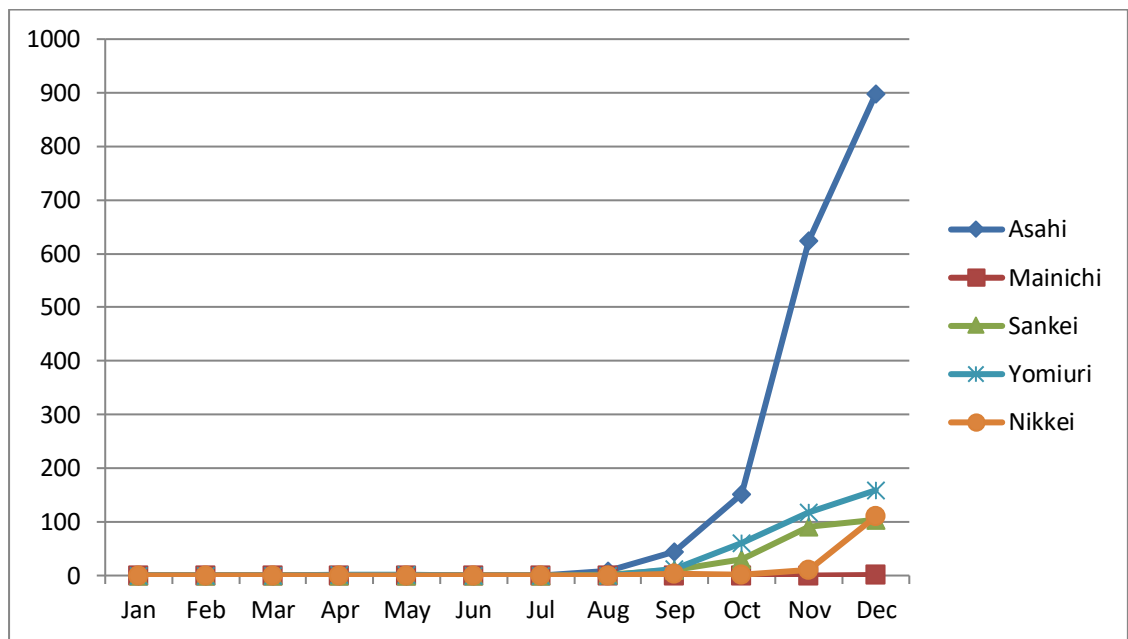
To see how the topic of the Special Secrecy Law was handled by the media, let us take a look at some graphs that show the fluctuation of certain words mentions over the period of four years. Below is the visual chart, reflecting the recurrence of the Special Secrecy Law related topics. To retrieve this data a simple search of the “特定秘密保護法” has been carried out through the archives of five big newspapers in Japan. (The tables with numerical representation can be found in appendix 1 for all the graphs following below.)



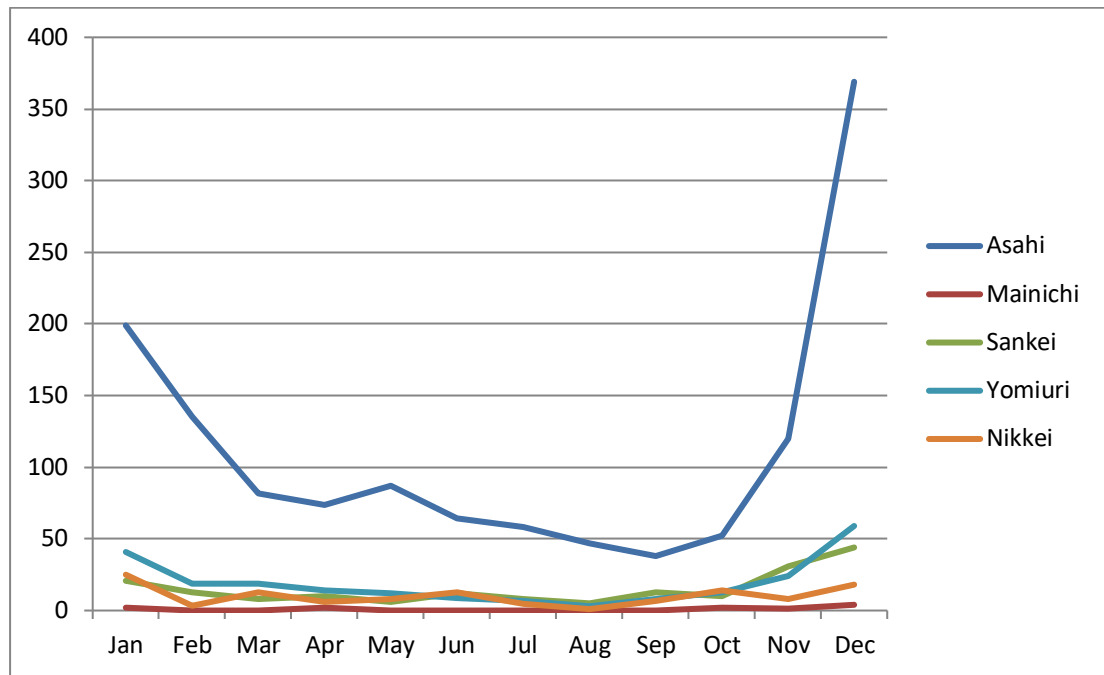
**Graph 2.** Mentions of “特定秘密保護法” in newspapers the Asahi Shimbun, Mainichi Shimbun, Samkei Shimbun, Nikkei Shimbun, and Yomiuri Shimbun from 2013 to 2016.

As one may see there from the number of mentions, the Special Secrecy Law has been intensively highlighted by the Asahi Shimbun mentions in 2013 when the law has been in a draft stage, and about 1300 mentions one year later, when the law came into force. This general declining tendency from year 2013 towards year 2016 can be seen in all papers, except for Mainichi Shimbun that shows more interest towards the topic over the time. Tokyou Shimbun is rather stable in its interest towards the matter, which is not very high comparing to starting points of other newspapers. Otherwise, there is a rather clear correlation between the time and the dropping interest towards the topic.

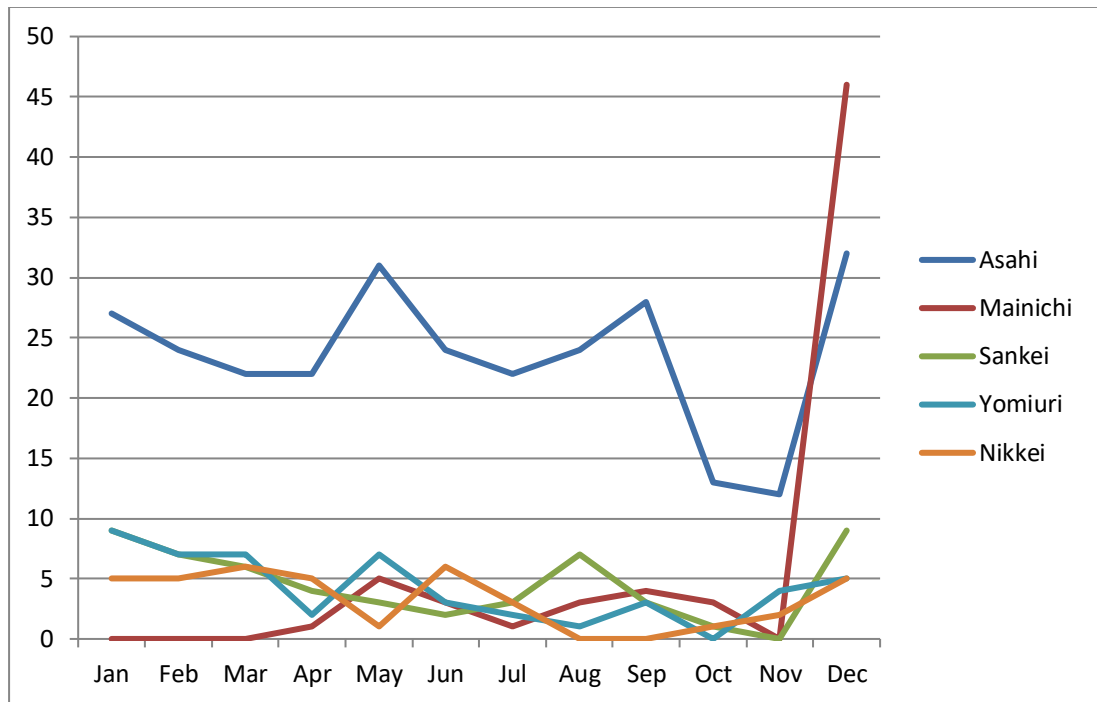
It is also worth taking a look at fluctuation of mentions within a year in every newspaper, as this data also provides us with valuable information on waves of mentions within shorter spans of time. As the graphs below show, there is a vivid spike of mentions around every December and January for almost every newspaper falling back flat every summer.



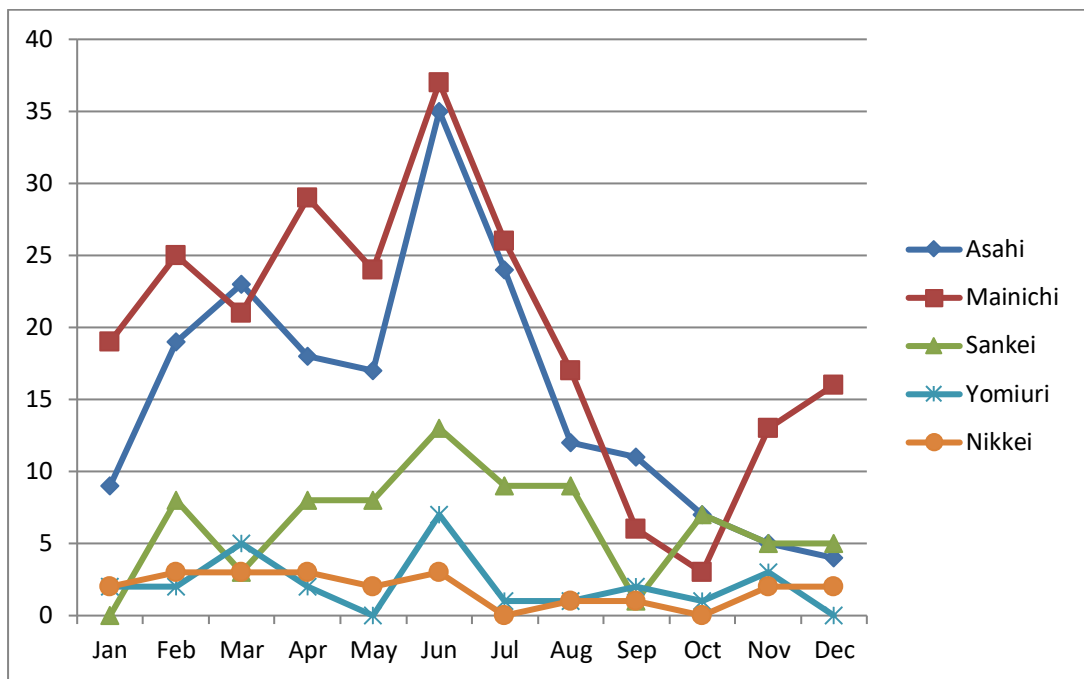
**Graph 3.** Mentions of “特定秘密保護法” in the Asahi Shimbun, Mainichi Shimbun, Sankei Shimbun, Nikkei Shimbun, and Yomiuri Shimbun in 2013.



**Graph 4.** Mentions of “特定秘密保護法” in the Asahi Shimbun, Mainichi Shimbun, Sankei Shimbun, Tokyo Shimbun, and Yomiuri Shimbun in 2014.



**Graph 5.** Mentions of “特定秘密保護法” in the Asahi Shimbun, Mainichi Shimbun, Sankei Shimbun, Tokyo Shimbun, and Yomiuri Shimbun in 2015.



**Graph 6.** Mentions of “特定秘密保護法” in the Asahi Shimbun, Mainichi Shimbun, Sankei Shimbun, Nikkei Shimbun, and Yomiuri Shimbun in 2016.

This may be explained by the time of vote and promulgation of the Special Secrecy Law. Both the approval and the coming into force were in the beginning of December, thus the interest to the topic was especially on the rise during December and January. But does NANS� have a role in bringing this issue to the attention of the media?

The NGO has been twice mentioned in the Asahi Shimbun newspaper on the 3<sup>rd</sup> of March 2014 in the morning additions of Tokyo and Nagoya branches. The text of both notes is rather short and only briefly describes the NGO itself. The Nagoya addition notifies of official recognition of NANS� as an NGO and quotes from the NGO about their aim “to protect a society where information is easily accessible”. (Asahi, Nagoya) Before December, according to the newspaper, their activity was mainly targeting resistance to the law approval and organization of study groups. NANS� was studying possible effects of the law on NGOs and was researching measures to deal with such effects. After the approval of the law, the organization plans to cooperate with member organizations and oversee the law application. Member NGOs of NANS� have summarized their concerns in a short bullet point list after the main articles.

It is impossible to establish the ways by which the news about the formation of NANS� has gotten into the newspaper: was it by their own attempt or did they reach the

critical mass in membership and coverage to be covered by the news giant. However, there were no other mentions of NANSL in other newspapers, beside the Asahi Shimbun, which is a known left-leaning publisher and for covering more of political scandals more than their conservative counterparts. That may explain why, the number of hits for the searched keywords in the Asahi Shimbun was much higher during any given period, and why the actively opposing organizations got the coverage. The Asahi Shimbun had number of reports on protest activities, mainly self-organized opinion polls at the railway stations and marches showing up every now and then along four years. At the same time more conservative publishers, like Yomiuri and Sankei kept reporting on this specific issue less as one can see from the graphs and data in the tables in appendix.

Since the Asahi focused on highlighting the negative effect and the shortcomings of the Special Secrecy Law, it may explain why they have chosen to add the list of the main NGO concerns after the main article. By doing so, NANSL was able to partially accomplish their stated mission – to share the information on some of the possible obstacles that the law created for the NGOs’ activities in the future, and to announce the study groups which might draw a wider audience to such lectures than a single advertisement at the NGO page, even if it is a big NGO.

It might be due to a general hype around the law that the topic came out regularly in the biggest newspapers. However, it is impossible to surely give credits to certain organizations for making the topic visible in the beginning of the Special Secrecy Law journey in 2013. On the other hand, very few organizations have remained focused the Law after the hype went down. It is easy to see that after two acute picks of in December-January 2013 and 2014 coinciding with the approval and coming into force, most publishers have shifted their attention to other topics and the number of hits went down. Except for Mainichi that might have felt more comfortable to write about these issues once the situation has settled down. The demonstrations and smaller acts of protest, like the abovementioned self-organized opinion polls, have also dissolved.

#### *Factors B to F*

Factor B (Success in promoting serious discussion, the issue is mentioned in longer or more scientific articles) is relatively hard to measure since it is hard to have a grip on all the recent and ongoing studies and publications. However this work relied on information

provided by the organization itself, and they have no mentions about the collaboration of any kind in production of any research material so far. Still, even if such works exist, they were probably produced without the direct acknowledgement to the organization, or NANSL did not find it worthy putting up to archives or newsfeed.

Of course, it might be possible to view the explanatory booklet as such. Yet, as it is visible from the table title and the table of content, it is more of internal work, a set of recommendations, rather than an academic work. However, it is important that the booklet was produced by professionals only. It may indicate that the trend of under-professionalized civil society described by Pekkanen may be changing.

Factor C (success is shifting public opinion, as expressed in public opinion polls) is also rather hard to measure because there is nothing to compare the initial public opinion poll to. The self-organized polls and protests as well as the official vox populi showed very negative attitude towards the law from the very beginning. Having the starting point at 77% resisting rate there is already a showing tendency. The only possible development in this situation for NANSL activities would be to shift the opinion from bad to worth, but it does not really makes any sense in such situation as it brings nothing to the table of negotiations about the law. As it was mentioned in the previous chapter, many consider the law to be forced voted without consideration of public opinion, thus there is almost no one whose opinion needs to be shifted in order to trigger the response.

Subsequently, if the government managed to push forward the law amidst such resistance rates and severe critiques, and keep on actively utilizing it, factor D (success is achieving procedural or institutional change) and factor E (success in achieving substantive policy change that eliminates the problem) automatically fall under “no influence” category. As for factor F (other factors, such as recognition or criticism of activists by governments, can indicate influence) the only time the government referred to all kinds of concerns and critique was the video of the Minister of State Mori Masako, prepared by the government itself before the approval of the law.

## CONCLUSIONS

The Special Secrecy Law has created a lot of ambiguity and hard-to-solve issues both on legislative level and within the civil society due to the core nature of the law. The main concerns have to do with the vagueness of application principles due to vagueness of the wording. With no clear instruction to what kind of information can become a designated secret the law might potentially infringe the right to access a variety of information for research and journalistic purposes, as well as limit the pool of data necessary to carry out all kinds of activities outside Japan. The situation is worsened by the threat of severe punishments for leakage of secrets and the background checks of public servants and employees of incorporated entities, breaching the right to privacy not only of any individual, but also of their families and close affiliates. Despite the official organs being set to overview the designation and declassification of information, the real state of things shows that there is no one to control the process of designation, letting the cabinet, and first of all the Prime Minister, to apply secrecy stamps on any kind of documents at their own will with no possibility to retrieve its content later on for others as the terms of prolongation are also obscure.

Since the beginning of the promulgation process civil society has shown a lot of activities aiming to stop the promulgation by going on demonstration rallies and voting the law down to 77% of disagreement during the public comments round. Yet, this research on a base of a case study of the NGO network has found that the social advocacy in Japan has no influence on the governmental policymaking. Nevertheless, civil society groups maintain other means of coping with the issue.

First of all, the utilization of communication channels is important. The NGO network has contact inside and outside Japan, allowing to call it an international organization. However, despite having the possibility to reach outside Japan, work on international level, and create the pressure from the outside (as Chan suggested), NANSL concentrates on protection of Japanese groups operating outside the country from within Japan. Yet, the major stress is still falling on domestically oriented activities (as argued by Pekkanen). From the case study it is also clearly visible that Pekkanen is also right about the solidity of grassroots and vastness of networks, but the proportion of professionals in it may be rising, denoting possible changes in the professionalization factor of civil society in Japan.

When looking at direction of communication within the country, on the one hand, NANSL has the ways to communicate the information down towards the citizens, on the other – channels to communicate its concerns up to the state. The downward local channels are utilized for distribution of information through the means of organizing sessions, circulating (selling) printed materials and writing up opinion statements and declarations. Thus NGO turns towards education citizens about protection of their own rights. NANSL does a lot of job by trying to educate individuals and organizations about the handling methods, by providing consultancy and professional support, and cooperating with the Ministry of Foreign Affairs.

As for the policymaking (or changes to it), at this point social advocacy groups can only go as far as get involved to a certain degree with the factor A (get the issue to the media). And even that is mainly due to the general high interest towards the matter. All other factors remain unreachable for this particular organization, which may let us think that civil advocacy still remains weak in Japan and cannot influence the policymaking.

Present research may become of use to those who are interested in changing dynamics of the civil society in East Asian countries and in Japan in particular. The Special Secrecy Law might also be studied in a context of influencing the foreign policies of Japan, media-scape within the country, or probability of changing the Constitution of Japan through adoption of the laws of a similar nature, as for example, the newly suggested Conspiracy law.

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## APPENDICES

### Appendix 1. Statistical data of the graphs

	2013	2014	2015	2016
<b>Asahi</b>	1728	1325	281	184
<b>Mainichi</b>	1	11	66	236
<b>Sankei</b>	236	181	54	76
<b>Nikkei</b>	0	121	39	22
<b>Yomiuri</b>	352	228	50	26

**Table 1.** Mentions of “特定秘密保護法” in newspapers Asahi Shimbun, Mainichi Shimbun, Samkei Shimbun, Nikkei Shimbun, and Yomiuri Shimbun from 2013 to2016.

	2013	2014	2015	2016
<b>Jan</b>	0	199	27	9
<b>Feb</b>	0	135	24	19
<b>Mar</b>	0	82	22	23
<b>Apr</b>	0	74	22	18
<b>May</b>	0	87	31	17
<b>Jun</b>	0	64	24	35
<b>Jul</b>	0	58	22	24
<b>Aug</b>	8	47	24	12
<b>Sep</b>	45	38	28	11
<b>Oct</b>	152	52	13	7
<b>Nov</b>	625	120	12	5
<b>Dec</b>	898	369	32	4
<b>Total</b>	1728	1325	281	184

**Table 2.** Mentions of “特定秘密保護法” in the Asahi Shimbun newspaper from 2013 until 2016.

	2013	2014	2015	2016
<b>Jan</b>	0	2	0	19
<b>Feb</b>	0	0	0	25
<b>Mar</b>	0	0	0	21
<b>Apr</b>	0	2	1	29
<b>May</b>	0	0	5	24
<b>Jun</b>	0	0	3	37
<b>Jul</b>	0	0	1	26
<b>Aug</b>	0	0	3	17
<b>Sep</b>	0	0	4	6
<b>Oct</b>	0	2	3	3
<b>Nov</b>	0	1	0	13
<b>Dec</b>	1	4	46	16
<b>Total</b>	1	11	66	236

**Table 3.** Mentions of“特定秘密保護法” in the Mainichi Shimbun newspaper from 2013 until 2016.

	2013	2014	2015	2016
<b>Jan</b>	0	21	9	0
<b>Feb</b>	0	13	7	8
<b>Mar</b>	0	8	6	3
<b>Apr</b>	0	10	4	8
<b>May</b>	0	6	3	8
<b>Jun</b>	0	12	2	13
<b>Jul</b>	0	8	3	9
<b>Aug</b>	1	5	7	9
<b>Sep</b>	10	13	3	1
<b>Oct</b>	30	10	1	7
<b>Nov</b>	91	31	0	5
<b>Dec</b>	104	44	9	5
<b>Total</b>	236	181	54	76

**Table 4.** Mentions of“特定秘密保護法” in the Sankei Shimbun newspaper from 2013 until 2016.

	2013	2014	2015	2016
<b>Jan</b>	0	25	5	2
<b>Feb</b>	0	3	5	3
<b>Mar</b>	0	13	6	3
<b>Apr</b>	0	6	5	3
<b>May</b>	0	8	1	2
<b>Jun</b>	0	13	6	3
<b>Jul</b>	0	5	3	0
<b>Aug</b>	0	1	0	1
<b>Sep</b>	3	7	0	1
<b>Oct</b>	2	14	1	0
<b>Nov</b>	11	8	2	2
<b>Dec</b>	110	18	5	2
<b>Total</b>	126	121	39	22

**Table 5.** Mentions of “特定秘密保護法” in the Nikkei Shimbun newspaper from 2013 until 2016.

	2013	2014	2015	2016
<b>Jan</b>	0	41	9	2
<b>Feb</b>	0	19	7	2
<b>Mar</b>	0	19	7	5
<b>Apr</b>	1	14	2	2
<b>May</b>	1	12	7	0
<b>Jun</b>	0	9	3	7
<b>Jul</b>	0	7	2	1
<b>Aug</b>	0	3	1	1
<b>Sep</b>	13	8	3	2
<b>Oct</b>	60	13	0	1
<b>Nov</b>	118	24	4	3
<b>Dec</b>	159	59	5	0
<b>Total</b>	352	228	50	26

**Table 5.** Mentions of “特定秘密保護法” in the Yomiuri Shimbun newspaper from 2013 until 2016.