As Thailand’s political crisis continues to simmer following last spring’s violent crackdown on anti-government protesters, the foreign media find themselves increasingly caught in the middle.

Most worrying, writes Pavin Chachavalpongponpun, is that opposition critics and the government appear to be using the country’s controversial lèse majesté law to muzzle the media – a tactic that could weaken, rather than secure, the standing of the monarchy.
IN JULY 2009, the venerable Foreign Correspondent's Club of Thailand (FCCT) was accused of committing *lése majesté*, a crime under Thai law with a maximum jail sentence of 15 years. While the accuser, Laksana Kornsilpa, 57, a translator and a fierce critic of ousted former Prime Minister Thaksin Shinawatra, could have targeted certain individuals in the FCCT, she filed a *lése majesté* complaint against the club's entire board of 13 members. For the first time in its five-decade history, the FCCT was dragged into Thailand's internal political war. The dangerous impact of the charges rested on the increasingly narrowing space for free expression of views and opinions about the Thai political situation.

What made this case even more alarming was the fact that Laksana filed the complaint almost two years after the club’s alleged violation of the law. On Aug. 29, 2007, the FCCT had invited Jakrapob Penkair, then Minister in the Prime Minister's Office and a pro-Thaksin figure, to give a speech at the club. Jakrapob later served in the Samak Sundaravej administration of January to September 2008. Samak himself was painted as Thaksin's political proxy and therefore faced continual challenges by members of the royalist, yellow-shirted People's Alliance for Democracy (PAD), which had organized a long-running series of street protests to unseat his government. In mid-2008, some months after delivering his
speech at the FCCT, Jakrapob was accused of using it to insult the monarchy. Eventually, he was forced to resign from the ministerial post and was charged with lèse majesté. The content of his speech cannot be revealed here because the revelation would be considered as an act of lèse majesté. In the aftermath of the violent demonstrations by the so-called red-shirt movement in Bangkok in April 2009, Jakrapob fled the country and became a fugitive from Thai law while his lèse majesté charges were still being investigated.

The FCCT was undoubtedly surprised at the allegation that came its way two years after the speech was made in a club that has always served as a venue for open and free discussion. But the surprise action could be explained. In April 2009, not only did the Red Shirts stage violent demonstrations, they also stormed the venue of a summit of the Association of Southeast Asian Nations Plus Three (ASEAN + 3) in Pattaya, forcing its cancellation. This badly damaged the reputation of Prime Minister Abhisit Vejjajiva’s government as the chair of the ASEAN Standing Committee that year. It is therefore possible that the lèse majesté charges against the FCCT were the product of the ongoing political struggle between the pro- and anti-Thaksin camps that has been under way since the 2006 coup. It is also possible that the charges, supposedly designed to protect the royal institution, were part of a plot to cover up the loss of the government’s legitimacy in the aftermath of the unrest in Pattaya and Bangkok. In the latter case, blaming the FCCT for what had happened two years earlier was indeed a tactic to divert public attention from the tottering state of government order that prevailed in Thailand at the time.

Laksana accused the FCCT of organizing Jakrapob’s talk and later distributing his speech to its members. It was true that DVDs containing Jakrapob’s lecture were produced for the club members who missed the event and sales were restricted solely to FCCT members. The media reported that few copies of his talk were sold because a manuscript of his lecture was circulated in Bangkok shortly after he was charged and the video could be downloaded online.

For one of the FCCT’s board members, Jonathan Head, the latest charges were another major blow to his already troubled record. The FCCT’s Vice-President and a BBC correspondent, he had separately been investigated in late 2008 for lèse majesté. Police Lt. Col. Wattanasak Mungkandee had filed the complaint, using as evidence an article on the BBC website from December 2008 that was perceived to criticize the monarchy. Head moderated Jakrapob’s talk at the FCCT, and on one royalist website, a comment was left calling for all members of the FCCT to be jailed for 99 years. Another asked the site to post Head’s photo so that anyone could attack him if they saw him.

At news of the accusation against the FCCT, Amnesty International and the Southeast Asian Press Alliance (SEAPA) were quick to voice their concerns about the way the lèse majesté law had been used to undermine political opponents. Lupe Arlumpe, Director of SEAPA, said: “We had already said, and we say it again, that lèse majesté law in the Thai law system must be reviewed as it has been used to block and intimidate mass media in the country.” Similarly, Bob Dietz of the New York-based Committee to Protect Journalists expressed his disappointment at the Thai authorities. He said, “It is time for prosecutors and investigators in Thailand to immediately drop these outrageous and punitive charges against our colleague Jonathan Head. Head’s reporting has raised important questions about Thailand’s deteriorating political situation and he should be allowed to report without fear of official reprisals.”

**EXPRESSION NOT FOR FREE**

Many once praised Thailand’s democracy and its support for freedom of the press. But that was before the advent of Thaksin and the military coup that toppled him in September 2006. Thaksin was widely condemned for his perceived disloyalty to the monarchy, while some civil libertarians joined the chorus, saying his government also undermined press freedom in various ways. Some military leaders justified the coup as “necessary” in order to safeguard the monarchy from Thaksin’s “arrogance of power.” Thaksin repeatedly denied any conflict with the king. But his opponents said
The Abhisit government has attempted to repair the old political consensus based on loyalty to the monarchy, when in fact the maintenance of elitist power is key. In doing so, more than at any time in Thailand’s modern history, it has sanctified the royal institution to legitimize its own regime, while seeking to rebuke those outside its network.

that he was seeking to usurp the power of the monarch. Thaksin’s controversial statements in the past seem to verify such allegations. At the height of the anti-Thaksin campaign in 2006, Thaksin said that he would happily step down from the premiership “if the King whispered in his ear.” In November 2009 in an interview with The Times of London, he enraged the traditional elites by calling for the reform of institutions around Thailand’s monarchy. Richard Lloyd Parry, the reporter who interviewed Thaksin, was also investigated for committing lèse majesté. Lately, the threat of lèse majesté charges has loomed over anyone, not necessarily from the pro-Thaksin camp, who holds political views that are different from the traditional elites, including foreign reporters.

Lèse majesté, or the crime of injury to the royalty, is defined by Article 112 of the Thai Criminal Code, which states that defamatory, insulting or threatening comments about the king, queen and regent are punishable by three to 15 years in prison. Charges against Thais are usually graver and the investigation and prosecution process is by nature opaque. Most charges against foreigners are subject to foreign media scrutiny, thus opening up the murky process. Foreigners convicted of lèse majesté often receive a royal pardon, as in the case of Australian writer Harry Nicolaides, who was given a three-year prison sentence for publishing a book that supposedly offended the royal family. He was set free after serving six months in jail.

Today, with the pervasive use of the lèse majesté law, foreign journalists are extremely cautious in writing about the monarchy. This has effectively led to a culture of “self-censorship” among foreign journalists based in Thailand.

At the crux of the lèse majesté allegations against foreign journalists lies the state’s strategy of trying to neutralize the foreign media’s coverage of the Thai situation; reporting must be in line with government policy and favorable to the Thai elites. The Thai political situation has become deeply polarized. All factions have fought to control public opinion, both inside and outside the country. Foreign journalists are caught in the middle of this domestic war and have increasingly become vulnerable. This explains why, in recent years, there have been virtually no reports on the monarchy from Thailand-based foreign journalists.

The royal institution is an integral part of political development in Thailand, particularly now when the protracted crisis shows no sign of subsiding. Unfortunately, foreign journalists who work inside Thailand, with a better understanding of the institution and better access to first-hand information, are forbidden to report on what happens within the walls of the palace. Instead, reports on this sensitive issue are “manufactured” by those outside Thailand, and they could seriously be misinterpreted, highly politicized and dangerous to the monarchy.
The FCCT has acknowledged the dilemma. The club’s current president, Marwaan Macan-Markar, released a statement on Feb. 5, 2010, saying: “The Executive Committee of the FCCT strove to achieve a balance between the two primary objectives of the club during the past year. These were to offer a space welcoming to our members and to serve as a venue open to the free exchange of views and ideas on current issues of the day... Against this were the times our club found itself mentioned in the local media. And not all of it was in praise. Thailand’s politically charged atmosphere saw the club being accused from all sides of the country’s political divide for not being open to their respective views. We were also not spared a lèse majesté complaint either.”

Following the crackdown on Red Shirt protesters in May 2010 and the arson attacks against several public buildings at the hands of radical elements within the Red Shirt camp, the room for dissent has shrunk further. The Abhisit government has attempted to repair the old political consensus based on loyalty to the monarchy, when in fact the maintenance of elitist power is key. In doing so, more than at any time in Thailand’s modern history, it has sanctified the royal institution to legitimize its own regime, while seeking to rebuke those outside its network through a variety of methods, including the arbitrary use of the lèse majesté law. Thais have been forced to comply and to sacrifice their political convictions, whereas foreign journalists have been forced to do the same thing at the expense of their own integrity.

**ONGOING ATTACKS AGAINST FOREIGN MEDIA**

FCCT President Macan-Markar may have delivered good news in saying that the complaint against the FCCT has not progressed and the procedure related to lèse majesté complaints has been subject to an overhaul. But the state has not given up. During the 2010 street protests, leading foreign media outlets, such as the CNN and the BBC, were accused by the Abhisit government of biased reporting and leaning toward the Red Shirt movement. In particular, Dan Rivers of CNN was attacked not only by the government but also by many Thai nationalists for failing to analyze the Thai crisis without prejudice. Rivers and other foreign journalists were reproached for oversimplifying the Thai crisis as if the Red Shirt protestors on the streets were fighting against a dictatorship. They were also accused of taking statements only from red shirts and conducting interviews with its leaders, but declining to elaborate on the government’s position, especially Abhisit’s attempt to resolve the political deadlock through peaceful means before he decided to launch a crackdown. Thai nationalists called this a “discrepancy in sources of information” on the part of foreign journalists.

Thai daily *The Nation* commented: “The point is not that CNN did not report that some of the Red Shirts were armed or show those armed men to the viewers. This they did. Where CNN and Rivers failed is in properly explaining the context of what was happening during the May 14-19
crackdown — and without proper context, understanding the story becomes impossible.” This allegation is consistent with the historical view of foreigners in Thailand: no matter how much they think they know, they do not understand and will never reach the core of what constitutes the Thai nation. But Rivers and CNN could have argued that the Thai media was hardly objective. They worked as a tool of the government and portrayed the anti-government supporters as enemies of the state. The argument on the media’s impartiality is endless.

What is more important is that dislike of the foreign press has reached an unprecedented level. Two foreign reporters were killed and at least seven foreign or local reporters were wounded during the violence and many reporters who covered the demonstrations believed they were a deliberate target. At a meeting at the FCCT on June 2, foreign journalists expressed their anger against the Abhisit government for the deaths of their colleagues and demanded that an independent probe into attacks on reporters be launched. They also complained about the widespread allegation that the foreign press was biased. They had lost their friends, now they were losing their reputation and credibility. Moreover, they were still subject to the lèse majesté law that threatened them with jail terms should they write anything critical of the royal institution.

Recently, the Abhisit government has striven to overcome negative media reports directly. Global Voices Advocacy reported that Thailand’s Ministry of Information Communication Technology (MIC) and the Centre for the Resolution of the Emergency Situation (CRES), admitted to having blocked at least 50,000 websites and was adding 500 more per day. Since May, it has been estimated that Thailand could be blocking 113,000 websites. In June, the Thai cabinet approved the creation of a Bureau of Prevention and Eradication of Computer Crime, purportedly to protect the monarchy. The new office adds to the censors already at the MIC, the CRES, the Royal Thai Police, the army’s “war room” and the Ministry of Culture.

What is the impact of the excessive use of the lèse majesté law? Social critic and lèse majesté case defendant Sulak Sivaraksa noted: “The problem of abusing lèse majesté law is now utterly messy. The fact that leading world intellectuals like Noam Chomsky and others have petitioned to Abhisit to reform the law is a testimony to it.”

So far, lèse majesté has deepened the politicization of the monarchy and served to damage, not safeguard, the institution. Indeed, it has been exploited to hide the ugly reality of Thai politics, from the suppression of the opposition and the media to obstructing Thailand’s long-delayed democratization. The government in July announced the extension of the emergency degree that followed the Red Shirt protests in 18 provinces, claiming that the situation had not returned to normal. Today, it is still in effect in four provinces. The emergency degree allows state agencies to curb media freedom for the sake of national security, particularly in protecting the monarchy. Portraying the Thai situation in this way has allowed the government to keep postponing elections.

The FCCT and its journalist members are at a crossroads. It is obvious that the Abhisit government has made lèse majesté one of its top priorities. For the first time since the end of the Cold War, the existence of the monarchy has been tied closely to national security. “In Thailand, the monarchy is not only a symbolic institution. It is the pillar of national security,” said Pirapan Saliratavibhaga, a former judge, in an interview with the media. “Whatever is deemed as affecting the monarchy must be treated as a threat to national security.” All foreign journalists are thus compelled to ensure that their reports will not harm the monarchy, which could be tantamount to threatening Thailand’s national security. For the government, the key to safeguarding security and shielding the royal institution from so-called enemies of the state is to nurture the lèse majesté law, even if by doing so the freedom of the media is grossly curtailed.

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3 “Getting Tough on Royal Critics,” The Straits Times, Jan. 9, 2009.