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DIFFERENCES IN FRENCH LAW PERTAINING TO REFUGEES FROM FORMER COLONIES:

A CASE STUDY OF NORTH AFRICA AND INDOCHINA

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By Lauren Bergin

A thesis presented in partial fulfillment of the requirements for completion  
Of the Bachelor of Arts degree in International Studies  
Croft Institute for International Studies  
Sally McDonnell Barksdale Honors College  
The University of Mississippi

University, Mississippi  
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## ABSTRACT

Colonial relations between colonizer and colonized are an interesting yet often understudied part of the legal field. This thesis will focus on these links within the relationship between France and two of its former colonies: North Africa and Indochina. In order to discover more information on these relationships, I take a historical approach focusing on legal documents, debates, and decrees, both from the French government and international bodies and representatives such as the United Nations High Commissioner for Refugees. The resulting discoveries show that French legal documents were far more concerned with North Africa compared to Indochina, both regarding asylum and other matters. Furthermore, while French law does not frequently mention Indochina, it was the subject of many international laws and conventions. Additionally, having a colonial past tied to that of France leads to certain benefits when a person is applying for asylum in France.

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## CHAPTER 1: INTRODUCTION

### **Introduction**

Scholars generally acknowledge September 2, 1945 as the end of the Second World War. In addition to the end of the war, 1945 was a year in which decolonization began on a large scale. For France in particular, the end of World War II marked the decline of their empire. This period leading up to decolonization and immediately after decolonization was significant in regarding how French law treated former colonies. With that in mind, this thesis aims to understand how French law and policy toward refugees differs between former colonies during the process of decolonization in North Africa and Indochina. Within this topic, I want to focus on how French law treated refugees from these former colonies and protectorates.

In order to answer this question, I will take a historical approach focusing on legal documents, debates, and decrees, both from the French government and international bodies such as the United Nations High Commissioner for Refugees. The majority of these resources will be from the period of time from 1950-1990. Because it immediately follows decolonization and is a period of drastic global change, this timeframe highlights the significance of the law and policy changes implemented after decolonization. As spheres of influence and changes in authority were frequent immediately before this period, France implemented many of the most significant laws and policies relatively close to the time of decolonization.

The cases of North Africa and Indochina are helpful case studies. First, while both areas were formerly under French control or protection, they had very different experiences under colonial rule. Algeria, and North Africa in general, had closer ties to France while under colonial rule, likely due to how close the regions were geographically. This resulted in more laws regarding North Africa appearing compared to Indochina which was both further from France

and fell in and out of French control. At the same time, there were critical similarities in how decolonization came about, through a process of violent conflict Algerian War and the Vietnam War.

## **Background**

In the period after World War II and before the beginning of decolonization, French law made few distinctions between refugees and other types of immigrants. This was due to an effort in both France and Europe as a whole to normalize the status of refugees, which people thought would help make the immigration process less discriminatory.<sup>1</sup>

France has had a history of offering asylum to those in need, and in the early years following the two World Wars, the country only refused a few asylum seekers. One important thing to note is that many of these asylum seekers were European at the time. By the 1970s, the number of asylum seekers was on the rise, and applicants were from countries outside of Europe. Citizens of certain countries had a higher chance of obtaining refugee status. One example of this is how Asian asylum applicants are much more likely to be granted asylum than African applicants.<sup>2</sup> The reason for this discrepancy in the reception of refugee status likely is due to French ties to its former colonies. While both regions had countries with colonial ties to France, North Africa had a much closer relationship with France, both due to geographic location and because of the violence with which the colonial rule ended. To this day, France is reluctant to truly apologize for the brutality that occurred during colonial rule and the Algerian War.

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<sup>1</sup> Greg Burgess, "Remaking Asylum, in Post-War France, 1944-52," *Journal of Contemporary History* 49, no. 3 (2014): 564.

<sup>2</sup> Catherine Wihtol de Wenden, "The French Response to the Asylum Seeker Influx, 1980-1993," *The Annals of the American Academy of Political and Social Science* 534, no. 1 (1994): 84-85.



According to Simona Vezzoli, post-colonial ties make people from former colonies prefer the former colonial state over other possible destinations.<sup>3</sup>

According to Greg Burgess, “France’s presence within this new international regime, it is further argued, was intimately tied to the assertion of asylum as integral to French cultural identity and French ambitions in postwar international affairs to recover lost prestige.”<sup>4</sup> While this may imply that France would change their asylum laws in the aftermath of World War II and decolonization, there are surprisingly few large-scale changes to refugee policy made explicitly made by France. Instead, France seemed to follow the lead of the United Nations High Commissioner for Refugees (UNHCR) and the decisions made at many international conferences and conventions regarding refugee crises. This is still important to note, as the Office française de protection des réfugiés et apatrides (OFPRA), the primary authority on asylum in France, was supposed to cooperate with the UNHCR. Also of interest is the fact that international treaties, such as those made by the UNHCR, are ranked just below the Constitution and above ordinary laws in the hierarchy of norms.<sup>5</sup>

## Literature Review

There is a significant amount of existing literature on the lasting impact of France’s colonial past on France itself. However, only some articles or researchers mention the impact of France’s colonial history on the former colonies’ laws and policies.

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<sup>3</sup> Simona Vezzoli, “How do post-colonial ties and migration regimes shape travel visa requirements? The case of Caribbean nationals,” *Journal of Ethnic & Migration Studies* 43, no. 7 (June 2017): 1143.

<sup>4</sup> Burgess, “Remaking Asylum,” 558.

<sup>5</sup> Hélène Lambert and Janine Silga, “Transnational Refugee Law in the French Courts: Deliberate Or Compelled Change in Judicial Attitudes?” in *The Limits of Transnational Law*, (United Kingdom: Cambridge University Press, 2010): 38.

Greg Burgess examined how France remade asylum and the rights of refugees after Liberation. Burgess stated that asylum was integral to post-war French identity and tied to France's position within the international asylum regime.<sup>6</sup> He argued that French law following World War II did not make any distinctions between refugees and other migrants to normalize the idea of "refugees" within the broader context of immigration. Being a part of this international regime allowed France to avoid intervening with refugee organizations while still being responsible for refugee safety and welfare. Lastly, Burgess argued that it was less impressive to note that France wrote the right to asylum into the 1946 Preamble, and more notable that it was placed there along with many new rights such as the right to work, the right to organize (labor), and the right to collectively strike.<sup>7</sup>

Hélène Lambert, Francesco Messineo, and Paul Tiedemann make a different argument in their article "Comparative Perspectives of Constitutional Asylum in France, Italy, and Germany: *Requiescat in Pace*." They argue that despite the three countries being some of the few that specifically include a right of asylum in their Constitutions, "international obligations and recent European commitments" have made that right to constitutional asylum "redundant" and "obsolete."<sup>8</sup> The authors also mention how OFPRA does not specify whether the right to asylum is granted by the Constitution or the Geneva Convention, further blurring the lines between state and international law.<sup>9</sup>

C. Michael Lanphier wrote in *Refuge: Canada's Journal on Refugees* that Southeast Asian refugee intake should have been increased during the 1970-1980 period after the fall of

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<sup>6</sup> Burgess, "Remaking Asylum," 558.

<sup>7</sup> Burgess, "Remaking Asylum," 573-574.

<sup>8</sup> Hélène Lambert, Francesco Messineo, and Paul Tiedemann, "Comparative Perspectives of Constitutional Asylum in France, Italy, and Germany: Requiescat in Pace?" *Refugee Survey Quarterly* 27, no. 3 (2008): 17.

<sup>9</sup> Lambert, Messineo, and Tiedemann, "Comparative Perspectives," 20.

Saigon. He believed that the French public had the perception that France was taking in fewer refugees, but when the public realized that the opposite was true, that France had not slowed in receiving refugees, they resisted welcoming an increased number of refugees instead of opening the borders more.<sup>10</sup> James M. Freeman and Nguyễn Đình Hữ'u mention a similar argument in their book *Voices from the Camps: Vietnamese Children Seeking Asylum*. They argued that as more and more Vietnamese refugees continued to arrive in countries of asylum, those same countries became less willing to grant the refugees asylum or help with resettlement. The authors further agreed with Lanphier when they say, "While individual countries have the sole authority to grant or deny refugee status to asylum seekers, they are influenced by UNHCR and its criteria for determining refugee status."<sup>11</sup> Lanphier also touched on the role of the UNHCR in resettlement, stating that it had three prominent roles: surveillance, serving on an advisory council to the French government, and adjudicating all appeals from OFPRA.<sup>12</sup> Finally, Lanphier discussed the priorities of the French government when taking in refugees. The main priorities were the unification of families, people who had administrative or military service within the French government, those with some knowledge of the French language, and those with some prior acquaintance with French nationals. While following these priorities, the French government allowed a quota of 12,000 SEA refugees per year, though the researchers thought the number be closer to 100-120,000.<sup>13</sup>

Virginie Guiraudon discusses how migration policies impact migrants arriving in France, specifically those from Morocco. She argues that France has seen two main periods of high

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<sup>10</sup> C. Michael Lanphier, "Recent Resettlement of Southeast Asian Refugees in France," *Refuge: Canada's Journal on Refugees/Refuge: Revue Canadienne Sur Les Réfugiés* 2, no. 3 (1983): 7.

<sup>11</sup> James M. Freeman and Nguyễn Đình Hữ'u, "Victims of Politics" in *Voices from the Camps: Vietnamese Children Seeking Asylum*, (University of Washington Press, 2003): 4.

<sup>12</sup> Lanphier, "Recent Resettlement," 6.

<sup>13</sup> Lanphier, "Recent Resettlement," 6.

levels of migration: the 1930s and the 1960s. While France initially recruited foreign workers from other European countries, the end of World War II showed a shift toward recruiting workers from its former colonies.<sup>14</sup> Guiraudon argues that France's colonial past is not the only reason for Moroccan immigration, something entirely different from most other researchers' arguments. She also argues that Moroccans in France do not choose to go to France in particular due to French immigration policies. However, instead, they choose to go there because of relatives or other relations that reside in France.<sup>15</sup>

The information produced in this thesis aligns differently from any one of these arguments but provides a new path for studying the relationship between colonies and their former colonial powers. Taking note of the ideas of Burgess and Lambert, Messineo, and Tiedemann, I argue that France has a distinct relationship with each of its former colonies and that this relationship impacts both the social and legal aspects of French society. These colonial links prompted specific actions from France in making laws and policies or adopting international laws and policies regarding their former colonies. These same actions are much less frequent when the refugees are from countries that do not have a colonial history with France.

In the following chapters of this thesis, I will begin by giving an overview of some of the main laws on asylum and refugees that apply to any asylum seeker, regardless of country of origin. Within that chapter, I will discuss some of the important international conferences and conventions that provided a framework for international migration and asylum seeking, as well as a definition of what exactly makes a person a refugee. In the following chapter, I will focus on the specific differences in laws and policies directed toward North Africa or Indochina. I will

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<sup>14</sup> Virginie Guiraudon, "Moroccan Immigration in France: Do Migration Policies Matter?" *Journal of Immigrant & Refugee Studies* 6, no. 3 (2008): 368.

<sup>15</sup> Guiraudon, "Moroccan Immigration," 379.

compare these differences to see if any aspects of French asylum policy are similar. I find that there are simply more laws concerning North Africa than Indochina. Furthermore, I discuss how, while French law does not directly mention Indochina in many documents, there were multiple international conferences and conventions that concerned Indochina. Finally, I will conclude with a summary of my overall findings, including how having a colonial past tied to France leads to certain benefits when a person is applying for asylum, and I will discuss the implications of this research as well as potential avenues for further study.

## CHAPTER 2: SHARED LAWS

### Legal Background

France's 1946 Constitution was the first to mention the right to asylum. The Constitution stated that "any man persecuted because of his action in favor of freedom has the right of asylum on the territory of the Republic."<sup>1617</sup> The document discussed how the French Republic would conform to the rules of public international law, which became an essential line years later when the Geneva Convention of July 28, 1951, took place. This occurred at the same time as a larger series of arguments about refugees in Europe, including discussions on who should be considered priority in terms of refugee status.<sup>18</sup>

In November 1945, the first major French policy on refugees and asylum seekers stated, "All individuals who do not have French nationality, either because they have a foreign nationality or because they have no known nationality, shall be considered foreigners." Within this document, foreigners were classified based on the length of their stay as temporary resident aliens, ordinary resident aliens, and privileged resident aliens.<sup>19</sup> The term alien simply means immigrant, with a resident alien being an immigrant who has permission to live in the country they have immigrated to.

On December 15, 1946, the International Refugee Organization signed its Constitution. According to this document, the term "refugee" concerns anyone who "has left, or who is outside of, his country of nationality or of former habitual residence, and who, whether or not he had retained his nationality, belongs to one of the following categories." Country of nationality refers

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<sup>16</sup> "Constitution of 4 octobre 1958," *Journal Officiel de la République Française [JORF]* (4 October 1958).

<sup>17</sup> Unless otherwise noted, all translations from French to English are done by the author.

<sup>18</sup> Tara Zahra, *The Great Departure: Mass Migration from Eastern Europe and the Making of the Free World* (New York: W.W. Norton & Company, 2016).

<sup>19</sup> "Ordonnance no. 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France," *JORF* (2 November 1945).

to the country a refugee holds citizenship with, and habitual residence concerns the country a person has lived in for a period long enough to show intent to remain. Those categories mentioned were victims of the Nazi regime, fascist regimes, or regimes that sided with them during World War II. Additional categories were Spanish Republicans and other victims of the Falangist regime in Spain, and people who were considered refugees before the Second World War due to race, religion, nationality, or political opinion.<sup>20</sup>

By the early 1950s, new French and international laws altered the immediate postwar legal regime. One law published on July 25, 1952, related to the right to asylum, established the French Office for the Protection of Refugees and Stateless Persons (OFPRA). The government charged OFPRA with the responsibility to both legally and administratively protect refugees and stateless persons. This law also decreed that a decree from the Minister of Foreign Affairs and the Minister of the Interior would determine the application of the law to Algeria and other overseas departments.<sup>21</sup> This law was also one of the first to reference the 1951 Geneva Convention relating to the status of refugees. It states that OFPRA will be responsible for implementing international conventions, agreements, or arrangements relating to protecting refugees in France.

In addition to new laws that adjusted the postwar legal regime, international conventions also provided a framework for a new model of asylum. The Geneva Convention of July 28, 1951, is the primary international reference for refugee and asylum laws. In part, France's legislation concerning refugees and asylum seekers merely refers to the Geneva Convention and other conventions like it. One central aspect of the Geneva Convention was defining what a refugee was. According to the Convention, "the term 'refugee' shall apply to any person who: ...

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<sup>20</sup> "Constitution of the International Refugee Organization," *United Nations Treaty Series* 18 (August 1948): 3.

<sup>21</sup> "Loi no. 52-893 du 25 juillet 1952 relative au droit d'asile," *JORF*, (25 July 1952).

As a result of events occurring before January 1, 1951, and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself to the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” In addition to this new definition of refugee, the Convention stated that refugees were to receive the same treatment as all other foreigners unless the Convention had explicitly laid out a “more favorable provision” for refugees regarding a specific matter.<sup>22</sup>

The New York Protocol of January 31, 1967, made one of the most considerable changes to international refugee law. The Protocol changed the definition of a refugee from that of the 1951 Geneva Convention by removing the stipulation that the events causing the person to become a refugee had to have happened prior to January 1, 1951.<sup>23</sup> This opened up opportunities for many people who for all intents and purposes could have been considered a refugee between 1951 and 1967 but were technically held back by the wording of the Geneva Convention. However, despite the broader definition of refugee given in this Protocol, many people still need to be included. This new definition still disregards those fleeing due to poor or deteriorating economic conditions and other people who may genuinely need asylum.<sup>24</sup>

In the early 1960s, other French laws impacted France’s overseas territories. While they do not explicitly mention Indochina or North Africa, they were important in creating a legal

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<sup>22</sup> “No. 2545. Convention Relating to the Status of Refugees. Signed at Geneva, on 28 July 1951.” *Treaty Series* 1887, (200): 391.

<sup>23</sup> “No. 8791. Protocol Relating to the Status of Refugees. Done at New York, on 31 January 1967.” *United Nations Treaty Series* (2000): 469.

<sup>24</sup> Freeman and Đinh Hũ’u, “Voices of Politics,” 4.



framework and conceptions of territory. The decree of October 4, 1960, regarding the status of stateless people, gave the rights of mainland France to all of its metropolitan departments, its five overseas territories, and the departments of Martinique and Guyana.<sup>25</sup> This was important because it was the first step in France broadening the scope of its Constitution by including not only the citizens of the metropole, but also its departments and territories. If this was possible, it was not unreasonable to think that France would grant certain rights to colonies or protectorates under French control.

The law of December 22, 1961, modified the code on French nationality and made it so that anyone born in France to foreign parents would automatically gain French citizenship on their 18<sup>th</sup> birthday if they met a few criteria: living in France since the age of sixteen, living in France or one of its territories, or was “governed by special provisions.”<sup>26</sup> This law also outlined how one could be naturalized. A foreigner had to have “rendered exceptional services to France or whose naturalization is of exceptional interest to France” or be someone from or formerly from a state that France has “exercised either sovereignty, a protectorate, a mandate or a guardianship” over.<sup>27</sup> This law shows how the families of migrants and even refugees from former colonies such as North Africa and Indochina have certain benefits due to their colonial history with France. The law of January 9, 1973, reiterated this concept, and, according to Weil and Spire, mentioned how France granted certain rights to citizens from former colonies, including nationality given at birth to the children of parents from former colonies that were born in France.<sup>28</sup>

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<sup>25</sup> “Décret du 4 octobre 1960,” *JORF* (4 October 1960).

<sup>26</sup> “Loi no. 61-1408,” *JORF* (22 December 1961).

<sup>27</sup> “Loi no. 61-1408,” *JORF* (22 December 1961).

<sup>28</sup> Patrick Weil and Alexis Spire, “France,” in *Acquisition and Loss of Nationality/Volume 2: Country Analyses: Policies and Trends in 15 European Countries*, edited by Rainer Bauböck, Eva Ersbøll, Kees Groenendijk, and Harald Waldrauch (Amsterdam University Press, 2006): 192.

In the 1980s, François Mitterrand's government attempted to reform French immigration policy. This was designed to "bring about the 'insertion' of 'marginalized' foreigners and their off spring."<sup>29</sup> Included in these reforms was the granting of amnesty to illegally employed foreign workers as well as the implementation of many social welfare programs.

Since the early 1940s, France has worked toward providing refugees the right to asylum. From its 1946 Constitution being the first to mention this right to further laws being enacted after the beginning of colonization, France has a strong legal background in granting asylum to those in need. In the next two chapters, I will look more in depth into the specific laws and conventions on asylum that have to do with the case studies of North Africa and Indochina. I will compare the two cases in order to better understand how French law differs between two colonies, and I will analyze and suggest why these differences may have occurred.

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<sup>29</sup> Jeremy Hein, *State and Political Migrants: The Incorporation of Indochinese Refugees in the United States and France*, (Routledge, 2019): 162.

## CHAPTER 3: DIFFERENCES IN LAWS BETWEEN COLONIES

### **Introduction**

This chapter will look to discuss the two case studies that are the focus of this paper. It will begin by describing the colonial relationship between North Africa and France, followed by noting important laws concerning North African right to asylum and freedom of movement. After analyzing the importance of these laws, I will proceed to the next case study: Indochina. Then, I will take a similar approach to that of the North Africa case and discuss the colonial history, laws and conventions, and finally the importance of the colonial relationship in the development of these laws.

This chapter will find that despite the two regions having some similarities in their colonial past that is shared with France, the relationship they share with France is quite different from one another. North Africa is more legally connected to France in that there are more French laws mentioning and concerning North Africa than there are for Indochina. On the other hand, I find that Indochina is more relevant on an international level, as it is the focus of multiple conventions and conferences both held by the United Nations and by other organizations.

### **North Africa**

As the previous section shows, many legal documents exist on asylum-seekers and immigrants trying to enter and stay in France. However, relatively few relate specifically to those entering France from North Africa. France's colonial past is intricately tied to that of North Africa. Starting with the colonization of Algeria in 1830, then establishing the protectorates of Tunisia in 1881 and Morocco in 1912, France's influence in North Africa lasted for decades. It was not until the end of World War II, however, that colonial influence began to wane, and France's colonies and protectorates began to push back against France's presence and control.

Finally, beginning in 1956, these colonies and protectorates began to gain independence from France, starting with Tunisia in March of 1956, then Morocco in April of 1956, and finally, after a brutal war, Algeria in 1962.

Following the end of World War II, there were labor shortages in many European countries. For France, North African migrant workers filled many of these open. According to Richard Alba and Roxane Silberman, beginning around 1964, the French government began recruiting Moroccan workers in particular. The immigration of Moroccan workers was much more controlled than the Algerian migrant workers entering the country, who had fewer restrictions on their movement.<sup>30</sup> This was likely due to Algeria being a French colony when Morocco was only a protectorate. This distinction meant that Algeria was directly controlled by France while protectorates such as Morocco and Tunisia retained some control over their own affairs, though many decisions were made by France.

Algerian migrant workers were allowed more freedom of movement compared to those migrants from other North African countries due to Algerian citizens being given complete, more formal civil rights by France.<sup>31</sup> This allowed Algerian migrant workers to work and live anywhere within the country, a right France did not afford to Moroccan migrant workers. Despite this close relationship between France and countries such as Morocco, Algeria, and Tunisia, under the presidency of Valery Giscard, there were efforts to make migrants return to their countries of origin by refusing to renew their residency permits.<sup>32</sup>

As the example of the *pied noir* shows, the French only treated some of those moving from Algeria to the metropole similarly. The *pied noir* were a group of people, often white

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<sup>30</sup> Richard Alba and Roxane Silberman, "Decolonization Immigrations and the Social Origins of the Second Generation: The Case of North Africans in France," *International Migration Review* 36, no. 4 (Winter 2002): 1175.

<sup>31</sup> Jeffrey Taylor, "Another French Revolution," *Harper's Magazine* 301 no. 1806 (November 2000): 60.

<sup>32</sup> Virginie Guiraudon, "Immigration Policy in France," *Brookings* (July 2016).

Europeans, from France who lived in Algeria during French colonial rule, who fled back to France or other parts of Europe following Algerian independence. According to Jeremy Hein, by 1970, close to 1.4 million repatriates from North Africa had arrived in France. Of this, almost 70% were pied noirs. This is significant because even though these migrants were not Algerian themselves, this flow of migration was “almost indistinguishable from refugee flight” since the pied noirs had to be evacuated from Algeria due to rising concerns about safety.<sup>33</sup> A similar yet slightly different group from North Africa is the *harkis*. This was a group of people who were Muslim troops who worked under French command in Algeria, but most of them were not actually French citizens. Despite this, following the decolonization of Algeria, from 1962 to 1964, over 50,000 harkis fled to France instead of choosing to remain in their home country.<sup>34</sup> These two groups, the pied noirs and harkis, show how the colonial ties between North Africa, specifically Algeria and France, led to France being a particularly desirable country for people to migrate and flee to in the wake of the wars for decolonization.

Prior to decolonization, in 1956 for Morocco and Tunisia and 1962 for Algeria, French immigration and citizenship laws regarding the three countries were quite different than after decolonization took place. According to the law of May 7, 1946, all nationals of overseas French territories, including Algeria, were to be given the same status as French nationals in both metropolitan France and overseas territories.<sup>35</sup> The law of 1947 concerning the organic status of Algeria followed this law, and said that French laws that applied to Algeria would be executed there and that those laws would include the ability to exercise and guarantee constitutional liberties.<sup>36</sup>

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<sup>33</sup> Hein, *State and Political Migrants*, 107.

<sup>34</sup> Hein, *State and Political Migrants*, 113.

<sup>35</sup> “Loi du mai 1946,” *JORF* (7 May 1946).

<sup>36</sup> “Loi no. 47-1853 du 20 septembre 1947 portant statut organique de l’Algérie,” *JORF* (20 September 1947).

The general declaration discussing Algerian independence printed in the *J.O.* on March 20, 1962, stated that there would be freedom of movement between Algeria and France so long as the Algerian had an identity card.<sup>37</sup> This was a unique opportunity afforded to Algerians, one that likely had to do with the close ties between France and Algeria, showing how the colonial history between the two countries may have influenced what laws France passed about Algerians, and how strict or lenient they would be. Also, in 1962, after the Evian Accords were signed, Algerians had another benefit afforded to them: those who wanted to become French citizens could do so much more quickly than people from other countries because the ability to become French if they were older than 18 years old, lived in France, and were willing to perform a “declaration of acceptance” of the French Republic was granted to Algerians.<sup>38</sup>

In 1969, the French government and the now independent government of Algeria reached an agreement. The agreement stated that a fixed quota of 35,000 Algerian workers that could enter France each year, with the quota being up for discussion after three years. This same agreement stated that spouses, children, and dependents of workers or other immigrants settling in France would receive the same residence certificate as the head of the family would receive.<sup>39</sup>

The order of May 13, 1975, discussing decree 75-354, discussed the decree on pregnant women staying in France. This decree laid out what identity cards would be acceptable in order to obtain permission for the woman to stay in France. One of the accepted cards is a resident certificate for Algerian nationals.<sup>40</sup> While not directly related to North African asylum seekers, this does show us how North African, particularly Algerian, nationals were afforded some benefits from being a former colony, in this case, the ability to obtain permission to stay in

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<sup>37</sup> “Loi du 20 mars 1962,” *JORF* (20 March 1962).

<sup>38</sup> Weil and Spire, “Acquisition and Loss,” 194.

<sup>39</sup> “Décret no. 69-243 du 18 mars 1969,” *JORF* (18 March 1969).

<sup>40</sup> “Ordonnance du 13 mai 1975,” *JORF* (13 May 1975).

France more easily. The list of accepted cards in this decree only specifically mentioned residents of a few countries, so the inclusion of Algeria on that list suggests that the two countries have relatively close ties to one another, perhaps due to their colonial history.

## **Indochina**

Similar to the case of North Africa, only a few French legal documents focus directly on refugees and asylum-seekers from Indochina. However, one main difference between the two cases is that the world saw Southeast Asian refugees as a global issue rather than a more regional issue, as was the relationship between France and North Africa. This resulted in fewer specific laws concerning Indochina, but many more international conferences and conventions on the Indochinese refugee crisis.

To many, the history behind France's relationship with Indochina is more complex than that of the relationship between France and North Africa. For one, control over the region of Indochina changed multiple times during World War II, with Cochinchina coming back under French control in 1945. However, there was pushback in the form of Ho Chi Minh, and while France and the Viet Minh attempted multiple negotiations, all failed, and the First Indochina War began in 1946. During this time, many Vietnamese students, businessmen, and refugees fled Indochina for France in to gain security and other opportunities that they could not receive in Indochina during the war.<sup>41</sup>

One important note is that the only actual colony of France in Indochina was Cochinchina. Since the other parts of Vietnam, and Cambodia and Laos, were protectorates, so France did not afford them certain benefits. For example, only those from Cochinchina could

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<sup>41</sup> Virginia Thompson, "The Vietnamese Community in France," *Pacific Affairs* 25, no. 1 (March 1952): 52.

obtain citizenship in France through residence.<sup>42</sup> This distinction as the only French colony in the region meant that Cochinchina was more directly controlled by France compared to the protectorates such as Cambodia and Laos, while at the same time giving it some benefits legally, as was the case with Algeria compared to Morocco and Tunisia in North Africa.

There were two primary waves of asylum seekers fleeing Indochina for France. The first was following the Geneva Conference in 1954, the fall of Diem Bien Phu after France's military defeat and expulsion. The second wave, the wave this thesis will look more closely at, followed the fall of Saigon, and covered the 1970s and 1980s. This gap is also due to France cutting ties with Indochina until after the Paris Peace Accords in 1973, when they then began to slowly reestablish a relationship.<sup>43</sup>

Despite the existence of a first wave of refugees around 1954, French foreign policy in the years following the Geneva Conference tended to neglect ties with Indochina in favor of focusing on other relations, especially that of the relationship with Algeria, as the Algerian War for independence was happening.<sup>44</sup> While there was undoubtedly some migration from Indochina to France prior to decolonization, there was a more significant wave of migration following the fall of Saigon and the end of the Vietnam War in 1975. After this, many Vietnamese refugees sought asylum across the globe, with many settling in France, where there was already a base of Southeast Asian refugees that had formed after Diem Bien Phu.<sup>45</sup> During this time, France set a quota of 12,000 SEA refugees per year, though researchers estimate that upwards of 100,000 actually arrived in the country.<sup>46</sup> This discrepancy was likely due to a number of people who

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<sup>42</sup> Hein, *States and Political Migrants*, 87.

<sup>43</sup> Hein, *States and Political Migrants*, 90-91.

<sup>44</sup> Hein, *States and Political Migrants*, 85.

<sup>45</sup> Lanphier, "Recent Resettlements," 6.

<sup>46</sup> Lanphier, "Recent Resettlements," 6.



arrived in France with different designations and then stayed and became “refugees”. According to Michael Lanphier, the French government prioritized SEA refugees reuniting with other family members and those who had served in an administrative or military role with the French government. However, those who were accepted did have one unique advantage over other refugees: the ability to become French nationals after only one year of being in the country.<sup>47</sup>

White, Winchester, and Guillon reiterate this estimate on the total number of SEA refugees who arrived in France and further mention that, despite a general ban on immigration during the period, over 82,000 refugees from Indochina had entered France by 1982.<sup>48</sup>

Compared to the number of legal documents related to North African refugees entering France, there were far more international documents and fewer French documents relating to Indochina. This was due to how multiple countries claimed control over Indochina in the years directly before and immediately after World War II. Regardless, many of France’s rules regarding Indochinese refugees come from international conferences and conventions. As previously mentioned, another interesting note is that the flow of Indochinese asylum seekers to France was not relatively soon after decolonization, as was the case with North Africa. Instead, most of the refugees fled Indochina following the fall of Saigon in 1975.

By 1979, the Indochinese refugee crisis had become bad enough that multiple organizations held conferences to discuss potential solutions. The International Council of Voluntary Agencies held a conference in Geneva, Switzerland, on July 18<sup>th</sup> and 19<sup>th</sup>. A conference called by the United Nations on the 20<sup>th</sup> and 21<sup>st</sup> followed this meeting. Following this, the World Council of Churches held the Consultation on Indochinese Refugees from July

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<sup>47</sup> Lanphier, “Recent Resettlements,” 7.

<sup>48</sup> Paul White, Hilary Winchester, and Michelle Guillon, “South-East Asian Refugees in Paris: The Evolution of a Minority Community,” *Ethnic and Racial Studies* 10, no.1 (1987): 49.

24<sup>th</sup> to 25<sup>th</sup>.<sup>49</sup> Additionally, according to Astri Suhrke, by the early 1980s, the waves of Indochinese refugees had become “self-perpetuating” and states that were accepting these refugees, primarily other SEA states, though also those involved in third-country resettlement, had to work towards reducing or stopping this flow of asylum seekers.<sup>50</sup>

The report concerning the United Nations Meeting on Refugees and Displaced Persons in South-East Asia that occurred July 20<sup>th</sup> and 21<sup>st</sup>, 1979, included a statement from the High Commissioner for Refugees that pleaded for countries to grant SEA refugees asylum while he searched for different places for resettlement. The meeting “recognized that no comprehensive solutions can be attained unless such is the will and determination of Governments within and beyond the region.”<sup>51</sup> According to Barry Stein, “the most significant and controversial development was Vietnam’s acceptance of the moratorium suggested by France, ‘that for a reasonable period of time it will make every effort to stop illegal departures’, and its willingness to expand the program of orderly departure.”<sup>52</sup>

Following this statement and the conference, countries such as France began setting quotas for the admittance of Indochinese refugees. In a report following the conference, the High Commissioner for Refugees noted that France had been receiving 1,000 refugees from Indochina each month, and that number went up to 1,100 at some point that year.<sup>53</sup> Likely due to the overwhelming number of refugees arriving from Indochina during the 1970s and 1980s, nearly all asylum seekers from Vietnam were automatically given refugee status and resettled in

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<sup>49</sup> Barry Stein, “The Geneva Conferences and the Indochinese Refugee Crisis,” *The International Migration Review* 13, no. 4 (1979): 716.

<sup>50</sup> Astri Suhrke, “Indochinese Refugees: The Law and Politics of First Asylum,” *The Annals of the American Academy of Political and Social Science* 467, no. 1 (1983): 102.

<sup>51</sup> “Meeting on Refugees and Displaced Persons in South-East Asia,” *UN General Assembly* (7 November 1979).

<sup>52</sup> Stein, “Geneva Conferences,” 721.

<sup>53</sup> “Report of the UNHCR” (11 October 1979).

France.<sup>54</sup> Ten years later, in June of 1989, another conference in Geneva decided that over the following three years, 4,400 of the remaining Indochinese refugees would be sent to France for resettlement. This was out of the remaining 52,000 Vietnamese refugees who remained in Asia and could be resettled.<sup>55</sup>

While I could not find any specific laws relating to the crisis of Indochinese refugees, there was a specific process that asylum seekers from Indochina went through when migrating to France. First, different government agencies and other associations worked together to take care of asylum seekers. The UNHCR High Commissioner for Refugees would begin by registering the applications for political asylum in Thailand, then those applications would be forwarded to France by the Comité intergouvernemental pour les migrations européennes (CIME). Then, once the asylum seeker was approved and arrived in France, the organizations would take over and focus on different tasks to help the refugees: the Red Cross would welcome refugees at the airport, France terre d'asile found housing, and Cimade offered French language courses to help refugees integrate into French society more easily.<sup>56</sup>

The cases of North Africa and Indochina offer an interesting picture of how France's colonial ties to a region can influence laws made years after decolonization. In the case of North Africa, which was geographically closer to France, there are many French laws both on asylum and relating to migrants from North Africa. On the other hand, Indochina was much further away from France, and there are nearly no laws specifically concerning the region, but there are

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<sup>54</sup> Freeman and Dihn Huu, "Voices from the Camps."

<sup>55</sup> Khien Theeravit and Father Olivier, "Indochinese Refugees Revisited," *Refuge: Canada's Journal on Refugees/Refuge: Revue Canadienne Sur Les Réfugiés* 9, no. 3 (1990): 3.

<sup>56</sup> Julia Bellot, "L'arrivée des réfugiés d'Asie du Sud-Est" <https://doi.org/10.4000/hommesmigrations.3508>.

numerous international conventions and conferences that France participated in and was a signatory of, that concerned the Indochinese refugee crisis.

## CHAPTER 4: CONCLUSION

### **Conclusion**

While there has been some previous research on colonial ties and state relations concerning migration, there has been little research on the effects of colonial history on the laws concerning refugees from former colonies fleeing to their former colonizers. I argue that colonial ties impacted French law and policy, making the laws towards former colonies such as North Africa and Indochina different than those towards refugees of other countries without the same colonial past.

Through the research conducted for this thesis, I have discovered a few key findings. First, there are more laws concerning North Africa compared to Indochina. While these do not all focus on asylum seekers or migration, many either do or have repercussions that impact how the public views immigration law for North Africans. Second, while French law does not directly mention Indochina many times, it was the subject of many international conferences and conventions that France was present at and abided by. This is a rather significant difference between France and Indochina compared to France and North Africa. Third, overall having a colonial past tied to that of France leads to certain benefits when a person is applying for asylum. This could, however, also be due to the circumstances in which these refugees were fleeing their countries: often, it was during or following a war that had international implications.

While this case study does not answer every question about the relationship between France and its former colonies and protectorates, it gives us an idea of how colonial ties can shape international relations even decades after decolonization has taken place. This study is useful in that it has laid out the specific French asylum and immigration laws that both form the legal history of immigration in France, and that aid North African refugees seeking asylum in

France. As for Indochina, this study has found that though there were no laws found that specifically impacted the region, the refugee crisis coming out of Indochina was large enough to gain international attention and force governments such as France's to take notice of the situation in order to offer assistance. Future research could benefit from exploring other colonial relationships both between France and other colonies or between other colonizers and their colonies.

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