

# POLICY BRIEF

Mar. 8, 2018

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## The Legacy of France's Colonial Past in Asia and its Consequences for Contemporary International Relations and Conflict Resolution

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French legacies in Asia are complex. Despite its role as an oppressive colonial power, at the ideological level, France of the French revolution, the Paris commune, its Universities, and the political atmosphere of the cafés in the Latin Quarter have also attracted many revolutionaries in Asia, including the most radicals, against their people. Out of the 250 Cambodian students sent to France as part of a university scholarship program in 1949, almost all became officials of the Khmer Rouge regime in Cambodia, including Pol Bot, Ieng Sary, and Khieu Samphan.

A few elements, however, do play a role in political evolutions and contemporary international relations in East Asia.

### *Colonization, law, and modernity.*

As with almost all colonization process, one cannot reject what Benjamin Stora calls the positive sides of imposed development; without denying the profound inequalities and discriminations related to it. Under French colonization, Indochina experienced rapid economic development, around mining industries (tin, coal), and agriculture with the system of large plantations of rubber, rice, and tobacco.<sup>1</sup>

The development of public work and infrastructure was also impressive. Indochina had one of the most extensive networks of roads and bridges in Asia, at the service of course of the economy and the evacuation, to the sea, of agricultural resources.<sup>2</sup>

However, beyond these material goods, one of the most important

1 Before the war, French Indochina had become the second rice exporter in the world.

2 L. Arousseau, « A.A. Pouyanne : les travaux publics de l'Indochine, » *Bulletin de l'Ecole Française d'Extrême-Orient*, 1926.26.

legacies might be in the fields of law and the use of concepts considered today better adapted to the principles of objective law in the management of international disputes.

The “democratic” characteristics of French colonization, despite the ambitions of Jules Ferry, well known both for his defense of compulsory education for all and of the French colonial expansion in Indochina, remains to be demonstrated. The French penal code and the civil code were introduced in Indochina in the 1880s, but with limited application, even if they resulted in the abolition of slavery, still in force on the territories of Laos and Cambodia.<sup>3</sup> Democratization remained limited in scope and not universally implemented. In the 1920s, 10 out of the 28 seats of the colonial council of Cochinchine were attributed to local elites; but throughout Indochina, Saigon was the only city whose municipality was elected by the population with a significant degree of representativeness.

Whereas in North Africa, the metropolitan was large, this was not the case in Indochina where the administration of the colony relied on an emerging and better educated new local middle class, especially in Vietnam, and on more traditional royal and mandarin elites. The inequality of positions, treatments, and opportunities for advancement with the French colonial officials, however, remained large.

In spite of these limits, in the name of enlightenment and education, the general government of Indochina, also favored the publication of dozens of newspapers and magazines in Vietnamese alphabetical transcription (not in Chinese characters). These in turn became significant instruments of the

contestation of the colonial system and also of the spread of Marxism.

At a more concrete level, the contribution of France to the legal system played a role in the fact that the Vietnamese claims against China after 1974, when China seized the Paracels by force, were based on international law, using universally accepted concepts such as proximity, or actual and continuous occupation. China, where no substantial theoretical basis was built for the establishment of the rule of law, relied then upon, and still relies today, on the less valid argument of “historical rights,” supported by the use of force and a favorable balance of power.<sup>4</sup>

The other significant element inherited from the colonial past in Indochina is modern cartography.<sup>5</sup> As early as 1885, after the Sino-French war about Tonkin, the border with China has been precisely delimited by military topographers and ratified by bilateral agreements in 1886, thus imposing the concept of the delineated border over the vaguer notion of unprecise margins, always contestable, which was that of the Chinese Empire. A Chinese Empire that conceived, in theory, no limits to its suzerainty over all the world “under the sky” (天下).

Along the same line, we can also note another permanence of the Chinese conception of the law, which is the refusal of international arbitration in the name of sovereignty and non-interference. On three occasions, (1932, 1937, 1947) France, in conflict with the Republic of China on the question of the Paracels and the Spratleys, proposed to use international arbitration, it was, however, systematically rejected by Beijing.

<sup>3</sup> Emmanuelle Saada, « Citoyens et Sujets de l'Empire, » *Genèses*, 2003/4, n° 53.

<sup>4</sup> Jean-Pierre Ferrier, « Le conflit des îles Paracels et le problème de la souveraineté sur les îles inhabitées, » *Annuaire français du droit international*, 1975, n° 21.

<sup>5</sup> Pierre Journoud, « L'Indochine et ses frontières, 1940-1954. Entre zones d'échanges, espace de confrontation armée et instruments de légitimation politique » in Frédéric Dessberg, Frédéric Thibault ed., *Sécurité européenne, frontières, glaces et zones d'influence*, Presses Universitaires de Rennes,

### ***The catalytic role of colonial power in national identity and nation-building***

In Indochina, France contributed to the building of “national identities” with a contradictory dual movement. On the one hand, there was the construction of a unified “Indochina,” and, on the other hand, the construction, revival or strengthening of new nations in Cambodia, and in Laos. Particularly in Laos where a modern national identity feeling is quite recent, encouraged by the French.

This process was first accomplished against the older suzerainties, Chinese in the case of Annam and Tonkin, Siamese in the case of Laos and Cambodia. In 1885, Siam abandoned suzerainty over Annam and Tonkin. In the case of China, the suzerainty was officially abandoned with the treaty of Tianjin and, in 1884, the Treaty of Hue established the protectorate of France over Annam and Tonkin.<sup>6</sup>

This movement of de-linkage with China also took place, through a new system of education of the Mandarin elites, removed from the Chinese model. Gradually the Latin transcription, more accessible for the French officials, and the local population, was imposed in writing, at the expense of Chinese characters. The Franco-local schools replaced Confucian schools, and the last imperial examination in Hue was held in 1919.

Concerning suzerainty and the relations with China, it is however interesting to note that one of the grounds of the Chinese claims on the Paracels and the Spratlys in the 1970s, was still the relations of suzerainty supposed to have existed between the kingdom of Annam - to which were attached the two archipelagos in the

maps established before the French occupation - and the Empire of China.<sup>7</sup>

### ***The case of Indochina***

In 1887, the Indochinese Union was established, renamed Indochinese Federation in 1941. This Indochinese Union was composed of several entities under different statutes, the colony of Cochinchine, the protectorates of the Annam, Tonkin, Laos, and Cambodia, and a territory under lease, which stretched from the border of Vietnam to the south of Guangdong Province in China.

The construction of the Union and then the Indochinese Federation contributed to the strengthening of the influence of Vietnam. Transposing Colbertian centralism into Indochina, France elevated Hanoi, the seat of the general government of Indochina, to the first administrative position. It was also in Hanoi where Universities, and the most important education establishments like the School of Law and Administration, were established, to drain all the future professionals and administrators of the whole region.

In addition, Vietnamese also played a significant role in the economy and administration of Indochina, including in Cambodia and Laos. Moreover, it is no coincidence that, in 1946, the Vietminh, supported and strengthened by Japan during the collaboration period (1940-1945), defended the idea of an “Indochinese revolution.”

### ***The support of national feelings and the reemergence of Cambodia and Laos***

At the same time, the French colonization

<sup>6</sup> Par un diplomate, *L'affaire du Tonkin : histoire diplomatique de l'établissement de notre protectorat sur l'Annam et de notre conflit avec la Chine* 1882-1885, Hetzel, Paris, 1888.

This model is also the model which was initially adopted by Japan in Korea. The Qing Empire renounced its relation of suzerainty with the Kingdom of Korea after the Treaty of Shimonoseki that ended the Sino-Japanese war of 1894-1895, then Tokyo set up a protectorate on the territory in 1905.

<sup>7</sup> Jean-Pierre Ferrier, op.cit.

also favored, and supported the reemergence of Laos as a unified State and the consolidation of Cambodia's borders, which went against Vietnamese ambitions, led to increased rivalries with its neighbors and eventually was one of the causes of the war between Vietnam and Cambodia in 1978.

Treaties were signed between France and Siam in 1887 and 1909 to settle for a time the borders with Cambodia and Laos. France promoted the unification of Laos, then divided into rival kingdoms and principalities and the consolidation of the monarchy.

This strategy of France in Cambodia and even more in Laos nurtured "pro-French" sentiments. Laos agreed in 1885 to become a French protectorate, with France guaranteeing its borders, supporting local elites, and the emergence of a national feeling, around the royal institution. This was particularly true during the second world war, against Siam (Thailand) then supported by Japan.<sup>8</sup>

One of the heritage of the French colonization in Indochina, with its inherent contradiction between a movement of unification of Indochina and a movement of reinforcement of independent kingdoms, or entities more favorable to France's interests, were tensions and divisions that resurfaced after the decolonization until, the end of the cold war. During the cold war and the Sino-Soviet conflict, a new layer of divisions was added, and, ultimately, these layers of historical, territorial and ideological divisions led to the war between Cambodia and Vietnam in 1978.

On the other hand, with China, the French heritage of border-fixing continues to play an important role in the claims and the potential resolution of contemporary conflicts.

### ***The role of former colonial powers in territorial disputes***

France, through its colonial offensive in Indochina, built the cartography of precisely delineated borders between the French protectorates of Annam and Tonkin and China. Things, however, were less evident in the case of maritime territories, which are at the heart of tensions in the south China sea.

Today's negotiations between China and Vietnam as well as with other countries with claims in the South China sea are still founded on the treaties signed by France at the end of the 19th century, and, most importantly, on the archives, maps and treaties kept at the French National Library, the Ministry of foreign affairs archives, and the archives of the Ministère d'outre-mer.

In 2016, The Hague Court of Arbitration asked to consult and relied on French colonial archives to achieve a decision "correct in fact and law."<sup>9</sup> Vietnam also uses French archives extensively, to support its claims, including through the production of videos and movies.

However, the status of the Paracels and Spratleys in the South China Sea remained poorly defined until the mid-1920s, not because France did not consider them part of Annam, and therefore of its protectorate, but because no real stake was apparently attached to it.

The question took a new urgency in relation to the exploitation of Guano (a source of phosphate) by private Chinese or Japanese entrepreneurs.

To clarify its position and answer these new challenges, at the end of the 1920s, France set up in the Paracels a weather station that

<sup>8</sup> Pierre Journoud, op.cit.

<sup>9</sup> *Arbitrage relatif à la mer de Chine méridionale*, Cours permanente de La Haye, sur <https://www.pccacases.com/web/sendattach/802>.

operated continuously until 1945, a radio transmitter and, at a more uncertain date, a lighthouse.

In 1925, the Governor General of Indochina declared that the Paracels Islands were part of the protectorate of Annam. However, it is only in 1932 that France officially proclaimed taking possession of the Paracels, to counter a Chinese attempt to establish exploitation of Guano, probably at the request of a Japanese company. France had indeed refused to Mitsui Bussan a concession of exploitation of phosphates under the pretext of pending issues concerning the status of the territories. In 1933, the Official Gazette (Journal Officiel) also proclaimed the official occupation of six islands part of the Spratleys archipelago.<sup>10</sup>

Finally, in 1937, a military detachment was sent to the Paracels to occupy the islands permanently. That detachment, however, was captured by Japan in March 1945, opening a period of confusion and power and administrative vacuum that could be used by the Republic of China to occupy some of the islands until 1947.<sup>11</sup>

In this context, the question is whether France may exclude itself from taking any stand on issues of sovereignty between Vietnam, China and Taiwan in the South China Sea.

At the Geneva conference of 1954, France renounced all claims to the territory of the former Indochina. However, the islands were not explicitly mentioned. Moreover, as late as 1959, a ship from the French Navy, the Dumont Durville could still use the Paracels.

Despite this historical heritage from the colonial and immediate post-colonial period, the official position of France on territorial issues

in the South China Sea is that any settlement must follow international law, without the use of force or unilateral decisions that change the status quo. France does not want to be involved beyond these positions of principle, despite the constant proclamations of its attachment to the principle of freedom of navigation as stated by the then Minister of Defense Jean-Yves Le Drian in Singapore in 2015.

Another example of that prudence concerning sovereignty issues, after The Hague decision in 2016, France did not make any declaration besides the official statement of the European Union. For two reasons, one was probably to avoid a confrontation with Beijing, but also in relations to some issues concerning France own EEZ and maritime territories.

France is therefore little involved, tends to confine itself to the general legal aspects and refuses to take positions on sovereignty issues between China and Vietnam, even though, in 1954, it was to the Republic of Vietnam that the archipelagos were - as a matter of principle - handed over. This followed French position on their status since the end of the XIXth century, the establishment of the protectorate on Annam, and the official claims and occupation of the 1920s and 1930s.

Nevertheless, one must note that in a document published in 2015 by the French Ministry of defense, the Spratlys are described as “claimed” by Brunei, China, Malaysia, the Philippines, Taiwan and Vietnam whereas, in the case of the Paracels, it is stated that the islands are “occupied by China and claimed by Vietnam”, which is another way to take position on the sovereignty issue in a region where France, as a former colonial power, played a major role in borders definition.<sup>12</sup>

10 Archives du Ministère des Affaires étrangères, Ministère des Affaires étrangères, Asie, 1818-1940.

11 Jean-Pierre Ferrier, op.cit.

12 Ministère de la défense, *France and Security in the Asia-Pacific*, <http://www.defense.gouv.fr>