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The Dust of Life: The Legal and Political Ramifications of the Continuing Vietnamese Amerasian Problem

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The Dust of Life: The Legal and Political Ramifications of the Continuing Vietnamese Amerasian Problem

Mr. Robear's insightful article documents the continuing plight of the Amerasian — another real and visible by-product of our involvement in the long Vietnam War. As a co-sponsor of both the Amerasian Homecoming Act and the Interest Section Resolution in the U.S. House of Representatives, I agree with the thesis of this paper and the need to normalize relations with the Socialist Republic of Vietnam. As a returning Vietnam veteran who used his GI Bill at Dickinson School of Law, I am proud of my school's continuing leadership in addressing the humanitarian issues of our day.

Foreword by Representative Tom Ridge*

I. Introduction

Vietnamese disparagingly refer to them as *bui doi*.¹ Americans refer to them as persons "of particular humanitarian concern to the United States."² In both cases the reference is to Amerasians,³ the children and young adults of mixed American/Asian parentage. For the purpose of this Comment, an Amerasian may be defined as one

* Republican, Pennsylvania. Member, Banking, Finance and Urban Affairs, Veteran's Affairs, and Post Office and Civil Service Committees.

1. Cooper, 'Go Back to Your Country', NEWSWEEK, Mar. 14, 1988, at 34. *Bui doi* is Vietnamese for "the dust of life." *Id.*

2. Shultz, *Proposed Refugee Admissions for FY 1985*, DEP'T ST. BULL., Nov. 1984, at 34. Congress has stated that the United States resettlement program is intended for refugees of "special humanitarian concern to the United States," in accordance with a determination made by the President after appropriate consultation. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

3. The term "Amerasian" is generally attributed to the late Nobel and Pulitzer prize winning author Pearl S. Buck and was first used at the time of the Korean War. In 1964, Miss Buck founded the Pearl S. Buck Foundation, Inc., a charitable organization dedicated to the displaced children of the world. Upon its founding, Miss Buck stated the Foundation's goals and objectives:

This Foundation shall not act solely or primarily, but only incidentally, as a distributor of direct relief to deprived children until they are trained, educated, and given opportunities to sustain themselves. It seems wise, however, to work with one group at a time until successful methods to relieve this situation are established. I am compelled to the conclusion that the most needy children in the world today are those born in Asia, whose mothers are Asian but whose fathers are American. Our present project, therefore, is the Amerasian.

J. SHADE, JR., AMERICA'S FORGOTTEN CHILDREN: THE AMERASIANS 4 (1981) (available from The Pearl S. Buck Foundation, Inc.; Green Hills Farm; P.O. Box 181; Perkasio, PA 18944-0181).

whose mother is Asian and whose father is American.⁴ Since the last United States forces pulled out of Vietnam on April 30, 1975,⁵ these Amerasians have been caught up in a bureaucratic tug-of-war between Washington and Hanoi. Despite positive legislation,⁶ the problems faced by Vietnamese Amerasians still exist and will continue to exist until the governments of the United States and Vietnam cease playing politics.

This Comment addresses the problems faced by Vietnamese Amerasians and the solutions which have thus far been implemented. Specifically, Section II provides background material including examinations of the scope of the problem, the nature of the Amerasians' plight, and the Orderly Departure Program (ODP). Section III analyzes the 1982 Amerasian Act, discussing its effects and criticizing its restrictiveness. Section IV looks at President Reagan's 1984 Amerasian initiative which called for the admission of all Amerasians from Vietnam by 1987. Next, Section V analyzes the 1987 Refugee Act. Section VI discusses three recent developments. Section VII presents a case study of the French approach to the problem. Finally, Section VIII lists several recommendations.

II. Background

Before discussing the various events of the last seven years, some background information about Amerasians and the nature of their plight will prove to be useful.

A. Scope of the Problem

The extent of the Amerasian problem in Vietnam is significant.⁷ An estimated 20,000⁸ Amerasians were born in Vietnam during the period from January 1, 1962 to January 1, 1976.⁹ Despite their de-

4. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 78 (9th ed. 1983).

5. P. DAVIDSON, VIETNAM AT WAR 790-91 (1988).

6. See discussion *infra*.

7. Although this Comment will focus exclusively on the problem in Vietnam, Amerasians can also be found in South Korea, Laos, Cambodia, and Thailand. Preferential Treatment in the Admission of Children of United States Citizens, Pub. L. No. 97-359, 96 Stat. 1716 (codified at 8 U.S.C. § 1154 (1982)). Moreover, Amerasians actually continue to be born, as in South Korea, for example, where a large number of United States troops are still stationed. See Note, *No Child Should Be Without Love and Protection: The Legal Problems of Amerasians*, 26 HOW. L.J. 1527, 1537 (1983).

8. *Vietnam Official Wants Talks on Amerasians*, N.Y. Times, July 31, 1984, at A5, col. 1. This figure is an official estimate by the government of Vietnam. In 1980, the Pearl S. Buck Foundation estimated that there were as many as 8,000 Amerasians concentrated in and around Ho Chi Minh City (formerly Saigon) alone. Kurtis, *The Plight of the Children Abandoned in Vietnam*, N.Y. Times, Mar. 2, 1980, § 6 (Magazine), at 54 [hereinafter *Plight*]. There has never been an official United States estimate of the number of Vietnamese Amerasians. Note, *Welcoming Home Our Children: An Analysis of the New Amerasian Immigration Law*, 2 B.U. INT'L L.J. 299 (1983) [hereinafter *Welcoming Home*].

9. Indochinese Refugee Resettlement and Protection Act of 1987, Pub. L. No. 100-202, 101 Stat. 1329-183, 1329-184 (1987) [hereinafter *Indochinese Refugee Act*].

sire to leave Vietnam and despite various legislative and humanitarian efforts on their behalf, many remain in Vietnam. In the nearly fifteen years since the end of the war in Indochina, only 4,000 of the Vietnamese Amerasians have entered the United States.¹⁰ Indeed, "some of the most desperate Amerasians have had trouble getting on [Vietnam's] emigration list."¹¹ The rest remain behind, awaiting the day when they too can leave Vietnam for their fathers' country.

B. Nature of Their Plight

The major reason why Amerasians desperately seek to leave Vietnam is the invidious discrimination they face in their home country. The Congress has stated: "[M]any of the[] Amerasian children in Vietnam are ineligible for ration cards and often beg in the streets, peddle black market wares, or prostitute themselves."¹² Moreover, "[b]ecause of their prominent physical features in an extremely homogenous society, these children are often harshly ostracized."¹³ Their mothers face prejudice as well. As Congress explained: "The mothers of Amerasian children in Vietnam are not eligible for government jobs or employment in government enterprises and many are estranged from their families and are destitute."¹⁴ In short, Amerasians and their immediate family members are unwanted persons in the country of their birth.

Part of the explanation for this abuse lies with the strict social structure of Vietnam. An Asian child obtains citizenship from his or her mother, while nationality, race, and personal identity are derived from the father.¹⁵ Indeed, "[r]egardless of how well one of these children excels or how good their knowledge of the language or culture, they are still basically considered outsiders . . . foreigner[s] within their own country"¹⁶ The Amerasian in such a society is viewed as an outcast and is more often than not "excluded from full participation in education, marriage, and employment opportunities."¹⁷ Without fathers, then, Amerasians have no real identity and "[t]hrough no fault of their own . . . have frequently lived in the most wretched of circumstances and have been ostracized in the

10. Cooper, *supra* note 1, at 34.

11. *Id.* at 35.

12. Indochinese Refugee Act, *supra* note 9, at 1329-42.

13. 133 CONG. REC. S11476 (daily ed. Aug. 6, 1987) (Statement by Sen. Dale Bumpers).

14. Indochinese Refugee Act, *supra* note 9, at 1329-42.

15. *Amerasian Immigration Proposals: Hearing on S. 1698 Before the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess., 64 (1982) (comments of Rev. Alfred Keane) [hereinafter *Amerasian Immigration Proposals*].

16. *Id.* at 77 (statement of Walter R. Martindale, III, a former Foreign Service Officer, U.S. Department of State).

17. *Id.* at 23 (statement by Sen. Carl Levin).

land[] of their birth."¹⁸

C. *The Orderly Departure Program*

Prior to 1979, only private humanitarian groups such as the Pearl S. Buck Foundation eased the plight of the Amerasians. In May 1979, however, the United Nations High Commissioner for Refugees (UNHCR)¹⁹ and the Government of the Socialist Republic of Vietnam reached an agreement establishing an Orderly Departure Program (ODP) for persons wishing to leave Vietnam.²⁰ The basic idea behind the understanding was to alleviate the situation caused by the children left behind by American and European military personnel and to facilitate the orderly departure of persons desiring to leave Vietnam.²¹ From October 1982²² to December 1985 some 9,000 Amerasians and family members were brought to the United States under the auspices of the ODP.²³ Notwithstanding the numbers, the ODP was plagued by problems from the start.

The main problem with the ODP was that it was far from orderly; instead, it was a bureaucratic nightmare. First, Amerasians had to deal with the Vietnamese bureaucracy, "a Kafkaesque process that [could] take years and require[d] as many as 30 signatures and multiple fees."²⁴ The problem was compounded by the fact that "with no fixed address or proper I.D. [many Amerasians never] officially existed."²⁵ Once the Amerasian got his or her name on Vietnam's master emigration list, he or she had to face the American bureaucracy. Because the United States does not diplomatically recognize Vietnam, "United Nations staffers interview those who win exit visas and pass the information on to U.S. personnel in Bangkok for approval."²⁶ Even after the Amerasian is interviewed and approved, he or she must wait in Vietnam while family members go through the ODP process.

In January 1986, the Vietnamese government unilaterally sus-

18. President Reagan's Remarks on Signing Amerasian Law Into Effect, 18 WEEKLY COMP. PRES. DOC. 1374 (Oct. 22, 1982).

19. The UNHCR is an organ of the United Nations whose domain includes issues of citizenship and nationality in an international refugee context. Kumin, *Orderly Departure from Viet Nam*, Refugees, June, 1982, at 12, col. 5 [hereinafter *Orderly*].

20. *Plight*, *supra* note 8, at 52.

21. *Orderly*, *supra* note 19, at 5, col. 5. Essentially, the ODP was established in response to the Indochinese Boat People Crisis of 1978-1979. Moore, *Proposed Refugee Admissions for FY 1988*, DEP'T ST. BULL., Nov. 1987, at 47, 51.

22. Although the ODP commenced operation in June 1979, Amerasians did not come to the United States under it until October 1982 when the Amerasian Act was passed. Beck, *'Where Is My Father?'*, NEWSWEEK, Apr. 15, 1985, at 54. See discussion *infra* pp. 129-31.

23. Moore, *supra* note 21, at 47, 51.

24. Beck, *supra* note 22, at 55. Moreover, Amerasians have to apply at the local, provincial, and State levels. *Id.*

25. Cooper, *supra* note 10, at 35.

26. Beck, *supra* note 22, at 55.

pended the ODP.²⁷ The official reason given by Vietnam was that: "[M]ost Western Governments conduct interviews that are too long and demand time-consuming [and] detailed health screening."²⁸ Even though the Vietnamese suspension of the ODP "had little to do with the specific question of Amerasians, it has had a prohibitive effect on their emigration from Vietnam."²⁹ It is clear that Vietnam has "never been pleased with using the ODP process for the emigration of Amerasians."³⁰ Eventually, after eighteen months of inactivity, an agreement was reached in July 1987 to resume the ODP.³¹ However, the bureaucratic problems which caused Vietnam to suspend it still exist.

III. The 1982 Amerasian Amendments

Until 1982, existing United States immigration and naturalization law made it virtually impossible for most Amerasians to immigrate to the United States.³² On October 22, 1982, President Reagan signed Public Law No. 97-359 into effect.³³ Commonly known as the 1982 Amerasian Amendments,³⁴ this legislation added a new subsec-

27. *Vietnam Appears to Hinder an Emigration Accord*, N.Y. Times, Aug. 22, 1987, at A4, col. 3.

28. *Id.*

29. 133 CONG. REC. S11476 (daily ed. Aug. 6, 1987) (statement of Sen. Bumpers).

30. *Id.* Senator Bumpers explained the reasons why:

Because the ODP designates these children as refugees, which is the United States point of view, the Vietnamese reject this term because it implies official persecution in Vietnam. Also, the ODP addresses the questions through the United Nations, when it is in fact a bilateral issue. Third, the ODP lumps the Amerasian children with the thousands of other refugees who seek to emigrate from Vietnam, which traps them in the slow, cumbersome bureaucracy and offers them little hope of immediate freedom.

Id.

31. Moore, *supra* note 211, at 47, 51. Interviewing of new applicants did not resume until October 1987. *Vietnam Children of Americans Reach Thailand on Way to U.S.*, N.Y. Times, Jan. 1, 1988, at A1, col. 1.

32. *Welcoming Home*, *supra* note 8, at 303. See discussion *infra* p. 131.

33. President's Remarks on Signing Amerasian Law Into Effect, 18 WEEKLY COMP. PRES. DOC. 1374 (Oct. 22, 1982).

34. Preferential Treatment in the Admission of Children of United States Citizens, Pub. L. No. 97-359, 96 Stat. 1716 (codified at 8 U.S.C. § 1154 (1982)). The text of the entire statute as enacted reads:

(g)(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(4), as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions prescribed in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

(2) The Attorney General may approve a petition under paragraph (1) if—

(A) he has reason to believe that the alien (i) was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before the date of the enactment of this subsection, and (ii) was fathered by a United States citizen:

(B) he has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (4); and

(C) in the case of an alien under eighteen years of age, (i) the alien's

tion to the Immigration and Nationality Act of 1952.³⁵ Although the passing of the Amerasian Amendments was a step in the right direction, the Act was too restrictive *vis-à-vis* Vietnamese Amerasians. Moreover, the legislation had the effect of polarizing the United States and Vietnamese governments.

placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency licensed in the United States and actively involved in the intercountry placement of children and (ii) the alien's mother or guardian has in writing irrevocably released the alien for emigration.

(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien's birth in order to make the determinations described in subparagraphs (A) and (C)(i) of paragraph 2; and

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and letters of proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

(4)(A) a guarantee of legal custody and financial responsibility for an alien described in paragraph (2) must —

(i) be signed in the presence of an immigration officer or consular officer by an individual (hereinafter in this paragraph referred to as the "sponsor") who is twenty-one years of age or older is of good moral character, and is a citizen of the United States or alien lawfully admitted for permanent residence, and

(ii) provide that the sponsor agrees (I) in the case of an alien under eighteen years of age, to assume legal custody for the alien after the alien's departure to the United States and until the alien becomes eighteen years of age, in accordance with the laws of the State where the alien and the sponsor will reside, and (II) to furnish, during the five-year period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to maintain the family the United States of which the alien is a member at a level equal to at least 125 per centum of the current official poverty line (as established by the Director of the Office of Management and Budget, under section 673(2) of the Omnibus Budget Reconciliation Act of 1981 and as revised by the Secretary of Health and Human Services under section 652 of such Act) for a family of the same size as the size of the alien's family.

(B) A guarantee of legal custody and financial responsibility described in subparagraph (A) may be enforced with respect to an alien against his sponsor in a civil suit brought by the Attorney General in the United States district court for the district in which the sponsor resides, except that a sponsor or his estate shall not be liable under such a guarantee if the sponsor dies or is adjudicated a bankrupt under title 11, United States Code.

Id.

35. The Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended as 8 U.S.C. §§ 1101 *et seq.* (1970)). The 1982 Act added subsection (g) to § 1154 of the Immigration and Nationality Act.

A. Effects of the Act

In order to understand the effects of the 1982 Act, it is first necessary to appreciate the difficulty Amerasians had in immigrating to the United States under the previous law. Under the Immigration and Nationality Act, "immediate relatives"³⁶ of United States citizens such as "children"³⁷ are exempt from any numerical restrictions which are placed on immigration. But this law only applies to legitimate children and stepchildren of United States citizens,³⁸ the consequences being that an illegitimate child is not a "child" of the father for immigration purposes. Because many, if not most, Amerasians are illegitimate,³⁹ they are precluded from qualifying as children under this law. Moreover, persons not qualifying as immediate relatives of United States citizens are placed in one of seven categories in order of preference.⁴⁰ Before 1982, Amerasians were generally placed in the lowest preference seventh category because they did not fit into any of the other six.⁴¹ Thus, under prior law it was nearly impossible for Amerasians to immigrate to the United States.

The 1982 Amerasian Amendments changed the previous law by placing Amerasians in more preferable categories. First, unmarried Amerasians under the age of twenty-one were placed in the unrestricted class of immediate relatives; second, unmarried Amerasians over the age of twenty-one were placed in preference category (1); and finally, married Amerasians were placed in preference category (4).⁴² Most of the Amerasians admitted under the 1982 Act were classified as "children" under the immediate relatives category simply because most Vietnamese Amerasians are still under the age of twenty-one.⁴³ To some extent, the passage of the Act opened doors which had previously been closed to Amerasians and permitted their

36. 8 U.S.C. § 1151(b) (1970).

37. 8 U.S.C. § 1101(b)(1) (1970).

38. *Id.*

39. 128 CONG. REC. E3459-60 (daily ed. July 23, 1982) (statement of Rep. William Lehman).

40. 8 U.S.C. § 1153 (1982).

41. The seven categories are:

(1) Age 21 years or older, unmarried sons and daughters of United States citizens;

(2) Spouses of unmarried sons and daughters of aliens lawfully admitted for permanent residents;

(3) Members of the professions or persons of exceptional ability in the arts or sciences;

(4) Married sons and daughters of United States citizens;

(5) Age 21 years or older brothers and sisters of United States citizens;

(6) Laborers in professions in which there is a shortage of United States workers;

(7) Non-preference.

8 U.S.C. § 1153(a)(1)-(7) (1970).

42. 8 U.S.C. § 1154(g)(1) (1982).

43. *Vietnamese Rejoins Her U.S. Mother*, N.Y. Times, Oct. 4, 1987, at A52, col. 4.

emigration from Vietnam under the ODP. Despite this step forward, however, significant problems remained.

B. Criticism

The 1982 Amerasian Amendments had three beneficial aspects. First, they allowed Amerasians to begin immigrating to the United States through the United Nations refugee program.⁴⁴ Second, the language of the Act acknowledged Vietnamese Amerasians as the sons and daughters of United States citizens for the purposes of immigration.⁴⁵ Finally, the Act covers persons born up to October 22, 1982,⁴⁶ recognizing that Amerasians continue to be born in the Philippines, Korea, and Okinawa.⁴⁷ In retrospect, however, the 1982 Act was only the first step in bringing Amerasians to the United States.

One of the major problems associated with the 1982 Act was its failure to provide any measures for Amerasians' mothers and close family members to immigrate to the United States along with the children. This essentially left the child in a quandary: travel to the United States alone, or stay in Vietnam with his or her family. Based on this lack of a familial provision, the United States Department of State refused to use the legislation,⁴⁸ instead relying on the ODP and classifying the Amerasians as refugees.⁴⁹ This designation in turn upset the Vietnamese and led to their unilateral suspension of the ODP.⁵⁰ Thus, the legislation had the effect of alienating both the Vietnamese and the State Department.

Another problem with the Act was that the "legislation . . . proved unworkable with respect to Vietnamese Amerasians."⁵¹ Due to the fact that the emigration of Amerasians from Vietnam was via the ODP, and considering that the United States does not diplomatically recognize the Vietnamese government, "the strict requirements of the [A]ct . . . virtually prevented its use for those in Vietnam."⁵² Although the Amendments represented progress, they were too restrictive in terms of permitting Amerasians to immigrate to the United States, especially Vietnamese Amerasians. With the aid of hindsight, the 1982 Amerasian Act did not substantially affect the

44. Beck, *supra* note 22, at 54.

45. See 128 CONG. REC. S12410 (daily ed. Sept. 28, 1982) (statement of Sen. Carl Levin).

46. 8 U.S.C. § 1154(g)(2)(A)(i) (1982).

47. See 126 CONG. REC. H4834 (daily ed. June 11, 1980) (statement of John A. Shade, Jr., former director of the Pearl S. Buck Foundation, Inc.).

48. Beck, *supra* note 22, at 57.

49. *More Vietnamese to Get Permission to Enter the U.S.*, N.Y. Times, Sept. 12, 1984, at A1, col. 6.

50. See discussion *supra* p. 128.

51. 133 CONG. REC. S11476 (daily ed. Aug. 6, 1987) (statement of Sen. Bumpers).

52. *Id.*

situation of the Amerasians.⁵³ It would take nearly six more years for such a significant change to take place.⁵⁴

IV. President Reagan's 1984 Amerasian Initiative

On September 11, 1984, Secretary of State George P. Shultz announced an initiative on behalf of President Reagan aimed at resolving the Amerasian problem.⁵⁵ Shultz stated that: "[T]he United States will accept for admission all Asian-American children and their qualifying family members presently in Vietnam—hopefully over the next three years. Because of their undisputed ties to our country, these children and family members are of particular humanitarian concern to the United States."⁵⁶ Secretary Shultz also announced United States plans to restructure the ODP into three separate subprograms.⁵⁷ The Amerasian subprogram called for the admission through the ODP of all Amerasians and family members.⁵⁸ This ambitious initiative had as its goal the immigration of *all* Amerasians to the United States by 1987.

By November of 1985, however, the State Department was claiming that the Vietnamese had failed to reach the United States' goal of 5,000 Amerasians and family members for the first year of the program.⁵⁹ Just two months later, in January 1986, the Vietnamese unilaterally suspended the ODP for eighteen months.⁶⁰ It is no wonder, then, that the relationship between the State Department and the Vietnamese government strongly resembles a game of political chess with the Amerasian children being used as pawns. Rather than accelerating the ODP process, the 1984 initiative further increased tensions between Hanoi and Washington. In November 1984, for example, it was reported that: "Vietnam has said that all Amerasians can leave, and it has said that the United States has been slow in taking them. American officials say Vietnam shares re-

53. While some Amerasians benefitted from the 1982 Act, Vietnamese Amerasians could not meet the strict requirements of the legislation.

54. See discussion *infra* p. 137.

55. Shultz, *Proposed Refugee Admissions for FY 1985*, DEP'T ST. BULL., Nov. 1984, at 34. (Secretary Shultz's statement before the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee).

56. *Id.*

57. *Id.* at 35-56. The three subprograms were:

The regular program, for spouses and children of American citizens, ex-U.S. Government employees, and ethnic minorities of special humanitarian concern;
The Asian-American program, for Asian-American children and close family members included in the same household as the child; and
The political prisoner program, for current and former political prisoners and specified family member.

Id.

58. *Id.*

59. Shultz, *Proposed Refugee Admissions for FY 1986*, DEP'T ST. BULL., Nov. 1985, at 20, 22.

60. See discussion *supra* p. 128.

sponsibility by not assigning enough personnel to the children emigration program."⁶¹ It seems that at the end of the day neither the Vietnamese nor the Americans want to accept the ultimate responsibility for the Amerasian situation.

The most serious cause of the problems between the two nations involved in this issue is the lack of diplomatic relations between Hanoi and Washington. The State Department has repeatedly refused to establish official diplomatic ties with Vietnam, usually citing that country's occupation of Kampuchea⁶² as the reason.⁶³ In January 1988, President Reagan stated that the United States views "the continued occupation of Cambodia as an unacceptable violation of international law that undermines regional efforts towards development, peace and stability."⁶⁴

Another area causing difficulties is the thorny American POW/MIA issue. While there has been some progress on this matter, Vietnam and the United States continue to bicker. One writer summed up the unfortunate situation in an August 1988 article: "Recently, however, the [Reagan] Administration threatened Vietnam with continued isolation just days after the Vietnamese had agreed to a visit by our M.I.A. search teams. Predictably, Vietnam canceled the teams."⁶⁵

What is needed more than ever is serious dialogue between Hanoi and Washington. Perhaps the Bush Administration can make some progress on diplomatic relations with the Vietnamese. For too long these two countries have been playing games with the lives of real people. There are only three countries with which the United States has no diplomatic ties: Albania, North Korea, and Vietnam.⁶⁶ It is time for the United States and Vietnam to put the past behind them and tackle the bilateral issues facing them, placing a special emphasis on the Amerasian children. In short, the 1984 Amerasian initiative sounded good on paper, but in practice it was just an empty shell.

V. The 1987 Refugee Protection Act

One of the most promising developments after the Vietnamese unilaterally suspended the ODP was the passage of the Indochinese

61. *Hanoi Called Hesitant to Let Foes Go*, N.Y. Times, Nov. 11, 1984, at A3, col. 1.

62. Kampuchea is also known as Cambodia. See discussion *infra* pp. 139-40.

63. Reagan, *National Security Strategy of the United States*, DEP'T ST. BULL., Apr. 1988, at 1, 25 [released by the White House in Jan. 1988].

64. *Id.*

65. Schumacher, *Vietnam and My Daughter's Private War*, N.Y. Times, Aug. 15, 1988, at A17, col. 2.

66. S. Con. Res. 109, 100th Cong., 2d Sess., 134 CONG. REC. 3010, 3011 (1988).

Refugee Resettlement and Protection Act in December 1987.⁶⁷ This

67. *Indochinese Refugee Act*, *supra* note 9. The full text of the statute as enacted reads:

(a)(1) Notwithstanding any numerical limitations specified in the Immigration and Nationality Act, the Attorney General may admit aliens described in subsection 9b) to the United States as immigrants if—

(A) they are admissible (except as otherwise provided in paragraph 92) as immigrants, and

(B) they are issued an immigrant visa and depart from Vietnam during the 2-year period beginning 90 days after the date of the enactment of this Act.

(2) The provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not be applicable to any alien seeking admission to the United States under this section, and the Attorney General on the recommendation of a consular officer may waive any other provision of such section (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation by a consular officer.

(3) Notwithstanding section 221(c) of the Immigration and Nationality Act, immigrant visas issued to aliens under this section shall be valid for a period of 8 months.

(b)(1) An alien described in this section is an alien who, as of the date of the enactment of this act, is residing in Vietnam and who establishes to the satisfaction of a consular officer or an officer of the Immigration and Naturalization Service after a face-to-face interview, that the alien—

(A)(i) was born in Vietnam after January 1, 1962, and before January 1, 1976, and (ii) was fathered by a citizen of the United States (such an alien in this section referred to as a "principal alien");

(B) is the spouse or child of a principal alien and is accompanying, or following to join, the principal alien; or

(C) subject to paragraph (2), either (i) is the principal alien's natural mother (or is the spouse or child of such mother), or (ii) has acted in effect as the principal alien's mother, father, or next-of-kin (or is the spouse or child of such an alien), and is accompanying, or following to join, the principal alien.

(2) An immigrant visa may not be issued to an alien under paragraph (1)(C) unless the principal alien involved is unmarried and the officer referred to in paragraph (1) has determined, in the officer's discretion, that (A) such an alien has a bona fide relationship with the principal alien similar to that which exists between close family members and (B) the admission of such an alien is necessary for humanitarian purposes or to assure family unity. If an alien described in paragraph (1)(C)(ii) is admitted to the United States, the natural mother of the principal alien involved shall not, thereafter, be accorded any right, privilege, or status under the Immigration and Nationality Act by virtue of such parentage.

(3) For purposes of this section, the term "child" has the meaning given such term in section 101(b)(1)(A), (B), (C), (D), and (E) of the Immigration and Nationality Act.

(c) Any alien admitted (or awaiting admission) to the United States under chapter 2 of title IV of the Immigration and Nationality Act to the same extent as individuals admitted (or awaiting admission) to the United States under section 207 of such Act are eligible for benefits under such chapter.

(d) The Attorney General, in cooperation with the Secretary of State, shall report to Congress 1 year, 2 years, and 3 years, after the date of the enactment of this Act on the implementation of this section. Each such report shall include the number of aliens who are issued immigrant visas and who are admitted to the United States under this section and number of waivers granted under subsection (a)(2) and the reasons for granting such waivers.

legislation was originally known as the Amerasian Homecoming Act when it was introduced in the Senate in August 1987.⁶⁸ The new law directly addresses some of the problems left unsolved in the 1982 Amendments, and specifically provides help for the Vietnamese Amerasians. With the passage of this Act, Amerasians in Vietnam finally have some hope of traveling to the land of their fathers on a timely basis.

A. Analysis

The Amerasian Homecoming Act differs significantly from the 1982 Act in that it makes Amerasians eligible for benefits normally afforded only to refugees, without referring to them as refugees.⁶⁹ In doing so, "[i]t allows immigrant status as required by the Vietnamese, but authorizes all of the language training and assimilation assistance provided refugees under chapter 2 of title IV of the Immigration and Nationality Act."⁷⁰ Another substantial difference is that the Amerasian Homecoming Act provides for the family members of Amerasians,⁷¹ unlike the 1982 Act which had no such provision. Under the new law, the spouse, child, mother, mother's spouse and child, and even a surrogate father may immigrate along with the Amerasian himself or herself.⁷² Thus, the new law recognizes that Amerasians are hesitant to leave their families behind and allows for the maintenance of family unity.

Another interesting aspect of the Amerasian Homecoming Act is that it requires face-to-face interviews in Vietnam between Amerasians and officers of the Immigration and Naturalization Service before an immigrant visa will be issued.⁷³ Previously, the Vietnamese have refused to allow the United States officials to enter Vietnam for the purpose of interviewing Amerasians, the process usually being

(e) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section and nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

Id.

68. 133 CONG. REC. S11476 (daily ed. Aug. 6, 1987) (statement of Sen. Bumpers).

69. *Indochinese Refugee Act*, *supra* note 9, at 1329-184.

70. 133 CONG. REC. S11476 (daily ed. Aug. 6, 1987) (statement of Sen. Bumpers). *See*

§ (c).

71. *See* § (b)(1)(B)-(C).

72. *Id.*

73. *See* § (b)(1).

performed by United Nations personnel.⁷⁴ Finally, the Act defines Amerasians in the Vietnamese context.⁷⁵ Under the legislation, a Vietnamese Amerasian is defined as a person who "was born in Vietnam after January 1, 1962, and before January 1, 1976, and . . . was fathered by a citizen of the United States."⁷⁶ This definition distinguishes the Vietnamese Amerasian from Amerasians in South Korea, Thailand, Kampuchea, and Laos, nations with which the United States maintains diplomatic relations.

B. Discussion

The Amerasian Homecoming Act is a vast improvement over the 1982 Amerasian Amendments. It gives the Amerasians immigrant status while providing them with refugee benefits; it allows for the maintenance of family unity; it requires face-to-face interviews in Vietnam; and it specifically addresses the problems faced by Vietnamese Amerasians. According to Senator Dale Bumpers (D-Ark.), who introduced the original legislation, the 1987 Act "provide[s] the necessary legal authority for the [Amerasian] program to go forward."⁷⁷ The law took effect in March 1988 and by the end of that year it was hoped that 1,000 persons a month would be immigrating to the United States from Vietnam.⁷⁸ In anticipation of the huge influx of Amerasians and their families, the State Department prepared to establish several cluster sites around the country to receive the new immigrants.⁷⁹ Perhaps, at last, the Amerasians in Vietnam are being given the help they so desperately need and the consideration they so clearly deserve.

VI. Recent Developments

Since the Amerasian Homecoming Act took effect in March 1988, three events have occurred which directly affect the future of the Amerasians still in Vietnam. The first is the introduction of Senate Concurrent Resolution 109 in March 1988. This resolution calls for the establishment of interest sections in Hanoi and Washington to facilitate discussion on humanitarian issues. The second is the announced withdrawal of Vietnamese troops from Cambodia. In July 1988 some of Vietnam's top commanders left Cambodia to return to Vietnam. The third is the adoption of Assembly Joint Resolution No. 91 by the California Legislature in January 1989. This resolu-

74. See discussion *supra* p. 128.

75. See § (b)(1)(A)(i)-(ii).

76. *Id.*

77. 133 CONG. REC. S11476 (daily ed. Aug. 6, 1987) (statement of Sen. Bumpers).

78. *Children of 2 Lands in Search of Home*, N.Y. Times, May 19, 1988 at A20, col. 1.

79. *Id.*

tion urges the United States Congress to fund the Amerasian Resettlement Program and to establish cluster sites in California. In the subsections which follow, these three recent developments will be discussed and analyzed in the context of Vietnamese Amerasians. In addition, the State Department's responses to the first two events will be addressed and criticized.

A. Senate Concurrent Resolution 109

On March 24, 1988, Senator John McCain (R-Ariz.) introduced legislation in the form of "a Senate concurrent resolution expressing the sense of Congress that the President should negotiate with the Government of Vietnam to establish interest sections in the capitals of both countries."⁸⁰ Senator McCain explained that an interest section is "exactly what we have between the United States and Cuba. There are presently Cubans who work out of the Czech Embassy here in Washington, and Americans who work out of the Swiss Embassy in Havana."⁸¹ This relationship has allowed the United States and Cuba to resolve several issues faced by the two nations.⁸² The Senator emphasized that Senate Concurrent Resolution 109 is in no way a prelude to full diplomatic relations with the Vietnamese, but merely a means to address the bilateral problems which still plague the United States and Vietnam. He concluded that: "[T]he time has come to help the American people and the Vietnamese people resolve the issues that still exist between us."⁸³

Short of establishing full diplomatic relations with the Socialist Republic of Vietnam, Senate Concurrent Resolution 109 is one of the most rational proposals to attempt to solve the Amerasian situation introduced in the last fourteen years. The passing of this resolution is the next logical step after the Amerasian Homecoming Act. Resolution 109 proposes that interest sections be established in Hanoi and Washington in order to generate solutions to certain humanitarian issues, including the Amerasian problem. Being a bilateral issue, the best method of solving the Amerasian quagmire is with bilateral negotiation and dispute resolution. Unfortunately, but perhaps somewhat predictably, Senate Concurrent Resolution 109 has not yet been acted upon.

B. The Department of State Response

The State Department has been unreceptive to the ideas set

80. S. Con. Res. 109, 100th Cong., 2d Sess., 134 CONG. REC. S3010 (1988).

81. *Id.* at S3011.

82. *Id.*

83. *Id.*

forth in Senate Concurrent Resolution 109.⁸⁴ In a statement before the Subcommittee on East Asian and Pacific Affairs of the Senate Foreign Relations Committee on August 2, 1988, a State Department spokesman⁸⁵ commented: "[W]e do not believe that the establishment of interests sections would significantly improve either communications or cooperation between our two countries on humanitarian issues."⁸⁶ The primary rationale behind this position is that a dialogue already exists between the United States and Vietnam on humanitarian issues such as the Amerasian problem.⁸⁷ Emphasizing that no formal diplomatic structures between the United States and Vietnam are required, the State Department's secondary rationale is that: "The establishment of interest sections—regardless of legislative language to the contrary—would be seen in Hanoi as an important political concession motivated by our desire to resolve these humanitarian issues."⁸⁸ Thus, the State Department rejects both formal diplomatic relations with Vietnam and the more informal interest sections at the same time that it stresses the urgency of the continuing Amerasian issue.⁸⁹

The Department of State's policies toward Vietnam and Amerasians are as irrational as they are contradictory. Opposing full diplomatic ties may be understandable, but rejecting a sound resolution which calls for the establishment of informal interest sections is completely unreasonable. Former Secretary of State Shultz remarked that the United States holds "no malice toward Vietnam as a result of the war in Indochina."⁹⁰ If this is true, the State Department should not be so hesitant to establish at least working level ties with the Vietnamese. In short, if the passage of the Amerasian Homecoming Act is one step forward, then the State Department's policy towards Vietnam sets the cause two steps back.

C. The Announced Withdrawal of Vietnamese Troops From Cambodia

Vietnam invaded Cambodia⁹¹ in late 1978, beginning an occupation that has continued to the present.⁹² Early in 1988, the Vietnamese announced a phased withdrawal of all its troops from

84. Lambertson, *Situation in Vietnam, Cambodia, and Laos*, DEP'T ST. BULL., Oct. 1988, at 40, 42 [hereinafter *Situation*].

85. David F. Lambertson, Deputy Assistant Secretary for East Asian and Pacific Affairs.

86. *Situation*, *supra* note 84, at 42.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. Also known as Kampuchea.

92. *Long Trip Home*, TIME, July 11, 1988, at 32.

Cambodia by 1990.⁹³ In July 1988 some of Vietnam's top commanders were sent home,⁹⁴ the first step in withdrawing some 50,000 troops by the end of 1988.⁹⁵ Vietnam's decision to leave Cambodia seems motivated more by political rather than military concerns, including pressure from the Soviet Union.⁹⁶ Moreover, on an international level, Vietnam has been isolated both diplomatically and economically.⁹⁷ In sum, Vietnam has assessed its position in the world and concluded that it would be better off in economic terms if it withdraws its forces from Cambodia.

The announced withdrawal of Vietnamese troops from Cambodia and the gesture in July 1988 of pulling out some of the top commanders are both positive signs that Vietnam is ready to negotiate with the United States on a serious level. Vietnam had occupied Cambodia for ten years before making the announcement of the pullout. Any retreat from that position, therefore, should be welcomed by the West. This is an opportunity to deal with the Vietnamese that has not arisen once in the nearly fifteen years since the end of the war in Indochina. If the United States moves swiftly, it can tie economic aid to Vietnam to the condition that the bilateral issue of Amerasian children be given a final resolution. In short, the phased pullout of Vietnamese troops from Cambodia can be a key event toward the solving of the Amerasians' plight.

D. The Department of State Response

The Department of State reacted to the announced withdrawal with caution.⁹⁸ Although admitting that the news was encouraging, the State Department suggested that considering "Hanoi's previous manipulation of withdrawal dates and announcements, we, of course, remain skeptical."⁹⁹ Despite the fact that Vietnam did withdraw some of its commanders from Cambodia in July 1988, the State Department decided "to adhere to a policy which can be summarized as 'no trade, no aid, and no normal relations' with Vietnam except in the context of a political settlement and an end of Vietnam's occupation of Cambodia."¹⁰⁰ Instead of viewing the announcement in an optimistic and positive manner, the State Department has cast Vietnam's gesture in a pessimistic and negative light. The bottom line

93. *Id.*

94. *Id.*

95. *Situation, supra* note 84, at 40.

96. *Long Trip Home, supra* note 92, at 32.

97. *Situation, supra* note 84, at 41. At least 115 nations have called for the withdrawal of Vietnamese troops from Cambodia and the restoration of Cambodian independence. Shultz, *Resolving the POW/MIA Issue*, DEP'T ST. BULL., Sept. 1987, at 18, 19.

98. *See Situation, supra* note 84.

99. *Id.* at 40.

100. *Id.* at 41.

here is that since Vietnam's complete withdrawal from Cambodia is a prerequisite to diplomatic relations and since the final resolution of the continuing Amerasian problem depends on diplomatic negotiations, it may be some time yet before this issue is closed.

E. California Assembly Joint Resolution No. 91

In January 1989 the Legislature of the State of California adopted a joint resolution dealing with the issue of Amerasian children.¹⁰¹ This resolution resulted from the fact that California has the highest percentage of Vietnamese and Amerasian immigrants of any state in the United States.¹⁰² The joint resolution calls for "the Congress of the United States to provide funding for the Amerasian Resettlement Program, and to enact legislation necessary for the establishment and funding of an appropriate number of cluster sites in the State of California."¹⁰³ Resolution No. 91 further asks Congress "[t]hat Amerasian immigrants be permitted to choose the cluster site at which they will be located, especially if there are relatives living in the vicinity of the cluster site."¹⁰⁴ Since Congress failed to

101. 135 CONG. REC. S 84 (daily ed. Jan. 20, 1989). This joint resolution was referred to the Committee on the Judiciary. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* The text of the entire joint resolution as enacted reads:

Whereas, Amerasian children living in Vietnam have suffered unduly because of the parentage and have been denied educational and employment opportunities afforded other Vietnamese; and

Whereas, the United States government and the government of Vietnam signed the Amerasian Homecoming Act in December 1987, thereby allowing a total of 30,000 Amerasians and their families to emigrate to the United States; and

Whereas, under the auspices of the Amerasian Resettlement Program administered by the Department of Health and Human Services, these Amerasian immigrants are to receive six months of educational training in camps in the Republic of the Philippines before coming to the United States; and

Whereas, upon arrival in the United States, the Amerasian immigrants will be sent to cluster sites specified in the Amerasian Resettlement Planning Committee in order to help them assimilate; and

Whereas, the Amerasian immigrants currently have no choice in the cluster site to which they will be assigned; and

Whereas, over 50 percent of all Vietnamese refugees have settled in California, and a large percentage of the Amerasian immigrants will relocate in this state as well; and

Whereas The Amerasian Resettlement Program itself is in danger since the Congress has failed to provide funding for the program for the 1988 fiscal year; now, therefore be it

RESOLVED, BY THE ASSEMBLY AND SENATE OF THE STATE OF CALIFORNIA, JOINTLY, That the Legislature of the State of California urges the Congress of the United States to provide funding for the Amerasian Resettlement Program, and to enact legislation necessary for the establishment and funding of an appropriate number of cluster sites in the State of California; and be it further

RESOLVED, That a representative of the State of California be appointed as a member of the Amerasian Resettlement Planning Committee; and be it further

RESOLVED, That Amerasian immigrants be permitted to choose the cluster

provide funding for the Amerasian Resettlement Program for the 1988 fiscal year,¹⁰⁵ Joint Resolution No. 91 represents a positive state action designed to compel the federal government towards further movement.

VII. Case Study: The French Solution to the Problem

One of the primary reasons why it is taking so long to resolve the Amerasian problem is a fundamental assumption made by both the Vietnamese and the Americans regarding the status of these children. The government of the Socialist Republic of Vietnam views Amerasians as United States nationals while the United States considers them to be Vietnamese nationals.¹⁰⁶ Hence the need for complex United States immigration and naturalization laws. This necessity for complexity has meant delays for Amerasians while bureaucracies in both the United States and Vietnam wrestle under mountains of paperwork. This section presents a case study of an alternative method of solving the problems associated with the children of war.

France has been involved in Vietnam since the latter part of the nineteenth century, having "completed its conquest of Indochina in 1888."¹⁰⁷ After World War II, tensions grew between France and Vietnam as French troops began "occupying towns and cities and occasionally fighting sharp local battles with [Vietnamese] guerrillas."¹⁰⁸ Finally, in December 1946, full-scale war erupted when French and Vietminh forces clashed in Hanoi.¹⁰⁹ The French-Indochina War would last more than seven years and claim approximately 600,000 lives.¹¹⁰

When the French-Indochinese War ended in October 1954,¹¹¹ France was faced with the same problems that have confronted the

site at which they will be located, especially if there are relatives living in the vicinity of the cluster site; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Health and Human Services, and to representatives of the Amerasian Resettlement Planning Committee.

Id.

105. *Id.* Congress *did*, however, appropriate \$15,000,000 "for costs of the expedited resettlement of Vietnamese Amerasians and their family members" for the fiscal year ending on September 30, 1989. See Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Pub. L. No. 100-461, 102 Stat. 2268, at 2268-15 (1988).

106. *Amerasian Immigration Proposals*, *supra* note 15, at 75 (comments by John A. Shade, Jr.).

107. *THE AFTERMATH: ASIA* 167 (C. Osborne ed. 1983).

108. *Id.* at 169-70.

109. P. DAVIDSON, *supra* note 5, at 9.

110. *THE AFTERMATH: ASIA*, *supra* note 107, at 172.

111. P. DAVIDSON, *supra* note 5, at 283.

United States regarding Amerasian children. Eurasian children, however, fathered by French soldiers and born of Vietnamese mothers,¹¹² were given chances that only a few Amerasians have had. Through various social structures, voluntarism, and the operation of law, Eurasians were fully integrated into French society. The Federation for French Children in Indochina (La Fédération des Oeuvres de l'Enfance Française d'Indochine) was an existing private agency used by France to establish a government-funded program designed "to provide [a] political solution and afford humane relief" to Eurasian children.¹¹³ The Federation comprised the social component of the French solution to the problems associated with Eurasians.

The Federation was responsible for the evacuation of Eurasians from Vietnam and their assimilation into French society.¹¹⁴ This organization had three primary ways to provide for the Eurasian children:

First, all mixed-race infants willingly relinquished by their mothers or guardians were granted French citizenship, brought to France, afforded placement or institutional care, and guaranteed an education; and

second, [the Federation] provided that all mixed-race infants not so relinquished could elect French citizenship at any time up to and including the attainment of the eighteenth year; and

third, [the Federation] further provided for the underwriting of various modes of education and vocational training to make the child or adolescent or young adult a productive member of the society into which he [or she] was born.¹¹⁵

The Federation purchased homes in which groups of children lived until they were gradually assimilated into French society. Social workers and government officials visited the children regularly to supervise their progress.¹¹⁶ The children were sent to French summer camps or were placed with French families who voluntarily accepted the children into their homes.¹¹⁷ In this way, it is estimated that the Federation has helped some 20,000 Eurasian children.¹¹⁸

In addition to this comprehensive social program, the French

112. "Eurasian" is a term which dates back to 1844 and refers to persons of a mixed European and Asian origin. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, *supra* note 4, at 428.

113. J. SHADE, JR., *supra* note 3, at 58.

114. Measures Taken for Eurasian Children Affected by the War in Indochina, 1 (June 15, 1971) (available from the French Embassy in New York) [hereinafter Measures].

115. J. SHADE, JR., *supra* note 3, at 112.

116. Measures, *supra* note 114, at 2.

117. *Id.*

118. *Id.* at 3.

passed legislation dealing with questions of nationality. In August 1955, the French-Vietnamese Convention on Nationality was enacted.¹¹⁹ This Convention, which dealt specifically with the Eurasian situation, stated in part:

Persons more than eighteen years of age as of the effective date hereof and of legitimate or illegitimate descent shall have French nationality with the right to elect Vietnamese nationality if:

1. born of a native Vietnamese father and a French mother;
2. born of a French father and a native Vietnamese mother;
3. born of parents either of a native Vietnamese father and a French mother or of a French father and a native Vietnamese mother;
4. born in Vietnam of an unknown father and a native Vietnamese mother, who are presumed to be of French extraction or nationality and who are recognized by the tribunals as being of French nationality.¹²⁰

Moreover, Eurasians under the age of eighteen, who were born of a French father and a Vietnamese mother, were "deemed to have French nationality with the right to elect Vietnamese nationality in accordance with the provisions of the convention."¹²¹ In addition, the Convention clearly states that such a child "has six months after reaching his or her eighteenth birthday to exercise this option unless there is a serious impediment to the exercise of this right, in which case the period of election does not begin to run until the impediment ends."¹²²

The Convention thus provides for both older French-Asian children and children who will be born in the future, giving all French-Asians a choice as to their nationality. By provisions of the French-Vietnamese Convention, and through the comprehensive social programs under the auspices of the Federation, the French government took immediate positive action to provide for the children of its nationals born abroad. The United States, on the other hand, has only recently taken affirmative steps comparable to the French measures. This delay has robbed many Amerasians of their childhood by leaving them in a land which does not want them. In addition, the United States does not have any of the comprehensive social programs to aid Amerasians that the French have to aid Eurasians. In sum, the United States should look to the French approach as an

119. Note, *America's Responsibility to Amerasian Children: Too Little, Too Late*, 10 BROOKLYN J. INT'L L. 55, 71 (1984).

120. *Id.* (quoting Convention on Nationality, August 16, 1955, France-Vietnam, Recueil des Traités et Accords de la France 62).

121. *Id.* at 71-72.

122. *Id.* at 72.

example of how to solve the problems associated with the children of servicemen born abroad.

VIII. Recommendations

In terms of recommendations, there are three areas which should be concentrated on in the near future.

A. Bush Administration Foreign Policy Agenda

The election of George Bush and his naming of James A. Baker, III, as Secretary of State could be positive factors in the Amerasian equation. Secretary Baker and President Bush should place the resolution of the Amerasian situation near the top of their foreign policy agenda for the next three years. Building on President Reagan and Secretary Shultz's 1984 Amerasian initiative, Bush and Baker are in the position to settle this matter once and for all. The process as it now stands has clearly stagnated, and perhaps this administration can reinvigorate the emigration of these children from Vietnam. Placing a high priority on the emigration of all Amerasian children will send a strong signal to Vietnam that the United States seeks a quick resolution to a problem which has gone on far too long.

B. Senate Concurrent Resolution 109

Senate Concurrent Resolution 109 should be acted upon by the Congress as quickly as possible. This legislation is a sound measure which seeks to establish a meaningful dialogue with the Vietnamese. As Senator John McCain explained:

I am not guaranteeing that the establishment of an interest section will bring progress, but I am making a case that the establishment of an interest section will provide the facility for ongoing continuous dialog, which does not exist today between our two nations I think the time has come, 13 years after the completion of our involvement in Southeast Asia, to begin a dialog, in hopes that the dialog will resolve these issues which are so important to the American people. I believe these issues can be adequately addressed through the maintenance of a steady and firm line of communication between our two nations.¹²³

Moreover, Senate Concurrent Resolution 109 is the perfect intermediary step between no diplomatic relations and the establishment of full diplomatic ties. In short, the passing of this legislation is the next logical move.

123. 134 CONG. REC. S3011 (daily ed. Mar. 24, 1988) (statement of Sen. McCain).

C. Establishment of Full Diplomatic Relations

The ultimate solution to the continuing problems faced by the Amerasian children is the establishment of full diplomatic relations between the United States and the Socialist Republic of Vietnam. Accordingly, the Bush Administration should take steps to accomplish this goal by 1991 at the latest. The lack of diplomatic ties has been one of the major obstacles to progress on this issue. Once relations are normalized, some real movement can be made to resolve the ongoing Amerasian situation. Thus, with the Vietnamese apparently leaving Cambodia by 1990, the Bush Administration is in a unique position to take advantage of the moment and offer diplomatic relations to the government of the Socialist Republic of Vietnam.

IX. Conclusion

Nearly fifteen years after the end of the war in Indochina, both the United States and Vietnam are still seeking victory. There has been some real progress made on the Amerasian question, especially with the enactment of the Amerasian Homecoming Act of 1987. Unfortunately, however, these steps forward have been negated by the ongoing hostile relationship between Washington and Hanoi. It is time for Vietnam and the United States to put the war behind them. It no longer matters who won or lost. What matters is that the problems created by that war should be solved bilaterally and quickly. It is time to let the war end and the healing begin. Until this occurs, ordinary Americans and ordinary Vietnamese will continue to suffer. For those trapped in the middle—the Amerasians—time will only tell what will become of the dust of life.

Ernest C. Robear