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T. Grant Callery

THE SCOPE OF THE PROBLEM

The fathering of illegitimate children in a foreign land by the soldiers of occupying or transient armies is certainly not a problem unique to the United States military involvement in the Republic of Vietnam. The problem has arisen whenever armies have engaged in operations on foreign soil and has, for the most part, been considered to be one among the many "costs of war." In earlier times, however, it was much easier to maintain an "out of sight, out of mind" attitude toward the problem. The soldier or colonial adventurer would put in his time in the distant land, return home, and would hear very little in his own country to trigger his sense of responsibility or guilt in connection with whatever offspring he might have produced. Technological advances have changed this pattern. Recent developments, particularly in the field of telecommunications, have enabled the American public to watch a war being fought halfway around the world on the evening news report, as the expression goes, "live and in color." The horrors of a distant war have been brought home to the nation as never before. Perhaps aided by the uncertainty of the propriety of the United States involvement in Vietnam, the press did not whitewash or overlook the more sordid and less honorable aspects of our involvement. In fact, some supporters of the United States Vietnam policy would contend that certain elements of the news media overemphasized those aspects. This extensive

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1 The word "military" as used herein must be taken in its broadest sense as referring to all American personnel including government contractors and other civilians as well as those actually in the military, whose presence was in any way related to the American military effort in Vietnam. Although there is no way to arrive at estimates, the effect of the civilian force in Vietnam as a contributing factor in the fathering of Amerasian children should not be discounted due to the considerably greater freedom from confinement to United States installations enjoyed by civilian as opposed to military personnel.
news coverage may also underlie what seems to be an unprecedented concern, on the part of the American people, for the welfare of the Vietnamese and in particular, the children of Vietnam who have inadvertently borne so much of the burden of the hostilities.

This is not to say that the problem is unique in American history either. The long period of stationing United States troops in Germany, for example, produced untold thousands of G.I. offspring — one estimate puts the number fathered by black Americans alone at 25,000. The problem in Asia, however, is perhaps more critical. Whereas the majority of the half-American children born in Germany are not racially mixed and thus may be easily assimilated into the society, all "Amerasian" children are, by definition, racially mixed, presenting problems over and above those of illegitimacy. Additional problems arose, particularly in Vietnam, from the fact that even in the cases where the American father wished to marry the mother of his child or to bring the child home with him, the impediments were great. First, there were complicated procedures to be undertaken to get permission for a G.I. to marry a Vietnamese national, followed by an involved procedure to obtain an American visa. Then too, the Vietnamese government imposed lengthy requirements of its own before allowing Vietnamese citizens to leave the country. These obstacles, combined with the fact that the typical United States military tour in Vietnam lasted only twelve months and was spent primarily in military operations made it extremely difficult to comply with the marriage requirements. Finally, all was compounded by the destructive effects of the war itself on Vietnam — and the children of Vietnam.

Although the primary focus of the present work will be on Vietnam, it should be kept in mind that similar problems exist in any Asian country where American troops are, or have been stationed. The Pearl S. Buck Foundation is presently conducting programs of relief for these children in Korea, Okinawa, the Phillipines, Taiwan and Thailand as well as in Vietnam. Pearl Buck, who lived in China for much of her childhood once described the plight of these unfortunate children as follows:

What is their condition in these countries where Americans have fathered them? Bluntly, it is piteous, it is miserable, it is hopeless. Everywhere the Amerasian children are growing up with-

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3 A word coined by the late Pearl S. Buck whose concern and efforts in behalf of the Asian children fathered by United States servicemen were unparalleled. These efforts are being carried on under the auspices of the Pearl S. Buck Foundation.
out education or hope of a future. Why? Because they are a New group of human beings, a group which the Asians do not know how to deal with, illegitimate as well as mixed in race. Asia is still family-centered, and without family there can be neither education nor job. And these Amerasian children have no families. Their mothers, outcast when they give birth to a child out of wedlock cannot care for them. Therefore they wander the streets, sometimes in packs. In orphanages already overcrowded, they are discriminated against, wherever they go. In position and status they are the lowest among the low. Yet they are innocent. Yet they are usually more beautiful and intelligent than the average child, perhaps because the ones who are not succumb to the hardships of their lives and die.4

In order to be able to explore possible solutions to the problems of the Amerasian children in Vietnam it is necessary first to survey some statistical data about them and obtain a better idea of the problems they are facing. It should be noted at the outset that there is a paucity of legal materials on the subject. What information is available is generally in the form of news reports from observers and reports from governmental and private agencies which are presently attempting to deal with the situation. Due to the varying goals of these groups, the information supplied by each may necessarily be, to some degree, presented to favorably reflect the bias of its proponent. Certain large statistical discrepancies will therefore be evident.

Statistically,5 the effect of almost three decades of war is apparent in the breakdown of the Vietnamese population by age. As of 1970 the total population of South Vietnam was 18 million; of this population eight million (or 46%) were under the age of fifteen. Fourteen percent of the total population was in the zero to four age group alone. It is, therefore, obvious that child welfare must be an important part of any aid program for Vietnam. The best available data as to the number of full or part orphans puts the total at about 957,000. Of these, some 300,000 are living within the extended family of their parents. Another 19,000 are living in the 130 orphanages recognized by the Vietnamese Ministry of Social Welfare (MSW) and another 5,000 live in some thirty-five non-recognized orphanages. Over 600,000 children orphaned as a direct result of the war now receive benefits from the Ministry of War Veterans. Although the figures are probably not particularly

4 P. Buck, The New Children (Pearl S. Buck Foundation Pamphlet).
5 Except where otherwise noted statistics in this section are taken from Agency for International Development Fact Sheet - Child Welfare in Vietnam, October 10, 1973 (hereinafter cited as A.I.D. Fact Sheet).
accurate, they do underscore the magnitude of the problem. It should be noted that the terms “orphan” and “orphanage,” as used in the above situation, may be somewhat misleading when taken in the normal American context. As stated by Wells Klein, formerly General Director of Travellers Aid — International Social Service, an agency which has facilitated many of the inter-country adoptions of American-Vietnamese children:

Well over 50% of the children are neither orphans nor abandoned. They have families or close relatives, and have been placed in orphanages because of economic difficulties or because their families are in movement around the country as refugees or military dependents. Children left in orphanages are frequently reclaimed by their mothers or relatives when family circumstances permit. Despite more than 25 years of war, the Vietnamese extended-family is still a strong institution.

Whatever definitions are used, however, one fact stands out. The estimated two dollars per month per child which the orphanages receive from the MSW is insufficient. In addition, the substantial support received in the past from United States military personnel stationed in Vietnam will no longer be forthcoming. Even while such support was available, the mortality rate in Vietnamese orphanages was astounding. Estimates from sources familiar with the situation run as high as 80%7 or even 90%8 in some instances.

With the magnitude of the child welfare problem somewhat delineated, it is now possible to look to the narrower issue of those children fathered by Americans. It is in the computation of these statistics that the variance in the estimates is the greatest. It is practically impossible to arrive at an accurate figure for the total number of American-fathered children. In a memorandum dated July 9, 1971, the MSW set the number in the neighborhood of from 10,000 to 15,000.9 Although that figure is currently the “official estimate,” it is widely disputed. In particular, Mr. Don Luce, a long time Vietnam relief worker, testified before the Senate Foreign Relations Committee that his estimate would reach at least

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7 118 CONG. REC. 11930 (1972) (statement by Louis P. Kublicka, American Friends Service Committee).
8 ISS Report at 2.
200,000, based on a study he conducted in 1969 while associated with the World Council of Churches. Mr. Luce explained:

I obtained the number of bars in different cities, from the tax collection offices, visited a sample of the bars and found out how many women worked in each bar. I estimated that there were between 100,000 and 300,000 bargirls, prostitutes, and temporary wives in Viet Nam in late 1969. Almost all of these women had at least one Amer-Asian child. Just about every bar had at least one woman pregnant by an American soldier. . . . Soon they became temporary wives. It is more permanent and they are less apt to catch venereal disease. They usually have a child by their American "husband." They want to have children because the Vietnamese feel that a child is the most precious possession a man can have. If they have a child, they feel, their soldier will not leave them.10

Because Mr. Luce's estimates are generally considered high, the true number probably lies somewhere between his and the official estimate.

Perhaps a more accurate and useful statistic is the number of Amerasian children in the Vietnamese orphanages. In this area the MSW places the figure at 770 which comprises only about four percent of the 19,000 children in the government recognized institutions. Other sources place the number of Amerasian children who are institutionalized at 1,00011 or 1,200.12 This indicates that the vast majority of Amerasian children are living with their mothers or within the mother's extended family. This fact is significant and must be considered in attempting to arrive at a proper course of action for the United States with respect to these children. Also to be considered is the reluctance of the Vietnamese government to adopt any program which will single out the Amerasian child for special treatment. In fact, when representatives of the Pearl Buck Foundation approached the MSW with the idea of setting up a center to aid Amerasian children and their mothers, the plan was rejected on the ground that such help was not needed at the time.13 The reason for the lack of need was the above mentioned fact that

10 118 CONG. REC. 11929 (1972).
12 Purcell, A TOUCH OF LOVE, WAR ON HUNGER, A REPORT FROM THE AGENCY FOR INTERNATIONAL DEVELOPMENT 9 (1973).
13 117 CONG. REC. 30919 (1971) (article by Daniel Southerland).
so many of the children were living within their families. While this is now the case, the future retention of the Amerasian children within their families is less than certain. It must be remembered that while the United States military presence in Vietnam was substantial, the "bar girls," prostitutes, and "temporary wives" who associated with the United States servicemen and had their babies were being generously subsidized (by Vietnamese standards), and were well able to support their illegitimate children. As one observer stated:

According to an estimate of a Saigon city councilman, there are 10,000 bar hostesses working in nearly 600 bars in Saigon alone.

The successful ones make as much as 50,000 piasters ($420) a month . . . (a wage) higher, in fact, than the salary of a Vietnamese general or that of Prime Minister . . . Ky.  

The withdrawal of American troops from Vietnam has eliminated this source of income, and the women will not be able to afford the standard of living to which they have become accustomed. It is well within the realm of possibility that these racially mixed children will be placed in orphanages in greater numbers when this occurs, especially if the mother wishes to marry a Vietnamese man who may not be as attracted to a woman with a half-American child. In fact, while most Amerasian children are still being cared for within their families, the statistics do indicate that the number in orphanages has doubled since 1971. The trend is not surprising in light of the fact that the orphanage population in Korea more than tripled following the cessation of hostilities in that country.

What then is the outlook for the Amerasian children in Vietnam? As already mentioned, the number that will end up in orphanages is uncertain. Another uncertainty is their acceptance into Vietnamese society, whether raised within the family or in an orphanage. For the Caucasian fathered child the outlook may not be completely grim, however. There have been reasonably large numbers of Eurasians in Indo-China since French colonial times, so the phenomenon of a lighter-skinned Vietnamese is nothing new. In fact, lightness of complexion is viewed as a desirable characteristic by many Vietnamese.

14 Id.
16 ADOPTION CONFERENCE PROCEEDINGS at 11.
17 ADOPTION CONFERENCE PROCEEDINGS at 1.
It is universally agreed that the most serious problems to be anticipated will arise with the half-black children. There are several indicators which point to the potential problems in this area. First, such discrimination is found now in Vietnam with regard to the children fathered by the French-Senegalese troops who were stationed in Vietnam during the 1945-1955 period. It does not seem likely that the offspring of the American blacks will fare any better. Even now the black babies are being put into orphanages at a rate disproportionately higher than the percentage of blacks who served in Vietnam. Sister Sabina of Go Vap, the largest orphanage in Vietnam, explains:

> It is a traditional prejudice. . . . People here believe that when skins get mixed it sparks off some instability. They are ashamed of Negro children and in some orphanages keep them apart from other children.

Another reason to believe that the black Amerasian child may encounter discrimination is the fact that color barriers exist within the Vietnamese society itself. This discrimination is practiced by the sino-mongoloid (majority) population against the 700,000 to 1,000,000 aboriginal tribesmen of Vietnam, known as the Montagnards. The Montagnards are largely of Malayo-Polynesian and Mon-Khmer stock and have darker skins and less traditionally “oriental” features. Studies and observation of Vietnamese-Montagnard relations indicate a great potential for discrimination based on race which could well effect black Amerasians.

One additional factor to be considered in this area is the position of the South Vietnamese government. A letter written by the Minister of Social Welfare in 1971 stated:

> My Ministry’s policy is not to distinguish racially mixed orphans from the others, for the former, although they are racially mixed, are Vietnamese-born citizens. Therefore, my Ministry has no intention of establishing separate orphanages for racially mixed children for this would have a traumatic effect on them.

This policy, although the proper and only progressive stand for

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18 *Hearings on Relief and Rehabilitation of War Victims in Indochina Before a Subcomm. of the Senate Comm. on the Judiciary, 93d Cong., 1st Sess., pt. 2, at 6 (1973)* (hereinafter cited as May Hearings).


21 *ISS Report* at 6.
the government to take, could conceivably cause problems in itself. Since the governmental position is one of non-discrimination, it might be difficult, should actual problems arise, to get the government to admit the existence of racial discrimination in order to allow programs to be begun to alleviate the situation.

Present Financial Assistance Programs

With the scope of the problem somewhat defined it may be of value to look at what is being done now for the children in Vietnam and what policies have been developed for dealing with their problems.

As mentioned above, the MSW provides meager support to the 130 orphanages caring for approximately 19,000 children. In addition, it operates 201 day care centers serving an additional 23,000 children and again, as previously noted, approximately 400,000 receive Veterans Compensation. Unfortunately, not only are the budgetary appropriations from the Vietnamese government small, but the MSW lacks a comprehensive child care program through which additional funding could be channeled.

The official position of the United States toward the Amerasian children seems to be one of growing concern and assumption of responsibility. In 1970, a Defense Department paper indicated:

The care and welfare of those unfortunate children . . . has never been and is not now considered an area of Government responsibility nor an appropriate mission for the Department of Defense to assume.\(^{22}\)

However, in July of 1971 the United States embassy in Saigon expressed the opinion that "responsibility for American fathered illegitimate children" in South Vietnam "has become a matter of serious and continuing concern."\(^{23}\)

The governmental branch charged with carrying out the responsibilities of the United States toward the children of Vietnam is the Agency for International Development (A.I.D.). Through this agency, the United States is attempting to supplement the present programs of the MSW and to expand into new program areas. In addition, there are approximately twenty private voluntary agencies involved in Vietnam child care programs. Indications from A.I.D. officials are that an increasing percentage of available funds are

\(^{22}\) Quoted in N.Y. Times, April 30, 1971, at 22, col. 1.

\(^{23}\) Quoted in N.Y. Times, July 26, 1971, at 1, col. 4.
to be channeled through these voluntary agencies rather than through A.I.D. operations as a part of the phase out of the American governmental presence in Vietnam.\textsuperscript{24} A.I.D. conducts a number of programs in this area. One of the major means of providing relief is the Food for Peace program.\textsuperscript{24,4} The orphanages receive food valued at $3.00 per month per child (equivalent to or greater than the MSW contribution). Food also goes to the day care centers and into school lunch programs. Distribution is accomplished through channels of the MSW and of the American voluntary agencies. For calendar year 1972, these commodities benefitted a total of 2,025,900 persons, slightly over 50% of whom were children.\textsuperscript{25} The overall dollar value of the Food for Peace program was $9.5 million, of which $7.6 million was for child feeding. The program approved for fiscal year 1973 was designed to increase the number of child recipients to more than 1,500,000. An increased emphasis on child feeding is evidenced by the fact that of the fiscal year 1973 total appropriation of $9.5 million, $8.6 million was slated for child feeding; an increase of a full million dollars over calendar year 1972.\textsuperscript{26}

It should also be noted that the veterans payments made by the Vietnamese government are also indirectly made possible by overall United States financial assistance.\textsuperscript{27}

In 1972 A.I.D. agreed to provide additional funding, up to a ceiling of VN $600 million\textsuperscript{28} for the expansion of existing child care programs, as well as for the establishment of new ones. The original level of support authorized for these programs in 1972 was VN $316 million. This amount, however, was increased to VN $336 million when the actual amounts needed for implementation

\textsuperscript{24} Interviews with personnel of Office of Technical Development, A.I.D., with statistical verification from A.I.D. Fact Sheet, supra note 5, and from Statement by the Honorable Robert H. Nooter, then Deputy Coordinator, Bureau for Supporting Assistance, A.I.D., before the Senate Foreign Relations Committee on April 5, 1972.

\textsuperscript{24,7} U.S.C. § 1701 (1964).

\textsuperscript{25} The State Department Child Welfare Fact Sheet places the number of children benefitted during calendar year 1972 at 1,076,016 with a breakdown as follows: school feeding — 595,000 recipients; maternal health care — 450 recipients; other child feeding (war victims, Montagnards, Day Care Centers, etc.) — 480,566 recipients.

\textsuperscript{26} The total number of recipients for fiscal year 1973 was to be 1,563,000 with significantly increased emphasis on school feeding (an increase of 600,000) and maternal health care (an increase of 9,000). Id.

\textsuperscript{27} Nooter testimony, supra note 24, at 3.

\textsuperscript{28} Figures in this area are given in Vietnamese piasters rather than in an American equivalent because of the fact that the value of the piaster fluctuates significantly in relation to the dollar on the world money market. It is of interest to note, however, that the current conversion ratio is $VN550 to $US 1.
of the programs administered by the MSW were discovered. Child welfare programs were expanded in 1973 to the extent that the funding level was in the neighborhood of the full VN $600 million (1.2 million United States dollars). This program points up the fact that the mere supplying of unlimited funds to the MSW will not be a panacea for Vietnamese child welfare problems. With their existing facilities and staff, there is a limit to the amount of monetary assistance which the MSW is able to absorb and effectively utilize. State Department projections for Vietnamese calendar year 1974 anticipate funding of child welfare programs in Vietnam totalling 7.2 million dollars of which 5.5 million will be administered through voluntary agencies. The balance will be provided under the auspices of the MSW and the Ministry of Health.

The inherent limitations in any aid program providing for child welfare in Vietnam were well summarized by Robert N. Nooter, Assistant Administrator, Bureau for Supporting Assistance, A.I.D., in recent testimony before the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees. Mr. Nooter illustrated the concern of A.I.D. for creating a program of assistance which would be practical by providing aid which would be of both short and long term value to the children of Vietnam. Mr. Nooter said, in part:

Social programs of this kind require complex and time-consuming administrative procedures and controls if they are to be administered properly, as we have learned in our own U.S. welfare programs. The Vietnamese are training people and are setting up administrative mechanisms to deal with these programs, but they cannot take on responsibilities which exceed their ability to administer. Second, the Vietnamese are deeply concerned that they not embark on social programs so expensive that they cannot be continued after U.S. financial support is withdrawn. And third, it is important that welfare recipients do not receive benefits in excess of the regular members of society which would lead to a massive influx of those on the public welfare rolls. Thus the con-

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20 A.I.D. Fact Sheet at 4-5.
21 State Department Telegram, Subject: Humanitarian Assistance Activities, From American Embassy, Saigon, to Secretary of State, December, 1973. The funding is to be broken down as follows: Day Care Centers — $1,426,000; Civilian Widows — $476,000; Foster Care — $570,000; Home Nursery Care — $760,000; Nutrition Centers — $630,000; Prevention of Infant Abandonment — $44,000; Orphanage Support — $1,736,000; Handicapped Children — $178,000; Other Child Welfare — $228,000; Pediatric Clinic — $340,000; Assistance for International Adoption — $470,000; Midwife Training — $324,000.
31 The average per capita income in Vietnam is equal to about $175 (U.S.) per year according to Mr. Nooter's estimate which is set forth in the May Hearings at 35.
straints in the area of child welfare are not financial, and the funds we have offered to make available to the Government of Vietnam during the last year or two for these purposes have not been fully utilized. These constraints are being addressed and gradually overcome, but we should bear in mind that it is necessary to proceed on the basis of sound programs and good administration, and to be supportive of Vietnamese efforts while permitting them to take the lead if the programs are to succeed.82

The United Nations has also provided a small amount of child welfare support in Vietnam, mainly in the form of training programs for MSW staff members, but also to some degree through the UNICEF Child Feeding Program. The amounts of this support have been limited due to budgetary and security considerations.83 A significant trend toward an increase in multilateral assistance to Vietnam has been evidenced since the cease fire in January, 1973. The World Health Organization has assumed a major role in malaria control. UNICEF has allocated three million dollars for Indochina aid and discussions have been undertaken as to possible support by both the World Bank and the Asian Development Bank. In addition, there are indications of the possibility of increased unilateral assistance from a number of European and Asian nations.84

It should be noted at this juncture that all aid thus far provided to Vietnam for child welfare has been used for general welfare programs, and not for those directed specifically at the Amerasian children. Due to problems which will be discussed herein it seems likely that, for practical reasons, and in the best interests of the children, no such singling out of Amerasian children will be attempted.

THE FRENCH SOLUTION CONSIDERED85

The French had a long history in Southeast Asia, extending from 1885 until 1954. Throughout this period many children were born of French fathers and Asian mothers (French colonies in-

82 Id.
83 Id. at 43. A dialog between Senator Kennedy and Mr. Nooter in these hearings indicated belief on the part of the Senator that the United States was not pressing the United Nations enough to get more involved in aid to Vietnam.
84 Hearings on Relief and Rehabilitation of War Victims in Indochina Before a Subcomm. of the Senate Comm. on the Judiciary, 93d Cong., 1st Sess., pt. 4, at 59 (1973) (hereinafter cited as August Hearings).
85 The greatest part of the information in this area was obtained through the courtesy of M. François Bujon De l’Estang, Counselor at the Embassy of France, Washington, D.C.
cluded what are now the countries of Cambodia and Laos as well as Vietnam). Many such children were abandoned and in need of charity for survival. The earliest aid came from religious organizations with help from the government of France.

In 1938 the problem was deemed serious enough to warrant the formation of a coordinating organization. Thus, a foundation was formed in 1939 which has, since 1950, been known as the Federation for French Children in Indochina. The Federation is a nonprofit public service organization. While France remained a colonial power in Indochina the Federation was funded from French allocations for Indochina as well as from the revenue from certain taxes. The Federation's stated purpose was to be sure that abandoned children of French parentage would be educated and placed in homes; material aid was to be given until the child completed his or her studies in France or in Indochina and until employment was obtained.

As early as 1947 when the prospects for finding a livelihood in Indochina began to decrease, the Federation started to evacuate children to France. Some three thousand were brought to France exclusive of the thirty to forty thousand children who went there with their families. In France, especially after the massive evacuations of 1954 through 1955, efforts were made to disperse the Eurasian children throughout the country so that they would be better able to integrate into French society. In particular, many of the children were placed in French foster homes subsidized by the Ministry of Social Affairs. As the Federation no longer has any resources of its own, it is now run entirely at the expense of the state.

The children raised in this manner are French citizens. If their birth records indicated to the contrary, procedures were instituted under which the children in Indochina could assert their rights and acquire French citizenship. The following is a brief outline of these procedures:

Under the decree of November 4, 1928: A child not recognized by his father or when such recognition is not valid may acquire French nationality by decision of a justice of the peace with extended powers. This quite simple procedure was widely used when French jurisdiction was in force in Indochina;

Children who did not benefit from such decisions and who are brought up in France can acquire French nationality by signing a statement in front of a magistrate of their place of residence according to the provisions of article 55 of the French Nationality Code;
Children born out of wedlock but legally recognized according to French law by a father of French nationality may acquire the nationality of their father according to the French law which was applicable in Indochina at that time.

This legislation was in effect until August 16, 1955 the date the French-Vietnamese convention on nationality was signed. If the child was born after that date, he came under the provisions of the French Nationality Code which kept the same principle.

The Convention of August 16, 1955 also gave Eurasians who were naturalized French citizens the right, valid for six months, to opt for Vietnamese nationality when they reached the age of 18. Similarly, Eurasians born in Vietnam after August 16, 1955 have Vietnamese nationality but they also have the right, likewise valid for six months, to opt for French nationality at 18.36

It has been estimated that about 120,000 Eurasians have benefited from a French education since 1885 and that some 20,000 of these have been aided by the Federation alone. It is estimated that even today some four hundred Eurasian children in Vietnam are receiving educational assistance from the French government.37 Part of the reason for the mass exodus of the métis (halfbloods) from Vietnam in 1954 through 1955 was the fact that with the disappearance of the French colonial government, many found that their once preferred status was changing drastically. The Diem government emphasized Vietnamese nationalism and the métis began to find that resentment of their past status was making their lives increasingly difficult as French related employment began to decrease.38

The question is, should the United States adopt a plan to deal with the Amerasian children in Vietnam based upon the French model? If so, those children would be able to reap some of the benefits of their American parentage whether they choose to come to the United States or to remain in Vietnam. Prior to attempting an assessment of the possible merits of such a course of action, the status of the Amerasian children under present laws must be considered. Most of the Amerasian children presently in Vietnam can now lay no claim to United States citizenship. Title 8 of the United States Code at section 1401(a)(7) provides United States nationality for a child born outside of the United States when one parent is an American citizen and the other is an alien;39 however, section

36 Measures Taken for Eurasian Children Affected by the War in Indochina, French government paper provided by the French Embassy, Washington, D.C.
37 ISS Report at 5.
38 TIME, September 10, 1956, at 44.
39 § 1401: "Nationals and Citizens of the United States at Birth (a) The following shall be nationals and citizens of the United States at birth: . . .
1409(a) specifically excludes such children who are born out of wedlock unless paternity is established, by legitimation, prior to the time the child reaches the age of twenty-one. The standard for determining when a child has been legitimated is that used by the domicile state of the citizen parent. This all means that very few of the Amerasian children in Vietnam today have any claim on United States nationality. One objection to implementing a French-type plan, therefore, is that it would require changing the present immigration laws. Moreover, the government of South Vietnam has stated its opposition to any such program. In keeping with the MSW policy of non-discrimination, all Amerasian children are considered Vietnamese citizens, and the Vietnamese government will not allow any program which will discriminate against some children by giving special advantages to others. It is most unlikely that the United States Congress will legislate a dual citizenship provision in the face of opposition by the Vietnamese government. The French, of course, were in a much different position when the Federation was formed. They were a colonial power and could legislate programs for their colonies as they saw fit, without much need to follow the wishes of the local government. In our situation, we are dealing with an ally on a “one to one” basis and great weight must be given to the desires of the Vietnamese government if an amicable relationship is to be maintained.

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such a person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five years of which were after attaining the age of fourteen years. Provided, that any period of honorable service in the Armed Forces of the United States may be included in order to satisfy the physical-presence requirement of this paragraph.

§ 1409: “Children Born Out of Wedlock (a) The provisions of paragraphs (3) to (5) and (7) of section 1401 (a) of this title, . . . shall apply as of the date of birth to a child born out of wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.”

40 It is of interest to note that the State Department in an information paper dated July 25, 1973 entitled “American-Vietnamese Children and Adoptions” reported that there had been approval of citizenship at birth for 3,970 half-American children during the period of July 1969 to July 1973. It seems unlikely, however, that a significant number of children will be legitimated in the future. If an American father intended to legitimate his Vietnamese child it normally would have been done while the father was still in Vietnam and as the time since the United States troop withdrawal increases, the chances of further legitimations would logically seem to decrease.

42 ISS Report at 6.

43 Id. In addition, while the Vietnamese government feels that it is inappropriate to make any comments on any piece of proposed United States legislation, acknowledgement of the Vietnamese resentment of the unilateral imposition of laws giving special status to the French-Vietnamese offspring and the impression that such a law dealing
There are also practical considerations which militate against adoption of a program based on the French model. As mentioned previously, the majority of the Amerasian children are living, at least at this time, within the extended family of their mother. This means that they are probably living with full Vietnamese brothers and sisters. Singling them out for special care and education is likely to aggregate problems which already exist as a result of their mixed parentage and further alienate them from Vietnamese society.

For all these reasons, it becomes apparent that a plan which would confer United States nationality upon Amerasian children may not be the best way to deal with their problems. While such a plan may have much surface appeal, closer scrutiny reveals the fact that any plan which singles out the Amerasian child would probably cause more problems than it would solve.

Present Adoption Situation

While it is true that most of the Amerasian children are not eligible for United States citizenship, the immigration laws of the United States do not preclude aiding some Amerasian, or for that matter, Vietnamese orphans. Specifically, our present laws do provide a mechanism by which foreign children may be brought into this country, notwithstanding the numerical quota system which generally governs immigration into the United States. An exemption to the quotas is granted for those persons qualifying as immediate relatives of United States citizens, and such persons may be admitted as immigrants in any numbers. Immediate relatives are defined by the code as children, spouses and parents of a citizen of the United States as long as that citizen is twenty-one years of age.

In order to qualify for immediate relative status, a Vietnamese child must meet the definition of a "child" of the United States citizen who is applying for the exemption. The definitional sections of title eight provide that the term "child" as used in the Act with Amerasian children would be clearly unacceptable to the South Vietnamese government came from an interview with Mr. Le Quang Minh, First Secretary, Embassy of Vietnam, Washington, D.C.

44 ISS Report at 6.

45 The quotas are found at 8 U.S.C. § 1151 (a) and limit the issuance of immigrant visas to 45,000 in the first three quarters of any fiscal year and to 170,000 for any complete fiscal year.

46 The exemption is found in 8 U.S.C. § 1151 (b) which reads: "The immediate relatives specified in this subsection who are otherwise qualified for admission shall be admitted as such, without regard to the numerical limitations in this chapter."
includes any unmarried person, under the age of fourteen at the time of a petition for immediate relative status is filed, who is an orphan and who has been adopted abroad by a United States citizen and his spouse, a procedure which requires seeing the child, or who is coming to the United States for adoption by a United States citizen and spouse who have complied with any pre-adoption requirements of their domicile. Of particular interest in application of this section to Amerasian or Vietnamese children is the status of sight unseen or "proxy" adoptions, where the prospective adoptive parents appoint a representative in the country of the child's birth to comply with the adoption requirements of that country. The need to use such procedures is obvious in the case of adoption from Vietnam due to both the expense of travel to and from Vietnam by the parents, and to the possibility of physical danger once in that country as long as the cease-fire remains as tenuous as it has been in its first year of operation. Therefore, if adoptions of Vietnamese children are not to be curtailed by economic or other considerations on the part of prospective parents, the procedures must, in many or most cases, be completed through agents of the parents who are operating in Vietnam. While the first part of the statute dealing with immediate relative status does not recognize overseas adoptions where the parents have not personally seen and observed the child, the second provides immediate relative status to a child coming into the United States for adoption here. The Code of Federal Regulations, Title 8, section 204.2(d)(3) states that the Immigration and Naturalization Service (I.N.S.) will treat children whose overseas adoptions are invalid because the parents have not seen them, as children coming into the United States for adoption, as long as the parents declare their intent to readopt the child, and such readoption is not prohibited by the law of the state of their

47 8 U.S.C. § 1101 (b) (F) reads: "The term "child" means an unmarried person under twenty-one years of age who is — a child, under the age of fourteen at the time a petition if filed in his behalf to accord a classification as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole surviving parent is incapable of providing the proper care which will be provided if the child is admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence. . . ."

Discussion of proposed changes to this statute which would terminate the requirement that the adoption be by a married couple is included in the section of this work headed "The Legislative Response to Date" infra at pp. 29-30.
domicile.\textsuperscript{48} The period of time which it takes to obtain approval of a petition for immediate relative status from the I.N.S. varies from six weeks to three months. The petitions are filed with the I.N.S. regional office nearest to the home of the petitioner and must be accompanied by substantial documentation.\textsuperscript{49} It should be noted that the I.N.S., in an attempt to facilitate adoptions of Vietnamese children by American citizens, has, in the last two years, authorized consular officials in Saigon to process the approval of the child’s papers rather than having to wait, as was the former practice, for the visit of the I.N.S. officer from Hong Kong.\textsuperscript{50}

When an alien child is afforded immediate relative status and brought to the United States to live, his or her status is that of an immigrant, and naturalization procedures must be complied with in order for the child to become a United States citizen. While this procedure necessitates a step which would not be required in the adoption of an American child, the statutes do provide for expeditious naturalization of children adopted by citizens. For example, the normal period of residence needed to become a naturalized citizen of the United States is five years, including two and one-half years of physical presence and periods of residence within a particular state.\textsuperscript{51} For children adopted by citizens, however, the residence period is reduced to two years, and even this period may be

\textsuperscript{48} 8 C.F.R. § 204.2(d) (1974).

\textsuperscript{49} According to a paper published by the United States Department of State dated July 6, 1973, entitled "Summary of Regulations and Laws Relating to Adoptions," the following documentation is required in order for a child to be granted immediate relative status:

- Form I-600, Petition to Classify Orphan Child
- Biographic Data — Petitioner & Spouse (P&S)
- Fingerprint charts — (P&S)
- Proof of U.S. citizenship (P or S)
- Statement of intent to readopt in the U.S.
- Birth certificates (P&S)
- Birth certificate of child
- Marriage certificate (P&S)
- Affidavit of support — including finances
- Proof of termination of all prior marriages
- Statement concerning preadoption requirements
- Statement releasing child for adoption
- Adoption contract
- Adoption decree (if completed)

The fee for filing the petition is $25.00 and the I.N.S. may require further information as the need arises on a case by case basis. Further information concerning petitions to classify an alien as an immediate relative may be found at 8 C.F.R. § 204 (1974).

\textsuperscript{50} Information provided by the I.N.S. as reported in \textit{ADOPTION CONFERENCE PROCEEDINGS} at 23.

waived should the child's citizen parent be working or stationed abroad, as long as the child has been in the custody of the adoptive parents for two years.\textsuperscript{53} The eased requirements are a continuation of the policy allowing quota exempt immigration of adopted children, and have been judicially interpreted as an attempt to eliminate disparity of treatment of adopted and natural children.\textsuperscript{58}

The mechanism is therefore already present in our statutory scheme\textsuperscript{54} to open up adoption as a major means for dealing with the problems of the Amerasian children, particularly if they are not accepted into the Vietnamese society and are put into orphanages in increasing numbers. This scheme is of little utility, however, if the government of South Vietnam is unwilling to allow these children to be adopted by foreign parents.

At the outset, it must be noted that the Vietnamese government is totally opposed to any program which would bring about mass adoptions.\textsuperscript{55} Any adoptions which are permitted will have to be on the basis of the child going to particular parents whose application will be reviewed as it would be in a domestic United States adoption. The laws governing adoption in Vietnam, which seem rather rigid and even archaic by American standards, are based upon the Napoleonic Code. The law states, as a basic premise that adoptions shall be for legitimate reasons and beneficial to the child.\textsuperscript{56}

Furthermore, one of the adopting parents must be over thirty years of age and at least twenty years older than the adoptive child. While the law does not require a prospective adoptive parent to be married, if this is the case, the couple must have been childless for at least ten years\textsuperscript{57} and they must present evidence that the adoption will be permissible under the law of their home country.\textsuperscript{58} There is no prohibition of proxy adoptions under Vietnamese law. In fact, their law specifically allows foreign applicants to proceed through a rep-

\textsuperscript{53} In re Chin Thloot Har Wong, 224 F. Supp. 155 (S.D.N.Y. 1963). The reason for the two year custody requirement is to insure the \textit{bona fide} nature of the adoptions for which the procedures are used and to prevent possible misuse of the less stringent entrance requirements. In re Glover, 207 F. Supp. 841 (E.D. La. 1962).
\textsuperscript{54} As outlined, the relevant sections of Title 8 of the United States Code are: 1101 (b)(1)(F), 1151(a) & (b), 1401 (a)(7), 1409(a), 1427(a) and 1434.
\textsuperscript{55} May Hearings at 36.
\textsuperscript{56} Republic of Vietnam, Prime Ministry Decree No. 94T.P., Article 3(1), May 21, 1965 (hereinafter cited as Present Adoption Law).
\textsuperscript{57} Id. Art. 3 (2).
\textsuperscript{58} Id. Art. 3(4).
resentative in Vietnam. Finally, the law provides that the surviving parent, relative, legal guardian, or institution must agree to the adoption before any child may be properly classified as "adoptable."

In the past, persons wishing to undertake out of country adoptions found the procedures very difficult, time consuming, and expensive. Until recently only one American voluntary agency was registered with the MSW and therefore was the only one authorized to help with adoptions; the rest of the adoptions had to be arranged privately, usually through a Vietnamese lawyer. In the recent past, however, four more agencies have been registered which, given the number of Amerasian children in orphanages, should be adequate, at least for the present.

There is currently a special commission in Saigon considering the reform of the Vietnamese adoption law. The commission recently presented the first fruits of its labor in the form of a draft adoption law which would supplant the existing law. Substantively, the major changes suggested involve termination of the requirement that a married couple be childless and increasing the age of prospective adoptive parents to thirty-five years. The draft also lays out time limits for each stage of the adoption process which would presumably expedite matters in many cases. It should be noted that a group within the MSW has already suggested various changes in the draft and that the draft has been sent to numerous voluntary agencies as well as to A.I.D. for comments. There are, however, indications that certain political factions within Vietnam oppose any change in the present law, and progress on the draft may proceed slowly, if at all.

As any reform may be many years in arriving, it is currently the position of the Vietnamese government to construe the existing law liberally. The law does provide that the requirements relating to age and the inability to have children may be waived when the

59 Id. Art. 8.
60 Id. Art. 3 (3).
62 The draft law as well as the comments are contained in "Briefing on the Meetings on Draft Legislation on Adoption," a paper dated July 11, 1973, distributed by the MSW and obtained from the Office of Technical Development, A.I.D.
63 May Hearings at 47.
The problem with obtaining such waivers is that they must come personally from the Chief of State, another time consuming procedure. Indications are that most such requests which have been made by Americans have been granted with little problem. In addition to the liberal granting of waivers, two other factors have helped to speed and simplify the processing of inter-country adoption applications. First, in 1972, the American Embassy was able to convince the Vietnamese government to allow children who are being adopted to leave Vietnam prior to the completion of the formal Vietnamese adoption procedures. This change allowed a child with a birth certificate to be issued a Vietnamese exit visa within a month as compared to the year or so which had been required when it was necessary to await completion of the adoption process. Another change which should have a significant effect on inter-country adoption processing was the institution by the MSW, in early 1973, of a requirement that all adoptions be processed by one of the five registered agencies. This requirement should ease the problems, caused by the lack of standardization of procedures, which arose when prospective adoptive parents had to proceed through individual Vietnamese attorneys in attempting to locate and process a child for adoption. The centralized procedures allow the prospective adoptive parents to contact those registered agencies in the United States which would then coordinate the location of an adoptable child with Vietnamese requirements.

64 Present Adoption Law, Article 4.
65 State Department Summary, supra note 49, at 2.
66 ADOPTION CONFERENCE PROCEEDINGS at 23. The conference also noted that obtaining the birth certificate can slow the process down in several ways. Due to the huge refugee movements within Vietnam and the damage done by the war, many records are difficult to locate. Furthermore, many of the Amerasian children in orphanages have no birth certificates since, in many cases, the mother did not register the birth of her illegitimate progeny.
67 Id. at 22.
68 The documentation required to effect a Vietnamese adoption (as outlined in the State Department Summary note 49, supra) is as follows:
   Birth certificate, petitioner and spouse (P&S)
   Birth certificate of child
   Marriage certificate (if applicable)
   Certificate of good conduct (P)
   Letters of Recommendation (3)
   Affidavit of ability to support
      (a) last income tax return
      (b) statement from employer
      (c) bank account statement
   Certificate of family status
   Power of attorney
   Consular letter re: permission to adopt
The effect of the easing of procedural requirements by both governments is reflected in an increase in the number of inter-country adoptions which have occurred in the recent past. The number of international adoptions of Vietnamese children climbed from 372 in 1971 to 500 in 1972, and estimates for 1973 place the figure at somewhere between 600 and 750. About three-fourths of those children processed in 1972 were adopted by Americans. It might also be noted that there has recently been a general upsurge in requests for adoptable children from American citizens. This is probably due to the combination of a shortage of adoptable children in the United States with an increased public awareness of the problems of the Vietnamese and Amerasian children.

It, therefore, appears that with the continued cooperation of the Vietnamese government, inter-country adoptions are a viable means for aiding those children who are eligible for adoption and will play a significant role in Vietnam child welfare.

THE LEGISLATIVE RESPONSE TO DATE

The response of the Congress as a whole to the problems of the Vietnamese and Amerasian children has been less than encouraging. Although several bills have been introduced in the past few sessions dealing with child welfare, only one has been voted into law — and that was probably because it was attached as an amendment to the recently enacted Foreign Assistance Act of 1973. Only one of the independent bills has progressed even to the point of committee consideration and the only detailed hearings concerning child welfare in Vietnam were not related to any piece of legislation. These hearings were conducted on May 11 and August 1 of 1973 by the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees. The lack of enthusiasm outside of that subcommittee was pointed out in the May 11 hearings by Dr. James R. Dumpson, Dean of the School of Social Service, Fordham

Proof of termination of prior marriages (P&S)
Statement concerning preadoption requirements
Statement releasing child for adoption.

69 May Hearings at 47.
70 Id. at 36.
71 ADOPTION CONFERENCE PROCEEDINGS at 25. While the total number of prospective adoptive parents (PAPs) greatly exceeds the supply of available children, it is interesting to note that the conference found that with 50% of the Amerasians in orphanages having black fathers only 1% of the PAPs are black. In order to rectify this imbalance, a black PAP recruitment program is being considered.
72 May and August Hearings supra notes 18 and 34.
University, and a member of a study mission which had been dispatched by subcommittee chairman Kennedy to Vietnam early in 1973.73

The following review of the legislative efforts to date will outline the various approaches that have been attempted.

One of the earliest bills in the 92nd Congress (S. 2071) was introduced by Senator Moss and provided, along the French lines, for special care for orphans born in Vietnam of one Vietnamese and one American parent after a certain date. The bill did not get out of committee and was not re-introduced. This seems just as well, for as has been noted, such a bill would have been unacceptable to the Vietnamese government.74

The next bill, marking a second approach to the problem, was introduced by Senator Harrison Williams, also during the First Session of the 92nd Congress (S. 2496). This bill had companion House bills introduced by Congressman Kastenmeier and others. The main thrust of these bills was to create a Vietnam Children's Care Agency which would work with the consent of the MSW to administer programs for child welfare and to facilitate inter-country adoptions of orphaned children. The bill also authorized appropriation of funds for carrying out the functions of the agency and provided for the internationalization of child welfare efforts by seeking an increased United Nations role. The bill was opposed by A.I.D. The agency's position was that the setting up of the new agency would duplicate A.I.D. functions, and as such, would be unnecessary. A.I.D. also pointed out the fact that the United Nations did not seem ready to accept a larger role at that point.75 Senate Bill 2496 never gained approval, apparently because of the reluctance of the Senators to create a duplicative agency. Although a House version (H.R. 8275) is still technically alive in the House Foreign Affairs Committee, no hearings are scheduled and there is no apparent pressure to schedule any. The sponsors, in fact, have demonstrated no intention to pursue the bill any further in light of the passage of the bill to be discussed next, which is thought to accomplish the goals of H.R. 8275.76

73 May Hearings at 4. In his testimony, Dr. Dumpson pointed out the lack of any efforts on the part of the United States government prior to the fall of 1971 (see shift in United States policy noted at p. 11, supra) but did commend A.I.D. for its role since that time.
74 See supra notes 42 and 43.
75 Senate testimony, supra note 19.
76 Information obtained from Congressman Kastenmeier's office.
Senator Williams who has evidenced continued interest in the child welfare program, introduced a successor bill to S. 2496 in the form of an amendment to the Foreign Aid Bill of 1972. The bill did not try to set up any administering agency but merely earmarked five million dollars for use during fiscal year 1973 to aid varied child care programs and to facilitate adoptions. The amendment eliminated the weak points of the earlier bills. It neither singled out the Amerasian children nor established a new bureaucracy and was therefore able to gain acceptance in both houses. The amendment died with the Foreign Aid Bill of 1972, but was re-introduced in 1973 as part of S. 1443, and ultimately became section 803 of the Foreign Assistance Act of 1973, reported out of conference on November 27, 1973, and signed into law by President Nixon on December 17, 1973.

The appeal of the Williams amendment lies in the fact that while it was able to avoid major opposition, it did, in effect, allocate a given sum taken “off the top” to be devoted to child care, protecting such programs from being pre-empted by higher priority items, at least to the extent of the appropriated funding. Section 803 constitutes a specialized section of Part V of the Act; sections 801 through 802 of the Act provide $504 million in support:

For relief and reconstruction of South Vietnam, Cambodia and Laos, including especially humanitarian assistance to refugees, civilian war casualties, and other persons disadvantaged by hostilities or conditions related to those hostilities. . . .

This language is quite general, and while it could be assumed that an appropriate portion of the funding would be channeled into child welfare, there were no guarantees. Section 803 insures that at least $5 million will go into South Vietnam:

(1) For the establishment, expansion and improvement of day care centers, orphanages, hostels, school feeding programs, health and welfare programs, and training related to these programs which are designed for the benefit of South Vietnamese children, disadvantaged by hostilities in Vietnam or conditions related to those hostilities, and (2) for the adoption by United States citizens of South Vietnamese children who are orphaned or abandoned, or whose parents or sole surviving parent, as the case may be, has irrevocably relinquished all parental rights, particularly children fathered by United States citizens.

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78 S. 1443 was signed into law as Pub. L. No. 93-189 (December 17, 1973).
79 Id., § 801.
80 Id., § 803 (a).
The amendment further directs that no more than ten percent of the funds shall be used to facilitate adoptions, and consistent with the views of A.I.D. already discussed, that as much of the $5 million as possible will be furnished under the auspices of the voluntary agencies.  

A third approach to the problem has been taken by Congresswoman Patsy Mink. Mrs. Mink has introduced H.R. 3159 which would allow the awarding of special immigrant status to orphans in Vietnam who are determined, under State Department regulations, to have one alien parent and one parent who is a United States citizen. The bill has been referred to the House Judiciary Committee where no hearings have been held or scheduled as of yet. It would seem that the future of the bill is somewhat uncertain. At hearing, the bill will be amended to grant citizenship to such children immediately upon their adoption by American parents.  

The effect of this bill would be to bypass the numerical quota for immigration without the need for a prospective adoptive parent to go through the I.N.S. procedures already discussed relating to the granting of immediate relative status. This would be possible because so-called "special immigrants" are excepted from the quotas much like immediate relatives. Practically speaking, the advantage which this bill could offer would be a speeding up of the adoption process to the extent that no delay would be encountered other than that which is caused by fulfilling the Vietnamese requirements. As previously mentioned it is possible for some prospective adoptive parents to comply with the Vietnamese procedures in as little as four weeks, while I.N.S. procedures usually take from six to nine weeks. While the passage of H.R. 3159 sounds as if it might well speed up the adoption process, some persons active in the field are of the view that such a speed-up is not

81 Id., § 803 (b).
82 The same bill has been reintroduced with some sixty-three co-sponsors, under various bill numbers. See: H.R. 6793, H.R. 7566, H.R. 8810, H.R. 8946.
83 The plans for this amendment are set forth in a document dealing with H.R. 3159 entitled "Action Ideas" which is available from Representative Mink's office.
84 8 U.S.C. § 1151(a) states:
"Exclusive of special immigrants . . . and of immediate relatives of United States citizens." The statute then goes on to set out the general quota scheme for immigration. H.R. 3159 would classify the orphans as special immigrants by stating:
"Notwithstanding the provisions of any other law there are hereby authorized to be issued special immigrant visas to individuals specified by this act."
85 See p. 23 supra.
86 See p. 20 supra.
in reality possible since most of the children need about three months of intensive health care to bring their level of physical well being up to the point where they are ready to travel to the United States. If this is, indeed, the case, the passage of H.R. 3159 may, at least as it relates to the issuance of visas, be of more symbolic than practical importance. Furthermore, although the sponsors of the bill state that its intended effect is to facilitate inter-country adoption, a reading of the substantive sections of the bill indicates that as presently drafted, H.R. 3159 need not be limited to adoption situations. In fact, it would appear that an orphan who was half American could file for such a visa *sua sponte* and be entitled to have that visa issued. Such an interpretation could, in the future, cause problems in that there might be an influx of Amerasian young people hoping to find the "good life" in this country who, because there would be no prearrangement (such as adoption) or coordination with any group within the United States for their arrival, might find themselves in a nation very different from that which they had imagined, and one in which they might find it very difficult to establish a decent life for themselves.

The proposed amendment to H.R. 3159, which would grant citizenship to Amerasian children adopted by Americans, is quite similar to a bill recently introduced by Congressman William Steiger. This bill, H.R. 10073, would confer citizenship upon a child born prior to January 1, 1974 who "in all probability has or had one parent who was at the time of the child's birth a citizen of the United States" and who is placed for adoption in the United States through a properly accredited adoption agency. The bill would, in addition, authorize payment of the child's transportation expenses by the United States government. One problem which can be foreseen with the enactment of either H.R. 3159 or H.R. 10073 is that some means would have to be devised to determine

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87 ADOPTION CONFERENCE PROCEEDINGS at 24.
88 Action Ideas, supra note 42.
89 H.R. 3159 reads, in pertinent part:

"Be it enacted . . . that, notwithstanding the provision of any other law, there are hereby authorized to be issued special immigrant visas to individuals specified in Section 2 of this Act seeking to enter the United States as immigrants.

"Sec. 2. Visas authorized to be issued under the first section of this Act shall be issued only to individuals residing in Vietnam who are seeking to enter the United States as immigrants and who, under regulations prescribed by the Secretary of State, are determined to have one alien parent and one parent who is a citizen of the United States and are determined to be orphans because of abandonment by the alien parent or the citizen parent, or both."
which children were fathered by Americans. In some instances, where the racial mix was clear, or where the birth records so reflected, there would be little problem. However, as previously mentioned, many children in orphanages have no birth records and there are many children whose American parentage is not outwardly apparent. Any system for administering the bill would, therefore, have to strive for maximum fairness. It seems this fairness could only be achieved by a liberal system of granting American parentage status. The problem which can be foreseen in a liberal policy in this area is, of course, that it would be difficult to prevent abuse by those seeking to obtain qualifying status for children who are not, in fact, Amerasians.

In addition, it should be noted that H.R. 10073 may actually be more of a symbolic gesture (except for the payment of transportation fees) than one of practical consequence, depending upon the time at which the rights of United States citizenship are to attach. Should the child become a citizen only at the time he or she arrives in the United States, the Immigration and Naturalization Service procedures to accord immediate relative status for purposes of immigration would still apply and the bill would do no more than eliminate the two year wait and the formality of application for citizenship. If, however, citizenship attaches while the child is still in Vietnam, he or she would enter the United States as a citizen, thereby eliminating any involved I.N.S. procedures.

The future of both the Mink and Steiger bills now lies with the House Judiciary Committee's Subcommittee on Immigration and Nationality. When, and if, that subcommittee schedules hearings, the bills will most likely be discussed together, and it is quite probable that any bill which might be reported by that subcommittee would replace or combine the individual proposals.

There is one further piece of proposed legislation which must be discussed in order to obtain an understanding of the Congressional response to the problems at hand. This is H.R. 7555, a bill to grant an alien child adopted by an unmarried United States citizen the same immigrant status as an alien child adopted by a United States citizen and his spouse. This bill, introduced by Congressman Koch, reported favorably by the House Judiciary Committee,
and passed unanimously by the House of Representatives,92 is now pending before the Senate Judiciary Committee.93 As discussed previously, Title 8 of the United States Code allows admission, quotas notwithstanding, of alien children adopted by couples in the United States.94 This provision has been held by the I.N.S. not to apply to unmarried persons adopting an otherwise eligible orphan.95 Under present law, this means that a single adoptive parent must bring his yet to be adopted child to the United States through the cumbersome process of awaiting a quota allocation. House Bill 7555, therefore, would merely follow the trend of the individual states which now allow adoptions by single parents.96 Since parents would, of course, still have to meet the general character and economic status requirements of adoption agencies and state law, the passage of this legislation, with the resultant augmentation of the pool of prospective parents, should have no adverse effect on the children's welfare. Therefore, no valid reason can be seen for rejection of H.R. 7555.

CONCLUSIONS

The foregoing discussion has demonstrated that the problem of dealing with Amerasian children in Vietnam is a complex one. Of course, the overriding consideration should be the best interests of the children themselves. But these interests are difficult to ascertain for several reasons. First, the actual number of Amerasian children in Vietnam is unknown. Further, it is not possible to estimate the percentage of Amerasian children who will become orphaned and dependent upon the government, or the degree to which the Amerasians will be assimilated into the mainstream of Vietnamese society. As previously discussed, it is also true that in promulgating any aid program for the Vietnamese children, the United States must proceed through diplomatic channels and must evidence a proper degree of respect for the desires of the Government of Vietnam.

The idea of employing any program which will single out the Amerasian child has been seen to contain many problems. These

96 MARTINDALE-HUBBELL LAW DIRECTORY, Vol. 5, Digest of State Laws, 1974, indicates that there are no longer any states which have statutory requirements that potential adoptive parents be married.
problems are of a twofold nature. First, of course, there are the practical problems of implementing a program which would treat Amerasian children in a different manner. Secondly, and of greater importance, is the fact that our moral obligation extends to all of the children in Vietnam who were subjected to suffering as a result of the war. It seems that it would not be in the best interests of either the Amerasian or the full Vietnamese children for the United States to implement any program which might add to the problems and divisiveness which, even without such a program, might be faced by the Amerasians in years to come. Therefore, financial and other assistance should probably be carried on, for the present at least, by A.I.D. working in cooperation with the MSW in efforts to improve the lot of all of the children of Vietnam. Implementation of such programs has been insured for the time being by the Foreign Assistance Act of 1973. Perpetuation of such funding should assure a minimum level of funds, earmarked for child welfare and not subject to pre-emption in favor of higher priority programs. In addition, increased support for the agencies which are working in the fields of child welfare and inter-country adoption should be encouraged. Although public interest in the problems of the Amerasian children is high, there unfortunately appears to have been no real effort by the involved organizations to channel this intent into public support for particular programs.

Adoption appears to be a promising means for relieving the problems of those Amerasian children who are not retained within the extended families of their mothers. This could prove especially important should rejection of the black-fathered children arise as a manifestation of the racial prejudice already discussed. Such adoptions, in keeping with the liberalized Vietnamese policy, could provide a viable "escape-hatch" should there be a failure of the official Vietnamese nondiscrimination policy to coincide with the day-to-day reality of life for the Amerasians.

In order to eliminate the inequity which now exists in the treatment of married and unmarried prospective adoptive parents, H.R. 7555 should be enacted into law as expeditiously as possible in order that maximum advantage may be taken of the opportunities for inter-country adoption which do and will exist.

Plans along the lines of the Mink and Steiger proposals might be further explored. The House Subcommittee on Immigration and Nationality should schedule hearings on these proposals to determine whether the abbreviation or elimination of immigration
and naturalization procedures, presented in these bills, is of sufficient practical or symbolic importance to warrant changes in the present procedures.

At the very least, therefore, we must insure both the funding and implementation of an adequate child welfare program, administered through the MSW and voluntary agencies, and the facilitation of inter-country adoptions of displaced Amerasian and Vietnamese children. Next, additional efforts should be initiated which would aim at increasing the involvement of the international community and the United Nations in Vietnamese child welfare problems. Further, the United States government and the voluntary agencies (with governmental support) must explore programs which will prepare the young people of Vietnam to assume a leadership role, which, when the time comes, will enable their country to attempt to overcome the effects of decades of war. Programs should be explored which will, as the children mature, provide education and training in addition to food, clothing, and health care. Ideas such as the expansion of Peace Corps training programs into Vietnam, and grants to allow Vietnamese students to obtain educational visas for study in the United States, should be fully explored and implemented when in the best interests of the children. Now that a beginning has been made it is imperative that all avenues through which further programs may be implemented be explored fully in order to determine what can and should be done for the children of the Vietnam War.