SET CASE NO. 001-15: RIZALITO Y. DAVID, *petitioner* **v. MARY GRACE POE LLAMANZARES,** *respondent.*

Promulgated: NOV 17 2015

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DISSENTING OPINION

CARPIO, *J.*:

There is no dispute that respondent Mary Grace Poe Llamanzares (respondent) is a Filipino citizen, as she publicly claims to be. However, she has failed to prove that she is a **natural-born** Filipino citizen, and is thus not qualified to sit as a Member of the Senate of the Republic of the Philippines pursuant to Section 3, Article VI of the 1987 Constitution.

The Case

This is a petition for *quo warranto* under Rule 18 of the 2013 Rules of the Senate Electoral Tribunal[1] filed by Rizalito Y. David (petitioner) challenging the eligibility of respondent to sit as a Senator of the Philippines for not being a natural-born Filipino citizen.

Petitioner alleges that respondent, being a foundling with no known biological parents, is not a natural-born Filipino citizen because she cannot show a blood relation to a Filipino father or mother. Petitioner asserts that there is no law declaring that a foundling, born in the Philippines, is a natural-born Filipino citizen. The 1987 Philippine Constitution declares, "No person shall be a Senator unless he is a natural-born citizen of the Philippines, x x x."[2] Since respondent is a foundling, she is not a natural-born Filipino citizen and is thus disqualified from sitting as a Senator.

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[1] Rule 18 of the 2013 Rules of the Senate Electoral Tribunal reads:

RULE 18. *Quo Warranto.* – A verified petition for *quo warranto* contesting the election of a Member of the Senate on the ground of ineligibility or disloyalty to the Republic of the Philippines shall be filed by any registered voter within ten (10) days after the proclamation of the respondent; *Provided, however*, that the petition for *quo warranto* on the ground of ineligibility based on citizenship may be filed at any time during the respondent's tenure.

The provisions of the preceding paragraph to the contrary notwithstanding, a petition for *quo warranto* challenging the position of a Member of the Senate, who, at the time of election or assumption of office, possesses all the qualifications, shall be filed by any registered voter at any time during the respondent's tenure, as soon as any of the required qualifications is lost.

[2] Section 3, Article VI of the 1987 Constitution reads:

Section 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

On the other hand, respondent claims that she is a natural-born Filipino citizen. She contends that "the Government's repeated recognition that [she] is a natural-born Filipino citizen created a **presumption** that she is a natural-born Filipino."[3] Respondent further argues that conventional and customary international law affirm such **presumption**.

The Issue

The crux of the controversy is whether respondent is a **natural-born** Filipino citizen, which is a constitutionally-mandated qualification to be a Member of the Senate of the Republic of the Philippines.

Each State Determines its Citizens

It is a recognized principle that every independent state has the right to determine who are its citizens. In *United States v. Wong Kim Ark,*[4] decided in 1898, the United States Supreme Court enunciated this principle:

> It is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.

In our jurisdiction, the Supreme Court similarly echoed in the 1912 case of *Roa v. Collector of Customs*[5] this indisputable right of each state to determine who are its citizens. Hence, every independent state cannot be denied this inherent right to determine who are its citizens according to its own constitution and laws.

Article 1, Chapter I of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Law explicitly provides:

> It is for each state to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

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[3] Respondent's Position Paper, p. 4.

In her Memorandum, respondent claims that "the Philippine Government has repeatedly and consistently recognized Respondent as a natural-born Filipino or a Filipino." Allegedly, then Bureau of Immigration Commissioner Alipio F. Fernandez, Jr. issued an Order on 18 July 2006 granting respondent's petition to reacquire her natural-born Philippine citizenship. On 31 July 2006, the Bureau of Immigration issued Identification Certificate No. 06-10918, recognizing respondent as a citizen of the Philippines. On 6 October 2010, respondent was appointed as Chairperson of the Movie and Television Review and Classification Board, who must be a natural-born Filipino citizen. Also, the Commission on Elections accepted respondent's candidacy for the 2013 senatorial elections. (Respondent's Memorandum, pp. 31-32)

[4] 169 U.S. 649 (1898).

[5] 23 Phil. 315 (1912).

This means that municipal law, both constitutional and statutory, determines and regulates the conditions on which citizenship is acquired.[6] There is no such thing as international citizenship or international law by which citizenship may be acquired.[7] Whether an individual possesses the citizenship of a particular state shall be determined in accordance with the constitution and statutory laws of that state. In short, no constitution or law other than that of the Philippines determines whether a person is a Filipino citizen.

Conventional International Law, Customary International Law, and Generally Accepted Principles of International Law

Respondent invokes conventional international law, customary international law and generally accepted principles of international law to support her claim that she is a natural-born Filipino citizen. A review of these concepts is thus inevitable.

Article 38 of the Statute of the International Court of Justice sets out the following sources of international law: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) general principles of law recognized by civilized nations; and (4) judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.[8]

Essentially, conventional international law is the body of international legal principles contained in treaties or conventions as opposed to customary international law or other sources of international law.[9]

Customary international law is defined as a general and consistent practice of states followed by them from a sense of legal obligation.[10] I had occasion to explain the concept of customary international law as used in our Constitution in this wise:

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6 Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines*, Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 443 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed 10 November 2015)

7 Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines*, Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 443 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed 10 November 2015).

8 http://www.icj-cij.org/documents/?p1=4&p2=2; last accessed 16 November 2015.

9 https://www.law.cornell.edu/wex/conventional_international_law; last accessed 9 November 2015.

10 *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386 (2007).

> Generally accepted principles of international law, as referred to in the Constitution, include customary international law. Customary international law is one of the primary sources of international law under Article 38 of the Statute of the International Court of Justice. Customary international law consists of acts which, by repetition of States of similar international acts for a number of years , occur out of a sense of obligation, and taken by a significant number of States. It is based on custom, which is a clear and continuous habit of doing certain actions, which has grown under the aegis of the conviction that these actions are, according to international law, obligatory or right. Thus, customary international law requires the concurrence of two elements: [1] the established, wide-spread, and consistent practice on the part of the States; and [2] a psychological element known as *opinio juris sive necessitatis* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[11]

Generally accepted principles of international law are those legal principles which are so basic and fundamental that they are found universally in the legal systems of the world. Legal principles such as laches, estoppel, good faith, equity and *res judicata* are examples of generally accepted principles of international law.[12] In *Pharmaceutical and Health Care Association of the Philippines v. Duque III*,[13] the Supreme Court further explained the concept of generally accepted principles of law, to wit:

> Some legal scholars and judges look upon certain "general principles of law" as a primary source of international law because they have the "character of *jus rationale*" and are "valid through all kinds of human societies." (Judge Tanaka in his dissenting opinion in the 1966 South West Africa Case, 1966 I.C.J. 296). O'Connell holds that certain principles are part of international law because they are "basic to legal systems generally" and hence part of the *jus gentium*. These principles, he believes, are established by a process of reasoning based on the common identity of all legal systems. If there should be doubt or disagreement, one must look to state practice and determine whether the municipal law principle provides a just and acceptable solution. x x x.[14]

There is No Customary International Law Presuming a Foundling as a Citizen of the Country Where the Child is Found

Respondent claims that under customary international law, "a child born in the Philippines in 1968, of unknown parents, is a natural-born

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[11] Dissenting Opinion, *Bayan Muna v. Romulo*, 656 Phil. 246, 326 (2011).

[12] See Malcolm N. Shaw, *International Law*, Seventh Edition, 2014, pp. 69-77.

[13] 561 Phil. 386 (2007).

[14] Id. at 400, citing Louis Henkin, Richard C. Pugh, Oscar Schachter, Hans Smith, *International Law, Cases and Materials*, 2nd Ed., p. 96. Emphasis omitted.

Filipino."[15] Citing various international conventions, respondent contends, among others, that she (1) has a right to a nationality from birth; (2) has a right to be protected against statelessness; and (3) is presumed to be a citizen of the country in which she was found. **Respondent further maintains that "the presumption that a foundling is a citizen of the State in which she is found is a generally-accepted principle of international law, as evidenced by state practice.**"[16]

Respondent anchors her claims on the (1) 1989 Convention on the Rights of the Child (CRC), (2) 1966 International Covenant on Civil and Political Rights (ICCPR), (3) 1948 Universal Declaration of Human Rights (UDHR), (4) 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Law (1930 Hague Convention), and (5) the 1961 Convention on the Reduction of Statelessness (CRS), among others.

(1) The 1989 Convention on the Rights of the Child

> Article 7
> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and as far as possible, the right to know and be cared for by his or her parents. (Emphasis supplied)

The Philippines signed the Convention on the Rights of the Child on 26 January 1990 and ratified the same on 21 August 1990. The Convention defines a child to mean every human being below the age of eighteen years unless, under the law applicable to the child, the age of majority is attained earlier.

Since respondent was born in 1968 or more than 20 years before the Convention came into existence, the Convention could not have applied to the status of her citizenship at the time of her birth in 1968. Respondent's citizenship at birth could not be affected in any way by the Convention.

The Convention guarantees a child the right to acquire a nationality, and requires the contracting states to ensure the implementation of this right, in particular where the child would otherwise be stateless. Thus, as far as nationality is concerned, the Convention guarantees the right of the child to acquire a nationality so that the child will not be stateless. **The Convention does not guarantee a child a nationality at birth, much less a natural-born citizenship at birth as understood under the Philippine Constitution, but merely the right to acquire a nationality in accordance with municipal law.**

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[15] Respondent's Position Paper, p. 8; Respondent's Memorandum, p. 23.
[16] Respondent's Position Paper, p. 16.

2. *The International Covenant on Civil and Political Rights*

> Article 24
> 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
> x x x x
> 3. **Every child has the right to acquire a nationality.** (Emphasis supplied)

Adopted on 16 December 1966 and entered into force on 23 March 1976, the International Covenant on Civil and Political Rights recognizes "the ideal of free human beings enjoying civil and political freedom and freedom from fear and want which can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."[17]

The Philippines is a signatory to this international treaty. Similar to the text of the Convention on the Rights of the Child, the ICCPR does not obligate states to automatically grant a nationality to children at birth. **The Covenant merely recognizes the right of a child to acquire a nationality. In short, the Covenant does not guarantee a foundling a nationality at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.**

3. *The 1948 Universal Declaration of Human Rights*

> Article 15.
> (1) **Everyone has the right to a nationality.**
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. (Emphasis supplied)

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948 whereby "Member States (including the Philippines) have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."[18] It sets out, for the first time, fundamental human rights to be universally protected.[19]

Article 15(1) of the UDHR merely affirms the right of every human being to a nationality. However, such right guaranteed by the UDHR does not obligate states to automatically confer nationality to a

[17] http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; last accessed 9 November 2015.
[18] http://www.un.org/en/documents/udhr/; last accessed 9 November 2015.
[19] http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx; last accessed 9 November 2015.

foundling at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.

4. *The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*

> Article 14.
> **A child whose parents are both unknown shall have the nationality of the country of birth**. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
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> **A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found**.
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> Article 15.
> Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. **The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.** (Emphasis supplied)

The Philippines is not a signatory to this Convention, and therefore, it is not bound by the Convention. Respondent, however, claims that this Convention is evidence of "generally accepted principles of international law," which allegedly created the presumption that a foundling is a citizen at birth of the state in which the foundling is found.

Article 14 merely states that a foundling "shall have the nationality of the **country *of* birth**." It does not say that a foundling shall have the **nationality *at* birth** of the country where the foundling is born. Nowhere in Article 14 is nationality guaranteed to a foundling ***at* birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.** Likewise, Article 14 merely lays down the presumption that a foundling is born in the territory of the state in which the foundling is found. This is the only presumption that Article 14 establishes.

Article 15 acknowledges the fact that acquisition of nationality by reason of birth in a state's territory is not automatic. **Article 15 expressly states that municipal law shall determine the conditions for a foundling to acquire a nationality**. Thus, to implement the Convention the contracting parties have to enact statutory legislation prescribing the conditions for the acquisition of citizenship by a foundling. This rules out any automatic acquisition of citizenship at birth by a foundling.

5. *The 1961 Convention on the Reduction of Statelessness*

> Article 1
> 1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. **Such nationality shall be granted:**
> **(a) at birth, by operation of law, or**
> **(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law.** Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.
>
> A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.
> x x x x
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> Article 2
> **A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.** (Emphasis supplied)

A 1961 United Nations multilateral treaty, the primary aim of the Convention is the prevention of statelessness by requiring states to grant citizenship to children born in their territory, or born to their nationals abroad, who would otherwise be stateless. **To prevent statelessness in such cases, states have the option to grant nationality (1) at birth by operation of law, or (2) subsequently by application. In short, a contracting state to the Convention must enact an implementing law choosing one of the two options before the Convention can be implemented in that state.**

The Philippines is not a signatory to this Convention, and thus, the Philippines is a non-contracting state. **The Convention does not bind the Philippines.** Moreover, this Convention does not provide automatically that a foundling is a citizen at birth of the country in which the foundling is found.

Article 2 of the Convention provides, "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born of parents possessing the nationality of that state." Dr. Laura Van Waas explains the meaning of Article 2 of the Convention, as follows:

> Once more, the wording of this provision is evidence of the compromise reached between *jus soli* and *jus sanguinis* countries.

> **Rather than determining that a child found abandoned on the territory of the state will automatically acquire the nationality of that state**, it declares that the child will be assumed to have both the necessary *jus soli* and *jus sanguinis* links with the state: born on the territory to parents possessing the nationality of the state. **This means that the child will then simply acquire nationality *ex lege* under the normal operation of the state's nationality regulations** – the effect being the same in both *jus soli* and *jus sanguinis* regimes. No attempt is made to further define the type of evidence that may be accepted as "proof to the contrary", this being left to the discretion of the contracting states.[20] (Emphasis supplied)

First, Article 2 applies only to a "**foundling found in the territory of a Contracting State.**" The Philippines is not a contracting state to the Convention and thus Article 2, and the entire Convention, does not apply to the Philippines.

Second, there must be "absence of proof" that the parents of the foundling do not possess the nationality of another state. This means there must be an administrative or judicial proceeding to determine this factual issue, an act necessary to acquire the citizenship of the state where the foundling is found. This also means that the grant of citizenship under Article 2 is not automatic, as Dr. Laura Van Waas explains. This factual determination prevents the foundling from acquiring natural-born citizenship at birth as understood under our Constitution, assuming Article 2 applies to the Philippines.

Third, the grant of citizenship under Article 2 is *ex lege* – which means by operation of law – referring to municipal **statutory** law. Assuming Article 2 applies to the Philippines, this grant of citizenship refers to naturalization by operation of law, the category of citizens under Section 1(5), Article IV of the 1935 Constitution (now Section 1(4), Article IV of the 1987 Constitution), or "[t]hose who are naturalized in accordance with law."

Nationality at birth may result because the law applicable is either *jus soli* or *jus sanguinis*. A child born in the United States to foreign parents is a citizen of the United States at birth because the United States adopts the *jus soli* principle. Under the *jus soli* principle, the place of birth determines citizenship at birth, not blood relation to the parents. In contrast, a child born in the Philippines to foreign parents is not a Philippine citizen at birth but a foreigner because the Philippines follows the *jus sanguinis* principle. Under the *jus sanguinis* principle, citizenship at birth is determined by blood relation to the parents.

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[20] Laura van Waas, *Nationality Matters: Statelessness under International Law*, pp. 69-70, Volume 29, School of Human Rights Research Series, Intersentia, 2008 (http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf; last accessed 12 November 2015).

Nationality at birth does not necessarily mean natural-born citizenship as prescribed under the Philippine Constitution. The Constitution recognizes natural-born citizens at birth only under the principle of *jus sanguinis* – there must be a blood relation by the child to a Filipino father or mother. Even assuming, and there is none, that there is an international law granting a foundling citizenship, at birth, of the country where the foundling is found, it does not necessarily follow that the foundling qualifies as a natural-born citizen under the Philippine Constitution. In the Philippines, any citizenship granted at birth to a child with no known blood relation to a Filipino parent can only be allowed by way of naturalization as mandated by the Constitution, under Section 1(5), Article IV of the 1935 Constitution,[21] Section 1(4), Article III of the 1973 Constitution,[22] and Section 1(4), Article IV of the 1987 Constitution.[23] **Such a child is a naturalized citizen, not a natural-born citizen**.

In sum, there is no international treaty to which the Philippines is a contracting party, which provides expressly or impliedly that a foundling is deemed a **natural-born** citizen of the country in which the foundling is found.[24] There is also obviously no international treaty, to which the Philippines is not a party, obligating the Philippines to confer automatically Philippine citizenship to a foundling at birth.

Since the Philippines is not a signatory to the various international conventions regulating nationality,[25] we shall scrutinize whether the relevant provisions on foundlings contained in the international conventions cited by respondent have become part of customary international law or generally accepted principles of international law on nationality.

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21 Section 1, Article IV of the 1935 Constitution reads in part:

Section 1. The following are citizens of the Philippines:
x x x x
(5) Those who are naturalized in accordance with law.

22 Section 1, Article III of the 1973 Constitution reads in part:

Section 1. The following are citizens of the Philippines:
x x x x
(4) Those who are naturalized in accordance with law.

23 Section 1, Article IV of the 1987 Constitution reads in part:

Section 1. The following are citizens of the Philippines:
x x x x
(4) Those who are naturalized in accordance with law.

24 See Bautista, Jaime S., *No customary international law automatically confers nationality to foundlings*, The Manila Times Online, http://www.manilatimes.net/no-customary-international-law-automatically-confers-nationality-to-foundlings/221126; last accessed 9 November 2015.

25 See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, Philippine Law Journal, Vol. 60, No. 1, Supplemental Issue, 1985, p. 16 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20International%20Law.pdf; last accessed 10 November 2015).

We shall first lay down the basic premise for an international rule to be considered customary international law. Such a rule must comply with the twin elements of widespread and consistent state practice, the objective element; and *opinio juris sive necessitates*, the subjective element. State practice refers to the continuous repetition of the same or similar kind of acts or norms by states. It is demonstrated upon the existence of the following elements: (1) generality or widespread practice; (2) uniformity and consistency; and (3) duration. On the other hand, *opinio juris*, the psychological element, requires that the state practice or norm be carried out in the belief that this practice or norm is obligatory as a matter of law.[26]

The pertinent provisions on foundlings are found in the 1930 Hague Convention and the 1961 Convention on the Reduction of Statelessness. Article 14 of the 1930 Hague Convention and Article 2 of the 1961 Convention on the Reduction of Statelessness state, respectively: (1) "A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found"; and (2) "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State."

We shall limit our discussion to Article 2 of the Convention on the Reduction of Statelessness since the presumption in Article 14 of the 1930 Hague Convention concerns merely the **place of birth** of foundlings. In this case, the parties admit that respondent was born in Jaro, Iloilo in the Philippines, which is the same place where she was found. Therefore, it is no longer presumed that respondent was born in the territory of the Philippines since it is already an admitted fact that she was born in the Philippines.

There are only 64 States which have ratified the Convention on the Reduction of Statelessness as of August 2015. Out of the 193 Member-States of the United Nations,[27] **far less than a majority** signified their agreement to the Convention.

One of the essential elements of customary international law is the widespread and consistent practice by states of a specific international principle, in this case, that foundlings are presumed to be born to parents who are citizens of the state where the foundling is found. **Respondent failed to prove this objective element**. Prof. Malcolm N. Shaw, in his widely used textbook *International Law*, explains the meaning of widespread and consistent practice in this way:

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[26] *Bayan Muna v. Romulo*, 656 Phil. 246, 303 (2011).

[27] http://www.un.org/en/members/index.shtml, last accessed 9 November 2015.

> One particular analogy that has been used to illustrate the general nature of customary law as considered by de Visscher. He likened the growth of custom to the gradual formation of a road across vacant land. After an initial uncertainty as to direction, the **majority** of users begin to follow the same line which becomes a single path. Not long elapses before that path is transformed into a road accepted as the only regular way, even though it is not possible to state at which precise moment this latter change occurs. And so it is with the formation of a custom. De Visscher develops this idea by reflecting that just as some make heavier footprints than others due to their greater weight, the more influential states of the world mark the way with more vigour and tend to become the guarantors and defenders of the way forward.[28] (Emphasis supplied)

Prof. Shaw concludes, "Accordingly, custom should to some extent mirror the perceptions of the **majority of states**, since it is based upon usages which are practiced by nations as they express their power and their hopes and fears."[29]

Respondent manifestly failed to show that Article 2 of the Convention on the Reduction of Statelessness is an "established, **widespread and consistent practice**" of a **majority** of sovereign states. There is no showing that this Convention was in fact enforced or practiced by at least a majority of the members of the United Nations. Respondent claims that "the element of 'widespread' practice does not necessarily entail practice by a 'majority' of States."[30] On the other hand, it is generally accepted by international law writers that the Convention on the Reduction of Statelessness does not constitute customary international law precisely because of the small number of states that have ratified the Convention. Dr. Laura van Waas summarizes the state of the law on this issue:

> In order to contend that a rule of customary international law has thereby been established, we must also prove that states are legislating in this way due to the conviction that they are legally compelled to do so – the *opinio juris sive necessitatis.* **The codification of the obligation to grant nationality to foundlings in the 1930 Hague Convention and the 1961 Statelessness Convention cannot be taken as sufficient evidence due, mainly, to the low number of state parties to both instruments.**[31] (Emphasis supplied)

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[28] Malcolm N. Shaw, *International Law*, Seventh Edition, 2014, p. 56, citing De Visscher, Theory and Reality, p. 149. See also Lauterpacht, Development of International Law, p. 368; P. Cobbett, Leading Cases on International Law, 4th edn, London, 1922, p. 5, and Akehurst, 'Custom as a Source', pp. 22-3.

[29] Id.

[30] Respondent's Memorandum, p. 92.

[31] Laura van Waas, *Nationality Matters: Statelessness under International Law*, pp. 70-71, Volume 29, School of Human Rights Research Series, Intersentia, 2008 (http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf; last accessed 12 November 2015).

It is hornbook law that there is no general international law, whether customary international law or generally accepted principle of international law, obligating the Philippines, or any state for that matter, to automatically confer citizenship to foundlings at birth. As Prof. Serena Forlati writes: "It is thus not possible to conclude that every child who would otherwise be stateless is automatically entitled to the nationality of her or his country of birth under the ICCPR, the CRC or **general international law**."[32]

Out of the 64 parties to the Convention on the Reduction of Statelessness, **only 13 states provide for the automatic and unconditional acquisition of nationality by foundlings**.[33] This means that the majority of the contracting states to the Convention do not automatically confer nationality to foundlings at birth. In fact, the majority of the contracting states impose various conditions for the acquisition of nationality to prevent statelessness, such as proof of unknown parentage, the specific place where the foundling is found, and whether the foundling is a newborn infant or a child of a certain age, among others. These conditions must necessarily be established in the appropriate proceeding before the foundling can acquire citizenship. These conditions for the acquisition of citizenship effectively prevent a foundling from being automatically considered a citizen at birth. In the Philippines, such conditions will prevent a foundling from being considered a natural-born citizen as defined under the Philippine Constitution.

Since the first essential element for an international rule to be considered a customary international law is missing in this case, the second essential element of *opinio juris* is logically lacking as well. In fact, respondent failed to demonstrate that any compliance by member states with the Convention on the Reduction of Statelessness was obligatory in nature. In *Bayan Muna v. Romulo*,[34] the Supreme Court held:

> Absent the widespread/consistent-practice-of-states factor, the second or the psychological element must be deemed non-existent, for an inquiry on why states behave the way they do presupposes, in the first place, that they

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[32] Prof. Serena Forlati, *Nationality as a Human Right*, p. 22-23, The Changing Role of Nationality in International Law, edited by Alessandra Annoni and Serena Forlati, Routledge Research International Law, 2015 Kindle Edition; emphasis supplied.

[33] http://eudo-citizenship.eu/databases/protection-against-statelessness?p=dataEUCIT&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S02; last accessed 11 November 2015.

These countries are:

1. Belgium
2. Bulgaria
3. Croatia
4. Finland
5. France
6. Germany
7. Hungary
8. Lithuania
9. Montenegro
10. Netherlands
11. Romania
12. Serbia
13. Sweden

[34] 656 Phil. 246, 306 (2011).

> are actually behaving, as a matter of settled and consistent practice, in a certain manner. This implicitly requires belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it. Like the first element, the second element has likewise not been shown to be present.

Moreover, aside from the fact that the Philippines is not a contracting party to the Convention on the Reduction of Statelessness, Article 2 of the Convention is inapplicable to this case because the Convention, which took effect after the birth of respondent, does not have retroactive effect. Paragraph 3, Article 12 of the Convention explicitly states:

> 3. The provisions of Article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State **after the entry into force of the Convention for that State.** (Emphasis supplied)

In short, even if the Philippines were to ratify the Convention today, the Convention would still not benefit respondent who was born in 1968.

Applicable Customary International Law on Citizenship of Foundlings

While there is no customary international law conferring nationality to foundlings at birth, there is no dispute that respondent has the right to a nationality and the corollary right to be protected against statelessness.

The Philippines is not a signatory to the 1930 Hague Convention or to the Convention on the Reduction of Statelessness. However, the Philippines is a signatory to the Convention on the Rights of the Child and to the International Covenant on Civil and Political Rights. The Philippines also adheres to the Universal Declaration of Human Rights.

The salient provisions of the Convention on the Rights of the Child, the ICCPR and the UDHR on nationality establish principles that are considered customary international law because of the widespread and consistent practice of states and their obligatory nature among states. Generally, most states recognize the following core nationality provisions: (1) every human being has a right to nationality; (2) states have the obligation to avoid statelessness; and (3) states have the obligation to facilitate the naturalization of stateless persons, including foundlings living within such states.

Right to a Nationality

Article 15 of the Universal Declaration of Human Rights affirms that "everyone has the right to a nationality". With these words, the international community recognizes that every individual, everywhere in the world, should hold a legal bond of nationality with a state.[35]

The right to a nationality is a fundamental human right[36] from which springs the realization of other cardinal human rights. Possession of a nationality carries with it the diplomatic protection of the country of nationality and is also often a legal or practical requirement for the exercise of political and civil rights. Consequently, the right to a nationality has been described as the "**right to have rights**."[37]

Obligation to Avoid Statelessness

Closely linked to the right of the individual to a nationality is every state's obligation to avoid statelessness since the non-fulfillment of such right results in statelessness.[38] In determining who are its nationals, every state has an obligation to avoid cases of statelessness.

Obligation to Facilitate the Naturalization of Stateless Persons, Including Foundlings

The right to confer nationality, being an inherent right of every independent state, carries with it the obligation to grant nationality to individuals who would otherwise be stateless. To do this, states must facilitate the naturalization of stateless persons, including foundlings. Therefore, states must institute the appropriate processes and mechanisms, through the passage of appropriate statutes or guidelines, to comply with this obligation.

Most states recognize as customary international law the right of every human being to a nationality which in turn, requires those states to avoid statelessness, and to facilitate the naturalization of stateless persons,

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[35] https://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/53a164ab0b80eeaac70001fe/preventing_and_reducing_statelessness.pdf; last accessed 9 November 2015.

[36] http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx; last accessed 9 November 2015.

[37] http://www.ijrcenter.org/thematic-research-guides/nationality-citizenship/; last accessed 9 November 2015.

[38] Council of Europe Convention on the avoidance of statelessness in relation to State succession, Strasbourg (France) 19.V.2006, https://books.google.com.ph/books?id=CIfBZyhO69UC&pg=PA13&lpg=PA13&dq=Closely+linked+to+the+right+of+the+individual+to+a+nationality+statelessness&source=bl&ots=nrVxMA115B&sig=UQEpVg8R_9NIIrmYtBNgfvOcLbY&hl=en&sa=X&ved=0CBwQ6AEwAGoVChMI_p7ix8OGyQIVyLKUCh1W0god#v=onepage&q=Closely%20linked%20to%20the%20right%20of%20the%20individual%20to%20a%20nationality%20statelessness&f=false; last accessed 11 November 2015.

including foundlings. However, there is no customary international law conferring automatically citizenship at birth to foundlings, much less natural-born citizenship at birth as understood under the Philippine Constitution.

General Principle of International Law Applicable to Foundlings

Considering that there is no conventional or customary international law conferring nationality to foundlings at birth, there are only two general principles of international law applicable to foundlings. *First* is that a foundling is deemed domiciled in the country where the foundling is found. **A foundling is merely considered to have a *domicile at birth, not a nationality at birth.*** Stated otherwise, a foundling receives at birth a domicile of origin which is the country in which the foundling is found.[39] *Second*, in the absence of proof to the contrary, a foundling is deemed born in the country where the foundling is found.[40] These two general principles of international law have nothing to do with conferment of nationality.

Status of Customary International Law and General Principles of International Law in the Philippines

Under Section 3, Article II of the 1935 Constitution,[41] Section 3, Article II of the 1973 Constitution,[42] and Section 2, Article II of the 1987 Constitution,[43] the Philippines adopts the generally accepted principles of international law as part of the law of the land. International law can become part of domestic law either by transformation or incorporation.[44] The transformation method requires that an international law be transformed into

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[39] See http://www.scotlawcom.gov.uk/files/3212/7989/6557/rep107.pdf. See also http://famguardian.org/Publications/TreatOnLawOfDomicile/A_Treatise_on_the_Law_of_Domicil__Nation.pdf, citing Savigny, System, etc. § 359 (Guthrie's trans. p. 132), citing Linde, Lehrbuch, § 89; Felix, Droit Int. Priv. no. 28; Calvo, Manuel, § 198; Id. Dict. *verb.* Dom.; Westlake, Priv. Int. L. 1st ed. no. 35, rule 2; Id. 2d ed. § 236; Dicey, Dom. p. 69, rule 6; Foote, Priv. Int. Jur. p. 9; Wharton, Confl. of L. § 39, citing Heffter, pp. 108, 109, last accessed 9 November 2015.

[40] John Bassett Moore, *A Digest of International Law*, Vol. III, 1906, p. 281. http://images.library.wisc.edu/FRUS/EFacs/1899/reference/frus.frus1899.i0032.pdf; last accessed 13 November 2015.

[41] Section 3, Article II of the 1935 Constitution provides: "The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as a part of the law of the Nation."

[42] Section 3, Article II of the 1973 Constitution provides: "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

[43] Section 2, Article II of the 1987 Constitution provides: "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

[44] *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386 (2007), citing Joaquin G. Bernas, S.J., *Constitutional Structure and Powers of Government (Notes and Cases)*, Part I (2005).

a domestic law through a constitutional mechanism such as domestic legislation.[45] The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.[46] The Philippine Constitution adheres to the incorporation method.

Any treaty, customary international law, or generally accepted international law principle has the status of **municipal statutory law**. As such, it must conform to our Constitution in order to be valid in the Philippines. If a treaty, customary international law or generally accepted international law principle does not contravene the Constitution and statutory laws, then it becomes part of the law of the land. If a treaty, customary international law or generally accepted international law principle conforms to the Constitution but conflicts with statutory law, what prevails is the later law in point of time as international law has the same standing as municipal statutory law.[47] However, if a treaty, customary international law or generally accepted international law principle conflicts with the Constitution, it is the Constitution that prevails. The Constitution remains supreme and prevails over any international legal instrument or principle in case of conflict. In explaining Section 2, Article II of the 1987 Constitution, the constitutionalist Father Joaquin Bernas, S.J. narrated:

> When Commissioner Guingona asked whether "generally accepted principles of international law" were adopted by this provision as part of statutory law or of constitutional law, Nolledo's answer was unclear. He seemed to suggest that at least the provisions of the United Nations Charter would form part of both constitutional and statutory law. Nobody adverted to the fact that Nolledo's interpretation was a departure from what had hitherto been the accepted meaning of the provision. Later, however, during the period of amendment, **Commissioner Azcuna clarified this by saying that generally accepted principles of international law were made part only of statutory law and not of constitutional law.**[48] (Emphasis supplied)

Treaties, customary international law and the generally accepted principles of international law concerning citizenship cannot prevail over the provisions of the Constitution on citizenship in case of conflict with the latter.[49] Treaties, customary international law or generally accepted international law principles on acquisition of citizenship that contravene the language and intent of the Constitution cannot be given effect in the Philippines for being unconstitutional.

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[45] Id.

[46] Id.

[47] *Secretary of Justice v. Lantion*, 379 Phil. 165 (2000).

[48] Joaquin Bernas, S..J., *The Intent of the 1986 Constitution Writers*, 1995, pp. 75-76.

[49] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, Philippine Law Journal, Vol. 60, No. 1, Supplemental Issue, 1985, p. 1. (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20International%20Law.pdf; last accessed 10 November 2015).

Citizens of the Philippines

It is the sovereign power and inherent right of every independent state to determine who are its nationals. The Philippines, and no other state, shall determine who are its citizens in accordance with its Constitution and laws.

In this case, the 1935 Philippine Constitution shall be applied to determine whether respondent is a natural-born citizen of the Philippines since she was born in 1968 when the 1935 Constitution was in effect.

Section 1, Article IV of the 1935 Constitution identifies who are Filipino citizens, thus:

> Article IV.—Citizenship
>
> Section 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
> 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
> 3. Those whose fathers are citizens of the Philippines.
> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
> 5. Those who are naturalized in accordance with law.

From this constitutional provision, we find that, except for those who were already considered citizens at the time of the adoption of the Constitution, there were, as there are still now, only two methods of acquiring Philippine citizenship: (1) by blood relation to the father (or the mother under the 1987 Constitution) who must be a Filipino citizen; and (2) by naturalization according to law.[50]

The Philippines adheres to the *jus sanguinis* principle or the "law of the blood" to determine citizenship at birth. An individual acquires Filipino citizenship at birth **solely** by virtue of biological descent from a Filipino father or mother. The framers of the 1935 Constitution clearly intended to make the acquisition of citizenship available on the basis of the *jus sanguinis* principle. This view is made evident by the suppression from the Constitution of the *jus soli* principle, and further, by the fact that the

[50] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines*, Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 444 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed 9 November 2015).

Constitution has made definite provisions for cases not covered by the *jus sanguinis* principle, such as those found in Section 1(1) of Article IV, i.e., those who are citizens of the Philippines at the time of the adoption of the Constitution, and in Section 1(2) of the same Article, i.e., those born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.[51]

In terms of jurisprudence, there was a period when the Supreme Court was uncertain regarding the application of *jus soli* or "law of the soil" as a principle of acquisition of Philippine citizenship at birth.[52] In *Tan Chong v. Secretary of Labor*,[53] decided in 1947, the Supreme Court finally abandoned the *jus soli* principle, and *jus sanguinis* has been exclusively adhered to in the Philippines since then.[54]

Based on Section 1, Article IV of the 1935 Constitution, respondent's citizenship may be determined only under Section 1 (3), (4) or (5) of Article IV. Section 1(1) is not applicable since respondent is not a Filipino citizen at the time of the adoption of the 1935 Constitution as respondent was born after the adoption of the 1935 Constitution. Section 1(2) is likewise inapplicable since respondent was not born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.

Of the Filipino citizens falling under Section 1 (3), (4) and (5), only those in Section 1(3), whose fathers are citizens of the Philippines, can be considered natural-born Filipino citizens since they are Filipino citizens from birth without having to perform any act to acquire or perfect their Philippine citizenship.[55] They are Filipino citizens by the mere fact of birth.

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[51] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines*, Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 448, http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf (last accessed 9 November 2015).

[52] Some of the cases applying the *jus soli* principle:
Roa v. Collector of Customs, 23 Phil. 315 (1912)
Vaño v. Collector of Customs, 23 Phil. 480 (1912)
US v. Ang, 36 Phil. 858 (1917)
US v. Lim Bin, 36 Phil. 924 (1917)
Go Julian v. Government of the Philippines, 45 Phil. 289 (1923)

[53] 79 Phil. 249 (1947).

[54] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, Philippine Law Journal, Vol. 60, No. 1, Supplemental Issue, 1985, p. 18 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20International%20Law.pdf; last accessed 10 November 2015).

[55] Section 2, Article IV of the 1987 Constitution reads:
Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Under Section 1(4), those Filipino citizens whose mothers are Filipinos and whose fathers are aliens cannot be considered natural-born citizens since they are still required to elect Philippine citizenship upon reaching the age of majority – they are not Filipino citizens by the mere fact of birth. However, under Section 1(2), Article IV of the 1987 Constitution, those whose fathers are Filipino citizens and those whose mothers are Filipino citizens are treated equally. They are considered natural-born Filipino citizens.[56] Moreover, under Section 2, Article IV of the 1987 Constitution, in relation to Section 1(3) of the same Article, those born before 17 January 1973 of Filipino mothers and who elected Philippine citizenship upon reaching the age of majority are also deemed natural-born Filipino citizens.

In *Co v. Electoral Tribunal of the House of Representatives*,[57] the Supreme Court held that the constitutional provision treating as natural-born Filipino citizens those born before 17 January 1973 of Filipino mothers and alien fathers, and who elected Philippine citizenship upon reaching the age of majority, has a retroactive effect. The Supreme Court stated that this constitutional provision was enacted "to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not, under earlier laws, conferred the status of a natural-born."[58] The Supreme Court explained:

> The provision in Paragraph 3 was intended to correct an unfair position which discriminates against Filipino women. There is no ambiguity in the deliberations of the Constitutional Commission, *viz*:
>
> > Mr. Azcuna: With respect to the provision of section 4, would this refer only to those who elect Philippine citizenship after the effectivity of the 1973 Constitution or would it also cover those who elected it under the 1973 Constitution?
> > Fr. Bernas: *It would apply to anybody who elected Philippine citizenship by virtue of the provision of the 1935 Constitution whether the election was done before or after*

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[56] Sections 1 and 2, Article IV of the 1987 Constitution provide:

SECTION 1. The following are citizens of the Philippines:
(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
(2) Those whose fathers or mothers are citizens of the Philippines;
(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
(4) Those who are naturalized in accordance with law.

SECTION 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

[57] 276 Phil. 758 (1991).

[58] Id. at 784.

> *January 17, 1973.* (Records of the Constitutional Commission, Vol. 1, p. 228; Emphasis supplied.)
>
> xxx xxx xxx
>
> Mr. Trenas: The Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights has more or less decided to extend the interpretation of who is a natural-born citizen as provided in section 4 of the 1973 Constitution by adding that persons who have elected Philippine citizenship under the 1935 Constitution shall be natural-born? Am I right Mr. Presiding Officer?
>
> Fr. Bernas: Yes.
>
> xxx xxx xxx
>
> Mr. Nolledo: And I remember very well that in the Reverend Father Bernas' well written book, he said that the decision was designed merely to accommodate former delegate Ernesto Ang and that the definition on natural-born has no retroactive effect. Now it seems that the Reverend Father Bernas is going against this intention by supporting the amendment?
>
> Fr. Bernas: As the Commissioner can see, there has been an evolution in my thinking. (Records of the Constitutional Commission, Vol. 1, p. 189)
>
> xxx xxx xxx
>
> Mr. Rodrigo: But this provision becomes very important because his election of Philippine citizenship makes him not only a Filipino citizen but a natural-born Filipino citizen entitling him to run for Congress...
>
> Fr. Bernas: Correct. We are quite aware of that and for that reason we will leave it to the body to approve that provision of section 4.
>
> Mr. Rodrigo: I think there is a good basis for the provision because it strikes me as unfair that the Filipino citizen who was born a day before January 17, 1973 cannot be a Filipino citizen or a natural-born citizen. (Records of the Constitutional Commission, Vol. 1, p. 231)
>
> xxx xxx xxx
>
> Mr. Rodrigo: The purpose of that provision is to remedy an inequitable situation. Between 1935 and 1973 when we were under the 1935 Constitution, those born of Filipino fathers but alien mothers were natural-born Filipinos. However, those born of Filipino mothers but alien fathers would have to elect Philippine citizenship upon reaching the age of majority; and if they do elect, they become Filipino citizens but not natural-born Filipino citizens. (Records of the Constitutional Commission, Vol. 1, p. 356)

The foregoing significantly reveals the intent of the framers. To make the provision prospective from February 3, 1987 is to give a narrow interpretation resulting in an inequitable situation. It must also be

retroactive.[59]

Therefore, the following are deemed natural-born Filipino citizens: (1) those whose fathers or mothers are Filipino citizens, and (2) those whose mothers are Filipino citizens and were born before 17 January 1973 and who elected Philippine citizenship upon reaching the age of majority. Stated differently, those whose fathers or mothers are neither Filipino citizens are not natural-born Filipino citizens. If they are not natural-born Filipino citizens, they can acquire Philippine citizenship **only** under Section 1(5), Article IV of the 1935 Constitution which refers to Filipino citizens who are naturalized in accordance with law.

Clearly, if the child's parents are neither Filipino citizens, the only way that the child may be considered a Filipino citizen is through the process of naturalization in accordance with statutory law. If a child's parents are unknown, as in the case of a foundling, there is no basis to consider the child as a natural-born Filipino citizen since there is no proof that either the child's father or mother is a Filipino citizen. In the case of a foundling, the only way such child can be considered a Filipino citizen under the 1935 Constitution, as well as under the 1973 and 1987 Constitutions, is for that child to be naturalized in accordance with law.

In the Philippines, there are laws which provide for the naturalization of foreigners. These are Commonwealth Act No. 473,[60] as amended by Republic Act No. 530, known as the Revised Naturalization Law, which refers to judicial naturalization, and Republic Act No. 9139,[61] which pertains to administrative naturalization.

Both parties here admit that there is no Philippine statute which provides for the grant of Filipino citizenship specifically to foundlings who are found in the Philippines. The absence of a domestic law on the naturalization of foundlings can be sufficiently addressed by customary international law, which recognizes the right of every human being to a nationality and obligates states to grant nationality to avoid statelessness. Customary international law can fill the gap in our municipal statutory law on naturalization of foundlings in order to prevent foundlings from being stateless. Otherwise, a foundling found in the Philippines with no known parents will be stateless on the sole ground that there is no domestic law providing for the grant of nationality. This not only violates the right of every human being to a nationality but also derogates from the Philippines' obligation to grant nationality to persons to avoid statelessness.

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[59] Id. at 782-783.

[60] AN ACT TO PROVIDE FOR THE ACQUISITION OF PHILIPPINE CITIZENSHIP BY NATURALIZATION, AND TO REPEAL ACTS NUMBERED TWENTY-NINE HUNDRED AND TWENTY-SEVEN AND THIRTY-FOUR HUNDRED AND FORTY-EIGHT.

[61] AN ACT PROVIDING FOR THE ACQUISITION OF PHILIPPINE CITIZENSHIP FOR CERTAIN ALIENS BY ADMINISTRATIVE NATURALIZATION AND FOR OTHER PURPOSES.

Customary international law has the same status as a statute enacted by Congress. Thus, it must not run afoul with the Constitution. Customary international law cannot validly amend the Constitution by adding another category of natural-born Filipino citizens, specifically by considering foundlings with no known parents as natural-born citizens. Again, under Section 1, Article IV of the 1935 Constitution, in relation to Sections 1 and 2, Article IV of the 1987 Constitution, only those born of Filipino fathers or Filipino mothers are considered natural-born Filipino citizens.

During the Oral Argument, petitioner's counsel admitted that Filipino citizens who are not natural-born Filipino citizens, particularly those with no known parents such as foundlings, are considered naturalized Filipino citizens in accordance with law, falling under Section 1(5), Article IV of the 1935 Constitution. Naturalization under Section 1(5), Article IV does not distinguish between municipal statutory law and customary international law. Hence, Section 1(5), Article IV of the 1935 Constitution includes naturalization by customary international law, which has the status of municipal statutory law. Thus:

> Justice Carpio: The status of customary international law is (that of) municipal law, correct?
> Atty. Luna: Yes.
>
> Justice Carpio: It does not prevail over the Constitution?
> Atty. Luna: Yes.
>
> Justice Carpio: It is municipal law.
> Atty. Luna: Yes.
>
> **Justice Carpio: So if you are naturalized by virtue of customary international law, you are naturalized under 5?**
> **Atty. Luna: Yes.**
>
> **Justice Carpio: You do not become natural-born?**
> **Atty. Luna: Yes.**[62] (Emphasis supplied)

Applying customary international law, specifically the right of every human being to a nationality and the Philippines' obligation to grant citizenship to persons who would otherwise be stateless, a foundling may be naturalized as a Filipino citizen upon proper application for citizenship. This application should not be interpreted in the strictest sense of the word. On the contrary, the term application for purposes of acquiring citizenship must be construed liberally in order to facilitate the naturalization of foundlings. Thus, the application for citizenship may be as simple as applying for a Philippine passport, which serves as evidence of citizenship.[63]

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[62] TSN, 21 September 2015, p. 97.

[63] See Francis Wharton, LL.D., *A Digest of the International Law of the United States*, Vol. II, 1886, p.

An application for a passport is an application for recognition that the holder is a citizen of the state issuing such passport. The application for citizenship may be any overt act which involves recognition by the Philippines that the foundling is indeed its citizen. In the case of respondent, she applied for, and was issued a Philippine passport on the following dates: (1) 4 April 1988;[64] (2) 5 April 1993;[65] (3) 19 May 1998;[66] (4) 13 October 2009;[67] (5) 19 December 2013;[68] and (6) 18 March 2014.[69]

In any event, for a foundling to be granted citizenship, it is necessary that the child's status as a foundling be first established. It must be proven that the child has no known parentage before the state can grant citizenship on account of the child being a foundling. In the Philippines, a child is determined to be a foundling after an administrative investigation verifying that the child is of unknown parentage. The Implementing Rules and Regulations (IRR) of Act No. 3753[70] and Other Laws on Civil Registration provide that the barangay captain or police authority shall certify that no one has claimed the child or no one has reported a missing child with the description of the foundling.[71] Rule 29 of the said IRR provides:

> RULE 29. Requirements for Registration of Foundling. — No foundling shall be recorded in the civil registrar unless the following requirements are complied with:
>
> a) Certificate of Foundling (OCRG Form No. 101, Revised January 1993) accomplished correctly and completely;
>
> b) Affidavit of the finder stating the facts and circumstances surrounding the finding of the child, and the fact that the foundling has been reported to the barangay captain or to the police authority, as the case may be; and
>
> c) **Certification of the barangay captain or police authority regarding the report made by the finder, stating among other things, that no one has claimed the child or no one has reported a missing child whose description may be the same as the foundling as of the date of the certification**. (N) (Emphasis supplied)

465, § 192 (Mr. Fish, Secretary of State, to Mr. Davis, January 14, 1875, MSS. Inst., Germ. XVI 6). See also Paul Weis, *Nationality and Statelessness in International Law*, Second Edition, 1979, p. 228; https://books.google.com.ph/books?id=hSLGDXqXeegC&pg=PA228&dq=passport+evidence+of+citizenship+international+law+proof+of+nationality&hl=en&sa=X&ved=0CCMQ6AEwAGoVChMIr5nxm6SHyQIVBZ6mCh1MggXO#v=onepage&q=passport%20evidence%20of%20citizenship%20international%20law%20proof%20of%20nationality&f=false; last accessed 11 November 2015.

64 Philippine Passport No. F927287, Exhibits 5 and 5-1.

65 Philippine Passport No. L881511, Exhibits 5-2 and 5-2-a.

66 Philippine Passport No. DD156616, Exhibit 5-3.

67 Philippine Passport No. XX4731999, Exhibit 5-4.

68 Philippine Passport No. DE0004530, Exhibit 5-5.

69 Philippine Passport No. EC0588861, Exhibit 5-6.

70 Civil Registry Law, 27 February 1931.

71 See Rules 26-30, IRR of Act No. 3753 and Other Laws on Civil Registration, 18 December 1992.

Before a foundling is conferred Philippine citizenship, there must first be a factual determination of the child's status as a foundling after an administrative investigation. Once factually determined that a child is a foundling, that child or its guardian may thereafter initiate proceedings to apply for Philippine citizenship, e.g., apply for a Philippine passport.

This need for a factual determination prevents the foundling from automatically acquiring Philippine citizenship at birth. The fact of unknown parentage must first be proven in an administrative proceeding before a foundling is granted citizenship on account of the child's foundling status. Such factual determination is a necessary act to acquire Philippine citizenship, preventing the foundling from being a natural-born Filipino citizen. In contrast, for natural-born Filipino citizens, no factual determination in an administrative proceeding is required to grant citizenship since the certificate of live birth speaks for itself – it establishes natural-born citizenship. This cannot be said of a foundling whose certificate of live birth does not on its face establish natural-born citizenship.

Intent of the Framers of the 1935 Constitution

Respondent argues that it was the intent of the framers of the 1935 Constitution to automatically consider foundlings found in the Philippines as natural-born citizens at birth. However, a careful reading of the statements made by the framers shows that this was not their intent.

Respondent specifically quotes Delegate Ruperto Montinola who, during the discussions on the provisions on citizenship, applied the Spanish Civil Code provision, stating that children of unknown parentage born in Spanish territory were considered Spaniards, and opining that the same concept may be applied in the Philippines and thus children of unknown parentage born in the Philippines should be considered Filipino citizens. However, this was an erroneous application since the provisions of the Spanish Civil Code (which Delegate Montinola was relying on) were no longer in effect as of the end of Spanish rule in the Philippines. The provisions of the Spanish Civil Code cited by Delegate Montinola ceased to have effect upon the cession by Spain of the Philippines to the United States. As early as 1912, in *Roa v. Collector of Customs*, the Supreme Court stated:

> Articles 17 to 27, inclusive, of the Civil Code deal entirely with the subject of Spanish citizenship. When these provisions were enacted, Spain was and is now the sole and exclusive judge as to who shall and who shall not be subjects of her kingdom, including her territories. Consequently, the said articles, being political laws (laws regulating the relations sustained by the inhabitants to the former sovereign), must be held to have been

abrogated upon the cession of the Philippine Islands to the United States.

> "By well-settled public law, upon the cession of territory by one nation to another, either following a conquest or otherwise, * * * those laws which are political in their nature and pertain to the prerogatives of the former government immediately cease upon the transfer of sovereignty." (Opinion, Atty. Gen., July 10, 1889.)[72]

Thus, Delegate Montinola's statement was based on an erroneous premise since the provisions of the Spanish Civil Code he cited had already long been repealed and could no longer be applied in the Philippines.

The same can be said of Delegate Manuel Roxas's statement regarding the supposed international law principle which recognizes a foundling to be a citizen at birth of the country where the foundling is found. There is nothing in international law which automatically grants citizenship to foundlings at birth. In fact, Delegate Roxas did not cite any international law principle to that effect.

Only the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which articulated the presumption on the **place of birth** of foundlings, was in existence during the deliberations on the 1935 Constitution. The Hague Convention does not guarantee a nationality to a foundling at birth. Therefore, there was no prevailing customary international law at that time, as there is still none today, conferring automatically a nationality to foundlings at birth.

Assuming *arguendo* that there was in 1935 and thereafter a customary international law conferring nationality to foundlings at birth, still foundlings could not be considered as natural-born Filipino citizens since to treat them as such would conflict with the concept of *jus sanguinis* under the 1935 Constitution. There can be no dispute that in case of conflict between customary international law and the Constitution, it is the Constitution that prevails. The 1935 Constitution clearly required blood relation to the father to establish the natural-born citizenship of a child. The 1935 Constitution did not contain any provision expressly or impliedly granting Filipino citizenship to foundlings on the basis of birth in the Philippines (*jus soli* or law of the soil),[73] with the presumption of Filipino parentage so as to make them natural-born citizens.

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[72] 23 Phil. 315, 330-331 (1912).

[73] See Jaime S. Bautista, *No customary international law automatically confers nationality to foundlings*, The Manila Times, 28 September 2015, http://www.manilatimes.net/no-customary-international-law-automatically-confers-nationality-to-foundlings/221126/, last accessed 9 November 2015. See also Joel Ruiz Butuyan, *Legal and emotional entanglements in Poe issue*, 6 October 2015, Philippine Daily Inquirer, http://opinion.inquirer.net/89141/legal-and-emotional-entanglements-in-poe-issue, last accessed 9 November 2015.

Even assuming there was in 1935 and thereafter a customary international law granting to foundlings citizenship at birth, such citizenship at birth is not identical to the citizenship of a child who is biologically born to Filipino parents. The citizenship of a foundling can be granted at birth by operation of law, but the foundling is considered "naturalized in accordance with law" and not a natural-born citizen. Since a foundling's nationality is merely granted by operation of statutory law, specifically customary international law assuming such exists, a foundling can only be deemed a Filipino citizen under Section 1(5), Article IV of the 1935 Constitution which refers to naturalized Filipino citizens. To add another category of natural-born Filipino citizens, particularly foundlings born in the Philippines whose parents are unknown, conflicts with the express language and intent of the 1935 Constitution to limit natural-born Filipino citizens to those whose fathers are Filipino citizens.

In short, there is a difference between citizenship at birth because of *jus soli*, and citizenship at birth because of *jus sanguinis*. The former may be granted to foundlings under Philippine statutory law pursuant to Section 1(5) of Article IV of the 1935 Constitution but the Philippine citizenship thus granted is not that of a natural-born citizen but that of a naturalized citizen. Only those citizens at birth because of *jus sanguinis*, **which requires blood relation to a parent**, are natural-born Filipino citizens under the 1935, 1973 and 1987 Constitutions.

Respondent cites the 1951 DOJ Opinion No. 189,[74] regarding the citizenship of Anthony Saton Hale, wherein the Secretary of Justice opined that under principles of international law, a foundling has the nationality of the place where the foundling is found or born. However, a scrutiny of the citations in the DOJ Opinion which purportedly supported such statement shows that there had been a gross and patent misstatement of international law principles. Specifically, the DOJ Opinion cited Francis Wharton whose *Treatise on the Conflict of Law* states that "the place where foundlings are discovered is held to be their domicile." Wharton merely laid down the presumption as to the **domicile** of the foundling, and nothing more. In fact, Wharton never mentioned citizenship at all. In his 1872 book, Wharton stated this key principle of international law, to wit:

> §39. (d) Foundlings. – The place where foundlings are discovered is held to be their domicile, with the qualification that removal to a place of education, or adoption in a private family, carries domicile with it.[75]

Thus, at most, what international law recognizes is that the place where the foundling is found is held to be the foundling's domicile. There is nothing in this principle that grants citizenship to a foundling.

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[74] Dated 20 March 1951.

[75] Francis Wharton, LL. D., *A Treatise on the Conflict of Laws or Private International Law*, 1872, p. 46.

Likewise, John Bassett Moore, an authority in international law also cited in DOJ Opinion No. 189, explained in his *A Digest of International Law* the case of Jules Michot, a foundling who petitioned and was granted a United States passport. Moore stated that a child with no known parents or a foundling was presumed to be born in the country where the foundling's existence first became known, thus:

> Jules Michot applied to the legation of the United Sates at Berne for a passport. While it was declared in his application that he was a native citizen of the United States, born in the city of Philadelphia, it was also stated that he knew nothing of his origin except what was set forth in the petition presented by his adopted mother, Rosalia Michot, to the court of common pleas No. 3, in Philadelphia, for his adoption, which was duly granted. The petitioner swore that the child was left with her near Philadelphia when it was about three months old, and that she knew nothing of its parentage or place of birth. Michot thought that the woman was really his mother, but of this there was no evidence, except that of filial association with her. But on the strength of "**the presumption that the child was born in the country where its existence first became known**," it was held that upon the circumstances set forth the applicant was entitled to be treated as a native citizen of the United States and to receive a passport accordingly.[76] (Emphasis supplied)

Contrary to what the DOJ Opinion No. 189 represented, Moore never stated that there is an international law principle that a foundling is deemed a citizen of the country where the foundling is found. The principle of international law explained by Moore is "**the presumption that the child was born in the country where its existence first became known**." However, in the case of Jules Michot, who was found in the United States, he became a US citizen at birth because the US follows the *jus soli* principle, not because of any international law principle that a foundling is deemed a citizen of the country where the foundling is found. This case is obviously not applicable to the Philippines which follows the *jus sanguinis* principle.

Moreover, none of the framers of the 1935 Constitution mentioned the term natural-born in relation to the citizenship of foundlings. Again, under the 1935 Constitution, only those whose fathers were Filipino citizens were considered natural-born citizens. Those who were born of Filipino mothers and alien fathers were still required to elect Philippine citizenship, preventing them from being natural-born citizens. If, as respondent would like us to believe, the framers intended that foundlings be considered natural-born Filipino citizens, this would create an absurd situation where a

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[76] John Bassett Moore, *A Digest of International Law*, Vol. III, 1906, p. 281. http://images.library.wisc.edu/FRUS/EFacs/1899/reference/frus.frus1899.i0032.pdf; last accessed 13 November 2015.

child with unknown parentage would be placed in a better position than a child whose mother is actually known to be a Filipino citizen. The framers of the 1935 Constitution could not have intended to create such an absurdity.

It is also the height of absurdity to presume that all foundlings found in the Philippines, by the sole reason that their parentage is unknown, are not only Filipino citizens but also natural-born Filipino citizens. To illustrate, if in 1968, on the same day that respondent was found in a church in Jaro, Iloilo, three infants were also found in front of the Manila Cathedral in Intramuros, will all the three infants be considered natural-born Filipino citizens? If the first infant was an African black, the second a Caucasian white, and the third an infant with Chinese features, would all three infants be automatically considered natural-born Filipino citizens with the conclusive presumption that their parents were Filipino citizens? Such presumption would certainly lead to a preposterous situation which could not have been intended by the framers of the 1935 Constitution. If at all, the framers intended a strict interpretation of the term natural-born citizen, considering that they limited the term natural-born citizens only to those whose fathers were Filipino citizens, and did not extend it to those who were born of Filipino mothers and alien fathers.

Definition of the Term Natural-Born Citizens

During the deliberations on the 1935 Constitution, the framers made *jus sanguinis* the predominating principle in the determination of Philippine citizenship and abrogated the doctrine laid down in the 1912 *Roa* case. The 1987 Constitution, like the previous 1935 and 1973 Constitutions, adopts the principle of *jus sanguinis* and also distinguishes between natural-born citizens and naturalized citizens.

The term "natural-born citizen" was first discussed by the framers of the 1935 Constitution in relation to the qualifications of the President and Vice-President. In particular, Delegate Roxas elaborated on this term, explaining that a natural-born citizen is a "**citizen by birth**" – a person who is a citizen by reason of his or her birth and not by operation of law. Delegate Roxas explained:

> Delegate Roxas. - Mr. President, the phrase, 'natural-born citizen,' appears in the Constitution of the United States; but the authors say that this phrase has never been authoritatively interpreted by the Supreme Court of the United States in view of the fact that there has never been raised the question of whether or not an elected President fulfilled this condition. The authors are uniform in the fact that the words, **'natural-born citizen,' means a citizen by birth, a person who is a citizen by reason of his birth, and not by naturalization or by a further declaration required by law for his citizenship.** In the Philippines, for example, under the

> provisions of the article on citizenship which we have approved, **all those born of a father who is a Filipino citizen, be they persons born in the Philippines or outside, would be citizens by birth or 'natural-born.'**
>
> And with respect to one born of a Filipino mother but of a foreign father, the article which we approved about citizenship requires that, upon reaching the age of majority, this child needs to indicate the citizenship which he prefers, and if he elects Philippine citizenship upon reaching the age of majority, then he shall be considered a Filipino citizen. **According to this interpretation, the child of a Filipino mother with a foreign father would not be a citizen by birth, because the law or the Constitution requires that he make a further declaration after his birth.** Consequently, the phrase, 'natural-born citizen,' as it is used in the English text means a Filipino citizen by birth, regardless of where he was born.[77] (Emphasis supplied)

Thus, it was the clear intent of the framers of the 1935 Constitution to refer to natural-born citizens as only those who were Filipino citizens by the mere fact of being born to fathers who were Filipino citizens – nothing more and nothing less. **In short, under the 1935 Constitution, only children whose fathers were Filipino citizens were natural-born Filipino citizens.** Those who were born of alien fathers and Filipino mothers were not considered natural-born Filipino citizens, despite the fact that they had a blood relation to a Filipino parent. Since a natural-born citizen is a citizen by birth who need not perform any act to acquire or perfect Philippine citizenship, then those born of Filipino mothers and alien fathers and who had to elect citizenship upon reaching the age of majority, an overt act to perfect citizenship, were not considered natural-born Filipino citizens. Necessarily, those whose parents are neither Filipino citizens or are both unknown, such as in the case of foundlings, cannot be considered natural-born Filipino citizens.

Burden of Proof

Any person who claims to be a citizen of the Philippines has the burden of proving his or her Philippine citizenship.[78] Any person who claims to be qualified to sit as a Senator because he or she is, among others, a natural-born Filipino citizen, has the burden of proving he or she is a natural-born citizen. Any doubt whether or not he or she is natural-born citizen is resolved against him or her. The constitutional requirement of a natural-born citizen, being an express qualification for election as Senator, must be complied with strictly as defined in the Constitution. As the

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[77] Record, Constitutional Convention, 18 December 1934, pp. 307-308.
[78] J. Carpio, Dissenting Opinion, *Tecson v. Comelec*, 468 Phil. 421, 624 (2004).

Supreme Court ruled in *Paa v. Chan*:[79]

> It is incumbent upon the respondent, who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. **No presumption can be indulged in favor of the claimant of Philippine citizenship**, and any doubt regarding citizenship must be resolved in favor of the State.[80] (Emphasis supplied)

Paa lays down three doctrines: *First*, a person claiming Philippine citizenship has the burden of proving his claim. *Second*, there can be no presumption in favor of Philippine citizenship. This negates respondent's claim to any presumption that she is a natural-born Filipino citizen. *Third*, any doubt on citizenship is resolved against the person claiming Philippine citizenship. Therefore, a person claiming to be a Filipino citizen, whether natural-born or naturalized, cannot invoke any presumption of citizenship but must establish such citizenship as a matter of fact and not by presumptions, with any doubt resolved against him or her.

While in a petition for *quo warranto* it is the burden of the petitioner to first prove the fact of disqualification before the respondent is called upon to defend himself or herself with countervailing evidence,[81] in this case, there is no dispute that respondent is a foundling with unknown biological parents. Since respondent's parentage is unknown as shown in her Certificate of Live Birth, such birth certificate does not show on its face that she is a natural-born Filipino citizen. This shifted the burden of evidence to respondent to prove that she is a natural-born Filipino citizen eligible to serve as a Senator of the Philippines.

In fact, respondent's counsel admitted, during the Oral Argument, that there is nothing in respondent's Certificate of Live Birth which shows that she is a natural-born Filipino citizen. Respondent's counsel admitted that (1) respondent is a foundling with unknown biological parents, and (2) there is nothing in respondent's official birth record which shows her status as a natural-born Filipino citizen, thus:

> Justice Carpio: Okay, thank you. You admit Counsel that respondent Poe x x x at the time of her birth and up to now, her biological parents are unknown. Is that correct?
>
> Atty. Poblador: As of the present they are still unknown. Though she has come out with the admission that she is still searching. And she is seeking steps towards that end.

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[79] 128 Phil. 815 (1967).
[80] Id. at 825.
[81] *Fernandez v. HRET*, 623 Phil. 628 (2009).

> Justice Carpio: So at the time of her birth and up to now, her parents are still unknown.
>
> Atty. Poblador: That is correct, Your Honor.
>
> Justice Carpio: **So if you look at the Certificate of Live Birth of respondent Poe at the face alone, you wouldn't know if she is a natural-born citizen because there is no father or mother there.**
>
> Atty. Poblador: **Yes.**[82] (Emphasis supplied)

Since the Constitution requires that a Senator shall be a natural-born citizen of the Philippines, it is imperative that respondent prove that she is a natural-born Filipino citizen, despite the fact that she is a foundling. The burden of evidence shifted to her when she admitted her status as a foundling with no known biological parents. At that moment, it became her duty to prove that she is a natural-born Filipino citizen.[83]

DNA Evidence

As the burden of evidence has shifted to respondent, it is her duty to present evidence to support her claim that she is a natural-born Filipino citizen, and thus eligible to sit in the Senate. The issue of parentage may be resolved by conventional methods or by using available modern and scientific means.[84] One of the evidence that she could have presented before the Tribunal is deoxyribonucleic acid (DNA) evidence[85] which could conclusively show that she is biologically (maternally or paternally) related to a Filipino citizen, which in turn would determine whether she is a natural-born Filipino citizen.

The probative value of such DNA evidence, however, would still have to be examined by the Tribunal. In assessing the probative value of DNA evidence, the Tribunal would consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[86] More specifically, they must be evaluated in accordance with A.M. No. 06-11-5-SC or the Rule on DNA Evidence:[87]

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82 TSN, 21 September 2015, pp. 158-159.

83 See *Reyes v. Commission on Elections*, G.R. No. 207264, 25 June 2013, 699 SCRA 522.

84 *Tijing v. Court of Appeals*, 406 Phil. 449 (2001).

85 In *Tijing v. Court of Appeals*, 406 Phil. 449 (2001), the Supreme Court held that to establish parentage, the DNA from the mother, alleged father and child are analyzed since the DNA of a child, which has two copies, will have one copy from the mother and another copy from the father.

86 See *People v. Vallejo*, 431 Phil. 798 (2002).

87 Dated 2 October 2007.

> Sec. 9. Evaluation of DNA Testing Results. – In evaluating the results of DNA testing, the court shall consider the following:
> (a) The evaluation of the weight of matching DNA evidence or the relevance of mismatching DNA evidence;
> (b) The results of the DNA testing in the light of the totality of the other evidence presented in the case; and that
> (c) DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity. If the value of the Probability of Paternity[88] is less than 99.9% the results of the DNA testing shall be considered as corroborative evidence. If the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity.

While respondent undertook DNA tests, she manifested that the tests yielded negative results. With this finding, there is in effect no evidence to show that respondent is related by blood to a Filipino father or mother. Consequently, respondent failed to present any credible and convincing evidence to prove that she is a natural-born Filipino citizen. A DNA evidence positively matching her to a Filipino mother, at the least, would have established her blood relation to a Filipino parent.[89] Absent such crucial evidence, there is clearly no basis to rule that she is a natural-born Filipino citizen.

Respondent is Not a Natural-Born Filipino Citizen

Respondent is a foundling born in the Philippines in 1968 with no known biological parents. In the 2013 elections, respondent was elected as one of the Senators of the Republic of the Philippines. In this case, petitioner questions respondent's eligibility as a Senator on the ground that she is not a natural-born Filipino citizen.

The 1987 Philippine Constitution is clear: "**No person shall be a Senator unless he is a natural-born citizen of the Philippines**, x x x."[90] Is respondent, being a foundling, a natural-born Filipino citizen?

The answer is clearly no. *First*, there is no Philippine law automatically conferring Philippine citizenship to a foundling at birth. Even if there were, such as a law would only result in the foundling being a naturalized Filipino citizen, not a natural-born Filipino citizen.

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[88] Section 3 (f) of the Rule on DNA Evidence defines "Probability of Parentage" as the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population.

[89] See *Tecson v. Comelec*, 468 Phil. 421 (2004).

[90] Section 3, Article VI, 1987 Constitution.

Second, there is no legal presumption in favor of Philippine citizenship, whether natural-born or naturalized. Citizenship must be established as a matter of fact and any doubt is resolved against the person claiming Philippine citizenship.

Third, there is no treaty, customary international law or a general principle of international law granting automatically Philippine citizenship to a foundling at birth. Respondent failed to prove that there is such a customary international law. At best, there exists a presumption that a foundling is domiciled, and born, in the country where the foundling is found.

Fourth, even assuming that there is a customary international law presuming that a foundling is a citizen of the country where the foundling is found, or is born to parents possessing the nationality of that country, such presumption cannot prevail over our Constitution since customary international law has the status merely of municipal statutory law. This means that customary international law is inferior to the Constitution, and must yield to the Constitution in case of conflict. Since the Constitution adopts the *jus sanguinis* principle, and identifies natural-born Filipino citizens as only those whose fathers or mothers are Filipino citizens, then respondent must prove that either her father or mother is a Filipino citizen for her to be considered a natural-born Filipino citizen. Any international law which contravenes the *jus sanguinis* principle in the Constitution must of course be rejected.

Fifth, respondent failed to discharge her burden to prove that she is a natural-born Filipino citizen. Being a foundling, she admitted that she does not know her biological parents, and therefore she cannot trace blood relation to a Filipino father or mother. Without credible and convincing evidence that respondent's biological father or mother is a Filipino citizen, respondent cannot be considered a natural-born Filipino citizen.

Sixth, a foundling has to perform an act, that is, prove his or her status as a foundling, to acquire Philippine citizenship. This being so, a foundling can only be deemed a naturalized Filipino citizen because the foundling has to perform an act to acquire Philippine citizenship. Since there is no Philippine law specifically governing the citizenship of foundlings, their citizenship is addressed by customary international law, namely: the right of every human being to a nationality, and the State's obligations to avoid statelessness and to facilitate the naturalization of foundlings.

Pointing to the purportedly sad plight of foundlings if found not to be natural-born Filipino citizens, particularly their disqualification from being elected to high public office and appointed to high government positions,

appeals plainly to human emotions.[91] This sentimental plea, however, conveniently forgets the express language of the Constitution reserving those high positions, in this case the position of Senator of the Republic, exclusively to natural-born Filipino citizens. The citizenship requirement under the Constitution to qualify as a Member of the Senate must be complied with strictly. To rule otherwise amounts to a patent violation of the Constitution. Being sworn to uphold and defend the Constitution, the Members of this Tribunal have no other choice but to apply the clear letter and intent of the Constitution.

A final word. A decision denying natural-born citizenship to a foundling on the ground of absence of proof of blood relation to a Filipino parent never becomes final.[92] If in the future respondent can find a DNA match to a Filipino parent, or any other credible and convincing evidence showing her Filipino parentage, then respondent can still be declared a natural-born Filipino citizen.

ACCORDINGLY, I vote to **GRANT** the petition for *quo warranto* and **DISQUALIFY** respondent Mary Grace Poe Llamanzares as a Member of the Senate of the Republic of the Philippines.

ANTONIO T. CARPIO
Chairperson

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[91] See Joel Ruiz Butuyan, *Legal and emotional entanglements in Poe issue*, 6 October 2015, Philippine Daily Inquirer (http://opinion.inquirer.net/89141/legal-and-emotional-entanglements-in-poe-issue; last accessed 9 November 2015).

[92] See *Kilosbayan Foundation v. Ermita*, 553 Phil. 331, 343-344 (2007), where the Supreme Court stated in the dispositive portion of the Decision that "respondent Gregory S. Ong x x x is hereby ENJOINED from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship."