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Atty. Bernadette Platon is hereby ordered to include the status of said case in her Monthly Report of Cases.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, and *Sereno, JJ.*, concur.

Velasco, Jr., J., no part due to relationship to party.

Perez, J., no part.

EN BANC

[G. R. No. 175352. January 18, 2011]

DANTE V. LIBAN, REYNALDO M. BERNARDO and SALVADOR M. VIARI, *petitioners, vs.* **RICHARD J. GORDON**, *respondent.* **PHILIPPINE NATIONAL RED CROSS**, *intervenor.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF R.A. NO. 95, AS AMENDED BY PRESIDENTIAL DECREE (P.D.) NOS. 1264 AND 1643 OR THE PHILIPPINE NATIONAL RED CROSS (PNRC) CHARTER; COURT WILL NOT TOUCH ISSUE OF UNCONSTITUTIONALITY UNLESS IT IS THE VERY *LIS MOTA*; CASE AT BAR.— As correctly pointed out in respondent's Motion, the issue of constitutionality of R.A. No. 95 was not raised by the parties, and was not among the issues defined in the body of the Decision; thus, it was not the very *lis mota* of the case. We have reiterated the rule as to when the Court will consider the issue of constitutionality in *Alvarez vs. PICOP Resources, Inc.*, thus: **This Court will**

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not touch the issue of unconstitutionality unless it is the very *lis mota.* It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may [rest] its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable. Under the rule quoted above, therefore, this Court **should not** have declared void certain sections of R.A. No. 95, as amended by Presidential Decree (P.D.) Nos. 1264 and 1643, the PNRC Charter. Instead, the Court should have exercised judicial restraint on this matter, especially since there was some other ground upon which the Court could have based its judgment. Furthermore, the PNRC, the entity most adversely affected by this declaration of unconstitutionality, which was not even originally a party to this case, was being compelled, as a consequence of the Decision, to suddenly reorganize and incorporate under the Corporation Code, **after more than sixty (60) years of existence in this country.**

2. ID.; ID.; HUMANITARIAN ORGANIZATIONS; PHILIPPINE NATIONAL RED CROSS (PNRC); *SUI GENERIS* CHARACTER OF THE PNRC, RECOGNIZED.— A closer look at the nature of the PNRC would show that there is none like it not just in terms of structure, but also in terms of history, public service and official statutes accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is ***sui generis.*** The PNRC succeeded the chapter of the American Red Cross which was in existence in the Philippine since 1917. It was created by an Act of Congress after the Republic of the Philippines became an independent nation on July 6, 1946 and proclaimed on February 14, 1947 its adherence to the Convention of Geneva of July 29, 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (the "Geneva Red Cross Convention"). By that action the Philippines indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose and like other volunteer organizations established in other countries which have ratified the Geneva Conventions, to promote the health and welfare of the people in peace and war. The provisions of R.A. No. 95, as amended

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by R.A. Nos. 855 and 6373, and further amended by P.D. Nos. 1264 and 1643, show the historical background and legal basis of the creation of the PNRC by legislative fiat, as a voluntary organization impressed with public interest. x x x The PNRC is one of the National Red Cross and Red Crescent Societies, which, together with the International Committee of the Red Cross (ICRC) and the IFRC and RCS, make up the International Red Cross and Red Crescent Movement (the Movement).

3. ID.; ID.; ID.; ID.; THE PNRC CHARTER DOES NOT COME WITHIN THE SPIRIT OF THE CONSTITUTIONAL PROVISION PROHIBITING CONGRESS FROM CREATING PRIVATE CORPORATIONS AS IT DOES NOT GRANT SPECIAL PRIVILEGES TO A PARTICULAR INDIVIDUAL, FAMILY OR GROUP, BUT CREATES AN ENTITY THAT STRIVES TO SERVE THE COMMON GOOD.— The PNRC Charter and its amendatory laws have not been questioned or challenged on constitutional grounds, not even in this case before the Court now. In the Decision, the Court, citing *Feliciano v. Commission on Audit*, explained that the purpose of the constitutional provision prohibiting Congress from creating private corporations was to prevent the granting of special privileges to certain individuals, families, or groups, which were denied to other groups. Based on the above discussion, it can be seen that the PNRC Charter does not come within the spirit of this constitutional provision, as it does not grant special privileges to a particular individual, family, or group, but creates an entity that strives to serve the common good. Furthermore, a strict and mechanical interpretation of Article XII, Section 16 of the 1987 Constitution will hinder the State in adopting measures that will serve the public good or national interest. It should be noted that a special law, R.A. No. 9520, the Philippine Cooperative Code of 2008, and not the general corporation code, vests corporate power and capacities upon cooperatives which are private corporations, in order to implement the State's avowed policy.

4. ID.; ID.; ID.; ID.; THE COURT MUST RECOGNIZE THE COUNTRY'S ADHERENCE TO THE GENEVA CONVENTION AND RESPECT THE UNIQUE STATUS OF THE PNRC IN CONSONANCE WITH ITS TREATY OBLIGATIONS.— In the Decision of July 15, 2009, the Court

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recognized the public service rendered by the PNRC as the government's partner in the observance of its international commitments, to wit: The PNRC is a non-profit, donor-funded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation. The PNRC provides six major services: Blood Services, Disaster Management, Safety Services, Community Health and Nursing, Social Services and Voluntary Service. The Republic of the Philippines, adhering to the Geneva Conventions, established the PNRC as a voluntary organization for the purpose contemplated in the Geneva Convention of 27 July 1929. x x x. **So must this Court recognize too the country's adherence to the Geneva Convention and respect the unique status of the PNRC in consonance with its treaty obligations.** The Geneva Convention has the force and effect of law. Under the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. This constitutional provision must be reconciled and harmonized with Article XII, Section 16 of the Constitution, instead of using the latter to negate the former.

5. ID.; ID.; ID.; ID.; ID.; THE DECISION OF JULY 15, 2009 LOST SIGHT OF THE PNRC's SPECIAL STATUS UNDER INTERNATIONAL HUMANITARIAN LAW AND AS AN AUXILIARY OF THE STATE, DESIGNATED TO ASSIST IT IN DISCHARGING ITS OBLIGATIONS UNDER THE GENEVA CONVENTION.— By requiring the PNRC to organize under the Corporation Code just like any other private corporation, the Decision of July 15, 2009 lost sight of the PNRC's special status under international humanitarian law and as an auxiliary of the State, designated to assist it in discharging its obligations under the Geneva Conventions. Although the PNRC is called to be independent under its Fundamental Principles, it interprets such independence as inclusive of its duty to be the government's humanitarian partner. To be recognized in the International Committee, the PNRC must have an autonomous status, and carry out its humanitarian mission in a neutral and impartial manner. However, in accordance with the Fundamental Principle of Voluntary Service of National Societies of the Movement, the PNRC must be distinguished from private and profit-making entities. It is the

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main characteristic of National Societies that they "are not inspired by the desire for financial gain but by individual commitment and devotion to a humanitarian purpose freely chosen or accepted as part of the service that National Societies through its volunteers and/or members render to the Community." The PNRC, as a National Society of the International Red Cross and Red Crescent Movement, can neither "be classified as an instrumentality of the State, so as not to lose its character of neutrality" as well as its independence, nor strictly as a private corporation since it is regulated by international humanitarian law and is treated as an **auxiliary** of the State.

6. ID.; ID.; ID.; ID.; THE *SUI GENERIS* CHARACTER OF THE PNRC REQUIRES THE COURT TO APPROACH CONTROVERSIES INVOLVING THE PNRC ON A CASE-TO-CASE BASIS.— [T]he *sui generis* status of the PNRC is now sufficiently established. Although it is neither a subdivision, agency, or instrumentality of the government, nor a government-owned or –controlled corporation or a subsidiary thereof, as succinctly explained in the Decision of July 15, 2009, so much so that respondent, under the Decision, was correctly allowed to hold his position as Chairman thereof concurrently while he served as a Senator, such a conclusion does **not** *ipso facto* imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution, that must be organized under the Corporation Code. As correctly mentioned by Justice Roberto A. Abad, the *sui generis* character of PNRC requires us to approach controversies involving the PNRC on a case-to-case basis. In sum, the PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law. This Court cannot all of a sudden refuse to recognize its existence, especially since the issue of the constitutionality of the PNRC Charter was never raised by the parties.

ABAD, *J.*, *concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; HUMANITARIAN ORGANIZATIONS; PHILIPPINE NATIONAL RED CROSS (PNRC); SINCE THE IMPETUS FOR PNRC's CREATION DRAWS FROM THE COUNTRY'S ADHERENCE TO THE

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TREATIES, IT IS IN THIS CONTEXT THAT ITS ORGANIZATIONAL NATURE SHOULD BE VIEWED AND UNDERSTOOD.— Congress created the PNRC to comply with the country's commitments under the Geneva Conventions. The treaties envisioned the establishment in each country of a voluntary organization that would assist in caring for the wounded and sick of the armed forces during times of armed conflict. Upon proclaiming its adherence to the Geneva Conventions, the Republic of the Philippines forthwith created the PNRC for the purpose contemplated by the treaties. Its creation was not privately motivated, but borne of the Republic's observance of treaty obligations. The "whereas clause" of P.D. 1643 or the revised PNRC Charter lays down this basic premise: **x x x WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick of Armed Forces and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions; WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions; x x x** It is thus evident that the PNRC's creation derived primarily from the Geneva Conventions. When Congress created the PNRC, it did not intend to form either a private of government-owned corporation with the usual powers and attributes that such entities might possess. Rather, it set out to form an organization that would be responsive to the requirements of the Geneva Conventions. Section 1 of the PNRC Charter thus provides: **SECTION 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila.** As a voluntary organization tasked to assist the Republic in fulfilling its

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commitments under the Geneva Conventions, the PNRC is imbued with characteristics that ordinary private or government organizations do not possess. Its charter's direct reference to the Geneva Conventions gives the PNRC a special status in relation to governments of any form, as well as a unique place in international humanitarian law. Since the impetus for the PNRC's creation draws from the country's adherence to the treaties, it is in this context that its organizational nature should be viewed and understood.

2. ID.; ID.; ID.; THE PNRC IS A *SUI GENERIS* ENTITY THAT HAS NO PRECISE LEGAL EQUIVALENT UNDER OUR STATUTES; IT ALSO HAS RIGHTS UNDER INTERNATIONAL HUMANITARIAN LAW THAT ORDINARY CHARITABLE INSTITUTIONS AND NON-GOVERNMENTAL ORGANIZATIONS (NGO's) DO NOT HAVE.— The PNRC is a National Society of the Red Cross Movement and is recognized by both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies. The PNRC is regarded as a component of the Movement with concomitant rights and obligations under international humanitarian law. Its status as a recognized National Society has imbued it with attributes that ordinary private corporations or government entities do not possess. It is a *sui generis* entity that has no precise legal equivalent under our statutes. The PNRC is not an ordinary private corporation within the meaning of the Corporation Code. As stated earlier, its creation was not privately motivated but originated from the State's obligation to comply with international law. The State organized the PNRC to assist it in discharging its commitments under the Geneva Conventions as an "auxiliary of the public authorities in the humanitarian filed." It was not established by private individuals for profit or gain, but by the State itself pursuant to the objectives of international humanitarian law. The PNRC is not an ordinary charitable organization, foundation, or non-governmental organization (NGO). As a component of the international Movement, it enjoys protection not afforded to any charitable organization or NGO under the Geneva Conventions. For instance, Articles 24 and 26 of the First Geneva Convention vests National Society personnel with the same status as the armed forces medical services in times of armed conflict, subject to certain conditions. Also, only recognized National

Societies enjoy exclusive use of the protective red cross emblem in conformity with the treaties. National Societies like the PNRC are thus **directly regulated by international humanitarian law**, unlike ordinary charitable organizations or NGOs. The PNRC also has rights and obligations under international humanitarian law that ordinary charitable organizations and NGOs do not have. Foremost of these rights is the privilege to participate as a full member in the International Conference of the Red Cross and Red Crescent, in which States also participate as members pursuant to the Geneva Conventions. States Parties and all components of the Movement attend the conference to discuss humanitarian matters **on equal footing**. No other organization has this exceptional privilege in relation to a State.

3. ID.; ID.; ID.; PNRC's ORGANIZATIONAL STATUS CANNOT BE ASSESSED INDEPENDENTLY OF THE TREATIES THAT PROMPTED ITS ESTABLISHMENT.— The PNRC is unlike ordinary charitable organizations or NGOs in many respects due to the distinct features it directly derives from international law. Although it is a local creation, it was so organized as a national Red Cross Society with direct reference to the Geneva Conventions. The PNRC was explicitly "designated as the organization which is authorized to act in matters of relief under said Convention." Consequently, its organizational status cannot be assessed independently of the treaties that prompted its establishment. The PNRC cannot also be regarded as a government corporation or instrumentality. To begin with, it is not owned or controlled by the government or part of the government machinery. The conditions for its recognition as a National Society also militate against its classification as a government entity. Article 4 (4) of the Statutes requires a National Society to "(h)ave an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement." Thus, a National Society must maintain its impartiality, neutrality, and independence. In its mission "to prevent and alleviate human suffering wherever it may be found," it must make "no discrimination as to nationality, race, religious beliefs, class or political opinions." It must enjoy the confidence of all and not take sides in hostilities or controversies of a political, racial, religious or ideological nature. It cannot be seen, therefore, as an instrument of the State or under governmental control. The Statutes require,

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however, that a National Society like the PNRC "(b)e **duly recognized by the legal government** of its country on the basis of the Geneva Conventions and **of the national legislation** as a voluntary aid society, **auxiliary to the public authorities in the humanitarian field**." This signifies a partnership with government in implementing State obligations based on international humanitarian law.

4. ID.; ID.; ID.; THE PNRC IS A HYBRID ORGANIZATION THAT DOES NOT FIT THE PARAMETERS PROVIDED BY EITHER THE CORPORATION CODE OR ADMINISTRATIVE CODE BUT A *SUI GENERIS* ENTITY THAT DRAWS ITS NATURE FROM THE GENEVA CONVENTION, THE STATUTES OF THE MOVEMENT AND THE LAW CREATING IT.— The status of being an "auxiliary" of government in the humanitarian field is a precondition to a National Society's existence and recognition as a component of the Movement. In its position paper, the Federation explained that the status of auxiliary "means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State." In other words, the status confers upon the PNRC the duty to be the government's humanitarian partner while, at the same time, remaining independent and free from government intervention. As a recognized National Society, the PNRC must be autonomous, even as it assists government in the discharge of its humanitarian obligations. Notably, the PNRC Charter is also reflective of the organization's dual nature. It does not only vest the PNRC with corporate powers, but imposes upon it duties related to the performance of government functions. Under Section 1 of the charter, the PNRC is "officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions." As such, it is obligated "to provide volunteer aid to the sick and wounded of the armed forces in time of war" and "to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention." Moreover, the charter clearly established the PNRC as a National Red Cross Society pursuant to the treaties and Statutes of the Movement. It was authorized "to act in such matters between similar national societies of other governments and the governments and people and the Armed Forces of the Republic of the Philippines." The PNRC was to establish and

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maintain a system of national and international relief and to apply the same in meeting natural disasters, all in the spirit of the Geneva Conventions. In the pursuit of its humanitarian tasks, the PNRC was thus granted the power of perpetual succession, the capacity to sue and be sued, and the power to hold real personal property. It was authorized to adopt a seal, but was given exclusive use of the Red Cross emblem and badge in accordance with the treaties. It may likewise adopt by-laws and regulations and do all acts necessary to carry its purposes into effect. Then PNRC is financed primarily by contributions obtained through solicitation campaigns and private donations. And yet, it is required to submit to the President of the Philippines an annual report of its activities including its financial condition, receipts and disbursements. It is allotted one annual national lottery draw and is exempt from taxes, duties, and fees on importations and purchases, as well as on donations for its disaster relief work and other services. Consequently, the PNRC cannot be classified as either a purely private or government entity. It is a hybrid organization that derives certain peculiarities from international humanitarian law. For this reason, its organizational character does not fit the parameters provided by either the Corporation Code or Administrative Code. It is a *sui generis* entity that draws its nature from the Geneva Conventions, the Statutes of the Movement and the law creating it.

5. ID.; ID.; ID.; THE CONSTITUTION DOES NOT PRECLUDE THE CREATION OF CORPORATIONS THAT MAY NEITHER BE CLASSIFIED AS PRIVATE NOR GOVERNMENTAL; IT DOES NOT FORBID CONGRESS FROM CREATING ORGANIZATIONS THAT DO NOT BELONG TO THE TWO GENERAL TYPES.— The Constitution does not preclude the creation of corporations that may neither be classified as private nor governmental. Sec. 7, Article XIV of the 1935 Constitution, which was carried over in subsequent versions of the fundamental law, does not prohibit Congress from creating other types of organizations that may not fall strictly within the terms of what is deemed a private or government corporation. The Constitution simply provides that Congress cannot create **private corporations,** except by general law, unless such corporations are owned or controlled by the government. It does not forbid Congress from creating organizations that do not belong to these two general types. In *Feliciano v. Commission on Audit*,

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the Court explained that the purpose of the ban against the creation of private corporations by special charter is to prevent the grant to certain individuals, families, or groups of special privileges that are denied to other citizens. The creation of the PNRC does not traverse the purpose of the prohibition, as Congress established the PNRC to comply with State obligations under international law. The PNRC Charter is simply a manifestation of the State's adherence to the Geneva Conventions. By enacting the PNRC Charter, Congress merely implemented the will of the State to join other nations of the world in the humanitarian cause. The special status of the PNRC under international humanitarian law justifies the special manner of its creation. The State itself committed the PNRC's formation to the community of nations, and no less than an act of Congress should be deemed sufficient compliance with such an obligation. To require the PNRC to incorporate under the general law is to disregard its unique standing under international conventions. It also ignores the very basic premise for the PNRC's creation.

6. ID.; ID.; ID.; THE ISSUE OF CONSTITUTIONALITY WAS NOT RAISED BY ANY OF THE ORIGINAL PARTIES AND NEITHER WAS THE PNRC A PARTY TO THE CASE, DESPITE BEING THE ENTITY WHOSE CREATION WAS DECLARED VOID UNDER THE JULY 25, 2009 DECISION.— The main issue in this case is whether or not the office of PNRC Chairman is a government office or an office in a GOCC for purposes of the prohibition in Section 13, Article VI of the Constitution. The resolution of this question lies in the determination of whether or not the PNRC is in fact a GOCC. As explained earlier, the PNRC is not a GOCC, but a *sui generis* entity that has no legal equivalent under any of our statutes. Consequently, Senator Gordon did no forfeit his Senate seat under the constitutional prohibition. In view of the PNRC's *sui generis* character, the Court need not even dwell on the issue of whether or not the PNRC Charter was validly enacted. Congress is proscribed only from creating private corporations which, as demonstrated, the PNRC is not. The issue of constitutionality was not raised by any of the original parties and could have been avoided in the first place. Neither was the PNRC a party to the case, despite being the entity whose creation was declared void under the main decision. Finally, the *sui generis* character of the PNRC does not necessarily overturn the rulings of the Court in *Camporedondo*

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and *Baluyot*. The PNRC's exceptional nature admits of the conclusions reached in those cases that the PNRC is a GOCC for the purpose of enforcement of labor laws and penal statutes. The PNRC's *sui generis* character compels us to approach controversies involving the PNRC on a case-to-case basis, bearing in mind its distinct nature, purposes and special functions. Rules that govern traditional private or public entities may thus be adjusted in relation to the PNRC and in accordance with the circumstances of each case.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; PASSING UPON THE ISSUE OF CONSTITUTIONALITY OF R.A. 95 IS INEVITABLE IN VIEW OF THE COURT'S FINDING THAT THE PHILIPPINE NATIONAL RED CROSS (PNRC) IS A PRIVATE CORPORATION CREATED BY CONGRESS THROUGH A SPECIAL CHARTER WHICH IS PROSCRIBED BY SECTION 16, ARTICLE XII OF THE 1987 CONSTITUTION.— Generally, the Court will not pass upon a constitutional question unless such question is raised by the parties. However, as explained by the Court in *Fabian v. Hon. Desierto*, the rule that a challenge on constitutional grounds must be raised by a party to the case is not an inflexible rule. In the *Fabian* case, the issue of the constitutionality of Section 27 of Republic Act No. 6770 (RA 6770) was not presented as an issue by the parties. Nevertheless, the Court ruled that Section 27 of RA 6770, which provides for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, infringes on the constitutional proscription against laws increasing the appellate jurisdiction of the Supreme Court without its advice and consent. In this case, the constitutional issue was inevitably thrust upon the Court upon its finding that the PNRC is a private corporation, whose creation by a special charter is proscribed by the Constitution. In view of the Court's finding that the PNRC is a private corporation, it was imperative for the Court to address the issue of the creation of the PNRC through a special charter. The Constitution prohibits the creation of a private corporation through a special law. The Court could not declare the PNRC a private corporation created by the special law RA 95 without running afoul of Section 16, Article XII of

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the 1987 Constitution. To declare the PNRC a private corporation necessarily meant declaring RA 95 unconstitutional. To declare the PNRC, a creation of RA 95, a private corporation without declaring RA 95 unconstitutional would mean that Congress can create a private corporation through a special law. This the Court could not do.

2. ID.; ID.; THE FACT THAT THE CONSTITUTIONALITY OF R.A. 95 HAS NOT BEEN QUESTIONED FOR SIXTY (60) YEARS DOES NOT MEAN THAT IT COULD NO LONGER BE DECLARED UNCONSTITUTIONAL.— The fact that the constitutionality of RA 95 has not been questioned for more than sixty (60) years does not mean that it could no longer be declared unconstitutional. One is not estopped from assailing the validity of a law just because such law has been relied upon in the past and all that time has not been attacked as unconstitutional. Indeed, there is no prescription to declare a law unconstitutional. Thus, in the case of *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, this Court held that constitutional challenge can be made anytime: **That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later**. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same. **More importantly, the Court granted the PNRC's motion to intervene and the PNRC then filed its Motion for Partial Reconsideration, in which the PNRC argued that its charter is valid and constitutional. Thus, the PNRC, the entity that is directly affected by the issue of the constitutionality of RA 95, is in law and in fact a party to this case, raising specifically the issue that its charter is valid and constitutional.** Moreover, although the original parties did not raise as an issue the constitutionality of RA 95, they were still afforded the opportunity to be heard on this constitutional issue when they filed their respective motions for reconsideration.

3. ID.; ID.; EVEN IF THE PNRC DERIVED ITS EXISTENCE FROM PD 1264, STILL THE CONSTITUTIONAL PROHIBITION WILL APPLY; THE EXERCISE OF LEGISLATIVE POWER BY PRESIDENT MARCOS UNDER MARTIAL LAW MUST STILL BE IN ACCORDANCE WITH

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THE CONSTITUTION.— Even if the PNRC derived its existence from PD 1264, still the constitutional prohibition will apply. President Marcos issued PD 1264 on 5 December 1977 during martial law period when the President assumed extensive legislative power. Such assumption of legislative power did not place President Marcos above the Constitution. President Marcos could not issue decrees or orders contrary to the provisions of the Constitution. The exercise of legislative power by President Marcos under martial law must still be in accordance with the Constitution because legislative power cannot be exercised in violation of the Constitution from which legislative power draws its existence. The limits on legislative power is explained by the Court in *Government v. Springer*, thus: Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. **In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four wall of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.**

4. ID.; ID.; THE PNRC CANNOT CLAIM THAT IT IS *SUI GENERIS* JUST BECAUSE IT IS A PRIVATE ORGANIZATION PERFORMING CERTAIN PUBLIC OR GOVERNMENTAL FUNCTIONS; THE EXPRESS CONSTITUTIONAL PROHIBITION AGAINST THE CREATION OF PRIVATE CORPORATIONS BY SPECIAL CHARTER ADMITS OF NO EXCEPTION.— All private charitable organizations are doing public service or activities that also constitute governmental functions. Hence, the PNRC cannot claim that it is *sui generis* just because it is a private organization performing certain public or governmental functions. That the PNRC is rendering public service does not exempt it from the constitutional prohibition against the creation of a private corporation through a special law since the PNRC is, admittedly, still a private organization. The express prohibition against the creation of private

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corporations by special charter under Section 16, Article XII of the 1987 Constitution cannot be disregarded just because a private corporation claims to be *sui generis*. The constitutional prohibition admits of no exception.

5. ID.; ID.; HUMANITARIAN ORGANIZATIONS; THE CONDITIONS FOR RECOGNITION OF NATIONAL SOCIETIES DO NOT REQUIRE THAT THE STATE ITSELF CREATE THE NATIONAL SOCIETY THROUGH SPECIAL CHARTER; THE NATIONAL SOCIETIES ARE BOUND BY THE LAWS OF THEIR HOST COUNTRIES AND MUST SUBMIT TO THE CONSTITUTION OF THEIR RESPECTIVE HOST COUNTRIES.— The conditions for recognition of National Societies do not require that the State itself create the National Society through a special charter. The absence of such requirement is proper and necessary considering the Movement's emphasis on the importance of maintaining the independence of the National Society, free from any form of intervention from the government. However, it is required that the National Society be officially recognized by the government of its country as auxiliary to the public authorities in the humanitarian field. A decree granting official recognition to the National Society is essential in order to distinguish it from other charitable organizations in the country and to be entitled to the protection of the Geneva Conventions in the event of armed conflict. The content of the decree of recognition may vary from one country to another but it should explicitly specify: 1. That the National Society is the country's only Red Cross or Red Crescent organization; 2. That it is autonomous in relation to the State; 3. That it performs its activities in conformity with the Fundamental Principles; and 4. The conditions governing the use of the emblem. **Thus, there is no specific requirement for the creation of the National Society through a special charter.** The State does not have the obligation to create the National Society, in our case, the PNRC. What is important is that the National Society is officially recognized by the government as auxiliary to the public authorities in the humanitarian services of the government. This the Philippine government can accomplish even without creating the PNRC through a special charter. Besides, as auxiliaries in the humanitarian services of their host governments, **the National Societies are subject to the laws of their respective countries**. Thus, the National Societies are bound by the laws

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of their host countries and must submit to the Constitution of their respective host countries.

6. ID.; ID.; THE CONSTITUTIONAL PROHIBITION UNDER SECTION 16, ARTICLE XII OF THE 1987 CONSTITUTION IS CLEAR, CATEGORICAL AND ABSOLUTE; THE COURT HAS NO POWER TO MAKE PNRC AN EXCEPTION TO SECTION 16, ARTICLE XII OF THE 1987 CONSTITUTION.— The Philippine Constitution prohibits Congress from creating private corporations except by general law. I agree with the PNRC that it is a private organization performing public functions. Precisely because it is a private organization, the PNRC charter – whether it be RA 95 or PD 1264 – is violative of the constitutional proscription against the creation of private corporations by special law. Nevertheless, keeping in mind the treaty obligations of the Philippines under the Geneva Conventions, the assailed Decision only held void those provisions of the PNRC charter which create PNRC as a private corporation or grant it corporate powers. The other provisions respecting the government's treaty obligations remain valid, thus: **The other provisions of the PNRC Charter remain valid as they can be considered as a recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement, and thus entitled to the benefits, exemptions and privileges set forth in the PNRC Charter.** The other provisions of the PNRC Charter implement the Philippine Government's treaty obligations under Article 4(5) of the Statutes of the International Red Cross and Red Crescent Movement, which provides that to be recognized as a National Society, the Society must be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field." This Court's paramount duty is to faithfully apply the provisions of the Constitution to the present case. The Constitutional prohibition under Section 16, Article XII of the 1987 Constitution is clear, categorical, and absolute: SEC. 16. The Congress, **shall not, except by general law**, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic

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viability. Since the constitutional prohibition admits of no exception, this Court has no recourse but to apply the prohibition to the present case. This Court has no power to make PNRC an exception to Section 16, Article XII of the 1987 Constitution. The PNRC could either choose to remain unincorporated or it could adopt its own articles of incorporation and by-laws and incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioners.

Agabin Verzola Hermoso & Layaoen Law Offices for respondent.

Lorna Patajo-Kapunan, Rodolfo O. Reyes and Reynaldo A. Dario and *Dennis R. Manzanal* for movant–intervenor.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

This resolves the **Motion for Clarification and/or for Reconsideration**[1] filed on August 10, 2009 by respondent **Richard J. Gordon** (respondent) of the **Decision** promulgated by this Court on July 15, 2009 (the Decision), the **Motion for Partial Reconsideration**[2] filed on August 27, 2009 by movant-intervenor **Philippine National Red Cross (PNRC)**, and the latter's **Manifestation and Motion to Admit Attached Position Paper**[3] filed on December 23, 2009.

In the Decision,[4] the Court held that respondent did not forfeit his seat in the Senate when he accepted the chairmanship of the PNRC Board of Governors, as "the office of the PNRC Chairman is not a government office or an office in a

[1] *Rollo,* pp. 256-264.

[2] *Id.* at 397-418.

[3] *Id.* at 434-439.

[4] *Liban v. Gordon*, G.R. No. 175352, July 15, 2009, 593 SCRA 68.

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government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution."[5] The Decision, however, further declared void the PNRC Charter "insofar as it creates the PNRC as a private corporation" and consequently ruled that "the PNRC should incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation."[6] The dispositive portion of the Decision reads as follows:

> WHEREFORE, we declare that the office of the Chairman of the Philippine National Red Cross is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution. We also declare that Sections 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Charter of the Philippine National Red Cross, or Republic Act No. 95, as amended by Presidential Decree Nos. 1264 and 1643, are VOID because they create the PNRC as a private corporation or grant it corporate powers.[7]

In his **Motion for Clarification and/or for Reconsideration**, respondent raises the following grounds: (1) as the issue of constitutionality of Republic Act (R.A.) No. 95 was not raised by the parties, the Court went beyond the case in deciding such issue; and (2) as the Court decided that Petitioners did not have standing to file the instant Petition, the pronouncement of the Court on the validity of R.A. No. 95 should be considered ***obiter***.[8]

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[5] Section 13, Article VI of the Constitution reads:

> SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

[6] *Liban v. Gordon*, *supra* note 4 at 97-98.

[7] *Id.* at 98.

[8] *Rollo*, p. 256.

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Respondent argues that the validity of R.A. No. 95 was a non-issue; therefore, it was unnecessary for the Court to decide on that question. Respondent cites *Laurel v. Garcia*,[9] wherein the Court said that it "will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground" and goes on to claim that since this Court, in the Decision, disposed of the petition on some other ground, *i.e.*, lack of standing of petitioners, there was no need for it to delve into the validity of R.A. No. 95, and the rest of the judgment should be deemed *obiter*.

In its **Motion for Partial Reconsideration**, PNRC prays that the Court sustain the constitutionality of its Charter on the following grounds:

A. THE ASSAILED DECISION DECLARING UNCONSTITUTIONAL REPUBLIC ACT NO. 95 AS AMENDED DEPRIVED INTERVENOR PNRC OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS.

   1. INTERVENOR PNRC WAS NEVER A PARTY TO THE INSTANT CONTROVERSY.

   2. THE CONSTITUTIONALITY OF REPUBLIC ACT NO. 95, AS AMENDED WAS NEVER AN ISSUE IN THIS CASE.

B. THE CURRENT CHARTER OF PNRC IS PRESIDENTIAL DECREE NO. 1264 AND NOT REPUBLIC ACT NO. 95. PRESIDENTIAL DECREE NO. 1264 WAS NOT A CREATION OF CONGRESS.

C. PNRC'S STRUCTURE IS *SUI GENERIS*; IT IS A CLASS OF ITS OWN. WHILE IT IS PERFORMING HUMANITARIAN FUNCTIONS AS AN AUXILIARY TO GOVERNMENT, IT IS A NEUTRAL ENTITY SEPARATE AND INDEPENDENT OF GOVERNMENT CONTROL, YET IT DOES NOT QUALIFY AS STRICTLY PRIVATE IN CHARACTER.

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[9] G.R. Nos. 92013 and 92047, July 25, 1990, 187 SCRA 797, 813.

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In his **Comment and Manifestation**[10] filed on November 9, 2009, respondent manifests: (1) that he agrees with the position taken by the PNRC in its Motion for Partial Reconsideration dated August 27, 2009; and (2) as of the writing of said Comment and Manifestation, there was pending before the Congress of the Philippines a proposed bill entitled "An Act Recognizing the PNRC as an Independent, Autonomous, Non-Governmental Organization Auxiliary to the Authorities of the Republic of the Philippines in the Humanitarian Field, to be Known as The Philippine Red Cross."[11]

After a thorough study of the arguments and points raised by the respondent as well as those of movant-intervenor in their respective motions, we have reconsidered our pronouncements in our Decision dated July 15, 2009 with regard to the nature of the PNRC and the constitutionality of some provisions of the PNRC Charter, R.A. No. 95, as amended.

As correctly pointed out in respondent's Motion, the issue of constitutionality of R.A. No. 95 was not raised by the parties, and was not among the issues defined in the body of the Decision; thus, it was not the very *lis mota* of the case. We have reiterated the rule as to when the Court will consider the issue of constitutionality in *Alvarez v. PICOP Resources, Inc.*,[12] thus:

This Court will not touch the issue of unconstitutionality unless it is the very *lis mota*. It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may [rest] its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable.[13]

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[10] *Rollo*, pp. 421-431.

[11] *Id.* at 421.

[12] G.R. No. 162243, November 29, 2006, 508 SCRA 498.

[13] *Id.* at 552, citing *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946).

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Under the rule quoted above, therefore, this Court **should not** have declared void certain sections of R.A. No. 95, as amended by Presidential Decree (P.D.) Nos. 1264 and 1643, the PNRC Charter. Instead, the Court should have exercised judicial restraint on this matter, especially since there was some other ground upon which the Court could have based its judgment. Furthermore, the PNRC, the entity most adversely affected by this declaration of unconstitutionality, which was not even originally a party to this case, was being compelled, as a consequence of the Decision, to suddenly reorganize and incorporate under the Corporation Code, **after more than sixty (60) years of existence in this country**.

Its existence as a chartered corporation remained unchallenged on ground of unconstitutionality notwithstanding that R.A. No. 95 was enacted on March 22, 1947 during the effectivity of the 1935 Constitution, which provided for a proscription against the creation of private corporations by special law, to wit:

> SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned and controlled by the Government or any subdivision or instrumentality thereof. (Art. XIV, 1935 Constitution.)

Similar provisions are found in Article XIV, Section 4 of the 1973 Constitution and Article XII, Section 16 of the 1987 Constitution. The latter reads:

> SECTION 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Since its enactment, the PNRC Charter was amended several times, particularly on June 11, 1953, August 16, 1971, December 15, 1977, and October 1, 1979, by virtue of R.A. No. 855, R.A. No. 6373, P.D. No. 1264, and P.D. No. 1643, respectively. The passage of several laws relating to the PNRC's corporate existence notwithstanding the effectivity of the constitutional

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proscription on the creation of private corporations by law, is a recognition that the PNRC is not strictly in the nature of a private corporation contemplated by the aforesaid constitutional ban.

A closer look at the nature of the PNRC would show that there is none like it not just in terms of structure, but also in terms of history, public service and official status accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is ***sui generis***.

The PNRC succeeded the chapter of the American Red Cross which was in existence in the Philippines since 1917. It was created by an Act of Congress after the Republic of the Philippines became an independent nation on July 6, 1946 and proclaimed on February 14, 1947 its adherence to the Convention of Geneva of July 29, 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (the "Geneva Red Cross Convention"). By that action the Philippines indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose and like other volunteer organizations established in other countries which have ratified the Geneva Conventions, to promote the health and welfare of the people in peace and in war.[14]

The provisions of R.A. No. 95, as amended by R.A. Nos. 855 and 6373, and further amended by P.D. Nos. 1264 and 1643, show the historical background and legal basis of the creation of the PNRC by legislative fiat, as a voluntary organization impressed with public interest. Pertinently R.A. No. 95, as amended by P.D. 1264, provides:

> WHEREAS, during the meeting in Geneva, Switzerland, on 22 August 1894, the nations of the world unanimously agreed to diminish within their power the evils inherent in war;
>
> WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and

[14] Whereas clause, Republic Act No. 95 (1947).

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Sick of Armed Forces in the Field and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions;

WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions;

WHEREAS, there existed in the Philippines since 1917 a chapter of the American National Red Cross which was terminated in view of the independence of the Philippines; and

WHEREAS, the volunteer organizations established in other countries which have ratified or adhered to the Geneva Conventions **assist in promoting the health and welfare of their people in peace and in war,** and through their mutual assistance and cooperation directly and through their international organizations promote better understanding and sympathy among the people of the world;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby decree and order that Republic Act No. 95, Charter of the Philippine National Red Cross (PNRC) as amended by Republic Acts No. 855 and 6373, be further amended as follows:

Section 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila. (Emphasis supplied.)

The significant public service rendered by the PNRC can be gleaned from Section 3 of its Charter, which provides:

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Section 3. That the purposes of this Corporation shall be as follows:

(a) To provide volunteer aid to the sick and wounded of armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Conventions to which the Republic of the Philippines proclaimed its adherence;

(b) For the purposes mentioned in the preceding sub-section, to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention;

(c) To act in matters of voluntary relief and in accordance with the authorities of the armed forces as a medium of communication between people of the Republic of the Philippines and their Armed Forces, in time of peace and in time of war, and to act in such matters between similar national societies of other governments and the Governments and people and the Armed Forces of the Republic of the Philippines;

(d) To establish and maintain a system of national and international relief in time of peace and in time of war and apply the same in meeting and emergency needs caused by typhoons, flood, fires, earthquakes, and other natural disasters and to devise and carry on measures for minimizing the suffering caused by such disasters;

(e) To devise and promote such other services in time of peace and in time of war as may be found desirable in improving the health, safety and welfare of the Filipino people;

(f) To devise such means as to make every citizen and/or resident of the Philippines a member of the Red Cross.

The PNRC is one of the National Red Cross and Red Crescent Societies, which, together with the International Committee of the Red Cross (ICRC) and the IFRC and RCS, make up the International Red Cross and Red Crescent Movement (the Movement). They constitute a worldwide humanitarian movement, whose mission is:

[T]o prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health

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and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance.[15]

The PNRC works closely with the ICRC and has been involved in humanitarian activities in the Philippines since 1982. Among others, these activities in the country include:

1. Giving protection and assistance to civilians displaced or otherwise affected by armed clashes between the government and armed opposition groups, primarily in Mindanao;
2. Working to minimize the effects of armed hostilities and violence on the population;
3. Visiting detainees; and
4. Promoting awareness of international humanitarian law in the public and private sectors.[16]

National Societies such as the PNRC act as **auxiliaries** to the public authorities of their own countries in the humanitarian field and provide a range of services including disaster relief and health and social programmes.

The International Federation of Red Cross (IFRC) and Red Crescent Societies (RCS) Position Paper,[17] submitted by the PNRC, is instructive with regard to the elements of the specific nature of the National Societies such as the PNRC, to wit:

> National Societies, such as the Philippine National Red Cross and its sister Red Cross and Red Crescent Societies, have certain specificities deriving from the 1949 Geneva Convention and the Statutes of the International Red Cross and Red Crescent Movement (the Movement). They are also guided by the seven Fundamental

[15] Pamphlet entitled "The Fundamental Principles of the Red Cross and Red Crescent Movement" (April 2009), available with the ICRC, http://www.icrc.org.

[16] *Id.*

[17] *Rollo,* pp. 440-442.

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Principles of the Red Cross and Red Crescent Movement: **Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.**

A National Society partakes of a *sui generis* character. It is a protected component of the Red Cross movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Power cannot require any change in the personnel or structure of a National Society. **National societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs**.

x x x x x x x x x

In addition, National Societies are not only officially recognized by their public authorities as voluntary aid societies, auxiliary to the public authorities in the humanitarian field, but also benefit from recognition at the International level. This is considered to be an element distinguishing National Societies from other organizations (mainly NGOs) and other forms of humanitarian response.

x x x. No other organization belongs to a world-wide Movement in which all Societies have equal status and share equal responsibilities and duties in helping each other. This is considered to be the essence of the Fundamental Principle of Universality.

Furthermore, the National Societies are considered to be **auxiliaries** to the public authorities in the humanitarian field. x x x.

The auxiliary status of [a] Red Cross Society **means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State**. In carrying out their major functions, Red Cross Societies give their humanitarian support to official bodies, in general having larger resources than the Societies, working towards comparable ends in a given sector.

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x x x **No other organization has a duty to be its government's humanitarian partner while remaining independent.**[18] (Emphases ours.)

It is in recognition of this *sui generis* character of the PNRC that R.A. No. 95 has remained valid and effective from the time of its enactment in March 22, 1947 under the 1935 Constitution and during the effectivity of the 1973 Constitution and the 1987 Constitution.

The PNRC Charter and its amendatory laws have not been questioned or challenged on constitutional grounds, not even in this case before the Court now.

In the Decision, the Court, citing *Feliciano v. Commission on Audit*,[19] explained that the purpose of the constitutional provision prohibiting Congress from creating private corporations was to prevent the granting of special privileges to certain individuals, families, or groups, which were denied to other groups. Based on the above discussion, it can be seen that the PNRC Charter does not come within the spirit of this constitutional provision, as it does not grant special privileges to a particular individual, family, or group, but creates an entity that strives to serve the common good.

Furthermore, a strict and mechanical interpretation of Article XII, Section 16 of the 1987 Constitution will hinder the State in adopting measures that will serve the public good or national interest. It should be noted that a special law, R.A. No. 9520, the Philippine Cooperative Code of 2008, and not the general corporation code, vests corporate power and capacities upon cooperatives which are private corporations, in order to implement the State's avowed policy.

In the Decision of July 15, 2009, the Court recognized the public service rendered by the PNRC as the government's partner in the observance of its international commitments, to wit:

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[18] *Id.* at 440-441.

[19] 464 Phil. 439 (2004).

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The PNRC is a non-profit, donor-funded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation. The PNRC provides six major services: Blood Services, Disaster Management, Safety Services, Community Health and Nursing, Social Services and Voluntary Service.

The Republic of the Philippines, adhering to the Geneva Conventions, established the PNRC as a voluntary organization for the purpose contemplated in the Geneva Convention of 27 July 1929. x x x.[20] (Citations omitted.)

So must this Court recognize too the country's adherence to the Geneva Convention and respect the unique status of the PNRC in consonance with its treaty obligations. The Geneva Convention has the force and effect of law.[21] Under the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land.[22] This constitutional provision must be reconciled and harmonized with Article XII, Section 16 of the Constitution, instead of using the latter to negate the former.

By requiring the PNRC to organize under the Corporation Code just like any other private corporation, the Decision of July 15, 2009 lost sight of the PNRC's special status under

[20] *Liban v. Gordon, supra* note 4 at 77.

[21] *Ebro III v. National Labor Relations Commission*, 330 Phil. 93, 101 (1996).

[22] **1935 Constitution, ARTICLE II, SECTION 3.** The Philippines renounces war as an instrument of national policy and adopts the generally accepted principles of international law as part of the law of the Nation.

1973 CONSTITUTION, ARTICLE II, SECTION 3. 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.

1987 CONSTITUTION, ARTICLE II, SECTION 2. 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.

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international humanitarian law and as an auxiliary of the State, designated to assist it in discharging its obligations under the Geneva Conventions. Although the PNRC is called to be independent under its Fundamental Principles, it interprets such independence as inclusive of its duty to be the government's humanitarian partner. To be recognized in the International Committee, the PNRC must have an autonomous status, and carry out its humanitarian mission in a neutral and impartial manner.

However, in accordance with the Fundamental Principle of Voluntary Service of National Societies of the Movement, the PNRC must be distinguished from private and profit-making entities. It is the main characteristic of National Societies that they "are not inspired by the desire for financial gain but by individual commitment and devotion to a humanitarian purpose freely chosen or accepted as part of the service that National Societies through its volunteers and/or members render to the Community."[23]

The PNRC, as a National Society of the International Red Cross and Red Crescent Movement, can neither "be classified as an instrumentality of the State, so as not to lose its character of neutrality" as well as its independence, nor strictly as a private corporation since it is regulated by international humanitarian law and is treated as an **auxiliary** of the State.[24]

Based on the above, the *sui generis* status of the PNRC is now sufficiently established. Although it is neither a subdivision, agency, or instrumentality of the government, nor a government-owned or -controlled corporation or a subsidiary thereof, as succinctly explained in the Decision of July 15, 2009, so much so that respondent, under the Decision, was correctly allowed to hold his position as Chairman thereof concurrently while he served as a Senator, such a conclusion does **not** *ipso facto* imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution, that must be organized under the Corporation Code. As correctly mentioned by Justice Roberto A. Abad, the *sui generis* character of PNRC

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[23] *Supra* note 15.

[24] *Rollo*, p. 433.

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requires us to approach controversies involving the PNRC on a case-to-case basis.

In sum, the PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law. This Court cannot all of a sudden refuse to recognize its existence, especially since the issue of the constitutionality of the PNRC Charter was never raised by the parties. It bears emphasizing that the PNRC has responded to almost all national disasters since 1947, and is widely known to provide a substantial portion of the country's blood requirements. Its humanitarian work is unparalleled. The Court should not shake its existence to the core in an untimely and drastic manner that would not only have negative consequences to those who depend on it in times of disaster and armed hostilities but also have adverse effects on the image of the Philippines in the international community. **The sections of the PNRC Charter that were declared void must therefore stay.**

WHEREFORE, *premises considered*, respondent Richard J. Gordon's *Motion for Clarification and/or for Reconsideration* and movant-intervenor PNRC's *Motion for Partial Reconsideration* of the *Decision* in *G.R. No. 175352* dated July 15, 2009 are *GRANTED.* The constitutionality of R.A. No. 95, as amended, the charter of the Philippine National Red Cross, was not raised by the parties as an issue and should not have been passed upon by this Court. The structure of the PNRC is *sui generis*¸ being neither strictly private nor public in nature. R.A. No. 95 remains valid and constitutional in its entirety. The dispositive portion of the Decision should therefore be *MODIFIED* by deleting the second sentence, to now read as follows:

> WHEREFORE, we declare that the office of the Chairman of the Philippine National Red Cross is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution.

SO ORDERED.

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Velasco, Jr., Nachura, Peralta, Bersamin, del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Abad, J., see concurring opinion.

Carpio, J., see dissenting opinion.

Carpio Morales, Brion, Mendoza, and *Sereno, JJ.*, join the dissent of *J.* Carpio.

Corona, C.J., no part.

CONCURRING OPINION

ABAD, *J.*:

On July 15, 2009 the Court rendered a decision partially voiding Republic Act 95 (R.A. 95), the charter of the Philippine National Red Cross (PNRC) as amended by Presidential Decrees 1264 and 1643 (P.D. 1264 and 1643). The Court ruled that Congress enacted the PNRC Charter in violation of Section 7, Article XIV of the 1935 Constitution, which states:

> **SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.**

The Court based its decision on a finding that the PNRC is a private corporation which Congress could not create by special law. Like any other private corporation, the PNRC can only be formed and organized under a general enabling law like the Corporation Code.

The decision stemmed from a petition that petitioners Dante Liban, *et al.* (Liban, *et al.*) filed with the Court to declare respondent Senator Richard J. Gordon (Sen. Gordon) as having forfeited his Senate seat under Section 13, Article VI of the 1987 Constitution.[1] Sen. Gordon had been elected Chairman

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[1] The provision reads:

SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the government, or any subdivision,

of the Board of Governors of the PNRC, which the Court classified in *Camporedondo v. NLRC*[2] as a government-owned and controlled corporation (GOCC). Consequently, he automatically forfeited his Senate seat for holding an incompatible office in a GOCC.

Parenthetically, in resolving the case, the Court held that Liban, *et al.* had no standing to file the petition, as it is a *quo warranto* case that could only be brought by the Government or an individual who claims entitlement to the public office. Since Liban, *et al.* did not seek the Senator's seat, they were not proper parties to bring the action.

Despite Liban, *et al.*'s lack of standing, however, the Court chose to address the merits of their petition. The main issue was: "whether the office of the PNRC Chairman is a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the Constitution."[3]

According to the Court, the PNRC is a private organization performing public functions. Congress established it in adherence to the Geneva Conventions for the purpose contemplated under the treaties. The PNRC is a member National Society of the International Red Cross and Red Crescent Movement and is guided and bound by its seven Fundamental Principles.[4] To be recognized as a National Society, the Statutes of the International Red Cross and Red Crescent Movement required that the PNRC be autonomous or independent.

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agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

[2] *Camporedondo v. National Labor Relations Commission*, 370 Phil. 901 (1999).

[3] Main Decision in G.R. No. 175352, p. 5.

[4] These principles are: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.

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Due to this requirement, the PNRC must not appear to be an instrument or agency of the government for, "otherwise, it cannot merit the trust of all and cannot effectively carry out its mission."[5] It must, in case of invasion or an internal war, maintain its neutrality and independence to be able to fulfill its humanitarian tasks. It cannot choose to treat only the wounded on one side.

Moreover, the PNRC cannot be government-owned because it does not receive appropriations from Congress or possess government assets. It is funded by voluntary donations from private contributors. The government does not have control over its affairs. While the President of the Philippines appoints six of the PNRC Board of Governors, the overwhelming majority of the thirty-member board is elected by private sector members. The PNRC Chairman is not appointed by or under the control of the President of the Philippines. He is elected by the organization's governing board. These all prove that the position of PNRC Chairman is a private, not a government office.

Additionally, the Court held that the *Camporedondo* ruling relied on by Liban, *et al.* was erroneous. The Court's conclusion in that case—that the PNRC is a GOCC—is based solely on the fact that it was Congress which created PNRC under a special law. The case failed to consider, however, that the 1987 Administrative Code defines a GOCC as "any agency organized as a stock or non-stock corporation, vested with functions relating to public needs x x x, and **owned by the Government** directly or through its instrumentalities x x x."[6] Since the government did not own PNRC, it cannot be a GOCC under such definition.

The Court thus concluded that Sen. Gordon did not forfeit his Senate seat.

As stated earlier, the Court partially voided the PNRC Charter on the ground that Congress has been constitutionally prohibited from creating private corporations by special law. The Court

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[5] *Supra* note 3, at 10.

[6] Section 2(13), Introductory Provisions, 1987 Administrative Code.

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declared as void those provisions of the PNRC Charter that related to its creation and those that granted it corporate powers.[7] What remained of the Charter, said the Court,[8] served "as recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement." The surviving provisions supposedly implemented the Philippine Government's treaty obligations under Article 4(5) of the Statutes of the Movement which required a National Society to be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation."[9]

Justice Antonio Eduardo B. Nachura dissented and was joined by four other members of the Court.[10] First, he argued that Liban, *et al.* had standing to file the petition, which he characterized as one for prohibition and not *quo warranto*. The petition actually sought an injunction against a continuing violation of the Constitution and involved a constitutional issue with great impact on public interest. Thus, the petition deserved the attention of the Court in view of its seriousness, novelty, and weight as precedent.

According to Justice Nachura, since no private corporation can have a special charter under the Constitution, it follows that the PNRC is a GOCC. As held in *Camporedondo* and *Baluyot v. Holganza*,[11] the test for determining whether a corporation is a GOCC is simply whether it was created under its own charter for the exercise of a public function or by incorporation under the general corporation law. The definition of a GOCC under the 1987 Administrative Code, on the other hand, is broad enough to admit of other distinctions as to the kinds of GOCCs.

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[7] These void provisions are Sections 1 to 13 of the PNRC Charter.

[8] These include Sections 4(b) and (c), 14, 15, 16 and 17 of the PNRC Charter.

[9] *Supra* note 3, at 22-23.

[10] All in all, seven (7) members of the Court voted in favor of the main decision penned by Justice Antonio T. Carpio, while five (5) members dissented. One (1) associate justice took no part.

[11] 382 Phil. 131 (2000).

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The more crucial factor to consider, said Justice Nachura, is the definition's reference to the corporation being vested with functions relating to public needs. In this regard, the PNRC Charter states that it is created as a "voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Convention x x x."[12] These obligations are undoubtedly public or governmental in character. Hence, the PNRC is engaged in the performance of the government's public functions.

Justice Nachura added that, at the very least, the PNRC should be regarded as a government instrumentality under the 1987 Administrative Code. An instrumentality "refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."[13] The PNRC's organizational attributes, said Justice Nachura, are consistent with this definition.

The dissent then cites the unsettling ripple effect which the main ruling could create on numerous Court decisions, such as those dealing with the jurisdiction of the Civil Service Commission (CSC) and the authority of the Commission on Audit (COA). It also noted the absurdity of partially invalidating the PNRC Charter as this would have the consequence of imposing obligations and providing an operational framework for a legally non-existing entity.

Justice Nachura finally warns against the PNRC's ultimate demise if it were regarded as a private corporation. Because of possible violations of the equal protection clause and penal statutes, the PNRC may no longer be extended tax exemptions and official immunity or be given any form of support by the National Government, local government units, and the Philippine Charity Sweepstakes Office (PCSO). If the PNRC is consequently

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[12] Section 1, P.D. 1643.

[13] Section 2 (10), Introductory Provisions, 1987 Administrative Code.

obliterated, the Philippines will be shirking its obligations under the Geneva Conventions.

The dissent finally concluded that Sen. Gordon forfeited his Senate seat for holding two incompatible offices.

Although the main ruling favored Sen. Gordon, he filed a motion for clarification and reconsideration of the Court's decision.[14] He said that the Court decided the case beyond what was necessary, considering that the parties never raised the constitutionality of the PNRC Charter as an issue. He invoked the rule that the Court will not pass upon a constitutional issue unless it is the very *lis mota* of the case or if it can be disposed of on some other ground. Since the Court held that Liban, *et al.* had no personality to file the petition, the Court should have simply refrained from delving into the constitutionality of the PNRC Charter. Sen. Gordon thus submits that the Court should regard the declaration of unconstitutionality of the PNRC Charter *obiter dictum*.

Liban, *et al.* also filed a motion for reconsideration of the Court's decision, essentially adopting the thesis of Justice Nachura.[15]

Subsequently, the PNRC, which was not a party to the case, sought to intervene and filed a motion for reconsideration of the Court's decision.[16] It claimed that, although the Court annulled its very existence, it did not give the PNRC the chance to defend itself and prove the validity of its creation. The PNRC pointed out that P.D. 1264 and 1643 completely repealed R.A. 95. Consequently, the PNRC no longer owed its creation to Congress but to President Marcos pursuant to his power of executive legislation. The constitutional bar is on Congress.

As for its organizational nature, the PNRC asserts that it is neither a private nor a government corporation but a *sui generis* entity, a unique being with no equivalent in corporate

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[14] *Rollo*, pp. 256-263.

[15] *Id.* at 264-285.

[16] *Id.* at 388-413.

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organizations. While the PNRC performs certain public services, its neutrality and independence would be compromised if it were to be deemed as a government-owned corporation or instrumentality. Besides, it is in fact neither owned nor controlled by the government.

The PNRC also stressed that, although it has private characteristics, it was not created for profit or gain but in compliance with treaty obligations under the Geneva Conventions. As such, it is an auxiliary of government in the performance of humanitarian functions under international law.

To support its stand that it is a *sui generis* entity, the PNRC submitted a position paper[17] prepared by the International Federation of Red Cross and Red Crescent Societies (the Federation) explaining the specific nature of National Societies like the PNRC.

There is a need to examine the Court's decision in this case considering its far reaching effects. Allowing such decision to stand will create innumerable mischief that would hamper the PNRC's operations. With a void juridical personality, it cannot open a bank account, issue tax-exempt receipts for donations, or enter into contracts for delivery of rescue reliefs like blood, medicine, and food. Its officers would be exposed to suits in their personal capacities. The validity of its past transactions would be open to scrutiny and challenge. Neither the country nor the PNRC needs this.

FIRST. Congress created the PNRC to comply with the country's commitments under the Geneva Conventions. The treaties envisioned the establishment in each country of a voluntary organization that would assist in caring for the wounded and sick of the armed forces during times of armed conflict. Upon proclaiming its adherence to the Geneva Conventions, the Republic of the Philippines forthwith created the PNRC for the purpose contemplated by the treaties. Its creation was not privately motivated, but borne of the Republic's observance of treaty obligations. The "whereas clause" of P.D. 1643 or the revised PNRC Charter lays down this basic premise:

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[17] See temporary *rollo*.

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WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick of Armed Forces and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions;

WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions;

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It is thus evident that the PNRC's creation derived primarily from the Geneva Conventions. When Congress created the PNRC, it did not intend to form either a private or government-owned corporation with the usual powers and attributes that such entities might possess. Rather, it set out to form an organization that would be responsive to the requirements of the Geneva Conventions. Section 1 of the PNRC Charter thus provides:

SECTION 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila.

As a voluntary organization tasked to assist the Republic in fulfilling its commitments under the Geneva Conventions, the PNRC is imbued with characteristics that ordinary private or government organizations do not possess. Its charter's direct reference to the Geneva Conventions gives the PNRC a special status in relation to governments of any form, as well as a

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unique place in international humanitarian law.[18] Since the impetus for the PNRC's creation draws from the country's adherence to the treaties, it is in this context that its organizational nature should be viewed and understood.

SECOND. The PNRC is a National Society of the Red Cross Movement and is recognized by both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies. The PNRC is regarded as a component of the Movement with concomitant rights and obligations under international humanitarian law. Its status as a recognized National Society has imbued it with attributes that ordinary private corporations or government entities do not possess. It is a *sui generis* entity that has no precise legal equivalent under our statutes.

The PNRC is not an ordinary private corporation within the meaning of the Corporation Code. As stated earlier, its creation was not privately motivated but originated from the State's obligation to comply with international law. The State organized the PNRC to assist it in discharging its commitments under the Geneva Conventions as an "auxiliary of the public authorities in the humanitarian field."[19] It was not established by private individuals for profit or gain, but by the State itself pursuant to the objectives of international humanitarian law.

The PNRC is not an ordinary charitable organization, foundation, or non-governmental organization (NGO). As a component of the international Movement, it enjoys protection not afforded to any charitable organization or NGO under the Geneva Conventions. For instance, Articles 24 and 26 of the First Geneva Convention vests National Society personnel with the same status as the armed forces medical services in times of armed conflict, subject to certain conditions. Also, only

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[18] See *The Relevance of the 50th Anniversary of the Geneva Conventions to National Red Cross and Red Crescent Societies: Reviewing the Past to Address the Future*; International Review of the Red Cross 835, pp. 649-668 by Michael A. Meyer (http./www.icrc.org/web/eng/siteen0.nsf/htmlall/57jq3j?opendocument; last visited July 12, 2010).

[19] Article 4 (3), Statutes of the Movement.

recognized National Societies enjoy exclusive use of the protective red cross emblem in conformity with the treaties.[20] National Societies like the PNRC are thus **directly regulated by international humanitarian law**, unlike ordinary charitable organizations or NGOs.

The PNRC also has rights and obligations under international humanitarian law that ordinary charitable organizations and NGOs do not have. Foremost of these rights is the privilege to participate as a full member in the International Conference of the Red Cross and Red Crescent, in which States also participate as members pursuant to the Geneva Conventions.[21] States Parties and all components of the Movement attend the conference to discuss humanitarian matters **on equal footing**.[22] No other organization has this exceptional privilege in relation to a State.

Significantly, **both** States Parties and the Movement's components adopt the Statutes of the Movement during the conference held every four (4) years.[23] The Statutes underscore the special relationship that National Societies have in relation to the State. Article 2 of the Statutes lays down reciprocal rights and obligations between States Parties to the Geneva Conventions and the National Societies, thus:

> **1. The States Parties to the Geneva Conventions cooperate with the components of the Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference.**
>
> **2. Each State shall promote the establishment on its territory of a National Society and encourage its development.**
>
> **3. The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the**

[20] Article 44 (2) of the First Geneva Convention.

[21] *Supra* note 18.

[22] See The Legal Status of National Red Cross and Red Crescent Societies by Christophe Lanord; (http://www.icrc.org/web/eng/siteen0.nsf/html/57JQT9; last visited June 25, 2010).

[23] *Supra* note 18.

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Movement. The same components, in their turn and in accordance with their respective statutes, support as far as possible humanitarian activities of the States.

4. The States shall at all times respect the adherence by all components of the Movement to the Fundamental Principles.

5. The implementation of the present Statutes by the components of the Movement shall not affect the sovereignty of States, with due respect for the provisions of international humanitarian law.

As can be seen, therefore, the PNRC is unlike ordinary charitable organizations or NGOs in many respects due to the distinct features it directly derives from international law. Although it is a local creation, it was so organized as a national Red Cross Society with direct reference to the Geneva Conventions. The PNRC was explicitly "designated as the organization which is authorized to act in matters of relief under said Convention."[24] Consequently, its organizational status cannot be assessed independently of the treaties that prompted its establishment.

The PNRC cannot also be regarded as a government corporation or instrumentality. To begin with, it is not owned or controlled by the government or part of the government machinery. The conditions for its recognition as a National Society also militate against its classification as a government entity. Article 4 (4) of the Statutes requires a National Society to "(h)ave an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement."

Thus, a National Society must maintain its impartiality, neutrality, and independence. In its mission "to prevent and alleviate human suffering wherever it may be found," it must make "no discrimination as to nationality, race, religious beliefs, class or political opinions." It must enjoy the confidence of all and not take sides in hostilities or controversies of a political, racial, religious or ideological nature.[25] It cannot be seen,

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[24] Section 2, P.D. 1643.

[25] Preamble, Statutes of the Movement.

therefore, as an instrument of the State or under governmental control.

The Statutes require, however, that a National Society like the PNRC "(b)e **duly recognized by the legal government** of its country on the basis of the Geneva Conventions and **of the national legislation** as a voluntary aid society**, auxiliary to the public authorities in the humanitarian field**."[26] This signifies a partnership with government in implementing State obligations based on international humanitarian law.[27]

The status of being an "auxiliary" of government in the humanitarian field is a precondition to a National Society's existence and recognition as a component of the Movement. In its position paper, the Federation explained that the status of auxiliary "means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State." In other words, the status confers upon the PNRC the duty to be the government's humanitarian partner while, at the same time, remaining independent and free from government intervention. As a recognized National Society, the PNRC must be autonomous, even as it assists government in the discharge of its humanitarian obligations.

Notably, the PNRC Charter is also reflective of the organization's dual nature. It does not only vest the PNRC with corporate powers, but imposes upon it duties related to the performance of government functions. Under Section 1 of the charter, the PNRC is "officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions." As such, it is obligated "to

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[26] *Supra* note 19.

[27] See *National Red Cross and Red Crescent Societies as Auxiliaries to the Public Authorities in the Humanitarian Field: Conclusions from the Study Undertaken by the International Federation of Red Cross and Red Crescent Societies; Prepared by the International Federation of Red Cross and Red Crescent Societies in consultation with the International Committee of the Red Cross* (http./www.icrc.org/web/eng/siteen0.nsf/htmlall/5xrfbm?opendocument; last visited July 12, 2010).

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provide volunteer aid to the sick and wounded of the armed forces in time of war" and "to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention."

Moreover, the charter clearly established the PNRC as a National Red Cross Society pursuant to the treaties and Statutes of the Movement. It was authorized "to act in such matters between similar national societies of other governments and the governments and people and the Armed Forces of the Republic of the Philippines." The PNRC was to establish and maintain a system of national and international relief and to apply the same in meeting natural disasters, all in the spirit of the Geneva Conventions.

In the pursuit of its humanitarian tasks, the PNRC was thus granted the power of perpetual succession, the capacity to sue and be sued, and the power to hold real and personal property. It was authorized to adopt a seal, but was given exclusive use of the Red Cross emblem and badge in accordance with the treaties. It may likewise adopt by-laws and regulations and do all acts necessary to carry its purposes into effect.

The PNRC is financed primarily by contributions obtained through solicitation campaigns and private donations. And yet, it is required to submit to the President of the Philippines an annual report of its activities including its financial condition, receipts and disbursements. It is allotted one annual national lottery draw and is exempt from taxes, duties, and fees on importations and purchases, as well as on donations for its disaster relief work and other services.

Consequently, the PNRC cannot be classified as either a purely private or government entity. It is a hybrid organization that derives certain peculiarities from international humanitarian law. For this reason, its organizational character does not fit the parameters provided by either the Corporation Code or Administrative Code. It is a *sui generis* entity that draws its nature from the Geneva Conventions, the Statutes of the Movement and the law creating it.

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THIRD. The Constitution does not preclude the creation of corporations that may neither be classified as private nor governmental. Sec. 7, Article XIV of the 1935 Constitution, which was carried over in subsequent versions of the fundamental law, does not prohibit Congress from creating other types of organizations that may not fall strictly within the terms of what is deemed a private or government corporation. The Constitution simply provides that Congress cannot create **private corporations**, except by general law, unless such corporations are owned or controlled by the government. It does not forbid Congress from creating organizations that do not belong to these two general types.

In *Feliciano v. Commission on Audit*,[28] the Court explained that the purpose of the ban against the creation of private corporations by special charter is to prevent the grant to certain individuals, families, or groups of special privileges that are denied to other citizens. The creation of the PNRC does not traverse the purpose of the prohibition, as Congress established the PNRC to comply with State obligations under international law. The PNRC Charter is simply a manifestation of the State's adherence to the Geneva Conventions. By enacting the PNRC Charter, Congress merely implemented the will of the State to join other nations of the world in the humanitarian cause.

The special status of the PNRC under international humanitarian law justifies the special manner of its creation. The State itself committed the PNRC's formation to the community of nations, and no less than an act of Congress should be deemed sufficient compliance with such an obligation. To require the PNRC to incorporate under the general law is to disregard its unique standing under international conventions. It also ignores the very basic premise for the PNRC's creation.

FOURTH. The main issue in this case is whether or not the office of PNRC Chairman is a government office or an office in a GOCC for purposes of the prohibition in Section 13, Article VI of the Constitution. The resolution of this question

[28] 464 Phil. 439, 454 (2004).

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lies in the determination of whether or not the PNRC is in fact a GOCC. As explained earlier, the PNRC is not a GOCC, but a *sui generis* entity that has no legal equivalent under any of our statutes. Consequently, Senator Gordon did not forfeit his Senate seat under the constitutional prohibition.

In view of the PNRC's *sui generis* character, the Court need not even dwell on the issue of whether or not the PNRC Charter was validly enacted. Congress is proscribed only from creating private corporations which, as demonstrated, the PNRC is not. The issue of constitutionality was not raised by any of the original parties and could have been avoided in the first place. Neither was the PNRC a party to the case, despite being the entity whose creation was declared void under the main decision.

Finally, the *sui generis* character of the PNRC does not necessarily overturn the rulings of the Court in *Camporedondo* and *Baluyot*. The PNRC's exceptional nature admits of the conclusions reached in those cases that the PNRC is a GOCC for the purpose of enforcement of labor laws and penal statutes. The PNRC's *sui generis* character compels us to approach controversies involving the PNRC on a case-to-case basis, bearing in mind its distinct nature, purposes and special functions. Rules that govern traditional private or public entities may thus be adjusted in relation to the PNRC and in accordance with the circumstances of each case.

ACCORDINGLY, I concur in the decision written for the majority by Justice Teresita J. Leonardo-de Castro.

DISSENTING OPINION

CARPIO, *J.*:

I vote to deny the motions for reconsideration filed by Respondent Richard J. Gordon (respondent Gordon) and movant-intervenor Philippine National Red Cross (PNRC).

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Respondent Gordon and the PNRC seek partial reconsideration of the Court's Decision dated 15 July 2009, declaring that Republic Act No. 95 (RA 95), insofar as it creates the PNRC as a private corporation and grants it corporate powers, is void for being unconstitutional. The Decision also declared that the Office of the Chairman of the PNRC is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution, which reads:

> SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

Respondent Gordon and the PNRC are seeking reconsideration of the portion of the Decision relating to the unconstitutionality of certain provisions of RA 95.

This case originated from a petition filed by petitioners, seeking to declare respondent Gordon as having forfeited his seat in the Senate when he accepted the chairmanship of the PNRC Board of Governors.

In the assailed Decision, this Court held that the PNRC is a private organization performing public functions. The Philippine government does not own or control the PNRC and neither the President nor the head of any department, agency, commission or board appoints the PNRC Chairman. Thus, the prohibition in Section 13, Article VI of the 1987 Constitution is not applicable to the office of the PNRC Chairman, which is not a government office or an office in a government-owned or controlled corporation.

Since the PNRC is a private corporation, the creation of the PNRC through a special charter is violative of the constitutional proscription against the creation of private corporations by special

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law. The creation of the PNRC by special charter on 22 March 1947 through RA 95 contravenes Section 7, Article XIV of the 1935 Constitution, as amended, which reads:

> SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

This provision prohibiting Congress from creating private corporations, except by general law, is reiterated in the 1973[1] and 1987[2] Constitutions.

In its Motion for Partial Reconsideration, the PNRC maintains that the decision declaring unconstitutional certain provisions of RA 95 deprived the PNRC of its right to due process considering that the PNRC was not a party to the case. Furthermore, the PNRC states that the constitutionality of RA 95 was never an issue in the case. Similarly, respondent Gordon posits in his Motion for Clarification and Reconsideration that the Court should not have passed upon the constitutionality of RA 95 since such issue was not raised by the parties.

Generally, the Court will not pass upon a constitutional question unless such question is raised by the parties.[3] However, as explained by the Court in *Fabian v. Hon. Desierto*,[4] the rule

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[1] Section 4, Article XIV of the 1973 Constitution reads:

> SEC. 4. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

[2] Section 16, Article XII of the 1987 Constitution reads:

> SEC. 16. The Congress, shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

[3] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, 21 June 2007, 525 SCRA 198.

[4] 356 Phil. 787 (1998).

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that a challenge on constitutional grounds must be raised by a party to the case is not an inflexible rule. In the *Fabian* case, the issue of the constitutionality of Section 27 of Republic Act No. 6770[5] (RA 6770) was not presented as an issue by the parties. Nevertheless, the Court ruled that Section 27 of RA 6770, which provides for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, infringes on the constitutional proscription against laws increasing the appellate jurisdiction of the Supreme Court without its advice and consent.

In this case, the constitutional issue was inevitably thrust upon the Court upon its finding that the PNRC is a private corporation, whose creation by a special charter is proscribed by the Constitution. In view of the Court's finding that the PNRC is a private corporation, it was imperative for the Court to address the issue of the creation of the PNRC through a special charter. The Constitution prohibits the creation of a private corporation through a special law. The Court could not declare the PNRC a private corporation created by the special law RA 95 without running afoul of Section 16, Article XII of the 1987 Constitution. To declare the PNRC a private corporation necessarily meant declaring RA 95 unconstitutional. To declare the PNRC, a creation of RA 95, a private corporation without declaring RA 95 unconstitutional would mean that Congress can create a private corporation through a special law. This the Court could not do.

The fact that the constitutionality of RA 95 has not been questioned for more than sixty (60) years does not mean that it could no longer be declared unconstitutional. One is not estopped from assailing the validity of a law just because such law has been relied upon in the past and all that time has not been attacked as unconstitutional.[6] Indeed, there is no prescription to declare a law unconstitutional. Thus, in the case of *Moldex*

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[5] Ombudsman Act of 1989.

[6] *British American Tobacco v. Camacho*, G.R. No. 163583, 20 August 2008, 562 SCRA 511.

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Realty, Inc. v. Housing and Land Use Regulatory Board,[7] this Court held that constitutional challenge can be made anytime:

> **That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later**. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same. (Emphasis supplied)

More importantly, the Court granted the PNRC's motion to intervene and the PNRC then filed its Motion for Partial Reconsideration, in which the PNRC argued that its charter is valid and constitutional. Thus, the PNRC, the entity that is directly affected by the issue of the constitutionality of RA 95, is in law and in fact a party to this case, raising specifically the issue that its charter is valid and constitutional. Moreover, although the original parties did not raise as an issue the constitutionality of RA 95, they were still afforded the opportunity to be heard on this constitutional issue when they filed their respective motions for reconsideration.

In its Motion for Partial Reconsideration, the PNRC claims that the constitutional proscription against the creation of private corporations by special law is not applicable in this case since the PNRC was not created by Congress but by then President Ferdinand Marcos, who issued Presidential Decree No. 1264[8] (PD 1264) which repealed RA 95. The PNRC insists that PD 1264 repealed and superseded RA 95. The PNRC maintains that since PD 1264 was issued by President Marcos in the exercise of his legislative power during the martial law period pursuant to Proclamation 1081, then the constitutional prohibition does not apply. Respondent Gordon agrees with the position taken by the PNRC.

I disagree. Even if the PNRC derived its existence from PD 1264, still the constitutional prohibition will apply. President

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[7] G.R. No. 149719, 21 June 2007, 525 SCRA 198, 204.

[8] AMENDING REPUBLIC ACT NO. 95 (As amended by Republic Acts No. 855 and 6373). AN ACT TO INCORPORATE THE PHILIPPINE NATIONAL RED CROSS.

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Marcos issued PD 1264 on 5 December 1977 during martial law period when the President assumed extensive legislative power. Such assumption of legislative power did not place President Marcos above the Constitution. President Marcos could not issue decrees or orders contrary to the provisions of the Constitution. The exercise of legislative power by President Marcos under martial law must still be in accordance with the Constitution because legislative power cannot be exercised in violation of the Constitution from which legislative power draws its existence. The limits on legislative power is explained by the Court in *Government v. Springer*,[9] thus:

> Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. **In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four wall of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.** (Emphasis supplied)

The 1973 Constitution, as amended, was in force when President Marcos issued PD 1264. Under Section 1, Article VIII of the 1973 Constitution, legislative power is vested in the National Assembly. By virtue of Amendment No. 6[10] of the 1973 Constitution, the President was granted legislative power. Thus, under Amendment No. 6, President Marcos was granted concurrent legislative authority with the interim Batasang

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[9] 50 Phil. 259, 309 (1927).

[10] Amendment No. 6 reads:

> Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instruction, which shall form part of the law of the land.

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Pambansa.[11] Considering that the legislative power of the interim Batasang Pambansa and the regular National Assembly is subject to the limitations imposed by the Constitution, then more so for the emergency legislative power granted to the President during the period of martial law. In fact, the Court has declared void several Presidential Decrees or provisions thereof for being unconstitutional.

In *Demetria v. Alba*,[12] the Court declared void Paragraph 1 of Section 44 of PD 1177 for being unconstitutional since it empowers the President to indiscriminately transfer funds and unduly extends the privilege granted under Section 16(5), Article VIII of the 1973 Constitution. In *Export Processing Zone Authority v. Judge Dulay*,[13] the Court held that PD 1533 is unconstitutional because it deprives the courts of their function of determining just compensation in eminent domain cases and eliminates the courts' discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court. In subsequent cases, similar provisions on just compensation found in expropriation laws such as PD 42, 76, 464, 794, 1224, 1259, 1313, and 1517 were also declared void and unconstitutional for the same reason and for being violative of due process.[14] In *Tuason v. Register of Deeds, Caloocan City*,[15] PD 293 was declared void and unconstitutional since it allows the President to exercise judicial function and to take property without due process and without compensation. In *Manotok v. National Housing Authority*,[16] the Court held that PD 1669 and 1670, which

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[11] *Legaspi v. Minister of Finance*, No. 58289, 24 July 1982, 115 SCRA 418.

[12] 232 Phil. 222 (1987).

[13] 233 Phil. 313 (1987).

[14] *Municipality of Talisay v. Ramirez*, G.R. No. 77071, 22 March 1990, 183 SCRA 528; *Belen v. Court of Appeals*, 243 Phil. 443 (1988); *Leyva v. Intermediate Appellate Court*, 239 Phil. 47 (1987); *Sumulong v. Hon. Guerrero*, 238 Phil. 462 (1987); *Ignacio v. Judge Guerrero*, 234 Phil. 364 (1987).

[15] 241 Phil. 650 (1988).

[16] Nos. 55166 and 55167, 21 May 1987, 150 SCRA 89.

expropriated certain properties, were void and unconstitutional for violating due process of law.

In this case, PD 1264 contravenes Section 4, Article XIV of the 1973 Constitution which provides that "[t]he National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the government or any subdivision or instrumentality thereof." This same prohibition is found in Section 16, Article XII of the present Constitution. Thus, just like RA 95, PD 1264 is also void insofar as it creates the PNRC as a private corporation.

The PNRC further submits that "due to its peculiar nature, it should be considered as a **private**, neutral and separate entity independent of government control and supervision, but acting as an auxiliary to government when performing humanitarian functions, and specially created pursuant to the treaty obligations of the Philippines to the Geneva Conventions."[17] Thus, the PNRC maintains that its structure is *sui generis* and that it is not strictly private in character since it performs certain governmental functions. The PNRC posits that its argument is reinforced by the Position Paper[18] dated 7 December 2009 of the International Federation of Red Cross and Red Crescent Societies ("International Federation"), which reads in part:

A National Society partakes of a *sui generis* character. It is a protected component of the Red Cross Movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Property cannot require

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[17] PNRC's Motion for Partial Reconsideration, p. 17; *rollo*, p. 413. (Boldfacing supplied)

[18] Annex "A". The Position Paper was written by Razia Essack-Kauaria, Director of Governance Support and Global Monitoring, International Federation of Red Cross and Red Crescent Societies.

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any change in the personnel or structure of a National Society. National Societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs.

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Once recognized by its Government as an independent National Society auxiliary to the public authorities in humanitarian field, a National Society, if it fulfills the ten (10) conditions for recognition, can be recognized by the International Committee of the Red Cross and be admitted as member of the International Federation of the Red Cross and Red Crescent Societies. No other organization belongs to a world-wide Movement in which all Societies have equal status and share equal responsibilities and duties in helping each other. This is considered to be the essence of the Fundamental Principle of Universality.

Furthermore, the National Societies are considered to be auxiliaries to the public authorities in the humanitarian field. The concept of National Societies auxiliary to the public authorities was reaffirmed in Resolution 3 of the 30th International Conference of the Red Cross and Red Crescent, on 26-30 November 2007. This status, as you may see, is not only a positive and distinct feature of any organization, but it is a precondition of its existence and functioning as a member of the International Red Cross and Red Crescent Movement.

The auxiliary status of Red Cross Society means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State. In carrying out their major functions, Red Cross Societies give their humanitarian support to official bodies, in general having larger resources than the Societies, working towards comparable ends in a given sector.

This is also the essence of the Fundamental Principle of Independence. No other humanitarian organization gives such interpretation to its independence, although many claim that they are independent. **No other organization has a duty to be its government's humanitarian partner while remaining independent**.

The Movement places much importance on the Principle of Independence and the duty of the States Parties to the Geneva Conventions to respect the adherence by all the components of

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the Movement to the Fundamental Principles. **Before it can be recognized by the International Committee, a National Society must have autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.**

Thus, in protecting the independence of the National Society in carrying out its humanitarian mission in a neutral and impartial manner, it is crucial that it must be free from any form of intervention from the government at the level of the internal organization of the National Society mainly its governance and management structure. (Boldfacing supplied. Underscoring in the original.)

All private charitable organizations are doing public service or activities that also constitute governmental functions.[19] Hence, the PNRC cannot claim that it is *sui generis* just because it is a private organization performing certain public or governmental functions. That the PNRC is rendering public service does not exempt it from the constitutional prohibition against the creation of a private corporation through a special law since the PNRC is, admittedly, still a private organization. The express prohibition against the creation of private corporations by special charter under Section 16, Article XII of the 1987 Constitution cannot be disregarded just because a private corporation claims to be *sui generis*. The constitutional prohibition admits of no exception.

Even the International Federation specifies the nature of the National Red Cross Society as a "**private institution and**

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[19] The following are some of the private charitable organizations in the Philippines: (1) CHILDHOPE Asia Philippines, Inc. — is registered in 1995 under the Securities and Exchange Commission and whose principal purpose is to advocate for the cause of street children [CHILDHOPE Asia Website, http://www.childhope.org.ph/about-us.html (visited 2 September 2010)]; (2) PATH Foundation Philippines, Inc. (PFPI) — is a private, charitable organization whose mission is to improve health and contribute to environmentally sustainable development, particularly in under-served areas of the Philippines. [PFPI Website, http://www.pfpi.org/about.html (visited 2 September 2010)]; (3) The Philippine Community Fund — is a registered charitable organization, whose mission is to permanently improve the quality of life for the poorest Filipino communities, through education, nutrition, health, medical and family enhancement programs, regardless of religion, race or political boundaries [The Philippine Community Fund Website, http://p-c-f.org/about_us/index.php (visited 2 September 2010)].

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a public service organization." Furthermore, **it emphasizes the importance of maintaining and protecting the independence of the National Society, free from any form of intervention from the government particularly concerning its governance and management structure.** Full independence means that the National Societies are prohibited from being owned or controlled by their host government or from becoming government instrumentalities as this would undermine their independence, neutrality, and autonomy.

Indeed, the PNRC, as a member National Society of the International Red Cross and Red Crescent Movement (Movement) must meet the stringent requirement of independence, autonomy, and neutrality in order to be recognized as a National Society by the International Committee of the Red Cross (ICRC). The conditions for recognition of National Societies are enumerated in Article 4 of the Statutes of the Movement, thus:

Article 4

Conditions for Recognition of National Societies

In order to be recognized in terms of Article 5, paragraph 2 b)[20] **as a National Society, the Society shall meet the following conditions:**

1. Be constituted on the territory of an independent State where the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field is in force.

2. Be the only National Red Cross or Red Crescent Society of the said State and be directed by a central body which shall alone be competent to represent it in its dealings with other components of the Movement.

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[20] Article 5, paragraph 2 b) states:

2. The role of the International Committee, in accordance with its Statutes, is in particular:

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b) to recognize any newly established or reconstituted National Society, which fulfils the conditions for recognition set out in Article 4, and to notify other National Societies of such recognition.

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3. Be duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field.

4. Have an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.

5. Use a name and distinctive emblem in conformity with the Geneva Conventions and their Additional Protocols.

6. Be so organized as to be able to fulfil the tasks defined in its own statutes, including the preparation in peace time for its statutory tasks in case of armed conflict.

7. Extend its activities to the entire territory of the State.

8. Recruit its voluntary members and its staff without consideration of race, sex, class, religion or political opinions.

9. Adhere to the present Statutes, share in the fellowship which unites the components of the Movement and cooperate with them.

10. Respect the Fundamental Principles of the Movement and be guided in its work by the principles of international humanitarian law.[21]

The conditions for recognition of National Societies do not require that the State itself create the National Society through a special charter. The absence of such requirement is proper and necessary considering the Movement's emphasis on the importance of maintaining the independence of the National Society, free from any form of intervention from the government. However, it is required that the National Society be officially recognized by the government of its country as auxiliary to the public authorities in the humanitarian field.

A decree granting official recognition to the National Society is essential in order to distinguish it from other charitable organizations in the country and to be entitled to the protection of the Geneva Conventions in the event of armed conflict.[22]

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[21] Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, ICRC Publication, p. 9.

[22] The Fundamental Principles of the Red Cross and Red Crescent, ICRC Publication, p. 18.

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The content of the decree of recognition may vary from one country to another but it should explicitly specify:

1. That the National Society is the country's only Red Cross or Red Crescent organization;
2. That it is autonomous in relation to the State;
3. That it performs its activities in conformity with the Fundamental Principles; and
4. The conditions governing the use of the emblem.[23]

Thus, there is no specific requirement for the creation of the National Society through a special charter. The State does not have the obligation to create the National Society, in our case, the PNRC. What is important is that the National Society is officially recognized by the government as auxiliary to the public authorities in the humanitarian services of the government. This the Philippine government can accomplish even without creating the PNRC through a special charter.

Besides, as auxiliaries in the humanitarian services of their host governments, **the National Societies are subject to the laws of their respective countries**.[24] Thus, the National Societies are bound by the laws of their host countries and must submit to the Constitution of their respective host countries.

The Philippine Constitution prohibits Congress from creating private corporations except by general law. I agree with the PNRC that it is a private organization performing public functions. Precisely because it is a private organization, the PNRC charter – whether it be RA 95 or PD 1264 – is violative of the constitutional proscription against the creation of private corporations by special law. Nevertheless, keeping in mind the treaty obligations of the Philippines under the Geneva Conventions, the assailed Decision only held void those provisions of the PNRC charter which create PNRC as a private corporation or grant it corporate powers. The other provisions respecting the government's treaty obligations remain valid, thus:

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[23] The Fundamental Principles of the Red Cross and Red Crescent, ICRC Publication, pp. 18-19.

[24] Discover the ICRC, ICRC Publication, p. 10.

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The other provisions[25] **of the PNRC Charter remain valid as they can be considered as a recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement, and thus entitled to the benefits, exemptions and privileges set forth in the PNRC Charter.** The other provisions of the PNRC Charter implement the Philippine Government's treaty obligations under Article 4(5) of

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[25] The valid provisions are Sections 4(b) and (c), 14, 15, 16, and 17:

SEC. 4. In furtherance of the purposes mentioned in the preceding sub-paragraphs, the Philippine National Red Cross shall:

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b. Be exempt from payment of all duties, taxes, fees, and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other Red Cross services, and in its benefits and fund raising drives all provisions of law to the contrary notwithstanding.

c. Be allotted by the Philippine Charity Sweepstakes Office one lottery draw yearly for the support of its disaster relief operations in addition to its existing lottery draws for the Blood Program.

SEC. 14. It shall be unlawful for any person to solicit, collect or receive money, materials, or property of any kind by falsely representing or pretending himself to be a member, agent or representative of the Philippine National Red Cross.

SEC. 15. The use of the name Red Cross is reserved exclusively to the Philippine National Red Cross and the use of the emblem of the red Greek cross on a white ground is reserved exclusively to the Philippine National Red Cross, medical services of the Armed Forces of the Philippines and such other medical facilities or other institutions as may be authorized by the Philippine National Red Cross as provided under Article 44 of the Geneva Conventions. It shall be unlawful for any other person or entity to use the words Red Cross or Geneva Cross or to use the emblem of the red Greek cross on a white ground or any designation, sign, or insignia constituting an imitation thereof for any purpose whatsoever.

SEC. 16. As used in this Decree, the term person shall include any legal person, group, or legal entity whatsoever nature, and any person violating any section of this Article shall, upon conviction therefore be liable to a fin[e] of not less than one thousand pesos or imprisonment for a term not exceeding one year, or both, at the discretion of the court, for each and every offense. In case the violation is committed by a corporation or association, the penalty shall devolve upon the president, director or any other officer responsible for such violation.

SEC. 17. All acts or parts of acts which are inconsistent with the provisions of this Decree are hereby repealed.

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the Statutes of the International Red Cross and Red Crescent Movement, which provides that to be recognized as a National Society, the Society must be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field."[26] (Emphasis supplied)

This Court's paramount duty is to faithfully apply the provisions of the Constitution to the present case. The Constitutional prohibition under Section 16, Article XII of the 1987 Constitution is clear, categorical, and absolute:

> SEC. 16. The Congress, **shall not, except by general law**, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. (Emphasis supplied)

Since the constitutional prohibition admits of no exception, this Court has no recourse but to apply the prohibition to the present case. This Court has no power to make PNRC an exception to Section 16, Article XII of the 1987 Constitution.

The PNRC could either choose to remain unincorporated or it could adopt its own articles of incorporation and by-laws and incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.

Accordingly, I vote to **DENY** the Motions for Reconsideration.

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[26] Decision dated 15 July 2009, pp. 22-23.