

# CRS Report for Congress

## The Charter of the American National Red Cross: Current Issues and Proposed Changes

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## Summary

On February 16, 2007, S. 655, a bill to revise the charter of the American National Red Cross (ANRC), was introduced in the Senate and referred to the Senate Committee on the Judiciary. S. 655 is very similar to H.R. 6343, a bill that was introduced in the 109<sup>th</sup> Congress on December 5, 2006. S. 655 incorporates, as did H.R. 6343, many of the recommendations provided in the governance audit report that was commissioned by the ANRC and published in October 2006.

S. 655 would amend the charter to (1) permit the ANRC to conduct business as the “American Red Cross”; (2) reduce the board of governors from 50 members to between 12 and 25 members by March 31, 2009, and to between 12 and 20 members by March 31, 2012; (3) reduce presidential appointees to the board of governors from eight to one, with the President appointing the chairman of the board; (4) abolish local chapter selection of 30 board members and board selection of 12 members; (5) require each board member, except the presidential appointee, to be elected by delegates at the ANRC’s annual convention; (6) establish a presidentially appointed ANRC advisory board of eight to 10 members, who would be officers of executive departments that work with the ANRC; (7) eliminate the requirement that the number of trustees overseeing the ANRC’s endowment be fixed at nine; (8) authorize the Comptroller General “to review the corporation’s involvement in any Federal program or activity that the Government carries out by law”; and (9) require the ANRC to establish an office of the ombudsman, which would report annually to Congress.

Observers both within and outside the ANRC have criticized its governance structure. They have argued that its board of governors is too large, has too many members who lack the skills and experience to serve adequately, and frequently interferes in the operations of the corporation. Congressional interest in the activities of the ANRC was heightened by the major role it played in providing relief to persons affected by Hurricanes Katrina and Rita. While there were many positive accounts regarding the ANRC’s relief work, there also were reports of shortcomings in its performance.

This report provides a brief history of the charter of the ANRC; describes the recent congressional interest in the ANRC’s governance, operations, and charter; reviews the ANRC’s governance audit report and proposal to amend its charter; and describes congressional proposals to amend the charter. The report concludes with a series of questions and observations concerning the ANRC’s current charter and the revisions proposed in recent legislation.

This report will be updated as events warrant.

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# The Charter of the American National Red Cross: Current Issues and Proposed Changes

## The Charter of the ANRC: A Brief History

A charter is a document issued by the sovereign power — usually the government — in a nation-state that legally establishes a corporation and its most basic characteristics, such as its legal purpose, basic governance structure, and means of public accountability. As such, the charter may be the most fundamental organizational building block for a corporation. Congress has used charters to create a variety of corporate entities, such as banks, government-sponsored enterprises, commercial corporations, venture capital funds, and more.<sup>1</sup>

The American National Red Cross (ANRC) is a somewhat unusual case.<sup>2</sup> Although its charter may be found in Title 36 of the *U.S. Code*, the organization bears little resemblance to the other congressionally chartered charitable entities found there.<sup>3</sup> The *U.S. Code* (36 U.S.C. Subtitle III) classifies the ANRC, and the ANRC alone, as a “treaty obligation organization.”

The ANRC was first chartered by Congress on June 6, 1900 (31 Stat. 277-280), for the purposes of fulfilling some of the duties of the United States under the Geneva Convention of August 22, 1864.<sup>4</sup> This treaty, signed by 30 nations at the

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<sup>1</sup> CRS Report RS22230, *Congressional or Federal Charters: Overview and Current Issues*, by Kevin R. Kosar.

<sup>2</sup> For a history of the ANRC’s charter, see CRS Report RL33314, *The Congressional Charter of the American National Red Cross: Overview, History, and Analysis*, by Kevin R. Kosar.

<sup>3</sup> Title 36 holds the charters of approximately 100 patriotic, charitable, and historical corporations and commemorative commissions. CRS Report RL30340, *Congressionally Chartered Nonprofit Organizations (“Title 36 Corporations”): What They Are and How Congress Treats Them*, by Kevin R. Kosar.

<sup>4</sup> While 26 of the 30 nations present at the August 1864 gathering in Geneva, Switzerland, signed the treaty on August 22, the United States and three others did not. President Chester A. Arthur signed the treaty on March 1, 1882, and the Senate acceded to it on March 16, 1882 (22 Stat. 940-951). Prior to its federal chartering, the ANRC had been incorporated under the laws of the District of Columbia in 1881. On the early history of the Red Cross, see Sarah Elizabeth Pickett, *The American National Red Cross: Its Origins, Purposes, and Service* (New York: The Century Co., 1923), pp. 12-14; David H. Burton, *Clara Barton: In Service of Humanity* (Westport, CT: Greenwood Press, 1995), pp. 81-99; and American  
(continued...)

time, declared that ambulances and military hospitals and persons attached thereto were to be considered neutral and “protected and respected by belligerents so long as any sick or wounded may be therein” (Article I). Congress also charged the ANRC with serving as the official U.S. disaster relief organization. The ANRC was to

continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities (31 Stat. 279).

Since 1900, Congress has re-chartered the ANRC once and greatly amended its charter at a later time. In 1905, Congress repealed the charter of 1900 and enacted a new charter in response to complaints regarding ANRC’s handling of funds, governance structure, and other problems (33 Stat. 599-602).<sup>5</sup> Under the 1905 charter, the activities of the ANRC were directed by the “central committee.” It had 18 members, six of whom were appointed by the President. One of these six appointees served as the chairman of the committee, and the other five were representatives of the Departments of State, War, Navy, the Treasury, and Justice.

At the ANRC’s urging,<sup>6</sup> Congress enacted major amendments to its charter in 1947 (P.L. 80-47; 61 Stat. 80-83). These changes were, perhaps, as dramatic as those made in 1905. In particular, Congress made significant alterations to the managerial structure in response to complaints that the ANRC’s board was insufficiently “democratic.”<sup>7</sup> The law replaced the 18-member central committee with a 50-person “board of governors.” The President appoints eight members of the board, one of whom serves as the chairman;<sup>8</sup> the chapters elect 30 members at the annual ANRC convention, and these 38 then elect 12 “members-at-large” who are to represent “the national interests which the corporation serves.” The effects of this change were significant. The new governance board’s membership differed greatly from that of the central committee. Federal representation fell from 33% to 16% of members, while local ANRC chapter representation rose from 33% to 60%. As a result, the

<sup>4</sup> (...continued)

National Red Cross, *The American National Red Cross: Its Origins and History, As Shown by Official Documents* (Washington: ANRC, 1898).

<sup>5</sup> The organization had been run, in great part, by its founder, Clara Barton, who barnstormed to raise money for the organization, traveled to disaster areas, and dispensed funds. At the close of the 19<sup>th</sup> century, her leadership was criticized and challenged by another person, with the result being the eruption of a schism and an internecine battle for control over the organization. Foster Rhea Dulles, *The American Red Cross: A History* (New York: Harper and Brothers; reprint, Westport, CT: Greenwood Press, Publishers 1971), pp. 19-80.

<sup>6</sup> ANRC, Advisory Committee on Organization, *The American National Red Cross Report of the Advisory Committee on Organization* (Washington: ANRC, June 11, 1946).

<sup>7</sup> By “democratic,” the ANRC meant that the board should have a larger membership and that its composition should have a higher percentage of members who were drawn from the local chapters of the organization. A more representative board was what the ANRC desired. See Dulles, *The American Red Cross*, pp. 531-538

<sup>8</sup> The ANRC’s charter designates the presidential appointee as both the chairman and the “principal officer of the corporation” (36 U.S.C. 300104(a)(1)(A)).

governance board of the ANRC is more democratic than it was previously, but it may reflect less the positions, perspectives, and interests of the federal government.

Since 1947, Congress has made modest alterations to the ANRC's charter.<sup>9</sup> Thus, the ANRC charter of today is largely the same as it was after the 1947 amendments.

The current ANRC charter establishes the basic purposes of the organization, one of which is serving as a disaster relief organization for the United States (36 U.S.C. 300102). The U.S. government and the ANRC also have signed separate agreements that specify the organization's particular responsibilities in response to disasters.<sup>10</sup> The ANRC is a signee to the Department of Homeland Security's (DHS's) National Response Plan (NRP). The NRP provides the framework for a federal governmental response to "national incidents" and assigns to signatories their responsibilities under the NRP's several "emergency support functions" (ESFs). The other participants in the NRP include federal agencies — such as the Department of Defense and the National Transportation Safety Board — as well as a private umbrella group, the National Voluntary Organizations Active in Disaster (NVOAD).<sup>11</sup> Currently, the ANRC has responsibility under ESF-6 to serve as one of the two primary agencies that coordinate the provision of mass care, housing, and human services after disasters.<sup>12</sup> The ANRC is the only non-governmental entity designated in the NRP as a primary support agency.<sup>13</sup>

The ANRC also serves as a "support agency" for other ESFs, including the following: ESF #3 ("public works and engineering"), ESF #5 ("emergency management"), ESF #8 ("public health and medical services"), ESF #13 (agriculture and natural resources"), ESF #14 ("long-term community recovery and mitigation"), and ESF #15 ("external affairs").<sup>14</sup> In addition, a "memorandum of understanding" between the ANRC and the Federal Emergency Management Agency (FEMA)

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<sup>9</sup> See ANRC, "The Federal Charter of the American Red Cross," pp. 5-7, at [<http://www.redcross.org/museum/history/charter.asp>]. The most recent codification (Jan. 19, 2004) of the ANRC charter is at [<http://uscode.house.gov/download/pls/36C3001.txt>].

<sup>10</sup> The ANRC also has disaster relief agreements with other federal agencies, such as the Department of Defense, the Department of Veterans Affairs, and the Centers for Disease Control and Prevention.

<sup>11</sup> NVOAD coordinates efforts by various private organizations in response to disasters.

<sup>12</sup> The Federal Emergency Management Agency (FEMA) of DHS shares this responsibility with the ANRC. See U.S. Department of Homeland Security, *National Response Plan* (Washington: GPO, Dec. 2004), ESF #6-5, at [[http://www.dhs.gov/xlibrary/assets/NRP\\_FullText.pdf](http://www.dhs.gov/xlibrary/assets/NRP_FullText.pdf)].

<sup>13</sup> Under the revised National Response Plan to be issued by DHS by June 30, 2007, the ANRC will no longer serve as a primary support agency for ESF-6. FEMA will assume this role, and the ANRC is to become a support agency. See David Garraty, Acting Director of Recovery, FEMA, "Letter to Joseph C. Becker, Senior Vice President, Preparedness and Response, American Red Cross," Feb. 21, 2007.

<sup>14</sup> U.S. Department of Homeland Security, *National Response Plan*, p. ESF-vi.

outlines the areas of mutual support and cooperation in disaster response and recovery operations in the event of a Presidentially declared disaster or emergency under the Stafford Act, or in the performance of respective roles under the National Response Plan.<sup>15</sup>

## Recent Congressional Interest in the Governance, Operations, and Charter of the ANRC

Several media reports of disputes between the ANRC's management and its board of governors appeared in 2001.<sup>16</sup> Reportedly, for example, President Bernadine Healy resigned her position after two years on the job, saying that she had been forced out by the board.<sup>17</sup> Her successor, Marsha J. Evans, served a little more than three years before resigning in December 2005.<sup>18</sup>

Critics of the organization have argued that the governance structure of the ANRC discourages those who serve as its president and chief executive officer (CEO)<sup>19</sup> from having long tenures.<sup>20</sup> They point out that in the past seven years, the ANRC has had three chief executives and three interim executives.<sup>21</sup> Leaders of the ANRC, they say, inevitably find themselves at odds with a board dominated by local chapter representatives, who lack the experience that is required to oversee a large corporation and who are protective of local chapter interests. Reportedly, in 2001,

<sup>15</sup> FEMA and ANRC, *Memorandum of Understanding Between the Federal Emergency Management Agency and the American National Red Cross*, May 30, 2006, p. 2.

<sup>16</sup> David Barstow, "In Congress, Harsh Words for Red Cross," *New York Times*, Nov. 7, 2001, p. B1.

<sup>17</sup> Deborah Sontag, "Who Brought Down Bernadine Healy?" *New York Times Magazine*, Dec. 23, 2001, at [<http://www.nexis.com>]; and Fran Lewine, "Red Cross Chief Quits, Says She Was Forced Out," *CNN.com*, Oct. 26, 2001, at [<http://edition.cnn.com/2001/US/10/26/rec.healy.resigns/index.html>].

<sup>18</sup> Jack Maguire has served as the interim president and CEO since January 2006.

<sup>19</sup> The chairman of the board should not be confused with the president and CEO. The former is an appointee who may be removed only by the President (36 U.S.C. 300104). The charter does not provide for a president and CEO of the ANRC. Rather, this officer is a creature of the ANRC's bylaws established under the authority provided at 39 U.S.C. 300104(c)(2). Under the bylaws currently in effect, the "The President and CEO of the Corporation shall be nominated by the Chairman and shall be elected by the Board of Governors. The President and CEO shall be the chief executive officer of the Corporation and shall be responsible for carrying into effect the policies and programs adopted or approved by the Board of Governors." ANRC, *Bylaws of the American National Red Cross* (Washington: ANRC, May 2005), p. 14, [<http://www.redcross.org/images/pdfs/bylaws.pdf>].

<sup>20</sup> Bill Nichols, "Legislators Have Critical Eye on Red Cross," *USA Today*, Jan. 30, 2006, p. 3A; and U.S. Senate Committee on Finance, Chairman Charles Grassley, "Grassley Urges Red Cross to Improve Governance, Respond to Volunteers' Concerns," press release, Feb. 27, 2006.

<sup>21</sup> Ian Wilhelm, "Charity at a Crossroads," *The Chronicle of Philanthropy*, Jan. 12, 2006, p. 32.

David T. McLaughlin, who chaired the board of governors from 2001 to 2004, voiced the opinion that the ANRC's board could be reformed by amending the ANRC's charter to reduce the size of the board and by requiring candidates for board membership to have relevant qualifications for the position of governor.<sup>22</sup>

Congressional interest in the activities of the American National Red Cross was heightened by the major role the ANRC played in providing relief to persons affected by Hurricanes Katrina and Rita.<sup>23</sup> While there were many positive accounts regarding the relief work of the ANRC, there also were reports of shortcomings in its performance. Questions were raised about the practicability of the federal government's reliance on a volunteer organization to respond to mass disasters.<sup>24</sup> There were complaints of racial insensitivity by ANRC volunteers toward disaster victims.<sup>25</sup> The ANRC was criticized for miscounting the number of Hurricane Katrina evacuees who were residing in hotels.<sup>26</sup> ANRC relief funds, reportedly, were given to persons who did not qualify for aid.<sup>27</sup>

The 109<sup>th</sup> Congress began its examination of the governmental and private sector response to Hurricane Katrina and the ANRC's role less than two weeks after Hurricane Katrina struck.<sup>28</sup> The Senate Committee on Homeland Security and Governmental Affairs held hearings on September 8 and 14, 2005.<sup>29</sup> On September

<sup>22</sup> Sontag, "Who Brought Down Bernadine Healy?"

<sup>23</sup> Previously, Congress had examined the ANRC's activities in response to the terrorist attacks of September 11, 2001. For example, see U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight, *An Examination of Federal 9/11 Assistance to New York: Lessons Learned in Preventing Waste, Fraud, Abuse, and Lax Management*, committee print 109-C, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., (Washington: GPO, 2006).

<sup>24</sup> Editorial, "Re-examining the Red Cross," *New York Times*, Dec. 4, 2005, p. 11. This editorial called for congressional hearings on the Red Cross's role in responding to catastrophes.

<sup>25</sup> Jacqueline L. Salmon, "Red Cross Bolstering Minority Outreach," *Washington Post*, Dec. 5, 2005, pp. A1, A10.

<sup>26</sup> Jacqueline L. Salmon and Spencer S. Hsu, "A Big Cut in Katrina's Hotel Bill," *Washington Post*, Oct. 19, 2005, p. A8.

<sup>27</sup> Eric Lipton, "Money Flowed to City Spared Worst of Storm," *New York Times*, Nov. 20, 2005, pp. 1, 22; and Jacqueline L. Salmon, "Fraud Alleged at Red Cross Call Centers," *Washington Post*, Dec. 27, 2005, p. A2.

<sup>28</sup> Hurricane Katrina made landfall between New Orleans, Louisiana, and Mobile, Alabama, on August 29, 2005. See National Weather Service (NWS), *Service Assessment, Hurricane Katrina, August 23-31, 2005* (Silver Spring, MD: NWS, June 2006), at [<http://www.nws.noaa.gov/om/assessments/pdfs/Katrina.pdf>], p. 1.

<sup>29</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Roundtable Discussion: Hurricane Katrina*, hearing, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., Sept. 14, 2005, S. Hrg. 109-266 (Washington: GPO, 2006). See also U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Recovering from Hurricane Katrina: The Next Phase*, hearing, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., Sept. 14, 2005, S. Hrg. 109-399 (Washington:

(continued...)



15, the House of Representatives established a “select bipartisan committee” to investigate the preparation for and response to Hurricane Katrina (H. Res 437). Before the year’s end, the Subcommittee on Oversight of the House Committee on Ways and Means also had held a hearing on the response of the ANRC and other charities. Additionally, the Senate Committee on Finance announced that it would undertake a review of the ANRC’s governance and performance.<sup>30</sup> In 2006, Congress continued to review the response to Hurricanes Katrina and Rita. Representatives of the ANRC testified before Congress, and the organization’s relief activities were discussed.<sup>31</sup> Some Members of Congress openly expressed an interest in the ANRC’s charter and its possible effects on the management and operations of the organization.<sup>32</sup>

The ANRC’s disaster response duties and activities were scrutinized further in studies and reports. The House select bipartisan committee reported that the ANRC had raised more than \$2 billion for the relief operation, assisted 1.2 million families, and served 52 million meals or snacks to hurricane survivors. However, the report criticized the ANRC for an “inadequate logistics capacity” and “disorganized shelter process.”<sup>33</sup> A report produced by the minority staff of the House Committee on Homeland Security criticized the quality and timeliness of the ANRC’s relief assistance to hurricane victims in “economically disadvantaged areas and minority areas.”<sup>34</sup>

In an interim report, the Government Accountability Office (GAO) found that the ANRC and FEMA had difficulties coordinating their activities to provide the

<sup>29</sup> (...continued)  
GPO, 2006).

<sup>30</sup> U.S. Congress, House Committee on Ways and Means, Subcommittee on Oversight, *To Review the Response of Charities to Hurricane Katrina*, hearing, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., Dec. 13, 2005, Ser. No. 109-52; and U.S. Senate Committee on Finance, Chairman Charles Grassley, “Grassley Questions Red Cross Board on Its Practices, Effectiveness,” press release, Dec. 29, 2005.

<sup>31</sup> For example, U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *Answering the Call: The Response of Community-Based Organizations to the 2005 Gulf Coast Hurricane*, hearing, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 7, 2006, S. Hrg. 109-440 (Washington: GPO: 2006).

<sup>32</sup> Stephanie Strom, “Senators Press Red Cross for a Full Accounting,” *New York Times*, Dec. 30, 2005, p. A17; Jacqueline L. Salmon, “Red Cross Leadership at Issue,” *Washington Post*, Dec. 30, 2005, p. A4; and U.S. Senate Committee on Finance, “Grassley Questions Red Cross Board on Its Practices, Effectiveness,” p. 2.

<sup>33</sup> U.S. Congress, House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 109-377 (Washington: GPO, 2006), pp. 343-344. Copies of the report, the “additional views” (i.e., minority views) report, and transcripts of hearings held by the committee are at [<http://katrina.house.gov/>].

<sup>34</sup> U.S. House Committee on Homeland Security Democratic Staff, *Trouble Exposed: Katrina, Rita, and the Red Cross: A Familiar History*, report, Dec. 15, 2005, at [<http://hsc-democrats.house.gov/SiteDocuments/redcrossreport.pdf>].

relief services stipulated under the National Response Plan's ESF-6.<sup>35</sup> Two reports of the representatives of other nations' Red Cross organizations faulted the ANRC's relief and logistical management.<sup>36</sup> The ANRC itself reported that there were "weaknesses" in its responses to the gulf coast hurricanes of 2005, saying it

recognized the need to more effectively create and sustain local partnerships; incorporate the application of new technology; pursue staff diversity; apply comprehensive internal controls; and modify its service delivery in an ever-changing environment.<sup>37</sup>

Generally speaking, the problems described in above-cited media accounts, Congressional hearings, studies, and reports appear to have been operational, not governance-related.<sup>38</sup> The problems involved the actions of local ANRC volunteers, the use of volunteers in mission-critical managerial positions, the ANRC's limited ability to scale itself up to respond to a disaster of great magnitude, and assorted coordination problems between ANRC staff and FEMA, as well as state and local governmental agencies. The ANRC has reported that it has taken actions to address these problems, such as improving its logistics, increasing supply stockpiles in states especially at risk of hurricane strikes, and improving local chapters' partnerships with community groups and local governments.<sup>39</sup> Additionally, since Hurricane Katrina struck, the ANRC and FEMA have attempted to improve the coordination of their relief efforts by signing a new memorandum of understanding and altering the ANRC's responsibilities under the NRP.<sup>40</sup>

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<sup>35</sup> Government Accountability Office, *Hurricanes Katrina and Rita: Coordination between FEMA and the Red Cross Should Be Improved for the 2006 Hurricane Season*, GAO-06-712 (Washington: GAO, June 2006).

<sup>36</sup> One of the reports described ANRC relief and logistics management as "well intentioned but volunteer amateurs." M. Goodhand, British Red Cross, "Mission Report, Hurricane Katrina, 2005," memorandum, Sept. 15, 2005, p. 2. See also Thomas Reiss, International Committee of the Red Cross, "Mission Report Montgomery + Mobile Alabama - Hurricane Katrina," memorandum, Sept. 28, 2005.

<sup>37</sup> ANRC, *From Challenge to Action: American Red Cross Actions to Improve and Enhance Its Disaster Response and Related Capabilities for the 2006 Hurricane Season and Beyond* (Washington: ANRC, June 2006), p. 3.

<sup>38</sup> This assessment appears to be shared by the ANRC. Jack Maguire, the interim president and CEO of the ANRC, told a reporter, "The issues with Katrina were really based on the size and scope of what we had to deal with in Katrina and were not related to governance." Stephanie Strom, "Red Cross to Streamline Board's Management Role," *New York Times*, Oct. 31, 2006, at [<http://www.nytimes.com/2006/10/31/us/31redcross.html>].

<sup>39</sup> *Ibid.*, pp. 14-22.

<sup>40</sup> Garraty, "Letter to Joseph C. Becker, Senior Vice President, Preparedness and Response, American Red Cross"; and FEMA and ANRC, *Memorandum of Understanding Between the Federal Emergency Management Agency and the American National Red Cross*, p. 2.

## The ANRC Advocates Charter Changes

On February 17, 2006, the board of governors of the ANRC voted to authorize and commission an audit of its governance.<sup>41</sup> It established an “Independent<sup>42</sup> Governance Advisory Panel” and asked it to “carefully examine Red Cross governance ... and to provide current examples of ‘best practices’ in for-profit and nonprofit corporations.”<sup>43</sup> According to the ANRC, the panel “should focus” its inquiries on the following topics:

- “the size and composition of the Board of Governors, participation by and independence of Governors and the process for selecting candidates for the Board;
- “the organization and functioning of the Board of Governors, including the composition, structure and roles of the Board’s committees;
- “the roles and relationships of the Board of Governors and management;
- “the Board of Governors’ oversight of the governance practices of the local chapters; and
- “the relationships and lines of reporting between the Audit Committee of the Board of Governors, the outside auditor, and the internal audit function, including the whistleblower process as it applies to Red Cross employees and volunteers, as well as constituencies served by the Red Cross.”<sup>44</sup>

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<sup>41</sup> ANRC, *American Red Cross Governance for the 21<sup>st</sup> Century: A Report of the Board of Governors* (Washington: ANRC, Oct. 2006), p. 19, at [<http://www.redcross.org/report/bogoct2006/>].

<sup>42</sup> The members of the panel were not ANRC employees and volunteered to produce the report. However, they did not work independently of the ANRC to produce it. The report states that during the course of its preparation, panel members held meetings which included ANRC board members and senior executive staff. At these meetings, the “progress of the audit as well as emerging themes” were discussed. Additionally, the panel “regularly briefed the [board’s] Governance Committee on the status of the audit. The Board also formed a small group of members to work with the Governance Committee and the panel.” *Ibid.*, p. 23.

<sup>43</sup> Bonnie McElveen-Hunter, Chairman of the ANRC Board of Governors, “Board Recommends Changes to Red Cross Governance,” memorandum, Oct. 30, 2006.

<sup>44</sup> ANRC, “Recitals and Resolutions for Consideration of the Board of Governors for the American National Red Cross,” Oct. 27, 2006, in ANRC, *American Red Cross Governance for the 21<sup>st</sup> Century*, Exhibit C, p. 2.

The panel delivered a report to the board of governors,<sup>45</sup> and on October 30, 2006, the board released to the public a more than 150-page report, *American Red Cross Governance for the 21<sup>st</sup> Century: A Report of the Board of Governors*.<sup>46</sup> According to the report, the ANRC had “authorized and commissioned an audit” of the ANRC’s governance

in light of the increased numbers of catastrophic domestic and international events in 2004 and 2005, and with a view toward continuing the legacy of the Red Cross and strengthening its position to meet the unprecedented challenges of the 21<sup>st</sup> century (including terrorism, natural and man-made disasters, and the need for a safe blood supply).<sup>47</sup>

The report contains chapters that examine the aforementioned subjects and two others not required by the board of governors — “governance oversight of local Red Cross chapters” and “enhanced transparency of governance practices.” The report addresses governance issues rather than operational issues.

Attention was devoted to governance rather than operational subjects, and an effort was made to refrain from addressing matters more appropriately handled by management. For instance, while inquiries were made about structural and reporting relationships among finance, treasury and internal audit personnel and the outside auditor, no effort was made to conduct a substantive review of financial reporting, or accounting or internal audit procedures. While inquiries were made about hotline procedures, no substantive evaluation of specific hotline or whistleblower complaints was made. Allegations of theft, mismanagement or

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<sup>45</sup> According to the chairman of the board of the ANRC, to “achieve the transformational changes the Board envisioned, the Governance Committee requested that an Independent Governance Advisory Panel be created, with the assistance of independent counsel, to provide the Board of Governors its substantial expertise and knowledge of best practices in governance. Working collaboratively with the Independent Governance Advisory Panel, the Governance Committee advised the Board of improvements and enhancements that it could consider. These recommendations, accompanied by the historical governance practices of the Red Cross and an analysis of best practices in non-profit and for-profit governance, formed the basis of a draft report that was reviewed and deliberated upon on October 27, 2006, by the Board of Governors.” Bonnie McElveen-Hunter, “A Letter from the Chairman of the Board of the American Red Cross,” in ANRC, *American Red Cross Governance for the 21<sup>st</sup> Century*, second page of the report.

<sup>46</sup> The report of the panel as delivered to the board was not made available to the public. It is unclear whether that report differs substantially from the report approved by the board. The approved version appears to have had two documents appended to it that were not included in the “draft” report — a “resolution of the board of governors” that was adopted on October 27, 2006, and a “governance committee report of recommendations and approved actions,” the latter of which included proposals for amending the ANRC’s charter. See ANRC, *American Red Cross Governance for the 21<sup>st</sup> Century*, pp. 145-147 and 149-156.

<sup>47</sup> ANRC, *American Red Cross Governance for the 21<sup>st</sup> Century*, pp. 2-3. This statement would appear to connect the need for governance reform to ANRC performance in the Gulf Coast hurricanes.

fraud (whether in connection with various disasters or otherwise) likewise were not within the scope of the audit.<sup>48</sup>

The report provides an analysis of the history of the ANRC's charter and current managerial best practices. It includes dozens of recommendations for improving the governance of the ANRC. Generally speaking, it would appear that the panel favored making many changes through ANRC governance via alterations to the corporation's bylaws, rather than through amendments to its charter. The rationale for this approach was not stated in the report.

Perhaps to the surprise of some critics of the board of governors,<sup>49</sup> the report states that the "prevailing view among those interviewed in connection with the Governance Audit was that chartered unit-elected Board members understand that their duties as Board members run to the national organization and they act accordingly."<sup>50</sup> Nonetheless, the report faults the current board of governors, citing "structural, cultural, and historical factors [that] have blurred the distinction between governance and management functions at the Red Cross." There is, according to the report, "a lack of clarity about the role of the board [of governors]."<sup>51</sup> The report offers extensive recommendations on measures that might be taken to improve the ANRC's board of governors, including reducing its size and improving its composition by changing the selection process to favor persons with the skills and experience to prepare them for board membership. The panel also recommends establishing a "National Leadership Council" in order to provide local chapters with a forum for their ideas and concerns, and creating a presidentially appointed "Cabinet Council" of eight to 10 officials of U.S. government departments and agencies.<sup>52</sup>

The same day that the report was released, the ANRC announced that its board of governors had "unanimously approved a series of recommendations for transformational changes in an effort to modernize its 60-year-old governance structure, and to enhance the Board's ability to support the critical mission of the Red Cross in the 21<sup>st</sup> Century."<sup>53</sup> Specifically, the ANRC stated that it would seek four major changes to its charter that would

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<sup>48</sup> Ibid., p. 24.

<sup>49</sup> Reportedly, former ANRC President Bernadine Healy has said that many of the members of the board "feel their role is to protect the chapters." Wilhelm, "Charity at a Crossroads," p. 32.

<sup>50</sup> Ibid., p. 32.

<sup>51</sup> Ibid., p. 31.

<sup>52</sup> Ibid., pp. 55-57.

<sup>53</sup> The date of this meeting is unclear. The ANRC's website declares that the board recommended these changes on October 17<sup>th</sup>. A press release from the ANRC says the board vote occurred on October 27<sup>th</sup>. See, respectively, ANRC website at [[http://www.redcross.org/services/governance/0,1082,0\\_234\\_,00.html](http://www.redcross.org/services/governance/0,1082,0_234_,00.html)]; and McElveen-Hunter, "Board Recommends Changes to Red Cross Governance," p. 1.

- “focus the Board’s role on governance and strategic oversight, explicitly delegating to management the responsibilities for day-to-day operations;
- “reduce its size by more than half to between 12 and 20 members by March 31, 2012, given its revised function;
- “create a single category of Governors, eliminating the distinction between how members are selected; [and]
- “transition seven of the Presidentially appointed Governors into a newly created Cabinet Council that will be advisory in function.”<sup>54</sup>

Thereafter, the ANRC reported meeting with at least one Member of Congress to discuss charter reform.<sup>55</sup>

## Proposed Legislation

On December 5, 2006, a bill (H.R. 6343) was introduced in the House by Representative George Radanovich that proposed amending the charter of the ANRC. H.R. 6343 was referred to the House Committee on International Relations, but was not considered before the end of the 109<sup>th</sup> Congress. H.R. 6343 included many of the alterations proposed by the ANRC.<sup>56</sup> It would have

- permitted the ANRC to conduct business as the “American Red Cross”;
- reduced the board of governors from 50 members to between 12 and 25 members by March 31, 2009, and to between 12 and 20 members by March 31, 2012;
- reduced presidential appointees to the board of governors from eight to one, with the President appointing the chairman of the board;
- abolished local chapter selection of 30 board members and board selection of 12 members;
- required each board member, except the presidential appointee, to be elected by delegates at the ANRC’s annual convention;
- established a presidentially appointed ANRC advisory board of eight to 10 members, who would be officers of executive departments that work with the ANRC; and
- eliminated the requirement that the number of trustees overseeing the ANRC’s endowment be fixed at nine.

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<sup>54</sup> Ibid.

<sup>55</sup> For example, see ANRC, “Red Cross Chairman Confers with Senator Grassley’s Office on Proposed Governance Changes: Organization Has Asked Congress to Act Quickly to Amend Its Congressional Charter,” press release, Nov. 15, 2006, at [[http://www.redcross.org/pressrelease/0,1077,0\\_314\\_5822,00.html](http://www.redcross.org/pressrelease/0,1077,0_314_5822,00.html)].

<sup>56</sup> The “findings” portion of the bill stated, “Recommendations from the [ANRC] Governance Report calling for amendments to the Congressional Charter [of the ANRC] are set forth in this legislation” (H.R. 6343, Sec. 2(3)).

The bill also included two charter amendments not advocated by the ANRC.<sup>57</sup> It would have (1) authorized the Comptroller General “to review the corporation’s involvement in any Federal program or activity that the Government carries out by law”; and (2) required the ANRC to establish an office of the ombudsman, which would report annually to Congress on “any trends and systematic matters ... confronting the corporation.”

On February 16, 2007, S. 655 was introduced in the Senate by Senator Charles Grassley and referred to the Senate Committee on the Judiciary. S. 655 is nearly identical to H.R. 6343 from the 109<sup>th</sup> Congress, the two bills differing primarily in the arrangement and wording of their “Findings” sections. Also, S. 655 placed text regarding “effective governance and transparency” from the “Findings” section of H.R. 6343 into a “Sense of Congress” subsection.<sup>58</sup>

Neither of the bills’ “Findings” sections justifies the proposed changes to the ANRC’s charter as a response to the corporation’s performance during the Gulf hurricanes of 2005. Rather, the bills’ stated intention is to “create a more efficient governance structure of the American National Red Cross and to enhance the Board of Governors’ ability to support the critical mission of the American National Red Cross in the 21<sup>st</sup> century” (H.R. 6343, Section 2; S. 655, Section (a)(3)).

S. 655 contains a lengthy “Findings” section that affirms that the ANRC is an “instrumentality of the United States” (Section 2). This section of the bill also states that it is in the “national interest” that the role and responsibilities of the board of governors as “a governance and strategic oversight board” be clarified. Specifically, Section (2)(a)(5) of S. 655 states that it is in the “national interest” that the “areas of responsibility” of the ANRC be outlined to include

- (A) reviewing and approving the mission statement for The American National Red Cross;
- (B) approving and overseeing the corporation’s strategic plan and maintaining strategic oversight of operational matters;

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<sup>57</sup> In the “recommendations and approved actions” attachment to its governance audit report, the governance committee said that the ANRC should “consider” establishing an ombudsman position on its own authority. ANRC, *American Red Cross Governance for the 21st Century*, p. 155. The ombudsman proposal did not appear in the ANRC’s red line document, which outlines its preferred amendments to its charter.

<sup>58</sup> The text reads: “It is the sense of Congress that — (1) charitable organizations are an indispensable part of American society, but these organizations can only fulfill their important roles by maintaining the trust of the American public; (2) trust is fostered by effective governance and transparency, which are the principal goals of the recommendations of the Board of Governors in the Governance Report and this Act; (3) Federal and State action play an important role in ensuring effective governance and transparency by setting standards, rooting out violations, and informing the public; and (4) while The American National Red Cross is and will remain a Federally chartered instrumentality of the United States, and it has the rights and obligations consistent with that status, the American National Red Cross nevertheless should maintain appropriate communications with State regulators of charitable organizations and should cooperate with them as appropriate in specific matters as they arise from time to time.”

- (C) selecting, evaluating, and determining the level of compensation of the corporation's chief executive officer;
- (D) evaluating the performance and establishing the compensation of the senior leadership team and providing for management succession;
- (E) overseeing the financial reporting and audit process, internal controls, and legal compliance;
- (F) holding management accountable for performance;
- (G) providing oversight of the financial stability of the corporation;
- (H) ensuring the inclusiveness and diversity of the corporation;
- (I) providing oversight of the protection of the brand of the corporation; and
- (J) assisting with fundraising on behalf of the corporation.”

S. 655 would not enact these changes by statute. Rather, it would have the ANRC make these changes through amendment of its bylaws.

Section 2(a)(6)(A) of S. 655 states that the selection of members of the board of governors is a “critical component of effective governance” for ANRC. It declares that it would be in the “national interest” that the selection process require that a candidate for nomination to the board be nominated by a committee of the board of governors, which would take into account the expertise, skills, and experience of the nominee. A majority of the whole board then would need to vote in favor of the person before he or she might stand for election at the annual convention. As with the role and responsibilities of the board, S. 655 would have the ANRC make the changes to the election process through amendment of its bylaws.

## Questions Concerning the ANRC

The above review of the ANRC and recent legislative proposals raise many questions of possible interest in any consideration of legislation to revise the ANRC's charter.

### Current Charter

**The Responsibilities of the ANRC.** The ANRC is the only charitable entity chartered by Congress to carry out war-and-disaster-relief-related activities. Should other charitable entities also be chartered to help carry out disaster relief and recovery responsibilities? Also, not all of the ANRC's current activities are required by its charter and the Geneva Conventions (e.g., blood collection).<sup>59</sup> Should some of these activities be assigned to other organizations? Or, should the ANRC's charter be expanded to authorize it to undertake other activities?

**The Board of Governors Membership — The Federal Presence.** Currently, the ANRC's board has 50 members, eight of whom are appointed by the

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<sup>59</sup> The ANRC provides approximately 45% of the nation's blood supply. Since 1993, the Food and Drug Administration (FDA) has faulted the ANRC for violating blood-safety laws and fined it for violations of blood-safety laws and a consent decree. FDA, “FDA Fines American Red Cross \$4.2 Million for Failure to Meet Established Blood Safety Laws,” press release, Sept. 8, 2006, [<http://www.fda.gov/bbs/topics/NEWS/2006/NEW01447.html>].



President. Should Congress and the members of the President's cabinet have a larger presence on the board of governors, as they did before the 1947 revisions to ANRC's charter? Or should governmental representation on the board be unchanged or reduced?

**The Board of Governors Membership — Expertise.** Currently, the charter of the ANRC does not enumerate the skills or experience that persons must have to serve on the board. Should members of the board of governors be required to have experience in relief activities? Or should they be experts in finance and management or some other field(s)?

**The Board of Governors Membership — Terms.** Currently, a governor serves a three-year term. Statute does not forbid him or her from standing for reelection. Is three years a sufficiently long time for a board member to develop the requisite familiarity with the operations of the ANRC so that he or she can competently oversee and direct its activities? How many terms should governors be permitted to serve?

## Changes Proposed by S. 655

**The Power of the Board of Governors.** The "Findings" portion of the proposed legislation concludes that it is in the "national interest" that the board of governors act as a "governance and strategic oversight board" for the ANRC. In effect, this would appear to suggest that the board's role and powers should be limited.<sup>60</sup> However, Section 6 of the bill would bestow on the board of governors "all powers of governing and directing, and of overseeing the management of the business and affairs of the corporation." It would not reserve any powers to any officers of the corporation. Indeed, the board would have the power to remove "officers of the corporation," possibly without cause.<sup>61</sup> S. 655 would permit the board to define its role and to choose the manner of its members' election through the bylaws. The board, it would appear, would have plenary power to set its bylaws. According to the current bylaws, the board may amend, repeal, or change the bylaws

by the affirmative votes at any regular or special meeting of the Board of Governors of a majority of the Governors present at any such meeting, provided that notice containing the general effect and intent of the proposed amendments has been given to all Governors at least ten days prior to such meeting.<sup>62</sup>

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<sup>60</sup> Relatedly, the ANRC's governance improvement report states that the responsibilities of the chairman of the board of governors and those of the CEO should be separated. This, the report suggests, would reduce the board's involvement in daily management of the ANRC. S. 655, Sec. 6(a)(3)(A)(i) would strike the current charter's language designating the chairman as the "principal officer" of the corporation. It would not prevent the chairman, however, from serving as the principal officer and wielding the powers of the position. *American Red Cross Governance for the 21<sup>st</sup> Century*, pp. 68-69.

<sup>61</sup> The proposed legislation would require removals "under such procedures as may be found in the bylaws or a resolution of the board."

<sup>62</sup> ANRC, *Bylaws of the American National Red Cross* (Washington: ANRC, May 2005), (continued...)

How much power should the board of governors have? Who should define its role and powers?

**The Executive Committee and the Board of Governors.** Section 6 of S. 655 would permit the board to select an executive committee to wield its powers when it was not in session. This invites the questions, Will either the board of governors or the executive committee serve as the full-time overseer of the ANRC's activities; or will the executive committee meet periodically or on an ad hoc basis? Moreover, the bill does not stipulate the minimum membership size for the executive committee. Would an executive committee of one member be possible and desirable? Who should decide the size and composition of the executive committee?

**Federal Influence Over the Governance of the ANRC.** Under current law, the President appoints eight members of the board of governors, one of whom serves as the ANRC's "principal officer" (i.e., chairman of the board). Section 6 of S. 655 would reduce the number of presidential appointees to the board of governors to one, the chairman. According to a press account of a review by the Senate Committee on Finance in 2006, six of the appointees to the board of governors did not attend any of the 23 meetings held between October 2000 and May 2006. Another governor attended once.<sup>63</sup> S. 655, Section 6(d), would establish a federal advisory board to the ANRC composed of eight to 10 presidential appointees. The proposed council would have no statutorily conferred powers. Would these revisions to the charter of the ANRC increase or decrease the federal government's influence over the ANRC's activities?

**The Investigatory Authority of GAO.** Federal law also empowers GAO to "investigate all matters related to the receipt, disbursement, and use of public money" and to "make an investigation and report ordered by either House of Congress or a committee of Congress having jurisdiction over revenue, appropriations, or expenditures" (31 U.S.C. 712). In the past, GAO has examined some of the ANRC's activities.<sup>64</sup> Section 11(a) of S. 655 would authorize the Comptroller General to review the ANRC's "involvement in any Federal program or activity the Government carries out by law." Would this proposed authorization increase or alter GAO's authority to examine the ANRC?

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<sup>62</sup> (...continued)

p. 24, at [<http://www.redcross.org/images/pdfs/bylaws.pdf>].

<sup>63</sup> Harvy Lipman, "Top White House Officials on the Red Cross Board Rarely Attend Meetings," *The Chronicle of Philanthropy*, Mar. 13, 2006, at [<http://www.philanthropy.com/free/update/2006/03/2006031301.htm>].

<sup>64</sup> See GAO, *Hurricanes Katrina and Rita: Coordination between FEMA and the Red Cross Should Be Improved for the 2006 Hurricane Season*; and GAO, *Disaster Relief: Reimbursement to American Red Cross for Hurricanes Charley, Frances, Ivan, and Jeanne*, GAO-06-518 (Washington: GAO, May 2006).

## Concluding Observations

Any consideration of legislation to change the ANRC might raise the question of which changes to make through the ANRC's charter and which through its bylaws.

At one level are the considerations of efficiency and flexibility. If the ANRC is considered able to carry out the changes internally, then it might do so by changing its bylaws. If not, these changes might be made statutorily. An advantage of making changes through revision of the bylaws might be efficiency — a majority of the board of governors might simply vote the changes into existence. Of course, any changes made this way might be reversed with equal efficiency. Changes enacted by statute, as the case of the ANRC indicates, tend to be more lasting.

The ease of amending the bylaws of a corporation endows it with the flexibility to respond to new challenges or environmental changes. Of course, this flexibility also provides an organization with the discretion to make changes with which some might not agree, particularly in an organization charged with helping the victims of “suffering caused by pestilence, famine, fire, floods, and other great national calamities” (36 U.S.C. 300102(4)).

At another level is the basic ambiguity about the organizational nature of the ANRC. As noted at the beginning of this report, a charter is a document that legally establishes a corporation and its most basic characteristics, such as its legal purpose, basic governance structure, and means of public accountability. Meanwhile, the bylaws of a corporation, typically, establish the managerial structure of the corporation, delineate the duties of its officers, prescribe the timing and procedures for holding board meetings, and, generally, set the rules governing the corporation's activities.

On the one hand, the ANRC is a federal instrumentality, an entity chartered by Congress to achieve public purposes. It is the sole congressionally chartered entity with the responsibility to carry out treaty-related obligations. Since 1905, the President has appointed the ANRC's “principal officer” and some of its board members; and Congress occasionally has provided the ANRC with appropriations. From this perspective, it might be argued that the federal government should enact by law any provisions that it believes would help the organization achieve its public purposes.

On the other hand, the ANRC is a private organization. As such, it might be argued that it should have the same discretionary authority that a private corporation has to structure its governance and operating procedures through its bylaws.