

**SERBIA AND MONTENEGRO
One Small Step for Mankind, One
Giant Leap for the Balkans?**

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Serbia and Montenegro*

For all the talk of “history in the making” in first reactions to the agreement between Belgrade and Podgorica, the spotlight is actually on the dustbin of history: Milosevic’s “Third Yugoslavia” is dead and there will be no more incarnations. First reactions to the new-born “Serbia and Montenegro” covered a whole spectrum of emotions, ranging from “a freak of a state” or “a rotten compromise” to “a new beginning.”¹ Fact is that Javier Solana seems to have found a middle way in-between federation and confederation² – at least for the time being. In three years (at the most!), the day of reckoning will come. For the moment, the political deadlock has been broken and a window of opportunity has been created for reform policies and regional co-operation. A comparison between the agreement of 14 March and the two “platforms” that defined the negotiating positions one and a half years ago throws the embedded compromises and innovations into relief. A second comparison with the political realities in Belgrade, Podgorica ... and Pristina reveals the agreement’s limitations and deficits. Despite all sobering thoughts, however, the symbolic value and regional consequences of this “small step” should not be dismissed too lightly: The dice have been cast and political actors will have to reposition themselves accordingly.

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Breaking the Deadlock

The relations between Belgrade and Podgorica had been deadlocked ever since Milo Djukanovic and his Democratic Party of Socialists (DPS) beat Milosevic’s confederates in Montenegro on a pro-independence ticket in the 1997 presidential and the 1998 parliamentary elections. His victory revealed the fundamental flaw of the

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¹ „Balkan Media Divided on Historic Deal,“ BBC News (15.03.2002)

² For lack of a better term, the new entity under international is referred to here as „state“, “union” and „federation“ interchangeably.

two-state federation created in 1992 from the remainder of Tito's Yugoslav Federation: Serbia is 15 times bigger than Montenegro in terms of both territory and population. Consequently, the equality of the two unequal partners in the new mini-federation deviated absurdly from the democratic principle of "one person – one vote." As long as Milosevic's SPS *de facto* ruled in both republics *and* on the federal level, this structural problem could be ignored. With Montenegro's pro-Western reform policies and Serbia's nationalist paralysis diverging more and more, Montenegro became independent in all but name and the Yugoslav Federation became a dead letter. On the eve of the epochal elections in the fall of 2000, Milosevic eliminated the principle of equality of the two constituent republics in law to restore Serb hegemony.³

The deadlock became an acute political dilemma after Milosevic ouster. Milo Djukanovic had made his political fortune on the independence ticket, but under the new circumstances, he was driven by his supporters and political allies to go for a referendum, well knowing that the population is equally divided on the issue and well knowing that the West was prepared to go to great lengths to prevent such a referendum. Actually, in 1996, Djukanovic miscalculated, expecting Milosevic to lose the elections, and opted for independence. In 2000, he miscalculated again, expecting Milosevic to win the elections, and boycotting the federal elections -. As a consequence, his natural allies, the reform-oriented and pro-Western DOS took over power in Serbia, but had to make a coalition with the reactionary Montenegrin opposition on the federal level.

The recent breakthrough after many rounds of fruitless negotiations is not to be blamed on "diplomatic arm-twisting" by Javier Solana only. As all players came to realise that they had manoeuvred themselves and others into a "lose-lose" situation, the conditionality of the EU perspective provided economic incentives as well as a welcome excuse. Zoran Djindjic must have realised that the stand-off and bickering over competencies between federation and republic was to the detriment of the reform drive and international credibility of his political program. His political competitor Vojislav Kostunica saw his lead in popularity diminish in comparison with Djindjic and other younger reformers – a development partly due to the powerlessness of his presidential position. Last, but not least, the nationalist opposition of former

³ Mark Thompson, „Yugoslavia's Death is Balkans' Gain," BBC News Online (15.03.2002)

Milosevic parties witnessed the once proud Yugoslavia become defunct, with a quasi-independent state in Montenegro and a quasi-protectorate in Kosovo.

In Podgorica, his narrow victory on 22 April 2001 in the parliamentary elections and the rising popularity of the SNP in recent polls have determined Djukanovic's reluctance to implement his promise for a referendum on independence. Torn between his coalition partners who wanted the referendum *now* and the pro-Yugoslav opposition with the polls showing a waning majority in favour of independence - the votes of the ethnic minorities (in favour) would actually decide on independence⁴, Djukanovic's political survival depends on finding an elegant way backtracking on the "path of independence" – and he knew that all along.

The EU as Honest Broker?

Ever since Javier Solana took on the "mission impossible" to find middle ground between Belgrade and Podgorica, criticism became louder and louder. Surprisingly, Solana's main critics were not found in Djukanovic's Democratic Party of Socialists (DPS). Recently, the Centre for European Policy Studies (CEPS) and the International Crisis Group (ICG) in Brussels published an open letter to Javier Solana concerning Montenegro. One part of their critique concerns the EU's *methods* of "applying extreme pressure to just one side" in order to "bull-dozer" Podgorica towards the EU's preferred solution.⁵ As several participants to the negotiations have indicated, Solana has indeed made ample use of a prospective Stabilisation and Association Agreement between "Yugoslavia" and the EU with its immediate economic advantages and its alluring promise of future EU membership. Thus, the EU used its hegemony as a regional economic power to force a state union on "unwilling partners." After the euphoria more than a year ago of finally having democratic negotiation partners and two constructive and apparently compatible platforms, the actual talks between Belgrade and Podgorica soon stalled in a "consent not to consent" and had to be revitalised by EU intervention and mediation in December 2001.⁶ No doubt, Solana's role went far beyond "good offices," but eventually the

⁴ ICG, „Montenegro - Time to Decide: Pre-Election Briefing“ (18.04.2002)

⁵ ICG/CEPS media release, „EU Pressure on Montenegro is ‚Unwise‘“ (Brussels 14.02.2002)

⁶ „Serbian and Montenegrin Experts on the Future of Yugoslavia,“ AIM Podgorica (13.01.2002)

principle of “regional ownership” will require a democratic verification of the political deal by all three parliaments.⁷

The other half of the critique concerns the actual “dictated” outcome of the negotiations - “a democratic Montenegro in a democratic Yugoslavia.” This solution is considered “economically and politically unwise.”⁸ Solana’s attempts to keep Serbia and Montenegro together were more often than not understood as a blunt attempt to save the status quo of the “good old” Yugoslav Federation with some minor, cosmetic modifications. Consequently, the EU would end up polarising the parties and quasi supporting the line of the reactionary SNP nationalists in Montenegro and the parties of the former Milosevic coalition in Serbia. Pro-independence Montenegrin parties, Western think tanks and even some Serbian intellectuals carried this argument.⁹ Proponents of Montenegro’s independence consistently painted a black-and-white picture of the FRY as the state associated with the reactionary and repressive Milosevic regime and of Montenegro as a paradise of pro-European reforms.

There certainly is reason to doubt the original transition optimism of the Djindjic team and ample evidence of “lagging reforms” in Serbia, due at least partly to the power struggle between Kostunica and Djindjic.¹⁰ The Milosevic past, however, makes a Yugoslavia neither illegitimate as a state nor *per se* reform-resistant. Nor is Montenegro an unqualified success story in terms of political and economic reform.

The argument that Yugoslavia in its three forms - the Kingdom of Serbs, Croats and Slovenes (1918-1945); the Socialist Federal Republic of Yugoslavia (1945-1992) and the Federal Republic of Yugoslavia (1992-2002) – was “a historic error”¹¹ or that “the FRY is an anti-European and anti-democratic state”¹² reintroduces the ideal of nation-state and the primacy of national self-determination through the backdoor. Qualifying for “Europe” depends on functional states and their capability of reform towards pluralist democracy and market economy. In this respect, Serbia and Montenegro each have their own specific problems and deficits, but both

⁷ Veseljko Koprivica, „Montenegro Following the Visit of Javier Solana. Good Services Mission“ AIM (16.12.2001); Negotiating the Balkans (Gütersloh 2001), p. 1-2.

⁸ ICG/CEPS media release, „EU Pressure on Montenegro is ‚Unwise‘“ (Brussels 14.02.2002)

⁹ Morton Abramowitz, “Let the Montenegrins Have Their Say,” IHT (31.12.2001); RFE/RL 6/46 II (11.03.2002).

¹⁰ ICG,

¹¹ Matthias Rüb, „Etwas ganz Neues im Suedosten,“ FAZ (15.03.2002), p. 1.

¹² Milka Tadic-Mijovic, „Entretien avec Paul Williams,“ Monitor (21.12.2001)

still have a long way to go. Neither a nation-state nor a federation constitutes a panacea for these reform challenges.

Milo Djukanovic – by now the longest-ruling president in the region – was not born a dissident against Milosevic and conservative nationalism. Nevertheless, once the break between Belgrade and Podgorica had become irreversible, a pro-Western reform orientation was the only option for the quasi-independent mini-state. Despite a series of political, administrative and economic reforms, Montenegro still is among the world's best in terms of international assistance per capita: The accusation of “simulated reforms” to please Western donors seems plausible.¹³ A significant part of economic activity – an estimated 40 to 60 per cent – is related to black market, mainly car rackets and cigarettes smuggling. The involvement of political parties and state administration is a foregone conclusion. The state needs foreign aid for social peace in a poverty-ridden country of rising unemployment, frequent electric power cuts and high inflation. The successful introduction of the euro (replacing the German mark as the national currency) earlier this year as such is by no means an indication of economic strength or aptitude: Podgorica is not bound by any criteria of economic convergence and the euro is more convenient for legal and not-so-legal international dealings than for an ailing local economy. Montenegro's economic openness (3 per cent tariff average, 10 per cent for Serbia) may be an asset, but tourism certainly is not its main industry at the moment.¹⁴ To what extent Montenegro will really be able to consolidate its head start in economic reforms into a national economy that is healthy, sustainable and socially equitable remains to be seen. For the time being Montenegro's reform economy has all the characteristics of a political myth.¹⁵

Once both Kostunica and Djindjic had expressed their willingness to consider a new form of federation with Montenegro (albeit not at all cost), Solana indeed ended up siding with the reactionary forces on the federal level and in Montenegro, cajoling the pro-independence parties into making major concessions to their program. Surely, a strong two-third majority in Montenegro in favour of independence would have had an impact on the EU approach, but a “50 per cent plus one” approach to such a fundamental issue of state sovereignty is neither particularly

¹³ ESI, Rhetoric and Reform. A Case Study of Institution Building in Montenegro 1998-2001 (Berlin 2001)

¹⁴ ICG/CEPS media release, „EU Pressure on Montenegro is ‚Unwise‘“ (Brussels 14.02.2002)

¹⁵ Zoran Radulovic, “Montenegro: Economic Collapse Threatens Independence” IWPR Balkan Crisis Report 295 (09.11.2001); Martin Woker, “Montenegro als Test für die EU-Außenpolitik,” NZZ (21.02.2002), p. 7.

stabilising nor democratic.¹⁶ (Therefore, the agreement insists on laws on referendum “taking full account of internationally recognised standards.”) At least publicly, the EU failed to distance its stabilisation objective from the die-hard conservatism of the local pro-Yugoslav forces.¹⁷ Miraculously, the eventual agreement favours the reformers rather than the reactionaries: A temporary freezing of the status issue in the form of “Serbia and Montenegro” allows pro-Western politicians to pursue their reform agendas with more drive, more concord – as the reform process towards regional and, first of all, European integration offers a broad basis of consensus.

In sum, after the peaceful settlement of the minority conflict in Southern Serbia and the Ohrid Agreement of 13 August defining the road to a new inter-ethnic arrangement in Macedonia, the creation of “Serbia and Montenegro” marks a third feat for Javier Solana, the European Union’s High Representative for the Common Foreign and Security Policy. In all three cases, however, due to the fragility of the arrangements and the volatility of political aspirations, today’s triumph can easily become a Pyrrhic victory tomorrow.

The Terms of the Agreement

Typically, whereas the 2000 Djukanovic platform dwelled on the injustices of past Montenegro-Serbia relations and Montenegro’s “inalienable right to self-determination” (more than a third of the platform text!), the preamble of the response by Kostunica and Djindjic highlighted the merits of federal arrangements, the historic and cultural ties as well as joint economic interests. The 14 March agreement contains only one terse reference to “elements of Serbian and Montenegrin statehood, stemming from the present-day factual situation and the historic rights of the two member states.” In Djukanovic’s vision the sovereignty and equality of the republics was key, while Belgrade argued on the basis of the “equality and operability” of the new federation.

1. In the foremost set of issues, international status and representation, the current agreement predominantly follows the Belgrade position with a veto on unilateral secession by referendum and *one* international-law subject. Montenegro will not have international legal personality, but in return, the West has accepted the

¹⁶ Dusan Reljic, “Montenegros Zukunft nach wie vor ungewiß,” SWP-Aktuell 3 (2002). Compare: Morton Abramowitz, “Let the Montenegrins Have Their Say,” IHT (31.12.2001).

¹⁷ Florian Bieber, “The instrumentalisation of Minorities in the Montenegrin Dispute over Independence” ECMI Brief 8 (Flensburg 2002), pp. 7-8.

option of a referendum on independence after three years for the first time. To protect Montenegro against being swamped by Serbs in the joint institutions and representative positions, some (rather specific) safeguards have been built in for proportional international representation by rotation. The elections on both levels and the constitutional amendments set the new state apart from the current deficient FRY without giving up implicit succession under international law.

2. Typically, as far as the more tangible issues of the relations between state and member-states and the division of competencies are concerned, the agreement is largely uninformative. Implicitly, the agreement dissociates itself from Djukanovic's vision of sovereign states delegating part of their competencies to a subsidiary federal level. The Belgrade position contained two potentially conflicting definitions of the federal competencies – (1) the federal units' need and common interest and/or (2) the elementary functions of internal and external operability – and the new agreement implicitly sympathises with “internal and external operability” as basic criteria. In terms of decision-making too, the spirit of the agreement seems to favour Belgrade's “co-operative” over Podgorica's impracticable “consensual” decision-making. As the text, however, contains not a single explicit statement on these issues, until the Constitutional Charter offers clarification (“the modalities for achievement of these goals shall be elaborated in parallel with the Constitutional Charter”), any partisan interpretation is permitted. Conversely, the range of joint competencies and ministries – defence, foreign affairs, internal and international economic relations as well as human and minority rights – copies the Montenegrin proposal with the exception of the common market and the convertible currency (euro).
3. In the five common policy fields, the new agreement clearly combines elements from both positions. As Djukanovic demanded, conscripts will not be forced to serve outside their own republic against their will, but there will be only one *federal* army (a lesson from Bosnia). In line with the choice on international legal personality, foreign and defence policy are in the realm of the union. In internal and international economic relations, the actual competencies of the federation are less clear as the republics are allowed to keep their separate economies, currencies, and customs services. At this point, the agreement is almost as blank as the Belgrade platform. The domain of human and minority rights is an open question, neither platform foresaw such a ministry that might either become a

figurehead or a welcome excuse for the federal authorities to interfere in almost any republican legislation and political decision-making.

4. In terms of state institutions and decision-making, the agreement tends to follow the more pragmatic Belgrade approach based on operability rather than an interpretation of equality. The impracticable mode of the two republican ministers of defence and foreign affairs taking turns at the respective nominal position on the federal level has been replaced by an “exchange of roles” by these two federal ministers and their respective deputies (from the other republic). Having a “real” federal foreign and defence minister strengthens the federal level and so does the abolishment of a strict parity of republics in each federal position: president and vice-president, each minister and his deputy. Taking into account the limited competencies of the federal government the agreement does not foresee a prime minister (unlike the Belgrade model) and the supervision of the ministerial council will be in the hands of the president (unlike the Podgorica model, there is no mention of a vice-president). The unicameral parliament elected by all citizens of Serbia and Montenegro points in the same direction, ignoring demands for a parallel system of republican parity next to individual democratic rights. The “certain positive discrimination” for Montenegro, however, requires specification.

Politicking Elites and Strategic Realignments

Both in Belgrade and in Podgorica key political figures that were not directly involved in the actual negotiations have pretended surprise and shock at the results. Most have recovered quickly and are beginning to reposition themselves accordingly. In Montenegro, Djukanovic, a political survivor of some repute, faces a tough political imbroglio. The president has tried to explain his decision to his supporters by underlining the fact that instead of stopping it, the agreement postpones, but in principle accepts a referendum on independence. Nevertheless, the Montenegrin government is not expected to survive Djukanovic’s surprise move: His coalition partner, the Social Democratic Party (SDP) is more radical than the DPS in its drive for independence, but cannot equal the liberal LSCG (supporting the government so far without participation) in its single-minded drive for statehood. SDP leader Ranko Krivokapic has already demanded the annulment of the agreement and an immediate referendum. The DPS’ offer to the liberals to join the government coalition seems to

be a red herring: In order to stay on top of the developments, Djukanovic will have to come to terms with the oppositional bloc “Together for Yugoslavia,” which reacted in more jubilant tones than the ruling parties. First meetings between Djukanovic and his SNP opponent Predrag Bulatovic date back to August 2001 when the referendum seemed a forgone conclusion. Although the president is in for tough negotiations, representatives of the oppositional People’s Party (NS) and the Socialist People’s Party (SNP) have cautiously signalled respect for Djukanovic “stopping at the brink of disaster” and even support for the agreement.¹⁸ All party leaders seem to be waiting for first indications of the popular mood.

In Serbia, Kostunica, all smiles during the ceremony, poses as the real winner and tries to sweeten the bitter pill for his nostalgic supporters by proclaiming “the beginning of a new historic unity between Serbia and Montenegro.”¹⁹ The state envisaged in the agreement would have an improved presidential authority: Election by the parliament rather than the populace will diminish its popular legitimacy, but his competencies are more concretely defined. Its implementation, moreover, would save him the choice between clinging to a largely symbolic Yugoslav presidency and running for the Serbian presidency (and thereby ending the federation single-handedly). Early elections will be a test for the DOS coalition, for Djindjic’s ability to keep the 18-party coalition united and for Kostunica to reap the fruits of his declining, but still high popularity.²⁰ Others like Deputy Prime Minister Miroljub Labus have criticised the multitude of unanswered questions in the agreement, particularly in the economic field. Serb nationalism decrying the loss of Yugoslavia and Kostunica’s “betrayal” must realise that he may have secured the best possible deal for nationally minded Serbs, much better than a Yugoslavia existing on paper only. Conversely, many Serb leaders had been more than willing to let Montenegro go its own way, but most certainly did not want to incur a nationalist backlash at home by letting it go.

Thus, apart from the clear decision to name the new state “Serbia and Montenegro,” most contentious issues are left open, hoping for a constructive negotiation process to fill in the gaps. Thus, at the end of the day, the agreement of 14

¹⁸ Michael Meyer-Resende, “The End of Yugoslavia – the End of Disintegration?” RFE/RL Newsline (Endnote) 6/55 II (22.03.2002); Mika Tadic Mijovic, “Montenegro: Djukanovic Plots Comeback” IWPR Balkan Crisis Report 324 (15.03.2002)

¹⁹ Mika Tadic Mijovic, “Montenegro: Djukanovic Plots Comeback” IWPR Balkan Crisis Report 324 (15.03.2002)

²⁰ Zeljko Cvijanovic, „Serbia: Joint State Deals Blow to Djindjic,“ IWPR Balkan Crisis Report 324 (15.03.2002)

March is essentially a declaration of intent rather than a constitution blueprint. The agreement contains some bitter pills for each negotiating party and some partial victories. For a real negotiation process in regional ownership, this may be just the right mixture.

The verification of the agreement by all three parliaments after elections will make for a hot summer: A mixed commission from the two republican parliaments and the federal parliament (currently not recognised by the Montenegrin government!) will present a Constitutional Charter in June on the basis of parliamentary conclusions. Thereafter, newly elected republican parliaments and eventually a federal parliament elected by the entire constituency of “Serbia and Montenegro” will pass democratic judgement on the state of a new type, dubbed “Solarium” by some sceptics. From the current perspective, it is hard to say who will be blocking the realisation of the agreement and who will be pushing it. Probably, negotiations will take months and it seems quite likely that the agreement will never be implemented in full. A velvet divorce by mutual agreement within the next three years may even be part of Djukanovic’s and Djindjic’s hidden agendas. Meanwhile, state formation as work in progress may, on the one hand, produce a substantial restructuring of the political landscape and, on the other hand, create a window of opportunity for real co-operation based on shared interests.

Open Questions and Hidden Caveats

Like any good political deal, the Serbia-Montenegro agreement leaves a number of questions unanswered. The first crucial hiatus concerns its ambiguous character between federation and confederation: Implicitly, “Serbia and Montenegro” is a continuation of the 1992 Federal Republic of Yugoslavia (FRY), as it is not a re-federalisation after a declaration of independence, as envisaged by the Djukanovic platform. At the same time, the fact that the Constitutional Charter has to be passed by the parliaments of the member states after elections, however, indicates an institutional break with the (recent) past. Evidently, the negotiating parties have decided to tackle the political status issue first and leave the contentious economic issues open. Pressed for time, the EU seems to have accepted a looser form of union than envisaged in earlier blueprints.

The envisaged “loose union of a new type” would enable a clearer institutional relation between Serbia and the federal level, a precondition for rationalisation and

the elimination of the costly overlaps between Yugoslav and Serbian administrations. A number of FRY institutions not foreseen for the new union could be re-designated as institutions of the Serbian Republic (e.g. the National Bank). The main structural problem to be resolved, however, concerns the equality of two so unequal republics. Montenegro will have its veto in the Supreme Defence Council and in the federal parliament and its share of international representation. As long as there is a strategic consensus, the idea of a Montenegrin representing 8 million inhabitants of Serbia and a few hundred thousand Montenegrins in international organisations may even be bearable. In negotiations with IFIs, however, conflicting interests may easily destroy the credibility of the new union, both externally and internally. Implementing the agreement's "special modes of representation for IFIs" will be a challenge. The same applies for the weighting of Montenegro's democratic representation in federal decision-making: How to design a system preventing Serbia from outvoting its junior partner on each and every issue, whilst preventing Montenegro from applying its veto to get a disproportionate say in common policy making?

The main deficit of the agreement – in that respect more similar to the Kostunica/Djindjic platform than to Djukanovic's – concerns the economic integration of the two member-states. Although Djindjic had noted during the negotiations that he cared more for economic than for political integration, each member of the new state will retain its own economic, financial and customs systems and Montenegro its euro currency for the time being, much along the lines recommended in the ICG/CEPS letter to Solana.²¹ Montenegro may keep its lower tariffs, its convertible euro currency and a customs barrier between the two republics. Conversely, access for Montenegrins to Serbian institutions of higher education, medical care and other state services beyond the reach of a mini-state like Montenegro is likely to become an issue for negotiations. Although economic separation has many disadvantages, the current asymmetries do not allow for significant re-integration. Economic separation, however, is not so much a setback, but rather the acceptance of current realities.

Federal Vice-President Miroljub Labus criticised the lack of clarity in terms of timetables and economic matters, noting that one year would be a reasonable time-frame for the reintegration of markets. His one-year deadline refers to the expected

²¹ ICG/CEPS media release, „EU Pressure on Montenegro is ‚Unwise‘“ (Brussels 14.02.2002)

duration of the negotiations for a Stabilisation and Association Agreement between the new state and the European Union, the first step towards full EU membership in 10-15 years.²² The EU mediators and the negotiating parties gave priority to breaking the spell of the (political) status question, hoping that new synergies and economic momentum released by the integrative Stabilisation and Association Process towards full EU membership will make up for the evident disadvantages of economic separation.²³ As the EU's promise to support and monitor the intermediate bilateral harmonisation in the economic field and the eventual harmonisation under the aegis of the European common market indicates, the expectation is for economic policies to be more rational and controllable than the emotional and intractable status question. Economic re-integration could take place gradually as Serbia catches up and as EU integration becomes a closer prospect.

Consequences for Regional Stability?

Many in Serbia, nostalgic for the days of Tito, will regret the loss of the name "Yugoslavia" and the ideal of a multiethnic state it once implied. For many in Serbia and beyond, after the experiences of the past ten years, Yugoslavia stood only for Serb ethno-nationalism and ethnic cleansing. Conversely, after the extradition of Milosevic, dropping the name "Yugoslavia" is a second reassuring symbol for many in the region, a farewell to the era of ethnic conflict and human tragedy. Whatever its quality as a functioning state may be, the new name should be listed on the credit side in the balance sheet for "Serbia and Montenegro." Dropping the name "Yugoslavia," moreover, may give a new dimension and impetus to the on-going debate on Serb national identity and the Serbian state.

The pivotal regional question relates to the consequences for the final status of Kosovo (and other potential status questions in the region, e.g. Republika Srpska or the Albanians in Macedonia). The main reason why the EU strongly objected to the idea of Montenegrin independence ever since Djukanovic took office, although the 1991/1992 Badinter Commission had confirmed Montenegro's right to self-determination, was concern for a precedent followed by yet another round of state fragmentation in a region traditionally suffering from too many projects of state and

²² Balkans Weekly (15.03.2002)

²³ Dusan Reljic, "Serbien und Montenegro engine sich über zukünftige staatliche Gemeinschaft," SWP-Brennpunkte (2002)

nation building. Although Djukanovic and his coalition partner SDP occasionally invoked the last Montenegrin King Nikola in their bid for independence, the envisaged mini-state was characterised as a civic state with harmonious relations between the Montenegrin majority (62%), the Muslims (15%), the Serbs (9%) and the smaller minorities.²⁴

Therefore, Kosovo's status was the main obstacle for Montenegro's independence, although political leaders in Podgorica and Pristina never tired of denying any such nexus. Indeed, the Kosovar politicians will never abandon their aspirations for independence, no matter what kind of constitutional acrobatics the Montenegrins perform.²⁵ An immediately backlash of a Montenegrin referendum on independence in Kosovo seems unlikely at the moment, but both in Brussels and in the region, the agreement has been applauded as an end to the Balkan trend of never-ending state fragmentation in a Europe characterised by integration and the transfer of sovereign rights.

The International Crisis Group was not the first to raise the question, what consequences the dissolution of the third Yugoslavia would have for the guarantee of its "sovereignty and territorial integrity" in resolution 1244, all the more so as this resolution referred to Kosovo as part of Yugoslavia, not of Serbia.²⁶ As of now, the ensuing debate among specialists in international and constitutional law has academic relevancy only. "Serbia and Montenegro" becomes the successor state of the defunct FRY and the 14 March agreement includes an explicit precaution for a possible disintegration after three years: "If Montenegro withdraws from the state union, international documents related to the FRY, the U.N. Security Council Resolution 1244 in particular, shall relate to and fully apply on Serbia as its successor." Thus, this weaving fault in resolution 1244 has been repaired. (Strictly speaking, only the unlikely case of Serbia's secession would unhinge resolution 1244.) The suggestion that this provision violates the resolution and re-introduces Serb sovereignty over Kosovo seems far-fetched: The UN resolution could not deny Kosovo being a province of the Serbian republic under the Yugoslav constitution and theoretically

²⁴ Tim Judah, "Montenegro's Quest for Independence" BBC News (28.12.2000); Florian Bieber, "The instrumentalisation of Minorities in the Montenegrin Dispute over Independence," ECMI Brief 8 (Flensburg 2002)

²⁵ Matthias Rüb, „Etwas ganz Neues im Suedosten,“ FAZ (15.03.2002), p. 1.

²⁶ UNSC Resolution 1244 (1999), adopted by the Security Council at its 4011th meeting, on 10 June 1999.

Serbia might uphold the defunct “shell” of the FRY even after Montenegro’s secession if only because of Kosovo.²⁷

Nevertheless, in three years (at the latest), the triangular Belgrade-Podgorica-Pristina dilemma will come to a head again: In quick succession, the term of office of the Kosovar government, the Constitutional Framework for Provisional Self-Government in Kosovo and the Serbian-Montenegrin moratorium on referenda will end. Three years, however, is a long time. What the agreement brokered by Solana may achieve is gaining time rather than playing for time. The new “union of states” erases the delusion of the defunct FRY that had become a danger in itself and offers a basic framework for new trilateral and regional arrangements. Even if the new state would be only a transitional solution, ending the constitutional confusion and political deadlock, it would be a historic achievement in the Balkan region. After all, the Balkans have never been known for giant leaps, and small steps may be safer and just as effective on an arduous road of protracted negotiations and political detours.

²⁷ Matthias Rüb, „Folgen der Einigung von Belgrad,“ FAZ (16.03.2002), p. 6.

Table 1 International Status and Representation

	International status	International representation	Referendum, elections and constitution
Djukanovic Platform (28.12.2000)	Independent and internationally recognised states	Member-states autonomous in diplomatic representation. Harmonisation and co-ordination within the Union.	Referendum on independence and future union in Serbia and Montenegro
Kostunica-Djindjic Platform (10.01.2001)	Internationally recognised federation with two federal units.	By the federation	Constitutional amendments
Serbia and Montenegro Agreement (14.03.2002)	Internationally recognised state with two republics	Joint proportional representation. Parity in UN, OSCE, EU and CoE representation by rotation. Special modes of representation for IFIs.	Three-year moratorium on referenda on secession. Elections for the republican parliaments, the president of the state as well as ministers and judges. Constitutional Charter drafted by commission on basis of parliamentary conclusions, submitted to republican and federal parliaments. Amendment of the republican constitutions.

Table 2 State and Member-States, Division of Competencies

	Union and republics	Institutions and decision-making	Competencies of the Union
Djukanovic Platform (28.12.2000)	Member-states as holders of sovereignty, delegating part of their competencies.	Competencies of the Union interpreted restrictively, as a rule performed by bodies of the member states. Equality and consensual decision-making.	Defence, foreign policy, common market and convertible currency, protection of human and minority rights.
Kostunica-Djindjic Platform (10.01.2001)	Autonomy of republics in all functions not referred to federal level, incl. direct co-operation.	Functions performed at federal level minimal, defined by (1) the federal units' need and common interest and/or (2) the elementary functions of internal and external operability. Co-operation between federal and republican bodies in decision-making and joint functions. Equality of the federal units. Dislocation of some federal institutions to Montenegro.	Fully exercised: national defence, monetary and customs system, transportation, communication, foreign policy. Jointly exercised: protection of basic rights and freedoms (incl. social rights), other basics of economic system.
Serbia and Montenegro Agreement (14.03.2002)	-	- Dislocation of some federal institutions to Montenegro.	Defence, foreign policy, internal and international economic relations, protection of human and minority rights.

Table 3 Common Policy Fields

	Defence and foreign policy	Common market and currency	Economic relations
Djukanovic Platform (28.12.2000)	Member state armies, military service in one's member state. The Supreme Defence Council (i.e. the three presidents) decides by consensus. Rotation of the defence and foreign ministers of the member states as defence minister of the Union. Foreign policy of the Union to facilitate the integration in Euro-Atlantic organisations.	Common, externally convertible currency and free flow of goods, capital, people and information. Each member-state has its own central bank and retains the right to have its own monetary system.	Single customs area without internal tariffs, harmonisation of customs policies and tariffs.
Kostunica-Djindjic Platform (10.01.2001)	Defence by the federation and the federal army. Foreign policy as a federal prerogative with the possibility for the republics to exercise international economic integration and regional co-operation autonomously.	-	-
Serbia and Montenegro Agreement (14.03.2002)	By the state. The Supreme Defence Council (i.e. the three presidents) decides by consensus. Conscripts serve in their own republic, unless they prefer otherwise.	Harmonisation in trade and customs policies via EU economic system. Transitional harmonisation takes into account the interests of the member states. EU monitoring and assistance.	Republics responsible for free flow of goods, capital, people and services as well as for functioning common market

Table 4 State Institutions and Decision-Making

	Assembly	President, Court	Council of Ministers
Djukanovic Platform (28.12.2000)	Unicameral - deputies elected on parity basis and within legislative competence of the member-states. Rotation of president and vice-president of the assembly	Elected and dismissed by the Assembly with prior agreement of the Assemblies of the member-states. President of Union and President of the Council of Ministers from different member-states and represent political majority. Federal court	President, Vice-President, Ministers of Foreign Affairs, Defence, Finance and Economic Relations. President/Vice-President, Ministers/Deputy-Ministers from different member-states
Kostunica-Djindjic Platform (10.01.2001)	Bicameral – absolute majority in both chambers needed for fundamental federal decisions. General jurisdiction for both chambers. Chamber of Republics with equal number of deputies from federal units, elected in republican legislatures. Citizens of the federation elect Chamber of Citizens, mandatory minimum for Montenegro.	Elected by the Federal Assembly, alternately from the two republics, dismissed only by ruling of Federal Court, nominates senior state officials. Federal court as constitutional and regular court	Prime minister elected alternately from the two republics. The ministers are accountable to the prime minister, who is accountable to the Federal Assembly.
Serbia and Montenegro Agreement (14.03.2002)	Unicameral – election laws by member states, certain positive discrimination for Montenegro. Mechanism against the outvoting of member states.	Elected by parliament, proposes and directs council of ministers Court as constitutional and administrative court	Foreign affairs, defence, international economic relations, internal economic relations as well as the protection of human and minority rights. Ministers proposed and directed by the president, rotation of ministers/deputy-ministers in foreign affairs and defence.

Government of Montenegro (28 December 2000) Platform for talks with Government of Serbia on new relations between the two states

I. Past Montenegro-Serbia Relations in FRY

1. On the grounds of the historical and centuries-old sovereignty of Montenegro and the inalienable right of Montenegro to self-determination, verified by the decisions of the United Nations and by the Badinter Commission and proclaimed by the Montenegrin Constitution of 1992:

* The Citizens of Montenegro decided to form a common state with Serbia – the Federal Republic of Yugoslavia. The Citizens of Montenegro wanted and expected FRY to be a democratic community of equal Republics and equal citizens. Nevertheless, many abuses of the FRY institutions and bodies occurred during its existence, which resulted in undemocratic relations and gross violations of the Constitutional principles of equality of the Republics and citizens, at the expense of Montenegro.

* After the parliamentary elections in Montenegro in May 1998, the Federal Government and the Chamber of the Republics of the Assembly of the FRY were constituted in a fashion that flagrantly violated the FRY Constitution, the constitutional rights and the will of the citizens of Montenegro expressed in these legal, legitimate and democratic elections. All federal institutions, and in particular the judicial and the administrative ones, were functioning and taking decisions in contravention to the legal order of the FRY, carrying out undemocratic and unitary policies of the then federal administration and thus violating individual and collective rights of citizens of the Republic of Montenegro. The most blatant manifestations of such policies were the unconstitutional declaration of state of war and the abuses thereof, as well as decisions that ignored fundamental rights of citizens of Montenegro, which must never be violated, not even during circumstances of war.

* The FRY competences in the field of foreign affairs, border crossings and control of goods, services and passenger transport across the borders, as well as the status of foreigners were discriminative and with elements of obstruction against Montenegro.

* The formulation and implementation of the FRY foreign policy was conducted without participation of and contrary to the political positions of the Montenegrin authorities, as well as in defiance of modern concepts of

international relations. The equal participation principle of Montenegro and Serbia in appointments and staff recruiting for the diplomatic and consular missions was not respected either.

* The principle of a single Yugoslav market was being constantly infringed upon, such infringements involving illegitimate checkpoints with the character of customs posts between the two Republics and violation of basic rights of citizens of Montenegro. Their property was being confiscated; the flow of goods and capital was being prevented, as well as free entrepreneurship and equal treatment of economic entities.

* The monetary and the foreign exchange policy were conducted without Montenegro's equal participation in decision-making and control, and in contravention to the Constitution and the Laws, especially in issuing new money and setting interest rates.

* The VJ (Yugoslav Army) was particularly misused, especially its commanding system (military and civilian). The Montenegrin President was excluded from the commanding system and the VJ became an instrument used for political purposes with the intention of destabilising Montenegro's legitimate authorities.

* After the Presidential elections in Montenegro there were encouragements and attempts to overthrow by force the democratically, legally and legitimately elected Montenegrin authorities.

* On 6 July 2000 illegal and illegitimate changes of the FRY Constitution were carried out; they meant constitutional violence against Montenegro. These changes instituted procedures for the election of the FRY President and the Chamber of the Republics of the Federal Assembly appropriate for a unitary rather than a composite state. Montenegro, given its significantly smaller constituency, lost the possibility to influence the election of the Federal President. Also, now that the Republic Assemblies no longer have the right to elect deputies to the Chamber of the Republics, this Chamber has ceased to protect the interests of the Republics. In an exercise of constitutional violence, and without the obligatory agreement of the Republic Assemblies, federal electoral legislation was taken away from the republican and transferred to the federal competence. These changes highlighted the absence of a constitutional mechanism that could protect equality and sovereignty of Montenegro against political violence.

2. Therefore, it is necessary to redefine the relations between Montenegro and Serbia on a

new basis. The fact that the Serbian Constitution has never been brought in line with the FRY Constitution (this has never been even attempted) makes the political conditions for restructuring the relationship between Montenegro and Serbia still more complicated. 3. The FRY Constitution of 1992 cannot be a basis for establishing a new relationship between Montenegro and Serbia.

* The relationship between the states of Montenegro and Serbia should be secured through new procedures.

Montenegro has been seriously and responsibly preparing for talks with Serbia on the subject of the basis, framework and directions of their future relationship. This relationship can only be based on:

* The historical, state, national and cultural identity of the two states and two peoples, as well as on the sovereign right of citizens of both states to autonomously make decisions regarding their destiny.

* The tasks of common interest to Montenegro and Serbia are to be entrusted to the Union and to be conducted on an equal footing and subjected to the same level of control.

* On that ground, Montenegro offers the Platform for talks on a future Union, which should be based on a common interest of both states, as well as on the historical and current realities.

II) The Character of a Future Union of the Internationally Recognised States of Montenegro and Serbia

The starting point for a new Union of Montenegro and Serbia lies in the inalienable right of the citizens to decide upon their national and state destiny. This can be the only basis for determining the common interest of the Union of Montenegro and Serbia. This will create conditions to overcome the obstacles in their mutual relationship.

* Montenegro and Serbia will be independent and internationally recognized states.

* The independence of Montenegro and Serbia will be decided through a referendum of their citizens, who have the sovereign right to determine the destiny of their state.

* Independent and internationally recognised Montenegro and Serbia will constitute the Union of two states by referendum vote of their citizens.

* Montenegro and Serbia shall form a Union, aware of the common interest and the utility of such association, building a structure based on the principles and relations acceptable for both.

* In this Union, the citizens, their associations, companies and institutions should have a wide range of opportunities to fulfil their needs and

interests. Instead of the hierarchical pyramid of alienated and bureaucratised state institutions, the new model of the Union of Montenegro and Serbia should provide decision-making on clear and easily applicable principles governing conduct of the states.

* Montenegro and Serbia, independent from each other regarding questions of national and state sovereignty, in fulfilling the common interest should function without centralisation.

* For the Union of Serbia and Montenegro the only acceptable concept is the one that has as the basis the constitutional position of the states as genuine holders of sovereignty, delegating part of their competences, those that can effectively be carried out in the Union on an equal footing and in a rational manner.

III. Principles of the Union of Montenegro and Serbia

The principles of the Union:

* The equality within the Union of states

* Each state conducting in a sovereign fashion all the state affairs within its competence.

* The Union carrying out only those activities entrusted to it.

* Competences of the Union to be interpreted restrictively

* Competences of the Union to be performed, as a rule, by bodies of the member states and exceptionally by bodies of the Union.

* Bodies of the Union constituted on the basis of the principle of equality and consensual decision-making.

* Open society

* Respect of international standards, human rights and freedoms, including special minority rights

* Market economy with domination of private ownership and private entrepreneurship

* Rule of law

* Constitutionality and legality of Montenegro and Serbia.

IV. Competences of the Union of Montenegro and Serbia

The competences of the Union should be considerably narrower than today's competences of the FRY. This should minimise potential conflicts, while at the same time expressing a new character of the Union. The Union would have the following responsibilities:

* Defence and external security of the Union

* Foreign policy of the Union

* Securing a common market and a convertible currency

Given the negative experience in the functioning of the FRY bodies, the bodies of the Union and the procedure for their

formation and decision-making should be defined by an act of the Union

1. Defence and External Security of the Union

* Montenegro and Serbia shall have their own armies

* The army must be professional; the military service shall be done in one's member state and shall not last longer than six months

* The common activities of the army, of importance for both Montenegro and Serbia, shall be under command of the President of the Union, exclusively on the basis of decisions of the Supreme Defence Council.

* The Supreme Defence Council shall decide by consensus of the member states presidents and the president of the Union

* The president of the state shall be in command of the army of the member state of which he is the president

* Having in mind the character of the Union it is suggested that defence ministers rotate every second year within a four-year term of office.

2. Foreign Policy of the Union

Member states, as separate persons in terms of international law, shall be autonomous in formulating and conducting foreign policy and international cooperation and shall do so in accordance with their constitutional capacity, their principles, goals and priorities. Foreign policy activity of the Union shall be aimed at facilitating integration of its member states into the international community, particularly into the Euro-Atlantic organizations and institutions, and making possible a better and more successful international cooperation and development. To this end the Union shall be engaged in harmonising and coordinating the policies, priorities and activities of its member states.

Foreign policy activity of the Union shall be harmonised and coordinated according to the foreign policy priorities, tasks and activities of its member states. The member states shall participate in these affairs on an equal basis and shall have equal control in the matters of the Union with clearly differentiated responsibilities of the Union from those of the member states.

Within the Council of Ministers of the Union, the functions of the Coordinator - Minister for Foreign Affairs of the Union shall be rotated between the Ministers for Foreign Affairs of the two member-states, each of them performing the function during a 2-year period. The Coordinator - Minister for Foreign Affairs of the Union, shall perform, with the assistance of the Union's institutions, the tasks of harmonisation and coordination of foreign policy and of the activities of the member-states of the Union. The Coordinator - Minister

for Foreign Affairs of the Union shall discuss, in regular consultations with the Minister for Foreign Affairs of the other member state, all foreign policy and international cooperation issues of common interest.

The member states shall be autonomous in establishing their diplomatic and consular offices, appointing ambassadors and consuls general in accordance with their policy, interests and priorities. In mutual consultations and within the Union they shall coordinate and harmonise their policy, interests and activities in this sphere, and discuss the manner and conditions for joint use of buildings and the overall infrastructure abroad. Also, one member-state shall entrust the other member-state with the duties and tasks of representing her interests in certain countries and/or international organizations where one member-state does not have an interest or possibilities for direct presence with her own diplomatic/consular office.

3. Common Market and Convertible Currency

The Union would have a common, externally convertible, currency and free flow of goods, capital, people and information.

V. Union Institutions, Electoral Procedures and Decision-making Processes

The responsibilities under the competence of the Union would be conducted through the Assembly of the Union, President of the Union and the Council of Ministers.

1. The Assembly of the Union

The Assembly of the Union would have one 'House' and the deputies would be chosen on a parity basis within the framework of exclusive legislative competence of the member-states. The deputies would be obliged to keep the Assemblies of their member-states informed on the approved agenda.

The President of the Assembly and the Vice-President shall be from different member-states, and shall rotate every 2 years, within a 4-year term of office.

The member-state, through its Assembly, would have the right to initiate a separate protection procedure regarding the acts from the competence of the Assembly of the Union.

2. President of the Union

The President of the Union shall represent the Union.

The President of the Union shall be elected to and dismissed from the post by the Assembly of the Union, subject to prior agreement of the Assemblies of member-states.

The President of the Union and the President of the Council of Ministers shall be from different member-states and shall represent the

'majority parties' or coalitions in the member states.

At the request of the Government members from the Social Democratic Party (SDP) the Government has taken note of the position of SDP that office of President of the Union is not in accordance with the character of a Union of internationally recognized states of Montenegro and Serbia.

3. The Council of Ministers of the Union

The Council of Ministers of the Union shall perform the assigned executive tasks within the competence of the Union and shall include the President, the Vice-president and the Ministers for Foreign Affairs, Defence, Finance, and Economic Relations.

The Vice-president of the Council of Ministers shall be from a different member-state with respect to that of the President, just as the Deputy Ministers shall be from a different member-state with respect to the Ministers.

The member-state, through its government, would have the right to initiate a special protection procedure regarding the acts from the competence of the Council of Ministers.

VI. The Basis of the Economic Relations between Serbia and Montenegro

In the sphere of economic relations the Union will have:

* A common market: free flow of goods, capital, people and information in the territory of the Union with protected 'property rights', freedom of establishment of economic entities, as well as freedom of contract.

* A single customs area: the Union shall be a single customs area without internal tariffs, in conformity with WTO regulations deriving from developing country status.

The customs system shall be under the competence of the member states. Customs policy and tariff rates could be harmonised through special agreements that would secure specific interests of the member states (strategic goods, strategic development ideas, customs free zones and off-shore companies, etc)

* A common convertible currency: The currency of the Union shall have external convertibility and shall be backed by reliable hard currency reserves.

Convertibility would be defined by an act of the Union.

Each member-state shall retain the right to its own monetary system should the monetary union prove a constraint to the realisation of its strategic commitments due to impaired monetary stability or influence of other factors. Each member state shall have its own central bank.

President Kostunica's Proposal for the Reconstruction of Yugoslavia

(published in Tanjug, 10 January 2001; endorsed by the Democratic Opposition of Serbia)

Throughout their contemporary history, Serbia and Montenegro aspired to state unification. They deemed the creation of a joint state their natural objective and a key precondition for materializing their interests and securing their internal and external freedoms. There is no doubt that our joint efforts produced many good things, but it is also true that it is only now that the road to a comprehensive and democratic transformation of the country has opened to us, and that we have just entered the process of creating conditions for proper constitutional restructuring of relations in the federation and the establishment of a stable joint state.

There are a large number of historical and actual reasons in favor of the preservation and restructuring of the Serbian-Montenegrin joint state. They exceed by far those in favor of the separation of the two republics, a larger part of the executive authorities in Montenegro have been insisting on. The reasons for preserving the state alliance are deep historic links between the two peoples, their language and tradition, religion and culture, firm family and property ties, and those granted citizens one republic, who enjoy permanent residence in the other or have inhabited it for quite a long time. What Serbia and Montenegro also share are a single economic environment, joint development interests, as well as the interests of common defense. Another important fact is that Serbia and Montenegro are equally multi-ethnic and multi-cultural states, with approximately for identical population share of different language, religion and culture. After the democratic changes, they are supposed to share the state responsibility for minorities and guarantee their position by sound constitutional and legal mechanisms. In less than two months, the FRY managed to improve considerably its standing within the international community. Moreover, it gained the reputation of a country international organisations can rely on in establishing understanding and cooperation in the region. The task of restructuring the state is responsible and difficult indeed. This task, however, is not unsolvable if there is a political goodwill and readiness for compromises. We should not be afraid of the fact that

Montenegro and Serbia, as old European states, internationally recognised two centuries ago, have every right to seek to safeguard their important national attributes in their joint state as well. Quite the contrary, it is precisely this fact that can make the challenge easier, because the need for both federal units for political autonomy within the state alliance can be fulfilled permanently by modern and specific federal solutions. After all, federalism emerged in contemporary history as a response to the question of how to organise complex states that comprise several political units. Federalism responds to their readiness to unite on the basis of common goals, while maintaining their autonomy and specific national attributes in the spheres falling within their autonomous jurisdiction. Each federation resolved this problem in its own way, having no model at all, since it was always a specific case of the creation and operation of a complex state. Just like all others, the federation of Serbia and Montenegro is also specific. This means that it has to identify individual and atypical solutions for its specific internal structure.

What has always been pointed out as the major obstacle to a healthy federal balance is the existing difference in the size and population of the two federal units. For that reason, the system is allegedly to incline to the two extremes, both of them being equally dangerous to the operation of the system. Basically, we are talking about the tendency of centralisation on the one hand, and the tendency of internal blockade on the other. To say the truth, the two tendencies had torn apart the present-day two-member federation indeed, all until they began to question its existence. However, this is not the consequence of the federal structure itself, as the advocates of Montenegro's secession are trying to prove, but rather the fact that the existing Constitution of the Federal Republic of Yugoslavia is the result of party deal made by the then ruling parties in Serbia and Montenegro, which, with the passage of time, they ceased to comply with themselves. We now have a unique chance of devising better constitutional solutions, endorse them in a legitimate procedure, and, as democrats and legalists, abide by them consistently.

It is precisely because of the set structure of the Serbian- Montenegrin federation, and the existing disproportion in size, the concept of functional federation, adapted to the local circumstances, is the most purposeful one. There are three basic characteristics of such a concept.

1) The number of functions to be performed at the federal level should be minimal, basically defined by the federal units' need for the joint and effective resolution of issues of common interest;

2) Cooperation between federal and republican bodies must exist in the processes of decision-making and performing joint functions alike.

3) All functions that are not referred to the federal level are performed autonomously by the republics, which also means that they can establish direct cooperation in the joint performance of those functions.

These three important characteristics will secure that the two following basic principles be exercised in theory and practice alike; the equality of the federal units and the operability of the federation as a whole.

A) Power-sharing and operations of the federation

The number of federal powers is defined by the elementary functions that make a federal state operable in its internal and external public life. these are:

- * protection of basic rights and freedoms, with the necessary minimum of social rights;
- * foreign policy;
- * national defense;
- * basics of economic system;
- * transportation and communications.

These are also the minimal powers a state should exercise if strategically oriented to European integration, which is no doubt the wish and substantial orientation of the citizens of Serbia and Montenegro.

In order to secure simultaneously the equality of the two federal units and the operability of the federation as a whole, I propose several principles that would pave the way to the establishment of a system of multiple balances. The first principle implies the bi-cameral adoption of all fundamental federal decisions - laws and other regulations, on the basis of absolute majority in both chambers. Due to the specific structure of our federation, the upper house, as a body directly representing the republics, should have general jurisdiction, just like the lower house.

When it comes to the exercising of federal powers, a difference should be made between those fully exercised by federal bodies - legislative, executive and judicial, and those exercised jointly by federal and republican organs. In the first case, all regulations are adopted and implemented by the federal bodies.

They include the following federal powers:

- * foreign policy
- * national defense,

- * monetary system,
- * customs system,
- * transportation,
- * obligation law,
- * securities.

When it comes to implementation of the laws relevant to the above-listed, the Federal Government may delegate its executive power to the republican executive and administrative organs.

In the second case of mixed powers, the federal parliament is to endorse framework laws only that are made concrete by the republics' legislatures, and those legal regulations are implemented by their executive and administrative organs. These powers are as follows:

- * basic rights and freedoms, including the protection of minority rights, as well as basic social rights,
- * property relations,
- * taxation system,
- * banking system,
- * trade law,
- * pensions,
- * insurance of property and persons.

When it comes to foreign policy and international relations, the future federal constitution should allow for the possibility that the republics exercise autonomously different forms of international cooperation in the spheres of economic relations and diverse modes of regional integrations.

B) Federal Institutions

Their composition and powers, as well as the way in which they are elected and the way in which they make decisions should make the federal institutions a consistent reflection of the functional federation concept.

As the supreme representative and legislative body of the federation, the Federal Assembly should have bi-cameral structure, that is, comprise the Chamber of Republics and the Chamber of Citizens. It is understood that the Chamber of Republics has the equal number of deputies from the federal units, who represent the interests of their respective republics in the chamber. Having in mind the local circumstances, it would be most purposeful if the deputies to the upper house be elected in republican legislatures in accordance with the principle of proportionality, so that their composition could reflect the will of the voters expressed through the structure of the republican parliaments. Given the fact that this chamber has general jurisdiction in the parliamentary decision-making, its deputies, even though they are representatives of the republics, should not have imperative

mandates. The renouncement of their imperative mandates would help the parliamentary life develop, which is the non sine qua condition for each and every form of democracy, including that in federations. This does not mean that the legislatures will not establish guidelines for the activity of deputies to the Chamber of Republics. Such guidelines are assumed in federations, but not with the intention of blocking the decision-making process in federal assemblies.

The Chamber of Citizens of the Federal Assembly should exercise the constitutional principle of equality of the citizens of the federation. Given the specific structure of the federation, a corrective mechanism is needed here in the form of a clause specifying the smallest mandatory number of representatives of a republic to the chamber. Although this might provoke the objection that this would affect to a degree the principle of equality of the citizens represented in the chamber, I am convinced that a certain correction of the "one man-one vote" principle would be beneficial to the parliamentary life. This would secure that the smaller federal unit be represented in parliamentary committees and commissions without exception. Furthermore, this would facilitate the election of the prime minister, when he/she is elected from Montenegro. Needless to say, the deputies to the lower house have free mandates, regardless of election units they are elected in, and they represent the interests of the federation as a whole.

It is necessary that the joint state of Serbia and Montenegro should have the President of the Republic. The president should have the powers of representation and nominate senior state officials in the executive branch and judiciary. The president would also chair the Supreme Defense Council that would also include the presidents of the republics. The president of the Republic should be elected by the Federal Assembly in its regular decision-making procedure. The dismissal of the president, however, is to be carried out solely on the basis of a ruling by the Federal Court that would determine whether the president violated the FRY Constitution by his conduct. The President of the Republic would be elected alternately from the two republics.

The Federal Government should be organised following the chancellor model. It is the most appropriate mode for the existing overall organisation of the federal authority. Given the small number of federal powers and the complexity of the decision-making process, it is of utmost importance that the executive branch and its major organ, the government, be

organised in the most efficient manner possible. In this context, it is only the prime minister, elected alternately from the two republics, that accounts to the Federal Assembly, while ministers account to him/her. The ministerial composition depends solely on the choice by the prime minister, taking utmost care about the equality of the two republics. The government should be independent, responsible to the assembly and rational. Apart from the prime minister, it should include only five ministers in charge of the federal ministries of justice, defense, foreign relations, finance and transportation. The Federal Government is elected by the two parliamentary chambers, but its dismissal will require a majority in one of them only. Proceeding from the specific federal structure, it is likely that the government will be formed by inter-republican party coalitions, because this is the only way for the government to secure a stable majority in both houses.

The federation should have a single court only, the Federal Court, which would perform both the constitutional and regular court functions. The usual constitutional and judicial control of constitutionality and legality on the federal level is also provided for. In the sphere of regular judiciary, the Federal Court would decide solely on extraordinary legal instruments, after all legal instruments within the two republics' judicial system are exhausted.

Given the fact that the federation will join all important international conventions to protect basic rights and freedoms, the citizen and other legal entities will be able to initiate court proceedings in order to protect their violated rights with competent international courts as well.

Although the federation has minimal functions and rational bodies for their implementation, it should dislocate the headquarters of some of its institutions. Some of them would be in Podgorica or Cetinje.

Finally, draft constitutional amendments should by all means specify procedure by which the constitution is to be amended. Bearing in mind that in this concept the exponents of sovereignty (constituency power) are the citizens of the republics, a procedure should be defined to make it sure that their will is expressed efficiently. In this context, when it comes to changes relevant to the issue of the state statuses of the republics and the federation, the citizens of the republics will be those deciding the final instance.

I believe that a constitutional concept like this can secure to the utmost the common interests of Serbia and Montenegro and at the same time

make it possible for the republics to achieve their own, special interests. However, even the best and most optimal of constitutional concepts will not be implemented in reality if the two basic preconditions are not fulfilled - political goodwill and the spirit of the rule of law. Once they are met, the citizens will be able to enjoy their rights and freedoms, and political power will be curbed by legal regulations formulated by the constitution and laws. This is also the only way for Serbia and Montenegro, on the one hand, and their joint state, on the other, to become part of modern Europe, with a good chance of being admitted to the democratic and prosperous community of European peoples and states.

Proceeding Points for the Restructuring of Relations between Serbia and Montenegro

Beograd 15.03.2002

Agreement on Principles. The Agreement on Principles of relations between Serbia and Montenegro within the state union shall be signed by participants in the talks: the President of the Federal Republic of Yugoslavia, the Deputy Federal Prime Minister, the President of the Republic of Montenegro, the Serbian and Montenegrin Premiers and, as a witness, the EU High Representative for Common Foreign and Security Policy. The document shall be submitted for debate to the Parliaments of member states and the Federal Parliament.

Constitutional Charter. On the basis of opinions put forward in parliamentary debates, that is, parliamentary conclusions, a constitutional commission, whose members shall be delegated by the Parliaments of the Federal Republic of Yugoslavia (FRY), Serbia and Montenegro, shall draft the Constitutional Charter, the highest legal act of the state union of Serbia and Montenegro. The text of this act shall be adopted by the republican parliaments first, and then submitted to the Federal Parliament. Such procedure would reaffirm the elements of Serbian and Montenegrin statehood, stemming from the present-day factual situation and the historic rights of the two member states.

Provision on Reconsideration. Upon the expiration of a three-year period, the member states shall be entitled to instituting proceedings for a change of the state status, that is, withdrawal from the state union. If Montenegro withdraws from the state union, international documents related to the FRY,

the U.N. Security Council Resolution 1244 in particular, shall relate to and fully apply on Serbia as its successor. A member state that uses this right, shall not inherit the right to international and legal status, and all debatable issues shall be regulated specifically between the state successor and the newly established state. If in a referendum process both member states declare themselves in favour of a change of the state status (independence), all debatable issues shall be resolved in succession proceedings, as was done in the case of former Yugoslavia. The Laws on Referendum shall be adopted by the member states, taking full account of internationally recognised democratic standards.

The name of the state: Serbia and Montenegro.

Institutions of Serbia and Montenegro: the Parliament, the President, the Council of Ministers and the Court.

Parliament: A unicameral parliament providing certain positive discrimination for Montenegrin representatives. The Laws on the Election of Representatives to the Parliament of Serbia and Montenegro shall be adopted by the member states, in compliance with the principles defined by the Constitutional Charter. Mechanisms to protect against outvoting of member states shall be provided for.

President of Serbia and Montenegro: The President, elected by the Parliament of Serbia and Montenegro, shall propose the composition of the Council of Ministers and direct its work.

Council of Ministers: The Council of Ministers shall be composed of five departments: foreign affairs, defence, international economic relations, internal economic relations and protection of human and minority rights. The competences of the ministries shall be defined in detail subsequently.

The Court of Serbia and Montenegro: The Court shall have constitutional-court and administrative court functions, and shall deal with harmonisation of court practice. The administrative court function shall be exercised in relation with administrative acts of the ministries of the Council of Ministers. The Court shall take legal views and give opinions related to the harmonisation of court practice. The Court is not an appellate court and has an equal number of judges from the member states.

The Army: The Army of Serbia and Montenegro shall be under the command of the Supreme Defence Council, composed of three presidents. The Supreme Defence Council

shall make decisions by consensus. Conscripts shall serve the army on the territory of their respective member states, with the possibility of serving on the territory of the other member state, if they wish so.

Elections and Appointments: Upon the promulgation of the Constitutional Charter under the specified procedure, elections shall take place, the Parliament of Serbia and Montenegro shall be constituted, the President of Serbia and Montenegro shall be elected, as well as members of the Council of Ministers and judges of the Court of Serbia and Montenegro. It shall also be possible to provide for rotating during a term in office. (In the Ministry of Foreign Affairs and the Ministry of Defence, the minister and his/her deputy from different member states shall take turns when one half of the term in office expires). In representing the member states in international organisations (UN, OSCE, EU and the Council of Europe), parity shall be provided for through rotation, whereas special models for representation shall be defined for international financial organisations. In diplomatic and consular representative offices of Serbia and Montenegro abroad, a special agreement shall be made on proportionate representation of the member states. The Constitutional Charter shall be submitted to the Parliaments for deliberation by the end of June 2002 at the latest.

Dislocation of federal institutions. Some federal institutions can be headquartered in Podgorica.

Constitutional reconstruction of the member states. Within the activities aimed at the promulgation of the Constitutional Charter of Serbia and Montenegro, the member states shall amend their respective constitutions in compliance with the Constitutional Charter of Serbia and Montenegro or promulgate new constitutions by the end of 2002 at the latest.

Economic sphere. The level of economic reforms reached in Serbia and Montenegro shall be a proceeding point for regulating mutual economic relations. The member states shall be responsible for unhindered operation of a common market, including the free flow of people, goods, services and capital. Harmonisation of the economic systems of the member states with the EU economic system shall overcome the existing differences, primarily in the spheres of trade and customs policies. In both regards, economic reforms that have already been carried out in the member states shall be taken into full account, while solutions that would provide for the quickest integration into the European Union shall be accepted. Transitional solutions in

harmonising trade and customs policies should take into account the interests of the member states. The European Union shall assist in the accomplishment of these objectives and monitor the process on a regular basis. The modalities for the achievement of these objectives shall be elaborated in parallel with the Constitutional Charter. If one of the member states believes that the other does not live up with commitments under this agreement concerning the operation of a common market and the harmonisation of trade and customs policies, it shall reserve the right to raise the matter with the EU in the context of the Stabilisation and Association Process with the view to the adoption of appropriate measures. The EU shall guarantee that, if other conditions and criteria for the Stabilisation and Association Process are fulfilled, the agreed principles of constitutional organisation shall not be an obstacle to a rapid conclusion of the Agreement on Association and Stabilisation.

President of the Federal Republic Yugoslavia
Vojislav Kostunica

Deputy Federal Prime Minister Miroljub Labus
President of the Republic of Montenegro Milo
Djukanovic

Premier of the Republic of Serbia Zoran
Djindjic

Premier of the Republic of Montenegro Filip
Vujanovic

Witnessed by EU High Representative for
Foreign and Security Policy Javier Solana

Belgrade, March 14, 2002