

**STILL BUYING TIME:
MONTENEGRO, SERBIA
AND THE EUROPEAN UNION**

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TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	i
I. INTRODUCTION	1
II. MONTENEGRO'S REFERENDUM DEBATE	3
A. INTERNATIONAL OPINIONS	4
B. CONSENSUS EMERGES	4
C. CONSENSUS ABORTED	6
III. SOLANA'S APPROACH	7
A. ADAPTING TO REALITY	9
IV. THE 14 MARCH AGREEMENT	11
A. REACTIONS	12
B. MAKING IT WORK	13
V. WIDER POLITICAL DYNAMICS	15
VII. CONCLUSION: THE EUROPEAN UNION AT CROSS PURPOSES?	17
APPENDICES	
A. THE MAIN POLITICAL PARTIES IN MONTENEGRO	19
B. PARTY STANDINGS	20
C. MAP OF FEDERAL REPUBLIC OF YUGOSLAVIA (FRY)	21
D. ABOUT THE INTERNATIONAL CRISIS GROUP	22
E. ICG REPORTS AND BRIEFING PAPERS.....	23
F. ICG BOARD MEMBERS	27



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EXECUTIVE SUMMARY AND RECOMMENDATIONS

On 14 March 2002 the leaders of Serbia, Montenegro and the Federal Republic of Yugoslavia (FRY) signed an agreement in Belgrade to replace FRY with a new “state community”: a “union of states” to be called “Serbia and Montenegro”.

If the agreement can be implemented, it will establish a loose association in which the two “member-states” enjoy virtually all the prerogatives of independence except those that depend on international personality (e.g. UN membership). The republics will control their borders – including customs – and become fully responsible for their economies and internal security. The union will depend on the republics to fund its institutions: an assembly, president, council of ministers, court, and the armed forces.

This agreement was the direct outcome of the European Union’s determination to block Montenegrin separatism and keep the two republics together. Before EU High Representative Javier Solana intervened last November, the two republics were close to approving a Montenegrin referendum on independence. By cajoling Montenegro’s and Serbia’s leaders, and warning the former of negative consequences if they pursued independence, Solana pushed them to preserve some sort of federal union.

The 14 March agreement, however, falls short of the EU’s original ambition, neither securing a federal state nor closing the debate on Montenegro’s status. It is provisional (either party can review the arrangement after three years), ambivalent, and very incomplete; and its terms

satisfied very few in either republic. Pro-independence Montenegrins were resentful at the intense pressure to head off a referendum, while many in Serbia believed that Solana had yielded crucially to Djukanovic on substance.

That said, Solana’s agreement is significantly redeemed by its pragmatism. While the Montenegrins did not get their early referendum, the envisaged union will conform much more closely to Montenegro’s negotiating platforms than to Belgrade’s proposals since January 2001. There will be no roll-back of either republic’s economic reforms to date. The three-year moratorium on independence should assist serious dialogue among the parties in Montenegro, where voters are split almost down the middle over independence. Another likely achievement is that the federal (Yugoslav) military’s room for making political mischief should be considerably reduced as the federal budget dwindles, the republics insist on greater civilian control over the armed forces, and border control duties pass to the republics.

Since 14 March, the governments have begun to address the range of practical issues raised by the agreement, on the apparent assumption that Serbia and Montenegro will act as semi-independent states. The immediate challenge is for them to agree on the detailed content of their new union. This will not be easy. The timetable given in the agreement to establish the union is unlikely to be fulfilled. None of the three parliaments can be counted upon to adopt a Constitutional Charter by the required majority. Although both of the republic parliaments have approved the Solana plan, the federal parliament has yet to do so, due to

wrangling between pro-republic and pro-federal forces.

In short, the 14 March agreement may not be implementable even with good faith efforts in both republics, and certainly will not be so without continuing EU pressure. Moreover, even if a new union does take shape, it may not prove to be durable. Especially as the Serbian government takes over federal competencies, the trend of political and public opinion in both republics may create a momentum of disaggregation that carries the two republics beyond the union and towards formal separation, even within the agreed three-year limit. Already, since 14 March, the question of Serbian independence has become a mainstream political issue for the first time.

Should this occur, the international community must stand ready to reopen the agreement; it should not be seen as an end in itself but only a means to an end – a stable, sustainable solution, based on democratic legitimacy. The EU should stop trying to decide on behalf of the republics themselves what their relationship should be. It is simply not critical for the future stability of either entity or the wider Balkans region that a union of some kind between Serbia and Montenegro be maintained. The reality is that the Stabilisation and Association process will be implemented through the three entities that currently make up the FRY – Serbia, Montenegro and Kosovo. It would be rash for the EU to rush into signing a Stabilisation and Association Agreement purely to shore up the new “union” structures and bind the union together before the questions of Montenegro’s and Kosovo’s status have been resolved.

Rather, the EU should use the new agreement by helping Serbia and Montenegro to stable, sustainable solution, based on democratic legitimacy. Only if it serves this purpose will Javier Solana’s intervention have bought time to good effect.

RECOMMENDATIONS

TO THE INTERNATIONAL COMMUNITY:

1. The European Union (EU) should be ready to accept whatever solutions Serbia and Montenegro can agree upon for their future relationship, in line with the 14 March agreement, including the possibility of eventual separation. It should not seek to impose solutions.
2. Member states and organs of the EU should cease to insist on rebuilding the competencies of the Federal Republic of Yugoslavia (FRY), which have largely been taken over the republics – a process that the 14 March 2002 agreement effectively ratifies and practically encourages.
3. The EU should be ready to provide impartial technical assistance to Serbia and Montenegro on the practical issues that need to be resolved whatever the form of their ultimate relationship.
4. In applying the Stabilisation and Association process (SAP) to the FRY, or its successor “Serbia and Montenegro”, the EU should ensure that Kosovo, Serbia and Montenegro are all three properly included.
5. The EU should not sign a Stabilisation and Association Agreement (SAA) with the FRY, or its successor “Serbia and Montenegro”, before the status of all of its entities has been resolved.

TO SERBIA AND MONTENEGRO:

6. Serbia and Montenegro should now concentrate on resolving the concrete issues involved in their future relationship, within the framework of the 14 March agreement, irrespective of what eventual form that relationship might take.
7. Delegates to the Constitutional Commission envisaged in the 14 March agreement should work constructively to agree a constitutional model for the new union in line with the agreement.

Podgorica/Belgrade/Brussels, 7 May 2002

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I. INTRODUCTION

On 14 March 2002 the leaders of Serbia, Montenegro and the Federal Republic of Yugoslavia (FRY) signed an agreement in Belgrade to replace FRY with a new “state community”: a “union of states” to be called “Serbia and Montenegro”.¹

If the agreement can be implemented, it will establish a loose association in which the two “member-states” enjoy virtually all the prerogatives of independence except those that stem from international subjectivity. The republics will control their borders – including customs – and become fully responsible for internal security. The union will depend on the two republics to fund its institutions, namely the assembly, the presidency, the council of ministers, the court, and the armed forces.

The agreement came after months of intense pressure on Montenegro by the European Union (EU) to delay a referendum on Montenegrin independence. Having achieved that aim, the agreement was hailed as a landmark success by its architect, the EU’s High Representative for Common Foreign and Security Policy, Javier Solana. After the EU’s dismal record in the Balkans in the early 1990s, the agreement was welcomed as evidence of the Union’s growing maturity and confidence as a foreign policy actor.²

The agreement received a more mixed reception in Montenegro and Serbia themselves. Montenegrin President Milo Djukanovic put a brave face on it, although coming after repeated promises that an independence referendum would be held by May 2002, he could not hide that it represented a climbdown. Supporters of independence were bitterly disappointed, and expressed anger both against the EU for pressuring Montenegro and against Djukanovic for succumbing. Describing the agreement as a fraud against the majority that had

referendum – whatever its result – would probably deepen the division. Secondly, Montenegrin independence would cast a shadow over Security Council Resolution 1244 (the source of international authority in Kosovo), and likely oblige the international community to confront the question of Kosovo’s final constitutional status sooner rather than later. Thirdly, the break up of the FRY could increase separatist pressure in Republika Srpska, the Serb-controlled entity of Bosnia and Herzegovina (BiH). Lastly, an independent Montenegro would be too small and poor to be viable. Regarding the first of these claims, the emergent consensus in November 2001 indicated that a negotiated solution, involving a referendum, was a possibility. The remaining arguments have been assessed, and found wanting, in numerous ICG reports. The applicability of Resolution 1244 would not be affected by Montenegro’s departure, and Kosovo’s final status will need to be addressed anyway, whatever Serbia and Montenegro decide to do. Republika Srpska’s status in BiH is in no sense analogous to Montenegro’s – or for that matter Kosovo’s – in the FRY, and any further separatist pressure is containable. Montenegro’s viability depends on the republic’s economic integration in the region. For detailed discussion, see ICG Balkans Reports No. 107, *Montenegro: Settling for Independence?*, 28 March 2001; No. 108, *After Milosevic: A Practical Agenda for Lasting Peace*, 28 April 2001, pp. 113-117; No. 114, *Montenegro: Resolving the Independence Deadlock*, 1 August 2001; No. 124, *A Kosovo Roadmap: I. Addressing Final Status*, 28 February 2002; and No. 125, *A Kosovo Roadmap: II. Internal Benchmarks*, 1 March 2002.

¹ “Agreement on Principles of Relations Between Serbia and Montenegro Within the Framework of a Union of States”, Belgrade, 14 March 2002.

² EU officials cite four reasons for opposing a referendum. First, Montenegrins are divided over independence, and a

voted for pro-independence parties, Djukanovic's coalition partners announced that they would withdraw from the government.

The pro-Yugoslav opposition in Montenegro declared the agreement a victory for their cause, and gloated over what they saw as Djukanovic's defeat. However, Djukanovic's assertion that the agreement gave little comfort to the advocates of the joint state was given credence by the reactions from many quarters in Belgrade that the agreement created a "Frankenstein's monster" of a state, and confirmed for most practical purposes the separation of Serbia and Montenegro.

Furthermore, the debate over Montenegro's status has not been closed. For supporters of independence, the agreement's "re-examination provision" – permitting a review of the union after three years – means that the agreement merely delays an independence referendum. Nevertheless, post-agreement opinion poll evidence in Montenegro pointed to a serious weakening of Djukanovic's position.

In Belgrade, the federal (Yugoslav) and republican (Serbian) authorities showed greater unity during these negotiations than on other key policy debates. Publicly, all parties except the Christian Democrats supported the creation of a functional federation. The commendable speed with which they recovered from their disappointment when the agreement delivered a tenuous "state community" suggests, however, that Belgrade's various leaders want, more than anything, an end to the debilitating confusion over Montenegro's status and the future of the federation. They have already begun to tackle the practical issues raised by the agreement, particularly those that would increase Serbia's republic powers at the expense of the federal institutions.

As well as being explicitly provisional, the 14 March agreement is both ambivalent and vague. While it laid down certain principles as to the organisation of the new union, to be known as "Serbia and Montenegro", it was very imprecise as to the details, leaving plenty of scope for different interpretations. The challenge for the two constituent entities is to reach common ground on the detailed content of the new arrangement.

Whatever the hopes of many EU officials that the agreement would mark the beginning of the

rebuilding of the joint state, the fact is that it preserves the high level of autonomy achieved by Montenegro over the last four years, including separate currency, trade and customs regimes, and economies. It extends equal autonomy to Serbia. Not surprisingly, key Montenegrin and Serbian officials interpret the agreement as envisaging an extremely thin union, in which joint action would be limited almost entirely to cooperation and coordination between autonomous entities. Whether this vision can be implemented remains to be seen.

The EU's engagement disappointed many in both republics. Pro-independence Montenegrins were outraged at the intense EU pressure to head off a referendum. In Belgrade, 'federalist' Serbs were dismayed at what they saw as Solana's caving into Djukanovic on the substance of the agreement, while the 'pragmatists' resented the agreement's failure to clarify the situation one way or the other. On the other hand, many Serbian government officials discreetly rubbed their hands at the prospect of taking over federal competencies. But, overall, the agreement looked much more like a prolongation of recent agony than a new beginning.

Nevertheless, the agreement is partly redeemed by its pragmatism. The skeletal union will conform much more closely to Montenegro's earlier negotiating platforms than to Yugoslav President Kostunica's proposal of January 2001.³ There will be no roll-back of either republic's economic reforms to date. The three-year moratorium on independence could assist serious dialogue among the parties in Montenegro, where voters are split almost down the middle over independence. The mere process of implementing the agreement will oblige the republics to address the range of practical issues involved in any future relationship. Contacts for this purpose between Belgrade and Podgorica have continued since 14 March. It is also positive that the federal (Yugoslav) military's scope for political trouble-making will be reduced when the federal budget dwindles and border control passes to the republics.

³ Earlier Montenegrin and Yugoslav proposals are published in *The Future of Montenegro. Proceedings of an Expert Meeting*, Centre for European Policy Studies, Brussels, 2001, pp. 97-126.

II. MONTENEGRO'S REFERENDUM DEBATE

After the fall of the Milosevic regime in October 2000, confirmed in the subsequent December elections, President Djukanovic and his government faced a historic choice. They could either seek a rapprochement with Serbia, or explicitly set Montenegro's course towards independence. They opted for the latter, in part due to genuine pro-independence sentiment, and in part because the largest pro-Yugoslav Montenegrin party, the Socialist People's Party (SNP), held all the Montenegrin seats in the federal parliament. The momentum towards independence faltered, however, after the disappointing result for the pro-independence camp in the April 2001 parliamentary election.⁴ The narrow victory for the pro-independence parties resulted in Djukanovic's Democratic Party of Socialists (DPS) and the allied Social Democratic Party (SDP) having to depend for support in parliament on the Liberal Alliance of Montenegro (LSCG), whose commitment to independence is matched by its deep antipathy to the DPS.

Relying on partners who would not compromise on the goal of independence, but lacking a popular consensus for breaking with Serbia,⁵ Djukanovic again faced only difficult options. Pre-election plans for a referendum by July 2001 were put off, and talk was instead of a referendum in early 2002. Djukanovic's problems were compounded by the lack of consensus even over the procedures for holding a referendum. Pro-Yugoslav opposition parties threatened a boycott of any referendum unless key changes were made to the February 2001 referendum law.⁶ They insisted that the law be changed firstly to allow Montenegrins in Serbia to participate, and secondly to require that in order for a pro-independence result to be valid, a majority of all registered voters should cast ballots in favour.

According to the February 2001 law, a simple majority only of those who actually voted would be required, so long as more than half of registered voters participated. The pro-Yugoslav parties also insisted that in order for any referendum to be held in an environment of trust and confidence, all parties should be involved in the preparations, and not just the pro-independence governing parties.⁷

Under the February 2001 law, with its requirement that more than half of all registered voters should participate in order for a result to be valid, a referendum boycott could have dealt a fatal blow to independence aspirations. Given the narrowness of a likely majority in favour of independence and that some 20 per cent of the electorate never participates, a boycott by the pro-independence parties would make it very hard to achieve the required 50 per cent turnout.

As a way out of the deadlock, the DPS proposed that preparations for a referendum should be undertaken by a broad, so-called "concentration government" of all parties. This, they argued, would help produce a consensus on referendum procedures and avoid a boycott. This idea, however, was rejected by the SDP and the LSCG, as well as by the pro-Yugoslav bloc, the latter arguing that there should be no talk of preparations for a referendum until efforts to reach agreement with Belgrade on a redefined federation had been exhausted.⁸

The SDP and the LSCG argued that there was no prospect of reaching a consensus with the pro-Yugoslav parties on the conditions for a referendum. Rather they proposed, within the framework of a multi-party working group that had been established at the initiative of the LSCG and with the agreement of the DPS, a special law (*lex specialis*) to amend the February 2001 law. This working group was boycotted by the pro-Yugoslav parties. Moreover, while the DPS participated in the group, it opposed the main innovation of the

⁴ For an analysis of the April 2001 election and the consequences for the debate on Montenegro's status, see ICG Balkans Report No. 114, *Montenegro: Resolving the Independence Deadlock*, 1 August 2001.

⁵ In the April 2001 election, parties favouring independence won less than 54 per cent of the vote.

⁶ For a discussion of the referendum law, see ICG Balkans Report No. 107, *Montenegro: Settling for Independence?*, 28 March 2001.

⁷ On other contentious issues concerning the holding of a referendum, such as media access, voter lists and allegations of administrative pressure, see ICG Balkans Report No. 114, *Montenegro: Resolving the Independence Deadlock*, 1 August 2001.

⁸ On the DPS's proposal and its negative reception by the other parties, see *VIP Daily News Report*, 7 September 2001.

proposed law: namely, to do away with the requirement of a 50 per cent turnout in order for a referendum result to be valid.

The purpose of this change, from the point of view of the LSCG and the SDP, would have been to make senseless a referendum boycott by the pro-Yugoslav parties. The DPS, on the other hand, argued that such a provision did not satisfy international standards.

A. INTERNATIONAL OPINIONS

This view was supported by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), which issued an opinion and recommendations on the draft law.⁹ Indeed, a change in the regulations explicitly designed to favour the pro-independence option would hardly have enhanced the legitimacy of the process or increased the likelihood of the result being accepted.

The European Commission for Democracy through Law (the "Venice Commission") also advised against the change proposed by the LSCG and the SDP.¹⁰ The Venice Commission recommended that a requirement that a decision be accepted by a minimum percentage of the total electorate was preferable to a minimum turnout rule. However, they advised against simply deleting the rule on minimum turnout, without replacing it with a rule on a minimum percentage of the electorate.

The Venice Commission's support for the requirement of a minimum percentage of the electorate gave weight to the contention of the pro-Yugoslav parties on this point. In an earlier report, the ODIHR had expressed approval, on the basis of international standards, of the 50 per cent turnout requirement in the February 2001 law.¹¹ But at the same time the ODIHR also recommended that

some form of qualified or weighted majority requirement be introduced, given the importance and divisiveness of the issue.

Both the ODIHR and the Venice Commission stressed that there was no applicable international standard on this matter, but both recommended a qualified majority as a way of ensuring that the outcome, in the words of the ODIHR report, would be "less contestable". The ODIHR supported its argument with a somewhat tenuous appeal to "best international practice".¹² Both it and the Venice Commission rejected the pro-Yugoslav parties' contention that people of Montenegrin origin residing in Serbia and entitled to vote in Serbian elections should be allowed to participate.

B. CONSENSUS EMERGES

The argument that in a polarised environment, pervaded with distrust, it would be unwise to proceed with a referendum without first achieving a consensus among the main parties – at least on the rules and procedures – is persuasive. In October and November 2001 it briefly appeared that such a consensus could be reached that would have allowed for a referendum without an

¹² As examples to illustrate its notion of "best international practice", the ODIHR pointed to Denmark, which used a qualified majority provision of 45 per cent of registered voters (later 40 per cent) in referendums in the 1950s, but later abolished the provision, and various Pacific islands which used a 75 per cent threshold when voting on proposals for Free Association with the United States. The ODIHR also referred to a referendum proposal for Bougainville which set a two-thirds majority provision. In fact, the ODIHR's accounts of events on the islands of Palau and Bougainville are substantially incorrect. In Palau, the 75 per cent requirement was eventually dropped. See

http://www.state.gov/www/background_notes/palau_0596_bgn.html In the case of Bougainville, the eventual peace agreement did not in fact require a two-thirds majority in any referendum. See

<http://rspas.anu.edu.au/melanesia/PDF/BougainvillePeaceAgreement29Aug01.pdf>

The Venice Commission did not make an argument for "best international practice". As examples of places that had grappled with the issue of referendum majorities, it referred to Canada, whose Supreme Court declined to specify what would constitute a "clear majority" in favour of secession for Quebec, and the 1998 Belfast Agreement on Northern Ireland, which stated that a simple majority of those voting in an eventual referendum on the status of the province would suffice in determining its future.

⁹ OSCE-ODIHR, *Comments on the Draft "Referendum Law on the State Status of the Republic of Montenegro"*, Warsaw, 5 November 2001.

¹⁰ *Interim Report on the Constitutional Situation of the Federal Republic of Yugoslavia*, adopted by the Venice Commission at its 48th Plenary Meeting, 19-20 October 2001.

¹¹ OSCE-ODIHR, *Assessment of the Referendum Law, Republic of Montenegro, Federal Republic of Yugoslavia*, Warsaw, 6 July 2001.

opposition boycott, so enabling Montenegro and Serbia finally to agree on their future relationship in a mutually satisfactory way.

The dynamic towards a referendum was dramatically accelerated by a meeting of Serbian and Montenegrin leaders in Belgrade on 26 October 2001. It was concluded that the positions of the two sides were simply irreconcilable, and that the only way out of the impasse was for Montenegro to hold a referendum on independence. In the words of FRY President Vojislav Kostunica, "We were unable to bring our stances closer, which means only one possible route remains – and that is for the public of Montenegro to voice its view."¹³

With talks between Belgrade and Podgorica apparently having ground to this conclusion, the main reason given by the SNP, for not discussing conditions for a referendum appeared to have dissolved. SNP leader Predrag Bulatovic indicated that the issue of Montenegro's status could indeed be solved by a referendum, and that the central issue to be settled was the size of the majority that would be needed for a change of status.¹⁴ The SNP wanted a majority of the total electorate to be required in order for a vote for independence to be valid. This would mean that, in the event of an 82 per cent turnout (as in the April 2001 election), a 'yes' vote would require about 61 per cent of the votes.¹⁵ It was reported that the DPS leadership found this excessive, but that there might be room for a compromise on a requirement that 55 per cent of votes cast should be in favour.¹⁶

Negotiations continued behind the scenes, and were productive. The pro-Yugoslav parties were reportedly ready to join a grand coalition government that would oversee a referendum, provided that agreement had been reached on such key issues as the referendum law and changes in state media. They were reportedly insisting upon agreement on a qualified majority, but were ready to abandon the demand that Montenegrins in Serbia should be allowed to take part.¹⁷ Bulatovic

declared that he was against a referendum boycott, and that if an independence decision were reached honestly, then the SNP should agree to changes in the Montenegrin constitution to confirm the republic's independence.¹⁸ This point was important due to the stipulation in the Montenegrin constitution that a two-thirds parliamentary majority would be required in order to change the status of the republic.¹⁹

Concluding that a referendum was likely, some international officials at this point focused on the need to ensure a consensus on the rules, so as to avoid a potentially damaging boycott.²⁰ On 22 November the draft special law proposed by the SDP and the LSCG was rejected by the Montenegrin parliament.²¹

¹⁸ Speech by Bulatovic in Podgorica, reported in *VIP Daily News Report*, 20 November 2001. Bulatovic's rejection of a boycott appeared to produce some dissension in the pro-Yugoslav coalition, as People's Party (NS) leader Dragan Soc would not rule out a boycott.

¹⁹ On the relevant provisions in Montenegro's constitution, see ICG Balkans Report N° 107, *Montenegro: Settling for Independence?*, 28 March 2001. Some independence advocates have claimed that the requirement for a two-thirds parliamentary majority to change the status of the republic would not be required following a referendum. ICG has taken a contrary view, advising that the constitutional provisions be strictly adhered to in order for the process to be seen to be valid. ICG's view on this was supported by the Venice Commission. Citing its "Guidelines for Constitutional Referendums at National Level" (adopted at the 47th Plenary Session of the Commission, 6-7 July 2001), the Commission stated that "The use of referendums must comply with the legal system as a whole and especially the rules governing revision of the constitution". ODIHR recommended that Montenegro's Constitutional Court should rule on contentious elements in the referendum law. On 26 February 2002, the Court ruled that the law was in line with the constitution, including the controversial provision that a referendum result would be binding on parliament (*Vijesti*, 27 February 2002). Thus the referendum law was held to take precedence over the constitution, contrary to the stipulation of the Venice Commission.

²⁰ The head of ODIHR, Gerard Stoudmann, reportedly stressed these points in discussions with top Montenegrin officials. *VIP Daily News Report*, 16 November 2001. According to the Montenegrin daily, *Vijesti* (21 November 2001), U.S. Ambassador William Montgomery pressed for a compromise solution on the referendum majority, suggesting that a 55 per cent requirement could be acceptable. U.S. Embassy sources have, however, assured ICG that no such message was conveyed.

²¹ *VIP Daily News Report*, 23 November 2001. The SDP had proposed a compromise whereby a pro-independence

¹³ Reuters, 26 October 2001.

¹⁴ *Vijesti*, 2 November 2001.

¹⁵ As calculated by the ODIHR in its *Assessment of the Referendum Law, Republic of Montenegro, Federal Republic of Yugoslavia*, Warsaw, 6 July 2001.

¹⁶ *Vijesti*, 5 November 2001.

¹⁷ *Vijesti*, 12 and 13 November 2001.

C. CONSENSUS ABORTED

At this point, the prospects appeared better than ever for agreement among the Montenegrin parties on solving the longstanding dispute over the republic's status. Belgrade too had apparently concluded that Montenegro's relationship with Serbia should be decided by a referendum in Montenegro. However, apparently taking fright at the prospect that both parties would agree among themselves on a path that might result in Montenegrin independence (though by no means necessarily, given the closeness of the two sides in opinion polls), the EU stepped in.²²

Meeting on 19 November 2001, the EU's General Affairs Council urged Belgrade and Podgorica to "hold a democratic dialogue in order to reach agreement rapidly on constitutional arrangements that are acceptable to all parties".²³ Glossing over the fact that Belgrade and Podgorica had already agreed on the need for Montenegro to hold a referendum (i.e. the holding of a referendum would not be a unilateral step), the Council restated its preference for "a democratic Montenegro in a democratic FRY", and stressed the need to avoid "any unilateral action which might threaten the internal stability of the FRY and stability in South Eastern Europe". The Council issued a thinly veiled threat of negative consequences if Montenegro were to defy the will of the EU, asserting that "a new constitutional arrangement would strengthen the necessary coordination of efforts by Serbia and Montenegro to allow the FRY and the Republics to benefit fully from international aid..."

The Council asked Solana to embark on a mission to Belgrade and Podgorica to reaffirm the position of the EU and promote further dialogue. Solana's

result would have to be supported by at least half of the average turnout in presidential and parliamentary elections over the previous decade. This, too, was rejected.

²² The U.S. was content to let the EU take the lead over Montenegro: "[D]uring recent negotiations between Serbia and Montenegro, we politely told the leaders involved that the EU's Javier Solana was the international negotiator and had our support". Greg Schulte, National Security Council Senior Director for Southeast Europe, "U.S. Strategy for the Balkans", at Georgetown University, 20 March 2002. See

<http://usinfo.state.gov/regional/eur/macedonia/schulte0320.htm>.

²³ Conclusions of the EU's General Affairs Council of 19 November 2001.

opening visit to Belgrade and Podgorica at the end of November 2001 set the tone for what was to become an odyssey for the EU's foreign policy point man over the coming months. By cajoling Montenegro's and Serbia's leaders, and bluntly warning Montenegro of negative consequences if it pursued independence, Javier Solana pushed the two republics, above all Montenegro, to reach a deal that would preserve the federal union.

The principal stick that Solana waved over Montenegro was the warning that if it pursued independence, its hopes of progress towards European integration would be jeopardised. He warned that Djukanovic "has to know that separation is not a rapid train to the European Union", and that "In a way, separation would be a slower train to the European Union." His office issued a statement asserting that an independent Montenegro would not automatically be admitted to international financial institutions and other organisations, "thus jeopardising prospects for international assistance, economic development and EU integration".²⁴ For a small, poor, undeveloped republic, dependent upon international assistance and seeing its future in the EU, such threats could not be lightly ignored.

The immediate effect of the EU's initiative was that the dialogue among the Montenegrin parties which had become increasingly fruitful during the preceding weeks, was cut short. Simply, neither the pro-Yugoslav parties in Montenegro nor Belgrade had any incentive to look for compromise agreements now that the EU had thrown its weight against a referendum. Pro-Yugoslav leaders asserted that talks on a referendum were again off the agenda. There was no more talk of conciliation or compromise. Rather they informed Solana of the risk of destabilisation in case the Montenegrin authorities pressed ahead with referendum plans without their consent. Bulatovic, who a few days earlier had ruled out a referendum boycott, now informed Solana that the opposition might permanently withdraw from parliament.²⁵

The pro-Yugoslav parties were delighted at the pressure being applied by the EU, Bulatovic commenting that Djukanovic was "no longer a

²⁴ Reuters, 27 November 2001.

²⁵ *VIP Daily News Report*, 29 November 2001.

favourite of the international community”.²⁶ SNP leaders, who had for months obstructed the FRY’s cooperation with the international war crimes tribunal (ICTY) in The Hague, now routinely cited the EU in support of their anti-independence cause.²⁷

The Montenegrin government agreed to further talks with Belgrade. However, Montenegrin officials’ persistence in their pro-independence rhetoric prompted Kostunica to express his disbelief that the talks could succeed, and his expectation that a referendum would eventually be required to settle the matter.²⁸

III. SOLANA'S APPROACH

Solana offered the service of EU “experts” to give their input into talks that were divided into three working groups. These groups covered three key areas of importance in any future relationship: constitutional and legal issues; economic and social issues; and foreign policy and security. Beginning in late December 2001, a series of working-level meetings were held.

In principle, the idea of addressing the practical issues involved in any future relationship between Montenegro and Serbia was sound.²⁹ There is a range of issues, including in the economic and social spheres, healthcare, education, pensions and citizenship that need to be addressed whatever the form of the future relationship. As a starting point for any discussion it would be necessary for each side to define its key interests. Before Solana’s initiative, Podgorica and Belgrade had largely failed to address such functional matters, persistently getting bogged down by the issue of status itself.

The flaw in Solana’s approach was that the EU clearly prescribed what the outcome of talks should be: a reintegrated federation. The apparent hope was that the EU “experts” would so inform the debate in the working groups that the Montenegrin side would be out-argued and persuaded of the benefits, as the EU saw them, of rebuilding the federation.

In fact the discussions did not bring the sides closer together. Although two of the working groups, those on economic and foreign and security matters, issued joint reports, they largely confirmed the entrenched views of the two sides. The working group on constitutional and legal matters produced two separate reports.

By late January 2002 it was being widely concluded that the talks were leading nowhere.³⁰ In fact the talks had been useful, in that representatives from Belgrade and Podgorica had begun seriously to debate the substantive issues

²⁶ *Glas javnosti*, 5 December 2001.

²⁷ For example, SNP Vice-President Zoran Zizic, cited in *VIP Daily News Report*, 12 December 2001.

²⁸ *VIP Daily News Report*, 24 December 2001.

²⁹ ICG had recommended such an approach in Balkans Report No. 107, *Montenegro: Settling for Independence?*, 28 March 2001.

³⁰ See Reuters, 25 January 2002.

involved in any rearrangement of their relationship. The issues at stake were being thrown into sharper relief.

With the working-level discussions failing to produce a breakthrough, the talk in Montenegro in the second half of January reverted to the conditions for a referendum as the only way out.³¹ Controversy emerged over the demand of the pro-Yugoslav parties that the EU should be involved in talks over the conditions for a referendum.³² With expectations of a successful outcome to the talks running low, supporters of the federation were counting on EU support to ensure stringent conditions for a referendum.

Rather than see the process that he had set in train fail, Solana stepped up his personal engagement. At a meeting in Belgrade on 25 January 2002, he put the discussions back on track and ensured that they would continue to focus on preserving the federation, not on dissolving it. While the participants were diplomatic in their comments after the meeting,³³ senior SNP official Dragan Koprivica could not conceal the glee on the pro-Yugoslav side, saying that Djukanovic had “been very roughly pulled down to the ground in Belgrade... It is obvious that in a European and very polished manner, Solana gave him a very clear lecture”.³⁴ With their confidence restored, pro-Yugoslav leaders who had days earlier thought a referendum unavoidable, now virtually discounted the possibility.³⁵

The high point of Solana’s efforts to broker an agreement on a reintegrated federation came at the beginning of February, when a further working-level meeting was held in Brussels, again with EU “experts”. The meeting on 4 February 2002 focused on the economic aspects of the future

relationship, which were proving to be particularly contentious. A statement issued by Solana’s office gave the impression that a broad understanding was reached over the benefits of a single state.³⁶ It asserted that the discussion “clarified the reasons why, on balance, staying together in a functioning federal state is the most efficient way for both Belgrade and Podgorica to achieve their common goal of European integration.” The statement noted that:

EU participants underlined that further fragmentation in the region would not only be contrary to the process of European integration, but would carry significant economic costs. The benefits of the bigger market will be lost, foreign investments will be discouraged and the lack of a common trade policy would be an obstacle to EU and WTO integration. Early adoption of the Euro might involve substantial economic risks and costs.

The statement went on to assert that progress towards a Stabilisation and Association Agreement (SAA) between the EU and the FRY could be held up by separation. It stated that improved cooperation “in the existing framework for EU—FRY relations is essential”. The statement finished with an optimistic declaration by Solana that the discussions had “shown clearly that staying together is by far the best and fastest way for Serbia and Montenegro to participate in European integration”.

The statement, which reflected the key arguments of the EU in the discussions, is highly disputable. By giving an impression of broad agreement over the main points, perhaps in an effort to build a self-fulfilling momentum, it gave a false portrayal of the discussion.

In order to put the record straight from their point of view, the Montenegrin participants at the meeting issued a response the following day.³⁷ This statement stressed Montenegro’s commitment to regional integration. It claimed that Montenegro

³¹ For example, Predrag Drecun, a leading figure in the pro-Serbian NS, said that the negotiations would not bear fruit, and that Montenegro should hold a referendum as soon as possible (interview with Radio Free Europe, reported in *VIP Daily News Report*, 16 January 2002).

³² See comments by Zizic, reported in *Vijesti*, 18 January 2002.

³³ See Reuters, 25 January 2002.

³⁴ Statement to Tanjug, cited in *VIP Daily News Report*, 28 January 2002.

³⁵ See for example comments by Zizic, who now said that to call a referendum would be “naked violence by the Montenegrin authorities”. *VIP Daily News Report*, 29 January 2002.

³⁶ Statement issued on 4 February 2002, reference S0019/02.

³⁷ Statement of the expert team of Montenegro after the previous day’s seminar in Brussels in the framework of the dialogue on the future of the federation, Podgorica, 5 February 2002.

had contributed towards that goal by setting a 3 per cent external tariff (much lower than Serbia) and asserted Montenegro's "readiness to pursue elimination of non-tariff barriers, harmonisation of rules and procedures, aiming at establishing a regional common market". It asserted the conviction "that convergence on sensible trade policies will facilitate participation in EU and WTO integration". The introduction of the Euro had, the statement asserted, following the earlier introduction of the German Mark (in 1999) been a success.

In essence, the Montenegrin authorities were standing by their belief that their economic policies and other reforms were appropriate and compatible with EU integration. For them, the introduction of the German Mark/ Euro had been a success, it was popular in Montenegro,³⁸ and they would not return to the Dinar. As a small economy, largely service-based and with little industry to protect, it made sense, they argued, for Montenegro to be a highly open economy with low trade barriers, and not to converge with Serbia's much higher tariff rates. The authorities asserted that they were in favour of closer integration, but pointed to Belgrade's slowness in abolishing price controls, as compared with the more liberal prices regime in Montenegro, as the principle obstacle to a single market.

Contrary to the claims of the EU "experts", Montenegrin representatives asserted that Montenegro's autonomy in the economic sphere should not hamper integration in the region or with the EU. Indeed, the model of EU integration involved independent states with separate currencies and customs regimes. The Montenegrin authorities argued for closer cooperation with Serbia as a way of ensuring that their common market would function more efficiently.

³⁸ According to an opinion poll in April 2002, conducted by the Damar Agency for the Centre for Democracy and Human Rights (CEDEM), 60 per cent of respondents favoured maintaining the Euro as the sole currency in Montenegro, 20 per cent were for reintroducing the Dinar in parallel with the Euro, and 12 per cent were in favour of replacing the Euro with the Dinar.

A. ADAPTING TO REALITY

Some Belgrade officials expressed satisfaction after the Brussels meeting that the EU had supported their position that, from an economic standpoint, separation made no sense. Federal Deputy Prime Minister Mirosljub Labus took heart from the tough EU warnings of negative consequences for Montenegro if the little republic defied its will, commenting that "it was clearly stated that in that break-up Montenegro stands no chance of entering the EU in time".³⁹

Yet the Montenegrins were increasingly confident that they were winning the arguments over economic integration. Following a more than three-hour meeting between Solana and Djukanovic in Brussels on 10 February 2002, it became increasingly clear that the two men were arriving at an accommodation. While there were indications of some tough talking,⁴⁰ both Solana and Djukanovic expressed satisfaction with the discussion.⁴¹ EU officials denied that Solana had presented Djukanovic with a concrete proposal, but confirmed that certain "ideas" had been discussed.⁴²

As rumours about the content of these "ideas" emerged, Belgrade officials who had previously counted upon Solana to pressure Djukanovic into accepting a reintegrated union took fright. For many Serbian leaders, the priority was to achieve a settlement that would be clear and workable. While their preference was for a re-ordering of the union with Montenegro, they did not want this at any price. Yet it now appeared to many Belgrade leaders that the price that Solana was conceding to Djukanovic for the preservation of the union was indeed too high.

Solana and the EU "experts" had met with sustained Montenegrin resistance to the abandonment of their autonomy in the economic sphere and strong arguments in favour of economic policies and reforms that had been implemented in

³⁹ Statement by Labus to Tanjug, reported in *VIP Daily News Report*, 6 February 2002.

⁴⁰ Djukanovic's foreign affairs adviser, Milan Rocen, described the talks as being "with gloves off" (radio interview reported by *BBC Monitoring International Reports*, 12 February 2002).

⁴¹ *Vijesti*, 11 February 2002.

⁴² *Beta* news agency, 11 February 2002.

Montenegro. Solana now appeared ready, so long as the form of a single state were maintained, to accommodate virtually all of Djukanovic's concerns over substance, so that Montenegro would retain all of the autonomy that it had built up over the previous three years.

Following reports that Montenegro would continue to use the Euro and have a separate customs regime and foreign trade and taxation policies in the new union, senior Belgrade figures lined up to voice their disquiet at the direction the talks were taking. Labus reportedly rejected the proposal that was emerging from Solana's discussions with Djukanovic.⁴³ Serbian Finance Minister Bozidar Djelic said that it was difficult to imagine a state without a common currency, customs administration and trade regime, describing the state that was being proposed as an "economic Frankenstein".⁴⁴ The governor of the National Bank of Yugoslavia, Mladjan Dinkic, said that what Solana was offering was a "fictitious" common state.⁴⁵ Serbian Justice Minister Vladan Batic, describing what was on offer as a "virtual state" that would only prolong the agony, said that Serbia would be better off as an independent state. Djindjic said that Serbia did not want a common state at all costs.⁴⁶

Belgrade tried to reassert its vision of a functioning joint state, with a single currency and customs service, presenting its views to Brussels.⁴⁷ However, Solana's Balkan adviser, Stefan Lehne, on a visit to Podgorica, reportedly received a firm message that Montenegro would not accept the return of the Dinar.⁴⁸ In an effort to bring their positions closer together, senior federal and Montenegrin leaders held an unannounced meeting in Podgorica on 5 March 2002, without EU officials. The meeting, attended by Kostunica, Labus, Djukanovic, Montenegrin prime minister Filip Vujanovic and finance minister Miroslav Ivanisevic, was devoted mainly to economic matters. Again, the Montenegrin side did not yield on its insistence on full economic autonomy.⁴⁹

At a further meeting, in Belgrade on 11 March 2002, again without EU participation, the leaders tried to identify areas where there was agreement and where not.⁵⁰ The most difficult outstanding issues were reportedly the currency and the customs regime. Solana returned to Belgrade on 13 March 2002, and an agreement was finally signed early in the morning of 14 March on a new, loose union to be known as "Serbia and Montenegro". The agreement was confirmed and celebrated at the European Council meeting in Barcelona on 15-16 March 2002, with Kostunica and Djukanovic in attendance.⁵¹

The EU had achieved its aim of heading off a referendum on Montenegrin independence. However, the agreement left many questions open as to how the new union would work in practice, and it specified that after a period of three years the union could be reconsidered. The question of Montenegro's status had been deferred, but not settled.

⁴³ Report on Radio B92, carried in *VIP Daily News Report*, 25 February 2002.

⁴⁴ *Glas Javnosti*, 24 February 2002.

⁴⁵ *Ibid.*

⁴⁶ *Blic*, 26 February 2002.

⁴⁷ *Ibid.*

⁴⁸ *Vijesti*, 1 March 2002.

⁴⁹ *Vijesti*, 7 March 2002.

⁵⁰ *Vijesti*, 12 March 2002.

⁵¹ Presidency Conclusions, Barcelona European Council, 15 and 16 March 2002; Reuters, 16 March 2002.

IV. THE 14 MARCH AGREEMENT

The 14 March agreement is a very short document, thin on detail and leaving much still to be negotiated. It gives little guidance as to how the new union should work in practice and plenty of scope for different interpretations and for disagreement.

Key points are as follows:

- A Constitutional Commission delegated by the FRY, Serbia and Montenegro parliaments should, by the end of June 2002, draft a Constitutional Charter for the new union, to be adopted by the parliaments of Serbia and Montenegro and 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."
- The Serbian and Montenegrin constitutions should be brought into line with the Constitutional Charter by the end of 2002.
- The member states can reconsider their membership of the union after three years. Importantly, in the event that Montenegro were to leave the union, Serbia would be the successor state, explicitly so concerning the implementation of UN Security Council Resolution 1244 for Kosovo.
- The new union is to have a unicameral parliament, a president to be elected by the parliament, a Council of Ministers ("ministries' duties shall be specified at a later date"), and a Court (with "a constitutional and administrative judicial function" and "no jurisdictional competence").
- The parliament will provide for unspecified positive discrimination in favour of Montenegrin representatives.
- The president shall propose the composition of the Council of Ministers, to comprise five departments: foreign affairs; defence; international economic relations; internal economic relations; and the protection of human and minority rights. The competencies of these departments and their relationship to the ministries in the member states are not defined.
- The armed forces will be under the command of the Supreme Defence Council, composed of the three presidents (as has notionally been the case in the FRY, although control over the military has in practice continued to be very unclear).⁵² Conscripts can serve in their home republic.
- Provision for the rotation of offices is mentioned, with representatives of each member state taking it in turns to be ministers and deputy ministers. Rotation is also provided for as regards representation in international organisations such as the UN, the OSCE and the Council of Europe. Unspecified "special models" will be defined for representation in international financial organisations. A "special agreement" will define proportionate representation in diplomatic offices abroad.
- Some federal institutions can be based in Podgorica.
- In the economic sphere there is considerable ambiguity. The currency is not mentioned. However, the provision that "The level of economic reforms reached in Serbia and Montenegro shall be the proceeding point for regulating mutual economic relations" confirmed that Montenegro would retain the economic autonomy achieved over the preceding three years. The member states would be responsible for ensuring a common market. In the contentious areas of trade and customs policies, "Harmonisation of the economic systems of the member states with the EU economic system shall overcome the existing differences." In other words, economic harmonisation between the two states would be achieved by both harmonising their systems with the EU.
- The EU is to have a monitoring role in overseeing the realisation of the agreement.

⁵² See ICG Balkans Report No. 126, *Belgrade's Lagging Reform: Cause for International Concern*, 7 March 2002.

Either member state can complain to the EU if it feels that the other is not living up to its commitments concerning the operation of a common market and the harmonisation of trade and customs policies.

A. REACTIONS

Reactions to the agreement varied widely. As mentioned, there was huge disappointment among independence supporters in Montenegro. The LSCG and the SDP saw the agreement as a betrayal of the majority that had voted for pro-independence parties in April 2001. The LSCG announced its withdrawal of support for the government, while the SDP declared that it would do likewise as soon as the agreement had been ratified.⁵³

Djukanovic was defensive. He stressed the provision that the union could be reconsidered after three years; this, he said, represented a crucial acknowledgement that Montenegro could reopen the independence issue with the approval of the EU itself and of Belgrade. Pointing to the lack of a convincing majority in favour of independence, he asserted that this was not the time to risk holding a referendum whose result was uncertain. He also stressed that Montenegro had preserved the advances that had ensured autonomy in practice.⁵⁴

The pro-Yugoslav parties in Montenegro welcomed the agreement, seeing it as a defeat for Djukanovic and the independence option,⁵⁵ from which they could hope to capitalise politically. The agreement could bring both advantages and disadvantages to the SNP. The party would hope to gain politically from Djukanovic's perceived defeat. On the other hand, the SNP had for several years enjoyed the benefits of being the sole representative (together with the small Serbian People's Party, the SNS) of Montenegro in federal institutions. As well as the jobs and perks that this entailed for leading SNP officials, it also gave them access to resources for their political activities in Montenegro. With the diminishing of the federal authorities that the new agreement implied and the fact that the DPS would again

participate at the central level, the SNP also stood to lose some benefits due to the agreement.

In Belgrade, Kostunica appeared satisfied that the joint state had been preserved, while others complained that the agreement did not provide the basis for a functioning union, and in effect represented a temporary agreement between separate states on the way to full separation. Some expressed dismay at what they saw as Solana's caving into Djukanovic on the substance of the agreement. There was general resentment that the situation had not been clarified one way or the other.

The Yugoslav Army (VJ) appears displeased with the agreement, and the arrest of Serbian vice-president Momcilo Perisic and U.S. diplomat John Neighbor, later on 14 March, has been interpreted as a sign of this dissatisfaction.⁵⁶ There can be little doubt that the military is concerned by the two republics' strengthened role in financing the VJ and exercising civilian control over the its budget and policies.

Overall, however, there was less regret at the end of federalism – and indeed of “Yugoslavia” – than many observers would have expected. Serbs' concerns were above all practical and open-eyed. At the end of February 2002, FRY Foreign Minister Goran Svilanovic had said that “The bottom line is that we would like to have a viable state, [but] what is being proposed is not viable, particularly as far as economic issues are concerned.” Solana's plan, he said, amounted to a union of two independent states.⁵⁷ From the perspective of many in Belgrade, this outcome was now confirmed. While Labus did not hide his dissatisfaction, he said that nothing more could have been achieved.⁵⁸ Dinkic said that the ultimate parting of the ways between Serbia and Montenegro was built into the agreement. He complained that the agreement was without economic content and that nothing had been solved.⁵⁹

Some Belgrade officials concluded that as the agreement did not provide for a reintegrated joint

⁵³ See *Vijesti*, 18 and 21 March 2002.

⁵⁴ Djukanovic press conference, *Pobjeda*, 15 March 2002.

⁵⁵ *Vijesti*, 15 March 2002.

⁵⁶ See ICG Balkans Briefing, *Serbia: Military Intervention Threatens Democratic Reform*, 28 March 2002.

⁵⁷ Reuters, 26 February 2002.

⁵⁸ *VIP Daily News Report*, 15 March 2002.

⁵⁹ Tanjug, 14 March 2002; Reuters, 18 March 2002.

state, Serbia should follow Montenegro's lead and assert its autonomy, rationalising governing structures by ending the duplication between Serbian and federal (in effect also Serbian) level institutions. Serbian finance minister Bozidar Djelic said that the agreement was not for a functional federation, but for a confederal relationship, with two separate markets that needed to be harmonised.⁶⁰ Dinkic said that as there would not be a common currency there would be no central bank at the level of the joint state. Thus the National Bank of Yugoslavia would become the National Bank of Serbia.⁶¹

According to Djelic, Serbia should take over federal economic competencies by the end of 2002, as a precondition for achieving the called-for harmonisation with Montenegro. The federal customs service would become the Serbian customs service, operating as part of the Serbian finance ministry. Federal regulations covering such areas as banking, capital markets, corporate and bankruptcy laws, pensions and healthcare, which are in practice only applied in Serbia, should be explicitly adopted as Serbian legislation.⁶²

B. MAKING IT WORK

Given the agreement's lack of detail, the challenge now is to put flesh on it. Sharing an understanding of the agreement as being about cooperation and harmonisation between autonomous entities, Montenegrin and Serbian officials quickly began to discuss how the implementation would work in practice. Djelic, who was in frequent contact with his Montenegrin counterpart, Ivanisevic, foresaw the new central authorities having a very limited role with no independent source of revenue. Rather, they would depend upon subventions from the member states, proportionate to their shares in the union's overall GDP. While federal institutions that functioned only in Serbia would become Serbian, other central bodies would have very limited roles, essentially coordinating functions that were carried out at the level of the member states.⁶³

This is a pragmatic vision of the implementation of the agreement. It accords with the stress of Serbian government officials on functionality. Having concluded that the argument for a functioning joint state had been lost, the point was to rationalise the administration in Serbia and to clarify how the member states, operating as separate, autonomous entities, would cooperate and harmonise their economies. While there would not be a single customs service, the member states would need to improve cooperation between their respective customs services in order to restore a single market. This approach was also in accord with the wishes of Montenegrin officials who were determined to preserve the autonomy that Montenegro had attained, and still held out the hope of eventual independence.

For both sides, a benefit of the agreement and the dialogue that it had spawned, was that they now had the best opportunity yet, through the implementation of the agreement, to resolve the range of questions about how relations between the two republics would in future be conducted, whatever the final outcome. Nonetheless, given Serbia's lagging reforms⁶⁴ and Montenegro's lead in reforming its customs, currency, taxes and price controls, Serbia may well be compelled to implement new reforms as a precondition for creating a single economic space with Montenegro.

However, whatever degree of common understanding about the implementation was shared by many Serbian and Montenegrin officials, the process envisaged for drawing up a Constitutional Charter for the new union gives plenty of scope for complications to emerge. The agreement has in general elicited much less interest in Serbia than in Montenegro, with the issue of cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) mostly dominating political events in Belgrade in the weeks after 14 March. The agreement was ratified by the parliaments of both republics on 9 April. In Montenegro, this was preceded by several days of often angry debate and recrimination in parliament, although the result was never in doubt given the support of both the DPS and the pro-Yugoslav parties.

⁶⁰ *VIP Daily News Report*, 15 February 2002.

⁶¹ Reuters, 18 March 2002.

⁶² *Blic*, 21 March 2002.

⁶³ Statement by Djelic, reported in *Vijesti*, 12 April 2002.

⁶⁴ See ICG Balkans Report No. 126, *Belgrade's Lagging Reform: Cause For International Concern*, 7 March 2002.

Not only is the Belgrade agreement very thin on detail. It is also very unclear as to how the Constitutional Commission which is supposed to draft the Constitutional Charter will function. The procedure adopted in Montenegro for appointing members of the Commission has been used by the political parties to try to tie the hands of the Montenegrin delegates in advance and pre-empt the Commission's work. A parliamentary committee was tasked to draft conclusions on the Belgrade agreement that would be adopted by parliament. The parties used this opportunity to try to impose their various interpretations of the agreement on the delegates to the Commission even before it had been constituted. Particularly contentious has been whether the new union's parliament will be directly elected, as advocated by the SNP, or nominated by the parliaments of the member states, as advocated by the DPS.⁶⁵

The agreement does not specify how the union's parliament should be elected, but states that the member states themselves should decide, in compliance with the principles defined in the Constitutional Charter. Logically, this and other matters concerning the Charter should have been left to the Constitutional Commission, whose draft would in any case have to be adopted by the parliaments of the member states. Thus the procedures adopted by the Montenegrin parliament quite unnecessarily opened up disputes even before the Commission had begun its work.

Having failed to gain satisfaction in the Montenegrin parliamentary committee, the SNP took its demands to the federal parliament on 18 April. Much to the annoyance of the Democratic Opposition of Serbia (DOS), its coalition partner at the federal level, the SNP held up ratification of the agreement there over its demands for the same guarantees that it had sought in the Montenegrin parliament. The SNP's demands were rejected by DOS, whose officials, logically, said that they should be considered by the Constitutional Commission.⁶⁶

All of this confusion even before the Constitutional Commission has begun its work does not augur well for the success of its work. The very fact that the Commission will contain advocates of a

stronger central state, from both Montenegro and Serbia, as well as representatives of parties either resigned to or advocating separation indicates that its work is not likely to be smooth. As has been described, key officials in both governments see the implementation of the agreement in terms of formalising the establishment of separate entities – virtually two independent states, except in terms of international personality – and putting in place mechanisms for cooperation. If the Serbian authorities proceed with their plans to do away with the federal layer of government in areas that they do not foresee being in the competence of the new union, then the very loose union of essentially separate states envisaged by the Serbian and Montenegrin governments may be established in spite of confusion over the Constitutional Commission.

Solana has sought to urge matters forward, but there is little expectation that the timetable envisaged in the agreement will be fulfilled.⁶⁷ Even if the Commission is not totally incapacitated by the type of political-party antics already seen in Montenegro, it is far from clear that an eventual Constitutional Charter can be adopted. Quite apart from the Montenegrin parliament, doubts have been raised as to whether the necessary two-thirds majority in favour could be achieved in either the Serbian parliament or the federal parliament.⁶⁸ In sum, the 14 March agreement may not be implementable even with good faith efforts in both republics. It follows that the EU will have to stay in close attendance on the parties, to prevent possible derailments.

⁶⁵ *Vijesti*, 19 April 2002.

⁶⁶ *Ibid.*

⁶⁷ When the speaker of the federal Chamber of Citizens, Dragoljub Micunovic, was asked about the chances of meeting the June 2002 deadline for passing the Constitutional Charter, he replied "I am sorry, but that is not possible". He estimated September 2002 as more realistic. *VIP Daily News Report*, 25 April 2002.

⁶⁸ *VIP Daily News Report*, 15 March 2002.

V. WIDER POLITICAL DYNAMICS

Whether the effort to implement the agreement succeeds or founders, and leads to a parting of ways or develops into a closer union, will largely depend on wider political dynamics. The mood in Serbia is above all characterised by weariness and impatience with the, as seen from Serbia, troublesome Montenegrins. Serbian pro-independence sentiment is increasing. In an opinion poll in Serbia, published shortly after the signing of the agreement, some 29 per cent expressed themselves against the common state with Montenegro, while a further 21 per cent were for a union of independent states.⁶⁹ A subsequent poll in late March conducted by the local subsidiary of a British-based market research company found that no fewer than 65.1 per cent of respondents were “in favour of an independent Serbia”.⁷⁰

On 29 April, the Christian Democratic Party (DHSS), led by Vladan Batic, began to collect signatures to call for a referendum on whether Serbia should stay with Montenegro or become independent.⁷¹ A public opinion survey found that 56 per cent of respondents favoured a referendum on the 14 March agreement.⁷² If the agreement does not swiftly lead to a more settled situation, the numbers of those who heed the call for independence is likely to keep rising. The issue remains volatile: already it is capturing the attention of the Serbian press and causing open political disputes between the federal and Serbian governments.⁷³ The Federal foreign minister, Svilanovic, has warned that it may derail the FRY’s accession to the Council of Europe.⁷⁴ If this pro-independence sentiment grows, it cannot be excluded that Serbia might even break with the union before Montenegro does so.

In divided Montenegro, the agreement and Djukanovic’s climbdown from plans for an early

referendum have led to political upheaval. As already noted, the LSCG and SDP withdrew support for the government. The result was the belated resignation of Prime Minister Vujanovic on 19 April 2002.⁷⁵ Immediately after the signing of the agreement Djukanovic expressed his preference for a new government of the pro-independence bloc, this time perhaps to include LSCG ministers.⁷⁶ However, despite a circus of behind-the-scenes and public negotiations in the following weeks, agreement on the composition of a new government was elusive.

While the SDP expressed itself in favour of a new government of the pro-independence parties,⁷⁷ the distrust of the LSCG towards the DPS and Djukanovic personally, always high, was further heightened by what LSCG leaders referred to as the treachery of the DPS leadership for signing the agreement.⁷⁸ Amid much uncertainty and contrary statements concerning their conditions for a coalition agreement, the LSCG said it would ask a very high price for joining a new government. Spokesman Slavko Perovic, a former party leader who retains considerable influence, said at one point that the LSCG would demand the prime minister’s post and support from the coalition partners for an LSCG presidential candidate in an election due later this year. The party would, he asserted, seek a deal that had “the taste and smell of the DPS’s dis-empowerment”.⁷⁹

Solana urged the LSCG and the SDP to support the agreement, inviting their leaders to Brussels.⁸⁰ The LSCG confirmed that it would accept the agreement and contribute to its implementation. However, even if terms for a new government of the pro-independence parties could be agreed, the bitterness between the LSCG and the DPS since the Belgrade agreement makes it hard to envisage such a partnership working effectively. Indeed, it was already clear during the period when the LSCG supported Vujanovic’s government, while

⁶⁹ Reported in *Politika*, 18 March 2002.

⁷⁰ *Blic*, 2 April 2002.

⁷¹ Radio Free Europe/Radio Liberty Newline, 29 April 2002.

⁷² B92 website, 29 April 2002.

⁷³ “Djindjic: savezna vlada opet prebacuje odgovornost”, Radio B92, 3 May 2002.

⁷⁴ “Svilanovic: Kampanja DHSS dovela u pitanje prijem SRJ u SE”, *Radio B92*, 3 May 2002.

⁷⁵ *Vijesti*, 20 April 2002. There ensued a bizarre controversy over whether Vujanovic had offered his resignation, or returned his mandate, as he put it, in the correct manner.

⁷⁶ *Pobjeda*, 15 March 2002.

⁷⁷ *Vijesti*, 22 March 2002.

⁷⁸ For example, speech by LSCG leader Miodrag Zivkovic in parliament, reported in *Vijesti*, 29 March 2002.

⁷⁹ *Vijesti*, 28 March 2002.

⁸⁰ *Vijesti*, 13 April 2002.

constantly sniping at it from the sidelines, that there is no united, pro-independence bloc in Montenegro.

For Djukanovic, signing the 14 March agreement had both advantages and disadvantages. Several observers had argued after the April 2001 election that, given the highly polarised environment and the difficulty of holding a democratic referendum whose results would be accepted by all, it would be wise to look for a compromise solution.⁸¹

On the face of it, Djukanovic has achieved much – more, certainly, than seemed likely several months ago. He has largely preserved the autonomy that Montenegro had achieved, and won EU acceptance that Montenegro could freely choose to withdraw from the union at a later stage. Delaying a resolution of the status issue for three years has much to commend it, not least for Djukanovic himself, given the likely closeness and unpredictability of the result. Removing the immediate prospect of a referendum could enable dialogue to develop among the parties in Montenegro in a calmer atmosphere. As described earlier, Montenegro and Serbia now have an opportunity to settle the range of practical issues involved in any future relationship. If the process evolves as the Montenegrin and Serbian governments hope, into a very loose union of for most purposes separate entities, the passage of three years might reduce the temperature of the independence debate.

However, any advantages for Djukanovic and his party of postponing a referendum may be more than cancelled by the political damage from being forced into a climbdown. Having committed themselves so strongly to an early referendum, backing down under EU pressure on severely dented their credibility. Indeed, the first opinion poll evidence to emerge since the agreement suggested that support for the DPS—SDP coalition had dropped sharply. While the LSCG's support has more or less held steady, the three-party pro-Yugoslav coalition has seen its support rise.⁸²

The slump in support for the DPS only partly reflects a waning of pro-independence feeling, as

the momentum towards independence ran out of steam after April 2001.⁸³ The increase in the number of people who said that they would not vote probably reflects disillusion in the pro-independence camp. Support for the agreement appears to be high,⁸⁴ but Djukanovic's worry must be that among the opponents of the agreement are many disaffected supporters that the DPS may struggle to win back.

An early test of the standings of the parties will come on 15 May 2002, when local elections are held in all municipalities except Podgorica and Herceg Novi, where early elections were held in June 2000. The DPS and the SDP will stand together in ten out of nineteen municipalities, and separately elsewhere. Despite appeals from the SDP and DPS, the LSCG would make no pre-election pacts. The main three-party pro-Yugoslav coalition hopes for gains in these elections, but their united front suffered severely from bitter arguing about the allocation of candidates on joint lists.⁸⁵ They too will stand together in ten municipalities, while the SNP and the SNS will stand together in a further seven.⁸⁶

There has been wide speculation that the DPS—SDP coalition stands to lose ground in the municipal elections. In any event, probably in part due to fears that the DPS would face punishment from disaffected voters in early elections, Djukanovic has expressed himself against an early parliamentary election.⁸⁷ Theoretically, even after the government's loss of its majority the present parliament could stagger on without new elections for some months. Vujanovic's government will continue to function until a new prime minister is mandated by the president, from which time he or she would have two months to form a government before elections had to be called.

⁸¹ See ICG Balkans Report No. 114, *Montenegro: Resolving the Independence Deadlock*, 1 August 2001.

⁸² For detailed opinion poll results, see Appendix B.

⁸³ According to opinion polls carried out by the Damar agency for the Centre for Democracy and Human Rights (CEDEM), in April 2002, 42.3 per cent of respondents said that they would vote in favour of independence, compared with 40.2 against. In January 2002 the result was 46.7 per cent in favour, and 41.9 per cent against. In March-April 2001 the result was 49.3 per cent in favour, and 39.5 per cent against.

⁸⁴ According to the CEDEM poll, 61.6 per cent supported the agreement, and 23 per cent were against it.

⁸⁵ See *Vijesti*, 22 April 2002.

⁸⁶ *VIP Daily News Report*, 22 April 2002.

⁸⁷ *Vijesti*, 19 April 2002.

Thus the political crisis in Montenegro has the potential to continue for several months. If the opinion-poll gains of the pro-Yugoslav SNP and SNS parties are confirmed in eventual elections, the consequences for Montenegro and Serbia could be far reaching. As a party that supported Milosevic until the end and which has continued to resist cooperation with the ICTY, there would be reason for deep concern about the prospects for continued democratic reform in Montenegro under an SNP-led government. It may be assumed that the SNP would not support the strategy adopted by the present Montenegrin authorities of implementing the 14 March agreement in such a way as to minimise the role of the central authorities.

Reformists in Serbia as well, gathered around Djindjic, would look askance at the prospect of a union with an SNP-led Montenegro. And despite the SNP's earlier tendency to find common cause with Kostunica at the federal level, for example over cooperation with the ICTY, the SNP's recent blocking of the 14 March agreement in the federal parliament has reportedly also exasperated Kostunica.⁸⁸

VII. CONCLUSION: THE EUROPEAN UNION AT CROSS PURPOSES?

As has been noted, a positive aspect of the EU's recent engagement in the FRY is that Podgorica and Belgrade have been galvanised into addressing the range of questions about how their future relationship will function in practice. They have made positive progress since 14 March in reaching common understandings about how their relationship should work in practice. The EU should welcome and encourage such progress, and be prepared to accept whatever satisfactory arrangement that Serbia and Montenegro can work out for themselves in line with the 14 March agreement, including the possibility of eventual separation.

The heavy pressure to which Montenegro was subjected by the EU to rethink its plans for an independence referendum has left a bitter taste for many Montenegrins, and damaged the EU's credibility as an honest broker. While Djukanovic and Vujanovic pointed to the agreement's acknowledgement that Montenegro may reconsider its place in the union, there is a widespread perception that the EU's strong preference for a reintegrated federation has not diminished and will not weaken over the next three years.⁸⁹

Concern about EU intentions was heightened by the publication – shortly after the signing of the 14 March agreement – of a report by the European Commission on the Stabilisation and Association process (SAP) in the FRY.⁹⁰ While assessing progress in carrying out reforms in the FRY in line with the SAP, the report persistently judges performance through the prism of the Commission's priority to restore the dysfunctional federation. Thus reforms carried out in Montenegro in many areas, such as public finances, banking, customs and trade policy, are barely acknowledged, if at all. The smaller republic is repeatedly castigated for carrying out reforms and pursuing policies that are out of step

⁸⁸ "SNP spreman da zrtvuje Kostunicu", *Nedeljni telegraf*, 24 April 2002.

⁸⁹ For example, comments by former SDP leader and Deputy Prime Minister Zarko Rakcevic in parliament, reported in *Vijesti*, 3 April 2002.

⁹⁰ *Commission Staff Working Paper, Federal Republic of Yugoslavia, Stabilisation and Association Report.*

with the federation, however legitimate and appropriate those policies may be.

The report repeatedly identifies Montenegro as the problematic, uncooperative republic that undermines the federation and allegedly hampers efforts at reform and integration with the EU. There is also a tendency, for example in the section on minority rights, to highlight positive changes in Serbia while pointing to outstanding problems in Montenegro. The result is a highly distorted picture in which Serbia is portrayed as forging ahead with reforms while Montenegro lags behind. It is a deeply flawed and unfair representation.⁹¹

The Commission's approach is rooted in the report's assertion that "The constitutional stalemate must be clearly resolved through constructive cooperation within a restructured and functional federal state." Thus the Commission explicitly supported the pre-14 March position of Belgrade in the debate over the future of the federation. But this is a position which the Belgrade agreement itself has rendered obsolete. The Commission should now catch up with the reality that Solana himself has in large measure accepted, and abandon its fixation with preserving the federal state by restructuring it.

The Commission's SAp report assesses the FRY's progress in the SAp through the EU-FRY Consultative Task Force (CTF) established in July 2001 and the federal government's European Integration Office (EIO), established in November 2001. The Commission's engagement with the FRY in the framework of the SAp and through the CTF and the EIO has recognised only the FRY as a partner. The EU has engaged directly with Montenegro in other ways, notably through the European Agency for Reconstruction, which channels assistance to Montenegro through its office in Podgorica. But in terms of the formal EU integration process, the Commission has, by insisting on recognising only the federal level (i.e. Belgrade – in effect Serbia), excluded Montenegro.

Solana's approach towards Serbia and Montenegro laid great stress on the SAp, and the EU has looked forward to the early conclusion of a Stabilisation and Association Agreement (SAA) with Serbia and

Montenegro.⁹² However, if the basic goal of the SAp, to help build lasting stability in the region, is to be fulfilled, the EU must ensure that Serbia, Montenegro and Kosovo are all three treated properly, and resist the temptation to treat the smaller entities as mere appendages of Belgrade. It would therefore be rash to seal the European integration process with an SAA for the FRY or its successor before the status of Montenegro and Kosovo have been resolved.

The challenge before Serbia and Montenegro is to take the initiative and implement the 14 March agreement in a mutually acceptable way. So long as they can find a satisfactory basis for their relationship, which takes both of them in the direction of European integration, the form of the relationship, whether in one state or as two, should be of secondary importance.

Now that it has brokered an agreement, the EU cannot disengage. Without outside pressure, the agreement will likely be stillborn. And even if a new union does emerge, it may not prove to be durable. Especially as the Serbian government takes over federal competencies, the trend of political and public opinion in both republics may create a momentum of disaggregation that carries the two republics further towards formal separation, even within the three-year limit. Any other outcome would buck the regional trend over the past decade.

Should this occur, the international community should stand ready to reopen the agreement, which must be regarded not as an end in itself, but as a means to an end. The EU should finally stop trying to decide on behalf of the republics themselves what their relationship should be. Rather, the EU should use the new agreement by helping Serbia and Montenegro to identify and build a stable, sustainable solution, based on democratic legitimacy. Only if it serves this purpose will Javier Solana's mediation have bought time to good effect.

Podgorica/Belgrade/Brussels, 7 May 2002

⁹¹ See "EU i Crna Gora: Svilen gajtan", *Monitor*, 19 April 2002.

⁹² See Conclusions of the EU's General Affairs Council, 15 April 2002.

APPENDIX A

THE MAIN POLITICAL PARTIES IN MONTENEGRO

Political Party	Political Alignment
Democratic Party of Socialists (DPS)	Headed by President Milo Djukanovic. The DPS – a communist successor party; the core of the governing coalition; pro-independence.
Social Democratic Party (SDP)	A pro-independence, pro-Western party, led by Ranko Krivokapic. Coalition partner of the DPS.
Liberal Alliance for Montenegro (LSCG)	The most consistently, radically pro-independence party, led by Miodrag Zivkovic. Supported the DPS-SDP coalition government after the April 2001 election.
Socialist People's Party (SNP)	Biggest pro-Yugoslav Montenegrin party, opposed to independence; an offshoot of the DPS. Predrag Bulatovic has headed the SNP since February 2001. Member of Together for Yugoslavia coalition.
People's Party (NS)	A pro-Serbia, anti-Milosevic, anti-independence party led by Dragan Soc. Member of Together for Yugoslavia coalition.
Serbian People's Party (SNS)	A pro-Serbian, anti-independence party led by Bozidar Bojovic; an offshoot of the NS. Member of Together for Yugoslavia coalition.
People's Socialist Party (NSS)	Pro-Yugoslav party that split with the SNP in February 2001 after the SNP forced former leader Momir Bulatovic to resign.

APPENDIX B

PARTY STANDINGS⁹³

Party/ coalition	Opinion poll results		Results excluding don't knows and won't votes		
	Jan. 2002	Apr. 2002	Apr. 2001 election	Jan. 2002 opinion poll	Apr.2002 opinion poll
Victory is Montenegro's (DPS + SDP)	33.3	27.2	42	41.6	36.1
Together for Yugoslavia (SNP + NS + SNS)	36.8	35.3	40.6	45.9	46.8
LSCG	6.7	8.1	7.8	8.4	10.7
Others	3.3	4.8	9.6	4.1	6.4
Don't know	9.4	9.7	--	--	--
Won't vote	10.5	14.9	--	--	--

⁹³ Results of opinion polls conducted in January and April 2002 by the Damar agency for CEDEM. April 2001 parliamentary election results, *Republic of Montenegro/ Federal Republic of Yugoslavia, Parliamentary Election 22 April 2001, OSCE/ODIHR Election Observation Mission Report*, Warsaw, 12 June 2001.

APPENDIX C

MAP OF FEDERAL REPUBLIC OF YUGOSLAVIA (FRY)



APPENDIX D

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is a private, multinational organisation committed to strengthening the capacity of the international community to anticipate, understand and act to prevent and contain conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are at Brussels, with advocacy offices in Washington DC, New

York and Paris and a media liaison office in London. The organisation currently operates eleven field offices with analysts working in nearly 30 crisis-affected countries and territories and across four continents.

In *Africa*, those locations include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan and Afghanistan; in *Europe*, Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East* Algeria and the whole region from Egypt to Iran; and in *Latin America*, Colombia.

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May 2002

APPENDIX E

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APPENDIX F

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Human rights lawyer and author

Allan J MacEachen

Former Deputy Prime Minister of Canada

Barbara McDougall

Former Secretary of State for External Affairs, Canada

Matthew McHugh

Counsellor to the President, The World Bank

Mo Mowlam

Former British Secretary of State for Northern Ireland

Christine Ockrent

Journalist

Timothy Ong

Chairman, Asia Inc magazine

Wayne Owens

President, Center for Middle East Peace and Economic Co-operation

Cyril Ramaphosa

Former Secretary-General, African National Congress; Chairman, New Africa Investments Ltd

Fidel Ramos

Former President of the Philippines

Michel Rocard

Member of the European Parliament; former Prime Minister of France

Volker Ruhe

*Vice-President, Christian Democrats, German Bundestag;
former German Defence Minister*

Mohamed Sahnoun

Special Adviser to the United Nations Secretary-General

William Shawcross

Journalist and author

Michael Sohlman

Executive Director of the Nobel Foundation

George Soros

Chairman, Open Society Institute

Eduardo Stein

Former Foreign Minister of Guatemala

Pär Stenbäck

Former Minister of Foreign Affairs, Finland

Thorvald Stoltenberg

Former Minister of Foreign Affairs, Norway

William O Taylor

Chairman Emeritus, The Boston Globe

Ed van Thijn

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Simone Veil

*Former Member of the European Parliament; former
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Shirley Williams

*Former British Secretary of State for Education and
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Grigory Yavlinsky

Member of the Russian Duma