Chapter 3
Serbia and Montenegro

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This chapter analyzes the impact of Europeanization on the Serbia – Montenegro relationship. The EU framework through the prospect of future membership and the EU active mediation through conditionality and socialization converged to put in place a precarious common state structure with the signing of the Belgrade Agreement in March 2002. The State Union of Serbia and Montenegro is a hybrid institutional model combining federal features and confederal elements. It has failed to generate consensual political support in either of the republics. Its viability has been questioned by political formations in both Serbia and Montenegro while pro-independence forces have been strengthened after the creation of the common state. The future of the State Union depends critically on the capacity and willingness of the EU to supervise the implementation of the Belgrade Agreement and arbitrate the disagreements between the two republics on issues related to their joint EU membership bid.

3.1 Historical Background

The State Union of Serbia and Montenegro (Serbia-Montenegro) was established in February 2003 as the successor state to the Federal Republic of Yugoslavia (FRY). It is a loose federal structure in which the common state has only limited powers, and its population distribution is very asymmetrical: Serbia (excluding Kosovo) has 7,5 million inhabitants, and Montenegro only 670,000. Since 1999, within the FRY and then the State Union, Montenegro has been claiming the right to form an independent state.

The State Union had its roots in the Yugoslav federation (SFRY). Its predecessor, the FRY, came into being on 27 April 1992, following the dissolution of the Yugoslav federation caused by the chain of secessions by the republics of Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia. The State Union consisted of the two remaining republics of the Yugoslav federation, Serbia and Montenegro. These two constituent republics of the State Union are themselves multiethnic. Even without taking into account the Albanian population in Kosovo (at present *de facto* separated from Serbia but still *de jure* part of its territory), the Republic of Serbia contains several minorities, in particular Hungarians in Vojvodina, Albanians in southern Serbia and Muslims in the Sandzak. In Montenegro, Montenegrins constitute the largest group of the population, which also includes Serbs, Muslims and Albanians.

Table 3.1 Serbia: population and ethnicity

2002	**No**	**%**
Serbs	6,212,838	82.86
Montenegrins	69,049	0.92
Yugoslavs	80,721	1.08
Albanians	61,647	0.82

Bosniaks	136,087	1.82
Hungarians	293,299	3.91
Macedonians	25,847	0.35
Roma	108,193	1.44
Total	7,498,001	

Source: 2002 Population Census, Republic of Serbia Statistical Office. The Kosovo population is not included in the total.

Table 3.2 Montenegro: population and ethnicity

	1991[1]		2003[2]	
	No	%	No	%
Montenegrins	380,467	61.9	273,366	40,64
Muslims	89,614	14.6	28,714	4,27
Serbs	57,453	9.3	201,892	30,01
Albanians	40,415	6.6	47,682	7,09
Yugoslavs	26,159	4.3	-	-
Croats	6,244	1.0	7,062	1,05
Roma	3,282	0.5	2,875	0,43
Bosniaks	-	-	63,272	9,41
Total	615,035		672,656	

Source: [1] 1991 Population Census, Serbia and Montenegro Statistical Office. [2] 2003 Population Census, Montenegrin Statistics Institute.

Unlike the other cases studied here, the history of relations between Serbia and Montenegro is not marked by ethnic antagonism. The dividing line between the Serb and Montenegrin identities is in fact fluid, and not very distinct: in the context of the Balkans, where religion has been an important marker for ethnic identity, the common adherence of Serbs and Montenegrins to Orthodox Christianity has created an important bond. Nor do language issues create a strong separation between the two communities. The languages of Serbs, Montenegrins, Croats and Bosnians are in fact closely related: they are different versions of a common stock, and variations in speech do not coincide exactly with ethnic differentiation.[1]

The difference between Serbs and Montenegrins stems rather from the divergent historical development of Serbia and Montenegro. Serbia succumbed to the Ottoman empire in the fourteenth century and remained under Ottoman sovereignty for five centuries. The principality of Montenegro, on the other hand, was able to preserve its independence both from the Ottoman empire and from Venice, thanks to its mountainous location. From the early nineteenth century on, the Serbs under Ottoman rule also started to campaign for independence. The principality of Serbia became autonomous in 1817,

[1] Aleksandra Mladenovic, "La lingua serba e le minoranze linguistiche della repubblica federale di Jugoslavia", in: Maurizio Cermel (ed.), *La transizione alla democrazia di Serbia e Montenegro. La Costituzione della Repubblica federale di Jugoslavia 1992-2002* (Venezia: Marsilio, 2002), pp. 155-165.

but initially it remained under Ottoman lordship. Both Serbia and Montenegro were internationally recognized as independent states at the peace conference of Berlin in 1878. At that point the two states were territorially separated by the Sandzak, still an Ottoman possession. Serbia and Montenegro became neighbours after 1912, when the Balkan wars led to the expansion of both Serbia (which acquired Macedonia) and Montenegro and to the division of the Sandzak between the two states.

After the First World War, Montenegro was incorporated into the newly founded kingdom of Serbs, Croats and Slovenes, later (in 1929) renamed Yugoslavia. In practice this new state was an extension of the former Serbian monarchy: through their alliance with the victorious Entente the Serbian monarchs managed to emerge as the kings of this new – and vastly extended – state, which included large territories from the dissolved Austro-Hungarian empire. Within this new state, the Serbian political class and the king pursued centralizing policies, abolishing local self-government. These centralist policies aroused a good deal of opposition among the newly incorporated minorities, especially the Croats. Because of these political conflicts and a depressed economic situation, interbellum Yugoslavia suffered from ongoing instability, with central government and monarchs frequently attempting to overcome this instability by authoritarian measures (without any real success). After the First World War, Montenegro lost not only its independence but also all its autonomy. Some politicians there supported the centralizing and pro-Serb policies – the 'White Montenegrins' - while on the other hand an anti-centralist opposition emerged which did not necessarily question unity with Serbia but resented the brutality of the incorporation process – the 'Green Montenegrins'. These opposing positions reflected the complexities of Montenegrin national identity, which on the one hand included an identification with Serbia and on the other affirmed its own historical specificity.[2]

The German occupation of 1941 led to the dissolution of Yugoslavia, and Germany, Italy, Hungary and Bulgaria each occupied parts of its territory. The rest was divided between a collaborationist government in Serbia proper, an Italian protectorate in Montenegro and the newly created state of Croatia, led by the Croat nationalist extremist Ante Pavelic. An impressive, mainly communist-led, partisan movement (which aimed to unify Yugoslavs of all ethnic groups against the Occupation and collaborationist regimes) resisted this occupation. At the same time, however, brutal ethnic conflicts took place between groups of extremist nationalists. The Croat Ustashe of the Pavelic government, in particular, distinguished themselves by their genocidal attitude towards Jews and Serbs, but other groups (including the Serb Chetniks, nominally part of the resistance) were also guilty of ethnic cleansing.

After the Second World War, power was seized by the communist partisans, who had played a dominant role in the resistance against the Nazis and local collaborators. Because of the history of ethnic conflict before and especially during the war, the Communist Party was very keen to carry out institutional reforms that would promote

[2] On the origins of these two factions in the years following the First World War, see Ivo Banac, *The National Question in Yugoslavia. Origins, History, Politics* (Ithaca: Cornell University Press, 1988), pp. 285-291.

ethnic reconciliation. This intention materialized in the constitution of 1946, which re-founded Yugoslavia as a federation of six republics (Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Montenegro and Macedonia). The Republic of Serbia also included an autonomous province (Vojvodina, with a sizeable Hungarian minority) and an autonomous territory (Kosovo, with an Albanian majority), with fewer rights than the republics. These divisions reflected both the ethnic divisions within Yugoslavia and the federation's multiple historical roots. The 1946 constitution recognized the Slovenes, the Croats, the Serbs, the Macedonians and the Montenegrins as nations (the Bosniaks/Muslims were recognized as a nation in 1963).[3] What these groups had in common was that they represented a sizeable part of the population with a particular historical, religious or cultural identity, and were more or less territorially concentrated, but also that Yugoslavia was their fatherland – i.e., none of them had a homeland outside Yugoslavia. The constitution set out to give each nation within Yugoslavia a republic, in which it would be the dominant ethnic group (even though all republics contained ethnic minorities with recognized cultural rights). Other groups, including those possessing a homeland outside Yugoslavia (notably the Hungarians and Albanians), were given the lower status of "nationalities" – with cultural rights, but without the status of a republic.

The Yugoslav constitution was inspired by Stalin's Soviet constitution of 1936, and could easily have created a structure masking centralism and the dominance of one ethnic group, as in the Soviet Union – especially since, in Yugoslavia as in the Soviet Union, the Communist Party held the monopoly of political power. In the minds of its creators, however, the Yugoslav constitution was intended to neutralize the predominant position of the main ethnic group, the Serbs – unlike the Soviet constitution, which in practice led to the predominance of the Russian nation. From the beginning, this aspect of the constitution was therefore taken more seriously, and much attention was paid for example to a fair delimitation of the territories of the respective republics, which resulted from an extensive process of negotiations between 1944 and 1947, repeated in 1953 and 1956.[4] Concerning the national question, the constitution's main weakness was undoubtedly the position it allocated to the Albanians.[5] Despite being the third-largest ethnic group in Yugoslavia, they were given the second-rate status of a nationality, because they had a homeland outside the country. By giving the region of Kosovo a form of autonomy, however, the regime nevertheless acknowledged the position of the Albanians within the state.

Notwithstanding the weaknesses of this constitution, the attitude of the Yugoslav Communist Party towards ethnic issues reflected a political commitment to building a multicultural society free from ethnic discrimination. The Communists actively encouraged expressions of cultural identity but forbade national, racial or religious hatred and also any manifestation of national exclusiveness. The equality of the nations within Yugoslavia was also understood in an economic sense, which meant that there were to be systematic economic transfers from the richer to the poorer regions.

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[3] Dario Montalbetti, "L'organizzazione costituzionale della Jugoslavia 1918-1992", in: Cermel, *op. cit.*, pp. 37-76.

[4] Susan L. Woodward, *Balkan Tragedy. Chaos and Dissolution after the Cold War* (Washington DC: The Brookings Institution, 1995), pp. 31-32.

[5] François Chesnais, Tania Noctiummes & Jean-Pierre Page, *Réflexions sur la guerre en Yougoslavie* (Paris: L'esprit frappeur, 1999), pp. 73-75.

The rupture between Yugoslavia and Stalin (1948) accentuated the differences between Yugoslavia and the Soviet Union in handling ethnic problems. The 1953 constitution reinforced the role of the republics. The constitution of 1963, and especially an amendment adopted in 1967, further institutionalized the role of the republics by creating a chamber of nationalities, with twenty representatives per republic and ten representatives for the two autonomous territories.[6] This chamber also guaranteed a counterweight to the relative demographic dominance of the Serbs at the federal level. The 1974 constitution granted greater territorial autonomy to Kosovo: while it did not become a republic, its status was upgraded to that of an autonomous province, like Vojvodina.[7] The constitution of 1974 went furthest in granting autonomy to the various entities in the Yugoslav federation. In its preamble, this constitution granted the nations of Yugoslavia a right to self-determination, but it still denied this right to nationalities. The interpretation of this right in the 1974 constitution remains controversial, and it has been assumed that the nations forfeited their right to self-determination by voluntarily joining Yugoslav federation. The republics – and, *a fortiori*, the autonomous provinces – did not possess the right to self-determination. Moreover**,** any change in the status of a republic could only be achieved through a commonly agreed revision of the constitution.

The problems in applying the constitution remained hidden for a long time, because the potentially centrifugal tendencies of this model were offset by the implicit centralism of the political system resulting from the dominance of the communist party. The creation of the chamber of nationalities in 1967 had nevertheless created an important counterweight to the centralist dynamics of the communist political system. This second chamber effectively neutralized the dominant position of Serbia, which controlled only 20 of the 140 seats – especially as the representatives of each republic tended to vote *en bloc* in this second chamber, making compromises necessary.[8]

The decentralization of powers in the cultural and economic fields also increased the assertiveness of the republics. After the decentralization of cultural powers, each republic (including the autonomous territories) tended to highlight its own distinctiveness – and here, already, was a first element for nation-building discourses which could be used to intensify antagonisms with other nations in the Yugoslav federation. Economic grievances reinforced centrifugal tendencies. The republics focused more and more on their own development, emphasizing their own needs and interests, with little regard for those of the federation as a whole. The richer republics in particular resented the obligation to make economic transfers – as early as 1970, a wave of Croat nationalism questioned this obligation (and was therefore repressed by the central government).

Nationalistic tendencies were at that time less vehemently expressed in Serbia and Montenegro. The particular position of the Serbs as the largest ethnic community of the country, and of Serbia as the largest republic – and the one that included the capital –

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[6] Montalbetti, *op. cit.*, p. 53.

[7] In addition Montalbetti, *op. cit.*, see also Massimo Rinaldi, "Profili storici e giuridici della forma di stato della Repubblica federale di Jugoslavia", in: Cermel, *op. cit.*, pp. 77-102, and especially pp. 77-83, and Raymond Detrez, "The Right to Self-determination and Secession in Yugoslavia: A Hornets' Nest of Inconsistencies", in: Bruno Coppieters and Richard Sakwa, *Contextualizing Secession. Normative Studies in Comparative Perspective* (Oxford: Oxford University Press, 2003), pp. 112-132 and especially pp. 115-116.

[8] For an analysis of the federal system of the SFRY, see Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991* (Bloomington/Indianapolis: Indiana University Press, 1992).

meant that Serb nationalism could easily take on the form of an ostensibly non-nationalist defence of the central structures of the federation. Serbian nationalism surfaced, however, in other republics, especially Croatia.[9] In Montenegro, the renewed development of a cultural identity followed the establishment of cultural institutions in the 1970s. However, as in the pre-War period, feeling in Montenegro was divided between pro- and anti-Serb (or at least hostility to Serb centralism).[10]

3.2 The Dissolution of the Yugoslav Federation and the Creation of the Federal Republic of Yugoslavia

The tensions inherent in the Yugoslav model were more or less contained as long as there was a prospect of economic growth and as long as communism provided the various republics with a common ideology. Until the 1970s, the communist regime was effectively able to develop the country, industrializing and urbanizing what had previously been a predominantly agricultural society, and offering the population a steady rise in their living standards. Mainly as a consequence of the growing economic difficulties in the 1980s, and especially the exponential growth of the state debt, relations between the republics and the different nationalities within Yugoslavia gradually worsened.[11] The richer republics especially (Slovenia and Croatia) began to question more openly the principle of federal solidarity which forced them to transfer part of their wealth to poorer entities in the federal republic.

In Yugoslavia in the 1980s, discussions on economic reform were intertwined with those on the future of the federal system. At federation level, centralists, supported by international economic organizations such as the World Bank, wanted to give the federal government primary responsibility in programmes for economic redress, and strove for a recentralization of the economic system. Anti-centralists, on the contrary, favoured the development of autonomy at the level of the republics. The antagonism between centralists and their opponents was also felt to be an ethnic opposition. This was particularly the case in Serbia, where the new party leadership around Slobodan Milosevic (who came to power in 1987) followed a blatantly Serb nationalist course, which led in 1989 to the abolition of the self-government of the two autonomous territories within Serbia, Vojvodina and Kosovo. In Kosovo, moreover, the cultural rights of the Albanian majority were severely curtailed, for example through the abolition of public education in the Albanian language.

The end of communism and the start of the process of democratization and post-communist transition thus coincided, in Yugoslavia, with a crisis in relations between the ethnic communities and with the centrifugal dynamics sparked off by this crisis within the Yugoslav federation. In Yugoslavia, democratization coincided in fact with the emergence of nationalist élites which were determined to assert their authority through political mobilization against other ethnic groups. The sequence of events in these years,

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[9] Ramet, *op. cit.*, pp. 117-118.
[10] Ramet, *op. cit.*, pp. 211-212.
[11] In discussing the dissolution of Yugoslavia, we mainly follow the analysis put forward by Susan L. Woodward in *Balkan Tragedy*. See also Laura Silber & Allan Little, *Yugoslavia. Death of a Nation* (TV Books, 1996); Raymond Detrez, *De sloop van Joegoslavië. Relaas van een boedelscheiding* (Antwerpen/Baarn: Hadewijch, 1996); and Stuart J. Kaufman, *Modern Hatreds. The Symbolic Politics of Ethnic War* (Ithaca: Cornell University Press, 2001), pp. 164-201.

moreover, reinforced these centrifugal tendencies. Elections in Slovenia and Croatia in 1990 saw the victory of nationalist parties, and were followed in both republics by unilateral declarations of sovereignty. Elections in the other republics of the Yugoslav federation gave more divided results: in Bosnia-Herzegovina each of the three major communities largely voted for parties representing them, and in Macedonia no party was really predominant. In Serbia the majority went to Milosevic and the ex-communists turned nationalists, and in Montenegro the ex-communists also won a majority.[12] It should be noted that no election was ever organized at the federal level, thereby depriving the population of Yugoslavia as a whole of the opportunity to decide together on their collective future.

The desire of the economically stronger republics (Slovenia and Croatia) to liberate themselves from the responsibilities of the federal system determined the further evolution of Yugoslavia. In both republics, the declarations of sovereignty were followed in 1991 by further unilateral steps. These declarations of independence by Slovenia and Croatia accelerated the dissolution of the Yugoslav federation. The republics of Bosnia-Herzegovina and Macedonia also declared themselves independent (although in the former case against the will of the overwhelming majority of the Serb community). Only in Montenegro did a majority of the electorate pronounce itself in favour of a continued union with Serbia – leading to the foundation of a new entity, the Federal Republic of Yugoslavia (FRY). In the opinion of its makers, this entity should have been considered the successor-state of the Yugoslav federation, but it did not obtain international recognition as such.

The dissolution of the Yugoslav Federation was achieved through the violation of its constitution. It quickly led to ethnic confrontation and the wars in Croatia and Bosnia. The international community did attempt to create an overall normative and legal framework for this transition, through the activities of the Badinter Commission (led by the renowned French jurist Robert Badinter). This intervention, however, sanctioned the actions of the secessionist republics, as the commission accepted their view that the Yugoslav Federation was in the throes of being dissolved.[13] This commission concluded that the 1974 Yugoslav constitution contained a right of secession for the republics – a controversial interpretation. It argued, however, that according to the constitution this right did not exist for territorial entities at a lower level than the republics – implying that minorities within the republics, even if they had been granted territorial autonomy during communism (as was the case with Kosovo), did not have a right to secession. The commission also excluded the possibility of border rectifications.[14] By recognizing the right of the republics of the Yugoslav federation to choose their future status freely when the federation was in a ***de facto*** process of dissolution, it followed a normative framework that is not usually accepted by the international community.

The Badinter Commission did advise caution in granting recognition to republics, arguing that this should be done only when they met the CSCE (Conference on Security and Cooperation in Europe, the predecessor of the OSCE) criteria for democracy and demonstrated respect for minority rights. According to the commission, this condition was fulfilled only by Slovenia and Macedonia. This advice was not followed by the

[12] Woodward, *op. cit.*, p. 119.
[13] Woodward, *op. cit.*, p. 181.
[14] Woodward, *op. cit.*, pp. 213-214.

international community, however, which procrastinated with the recognition of Macedonia (because of a Greek veto) but quickly recognized the independence of Croatia, without waiting for guarantees on minority protection and despite the risk of an escalation of the civil war. The international community likewise ignored a ruling by the commission that a vote on the independence of Bosnia would only be valid if supported by sizeable numbers of the three main communities there.[15]

The Federal Republic of Yugoslavia, consisting of the republics of Serbia and Montenegro, came into being in these complex and unfavourable circumstances. Partly because the Milosevic leadership of the FRY was considered the main – or even the only – culprit responsible for the escalation of conflicts in the Balkans, the FRY did not receive international recognition as the successor-state to Yugoslavia. The FRY landed in a vicious spiral where economic sanctions reinforced Serb nationalism, since the Serb political leaders could easily portray Serbia as the victim of a biased and unjust international community. By mobilizing Serb nationalist sentiments, the Milosevic regime also managed to postpone further democratization.

The new state gave itself a new constitution in 1992, which at least nominally defined the FRY according to the criteria of a liberal democracy, including guarantees for the protection of minorities.[16] Where the relationship between Serbia and Montenegro was concerned, the 1992 constitution was ambivalent, and tended to oscillate between a federal and a confederal logic. The FRY was described as consisting of the voluntary union of its two constituent entities, Serbia and Montenegro. The constitution affirmed the sovereignty of the republics, but also the sovereignty and unity of the federal state. It did not grant the constituent entities a right to secession, nor did it describe any procedure for an eventual separation.[17] It applied the federal principle that powers that are not explicitly allocated to the federal level would automatically be granted to the republics. It explicitly recognized the right of the republics to develop international relations, so both republics could have a ministry of foreign affairs. At the federal level, the constitution also offered guarantees to the Montenegrin republic. While the first chamber of the parliament reflected the demographic predominance of the Serbs, an indirectly elected second chamber was based on the equal representation of the two republics. Within this second chamber, the mandates of the deputies were designed to guarantee that they would represent the views of the leaderships of their respective republics.[18]

Problems between Serbia and Montenegro arose from the asymmetry between the two entities, which made Montenegro dependent on decisions taken by Serbia. As a result, Montenegro also experienced the negative consequences of the escalation of the post-Yugoslav wars: when the economic sanctions against the FRY also increased the republic's dependence on Serbia. The two republics also had different – and sometimes conflicting – economic interests: Serbia is more industrialized and its industry is in need of economic protection, while Montenegro, more geared towards services and tourism, is

[15] Woodward, *op. cit.*, p. 282.
[16] Matteo Frau, "I diritti delle minoranze nazionali nella costituzione della repubblica federale di Jugoslavia", in: Cermel, *op. cit.*, pp. 167-197.
[17] Frau, *op. cit.*, pp. 189-193.
[18] Fioravante Rinaldi, "L'efficacia dei contrappesi negli istituti di razionalizzazione della forma di governo Jugoslava", in: Cermel, *op. cit.*, pp. 103-129.

keen to open up its market. Moreover, in 1999 Montenegro adopted the Deutschmark as its currency, later followed by the Euro, while Serbia retained the Dinar.

While the Montenegrin leadership began by supporting Milosevic, the continuous involvement of the FRY in the Balkan wars and the conflict in Kosovo, together with growing differences on economic policies, ultimately led to a confrontation between the two republics. From 1997 on, the Montenegrin leadership around Milo Djukanovic publicly questioned the politics of Milosevic, a dispute that came to the fore during the Kosovo crisis of 1999, in which Montenegro remained neutral. The Montenegrin political leadership (despite the presence of a consistent pro-union opposition of between 40 and 50 % of the electorate) strove for a pro-Western political course more independent of Belgrade. It asserted Montenegrin identity and from 1999 on affirmed its desire to secede from the FRY and to form an independent state of Montenegro. Because of its opposition to Milosevic, Montenegro received support from the international community, which at that point supported its secessionist stance.

The Montenegrin leadership defended its pro-independence stance by referring to the Badinter Commission. It claimed that the right to secession this commission had attributed to the republics of Yugoslavia legitimized the secession of Montenegro. Its adversaries, on the contrary, pointed out that by rejecting this option in 1992, and by joining the FRY (whose constitution did not include a right to secession), Montenegro had renounced the exercise of this right. In reaction to the Montenegrin stance, moreover, in 2000 the federal parliament adopted a constitutional change designed to reinforce the authority of the federal president and which, by introducing the direct election of the representatives to the chamber of the republics, and the abolition of the imperative mandates of these representatives, would effectively undermine the veto power of the Montenegrin leadership. This was followed by a boycott of the federal elections of 2000 by the pro-independence parties in Montenegro.

Under Milosevic's leadership, the transition to democracy in the FRY was stalled for a long time. The presidential election campaign in 2000 led, however, to the formation of a unified and pro-democratic opposition front (DOS) around the candidacy of Voijslav Kostunica. The elections were accompanied by revolutionary upheaval and led to the downfall of Milosevic (5 October 2000) and the formation of a pro-Western democratic government in Serbia. These events brought a quick *rapprochement* between the FRY and the international community, particularly the EU. The international community, while earlier sympathetic to Montenegro's opposition to Milosevic, now supports the continued union of the two republics, although the Montenegrin leadership has continued to favour the option of independence. Serbia-Montenegro has been admitted as a member of European institutions such as the OSCE and the Council of Europe. It is a partner in the Balkan Stability Pact and the South-East European Cooperative Process (SEECP). Together with the other countries of the Western Balkans, it has been offered the prospect of future accession to the EU.

3.3 History of Attempted Solutions

The common state of Serbia and Montenegro came into being as a result of crucial intervention by the EU, supported by the EU framework. It was the EU's incentive structure – including the promise of full integration into the EU framework – that induced

the two sides to redefine their constitutional relationship and stay together in a common state. Other external actors fully backed the EU initiative to mediate an agreement between Belgrade and Podgorica and to use its leverage vis-à-vis Serbia and Montenegro related to their expressed interest in being part of the EU. No incentives other than the EU-related ones competed for a place in the players' calculations. It was the EU common state conditionality that succeeded in bringing about an initial conflict settlement.

The EU's first attempt to influence the dialogue on constitutional arrangements between Belgrade and Podgorica was made through the monthly statements of the General Affairs Council, which repeatedly conveyed the member states' attachment to the formula "A democratic Montenegro in a democratic Federal Republic of Yugoslavia".[19] While the strength of the wording against unilateral actions that would threaten stability in the region of South-East Europe grew throughout 2001, the member states' offer to the two republics contained nothing more substantial than the vague promise of unspecified benefits from "international aid and the reform process, in particular in the context of the stabilization and association agreement".[20] Not surprisingly, this fuzzy formulation of unclear incentives and the absence of a strong third-party player capable of communicating the message to the parties in conflict was insufficient to trigger a decisive change in the negotiations between Podgorica and Belgrade.

The EU stepped up its involvement at the beginning of 2002 and gave a mandate to the EU's High Representative for the CFSP, Javier Solana, to break the impasse in the dialogue, help the two sides reach an agreement and find a common state solution. Solana's mediation culminated on 14 March 2002 in the signing of the Belgrade Agreement, in which the two republics committed themselves to establishing a loose Union structure and a common market between them, while the EU agreed to supervise and arbitrate the implementation of the agreement.

The Belgrade Agreement is a framework document which is very thin on the substantive elements of the relationship between Serbia and Montenegro. It lays the foundations for a two-entity State Union with single international representation and a number of joint institutions – a unicameral parliament, a president, a ministerial council and a court. The common state layer of government is responsible for defence, foreign affairs, foreign economic policy, internal economic relations and the protection of human and minority rights. A joint army, controlled by a common Supreme Defence Council consisting of three presidents (those of the two republics and of the State Union), is in charge of the territorial security of the State Union.

The Belgrade Agreement left many institutional and policy questions open, but it committed the two republics to agreeing on specific issues in a Constitutional Charter and an Economic Harmonization Action Plan, to be worked out by them in the course of 2002. It did, however, contain a clear withdrawal clause, which could be invoked by either side three years after the establishment of the State Union. This provision was included – as a concession to the Montenegrin preference for independence – to allow for a referendum on the future status of that republic. But it does not guarantee international recognition to the entity which declares its independence first.

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[19] See for example *Western Balkans Conclusions*, General Affairs Council, 2386 Council Meeting, 19-20.11.2001, Brussels, 13802/01 (Presse 414).
[20] *Ibid*., p. 23.

The Belgrade Agreement is the minimal political solution Solana was able to persuade the two sides to agree to. He secured the signatures of both leaderships by making future accession to the EU conditional on the preservation of the State Union. Membership of the EU, therefore, was the biggest incentive to the two sides (especially the Montenegrins, at that time) to accept some level of institutional and economic re-integration. The degree of institutional centralization and economic harmonization between the two republics became the main bone of contention in the subsequent discussions between Podgorica and Belgrade on the implementation of the Belgrade Agreement.

The Constitutional Charter of the State Union – adopted in February 2003, eight months later than the deadline envisaged by the Belgrade Agreement – was the result of intensive discussions among politicians and experts in Serbia and Montenegro about the nature of the common state. The Montenegrin side maintained that this was a union of two sovereign states in which authority rested with the republican governments and decision-making at central level was limited to coordination with the consent of the republics' authorities. The Serbian side preferred a federation in which decision-making power for certain policy areas resided with the central authorities and there was a clear division of competences between the federal and republican levels of government.

The Constitutional Charter in fact provides for an institutional arrangement that is closer to the Montenegrin vision of power-sharing. It safeguards the statehood of the member states and endows both republics with equal policy-making power at the state level. Article 2 of the Charter states this in a straightforward and unambiguous manner: "Serbia and Montenegro shall be based on the equality of the two member states, the State of Serbia and the State of Montenegro". In essence, either of the republics can block a decision if it considers that it conflicts with a vital republican interest. Bearing in mind the discrepancy in size between the Union's two member states, the arrangement goes a long way towards accommodating Montenegro's concerns about being politically dominated by the much larger state of Serbia.

EU standards and EU integration are the key reference points in defining the main goals of the State Union. In addition to respect for human rights, the promotion of rule of law and the introduction of a market economy, Article 3 of the Constitutional Charter defines the *raison d'être* of the State Union as "integration in European structures, the European Union in particular; harmonization of its legislation and practices with European and international standards; and establishment and insurance of an unhindered operation of the common market on its territory through the coordination and harmonization of the economic systems of the member states in line with the principles and standards of the European Union".

Given the vital role of the overarching EU framework, acknowledged by the domestic players themselves, the involvement of the EU in the day-to-day politics of inter-republic relations was unavoidable, and was even expected by both sides. Because the State Union had been created in order to deepen relations with the EU and prepare the two republics for full integration into EU structures, the EU had to be a constructive mediator in relations between the two governments when their disagreements concerned policy areas related to the Stabilization and Association Process. This meant that the EU had to take a more active approach to helping the two sides find the middle ground. The survival of the constitutional solution achieved through the inclusion of the third level of

governance – the EU framework – therefore necessitated a larger role for the EU in various policy areas.

Economic policy – where the framework dimension needed the support of the actor dimension – was one such area. Because the EU was willing to integrate only one state into its framework, and to sign a Stabilization and Association Agreement (SAA) with only one party, when negotiating a trade liberalization scheme with the EU the State Union had to present a common position on trade policy. This empowered the European Commission to insist on the adoption of a common external tariff by the State Union, a condition that was bound to provoke a major clash of interests between Belgrade and Podgorica.

Although the Constitutional Charter stipulates that "Serbia and Montenegro shall have a common market" (Article 12), actually working out the technical aspects of their economic relationship proved much more difficult than merely stating the final objective. The reason for this has to do with the divergent paths taken by the two governments in terms of economic reforms and priorities. An essentially de-industrialized Montenegro, dependent on tourism, has striven for greater economic integration within Europe, adopting the Deutschmark – and later the Euro – as its currency, and opting for low tariff protection in its trade policy. With a sizeable industrial base and agricultural sector, Serbia has sought to protect its local producers by adopting higher and more protective customs tariffs. The Serbian government started to introduce radical market-based reforms only after the ousting of Milosevic in October 2000 and the coming to power of a democratic coalition government. The different levels of economic reforms achieved individually by the two republics was a source of concern to both sides, neither of which wanted to be held back in its economic development by the other.

Talks between the two governments on economic harmonization started shortly after the signing of the Belgrade Agreement. The first comprehensive plan for putting in place the legislative framework for the four fundamental freedoms of the internal market – free movement of goods, capital, services and people – was agreed in July 2002. With this economic plan, Serbia and Montenegro committed themselves in principle to recreating a common economic space and to agreeing in the future about any technical questions that might arise.

When it came down to actually choosing the tariff level for each product, the clash between Belgrade and Podgorica could no longer be avoided or masked by more commitments on cooperation in principle. The European Commission did not want to intervene in the matter by prescribing a concrete tariff, as it felt it would be inappropriate to influence the State Union's tariff level and then represent EU member states in future negotiations with the State Union on trade liberalization. So the two republics were left to develop a common trade policy on their own, although the adoption of a common external tariff was an absolute prerequisite for the Commission's initiation of a feasibility study assessing the readiness of Serbia and Montenegro for an SAA.

Negotiations between Belgrade and Podgorica dragged on for a year. The Montenegrin government maintained that if it raised tariffs to the Serbian level, consumer prices in Montenegro would rise dramatically and the cost to Montenegrin consumers

would be too high.[21] The Serbian government argued that if it lowered tariffs to Montenegrin levels, many industries in Serbia would be destroyed, as Serbian producers would be forced to compete with cheap imports which they were not ready for. In the end, both sides had to make concessions in order to proceed along the path of European integration. But the economic incompatibility argument created many enemies for the State Union on both sides.

The Internal Market and Trade Action Plan[22] demanded by the European Commission before the launch of a Feasibility Study was finally approved by the two governments in July 2003 and adopted by the State Union Parliament on 29 August 2003. The document has 20 annexes with agreements on customs tariffs and customs administration, product standardization, animal and plant health control, the payment and collection of sales taxes and excise duties, inter-bank cooperation and representation in international financial institutions. On the most sensitive question – the common customs tariff in all product categories – agreement was possible only when a time component was introduced, with the result that a common customs tariff for the most sensitive products would not become applicable until 18 or 24 months after the entry into force of the Action Plan. In addition, Montenegro managed to retain its low tariffs for a minimum quantity of imports – the 56 agricultural products it considered strategic. It proved impossible at that time to agree on tariff rates for the quantities exceeding the quotas, and the two sides pledged to present a plan for this by mid-October 2003.

By the summer of 2003, 93 % of the tariff areas affecting trade between the two republics had been harmonized on paper and the timetables for their implementation agreed. Yet the most sizeable tariff items in terms of trade volumes (agriculture in particular) have still not been agreed on. Moreover, two separate systems of levies continue to apply, which on the whole diminishes the effect of customs harmonization. As long as such differences exist in the trade regimes of the two republics, the internal customs line between them will remain in place, with comprehensive checks on the origin of products crossing the internal border, thus effectively obstructing the free movement of goods.

The Constitutional Charter, the law on its implementation and the Action Plan form the core of the constitutional and economic arrangement between Serbia and Montenegro. In theory, the common state resembles a classical symmetrical federation with one legal personality, an agreement in principle on federal and republican powers, and a number of federal institutions to decide on common policies. Thus policies on foreign affairs, defence, foreign trade and human and minority rights are determined at the federal level, while all others are the exclusive prerogative of the member states of the State Union, including monetary policy, customs administration, taxation, citizenship, policing, border control, the judiciary, etc. Cooperation in these areas at the common state level is not ruled out, but the degree of formal harmonization or policy coordination is subject to negotiations and further agreements between the two republics. This political condition introduces a confederal approach to decision-making into the federation.

[21] See also D. Gros, D. Kernohan, V. Najman and P. Wozniak, "On the Cost of Re-establishing Yugoslavia: First Estimates on the Economic Impact on Montenegro of Establishing a Customs Union with Serbia", *Journal of South-East European and Black Sea Studies* (forthcoming).
[22] Hereafter referred to as the Action Plan.

The performance of the common institutions is entirely dependent on a continuous process of bargaining and deal-making on concrete issues between the relevant republican authorities. The central institutions are entrusted with weak powers, and in practice serve to facilitate the on-going negotiations between the two republican governments, which are the two major decision-making centres of the State Union. The common state functions more like a confederative arrangement in which the two member states have a contractual relationship for most common policies, and multiple inter-republic agreements on cooperation in those areas. The areas in which such common policy positions exist at present, or could be expected to emerge in the future, are predicated on the external constraint of acceding to the EU together, as a common state. The responsibilities of the central institutions are consequently more pronounced in the external representation of the Union, and in particular in coordinating relations with the EU.

Ever since the two republics put their signatures to the Belgrade Agreement, the question of the survival of the common state has dominated assessments of the Agreement. In the first place, doubts about the viability of the constitutional solution originated in the withdrawal clause agreed by the two sides and reluctantly approved by the EU in its capacity as guarantor of the agreement. To most observers, the agreement looked as if both Solana and Djukanovic were buying time.[23] Fear of renewed instability, and even of possible violence in the region, was the immediate concern for Solana, prompting him to discourage Djukanovic's aspirations to independence, but the questions of Kosovo and Bosnia and Herzegovina were then at the back of everyone's mind. At the same time, Djukanovic was widely believed to have accepted a temporary setback on his pro-independence course in order to secure international recognition and a place in the European integration process for an independent Montenegro in three years' time.

The uncertainty about the future of the State Union has undoubtedly affected the players' willingness to build common institutions and proceed jointly with reforms in key areas. Yet divergent views in the two republics about what constitutes a functioning state have also played a role in institution-building and policy-making. Montenegro has been reluctant to give support to any further centralization of authority at the State Union level, even in policy areas where it could potentially benefit from a more concerted joint effort. Policies coming under the heading of "Justice and Home Affairs", for instance, have a very slim constitutional basis in the Constitutional Charter and could be strengthened in aspects affecting relations with third countries, such as visa system, immigration and asylum policy, border control, police cooperation, etc. Preferring to draw on its own sovereign powers, enshrined in the Belgrade Agreement, the Montenegrin government has opted for formal dialogue between the republican administrations rather than entrusting the (state-level) Ministry for National and Ethnic Communities with more responsibility.

While the Montenegrin side has insisted on policy coordination in the areas affected by the State Union's joint EU bid, the Serbian side has been more sympathetic to centralized decision-making, for purposes of efficiency. From the Serbian point of view, sufficient administrative capacity is an important EU pre-accession condition, and the slow, cumbersome institutional apparatus of the State Union will not meet the standards

[23] See *ICG Balkans Report* No.129, "Still Buying Time: Montenegro, Serbia and the European Union", May 2002.

required by the European Commission. Strong state institutions such as courts, police and public bureaucracy are the decisive features of a smoothly functioning state, and without them, runs the Serbian argument, a country cannot proceed fast along the path to EU integration.

The absence of a common vision of what constitutes a viable State Union puts a big question-mark over the longevity of the Serbian and Montenegrin constitutional arrangement. While most of the common institutions have now been established and arrangements have been made to get them up and running, a year after the adoption of the Constitutional Charter the Court of Serbia and Montenegro mandated by the Charter has still not been established. The Court has been given important responsibilities for arbitrating disputes between the two republics and for ensuring that the republics' constitutions and legislation comply with the Constitutional Charter of the State Union. Yet Podgorica, where the Court is to have its official seat, has taken a 'wait and see' approach and has postponed setting it up. From a Serbian perspective, it is the absence of political will on the Montenegrin side – and even the lack of commitment to pursuing European integration as a top priority – that is the fundamental problem for the State Union. Meanwhile, as Montenegro sees it, it cannot be expected to act against its own interests by ceding further decision-making authority, even for the sake of speeding up the process of joining the EU.

The Belgrade Agreement did not resolve the conflict between Serbia and Montenegro but transformed it into a day-to-day negotiation of the terms of the relationship between the two republics. The arrangement appears fragile and temporary, as if awaiting a final judgment. In Montenegro, the ruling leadership favours independence and attaches considerable importance to the possibility of a future referendum on the status of the republic. The option of separation is garnering increasing support within Serbia too, since it is assumed that an independent Serbia would be able to reform at a faster pace, without the cumbersome procedures of common institutions. The Montenegrin population is largely over-represented in the State Union, yet the Montenegrin side appears unsure whether it can trust Serbia's declared intention to regard Montenegro as an equal partner. The balance of power between the two republics is the subject of constant internal strife, which is the most characteristic feature of the State Union. Against this background, conflicts between the two republics on concrete issues related to the daily functioning of their common structures are commonplace.

3.4 Analysis of Europeanization

EU intervention affected the balance of power not only between the two republics but also between the major players in Serbian and Montenegrin politics. The objectives of the EU conditionality policy and socialization activities vis-à-vis Serbia and Montenegro can be understood through the logic of the first conditionality-socialization model developed in chapter 1. The question is: have the incentives and disincentives offered by the EU been successful in shifting the internal balance of political power in favour of groups that are supportive of the common state, and committed to making the arrangement viable in the long run? In other words, have the rewards offered by the EU – both material and social – been sufficient to persuade players who opposed the common state to change

their position? Since the political processes within the two republics have different characteristics, the Europeanization mechanisms have had different effects on them.

At the outset, the EU's common state conditionality was perceived as favouring mainly Serbia. The Serbian government, however, was not satisfied with the arrangement, and the Serbian political élite expected the EU to intervene more strongly during the negotiations on the detailed constitutional and economic arrangements in order to impose a more centralized – and, in the Serbian view, more viable – version of the State Union. The Montenegrin government was not satisfied either. In view of the strongly pro-independence policy unremittingly pursued by Djukanovic since 1997, observers expected that his signing of the Belgrade Agreement would strongly undermine his standing in his domestic constituency and would weaken his position vis-à-vis his political opponents. The political reactions within both republics, however, proved more diverse and more unexpected.

In theory, the EU can play a significant role in shaping domestic politics by affecting the policy preferences of domestic players, constraining their alignment patterns, and setting the parameters for the bargaining between them. In practice, this effect is more pronounced in Montenegro, where the positioning of the parties on the independence issue has been a decisive factor, dominating the internal political scene since Djukanovic changed course in 1997 and began to distance himself first from the Milosevic regime and later from Serbia as a whole. In Serbia, status is not a major political issue and, in this sense, the EU's common state conditionality does not have the same significance as in Montenegro. Yet the EU's intervention was sufficiently controversial to provoke changes in the Serbian political arena too.

Clearly, EU intervention on the status question goes against the political platform of the pro-independence Montenegrin parties, in particular the Democratic Party of Socialists (DPS), the Social Democratic Party (SDP) and the Liberal Alliance of Montenegro (LSCG), and directly favours the pro-union political formations, the Socialist People's Party (SNP), Serbian People's Party (SNS) and the People's Party (NS). Because the pro-independence political agenda in Montenegro grew out of the opposition to Milosevic's rule, it has been associated since the very beginning with pro-western economic and political reforms. In the public mind, therefore, the political parties arguing against independence and in favour of closer relations with Belgrade do not stand for reforms compatible with European standards of governance. The SNP, for instance, which is the major political formation defending the State Union cause, has been banished to the opposition benches by Montenegrin voters due to its linkages with and support for the Milosevic regime in Belgrade in the late 1990s. The absence of a credible reform-minded political party in Montenegro, capable of providing an alternative to the DPS-SDP governing coalition, has effectively sanctioned Djukanovic's pro-independence policy and cemented his rule.

The signing of the Belgrade Agreement did not hurt Djukanovic's domestic standing – on the contrary, and against all expectations, it strengthened it. Initially, there was internal political turmoil and a crisis which led to a no-confidence vote against the DPS-SDP government and early parliamentary elections. The pro-independence LSCG declared the EU-brokered deal with Serbia a betrayal of Montenegrin interests and withdrew its support from the governing coalition. In the parliamentary elections held in October 2002, the Liberal Alliance radically changed tack and formed a coalition with the

anti-independence political bloc 'Together for Yugoslavia', for which it was ultimately punished by voters.[24] Djukanovic and the ruling DPS-SDP coalition emerged from the October 2002 elections as the absolute winners, with a comfortable majority of 39 seats out of 75.[25]

Having formed a new government and secured his position at home, Djukanovic, now Prime Minister, gained manoeuvring space with regard to his partners in both Belgrade and Brussels. This gave the DPS-SDP government greater assertiveness in the negotiations on the State Union Constitutional Charter and Action Plan. In the meantime, Djukanovic's discourse for the Montenegrin public retained its clearly pro-independence tone. EU pressure on (one could even say bias against) Montenegro can serve as a convenient explanation for the delay in holding the independence referendum.

The lack of an overwhelming majority of Montenegrin citizens in support of Montenegrin independence, however, has been a major constraint on Djukanovic's political manoeuvres. The population of Montenegro has been more or less evenly split on the question of the republic's status, with pro-independence forces only slightly stronger than the pro-union ones. In fact, a sizeable proportion of Montenegrin society has traditionally held pro-Serbian views and strongly supports links with Serbia, including a formal relationship. Regardless of the pro-independence course followed by the leadership in Podgorica, as manifested by the negotiating positions of the Djukanovic government during the talks on the Belgrade Agreement and the Constitutional Charter, the diversity of opinion within Montenegro on the status issue cannot be ignored. And although the pro-independence political parties have been setting the course for government policy, societal fragmentation on the status question defines the limits on how far this policy can go.

In Serbia, the political fragmentation on the status issue began with the increasingly vocal public criticism of the Belgrade Agreement by two prominent Serbian economists, the then Yugoslav Deputy Prime Minister Labus and Central Bank Governor Dinkic, who later turned their arguments against the State Union into a political platform for their newly founded political party, G17 PLUS. In an interview published in the *Frankfurter Allgemeine Zeitung* of 28 February 2003, Dinkic openly challenged EU policy on the State Union and called for Serbia's separation from Montenegro:

> The EU and Solana wanted a diplomatic victory at all costs; the content did not matter to them (…). Solana has not fulfilled his role as a helpful mediator (…). We all know that Djukanovic is absolutely set on Montenegro's independence, so why should Serbia pay for it? (...) If the EU wants to keep the Union because it fears the destabilization of the Balkans, it needs to commit itself more strongly than before to bringing about economic harmonization and to correcting the institutional framework.[26]

Opposition to the State Union in Serbia emerged from disappointment with the EU for not imposing the Serbian vision of the common state. As the Montenegrin reluctance to cede further authority to the State Union grew stronger, so too did the voices in Serbia

[24] In the October 2002 elections, the LSCG's vote dropped from 7.8 per cent to 5.7 per cent.

[25] See Peter Palmer, "Montenegro's Elections", Commentary, *CEPS Europa South-East Monitor 39*, October 2002.

[26] "Solana has not fulfilled his task. Central Bank Governor Dinkic is for separation from Montenegro", *Frankfurter Allgemeine Zeitung*, 28 January 2003 (our translation).

against the Union. In May 2003, G17 PLUS launched its "State Programme of a European Serbia", advocating a functioning sovereign State of Serbia within the EU. The Programme sets out a systematic list of the arguments against the State Union, putting forward mainly economic reasons for not staying together with Montenegro in a dysfunctional common state in which the bigger partner, Serbia, contributes 95 per cent of the economic wealth of the State Union but shares political power equally with the economically insignificant Montenegro.[27] Similar logic is also applied to the case of Kosovo, with the argument that it is no longer in Serbia's interests to keep Kosovo at any price. "Putting Serbia First"[28] subsequently became the slogan of G17 PLUS for the early parliamentary elections in December 2003. Paradoxically, the pro-independence stance of G17 PLUS is justified and legitimized by its proponents using the prospect of faster attainment of EU standards and, ultimately, EU accession. While the new political agenda proposed by the party endorses EU membership as an objective, it rejects the EU conditionality policy and tries to expose its inappropriateness in the Serbian context.

Dissatisfaction with the day-to-day functioning of the common state was not lacking within the Democratic Party (DS)-led government either, which was in power in Belgrade between the ousting of Milosevic in October 2000 and the early parliamentary elections in December 2003. Yet the official government line has always rated positively the prospect for making the State Union functional using the minimalist coordination provisions at State Union level. Hoping to prove its 'Europeanness' by honouring its obligations under the Constitutional Charter and the Action Plan, the DS-led government in Belgrade was committed to the current State Union formula. It also emphasized the full acceptance by both sides of the deal put on the table by Solana, and highlighted the sovereign decision by the Serbian and Montenegrin governments on the particular form of the institutional arrangement. It also stressed the benefits of preserving the common state and proceeding along the path to European integration.

Being in government, the Democratic Party was clearly more constrained by the EU's conditionality policy in the event of non-compliance. Failure to agree on the Constitutional Charter and the Action Plan would have meant that Serbia, with or without Montenegro, would have remained the only country in the region without a tangible prospect of entering into a contractual relationship with the EU. If Serbia was not to miss the European boat, the DOS had to make the difficult decision to accommodate Montenegro's aspirations for equal political representation and minimal economic harmonization – even though by doing so it rendered itself vulnerable to domestic criticism, as it was seen as giving in too far to Montenegro's 'blackmailing'. Yet the option of using the EU as a scapegoat is there, if the government wants to avoid responsibility and blame the EU for not putting sufficient pressure on Montenegro to agree to a more robust State Union layer.

The future of the State Union of Serbia and Montenegro was not a major theme in the Serbian parliamentary elections of 28 December 2003. Domestic issues dominated the election campaign and the political platforms of the main contenders. Serbian voters gave most support – 27.6 per cent – to the extreme nationalist Serbian Radical Party (SRS), which has a 'Greater Serbia' political philosophy and whose leader, Vojislav Seselj, is a

[27] See "G17 Plus State Program of a European Serbia" and "Action Plan for the Implementation of the State Program of a European Serbia".
[28] Translation of original slogan in Serbian, "Serbia na 1. mesto".

war crime indictee at the Hague Tribunal (see election results in Table 3.3 below). Indeed, public disillusionment with the economic results and social consequences of the reform process did play a role in the strong showing of the radicals who represent the failed policy of nationalism of the 1990s. The SRS electoral success was nevertheless a shock since the party has not renounced the past and as such is a threat to the pro-Western reform orientation of Serbia. Reform-oriented parties collectively received some 60 per cent of the vote – the DSS, DS, G17 PLUS and SPO-NS coalition but disagreements and personal clashes between their leaders prevented the formation of a governing coalition between them. In particular, the DS decided to stay in opposition which pushed the rest of the democratic bloc to accept the support in Parliament of the discredited Socialist Party of Serbia of Slobodan Milosevic in order to avoid another election round and an even stronger showing of the radicals. G17 PLUS on its own mobilized close to 12 percent of the votes, a very good achievement considering the short political existence of the party but very bad news for the EU preference for a common state.

While the issue of the State Union was not a determining factor in coalition-making, it may prove critical in sustaining the coalition of democratic forces in Serbia. This is because of the different positions of the democratic parties on the Union question. The biggest political formation in the democratic bloc, Voijslav Kostunica's Democratic Party of Serbia (DSS), would like to preserve the Union with Montenegro, whereas G17 PLUS would like to see an independent Serbia. The Democratic Party (DS) of the outgoing Prime Minister Zivkovic supported the common state formula while in government, but is the one that most acutely felt the difficulty of making the common institutional system function. Vuk Draskovic's Serbia Renewal Movement (SPO) has a monarchist political platform. The question of the future constitutional make-up of Serbia is among the most serious factors that will decide the fate of the governing coalition in Belgrade.

Table 3.3 Serbian Parliamentary Elections, December 2003: Final Results

Political Party	Seats in Parliament (250)	Number of votes	Percentage of votes
Serbian Radical Party (SRS)	82	1,056,256	27.61
Democratic Party of Serbia (DSS)	53	678,031	17.72
Democratic Party (DS)	37	481,249	12.58
G17 Plus	34	438,422	11.46
Serbia Renewal Movement-New Serbia coalition (SPO-NS)	22	293,082	7.66
Socialist Party of Serbia (SPS)	22	291,341	7.61

Source: Government of the Republic of Serbia

The controversy surrounding the EU's involvement in the constitutional affairs of Serbia and Montenegro has handed arguments to political players in both Serbia and Montenegro with which not only to question EU demands but also to use the

Europeanization discourse strategically, to further their own political goals. Political parties – whether in power or in opposition – can find good reasons for exploiting the EU's actions in order to strengthen their own support base. This Machiavellian behaviour, however, has been greatly facilitated by the way the EU policy has been implemented and interpreted by domestic players in both republics.

Political formations in both Serbia and Montenegro have essentially been taking Brussels as speaking with two voices: that of Solana, and that of the European Commission. In principle, the High Representative for the CFSP, Javier Solana, acts on a political mandate from the EU Member States, and in the case of Serbia and Montenegro his intervention to reverse the disintegration trend in the region and prevent the expected domino effects was motivated by security considerations. He put the EU membership incentive on the table in order to get the parties to sign an initial agreement, the details of which they could work out themselves at a later stage.

The European Commission, in turn, has the technical task of managing the Stabilization and Association Process which leads to eventual accession to the EU, and as such it has considerable leverage in terms of certifying compliance with the specific conditions attached to the various phases in the lengthy pre-accession process. Its role in assessing a country's readiness to start negotiations for an SAA – by conducting a feasibility study – has in practice given it considerable influence on the reform agenda of SAA candidates. In the case of Serbia and Montenegro, it has used this powerful tool by making the issuing of a positive feasibility report conditional on the progress achieved in economic harmonization by the two republics. And since economic harmonization has a great many institutional implications which go straight to the heart of what kind of common state Serbia and Montenegro is, and how centralized economic policy-making at the State Union level should be, the Commission's technocratic stance has been taken as a political statement by domestic players in both republics.

In Montenegro, the tension between Solana's broadly framed common state conditionality and the Commission's detailed specification of what that implies for economic governance has been picked up by the pro-independence forces, who have read into the Commission's specific demands an intention to reverse the logic of the Belgrade Agreement and turn the State Union into a more centralized state. The pro-separation party in Serbia, G17 PLUS, has consistently argued that the cost of economic harmonization is too high for Serbia and that tariff reduction in particular would be extremely detrimental to the Serbian economy. It does see the Commission as an objective ally, however, since its demands for harmonization have prompted the pro-independence government in Montenegro to block or postpone decisions at the State Union level and this, in turn, contributes to the image of the common state as a totally inefficient and dysfunctional structure. It is Solana who is the problem for Serbian pro-independence supporters.

The EU's common state conditionality has aroused opposition in both Serbia and Montenegro. It has worked to the extent that the two sides have not formally separated, but the State Union appears to be a Union of two reluctant partners whose endorsement of the project is not genuine. The EU, which helped bring about an agreement between the two republics in the first place, still retains its normative appeal. Europeanization as adherence to European norms and achieving European standards has penetrated the political discourses of both Serbia and Montenegro and features in the rhetoric of both

opposition parties and ruling coalitions. Even the pro-independence political formations, in both republics, endorse the Europeanization project in the broader sense of subscribing to the principles of democracy, a market economy and the rule of law.

From the point of view of local players, however, Europeanization – understood as EU-ization – is more contentious. Pro-independence groups in Montenegro in particular are undecided as to whether EU accession is the best development strategy for the republic. They are also considering alternative models of development outside the EU framework, and picturing a future Montenegro as a micro-state prospering from a liberal tax regime outside the EU, thus avoiding the EU's financial market regulations and pre-accession requirements in general. In Serbia, however, even the pro-independence groups are convinced that the future of the republic lies within the EU and, in fact, argue their case for independence from the position of wishing to cut short the distance to EU membership, regardless of the fact that their position on the status question clashes fundamentally with the EU's preference for the preservation of the common state.

Because the EU's involvement in the conflict settlement is seen as controversial and counterproductive, there is a danger that the normative attraction of Europe for certain domestic players might weaken. Certainly, the EU has complemented its conditionality policy with the softer mechanisms of argumentation and persuasion. EU officials have consistently pointed to the example of the EU itself to show that both small and large economies have benefited from economic harmonization and deeper integration into the EU. What the EU is asking is nothing more than a replication of this process on a smaller scale, partly as a test of the willingness of the parties to compromise and seek win-win solutions, if they aspire to become EU members. But since the legitimacy of its specific conditions has been questioned by a number of domestic players, the EU's socialization efforts in this particular case have not been very effective.

In Serbia, G17 PLUS has rejected the EU's concrete demands for economic harmonization and the preservation of the State Union, although it shows a profound understanding and endorsement of European integration. The DS while in government was frustrated at what it deemed a cumbersome coordination process at State Union level, but it was nevertheless committed to making the system work. In Montenegro, the ruling DPS-SDP coalition resents the EU's specific requirement for re-creating the common economic space with Serbia, and compromises just enough to avoid being seen to be blocking the system and being condemned as totally obstructionist.

The EU membership incentive held out to the State Union of Serbia and Montenegro has been unable to inspire genuine support for the common state in either of the republics. It has prompted a restructuring of the political space in both Serbia and Montenegro, but as a result it is the critics of the State Union, rather than its supporters, who have been empowered. It has, therefore, been unable to shift the internal balance of political power in favour of players sympathetic to the cause of a common state.

At the regional level, however, the EU has been more successful in promoting reconciliation and *rapprochement*. EU conditionality on regional cooperation and its concrete initiatives to boost collaboration between the governments of South-East Europe have produced positive results. Both conditionality and socialization played a role in fostering the regional dimension of governance in South-East Europe. The primary objective of EU policy has been to overcome past bilateral tensions in the region through socializing the political élites and forcing them to work together on issues of common

concern such as democratization, economic development and security cooperation. Making regional cooperation a precondition for improved relations with the EU has been crucial in changing the domestic élites' initially hostile attitude to regional initiatives. The regional cooperative process, however, has become more and more self-sustaining, and is increasingly driven by local initiative.

When the EU launched the Stability Pact for South-East Europe in 1999, scepticism in the region was widespread – first because of apprehension that this might lead to a new Yugoslavia, and secondly because it was feared it could slow down every state in the region to the speed of the slowest. Five years later, all the countries are engaging in regional projects, in the framework of both the Stability Pact and the South-East European Cooperative Process – the latter being a regionally led and owned mechanism, parallel to the Stability Pact, which involves the EU and all Western states and multilateral organizations. It is too early to say how far these new regional structures will develop. What is certain is that, through practical initiatives, the Stability Pact and SEECP have helped to depoliticize regional exchanges and put them back on a normal footing.

What also changed in the meantime – and partly accounts for this regional progress – was the EU offer to the region itself, which took shape and became more substantive in nature. The EU first held out the prospect of EU membership to all of the countries at the Feira European Council in 2000, and strengthened its commitment to the whole region at the Thessaloniki Council in 2003. This reaffirmation of the EU's intention of accepting the countries as full members as soon as they are ready has greatly reduced the fear that the proposed regional cooperation formula is a substitute for real integration into EU structures.

Croatia, for instance, is a particular example, illustrating the change in the attitude of South-East European countries to the regional dimension, which is no longer viewed as contradictory to the primary objective of EU membership but rather as reinforcing the EU accession process. Croatia has launched its bid for the opening of accession negotiations. Initially concerned that it would be grouped with less advanced countries from the region, and held back in its early accession ambitions, Croatia is now playing the regional game. The Stability Pact, however, would not have been able to bring about such a shift in Croatia's position had the regional dimension not been part of the EU's broad conditionality package. The socialization process has started too. This message was communicated to the people at the highest level when, in September 2003, the President of Croatia visited Belgrade for the first time since the war of the 1990s. He was greeted by an apparently spontaneous and public apology by the President of Serbia and Montenegro for the pain and suffering of the war; to which the president of Croatia immediately responded with a reciprocal apology.

The EU common state conditionality and efforts to socialize the newly created state union into the European framework have been partially successful. The mega-incentive of EU membership worked to the extent that the parties reached an initial settlement. This early success, however, has not been transformed into a sustainable long-term resolution of the conflict. In fact, all of the unintended effects of the EU policy under conditionality-socialization model I have occurred in the case of Serbia and Montenegro (see matrix in chapter 1). Whether the intended effects will prevail in the long run depends critically on the capacity and willingness of the EU to supervise the

implementation of the Belgrade Agreement and arbitrate the disagreements between the two republics as well as on the domestic political developments in the two republics.

3.5 Concluding Discussion of Possible Outcomes

One possible scenario is the status quo. The State Union of Serbia and Montenegro survives as a thin common state structure with high degree of decentralization of decision-making power and one legal personality, with positions on EU-related matters and other external representation issues coordinated through the State Union institutions. The EU's Stabilization and Association Process provides the cushion mechanism for engaging the State Union in the period prior to full EU membership. The State Union negotiates and signs a Stabilization and Association Agreement with the EU and works towards fulfilling the general EU accession requirements based on the Copenhagen criteria of building democracy, a market economy and the rule of law.

Such a scenario would entail generating sufficient political will on both sides to make the arrangement work under its current power-sharing formula. The preceding analysis suggests that in the short run this is becoming increasingly unlikely, given the polarization of political views in both republics with regard to the viability and desirability of the common state. Under these circumstances, the EU has two alternative policy options. One of them is to apply further political pressure on both sides and compel them to resolve the outstanding issues, including the customs tariffs on sensitive agricultural products. The remaining disagreements between Belgrade and Podgorica are not technical but political in nature and this requires a political response from the EU. The hands-off approach adopted by Solana following the signing of the Belgrade Agreement has signaled disengagement rather than active mediation and arbitration in the implementation stage as envisaged.

If the EU is not willing to intervene further, then it should be prepared to accept innovative adjustments to its policy stance in order to make the State Union appear compatible with the European integration objective to domestic actors. Pro-independence voices in Serbia have informally proposed a novel way out of the deadlock by creating two separate sub-tracks under a single SAA. Under this proposal, the two republics would have to harmonize their legal frameworks separately with the EU, thus avoiding internal harmonization between them and, therefore, potential tension and stalemate on concrete issues.

This second course of action would, however, require softening the EU's common state conditionality. For such a scenario to unfold, there would be a need for political backing from the EU member states and the consent of the European Commission, since it is the Commission that monitors the reform process and evaluates the fulfilment of the pre-accession criteria by candidates and potential candidates. While the proposal is attractive to domestic groups in Belgrade and Podgorica that are hostile to the State Union idea, it clashes with the Commission's preference for dealing with one strong government rather than two sub-state entities. Moreover, there is a danger that if one of the republics proceeds faster than the other, the voices in favour of separation will grow stronger. From that point of view, it is not surprising that Brussels is not excited about instituting separate mechanisms for monitoring and evaluating the two republics.

When the cost/benefit analysis of the common state is seen from a longer-term perspective, however, the problems of the State Union appear overstated. Tensions between Podgorica and Belgrade over reform strategies may seem insurmountable in the short run, but they could become obsolete in the medium to long term once the State Union becomes part of the EU, for example with the EU's common external tariff automatically displacing current disputes over different levels of protection.

Further modifications to the current common state solution, to make it better reflect the preferences of the parties, should not be ruled out, although a compromise might prove difficult to achieve. In principle, the gradual evolution of the State Union into a classical federation is not precluded by the current arrangement. There is no provision in the Belgrade Agreement against ceding more powers to the State Union level, or against equipping the State Union institutions with more decision-making authority in any policy area. The classical federal option, however, was ruled out with the Belgrade Agreement, and the parties are not very likely to come back to this scenario after trying a more limited institutional relationship.

Likewise, the development of the State Union into a confederation – in which the component entities would be sovereign states with the right to secede, while co-operating on EU-related policies and external representation – is also a hypothetical option. The State Union could evolve in this direction if, after the trial period of three years, the two republics decided to develop their relationship on a purely contractual basis and further reduce the thin institutional layer at the State Union level. In fact, the proposal for separate sub-tracks under a single SAA may be viewed as a step towards institutionalizing more pronounced confederal features in the State Union.

These hypothetical outcomes, however, present the minimalist and maximalist options, which the State Union formula tried to bridge in order to ensure that the two parties signed up to it. Occupying the middle ground between a classical federation and a confederation, the State Union structure could (at least in theory) have the highest likelihood of success, because it induces both sides to make concessions and learn to live with them. In practice, the political dynamics of the common state have not settled down enough in either Serbia or Montenegro to make the discussion about the future of the State Union redundant.

A second scenario foresees the peaceful separation of the two republics after a referendum called by either of them. The Montenegrin pro-independence governing coalition of the DPS-SDP and the Liberal Alliance of Montenegro rely on the referendum clause in the Belgrade Agreement, although Montenegrin citizens are divided almost fifty-fifty on the question of Montenegro's independence. Furthermore, the most recent census in Montenegro revealed a far greater ethnic mix of its population than before. In 2003, only 40.6 per cent of Montenegrin citizens declared themselves to be of Montenegrin ethnicity, a decline of 21.3 per cent compared with the previous census, in 1991.[29] At the same time, the proportion of ethnic Serbs increased from 9.3 per cent to an estimated 30 per cent. In 2004 the political leadership in Podgorica can no longer claim that ethnic Montenegrins form the majority of the population in the republic – something that will make the EU and international community view their pro-independence claims with even less sympathy.

[29] "Montenegro Census Offers Surprising Results", *Southeast European Times*, 19 December 2003.

The outcome of a referendum on independence in Montenegro is by no means certain. The traditional split between the so called 'white Montenegrins' and 'green Montenegrins' – the former supporting unification with Serbia and the latter favouring independence – has been a major constraint on the pro-independence leadership in Podgorica and a serious argument against a 'just cause' for possible secession. Furthermore, the involvement of Montenegro in a couple of international smuggling and trafficking cases has not helped advance the pro-independence cause abroad. Needless to say, proponents of the micro-state concept in Montenegro, including the business lobby (and smugglers) who could profit from a more liberal tax policy, would back an independent Montenegro.

If a vote on Montenegrin independence succeeds in Podgorica, and Montenegro decides to secede from the State Union, the question of its international status and the nature of its relationship with the EU will be opened up for discussion. Developing as a tax haven may seem beneficial to some domestic circles in Montenegro with vested interests in the system but, seen from Brussels, this scenario would work against Montenegro's aspirations to European recognition and participation in EU structures. In addition, the EU has recently been putting serious pressure on tax haven micro-states and micro-entities (Andorra, the Channel Islands etc.) to reduce free-rider policies, and there should be no illusions as to how available this theoretical option might be, in practice, to Montenegro, in years to come.

How the EU would react to the secession of Montenegro from the State Union is not known, but in principle it could take one of the following positions: (1) acceptance and international recognition of Montenegro and granting of a separate accession road-map to it, including an individual SAA; (2) international recognition of Montenegro but no prospect of EU membership – Montenegro would be offered association status with the EU, mirroring the latter's arrangements with other micro-states in Europe such as Andorra or Lichtenstein; (3) no international recognition of Montenegro but economic links with the *de facto* state, including association with the EU under a special arrangement.

EU conditionality has so far ruled out solutions other than the common state. The EU conditionality policy, however, can change its objectives, should the State Union break apart. This policy choice, however, would have different consequences for the two sides depending on who initiated the separation and who was perceived to have been blameworthy.

If Montenegro quits the State Union because Belgrade politics again take a nationalistic turn, returning to an aggressive attitude toward Kosovo, then Montenegro would have a good argument for demanding its own path to Europe. The Montenegrin side is increasingly concerned that the future of the State Union is being assessed in the context of Kosovo's unresolved status. On 9 December 2003, the Montenegrin President, Filip Vujanovic, announced in Podgorica that Montenegro should not be held "hostage to the Kosovo problem".[30] The wave of ethnic violence in Kosovo in March 2004 and the renewed attention of Belgrade to Kosovo provoked a sharp reaction from the Montenegrin Prime Minister Djukanovic who, in an interview with *Financial Times* on 28 March 2004, stated that Montenegro may press the case for a separation from Serbia

[30] See Radio Free Europe, RFE/RL South-Eastern Europe Newsline, 10 December 2003.

earlier than the envisaged three-year trial period of the state union.[31] The desire of the Montenegrin leadership to disconnect the two issues is understandable in view of the uncertainty and complexity involved in settling the Belgrade-Prishtina political relationship.

At present, it is unclear how the status of Kosovo will be resolved in relation to the State Union and how this might affect the union's future. Proposals that envisage Kosovo's incorporation into the State Union – albeit a reformed State Union – can only strengthen the pro-independence voices in Montenegro. The negotiations on Kosovo's status are provisionally scheduled to begin in 2005, but no one expects that they will produce a solution quickly. The talks will start shortly before the end of the three-year trial period of the State Union in 2006, and the arguments used in the Belgrade-Prishtina discussion could undoubtedly spill over and feed into the debate on the future of the State Union of Serbia and Montenegro. In theory, an independent Kosovo could provide impetus to both pro-independence and pro-union forces in Montenegro. It could make the pro-independence camp more assertive in demanding recognition for an independent Montenegro from an international community willing to sanction independent status for Kosovo. Similarly, it could empower the pro-union voices in Montenegro, who could potentially fear a new neighbour of very different ethnicity and religion, and might prefer to seek unity with the ethnically and religiously closer Serbia. These fears could very well be reflected in a referendum vote.

If Serbia were to quit the State Union first, on the grounds that Montenegro was holding up its reform programme and EU accession preparations, then Montenegro's pro-independence leadership could deploy the contrary discourse and plead that, formally, the other side had broken the common state agreement. In fact, many suspect Djukanovic of covertly working towards such an outcome by being a very difficult partner in the State Union in the hope of provoking the Serbian side to resort to the withdrawal clause first. If this scenario does develop, the EU may find itself in a difficult arbitrating position as each side can point the finger at the other. Under such circumstances, it may be more likely to adopt a lenient stance vis-à-vis both.

At the moment, however, there is no clear majority in Serbia in support of an independent state completely disconnected from either Montenegro or Kosovo. The frustration with the State Union is more at the level of the political, administrative and intellectual élites, and it is unclear to what extent it may translate in the months to come into public dissatisfaction with the common state. The latest parliamentary elections in Serbia brought to the fore the Serbian Radical Party which no longer seems to espouse the aggressive nationalism of the 1990s but has a very different vision of Serbia than the vision proposed by G17 PLUS, for instance. The question of Serbia's statehood and of the boundaries of Serbia's political community has not yet been debated within Serbia, and a national consensus has not been reached on the issue. The resurgence of violence in Kosovo in March 2004 was a painful reminder that the uncertainty over the status question is undermining the enormous efforts invested in the stabilization of the region in the last five years. The search for a solution to the Kosovo question could trigger an internal public debate in Serbia as the political class of Belgrade is becoming aware that it has to settle its relationship with both Kosovo and Montenegro in order to be able to

[31] Eric Jansson, «Montenegro may withdraw from Serbian union», *Financial Times*, 28 March 2004.

achieve the goal of EU membership, a goal which enjoys popular support and mobilizes a lot of votes.

If the two republics split by common consent and in a democratic way, the EU will again be compelled to accept the situation and adjust its policy. In such a case, it would be able to acknowledge that the initial goal of stabilizing the region had been achieved by postponing the separation for three years and giving the local players time to arrive at such a decision in a rational, democratic way and according to mutually agreed constitutional rules. It could then refocus its conditionality – for each of the two republics individually – on the reform agenda underpinning the Copenhagen pre-accession criteria.

Whether the EU's continuing enlargement, to include more small member states, is itself going to prove viable will remain an open question for some years, however. The digestion of the expansion from 15 to 25 EU members has barely begun, and may be quite difficult. Resistance to accepting more very small states as full members may well grow within the EU, and here an independent Montenegro could find itself in a weaker position than an independent Serbia. From this perspective, the advantages of the thin common state formula may be viewed more positively. Whereas today the EU's concern is to prevent a domino effect among secessionist entities in the Balkans, tomorrow it may be more concerned about the manageability, in terms of governance, of an EU with an increasing number of small and very small states.

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