

Sovereignty, Europe and the Future of Serbia and Montenegro

A Proposal for International Mediation

Discussion Paper
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Amidst the celebrations surrounding the new regime in Belgrade, the Montenegro question continues to cast a sour note, and the prospect of dissolution of the third Yugoslavia now seems more real than ever. The collapse of the second Yugoslavia (1945-1991) led to a decade of armed conflict. Fortunately, the future of the FRY (established in 1992) is no longer an issue of war and peace, with both sides committed to settling the matter at a political level. If no lasting solution is found soon, however, it has the potential to introduce yet more tensions and divisions into the region.

There are two outcomes that must be avoided: an acrimonious divorce resulting from a breakdown in negotiations; and a festering constitutional crisis, leaving a dysfunctional federation under continuing siege, distracting the attention of political elites from the imperatives of political and economic reform. This paper suggests that shifting the debate onto the concrete functional and institutional ties which Serbia and Montenegro both wish to preserve in the future could offer a solution to what at present appears to be a zero-sum status issue.

The paper recommends that the international community, and particularly the European Union, could play a useful mediating role, helping to break through the current impasse. This would be more productive than simply applying diplomatic pressure on the Montenegrin leadership not to proceed with its independence plans. The paper recommends the following steps for the European Union to follow:

- ⌘ *Support the creation of a new and sustainable relationship between Serbia and Montenegro, while remaining open to whatever constitutional structures the two are able to agree;*
- ⌘ *Offer to name a mediation team and support a serious, structured effort to reach a common position between the parties on the substance of their future relationship;*
- ⌘ *Support the negotiating process with its own expertise on building functional links, based upon the EU's own structures and its vision for regional integration in South Eastern Europe;*
- ⌘ *Encourage the Montenegrin government to adopt a more constructive process **for resolving the issue by making a genuine effort to agree on a future relationship with Serbia before it proceeds with a referendum on independence;***

⌘ *Encourage the new Serbian government to come to the negotiating table ready to discuss future functional relationships short of creating a new federation, and demonstrate its break from the Milosevic regime through a new, constructive approach to resolving regional problems.*

1. The state of play

Two proposals are currently on the table: an updated 'Platform' issued by the Montenegrin government on 29 December 2000, and a counter-proposal prepared jointly by FRY President Kostunica and Serbian Prime Minister Djindjic, issued on 10 January.¹ The first proposes a confederation of two independent states; the other a reformed federation of two republics. However, neither offers what is most needed at present: a credible path for negotiations to narrow the differences and achieve consensus on future functional links.

There have been countless interviews, television debates and unilateral declarations from the main protagonists, all of which have contributed to heating up the political atmosphere. What is **not** currently taking place, however, are any constructive negotiations on the substantive issues. In this respect, the situation is disturbingly reminiscent of the constitutional debates in 1990-1, which marked the final days of the old Yugoslavia.²

The Montenegrin government's 'Platform' proposes a confederal relationship between Montenegro and Serbia. It suggests that the two republics should first become independent, sovereign states, if that is the choice of the people expressed in a referendum. Once their international personality is established, the two states could decide (again by popular referendum) to establish a 'Union'. In a confederation agreement, they would agree to delegate certain limited aspects of their sovereign powers to the Union, to be exercised on their behalf. The Union would be given competence for only three areas: defence and external security; foreign policy; and maintaining a common market and common convertible currency. The two member states would retain separate armies and diplomatic representation, but the Union would take the lead in negotiating membership of Euro-Atlantic structures. On an economic level, the relationship between the two member states would be similar to that between member states of the European Union. There would be a customs union and a single market, based upon the four freedoms: movement of goods, services, capital and persons.

The document issued by Kostunica and Djindjic argues for retaining the Yugoslav federation. It acknowledges the weakness of the existing constitutional structure, and that it has been honoured mainly in the breach by political forces over the past few years. However, it relates the many close historical, economic and family ties between Serbia and Montenegro. It points out that federalism is a constitutional model designed to be adapted to diverse circumstances, and that a successful federation requires a balance between the twin perils of excessive centralisation and internal deadlock.

Under the DOS counter-proposal, Yugoslavia would continue as a federal state, with two component republics. However, it would be highly decentralised, without much more competence for the federal government than the Union would have under the Montenegrin Platform. The proposal adds the protection of basic human rights, transport and communications, and the basis of the economic system as federal competencies. There would be five federal ministries – justice, defence, foreign relations, finance and transportation – but certain public functions in these areas could be delegated to the republics. The document envisages that the federation would adopt 'framework laws' governing human, minority and social rights, property, taxation, banking, trade, pensions and insurance, which would set out common principles for further elaboration by the republican legislatures. The republics would be permitted to develop their own forms of foreign economic co-operation, and the

¹ English versions published in: Center for European Policy Studies (CEPS), Europa South-East Monitor, Issue 19, January 2001, www.ceps.be.

² A meeting between Kostunica, Djukanovic and Djindjic on 17 January did not lead to any results, with all parties stressing only their "huge differences regarding the future": IWPR, Balkan Crisis Report No 214, 1 February 2001.

federation would allow for ‘diverse modes of regional integration’ – which can be read as a reference to Montenegro’s special status under the Stability Pact.

There are a number of gaps between the two proposals. One potentially difficult issue is the structure of the federal parliament. DOS proposes retaining a bicameral parliament, with a Chamber of Republics composed of an equal number of delegates from both republics. However, it suggests that the republican delegates would be selected in proportion to party representation in the republican parliaments. The Montenegrin proposal envisages a single-chamber parliament, with an equal number of republican deputies chosen through procedures determined by the republics.

On most substantive issues, however, the two proposals appear to be within negotiating distance. Crucially, both proposals – a reformed federation or a new confederation – require agreement on new institutional structures. For these to become more meaningful than the institutions of the FRY over the past decade, they must be based on a broad public debate. Many practical issues – such as citizenship, property, freedom of residence, pension and social security systems, infrastructure links, the servicing of foreign debt, and the fiscal implications of the various proposals – are missing from the current ‘tit for tat’ exchanges about status.

2. Understanding the political dynamics

Events since the summer of 2000 have led to increasing bitterness between the new political elite in Belgrade and the Montenegrin leadership. Old stereotypes – “Montenegrin secessionists”, “Greater Serbia ambitions”, “a mafia state” – are becoming a substitute for sensible discussion. Unless both sides are willing to put aside preconceptions and open constructive dialogue, there is little prospect of moving forward.

The falling out between DOS and the Montenegrin government, the two principal centres for democratic opposition to Milosevic over the past few years, could be described as Milosevic’s final act of mischief. It is easy to imagine Milosevic taking grim satisfaction at having thrown such an effective spanner into the process of democratic change in FRY.

Until the summer of 2000, the Serbian opposition and the political establishment in Podgorica existed in largely separate political universes, each concerned mainly with political affairs within its own republic. When they met, relations were cordial. The renowned independent policy institute G-17 played a prominent role in advising the Montenegrin government on economic reform, and provided a meeting point for reform-minded academics from both republics. Various Serbian opposition leaders sought refuge in Montenegro at different times. Diplomatically, the Djukanovic government and DOS supported each other, although there was open scepticism among the Montenegrin elite about the prospects of an eternally divided Serbian opposition ever threatening Milosevic’s power base in Belgrade.

The break came about in July 2000 when Milosevic, in a manoeuvre designed to preserve his hold on power, forced through changes to the FRY constitution which altered the structure of representation in the federal institutions. One effect of this highly irregular constitutional amendment was to eliminate Montenegro’s veto over federal legislation, and therefore its status as an equal partner in the federation.

In response, the Montenegrin parliament denounced the changes as illegitimate, and declared that federal laws adopted without the participation of legitimate Montenegrin representatives would no longer apply in Montenegro. The Montenegrin governing coalition decided to boycott the September federal elections, to avoid ratifying the constitutional ‘coup’. In the face of a perceived military threat from Serbia and international pressure, the Montenegrin government allowed voting to take place on Montenegrin territory, but declined to field

candidates to any federal institution. The opposition SNP of Momir Bulatovic, long-time Milosevic loyalists, took part. The majority of the Montenegrin population followed the government's call to boycott the poll, and turnout was less than 25 percent. Those who did participate voted for the SNP. As a result, it is the Montenegrin opposition which now purports to represent Montenegro on the federal level.

Whatever the leaders of DOS may have thought of the July 2000 constitutional manoeuvre, their tactical interests were diametrically opposed to those of the Montenegrin government. Sensing the possibility of victory, DOS pressed ahead with its campaign. It is notable that though the elections were at federal level, the campaign was based overwhelmingly on the need for political change in *Serbia*. The campaign material drawn up by G-17, under the title of "Platform for a Democratic Serbia", defined the goal of DOS (the Democratic Opposition of *Serbia*) as "restoring Serbia's equal position in the union of European states". Vojislav Kostunica, then candidate for the position of FRY president, defined the platform as the basis for a dialogue "within Serbia, and between Serbia and the outside world".³ DOS and the Montenegrin government were therefore not far apart in seeing the elections as concerned primarily with political dynamics in Serbia.

Once in power, DOS could not repudiate Milosevic's constitutional changes without calling into question the legal basis of its own election; and the Montenegrin authorities did not recognise the election of Kostunica for FRY president as legitimate, although they welcomed Milosevic's defeat. DOS also needed to secure a working parliamentary majority at federal level, which could only be done through an alliance with the Montenegrin SNP, which had campaigned in the election as Milosevic allies.

This unfortunate turn of events has led to a legacy of bitterness and mutual suspicion, making serious discussion of the issues very difficult. Resentments stoked by the old regime (Montenegro as traitor for betraying Serbia during the NATO war, in order to benefit from Western aid) have combined with the resentment of the new regime (Montenegro as traitor for failing to pull its weight in the fight against Milosevic). DOS leaders are incensed that Montenegro continues with its drive towards independence when the ostensible reason – Slobodan Milosevic – has disappeared from the scene. They have begun to speculate in public that the real motivations of the Djukanovic government are personal, relating to commercial interests and shady, mafiotic links. A mood of "*inat*" (an expression of Turkish origin connoting a mixture of anger, pride and stubbornness) is emerging in Belgrade, leading some to suggest that Serbia should cut its ties to Montenegro altogether, if the latter persists with its independence plans. The Montenegrin idea that the two republics would form a Union as soon as they separate was memorably described by Serbian Prime Minister Djindjic as "like getting a divorce, and then wanting to meet in a hotel room afterwards".⁴

In Podgorica, a similar dynamic is at work. Many people among the governing elite, media and nascent civil society feel that DOS is ignoring Montenegro's contribution to the long struggle against Milosevic, and has betrayed them by siding with their political opponents. There is widespread scepticism as to how deep-rooted the political changes in Belgrade really are. There is a fear that Montenegro is losing its cherished place in the international spotlight, and by extension its flow of international aid, in favour of the new Serbian regime. Montenegro's sizeable ethnic minority communities appear to be firmly behind the idea of independence, and remain distrustful of Serbia. All of this has hardened the Montenegrin governments' determination to go it alone, rather than remain politically subservient to Belgrade.

³ Reuters, 16 August 2000.

⁴ Televised debate with the Montenegrin prime minister, January 2001.

This atmosphere is not conducive to the search for sensible solutions. Unless the political distrust is overcome, none of the schemes currently on the table stand much chance of being implemented.

3. Pressures for independence within Montenegrin society

While the current political atmosphere can be attributed to events over the past six months, the origins of Montenegro's push for independence lie deeper. It represents the continuing operation of centrifugal forces which were inherent in the old Yugoslavia, and which are embedded in the institutional and political interests of the Montenegrin establishment. It is not, as some have suggested, simply a problem of personalities or short-term political interests.

Montenegro has a tradition of precarious independence stretching back long before the creation of Yugoslavia. Ever since Serbia and Montenegro gained a common border as a result of the First Balkan War of 1912, there have been competing pressures within Montenegrin society between those seeking a union with Serbia, and those wanting to remain independent. One historian notes:

“the loss of identity implicit in uniting with Serbia versus the difficulty of maintaining a small, isolated nation-state made the third alternative of a larger Yugoslav state attractive to some Montenegrins after both world wars. Yet all three options... would retain their supporters”.⁵

More important to the present dynamics than its early history, however, is the institutional legacy of Tito's Yugoslavia, and the confrontation with Milosevic that emerged after 1997. From the early 1960s, the Yugoslav republics became increasingly autonomous, to the extent that the SFRY itself resembled “a confederation of one-party regimes”. Through a long process of constitutional revision and economic reform, they gained the right to administer their own socialist economies and control public-sector enterprises, turning the republics progressively into separate economic spaces. Co-ordination of economic policy, in areas from milk pricing to public transport, became increasingly a matter of republican co-operation, rather than central regulation. By the time that socialist Yugoslavia entered its final decade, the republics had exclusive jurisdiction over agricultural policy, mining, transport, forestry, urban planning, investment projects, education, science, culture, health, public safety, environmental protection, residence rules, public meetings, the legal status of religious communities, marriage and family affairs, inheritance, employment law and many other areas.⁶

As a result, by 1992 when SFRY had collapsed and Serbia and Montenegro decided to establish a new Federal Republic of Yugoslavia, there were very few functional or institutional links between the two republics. In October 1991, the European Union negotiators Carrington and van den Broek offered the six SFRY republics a plan for political re-development, rearranging Yugoslavia along the lines of the European Community (today's European Union). Montenegro under its president Momir Bulatovic approved the proposal, while Serbia rejected it. Only later, after Milosevic applied intense pressure on Bulatovic, did Montenegro withdraw its support.

Until 1997, the Serbian and Montenegrin establishments remained close political allies, but this was more a result of Milosevic's domination of the Montenegrin political establishment, rather than any formal or institutional links. The Milosevic regime treated the federal

⁵ John R. Lampe, *Yugoslavia as History* (Cambridge and New York, Cambridge University Press, 1996), p. 98.

⁶ Sabrina Ramet, p. 73.

institutions in an extremely high-handed fashion, disregarding the constitution at will. In early 1992, for example, Serbian police raided the Belgrade headquarters of the federal Ministry of Interior, locking the minister out of the building and seizing records. Milosevic himself moved from the Serbian to the federal presidency when it suited his political interests, while continuing to control both levels. In 1995, he negotiated the Dayton Peace Agreement as president of Serbia, rather than of the federation.

From 1997, following Djukanovic's break with Milosevic, the Montenegrin government set about detaching the republic from the remaining federal institutions, and building up the institutions required for it to operate autonomously. This process accelerated dramatically over the past year as a result of the Kosovo war and Serbia's international isolation.⁷ The ease with which Montenegro was able to separate from the federation demonstrates how limited it had been.

The balance sheet of the Yugoslav federation now looks like this:

- In daily life, the government of the Federal Republic of Yugoslavia exercises almost no influence on decisions taken in Montenegro. In January 2001, the FRY opened a "representative office" in Podgorica.
- In 1998, after the federal authorities ceased making contributions to the Montenegrin Pension Fund, Montenegro stopped **payments to the federal budget**, and began transferring former federal revenues to an account of its own.
- **Customs administration** on Montenegro's borders was taken over by Montenegro in August 1999. A Montenegrin Customs Administration has been established, although it still depends upon the central computer system in Belgrade.
- In November 1999, the Montenegrin government introduced the German Mark as a parallel currency, and the Podgorica Branch of the National Bank of Yugoslavia was converted into the **Montenegrin National Bank**. In November 2000, the **German Mark** became the sole currency in Montenegro
- In November 1999, the Montenegrin branch of the **Payments Bureau (ZOP)** was cut loose from the federal system.
- The Montenegrin Ministry of Interior (MUP) has been building up a **militarised police force**, whose current strength is estimated at between 12,000 and 18,000 personnel.
- Since 1998, Montenegro has been very active in **external relations**, enlarging its foreign ministry and establishing further representative missions abroad, including Washington, New York, Brussels, Rome, London, Ljubljana and Sarajevo. Montenegro has a special status in the Stability Pact as an 'early beneficiary'.

The remaining institutional links of FRY are:

- The FRY retains exclusive competence to negotiate membership of international organisations. It has been readmitted to the United Nations, the OSCE and the IMF, has begun negotiations with the World Bank and the Council of Europe, and has applied to join the World Trade Organisation. Montenegro's finance minister has participated in negotiations with the IMF on a stand-by agreement.

⁷ For a more detailed account, see European Stability Initiative, "Autonomy, dependency, security: the Montenegrin dilemma" (Podgorica and Berlin, August 2000).

- Montenegrins still perform **military service in the Yugoslav army (VJ)**, on the territory of both republics, and there remain several thousand Montenegrin professional soldiers in the VJ. Since the September elections, Djukanovic has resumed attending meetings of the Supreme Defence Council, and Montenegro still collects some revenue on behalf of the VJ.
- Montenegrins still use **Yugoslav passports**, although these are issued by the Montenegrin MUP. Albania permits Montenegrins to enter without a visa if their passports are issued in Montenegro.
- **Air traffic control** in Montenegro is in the hands of the Yugoslav Army; there are close infrastructure and managerial links in the **electricity sector**; the **Statistical Office** in Podgorica continues to depend for many services on the Federal Statistical Office in Belgrade.

As a result of the trade blockade against Montenegro imposed by Milosevic in early 2000, there has been a drastic reduction in economic ties between the two republics. Montenegro has been forced to look for new markets in the region, and has shifted from importing subsidised foodstuffs from Serbia to market-priced goods from Slovenia, Croatia, Italy and elsewhere. There are also links in the field of infrastructure, although the importance of the Montenegrin port of Bar has declined over the years.

Social links between the two republics remain strong. Large numbers of Montenegrins still live and work in Serbia – supporters of the federation sometimes assert that there are more Montenegrins in Serbia than in Montenegro. Such claims are impossible to verify, because many individuals consider themselves to be simultaneously Serbs and Montenegrins. According to the 1991 census, there were 74,000 Montenegrins in Central Serbia, 45,000 in Vojvodina and 20,000 in Kosovo.⁸ Traditionally, many Montenegrins study in Serbia, particularly in Belgrade. There are many family ties across the republican border, and many citizens own property in both republics.

In general, however, the institutional and functional links between the two republics are now very limited – far less, for example, than between two member states of the European Union. As new Montenegrin institutions have been created, the political and administrative elites have acquired vested interests in their continued existence. To reconstitute a meaningful federation, a strong political impetus would be needed to overcome their resistance. Yugoslav history shows that this is not easily done; it was not by accident that the trend in the former Yugoslavia was always towards greater decentralisation.

Montenegro has been warned by some outsiders that, if it persists in seeking independence, it will lose much of its foreign aid. However, Montenegro also has good reason to fear the loss of these external subsidies if it gives up its claim to independence. External aid given to Yugoslavia may not find its way to Montenegro, given the enormous humanitarian, reconstruction and development needs of Serbia, and its much stronger bargaining position vis-à-vis the international community. Montenegro therefore wants to assert its international personality in order to strengthen its claim for its own aid package, and retain the capacity to lobby its friends in Western capitals.

Not least, the Montenegrin government is subject to political pressures from its electorate and political allies. All parties in the Montenegrin parliament, other than the former pro-Milosevic SNP and the small People's Party, have declared themselves in favour of independence. 55 percent of the Montenegrin public, according to recent polls, favour some

⁸ Federal Statistical Office, *Statistical Yearbook 1998* (Belgrade, Savremena administracija, 1998), p. 68.

form of independence. This narrow majority is the government's own constituency. Of course, this also means that 45 percent want to retain close links with Serbia. While the Montenegrin idea of a declaration of independence followed by immediate negotiations on a Union may seem contradictory, and is undoubtedly impractical, it reflects quite well the mixed feelings of the Montenegrin electorate.

4. Avoiding the blind alley

In their eagerness to support the new regime in Serbia, Western governments are becoming increasingly frustrated with the impasse over Montenegro. They are concerned to prevent the emergence of another independent state in South Eastern Europe. However, the tools chosen to date - diplomatic pressure on Montenegro to remain in the Federation applied from afar - are unlikely to yield the desired result. Opposition to Montenegrin independence without a constructive approach to defining a new relationship would simply increase the likelihood of an acrimonious separation.

International resistance to Montenegrin independence is beginning to show through in increasingly unsympathetic interpretations of the Montenegrin position. There are suggestions that Montenegro is seeking its independence in order to remain on the fringes of the law, and will become a haven for smuggling and organised crime. From welcoming the “continued consolidation of democracy”⁹ in Montenegro as recently as September 2000, the tone has shifted to questioning the whole notion of Montenegrin democracy. Djukanovic himself, once courted by the international community as a courageous, Western-oriented democrat and a key ally against Milosevic, is now being portrayed as a reckless adventurer.

While fears about the weakness of the Montenegrin state and the growth of organised crime are legitimate, they are not linked directly to the question of the republic's future status. Building the rule of law in Montenegro and combating cross-border crime requires strengthening domestic law-enforcement agencies and regional co-operation. Even under the DOS proposal for a new federation, law enforcement will remain a republican competence, and improvements will require reform and institution building within Montenegro.

The analysis in this paper suggests that simply using diplomatic pressure to maintain the *status quo* would not lead to a solution in the problem. It would merely prolong the current constitutional paralysis, and lead ultimately to separation without any political resolution.

The *status quo* is that the FRY has ceased to function – to use the expression coined by the Badinter Commission in 1991, it is “in the process of dissolution”. All the momentum within Montenegro is towards *de facto* independence. Strong international pressure may (possibly) be enough to persuade the Montenegrin government to delay calling a referendum on independence, or implementing the result. However, this would not change the underlying dynamics, and it would not help to reconstitute a functioning federation. The ‘Montenegrin question’ would not disappear from the political agenda.

In the meantime, the Federal Republic of Yugoslavia would remain caught in its current constitutional paralysis, to the detriment of both republics. The uncertain status of the federation is impeding the reform process in both Serbia and Montenegro. At a time when Serbia is beginning to restructure its public institutions, and is contemplating thorough reform of its own constitution, it cannot even say for sure whether it is a unitary or a federal state. The division of DOS across two different levels of government, and the uncertain status of those leaders such as Kostunica himself who occupy federal positions, is complicating the process of consolidating the new government. In Montenegro, experience shows that no

⁹ Reuters, Contact Group Statement on Yugoslavia, 15 September 2000.

serious action on economic transition or institutional reform can take place while the status question remains unresolved.

If independence results from a unilateral decision, outside of any process agreed with Serbia, it would be far more acrimonious and destabilising if it occurs outside a serious political process. It would make it less likely that the two republics would be able to agree on a confederal arrangement or any other fruitful relationship. It would leave an already weak Montenegrin state, with its dependent economy and weak democratic structures, poorly equipped to face the challenges of economic and political transition alone.

The one course of action which the international community must avoid is forcing Montenegro to delay its referendum plans, without insisting on or offering a positive process for redefining the relationship between Serbia and Montenegro. The *status quo* is neither desirable nor sustainable, and delay is not a constructive option.

5. The way forward

If the worst outcome is a breakdown in communication and a continuation of the current constitutional crisis, then what is urgently needed is a structured negotiation process between the two republics on their future relationship. At present, the two parties disagree on the question of sovereignty, but are not so far apart in their vision of future functional ties. The problem is that neither side has given any serious consideration to the concrete questions of how those functional ties should be established. Negotiations which began with the substantive issues, rather than the symbolic ones, would have the best prospect of success.

Montenegro and Serbia should open negotiations with both status options – a revised federation and a confederal Union – on the table as legitimate outcomes. This is consistent with the general consensus, acknowledged by Serbia, that Montenegro has the legal right to insist on its independence, if that is the genuine popular will. If the FRY is to be preserved, Montenegro needs to be persuaded to remain within it, rather than forbidden to leave.

However, the discussions should begin not with independence, but with the question of what functional and institutional relationships the two republics wish to create. Montenegro wants the same ties to Serbia that member states of the European Union have with each other, including a single market, common currency and customs union. The EU experience shows that this requires very sophisticated institutional arrangements, from harmonised legislation and administrative procedures, to a binding supranational judiciary, to central regulation in fields such as competition policy and financial markets. **Thus, even Montenegro's opening negotiating position would require the two republics to build much stronger institutional ties than they have at present.**

As the objective of both republics is to begin to integrate with the European Union through the Stabilisation and Association Process, working on these kinds of ties is a positive approach to regional stabilisation, irrespective of the sovereignty question. They may take the form either of new federal arrangements or of supranational structures. If their effect is to bind Serbia and Montenegro closer together, then neither will disrupt regional stability.

A supranational solution modelled on the institutions of European integration may even increase the options available for a resolution of the Kosovo question. At present, Western policy makers fear that the loss of the Yugoslav federation would make the issue of Kosovo's final status more difficult to resolve. In fact, Kosovo is equally difficult to resolve either way, with the Kosovar Albanians adamantly opposed to remaining part of either Yugoslavia or Serbia. A federation of Serbia, Montenegro and Kosovo could not meaningfully be established without Kosovar Albanian agreement, which for the foreseeable future is unlikely to be forthcoming. An approach based on functional ties and supranational structures

between Kosovo and its neighbours would offer more potential for achieving a negotiated solution.

Discussions between Serbia and Montenegro on functional ties should precede Montenegro's decision as to whether to declare its independence. Djukanovic's current proposal is that Montenegro first declare its independence, and then begin a discussion with Serbia on the creation of a Union. Any agreement would then need to be submitted to popular referendum in both states for approval. This is not a constructive approach, and may fail at a number of different points. Discussions on functional ties would begin just when relations between Serbia and Montenegro were at their lowest possible level.

Instead, Serbia and Montenegro should use the coming months to explore the options for their future relationship, and to commence a serious public debate. The new government emerging from April elections in Montenegro would then have a clear popular mandate to begin negotiations with Serbia. When the sovereignty question is finally submitted to the Montenegrin people, they would be much better informed about the options available, and the consequences of their choice. In fact, rather than asking the Montenegrin public to approve or disapprove a unilateral declaration of independence, it may then be possible to put to them two positive options: creating a new federation, or establishing confederal ties.

6. The role of the international community

The principal external actors in this arena are the European Union and the United States. While it would be vital to secure a transatlantic consensus on the issues, the European Union may be best placed to mediate the kind of structured negotiation this paper proposes.

Given the desire of both parties to establish closer links with the EU, and the fact that both have called for EU involvement in the process, it can play an extremely important mediation role, helping to break through the current political impasse and set in motion a process of constructive dialogue. These are the steps that the EU, with the support of its partners, could follow:

1. *The EU should offer to name a mediation team and support a serious and intense effort to reach a common position between the parties.* It should stress from the outset that there is no link (no possible "domino effect") between the outcome of such negotiations on the future of FRY and other regional issues. Nobody in Belgrade or Podgorica questions the constitutional right of Montenegrin citizens to determine their future status. This would not establish a precedent for other regions of Bosnia and Herzegovina, Macedonia or Serbia. The position of Montenegro (and indeed Serbia) as constituent republics of the FRY is unique.

If the European Union simply pressures the Montenegro government not to proceed with a referendum on independence, it would not help to restore a functional federation. At most, it would defer the question of independence to a later date, while causing it to be more acrimonious when it finally happened. It would also cost the EU its potential influence as a mediator.

2. *The EU should support the negotiating process with its own expertise on the establishment of functional links to the parties to fill the negotiations with substantive content, drawing on the substantive experience in the European Commission and in member states.* From the present political atmosphere in Belgrade and Podgorica, one would never guess that both sides are proposing stronger institutional ties than exist at

the present time. Neither side has given any attention to how to operationalise its proposal.

The EU could take as a starting point the Montenegrin idea of a genuine single market on the European Union model, and demonstrate to the parties the kind of institutional relationships that this would require to become operational. This would help to shift the discussions away from the zero-sum equation implied in the sovereignty question, and towards more substantive issues. It would also break new ground for European Union diplomacy in the region.

3. *The EU should insist that the Montenegrin government adopt a more constructive attitude to the **process** for resolving the issue. It should welcome the fact that April elections will give a clear mandate for negotiations to a new government. Preparations for intensive negotiations should focus on the period following the formation of a new government and before any planned referenda. A referendum on sovereignty before there is progress on defining a new relationship is very unlikely to lead to a new equilibrium with close (economic or other) ties and would most likely usher in unilateral independence.*

The EU should insist that the Montenegrin government further develops the institutional implications of the functional links which are implicit in its 'Union' proposal. If it is able to offer the Montenegrin people a clearer picture of the options before they vote on independence, it will receive a much stronger popular mandate. It will also be less likely to be divisive within Montenegro society, whatever the final outcome.

4. *The EU should encourage the new Serbian government to come to the negotiating table ready to discuss future functional relationships, irrespective of Montenegro's ultimate decision on the independence question. It is important that the DOS leadership overcome its resentment of the Montenegrin position, and take a constructive and pragmatic approach to redefining the relationship. It is equally important that the leaders of the Serbian Republic define how they their future relations with the FRY or its successor structures, and in which areas they would be willing to accept binding decisions by common bodies.*

The concept of independent states linked through supra-national institutions as a step towards closer links with the European Union should be fully explored, to help provide a possible answer to the zero-sum logic of the sovereignty question.

If the EU simply informs the Serbian government that it is opposed to Montenegrin independence, it would act as a disincentive to positive dialogue. This is likely to lead to an acrimonious break-up of the federation – the worst case scenario for the EU's regional policy. The EU should not insist that FRY continue to exist merely because of the implications for the final status of Kosovo, as this would be creating an artificial linkage between two distinct sets of issues.

The Montenegrin question seems particularly difficult at present because the political atmosphere has soured, and no meaningful discussions are taking place. By helping to shift the debate towards the issues which really matter, the European Union could help to produce a practical and sustainable settlement.