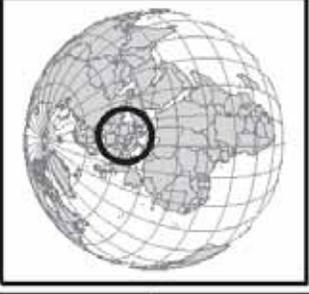


Serbia and Montenegro

Capital: Belgrade
Population: 8.3 Million (2002 est.)

* Vojvodina and Kosovo and Metohija are autonomous provinces.



Source: CIA, World Factbook
EFREU: US Geography Department



Serbia and Montenegro

(State Union of Serbia and Montenegro)*

MIHAILO CRNOBRNJA

1 HISTORY AND DEVELOPMENT OF FEDERALISM

Although not an old country by any standard, the Federal Republic of Yugoslavia (FRY) has had a very turbulent history. The country has survived long dominance by foreign powers and, in the twentieth century, it passed four constitutions and two sets of major constitutional amendments in less than 75 years. The country called Yugoslavia has also changed names, its size and the number of federal units which comprise it. It even disappeared off the map during World War II.

The peoples of the area were ruled by foreign powers from the mid-1400s until the collapse of the Austro-Hungarian Empire after World War I. Austria controlled Slovenia, Hungary controlled Croatia, Venetians controlled parts of the coastal regions of what is now Croatia, and Serbia (which included what are now Macedonia and Montenegro) and Bosnia were under the control of the Ottoman Empire. At the Congress of Berlin in 1878, which followed a war by Serbia, Montenegro and Russia against Turkey, Serbia gained independence from the Ottoman Empire, and Montenegro's independence was recognized. At the outbreak of war in 1914 Montenegro decided to join Serbia in the war effort, and in November 1918 a national assembly voted for union with Serbia.

* The Federal Republic of Yugoslavia transformed itself into the State Union of Serbia and Montenegro on 4 February 2003, when the former federal Parliament adopted a new "Constitutional Charter" that renamed the country.

Yugoslavia became a country after the end of World War I. On 1 December 1918, Bosnia, Croatia and Slovenia (the latter two were formerly part of the Austro-Hungarian Empire which had collapsed by 1918) decided to join Serbia and Montenegro and Macedonia in forming a new, multi-ethnic country. Initially the country was called the Kingdom of the Serbs, Croats and Slovenes but King Alexander changed its name to Yugoslavia in 1929. This "First Yugoslavia" was a constitutional monarchy with a Parliament and the Serbian dynasty Karadjordjevic as sovereigns. Although multi-ethnic, and composed of distinct ethnic regions with individual histories, the country was centralized. The regions and ethnic groups had no autonomy in political affairs, or in cultural affairs. This was the cause of many tensions particularly among the Serbs and Croats.

During World War II Yugoslavia was partitioned. Parts of the country were annexed to the German Reich, the coast was given to Italy, most of Macedonia was annexed by Bulgaria, Kosovo was given to Albania (then an Italian puppet state), and small parts in the north became part of Hungarian jurisdiction. Two "independent" states were created – Croatia and Serbia – both effectively run by the German occupying forces. During the war two major resistance movements emerged. Members of one group – the Chetnics – were royalists and fought for the restoration of the monarchy and "First Yugoslavia." They operated exclusively in the Serb-populated areas. The other group – known as Partizans and led by Marshal Josip Broz Tito – operated across all territories that had been part of Yugoslavia. They fought for a new, different Yugoslavia. Recognizing that the previously highly centralized state was ill-suited to the diversity of the ethnic groups that comprised it, the Partizans declared as early as 1943 their intention to organize a future Yugoslavia as a federal state.

Tito's Partizans eventually gained international recognition which strengthened them internally. With minimal assistance from Allied troops they managed to liberate all the territories of former Yugoslavia. They then set out to create the new, "Second Yugoslavia." On 29 November 1945 the country became the Federal People's Republic of Yugoslavia, and the constitution of 1946 organized Yugoslavia as a federal state. The new federal Yugoslavia was made up of six republics: Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Two autonomous provinces were created within Serbia in recognition of the large minorities living there (Hungarians in Vojvodina and Albanians in Kosovo).

Although nominally a federation, Yugoslavia was in fact a highly centralized state. Since the core of the Partizan movement was made up of Communists, it was no surprise that the political system soon became a

replica of that in the Soviet Union. Although each republic had a constitution, an assembly, a flag and other symbols of sovereignty, most if not all political decision making took place in the Central Committee and the Politburo of the Yugoslav Communist Party. There was, however, considerable cultural and linguistic autonomy, which was some improvement over the pre-war situation.

In 1948 Yugoslavia was expelled from the Soviet bloc for being too independent-minded. From that point on, the history of the Yugoslav state is basically one of gradual democratization and decentralization of state power from the centre to the federal republics. In 1963 a new constitution was adopted. Other than changing the name of the country to the Socialist Federal Republic of Yugoslavia (SFRY), to underline and emphasize the ideological core of the country's politics, the new constitution relegated considerable decision-making power to the republics. Thus, the fields of education, health and social policy were now primarily the responsibility of the republics. The judiciary and the law enforcement system were also changed to increase the power of the republics and decrease the responsibilities of the federal state.

The state structure was changed yet again by the constitution of 1974 which gave the republics even more prerogatives. The position of head of state was to become a collective one, with a yearly rotating chairman (this would occur after Tito died). While Tito was alive this collective body was only symbolic but it did, in effect, take over when he died in 1980.

In the constitution of 1974 the republics gained a right to secede, but the mechanism according to which this could be undertaken was not specified, leading to major disagreements when the country dissolved in 1991–92. The republics also developed military structures, a kind of national guard and a supplementary component to the Yugoslav standing army. Finally, republics were allowed limited international relations and ministries of foreign affairs appeared in all of them.

But the most controversial aspect of the constitution of 1974 was the treatment of the autonomous provinces in Serbia. While still nominally parts of Serbia, Kosovo and Vojvodina were at the same time federal units and had direct representation at the federal level where they were treated as almost equal to Serbia, which was one of the republics of the federation. The only difference was in the number of representatives that Serbia and Vojvodina/Kosovo respectively sent to the two chambers of the federal Parliament. This situation irritated Serbs enormously but they could do nothing while Tito was alive. After his death, the tension caused by such a constitutional arrangement helped a great deal in fomenting Serbian nationalism and the rise of Slobodan Milosevic to power.

The period between Tito's death and the definite disappearance of the Second Yugoslavia in 1992 was a period of gradual but steady atrophy of the federation. It became ever more dysfunctional and easy prey to mounting aspirations of leaders in the republics. From 1987 on, the rise of ethnic nationalism made the debate on the future of Yugoslavia even more passionate and heated. Every ethnic group claimed that it was dissatisfied with the existing arrangement and that another ethnic group (or groups) was getting a better deal. While Tito's reign was symbolized by an *inclusive* agenda, one favouring centripetal forces, after his death the new elites in the republics favoured *exclusive* agendas which were divisive and strongly centrifugal.

Since the constitution did not provide a clear mechanism for the dissolution of the federation, each side interpreted the process in the way best suited to it. Agreement was impossible and republics left Yugoslavia by unilateral decisions. The first to do so were Slovenia and Croatia, followed by Macedonia and finally Bosnia-Herzegovina. Unilateral declarations of independence were followed by wars in Slovenia, Croatia and Bosnia-Herzegovina. Only Macedonia left the federation without firing a shot. Serbs first tried to keep Yugoslavia together by using military force in Slovenia. When that failed, they tried to create a greater Serbia which would include territories of Croatia and Bosnia inhabited by Serbs. This led to bloody ethnic wars which lasted almost four years.

SFR Yugoslavia died a slow death. No one can say for sure when the old country ceased to exist. But what can be said with certainty is that the new, truncated Federal Republic of Yugoslavia was born on 27 April 1992 when the new constitution came into force. The Federal Republic of Yugoslavia (FRY) was a federation of two units: the Republic of Montenegro and the Republic of Serbia. These were the two republics of the old SFRY with the largest common denominator. In terms of culture, religion and ethnic origins there was no difference between the populations of the two republics – these were two states of the same ethnic people. Serbia is six times larger in terms of territory, 16 times in terms of population and roughly 20 times in terms of economic power. This rather odd state functioned without problems for five years not because of good constitutional design, but because of the power of one man – Slobodan Milosevic. During that time Milosevic was the president of Serbia but he ran the federation through his proxies, with the full consent of Montenegro.

At the beginning of 1997 a power shift occurred in Montenegro. A loyal Milosevic supporter was replaced by the independent-minded Milo Djukanovic. Djukanovic began a policy of distancing Montenegro from Milosevic's Serbia, its federal partner. In the summer of 1997 Slobodan Milosevic became the President of FRY. He chose as his Prime Minister a

political leader from the opposition in Montenegro rather than from Djukanovic's ruling coalition. In effect, he chose a partner by loyalty, not by the word and spirit of the constitution. After this, Montenegro's policy of distancing from Serbia and the federal authorities gained momentum. The federation was declared illegal and illegitimate, and federal laws and policies were ignored in Montenegro whenever it suited Djukanovic. The West was very supportive of such political dynamics in Montenegro, offering moral, political and financial assistance to what was seen as a major irritant to Milosevic's authoritarian rule and a bridgehead for the development of democracy in FRY.

Initially, Montenegro maintained that it wanted to be a federal partner but that Milosevic was standing in the way with his authoritarian and heavy-handed rule which all but ignored the existence of official Montenegro. But distancing from Milosevic's policies in effect became a process of distancing from the federation. During the year 2000, for example, Montenegro replaced the Yugoslav *dinar* with the German *deutsche mark* as the currency in circulation, a clear violation of the federal constitution.

The momentum toward Montenegro's independence did not stop when Milosevic's rule came to an end in October 2000. The new, democratically elected President of FR Yugoslavia and the democratically-elected government of Serbia offered immediate talks on the amendment of the existing constitution, or the drafting of a new one based on federal principles. The offer was declined by Montenegro. That is when the European Union stepped in.

Afraid of the consequences of further "Balkanization" the EU used both "a carrot and a stick" approach to prevent the dissolution of FR Yugoslavia. The United States was also supportive of the EU position that Serbia and Montenegro should stay together in some semblance of a state so Montenegro, the reluctant partner, finally agreed. In March of 2002, the Accord on Principles on Future Relations Between Serbia and Montenegro (the so-called Belgrade Accord) was signed by representatives of Serbia, Montenegro, FR Yugoslavia and the EU. The Belgrade Accord was supposed to set the principles for the Constitutional Charter of the future state. It was a typical political document. Quite a few of the principles were formulated in such a vague way that each party could claim to have an authentic reading of the "letter and spirit" of the Accord. Instead of three months, envisaged by the Accord, the drawing up of the Constitutional Charter took almost a year. Finally, on 4 February 2003 with the proclamation of the Constitutional Charter, the third incarnation of Yugoslavia died and the new state of Serbia and Montenegro was born.

2 CONSTITUTIONAL PROVISIONS¹

The State Union of Serbia and Montenegro does not have a constitution. It has a Constitutional Charter. It has no property and no independent fiscal sources. The common institutions are defined as policy coordinating mechanisms, rather than institutions of a state. The only two functions authentically performed at the union level are defence and foreign policy. Other state functions are substantively performed only at the level of the two states.

Probably the most unusual article of the Constitutional Charter is Article 6o. It states that the two states have a right to call a referendum on independence three years after the Charter enters into force. It is a built-in self-destruction clause, with the time fuse set to three years. The state that decides to secede would lose international recognition because continuity of recognition would remain with the state that did not secede. This unique article also states that, should Montenegro decide to secede, the international arrangements for Kosovo (UN Security Council Resolution 1244) would be carried over onto the future state of Serbia.

Article 2 states that the State Union is based on full equality of the two states that decided freely to form the Union.

Article 3 states the reasons and goals of the Union as:

- respect for human rights;
- maintenance and advancement of human dignity, equality and the rule of law;
- integration into European structures, especially the European Union;
- creation of a market economy based on freedom of enterprise, competition and social justice; and
- uninhibited functioning of a common market through the *coordination* and harmonization of the two different systems in the two member states, as well as harmonization with the principles and norms of the European Union.

Article 14 states that the State Union is the only subject of international law and member of international organizations. Article 18 states

¹ In the previous edition, this section was entitled: “Constitutional Provisions Relating to Federalism.” Since it is unclear if in the current arrangement there are many elements of federalism the second part of the section title has been omitted.

that the State Union has no autonomous revenues. Financing for the Union is provided by contributions of the two member states.

Articles 19-25 define the Assembly of the State Union. It is unicameral with 126 members, 91 from Serbia and 35 from Montenegro. An interesting provision is that the members of the State Union Parliament are chosen indirectly (by the respective Parliaments of member states) for the first two years. Thereafter, they will be chosen through direct popular vote. The responsibility of the Parliament is very limited and deals mostly with the external position of the State Union.

Articles 26-32 define the responsibilities of the President of Serbia and Montenegro. They are mostly ceremonial except that the President is at the same time the President of the Council of Ministers (thus, a Prime Minister of sorts).

Articles 33-45 define the functions of the Council of Ministers. Essentially, the Council coordinates the functioning of the five ministries that exist at the level of the State Union. It also coordinates the execution of policies previously agreed to by the two member states. The Council has six members. The President and two ministers are from one member state, while the other three ministers are from the other state. The Minister of Foreign Affairs and Minister of Defence cannot be from the same state, and they will both have deputies from the other state. After two years, ministers and their deputies will change places. Representation of the State Union abroad is done on a parity basis: half the ambassadors are to be provided by each state. The Ministry of Internal Economic Relations coordinates the functioning of the internal market. The Ministry of External Economic Relations coordinates the representation in international institutions, integration into the European Union and matters of foreign trade. But there is no common customs law, a custom union, or uniform tariffs.

Articles 46-50 define the Supreme Court of the State Union. It has no source authority and independent functions, but only the job of coordinating the two judicial systems in the two states. The seat of the Supreme Court is Podgorica, the capital of Montenegro, while all other State Union institutions are based in Belgrade.

3 RECENT POLITICAL DYNAMICS

The loose arrangement of the State Union, and the difficulty with which even this “skeletal structure” was created, is a consequence of two things. First, over the period 1997–2002 the previously unified economic and legal system of Yugoslavia split into two very different and largely incompatible systems. The crowning event was the introduction of a different legal tender in Montenegro. Clearly, bringing

the two systems back together would be difficult and time-consuming. Even the creation of a minimal common denominator, as required by the European Union, is difficult in a situation in which the two sides have little in common.

Second, there is no overwhelming political desire, particularly in Montenegro, to strengthen and solidify the new State Union. This reluctance is gradually but surely spreading into Serbia. Though not a mainstream political platform yet, the view that "Serbia should go it alone" is gaining momentum and becoming more popular by the day.

But under strong pressure from the European Union, sweetened by the prospect of European integration for Serbia and Montenegro, the two states produced an "Action Plan for the Harmonization of the Economic Systems." It took an entire year to produce this document. The plan was passed into law in August 2003. The objective of the Action Plan is to provide enough of a common market in Serbia and Montenegro over a period of three years to be able to sign an association agreement with the EU.

Will the two sides muster the wisdom to view their respective and joint future from a longer-term perspective, rather than the calculus of immediate, short-term political interest? Will the EU decide that its creation in the proverbially unstable Balkans is important enough to keep the pressure and offer political support and financial assistance? At this time, there are no answers to these fundamental questions.

No discussion of Yugoslavia, now Serbia and Montenegro, would be complete without mention of the status of Kosovo (formally called Kosovo and Metohija) within the federation. Since 1999 Kosovo, a formerly "autonomous region" within Serbia, has been de facto an international protectorate, run by the UN Mission in Kosovo (UNMIK). In 2001 elections were held to elect the local Parliament and President of Kosovo, increasing self-rule within the region. The final status of Kosovo, within or without Yugoslavia and Serbia, is still a long way from being decided. UN Security Council Resolution 1244 states that the solution must be found within the framework of Yugoslavia.

So far, the international community has kept to both the spirit and the letter of the resolution, fearing a new wave of disintegration within the Balkans if Kosovo gains independence. The Serbs, of course, are also in favour of a "Kosovo within Serbia" while the Albanians of Kosovo adamantly reject any idea of being under Serbian sovereignty again. In response to increasing demands by Kosovo Albanians for independence, the UN administrators of Kosovo have determined a strategy of "standards before status." In other words, talks on the final status of Kosovo can be opened only after human rights, rule of law and other relevant standards of normal life have been met in Kosovo.

The gap between the two positions – Albanians of Kosovo and the Serbian government – is very wide and it will take a long time, and a lot of hard work on the ground, to find a suitable solution.

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Table I
Political and Geographic Indicators

Capital city	Belgrade
Number and type of constituent units	2 Republics: Montenegro and Serbia 2 Autonomous Regions in Serbia: Kosovo ¹ (Kosovo-Metohija) and Vojvodina
Official language(s)	Serbian
Area	102 173 km ²
Area – largest constituent unit	Serbia – 88 361 km ²
Area – smallest constituent unit	Montenegro – 13 812 km ²
Total population	8 300 000 (2002)
Population by constituent unit (% of total population)	Serbia 94%, Montenegro 6%
Political system – federal	Federal Republic
Head of state – federal	President of the Union Svetozar Marovic (2003). Elected by the Parliament for a 4-year term. Next election due in 2007. The President and the Speaker of Parliament cannot be from the same member state.
Head of government – federal	President of the Union. The President chairs the Council of Ministers (Cabinet) which has 5 ministries.
Government structure – federal	Unicameral: Parliament of Serbia and Montenegro. Made up of 126 members elected on 25 February 2003. For the first 2 years after the adoption of the Constitutional Charter in 2003, the members will be elected indirectly by the assemblies in the member states in proportion to their respective population. After that initial period, members will be elected in direct elections for a 4-year term.
Number of representatives in lower house of federal government of most populated constituent unit	Serbia – 91
Number of representatives in lower house of federal government for least populated constituent unit	Montenegro – 35
Distribution of representation in upper house of federal government	There is no upper chamber
Distribution of powers	Since 2003 when the Union of Serbia and Montenegro was created, the responsibility of the federal government is limited in practice to foreign affairs, membership in international organizations, immigration, defence and human rights. The republics have responsibility for everything else.

Table I (continued)

Residual powers	Residual powers belong to the republics.
Constitutional court (highest court dealing with constitutional matters)	Court of Serbia and Montenegro. The judges from both member states have equal representation on the Court. The judges are proposed by the Council of Ministers and elected by Parliament for a 6-year term.
Political system of constituent units	Unicameral: National Assembly of the Republic of Serbia has a 250-member assembly. Members are directly elected for a 4-year term. The assembly elects both Governor and President of the Republic. Assembly of the Republic of Montenegro has a directly elected Parliament which currently has 74 members.
Head of government – constituent units	President

Table II
Economic and Social Indicators

GDP	US\$37.3 billion at PPP (2002)
GDP per capita	US\$4,500 at PPP (2002)
National debt (external)	US\$11.8 billion (2002)
Sub-national debt	N/A
National unemployment rate	24.7% (2002)
Constituent unit with highest unemployment rate	Montenegro – 38.9% (2002 est.)
Constituent unit with lowest unemployment rate	Serbia – 33.4% (2002)
Adult literacy rate	98% (2001) ²
National expenditures on education as % of GDP	4.1 (1998–2000)
Life expectancy in years	72.9 (2001)
Federal government revenues – from taxes and related sources	US\$739.1 million (2001)
Constituent units revenues – from taxes and related sources	Montenegro: US\$364.2 million (2002) Serbia: US\$7.9 billion (2002)
Federal transfers to constituent units (US\$)	N/A
Equalization mechanisms	The federal government's fiscal powers are restricted. Its finances are provided by the 2 member states (as per Article 18 of the Constitutional Charter).

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Notes

- 1 Kosovo is currently under the authority of an interim international civil and military administration.
- 2 Age 15 and above.