



# Birth of a Frankenstein federation?

Even before the assassination of Prime Minister Zoran Djindjic, the union of Serbia and Montenegro was on shaky ground.

BY MIHAILO CRNOBRNJA

**On** February 4, 2003, after the adoption of the Constitutional Charter, the new state union of **Serbia and Montenegro** was officially inaugurated. There was no champagne or fanfare on that occasion. Rather, the birth of the newest state in the world community of states was welcomed with comments like: "A State for Guinness"; "The Frankenstein State"; "An imbecile that will die within three years". These comments did not come from those in Serbia or Montenegro who fiercely opposed the creation of the new state union, but from non-partisan observers and professional analysts.

Nine months ago (see *Federations* Vol. 2, No. 4) we reported on the initial mood after the signing of the Accord on Principles on Future Relations (the Belgrade Accord). At that time the European Union (EU) was jubilant, while the Serbs and Montenegrins were skeptical. The Belgrade Accord was the document that 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, and do it with a straight face. At the time, the officials of the EU and the optimists among Serbs and Montenegrins, believed that the vagueness would be overcome through the Constitutional Charter and that, ultimately, a functional state union would be created.

## **A Charter delayed**

Over the last nine months, lots of things went wrong and very few went right. The new state union (or union of states, federation, confederation – nobody is quite sure how to label it) is now a reality but it is far from being a functional state. As a consequence, the skepticism of the Serbs and the Montenegrins has increased, and the triumphant feeling of the EU has all but disappeared.

The first thing that went wrong was the time it took to adopt the Constitutional Charter. Instead of three months, envisaged in the Belgrade Accord, the adoption of the basic legal document of the new state took almost a full year. This was a direct consequence of the large gap between the interests of

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*A month before his assassination, Serbian Prime Minister Zoran Djindjic (left) met with the EU's Javier Solana (centre)*

## **The Assassination of Djindjic**

The tragic assassination of the Serbian Prime Minister Zoran Djindjic will have a dual effect on the further development of the state union. On the positive side, there is a constructive atmosphere that translates into a "lets get things done" attitude. How long that will last no one knows, but it is almost impossible for it to last as long as is necessary (three years) to firm up the state union. Also on the positive side: the EU is again focusing much more attention on events in Serbia and Montenegro. On the negative side, the loss of Prime Minister Djindjic is the loss of the most influential and effective negotiator with the Montenegrins. No one can effectively step into his shoes when it comes to dealing with the Montenegrin Prime Minister, Milo Djukanovic. That is bound to have a negative effect on the amount of time it will take to come up with the action plan, and the content to which the two parties will agree.

Serbia and those of Montenegro, a gap which was clearly underestimated at the beginning of the negotiating process. Each side thought of the other as deliberately exaggerating their positions for tactical reasons. It came as a bit of a surprise to all sides when it transpired that these were actual positions and that there was very little to negotiate.

During the time of negotiations, political developments both in Serbia and Montenegro were destabilizing, rather than stabilizing. Montenegro had a government in resignation for six of the nine months; there were three failed presidential elections in Serbia and two in Montenegro. This could not

bode well for the creation of a common state, since the process of its creation was handed over to the political elites of the two states. Never once was there any talk of checking the creation through a popular, democratic mechanism such as a referendum.

### **The EU stands aside**

The role of the EU *after* the signing of the Belgrade Accord was not very helpful either. In fact, the opposite could be said. The EU had taken a very active role in preparing the Belgrade Accord. The EU all but forced the signatures of the reluctant parties, claiming that the signing was a major achievement of its foreign policy in the Balkans. But after the Belgrade Accord the EU acted much less forcefully, expecting that the Serbs and Montenegrins would hammer out a solution while the EU stood by as an interested observer.

The position of Javier Solana, the High Representative of the EU for Security, was that an agreement, *any agreement*, was what the EU would welcome and reward by opening negotiations for a stabilization and association agreement. He was, in effect, the “midwife” of the new state union - so much so that there were half-serious suggestions that the new state be called “Solania”.

The end result of the above factors was an agreement on the lowest common denominator to which the parties could agree. And that produced a weak, non-functional state.

The first obvious weakness is that the new state union does not have a constitution, but a Constitutional Charter. The Charter reads more like a legal-political document, than a legal-constitutional document. It defines general political objectives and the way in which common institutions are organized.

### **No federal ministries?**

The common institutions are defined as coordinating mechanisms, rather than institutions of a state. The two functions authentically performed at the level of the union are defense and foreign policy. That, however, did not stop Montenegro from having a Ministry for Foreign Affairs.

Other state functions are substantively performed at the level of the two states. Some of them are coordinated at the level of the union through the ministry for internal economic relations, and the ministry for external economic relations. The “federal” state has no property and no independent fiscal source of revenue. The elections for the Parliament of Serbia and Montenegro will be indirect during the first two years and only after that, if the state union survives, direct elections for the union parliament would be held in the two constituent states.

For a federal judiciary, the Supreme Court has no source authority and independent functions, but only the job of coordinating the two judicial systems in the two states. And, of course, the whole arrangement is only for a trial period of three years, after which time each side has the right to hold a referendum on the withdrawal from the union.

## **Four constitutions in 60 years**

The Constitutional Charter of Serbia and Montenegro is the fourth legal-constitutional document that the two states have lived in. In other words, the average sixty-year old Serb or Montenegrin has outlived three state forms, and is now living in the fourth one. And, if their health holds, in three years time they could yet be living in a fifth version of their respective states.

Curiously, the very same EU that was so instrumental in the signing of the Belgrade Agreement and the Constitutional Charter, now complains that the “federal” state it helped to create is non-functional. Serbia and Montenegro were given notice that the EU has no intentions of entering into any type of negotiations with a state that does not have a common foreign trade policy, a unified customs regime and procedure, central statistics, a unified anti-monopoly law, unified standards and intellectual rights protection, and a few other functions, none of which were envisaged by the Constitutional Charter.

### **Delays for the action plan?**

At the time of this writing the Serbs and Montenegrins are involved in yet another round of negotiations. After the Accord and the Charter, the current round of negotiations is about the action plan for harmonizing the two economic systems. The implementation of the action plan, if successfully negotiated, would provide for the substance that the EU wants to see

before it recognizes Serbia and Montenegro as a valid candidate for negotiations of the stabilization and association agreement.

These negotiations are as tough, perhaps even tougher than the previous two rounds. That makes sense since the wrangling now is not over principles and institutions, but over dollars and cents. And again, the EU is not bringing its full weight to bear, preferring to use softer forms of persuasion. The initial deadline of producing an action plan by March 31 was postponed by a month after the tragic assassination of the Serbian prime minister.

Crunch time is rapidly approaching. The new state union makes or breaks over the next few months. Neither side seems willing to make major concessions that are necessary to agree on an action plan. And the EU, with all its recent outpouring of sympathy and support, is standing firm in refusing to open negotiations with Serbia and Montenegro without an action plan in place and *implemented*.

Will the two sides muster the strength and wisdom to view their respective and joint future from a longer-term perspective, rather than the calculus of immediate, short-term interest? Will the EU decide that its creation in the proverbially instable Balkans is important enough to step in, financially and politically, to bridge the gap between Serbia and Montenegro? No one has definite answers to these fundamental questions. But one thing certain: as time passes by, more and more mention is made of “Plan B”. And that is the final dissolution of the state even before the trial three years are over. (6)

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