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The very fact that a large part of mankind, nearly one half of it, lives in federal government systems speaks for itself about the advantages of this system when it comes to compound and diversified state unions, whatever the differences within them might be – social and historic, cultural or ethnic. However, despite a wide variety of approaches, researchers of federalism will agree upon one thing – the value of federalism is relative rather than absolute. In other words, the value of a federal solution is to be discussed on a case-by-case basis. Or, as John Stuart Mill would have it in his work “Representative Government”: “When the conditions exist for the formation of efficient and durable federal unions, the multiplication of them is always a benefit to the world.” Federalism merges in itself and should reconcile, in something Carl Friedrich called a federal spirit, two opposed aspirations – an aspiration towards diversity and an aspiration towards unity. It is only when cohabitation, that is mutual permeation of the two aspirations, proves to be possible, that a federal order has a future.

Therefore, the purpose of my speech is to identify the effects federalism had on internal relations in the former Yugoslavia and its collapse in the 1990s, along with its impact on relations in what’s left of the country – the Federal Republic of Yugoslavia, i.e. the Serbian-Montenegrin federation. Even though a federal restructuring was considered as early as before the Second World War, it was only after the war that several different federal models were applied. All of them, however, proved to be inefficient, be they centralised (as

in the early stages), or decentralised (implemented later on, in the 1970s). Yet another attempt at federal restructuring is underway in Yugoslavia, this time with the support of the European Union (EU). This has given the case of Yugoslavia a European dimension, and since I have been led by the notion that we are supposed to learn from each other at this conference, I think this might serve as an interesting case of a very special experience and a federal experiment. After all, some foreign researchers with a profound knowledge of Yugoslavia, such as Susan Woodward, feel that “the new way of solving relations between Serbia and Montenegro could be a model for other countries sharing the similar situation of a ‘frozen conflict’” (Cyprus, Moldova, Nagorno Karabakh, Armenia, Azerbaijan, Northern Ireland and the like).

At the very beginning, however, I have to make a digression. Some 20 years ago, a British historian of Serb origin, Stevan Pavlowitch, wrote a book with a very attractive title, “The Improbable Survivor: Yugoslavia and its Problems 1918-1988”. As a historian, Pavlowitch deals with not only the past, but also the possible future of a new state, “a small multiethnic empire” created after the First World War. While the very same century in which it was created was nearing its end, Yugoslavia disappeared in the whirlwind of a civil war. The state that rose from the ashes of one World War and outlived another vanished in a local civil war. The state created after the First World War by the consent of the international community, that is, the Great Powers, which was restored by their consent after the Second World War under new, communist insignia, ceased to exist less than half a century later, by the will of the international community, the European Community (EC) in the first place, but also the United States. The state whose beginnings coincided with the onset

of communism dissolved when communism disappeared. As a consolation, not a single communist federation, including the Soviet Union, Czechoslovakia and Yugoslavia, was destined to survive the fall of communism in its original form, not only because these federations were established in communist states, but because communism destroyed their natural and rational elements.

The international community, that is, Europe, not only failed to prevent the disappearance of Yugoslavia, but tried to underpin and defend it legally by a famous report by Badinter's Arbitrage Commission. Just to remind you, the Arbitrage Commission was set up in the autumn of 1991, when an internal crisis and armed clashes broke out in the former Yugoslavia. It was composed of the presidents of constitutional courts of five EC countries, and was headed by Robert Badinter, the President of the French Constitutional Council.

According to the Arbitrage Commission report of 10 December 1991, if the central organs of a federation are no longer able to function, the state is in dissolution, and as a consequence, each federal unit might legally use its original right of unilateral self-determination, or more precisely, secession. This report and its implementation were not in conformity with the Yugoslavian constitution, the Helsinki principle of inviolability of borders, or conditions for the recognition of new states as stipulated by the 1932 Montevideo Convention.

In a broader context, the interpretation by the Arbitrage Commission can hardly be brought into accord with the political and legal tradition that describes the right to secession as *contradictio in adiecto*, a non-right, rather

than a right. According to the Arbitrage Commission, every federal state would be a non-state in a sense, that is to say, a potential state in dissolution, whereas its parts would be the states in the true meaning of the word. Implicitly, the commission's interpretation suggests that unlike federal states, the dissolution of unitary states is legally impermissible. The commission built its case on the example of Bosnia and Herzegovina, one of the six Yugoslav federal units in which central organs did not operate, but which was not a state in dissolution after international recognition, because it was nominally not a federal state.

Contrary to the report by the Arbitrage Commission, the prevailing opinion in public law tradition and practice is that a unilateral right to secession cannot exist. Such a view was defended in practice by United States President Abraham Lincoln, and has recently been provided with a thorough theoretical rationale in a famous ruling by the Supreme Court of Canada in 1999, on a referendum for the secession of Quebec. The latter determines that the right to secession is feasible only under the principle of self-determination of a people within the international law, and only when it concerns colonies or oppressed peoples that are denied participation in power and access to democratic institutions and possibilities of development. In all other cases, the people is expected to exercise self-determination within its own state, while a possible referendum at which it would come out for or against secession must not be unilateral, but rather a matter of agreement, and legally defined in detail. The rules and procedures of a referendum must be crystal clear, a notion implemented most thoroughly and consistently in the Canadian Clarity Act of 2000.

This is how things stand when it comes to the dissolution of Yugoslavia. The state that existed more than 70 years disappeared in less than a year. Yet all this falls in the domain of history and historic responsibility, which is not the subject of my interest at this conference. My intention here is to answer the question of whether federalism was or was not of any help in a bid to preserve Yugoslavia. Also, what are the effects of federalism on the fate of Yugoslavia? And finally, how different modalities of federalism can affect the future of what is left of the former Yugoslavia – the Federal Republic of Yugoslavia (FRY) – the Serbian-Montenegrin federation?

Yugoslavia was established in 1918, as a unitary, multiethnic state, the character of which was clearly demonstrated in its name – the Kingdom of Serbs, Croats and Slovenians. It is not often that the name of a state includes the peoples it is composed of, a fact which in this case reflects the need to recognise their identity. Of course, the constituent peoples of the first Yugoslavia, including a confession that was given a partly constituent status – the Muslims – did not territorialise their status. Yugoslavia was a predominantly unitary state, which was first divided administratively into a number of smaller units (33), and during the personal regime of King Aleksandar, as of 1929, into nine governorships, the establishment of which annulled the boundaries of the historic areas.

This does not mean that there were no advocates of federal restructuring in the first Yugoslavia. On the contrary, they could be found among Serbian politicians and parties and, of course, among their Croatian counterparts. The federalisation, if not confederalisation, of Yugoslavia based on ethnicity began asymmetrically with the creation of one (con)federal unit, the Governorship of

Croatia, following a mutual agreement by the Croatian and Serbian ruling parties shortly before the war, in 1939.

Unlike its predecessor, the second, communist Yugoslavia was established formally as a federal state, but federalism was present as much as the separation of powers and pluralism could be in an authoritarian, one-party state. The number of constituent peoples or nations doubled in the second Yugoslavia: apart from Serbs, Croats and Slovenians, this status was granted to Macedonians, Montenegrins and, at a later date, Muslims. (Since the Dayton Peace Conference, the Muslims have been called Bosniacs).

Consequently, the state was divided into six federal units, with each nation given its own, parent federal unit, except Bosnia and Herzegovina (dubbed “Yugoslavia in miniature”), in which there were three constituent nations – Muslims (Bosniacs), Serbs and Croats. It is important to note that all the peoples, not only the Serbs as the largest ethnic group, were dispersed in other federal units too. Unlike other federal units, Serbia had two provinces – the Serb-dominated province of Vojvodina in the north and the Albanian-dominated province of Kosovo in the south.

In the 1970s, the rights of federal units were broadened considerably. Each of them was dominated by a national communist party under Tito’s supervision. Their status gave the two provinces in Serbia certain prerogatives of federal units, but not all of them. The system operated and remained in place during Tito’s lifetime, despite the fact that the federal units had the right to veto, which made it possible for them to block the decision-making process. After the death of Yugoslavia’s president for life, the system, as a researcher would put it, lost “the immovable prime mover,” or an unopposed arbiter. A crisis

broke out, which intensified the conflict between opposed national political elites, gave rise to calls for secession and eventually led to armed clashes.

Once a six-member federation, Yugoslavia was reduced to two federal units in 1992 – Serbia and Montenegro. Prior to this, through referendums and declarations of independence and sovereignty, adopted between December 1990 and November 1991 by the republican parliaments of Slovenia, Croatia, Macedonia and Bosnia and Herzegovina, “the republics expressed their desire for independence”, as the report by the Arbitrage Commission read. The referendums in Slovenia and Croatia were held until 15 January, while a referendum in Bosnia and Herzegovina, held on 29 February and 1 March 1991, was specific in that the second largest constituent people, the Serbs, did not take part in it. Of the total number of voters, 63.04% participated in the referendum, and mere 62.68% voted in favour of “a sovereign and independent Bosnia and Herzegovina.” In other words, only some 40% voted for independence. Yet the commission, on the basis of this and the fact that a few republics did not participate in exercising power in the federation, and that the authority of the federation was not effective, concluded that “the SFRY [Socialist Federal Republic of Yugoslavia] was in dissolution.” The propositions of the commission implied that Yugoslavia was dissolved into its six components, six federal units, which could unify mutually. The post-communist ruling parties, led by Slobodan Milosevic in Serbia and Milo Djukanovic and Momir Bulatovic in Montenegro, used this right when, in April 1992, they influenced significantly the drafting and promulgation of the third Yugoslavian constitution.

At this point, it is necessary to recall a few important historic facts. Of all the newly created states formed after the collapse of the former Yugoslavia, only Serbia and Montenegro were independent and internationally recognised as far back as the nineteenth century, following the 1878 Berlin Congress. All the others (Slovenia, Croatia, Macedonia, and Bosnia and Herzegovina) did not earn international recognition before the late twentieth century, at the beginning of 1992. Having brought their statehood in Yugoslavia after the First World War, Serbia and Montenegro were longer together in a single state, than independent of each other.

What happened next? Five years later, Montenegro's ruling coalition, headed by President Djukanovic, began to contest the Yugoslav federation, arguing that the 1992 referendum in Montenegro was not free, that the federation was ineffective and that Montenegro, as a much smaller federal unit, could not be equal. The defeat of Slobodan Milosevic in the September 2000 election, which was also an end to his regime, did not change the arguments in favour of an independent Montenegro. Quite the contrary, this appeared to step up the independence rhetoric. Furthermore, the advocates of Montenegrin independence claimed that the right the Arbitrage Commission granted to all the republics did not have a one-off and time-limited character, and that, accordingly, it was not consummated either. The position maintained by the ruling coalition in Montenegro, relying on a slim majority in the electorate, was that the FRY effectively did not exist, and that the two republics should seek international recognition first, and then, possibly, form a union of independent states. The Montenegrin authorities put forward this view on the political platforms that emerged in the summer of 1999 and at the end of 2000.

Even though the EU had already advocated the survival of the common state under the formula “a democratic Montenegro in a democratic Yugoslavia”, it demonstrated an explicit commitment to this tenet in the autumn of 2001, when it engaged the EU High Representative for Common Foreign and Security Policy in the search for a solution that would be acceptable for both Serbia and Montenegro. This solution was also supposed to bring to an end the fragmentation of the state territory, instability, and wars in the Balkans, while Serbia and Montenegro would be able to place their internal conflicts and desires in a European context. EU foreign ministers decided in Brussels, on 19 November 2001, to send High Representative Javier Solana to Belgrade and Podgorica in order to encourage a dialogue between the two capitals and reach mutually acceptable constitutional solutions within the Yugoslav federal state. After a few months of talks, the Belgrade Agreement was signed on 14 March this year, by representatives of the Serbian, Montenegrin and Yugoslav authorities and the EU High Representative. Thereby the process of disintegration of states in the Balkans was stopped. I do not say once and for all, but for the time being – yes, it has stopped. The idea of the unfinished dissolution of Yugoslavia was defeated. This has brought a relief to our country, to the politically polarised republic of Montenegro in particular, to the Balkans, to those who care about peace and stability, and to Europe. With myriad difficulties and impediments, work is underway in Belgrade and Podgorica to translate this political agreement into a legal act, a constitutional document, the Constitutional Charter of the state union of Serbia and Montenegro.

What are the main characteristics of the Belgrade Agreement? What does it offer? First and foremost, despite all its inconclusiveness, it gives the common state an opportunity to survive and develop seriously. What we were pledged with was a federal state that one part of it, Montenegro, did not recognise, but instead acted as an independent state, never missing a chance to underscore that non-recognition and independent activity. In other words, the federal state largely operated as an extension of the other federal unit – Serbia. What's worse, this actually tied the hands of Serbia and the federal state alike.

In the end, this was the only compromise that could be reached, a compromise that is a benefit to Serbia, Montenegro, the region, and the EU alike. This is a compromise by which everyone wins, but no one wins it all. Nothing more could be possibly achieved, but with the passage of time, I would like to underline that things could and should be improved. There are states that used to be loose unions at one time, but have since solidified: the United States, for example. After all, time can show that the existing powers of the common state are insufficient, and that they should be broadened. With or without the Belgrade Agreement, it is perfectly clear that there is a minimum of powers that a state must have in order to be a state.

Serbia and Montenegro governed their relations differently in the three former Yugoslavias. Now, they have a chance to do so in a completely new fashion, having learned from their delusions and mistakes. What is offered here is not only a constitutional but also historic discontinuity and a new beginning. Or more precisely, the opportunity for a new beginning. Hence the new name, Serbia and Montenegro, which is not the sole result of a mere compromise. Thus, Serbia and Montenegro introduced their full names into the state union.

This does not mean the disappearance of the state – a superficial, wrong and malevolent interpretation we encounter occasionally.

The Belgrade Agreement stipulates that after a three-year period the member states have the right to initiate proceedings for a change of the state status, that is, withdraw from the state union. The agreement is explicit, however, that the member state that decides to use this right will not inherit the international law subjectivity of the state union. In other words, the member states can bring up the issue of a change to their status, i.e. independence, in three years time, (both Montenegro, which is more likely, and Serbia, which under the applicable constitution is not entitled to do so), but this issue is not opened automatically, and unilateral secession is out of question. The Belgrade Agreement is explicit that the referendum process of withdrawing from the state union must take into account internationally recognised democratic standards. These standards, on the other hand, are clearly against unilateral secession, as confirmed by the Canadian Clarity Act of 2000 that governs referendums.

Serbia and Montenegro have spent more time in a single state than as independent states. They were together in very different governmental systems. In a monarchy and a republic, in unitary, federal and federal-confederal states, under the regimes of parliamentarism, dictatorships and in a communist party state. They share the same roots, while the Montenegrin and Serbian identities are interwoven and sometimes even identical.

Furthermore, the number of Montenegrin citizens living in Serbia is far from negligible, while the number of Serbian citizens of Montenegrin origin exceeds today's Montenegrin population by far.

When it comes to the state union of Serbia and Montenegro, it does contain confederal elements, but not solely confederal. The state union of Serbia and Montenegro is not based on a contract, but rather a constitutional act (charter), which is why it is not a mere union. The laws to be endorsed by the parliament refer to the citizens, not the member states – so it is not a confederation either. The first sentence of the Belgrade Agreement, reading “the agreement on principles of relations between Serbia and Montenegro within the state union”, makes this perfectly clear. This is not a union of independent states (let’s recall the Commonwealth of Independent States formed after the breakdown of the Soviet Union). Instead, this is the state union of Serbia and Montenegro. The state union with the international law subjectivity at that.

In this context, this common state will abide by the principle on which every federal state rests – every citizen belongs to two communities – the federal unit and the federation. The federation is not composed only of the states that make it up, but also represents a new all-inclusive union comprising the citizens of all member states. It is a union of citizens as individuals, and a union of member states – it is a union of unions. On the other hand, the broader union and the narrower unions are separated, and they dispose of their own effective prerogatives of power. The structure of power of the state union includes institutions typical of any state, regardless of its government system (the parliament, the president, who, as in Switzerland, chairs the sessions of the Council of Ministers, the Court that unifies regular and constitutional court functions). The only difference is that the structure and powers of the state union have been reduced, but they are nevertheless

original. Using the analogy of the creators of the American federation, the main objective was to create a union in which states rights would be respected and federal power effective. While the United States constitution makers used the expression “a more perfect Union” for this construction, the term “a minimum but viable federation” was used in the case of Yugoslavia.

Critics say that the reasons for unification of states are economic first, and then political, and that the opposite was done in the case in question, which is tantamount to building a house from the roof. They have clearly forgotten that the situation of economic separation was inherited, and that a political, that is, institutional integration is easier to reach than an economic one. What we are trying to do now is to build a house from the foundation, the only one we have left, which, bearing in mind national, historic, cultural and spiritual ties between Serbia and Montenegro, the Serbs and Montenegrins, is still strong enough to bear our new, restructured home. What I also have in mind are the interwoven and substantially linked economic interests of the two republics.

Despite all the criticism, what are the advantages of the new constitutional system on the horizon? First, the Belgrade Agreement does not offer any illusions, idealism or unrealistic expectations. It reflects the reality of the situation and balance of power. Second, the dissolution of a state has been stopped. This means that Serbia and Montenegro, in geographical, historic, cultural and geo-political terms, would be a Central European and Mediterranean state at the same time. Third, we managed to buy some time, most precious to us at the moment. If nothing is done, three years may be too much time to waste, but if the process of integration (and harmonisation) within the state and with the EU gets off the ground, these years could be very

important. Fourth, the new state is based on a compromise, but it is cheaper than its predecessors, which is a great advantage bearing in mind poverty we live in. Too many human lives were lost for our previous common states, and we cannot allow ourselves anything like that to happen again. So many opportunities have been missed and so much time wasted that, to all appearances, this is our last chance.