

VI.
CONSTITUTIONAL CHARTER OF
THE STATE UNION OF SERBIA AND MONTENEGRO*

PREAMBLE

Proceeding from the equality of the two member states, the Republic of Montenegro and the Republic of Serbia, the latter including the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija, the latter of which is presently being run by an international administration under U.N. Security Council Resolution 1244, and based on the Points of Procedure for the Restructuring of Relations between Serbia and Montenegro dated March 14, 2002, the People's Assembly of the Republic of Serbia, the People's Assembly of the Republic of Montenegro, and the Parliament of the Federal Republic of Yugoslavia shall approve this

*Constitutional Charter of the State Union
of Serbia and Montenegro*

NAME

ARTICLE 1

The name of the State Union shall be Serbia and Montenegro.

PRINCIPLE OF EQUALITY

ARTICLE 2

Serbia and Montenegro shall be established on the basis of the equality of the two member states, the Republic of Serbia and the Republic of Montenegro.

GOALS

ARTICLE 3

The goals of Serbia and Montenegro shall be the following:

- To respect the human rights of all persons in its charge;
- To preserve and advance human dignity, equality and the rule of law;
- To integrate with European structures, the European Union in particular;

* Unofficial translation of the Draft Version, Belgrade/Podgorica, December 14, 2002; adopted in Belgrade on January 27, 2003.

Il 3 aprile 2003 l'Unione di Stato di Serbia-Montenegro ha aderito al Consiglio d'Europa, divenendone così il 45° membro. (N.d.R.)

- To harmonize its legislation and practices with European and international standards;
- To establish a market economy based on free enterprise competition and social justice; and
- To establish and promote the unhindered operation of a common market on its territory, through coordination and harmonization of the economic systems of the member states, in line with the principles and standards of the European Union.

ARTICLE 4

Serbia and Montenegro shall have a flag, an anthem and a coat of arms has specified by the laws of Serbia and Montenegro.

THE TERRITORY OF SERBIA AND MONTENEGRO

ARTICLE 5

The territory of Serbia and Montenegro shall consist of the territories of the member states of Serbia and Montenegro.

The borders of Serbia and Montenegro shall be inviolable.

The boundaries between the member states shall be unchangeable, except by mutual consent.

COMMON MARKET AND FREEDOM OF MOVEMENT

ARTICLE 6

Economic relations between Serbia and Montenegro shall be based on a market economy founded on free enterprise, competition, a liberal foreign trade policy, and the protection of property.

Serbia and Montenegro shall have a common market.

The flow of people, goods, services and capital in Serbia and Montenegro shall be free.

Setting obstacles to the free flow of people, goods, services and capital between the Republic of Serbia and the Republic of Montenegro shall be prohibited.

The member states shall be responsible for the unhindered operation of their common market.

Serbia and Montenegro shall coordinate and harmonize the economic systems of the member states.

THE SEAT OF THE INSTITUTIONS OF SERBIA AND MONTENEGRO

ARTICLE 7

The administrative center of Serbia and Montenegro shall be Belgrade.

The seat of the Parliament of Serbia and Montenegro and the Council of Ministers shall be in Belgrade, and the seat of the Court of Serbia and Montenegro in Podgorica.

CITIZENSHIP

ARTICLE 8

A citizen of a member state shall also be a citizen of Serbia and Montenegro.

A citizen of a member state shall have the same rights and duties in the other member state as any of its citizens, except for the right to vote.

HUMAN AND MINORITY RIGHTS AND FREEDOMS OF CITIZENS

ARTICLE 9

A Charter on Human and Minority Rights, which shall form an integral part of this Constitutional Charter, shall be adopted according to the procedure and in the manner prescribed for the adoption of this Constitutional Charter.

The member states shall govern, ensure and protect human and minority rights and the freedoms of citizens in their respective territories.

The provisions of international treaties on human and minority rights and the freedoms of citizens which are valid in the territory of Serbia and Montenegro shall apply directly.

Serbia and Montenegro shall monitor the exercise of the human and minority rights and freedoms of its citizens, and shall ensure their protection should the member states fail to ensure such protection,

The existing level of human and minority rights and individual and collective freedoms of citizens shall not be reduced.

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

ARTICLE 10

Serbia and Montenegro shall represent a single subject under international law and a single member of international, global and regional organizations whose membership is conditioned on international subjectivity.

Serbia and Montenegro shall establish international relations with other states and international organizations, and shall conclude international agreements and treaties.

Ratified international agreements and generally-accepted rules of international law shall have primacy over the laws of Serbia and Montenegro and of the member states.

The member states may maintain international relations, conclude international treaties and establish missions in other states, unless this contravenes the jurisdiction of Serbia and Montenegro or the interests of the other member state. The member States may join international, global and regional organizations whose membership is not conditioned on international subjectivity.

THE JURISDICTION OF SERBIA AND MONTENEGRO

ARTICLE 11

Serbia and Montenegro shall have such jurisdiction as has been granted to it by this Constitutional Charter.

The member states may jointly transfer to Serbia and Montenegro additional responsibilities that fall within their jurisdiction.

The member states shall finance any transfers of jurisdiction and additional responsibilities of Serbia and Montenegro.

THE PARLIAMENT OF SERBIA AND MONTENEGRO

ARTICLE 12

The Parliament of Serbia and Montenegro shall decide on the Constitutional Charter as the supreme legal act of Serbia and Montenegro in the manner prescribed by this Constitutional Charter, and pass the laws and other acts with regard to the following:

- Institutions established in accordance with this Constitutional Charter and their operation;
- Implementation of international laws and conventions which contain the obligation of cooperation between Serbia and Montenegro and international courts.
- Proclaiming and ending a state of war, with the consent of the assemblies of the member states;
- Membership of Serbia and Montenegro, as a subject under international law, in international organizations, and the rights and obligations stemming from such membership, with the consent of the relevant bodies of the member states;
- Definition of the borders of Serbia and Montenegro, with the consent of the assembly of the member state on whose territory the given border lies;
- Issues related to standards, intellectual property, measurements, precious metals, and statistics;
- Policies, on immigration and asylum, the visa system and integrated border management, in accordance with EU standards;
- Ratification of international treaties signed by Serbia and Montenegro;
- Annual revenues and expenditures necessary for funding activities transferred to Serbia and Montenegro, based on a proposal by the relevant bodies of the member states and the Council of Ministers;
- The prevention and removal of obstacles to the free flow of goods, services, persons and capital within Serbia and Montenegro;
- The election of the President and the Council of Ministers;
- The flag, anthem and coat of arms of Serbia and Montenegro;
- Other activities within the jurisdiction of Serbia and Montenegro as defined by this Constitutional Charter.

The Parliament shall be unicameral and consist of 126 representatives, 91 from Serbia and 35 from Montenegro. Members of Parliament (MPs) shall be elected to a four-year term of office.

Members of the Parliament of Serbia and Montenegro shall be elected from each member state in accordance with European and democratic standards, under the laws, of the member states. In the first two years following promulgation of the Constitutional Charter, MPs shall be elected directly, in proportion to their representation in the People's Assembly of Serbia and the People's Assembly of Montenegro.

In the first election, MPs shall be elected from among the members of the People's Assembly of Serbia, the People's Assembly of Montenegro, and the Federal

Parliament. If a member state is holding a parliamentary vote in that same period, the composition of its delegation to the Parliament of Serbia and Montenegro shall be adjusted according to the election results.

After this initial period, Members or the Parliament of Serbia and Montenegro shall be elected by popular vote.

The Parliament shall elect a Speaker and a Deputy Speaker from amongst its members, each of whom shall be from a different member state.

The Speaker of the Parliament of Serbia and Montenegro and the President of Serbia and Montenegro cannot be from the same member state.

The Parliament shall pass decisions by a majority vote of all MPs, provided, that such a decision has been supported by the majority of MPs from each member state.

A bill may be submitted to the Parliament by the Council of Ministers, an MP, or the assembly of a member state.

An MP shall enjoy freedom of speech in the Parliament and immunity from prosecution for words spoken and acts performed in his or her capacity as an MP. Without the approval of the Parliament, an MP cannot be called to account, detained or sentenced by a court, unless he or she has been caught in the act of committing a crime that carries a sentence of over five years in prison.

The immunity from prosecution enjoyed by MPs shall also be granted to the President of Serbia and Montenegro, members of the Council of Ministers, and the judges of the Court of Serbia and Montenegro.

The Parliament shall pass its own Rules of Procedure.

THE PRESIDENT OF SERBIA AND MONTENEGRO

ARTICLE 13

The Speaker and Deputy Speaker of the Parliament shall propose a candidate for President of Serbia and Montenegro to the Parliament.

If a nominated candidate fails to win the majority of votes required, the Speaker and Deputy Speaker of the Parliament shall nominate a new candidate within ten days. If this candidate fails to obtain the necessary majority of votes as well, the Parliament shall be dissolved and an election scheduled.

If the elected President of Serbia and Montenegro is from the same member state as the Speaker, the Speaker and the Deputy Speaker shall change places.

The President of Serbia and Montenegro shall be elected to a four-year term of office.

The President of Serbia and Montenegro shall be elected alternately from each of the two member states.

The President of Serbia and Montenegro shall:

- Represent Serbia and Montenegro at home and abroad;
- Chair the Council of Ministers and head its activities;
- Propose the make-up of the Council of Ministers and the dismissal of its members;
- Be a member of the Supreme Defense Council;
- Issue decrees whereby the heads of diplomatic and consular missions of Serbia and Montenegro shall be appointed or recalled, and receive Letters of Credentials and Letters of Recall from foreign diplomatic representatives;

- Confer medals and other awards;
- Proclaim laws passed by the Parliament of Serbia and Montenegro and regulations enacted by the Council of Ministers;
- Call elections for the Parliament of Serbia and Montenegro;
- Perform other duties as set forth in this Constitutional Charter.

THE COUNCIL OF MINISTERS

ARTICLE 14

The President of Serbia and Montenegro shall propose candidates for members of the Council of Ministers and deputy foreign and defense ministers to the Parliament.

Two ministerial candidates shall be from the same member state as the President, and the remaining three shall come from the other member state.

Candidates for the Minister of Foreign Affairs and the Minister of Defense shall be from different member states, as shall their deputies.

Ministers shall be elected to four-year terms of office.

The member states shall be represented in international organizations (UN, OSCE, EU, the Council of Europe) on a parity basis and via rotation.

A model for the representation of the member states in international financial organizations shall be defined by the Council of Ministers, with the consent of the relevant institutions in the member states.

The representation of the member states in the diplomatic and consular missions of Serbia and Montenegro shall be determined by the Council of Ministers, with the consent of the relevant institutions of the member States.

The Parliament shall vote for a list of candidates for the Council of Ministers. If this list fails to win the necessary majority of votes, the President may submit up to, but no more than, two other lists of candidates. If none of these obtains the required majority of votes within 60 days of the publication of the first list of candidates, the Parliament shall be dissolved and an election called.

The Council of Ministers shall:

- Formulate and conduct the policy of Serbia and Montenegro in line with a common policy defined by mutual consent and the interests of the member states;
- Coordinate the work of ministries;
- Propose laws and other acts falling within the jurisdiction of ministries to the Parliament;
- Appoint and dismiss the heads of diplomatic and consular missions of Serbia and Montenegro and other officials in accordance with the law;
- Pass by-laws, decisions and other General acts required for the implementation of the laws of Serbia and Montenegro;
- Carry out other duties as set forth in this Constitutional Charter.

The Council of Ministers shall make decisions by a majority of votes. In the event of an equal number of votes, the deciding vote shall be the President's vote, provided that at least one Minister from the other member state has voted in favor of the decision.

ACCOUNTABILITY OF THE PRESIDENT AND TERMINATION
OF THE PRESIDENT'S TERM OF OFFICE

ARTICLE 15

The President of Serbia and Montenegro shall be accountable to the Parliament for the performance of his or her duties.

The President's mandate may be terminated prior to the expiration of the term of office to which he or she has been elected by resignation, dismissal, or dissolution of the Parliament.

The mandate of the President of Serbia and Montenegro shall be terminated by resignation when his or her resignation is verified by the Parliament.

The Parliament may dismiss the President of Serbia and Montenegro if it is discovered that he or she has violated the Constitutional Charter. The violation of the Constitutional Charter shall be ascertained by the Court of Serbia and Montenegro. The procedure for ascertaining a violation of the Constitutional Charter shall be instituted by the Parliament of Serbia and Montenegro.

The President of Serbia and Montenegro whose term of office has been terminated by dissolution of the Parliament shall perform his or her presidential duties until the election of a new President.

If the President of Serbia and Montenegro resigns or has been dismissed, his or her duties shall be temporarily assumed by the Deputy Speaker, until the election of a new President.

The procedure for the election and dismissal of the President of Serbia and Montenegro shall be prescribed by law.

ACCOUNTABILITY OF THE COUNCIL
OF MINISTERS AND THE TERMINATION OF ITS TERM OF OFFICE

ARTICLE 16

The Council of Ministers shall be accountable to the Parliament for the performance of its duties.

The terms of office of ministers and their deputies may be terminated prior to the expiration of their mandates by resignation, a vote of no confidence, dismissal, or dissolution of the Parliament.

Ministers and deputy ministers whose terms of office have expired shall perform their duties until the election of new ministers and their deputies.

The procedure for the election and termination of the terms of office of the Council of Ministers shall be prescribed by law.

MINISTERS

ARTICLE 17

The Minister of Foreign Affairs shall carry out and be responsible for conducting the foreign policy of Serbia and Montenegro, negotiate international treaties, and propose candidates for heads of the consular missions of Serbia and Montenegro to the Council of Ministers. The Minister of Foreign Affairs shall coordinate the formulation of a foreign policy with the relevant organs of the member states.

The Minister of Defense shall be a civilian. He or she shall coordinate and carry out a pre-defined defense policy and exercise command over the Army in accordance with the law and the jurisdiction of the Supreme Defense Council. He or she shall propose candidates for approval by the Supreme Defense Council and shall appoint, promote and relieve officers in accordance with the law.

After two years, the Minister of Foreign Affairs and the Minister of Defense shall change places with their respective deputies.

The Minister for Foreign Economic Relations shall be responsible for negotiating and coordinating the implementation of international treaties, including contractual relations with the European Union and the coordination of relations with international economic and financial institutions, following consultation with competent ministers of the member States.

The Minister for Internal Economic Relations shall be responsible for coordination and harmonization of the economic systems of the member states, aimed at the establishment and unhindered functioning of common market operations, including the free flow of goods, services, people and capital.

The Minister for Human and Minority Rights shall monitor the exercise of human and minority rights and, together with the relevant bodies of the member states, coordinate efforts to ensure the implementation of and respect for international conventions on the protection of human and minority rights.

THE ARMY OF SERBIA AND MONTENEGRO

ARTICLE 18

Serbia and Montenegro shall have an army under democratic and civilian control.

The Army's role shall be to defend Serbia and Montenegro, in accordance with this Constitutional Charter and the principles of international law governing the use of force. A defense strategy, shall be endorsed by the Parliament of Serbia and Montenegro in accordance with the law.

The Supreme Defense Council shall exercise supreme command over the Army, deciding on the use of the Army of Serbia and Montenegro. The supreme Defense Council shall have the President of Serbia and Montenegro and the presidents of the member states as its members.

The Supreme Defense Council shall make decisions by consensus.

Conscripts shall serve the army in the member state whose nationals they are, and may act otherwise of their own free will.

Conscripts shall be guaranteed the right to declare themselves conscientious objectors.

The jurisdiction of military judicial organs shall be transferred to regular courts, in accordance with the law.

THE COURT OF SERBIA AND MONTENEGRO

ARTICLE 19

The Court of Serbia and Montenegro shall have an equal number of judges from each member state.

The judges of the Court of Serbia and Montenegro shall be elected to six-year terms of office by the Parliament of Serbia and Montenegro, based on a proposal by the Council of Ministers.

The judges shall be certified legal experts with no less than 15 years of professional experience. Judges may be elected only once. They shall be independent in their work, and shall not be relieved of duty before the expiration of the term of office to which they have been elected, except in cases stipulated by law.

The Court shall have jurisdiction over the following:

- Disputes between institutions of Serbia and Montenegro over their jurisdiction, as stipulated by this Constitutional Charter;
- Disputes between Serbia and Montenegro and one or both of its member states; or between the two member States, over issues falling within their respective competencies;
- Complaints by citizens in the event that an institution of Serbia and Montenegro has violated the rights or freedoms guaranteed them by this Constitutional Charter, if no other legal remedy has been provided;
- Harmonization of the constitutions of the member states with this Constitutional Charter;
- Harmonization of the laws of Serbia and Montenegro with this Constitutional Charter;
- Harmonization of the laws of the member states with the legislation of the state union;
- The legality of final administrative acts by the institutions of Serbia and Montenegro.

The Court shall adopt legal viewpoints and offer opinions on the harmonization of court practice.

Rulings by the Court of Serbia and Montenegro shall be binding, and shall not be subject to appeal. The Court shall be authorized to invalidate laws and other regulations and acts of the institutions of Serbia and Montenegro which contravene this Constitutional Charter and the laws of Serbia and Montenegro.

The structure and functioning of the Court of Serbia and Montenegro shall be stipulated by law.

RELATIONSHIP BETWEEN THE LAWS AND JURISDICTION OF SERBIA AND MONTENEGRO AND OF ITS MEMBER STATES

ARTICLE 20

The Constitutional Charter, laws and jurisdiction of Serbia and Montenegro and the constitutions, laws and jurisdiction of the member states must be harmonized.

Judges of the constitutional courts of the member States shall participate and make decisions at the session of the Court of Serbia and Montenegro where an assessment of the harmonization of the laws and jurisdiction of the member States with the laws and jurisdiction of Serbia and Montenegro, or between the laws and jurisdiction of each member state is made.

Judges of the constitutional court of a member state shall participate and make decisions at the session of the Court of Serbia and Montenegro where an assessment of the harmonization of the constitution, laws or jurisdiction of that member state

with the Constitutional Charter, laws or jurisdiction of Serbia and Montenegro is made.

The type of decision-making process shall be defined by the Law on the Court of Serbia and Montenegro.

COMING INTO FORCE

ARTICLE 21

The laws and other acts of the bodies of Serbia and Montenegro shall come into force eight days after they are published, at the earliest.

Exceptionally, when a reason for this is provided in the ratification procedure, laws and other acts of the bodies of Serbia and Montenegro may come into force on the day they are published, at the earliest.

RETROACTIVE EFFECTS

ARTICLE 22

The laws and other acts of the bodies of Serbia and Montenegro shall have no retroactive effect.

Exceptionally, certain provisions may have a retroactive effect if the public interest provided for by the ratification procedure so requires.

TRANSITIONAL PROVISIONS

ARTICLE 23

This Constitutional Charter shall be adopted by the People's Assembly of Serbia and the People's Assembly of Montenegro in an identical wording, and shall come into force when the identical text of the Charter is adopted and promulgated by the Parliament of the Federal Republic of Yugoslavia.

Once this Constitutional Charter comes into force, all rights and responsibilities of the Federal Republic of Yugoslavia shall be transferred to Serbia and Montenegro, pursuant to this Constitutional Charter.

The laws of the Federal Republic of Yugoslavia shall be applied in the affairs of Serbia and Montenegro as the laws of Serbia and Montenegro.

The laws of the Federal Republic of Yugoslavia beyond the scope of the affairs of Serbia and Montenegro shall be applied as the laws of the member States until the adoption of new regulations by the member states, except for laws whose application the assembly of a member state shall decide against.

The member states shall amend their respective constitutions or promulgate new ones, for the purpose of their harmonization with this Constitutional Charter, within six months of the date on which this Constitutional Charter is promulgated.

THE PROPERTY OF SERBIA AND MONTENEGRO

ARTICLE 24

The property of the Federal Republic of Yugoslavia necessary for the functioning of those institutions that shall continue to operate in Serbia and Montenegro shall be the property of Serbia and Montenegro.

The property of the Federal Republic of Yugoslavia on the territory of the member states shall be the property of the member states, based on the territorial principle.

The property of the Federal Republic of Yugoslavia abroad shall be the property of Serbia and Montenegro.

WITHDRAWAL FROM THE STATE UNION OF SERBIA AND MONTENEGRO

ARTICLE 25

Upon the expiration of a three-year period, the member States shall have the right to initiate a procedure for a change of their state status, that is, for withdrawal from Serbia and Montenegro.

A decision to withdraw from Serbia and Montenegro shall be made following a referendum. A Referendum Law shall be passed by the member state, taking internationally-recognized democratic standards into account.

If Montenegro withdraws from Serbia and Montenegro, international documents relating to the Federal Republic of Yugoslavia, particularly UN Security Council Resolution 1244, shall pertain and apply fully to Serbia, as its successor.

The member state exercising this right shall not inherit the right to subjectivity under international law, and all disputes shall be regulated separately between the successor state and the state that has become independent.

If both member states declare through a referendum process that they are in favor of changing their state status, i.e. in favor of independence, all disputes shall be resolved in the succession procedure, as was the case in the former Yugoslavia.

AMENDMENTS TO THE CONSTITUTIONAL CHARTER

ARTICLE 26

Amendments to this Constitutional Charter shall be made following the same procedure and in the same manner applied in the process of promulgating this Constitutional Charter.

THE LAW ON IMPLEMENTATION OF THE CONSTITUTIONAL CHARTER

ARTICLE 27

The Law on Implementation of the Constitutional Charter shall be passed simultaneously with this Constitutional Charter, and in the same manner in which this Charter has been promulgated*.

* Vedine il testo in "Review of International Affairs", Belgrado, vol. LIII, n. 1108 (ott.-dic. 2002). Vi si pubblica anche la *Charter of Human and Minority Rights and Fundamental Freedoms of the State Union of Serbia and Montenegro*, Belgrado, 26 feb. 2003 (N.d.R.).