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Imposed Unions and Imperfect States
The State Union of Serbia-Montenegro and Bosnia and Herzegovina in Comparative
Perspective¹

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Abstract

This paper explores the political conflicts generated by imposed unions and the unionist actors (international and domestic) that defend them. It shows how the imposed political institutions symbolise directly or indirectly not only unionism in these states but also the resulting contestation over the statehood of these unions. It takes as its examples the State Unions of Serbia and Montenegro and Bosnia and Herzegovina. Building on the existing literature (Bieber, 2011; Belloni, 2007, Bieber and Keil, 2010) the paper examines the links between the imposed nature of these two states and the continuation of state contestation. It assesses how contestation becomes an integral part of a political system, undermining decision-making procedures and making the Union completely dysfunctional. It asks how this dysfunctionality might be overcome. Finally, the paper addresses the comparative significance of these cases for partially-functional unions, like Northern Ireland.

Introduction

Bosnia and Herzegovina² and the State Union of Serbia and Montenegro are in many ways atypical and unique cases of Unions. Both states were created as a result of the incomplete ethno-territorial break-up of the Socialist Yugoslavia, which resulted in the establishment of numerous new states. Yet, while Slovenia, Croatia, and (North) Macedonia identified themselves as nation-states, with one dominant national group, the Union states of Bosnia the State Union of Serbia and Montenegro continued to be multi-nation states, home to more than one national group that claimed ownership of the states, or at least to parts of its territory. What is more, neither state was created voluntarily by local elites (Bieber, 2011). While Bosnia's federal system after 1995 was the result of the 3.5-year long war in the country and was imposed by international actors – most noticeably the USA, the State Union was the brain-child of Javier Solana, the European Union's (EU) foreign policy chief at the time (Keane, 2004). Certain elites in both countries would have preferred the dissolution of the previous Unions – the Social Republic of Bosnia and Herzegovina, and the Federal Republic of Yugoslavia respectively. Serb and Croat elites forged a war in Bosnia in order to split up the country and create ethnically homogenous territorial units which would eventually join Serbia and Croatia, the neighbouring kin states. The

¹ I would like to thank Jennifer Todd and Dawn Walsh, as well as two anonymous reviewers for their feedback. I am also grateful to Paul Anderson for helpful comments on an earlier version of this paper.

² Following the general use of term, the short forms BiH and Bosnia will be used. This always refers to the whole country.

Federal Republic of Yugoslavia, the association of Serbia and Montenegro, was created in 1992, but by the time of the State Union's creation it had run its course and Montenegrin elites had started a process of 'creeping independence' to detach themselves from the common state institutions (Dzankic, 2014). Yet, international pressure kept these states together – in Bosnia this is the case until today, while the State Union was short lived and died with the independence of Montenegro in 2006.

This paper is interested in the concept of "imposed Unions" and how this imposed nature affects state functionality. The key argument is that the imposition of these Unions is at the centre of state contestation, i.e. the fact that local elites did not agree to the formation of these Unions meant that they continued to undermine, work against and contest these Union states. The result of this is twofold. In the case of Serbia and Montenegro it resulted ultimately in state dissolution and the independence of the two part of the country as independent countries. In the case of Bosnia, this is the reason of political deadlock and ongoing antagonism between the different elites in the country. In order to demonstrate how imposition leads to contestation, two policy areas, namely foreign policy and citizenship policies will be analysed.

The second consequence of state contestation in these two cases relates to the concept of unionism – the overall theme of this special issue. When looking at unionism in the Balkans today, we find two opposing trends. On the one side, there are continued ideas about Unions based on ethnic belongings, political parties such as the Serbian Radical Party in Serbia and Vetëvendosje in Kosovo promote the creation of Greater Serbia and Greater Albania respectively. Here, ethno-national and unionist movements overlap in order to push for the creation of new, ethnically homogenous unions. The entrepreneurs for such kind of unionism engage in 'nation-building' and 'nation-destroying' simultaneously (Connor, 1972), promoting the end of what they see as artificial states such as Kosovo and Bosnia in order to create new, purer ethnic unions. On the other side, we find the push by international actors to keep union states such as Bosnia together, even though these states are internally and externally contested.

This paper progresses in three steps. In the first section, the concept of unionism is revisited. Going back to the Federalist Papers and the work of Murray Forsyth (1981), the paper examines how Unions evolve, operate and what different kinds of Unions exist. In addition, this paper will provide an evaluation of the role unionism has played in the former Yugoslavia and continues to play in the area of the Western Balkans until today.

In the second step, the evolution of Bosnia and the State Union of Serbia and Montenegro are contextualised and discussed, before the role of state contestation is evaluated, using certain policy fields as key indicators of state dysfunctionality and contestation (foreign policy and citizenship).

The final section of this paper will re-visit the theoretical discussion on unionism and demonstrate how our existing conceptual lenses are limiting our understanding of new political developments. It will also highlight how a form of 'constructive unionism' is the key ingredient missing from the two case studies,

and how it will be a challenge for future peacebuilders and policy-makers to encourage such a form of unionism in post-conflict societies.

Unions and Unionism in the former Yugoslavia and Today

The study of Unions has been prominent within political science for a long time. Even before the United States became the first federal union in 1787, there had been substantial interest in forms of unionism in academia and political philosophy. Samuel Pufendorf (2006) highlighted already in the 17th century in his works on late medieval Germany the difference between what he called ‘regular states’ and ‘systems of states’. One hundred years later, Immanuel Kant (2006) published his work on ‘Perpetual Peace’ in which he argued for cooperation between Republics – to the extent that these Republics would form a world federation in which war between states would become impossible. It was, however only in the context of the new constitution of the United States, and the push of the authors known as “Publius” that a distinction was made between federation and confederation as different forms of unions. The move from the loose American confederation to the United States did not just symbolise the emergence of constitutional federalism. It also marked a significant conceptual shift in our understanding of unionism and its different forms (Hamilton, Madison and Jay, 2003). Our current understanding of confederation as a loose union in which the member states remain the main holders of sovereignty, and in which the confederal government has very specified and limited powers, goes back to the Federalist Paper’s description of the American system between 1781 and 1787 as a confederation. Likewise, our use of the term “federation” implies the need for a federal state, in which the union has external sovereignty, and in which the distribution of competences is clearly defined, usually within the constitution (Burgess, 2006, pp. 50-75). Indeed, the American influence is visible in countries as diverse as Nigeria, Germany and Bosnia and Herzegovina, one of the case studies for this paper. The conceptual distinction between what a federation is and what can be called a confederation has become a fixed feature, both in political reality and in academia.

Indeed, the success of the EU as an integration project has sparked a renewed interest not just in the study of confederations, but in the study of different kinds of unions. As Forsyth (1981, 1) argues, when talking about ‘Union of States’ a whole list of political systems is included – he records ‘confederacy, confederation, union, federal union, federal government, system of states, community, perpetual league, republicque federative, Staatenbund, Bund and Eidgenossenschaft’ as the most prominent ones.

For this special issue, the concept of unionism is very important. Going beyond the above-described forms of “unions”, unionism refers to ‘the movements and ideologies concerned to hold [a] polity together against separatisms, secessions, irredentism and other forms of boundary change’ as Jennifer Todd (2019) points out in her Introduction to this special issue.

In the context of the former Yugoslavia,³ at least three forms of unions can be identified. First, and most often-cited is a form of ethnic unionism, often with imperialist elements. This was visible, when King Alexander I created the first Yugoslavia by establishing a royal- Serb-dominated dictatorship, thereby removing the autonomy of several sub-parts of the country, and re-organising it so that Serbs would dominate the different territorial units (Banac, 1988). Likewise, this kind of ethnic unionism was visible during the Second World War, when the Croatia *ustashe* state established a fascist regime in large parts of the territory of the first Yugoslavia, killing large numbers of Serbs, Jews, Roma and Sinti in the process (Glenny, 2000, pp. 478-544). The same ethno-nationalist strife for union based on blood-belonging emerged in the late 1980s and resulted in the violent break-up of the Second Yugoslavia, and the conflicts in Croatia, Bosnia and later Kosovo (Ibid., pp. 634-662; Silber and Little, 1996).

The second form of unionism to be found in the region is one of South-Slav unity, of the quest to unite the Slavs in a common state, so that they could live together in peace. This was promoted and hoped for by Croatian and Slovenian elites when joining the Kingdom of Serbs, Croats and Slovenes in 1918 (Banac, 1988). Today, this form of unionism is associated with the Second Yugoslavia and the rule of Marshal Tito and his Communist Party. The common assumption is that the Communists, defeating not only the Nazi occupants, but also royalist Serb forces during the Second World War, aimed to create a state based on ethnic equality and a 'balance of power' to cite Sabrina Ramet (1992, pp. 19-60).

Yet, as Aleksa Djilas (1991) pointed out, the Communists themselves tried different concepts of unionism before settling for a system that focused on a multinational state conception and equality amongst the different national groups. The repressive policies of Aleksandar Ranković (number three in the Communist hierarchy after the Second World War) in Kosovo in post-war Socialist Yugoslavia highlight that elements within the Yugoslav Communist elite still believed in a union that would be dominated by Serbs. His removal in 1966 resulted in substantial shifts towards a more constructive unionism project focused on the equality of the Yugoslav peoples, and the common vision of a joint Socialist state that was reasonably wealthy internally and influential in foreign policies.

This project resulted in the 1974 constitution, which also enshrined ethnic power-sharing (albeit under a one-party state) within the Yugoslav institutional architecture. The way Yugoslavia was designed was as a multinational federal union, in which each Republic would have a lot of autonomy, while at the same time being included in decisions at the centre. Ironically, the substantial decentralization of 1974 also laid the foundation for the revival of nationalist tendencies, not only in Serbia, where the famous Serbian Academy of Sciences and Arts (SANU) Memorandum of 1986 claimed that the Serbs are being systematically discriminated, but also in Croatia and Slovenia, where calls for more autonomy were connected with demands for a national awakening (Lampe, 2000, pp. 332-390).

³ The former Yugoslavia included Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Macedonia and Montenegro, as well as the two autonomous provinces of Vojvodina and Kosovo. When talking about the Western Balkans today, usually this refers to the area of the former Yugoslavia, minus Slovenia and plus Albania.

The third form of unionism in the Western Balkans emerged in the 1990s as a result of the violent break-up of the Socialist Yugoslavia. While the Federal Republic of Yugoslavia continued as a union-state, albeit one based on the dictatorship of Slobodan Milosevic, and his focus on ethnic unionism that would lead to the substantial ethnic cleansing of Kosovo Albanians in 1998 and 1999, a new form of union was created in Bosnia and Herzegovina. The Dayton Peace Agreement imposed a federal solution in Bosnia (Keil, 2013), and highlighted a new form of unionism – unionism by the international community as a tool of conflict resolution and peacebuilding (Walsh, 2018, pp. 69-101). This form of unionism, which was promoted by political elites in the USA (and the EU) (Glaudric, 2011; Holbrooke, 1996) has led to the creation of Bosnia as a federal country, and later, to the State Union of Serbia and Montenegro.

Yet, as will be highlighted below, these imposed unions remain contested. They remain contested by ethnic engineers who strive to create ethnically homogenous unions. The Serb Radical Party for example still believes in a Greater Serbia project,⁴ in which both Kosovo and large parts of Bosnia would be part of Serbia, while Vetëvendosje in Kosovo openly rejects the international community's imposed solution and instead argues for the creation of a Greater Albania, which would unite Kosovo and Albania.⁵ In Bosnia, too, elites such as Milorad Dodik, promote the idea of Serbs of Bosnia joining Serbia. These moves towards ethnic unionism connect to the ethnic unions that once existed in the region – Serb Radicals celebrate the first Yugoslavia as a great example of Serb rule over other peoples in the region, while right-wing Croatian leaders continue to praise the Croatian fascist state of the 1940s as a key part of Croatian identity, and an example to follow in the future (Obucina, 2012). The multi-ethnic character of the region, and many states within it, as well as on-going contestation and debates about borders, belonging, and national identity all contribute to the continued existence and prevalence of this form of unionism. In short, this form of unionism exists for two reasons, on the one side because ethnic engineers see the ethno-national break-up of Yugoslavia as incomplete – the ultimate aim should be ethnically homogenous unions. On the other side, the imposition of internationally designed solutions in states such as Bosnia and Kosovo also results in contestation and fuels those that claim that these states are artificial and should be destroyed in order to allow for the creation of new particularistic unions based on ethnic homogeneity. An exception to this trend are the Bosniaks, who do not have a kin-state. Instead, leading Bosniak parties promote the idea of Bosnia as a liberal majoritarian democracy, thereby promoting a form of majoritarian unionism, in which they as the majority would rule over Serbs and Croats in Bosnia (Keil, 2013, pp. 125-177). The next section will analyse the interplay of these forms of unionism in more detail.

Bosnia and Herzegovina and Serbia and Montenegro as new forms of Unions and Unionism

⁴ See for the party's programme: <https://www.srpskaradikalnastranka.org.rs/> (in Serbian).

⁵ See for the party's programme: <https://www.vetevendosje.org/> (in Albanian).

Bosnia and Herzegovina and the State Union of Serbia and Montenegro (and its predecessor, the Federal Republic of Yugoslavia) emerged in the wake of the ethnonational break-up of Socialist Yugoslavia. They both adopted forms of unionism that cannot be found in the other post-Yugoslav states. What is more, both countries symbolise the above-mentioned dynamic between an imposed form of unionism based on the preferences of international elites, while at the same time witnessing state contestation by local elites.

The death of Tito, the long-term leader of the country, in 1980, and shortly after the rise of Slobodan Milošević in Serbia on a nationalist agenda contributed to enhancing the centrifugal tendencies that were visible in the country since the 1974 constitution established a highly decentralised system (Ramet 1992). Bosnia and Herzegovina declared its independence in April 1992. However, independence in Bosnia was highly contested, with large parts of the Serbian population, and the leading Serb Democratic Party (SDS) opposing any detachment of Bosnia from Serbia. As a result of this, a war broke out when Bosnian Serb troops, supported by the Yugoslav army, conquered substantial territories in the countries and ethnically cleansed them by forcing the non-Serb population to leave, a practice that was also applied by Bosniaks and Croats in territory under their control. After 3.5 years of conflict and consistent failure by the newly-formed EU to deal with the conflict, American leadership and NATO military actions resulted in the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP, also known as the Dayton Agreement), which was negotiated in Dayton, Ohio and signed in December 1995 in Paris (Daalder, 2000).

Annex IV of the peace agreement is called “Constitution” and includes Bosnia’ post-war constitutional provisions.⁶ This constitution was written mainly by lawyers in the US State Department, and while some provisions were negotiated beforehand (such as the share of territory for the two entities and the keys for power-sharing between Bosniaks, Serbs and Croats), the agreement can be considered as imposed – that is, it was not based on negotiations, cooperation and compromise between the elites of the different groups in Bosnia (Keil 2013, Zdeb 2018).

The Dayton constitution introduced a highly decentralised system in Bosnia, which was designed to address the root causes of the conflict, namely the disputes over belonging and territory to and within Bosnia and Herzegovina. However, the agreement does not specify what kind of state Bosnia is – meaning that it does not describe the state as federal. Some authors have characterised Bosnia as a confederation (Bose 2002), because of the substantial power of the entities, which, amongst others, were responsible for economic development, internal security and defence, as well as all tax income.⁷

⁶ The whole agreement, including its annexes, is available at: http://www.ohr.int/?page_id=1252 (accessed 15 July 2019).

⁷ In fact, according to Article III.1, the only competences given to the institutions of Bosnia and Herzegovina were foreign policy, foreign trade policy, customs policy, monetary policy, Finances of the institutions and for the international obligations of Bosnia and Herzegovina, Immigration, refugee, and asylum policy and regulation, International and inter-Entity criminal law enforcement, including relations with Interpol, Establishment and operation of common and international communications facilities, Regulation of inter-Entity transportation, and Air traffic control.

However, a closer reading of Bosnia's constitution makes clear that Dayton institutionalised a loose multinational federation, consisting of two entities (the Federation of Bosnia and Herzegovina (FBiH) – itself consisting of ten cantons, and the Republika Srpska (RS)), in which the central level has very limited competences but is the sole holder of international recognition and external sovereignty (Keil 2013, 95-124, Bieber 2006, 40-85). Bosnia very clearly demonstrates the evolution of a new type of union – a multinational federal system, which has elements of both federation and confederation, and in which international actors played an important role in policy design and implementation, so much so, that the country has been described as an “internationally-administered” federation (Keil 2013, 4). The use of the federal toolbox as a tool to overcome the violent conflict in Bosnia continues to challenge elites in the countries and academics alike.

The discussion about a post-war order in Bosnia demonstrate clearly the above-mentioned rivalry between local elites promoting the concept of ethnic unionism – that is the creation of nation-states along ethnic lines (as particularly promoted by Serb and Croat elites during the war), and the specific preferences of the international community, which ensured Bosnia's territorial integrity on the one side, while allowing the different ethnic groups a high level of autonomy within the territory under their control on the other side.

Unlike Bosnia, there was no imposition needed when the Federal Republic of Yugoslavia (FRY) emerged from the ashes of Socialist Yugoslavia. Serb and Montenegrin elites voluntarily formed the Federal Republic in 1992 and passed a new constitution in April 1992 – just weeks after Bosnia formally declared its independence (Ramet 2006). The FRY and the two Republics were ruled by supporters of Milošević in what has been characterised as a competitive authoritarian regime (Vladisavljevic 2016).

The watershed moment in the history of the FRY came in 1997 (Calhoun 2000), when parts of the Montenegrin elite under the leadership of Milo Đukanović began to question the authority of Slobodan Milošević, and started a process of policy divergence from the FRY and in particular from Serbia – a process that has been labelled ‘creeping independence’ (Morisson, 2009; Dzankic, 2014; Jenne and Bieber, 2014). The democratic changes in Serbia in 2000 did not end this policy divergence, and by 2002 there was a clear ambition by the Montenegrin elites to become independent. However, this was also the time of ongoing discussions about the future of Kosovo, and leaders in the USA and particularly in the EU argued against the independence of Montenegro in order to secure stability in the region and stabilise the fragile democracy that had emerged in Serbia (Hasani, 2005). In light of this, the State Union of Serbia and Montenegro was born – under heavy EU pressure and substantial involvement by Javier Solana, the EU's foreign policy chief (Keane, 2004). While the circumstances of the creation of the State Union were different to those of Bosnia, most notably the absence of violent conflict, many of the prerogatives were the same. The international focus on territorial integrity and regional stability had overcome arguments for a complete ethnonational break-up. Moreover, international actors, in this case the EU, became directly involved in the creation and functioning of the new state. Finally, as was discussed in the case of Bosnia, Serbia and Montenegro was a state based on

contestation (Bieber, 2011) – not wanted by the Montenegrin elites who preferred independence (Vukovic, 2015) and assessed critically by the Serb elites for its institutional weaknesses.

Like Bosnia, the State Union was a weak federal union, too. This is visible in its Constitutional Charter, which limited the powers of the joint institutions substantially to military issues, enforcement of international law, membership in international organisations, standardization, intellectual property and statistics, immigration and asylum, finances of the common state, common market and the state symbols (Article 19).⁸ Similarly to Bosnia, the State Union was therefore highly decentralised, and in many areas allowed for policy divergence between the two parts. What is more, even in areas traditionally reserved for the central level, such as foreign relations (Articles 14 and 15), there were possibilities for the two Republics to diverge and develop their own policies. As was the case in Bosnia after 1995, the territorial units were to fund the common union (Article 18), the union itself had no direct income. Similar to Bosnia, there was also confusion if Serbia and Montenegro should be considered a federal country or more like a confederal arrangement (van Meurs, 2003; Bieber, 2004). The State Union of Serbia and Montenegro succeeded the FRY in 2003, and lasted until June 2006, when Montenegro officially became independent – marking a key difference to Bosnia and Herzegovina by including the right to secession (and independence) for the constituent parts (Macek-Mackova, 2011).

Returning to the earlier discussion on unionism, the State Union highlights similar trends between Bosnia and Serbia-Montenegro. In both cases, rival concepts of unionism existed between local elites and the international community. While international actors were focused on stability and promoting territorial integrity, local elites would have preferred the end of these unions. While Serbs and Croats in Bosnia promoted unification with the neighbouring countries, Montenegrin elites wanted to detach themselves from Serbia – a process that has been classified as nation-building and reconceptualising the meaning of ‘Montenegrin’, which after 1997 turned into an ethnic label, rather than just a geographic one (Dzankic, 2014). Unionism, as seen in Serbia-Montenegro, demonstrates the conflict between those promoting a union for stability purposes (in this case international actors), and those that push for ethno-national and particularistic interests (here mainly the elites in Montenegro). The Serb elites, while recently having undergone democratic changes, nevertheless favoured a union solution not because of their belief in equality between Serbs and Montenegrins, but because they saw it as a chance to dominate the union, to promote a majority unionism as has been the case during the existence of the FRY (Macek-Mackova, 2011).

Contestation in Practice – Foreign Policy and Citizenship Policies in Bosnia and Serbia-Montenegro

⁸ The Constitutional Charter of Serbia and Montenegro is available at: https://en.wikisource.org/wiki/Constitutional_Charter_of_Serbia_and_Montenegro (accessed 15 July 2019).

While it has been established that both Bosnia and Serbia-Montenegro were contested states (Bieber, 2011), there remains a gap in the academic literature to engage with the question of how contestation plays out in practice, and how this links to the overall discussion on unionism. In order to highlight how contestation works, this section will assess the foreign policy of Serbia-Montenegro and Bosnia, and the citizenship policies in both countries. Foreign policy was chosen, because it highlights how ethnic engineers in both countries have used contacts with other countries (in the case of Bosnia mainly neighbouring countries, while in the case of Serbia-Montenegro mainly EU member states) in order to undermine the existing union and promote their alternative versions of statehood. While in Bosnia, Serb and Croat foreign policy concentrated on alternative concepts of unionism (namely a movement to reunite with what is seen as their homelands), in Serbia-Montenegro, foreign policy was used by Montenegrin elites as a form of irredentism, to undermine the State Union and promote the idea that an independent Montenegro would be able to join another union sooner – namely the European Union.

Foreign Policy

In the case of the State Union between Serbia and Montenegro, the constitution is already ambivalent about foreign policy:

Article 14

Serbia and Montenegro shall be a single personality in international law and member of international global and regional organizations that set international personality as a requirement for membership. The member states may be members of international global and regional organizations which do not set international personality as a requirement for membership.

Article 15

Serbia and Montenegro shall establish international relations with other states and international organizations and shall conclude international treaties and agreements. The member states may maintain international relations, conclude international agreements and establish their representative offices in other states if that is not in conflict with the competences of Serbia and Montenegro and the interests of the other member state.

While both, Article 14 and Article 15 maintain the international sovereignty and personality of the State Union, they clearly assign foreign policy competences and opportunities for the conduct of independent (and divergent) foreign policies to Serbia and to Montenegro. This constitutionally manifested divergence is no surprise, it was a result of the previous divergence in foreign policy – after 1997 there was a clear detachment of Montenegrin elites from Serbia and a stronger orientation towards the West. Montenegro was spared major damage during NATO's military campaign against Serb forces in Kosovo in 1999, and it received substantial foreign aid from Western countries to bolster its opposition to the rule of Slobodan Milošević (Dzankic, 2014). The divergence increased after the EU sponsored agreement on the State Union – because this included a 'twin-track' option for both parts of the common

state to integrate into the EU at different speeds (Duric, 2003). EU integration was also a key driver of Montenegro's detachment from Serbia, as Montenegrin elites argued that Serbia, and its unwillingness to engage with its own role during the Yugoslav succession wars, held the common state back and prevented a speedier integration into the EU. Hence, the push of Montenegrin elites to undermine and leave the State Union was also driven by a desire to join another union – the EU, which, it was argued, would be easier for an independent Montenegro. There was also disagreement on other key foreign policy issues – while Serbia rejected NATO integration, Montenegrin elites openly supported NATO membership and stronger links with the US, despite public criticism of this approach even within Montenegro (Dzankic, 2014).⁹

Montenegro's conduct of an independent and diverging foreign policy from Serbia and the common State Union was clearly part of the elites' plans to build an independent state, and prepare the small republic for independence, including forging closer links with the EU and NATO. The foreign policy of Montenegro went well beyond what would normally be allowed in federal states, and included representative offices, separate negotiations with the EU and membership in several important organisations. It was designed as a state-building tool and by doing so undermined and weakened the State Union immediately from the start. The focus of Đukanović and his allies was not on a coordinated and functioning foreign policy of the State Union, but to lay the foundations of an independent foreign policy of Montenegro – and to ensure that once the country had become independent, it would be recognised and able to align itself quickly to Western countries and organisations, which included a quick accession to the status of an EU member state. By doing so, Montenegrin elites sought open conflict with Serbia and the representatives of the State Union.

When looking at the foreign policy of Bosnia and Herzegovina, it becomes obvious that foreign relations have reflected many of the overall problems of the country (Hasic and Karabegovic, 2019). The country's foreign policy has lacked progress in several areas, most notably in the area of European integration, where Bosnia is only behind Kosovo in the region of the Western Balkans (Dzankic and Keil, 2018). While the lack of EU integration can be explained by the absence of consensus on major policy issues (such as police reform, economic governance and guarantee of the rule of law), contestation is also visible in areas outside of EU integration. For example, in recent years, there has been a closer association of the Republika Srpska (RS) with Russia, including economic cooperation and the provision of loans by Russia for the RS (Huskic, 2019). At the same time, there have been ever-closer relations between the dominant Bosniak party and Turkey's ruling AKP party, including mutual support at elections and agreement on joint economic projects, while Croat elites have continued to lobby Croatia for support, often with success (Perry, 2014). While Bosnia's constitution is not as ambivalent about foreign policy competences as the above-quoted constitution of Serbia and

⁹ Montenegro eventually became a member of NATO in 2017.

Montenegro, it nevertheless gives room for the entities to engage in limited foreign policy. Article III.2a allows the entities to engage in relations with neighbouring countries and Article III.2d states

Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.

However, the foreign policy activities of the RS have not been approved by the Parliamentary Assembly. There is also no law outlining which agreements require consent from the Parliamentary Assembly and which do not. What is more, the activities conducted by the RS and also by the Bosnian Croat elites have been designed to undermine Bosnia's constitutional integrity – in the case of the RS, for example, strong economic and financial support from Russia has enabled the entity to de-couple itself economically and politically from the rest of Bosnia, and maintain its resistance against a countrywide economic strategy (including resisting the creation of a Ministry for Economics and Business at the central level). In the case of the Croat elite, there is evidence to suggest that elements of Croatia's ruling party support their claim for a fundamental reform of Bosnia and the creation of a territorial entity for Croats (Perry, 2014). Hence, the internal conflicts between the elites of the three groups – discussed above as three conflicting forms of unionisms, are externalised and each group continues to look for allies for their policies and priorities. While Croat and Serb elites use foreign policy to undermine Bosnia, and the internationally imposed union, in order to promote stronger links to their kin states, Bosniaks use their foreign leverage to promote their internal agenda, which focuses on dominance within Bosnia within a hegemonic union. Bosnia's foreign policy is one of stagnation and reflects the internal divisions within the country (Huskic 2014).

In both cases, foreign policy was used by key actors for two purposes. On the one side, foreign policy activities and irredentism was used in order to undermine the existing unions and demonstrate its weaknesses. However, foreign policy was also used as a tool of external legitimisation of irredentism, and linked to it as a tool of state-building to promote alternative concepts of statehood – in the case of Bosnia to promote unification of the RS with Serbia and the Croat territories with Croatia, while in the case of Serbia-Montenegro it was used to legitimise the separatist tendencies of the Montenegrin elites. State contestation becomes visible in foreign policy, because key elites in both countries did not believe in the existing union states, they promoted instead alternative concepts of unionism that necessarily undermined and threatened the existing unions.

Citizenship Policies

When looking at the citizenship policies of Bosnia and Serbia and Montenegro, internal contestation becomes visible. The citizenship regimes of both countries were heavily influenced by two factors –

the legacy of Socialist Yugoslavia and the violent break-up of the country along ethnonational lines (Stiks, 2015). Hence, both countries have implemented citizenship policies which are multi-layered, i.e. in both Serbia and Montenegro and Bosnia one needed to hold the citizenship of one of the member-states/entities in order to hold the citizenship of the union (Dzankic, 2015). While this was per se not uncommon and in line with the Yugoslav tradition, problems arise where ethnonational belonging finds its limits. For example, in the Bosnian district of Brčko, which does not belong to any entity but is an autonomous district, citizens must choose which entity citizenship they will take. This also determines their rights in terms of voting, for example when voting for the Presidency of the country.

The Bosnian constitution furthermore states that ‘There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity’ (Article I.7), however it remains silent about who can award citizenship and how. Taking into account that the entities are responsible for the implementation of citizenship laws, it can be assumed that they also set the criteria for who belongs to the entity and who does not – thereby enabling the entities to use citizenship as a tool of exclusion and ethnic engineering (Sarajlic, 2012). Citizenship policies were used by entity authorities to decide who gets which rights and who gets access to the state – a policy that continued until December 1997, when as a result of international imposition by the Office of the High Representative,¹⁰ a new citizenship law was passed, which was extended and detailed in 1999. However, citizenship remains contested in Bosnia until today. Questions over access to the state and its offices (some of which are reserved for members of the three constituent peoples), the right to register births and therefore award citizenship, and the relationship between entity citizenship and the citizenship of Bosnia and Herzegovina remain a major area of conflict. In particular RS authorities have openly challenged the Bosnian state in recent years to push for their own citizenship regime. They have promoted their own citizenship regime in order to define who belongs to their people, within their territory, according to their historical narrative. The solidarity shown by the RS is one of ethnic solidarity, linking the RS strongly with Serbia, but also ensuring that non-Serbs are excluded from ‘the people’ as understood by RS authorities. A similar trend is visible in the Croat territories in Bosnia, where most people hold dual nationality, that of Bosnia, as a place of residence, and that of Croatia, as a place of true belonging and as the place of the historic homeland and the true ethnic homeland.¹¹

In the case of Serbia and Montenegro, the issue was even more complicated. The constitutional charter states in Article 8:

¹⁰ The Office of the High Representative (OHR) is an institution created by the Dayton Peace Agreement. It is designed to oversee the implementation of the civilian aspects of the peace agreement. In 1997, the powers of the High Representative were extended so that he could impose laws and remove Bosnian officials from office, if they obstruct the implementation of the peace agreement. As a result of these so-called Bonn powers, High Representatives have imposed numerous laws, dismissed hundreds of officials and even implemented changes to the entity constitutions.

¹¹ See Todd’s discussion on the links between Unionism and nationalism and the similarities according to Hutchinson and Smith (1994) in the Introduction to this special issue (Todd, 2019, [p. 5](#))

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.

In contrast to the State Union, the FRY had clear regulations on citizenship, in which the federal government provided the framework and the republics implemented the rules. However, the State Union never had such a regulatory framework. In fact, recognition of the citizenship of Serbia and Montenegro is missing from the constitutional charter. While Article 8 provides a similar framework as the Maastricht Treaty did for EU citizenship, what is completely missing is an overall framework. The State Union in its time of existence never introduced a citizenship law, and Serbia used the old FRY law from 1996 (along with the Serbian Citizenship Act of 1976), while Montenegro introduced a new citizenship law in 1999. Montenegro's citizenship law was purposely designed to exclude Serbs living in Montenegro through strict naturalization rights (Dzankic, 2010). This was used in order to ensure that those identifying as Montenegrin, and those voting for Đukanović and his allies would remain a majority within the population. Serbs, whether from Serbia or refugees from Croatia and Bosnia, were more likely to vote for opposition parties (and against Montenegrin independence), so excluding them would not only keep the ethnic balance in the country, but would also ensure that they did not threaten the goal of Montenegrin independence.

Similarly to the above-discussed case of Bosnia, citizenship in Serbia-Montenegro is a tool to define who belongs and does not belong. The fact that the State Union never had an overall framework for citizenship policies beyond the weak constitutional provisions demonstrates the weakness of this union, and its inability to provide an umbrella for all people living within it. Instead, the two parts of the State Union defined themselves individually who belongs to their conception of 'the people' and who does – this was done through the use of substantial ethnic engineering.

Citizenship policies define who belongs to a state and who does not. In unions, they are of vital importance, because they provide a framework for the relationship between people, state and government. The competing forms of unionism found in the two case studies is visible in the contradictions of the different citizenship regimes of the different parts of the two unions. While the overall conception of 'the people' of the union in Bosnia is vague, and at times exclusionary focused on the three constituent peoples. This has enabled the different ethnic engineers to push for their own 'citizenship regimes' in the territory under their control – thereby undermining the common framework. In Serbia-Montenegro, such a common framework never existed. Instead, both parts of the State Union implemented their own citizenship policies, which were used as key tools in the process of ethnic engineering and state-building, and by doing so undermined the existing union.

Conclusion: Rethinking Unionism – Evidence from Bosnia and Herzegovina and Serbia and Montenegro

Bosnia and Herzegovina and Serbia and Montenegro were designed as union states first and foremost by international actors, whose sole focus was on stability and the protection of the status quo – meaning safeguarding territorial integrity. In both countries, there were key elites that opposed the formation of these unions and have undermined them from the beginning – in the case of Serbia and Montenegro to the extent that the union fell apart when Montenegro became independent in 2006. There is, as discussed in the previous section, a clear link between international imposition and state contestation – when key actors do not support international arrangements, they will find direct and indirect ways of how to undermine them. This contestation is the promotion of alternative forms of unionism by key elites. In Bosnia, Serbian and Croatian elites have promoted unionism based on ethnic belonging to the kin state and have therefore thought to align more closely with the neighbouring state and detach themselves from Bosnia. In Serbia-Montenegro, elites have undermined the State Union in order to promote a different concept of statehood – that of Montenegrin independence. The idea of joining another union, namely the EU, was an inherent part of Montenegro's push for independence, so here too we see that one conception of the union was contested in favour of membership in another form of union.

What is missing in both cases is a form of unionism that Todd (2019) defined as constructive unionism, in which diversity is celebrated and respected. While international actors promote an imposed form of unionism that is mainly focused on territorial integrity and stability, a constructive form of unionism in both countries would focus on ethnic equality, cooperation and consociational mechanisms that ensure inclusion and compromise. There were, however, no drivers of such a form of unionism in the State Union of Serbia and Montenegro. In Bosnia, one could argue that smaller liberal parties such as Naša Stranka promote this kind of unionism – they focus on overcoming ethnic divides and instead building a state based on equality and human rights (Touquet, 2011). Yet, these parties seem too small to really challenge the existing dominance of those actors that promote unions based on ethnic criteria, or, as is the case for most Bosniak parties, based on the dominance of one group over others. In this context, a key challenge emerges for policy makers – if imposing union states remains an option for conflict resolution, then the question must be asked how these imposed unions can become self-sustainable. Unions such as the United Kingdom, India or the European Union exist and function, because they have key ruling elites who cherish the idea of unionism, by promoting the positive benefits of the union itself, be they economic, moral, institutional or legal. They constitute, to refer to Todd's introductory paper, a union of people and a polity (Todd, 2019).

The two cases above constitute neither. They are neither functional states, in which decisions are taken in the best interests of the citizens, nor are they union of people(s), who identify with the common union and cherish its existence. How these unions are created in the context of post-conflict societies, is a key policy question, and important not only for the promotion of peace, but also for the longer durability of these imposed unions (Keil and Anderson, 2018). One should not forget that while imposition resulted

in a lot of problems as discussed above, after all, it was used as a tool to promote peace and end suffering. This will be important in other cases. However, in order to make other unions work, international actors need to promote a form of unionism that cherishes the common state and promotes equality and human rights. Doing this is much easier in theory than in practice, as 25 years of institution-building and unionism in Bosnia have demonstrated.

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