

Serbia's New Constitution: Democracy Going Backwards

I. OVERVIEW

Premier Vojislav Kostunica won a high stakes gamble with passage of Serbia's draft constitution in the 28-29 October referendum. However, numerous credible reports indicate the process was deeply flawed and the result falsified. The referendum cannot be characterised as either free or fair. The new constitution could prove a step away from European values. It opens the door to increased centralisation of the state, curtailment of human and minority rights, destruction of judicial independence and potentially even a parliamentary dictatorship. The process used to pass the constitution illustrates how Kostunica continues to transform Serbia into something closer to illiberal authoritarianism than liberal democracy; yet, the referendum was welcomed by the Council of Europe, the European Union and the United States.

The main purpose of the new constitution was to demonstrate Serbian hostility to, and create further legal barriers against, Kosovo independence. It was a victory for Kostunica's Democratic Party of Serbia (DSS) and his ideological allies, Milosevic's Socialist Party of Serbia (SPS) and the Serbian Radical Party (SRS) of war crimes indictee Vojislav Seselj. The biggest losers are President Boris Tadic and G17+. The Liberal Democratic Party (LDP) of Cedomir Jovanovic could profit at the expense of Tadic's Democratic Party (DS).

Belgrade continues to pursue three main Kosovo goals: first to delay status resolution indefinitely, in hopes of provoking Albanian violence and so strengthening Serbia's position at the bargaining table; secondly, partition; and thirdly, to keep Kosovo from gaining diplomatic recognition and UN membership.

The new constitution makes it legally impossible – without further constitutional amendment – for Serbia to recognise Kosovo independence and could contribute to long-term political instability should it sanction neighbouring states for doing so. This would continue Serbia in its generation-long role as a source of instability in the Balkans, though it does not appear Belgrade would use its security forces to assert its territorial claim to any areas of Kosovo south of the Ibar River.

There is significant domestic political pressure against early parliamentary elections, particularly from the SPS, SRS, and DSS, but there is an increasing possibility they may be held within three months. It is doubtful that they would include a presidential election. The government, however, still wants to delay new elections as long as possible, partially in the hope this would cause the international community to delay the Kosovo status process out of concern an independence decision could bring the SRS to power. A real possibility exists that the new constitution could be misused to impose a temporary state of emergency to deal with the government's political enemies.

The international community has two goals in dealing with Serbia. The first is a strong desire to strengthen democracy while promoting European integration and the transition to a market economy. The second is – unrealistically – to gain Serbian acceptance of Kosovo independence. Many see these two goals as at odds, fearing early recognition of Kosovo's independence could damage Serbia's democratic political forces¹ and move it further from Europe. The result has been a policy of mixed signals.

In fact, Serbia's democracy is imperilled by its own democratic politicians. Kostunica rehabilitates Milosevic-era personnel and policies, while trying to outflank the Radicals on nationalist issues. His refusal to arrest Mladic and the subsequent standstill in talks with the EU reflect his policy priorities. Cooperation with the SPS and SRS is easier than with Tadic's pro-Western DS. G17+ too has not placed a European agenda ahead of nationalist policies.

In the short and medium term, there may be little the West can do to save Serbian democracy. Kostunica and most of the governing coalition parties, as well as their supporters in the SRS and SPS, appear ideologically inclined more towards paternalistic, illiberal authoritarianism

¹ It is a recurring theme of this paper that the common labeling of Serbia's political parties as "democratic" (e.g. DS, DSS, G17+) or 'non-democratic' (e.g. SPS, SRS) is not especially helpful either in understanding domestic political dynamics or as a guide to international policy-making.

than Western liberal democracy. This will continue to create tensions not only within Serbian politics, but also within the EU, as Brussels confronts the reality of political elites who show little enthusiasm or interest for the reform measures necessary for European integration.

II. CONSTITUTIONAL POLITICS

Slobodan Milosevic's constitution, rubber-stamped by Serbia's parliament in 1990, instituted several retrograde measures. The first was greater centralisation. The two Socialist Autonomous Provinces of Vojvodina and Kosovo lost nearly all autonomy to Belgrade, as did most municipal governments. Both autonomous provinces subsequently experienced ethnic cleansing and discrimination against national minorities; in the case of Kosovo, adoption of the constitution signalled the start of renewed official repression of Albanians.² The constitution also enshrined the previously existing categories of socialist ownership of property and created conditions that made amendment very difficult. This meant that a two-thirds vote in the parliament, a national referendum in which 51 per cent of registered voters approved and then a second two-thirds vote in the parliament vote were necessary to proclaim the 2006 document.

The Milosevic constitution defined Serbia as a civic, not a national, state³ and in many respects was superior to the new one. In the minds of many Serbs, however, its most important negative legacy was not its actual content, but rather the image it presented of a state whose basic governing document had been imposed by a dictator.

A. DEADLOCK

Passage of a new constitution was an important promise of the DOS (Democratic Opposition of Serbia) coalition that unseated Milosevic on 5 October 2000, as was the return of autonomy to Vojvodina. After the December 2000 elections, DOS controlled 177 of the Serbian parliament's 250 seats, a better than two-thirds majority. More importantly, the three political parties that had been the pillars of Milosevic's regime were on the run:

JUL had failed to pass the parliamentary threshold, while the SRS had polled only 8.6 per cent and the SPS 12.2 per cent. All were considered spent political forces. Numbers and popular sentiment were on the side of DOS and its reformers, and constitutional change appeared possible without involving retrograde, Milosevic-era forces.

The two largest DOS parties – DSS and DS – disagreed over several key elements of a new constitution. Kostunica's DSS insisted that a new constitution further increase centralisation and redefine Serbia as a national, rather than a civic state; the DS and the majority of DOS parties favoured a more modern constitution emphasising greater decentralisation and liberal democratic values in a civic state. They also favoured returning autonomy to Vojvodina, something the DSS opposed. Kostunica pulled the DSS out of the coalition in June 2001 after only six months in power, due to his opposition to cooperation with the International Criminal Tribunal for the former Yugoslavia in the Hague (ICTY). At this point he began more openly defending Milosevic's nationalist legacy, and hope of constitutional change vanished.⁴ The SRS revived as Kostunica more openly defended the underlying ideology of the Milosevic era.

Kostunica's main election promise during the December 2003 parliamentary campaign, in which the DSS emerged as the leading democratic party, was to pass a new constitution. The new parliament, however, had a substantially different composition. The SRS won 32.8 per cent of the vote and became the largest single party, with 82 seats. The SPS dropped slightly but won 22 seats (8 per cent). This meant that no constitution could be passed without the approval of two parties which had been the ideological backbone of the Milosevic regime. Neither felt a pressing need to change what was essentially their constitution. On issues such as centralisation, defining Serbia as a national state and the status of Vojvodina, however, their views were similar to those of the DSS. The DS was unwilling to bend on Vojvodina, where it had strong electoral support.

Kostunica restarted constitutional negotiations but they became bogged down again over the same issues: decentralisation, defining Serbia as a national state and the status of Vojvodina. While the DSS and DS posted draft texts on the party web site and the B92

² The ethnic cleansing in Vojvodina took place on a far smaller scale than in Kosovo and concentrated primarily on Croats, although Hungarians were also pressured to leave. The leader of the Serbian Radical Party, Vojislav Seselj, is currently on trial in the Hague: one of the charges relates to the ethnic cleansing of Vojvodina.

³ A civic state is typically defined as one of all citizens and/or residents, a national state of a specific national or ethnic group.

⁴ See Crisis Group Europe Report N°117, *Serbia's Transition: Reforms Under Siege*, 21 September 2001. For more on Kostunica's defence of the Milosevic legacy, see Nebojsa Popovic and Kosta Nikolic, *Vojislav Kostunica: jedna karijera* (YUCOM, Belgrade, 2006). See also Crisis Group Balkan Report N°126, *Belgrade's Lagging Reform: Cause for International Concern*, 7 March 2002.

radio/television site respectively, few people bothered to read them. The question of a new constitution remained on the back burner, popping up occasionally when the government used it to distract attention from all too frequent political crises or corruption scandals.

As Kosovo negotiations continued through the spring and summer of 2006, the chief UN negotiator, Marti Ahtisaari indicated he would present a proposed final status solution to the Contact Group before year's end. Belgrade tried to drag out the process by missing meetings, seeking postponements and charging Ahtisaari, a former president of Finland, was biased, in the hope this would lead to his removal and further delay. When Ahtisaari stated in September that the talks were essentially dead, however, it became clear to Belgrade that time was running out, and the minority government would need to find a way to avoid blame for losing the province if it wished to survive.

Finance Minister Mladan Dinkic had been placed in a tight spot by the 3 May resignation of his predecessor as party president, the then deputy premier Miroslav Labus, in reaction to the EU's suspension of Stabilisation and Association Agreement negotiations with Serbia and Montenegro due to Serbia's failure to cooperate with the Hague Tribunal. G17+'s members and constituents are pro-European, and failure to react to the EU's move would have cost this increasingly unpopular party votes at the next election. Labus wanted to pull the G17+ out of government but Dinkic out-manoeuvred him and took over the party reins. Insisting it remained committed to European integration, he gave the government until 1 October to restart the EU talks, or he and his party colleagues would resign from the government, either causing it to fall or forcing the DSS into an open coalition with the SRS and SPS that Kostunica wanted to avoid.

As 1 October approached, Kostunica showed no sign of trying to arrest Mladic, while the EU showed no sign of changing its policy. It became clear that Dinkic and some others in the party leadership wished to remain in government but could not do so without losing credibility. Kostunica wanted to prevent the government's fall and to pass a constitution. None of the other parliamentary parties were particularly keen for new elections. The SRS, SPS and DS all wanted a Kosovo status resolution first so they could avoid responsibility for its result. The DSS and G17+ were more than happy to oblige, as were the other members of the governing coalition, the Serbian Movement of Renewal (SPO) and New Serbia (NS), which might have trouble making it into a new parliament on their own. Kostunica needed a solution to both problems and a face-saving "defence" of Kosovo, all prior to 1 October.

Early in September the mass-circulation daily *Vecernje Novosti* published a story hinting the government was finally becoming serious about a new constitution and a proposal would be forthcoming.⁵ Consultations were going on behind the scenes, although the sides were still far apart on Vojvodina and decentralisation, and no one except Kostunica felt the urgency of agreeing upon the document. The government was preoccupied with other matters, as it struggled to stay in power with increasingly shaky parliamentary support. High profile privatisations, keeping G17+ in the coalition, Kosovo status negotiations and speculation about early elections seemed to top the agenda.

As 1 October approached, the media was filled with speculation that G17+ would find a way to stay in power. Deputy Premier Ivana Dulic-Markovic of its "Europeanist" wing, however, said convincingly that the party would leave government, and Dinkic too began saying that this would happen if the EU did not restart Stabilisation and Association talks. When Kostunica continued to show little inclination to engage in anything more than superficial cooperation with the ICTY, Dinkic became increasingly open in the threat to resign.

At one point it appeared that Dinkic had reached a tacit understanding with Kostunica whereby he and the rest of the G17+ ministers would officially resign from government but not withdraw support from it in parliament. In return, the government would delay holding a session to accept their resignations officially.⁶ As word of this leaked out, the SPS and SRS attacked G17+ in the media, asserting it could not remain in power while pretending to be in opposition.⁷ Their pressure caused the government to back down.

B. BREAKING THE LOGJAM

On Thursday 21 September the government gave its first real hint that it intended to move ahead with a constitution, when it approved €7.3 million⁸ for a constitutional referendum and said it would announce a date shortly. Few people took this announcement seriously: there had been other false alarms, the DS and DSS were still far apart on a draft, and the impending resignation of G17+ was the topic of the day.

On Monday 25 September the logjam broke. That morning's edition of the mass-circulation Belgrade daily

⁵ "Nastavak pregovorakrajem meseca", *Vecernje Novosti*, 4 September 2006.

⁶ Crisis Group interview, G17+ source.

⁷ "Kraj stabilne Vlade Srbije?", *B92*, 25 September 2006.

⁸ 586 million dinars.

Blic hinted that a constitution might be rushed through parliament by week's end.⁹ At the end of that day, Kostunica, after meeting separately with SRS Vice President Tomislav Nikolic, Tadic and SPS leader Ivica Dacic, announced that the parliament would approve a draft constitution by Saturday 30 September, the eve of the G17+ deadline.

This announcement came as a complete surprise to the public and to many of Serbia's top politicians, as negotiations had been limited primarily to the leaders of the four largest parties. An agreed text did not exist until several hours prior to the vote on 30 September. On 25 September, there was only a draft marked with alternative suggestions of the parties.¹⁰

The unseemly rush to agree a text meant that many senior politicians were not included in the process. On 29 September, Dulic-Markovic complained publicly: "I as a citizen and as vice president of the government and as vice president of the [G17+] party do not know what is written in the constitution".¹¹ Foreign Minister Vuk Draskovic, president of the SPO, a member of the ruling coalition, was excluded entirely, which led him to state that he was "very, very disappointed by the development of events",¹² although he subsequently supported the constitution. Bojan Pajtic, the Vojvodina premier, was kept out of the negotiations, as was Bojan Kostres, speaker of the Vojvodina Assembly. The government did not consult anyone from civil society, the churches, national minorities or unions. Leading legal experts were kept in the dark. At the end of the day, the constitution was a rough political bargain between DS, DSS, SRS, and the SPS. Dinkic seemed happy to agree to any text which allowed G17+ to claim extenuating circumstances and remain in government at least until year's end.

To reach an agreement, the DS had to change its position on Vojvodina's autonomy so as to placate the SRS, which fears the province might become the next Kosovo. In return, Tadic was promised parliamentary and presidential elections by the end of December 2006, a promise on which Kostunica soon reneged.¹³ The DS further received a series of "guaranteed" constitutional provisions on human and minority rights, all of which, however, could be easily removed or restricted by the parliament. There were also changes to the socialist-era definitions of property relations. Kostunica got a constitution that enshrined his nationalist values. The

biggest winners were the SRS and SPS, who received a national (rather than civic) state, more restrictive centralisation, removal of all independence from the judiciary and prosecutorial organs and relatively easy conditions for proclamation of a state of emergency.

Kostunica used the preambular statement that Kosovo is a part of Serbia to force other parties to support the draft lest he accuse them publicly of insufficient loyalty at a time when the province is in danger of being lost. In the end, the constitutional referendum was an opportunity for Kostunica to use a vote on Kosovo status as a cover for imposing a more politically and socially restrictive constitution. The campaign emphasised that defending Kosovo was the main point of the constitution. But while Kostunica asserted that "the essential national interest is the defence of Kosovo...if God wishes, Serbia will get a new constitution",¹⁴ few seemed to recall that the old Milosevic constitution also stated that Kosovo was a part of Serbia.

III. RUBBER-STAMP DEMOCRACY

At 20:00 on 30 September 2006, parliament began the urgent special session to adopt the draft constitution. Following introductory remarks by the speaker, Predrag Markovic, Tadic, Kostunica, Nikolic, SPS leader Ivica Dacic and three other speakers took the podium to urge the deputies – and those television viewers who chose not to watch the "Miss World" competition on Pink TV or "Big Brother" on B92 TV – to vote for the constitution. All stated that this meant defending Kosovo, although each gave a slightly different spin to his remarks to appeal to constituents. No debate was permitted. After slightly more than 90 minutes of exhortations, the 242 deputies present voted unanimously.¹⁵ The vast majority had not seen the document and had little idea of its contents.¹⁶ The parliament also scheduled a referendum for 28-29 October.

A. NO ROOM FOR DISSENT

The referendum campaign suffered from a glaring lack of public debate and any attempt to educate the public about what was in the constitution. The opposition was

⁹ "Novi ustav do kraja septembra", *Blic*, 25 December 2006.

¹⁰ Crisis Group obtained a copy of the working draft.

¹¹ "Sutra konacan predlog teksta ustava", *B92*, 29 September 2006.

¹² "Natavljene konsultacije o ustavu", *B92*, 27 September 2006.

¹³ Crisis Group interview, DS party official.

¹⁴ "Skupština usvojila predlog ustava", *B92*, 30 September 2006.

¹⁵ Deputies from the GSS and SDU refused to attend, as they were not allowed to debate or speak against the constitution.

¹⁶ Crisis Group interviews, parliamentary deputies. Crisis group interviews, DS, SDU, GSS and SDP representatives.

drowned out by a massive government propaganda campaign.

No sooner had the parliament passed the draft than the government and all the major political parties combined forces in a well-coordinated media campaign not seen since the Milosevic era, one that demonstrated the lack of real media freedom in Serbia today. The most influential daily newspapers – *Blic*, *Politika* and *Vecernje Novosti* – promoted the constitution in every edition, often with front-page articles. Most major dailies distributed copies of the text with notices urging a “yes” vote. All papers ran large daily advertisements, some on the front page. Only the low circulation *Danas* ran a paid advertisement for a “no” vote or boycott.

The editorial policy of most dailies was overwhelmingly pro-constitution. In some instances editors invented stories: on the day before the referendum, government-controlled *Politika* ran a front page headline falsely claiming “The EU Supports the Constitution of Serbia”, with quotes praising the document from Javier Solana, the EU’s high representative for common foreign and security policy, European Commissioner Olli Rehn, and the foreign minister of the Finnish EU Presidency, Erkki Tuomioja, that the senior officials never made.¹⁷ The tabloids followed suit. Opponents of the constitution were often ridiculed or derided as Albanian collaborators and traitors. Not a single paper supported the call for a boycott. Only *Danas* permitted opposing voices to be expressed, but even it carried significant attacks on the opposition.

Television stations presented a mind-numbing united front. News programs devoted extensive coverage to the constitution, invariably positive. Leading politicians from all parties made guest appearances in the studio during the evening news, while special talk shows were devoted entirely to its promotion. Each day’s news seemed to lead off with long segments devoted to the activities of Kostunica and Tadic promoting the constitution, as well as those of the other party leaders. Television viewers were bombarded with advertisements showing prominent politicians, athletes, entertainers and academics urging Serbs to do their patriotic duty and vote “yes”. Only B92 came close to balanced coverage but even it failed to present an accurate view of the document’s potential drawbacks.

None of the talk shows offered a forum for serious debate. In the rare instances where opponents were

allowed on television, they almost invariably pointed to minor flaws, only to concede at the end that the draft – for all its faults – was better than the Milosevic constitution and that the country needed to break with the past. Everything seemed well-scripted and rehearsed. Supporters warned that Serbia would face a dire crisis if the vote failed and even hinted that extraordinary measures might then be necessary.

Billboards appeared throughout the country urging a “yes” vote. Representatives of NGOs and political parties opposed to the constitution said there was absolutely no television advertising for their point of view, and Crisis Group found none. DSS, DS, SRS and SPS workers canvassed each neighbourhood door to door for a “yes” vote. The newly privatised mobile telephone provider Telenor¹⁸ appeared to violate the law by sending out an unsolicited SMS message urging people to vote, as did the state-owned mobile phone provider, Telekom.

This massive propaganda campaign was financed directly by the government. Each parliamentary party favouring the constitution was given an allocation in proportion to its size to spend on promoting the constitution. All told, the government distributed approximately €1.5 million among the parliamentary parties¹⁹ and allocated itself an additional €1.8 million.²⁰ The director of Transparency Serbia, Nemanja Nenadic, noted that these funds were not subject to any public scrutiny, as the law on campaign financing does not apply to a referendum. Djordje Vukovic, the program director of CeSID, a respected election watchdog group, said this dispersal of funds was “not in keeping with the law”.²¹ No public funds were given to opponents of the constitution.

The only crack in the government’s united front occurred when Deputy Premier Dulic-Markovic, who is from Vojvodina, openly opposed the new constitution as seriously damaging Serbia’s prospects for joining the EU and suggested a boycott.²² Although she survived a vote of confidence inside G17+, the tabloid media attempted to discredit her, claiming she was having an affair with the minister of agriculture.

The unanimity with which Serbia’s leading political parties promoted the constitution was startling. In Kosovo’s Mitrovica, only days before the referendum,

¹⁷ “EU podrzava ustav Srbije”, *Politika*, 27 October 2006. The offices of Solana, Rehn, and Tuomioja told Crisis Group these officials never made the statements that *Politika* and the Tanjug agency attributed to them.

¹⁸ Purchased by the Norwegian company Telenor.

¹⁹ 150 million dinars at an exchange rate of 80:1.

²⁰ “Kontrola novca za referendum”, *B92*, 4 October 2006.

²¹ “CESID: Dva koraka unazad”, *B92*, 31 October 2006.

²² “G17 Plus ipak u kampanji za donosenje novog ustava,” *Danas*, 10 October 2006.

SRS, SPS, DS, DSS and G17+ officials held a joint rally. To chants of "Ratko Mladic", they called on the assembled crowd to vote for the constitution.²³

B. STACKING THE DECK

The referendum process was far from transparent, and the state obstructed impartial observers from monitoring effectively. Even though this was evident well in advance, the Organisation for Security and Cooperation in Europe (OSCE), the EU, the Council of Europe and the Venice Commission kept silent. The OSCE Chairman in Office was aware of the problems but did not react.²⁴ The Venice Commission did not provide an impartial analysis of the constitution. The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) did not organise a monitoring presence because it was not invited.²⁵ In the end the international community sent only a handful of observers. The Council of Europe Parliamentary Assembly sent seventeen, and the EU 35, sufficient to cover less than half of 1 per cent of the 8,375 polling places. The Russian Duma also sent observers. The government used the presence of these foreign observers to claim that the vote was fair and regular.²⁶ This lack of international engagement was in marked contrast to the micro-management of the Montenegrin referendum. Crisis Group contacts within the U.S. embassy indicated that the embassy was well aware of the problems; the U.S. government, nevertheless, chose to ignore them. Ambassador Michael Polt reflected this policy when he said it was not up to him to comment on Serbia's constitution, but rather to Serbia's citizens.²⁷

There were numerous procedural and technical problems. The first was with composition of the municipal election commissions. Serbia already has such bodies, which have supervised all previous elections and referendums and are familiar with procedures. Each includes representatives of the political parties which are in the local municipal assemblies, thereby providing a certain political balance. The government decided to sideline these bodies and create special local commissions based on proportional representation of the parties in the parliament. This meant that municipalities had referendum commissions appointed by the central government that often bore no

resemblance to the local balance of political power. These officials also lacked the necessary training.²⁸ The parties represented on the commissions all favoured the constitution, the equivalent, as the Serbs say, of "letting a goat guard the cabbage".

The issue of representation on the municipal referendum commissions was particularly problematic in the numerous areas where national parties are not well represented or are absent. The SRS had a 32 per cent representation in every municipality whether or not it actually was represented there. This proved troubling in majority non-Serb municipalities, such as in Sandzak, the Presevo Valley and Hungarian areas that have little or no representation in parliament. To compensate for this, the Republic Election Commission (RIK) permitted one representative from a national group to be present in municipalities where it was more than 50 per cent of the population. In each instance this was a representative of an ethnic political party that had made a deal with Belgrade. In Sandzak the local strongman, Sulejman Ugljanin, received a promise of a state university in Novi Pazar in return for delivering the Bosniak vote.²⁹ There was no way one individual could monitor all the polling places in each municipality over 49 hours of voting, and the arrangement did not cover the numerous municipalities where national groups are heavily represented but not a clear majority.

The RIK at first attempted to prevent independent observers or representatives of the three parliamentary parties opposed to the constitution (SDP, GSS, SDU)³⁰ from monitoring the polling places. It eventually allowed GSS and SDU to post 670 and 335 observers respectively for all 8,375 polling places, enough to do a proper job at some 6 per cent. The SDP was kept out. CeSID had sufficient funds to monitor only 600 polling places.³¹ The RIK turned down requests from at least eleven groups opposed to the constitution.³² The RIK left securing ballot boxes overnight to each individual polling place. Other actions of the RIK were questionable: the CeSID accused it, for example, of holding late night meetings without notifying the public as required by law.

Even though the preamble of the new constitution states that Kosovo is a part of Serbia, the government made no

²³ Crisis Group watched video footage of the rally.

²⁴ Crisis Group interview, OSCE official.

²⁵ Crisis Group communication with ODIHR.

²⁶ Speaker of the Parliament Predrag Markovic made this point in a nationally televised speech shortly after the polls closed on 29 October 2006.

²⁷ "O Kostrevoj ostavci posle referenduma", *Politika*, 13 October 2006.

²⁸ "Constitutional referendum conducted, in general, with due respect for Serbia's Council of Europe commitments", Parliamentary Assembly of the Council of Europe, press release, 30 October 2006.

²⁹ *Beta*, 27 October 2006.

³⁰ Civic Alliance of Serbia (GSS); Social Democratic Union (SDU).

³¹ Crisis Group interview, with CeSID director Marko Blagojevic.

³² See the minutes of the RIK meetings available at http://www.rik.parlament.sr.gov.yu/cirilica/sednice_frames.htm.

provision for Kosovo's Albanians to vote, nor to take their numbers into account in determining whether sufficient eligible voters took part to validate the result.³³ If Kosovo's Albanians had been represented in the rolls, the referendum would have failed unequivocally. The Serbian government and mainstream parties sent a message that they want Kosovo's territory, but reject its people.

Many opponents of the constitution pointed to one person as a symbol of the broader problem, Dobrivoje Glavonjic, a member of the RIK. A prominent judge under Milosevic, he was responsible for jailing student activists in the protests against the 1996 election fraud and for imposing excessively harsh prison sentences against minors who protested. He played a leading role in muzzling the media via fines and activist implementation of the draconian 1998 "Law on Information", for which he earned the nickname "the headsman". *Politika* claims he was prominent in organising the "crisis staffs" inside the judiciary that drove out judges who disobeyed orders from Milosevic.³⁴ He was fired by the late Premier Djindjic after DOS ousted Milosevic in October 2000 and is a loyalist of Milosevic's Socialist Party of Serbia. Kostunica reappointed him to the RIK in 2004.³⁵

C. THE OPPOSITION

The organised opposition to the constitution consisted primarily of Nenad Canak's League of Social-Democrats of Vojvodina (LSV), Cedomir Jovanovic's Liberal Democratic Party (LDP), Natasa Micic's GSS and Zarko Korac's SDU in alliance with several prominent domestic NGOs, such as the Helsinki Committee for Human Rights, the Youth Initiative for Human Rights, the Lawyers Committee for Human Rights and the Women in Black. In Vojvodina more than twenty civic groups opposed the constitution. The LSV is strong in the Vojvodina Provincial Assembly, while the GSS and SDU have two

seats and one seat respectively in Serbia's parliament.³⁶ Bojan Kostres, an LSV member and president of the Vojvodina Assembly, came out in direct opposition. The provincial president, DS loyalist Bojan Pajtic, supported it only after significant pressure from Tadic.

The opposition called for a boycott. This has often been a counterproductive or ineffective tactic in the Balkans but the opposition realised the voting procedures were deliberately designed to make abuse relatively simple and that there would be little credible monitoring. Because the Milosevic constitution required a simple majority of all registered voters to validate a referendum, the government would have lost if turnout did not top 50 per cent, and it was thought to be harder for the government to create missing votes than to miscount actual votes. Given the lack of faith in the procedures and the near absence of international observers, a boycott seemed more promising than a campaign to produce "no" votes. The OSCE mission head was widely reported to have told Minister of Justice Zoran Stojkovic that the OSCE did not support a boycott, as it was not in keeping with democratic principles.³⁷ By failing to push the government to adopt free and fair practices or to monitor the referendum, the OSCE also gave an appearance of approving the procedures.

The government-controlled media and its sympathisers demonised the opposition. The high-circulation tabloid *Kurir* referred to it as the "Siptar Lobby" (the word "siptar" is a derogatory term for Albanians).³⁸ A notorious example was a political rally disguised as performance art, put on by youths from northern Mitrovica in Kosovo. Under the political supervision of Kosovo Serb leader Milan Ivanovic, students from the Serb university there and youths from his own Serbian National Council³⁹ staged a show on a specially erected stage on Belgrade's Square of the Republic in which an actor wearing an oversize foam/plaster head of the late president of Kosovo, Ibrahim Rugova, gave awards to opposition leaders and thanked them for promoting Greater Albania. The stage was surrounded with large posters of the opposition leaders dressed in Albanian national costumes against a backdrop of the Albanian flag.⁴⁰ Some students wore t-shirts from the disbanded Red Berets paramilitary unit that was involved in the assassinations of Premier Djindjic and former Serbian

³³ "Kampanja jedinstvene drzave", *B92*, 10 October 2006. Albanians would surely have boycotted but it appears voter rolls showing some 900,000 Kosovo Albanians as eligible to vote in 1999 were removed when Serbian forces left the province that year. These voters are no longer on the register and, unlike Kosovo Serbs, were not given an opportunity to vote. Belgrade made it clear Kosovo Albanians would not be included in the voter rolls, although the day before registration closed, Kosovo Coordination Centre Vice President Nenad Popovic, who is increasingly taking a leading role in Serbia's Kosovo policy implementation, invited Albanians to register, without specifying how or where.

³⁴ "Glavoseca medija u referendumskoj komisiji", *Politika*, 11 October 2006.

³⁵ See the RIK web site: http://www.rik.parlament.sr.gov.yu/cirilica/Sastav_frames.htm.

³⁶ The LDP has no parliamentary deputies, and it is uncertain whether it could pass the threshold in any new elections.

³⁷ OSCE never denied these media reports. "Zelimo nov sistem vrednosti", *B92*, 11 October 2006.

³⁸ *Kurir*, 25 October 2006.

³⁹ See Crisis Group Europe Report N°165, *Bridging Kosovo's Mitrovica Divide*, 13 September 2005, for background.

⁴⁰ Crisis Group watched televised footage of this rally.

President Ivan Stambolic and attempts against Vuk Draskovic. They also demonstrated in front of LDP headquarters chanting "let's kill Cedo [Jovanovic]"⁴¹

The opposition struggled to get its message out. LDP and NGO activists were attacked and beaten as they tried to distribute fliers and put up posters.⁴²

IV. STEALING THE VOTE

On 26 October the RIK announced there were 6,639,385 registered voters in Serbia, not including Kosovo Albanians. This meant that for the constitution to pass, 3,319,693 registered voters had to cast ballots in favour. This was difficult for several reasons, the first of which was the voter register.⁴³ The actual number of registered voters alive and living inside the country may be substantially smaller than the official figure. The problem was illustrated – and reported widely in the press – when a notice advising of eligibility to vote and location of his polling place was sent to Milosevic, who died in The Hague in the midst of his war crimes trial in March 2006. Moreover, turnout in Serbian national elections has been rather low in recent years, ranging between 38.8 and 59.3 per cent.⁴⁴ These facts suggested the government could not be certain of obtaining an absolute majority of the official registration total, even though a survey taken from 12 to 16 October by CeSID indicated the constitution was supported by something over 55 per cent of registered voters.⁴⁵

A. ELECTION DAYS

Serbia has never voted over two days before. The weather was pleasant and warm on 28 October. Throughout the

day the government continued to run television advertisements urging people to vote, while leading politicians actively pressed for a "yes" ballot. At the end of the evening the RIK announced that turnout had been a disappointing 17.81 per cent. It was evident that the national minorities – Albanians, Bosniaks, Croats, Czechs, Slovaks, Hungarians, Roma and others – were staying away, as were most Serbs.⁴⁶

The first sign that the electoral procedures were being deliberately abused occurred in the 100 per cent Albanian community of Veliki Trnovac, a part of the Bujanovac municipality in the Presevo Valley. Because the local election commission consisted of representatives of the national parliamentary parties, they were Serbs. Local Albanians – all of whom appear to have boycotted – began protesting in front of the polling station when they discovered that more than 100 ballots were in the ballot box and that many of them were listed as having "voted".⁴⁷ The poll workers were Serbs.

During the night of 28-29 October, the government held emergency consultations with media representatives as for the first time it began to realise it could lose.⁴⁸ On Sunday, 29 October, all daily newspapers ran patriotic front page stories or advertisements urging Serbs to vote "yes". Editorial content was openly pro-constitution. In the daily *Press*, readers were asked, "are you for the Patriarch or for Lesbians?" A statement by a noted musician expanded the second half of the question to "fags, lesbians, and the other shits"⁴⁹ Another tabloid, *Glas Javnosti*, ran a reader's letter stating that the "boycott is in the service of an independent Kosovo".⁵⁰ Throughout the day television advertisements urged "yes" votes. The most widely-watched station, Pink, showed the film "Battle in Kosovo", while Studio B ran a patriotic/historical show with the martial tune "March on the Drina" in the background. "Battle in Kosovo" is a patriotic film Milosevic had often put on television whenever faced with a political crisis. News shows urged people to go to the polls.

In spite of the unrelenting media barrage and the extra hour of sleep afforded by the change from summer time, by 14:00 only 32.7 per cent of the electorate had voted, a light rain was starting and the temperature dropping rapidly. It evidently would be difficult, if not impossible

⁴¹ Letter from the Helsinki Commission of Serbia.

⁴² LDP activists were attacked on numerous occasions, as were those of the Novi Pazar NGO Urban-In. Crisis Group communications with Urban-In and LDP. Reports of this did trickle into the Serbian press.

⁴³ CeSID research into the system of maintaining voter registers in 2001-2002 revealed there is no central republic-level system; much is left to the individual municipalities. Available at <http://www.cesid.org/programi/izbori/ocena.jsp>.

⁴⁴ The second round of the 2004 presidential elections had a 48.7 per cent turnout, the first round 47.7 per cent. In the December 2003 parliamentary elections, 59.3 per cent voted, close to the December 2000 parliamentary election turnout of 58.5 per cent. The failed 2003 presidential election had 38.8 per cent turnout, largely due to apathy caused by a lack of acceptable candidates. Statistics are from the CeSID web site, <http://www.cesid.org/>.

⁴⁵ The CeSID poll is at <http://www.cesid.org/>.

⁴⁶ Non-Serb minorities make up almost 20 per cent of Serbia's population.

⁴⁷ Crisis Group interviews, Riza Halimi and Marko Blagojevic, 30-31 October 2006.

⁴⁸ Crisis Group interview, source close to the Serbian government.

⁴⁹ *Press*, 29 October 2006.

⁵⁰ *Glas Javnosti*, 29 October 2006.

to top 50 per cent turnout before the polls closed at 20:00. At this point the media ramped up its pressure. Television reported that for the first time ever Patriarch Pavle had voted and that he had voted for the constitution. Text scrolled across television screens on all stations almost without interruption urging people to vote and carrying messages of encouragement from leading politicians, who also warned of dire consequences if the referendum failed. Radical Party General Secretary Aleksandar Vucic said if that happened, the Albanian separatists, Kosovo Prime Minister Agim Ceku and Ahtisaari would rejoice.

During the afternoon, the Helsinki Committee began receiving reports of pressure being put on minority communities in Vojvodina to vote.⁵¹ The most disturbing sign came during the 19:00 media briefing by CeSID, carried live on state television, RTS. After giving turnout statistics, the visibly nervous director, Marko Blagojevic, noted that since 14:00 the behaviour of the workers at the 600 polling stations CeSID was monitoring had shifted dramatically. People were being permitted to vote without picture identification and to vote on behalf of multiple individuals. As he said this, RTS cut back to the studio, interrupting his remarks.⁵² He was unable to give any information regarding the 7,775 polling stations at which CeSID did not have observers.

Other groups also began reporting irregularities. In Novi Pazar, though the polling places appeared to be empty, the city government announced that turnout was well over 50 per cent among Bosniaks.⁵³ An opposition party there that set up video cameras to monitor reported the actual turnout varied between 5 and 8 per cent, depending on the polling place.⁵⁴ Another report was that DS election monitors in Novi Pazar had left the polling places and stood outside, as they did not wish to participate in fraud.⁵⁵ The NGO Youth Initiative for Human Rights (YIHR) observed people who were permitted to vote without identification in other people's names.⁵⁶ The LDP, which had set up its own observers outside polling places, sent in activists with hidden cameras, who recorded how they were able to vote in other people's names without being asked for documents.⁵⁷

Activists from the Lawyers Committee for Human Rights (YUCOM) and the Helsinki Committee of Serbia also reported numerous violations. YUCOM obtained testimony from a poll worker in Pancevo who alleged that other members of the election commission had rounded up heads of Roma households and forced them to vote on behalf of family members who were out of the country or did not wish to vote and had blatantly stuffed the ballot boxes.⁵⁸ In one municipality the president of the municipal assembly visited all polling places on Sunday afternoon to instruct poll workers to begin falsifying ballots.⁵⁹ Numerous credible witnesses reported that the required indelible ink spray was not being applied to voters' hands, nor were ultraviolet lamps being used to check whether people had already voted. They also reported a large late afternoon surge at the polling places, in spite of the cold and wet weather. The government announced it would keep polling places open wherever people were still in line.

The last minute rush was allegedly quite large. According to CeSID, at 14:00 32.7 per cent of the electorate had voted. By 17:00 turnout had climbed to 41.9 per cent, by 19:00 to 50 per cent and in the last scheduled hour to 53.3 per cent.⁶⁰ In spite of this, the main evening news program on RTS at 19:30, half an hour before the polls were to close, reported unofficial information that the referendum had failed.⁶¹ State television never broadcast footage of the large numbers that were subsequently said to have been lined up to vote in the last hours.

The sense of panic inside the government and lack of a clear fall-back option were signalled some fifteen minutes after the polls closed, when it was still uncertain whether turnout had been sufficient to declare victory. Speaker of Parliament Predrag Markovic appeared on television to scold those Serbs who had not voted, hinting that if the constitution did not pass, Serbia would be subjected either to a protectorate or a dictatorship.⁶²

B. THE RESULTS

The media campaign and the sudden surge in irregular voting after 14:00 barely put the government over the top. At 22:00 the RIK announced preliminary results of

⁵¹ Crisis Group interview, Serbian Helsinki Committee director Sonja Biserko.

⁵² Crisis Group monitored this press conference.

⁵³ The EU teams in Sandzak saw few people voting. One saw only two dozen voters over two days. Crisis Group interview.

⁵⁴ Stranka za Sandzak Press Release, Br. 02/117-29-10/06, 29 October 2006.

⁵⁵ Crisis Group interview, with Urban-In director Aida Corovic.

⁵⁶ Crisis Group interview, Andrej Nosov, director of YIHR.

⁵⁷ Crisis Group has a copy of this recording.

⁵⁸ See the YUCOM press release, "Prilog referendumskoj regularnosti", 30 October 2006.

⁵⁹ Crisis Group interview, member of an EU monitoring team.

⁶⁰ All figures are from CeSID, available at http://www.rik.parlament.sr.gov.yu/cirilica/saopstenja_frames.htm.

⁶¹ *VIP*, 30 October 2006.

⁶² "Markovic: Demokratija, diktatura", *B92*, 29 October 2006.

53.66 per cent turnout, 51.46 per cent of total eligible voters in favour. At 22:30 a subdued Kostunica appeared on television to announce that parliament would pass a law declaring the new constitution valid.⁶³ He indicated that the next step would be to pass an election law but made no mention of new elections.

Based on its unofficial monitoring,⁶⁴ the opposition announced that only 49.7 per cent of registered voters had cast ballots, a figure which, if accurate, would have meant defeat for the constitution. The final numbers released by the RIK on 2 November claimed a 54.91 per cent turnout and 53.04 per cent of registered voters in favour.⁶⁵ CeSID extrapolated on the basis of its sample at 600 polling places that turnout was 53.3 per cent, with 51.4 per cent of registered voters in favour.⁶⁶ CeSID Director Marko Blagojevic told Crisis Group any deviation of more than .09 per cent between its numbers and those of the RIK would indicate fraud. Evidence continues to mount of widespread fraud at polling places where CeSID was not present. Although Blagojevic states that the vote would have succeeded without the fraud,⁶⁷ other evidence indicates a different conclusion. Given the lax procedures and blatant violations of the electoral laws, it may never be possible to ascertain how many votes were fraudulent. However, one source from a pro-constitution political party told Crisis Group that by the government's own internal estimates, the actual legitimate voter turnout was under 40 per cent.⁶⁸

If CeSID's projections are accurate, the constitution passed by 95,661 votes. If the RIK is correct, it passed by 202,036 votes. If the opposition is correct, there was not even 50 per cent voter turnout. In order to get the necessary number of votes above 50 per cent that RIK claims, each of the 7,775 polling places that lacked monitors would have had to provide roughly 25 illegal "yes" votes. Persons inside political parties that supported the constitution and who are familiar with what happened told Crisis Group that in addition to blatant ballot box stuffing by poll workers, on the afternoon and evening of 29 November party activists began going from polling place to polling place to vote, often returning to the same polling place as many as ten times and casting numerous ballots at once.

⁶³ This session may be held on 8 November 2006, St. Mithras Day.

⁶⁴ The opposition placed monitors outside most of the polling places to count the number of people who entered.

⁶⁵ Available at http://www.rik.parlament.sr.gov.yu/cirilica/saopstenja_frames.htm.

⁶⁶ Available at http://www.cesid.org/rezultati/sr_okt_2006/index.jsp.

⁶⁷ Crisis Group interviews, with Marko Blagojevic, 30-31 October.

⁶⁸ Crisis Group interview with Serbian politician who asked to remain anonymous.

One large pool of fraudulent votes appears to have been in the Bosniak majority municipalities in Sandzak controlled by Sulejman Ugljanin's Party of Democratic Action: Tutin, Novi Pazar and Sjenica. These three municipalities have a combined electorate of close to 110,000.⁶⁹ Despite the government's announcement in the week prior to the vote that Novi Pazar would receive a university to compete with the institution run by the Islamic Community,⁷⁰ most Bosniaks boycotted. Credible independent observers stood outside polling stations, counted voters and videotaped turnout at some places they could not physically monitor. Their observations indicate that turnout was in some cases less than one quarter of the official figure. Nevertheless, it was announced officially as being nearly 60 per cent overall,⁷¹ which would mean that Bosniaks had a higher turnout than Serbs in the Sumadija heartland – or that possibly as many as 50,000 votes may have been stolen in Sandzak alone.

In Bosniak voting districts actual turnout seems to have been approximately 7 per cent; in mixed Bosniak/Serb districts between 15 and 20 per cent; in Serb districts 35 per cent.⁷² At one polling place 371 persons voted, while the government claimed 1,396. At another 97 voted in contrast to official claims of 768. Polling place #68 in Sjenica had only 2 per cent turnout, while the government claimed 55 per cent. On Sunday afternoon representatives of the pro-constitution parties G17+ and DS actually left a number of polling places and stood outside, as they did not wish to be involved in the massive ballot box stuffing taking place inside by representatives of the DSS, SRS and Ugljanin's SDA. There are also reports of massive vote theft at Bosniak majority polling places in two other Sandzak municipalities, Prijepolje and Priboj.⁷³ In Vojvodina, which has 26 different national minority groups, turnout was also extremely low, although this was creatively augmented on the afternoon of the 29th by pro-constitution party activists and poll workers.

In Kosovo, which always provided a large pool of fraudulent votes for Milosevic during the 1990s, 97,000

⁶⁹ The numbers are an estimate by a member of an international organisation observing the elections. Crisis Group has not yet been able to determine the exact number of registered voters in these municipalities.

⁷⁰ The university was a point of political contention between Ugljanin and Mufti Muamer Zukorlic. Crisis Group Europe Report N°162, *Serbia's Sandzak: Still Forgotten*, 8 April 2005.

⁷¹ Stranka za Sandzak Press Release, Br. 02/117-29-10/06, 29 October 2006, and open letter to diplomatic representatives Br. 01/122-02-11/06, 2 November 2006.

⁷² Stranka za Sandzak open letter to diplomatic representatives, op. cit.

⁷³ Crisis Group interviews, civic activists in Sandzak.

voters were registered for the referendum.⁷⁴ None of the polling places were monitored by UNMIK, CeSID or opposition parties. Kosovo was reported to have had 89.7 per cent voter turnout. There is no doubt that a significant part of this was legitimate, since many Kosovo Serbs saw this as their one chance to express democratically their desire for Kosovo to remain part of Serbia. Nonetheless, even there voter fraud appears to have been rampant. In one large Kosovo Serb enclave, a Serb source spoke of voting by the dead in the thousands.⁷⁵ Another source spoke of substantial fraud in northern Mitrovica.

Give the blatant irregularities at polling places where monitors were present, one must wonder what happened where there were no monitors. CeSid's Marko Blagojevic told Crisis Group the very administrative procedures in force meant the vote was "neither free nor fair",⁷⁶ and he told the Serbian media the referendum was "two steps backwards for Serbia", the worst vote since the Milosevic era.⁷⁷ The opposition has lodged more than 100 separate complaints with the RIK. It appears highly probable the number of legally cast votes was well below 50 per cent.

C. INTERNATIONAL WHITEWASH

Motivated by their desire to promote democracy in Serbia, the Council of Europe, the EU and the U.S. seem to have colluded in undermining it in their uncritical support of the referendum process. In the period leading up to the referendum Serbian media used the general international silence, along with the occasional laudatory comment by uninformed international officials, to promote the constitution. On 25 October, a Council of Europe Monitoring Mission, headed by Political Affairs General Director Jean-Louis Laurens, met with Kostunica and was reported to have said "that the democratic process in Serbia had been promoted in the past period".⁷⁸ The same day the news agency Tanjug quoted Ruairi O'Connell, the deputy head of the UK Office in Pristina as saying that "the referendum on confirmation of Serbia's constitution is an important step forward in the process of breaking away from the era of Slobodan Milosevic".⁷⁹

The only international organisation to call attention ahead of time to the problems was the International Helsinki Federation, whose executive director, Aaron Rhodes, was promptly demonised in *Politika* for its stand against Serbian mistreatment of Kosovo Albanians during the NATO intervention in 1999.⁸⁰ None of the international NGOs operating inside Serbia, many of which are tasked with democracy building, made any objection about either the campaign or the voting; nor did any international donors.

After the referendum, the Council of Europe stated that the vote was "in general, conducted with due respect for Serbia's democratic commitments to the Council of Europe" and noted that "the atmosphere was clearly conducive to a democratic expression of the will of the electorate".⁸¹ Javier Solana, the EU High Representative for the Common Foreign and Security Policy, congratulated Serbia, noting the referendum's "orderly conduct".⁸² The U.S. State Department spokesman, John McCormack, referred to it as "a positive step forward for the Serbian people".⁸³ All these statements were cited by Serbian media as proof that the vote was fair. US Special Envoy Frank Wisner, visiting Belgrade a few days after the referendum, said "the Serbian constitution is a Serbian matter".⁸⁴ France, Germany and Italy issued similar statements, all of which were presented to the Serbian public as international endorsement of the constitution.⁸⁵

What the small number of international monitors saw and what the Council of Europe and EU said in their statements appear to have been worlds apart. One person working for the Council of Europe told Crisis Group the monitors noted that many ballot boxes were improperly sealed,⁸⁶ at least half the polling places were not using ultraviolet lamps to detect double voting and in many polling places the ballot boxes contained ballots that were not validated by signatures on the voting lists. In many places voters were permitted to cast multiple ballots. In at least one instance, Council of Europe monitors found that the number of ballots in the see-

⁷⁴ "Kampanja jedinstvene drzave", *B92*, 10 October 2006.

⁷⁵ Crisis Group interview, local NGO, Pristina, 30 October 2006.

⁷⁶ Crisis Group interviews, Marko Blagojevic, 30 and 31 October, 2006.

⁷⁷ "CESID: Dva koraka unazad", *B92*, 31 October 2006.

⁷⁸ "COE delegation says democratic process promoted in Serbia", Tanjug, 25 October 2006.

⁷⁹ "O'Connell: Referendum is important step forward" Tanjug, 25 October 2006.

⁸⁰ "Razaranje zajednice", *Politika*, 26 October 2006.

⁸¹ "Constitutional referendum conducted", op. cit.

⁸² Press Release S296/06, 30 October 2006.

⁸³ U.S. State Department, press briefing, 30 October 2006, at <http://www.state.gov/r/pa/prs/dpb/2006/75328.htm>.

⁸⁴ Associated Press on www.kosovareport.blogspot.com, 31 October 2006.

⁸⁵ "Serbia gets news, thorough document", Tanjug, 30 October. "Serbia consolidating democratic order with new constitution", Tanjug, 30 October 2006; "Serbian assembly speaker with Italian parliamentarians", Beta, 30 October 2006. All these articles were posted on the web site of Serbia's ministry of foreign affairs, <http://www.mfa.gov.yu/>.

⁸⁶ The Council of Europe press release mentioned this as a minor problem, "Constitutional referendum conducted", op. cit.

through ballot boxes had grown visibly overnight from Saturday evening after the polling place had closed to Sunday morning when it reopened. The poll workers who were in charge of the ballot boxes in the interim had been appointed by political parties favouring the referendum. The Council of Europe monitors outside Belgrade stopped work at approximately 14:30 on Sunday 29 November, about the time the most substantial fraud appears to have begun. A person working for the EU told Crisis Group it encountered nearly identical problems.

The EU and Council of Europe teams, each consisting of two observers, spent Saturday and part of Sunday driving between polling places. They stayed at each for fifteen to 30 minutes and covered fifteen to twenty polling places per day. The small numbers meant they were by no measure capable of fully monitoring the elections and consequently that neither organisation had the capacity to support a claim that the referendum was free and fair.

By sending insufficient numbers of observers and then expressing satisfaction with the referendum, the international community gave Serbia's government political cover to steal the vote. Many Serbs consider the result was fraudulent and are watching in disbelief the reactions from Brussels, Washington and Strasbourg.

The international community's behaviour appears to be the result of a deliberate policy choice, combined with a misunderstanding of Serbia's political scene. Both the EU and U.S. seemed to believe that by maintaining silence on the non-transparent procedures and voting fraud, they would gain new elections by year's end and facilitate a stronger democratic government in which the DS would play a leading role and promote pro-European policies. They hope that such a government could then remain in power for the next four years and keep Serbia's nationalist forces in check when Kosovo gains independence.

This reasoning fails to take into account the ideological positions of Serbia's political parties and their respective electorates, as well as their previous behaviour. Any new government that comes to power in early elections will be led either by the DS or the SRS: neither can form a coalition without the DSS. As is discussed below in Section VI, Kostunica's DSS is ideologically similar to the SRS, and even if it enters into coalition with the DS, the international community will face policy outcomes similar to if the SRS was in government, due to Kostunica's opposition to pro-European policies. This means that early elections will quite probably not have the desired long-term outcome.

The lack of international monitoring and critical response to the referendum – in sharp contrast to the micro-management of the Montenegrin referendum – has sent the wrong message to the western Balkans. The Montenegrin minister of foreign affairs, Miodrag Vlahovic, told Crisis Group: "This is detrimental to the region. It sends confusing signals to other countries and calls into question whether rules matter".⁸⁷

V. WHAT KIND OF CONSTITUTION?

Serbia needed a new constitution badly. The Milosevic-era one was flawed primarily because it made the judiciary subservient to the government and centralised the state – not only the two autonomous provinces, Kosovo and Vojvodina, but also the municipalities – to a high degree. It also enshrined a system of property rights based on socialist ownership and values. It is important for Serbia to rid itself psychologically of the Milosevic legacy but a new constitution also needed to be better than its predecessor, which was written by legal scholars and was half as long. What Serbia got may actually be a step backwards. The document continues many of the negative trends begun under Milosevic: SPS functionary Milorad Vucelic stated publicly during the referendum campaign that the new constitution was a continuation of the old.⁸⁸ Its nature will depend heavily on the judges who interpret it and the politicians who control those judges and the police.

A. THE GOOD POINTS

There are some good provisions. The amendment process is slightly easier, requiring only a simple majority of those who vote in a referendum, no longer a majority of registered voters.⁸⁹ For the first time broad minority and human rights are mentioned and ostensibly "guaranteed".⁹⁰ Municipal governments may now have the right to own their property, although this seems subject to parliament's will.⁹¹ Parliament is empowered to pass a law to abolish the category of "socially owned" property.⁹² It appears that the category of "city construction land", which meant private ownership of land in cities was forbidden, may now also be abolished, although there appear to be numerous possibilities for

⁸⁷ Crisis Group interview, Montenegrin Foreign Minister Miodrag Vlahovic, 30 October 2006.

⁸⁸ "Ustav nastavak onog iz 1990", B92, 14 October 2006.

⁸⁹ Article 203.

⁹⁰ See Articles 18, 19, 23-27, 39-47, 50, 55-59, 61, 75-79.

⁹¹ Article 86.

⁹² Ibid.

delay or non-implementation, depending on parliament.⁹³ But these laws, if passed and carried out, could significantly reduce corruption and encourage investment.

B. THE BAD POINTS

The list of potential negatives, however, is far longer and more serious. Perhaps the biggest concern is that Serbia's behaviour towards Kosovo as dictated by this constitution could well be a cause of further long-term regional instability. The constitution will have to be amended if Serbia is ever to recognise an independent Kosovo. The international community should not expect this anytime soon.

The constitution permits the parliament to restrict all the ostensibly guaranteed rights, opening the door for a dictator to come to power via the parliament; it places the courts – including the Constitutional Court – firmly under government control, while turning the prosecutor's office into little more than a sub-branch of the executive. The parliament can constantly harass the president because a minority of deputies can initiate an impeachment procedure. Centralisation is substantially increased, with the government able to dissolve and appoint municipal councils and mayors. In addition, the constitution is full of internal contradictions.

Whereas Milosevic's constitution defined Serbia as a civic state, Article 1 defines it as "a state of the Serbian people and all citizens who live in it", very much against the European trend of basing statehood on *demos* rather than *ethnos*. The constitution removes the freedom from parliamentary deputies to vote their conscience and makes party loyalty paramount.⁹⁴ In the context of current practice, this means parties, rather than individual deputies, will control parliamentary mandates. Cyrillic is enshrined as the official alphabet; in the Milosevic document the Latin alphabet was also official, and both are in widespread use, with Latin preferred by most minorities, as well as by most Serbs for commercial purposes. The constitution states that "official use of other languages and scripts will be regulated by the law".⁹⁵ The only laws on use of these languages and scripts are from the old Federation and State Union and no longer have legal force. Until such time as the parliament gets around to passing new legislation, use of the Latin alphabet for the Albanian, Bosnian, Croatian,

Czech, Hungarian and other minorities could theoretically be considered illegal.

Serbia's European integration progress could be significantly slowed, as international law and treaties are not automatically accepted as part of domestic law, a significant point of dissent for Deputy Premier Dulic-Markovic.⁹⁶ Should the government decide it wants to work seriously towards European integration, this may slow down adoption of the EU *acquis communautaire*. It is also unclear whether the two clauses discussing this point may be interpreted so as to call into question heretofore accepted treaty obligations that were part of the requirements for Serbia's membership in the Council of Europe.

Human and minority rights⁹⁷ are subject to curtailment by the government under Article 20 on an as-needed basis:

Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. The attained level of human and minority rights may not be lowered. When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.

This clause is so internally contradictory, vague and open-ended that it essentially permits the government to do whatever it wishes. The government's ability to curtail rights is further strengthened by Article 202, which defines authorities during a state of emergency and likewise appears internally contradictory.

Article 44 appears to open the door for the government to ban on the grounds of protecting "family integrity" a religion that gains converts from another religion against the opposition of immediate family members.⁹⁸ The Serbian Orthodox Church and the state media are presently campaigning against "sects", many of which are considered mainstream Protestant churches in the West. In conjunction with the "2006 Law on Churches",

⁹³ Article 88.

⁹⁴ See Article 102. Although this article is seemingly contradicted by Article 5, current practice leaves little doubt which is likely to be considered primary.

⁹⁵ Article 10.

⁹⁶ Articles 16 and 194.

⁹⁷ Articles 18, 19, 23-27, 39-47, 50, 55-59, 61, 75-79.

⁹⁸ Article 44.

which was condemned by the OSCE and the Council of Europe, it is of significant concern.⁹⁹

Article 105 may open the door to a parliamentary dictatorship. The legislature is permitted to declare a state of emergency by a simple majority vote and to rescind human and minority rights during that period. This could be subject to significant abuse as a Kosovo status decision nears.

The presidential oath of office reads: "I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of the Republic of Serbia, including Kosovo and Metohija as its constituent part..."¹⁰⁰ This could present obstacles to establishing normal relations with an independent Kosovo. Any president who dared this could find himself subject to removal by the parliament, which could initiate the procedure by vote of one third of the deputies.¹⁰¹ The SRS is likely to use this to hold the president hostage.

Judicial independence is nearly abolished. Although Article 142 says the "courts shall be separated and independent in their work...", Articles 143-155 clearly dilute independence and make the courts subservient to the government. The office of the prosecutor is also made subservient to the government,¹⁰² and the right of appeal seems sharply curtailed. If one third of parliamentary deputies request, the Constitutional Court must review and decide on the constitutionality of any law within seven days of its passage. If that court declares the law constitutional, subsequent legal challenges to its constitutionality on any grounds appear impossible: "a process of assessing constitutionality may not be instituted against a law whose compliance with the Constitution was established prior to its coming into force."¹⁰³ Constitutional Court terms are limited to nine years (with the possibility of one renewal), and the parliament essentially controls ten of the fifteen appointments, while exercising significant control over the other five.¹⁰⁴

Finally, the government has the power to dismiss democratically-elected municipal assemblies and mayors and to write statutes for cities.¹⁰⁵ In short, the new

constitution is out of step with traditions of European liberal democracy.

VI. THE ILLIBERAL DEMOCRACY

As a Kosovo status decision draws closer, it appears that Kostunica will use the new constitution and the changes he has instituted in Serbia to chart a new course that moves deliberately away from European integration and creates a hybrid, home-grown form of illiberal, authoritarian democracy.

Milosevic's real legacy was to indoctrinate many Serbs with an ideology that is anti-Western and xenophobic, views Serbia as a victim and is based on a populist, Kosovo-centric mythology. Today, 71 per cent of all deputies in the parliament belong to parties that are either openly or covertly anti-Western. Only 29 per cent can be said to represent parties that favour liberal democracy and EU integration. Although Milosevic is gone, new generations are being indoctrinated with his ideology. It is on this foundation that Kostunica is building Serbian democracy.

Although Milosevic has been gone from power for five years, the generation of students under the age of 24 is still heavily influenced by having spent their formative years under his regime. Their world views were formed by Milosevic-era populist propaganda themes that continue to be taught in schools and to form Serbia's broader social and political mindset. Many may have disliked Milosevic and realized they were being lied to but they were never presented with a credible alternative version of the world. Even today, the relative few who attend university are taught by many professors who were appointed on political grounds by the former regime and continue to use the old vocabulary of hatred, particularly in the influential law faculties. Equally troubling, 70 per cent of students under the age of 24 have never travelled outside Serbia, a ratio almost the inverse of the pre-1991 period. Due to EU and U.S. visa restrictions, most will not be able to go to the West. Only 10 per cent obtain university degrees.¹⁰⁶ This younger generation, isolated, under-educated and under-exposed to Western thought, is fertile ground for the radical ideology of populist nationalism that was the heart of Milosevic's regime and which Kostunica seems to share.

⁹⁹ "OSCE, Council of Europe concerned over Serbian Law on Churches and Religious Communities", OSCE/Council of Europe joint press release, 25 April 2006.

¹⁰⁰ Article 114.

¹⁰¹ Article 118.

¹⁰² Articles 156-165.

¹⁰³ Article 169.

¹⁰⁴ Article 172.

¹⁰⁵ Articles 183-192.

¹⁰⁶ "Srbija zemlja s najmanje studenata", *B92*, 23 March 2006.

A. RESURRECTING MILOSEVIC

Since replacing Milosevic as Yugoslavia's president in October 2000, Kostunica has taken a number of actions to rehabilitate his legacy, both by appointments and policy. At the outset this meant protecting Milosevic's top security officers, Chief of the General Staff Nebojsa Pavkovic (now indicted for war crimes by the ICTY) and the head of State Security, Rade Markovic, against the protests of his DOS coalition colleagues. He broke from that coalition in June 2001, rejecting cooperation with the Hague Tribunal.¹⁰⁷ After the December 2003 parliamentary elections, he rejected forming a government with Tadic's DS in favour of an alliance in which Milosevic's SPS agreed to support his minority government.¹⁰⁸ From that time, he has steadily moved Serbia away from the ideals of liberal democracy that form the cornerstone of modern European values.

Since 2004 Kostunica has appointed a number of Milosevic-era figures to positions of responsibility. These include: Aleksandar Tijanic, minister of information under Milosevic, now director of state television (RTS);¹⁰⁹ Aleksandar Vucic of the SRS, also minister of information under Milosevic, now on the board that oversees RTS programming; Vida Petrovic-Skero, noted for her vocal opposition to Djindjic's lustration of Milosevic-era judges, now president of the Supreme Court; Milovan Bozovic, subject to two criminal proceedings and suspended as a municipal prosecutor for one year, now the Belgrade district prosecutor; Ratko Zecevic, SPS party functionary and former municipal prosecutor, now a member of the High Judicial Council.¹¹⁰ The EU visa-ban list from the 1990s contains many other names of individuals once important in the Milosevic regime who are again in positions of public responsibility or have a prominent role in Serbia's economic life.

Kostunica has strengthened state control over the media, as seen during the referendum campaign. It is increasingly difficult to find outlets that are not under the control of the government or state security organs. The first sign of a media crackdown came in 2004, when the widely watched, privately-owned Pink-TV pulled its popular puppet political satire program "Apologize, Never" off the air, due to government pressure.¹¹¹ On three occasions the government attempted to rush amendments to the

"Radio-Diffusion Law" through parliament without consulting media associations and experts or public debate.¹¹² The attacks on the media roused the usually lethargic OSCE office in Belgrade to criticise the proposed amendments.¹¹³ In one instance the amendments were so objectionable that Tadic vetoed them, only to have the veto overridden by the DSS in alliance with the SRS and SPS.

The lengths to which the government will go to control the media were demonstrated when the Radio Diffusion Agency shut down the popular BK television station in a middle-of-the-night police raid in early 2006. This was due largely to the threat the owner's new party, Movement for the Strength of Serbia (PSS), was posing to the DSS. Kostunica's media policies have prompted numerous protests from the Independent Association of Journalists of Serbia (NUNS), as well as from the Independent Society of Journalists of Vojvodina (NDNV) and the South East Europe Media Organisation (SEEMO).

Immediately prior to Easter 2006, Kostunica rushed through the parliament the "Law on Churches", which essentially enshrines the Serbian Orthodox Church as a state church, and could force the closure of a number of denominations that were legally registered under communist rule in Yugoslavia and are viewed as mainstream in the West. Its restrictive nature provoked a joint protest from the OSCE and Council of Europe, as well as from the U.S. Helsinki Commission.¹¹⁴ Donation slips for the Church are now sometimes included in home utility bills. New school history books were introduced for third and fourth year students in which the Holocaust was missing from the section on the Second World War.

Kostunica's administration has created a climate where crimes of the Milosevic era are a relatively taboo topic, and the courts are discouraged from pursuing cases against the accused, except where international and local pressure is overwhelming or where the government sees political gain in its struggle against the Hague Tribunal, such as

¹⁰⁷ Popovic and Nikolic, op. cit.

¹⁰⁸ Crisis Group Europe Report N°154, *Serbia's U-Turn*, 26 March 2004.

¹⁰⁹ Tijanic's appointment caused the governing board of RTS to send in a collective resignation.

¹¹⁰ Popovic and Nikolic, op. cit., pp.306-307.

¹¹¹ Crisis Group interview, an individual associated with the show.

¹¹² See "Seemo Concerned About Amendments To The Broadcasting Law In Serbia", SEEMO press release, 9 August 2006. "ANEM urges parliament to reject hasty amendments to Broadcast Act", ANEM press release, 19 July 2006.

¹¹³ "Serbian Broadcasting Law amendments ought to be withdrawn, OSCE Mission argues in analytical report", OSCE press release 11 August 2006. "OSCE Mission urges Serbian Assembly to avoid hasty adoption of amendments to broadcasting law", OSCE press release, 18 July 2006.

¹¹⁴ "Commissioners Disappointed By Serbian Religion Law", United States Helsinki Commission press release, 26 April 2006. "OSCE, Council of Europe concerned over Serbian Law on Churches and Religious Communities", OSCE/Council of Europe joint press release, 25 April 2006.

the recently begun trial of eight suspects in connection with the early 1999 killing of 40 members of an Albanian extended family by Serbian forces in Suva Reka, Kosovo.

The judiciary is imperilled and under constant government pressure. Nowhere is this more clearly seen than in the Djindjic assassination. After numerous procedural and administrative delays caused by the justice and interior ministries and strong pressure from inside the government, presiding judge Marko Kljajevic resigned in September 2006, claiming strong government pressure.¹¹⁵ Although a retrial has started, two protected witnesses have been killed, and the police have shown little interest in solving the murders. A main indictee, Milorad "Legija" Ulemek, has been permitted to publish novels from prison, one of which was sold through a state-owned bookstore. He and other members of his disbanded special forces unit, the Red Berets, also are accused of two assassination attempts on Foreign Minister Vuk Draskovic in which several persons were killed, and the assassination of former Serbian President Ivan Stambolic. Due to obstruction within the government and police, the case is being retried for the third time, following the higher courts consistent refusals to confirm guilty verdicts.

The continuing support for Milosevic-era ideologies and personnel was best symbolised by the support the government extended the SPS in giving a state funeral in all but name to the dictator himself. Shortly afterwards the parliament paid homage in a minute of silence.

Kostunica is not rehabilitating the Milosevic era wholesale. His government permits a far wider range of political activities and human rights. Nonetheless, he appears to have set the country on a course that is defined largely by a nationalist vision that emerged from the ideological matrix of the Milosevic era. Protection of the wartime legacy – Mladic and Kosovo included – is a higher priority than European integration. The international community will need to be aware of these priorities as it develops Balkans policy and decides on next Kosovo steps.

VII. CONCLUSION: KOSOVO AND THE FUTURE

The referendum's biggest loser was Tadic, who agreed to the constitution on the basis of Kostunica's promise – since reneged on – that early elections would be held by the end of 2006 for both president and parliament. He stands to lose significantly among DS party faithful, and splits are already appearing within the party. The DS has certainly weakened itself in Vojvodina. G17+ also lost.

The vanishing resignations and the split with Dulic-Markovic have shown Dinkic as interested in staying in power at all costs, even if that means abandoning the pro-European platform. One winner is Cedomir Jovanovic, who used the referendum to profile himself and his LDP as centrist, pro-European and democratic, intent on abandoning the nationalist past. The success of his anti-constitution coalition will cause trouble for Tadic and gain a larger following in Vojvodina at the expense of the DS. This could mean that the LDP will enter parliament after the next election. The SRS may strengthen following a Kosovo status decision, although probably not sufficiently to take power without a coalition partner. Provided Kostunica does not join an open coalition and is willing to enter an alliance with the DS, there should be little danger from the Radicals.

Serbia's government still wishes to delay a Kosovo final status decision until mid-2007, although its capacity to do so is becoming increasingly improbable. In order to persuade the international community, it is playing several familiar cards in a game of high-stakes bluff. Belgrade feels that the longer it can delay, the more impatient Kosovo's Albanians will become. It hopes this impatience will translate into violence that will weaken the Albanians' position at the bargaining table.

The first card Belgrade is playing is the West's fear that the ultra-nationalist SRS may come to power in new elections, due to national outrage over "losing" Kosovo. This is targeted at those in Washington and EU capitals who fear the Radicals. The same bluff was used by Milosevic in the 1990s and then again by Serbia's democrats after Milosevic's ouster to avoid international obligations. But the Radical bogeyman is rather false. Polls consistently show that if the democrats are united, they face no significant challenge from the Radicals and could easily form a coalition government immune to SRS pressure.

Although the Radicals frighten many in the international community, they have shown an ability to govern relatively adequately (by Serbian standards) in places such as the Vojvodina city of Novi Sad. The SRS is or has been involved in power-sharing arrangements with national minority parties in both Vojvodina and Sandzak, where their behaviour has been far more pragmatic and less nationalistic than the statements of their national leadership. Nevertheless, the Radicals do not want power now; they want the democratic parties to take the blame for losing Kosovo. A delay could improve their election chances and weaken the democratic parties at the ballot box. The SRS does not appear to want to enter government until it polls 51 per

¹¹⁵ "Kljajević zvanično podneo zahtev", *B92*, 1 September 2006.

cent and can govern without partners.¹¹⁶ Until then it suits them to remain on the sidelines, where they have enjoyed a comfortable quasi-coalition with Kostunica since 2004. They already exert a significant influence on government policy without taking responsibility.

The second card is Ratko Mladic, the man responsible for the Srebrenica massacre. Although required by treaties to arrest and transfer him to the ICTY, Kostunica has thus far refused. Sources within governing circles told Crisis Group in late 2005 that Kostunica will not arrest Mladic and wants him to surrender voluntarily. There also seems to be some lingering hope in Belgrade that Mladic might prove useful as a last minute trump card in Kosovo status negotiations. But on this Serbia may have overestimated EU and U.S. patience.

The third card is the informal offer to create a pre-election coalition of so-called democratically oriented parties, including the DS, DSS and G17+, in exchange for a delay on status until spring 2007. It appears that the international community will no longer accept such significant delays and has also calculated that a delay would not affect the formation of any such coalition. Nonetheless, Serbia is likely to continue to delay early parliamentary elections in the hope of influencing the West on Kosovo.

The one certainty is that no matter what the international community does, Serbia and Serb leaders in north Kosovo plan on hardening the present soft partition in Kosovo along the Ibar River, when either a status decision is announced or Kosovo declares independence.¹¹⁷ The government has long used the Belgrade media to float trial balloons on partition, the most recent on the front page of *Politika* shortly before the referendum.¹¹⁸

It increasingly appears that Kostunica will not meekly accept Kosovo's independence. He appears on a collision course with the EU and U.S. If his tough stance is primarily ideological, as seems increasingly evident, appeals to reason may fall on deaf ears. The new constitution gives him a new arsenal to use in defending Kosovo, most of which could also be used to quell domestic dissent. This could substantially shrink Serbia's narrow political spectrum and force much of its pro-Western political elite to march in lock-step with resurrected Kosovo-centric patriotism or else face accusations of treason. It will certainly narrow President Tadic's scope of manoeuvre.

Serbian strategy for the current phase of Kosovo status discussions could be far more aggressive than anything seen since Milosevic and continue the country's role as a generator of regional instability. This was hinted at in Kostunica's post-referendum interview with Russian state television, when he said, "I warn supporters of independent Kosovo, who at unofficial talks already speak about possible recognition, that such a step will not be without consequences – it will directly influence Serbia's relations with the countries which will recognise Kosovo".¹¹⁹ Following the 3 November visit by Kosovo Premier Agim Ceku to Montenegro, which Serbia interpreted as recognising the legitimacy of Kosovo's democratically elected government, Kostunica stated that if Montenegro failed to respect Serbia's territorial integrity, "the government of Montenegro will bear responsibility for serious consequences in the relations of Serbia and Montenegro".¹²⁰ Radical leader Nikolic called for the suspension of relations with Montenegro and for all Serbs to leave that country.¹²¹

There is a significant probability that this marks the beginning of a rearguard action and that Serbia will use all diplomatic tools at its disposal to prevent Kosovo from gaining recognition from other former Yugoslav republics and neighbouring states, a UN seat and membership in other international organisations. Cutting diplomatic and economic ties with neighbours should not be ruled out. This could prove destabilising for Bosnia, Macedonia and Montenegro.

That the government was unable to mobilise even 50 per cent of the population to vote in the referendum indicates that for many Serbs, Kosovo is no longer a motivational factor. It also indicates that many Serbs were deeply sceptical of how the government passed the constitution. Nonetheless, Kosovo will retain an important role on Serbia's internal scene, which will be chaotic for the foreseeable future. Serbia's politicians will continue to present this as an excuse to delay the inevitable on Kosovo. Belgrade hopes the new constitution and the possibility of early elections will cause the EU in particular to agree to further delays in the status process. The domestic impetus for new elections is still weak and could falter when a Kosovo status decision is made but Kostunica might then use the new constitutional powers to declare a state of emergency.

Should the parties agree on early parliamentary and/or presidential elections, the international community should not expect improvement in Serbia's political life.

¹¹⁶ Crisis Group interview, SRS member.

¹¹⁷ See Crisis Group Report, *Bridging Kosovo's Mitrovica Divide*, op. cit.; Crisis Group Europe Report N°174, *An Army for Kosovo?* 28 July 2006, pp.8-9.

¹¹⁸ "Kiparski model za Kosmet", *B92*, 24 October 2006.

¹¹⁹ "Političari čestitaju građanima", *B92*, 29 October 2006.

¹²⁰ See the Serbian government web site available at <http://www.srbija.sr.gov.yu/vesti/vest.php?id=58920>.

¹²¹ VIP, 6 November 2006, issue 3458.

If the democrats do agree to a governing coalition, it would have to include the DSS, which will continue to press its nationalist ideological agenda and flirt with the radical right. In any democratic coalition government, the DSS would probably repeat the role it played under Djindjic, where Kostunica opposed reforms and sought to preserve the Milosevic legacy. There is also a real possibility it might go into open coalition with the SRS, taking the wraps off an alliance that has long been apparent to analysts. Whatever the final outcome, it is unlikely that even a “democratic” coalition government would deviate substantially from positions espoused by the SRS, due to the influence of the DSS.

The democracy the West wishes to save, however, increasingly bears less resemblance to what was in place three years ago when Djindjic was assassinated. The new constitution reflects the different, more illiberal course Kostunica has set for Serbia. The international community should not be surprised if Belgrade expresses a distinct lack of interest in European integration.

Belgrade/Brussels, 8 November 2006