Constitutionality and the right to self-determination of the Bosniaks as a basis for resolving the status of Sandžak

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Abstrakt
In this paper, by using international documents, the author addresses the issue of resolving the political status of the Bosniaks in Sandžak, i.e. in Serbia and Montenegro. He emphasizes the methods of regulation of ethnic relations through mechanisms of eliminating differences, i.e. mechanisms of managing the differences that exist in modern sovereign multiethnic states. Explains the basic terms - autochthony, constitutivity and constitutionality, and thoroughly analyzes the principle of the right to self-determination and the right to autonomy, in the context of resolving the so-called status of indigenous peoples.

Key words: sovereignty and integrity, autochthony, constitutivity, constitutionality, the right to self-determination, autonomy.

Introduction
Throughout history the ethnic issues have been main cause of various conflicts, and even today present one of the most important concerns of the international community. Due to the unresolved status of the various so-called minorities, minority peoples and indigenous peoples, broke out, and are still taking place, many political, economic, cultural and other conflicts between states, and even real wars. As a result of these conflicts we have disintegration of many multiethnic, complex, federal states, changing boundaries, various humane and inhumane transfer of population, i.e., the demographic movements of population.

The question of Sandžak during the breakup of the former Yugoslavia was one of the issues which has been treated at the
London Conference on former Yugoslavia, where, under the so-called Group for minorities at the Conference, a solutions to resolve the issue of Bosniaks in Sandžak as autochthonous peoples was tried to be found. For this purpose, a special proposal of the then European Community was conformed, which has been accepted by all of its 12 member states, as well as by the heads of all the Yugoslav republics with the exception of Serbia. Under pressure of the Milošević regime, several days after the acceptance of this act, the then President of Montenegro, Momir Bulatović withdrew his signature. Sandžak Bosniaks, through the then Muslim National Council of Sandžak (MNVS), which has also been invited to the London conference, accepted the document as a possible formula for the resolution of the question of Bosniaks in Sandžak, hoping that all the former Yugoslav republics would enter into some kind of a union of sovereign states. However, this attempt for solution of the crisis failed, and the question of Sandžak, after the conclusion of the Dayton Accord, by neglect of the authorities, by neglect of the Bosniak representatives, was placed under the carpet and to date a solution to this problem has not been found.

The task of the Bosniak intellectuals and their political representatives today is to offer their (theoretical) view, as one possible solution to the status of Sandžak and Bosniaks in Serbia and Montenegro.

In this effort, of course, not wanting to give concrete solutions, we are giving a theoretical observation of the possible solutions of ethnic conflicts in the world, accepting the theory of American scholars John McGarry and Brendan O’Leary as given in the book which they edited and entitled: *The Politics of ethnic Conflict Regulation*.

The authors in the book deal with eight methods (eight different policies) for regulation of an ethnic conflict – problems, which are divided into two groups:

1. Methods to eliminate differences: where they ranked genocide, forced mass resettlements, separation and/or secession of territories with the use of the right to self-determination, and integration or assimilation; and,

2. Methods of managing differences: where they placed hegemonic control, arbitration (as third party intervention); cantonization and/or federalization; consociativizm or power-sharing.

Applying the methodology of the aforementioned authors to the case of Bosniaks in Sandžak, we can conclude that the first two methods of eliminating the difference - genocide and forcible transfer of population, unfortunately, through

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1 John McGarry and Brendan O’Leary, *The politics of ethnicity Conflict Regulation*, Routledge, New York, 1995. (Quoted from the brochure *National Minorities*, which is an integral part of the educational and information service for minority rights and inter-ethnic tolerance, which the agency STINA realized with the help of the European Union, in the framework of the European Initiative for Democracy and Human Rights in Croatia, in 2000. STINA www.stina.hr).
the whole of history have extensive application in our region. These two methods often went together, applied as additional mutual means to eliminate the differences in the state, i.e. to eliminate Bosniaks.

In the understanding of these authors “genocide is systematic mass murder of an ethnic collectivity or indirect intentional destruction of ethnic communities by eliminating conditions that allow its biological and social reproduction”. On the other hand, the forcible transfer of population we have "when one or more ethnic communities are physically expelled from their homeland and forced to live in a different area." The two authors point out that "forcible transfer of population is to be distinguished from the agreed exchange of population, which are result of a separation agreement, such as the one between Greece and Turkey after World War II", although neither this agreed relocation "cannot be regarded as agreed." As an example in this case can serve the case of the Palestinians who were expelled from their territory in order to through forcible manner (which is impermissible under international law) in 1948 the state of Israel was created.

Separation and/or secession is (through the use of the right to self-determination), the authors state,"in line with the liberal democratic values of the West. In this manner are successfully resolved the existing conflicts, the disintegration of multiethnic states, and allowing the split of those ethnic communities that do not want to live in the same state".

Integration and/or assimilation, as the fourth method of political regulation of ethnic conflicts "is based on the idea of eliminating ethnic differences through the integration and assimilation of an ethnic community in the new (ethnic) identity." Hence, the "integration aims to create a common civic or ethnic identity", such as for example is the official policy of the advocates of civil rights in the U.S., while the "goal of assimilation is establishment of a common ethnic identity by merging and annulling the difference."

As for the methodological group - Management of differences, and its first method - Hegemonic control, according to the understanding of these authors, it is a "form of ethnic conflict management, applied in multiethnic states." This method means "the state management with a great support of the institutions of coercion (the army and the police) in order to successfully eliminate all ethnic challenges of the government order." Of course, this kind of control is easily implemented in authoritarian regimes, such we had, and which (with small improvements), we even have today in our region, especially in Serbia and Montenegro.

Arbitration as an intervention by third parties, means mixing "neutral" authority of a foreign country and "therefore implies consent of the conflicting parties on agreed compromise in order to reduce the levels of ethnic conflict."
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Cantonization and/or federalization. "Cantonization is considered synonym to decentralization organized on ethnoteritorial basis. In a political system in which cantonization is applied, the multiethnic state is divided into cantons, taking into account the ethnic distribution of the population, so that they present ethnically homogeneous entireties. The cantons are given part of a political power where they have minisovereignty". As examples the authors provide the Aland Islands in Finland populated by Swedes, and South Tyrol in Italy populated by Germans.

Federalism, however, as a form of functioning of a multi-ethnic state, is similar to but not identical with cantonization. The authors state that "federal entities in the federation are territorially larger than cantons, and have more political power." The authors went on to note that "if the component parts of the federation boundaries coincide with the boundaries of the relevant ethnic, religious and linguistic communities, or if there is a 'federal society', in this case, federalism can be an effective way of regulating ethnic conflicts'. The success of federalism of Belgium, Canada and Switzerland is based, according to these authors, "on the historical circumstances of 'reasonable' spatial separation of different ethnic (linguistic) communities." On the other hand, the failure of Yugoslav federalism occurred because of the territory distribution which did not properly respect the ethnic dimension. These problems we have today in Canada-Quebec, Flanders in Wallonia, and we would add Kosovo, Sandžak and Vojvodina in today's Serbia and Montenegro.

In accordance with this methodological approach, we note that, according to the aforementioned authors, political relations between ethnic communities can be organized on the principles of consensual power sharing or consociativism. This methodological group for finding solutions to the ethnic problems in multiethnic state, is based on four main principles: "large coalition government, the principle of proportionality, ethnic self-government and constitutional right of veto for minorities." In order for this model to be successfully implemented, the aforementioned American authors found it necessary to previously "meet at least three basic requirements. First, the opposing ethnic groups must give up their ambition for rapid integration or assimilation of other communities in their own community, i.e. to give up the creation of national state. Second, the political leaders of ethnic communities must be highly motivated to resolve the conflict and preserving the consociational system for many years, and are afraid of the possible consequences of ethnic violence or war. And third, the political leaders of opposing ethnic groups must have a certain political autonomy to be able to negotiate and enter into a compromise without fear of being accused of betraying the nation."

In practice, these methods of solving conflicts and finding solutions are used in various combinations. Nazis and other totalitarian systems have used the...
genocide, some, again, forced relocation of population, some hegemonic control and tyranny to suppress all forms of freedom, etc.

Hereafter in the paper, we will clarify some of the requirements that are necessary so that the Bosniaks in Sandžak, and their political representatives are able to work on finding the best and most democratic solution for their constitutional and political status.

**Autochthony and constitutionality of the Bosniak people as a condition for resolving the status**

Autochthony (lat. old, native, indigenous)\(^2\), means that one nation, ethnicity, minority population (as are the Bosniaks in Sandžak), indigenous minorities, etc., is autochthonous when it is born, i.e., originated in a particular area which it inhabits, i.e. it is "historic people" that is tied to the territory in which it originated, that that territory - territory inherited from his ancestors, that it's not (in the modern sense of the word) immigrant population, that it is not a national or ethnic entity of nomadic character, that it is not immigrant group, nor groups of refugees, outcasts, foreign workers, etc.

In nationally heterogeneous (mixed) states, those national entities that are indigenous, seek to be a constitutive and the constitutional state elements in which they live, and which, most often is not their national - home country. For illustration of this situation, there is the example of Montenegro, where, for example, Serbs and Bosniaks, based on their autochthony, demand to be included in the constitution and defined as constituent and constitutional population of Montenegro, not accepting to be treated as minority.

Autochthony is to be equally understood for civilized European nations, as well as for the autochthonous/indigenous peoples of America, Australia, Africa, Spain, Finland, Greenland, etc. because the rights of the people and respecting of cultural diversity cannot be measured by cultural and civilization development.

**Constitutionality** is a term that derives from the Latin word *constitutivus* = specified, fixed, established, important, objectively valid, component, constituent\(^3\). Therefore, we consider that in this paper, in addition to the concept of autochthony, we need to clarify the concept of constitutionality, and with it certainly to explain the related notion of constitutionality. Specifically, the "constitutionality" as a fact, gives certain elements of subjectivity to the peoples who are constitutive nation, allowing it stronger "bargaining" position, capacity and legitimacy. We also underscore the fact that the Sandžak Bosniaks are constitutive people in their territory, and in the states of Serbia and

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Montenegro in which they live. Therefore, one people, one ethnicity or one minority population, indigenous population, minorities, etc., is constitutive, then when it is recognized and when together with the territory indigenously inhabits, as the territory of its ancestors, objectively is an integral part of a state, constitutes that state, it is its material element and constitutes its statehood substance. The phrase "constituent people" is especially used in nationally heterogeneous countries, such as Bosnia and Herzegovina, Montenegro, or, for example, Switzerland, Belgium, etc. Montenegro is an illustrative example where all the people who live in it, even Montenegrins who consider Montenegro their own nation-state, are statistically below 50% of the total population of the state. Therefore these constituent peoples desire to have their constitutionality arranged by the constitution, to make everyone equal, and that none of them would be treated as minority, although all are "a numeric minority." Also, in these cases, these constituent peoples do not accept that the state in which they live are the national states of one nation nor the state symbols (coat of arms, flag and anthem) are symbols of identity and sovereignty of only one people and they should be imposed on other nations, but they must reflect and contain identification elements of all the constituent peoples who make up this country.

On the other hand the term "constitutionality" comes from the Latin word *constitutio* (constitutional, which is related to the composition and the form of the body, which comes from the body composition). Therefore, the constitutionality of a people means that the people, ethnicity, minority people, indigenous people, minorities, etc., are constitutional category, i.e. that it is mentioned in the constitution, especially in its preamble, but also in the content of the normative part of the very constitution. And this expression is related to constitutivity of peoples, because all nationalities, all ethnic entities, who insist on the constitutionality, also demanded that this fact is entered into the text of the constitution, and in this way they become a constitutional category, i.e. constitutional people.

**Self-determination as a principle of resolving the status of the peoples**

In addition to the presented theoretical, methodological and practical proposals and requirements for finding a possible solution for the Bosniak issue

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4 Bosniaks in Montenegro and the Montenegrin part of Sandžak are, unlike their compatriots in the Serbian part of Sandžak, mentioned in the preamble of the Constitution and „de jure“ their autochthony and constitutionality are admitted, although in practice they don’t have much benefit.

5 M. Vujaklija, Ibidem.
in Sandžak, we consider it very important to process self-determination as a principle, which has been accepted in numerous international documents.

What is broadly contained in the term self-determination is its meaning which includes the right to participate in the democratic process of governance and influencing on the future politically, socially and culturally.

Self-determination means the right of all peoples to determine their own economic, social and cultural development. Self-determination has been defined by the International Court of Justice in the case of Western Sahara as: "the need to respect the freedom of expression of the will of the people".

It is important to emphasize that, when it comes to this right for indigenous peoples, according to some previous understanding, the term self-determination often didn’t imply secession from the state, which has flagrantly breached their right to do so.

However, the fact is that the right to self-determination of peoples is a fundamental principle in international law. It has been involved in the United Nations Charter, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both from 1966. Article 1. of both these International Covenants provides that: "all peoples have the right to self-determination. On the basis of that right they freely determine their political status and freely exercise their economic, social and cultural development."

The right to self-determination was recognized with other international and regional instruments on human rights, such as Chapter 7. of the Helsinki Final Act from 1975, Article 20. of the African Charter on Human and Peoples' Rights, and the Declaration on the admissibility of independence of the colonial territories and peoples, the Declaration on friendly relations and cooperation between countries, etc. The right to self-determination was also confirmed by numerous decisions of the International Court of Justice. Further, the meaning and scope of the right to self-determination were elaborated in the UN Committee on Human Rights and the Committee on the Elimination of Racial Discrimination, as well as by many international lawyers and experts on human rights.

Who is entitled to the right of self-determination

The idea of the right to self-determination is far older than both the Covenants on Human Rights and other international and regional documents.

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6 Western Sahara, Advisory Opinion, (1975) ICJ Reports 12 at 33
It dates from the time of the French bourgeois revolution, and its proper expression is given in the second half of the nineteenth century. However, only during the First World War it becomes the main motto, first of the leader of the October Revolution, Vladimir Ilić Lenin, and then U.S. President Woodrow T. Vilsona. Since its outbreak in the first place, this idea could no longer be eliminated since there have always been situations in which one ethnic or national group excelled the demand for self-determination.

When we talk about the right to self-determination, it is necessary to provide answers to many ancillary questions, for example - for whose right to self-determination we are talking? Who are the people who should decide about themselves? Who is entitled to the rights of self-determination? Whether those are the autochthonous/indigenous peoples, minority peoples, constituent peoples, minorities, ethnic groups, national groups, national communities, or are those just the so-called "historical" and "state-building" nations?

In accordance with the right to self-determination, each state should grant any part of its territory and each ethnic community, each group of its population, which considers itself as people, and guarantee the right to secede from the existing state at any time. This, however, is not the case on the ground. However, there is also a very important question: why the United Nations, i.e. why the governments have in 1966 adopted these two international covenants, as well as some later documents, by which the right to self-determination is guaranteed as the highest and most sacred right of every nation, and at the same time are not willing to guarantee it without restriction.

The internal and the external mode of self-determination

Several attempts are made to eliminate this contradiction. One such attempt is reflected in distinguishing between internal and external self-determination. External self-determination means gaining statehood of the affected areas and peoples who decide towards self-determination, while the internal self-determination is based on finding status within a particular country, that is, the people acquire a certain degree of autonomy. However, such a definition would not suit the formulation presented by Human Rights Covenants. They explicitly guarantee one unrestricted right - the right of peoples to self-determination. Of course, no nation is obliged to accept the norm of self-determination as an imperative. But that does not mean that every nation does

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8 Woodrow T. Wilson, president of the USA from 1913. to 1921, previously university professor and rector, as well as governor of New Jersey, received the Nobel prize for peace in 1919. After First World War played a crucial part on the peace conference in Versaille, whose outcome is largely based on his plan of „14 points“ and participated in the creation of the Society of peoples, but the Senate refused to ratify the Versaille peace accord after which the USA were left out of this first world organisation, ancestor of the United Nations.
not have the right to call upon that right at the appropriate time. If the state, within its own territory, tried to guarantee internal self-determination to some people while it requires external self-determination, then it would in fact mirror the denial of the right to self-determination.

A similar situation applies to the second attempt of defining. It is often said that the self-determination in terms of the right to statehood only "ultima ratio" (the last resort), what is being sought only when a state violates the rights of minorities on their territory.

Based on the postulates presented, it can be concluded that the right to self-determination, or, specifically, guaranteeing statehood to specific groups, in the international law, in a way, has the character of punishment for the country whose territory is split, and it is all because of its unacceptable attitude toward the secession group, while for the secession group the self-determination, in effect, has the character of reward or salvation from unsustainable situation. A democratic society, since the beginning of the colonial system, although "self-determination", the "right to self-determination" or "the right of peoples to self-determination" are demanding programs, should not be against these principles, since it would mean support to a foreign government, subordination, tyranny, discrimination, continuing of colonialism, oppression of the people, genocide, ethnic cleansing, persecution, etc. Because, if the international community once accepts, proclaims and includes in its positive regulation the principle of the right to self-determination, as it did in its documents, then it cannot abandon them anymore because thus it would discredit itself.

Hence, one cannot ignore the fact that the right to self-determination is one of the fundamental principles of the contemporary international law. It is included in the Treaty of Versailles and the other peace treaties concluded after First World War, and then confirmed by a number of important universal and regional international legal documents.

The UN Charter in art. 1/2 specifies that the goals of the United Nations, among other things are:

"... to develop friendly relations among nations based on respecting the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen the general peace."

Likewise, the UN Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), in clause 2 states:

"All peoples have the right to self-determination; on the basis of that right they freely determine their political organization and walk freely through their economic, social and cultural development."
Also, the implementation of two International Covenants from 1966, each in its Article 1., as we have already pointed out, contains the same provision, according to which:

1. All peoples have the right to self-determination. On the basis of that right they freely determine their political status and freely provide their economic, social and cultural development.

2. To achieve their goals, all nations are free to access their natural wealth and natural resources, without detriment to the obligations arising out of international economic cooperation based on the principles of mutual interest and international law. One nation can not in any case be deprived of its own means of subsistence.

3. Member States of the present Covenant, including those countries that are responsible for the management of non-self-governing territories and territories under the trusteeship are obliged to support the realization of the rights of peoples to self-determination and to respect this right in accordance with the provisions of the Charter of the United Nations.

At the universal level, there is also the UN Declaration on the principles of international law concerning friendly relations and cooperation between countries (1970), which, among other things, contain the following provision:

"According to the principle of equal rights and self-determination of peoples, the principle laid down by the Charter, all peoples have the right to determine political status and freely and without foreign interference, and to pursue their economic, social and cultural development, and every state is obliged to respect this right in accordance with the provisions of the Charter."

From the above said it follows that there is no doubt that the right was guaranteed not only by a wide range of international instruments, but it also turned into one of the principles of contemporary international law.

Further clarification of the right to self-determination, gave the Vienna Declaration adopted at the World Conference on Human Rights (1993). It has, on one hand, reaffirmed that all nations have the right to self-determination, and that on the basis of that right may freely determine their political status and freely exercise their economic, social and cultural life, and on the other hand (section 1.2, second paragraph), refine who deserves these rights:

"Keeping in mind the special circumstances in which there are people under the colonial or another form of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate acts in accordance with the Charter of the United Nations, in order to accomplish their inalienable right to self-determination. The World Conference

9 The right to self-determination is guaranteed with other different instruments, such as the Declaration of the UN on inadmissibility of interfering in the internal affairs of states and protection of independance and sovereignty (1965, point 6), Deklaration of the UN on social achievement and development (1965, art. 3/a), African Charter, etc.
The right to autonomy

There is great diversity, of both terms that are used as well as of different meanings that the term autonomy implies. In theory and in practice, it is spoken of personnel, cultural, territorial, and possibly another forms of autonomy. In this connection, the main problem is establishing what exactly one has in mind when one mentions some kind of autonomy for minority or ethnic groups and communities.

There are different views, which for the sake of an illustration, we notice that sometimes in connection with the issue of autonomy and the collective rights of minorities, groups and communities, in particular are singled out:

1) minority based freedom of association on various levels (local, national, international). It is the right of the formation of various minority organizations, including political parties, cultural associations, and various associations. In any case, these are organizations that aspire to in this or that way represent and meet various political, cultural, social and other interests of a minority or a group;

2) personal autonomy, which is a set of rights to ensure equality of opportunity for all citizens, regardless of their minority or majority status. Thus defined it specifically includes: (1) the right of minority self-government (the right of minority citizens to elect their own political, cultural and interest organizations and propose the establishment of new institutions, which would be organized on minority basis), (2) the right to use mother tongue in all situations, (3) the right to use their mother tongue at all levels of education, (4) the right to nurture customs and traditions, (5) positive social and cultural discrimination (i.e., measures of affirmative action), (6) familiarization with the majority nation culture;

3) regional autonomy, which provides a set of relevant legislative within the geographically (and administratively) defined borders. Here we actually have in mind the territorial autonomy. It can work at the local (municipal) or wider (regional) level, and consists in the fact that certain rights, responsibilities and powers of state bodies are transferred to the local, regional, and self-governing bodies.

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10 Krivokapić, B., Ibidem str. 95.
11 Glatz F.: *Minorities in East-Central Europe - historical analysis and a Policy Proposal*, Budapest 1993, pp
Territorial autonomy of minorities is envisaged in the Additional Protocol Draft to the Convention on the Protection of Human Rights and Fundamental Freedoms, concerning persons belonging to national minorities, which is given as a supplement to Recommendation No. 1201 of the Parliamentary Assembly of the Council of Europe (1993). That provision of Article 11 of the Proposals states:

"In areas where they are majority, individuals belonging to a national minority have the right to have the appropriate local or autonomous administrations or are entitled to a special status, which corresponds to a specific historical territorial position, in accordance with the national legislation of the country."\textsuperscript{12}

It should be noted that according to the understanding of the Venice Commission, the international law does not require from the states to provide some sort of special self-government (autonomy) for the minorities on their territory (even if on a part of the territory they are the majority, even a significant majority). If this in turn, is voluntarily made, the states act on the basis of their particular political evaluations and decisions and in accordance with their own laws, not because they are obliged to do so by existing international law. In this context it may be worth to mention euro-regionalism, as a trend of Europe consisting of regions, and as a recommendation from the European Union to all countries that want to be included into this organization.

However, if in our case, we take it for granted that the peoples have right to external self-determination, and that minorities do not have that right, but only the right to internal self-determination, then the question is what about the autochthonous/indigenous or minority peoples, since they are not minorities? Given that the native peoples and their subjectivity (in our case, for example Bosniaks in Sandžak), are essential subject matter in this paper, it is exactly this issue we pay special attention further in the text, and we present some specifics regarding their right to self-determination.

The right to self-determination of Sandžak Bosniaks as autochthonous peoples

It is not necessary to elaborate further here, so we would just like to mention that Sandžak Bosniaks are indisputably autochthonous people, who in the past had their autonomy, and who has and "bears" the acquired right "people" throughout its recent history, and in the former Yugoslavia. These facts we consider undisputed.

However, we wish to emphasize some elements that arise from the most appropriate and the most ample international-legal document so far addressing self-determination - the Declaration on the Principles of International Law

\textsuperscript{12} Ibidem
concerning Friendly Relations and Cooperation among States, in accordance with the UN Charter, widely known as the Declaration on friendly relations of the UN General Assembly, as well as some other documents. This Declaration outlines a number of principles concerning the friendly relations and cooperation between states. One such principle is "the principle of equal rights and self-determination of peoples" (Principle No. 5.), established in the UN Charter. The main part of this principle 5 states:

"(1) On the basis of the principle of equal rights and self-determination of the peoples established in the Charter of the United Nations, all peoples have the right to freely, without interference from outside, determine their political status and to pursue their economic, social and cultural development, and every State has the obligation to respect this right in accordance with the provisions of the Charter ..."

"(4) Establishment of a sovereign and independent state, free association or integration with an independent state or acquisition of any other status freely determined by the people, presents the ways in which these people can apply the right to self-determination...

"(5) Each State has the duty to refrain from any violent action which deprives peoples of the aforementioned actual principle of their right to self-determination, freedom and independence. In the proceedings of opposition and resistance to such a violent act, and in an effort to exercise their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter ..."

"(7) Nothing in the foregoing paragraphs shall be construed as granting any authorization or encouraging any action which would undermine or fragment, in whole or in part, the territorial integrity or political unity of sovereign and independent states, that behave in accordance with the principle of equal rights and self-determination of peoples as described above and therefore have a government that represents the whole people belonging to the territory without distinction as to race, religion or color."\(^{13}\)

When we analyze this Principle 5, we come to the following important conclusions:

(a) First, the right of peoples to self-determination can be applied or generated by particular people, minority people or minorities "to establish their sovereign and independent state";

(b) Second, the right of peoples to self-determination must be interpreted in conjunction with the right of the states to maintain and preserve its territorial integrity, and,

(c) Third, the right of a state to territorial integrity takes precedence over the right of any of its peoples to self-determination, but under the condition that the state behaves in accordance with the principle of equal rights and self-determination of peoples.

It is quite clear that the first conclusion indicates that secession is one of the ways of implementation of the right to self-determination. However, the right to secession occurs only in the cases mentioned in the third point. But the key part of Principle 5, for the subject of our research is paragraph 7, the essence of which is that the territorial integrity of the state is provided only under certain conditions. The main requirement is the obligation of the state to act in a manner that excludes any form of discrimination against groups living within that state. This means that - if the groups are exposed to any form of discrimination, then they have the right to secede. If this requirement of discrimination is met, the international law recognizes the subjectivity to groups and nations in the sense that they have a right to secede and establish their sovereign and independent state.

Interpreting Section 7, we see that it only protects the territorial integrity of the state which is acting "in accordance with the principle of equal rights and self-determination of peoples."

Further, the Section 1, Principle 5 provides that on the basis of the principle of equal rights and self-determination of peoples "all peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respects this right". This means that the behavior of the state has to satisfy the principle which requires of it that "all nations" on its territory are allowed the right to freely determine their political status and to pursue their economic, social and cultural development. Explaining this principle Cassese Antonio states that the state is obligated to provide all peoples an "equal access to government."

On the other hand, if the government does not act in accordance with these principles, its territorial integrity is not protected by Paragraph 7. Following this, it is clear that Paragraph 7 does not provide in an absolute sense the territorial integrity of a state, but it implicitly envisages the creation of a new state or states from the existing state. In other words, this means that Paragraph 7, in certain circumstances, permits secession and creation of the state through secession of certain territory within the existing sovereign and independent state.

The provision of Paragraph 7 was at issue in the case of secession of Bangladesh from Pakistan in 1971. Specifically, the International Commission

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of Jurists on the occasion of the case in their study from 1972, entitled Events in East Pakistan, declared that the right to self-determination and the principle of territorial integrity, contrary to principles, but in the opinion of the Commission Paragraph 7 gives priority to the principle of territorial integrity. However, the commission in this study issued the following statement:

"We believe, however, that this principle is subject to the condition that the government must respect the principle of equal right and that it represents the whole people, without any distinction. If one of the constituent peoples of the state is denied its equal right and there is discrimination against it, we believe that their full right for self-determination will occur again.”\(^15\) It appears that according to the commission, if there are opportunities similar to the situation in Bangladesh, the secession, as the exercise of the nations’ right to self-determination, is permissible.

From the quoted opinion of the committee, it could be understood that the scope of secession under Paragraph 7 is limited by the fact it will be considered that a state fulfills the duty of equal access to the government if it "has a government that represents the whole population belonging to the territory without distinction as to race, religion or color.”\(^15\)

When we talk about this, it can be concluded that it is important to determine the meaning of "race, religion or color" in order to know who falls under the category of groups that, under Paragraph 7, probably could have the right to secede. But no matter what the words "race, religion and color" referred to in Paragraph 7 mean, it is considered that this is only a theoretical question, according to the UN Declaration on the occasion of the UN fiftieth anniversary, which in October 1995 was adopted by the General Assembly of the United Nation. In Article 1. of the United Nations Declaration it is underlined that, among other things it will: "... continue to reaffirm the right of all peoples to self-determination, taking into account the situation of peoples under colonial rule or other forms of alien domination or foreign occupation and recognize the right of peoples to take legitimate actions in accordance with the Charter of the United Nations, in order to realize their inalienable right to self-determination. This shall not be construed as granting any authorization or encouraging any action which would undermine or fragment, in whole or in part, the territorial integrity or political unity of sovereign and independent states, that act in accordance with the principle of equal rights and self-determination of the people as described above, and therefore have a government that represents the whole people belonging to the territory without distinction of any kind.”\(^16\)

\(^{15}\) International Commission of Jurists, 1972, str. 46.
\(^{16}\) Deklaration on the occasion of the fiftieth UN anniversary, adopted on the GAUN 1995.godine.
It can be obviously noted that the quoted article of the Declaration has similarities with Principle 5, especially with Paragraph 7 of the Declaration on Friendly Relations. The main difference between the quoted Article 1 and paragraph 7 is that Paragraph 7 speaks of a representative government, "regardless the differences in terms of "race, religion or color", while Article 1 of the Declaration speaks of a representative government, "regardless of the distinction of any kind". We can unambiguously conclude that, if there was doubt on the scope of the right to secession among the authors and theorists of international law and the counsels in general given in Paragraph 7, the doubts are now removed with the help of article 1 of the quoted Declaration.

We come to a clear conclusion that "any group within the state, who is a victim of unrepresentative discriminatory policy of that state, has the legal right to secede from the state, provided that such law is rooted in the people's right to self-determination ... it is clear that Article 1 anticipates discrimination by the state along ethnic lines. If a particular state denies equal access to the government to all its peoples, it is not acting in accordance with the principle of equal rights and self-determination of peoples and thus its territorial integrity is not absolutely protected by Article 1, and is therefore allowed to secede such national groups."\(^7\)

This theory of limited rights to secession was confirmed by the Canadian Supreme Court in the case of Quebec, when he gave his next paragraph:

"In short, the international law, the right to self-determination, at best, leads only to a right to external self-determination:
- In the case of former colonies;
- When people are oppressed, as occurs under foreign military occupation;
- Or when a separate group was significantly denied access to the government to achieve its political, economic, social and cultural development. In all three situations, the affected people have the right to external self-determination, because he has been denied the ability to exercise their right to internal self-determination."\(^8\)

It is important to emphasize that the right to external self-determination or secession, suggested by a Canadian court in the case of Quebec, in fact is a right that can be done unilaterally, which means that the secessionist group does not need the approval of the state it wants to secede from. The justification of this unilateral secession arises from the circumstances in which it occurred and those are occasions when the government discriminates against its minority group. Such discrimination of the groups takes away from the state the right to

\(^7\) A.Pavković, P.Radan, _Stvaranje novih država, Teorija i praksa otcjepljenja_, „Sl glasnik“, str.355
\(^8\) Quebec Case, _Reference re: Secession of Quebec_ (1998) 2 SCR 217, str. 287.
protect its territorial integrity, as well as any other right to decide whether the secession is allowed or not.

International law theorists have emphasized that the scope of secession as set forth in the Declaration on Friendly Relations ... and the Declaration on the occasion of its fiftieth ..., still do not have some significant importance. For example W. Ofuatey-Kodjoe states that the condition set out in Paragraph 7 "may represent a tiny violation of the prohibition of secession which is prescribed by the United Nations."\(^{19}\)

On the other hand, Karen Knop argues that Paragraph 7 "to some extent supports the opinion that the secession is the ultimate cure for the large disparities in treatment."\(^{20}\)

However, in spite of all attempts to disparage it, the importance of Paragraph 7 no one can dispute. In this sense, Antonio Cassese stated the following:

"Secession is implicitly allowed in the Declaration on Friendly Relations ... when the central government of a sovereign state persistently refuse to grant participatory rights to religious or racial group, largely and systematically tramples on their basic rights and denies the possibility of reaching an amicable agreement within the state structure ... the racial or religious group may secede - thus doing the most radical form of external self-determination - as soon as it becomes clear that all attempts to achieve self-determination have failed or are doomed to failure."\(^{21}\)

In support of this claim, we may list the theorist Frederick Jr. Kirgus who unequivocally states that Paragraph 7 gives the right to secede if the government is "quite unrepresentative," even if the secession can lead to serious destabilization.\(^{22}\)

At the end of the discussion on the right of peoples to self-determination, we would like to briefly mention the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13. september 2007, as the latest document relating to the principle of the right of peoples to self-determination.\(^{23}\) In fact, although non-binding since it is not a contract, this

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\(^{23}\) A/RES/61/295 (The council of the UN Human Rights has adopted an act on 29.june 2006, by which it adopted the draft text of this declaration. The UN General Assembly by its resolution 61/178 from 20. december 2006., decided to defer the consideration and work on the Declaration in order to allow time for further consultations in connection with the declaration
Declaration is the most important act adopted in connection with the rights of the autochthonous peoples, which is directly and exclusively dedicated to these peoples. It is an outline of minimum standards for both state and non-state factors around the world in relation to autochthonous peoples. It also makes unquestionable the right to self-determination does not belong to the so-called "statehood" and "historical" peoples, but autochthonous peoples, which are different from other peoples just for the fact that due to various historical circumstances, have not yet managed to create their own state.

In article 43. of that Declaration it is stated that: "The rights recognized therein constitute the minimum standards for the survival, dignity and well-being of autochthonous peoples in the world."

Article 3. of the Declaration clearly states that: "Autochthonous peoples have the right to self-determination. On the basis of that right they freely determine their political status and freely pursue their economic, social and cultural development." In Article 4., the Declaration underlines that: "Autochthonous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as modes and means for financing their autonomous functions."

If it up to the adoption of this declaration was unclear to whom does the right of peoples to self-determination apply, now this ambiguity is resolved. For, the Declaration explicitly anticipates that right to the autochthonous peoples. It needs to be stressed that this Declaration is part of the universal law on human rights. The basic principles of the Declaration are identical with those from the major international treaties on human rights. We have seen that the Declaration in Article 3 affirms the right of autochthonous peoples to self-determination, using the same common terms used by the provisions of Article 1 of the two International Covenants on Human Rights from 1966. Therefore, any future agreements on human rights will have to be based on this Declaration, as practice already shows, when it comes to autochthonous rights. It should also be noted that the Declaration is not an instrument of a specialized agency that obligates only the states as signatories, but it is the general, universal human rights instrument.

Voting in the UN General Assembly, of this Declaration, has shown that the vast majority of the international community stands behind the Declaration, which is a significant fact in determining its legal force. In this regard, it is significant to emphasize the fact that Article 38 of the Statute of the

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after when in Septembru 2007. Decided to conclude its considerations before the end of the sixty-first session of the General Assembly so the Declaration could be given for adoption what was done on 13.september 2007.)
International Court of Justice, states the sources of international law that the Court will apply, including among them the "general principles of law recognized by civilized nations." This Declaration is precisely formed as "legal principle", considering the "right" as the main concept, and the acceptance of the Declaration around the world, along with a small group of countries that have not adopted it, and can almost be considered as a general measure of "civilized nations."

**Conclusion**

From all the above it can be concluded that the right to self-determination is one of the fundamental rights of every (autochthonous) people or minorities, regardless of whether that nation or minority as such, are recognized by the "territorial" state in which they live. It is not, therefore, decisive as to whether, it is in general a nation or of some sort of racial, ethnic, religious, ethnic or other minority or group. If you meet the conditions laid down by international laws, particularly those mentioned in principle no. 5 of the Declaration on Principles of International Law Concerning the Friendly Relations and Cooperation among States, then the right to self-determination and secession of peoples, groups or minorities is indisputable. Of course, the procedure for exercising the right to self-determination must be respected. It is the most purposeful when these things are resolved by peaceful means and dialogue among the interested parties.

The right to self-determination implies not only the so-called "internal" right of peoples, groups or minorities to determine their political status within the territorial state in which it lives, but also the so-called "external" law, which consists in the authorization of the people, group, or minority to secede their autochthonous territory from the territorial government and create their independent and autonomous nation-state. No matter what that territorial state has been and what is the subject of international law, and which, according to the UN Charter, enjoys the right to maintain its territorial integrity. Since, as we have pointed out, the principle of the right to self-determination is stronger than the principle of the right to maintain the territorial integrity, which is not absolute, provided that certain conditions are met, which we have explained in detail in this paper.

In the international law applies the custom law that when some right, in a way that is required, conflicts with other international legal principles and rights, each of these rights and principles should be measured and balanced in accordance with the intentions of the international law for the maintenance of peace and security in the world. For, why at all costs to keep the territorial integrity of a state, if thus cannot be maintained peace and security neither in this state nor in its environment.
Then how do you reconcile the right of the people to self-determination on one hand, and the right to preserve the territorial integrity of the state on the other side. The participants of the Vienna Conference on Human Rights, held in 1993, noted that while the principle and the right to self-determination have profound ethical and moral roots and are based on the natural law of peoples as an inalienable, God given right, that, on the other hand, is not the case with the principle of territorial integrity of the state. Because the principle of territorial integrity of the state is a product of interest and a stronger law, it's legal, political and pragmatic construction, established for the benefit of the territorial states that were usually established by force and injustice, with the suppression of minority, autochthonous peoples and minorities.

Our brief conclusion derives - Sandžak Bosniaks are autochthonous people. They have the right to self-determination. Their right to be in the range starting from the right to determine their political status within the territorial state in which they live, to pursue their economic, cultural and social development, which implies some degree of territorial autonomy, to complete secession and the creation of their own government, or state in his native territory. Of course, all this is in accordance with international law and democratic standards in the civilized world.