THE IMPACT OF MINORITY RIGHTS MECHANISMS
To Anke, Frits & Rob
THE IMPACT OF MINORITY RIGHTS MECHANISMS

by

Rianne M. Letschert

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PREFACE

The atrocities of the First as well as the Second World War have made it clear that persons belonging to national minorities are often vulnerable and in need of special protection. Legal and quasi-legal instruments adopted after both wars have stated this in many ways. However, it was not until after the fall of the Berlin Wall that the protection of (persons belonging to) national minorities became a really dominant issue in the international legal and political arena. Since then, it has become clear that, on the one hand, minority problems still exist in many ways and will probably cause new eruptions of violence, while, on the other hand, it has become an accepted idea within international legal doctrine and state practice that the way States treat ‘their’ national minorities is no longer a matter of exclusive national jurisdiction. From the beginning of the 1990s, States and their international organisations have started to question seriously how minorities are dealt with, and have developed new instruments and supervisory procedures in order to see how States live up to their obligations: in what sense do they offer protection to minorities; how do they try to bring into balance their own interests with the ones of ‘their’ minorities; and how do they avoid further conflicts by better protecting the interests of minorities?

In this book, Rianne Letschter focuses on three mechanisms in the field of the protection of national minorities: The High Commissioner on National Minorities, established in 1992 by the (then) Conference on Security and Cooperation in Europe, the United Nations Working Group on Minorities, established in 1995, and the Advisory Committee on Minorities, established by the Council of Europe in 1997. The core question raised is whether the three mechanisms, with the variety of approaches and working methods at their disposal, really make a difference in the protection of national minorities. Are their interests taken more seriously and have they been better protected due to the interventions by one or more of the mechanisms? In the words of Rianne Letschter herself: ‘The main issue that has inspired me concerns the question whether the three mechanisms have contributed to a further elaboration and promotion of the rights (and duties) of minorities in general and to a further implementation of minority rights at the domestic level. (...) This book aims to determine the impact of the three mechanisms on the implementation performance of States’ (Chapter 1).

Based on a plurality of sources, analysing the pros and cons of legal and quasi-legal/political instruments, assessing the conditions and factors influencing implementation, and thereby, above all, making use of her own analytical skills and qualities, Letschter comes to a series of very critical observations as to each of the mechanisms. In addition, while rightly underlining time and again the extremely
difficult situations in which these mechanisms have to do their work and having an open eye for the fact that the effectiveness of the mechanisms greatly depends on the cooperation by States, who themselves are often part of the problems the minorities concerned are confronted with, she comes up with a series of extremely valuable, well-thought observations as to a better protection of national minorities. Letschert has done her job in a very critical and balanced way, not falling into the trap of one-sidedness which is so characteristic of many minority rights studies. In doing so, she has made a great contribution to the minority rights literature, which deserves to be read and practised.

Oslo/Tilburg/The Hague, July 2005

Asbjørn Eide
Willem van Genugten
Max van der Stoel
ACKNOWLEDGMENTS

I was brought up on the principle that all persons are equal and that people with different characteristics enrich your life. Together with my passion for international law and international relations, it therefore did not come as a surprise that I decided to write a book on the impact of international minority rights mechanisms that try to induce Governments to implement minority rights.

Three wise men have supervised my study: Willem van Genugten, Max van der Stoel, and Asbjørn Eide. Their critical minds were invaluable. Each of them has contributed in his own way to the finalisation of this project. Willem van Genugten’s trust in my capabilities and his constant support have been a great inspiration and motivation. Max van der Stoel’s detailed and critical comments have given important nuances to several parts of this study. Our trip to Macedonia will always be a warm memory. Asbjørn Eide became part of the supervision team half way; his willingness to share his great expertise on the Working Group and the Advisory Committee has given me crucial behind-the-scenes information on the work of the three mechanisms. I further would like to express sincere gratitude to Anna Meijknecht for her detailed and analytical comments on each chapter. Especially in the final stage of my book, the many discussions with her stimulated me to critically evaluate what I had written. The members of the reading committee were confronted with 550 pages of text. I thank them for reading the manuscript and for their positive comments.

Working in the minority rights field has been both interesting and inspiring. I am impressed by the dedication of the people working for the three minority rights mechanisms. The people representing the three mechanisms with whom I have had the honour to discuss issues pertaining to my study have become true examples of dedication and persistence. The input of John Packer, Marcin Czaplinski, and Dženana Hadžiomerović (former director, former political advisor, and legal advisor to the High Commissioner on National Minorities, respectively) has been truly helpful. Especially the input of Marcin, an expert on both Croatia and Macedonia, has been vital to this study. I am also grateful towards Rolf Ekeüs, the High Commissioner on National Minorities, for allowing me to conduct several months of research at the Office in The Hague. A special word of thanks goes to Ms. Fiona Blyth-Kubota of the Secretariat of the Working Group on Minorities, who patiently provided me with information every time I contacted her and who made the sessions in Geneva something to look forward to. The help of Antti Korkeakivi, Stéphanie Marsal, and Nicola Markes-Goerlach from the Framework Convention Secretariat is also been greatly appreciated.
Other people working in the minority rights field have given greater depth to this study and made working in this field a true pleasure. Chris Chapman and Graham Fox of MRG have introduced me to their colleagues in the field during the Working Group sessions and provided all sorts of information over the years. Thanks also to Ljubomir Mikic of the Croatian Centar Za Mir Vukovar and Albert Musliu of the Macedonian Association for Democratic Initiatives, who have given me further insights into the complex issues in their countries. Harm Hazewinkel, thanks for your support and sharing your great knowledge on the history of the OSCE.

I would further like to thank the T.M.C. Asser Institute in The Hague for financing part of this study as well as several trips abroad. It was good to have nice colleagues and office space in The Hague! Philip van Tongeren, and especially Marjolijn Bastiaans and Mieke Eijdenberg of T.M.C. Asser Press supported me in the important final stage and helped me through it. The Graduate School of the Schoordijk Institute of Tilburg University should also be thanked for supporting my travels and organising several PhD courses. The Netherlands School of Human Rights Research is also gratefully acknowledged for organising the human rights research seminars and other inspiring events.

Ineke Sijtsma and Carol Post have patiently corrected the English spelling and grammar, for which I am truly grateful. Julie Tims of the Tilburg University Library has been a great information specialist. Michelle Möhl has shown accuracy and great commitment by offering her spare time to work on the bibliography.

During the four years of this study, my basis was at the Department of European and International Law of Tilburg University. I found it an inspiring environment which enabled me to further develop myself, not only as a researcher. I thank Saskia Lavrijsen, Susan Mathews, and Conny Rijken for their support and friendship. Especially Susan has been a great help in the final period of this project. I made good use of her critical mind.

Writing a book does not only affect your own life; it affects the lives of friends and family as well. I will never be able to thank my friends enough for their continuing support after having missed so many social events. My family, Anke, Frits, Michel, Johanneke, and Ien, have constantly shown their pride in me and supported me. This gives me another opportunity to tell them that I am proud to be part of their lives. My father should be specially thanked because, without his inspiration, I would probably never have made it this far.

Two persons deserve an entire chapter of acknowledgments. Anne-Marie de Brouwer was my critical ‘sparring partner’ for more than four years. On top of that, her care and friendship has made the sometimes insecure and stressful life of a PhD researcher much easier and more fun. Even though we are no longer sharing rooms, I know our friendship will continue.
ACKNOWLEDGMENTS

Last but not least, my gratefulness for Rob’s patience and never-ending support cannot be expressed in words. He made me realise there is more to life than work, and taught me the things about life I could never have learned from books. I hope he will continue to play that role in the future.

Eindhoven, July 2005

RIANNE LETSCHERT

(The study was completed on 1 May 2005. Only a few important documents adopted after this date are (briefly) referred to.)
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<tr>
<td>AC</td>
<td>Advisory Committee on Minorities (CoE)</td>
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<td>CAHMEC</td>
<td><em>Ad Hoc</em> Committee on the Implementation Mechanism of the Framework Convention for the Protection of National Minorities</td>
</tr>
<tr>
<td>CAHMIN</td>
<td><em>Ad Hoc</em> Committee for the Protection of National Minorities</td>
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<tr>
<td>CARDS</td>
<td>Community Assistance for Reconstruction, Development and Stability (EU)</td>
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<td>CAT</td>
<td>Committee against Torture (UN)</td>
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<tr>
<td>CBSS</td>
<td>Council of the Baltic Sea States</td>
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<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women (UN)</td>
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<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination (UN)</td>
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<tr>
<td>CESC</td>
<td>Committee on Economic, Social and Cultural Rights (UN)</td>
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<tr>
<td>CDCC</td>
<td>Council for Cultural Co-operation (CoE)</td>
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<td>CDDH</td>
<td>Steering Committee for Human Rights (CoE)</td>
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<td>CDMM</td>
<td>Steering Committee on the Mass Media (CoE)</td>
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<td>CIO</td>
<td>Chairman-in-Office (OSCE)</td>
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<td>CLNM</td>
<td>Constitutional Law on the Rights of National Minorities</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CoM</td>
<td>Committee of Ministers (CoE)</td>
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<tr>
<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
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<tr>
<td>CSO</td>
<td>Council of Senior Officials (OSCE)</td>
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<tr>
<td>DH-MIN</td>
<td>Committee of Experts on Questions relating to the Protection of National Minorities (CoE)</td>
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<tr>
<td>DPA</td>
<td>Democratic Party of Albanians (Macedonia)</td>
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<td>EC</td>
<td>European Community</td>
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<td>ECOSOC</td>
<td>Economic and Social Council (UN)</td>
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<td>ECMI</td>
<td>European Centre for Minority Issues</td>
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<td>ECRI</td>
<td>European Commission against Racism and Intolerance (CoE)</td>
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<td>ECCHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>ECHR</td>
<td>Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<tr>
<td>EDAP</td>
<td>European Diversity and Autonomy Papers</td>
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<td>EP</td>
<td>European Parliament (EU)</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUMM</td>
<td>European Union Monitoring Mission</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>EYMI</td>
<td>European Yearbook of Minority Issues</td>
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<td>FCNM</td>
<td>Framework Convention for the Protection of National Minorities (CoE)</td>
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<td>FIER</td>
<td>Foundation on Inter-Ethnic Relations</td>
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<td>FYR</td>
<td>Former Yugoslav Republic</td>
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<td>FYROM</td>
<td>Former Yugoslav Republic of Macedonia</td>
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<td>GAOR</td>
<td>General Assembly Official Records (UN)</td>
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<td>GHM</td>
<td>Greek Helsinki Monitor</td>
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<td>HCNM</td>
<td>High Commissioner on National Minorities (OSCE)</td>
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<td>HDIM</td>
<td>Human Dimension Implementation Meeting (OSCE)</td>
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<td>HRC</td>
<td>Human Rights Committee (UN)</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights (UN)</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights (UN)</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>MC</td>
<td>Ministerial Council (OSCE)</td>
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<tr>
<td>MHC</td>
<td>Macedonian Helsinki Committee</td>
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<tr>
<td>MIRIS</td>
<td>Minority Rights Information System</td>
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<td>MRG</td>
<td>Minority Rights Group International</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights (OSCE)</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>PA</td>
<td>Parliamentary Assembly (CoE/OSCE)</td>
</tr>
<tr>
<td>PC</td>
<td>Permanent Council (OSCE)</td>
</tr>
<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<tr>
<td>PDP</td>
<td>Party for Democratic Prosperity (Macedonia)</td>
</tr>
<tr>
<td>SAA</td>
<td>Stabilisation and Association Agreement (EU)</td>
</tr>
<tr>
<td>SC</td>
<td>Senior Council (OSCE)</td>
</tr>
<tr>
<td>SDSM</td>
<td>Social Democratic Union of Macedonia</td>
</tr>
<tr>
<td>SEEU</td>
<td>South East European University</td>
</tr>
<tr>
<td>SDS</td>
<td>Independent Democratic Serb Party (Croatia)</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>UÇK</td>
<td>Ushtria Çlirimtare e Kosoves (Kosovo Liberation Army)</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
</tbody>
</table>
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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</thead>
<tbody>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>UNPREDEP</td>
<td>United Nations Preventive Deployment Force (Macedonia)</td>
</tr>
<tr>
<td>UNTAES</td>
<td>UN Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (Croatia)</td>
</tr>
<tr>
<td>VMRO-DPMNE</td>
<td>Internal Macedonian Revolutionary Organization-Democratic Party of Macedonian National Unity</td>
</tr>
<tr>
<td>WGM</td>
<td>Working Group on Minorities (UN)</td>
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