

ADVISORY LETTER

THE RECEPTOR APPROACH
A QUESTION OF WEIGHT AND MEASURE

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Introduction

Although the Minister of Foreign Affairs did not mention the receptor approach in his policy memorandum 'Responsible for Freedom: Human Rights in Foreign Policy' of 12 April 2011,¹ it appears to be developing into a key concept of Dutch human rights policy. The Minister has since discussed this approach with the House of Representatives on several occasions, for example during his meetings with the Permanent Parliamentary Committee on Foreign Affairs on human rights, freedom of religion and freedom of speech (14 June 2011) and China (16 November 2011), as well as during the parliamentary debate on the foreign affairs budget (23-24 November 2011). In addition, he referred to the receptor approach in his speech to the UN Human Rights Council on 29 February 2012 and elaborated on the concept in a letter to the House of Representatives on 7 March 2012 (see annexe I).

On 30 June 2011, the House of Representatives adopted a motion on the receptor approach.² This motion points out that, in the interests of effectiveness, the Minister sometimes favours entering into a dialogue with states to ensure that they comply with their obligations, rather than confronting them. It also asks the government to commission a pilot project to determine the practicability of the receptor approach in Dutch human rights policy, with special emphasis on what can be done to ensure that a combination of confrontation and dialogue helps increase the effectiveness of Dutch efforts in the area of human rights.³

During the debate on the foreign affairs budget in the House of Representatives on 23-24 November 2011, MPs Han ten Broeke and Nebahat Albayrak suggested asking the AIV to prepare an advisory report on the receptor approach. During a meeting between the Permanent Parliamentary Committee on Foreign Affairs and the AIV on 15 February 2012, the Committee repeated this request. Furthermore, the abovementioned letter of 7 March 2012 provides the AIV with a sufficient basis on which to produce an advisory letter.

This advisory letter was prepared by the AIV's Human Rights Committee (CMR) and was adopted by the AIV at a meeting on 13 April 2012.

The receptor approach

In his letter to the House of Representatives of 7 March 2012 concerning the receptor approach, the Minister of Foreign Affairs states that the receptor approach emphasises that, while human rights are universal, their implementation is a national matter. The letter also claims that 'most Western states favour a rights-based approach, meaning that they translate their international obligations into national legislation and legally enforceable individual rights.' In contrast, 'when implementing such obligations, non-Western states sometimes opt to make use of institutions outside the legal sphere,

1 Policy memorandum 'Responsible for Freedom: Human Rights in Foreign Policy', House of Representatives of the States General, 32 735, no. 1, 12 April 2011.

2 House of Representatives of the States General, 32 735, no. 21.

3 House of Representatives of the States General, 32 735, no. 19.

such as religious or civil-society organisations, academic institutions, women's organisations and so forth.' After guaranteeing that this does not constitute a challenge to the universal character of human rights, the letter states that 'it is entirely consistent with the principles of international law for these states to make use of local sociocultural institutions to comply with their human rights obligations.' The letter goes on to note that the international community puts pressure on such states to focus exclusively on a rights-based implementation of human rights obligations, which '[can] stand in the way of practical progress' and '[eclipse] local culture and traditional social institutions, which in some cases can serve as effective vehicles for implementing international human rights obligations.' The government thus describes several aspects of the receptor approach without subsequently providing a clear definition of the concept.

The AIV would qualify several aspects of the letter, starting with the phrase 'to focus exclusively on a rights-based implementation'. Besides focusing to a certain extent on the development of law and compliance with existing treaties and other legal agreements, the international community of states has always employed many other approaches. Examples include human rights consultations and dialogues, issuing public statements, delivering demarches, funding civil society organisations (while bypassing the governments concerned), visiting human rights activists, arranging seminars, imposing sanctions, raising human rights violations in the UN Commission on Human Rights (until 2006) and subsequently in the UN Human Rights Council, emphasising the human rights aspects of corporate social responsibility and so forth. These instruments and methods do not fit neatly into Western or non-Western categories. That being said, the AIV believes that it is very important to think *primarily*, or at least simultaneously, in terms of a rights-based approach and the associated enforcement mechanisms, with a particular focus on human rights that aim to protect citizens against abuse of power by their governments and promote rights that are at the core of human dignity. This applies in general to civil and political rights, but also, for instance, to the right of access to food and the right to humanitarian assistance in emergencies.

The AIV would further emphasise that while the view that implementing human rights is a national matter is essentially correct, it may also lead to misunderstanding. Human rights are supranational in character and are also applied by international courts and other international institutions. It is therefore important that their implementation at national level take account of principles and views that have developed at international level. Indeed, the Minister's letter of 7 March 2012 does not rule this out. Furthermore, in the context of this interaction between the national and international levels, attention should also be paid to recent concepts such as the Responsibility to Protect, in particular its second and third pillars. The formal introduction of this concept in 2005 once again confirmed that compliance with human rights is a legitimate concern of the international community in both a normative and a practical sense.

The AIV further notes that the way in which the term 'rights-based approach' is used in the letter of 7 March 2012 appears to present an unsustainable contradiction, because even the non-legal implementation of a human right is ultimately based on that human right, which means that it is also rights-based. An example of the link between legal and non-legal implementation measures appears in article 4 of the UN Convention on the Rights of the Child, which calls on all states parties 'to undertake all appropriate legislative, administrative, *and other* measures for the implementation of the rights recognized in the present Convention' (emphasis added). In addition, the rights-based approach emphasises several normative principles from various human rights treaties (e.g. non-discrimination and the role of the state as the primary bearer of obligations

and responsibilities in the area of human rights) and also centres on the participation of all the relevant parties and on such issues as the public accountability of the authorities. The measures employed to achieve the desired goals in the context of the rights-based approach can therefore be highly varied and go much further than, for example, the exercise of individual rights of complaint.

According to the Minister of Foreign Affairs' letter, this presumed emphasis on legally enforceable individual rights can eclipse local culture and traditional social institutions, which in some cases can serve as launch pads for implementing international human rights obligations. The receptor approach aims to identify and utilise these opportunities. The AIV would note that taking account of the local human rights context is hardly a new concept. In 1998, it produced an advisory report entitled 'Universality of Human Rights and Cultural Diversity',⁴ in which it stated that 'in answering the question of the relationship between cultural diversity and universality of human rights, the first thing to remember is that human rights (...) must always be applied within a specific context.' It also noted that 'although there are great similarities between the various cultures when it comes to human rights, acceptance of the universality of human rights norms does not mean that they have to be applied uniformly in all cases.' In other words, universality does not imply uniformity. In addition, the AIV emphasised that 'the international supervisory system is complementary and in a number of cases allows states a certain degree of latitude in implementing human rights norms.' It also pointed out that 'the extent of this latitude largely depends on the amount of room allowed by international conventions and the associated supervisory mechanisms.' At the time, the AIV referred to this as 'controlled latitude', adding that 'in the case of certain core rights – mainly those in the "non-derogable" category – there can be no such latitude.'

It is beyond the scope of this short advisory letter to further discuss this complex issue, but it should be clear that what is currently referred to as the 'receptor approach' has been part of the global human rights debate for a long time. In its response to the abovementioned advisory report, the government stated that it 'fully agrees with the Council that the objective should not be cultural uniformity', but that in terms of human rights policy it is important 'to find points of departure for defining the relationship between human rights and local cultural norms'. In the government's view, the basic principle is that 'the opportunity to live according to one's own culture, both individually and as part of a group, is an essential part of human dignity', but also that one of the key features of human rights is that 'they transcend national borders, groups and cultures and provide individuals with guarantees for a dignified existence. These guarantees are universal in character and should be applied in all cultural contexts.' Finally, the government noted that 'it is essential to make use of every opportunity to create a local understanding and a local interpretation of human rights while holding on to the principle of universality. In this way, a contribution can be made to the worldwide enjoyment of human rights within a context of cultural diversity.' Although the term 'receptor approach' is not used, the reasoning is identical to that of the letter of 7 March 2012.

In 2008, at the government's request, the AIV produced another advisory report on the universality of human rights, entitled 'Universality of Human Rights: Principles, Practice and Prospects'.⁵ In this report, the AIV stated that human rights can only be achieved

4 AIV advisory report no. 4: 'Universality of Human Rights and Cultural Diversity', The Hague, June 1998.

5 AIV advisory report no. 63: 'Universality of Human Rights: Principles, Practice and Prospects', The Hague, November 2008.

if they are embedded in the local 'vernacular'. 'Cultural diversity should not only be accepted or tolerated, it should also be welcomed, as long as it is in line with human rights norms.' The report also speaks at length about how much latitude states have in applying universal human rights norms. In response, the government noted that 'international law rightly allows scope for culturally determined interpretations of more peripheral parts of the human rights acquis', but that 'at the same time, it must be ensured that local traditions and customs are not used as an excuse for not applying fundamental rights and for casting aside key elements of the human rights acquis, whether temporarily or permanently.' The letter of 7 March 2012, it should be noted, is in line with these words of warning.

In his letter, the Minister states that 'wagging a disapproving finger is not an effective approach', that 'dialogue and concrete cooperation aimed at improving the human rights situation make more sense' and that 'this means opting for communication rather than confrontation.' The AIV agrees that 'finger wagging' is not the preferred option, since it quickly comes across as didactic and patronising, although it should also be noted that the difference between 'finger wagging' (which, based on the above quote, may be taken to mean confrontation) and communication is certainly not always clear. In general, however, the AIV believes that it is possible to call states to account regarding their compliance with universal human rights without giving them a dressing-down (or 'wagging a disapproving finger'). To achieve this, it is important to make as much use as possible of existing legal obligations (so that the debate remains objective), to be alert to real shortcomings and considerations in the countries in question and to pay attention to one's own credibility – to practise what you preach, as the Minister is in the habit of saying and as stated in his letter of 7 March 2012.

The government favours dialogue and cooperation. The AIV endorses this view (with due regard for the caveats outlined above) but also notes that various forms of international and bilateral dialogue and cooperation are often driven by pragmatic and economic motives, which quickly threaten to push fundamental values and norms to the background. Together with its EU partners, the Netherlands should therefore continue to spell out its fundamental positions. In the AIV's view, human rights consultations, public statements and demarches are either part of or complementary to dialogue and cooperation, depending on how one interprets the two. Incidentally, Dutch human rights policy has been combining these instruments for decades, as explicitly stated in the government's first substantial policy document on human rights in 1979.⁶ At that time, the government stated that the need to maintain the stability of East-West relations did not mean that the West should always 'seek to avoid any kind of friction with Eastern European governments' and that, 'in the long term, frictions in East-West relations might [even] have a beneficial effect on those relations.' It is an observation that is still relevant today.

As regards the way in which the receptor approach is applied in Dutch foreign policy, the government states that the Netherlands will continue to employ the full range of policy instruments. The AIV supports this approach but has questions concerning the relative weight of the various means employed. In the AIV's view, the key issue is therefore how these instruments are balanced and measured. Moreover, the introduction of the term 'receptor approach' must not lead to the disappearance of key elements of Dutch

6 'Human Rights in Foreign Policy', House of Representatives of the States General, 15 571, nos. 1-2, 3 May 1979.

human rights policy. For example, an excessive emphasis on the receptor approach could cause human rights policy to focus too strongly on local culture and traditional social institutions, which could marginalise victims of human rights violations involving traditional cultural practices. Victims must remain at the core of human rights policy. Too much emphasis on local institutions also carries the risk that the means – investing in receptors – will become an end in itself, without thought to whether the main goal – guaranteeing universal human rights – is any closer to being achieved. Other states and independent supervisory bodies can play a key role in this regard, from identifying, to challenging and, if necessary, condemning human rights violators. As already noted, if this is achieved using the full range of existing legal instruments and the right tone, it need not involve any ‘finger wagging’.

During the aforementioned debate on the 2012 budget of the Ministry of Foreign Affairs, several members of the House of Representatives observed that applying the receptor approach would put the universality of human rights under pressure. In response, the Minister noted that the issue mainly involved the Netherlands and the European Union holding countries to account under the treaties that they themselves have signed and ratified. The AIV agrees but notes that other countries, which have not ratified these treaties, can and should also be held to account over their human rights records. After all, one characteristic of universality is that the validity of human rights does not depend on the signing or ratification of treaties. Furthermore, in line with its advisory report of 2008, the AIV would again emphasise the importance of complementing the concept of universality with that of the ‘universalisation’ of human rights, which emphasises the process by which those rights come to be realised (but does not relate to non-derogable rights). In its response to this report, the government noted that it considered ‘universality – that is, the conviction that every individual is born with equal rights – to be a matter of fact, which is independent of the extent to which the principle is endorsed’, and that it might indeed be better to use another term – such as the AIV’s ‘universalisation’ – for the process by which those rights are accepted. In essence, universalisation may be described as the process of ensuring, in all possible ways and using the full range of available means, that human rights take root in local cultures, not least because they might otherwise be rejected as foreign objects.

Incidentally, the government’s letter on the receptor approach would have been clearer if it had included an example of a recent situation in which failure to apply the receptor approach constituted a missed opportunity or if it had described a theoretical case in which this approach would have produced the best possible result.

The pilot projects

In his letter of 7 March 2012, the Minister of Foreign Affairs announced two pilot projects designed to further examine the scope for applying the receptor approach. The first project involves helping states comply with their treaty reporting obligations. The second involves the establishment of an academic human rights dialogue between the European Union and China. The aim of the latter project is to determine the extent to which steps could be taken in China to promote the implementation of the human rights treaties to which China is a party. The Minister has announced that he will evaluate the progress of the pilot projects in 2013.

In the AIV’s view, the success of the evaluation depends on the phrasing of the relevant questions. States that receive assistance in drafting their country reports will undoubtedly be able to produce better reports, but the next question is whether this

results in better and more specific monitoring of their compliance with the treaties, and a greater willingness to undergo such monitoring, including a sound balance (from an international law perspective) between the enjoyment and supervision of the latitude described above. Will the evaluation indeed help provide ‘a good framework for testing the validity of the receptor approach’ as the government asserts – which in itself is a valid scientific aim – or is there more at stake, such as the question of whether applying the receptor approach has actually improved the human rights situation in the countries targeted by the pilot projects? As regards the second project, moreover, it would be interesting if it did not confine itself to those agreements that China has ratified (such as the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child) but also looked specifically for openings regarding implementation of the many treaties that China has *not* ratified, such as the International Covenant on Civil and Political Rights. From a scientific perspective, both projects also require a methodologically sound baseline, but this seems impossible to establish in practice. The question is therefore what the final situation will be compared with in order to determine whether the desired effect has been achieved.

Conclusion

The receptor approach is gradually becoming a key concept in Dutch foreign policy. There is nothing fundamentally wrong with its basic premise, namely that it is important to focus on the local context in which human rights obligations must be observed. In fact, this principle has long attracted widespread support, including from the government and the AIV, as evident from previous AIV advisory reports and the government’s responses to them. However, it is important to ensure that the receptor approach is not embraced as the sole or primary approach in Dutch human rights policy. Recognising the importance of local institutions should not distract from the task of ensuring the universal protection of human rights, even – and sometimes especially – when a country has not ratified certain human rights treaties. This highlights the importance of ‘universalising’ human rights. Investing in receptors can be a promising strategy in this regard, but other strategies might be more effective, for example in situations where local culture facilitates human rights violations among certain groups or individuals or where there is no way of knowing whether receptors will actually help to improve the human rights situation.

For some time now, the theory and practice of international human rights policy has been based on the need to strike a proper balance between a rights-based approach, with its associated enforcement mechanisms, and investing in civil society and social institutions. The government would be taking a step backwards if – inspired by a new term for an old idea – it allowed the scales to tip too heavily to one side. The important thing is to strike a good balance and set the right parameters within the broad range instruments that have been part of Dutch human rights policy for decades.

Letter from the Minister of Foreign Affairs to the President of the House of Representatives of the States General, The Hague, 7 March 2012

On 29 June 2011, the House of Representatives adopted a motion submitted by Kees van der Staaij, Klaas Dijkhoff, Harry van Bommel and Coskun Çörüz (MPs) asking the government to commission a pilot project to test the receptor approach (Parliamentary Paper 32 735, no. 19). In response to the request of the Permanent Parliamentary Committee on Foreign Affairs, I am writing to explain my views on the receptor approach and the status of the pilot project.

The receptor approach: main features

The receptor approach emphasises that, while human rights are universal, their implementation is a national matter. Most Western states favour a 'rights-based' approach, meaning that they translate their international obligations into national legislation and legally enforceable individual rights. When implementing such obligations, non-Western states sometimes opt to make use of institutions outside the legal sphere, such as religious or civil-society organisations, academic institutions, women's organisations and so forth. This does not represent a challenge to the universal character of human rights; it is entirely consistent with the principles of international law for these states to make use of local sociocultural institutions to comply with their human rights obligations. Just as cells need receptors to initiate biological processes, these sociocultural points of contact serve as 'receptors' that stimulate a social process aimed at promoting human rights.

The international community puts pressure on such states to focus exclusively on a rights-based implementation of their human rights obligations. This approach can stand in the way of practical progress, since it eclipses local culture and traditional social institutions, which in some cases can serve as effective vehicles for implementing international human rights obligations. The pressure to achieve a uniform method of implementation, which is not prescribed by the various human rights treaties, results in aversion to and alienation from the human rights system in the East and South.

The receptor approach is aimed at highlighting and facilitating the sociocultural implementing solutions that non-Western states employ alongside legal instruments. It also shows how such states can use home-grown solutions to build up their social institutions if these are not adequate to ensure compliance with their international obligations.

The receptor approach is based on the idea that protection of human rights will be enhanced if implementation can be entrusted to local social institutions. These institutions are first identified and then strengthened as necessary. This involves helping institutions carry out improvement measures developed locally rather than simply imposing Western concepts on them.

The receptor approach in Dutch foreign policy

In my foreign policy, the universality of human rights remains the guiding principle. The Universal Declaration of Human Rights sets out the minimum requirements with which governments must comply in their conduct towards their citizens. The Netherlands employs the full range of policy instruments to promote and implement human rights, all within the framework of the Dutch human rights strategy 'Responsible for Freedom'. I believe that Dutch efforts to promote human rights need to be carefully targeted. The watchwords of my policy are therefore effectiveness and selectiveness. My own guiding principle is 'practise what you preach': countries must be held to the international agreements that they sign up to. However, wagging a disapproving finger is not an effective approach. Dialogue and concrete cooperation aimed at improving the human rights situation make more sense. This means opting for communication rather than confrontation. The way in which a state guarantees its people's rights is not important; the fact that they are guaranteed is what matters. I believe that there is room for this approach. We need to look at what is already happening in a given country and try to align with that situation. There is also a role for the embassies here. Many Dutch missions receive delegated funds with which to support local organisations. They work on the ground with local social institutions like women's groups, trade unions, think-tanks and civil society organisations. Promoting ownership and making sure that activities are demand-driven are important principles: only then can we ensure the closest possible alignment with developments on the ground.

Pilot projects

In order to further examine the possibilities for applying the receptor approach, the Ministry of Foreign Affairs is carrying out two pilot projects in partnership with Utrecht University.

1. Assisting states with their reporting requirements under UN human rights treaties

Researchers will assist a small number of states in complying with their treaty reporting obligations by drafting the sociocultural section of their reports in the form of an alternative or shadow report. Owing to its subject matter, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides a good framework for testing the validity of the receptor approach. Researchers will also approach a few countries that need to submit reports under the International Covenant on Civil and Political Rights (ICCPR). It will be especially interesting to see to what extent the receptor approach produces better reporting results in the case of the ICCPR, which enshrines several classic human rights, such as the ban on torture and the prohibition of the death penalty.

2. Establishing an EU-China academic human rights dialogue

An academic network will be set up jointly with Chinese human rights experts from various universities. Utrecht University already has the necessary international contacts and has identified several Chinese and European universities for this purpose. The members of the network will attend seminars on the receptor approach. The aim is to determine the extent to which steps could be taken in China to promote the implementation of human rights treaties to which China is a party. The project will also include a PhD exchange programme. The students will search for social and cultural institutions and traditions in China that could contribute to implementing and developing the country's human rights policies. There is funding for three doctoral dissertations on this subject.

I intend to evaluate the progress of the pilot projects in 2013. Furthermore, as promised during the budget debate, I will organise an expert meeting later this year to further discuss the receptor approach.

Uri Rosenthal

Minister of Foreign Affairs

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