CODES OF CONDUCT FOR MULTINATIONAL ENTERPRISES: USEFUL INSTRUMENTS OR A SHIELD AGAINST BINDING RESPONSIBILITY?

"Feared by some as an undue burden on international business, they are hailed by others as a road to a more equitable international economic order." ¹

INTRODUCTION

In its advisory report "Human Rights and International Economic Relations", the Dutch Advisory Committee on Human Rights and Foreign Policy discusses the potentially positive effects of codes of conduct for multinational enterprises on human rights practices in various countries. The Committee states:

"These are agreements, in some cases among companies belonging to industrial confederations, in some cases among governments, and in some cases between industry and governments. Although the agreements do not impose any legally binding obligations, they may nonetheless exert a certain influence on action by governments, companies and non-governmental organisations." ²

The Advisory Committee’s remarks serve as a starting point for the follow-

following questions: what is the (legal) significance of the codes of conduct, to what extent are existing codes concerned with human rights, and what can be expected from the codes, from the perspective of self-regulation by multinational enterprises? The questions are highly relevant today, given the renewed interest of multinational enterprises—with special but not exclusive emphasis on the Shell Group—in business ethics and human rights issues.

HUMAN RIGHTS AND MULTINATIONAL ENTERPRISES

Internationally recognised human rights include civil and political rights such as the right to be safeguarded against torture, the freedom of speech and the right of association and assembly, as well as economic, social and cultural rights such as the right to adequate food, medical assistance, housing and education. Those rights are laid down in the Universal Declaration of Human Rights of 1948, and have been elaborated upon afterwards in a number of international conventions, for instance, the Convention on Civil and Political Rights and the Convention on Economic, Social and Cultural Rights (both adopted by the UN in 1966), Discrimination against Women (1979), against Torture (1984) and the Rights of the Child (1989). At present about two-thirds of the states are party to these conventions, the Convention against Torture contrasting in a negative way and the Convention on the Rights of the Child in a positive way with 102 and 191 ratifications, respectively. Apart from the UN conventions on human rights, some conventions of the International Labour Organisation deserve mention. We may think of the Conventions no. 87 (Freedom of Association and Protection of the Right to Organise), no. 98 (Right to Organise and Collective Bargaining), and no. 111 (Discrimination (Employment and Occupation)). Both the UN and the ILO Conventions characteristically deal with the relation between public authorities and citizens (and their representatives). They do not provide for a specific role for multinational enterprises. Yet, many links exist between enterprising activities and internationally recognised human rights. We may think of the right to labour (including working conditions), the right to health care, the right of association and assembly, the right to strike, the right to social security, and the prohibition of (modern forms of) slavery (among other things: (extreme forms of) child labour). In this context, the right to (family) life, too, is important, especially when taking into account the way


4 See the annual overview of ratifications in the Netherlands Quarterly of Human Rights, most recently September 1997.