

University of Debrecen

Summary of PhD dissertation

*MNEs in international commerce: problematic of governing laws, jurisdiction
and domicile*

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1. Introduction

Multinational enterprises (MNEs) have gained remarkable importance in international commerce, especially in recent years. The importance of MNEs goes beyond being a primary resource for providing commercial goods, as it has become an entity that affects the economic and political aspects of host countries. Recently, MNEs have been able to integrate effectively into the global economy, which has enhanced the level of political and economic corporations' relations with various countries¹. This inevitably necessitates the creation of laws and political systems that control the relationships of MNEs with the countries concerned.

At a time when competition is increasing between different institutions, MNEs seek to achieve competitive advantage by managing their operations effectively in host countries, and access to modern markets quickly. However, implementing the activities of multinationals in international commerce faces many challenges, such as the different legal standards among stakeholders in the complex international commerce environment in foreign countries. In addition, the national and regional legislation in many countries that witness an expansion in the activity of multinational companies are considered unable to control these activities due to the lack of appropriate regulations that control the work of these enterprises².

Other most common problems that face MNEs are the existed possibility to ignore national jurisdictions due to MNEs special spreading power and the problematic of MNEs governing law according to the special characteristics of the structures of MNEs, where this may result in unfair treated for some involved entities dues to the private enterprises law of MNEs. In other cases, MNEs may bypass and circumvent national laws as these considered less stringent than other laws for both employees and creditors³. Based on these problems; this research aimed to identify governing laws of MNEs in international commerce activities and to investigate the core

¹ Evren Koksall, The impact of multinational corporations on international relations. master thesis, Middle East Technical University, Dec. 2006, p. 25

² Gatto (n 3) 14; Nicolás Zambrana Tévar, 'Shortcomings and Disadvantages of Existing Legal Mechanisms to Hold Multinational Corporations Accountable for Human Rights Violations' (2012) 4 Cuadernos de Derecho Transnacional 398, 400

³ Eroglu, Muzaffer , Liability of Multinational Enterprises for Their Subsidiaries' Torts, PhD thesis, Queen Mary College, University of London, May (2007), p. 35

problematic, jurisdiction and domicile issues in these laws and how MNEs governing laws treated with such issues.

1.1 Research problem

The changing image in which Multinational enterprises (MNEs) operate makes them a dilemma for the contemporary international community, especially as they are operating as a single independent entity after it was composed of a group of entities. MNEs can cause several negative impacts, such as unemployment, overpopulation, and environmental pollution⁴. The MNEs also contributed to pressuring governments and running their own interests by neglecting and bypassing established principles of public international law, such as the principle of sovereignty, the principle of interference in the internal affairs of states⁵. These enterprises have even aspired and acted in the same position and legal standing as ordinary people in public international law⁶.

On the other hand, there were many opinions about the domicile and law applicable to MNEs, especially those that exist in more than one country⁷. Some of these views were based on the spatial standard such as the place of establishment of the enterprise or the place where the company practices its activities. Other opinions have depended on the nationality of multinationals, which is considered as a controversial issue between a supporter of granting the nationality for multinationals and opponents. Several of these issues confirm that MNEs have taken on great importance by economists and politicians⁸, and many opinions have risen about their legal nature, nationality and laws governing them, especially in the context of international commerce, and current study seeks to raise many legal problems about MNEs in international commerce, including the problematics of its governing laws, its jurisdiction and its domicile.

⁴ Bupratkh Naimia, Legal Person of Multinational Companies in Public International Law. Master of Public Law, specializing in international relations and law of international organizations. Montauri Brothers University, Faculty of Law and Political Science, 2011, p.2

⁵ Mohammad Ayub Khan, Challenges for MNEs operating in emerging markets, Tecnológico de Monterrey, México, 2014, p. 4

⁶ Ahmed Abdul Aziz, Jassim Zakaria, Firas Abdul Jalil, multinational companies and their impact on developing countries. Journal of Management and Economics, No. 85, 2010.

⁷ Akindele Oyebode, International Regulation of the multinational corporation: A look at some recent proposals. Assistant Lecturer in Law, University of Lagos, Nigeria, National Black Law Journal, 5(2), 1977, pp. 234

⁸ James Yang and Victor Metallo, the Emerging International Taxation Problems, Int. J. Financial Stud. 2018, 6, 6, p.2

1.2 Research goals

The thesis seeks to achieve the following objectives:

1. To reveal the laws governing the work of MNEs in international commerce.
2. To find the legal problematics concerning with the nationality of MNEs.
3. To investigate the problematics concerning with governing laws of MNEs in international commerce.
4. To discuss the problematics concerning with jurisdiction of MNEs in international commerce.
5. To investigate the problematics concerning with domicile of MNEs in international commerce.

1.3 Importance of the research

The importance of MNEs has emerged after the Second World War, and they have become giant economic entities characterized by the diversification of their activities, products and the expansion of their geographical spread in various parts of the world. As a result of the wide spread of these enterprises and their huge capital, there are multiple laws and regulations governing the work of these companies, and the importance of this study emerges from its focus on finding the problematics concerning with governing laws, jurisdiction and domicile of MNEs in international commerce in international commerce in particular.

On a practical level, this study can assist MNEs and host countries in defining the legal framework governing their activities, thereby determining the obligations of legal firms and host countries. The current study will also encourage legal researchers to conduct more studies related to the current study topic, and it will dictate a new scientific addition that can be used in future studies.

On a personal level, the issue of MNEs is one of the topics that attract most of my attention due to the ambiguity of this phenomenon and the multiplicity of opinions about it for economists, politicians and even socialists. Uncovering the problematics of MNEs governing laws, jurisdiction and domicile in international commerce can help these companies to enhance their level of performance and to act within the specified legal scope.

2. International commerce and its relation to the MNEs

2.1 The concept of international commerce

Countries cannot produce all their needs, no matter how strong their economic and social status, as the surrounding circumstances, whether economic, geographical or political, may limit their ability to do so. Also, states cannot live in isolation, as countries need another country to share with the services and products. Some countries may be distinguished by their ability to produce certain goods that are appropriate to their economic and natural nature, and may exchange them for other products that they cannot produce. This process is called foreign commerce, and if its scope is between countries, it is called international commerce⁹.

International commerce represents one of the commercial methods that enable countries to exchange products, goods and services, as a country produces a certain commodity that is able to manufacture it at a low cost and export it abroad, in return, this country may need another commodity that it is unable to manufacture and buy it from another country that has the advantage of manufactures it¹⁰. Mahmoud emphasized that international commerce helps meet the needs of individuals.¹¹

International commerce includes a set of methods, procedures and laws that the state depends on in achieving certain goals. International commerce includes the movement of goods, individuals and capital, and it arises between the various economic units that exist in different political units.¹²

International commerce represents a link between countries that differ in their policies and economies, and it is based on the premise that countries cannot live in isolation from other countries and are self-sufficient, and this necessitates the necessity of a movement of goods and services between different countries.¹³ Consequently, international commerce refers to the exchange of goods between countries, whether by import or export. The concept of international

⁹ Firas Ashqar, Introduction to International Trade, Jamah University, Faculty of Economics, 2017, p. 3

¹⁰ Mousi Saeed et al., Foreign Trade, Dar Safa Publishing and Distribution, Jordan, 2001, p 13

¹¹ Mahmoud Yunus, The Basics of International Trade, University Press and Publishing House, Egypt, 1993, p. 12

¹² Hamdi Abdel Azim, The Economics of International Trade, Dar Al-Nahda Publishing and Publishing, Jordan, 2000, p1

¹³ Sami Afifi Hatem, Foreign Trade between Framing and Organization, Part I, The Egyptian Lebanese House, Egypt, 1993, p36

commerce emerged due to the expansion in the level of economic exchanges between countries due to the geographical expansion of countries, and it is a concept that differs from the internal commerce that takes place within one country.

2.2 Motives for the emergence of international commerce

The emergence of international commerce is linked to the changes and developments witnessed by different countries in various fields, including economic, social and political. The most important reasons that contributed to the emergence of international commerce can be summarized in the following points:¹⁴

1. Countries have different capacities to produce goods and services
2. Different level of production of countries due to different environmental conditions and factors
3. The weak ability of states to achieve self-sufficiency due to weak economic and environmental conditions or lack of qualified human capabilities.
4. Governments strive to enhance the standard of living of citizens
5. Meeting the desires and needs of citizens.
6. Eliminating the production surplus for the exporting countries

Other researchers divided the causes into economic and political motives. Economic factors include:¹⁵

1. The inability of the local market to absorb production capacities in some countries
2. The technological development that was reflected on the production levels
3. The weak ability of developing countries to invest because of weak financial capabilities and the lack of necessary equipment for that.
4. Marketing opportunities for goods and services are declining due to the difficult economic conditions in the markets

¹⁴ Paul Krugman, *Growing World Trade: Causes and Consequences*. Stanford University, 1995, p. 329; United Nations Conference on Trade and Development, *Evolution of the international trading system and its trends from a development perspective*. Trade and Development Board Sixty-second session Geneva, 14–25 September 2015 Item 6 of the provisional agenda, p.1; Carmen Elena Dorobat, *A Brief History of International Trade Thought: From Pre-Doctrinal Contributions to 21st Century Heterodox Economics*, Research Gate. *The Journal of Philosophical Economic: Reflections of Economic and Social Issues*, Vo.VIII, Issue 2, spring 2015 ISSN 1843-2298, p.113-120

¹⁵ Sami Afifi Hatem, *Foreign Trade between Framing and Organization*, Op cit.

5. The political factors include the desire of some countries to dominate the economy and control of foreign markets

2.3 International commerce and MNEs

The nature of the relationship between multinationals and international commerce is not limited to buying and selling, but also includes enhancing the level of production, increasing the rate of exports, improving the level of foreign commerce in the global market and reducing the level of import to increase countries' dependence on themselves.

Imports are considered an aspect of international commerce that contributes to the formation of the capital necessary to increase the economic level, which contributes to enhancing the level of national product. The strategy of replacing imports is considered one of the strategies that some countries rely on to improve their economic level by producing industries that need large sums of money, thus trying to reduce the import cost borne by countries.¹⁶

As for exports, they are part of the trade balance, which determines the level of state integration with international commerce and, consequently, the level of influence of multinational companies on the production process¹⁷. The policy of promoting exports is defined as a strategy aimed at enhancing the value of exports in order to enhance the competitiveness of companies by enhancing the competitive level of quality products in global markets. There are many methods that can be relied upon to stimulate the level of investment in exports, and including; customs tax exemptions on imported inputs, direct and indirect local tax exemptions on export activities and providing direct support to export industries.¹⁸

Multinational enterprises contribute to enhancing the level of trade balance, which is a key and important factor in diversifying the source of domestic production and reducing the amount of import. On the other hand, the level of the trade balance is related to the level of exports, as

¹⁶ Mohamed Abdel Razzaq, *International Economics and International Trade (Theory and Practice)*. First Edition, University House, Alexandria, 2010, p. 89

¹⁷ Mustafa Rushdi Shiha, *International Markets Concepts, theories and policies*. New University House, Alexandria, 2003, pp.168-170

¹⁸ Ibid.

improving the level of exports affects the level of foreign currencies and improves their level, thus improving the economic situation of the country at the international level.¹⁹

3. Multinational Enterprises definition and characteristics

Several definitions were provided to multinational enterprises, as researchers did not agree on a single definition for these companies.²⁰ The concept of MNEs refers to enterprises that provide multiple services to clients and are distributed in different countries of the world. It also refers to a company located in a foreign country that provides a distinct service or commodity.²¹ MNEs follow the principles of the country in which they are founded. MNEs aim to enhance the capacity of the country in which they are established economically by diversifying their products and improving their ability in a competitive environment²². The United Nations indicated that multinational companies produce goods in countries that are different from their country of origin, and these companies have economic and investment activities in multiple countries.²³

Multinational enterprises consist of more than one company, and these companies are distributed in multiple countries in order to try to reduce production costs in global markets. MNEs strive to choose the most suitable sites to achieve their goals and the most appropriate for the production of their services, or in countries with low tax rates. Multinational enterprises possess a wide range of talents and financial resources that enable them to control their operations, and these companies are constantly trying to improve their position in the global market.

MNEs are characterized by a set of characteristics, the most important of which is that they spread in large geographical areas in the world, and they are considered flexible companies by transferring their resources and financial and human assets from one country to another, also they are dynamic

¹⁹ See; Ibrahim Al-Akhras, *The Role of Transcontinental Companies in China*, First Edition, Itrak Publishing, Publishing and Distribution, Cairo, 2012, p. 294; Noui Walid, *The Role of Multinational Enterprises in the Development of Foreign Trade in Algeria*, Master Thesis in Commercial Science, International Trade, Mohammed Khaydar University, Biskra, 2015, p. 96

²⁰ Hamid Al Jumaili, *Multinational Enterprises and Their Role in International Production*, Journal of Oil and Industry, Issue (1-4), Abu Dhabi, 2004, p. 27

²¹ Mahmoud Khalaf, *Introduction to the World of International Relations*, Dar Zahran, Amman, 1997, p. 176

²² Omar Sakr, *Globalization and Contemporary Economic Issues*, publishing of University House, Cairo, 2003, p. 29

²³

adapting to the changes and developments surrounding, and they are considered one of the most companies adopting technical and technological development.²⁴

4. Regulations of MNEs

There are several regulations that organize multinational enterprises act which can be divided to the National and International Regulations. National Regulations focused on organizing each state enterprise's through following the home country law or by employing a set of common agreed regulations within all MNEs actors. Various problems have faced the national regulations of MNEs such as; multinational enterprises nationality, labor laws, business management laws, accounting laws and double taxation issues.²⁵ Moreover, the unclear condition of MNEs in the national legal side could enable the largest enterprises to maximize their benefit and profits over the less stringent national laws states. Therefore, international laws gain more attention to offer a more restricted MNEs regulation laws.

One of the main international regulations of multinational enterprises is the United Nations International Code of Conduct. This code was developed due to the inability of domestic law to protect all activities of multinational enterprises.

This code attempts to find a healthy environment for investment for MNEs, and offering legal guarantees that protect multinational enterprises rights.²⁶ Furthermore, the MNEs economic power could enable these enterprises to neglect some agreed legalizations either in their home countries, which could as a result harm some smaller enterprises to cover their interests. Moreover, the need for this international regulation significantly appeared after the recognition of MNEs as an international legal personality by the international law. The United Nation code of conduct basically aimed to cover the unemployment issue through leverage the employment ratio, developing the condition and work satisfaction through developing workers conditions and saving their rights especially overcoming wages issue.

²⁴ Ibid.

²⁵ Muthari Samah, Multinational Enterprises and their impact on international relations. Master's thesis in law, specializing in international law and human rights. University of Muhammad Khidr Bashkra, Faculty of Law and Political Science, 2016 , p. 29.

²⁶ Ben Saleh Rachida, International Organization for Multinational Enterprises, Master, Business Law, Faculty of Law and Administrative Sciences, University of Algiers, 2002, p. 82.

It should also be mentioned that the United Nations International Code of Conduct included various fields of codes, including the work globally governing laws, the technology rules, and laws regarding restrictive business practices. Several consumer protection international regulations should be respected by multinational enterprises as the Who ethical standards on pharmaceuticals promotion, and the international code of marketing of breast milk substitutes that employed by the assembly of world health. MNEs also pay a huge attention to follow all agreed legal standards in their promotional advertisements.²⁷ Moreover, multinational enterprises care about the products quality and safety that they produce, share and save.

International regulations of Multinational enterprises also force them to consider their activities impact on environment; as according to some human rights norms, MNEs should operate their practices according to national regulations and international laws and principles that guarantee protecting the operating states environment.²⁸ It should be mentioned here that according to the direct impact of MNEs practices on environment, the United Nations International Code of Conduct also considered this issue significantly.²⁹

Nationalization and compensation are another issue that gain attention from the code; as it attempt to recognize the states right to nationalize and confiscate assets of multinational enterprises operating in its territory.

Another international regulation that governs multinational enterprises activities is the organization for economic cooperation and development (OECD), which clearly indicates the significant role of MNEs in the global economy development. OECD was basically developed according to some states demands to protect their territory toward some MNEs activities. Furthermore, involved states in OECD focused mainly on multinational enterprises according to their believe that MNEs have a direct impact on international investments development.³⁰ A set of guidelines was developed by this entity to achieve some purposes regarding MNEs activities, such

²⁷ United Nations standards on the responsibilities of transnational enterprises, 2004, p. 28; Ben Saleh Rachida, Op cit, p, 86.

²⁸ United Nations standards on the responsibilities of transnational enterprises, 2004, p. 29.

²⁹ Ben Saleh Rachida, Op cit, p, 86.

³⁰ Pieter Sanders, Implementing International Codes of Conduct for Multinational Enterprises. The American Journal of Comparative Law, Vol. 30, No. 2 (Spring, 1982), pp. 241-254, p. 245.

as³¹; enhancing the economic climates and ensuring the economic and social developments for all concerned countries in multinational enterprises, and to find solutions and overcoming risks for all expected and real problems that could face these enterprises. This declaration basically aims to enhance the foreign investment opportunities, and covering issues that are related to the direct activity of these entities. OECD share the same objectives of the United Nations International Code of Conduct as they both aim to cover the obstacles and issues that face these enterprises and providing guidelines to avoid such obstacles and their consequences.

OECD guideline includes four main sections which are, the general principles section, the international investments section, the MNEs national treatment, and the reasons and issues could face MNEs international investments.

Although all above national and international efforts to govern and regulate MNEs activities in various aspects, but still there is a need to generate an international institute that produce clear legal norms that govern its practices.

4.1 The status of multinational enterprises in commerce exchanges

The role of multinational enterprises in international commerce represented from the fact that MNEs have various production entities in various areas all over the world. For instance, in 1970s, MNEs held a huge volume of growing dill exported products which approximately comprise 30% of 6 new industrialised countries exports and more than 90% of some least developed states exports like Singapore.³² MNEs seek to make a cheap labor investment to generate a higher profit rates, and to enhance the chances to create free zones to attract more developed countries within MNEs polices which accordingly could enable them to take benefit from low taxes and take advantage of some of the more related lenient procedures.³³

Several regulations have developed for the purposes of regulating MNEs when they operate within international commerce exchanges. International business law is the basic MNEs regulations in international commerce exchanges. Another important regulator of MNEs within international

³¹ Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law. Master of Laws, Branch of Business Law. Faculty of Law and Commercial Sciences, 2006, 75.

³² Michael Rainelli, le commerce international, 9eme édition, édition la découverte, Paris, 2003, p 1.

³³ Fadel Muthana preferred the possible effects of the World Trade Organization (WTO) on the foreign trade of developing countries. Madbouli Library, 2000, Cairo.

commerce activities is the “General Agreement on Tariffs and Trade (GATT)”.³⁴ GATT Agreement contains several basic principles such as transparency principle, the developing countries increased participation principle, the trade negotiations principle, and reciprocity principle and (MFN) most favored nation principle.³⁵

Transparency principle indicates the reliance on customs tariffs, such as quality, in spite of relying on the quantitative restrictions, such as product quantities, for the purposes of evaluating international commerce performance.³⁶ The developing countries increased participation principle indicated the encouragement of developed countries to participate in international commerce practices according to some commitments.³⁷ While the trade negotiations principle declared that the main responsible of disputes settlement of MNEs in international exchange is The World Trade Organization.³⁸ Reciprocity principle also clarified that the convention member states liberalize international commerce according to reciprocity negotiations framework.³⁹ And regarding the most favored nation principle indicates the non-discrimination of foreign services suppliers according to market access and operation status. This section of the paper provided an overview of the regulations that governed MNEs activities and practices, and the following section will summarize the basic problem that faces MNEs in their international commerce activities.

5. Problems of the operation of MNEs

The idea of international commerce has been spread widely in different states, and MNEs are one of the main types and powerful entities in the world. There are several problematics MNEs face while performing their activities, and the following sections summaries these main problems.

³⁴ Osama al-Mahdoub, *Jatumasr and the Arab countries from Havana to Marrakas 1947-1994*.

³⁵ Abdulmutallab Abdul Hamid, *GATT and WTO mechanisms: from Uruguay to Seattle and Doha*. University House, Alexandria, 2003, p. 87

³⁶ Mohammed Salim Al Harbi, *World Trade Organization, Arab Lawyers Forum, 2009*.

³⁷ Laith Khatib, *WTO issues and their implications for Jordan and Arab countries*. Submitted to the World Trade Organization Program, University of Jordan. College of Foreign Languages, 2011, p. 16.

³⁸ *Ibid*, p. 17.

³⁹ Mohammed Salim Al Harbi, *World Trade Organization, Op cit*.

5.1 Problematics concerning with the laws that regulate MNEs practices in international commerce

There are several issues that face MNEs regulations and laws. One of these issues is the unclear and contradictory situation of these enterprises under the international law regulations; as although the powerful role this law over MNEs it has little governance over some small national institutes that could be a part of the MNEs. Furthermore, the problematic in the laws that regulate the international commerce activities and practices of MNEs could be summarized through the conflict between these governing laws; which indicates the existence of multiple legal regulations in each state which could generate several disputes over the involved states legalization rules and its differences.

Therefore, the conflict of MNEs laws can be represented from the rules of attribution that refer to the applicable law regarding conflict, which is characterized by international patterns, and to solve this problem, states usually follow some legal rules that are recognized as conflict of laws or rules of attribution, which represents the laws that direct the judge to Applicable and laws must follow the special legal centers that include a foreign entity.⁴⁰

The conflicts of MNEs laws also came from the legal competitiveness of legal governing entities over these enterprises activities, or according inadequate place or time for employing the agreed laws over MNEs.

Moreover, according to the enlargement of MNEs amounts and its universal commerce transactions⁴¹, this could cause various issues while performing their operations as week governance strategies, conflicts in governing laws and contradiction in the human rights.⁴²

Therefore, we can conclude that the main MNEs problematic are the variance in the rules, regulations and international principles that govern and regulate the activities of MNEs. On the

⁴⁰ Maher Ibrahim Al-Sadawi, Principles of Private International Law: Conflict of Jurisdiction in International Judiciary, Without Publisher, 1981, p38

⁴¹ UNCTAD .Word investment report 2010. Retrieved from http://unctad.org/en/Docs/wir2010_en.pdf 2013. Accessed in: 5-6-2018.

⁴² Tan, J. Multinational Corporations and Social Responsibility in Emerging Markets: Opportunities and Challenges for Research and Practice. Journal of Business Ethics, 2009.

other hand, the inability of national and regional laws to totally protecting the MNEs international commerce activities from harmful acts fulfills the necessity of the existence of international laws.⁴³

Last and not least, it must be mentioned that the efficiency of MNEs regulations domestic law is not proved so far, nor the effective role of international laws is not clear.

5.2 Problematics concerning with jurisdiction of MNEs in international commerce

The jurisdiction problems can be defined as those problems that face MNEs when performing their activities in international commerce, and which directly impact the involved MNEs liability. As international commerce activities expands to a wide borders, legal disputes spread further, and the main responsible entity in resolving this international controversies is the national courts.

Jurisdiction issue mainly focused about the court location and type that is concerned about resolving these issues, which is realized as a complex process due to the recent globalization phenomenon which affecting law sector.⁴⁴

The main jurisdiction issue became from the fact that some states add some special jurisdiction laws and regulations to save their power of judicial although the proved success of international jurisdiction rules.⁴⁵ Thus, the process of assigning the proficient court in the conflicts between international commerce activities considered as a complex process for all involved entities.

On the other hand, novel jurisprudence proves the jurisdiction state right with regard to the double-functional theory. That explains the internal jurisdiction over each state society, additionally to determine the foreign center legal rules. This generated from the shortage of a unified legal system.

⁴³ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse theory of Law and Democracy*, Cambridge, MA: MIT Press, 1996.

⁴⁴ N. Hatzimihail and A. Nuyts, 'Judicial Cooperation between the United States and Europe in Civil and Commercial Matters: An Overview of Issues', in *International Civil Litigation in Europe and Relations with Third States* (2005), p.25, and P. Wautelet, 'What Has International Private Law Achieved in Meeting the Challenges Posed by Globalisation?', in *Globalisation and Jurisdiction* (2004), p.56.

⁴⁵ P. Berman, 'The Globalization of Jurisdiction', 151 *University of Pennsylvania Law Review* (2002), 311-545

The international jurisdiction conflict defined as the simultaneous jurisdiction of multiple state courts that lead to the international jurisdiction conflicts. Therefore, jurisdiction conflicts came after specifying the applicable law and the court that solve these conflicts.

From all above, we can conclude that international jurisdiction conflict came from conflicts that existed between two or more states to cover issue and solve disputes between legal entities. National judiciary considered as the main jurisdiction in several areas of conflict.

Last and not least, here we should clarify that private international law focuses directly on rules conflicts between exited laws rather than focusing international jurisdiction⁴⁶. In general, only little unification of international jurisdiction has been covered world-wide in international commerce fields.

5.3 Problematics concerning with domicile of MNEs in international commerce

Domicile is considered as another shape of the jurisdiction problems as each parent company has an issue that can be represented in the right of each parent state of the company domicile legal status, for example, in act 18, 1982, and according to the Civil Jurisdiction and Judgments law, the companies domicile belong to UK is the parent state of the company is UK, or it has a registered office in UK or its creation was established under the law of UK.

Additionally, Brussels Convention article 53⁴⁷ clarified that company's domicile presented through the private regulations of international law⁴⁸. Furthermore, company seat is considered as the main representor of the company domicile, which is defined by the court of private international law that is considered as the UK incorporation doctrine.

The main concern of company's domicile can be defined with the existence and location of Defendant Corporation, as the corporation must be subjected to the judiciary and attends the jurisdiction during the legal proceedings starting. Some appeal court suggests accepting the

⁴⁶ A. Miaja de la Muela, 'Les principes directeurs des regles de competence territoriale des tribunaux internes en matiere de litiges comportant un element international', 135 *Recueil des cours*, 1973, p.41-42.

⁴⁷ Darcy LC and Murray B, *Cleave Schminhoff's Export Trade* (Sweet & Maxwell, London, 2000, p. 442

⁴⁸ 1982 Civil Jurisdiction and Judgments Act art. 52(1)

appearance of some subsidiary institutes in the foreign jurisdiction instead of the parent institute while adding some conditions and restrictions.⁴⁹

In summary, it is considered a complex process when determining the MNEs companies' domiciles as there is no any unified legal entity for determining MNEs legal domicile. Therefore, it is considered impossible approach to determine domicile and jurisdiction of MNEs.

Concluding remarks

Multinational enterprises contribute to enhancing the level of trade balance, which is a key and important factor in diversifying the source of domestic production and reducing the amount of import. It also clarified that there are several definitions were provided to multinational enterprises, as researchers did not agree on a single definition for these companies. Multinational enterprises consist of more than one company, and these companies are distributed in multiple countries in order to try to reduce production costs in global markets.

The study also concluded that there are several regulations that organize multinational enterprises act which can be divided to the National and International Regulations, and specifically, there are several regulations have developed for the purposes of regulating MNEs when they operate within international commerce exchanges. In conclusion, there are several issues that face MNEs regulations and laws which can be caused mainly due to the governing laws conflicts, MNEs jurisdiction and domicile in international commerce. the research recommends the need to create an appropriate environment for multinational enterprises, which is a key source of political, economic and security stability in the country, and to make the laws of attracting multinationals more transparent in their all activities.

⁴⁹ Baughen S, 'Multinationals and the Export of Hazard' (1995) 58 MLR 54