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MULTINATIONAL ENTERPRISES IN INTERNATIONAL COMMERCE: PROBLEMATICS OF GOVERNING LAWS, JURISDICTION AND DOMICILE

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1.0 Introduction

Multinational enterprises have played an essential role and gained a special importance in international commerce and investments all over the world in recent years[1]. The role of multinational enterprises exceed the common recognized act of being the basic supplier of commercial goods for customers to become an influencer entity that have a political and economic impact in hosting countries. MNEs are considered powerful institutes as they possess significant resources that exceed most nation's government assets. These institutions participate widely in international commerce and are integrated deeply in the world economy. Such internationally economic integration made this enterprises have a strong political and economic inter relations between different nations all over the world. Therefore, the need for an influenced political regulations and laws considered as a necessary to control the relations and transactions between involved states in MNEs[2]. The basic known definition of a MNE is an enterprise that has activities, transactions and partners in several countries. In legal definition, multinational enterprises can be defined as a set of institutes that has its own domicile, special juridical planning but they all share in somehow in a combined legally control system that manages their practices[3].

There was a noticeable growth of MNEs in past years. For example in 2010, the number of MNEs reached to 82 thousand enterprises all over the world. MNEs seek to achieve competitive advantage by running their operations in other countries that have developed assets, knowledge, market access and technology better than its origin country[4]. On the other hand, MNEs face several challenges and issues while performing

[1] J.D. Candidate, University of Pennsylvania; B.A. 1984, State University of New York, Purchase, 1989.

[2] Evren Koksal, The impact of multinational corporations on international relations. master thesis, Middle East Technical University, Dec. 2006 , p. 25.

[3] Wallace CD, the Multinational Enterprises and Legal Control Host State SovereignlY 111 an Era of Economic Globalization (Martinus Nijhoff. London 2(02) p. 9.

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

their activities in international commerce. The basic cause of MNEs issues in complex international commerce environment is the existence of legal norms differences between various involved stakeholders in foreign countries. Furthermore, national and regional legislations often cannot have a sufficient control on all harmful acts of globally extended practices of MNEs, in addition to the difficulty to prepare suitable unified regulations to operate this kind of enterprises[5].

Another noticeable issue that could face MNEs in international commerce is the existed possibility to ignore national jurisdictions due to MNEs special spreading power. Additionally, the problematic of MNEs governing laws could be generated according to the special characteristics of the structures of MNEs accompanied by international law and the expected unfair treated for some involved entities dues to its private enterprises law[6]. Moreover, MNEs themselves inflict problems given that they often aim to circumvent national laws through establishing subsidiaries in foreign countries where national law might be less stringent or contain less safeguards to either employees of the company or to creditors.

Therefore; this thesis will focus on discovering the main problematic of MNEs governing laws, jurisdiction and domicile issues in order to organize the activity of MNCs within a specific legal framework. The research basically aims to identify governing laws of MNEs in international commerce activities, and to investigate the core problematic, jurisdiction and domicile issues in these laws and how MNEs governing laws treated with such issues.

1.1 General Background

[5] 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.

[6] See; Eroglu, Muzaffer , Liability of Multinational Enterprises for Their Subsidiaries' Torts, PhD thesis, Queen Mary College, University of London, May (2007), p. 35; Olga Petricevic & David J Teece, The structural reshaping of globalization: Implications for strategic sectors, profiting from innovation, and the multinational enterprise, Journal of International Business Studies volume 50, pages1487–1512(2019).

MNEs activities considered as an essential part in international worldwide economy. MNEs are also recognised as the core drivers of economic globalization[7]. According to the UN world investment report, the percentage of MNEs involvement in international commerce and trade practices reached to 80%[8] .

In the 20th century, various business sectors alter their structure and activities to offer outsourcing services for beneficiaries in various regions that differ than the core business region. This act was taken for the purposes of decreasing the required business financial assets and to enhance their processes flexibility[9]. One of the main regulations that govern MNEs in international commerce is self-regulations. Self-regulation is recognised widely by MNEs as a special governing law and legal instrument that deals with each industry sector in separate way. MNEs also prefer to utilize self-regulation as it considered as a flexible instrument that could add benefits to the corporate structure, and enhance the efforts of marketing, in addition to adding a special conduct codes. In the other hand, Self-regulation cannot offer a clear monitoring strategy for MNEs activities[10].

Some further internationally efforts were conducted to make an integration between the international law norms and corporate self-regulations. Therefore, specifically in 1970s, corporate codes of conduct were recognised by MNEs in their international businesses and transitions. In 1980s, several corporate codes were launched such as the UN Code of Conduct that is basically directed to Transnational Corporations but this tool was not implemented due to some challenges that are related to the difficult evaluating and enforcement approaches.

Several international guidelines and regulations were later launched to regulate the practices and behavior of MNEs. The basic controller of these norms is to ensure a

[7] Peter Malanczuk, Globalization and the Future Role of Sovereign States, in international economic law with a human face (Friedl Weiss et al. eds., 1998)

[8] United Nations Conference on Trade and Dev. (UNCTAD), World Investment Report 2013: Global Value Chains: Investment and Trade for Development 134 (2013).

[9] Andrew Crane, Abagail McWilliams, Dirk Matten, Jeremy Moon, & Donald S. Siegel, The Oxford Handbook of Corporate Social Responsibility, Oxford University Press, New York, at 377 (2008), p.363.

[10] Michael Freeman, Human Rights: An Interdisciplinary Approach, Cambridge, Polity Friends of the Earth Annual Report, 2002, p 12

wider protection for workers and human rights, avoid any shape of discrimination and guarantee the existence of equal opportunities for all involved states in MNEs acts[11].

International regulating norms of MNEs often composed of three main phases. First phase concerned about the adoption of internal operation regulations in each partner business in multinational enterprises while keeping in mind their conformity with accepted international norms[12]. Second phase focus on monitoring the MNEs acts through national and international regulations that played as monitoring systems and commonly designed by the United Nations. The third final phase emphasize on the need of national states to implement their legal special designed frameworks and the compensation and retribution that imposed on non-compliance partners[13].

Although the credibility of international regulations rather than other norms but they have some considerable limitations. For example, the used monitoring systems have no clear reference or obligations for such monitoring practices. Additionally, there are no specific guidelines for procedures on how to conduct these phases, and that national states are the main controller for these norms implementation[14]. One well known international regulations that control MNEs activities while seeks to add universal ethics with compliance to the UN rules in organising the activities of MNEs is "the UN global compact"[15]. The UN compact pays a huge attention to have a strong protection of human rights and to eliminate any labour abuse practice while operating MNEs activities[16]. The basic limitations of this type of international norm is that if focused on

[11] U.N. ECON. & SOC. COUNCIL, U.N. COMM'N ON HUMAN RIGHTS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), at 4-5 [hereinafter Norms].

[12] I bid.

[13] Daimler AG v. Bauman, 134 S. Ct. 746, 760-61 (2014).

[14] Regina E. Rauxloh, A Call for the End of Impunity for Multinational Corporations, 14 Tex. Wesleyan L. Rev. 297, 305 (2008).

[15] Global Compact Principle Two, UN GLOBAL COMPACT, https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle2.html (last visited Feb. 28, 2014)

[16] Global Compact Principle One, UN GLOBAL COMPACT, https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html (last visited Feb. 28, 2014)

cooperation of MNEs while ignoring any monitoring or compensation strategy form this partnership victims[17].

Later on OCED guidelines were launched as governmental legal standards of MNEs activities[18].These guidelines offer a set of norms and principles that ensure a MNEs internationally accepted practices. The basic issue in OCED guidelines is that its voluntary implemented and there is no force to emphasize to the need to adhere to its norms.

In summary, we can recognise that these self-regulations, national and international regulations are essential to keep an accepted behavior and legally respectful activities of MNEs. On the other hand, until now these norms are unenforceable that is why many issues could be noticed while regulating the practices and operations of MNEs. Therefore this research came to investigate the effectiveness of governing laws of MNEs and to investigate the main problems that basically connected to involved national norms such as jurisdiction, domicile and overall MNEs governing laws problematic.

1.2 Research problem and questions

The operations of Multinational enterprises (MNEs) were intertwined to act as one entity rather than a group of independent and competing entities. All this makes it play a serious and important role in economic, political and even international legal life. Bupratkh [19] clarified that MNEs may be the cause of the dilemmas of the contemporary international community, where they can cause economic and social crises such as

[17] Overview of the UN Global Impact, UN Global Compact, http://www.unglobalcompact.org/AboutTheGC/index.html (last visited Feb. 28, 2014) ("The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption." It is a critical platform for the UN to engage effectively with enlightened global business).

[18] Org. for Econ. Cooperation and Dev. [OECD], OECD Guidelines for Multinational Enterprises, 15 I.L.M. 9 at 2 (1976) [hereinafter OECD Guidelines]

[19] 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.

unemployment, inflation, depletion of the Third World, polluting the environment, violating human rights, igniting strife and war, and pressure on governments.

Mohammad[20] argued that Multinational enterprises (MNEs) had used Governments as a tool to serve their own interests and had neglected established principles of general international law, such as the principle of sovereignty and the principle of non-interference in the internal affairs of States because they operated freely beyond the law.

Consequently, MNEs have become a source of danger to sovereign states, especially as they aspire to be in the same legal status as persons of public international law, forgetting their legal status as private commercial companies that live and end in accordance with the national laws of States[21].

Akindele[22] stated that the host country is concerned about regulating the activities of MNEs, particularly in matters related to anti-trust, taxation and export control. In contrast, host countries are afraid that their economies will be controlled from outside parties and foreign interests, and therefore the host country may hesitate to apply its domestic laws on these MNEs[23]. This presented the MNEs, in many cases, to apply conflicting laws that have imposed a heavy burden on them, such as the taxes imposed on MNEs. In many cases, double taxation was imposed on these companies, which resulted in losses in many cases[24]. These taxes exceeded the profits from their operations and activities and presented them to losses in the various industries[25]. On the

[20] Mohammad Ayub Khan, Challenges foe MNEs operating in emerging markets, Tecnológico de Monterrey, México, 2014, p. 4.

[21] Bupratkh Naimia, Legal Person of Multinational Companies in Public International Law, Op cit, p.4.

[22] 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.

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

[24] Akindele Oyebode, International Regulation of the multinational corporation: A look at some recent proposals, Op cit, pp. 235.

[25] Jamie Morgan, Corporation Tax as a Problem of MNC as Organizational Circuits: The Case for Unitary Taxation. The British Journal of Politics and International Relations 18, 2016, p. 95.

other hand; Akindele [26]clarified that the absence of specific and clear monetary and tax systems for MNEs allowed these companies to circumvent and neglect national policies.

Moreover, domicile, which refers to regulations and laws that apply to MNEs, especially that the parent company may have more than one branch in more than one country, is also controversial[27]. Opinions differed about the standard used to determine the laws to be applied to multinational companies that have more than domicile in more than one place. Laws differed in determining the nature of the law applicable to MNEs[28]. Some laws have relied on the spatial standard in determining the nationality of MNEs, including; the standard of the main management center[29], the standard of the establishment place[30], and the standard of place which the company practice its activity in[31]. Other laws relied on personal criteria in determining the nationality of MNEs, such as the nationality standard of partners[32]. All these standards are used as the basis for determining the nationality of MNEs and thus determining the applicable law. Ahmed et al. [33] argued that jurists differed on the accepted standard for determining the nationality of MNEs[34]. Thus, despite the importance of the nationality of MNEs, its adoption was not unanimous among scholars, as they were divided into deniers and supporters to grant nationality to the moral person.

What can be observed about the legal status of multinational enterprises in national laws and international codes is the international community's recognition of the

[26] Akindele Oyebode, International Regulation of the multinational corporation: A look at some recent proposals, Op cit, pp. 236.

[27] OECD, OECD Guidelines for Multinational Enterprises. The Secretary-General of the OECD, 2008.

[28] Jamie Morgan, Corporation Tax as a Problem of MNC as Organizational Circuits, Op cit, p. 99.

[29] Such as the Companies Act of France, German Law, Italian Law, Egyptian Civil Code, , see; Tayeb Zeruti. Mediator to explain Algerian nationality. Al Kahnah Press, Algiers, 2002.

[30] Such as the Anglo-Saxon system.

[31] Such as the Algerian law.

[32] Meta Hussein. Nationality of multinational corporations. Master's degree in Law Division, Specializes in International Private Relations Law, 2016.

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

[34] Nationality is the tool and the means by which the company determines the extent to which the company enjoys its diplomatic protection and subject to its national law.

importance and seriousness of these entities. This is translated into an attempt to regulate the activities of these companies in accordance with the fair rules of trade through many codes, including comprehensive codes. In contrast, the return to domestic laws highlights the absence of explicit organization of these entities, which puts them in equality with all kinds of other investments, despite the fact that the multinational enterprise have special characteristics that distinguish them from others through looking to its financial and human resources, as well as scientific, which exceed foreign investment and sometimes exceed the possibilities of some countries and their capabilities[35] and at times equal with some countries.

MNEs have attracted special and general attention from economics, politics and law. The lawmakers present the MNEs as a contemporary idea that needs to be raised and researched within the framework of international commerce to understand and realize its legal status, because the differences are clear between its establishment of the law as a private law subject and its international implications in all fields[36]. Therefore, the current research seeks to raise many legal problems about MNEs in international commerce, including the problematics of its governing laws, its jurisdiction and its domicile.

The main questions that this study seeks to answer ,with regard to the mentioned problems above, can be summarized as follow;

1. What are the governing laws that regulate the work of MNEs in international commerce?
2. What are the legal problematics concerning with the nationality of MNEs?
3. What are the problematics concerning with governing laws of MNEs in international commerce?
4. What are the problematics concerning with jurisdiction of MNEs in international commerce?

[35] This has led to a divergence of jurisprudential views on the legal personality of multinational enterprises. There are some opinions that they consider MNEs to be from international personalities, and there are opinions that rejected to give the MNEs the international personalities.

[36] Nadia Fadil. The provisions of the company in accordance with the Algerian commercial law. Dar Houma for Printing, Publishing and Distribution, 6th edition, Algeria, 2006, p. 5.

5. What are the problematics concerning with domicile of MNEs in international commerce?

1.3 Research significance

The fact that MNEs have a significant impact on the world economies because of its wide spread and its huge capital in different parts of the world; and due to the magnitude and diversity of the areas in which they operate, and due to the existence of overlaps related to the laws and regulations governing the work of MNEs; all these aspects represent a direct motivation to determine the current research problem that includes finding the problematics concerning with governing laws, jurisdiction and domicile of MNEs in international commerce.

The subject of Multinational enterprises (MNEs) is one of the most important phenomena that emerged on the international scene, especially after the Second World War, considering these enterprises as giant economic entities characterized by the diversity of their activities, the diversity of their products and their geographic spread throughout the world, exceeding the territorial boundaries of the countries. The importance of the topic can also be determined in the following points:

1. The subject of MNEs has become the focus of attention of politicians and jurists, which makes it a speech material for research and research.
2. The subject of MNEs is no longer just a subject of international law, but has become, for many jurists, a person of international law.
3. The importance of the subject is growing as a result of the wide spread of multinational corporations, and therefore the increasing of their economic, political and financial implications.
4. In practice, granting MNEs a nationality helps regulate their activities within a legal framework. The acquisition of citizenship means its entitlement to protect the state that grants citizenship and its commitment to its laws.
5. The current research will pave the way for other studies related to the field of research and will represent a new scientific reference that can be used in subsequent studies.
6. This research will add valued information to the library of Law.

Moreover, the importance of the present research stems from its aim to discuss the problematics of governing laws, jurisdiction and domicile associated of MNEs in international commerce in particular, as opposed to other studies that have dealt with these problems in international law[37]. MNEs have had a direct role in defining international commerce law through a comprehensive international regulation that includes a set of rules governing contracts and instruments through which international commercial transactions are carried out[38]. In fact, MNEs are members of the international commerce law, and these companies abide by the provisions of international business law, which is the basis of international commerce law.

On the personal level of me, the subject of MNEs has attracted his attention. Just as the ambiguity of this phenomenon has attracted the attention of economists, politicians and meeting Scholars, I am in the legal field also concerned about it, because it is a multifaceted phenomenon, and he is the most eager to examine it, reveal its legal system and develop solutions to the various legal questions raised by the research process, and in particular the questions related to the problematics of MNEs governing laws, jurisdiction and domicile in international commerce. Moreover, this subject falls within the my specialty, interest and scientific curiosity, in addition to his scientific interest in enriching the legal library, which lacks a research covering all the problems that the present research seeks to address and research.

1.4 Research aim and objectives

The current research aims to raise many legal problems about MNEs in international commerce, including the problematics of its governing laws, its jurisdiction and its domicile. More specifically, the research seeks to achieve the following objectives:

6. To reveal the laws governing the work of MNEs in international commerce.
7. To find the legal problematics concerning with the nationality of MNEs.

[37] See; Akindele Oyebode, International Regulation of the multinational corporation: A look at some recent proposals, Op cit; Perry-Kessaris, Multinational enterprises and the law. Module A: MNEs in context, Revised edition, University of London, 2012; Jan Wouters and Anna-Luise Chané, Multinational Corporations in International Law. SSRN Electronic Journal, 2013; Freddy Mnyongani, Accountability of multinational corporations for human violations under international law, submitted in accordance with the requirements for the degree.

[38] Bukhanov Nazeha and Shaib Rashida, the role of multinational corporations in establishing international trade law. Master Thesis, Faculty of Economic Law and Business Law, 2015, p.1

8. To investigate the problematics concerning with governing laws of MNEs in international commerce.
9. To discuss the problematics concerning with jurisdiction of MNEs in international commerce.
10. To investigate the problematics concerning with domicile of MNEs in international commerce.

1.5 Research Structure:

This thesis will be basically divided into six main chapters as follow;

The first chapter will investigate the historical development of international commerce and will explore in more details the theoretical context of multinational enterprises in international commerce.

Chapter two directly focused on defining multinational enterprises, its evolution and historical development. In this chapter I will also provide a brief introduction for international enterprises structure and international commerce, in addition to investigating the origins of the first MNEs.

Chapter three Chapter three discuss the effects of the activity of multinational enterprises

Chapter four will examine international Regulations of MNEs; will provide readers with an in-depth exploration of the governing laws of MNEs in international commerce, while highlighting the MNEs status under international law and other common governing regulations.

Chapter five will focus on governing laws problems in MNEs especially in their activities in international commerce sector. This chapter will focus on the accompanied issues that could strike these laws. A deep concentration on Jurisdictional Limits and Domicile of international Laws and Regulations of MNEs will be investigated in this chapter.

Chapter sex New legal challenges in relation to MNEs: questions of liability and future directions. While the final chapter is the conclusion chapter that offers and overall summary of this research findings, its limitations and recommendations, and provide future researchers with possible topic development for future researches.

Chapter one

The development of international commerce and its relation to the MNEs

1. Introduction

Today, the world is witnessing the formation of a new global commerce system. This is mainly due to the complexity of the economic life in all countries of the world and due to the expansion of trade between them. In addition to the multiplication which led to the emergence of international economic blocs seeking to lift customs barriers and restrictions to international exchange based on the principle of specialization International and division of labor. Accordingly, commerce laws have been put in place to ensure the good conduct of this trade. Over time, the importance of international economic relations has increased due to the high proportion of the foreign trade sector within the GNP of countries and their economies in particular. This sector has taken a vital role in the economic activity because it is considered the most important picture of economic relation. The exchange of goods and services in the form of exports and imports is done through this sector, in addition to the different elements of production between countries in order to achieve the mutual benefits for trade parties[39].

The commerce between countries is a reality that the world cannot be imagined without it, where a country cannot be independent from the rest of the world, whether it is developed or developing. The national economy of each country is based on many economic activities that complement each other in a way that affects and is affected by the other[40].

Commerce is one of the branches, which is based on studying the exchange between the countries of the economics e world. This exchange is constantly increasing with the increasing of economy globalization and markets. It takes three forms: exchange of

[39] Nwi Walid, The role of multinational companies in the development of foreign trade in Algeria. Master Thesis in Business Science, International Business, Mohammed Khader University, Department of Business Science, 2015, p. 57.

[40] Moussa Matar et al., International commerce. Dar Safa Publishing and Distribution, Amman, Jordan, 2001, p 13.

material goods, exchange of services and exchange of financial and monetary transactions such as foreign direct investment, which the multinational companies are from the most important form of it. The current chapter aims to give an overview of international commerce, in terms of its concept, history, importance, objectives, causes of appearance, as well as to clarify the relationship between international trade and multinational enterprises (MNEs).

1.1 Classification of business relations

Business relations are generally oriented into two main categories[41]:

1. **National commerce relations**: This kind of legal relationship is called for in such commercial transactions within a single State, either between national natural persons or legal persons described as national. Commercial law is the type of laws that is applied on commercial relations. It is obvious that this law applies only to limited persons and certain legal relations.
2. **International commerce relations**: It is the second type of commerce relations that is more sophisticated and more complex than national commerce relations. This type is described as evolving because it carries the meaning of global openness to international trade, thus calls for the search for commercial markets in countries other than the state from which the business started. This type of relationship resists the policy of economic closure of the self and calls for and encourages the integration of countries, in addition to reviving the international trade movement and beyond the limits of narrow national relations to open up broad prospects. This will affect the economic wheels and promotes national development and even elevates the national industry and products to a high level to ensure global trade competition.

While national commerce relations have been governed, without exception, by the rules of trade law, this is not the case at the level of international commerce relations, which are characterized as liberal and saturated relations and are not necessarily governed by a single traditional pattern and are not subject to the same legal rules even if the contents

[41] Michael Kleinaltenkamp, Wulff Plinke, and Albrecht So¨llner. Theoretical Perspectives of Business Relationships: Explanation and Configuration. Springer-Verlag Berlin Heidelberg, 2015, p. 29.

of such relations are united or similar[42]. This is due to the absence of a legislative authority to regulate the rules of international commerce relations. Although international trade practice has largely helped to formulate legal rules and patterns of international commerce relations, these rules do not have the mandatory status, contrary to the legal rules governing national commerce relations[43].

The factors that cause international commerce to differ from national commerce are as follows[44]:

1. National commerce takes place within the geographical boundaries of the country, while international commerce takes place among the different countries of the world.
2. Different currencies of trading countries: The national commerce deal is conducted in one currency, which is the currency of the country concerned. While international commerce takes place at least in two currencies, this difference has wide implications for the trading process. In the case of international commerce, the exchange rate and the risk of volatility should be taking into account, especially if the regime in one or both countries allows exchange rate movements. This possibility leads traders to take special measures known as hedging, all of which constitute an additional cost that changes the value of the trade deal and affects the centers of the parties.
3. The difference in trade policies between countries: The State, by virtue of being an independent political unit, has the right to issue the legislations and laws it deems appropriate to serve its interests, including the regulation of its trade policies which represent the set of laws and regulations issued by the State to effect on the trends of the international commerce relations, where tariff and import quotas are considered to be the most common traditional means of trade

[42] Ashish Gupta and G. P. Sahu. A Literature Review and Classification of Relationship Marketing Research. IGI Global. Copying or distributing in print or electronic forms without written permission of IGI Global is prohibited, 2012.

[43] Kleinaltenkamp, M., & Ehret, M. The value added by specific investments: A framework for managing relationships in the context of value networks. Journal of Business & Industrial Marketing, 2006, 21(2), p.67.

[44] Hajir Adnan, International Economics (Theory and Applications). First Edition, Dar Athera for Publishing and Distribution, 2010, p. 19.

policy. Therefore, the transfer of a commodity from one country to another may be subject to a customs tariff imposed by the importing country, which raises the cost of the trade transaction or this commodity not may be allowed to enter only in certain quantities if the country follows the quota system, Which is considered rare to happen between the regions which are subjected to the same legislation and laws. On this basis, the difference in the legislative environment between countries constitutes a fundamental difference between domestic and international economic relations.

4. The possibility of moving elements of production within one country in return for restrictions on the movement of elements of production across borders.
5. The difference in the social environment, customs and traditions: The difference in the countries of the world in their customs, traditions and beliefs, and what may be reflected from this difference on their legislation and constitutions, makes a difference between the local economic relationship that takes place in a particular environment and the external economic relationship, which includes the transition to another environment that differs from them in customs, political system. A commodity that is acceptable to be traded in a particular social environment may be banned from dealing with it in another environment, such as alcohol, pork or beef. This will prevent the export of such goods to certain countries where beliefs prevent external relations.

1.2 The definition of international commerce

No matter how different are political systems in different countries of the world, they cannot follow the policy of self-sufficiency fully and for a long period of time because following this strategy may force the state to produce all their needs, although economic and geographical conditions may not enable them to do so. From other hand, whatever the tendency of any country to live this policy, they cannot live in isolation from other countries, that is, states, such as individuals, cannot produce all the goods and services they need[45]. Countries need to specialize in producing the goods that their natural and

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

economic conditions qualify them for producing these products and then exchanging them with surplus products of other countries that they cannot produce within their borders or can produce them but at a high cost, thus this is becoming the basic for foreign trade. Therefore, international commerce is the process of trade in goods, services and other elements of production between different countries in order to achieve mutual benefits of the exchange parties.

International commerce allows States to specialize in producing the materials that are commensurate with their manufacture with the resources in those countries. Mousi et al. [46] stressed that States benefit from international commerce by producing goods they can produce at lower cost and by buying cheap goods produced by others. International commerce can also produce more goods and satisfy human needs better.

Mahmoud [47] pointed to the differences between internal and international commerce. Economists pointed to more than one difference, the most important of which is that internal commerce takes place within the borders of the geographical state, while foreign commerce takes place in the world, also the international commerce is carried out in various currencies, but domestic trade takes place in a single currency. Hamdi [48] clarified that international commerce takes place with different economic and political systems while internal commerce takes place under one regime, as well as the differing legislation and laws governing international commerce and the internal commerce. Sami [49] indicated to the different modes of transport between international commerce and internal commerce, where 90% of foreign trade is done through maritime transport and a small part of it is by road transport in contrast to internal commerce, in addition to the market difference and factors affecting both of international commerce and internal commerce through the nature of consumers, prices, competition and market regulation.

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

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

[48] Hamdi Abdel Azim, The Economics of International Trade, Dar Al-Nahda Publishing and Publishing, Jordan, 2000, p1.

[49] Sami Afifi Hatem, Foreign Trade between Framing and Organization, Part I, The Egyptian Lebanese House, Egypt, 1993, p36.

Fayrouz [50] defined that International commerce as the choice of the State for a specific destination in its commercial relations with the outside, and expresses this by issuing legislation and adopting decisions and procedures that put it into practice. It is also defined as a collection of means used by the State to intervene in its foreign trade in order to achieve certain objectives. Ibrahim [51] pointed out that it can be said that International commerce reflects both visible and invisible exports and imports.

Mohamed [52] defined the international commerce as international commercial transactions involving the movement of goods, individuals and capital, where they arise between individuals residing in different political units or between Governments and economic organizations living in different political units.

Magdy [53] expressed the international commerce as a link between countries in different policies, laws and ideologies, as the countries of the world cannot live isolated from each other rely on self-sufficiency. International commerce represents the international movements of goods and services, or an economic term that reflects the movement of goods and services between different countries[54].

Through the above, we can define the concept of international commerce as the physical exchange of goods across the political borders of the State, either imported or exported. It also takes the form of services that are performed by nationals of a country to nationals of another country. As well, the international commerce is the result of the expansion of economic exchanges in human society, which resulted from the expansion of the geographical market of economic exchange. Thus, the market is no longer closed or based on a single geographic area, comprising one society and one political

[50] Fayrouz Soltani, The role of trade policies in activating regional and international trade agreements, Algeria case study and Euro-Mediterranean partnership agreement. Master degree, Faculty of Economic and Commercial Sciences and Science of Facilitation, University of Mohammed Khader, 2012, p. 3.

[51] Ibrahim Ajil, Multinational Enterprises and State Sovereignty. Master, International Law, Faculty of Law and Politics, Denmark, 2009, p. 8

[52] Mohamed Nassar, The Role of International Law in the New World Economic System, University Thought House, Alexandria, 2007, p. 47.

[53] Magdy Mahmoud Shehab et al., Fundamentals of International Economics, New University Publishing House, Egypt, 1998, p.19.

[54] Bukhanov Nazeha and Shaib Rashida, the role of multinational corporations in establishing international trade law. Master Thesis, Faculty of Economic Law and Business Law, 2015, p. 8

composition; but expanded to carry out commodity and service exchanges between regions with different social and political components. International commerce therefore has its own nature, which differs from the nature of internal commerce in a single State.

1.3 The historical development of international commerce and the reasons for its establishment

International commerce has emerged since the early days, when the industrial revolution that took place in Britain in the mid-eighteenth century was the starting point for it[55]. In that period, the need for raw materials increased, production by machines was increased, and the need for product markets became apparent. Hence the colonization of countries started in order to open up new markets for raw materials to manage surplus production. By the early 1990s, international commerce amounted to about three trillions and a half trillion dollars a year. The main exporting countries at the time were Germany, the United States, Japan, France and the United Kingdom[56]. Trade exchange between countries has been defined in the following ways[57]:

1. Exchange of goods: such as cotton, textiles, machinery and cars.
2. Exchange of services: such as transportation, insurance and tourism
3. .Exchange of capital: such as foreign direct investment in the form of foreign projects within the political borders of the country.
4. The exchange of the labor component, which includes that the State having employment outside its borders.

After the Second World War, the interest of all countries in international commerce increased because of the following reasons[58]:

[55] See; Firas Ashqar, Introduction to International Trade, Op cit, p.4 Mohammad Ayub Khan, Challenges foe MNEs operating in emerging markets, Tecnológico de Monterrey, México, 2014.

[56] See; Sultan Abu Ali, International Trade Theory and Policy, Cairo, 1981; Paul Samuelson و A Ricardo-Sraffa Paradigm Comparing the Gains from Trade in Inoputs and Finished Goods. Journal of Economic Literature, 2001, 39(4) pp.1204-1214.

[57] Firas Ashqar, Introduction to International Trade, Op cit, p.4

[58] Ibid, p.2

1. The world entered in the era of international economic cooperation through international conventions.
2. The emergence of international institutions working in the area of oil, finance and economic development, such as the GATT (the General Agreement on Tariffs and Trade), which is an international treaty designed to regulate the process of exchanges between the signatory States.
3. The emergence of deficits in some countries such as developing countries, where the deficit represents the deterioration of international exchange rates, and the continuous deficit in the balance of payments.
4. The emergence of a new scientific global called globalization.

Fifty years after the GATT was established and after about eight rounds of trade negotiations between countries, the WTO (The World Trade Agreements) was established in 1995 as a result of Uruguay's famous tour[59]. The World Trade Agreements cover the rules governing the liberalization of international commerce in goods and services, as well as the system for the settlement of international commerce disputes and the legal regime of commercial aspects of intellectual property and international investment[60]. At the international level, international commerce is not only subject to the WTO agreements, but rather to a wide range of international conventions, protocols and norms, which have been endorsed by the United Nations Commission on Trade Law (UNCITRAL), the Customs Territory Conventions and the Common Markets, the Rules of International Trade Organization, in particular the International Chamber of Commerce (ICC), as well as bilateral trade agreements[61].

Today, the development of international commerce is due to the evolution of all aspects of life from transportation to various technical and technological sciences, the development of monetary policies, and the emergence of trade unions and economic blocs, in addition to the emergence of many global concepts supporting the mechanism of action of global trade umbrella such as the World Bank for Trade and Finance and others[62].

[59] Arab British Academy for Higher Education, international commerce, 2009. Acessed in [11-4-2018].

[60] Ibid.

[61] Ibid.

[62] Firas Ashqar, Introduction to International Trade, Op cit, p.4.

1.4 Reasons for the international commerce emergence

The explanation of the reasons for the emergence of international commerce is explained by the explanation of the causes of the economic problem among States. These reasons include[63]:

1. Not all countries have the same potential to produce all goods and services ز
2. The different production costs among countries due to different environmental factors.
3. The different levels of technology from one country to another
4. The inability of some countries to achieve self-sufficiency due to poor physical or human potential or both.
5. Excess production.
6. Raising the standard of living of citizens through the pursuit of governments through international commerce to access to goods and services that meet the needs and satisfy the desires.

There are many reasons for the emergence of international commerce, where these reasons can be divided mainly into political and economic reasons.

- **Economic reasons**[64]; which include:

1. The high production capacity of projects in a particular country due to the element of technology, the entry into the field of large production, and the inability of the local market to absorb this quantity of production.
2. The increasing cost of investment in equipment, machinery and equipment used in the production process as in developing countries.

[63] See; 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 Philpsophical Economic: Reflections of Economic and Social Issues, Vo.VIII, Issue 2, spring 2015 ISSN 1843-2298, p.113-120.

[64] Sherif Ali Alsous, International Trade (Foundations and Applications). First Edition, Dar Asima for Publishing and Distribution, Amman, Jordan, 2012, pp. 18-19.

3. The increasing weakness in the marketing opportunities of goods and services in foreign markets due to the conditions experienced by these markets, and consequently the increase in demand for exports, as is the case in the economic crisis that the world is going through these days.

- **Political reasons**[65]; which include:

1. The increasing desire of some countries to seize the foreign markets of certain countries and thus control the economies of these countries, which leads to the concept of economic dependence and the situation which is existed in many developing countries in Africa.
2. The emergence of new trend of some countries for the seizure and economic control of certain countries for political reasons, especially through the trade exchange between these countries and other countries as is the case with the Eastern bloc countries.

1.5 International commerce theories

The theory of international commerce, which tries to explain the principles of international commerce and its mechanisms, is based on a historical accumulation of nearly two centuries. Adam Smith noted in his writings the absolute advantage that constitutes the basis of the state's ability to export[66]. The absolute advantage means the availability of the country to excel other countries in the factors of production and low costs so that this country can invade its exports to the markets of other countries. David Ricardo then came with the comparative advantage of state-owned nature donations. Comparative advantage means that each country is better off producing a specific commodity or goods, making exchange between countries profitable all on the basis of superiority of each commodity. David Ricardo was followed by a group of diligent people who added a lot of opinions and used analytical tools[67].

[65] Hageer Amin, International Economics (Theory and Practice). First Edition, Dar Athera for Publishing and Distribution, 2010, p. 19.

[66] Mohammed Ahmed Al-Siriti, Foreign Trade, Dar Al-Jama'a, Egypt, 2009, p.27.

[67] Mohamed Khaled Hariri, International Economy, New Printing Press, Syria, 1977, p.136.

The existence of trade since ancient times is based on the existence of differences between different countries in the regions and natural resources, and the different environmental and geographical conditions. This has made many economic thinkers to put different theories through the ages to explain the causes of international commerce. In this section we will address the most important theories of classical and neo-classical international commerce, and move on to modern theories in international commerce.

1.5.1 Classical theories of international commerce

The traditional theory of international commerce emerged in the late 1880s and early 19th century as a reaction to the trade-unionism, which called for restrictions on international commerce to obtain as much precious metal as precious metals were a measure of the country's economic power at the time, thus, the traditional theory defended the freedom of international commerce, indicating that the economic strength of the state lies not only in the storage of its precious metals, but also in the real economic resources available.[68]

1. **Absolute Advantage Theory (Adam Smith)**

The first classic economist who attempts to explain the existence of international commerce between nations is the famous economist Adam Smith in his famous book 'The Wealth of Nations', published in 1776 in New York, where Adam Smith used the concept of absolute difference in productivity costs between states or what is known as absolute advantage.

Adam Smith believes that the rationale for the emergence of international commerce is concentrated in the existence of absolute advantages for States from the production of various goods, where each country must allocate to produce and export the product that it has an absolute advantage. Absolute advantage means that the state can produce larger amounts of the commodity than the other using the same size of resources or output elements.

Thus, Adam Smith assumed that each country could produce at least one commodity or group of goods at a lower real cost than its trading partners, so each country would

[68] Jalal Juweida Al Qassas, Money, Banks and Foreign Trade. First Edition, University House, Alexandria, 2010, p.211.

gain more if it specialized in that commodity in which it had an absolute advantage and then exported such this item and imports other item. Smith considered the real cost to be measured by the amount of work time needed to produce the commodity. According to this concept, the goods would be exchanged according to the proportion of hours worked in production.[69]

For example, if it is necessary to produce a food unit (10) working hours, while the production of one unit of clothing required 30 hours of work, it means that each (3) units of food equivalent to one unit of clothing. The implicit assumption here is that labor is the only productive factor and therefore the cost of labor measures the total cost of production. On the other hand, the mechanization of a free market system and competition within the economy will ensure that the rate of exchange of goods remains.

In the previous example, no one in this economy will show more than 3 units of food per unit of clothing because it costs more than 30 hours of work, which is the cost of producing one unit of clothing. For the same reason, no one will accept less than (3) units of food versus clothing unit. Therefore, market competition and interoperability between industries ensures the exchange of goods according to their cost of labor, taking into account the fundamental factor of the possibility of free movement of labor between industries. In the case of the inability to move easily between industries, the theory of exchange based on the value of work does not prove, this is because the wage varies from industry to industry.[70]

2. The Theory of Comparative Advantages (David Ricardo)

In the nineteenth century, the great English economist David Ricardo blew up the previous theory in his famous book on foreign trade 1817, Political Economy and Taxation, where he announced in Chapter VII of his book on the law of comparative advantage.

According to this theory, Ricardo emphasizes that not all countries can have an absolute advantage in production. In many countries, especially developing countries, may not have an absolute advantage in any of their goods because of the traditional methods of

[69] Mohammed Ahmed Al-Siriti, Foreign Trade, Op cit, p. 28.

[70] Rashad Al Attar et al, Foreign Trade. First Edition, Dar Al-Masirah for Publishing, Distribution and Printing, Jordan, 2000, p.21-22.

production or incompetence or because it cannot construct large projects to benefit from the abundance of costs as in the case of developed countries economically, and of course cannot use the theory of absolute advantage of the interpretation of international commerce and thus highlights the question: How can these less efficient countries compete with developed industrial countries?

The answer to this question is gaining additional importance in the light of the continued discontent by representatives of developing countries that their industry is less efficient than those in advanced industrial countries and therefore argue that these developing countries should protect their industry from this extraordinary foreign competition. The essence of Ricardo's comparative advantage came to shed light on this particularly important question.

Ricardo, in his book Principles of Political Economy and Tax, states that the condition of an absolute advantage of a state in a commodity is not necessary for this country to gain from the entry into international commerce. It is sufficient for the state to have what Ricardo calls "comparative advantage" in one or more of the goods they produce, and therefore profitable trade depends on the relative costs of goods across countries rather than on absolute costs. A State can therefore make gains from trade even if it has higher real costs in all the goods it produces than its commercial partners.[71]

3. John Stuart Mill and Theory of International Values

The "Mill" theory was complementary to Ricardo's theory. John Stewart Mill's interest was on the demand side of international trade, which Ricardo's analysis neglected, particularly the exchange rate under which goods were traded internationally. According to Mill, the exchange rate will fall within the limits determined by the relative costs of the two countries, in other words between the two internal exchange rates in both countries and determined by the reciprocal demand of the two countries. Mill explained that the international value of the commodity will be determined at the level that achieves a tie in mutual demand.[72]

Mel believes that there is a unique rate between the possible rates between the minimum and maximum exchange rates, which equalize the value of imports and the value of

[71] Rashad Al Attar et al, Foreign Trade, Op cit, p. 26.

[72] Jalal al-Qassas, money, banks and foreign trade. Op cit, p. 211.

exports to countries, since the exports of the first country are the imports of the second country, and any other rate leads to the difference between exports and imports[73]. Thus one country will fall in surplus and the other in deficit. According to John Stewart Mill, cash distribution depends on two main factors[74]:

A. The volume of mutual demand in both countries.
B. Flexibility of demand.

Mill has taken into account the impact of transport costs, which have a dual effect on international commerce. On the one hand, their cost-cost calculation increases the cost of imports, which in turn will change mutual demand because of the different elasticity and hence changing the exchange rate. On the other hand, the cost of transportation is the international specialization of labor because the presence of expenditure increases the cost of imported goods, making their production locally better than importing them.[75]

Mill concluded that the replacement ratio tends to be in favor of a country whose demand for other international goods is less flexible. This means that demand is not affected by price changes and vice versa in the case of goods with flexible demand.

1.5.2 New classical theories of international commerce

The classical theory of international commerce has shown that international exchange occurs when the relative expenditure of production in different countries is different, whether it is labor costs alone or the components of production combined. But classical theory does not explain the reasons for the differences in relative expenditures between these countries. That is to say, classical theory determines when international commerce occurs but does not explain to us why international trade occurs, thus it describes a situation of observation and does not explain it. Swedish theory has thus provided this interpretation by the famous authors Hecker and Brill Olin.

Swedish Theory (Hacher-Ulin Theory)

[73] Mohammed Ahmed Al-Siriti, Foreign Trade, Op cit, p. 36.

[74] [74] Jalal al-Qassas, money, banks and foreign trade. Op cit, p. 212.

[75] Mohammed Ahmed Al-Siriti, Foreign Trade, Op cit, p. 37.

The theory of "Hacher Ulin" argues that the cause of international commerce, as the traditionalists have pointed to, is the difference in relative expenditures. However, Hacher-Ulin theory adds that the difference in relative expenditure is due to the difference in relative abundance or scarcity of the elements of production because the elements of production are not equally available in all countries[76]. This will lead to make difference in the degree of production factors between countries, which causes the difference in the prices of these elements from one country to another and this causes the difference in the costs of production relative from one country to another[77].

The theory of Hucker and Olin is based on a set of hypotheses, whereas it did not adhere to the classic rule that includes that the value of the commodity is determined by the value of the work done in its production. Therefore, we will subtract this hypothesis from the list of hypotheses described in classical theory, and add the remaining hypotheses in the following list[78]:

A. The technology available to produce the same commodity is the same for producers in the same country. The production states for any commodity are the same in the same country and may be between different countries and may not be.
B. The different commodities vary in their intensity of use of the components of production.
C. Consumers' tastes are so given that international trade will not change in these tastes, and that these tastes are not very different from one country to another.
D. The pattern of income distribution is given and is known in some detail.

The production function means the relationship between the quantity of production of a given commodity and the quantities used for different production elements, including intermediate inputs[79]. In the area of cotton production, for example, the production function means the relationship between the quantity produced (e.g. one quintile) and

[76] Sultani Salma, Role of Customs in Foreign Trade Policy (The Case of Algeria). Master Thesis, Faculty of Economic Sciences, Facilitation Science and Economic Sciences. University of Algiers, 2003, pp. 18-19.

[77] Adel Hashish and Majdi Shehab. Principles of International Economics. Al-Halabi Publications, Lebanon, 2003, p.95.

[78] Sultani Salma, Role of Customs in Foreign Trade Policy (The Case of Algeria), Op cit, p. 19.

[79] Mohammed Ahmed Al-Siriti, Foreign Trade, Op cit, p. 87.

the quantities used from Work, land, capital, water, fertilizer and seeds in addition to the climate of course. Thus, the production function allows the calculation of the total, average and marginal output of any commodity. The meaning of the unit of production of a single commodity in a country is that there are no differences in the productivity of the different production elements in the production of the same commodity within the same country. The method of cotton production is not different from the type of farm (small or family farms, for example) to another type (large or capital farms)[80].

Regarding the assumption that includes that consumers 'tastes are given; this assumption means to isolate the impact of international commerce on consumers' tastes, and thus on their analytical consumption pattern[81]. This assumption is intended to avoid the interaction (or reaction) that can be made between international commerce by consumers' tastes[82]. On the other hand, no one doubts that this assumption is unrealistic, but it should be pointed out that it means allowing the focus on the impact of foreign trade on the level of income and therefore consumption, where international commerce is to harmonize production on the one hand with consumption requirements on the other[83]. In this sense, international exchange is a function of the disparity between production and consumption. This will be greatly complicated if the impact of international commerce on consumption is taken into account by influencing consumer tastes.[84]

Many criticisms have been made of this theory, which include the following[85]:

A. The focus of the theory is on the scarcity or relative abundance of the elements of production, i.e. on the quantitative side, and the qualitative aspect of these elements is neglected.

[80] Adel Hashish and Majdi Shehab. Principles of International Economics, Op cit, p. 79.

[81] I bid, p.55.

[82] Adel Hashish and Majdi Shehab. Principles of International Economics, Op cit, p. 83.

[83] Huwaidi Abdul Jalil, Implications of the Euro-Mediterranean Partnership on Foreign Trade. Master Thesis, Faculty of Economic and Commercial Sciences and Facilitation Science. Mohammed Khaydar University, 2013, p.8.

[84] I bid, p.8-9.

[85] Mahmoud Younis, International Economics, Dar Al Ma'arif Al Arabiya, Egypt, 1999, p.78.

B. The theory assumes homogeneity of the factors of production in all countries. However, this assumption is unrealistic because these factors are heterogeneous and varied in different countries, and the mixing rates of these elements cannot be equal when producing a product in different countries due to technical differences between them.

C. The theory neglected the possibility of transferring the elements of production at the international level. The theory shared the theory of relative expenditure in neglecting the possibility of the movement of elements of production at the international level.

D. The theory of "Hacher-Ulin" assumed the same function of the production of one commodity, but the reality proved the opposite, since the function of production of one commodity vary from state to another and not identical.

1.5.3 Modern Theory of international commerce

1. Stephen Leander's theory and international exchange:

Linder was interested in the dynamic framework of international commerce and focused on the economic situation and the implications of international exchange. Linder considered that domestic demand for commodities as one of the main determinants of potential exports and imports.[86]

Domestic demand:

In his interpretation of the international exchange between the trade of industrial products and the trade of primary products, Linder explained that the trade of industrial products is among countries with no significant differences in factors of production. The trade of primary products is between developed and backward countries. For primary products, Linder believes that their exchange is based on comparative advantage and that this advantage in resource donations is determined by the proportions of the production components, which is the same as the Hachser and Olein explanation[87]. As for industrial goods, Linder sees a set of factors that determine

[86] Adel Hashish and Majdi Shehab. Principles of International Economics, Op cit, p. 130.

[87] Mahmoud Younis, International Economics, Op cit, p.78.

potential exports and potential imports and there is another set of factors that determine actual exports and actual imports. One of the most important determinants of potential exports is the volume of domestic demand. In order for a country to export a particular commodity, there must be a domestic demand for this commodity. The basic principle of the Leander theory is that a domestic demand for goods (whether for investment purposes) is a necessary and not sufficient condition for these goods to be potential exports[88].

Intensity of trade in manufactured goods:

The intensity of trade in the concept of "Linder" is a measure of the volume of trade between countries, after excluding the effect of the size of the countries on the volume of trade between them. The intensity of trade is measured by the different countries' tendency to import from each other. Increasing the similarity of the demand structure in two countries will lead to increase the potential trade between these countries, i.e. increasing the Intensity of trade[89]. As for the determinants of the demand structure in different countries, the demand structure is driven by a combination of factors, the most important of which is the average income. The higher the average income in a country, the more complex goods, whether consumer goods or Investment goods. Thus, potential trade is more intense among countries with an average income level, although other factors determine the structure of demand, such as climate, language, religion and culture[90].

Effects of international exchange:

Linder distinguishes between two types of countries. The first one is the countries whose economies are adaptable to the new situation by reallocating resources, and countries that do not. First type can be called as the developed countries and the second type the backward country. The reason for this distinction in the field of research on the impact of international exchange is that this effect varies in quantity and quality, depending on the degree of flexibility of the economic structure. If this structure is flexible, as in the first type of country, it is possible to adapt to the new situation by

[88] Adel Hashish and Majdi Shehab. Principles of International Economics, Op cit, p. 131,

[89] Mohammed Ahmed Al-Siriti, Foreign Trade, Op cit, p. 103.

[90] Mahmoud Younis, International Economics, Op cit, p. 79.

reallocating resources to benefit from international exchange. If the economic structure is so rigid that resources cannot be reallocated between the export sector and the import competition sector, the result is the long-term disappearance of the import competition sector.[91]

2. Vernon and Product Cycle:

Despite the power of the classical theory that attributes trade between countries to technological differences, one of the determinants of this theory lies in its adoption of the static mode of determining comparative advantage and trade patterns. Technological advantage is not static and can change over time in light of the ease of technology transfer across countries. Frenon developed a dynamic analysis model for the comparative advantage of invention, focusing on the new commodity in its own right and its stages[92]. It combines the evolution of the nature of the commodity throughout its session with the developments in international commerce. Vernon distinguishes between three stages to develop the conditions of production of the product, as follows[93]:

1. Production stage: The manufacture of this product begins in the United States, where this product is accompanied by a certain uncertainty, which makes it marketable in the local market and the cost of production is high.
2. Deployment phase: The product begins to diversify. Hence, the United States begins to export some quantities from the domestic market to the external market, specifically to invest in the production of this product in the industrialized countries and it will not hesitate to import it if the volume exceeds the transport costs.
3. The severe stereotypical phase: This means that at this stage the product becomes very typical and its market becomes fully known. Here, the development of projects in some developing countries is started due to low wage levels despite the high costs of spare parts and maintenance equipment.

[91] Adel Hashish and Majdi Shehab. Principles of International Economics, Op cit, p. 132.

[92] Mahmoud Younis, International Economics, Op cit, p. 80.

[93] An example will be given to the United States to clarify these stages. See; Rashad Al-Attar et al., International commerce, Op cit, p.35.

It is concluded through the previous stages that the production of a new product begins with the reservation of comparative advantage of this product, then begins the spread of the art and techniques of production of this new product, and then the competition between these countries starts, thus, push the innovating companies to think about investing this product in developing countries to benefit from Low labor costs.

3. The theory of unequal exchange:

International exchange would be beneficial to its extremes in classical theory as well as the relative availability of factors of production that would also lead to convergence of income levels in developing countries. In fact, international exchange has not been like that in the past or in the present, and therefore it must be seen in the context of inequality between its parties, which is the basis of the theory of unequal exchange.[94]

Initial formulation of the theory of unequal exchange:

Since the 1950s, some economists, including Mirdal, Berry Cheb and others, have shown that underdeveloped countries represent the weakest part of the exchange process, meaning that the exchange of the group of developed countries and the group of underdeveloped countries is an unequal exchange. Mirdal explained that international exchange does not result in a trend towards equal access, as classical and Swedish theory says, and that what these theories say is due to the most important hypotheses of these theories, as follows:

a. To impose a stable balance.
b. The imposition of harmony of interests.
c. The imposition of full competition.

The idea of a stable equilibrium is that if equilibrium is breached, it generates automatic forces that bring things back to normal. In other words, the differences in the prices of the elements of production between countries generate automatic forces through exchange. These automatic forces lead to the elimination of these differences.

The hypothesis of harmony of interests includes that there is no diminution between the two sides of the exchange, while the hypothesis of full competition implies that neither side of the exchange can determine the outcome of the exchange alone. These

[94] Mahmoud Younis, International Economics, Op cit, p.91.

presentations have been criticized by the economist "Myrdal," who believes that the economic process is cumulative, i.e. the existence of differences under the existing conditions lead to more differences. The hypothesis of full competition has been criticized in two ways[95]:

- First: It is far from reality, especially in the framework of relations between developed countries and underdeveloped countries.
- Second: It is a meaningless hypothesis in the context of the cultural, economic, social and psychological conditions of underdeveloped countries.

Mirdal concludes that if we look at the economic process as a cumulative process, and if we refuse to impose full competition, the logical result is increased inequality due to the inequality between the two sides of the exchange.

The economist Pribsch pointed to the inequality between backward countries and developed countries and the resulting damage to developing countries as the weakest party. He focused on the latest forms of this damage, which is the deterioration of the international exchange rate of the developing country. The economist Pribsch concluded that the underdeveloped state should abandon the principle of freedom of foreign trade and adopt a protectionist trade policy that enables it to establish a national industry within.

1.6 Policies of International commerce

The interference of the state in its foreign trade movement is back to a long time. The philosophy of this intervention is to protect the local product on the one hand and to increase government revenues on the other, to reduce the balance of payments deficit and to rely on manufactured goods on the third hand. The economic policy is defined as the set of measures taken by the economic authorities to achieve certain objectives.

Trade policy objectives

There are several objectives of the trade policy. Perhaps the most common objectives are to achieve treasury resources, achieve the balance of payments, protect domestic

[95] Mohammed Ahmed Al-Siriti, Foreign Trade, Op cit, p. 104

production from foreign competition, protect the national economy against drowning, protect the emerging industry, restore national income and protect the national economy from external fluctuations[96]. These strategic objectives can be divided into three main groups: economic, social and strategic.

- Economic objectives: which includes[97]:

1. Achieving resources for the public treasury: Access to public treasury funds to finance public expenditure of all kinds is one of the objectives of trade policy. In many cases, access to resources on this route is more effective and more politically acceptable than some alternative ways of financing the public domain. The treasury's financial resources are usually obtained when the goods pass through the border, thus providing a large part of the collection expenses, and the financial resources obtained from this route are at least partly driven by foreigners. If these financial resources were obtained by imposing customs duties on imported goods without discrimination, this may lead to a breach of social justice or economic development. Achieving this objective requires the choice of the right kind of goods and services in international trade.
2. Achieving the balance of balance of payments: Automatic forces may not be sufficient to balance payments, and the use of currency as a means of restoring balance to the balance of payments has many caveats. The price elasticity of exports and imports may be weak, and the exchange rate may deteriorate considerably as a result of the devaluation of the currency, and this reduction may lead to an increase in the external debt burden if the proportion of debt declared a large proportion (which is the predominant situation). As for the developing currencies, devaluation will not lead to any result, given the modest flexibility of external demand for exports and the high internal elasticity of internal demand for imports. All these reasons may not exist in many countries including developing countries. This leads them to take measures to restore balance on the balance of payments.
3. Protection of domestic production from foreign competition: In certain circumstances, economic policy may be aimed at protecting domestic

[96] Bashi Ahmed, Foreign Trade and Economic Development, The Case of Developing Countries, Master Thesis, University of Algiers, 1986, p. 85.

[97] Adel Hashish, Fundamentals of International Economics, New University House, Egypt, 2002, p. 234.

production from foreign competition. This is also a trade policy objective. It is intended to isolate external influences that can adversely affect local production in some branches, where the need for protection in this area appeared when the real expenditure of production at home is greater than abroad, and when there are reasons to maintain domestic production, for example, as applied by Western European countries to protect the agricultural production from competing the agricultural production in developing countries.

4. Protecting the national economy from slippage: This is an application of the theory of price discrimination in international trade. It is intended to sell at a price lower than the cost of production in foreign markets and compensate for the loss of selling at a high price in the domestic market.
5. Protecting the nascent industry: Protecting the nascent industry is one of the strongest arguments for the intervention of countries in the path of free trade. The nascent industry is a modern industry that is expected to mature if the appropriate environment and potential possibilities for the industry were available. The outcome of these conditions is called "comparative advantage". If there is a full or potential comparative advantage in the productive branches, then the industry may be regarded as a nascent industry that must be protected.
6. Protection of the national economy from external fluctuations: There may be economic fluctuations outside the national economy, such as violent inflation or severe contraction, and such fluctuations (regardless of the causative factors) are undesirable, so protection of the national economy is considered necessary as foreign trade is the means of communication abroad.

- Social and Strategic Objectives:

Social goals: This includes the following[98]:

1. Protection of the interests of certain social groups: such as the interests of farmers and producers of a particular commodity or workers engaged in a particular industry, and here the interests of these categories fluctuate according to a particular mechanism.
2. Redistribution of national income: In some cases, the state may target the redistribution of national income among different classes, resorting to foreign

[98] Adel Hashish and Majdi Shehab. Principles of International Economics, Op cit, p. 121.

policy instruments to achieve this, and usually more than one instrument can be used to achieve this. For example, the imposition of customs duties and the application of quotas on certain imports, while the stability of other factors reduces the real income of consumers of this commodity and increases the real income of its producers at home. National income distribution is rarely declared as a trade policy goal, but this policy is vital if it is accompanied by other economic and financial policies.

Strategic objectives: Strategic objectives of trade policy are all related to the security of society, whether in the economic, food or military dimension. Social security and strategic considerations may require the provision of a minimum level of food through local production, no matter how expensive it may be. This is done by imposing tariffs or quotas. The same applies to the provision of a minimum level of military production so that the community achieves a high degree of security. Strategic considerations for economic activity also require the provision of sufficient amounts of energy sources such as petroleum, for which trade policy must adequately follow enough tools to achieve this objective.[99]

1.7 The importance of international commerce

International commerce plays a distinctive role in economic, social and political life. This role can determine the political features of the state and the aspects, manifestations and basic forms of its relations with other countries. This important role of international commerce is represented in the following areas:

- **Economic field**: international commerce in the economic field seeks to achieve the following[100]:
    1. International commerce considered as an outlet for disposal of surplus production from the need of the local market where the domestic production is greater than the local market can absorb, and benefit from the strengthening of the budget of foreign exchange.

[99] Jawdat Abdul Khaliq, the international economy from the comparative advantages to the unequal exchange. Dar al-Nahda al-Arabiya, I 4, 1992, pp. 77-81.

[100] Abdel-Muttalib Abdel-Hamid - Economic Theory, University Press and Publishing House, Egypt, 2000, p. 373.

2. Helps to obtain more goods and services at the lowest cost, as a result of the principle of international specialization on which it is based.
3. Encouraging exports which contribute to have the gains in the form of foreign capital, which plays a role in increasing investment, building factories and establishing the infrastructure especially in developing countries and thus promoting economic development.
4. It is an indicator of the ability of the productive and competitive countries in the international market to link this index with the available productive potential, the ability of the countries to export and the levels of income, as well as their import capacity, and this is reflected on the ability of the country in dealing with foreign transactions.
5. Transferring the technology and basic information to build the developing economies and promoting the process of comprehensive development.
6. Balancing the internal market as a result of achieving the balance between supply and demand.

- **Social domain**[101]: international commerce in the social field seeks to achieve the following:

1. Increase the well-being of individuals by expanding testing in terms of consumption.
2. Making the necessary changes in the social structure resulting from changes in the economic structure.
3. Raise tastes and fulfill all requirements and desires and satisfaction of needs.
4. Access to the best of science and information technology at relatively cheap prices.
5. Increasing the impact of foreign trade on daily life.

- **Political sphere**[102]: international commerce in the political sphere seeks to achieve the following:

1. Strengthening defense infrastructure in countries by importing the best and best of science and technology.

[101] Rashad Al-Attar et al., International commerce, Op cit, p1.

[102] Magdy Mahmoud Shehab et al., Fundamentals of International Economics, New University Publishing House, Egypt, 1998, p. 19.

2. Establishing friendly relations with other countries involved.
3. Political globalization, which seeks to remove borders and shorten distances. It seeks to make the world a single global village and thus has benefited from modern technology and cross-border foreign trade routes

On the other hand, Firas[103] clarified that international commerce represents a vital sector because of its importance in:

1. Linking Countries and societies.
2. It represents a vital indicator of the country's productivity and competitiveness in the international market as a result of the correlation of this index with the available productive potential and the state's ability to export.
3. P. Achieve gains by obtaining goods that cost less than if they were produced locally.
4. Increase national income by relying on specialization and international division of labor[104].
5. E. International commerce helps to transfer technology that will help build strong economies and promote inclusive development.

International commerce also contributes to the increase of treasury resources and their use in financing public expenditures of various types[105]. International commerce contributes to the protection of the domestic industry from foreign competition and

[103] Firas Ashqar, Introduction to International Trade, Op cit, p.4

[104] There is a reciprocal relationship between international trade and international specialization, where international trade is closely related to the phenomenon of specialization and division of labor at the international level. Without international commerce, some countries would not have been able to produce goods and services in excess of their needs. On the other hand, without specialization, each country would have produced the different goods and services and the international commerce would not be appeared. Adam Smith emphasized that specialization and division of labor on the international level is closely related to international commerce. This is confirmed by classical economists such as Adam Smith, who showed that if an individual is assigned to perform one job, he or she will master it and increase its proficiency, thus increasing its productivity and achieving a higher level Of economic well-being.

[105] Jim Sherlock and Jonathan Reuvid, the Handbook of International Trade. A Guide to the Principles and Practice of Export. SECOND EDITION, Published in Association with: The Institute of Export, 2008.

protects national economies from external fluctuations that occur outside the national economy such as deflation and inflation[106].

1.8 Multinational enterprises and the international commerce

The relationship between foreign direct investment provided by multinational enterprises and international commerce goes beyond buying and selling as some believe, as the relationship is centered on increasing production, thus increasing exports, increasing the share of foreign trade in the global market or replacing imports to reduce dependency on the outside world.

1.8.1 Multinational enterprises and their impact on imports

Imports are one of the aspects of international commerce, where imports contributing to the formation of the necessary vertical formation of the process of economic development, which in turn contributes to the gross national product. Imports can have a negative impact on national output if these imports are consumption and non-capital or intermediate goods that contribute to increased production. However, the production structure in some countries is still inflexible, so the devaluation of the currency does not contribute to increased exports and lower imports, so it does not absorb the devaluation of the national process effectively.

The import substitution strategy is the choice of industries whose products can be replaced by imported products through the establishment of industries that reduce the import bill within a certain time period required by the implementation of this strategy, which will ultimately be reflected in the reduction of the demand for foreign exchange. The import substitution strategy involves the establishment of local industries to produce products that were imported previously through the establishment of customs and non-tariff barriers against the importation of similar foreign goods.

The import substitution strategy goes through three basic stages: production of real consumables, production of durable consumer goods due to differences resulting from

[106] Rashad Al-Attar et al., International commerc, Op cit, p.3.

market constraints facing the first phase through using the multinational enterprises. The third stage is the production of intermediates or the search for external markets.

1.8.2 Multinational enterprises and their impact on exports

Exports are the first part of the trade balance, which measures the extent to which the country is integrated into the process of international commerce, which is the supplier of the country, and from which imports can be covered, where the impact is also affected by the contribution of multinational companies to the production process.

Export promotion policy is defined as a set of measures aim to affect the quantity and value of its exports, leading to increased competitiveness of domestic products in world markets. It is also defined as a set of procedures that are followed to encourage all exported goods. To ensure the implementation of this strategy; Gheraway & Milner (1990) set several tools to stimulate investment in production for export such as[107]:

1. Customs tax exemptions on imported inputs.
2. Direct and indirect local tax exemptions on export activities with export credit granted to import intermediate inputs for export industries.
3. Providing direct support to export industries.

Economists have found the strategic encouragement strategy as an essential step towards economic growth, a good alternative to import substitution policy, maximizing the comparative advantages of international commerce and creating an enabling environment for production through international competition. The countries that adopted this policy tried to benefit and apply some aspects of market economics, especially the liberalization of the economy and the liberalization of trade, considering that these liberalizations promote exports through international competition.

Mustafa[108] stressed that the increase in investments leads to an increase in exports, because there is a direct relationship between investment surpluses and increase exports, and the decrease in exports means that there is no relationship between them.

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

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

To illustrate this more closely, the Chinese example can be found in the export promotion strategy. In the mid-1980s, China's trade strategy shifted from an import-import policy to a production-export policy against the backdrop of multinational corporations entering China in the mid-1980s with investments. China's international commerce has become a strategic hub for Chinese enterprises, with China's exports increasing dramatically, and Chinese enterprises financed by foreign investment have been a driving force for the development of China's foreign trade. Consequently, China's exports increased from 0.1 percent to 12.6 percent of total production in 1984, after which China opened trade to the world so that its exports reached various types of the world[109].

1.8.3 Multinationals enterprises and their impact on trade balance

Multinational enterprises are the most important contributors to the improvement of the trade balance situation, as the trade balance contributes to the diversification and increase of domestic production, which covers domestic consumption, which in turn reduces the import bill. It also affects exports, raising the country's foreign currency receipts and improving its financial position in the international arena and maintains surplus trade balance.[110]

The trade balance includes[111]:

1. .Exports and imports of goods, so it is called the projected balance of payments.
2. It is the difference between the value of a country's imports during a period and the value of its exports.
3. The trade balance is an important economic indicator and its value lies in the analysis of its components and not in absolute values. Therefore, it is

[109] See; Mohamed Abdel Razzaq, International Economics and International Trade, Op cit, p. 912; Ibrahim Al-Akhras, The Role of Transcontinental Companies in China, First Edition, Itrak Publishing, Publishing and Distribution, Cairo, 2012, p. 294.

[110] 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.

[111] I bid, p. 97.

necessary to know the quality of all its components and structure, i.e. the ratio of primary, semi-finished or processed resources to total imports or exports.

4. The surplus in the trade balance occurs when the volume of exports in certain countries exceeds the volume of imports.
5. The trade balance deficit occurs when the volume of exports in a given country is less than the volume of imports.

Produce products from Multinational companies that replace imports imported from abroad increase the resources of these countries by using their scarce financial resources in their other activities. These processes can also export surplus products to other foreign markets. This can improve the trade balance and reduce the balance of payments.

Chapter Two

Multinational Enterprises: concept, characteristics & evolution

2.1 Chapter Introduction:

This chapter of the research came to provide readers with a general background regarding the emergence, evolution, characteristics and challenges that could face MNEs while performing their operation. The chapter also offers an overview of the basic theories that explains MNEs concept and operations. It also reviews the historical development of multinational enterprises (MNEs). The chapter starts with defining and the clarifying the concept of multinational enterprises as follow;

2.2 The definition and concept of MNEs

In the 20th century, a huge transportation and communication developments have been observed widely, and had strong influences in various life sectors. Multinational enterprises (MNEs) became as one of the main international actors in this century. Several states such as USA, UK, Canada and Japan have extended their relations and activities through making wide investments overseas[112].

[112] Mira Wilkins, "European and North American Multinationals, 1870-1914: Comparison and Contrast", in Ed. Mira Wilkins, The Growth of Multinationals, Edward Elgar Publishing, US, 1991,p.52

One of the main concepts that gained a new skyline with the existence of MNEs is international commerce. Therefore, the MNEs term should be defined clearly at this stage to realise its basic concepts.

Several definitions were recognised for the Multinational Enterprises (MNEs) notion as there was no univocal explanation and definition of MNEs in the past literature. The basic definition of MNEs is these corporations that deliver different kinds of services for beneficiaries in various countries all over the world[113] , or a company that posses distinguished production service in foreign countries[114] . Muchlinski [115] defined multinational enterprises as companies that created in one country and operated within other countries laws and conventions. Different terms could be used and means the same as MNEs such as multinational corporations or either international corporations. But it must be mentioned that international ventures cannot be considered MNEs until they own considerable investments and real trade transactions in one country and other foreign countries, and have administrative and organisational power over these ventures operations[116].

MNEs also defined as a profit institutes that control various countries activities for the purposes of expanding their sales capabilities, diverse their potential resources and vary their suppliers to enhance their abilities to achieve competitive advantage[117] . Furthermore, United Nations considered MNEs as companies that basically manage product or service in countries that differ from its origin country[118]. Moreover; the guidelines the created by OCED for MNEs defined this terminology as companies that

[113] Zhang, F. Corporate Social Responsibility in Emerging Markets: The Role of Multinational Corporations; An Initial Paper for the Launch of the Foreign Policy Centre Project on "Corporate Responsibility in Emerging Markets" in association with Coca-Cola Great Britain, . (2008), p.5.

[114] Meier, O. – Schier, G., Enterprises multinationals. Strategies, restructuration, governance. Paris, Dunod, (2001), p.8.

[115] Muchlinski, Peter,'The development of human rights responsibilities for multinational enterprises' in Sullivan, Rory, *Business and Human Rights: Dilemmas and Solutions*, Sheffield: Greenleaf publishing ,(2003), p. 5

[116] Bartlett, C. A., & Ghoshal, S. *Managing Across Borders: The Transnational Solution*. 2nd ed. Boston: Harvard Business School Press, (1998), p.12.

[117] Mira Wilkins, "European and North American Multinationals,Op.cit. ,1991,P.53.

[118] UN, Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations (1974) UN Doc E/5500/Rev.1, ST/ESA/6, 25.

have activities and investments in different economical sectors in two countries or more. OCED also mentioned that the autonomy and power of involved entities can differ within multinational enterprises[119].

MNEs always comprised of the parent (or home) country, and at least one host country that represent other countries that has organisational and legal interrelation with the parent country company[120]. Other financial definition was recognised to MNEs is that it is an enterprise that gain its capital through gathering of international assets[121]. In managerial definition, MNEs is the enterprise that controls other countries enterprises, at least at two countries, either financially, physically or strategically[122].

From all above definitions, it can be noticed that there is no any universal accepted definition for MNEs term. Some scholars mentioned that multinational institute that has managerial, political, and operational relations in different geographically distributed firms[123].

There are several patterns that could be used to classify the previous definitions of MNEs. The first pattern concern about the host countries amount, so it classified institutions as MNEs when it operates their business is several countries[124]. Another definition that also concerned about this pattern created by dunning who defined MNEs as an organisation that manage and generate productions in more than one country[125]. In more details, the above mentioned definition that created by Organization for Economic Co-operation and Development (OECD) located within this trend of MNEs definitions, cause OECD defined MNEs a set of companies that have a singular or mixed administration, that located in several countries, and that have various connected

[119] OECD Guidelines for Multinational Enterprises (n 12), part I, ch I, at 4; see ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (n 12) at 6.

[120] Levasseur S. Les investisements directs à l'étranger et stratégies des enterprises multinationals. In: Revue de l'OFCE, No. 5, Iss. 83-1, 2002, pp. 103-105.

[121] Wilkins M . The free-standing company, 1870–1914: An important type of British foreign direct investment. Economic History ReŠiew 39, (1988), p. 82.

[122] Meier, O. – Schier, G. ,Enterprises multinationales. Stratégie, restructuration, gouvernance. Paris, Dunod, (2001), p.8.

[123] Richard D. Hayes, Christopher M. Korth, Manucher Roudiani, International Business: An Introduction to the World of the Multinational Firm, Englewood Press, U.S, 1972 p.261

[124] Elwood L. Miller 1979, p.3

[125] John H. Dunning, 1971, P.16.

relations and impacts alongside with their connected activities while they sharing knowledge and assets while performing their transactions[126]. Another definition considered MNEs as a technological improved company that control their services and production abroad and over more than one country[127].

The second pattern of defining MNEs focused about the foreign investments amount. Some scholars who believed in this pattern defined MNEs as a company that at least 20% of their assets are globally invested[128]. However, the report of international business clarified that any company to be considered and classified as MNEs, it must have more than 35% of their financial profits and returns came from exploiting their assets overseas[129].

The third pattern is realised as a combination of the two previous mentioned patterns, as it concerns about the host countries number, in addition to the foreign investment amount, such as Hood who defined MNEs as a company that share at least 25% of their assets are invested overseas with minimum states amount, at least five countries[130].

Final other pattern of defining MNEs mainly concerned about controlling and managing enterprises internationally, as it defined MNEs as a parent company that control a set of foreign institutions that have common approaches, goals and assets[131]. MNEs also defined as an institute that operate and control their business and assets in several countries[132].

After having a deep investigation regarding the MNEs definition through reviewing the whole patterns of defining this term, MNEs represent giant entities that practices trade and production across continents and has two or more countries. These companies are giant entities in terms of the size of its capital, the volume of investments, the diversity

[126] OECD, Paris, 1988 , P27.

[127] Hoogvelt , A., Puxty ,A. G. &Stopford, J. M. , 1987, P.157 :as cited in Marius Ronge , 2001, P10 .

[128] Victor Z. Priel , Some Management Aspects of Multinational Companies, Management International Review, vol.14 No.(4-5)1974, P.47.

[129] Ibid, P.47.

[130] Hood, N. & Young, S., the Economics of Multinational Enterprise, Longman Inc., New York, 1984,P.2 .

[131] Elwood L. Miller, Op Cit, P.3 .

[132] D. K. Fieldhoouse. 1986, P.9.

of its production, its sales figures, revenues, their marketing networks, the volume of their spending on research and development, the magnitude of their organizational structures and the efficiency of its departments. An economic entity that practices trade and production across continents and has two or more countries. Moreover, these companies account for 80% of the world's total sales. Google and Microsoft are among the most famous multinational companies. So it represents all enterprises that have operations and international commerce activities overseas.

2.3 The Multinational enterprises characteristics:

All Multinational enterprises tend to be monopolistic, where ownership, management, production and sales activities extend beyond the authority of several national entities. MNEs often composed of a home company in one state and other subsidiaries in other countries in diverse places in the world, and the main aim of this corporation is through having the least production costs in the world markets, and this could be achieved by obtaining the best and most efficient locations for production facilities or through having tax concessions from the host governments of these companies[133]. It should be mentioned here that all multinational enterprises have huge sets of managerial talents, financial and technical assets and resources in which they managed through a coordinated global strategy for controlling their operations. Multinational enterprises often seek to expand and sustain their situation in the world market through having vertical integration and unification in generating the company major decision[134].

In spite of the fact that MNEs have several definitions and purposes, but they all have several common features and characteristics, that can be summarised as follow[135];

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

[134] Mahmoud Khalaf, Introduction to the World of International Relations, Dar Zahran, Amman, 1997, p. 176

[135] See; Beamish, P. W., & Lupton, N. C, Cooperative strategies in international business and management: Reflections on the past 50 years and future directions. Journal of World Business, 51(1): 163–175, 2016

1. MNEs spread in wide geographical areas: this feature can be explained due to the spread of subsidiaries in different countries all over the world. For instance, the subsidiaries of the home Coco Cola company spread in more than 150 states. This feature makes MNEs more flexible as it make them able to take benefit from the international economic changes and to create more economically effective deals through choosing the best pricing and financing sources from the existed wide range alternatives. This feature also could make MNEs more able to generate overseas production, operation and sales activities. The importance of this feature could be explained as they contribute in formulating company's strategies worldwide, and to quantify the quantities and qualities of productions and services globally, while paying attention to achieve a secure supply strategy. All of these encourage such institutions to spread over several countries to achieve competitive advantage even without giving preference to the legal headquarters states in some times[136]. So this wide geographical spread of MNEs made them as essential actors in the international commerce activities[137].

2. MNEs considered as flexible institutions: according to the above discussed attribute and according to the MNEs size this made the involved enterprises more economically flexible enteritis. This feature enables MNEs to choose the best communication system with the involved affiliate networks to utilise the existed recourses for the purposes of achieving the local and overall MNEs interests. MNEs flexibility can also be explained due to the ability of such institutions to choose the location in the global market that could offers the best resources, operations and production opportunities, and that have little restriction and obligation rules that could enhance the level of MNEs operation flexibility[138].

Bhaumik, S. K., Driffield, N., & Zhou, Y., Country specific advantage, firm specific advantage and multinationality–Sources of competitive advantage in emerging markets: Evidence from the electronics industry in China. International Business Review, 25(1): 165–176, 2016

Buckley, P. J., Doh, J. P., & Benischke, M. H., Towards a renaissance in international business research? Big questions, grand challenges, and the future of IB scholarship. Journal of International Business Studies, 48(9): 1045–1064, 2017

[136] Omar Sakr, Globalization and Contemporary Economic Issues, publishing of University House, Cairo, 2003, p. 29

[137] Hood, N. & Young S., Op. Cit.,P.24.

[138] Elwood L. Miller, Op. Cit.,p.20

3. The efficiency of MNEs: this characteristic could be explained according to the ability of MNEs to transfer their assets starting from financial assets, human resources, goods, technical abilities transferring and materials from one country to another all over the world. Furthermore, the ability to manage all MNEs subsidiaries to achieve the common interest through obtaining the best opportunities with least challenges either managerially or legally. So the efficiency of MNEs can be realised in its ability to produce and transfer resources in the lowest costs and performing its operations in less-restricted global markets[139].

4. The power of MNEs: this feature considered as a result of the previous attributes combinations, especially geographical spread, efficiency, and these institutions overall size, and operations amount. According to the huge amount of financial assets owned by multinational enterprises, this made them have the power over the local business market. As MNEs did not have the complete protection of the international law, this made them must having power to compete and defend themselves, which clearly realised in the MNEs ability to surpass some national law restrictions in the host countries and take benefit of the global regulations in efficient manner[140].

5. The stability of MNEs: the main attributes that could explain the MNEs stability is their size and their owned power. The existence of integrated resources between the home and host countries made them able to face all unexpected restrictions while performing their operations. Additionally, the huge amount of their assets and resources ensures the profitability and success of their investments. The MNEs stability could also be explained due to their power to overcome some subsidiaries financial losses to achieve the overall economical efficiency[141].

6. MNEs are considered as dynamic enterprises: According to the globalisation phenomenon and the technological advancements this generates continuous developed resources, products and innovative market, thus explain the dynamic attribute of MNEs. The dynamic attribute of MNE can be noticed through its ability to utilise the merged management and planning strategies to overcome the existed issues and expected conflict forces while performing their operations in different

[139] Ibid, P.18

[140] Ibid, p. 18

[141] Ibid, p.18.

states[142]. MNEs is also realised as an accepted changes initiatives as they realise, adjust and harmonise the expected challenges to novel opportunities. Hood & Young also stated that "The MNCs often operate in monopolistic market structures and it is clear that the speed of commercial introduction of new products and processes is more rapid in oligopoly, which gives them more dynamic"[143].

7. Monopolistic: the products and transactions of MNEs are often monopolistic to the developed countries activities. The monopolistic characteristics came from the fact that MNEs attempt to achieve the best economical growth through achieving more access to the capital markets. MNEs often choose the country that has continues development and legal environment that support its activities and help me to achieve competitive advantage[144].

8. The technological advancement and development of MNEs: Multinational corporations are considered as an essential source of technical, managerial and organizational knowledge sharing through offering a well-trained and specialized labor. These human resources contribute to narrowing the technological gap between developed and developing countries[145]. MNEs are realised as the main monopolies of the universal technology to achieve their ultimate goal of maximising their profits. Multinational enterprises are the main dominated of the latest technological equipments through its enormous investment in scientific research and technological development field. These companies also control the latest fields of technological advancements, such as electronic, nuclear, chemical and military industries. This attribute is considered as one of the essential MNEs characteristics as the existence of the most developed technological sources could result in reducing costs, enhancing productivity and efficiency, develop business opportunities and create additional sources of income which as a result could cause the achievement of competitive advantage over other local companies in the global markets.

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[142] Ibid, p.20

[143] Hood, N. & Young S. , Op. Cit.,P.115.

[144] Elwood L. Miller, Op. Cit., P.19.

[145] Mustafa Salameh Hussein, International Organization of Multinational Enterprises, Faculty of Law, Alexandria University, Dar Al-Nahda Al-Arabiya, 1982, p.15

One of the most important characteristics associated with multinational companies is the ability to transform production and investment globally. This characteristic is the result of the fact that these companies are characterized by their wide investment activity in the world, as well as being gigantic entities with various activities dominated by the processes of horizontal and vertical integration. Despite the huge international investments made by multinational companies, more than two-thirds of their investments are concentrated in the United States of America and the countries of the European Union (England, Germany and France), Switzerland and Japan, meaning that the bulk of the investments of multinational companies goes to the advanced capitalist countries and this shows that these Corporations are a phenomenon often associated with the advanced capitalist countries as they are the main source and importer of these companies' investments [146]. Multinational companies also enjoy a set of monopoly advantages thanks to their control. This feature is due to the fact that the market structure in which these companies operate takes the form of an oligopolistic market in most cases. Oligopoly is the situation that arises when a few individuals or firms produce the total supply of a commodity.

Among the most famous examples of multinational corporations are Apple's monopoly to the App Store and Apple Pay practices. In this regard, the European Commission has opened two investigations into this monopoly. The first is related to Apple's breach of competition rules in the European Union through its application store policies that force app developers to sell to customers using its purchasing system, as well as rules that prevent them from informing users of less cost products elsewhere. The second investigation is related to Apple's terms and conditions about the use of the mobile payment service (App Store) in website applications and the company's refusal to allow competitors to access the payment system. The commission has indicated that these companies do not want to follow the same rules as everyone else, and that an equal workplace must be preserved.[147]

[146] Muhammad Nabil Al-Shimi, Multinational Corporations and Developing Countries, Benefits and Drawbacks, Al-Dialogue Civilized - Issue: 2960, 2010

[147] Tony Romm, Elizabeth Dwoskin and Craig Timberg, Justice Department announces broad antitrust review of Big Tech, 2019

The US Department of Justice in 2019 called for a comprehensive investigation against major Internet companies and may target Google, Facebook, and Amazon related to the monopolistic practices practiced on major Internet platforms to determine whether these companies stifling innovation or limiting competition. Amazon is the second largest public company in The world. Its market value has recently exceeded a trillion dollars and it is managed by the richest man in the world. Amazon is always placed in the spotlight and not without criticism, from junior analysts to senior politicians, led by US President Donald Trump, who see it exploiting Its size increased in unfair competition, according to a report by The Wall Street Journal.[148]

Apple is facing criticism that its policies and app store algorithms support its own products and clamp down on competing apps. Looking at the real stores in the United States, it is obvious the small size of "Amazon", as this market still accounts for 90% of sales of consumer goods in the country, but the company owned by billionaire "Jeff Bezos" dominates the retail trade over the Internet, and represents 45% of the total. The virtual market, according to a report by Euro monitor International. However, some claim that the company's access to massive amounts of consumer data gives it an unfair advantage when it comes to pricing and other business practices.[149]

Most experts say that antitrust law enforcement since the 1970s has focused primarily on making sure not to harm customers, and it is difficult to find evidence condemning "Amazon" for doing so, while University of Michigan law professor, Daniel Crane, says: 'We don't simply punish companies Because it's big, we look at behavior'. On the other hand; some legal professionals and regulators are concerned that the current antitrust laws have not anticipated the significant impact of technology companies such as Amazon, and are questioning whether the capabilities of the current antitrust authority are sufficient to keep pace with the rapid changes in the US business sector.[150]

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[148] I bid.

[149] Does the sheer size put Amazon under antitrust law?, Argaam, 2018. Available at: https://www.argaam.com/ar/article/articledetail/id/571700

[150] Ibid

2.4 Multinational enterprises challenges

Although the previous characteristics of MNEs that made them appear as a stable, powerful, flexible and huge in size enterprises, but in fact such enterprises could face several challenges that could hinder its development and control.

The first challenge that could face MNEs, especially in their international commerce activities, is the differences between the host and the parent company governmental regulations. The legalisation of the host countries government in international commerce basically represented in the legislate power, the right to add taxes, and to expropriate[151].

The host country legislation power is a double-edged sword as it could either support or hinder the MNEs activities. First of all, the host country declares all rules, especially economical concerned rules that could govern any company that intend to operate its activities in the host country. Furthermore, several legalisations could be created by the government of the host country for the purposes of managing operations and financial exchanges between the subsidiaries and the home company. So the host country government is considered as the basic controller of the benefits taken from the MNEs activities in international commerce and business, as it is the generator of the patterns of taking benefits and generating economical growth while operating with foreign countries.

Moreover, the host government is realised as the basic director of Tax regulations in international commerce activities. Such regulations could be considered as a basic challenge in front of the MNEs because of the conflict of strategic goals of the host and MNEs in this aspect. We should mention here the MNEs often seeks to have a minimum taxation charge and to gain an enlarge income after paying taxes, so they often follow some twisted procedures to have minimum taxing charges. Besides they utilise the evidence of some laws that oblige the host countries to minimise the taxation such as the double taxation reduction laws[152].

[151] Ibid, Op. Cit., P.23.

[152] Hood, N. & Young S., Op. Cit., P.210

While the government of the host countries attempts to enlarge their local benefits through maximizing the imposed tax charges over MNEs. Taxation is realised as the host government noticeable shares with other foreign institutions activities.

Other challenge that could face MNEs is the ability of host government to expropriate over any foreign institution that operates on its land, and such expropriation could be performed with or without any kind reparations to the foreign institute[153].

Moreover, the host country government has the right of the immoral suasion which is considered as a huge problem for other involved foreign states as it is considered as a protocol to oblige foreign states to take some actions which could have a negative impact on these states with the time passage[154] .

From all above, it is clear that the host country and its governmental practices and regulations realised as the basic trouble generator for MNEs operations and practices. So MNEs seek to combine these four noticeable challenges, the host government legislation, the added taxes over foreign states, the expropriation, and the immoral suasion, with other strategic economical and environmental factors which could minimise the probable sources of risks while generating investments with other host countries. Some other political functions of foreign institutions could also restrict the host government practices and make them offer some facilities to foreign investors.

Conversely it must be mentioned that MNEs could add some charges on host countries government such as repealing the local government sovereignty, making unfair competition activities, wriggling from paying taxes, competing in unfair manner, changes the status of labour market and its stable situation, in addition to neglecting social responsibilities and exploiting local resources selfishly.

Another noticeable challenge that could face MNEs is the probability to be existed and to perform their operations in other corporation that has the same strength. This competition of MNEs is classified as a local competition even if it was occurred internationally. The basic motivator behind MNEs competition is to have dominance over the local business market. The MNEs completion often realised in developed

[153] Elwood L. Miller, Op. Cit., P.24.

[154] Ibid, p.24

countries that have not trace the technological advancements and local capital. Additionally, there are some indirect competition practices that could be taken by the host country to support and protect their domestic productions[155], such as importing some essential resources and exporting some determined productions. This problem could be solved through designing a discussion panel for all expected challenges before creating investments with the host country. The ability of MNEs to utilise the advantage of transfer pricing through having an access to all business markets all over the world, make the host government price control strategies inapplicable.

2.5 Multinational Enterprises Emergence and evolution

However there are common features between modern and past MNEs, but the evolution of MNEs was basically noticed in the last half of nineteenth century[156] as the noticeable growth of several modern industries shown the necessity to develop multinational companies.

According to the industrialisation phenomenon, private investors hugely intend to find large industrial firms that could cope with this sudden development. They believed that national firms could restrict large firms to develop their industries and activities[157]. Therefore; the emergence of multinational enterprises became a reality.

The emergence of MNEs was strongly connected with the trade activities origin and development. It should me mentioned that trade with its early activities faced a severe problems that is tied with the difficulty in making transactions with other out boarders countries. Therefore, trading was recognised with the unequal geographically distribution of resources feature in this period. This feature aroused traders obsession to expend their activities long distances.

Buckley, Peter J., the Theory of the Multinational Enterprise, Uppsala, 1987, P.34[155]

[156] Chandler Alfred 0 Jr. *Scale and Scope: The Dynamics of Industrial Capitalism* (Harvard University Press Cambridge 1990), Wilkins Mira, The History of Multinational Entelprise in Rugman AM and Brew~r TL (eds.) *Oxford Handbook of international Business* (Oxford University Press, Oxford 2001) p. 4

[157] Zander, Iva, The Tortoise Evolution of the Multinational Corporation -- Foreign Technological Activity in Swedish Multinational Firms 1890-1990, A Dissertation for the Doctor's Degree in Business Administration lIB and the author ISBN 91-971730-29, Stockholm School of Economics 1994, p.2.

The industrial revolution that generated in the 19th century has altered the way that firms and states engaged in trade activities. This century also allowed for easy movement of individuals between various countries especially traveling between Europe and North America. Several reasons that encouraged firms to enroll this cross boarder investments in this time, such as, to bring novel raw materials and minerals to support the domestic business, to cover the continuous raising population needs from food and other basic necessities, or either to follow the global markets through widen their activities and operations[158].

The industrial revolution plays a significant role on how business enterprises manage their operations and production techniques. It also shapes a more legal and economical basis for exchange relations between institutions.

Moreover, the industrial revolution shed light on the significance of the technological advancements, human capital and financial abundance in the processes of production.

A noticeable growth of modern MNEs was noticed in the second half of the 19th century, and after the industrial revolution specifically. Before this revolution, three basic reasons encouraged economical institutions to make national and out borders transactions[159]. The basic reason is to develop the nature of financial operations and trading activities in the concerned states. Secondly, to gain new wealth opportunities and offer new state resources, and the third reason was to develop new methods to utilise the existed domestic resources. So the first MNEs were existed with the aim of developing the home and host countries resources and assets. But this kind of MNEs were changed in the second half of the 19th century and especially when the US and European MNEs emerged.

According to the industrial and technological continuous developments, and the improvements in transportation, and communication means, new business opportunities were created in various locations in the world. Companies start looking to find new

[158] Evren Koksal, The impact of multinational corporations on international relations. Master thesis, Middle East Technical University, Dec. 2006, p.34.

[159] Dunning JH, *Multinational Enterprises and the Global Economy* (Addison-Wesley, Wokingham),(1993), p.97.

wellbeing opportunities, and as this accompanied with the managerial new strategies; which aid to a wide expansion of international transactions[160].

In more details, in 20th century, several states make a strong strategically cooperation with various private and nongovernmental institutes which are considered more technological developed institutions. This atmosphere considered as the base for multinational corporation evolution. Several institutes such as US, Britain, Canada, Japan and Continental Europe institutes have created foreign direct investments overseas[161] .

In the 21 century, MNEs became the basic representative of developing countries activities, and a significant amount of MNEs started their activities and operations as the condition of world economics has extremely changed.

All of the above mentioned events clarified the emergence and evolution of international businesses and especially MNEs business. It should be clarified here that industrial capitalism was the basic dominant of international trade activities in the last two centuries rather than the previous merchant capitalism[162].

So, it can be noticed that MNEs did not emerged and developed until the late of the 19th century, but several companies in North America and Europe have made foreign sales, plantation, and banks investments.

The economic development can be also considered as the main reason behind the evolution of MNEs, and as each state has their own economical capacity then this development could be varied in each country. So the most industrialised states such as America and UK are the first successful emerged MNEs. The First World War was the basic noticeable evolution of the American multinational enterprises although some scholars thought that this development appeared before the American war[163] . Other countries such as Japan and European states applied the utilised models in America and British after the First World War period due to some economical and political conditions. In conclusion, it may be noticed that the main purpose behind the emergence

[160] Jones G 'The Performance of British Multinational Enterprise, 1890-1945' in Hertner Peter and Jones Geoffrey, *Multinationals: Theory and History,* (Gower, Aldershot 1986), Wilkins Mira, *Emergence of Multinational Enterprise* (Cambridge Mass, 1970), and Dunning *Multinational ... Global Economy* p.l03

[161] Mira Wilkins, "European and North American Multinationals, Op.cit, 1991, P. 52-55.

[162] Ibid, p.99

[163] Mira Wilkins, "European and North American Multinationals, Op.cit, P. 150.

and evolution of MNEs was to maximize the profits of the parent and host countries either, through avoiding the host countries customs protection, utilising the least cost materials and labor forces and to have the world markets big shares, in addition to gain the economic power through having the best amount of revenues and returns. The following part will discuss in more details the historical development of MNEs over the last periods.

2.6 Conflicting thoughts regarding the evolution of MNEs:

A great amount of scholars and researchers have diverse thoughts regarding the advantages and disadvantages of MNEs existence and evolution. This part of the research came to explore the contradictory views and opinions of the critics and the MNEs supporters[164].

The believers in the first point of view, which represent the critics, considered MNEs as selfish corporation that causes a bad exploitation of local resources. They also believe that MNEs could cause problems for the host government especially in the political and economical side. They often negatively impact the currency situation of the host countries. The gained economical power from this institutions combination makes them able to generate unfair investments that serve their own advantage with neglecting the host country or some weak subsidiaries purposes and goals. As well as, these institutions could hinder the host state local business practices through controlling and managing their operations arbitrarily. MNEs could also enhance the negative anti-company feelings through focusing on company's nationality rather than company's loyalty feelings and practices. Such institutions could also negatively affect local enterprises evolution as they add strong competition that local enterprises cannot handle with. Multinational enterprises could also cause an economic monopoly over some other local and smaller countries economy. They also could utilise some unethical and more manipulated procedures to achieve their goals, such as speculations of prices to cover some economical advantages. Additionally, according to the fact that MNEs consider the involved companies ultimate goal is the main concern of their practices and operations, this could have a negative impact on the companies staff motivations, as they focuses on maximizing profits and minimising risks without paying attention to

[164] Victor Z. Priel, Op. Cit., P57.

the staff willingness and desires. Other critics also considered MNEs as corporations that aim to achieve their ultimate goal without considering the cultural and social aspects of local environment in which they operate and belong to. They also believed that such institutions is considered as an exporter of assets , with its different shapes starting from financial assets reaching to human recourses and job opportunities, to other foreign states. Finally, some critics clarified that MNEs generate profits overseas over the home country interest[165].

On the other hand, the supporters of the emergence and evolution of MNEs believed that such institutions is the common utilised mean for achieving optimal exploitation of assets and resources either at the local or global level. Furthermore, they considered as an essential source of capital investments whenever it needed, and as a tool for ensuring development and affording offering professional services. These institutions also considered as a practical prove of international business cooperation efficiency and validity[166]. They additionally considered as a leader of operating innovative activities that generate favorable financial results. They also generate novel career opportunities and offer special professional staff training courses. Their international commerce activities could also benefit the distant regions and less developed nations. The believers in the benefits of MNEs also clarified that these corporations considered as a tool to support democracy as they permit a wide participation rate to utilise their investments. Moreover MNEs realised as a balance saving tool that could maintain economical equilibrium between developed and developing states. Likewise, Supporters for the MNEs evolution stated that such institutions offer a detailed model for the interconnected operations and financial resources flow in the international commerce framework. At the end, it must be mentioned that MNEs activities and operations realised by this side believers as a mean of self-sufficiency[167]. I think that MNEs are multinational corporations that are essential in all aspects of the new global economic. These companies strongly influence the global economy through its various activities. These giants with enormous financing potential play the role of leader in the

[165] Ibid ,P57.

[166] *Elsharawy*, Hatem (2006). Developing Controlling and Performance Evaluation
Of Multinational Companies Operating in Egypt, PhD thesis, der Georg-August-University.

[167] Victor Z. Priel, Op. Cit., P57.

scientific and technological revolution and thus deepen the trend towards globalization of the economy

2.7Historical development of Multinational Enterprises

The historical development of multinational enterprises can be basically classified to three main historical duration which are between the period of (1840-1918), (1918-1960) and the period between (1960- 1990) as follow;

- *MNEs historical development in the period between 1840-1918*

This historical period was featured with the proliferation of multinational enterprises investments while paying the utmost effort to exploit available resources, both material and human, such as the petroleum companies. After that the MNEs types was diverted and spread in different fields such as multinational manufactories that launched in 1860 such as the dynamite manufactory that is created by Alfred "The Swedish inventor"[168] , as well as the United States manufacture that is specialised in creating SINGER sewing machines to produce and transfer the same trade mark products all over the world. So this manufacture considered as the first multinational enterprise in that duration. In period the extend between 1880-1890, the United States recorded a dense industrial concentration as more than five thousand institutions monopolies over than three hundred production sources , although the existence of large amount of local small companies. In the period that ranges between 1914-1918, the fear of war was the common atmosphere that distinguishes this period, so the economic stagnation was the main attribute at this duration as the vast majority of the powerful countries denied their companies from transferring their businesses overseas, and they add several discriminatory measure over the foreign companies practices; so the national industries was the dominant commerce activities at this time.

- *MNEs historical development in the period between 1918-1960*

The First World War has a negative impact on all types of MNEs activities and operation as the vast majority of countries intend to make a connection between the

[168] KoldeEndle, The Multinational Company, Behavioral and Managerial Analysis, Lexington Books, D.C Heath and Company, London, 1974, p :21

origin states and the foreign firms, and to find a more protectionist economies for all their activities. Therefore, many companies, German institutions for example, seek to follow other international development strategies such as generating joint ventures and creating licensing relations[169]. While the actual number of involved countries in MNEs was continuously enhanced in this duration, but a remarkable development in this area was exclusively for US companies[170]. In the duration that ranges between (1914-1939), US were the most advanced and developed countries in the existed foreign investments value although UK has more secured resources in this period[171]. This indicates the birth of the American domination according to the American sudden expansion in their manufacturing and international trading practices after the First World War , and according to the fact that the European companies was the basic security keeper in some America's vital positions[172]. The first and second world war restricted the economical situations of sates and companies. Some commercial monopolies were found in that duration. In the 1930s, MNEs are considered as crucial institutions in various business market and industrial sectors economies, and they considered as a social and political accepted firms in different countries all over the world[173]. MNEs were largely existed and widely accepted in countries that have a noticeable interest in enhanced technological productions[174].

[169] Hertner Peter and Jones Geoffrey (eds.), *Multinationals: Theory and History* (Aldershot Gower, (1986), p. 9.

[170] Dunning JH, *Multinational Enterprises……Global Economy* , Op.cit, p.120.

[171] Dunning JH, Cantwell JA and Corley TAB, 'The Theory of International Production: Some Historical Antecedents' in Hertner Peter and Jones Geoffrey, *Multinationals: Theory and History,* (Gower, Alders hot), (1986), p.26.

[172] Gurak H, 'Multinational Enterprises and Foreign Direct Investments' at http://econwpa.wustl.edu:8089/epslgetlpapersl0404/0404004.pdfaccessed 20 February, (2005).

[173] Teichova A, 'Multinationals in Perspective' in Teichova Alice, Uvy-Leboyer Maurice and Nussbaum Helga (cds). *Multinational Enterprise in Historical Perspective* (Cambridge University Press, Cambridge, (1986), p. 365.

[174] Wallace CD, *The Multinational Enterprises And Legal Control Host State Sovereignty 111 An Era Of Economic Globalization* (Martinus Nijhoff. London, 2002), p.22.

The vast majority of cross border investments in USA and Europe institutions were to develop the quality and quantity of goods that cover the local demands, and supply the local market with a more developed production services[175].

So, it should be mentioned that the main idea of MNEs since 1918 until 1945 was only limited for the purposes of developing business and marketing strategies and it was restricted between countries that already have historical relations. After that, specifically in 1950 s, America was considered as the main owner of foreign investment all over the world and this could be explained due to their competitiveness and the American governmental support[176] . So in this century statisticians have looked to MNEs as specialised American term[177].

- *MNEs historical development in the period between 1960-1990*

The significance of MNEs at institutions that could facilitate the process of assets transforming between one country and another was largely accepted after the 1950s and specifically in the duration that ranges between 1950s to 1960s[178] .

This period also considered as a turning point in the American economical growth as the amount of American MNEs significantly enlarged after the Second World War and became more than the European international enterprises that were a leading companies in their amount and operation since 1914s. So the American economical dominance was first recognised at this duration[179]. The US shares enhanced to 49% in 1960, while in contrast, the UK shares decreased to 16% at this year. Additionally, it must be mentioned that developed countries are the main actors and participated states in MNEs operations and control.

[175] Dunning JH, *Multinational Enterprises and the Global Economy* (Addison-Wesley, Wokingham,(1993), p. 123.

[176] Muchlinslci P, *Multinational Enterprises and the Law* (Blackwell, Oxford), (1999), c. 2, Tugcndhat., *n.eMultinationals* c.2 , Hood N and Young, S, *'Ihe Economics Of Multinotion,* Op Cit, p. 12 .

[177] Wallace, *The Multinational,* Op.cit, p. 22

[178] Gurak, Multinational Enterprises, Op.cit.

[179] Franko L, *The Europetl1l Multinationals* (London 1976) p. 8

This American noticeable economical growth and dominance stimulated the European attention and concern. This concern gradually decreased by the enlargement of producing cooperation between Europe and the US, and through encouraging them with the long-term benefits and enhanced economies of the host countries[180].

After the 1960s, the American superiority in the existence and spreading of MNEs was changed; as several Germany and Japanese international companies launched as a competitor to the US MNEs[181]. At the beginning of 1990s, several novel states have strongly emerged as a well-known owner of competitiveness MNEs such as Hong Kong, China, Korea, Singapore, etc.

So in this period, US MNEs became as one host economy state such as many other MNEs emerged nations, and the US economical dominant clearly vanished in this era[182].

Therefore, in this period, a huge number of nations made strong investments in MNEs as a basis for making benefits and generating new production resources through cross border markets[183]. Here, we should indicate that MNEs in the 70s -80s were focused at investments of Greenfield[184].

2.8 Theories of multinational enterprises emergence

There are several theories that launched to explain the emergence and evolution of MNEs. These theories basically aims to realize the reasons, facilitators behind the wide spread of MNEs, and to figure out the common MNEs investment types. These theories are different in their nature as some of them focus on a specific MNEs characteristic,

[180] Servan Schreiber J, *the A.merican Challenge, Hamish* Hamilton, London, (1968).

[181] Hertner and Jones, *Multinationals,* Op.cit, p. 2.

[182] Dunning, Cantwell and Corley, Op.cit, p. 36

[183] Dunning JH, The Key Literature on IB Activities: 1960-2000 in Rugman AM. Brewer n. (eds). *Oxford Handbook of International Business* (Oxford University Press, Oxford 200 1) p. 40

[184] Greenfield investment can be defined as direct investment in new facilities or expansion of existing facilities. However, the Oxfam approaches definition of Greenfield investment suspicious by defining FDI as a Greenfield investment *"when Q foreign firm creoles a new subsidiary* details at Oxfam America 'Global Finance Hurts the Poor' (Oxfam America),(2002).

whereas others focus on common characteristics of this type of international firms. This part of the chapter came to shed light on the main MNEs theories that could be divided into theories that focus on MNEs from the international trade perspective, and the industrial firms' theories[185].

The paragraphs below include the main theories that aim to discuss MNEs characteristics from both international trade perspective and the industrial firms' theories:

1. international investment location theory:

This theory considered as the main theory that explain the emergence of international out boarders' trade transactions which is recognized as MNEs operations[186].

This theory basically divided into supply and demand focused location theory as each one of them works in contradicts way. The first supply oriented location theory discusses that the location of any company is controlled by the places that is considered as the lowest production cost places[187]. While the demand oriented theory explains the location of strong competitors in the same business market[188] .

According to this theory, there are four significant factors that could influence the emergence and spread of MNEs due to firms' locations which are the existence of economically effective labor who works with lowest salaries, offering protected business markets that have abundance in raw materials, and low cost transportation services[189].

[185] Kojima, K. ,Direct Foreign Investment: A Japanese Model of Multinational Business Operations. London: Croom Helm,(1978),p.5.

[186] Parry, Thomas G. ,The Multinational Enterprise: International Investment and Host Country Impacts. Greenwich: Jai Press, (1980),p.161.

[187] Dunning, J. H. , "The determinants of international production", Oxford Economic Papers, 25, (1973), p.290.

[188] Ibid, p.291-292.

[189] Buckley, P. J. ,"A critical view of theories of the multinational enterprise", in P. J. Buckley and M. Casson (eds.), The Economic Theory of Multinational Enterprise. London: The Macmillan Press, (1985), p. 8.

This theory has some advantages and disadvantages. For example the basic advantage of this theory as it enables offering a visualization of MNEs geographical distribution, but in contrast it could not provide a description of MNEs origin states[190].

Although this approach provided valuable insights as to geographical distributions of MNEs, it fell short to explain "how it was that foreign owned firms could outcompete domestic firms in supplying their own market" (Dunning, 1979:273), neither did it give any hint about the origin countries of MNEs.

2. The Aliber Theory

This theory is generated by Aliber in 1970[191] in order to offer a financial explanation of MNEs through business market relations, specifically in the risk of exchange, and "the market's preferences for holding assets denominated in selected currencies". His theory made the financial market as the basic enabler to gain advantages throughout the firms of host country.

Aliber theory indicated that MNEs often shifts from strong to week deliberation locations. This theory was criticized as it only pay attention to the American economical dominant after the spread of US MNEs, without considering any continues spread of MNEs in Europe and Japan [192], [193].

Hennart [194](1982) also criticized Aliber theory as most investments of MNEs are paid for host country while the financial capital cannot be considered as a critical MNEs

[190] Dunning , "Explaining changing patterns of international production : a search for the eclectic theory", Oxford Bulletin of Economics and Statistics, 161,(1979),p.273.

[191] Aliber, R. Z. ,"A theory of direct foreign investment", in C. P. Kindleberger (ed.), The International Firm. Cambridge, Mass: MIT Press, (1970), p.25.

[192] Buckley and M. C. Casson, The Future of Multinational Enterprise. London: The Macmillan Press, (1976),p.45.

[193] Ragazzi, G. , "Theories of the determinants of direct foreign investment", IMF Staff Papers, 20(July), (1973), 471.

[194] Hennart, J. F. , A theory of multinational enterprise. Ann Arbor (Michigan): Michigan University Press, (1982).

factor. While this theory is considered as a vital approach to visualize the FDI timing and MNEs take over in different business markets[195].

3. The theory of Government Imposed Distortions

Traffic and non traffic trade barriers are often realized as the main motivator for MNEs existence[196]. MNEs is often realized and considered as an act for keeping market protection phenomenon. This theory indicated that there is a clear connection between the existences of high sales share level of MNEs and high industry tariffs protecting[197]. Furthermore, the added regulations of price and profit in hosts countries as another factor that could influence firms intention to have abroad transitions[198]. This theory only focuses on how firms could face barriers of trading operations abroad, but it still did not offer a clear explanation for the MNEs emergence and existence.

4. The theory of MNEs as complement of international trade:

Generally, all trade theories focus on the fact that each state aims to export and produce the lowest cost and more effective goods. While in contrast states intend to import the relatively high cost, and less efficient production[199]. This could be explained due to the fact that each state has specific production sources that hugely differs from the international demands.

This theory could be widely explained in countries that have trained labour forces and municipal resources but low efficient production processes according to the existed shortage in some technological, managerial or other capital resources.

[195] Cantwell, John ,"A survey of theories of international production", in C. N. Pitelis and R. Sugden (eds), The Nature of Transnational Firm. London: Routledge, (1991), p.53.

[196] Ragazzi, G. ,"Theories of the determinants of direct foreign investment", IMF Staff Papers, 20(July), (1973), 473.

[197] Caves, R. E., Multinational Enterprise and Economic Analysis. Cambridge: Cambridge University Press, (1982).

[198] Calvet, A. L. ,"A synthesis of foreign direct investment theories and theories of the multinational firm", Journal of International Business Studies, 12(1), (1981), p.43.

[199] Samuelson, Paul A. and Nordhauses, W. D. ,Economics. New York : McGraw-Hill, (1989),p. 901.

All above discussed theories offer an explanation for the main drivers of MNEs and their accepted regulations.

From this point, many researchers tried to make integration between the MNEs and the trade theory. Kojima stated that "FDI is required in order to make factor markets more competitive and efficient internationally and to improve production processes in the country which is well endowed with the given resource"[200]. Kojima also assumed that MNEs could enhance the production processes if it has the ability to transfer the technology and managerial skills to the host countries which improves these countries productivity.

This type of theory is especially recognised in Japanese MNEs that is named as trade oriented MNEs. While when moving from one industrial country that has competitive advantage to a less advantageous situations this could negatively influence the effectiveness of international trading practices which is recognised in USA MNEs and named as "anti-trade oriented" MNEs[201].

Kojima also explained that MNEs emerged due to three main factors which are labour, assets and market motives, where assets is the main controller factor as it considered as an economical securing factor . Labor factor governed by the existence of cheaper labor. Additionally, market factor explains the level of barriers in international trading operations. This chapter also indicated that there are several theories that launched to explain the emergence and evolution of MNEs.

So we can figure out that the noticeable evolution of out boarder national firms in US which was in the 19th century, was almost as the same to the recent US firms transformation to multinational featured companies[202]. The previous historical forms of MNEs proven emergence and evolution indicated that the vast majority of involved

[200] Kojima, K., Direct Foreign Investment: A Japanese Model of Multinational Business Operations. London: Croom Helm, (1978), p.22.

[201] Ibid

[202] Nicholas S, 'The Theory of Multinational Enterprise as a Transactional Mode' in Hertner Peter and Jones Geoffrey, *Multi1ll1tiol'ltlls: Theory and History,* (Gower, Aldershot, (1986), p. 64.

firms in international trading operations were to achieve competitive advantage and economic efficiency[203].

Chapter three: The effects of the activity of multinational enterprises

The implementation of multi-national corporate strategies has certain advantages and disadvantages. Supporters of multi-national companies suggest that they are achieving many advantages and benefits for host countries and for the new world economy.

First: the impact of multinational companies on the new economic system

Multinational enterprises adopt certain methods in their penetration into international trade, leaving implications for the new economic system. Multinational enterprises have a significant impact on the mechanisms and components of the new global economic system, which can be illustrated in the following points[204]:

1. Emphasis on universality: It is natural that multinational corporations have played a major role in deepening the concept of universality, which is mainly the development of transnational organized business that leads to the globalization of the economy, including the unification and competitiveness of markets for goods and services and capital markets, It also supports an enormous infrastructure for communications, information, media, arts and culture. Multinationals have transformed the world into a unified entity in terms of communications and transaction intensity, and thus they have been able to spread globalization at all levels of productivity, finance, technology, marketing and management.
2. a. Impact on the international monetary system: The volume of liquid assets and international reserves available to multinational corporations is very clear, in

[203] Caves RE. *Multinational Enterprises and Economic Analyses* (Cambridge University Press, Cambridge, Casson Mark, *the Economic Analyses of Multinational Trading Companies* (Reading: U. of Reading, Dept. Of Economics, (1996), p.61.

[204] Ibrahim Al-Akhras, The Role of Transcontinental Companies in China, First Edition, Itrak Publishing, Publishing and Distribution, Cairo, 2012, p. 296.

addition to the extent to which these firms can influence international monetary policy and international monetary stability.

The huge assets of the countries in which the multinationals operate are likely to increase the potential of these companies to effect on the global monetary system. If these companies wanted to convert some assets from one country to another, this will precipitate a global monetary crisis.

3. Impact on global trade: As a result of multinational companies' acquisition of a large proportion of trade volume and international sales, they undoubtedly affect the international trading system and structure through its high technological capabilities and resources that may lead to many competitive advantages for many countries in many industries and activities..

   It is possible to observe the impact of multinational companies on the volume of world trade, as the increasing degree of diversification in activities and the presence of integration have led to an increase in the volume of trade between these companies and their subsidiaries or branches in different countries.

4. Impact on international investment trends: the International Investment Report issued by the United Nations in 2003 estimates that the volume of international investment flowing in the world in that year amounted to more than $ 300 billion, which flowed in various regions of the world.

   The multi-national companies must implement the bulk of international investments annually, and note in this regard that the investment map of international investment is affected by the investment trends of multinational companies where it was noted that one of the most important features or characteristics of these companies is that characteristic of investment concentration, where the investments of these companies are concentrated in developed countries, where they acquire 80% of the investment activity of these companies. On the other hand, developing countries receive only 10% of the investment activity of multinational companies.

5. The development of new patterns of specialization and international division of labor: The interaction of multinational corporations' influence on global trade and international investment trends has led to the formation of new patterns of specialization and international division of labor. Production and investment decisions have been taken from a global perspective according to economic considerations of cost and return.

The large investment, production, marketing and commercial activity of multinational companies and the technological revolution have created new possibilities for specialization that have led to new patterns of specialization and division of labor. These companies play a key role in deepening this process and have become increasingly visible among industrialized and developing countries.

This trend may give developing countries an opportunity to penetrate global theft in many products. The new patterns of international labor division allow these countries to gain competitive advantages in a wide range of goods in the electrical, electronic, engineering and chemical industries, such as the Asian tigers in Southeast Asia. Therefore, other developing countries must exploit this trend in maximizing their exports and learn that the mechanisms of dealing with multinational companies are to attract companies to operate and settle some industries in developing countries that are exiting from the production cycle of primary and extractive goods to the most profitable industries on the one hand, and Export additives value on the other hand.

6. Influence on transport and revolution Technology: Multinational corporations play an active and influential role in the latest technological revolution. The world is living in a third industrial revolution called the scientific revolution in information, communication, transportation and global technology. For this reason, the challenge for developing countries is to develop their capacity to create mechanisms to deal with multinational corporations. Technology transfer through multinationals is influenced by the FDI trends of these companies across different regions of the world, taking in to account the factors that affect attracting foreign direct investment by multinational corporations. Foreign direct investment play an effective and influential role in bringing about a technological revolution because of its enormous human and material potential and resources directed towards research and development.

Second: the effects of the activity of the multinational companies in the host countries

Positive Impacts: There are many benefits of multinational companies' activity in the field of foreign investment in host countries, but these benefits do not always occur and

do not make the same size and importance in different countries. These benefits include[205]:

1. Increased production: When the capital moves from the sending country to the receiving country, it increases the capital element in the receiving country and by linking this element with the rest of the other components of the production process, this will increase total production.
2. Wage increase: The mobility of companies and the competition between them to attract qualified workers with low wages can lead to an increase in wage levels due to increased demand for specialized labor.
3. Increased employment of workers: This result is very important, especially if the host countries are a developing country with a relative abundance of labor resulting from the increase in population growth, as the transfer of capital in these countries to build new projects leads to the employment of unemployed people in these projects.
4. Achieving economies of scale: It is possible for foreign multinationals to enter into a particular industry in order to achieve economic economies of scale because of the size of markets for the industry and the use of the high technology they require. The local companies are likely to be unable to raise the head of the money needed to reduce the cost of production resulting from the large volume of the production process. If a foreign investor is able to reduce economies of economic size, it helps to reduce the prices of goods produced and prepared for consumption.
5. Increasing the revenues of the state: These investments can increase the revenues of the state in the form of fees and taxes imposed on these projects when they are established or on activity in the process of production, marketing and export, which helps to reduce the state budget deficit.
6. Provide host countries with new technical, managerial and technological skills: Many countries emphasize that technical skills and management skills are scarce in developing countries. Therefore, settling this situation in developing host countries through giving the multinational corporations the

[205] Nwi Walid, The role of multinational companies in the development of foreign trade in Algeria. Master Thesis in Business Science, International Business, Mohammed Khader University, Department of Business Science, 2015,p. 48-51.

responsible for introducing human capital in these countries increases the possibility of production in these countries.

7. Increase in exports and decrease in imports: This is due to the economic results achieved by direct investments and the ability to connect to foreign markets and the large increase in the volume of their distribution.
8. Decreasing the local monopoly power: This can happen if a local company monopolizes economic activity in a particular industry before domestic foreign capital flows in the host country, but after the inflows of foreign direct investment into the host country, new corporate competitors are emerging Local and can increase production and reduce prices in the industry.

Negative effects: The effects of multinational corporations on host countries include the following[206]:

1. The adverse effect on the level of trade of host countries: The trade exchange rate of a country can be determined by dividing the prices of the goods it exports on the prices of the goods imported by the State. Through foreign direct investment, foreign capital moves to the host country and sometimes leads to deterioration in the rate the trade exchange. This deterioration can also occur if foreign capital is invested in the production of export goods and the increase in the quantity of its production. If the host country is a large country in its export goods sales, the increase in exported goods leads to a reduction in the prices of the exported commodities, while the import prices remain stable, leading to deterioration in the trade exchange rate.
2. Environmental pollution: Among the damage to these companies is that they face considerable opposition in their countries in some industrial sectors that have become the cause of environmental problems, and this makes them transfer these industries to developing countries. One of the world-class results is the problem of high temperature or air pollution caused by gases, the most important of which is carbon dioxide.

[206] See; Ali Abdel Fattah, International Economics Theory and Politics. Third Edition, Dar Al Masirah for Publishing and Distribution, Amman, 2013, 249; Adnan Saleh, the role of foreign direct investment in the economic development of the developing country with a special reference to the Chinese experience. Journal of Baghdad College of Economic Sciences, University College, 2013, p. 368.

3. Transferable and remittable prices: it is represents another mechanism by which the trade balances in the host country can deteriorate. The term transferable and remittable prices refer to prices recorded as a result of international business transactions between the parent company and its subsidiaries abroad. If an affiliate or branch of a multinational company sells the inputs to another subsidiary or branch of the same company and another country, in this case the current prices in the market are not taken into account, but the parent multinational company and its subsidiaries abroad Recording the prices of the transactions held between them in the books of accounting, leaving room for manipulation of prices.
4. Potential impacts on the market structure: Foreign companies have monopoly status in the host countries' markets, either because they have exclusive products or commodities that do not have alternatives in those markets or have a large share of the market demand for such goods in the host country. Therefore, the negative impact is the impact on the national market by exposing many local companies to the problems of discharge of their products, which requires the host country to develop a protection policy for some emerging industries through the development of a legislative and regulatory framework to ensure the continued activity of these companies.
5. Lack of domestic savings: The claim by developing countries that the inflows of foreign capital in the developing country make the local government relax in its efforts to generate greater domestic savings. If the tax mechanisms are so difficult to enforce that they cannot be put in place, it is possible for the local government to decide not to collect taxes from low-income citizens to finance development projects on the grounds that foreign companies are doing the job.
6. Increased unemployment: The use of foreign capital investment by foreign investment firms, particularly in high-density developing countries, does not address unemployment, nor creates employment, but leads to increased unemployment.
7. The loss of sovereignty over domestic and foreign policies: the loss of sovereignty and perhaps the influence of political decision-making. This occurs when foreign direct investment is large in comparison to the size of wealth in the developing country.

8. Establishment of local monopoly: The establishment of the local monopoly in the host country through multinational companies is contrary to the borrowed interest provided by the multinational companies of the host country, and the local monopoly is established by the multinational companies to display the goods produced at prices lower than the prices of competing goods produced by companies. The advanced technology possessed by multinational companies can help in achieving this, enabling them to take out local companies from industry and establish local monopoly in the host country. Therefore, foreign companies remain in the host country as a monopolist accompanied by his activity all monopoly negatives.

Thus, in the 21 century, MNEs became the basic representative of developing countries activities, and a significant amount of MNEs started their activities and operations as the condition of world economics has extremely changed. This chapter reveled that there are a contradictory thoughts between the critics and supporters of MNEs emergence and evolution. The vast majority of critics bedeviled that MNEs is a selfish corporations that could cause problems for the host government especially in the political and economical side. While the supporter considered such institutions as a practical prove of international business cooperation efficiency and validity. Their international commerce activities could also benefit the distant regions and less developed nations.

Chapter four

International Regulations of MNEs

4. Introduction

The large set of agreed rules for the behavior of multinational enterprises indicates that there is an international consensus on certain basic rules for international activities. Some of these principles are reflected in the practices of multinational corporations, some of which are important indicators of the future evaluation of international business rules, and other support established international legal principles.

There is a great interest in foreign direct investment and related issues, especially its relationship with multinational enterprises by countries, whether developed or developing, as well as whether they are countries of origin or host. This concern is the basis for any attempt to consider the future of international norms in this field.

There has been increasing interest in the activities of multinational enterprises and the policy of governments in this area. Developed countries have thus concluded bilateral agreements with each other or with developing countries in the promotion and protection of Foreign Direct Investment (FDI). At the regional level, in some cases, rules on the conduct of multinational enterprises have been established on a legal basis under decisions taken by international organizations, for example, the Latin States of the Andean era, or what has been described as optional rules not formally binding under another organization such as those developed by the Organization for Economic Co-operation and Development (OECD).

In other cases and at the multilateral level, the rules have taken the form of international recommendations that containing rules on multinational enterprises and their activities, such as the ILO Tripartite Declaration and the Set of Rules and Principles on commercial restrictive practices of the United Nations Conference on Trade and Development (CNUCED). In other cases there have been some suggested instruments, but it has not yet been adopted definitively, such as the United Nations Code of Conduct for multinational enterprises as well as the code of conduct for the transfer of

technology developed by the United Nations Conference on Trade and Development (CNUCED).

Ibrahim[207] argued that in recent times the focus of international negotiations has been on the drafting of rules on the treatment or protection of multinationals rather than the drafting of rules on these enterprises to encourage foreign direct investment as a result of the change in the global economy of liberalization and globalization. Hussein[208] clarified that the acceptance of these rules by the States concerned, even in a form that does not create specific legal effects, is at least creates a presumption in favor of the international legality of the conduct of other States and the same process is even more pronounced in the case of rules that are related to the treatment of multinational enterprises.

Thus the current chapter aims to identify the legal Status of Multinational Enterprises, regulations of MNEs (including the national regulations and the international regulations). Through clarifying these national regulations; legislators should take into account the special nature of MNEs when creating their domestic rules on private international law. Moreover, this chapter will include a clarification of the status of multinational enterprises in commerce exchanges.

4.1 Legal Status of Multinational Enterprises

International legal personality is defined as the capacity to acquire rights and assume obligations under international law[209], as well as the capacity to acquire rights and obligations with the ability to protect them and to make international claims, whether

[207] Ibrahim Ajil, Multinational Legacies and State Sovereignty (Comparative Legal-Economic-Political Study). MA, The Arab Open Academy of Denmark, Faculty of Law and Politics, 2008, p. 32.

[208] Hussein Othmani, Strategies of Multinational Companies in the Globalization of the Economy, Master's Note, University of Haj Lakhdar, Algeria, 2003, p. 19.

[209] Guitar Rachid, International Responsibility for Violations of Multinational Enterprises for Human Rights, Cairo University Press, Egypt, 2009, p. 43.

through litigation or otherwise and the ability to establish the rules of international law[210].

As multi-national enterprises are non-state actors in the international arena, especially in the economic and technological fields, they have a similar status to that of States and other subjects of international law with their international legal personality[211]. This has given rise to a contradiction in granting multinational corporations with this status. Some parties denied the legal personality of MNEs and the other support this[212].

The denied parties of granting MNEs the legal personality clarified that only States and others are considered as persons of international law, so that international law applies primarily to States and their nationals. In this respect, MNEs are not directly members of international law at all[213]. In addition, the discussions conducted on the Draft Code of Conduct for Transnational Corporations being prepared since 1974, stressed that the treatment of such enterprises must be in accordance with national laws and not in accordance with international law. Thus, the status of MNEs in international law can be determined through their association with a State provided that they are subject to their control[214].

In the same context, some attempts at jurisprudence to consider transnational corporations as mere topics of modern public international law are, in their view, no different from the subjects of international responsibility and diplomatic protection, the subject of human rights and the sources of law[215].

Regarding the support parties, they demonstrates that the company's enjoyment of this character is linked to the extent to which it enjoys certain duties and the extent to which it contributes to the development of the rules of international law and international

[210] Bu Bakr Badadash, The globalization of the global oil company. Thesis for a Doctorate in Economics, 2010, p. 72.

[211] Omar Saadallah and Ahmed bin Nasser. The law of the contemporary international community. Fourth Edition, University Press, Algeria, 2007, p. 269.

[212] Guitar Rachid, International Responsibility for Violations of Multinational Enterprises, Op cit, p. 44.

[213] Ibid, p. 45.

[214] Omar Saadallah and Ahmed bin Nasser, The law of the contemporary international community, Op cit, p. 268.

[215] Ibid, p. 269.

relations[216]. A resolution was issued by the International Labor Organization on 16 November 1977, this resolution clarified the criterion for giving the MNEs the legal personality, and it decided to place more obligations than rights on these enterprises. The most important obligation is to respect the sovereignty of the host State and non-interference in its internal political affairs. These obligations also include[217]:

1. Respect the laws of the host country and conduct its activities in accordance with an economic plan exercised by the host country.
2. Respect the workers' rights and cultural heritage.
3. Respect the competition rules.

With regard to the rights given to the MNEs, they include[218]:

1. The obligation of States to treat MNEs on an equal footing with national enterprises.
2. The conclusion of contracts with States and other persons of international law.
3. Resolve its disputes regarding investment through international arbitration

There is a new trend that calls for an official recognition of the international personality of MNEs, thereby recognizing these enterprises as a member of the international community if their international character is recognized. This is reflected in the Draft Code of Conduct for these enterprises being developed by the UN in 1974. The conduct code established a committee and centers concerned with transnational corporations[219]. This center has three objectives[220]:

[216] 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. 23.

[217] See; Omar Saadallah and Ahmed bin Nasser. The law of the contemporary international community, Op cit, p.270; Ben Amer Tunis, Law of the International Community, Fourth Edition, University Publications, Algeria, 2003, p. 307.

[218] Mabrook Kadban, the international community assets, evolution and people. Section II, Department of University Publications, Algeria, 1994, p. 615.

[219] Muthari Samah, Multinational Enterprises and their impact on international relations, Op cit, p. 26.

[220] Omar Saadallah and Ahmed bin Nasser. The law of the contemporary international community, Op cit, p.276.

1. To develop international rules and arrangements to encourage the contribution of TNCs to the achievement of national development goals and global economic growth.
2. To provide practical assistance to governments, especially developing country governments, in supporting their leaders in dealing with these corporations.
3. To report to the Commission on Transnational Corporations, a governmental commission currently composed of 45 members representing the entire world

The Code is a multilateral treaty or an international declaration that imposes a new reality on the international community. Its rules include respect the enterprises and treat them with the equality principle, promote cooperation with them, which gives them legal personality and treats them as subjects of international law. The Code also prohibits MNEs from interfering in the internal affairs of States and intergovernmental relations, in addition to respect the fundamental human rights and not violation them in any way.[221]

In addition, the proposed Conduct Code has regulated the economic and financial aspects of MNEs, codifying issues of ownership, balance of payments, transfer, taxation and competition, as well as traditional business practices and other issues relating to any international legal entity. This code has also codified other topics such as technology transfer, consumer protection and environmental protection.[222]

4.2 National and International regulations of MNES

The work of multinational enterprises is regulated by national regulations related to a single state and international regulations that bind more than one country.

4.2.1 National regulations

Multinational enterprises exposed at the beginning of its emergence to a series of international obstacles that have made it difficult for these enterprises to participate in

[221] Muthari Samah, Multinational Enterprises and their impact on international relations, Op cit, p. 27.

[222] See; Omar Saadallah and Ahmed bin Nasser. The law of the contemporary international community, Op cit, p.276; Geoffrey Jones, International Business and Emerging Markets: A Long-Run Perspective, Working Paper, 2017, p. 18-20.

the process of foreign investment, and the main reason is that these enterprises are considered as a threat to national wealth[223].

Therefore, a group of countries imposed laws and legislation limiting their ability to foreign investments. The socialist countries did not allow multinational enterprises to engage in any activity on their territory until after conducting an agreement between the two parties[224]. But developments in global economic systems have forced countries to change their legal position towards these enterprises, starting with third world countries that allowed these enterprises to invest in their lands in part or in absolute terms[225].

National laws that regulate the work of multinational enterprises have been linked to a range of problems, such as the nationality of multinational enterprises, subjecting enterprises to double taxation, labor laws, accounting laws, and laws governing the performance and control the business of multinational enterprises[226]. These laws also included procedures for national decisions, investment laws and free competition laws. In general, countries seek to limit the capacity and activity of these enterprises by determining the proportion of foreign funds in projects and determining the participation of foreign individuals in local projects, in addition to preventing enterprises from investing in most vital sectors and encouraging them to invest in national sectors[227]. Countries have also set many conditions that limit their ability to invest by forcing them to shoulder additional obligations

National laws applied over multinational enterprises could follow the home country law or a set of harmonised rules that agreed among all MNEs operates. The main

[223] Ghassan al-Amri, the dilemma of the moral and see the decline in the objectives of operations of multinational companies. Research presented at the 7th International Scientific Conference "Implications of the global economic crisis on the organizations of economies, challenges, opportunities, prospects, 2009, p.62.

[224] Ahmed Abdul Aziz, multinational companies and their impact on developing countries. Journal of Economic Management, No. 85, 2010, p.121

[225] Perry-Kessaris, Multinational enterprises and the law, Module A: MNEs in context Revised edition, 2012.

[226] Muthari Samah, Multinational Enterprises and their impact on international relations, Op cit, p. 29.

[227] Ahmed Abdul Aziz, multinational companies and their impact on developing countries, Op cit, p, 122.

assumption regarding MNEs governing law before the 1980s is that MNEs are profit-maximizing ventures with no particular national allegiance[228]. The evolving and unclear legal status of MNEs could enable these enterprises to utilise some less restricted national laws to ensure maximising their benefits[229]. The limited liability of MNEs under national legal personality could enable them to maximise profit and take advantage of less stringent national laws. This argument was based on the idea that MNEs sources globally increase rather than focusing on a specific country with their capital, employees, customers and various business operations.

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4.2.2 International regulations

Some regional organizations have developed international legal legislation and regulations to regulate the work of multinational enterprises, just as the Latin countries of the Andean era have done in addition to the guidelines developed by the Organization for Economic Co-operation and Development (OECD)[230]. Some rules have also emerged in the form of international recommendations such as the ILO Tripartite Declaration and the restrictive trade practices rules of the United Nations Conference on Trade and Development (CNUCED). The following is a discussion of the most important charters at the international level that focused on explaining the status and status of multinational enterprises and the legal system governing them.

4.2.2.1 United Nations International Code of Conduct

All the reasons have come together to lead to a single result, including the need to regulate multinational enterprises because of the risk they pose to the economies of industrialized and developing countries. This has led to the emergence of the United

[228] Robert B. Reich, Who Is Us?, 68 Harv. Bus. Rev. 53 (1990); Edward M. Graham & Paul R. Krugman, Foreign Direct Investment in The United States, 57-84,(3d Ed), 1995.

[229] Alvarez, J.E. 'Are Corporations 'Subjects' of International Law?' NYU School of Law, Public Law Research Paper No. 10–77, (2010). Available at SSRN: http://ssrn.com/abstract=1703465.

[230] OECD Guidelines for Multinational Enterprises, Declaration on International Investment and Multinational Enterprises, 27 June 2000.

Nations Code of Conduct to regulate the activity of multinational enterprises as a document of a special legal nature[231].

There are many reasons for the emergence of the Code, but the most important of these reasons is[232]:

1. The countries affected by the activity of multinational enterprises have looked for a law that protects them because of the inability of their domestic law. This led to pressure on the United States of America to find an international system that guarantees protection for these countries. Thus, developing countries, represented by a group of 77 countries, presented their views on 21 issues related to the organization of these enterprises [233], reflecting the main points that need to be regulated through the Code. On the other hand, capital donors have also made proposals with key points for inclusion them in the Code. The most important of these is the creation of the right investment environment and protection the right of multinational enterprises' investments by providing a range of legal guarantees, such as protection against expropriation and nationalization, as well as the inclusion of arbitration as a first legal solution to disputes that may arise between them and the host countries.
2. The economic power that these enterprises have acquired has prevented them from evading many of the legislation even in their home countries, and denies

[231] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law. Master's Degree in International Public Law and International Relations. Institute of Legal and Administrative Sciences, University of Algiers, 1987, p.66.

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

[233] These most important issues were:

1. Mismatch of multinational companies' activity with host country legislation, particularly with regard to foreign investment, conversion rates and labor policies.
2. The intervention of companies in the internal affairs of States.
3. Economic policy mismatch with the activities of these companies, while not taking into account the development priorities of these countries.
4. The multinational corporations' refusal the jurisdiction of the host countries on the issue of nationalization.
5. Companies did not permit private information about their activities, which makes host countries unable to control and supervise the activity of these companies.

allegiance when it comes to measures that harm their own interests and cause them loss, which has given them the sense that they have a significant legal status towards sovereign States. This makes developing countries not really deal with industrialized countries; they deal with the enterprises of these countries. These enterprises are now ranked first as the instruments of the international community because of their great development capacity at the international and domestic levels.

3. The recognition of the international law of these enterprises as an international legal personality independent of their mother country is one of the most important reasons and motivations for examining a legal system and framework that controls their activity.

The international code of conduct of the United Nations arose in a conflict between conflicting interests. This conflict extended to the definition of its legal nature, so that the developing countries insisted on making the rules of the Code binding rules to enable them to impose their sovereignty from the principle of permanent sovereignty over their natural wealth[234]. The capitalist countries rejected this as guaranteeing the interests of the developing countries at the expense of their interests and prevented the provision of adequate legal guarantees for their investments, and thus insisted on making these rules optional. This explains the existence of some binding rules and other optional rules, which is a special double nature characterized by the rules of the Code[235].

The legal nature of this Code can be seen in view of the body that it drafted, which is a committee of multinational corporations, with the contribution of a special status of these enterprises to the United Nations Economic and Social Council. These bodies issue non-binding decisions of an advisory nature. International jurisprudence called these rules "soft law" as the absence of mandatory status of its texts, and this is mainly

[234] 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, p. 63.

[235] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 67.

due to the body that prepared it, and therefore the optional and non-mandatory language remains the dominant character of this code.[236]

The conflict of interest between the North and the South has been reflected in this Code, which has lost its legal value, while these countries are demanding international legal norms; at the same time they demands that the legal nature of this document be non-binding[237]. Thus, this code is optional unless it is formulated in the form of an international treaty such as other international treaties. In contrast, the legal effect of the application of this Code cannot be revoked. It produces effects arising from valid legal obligations as soon as enterprises recognize them and are morally committed to their application.

4.2.2.1.1 The Content of the Conduct Code for regulating the activities of MNEs

The Code focused on key points, such as the principle of sovereignty, which is one of the most important reasons for the concerns of the developing countries of investments by multinationals. The Code also raised a sensitive point in the treatment of multinational corporations in an attempt to reconcile the national advantages of the host countries with the interests of these giant enterprises, which explains the true value of this Code and how long it has been in reconciling conflicting interests.[238]

The universality of the Code is due to the breadth of its character in dealing with various issues and various sectors without discrimination. It has been exposed to public activities and political activities[239]. The authors of the Code have shown their knowledge of the needs and requirements of developing countries from these enterprises, and have therefore tried to remedy this by their interest in the political

[236] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 64.

[237] The view of developing countries on the legal nature of this Code is different. It is a necessity that should be distinguished by a mandatory view. They are convinced that the development of an international style of a mandatory nature will solve the problems of companies.

[238] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 64.

[239] Masadee Ammar, international economic relations and the principle of equality under the contemporary international economic order. PhD, International Law and International Relations, University of Algiers, 1997, p.200.

sector, focusing on the need to respect the principle of national sovereignty and observance of local laws, regulations and administrative practices. This interest is generated as a result of the existence of a full agreement between the views and laws of developing countries and some developed countries in subjecting the presence of any enterprises multinational company to the laws and regulations in the countries in which these enterprises are active[240].

The concern of the United Nations for the activity of MNEs stems from its being the primary sponsor of human rights on a global level. The Code stipulates that MNEs must respect human rights and fundamental freedoms in the country in which they operate and must respect labor legislation and labor rights. MNEs are therefore obliged to respect social relations through the provision of workers' rights, including social security, social security, trade union rights, equality, justice and the enjoyment of various forms of discrimination.[241]

In article 25, the Code included working conditions and professional relations, in which it adopted the tripartite Declaration of the International Labor Organization (OIT)[242], the first Code of Conduct adopted at the international level. The main contents adopted by the United Nations Code of Conduct are:

[240] The comprehensiveness of this code included the adoption of the objectives of the new international economic order adopted by Resolution No. 3202 in 1974, where the fifth point of the resolution dealt with the organization and control of the activities of national enterprises. It set out a set of principles to be achieved through an international code of conduct for MNCs To achieve the following:

1. Prevent its interference in the internal affairs of the countries in which it operates
2. Organize its activities in countries with a view to eliminating RBPs
3. Provide assistance, technology transfer and management skills to developing countries on equitable and appropriate terms
4. Regulate the return of profits resulting from its operations, taking into account the legitimate interests of all concerned parties
5. Encourage the reinvestment of profits

[241] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 65.

[242] In 1972, the interest of International Labor Organization of the Social Policy Action for Multinational Enterprises was started. The first report on this subject was prepared in 1973 and the Tripartite Declaration of Principles was adopted on 16 November 1977.

1. Raising the level of employment and addressing the problem of unemployment. But it may be difficult to achieve this goal because enterprises seek to find the climate that is most conducive to their investments, which makes them able to move and change their headquarters and stay in places more suitable for their investments.
2. Improving working conditions and not exploiting low wages in the poor country.
3. Respect for labor relations and legal procedures devoted to protecting their rights and raising complaints.

On the other hand, the comprehensiveness of the Code made it comprehensible to the totality of rules and principles relating to restrictive practices. The Code defined the of restrictive business practices as acts and conventions that misused a dominant position in the market and determined inappropriate market entry, International trade, especially on the trade of developing countries[243]. Among the restrictive practices contained in the Code are the third paragraph of Part One on rules and principles for MNEs[244]:

1. Price fixing agreements.
2. Collusion in making deals
3. Arrangements for sharing markets and customers and making them quotas.
4. Collective action to implement certain procedures
5. Collective Monopoly
6. The policy of price extension and manipulation of lowering and raising prices.

Thus, it can be said that the United Nations International Code of Conduct has included range of Codes in several areas, including the global rules governing the work, the set of principles on restrictive business practices and the rules on technology.

The Code also provided for two other areas, which are the environment and consumption. The code adopts some consumer protection codes, such as the Common Code on South Africa adopted by the United Nations General Assembly in 1985[245]. On

[243] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 68.

[244] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 66.

[245] Ibid, p. 69.

the other hand, multinational enterprises are committed to working in accordance with national consumer protection rules while respecting relevant international standards so as not to harm the health of consumers[246]. However, despite the principles of this code, there is nothing that makes its rules binding. It is the responsibility of the host country to control the quality of products and their conformity with international and national standards.

Multinational enterprises are committed to respecting international consumer protection standards and relevant international standards for promoting specific products, such as the International Code of Marketing of Breast milk Substitutes adopted by the World Health Assembly, as well as the WHO ethical standards on the promotion of pharmaceuticals. Multinational enterprises and other business enterprises ensure that all their promotional logos are verifiable and meet reasonable and legal standards, and should not, in addition, target children when advertising potentially harmful products.[247]

In addition, multinational enterprises ensure that all goods and services they produce, distribute or store are usable and safe for their intended use, and that they provide clear, understandable and visual information in the language that is officially recognized in the country where the products are available or Services.

In accordance with paragraph 15 of this Code, in cases where the product is likely to be detrimental to consumer health, multinational enterprises shall disclose all appropriate information regarding the contents of the products they produce[248]. This shall be done through respect for marking procedures, the development of an appropriate mark and the provision of appropriate information on potentially harmful products to the relevant authorities.

With respect to environmental protection, it is considered a principle of human rights that multinational enterprises carry out their activities in accordance with the laws, regulations, administrative practices and national policies that are related to the

[246] Ibid, 69.

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

[248] Ben Saleh Rachida, Op cit, p, 86.

protection of the environment in the countries in which they operate, as well as in accordance with international conventions, principles, responsibilities and standards relating to the environment.[249]

The Code attaches great importance to this issue because the activities of multinational enterprises have a direct impact on the environment[250], as reflected in the inclusion of Article 41 of the Code, which obliges companies to comply with national laws on the protection of the environment of host States. Multinational enterprises must also improve the environment and contribute to its protection from pollution.

The issue of protecting the environment from pollution is still one of the main areas of discussion and ongoing negotiations. Bennett [251] argued that multinational enterprises lie between two contradictory issues. They are exporters of technology to developing countries, while they are committed to preserving the environment. This allows for some kind of control over the industries and imports of these enterprises through the national laws of independent States[252].

[249] United Nations standards on the responsibilities of transnational enterprises, 2004, p. 29.

[250] Ben Saleh Rachida, Op cit, p, 86.

[251] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 69.

[252] The United Nations document number E/CN.4/sub2/2003/38/REV.2 revealed on environmental protection obligations that multinationals and other corporate companies must comply with as follows: "Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies in connection with the maintenance of the environment in which they operate, as well as in accordance with relevant international conventions, principles, objectives, responsibilities and standards relating to the environment, as well as human rights, public health, public safety and bioethics. For that these companies must to do the following:

1. Respect for the right to a clean and healthy environment in accordance with internationally recognized environmental standards such as those relating to air pollution, water, land use, biodiversity, hazardous wastes and the broader goal of sustainable development.
2. Multinational enterprises are responsible for the environmental and human health implications of their activities, including any commercially distributed products or services, such as packaging, transport and manufacturing.
3. MNEs should assess (and periodically) the impact of their activities on the environment and human health. Evaluations in particular address the impact of proposed activities on specific

A new investment trend has emerged in recent years calling for the adoption of environmental remediation projects. A group of national companies specializing in environmental treatments have provided services to developing countries. In a short period of time it was able to establish foreign branches in the field of environmental treatment. These multinationals have been able to export their polluting technologies to developing countries for investment, and have been able to clean up the environment from such unclean technology[253], which makes future developing countries unable to cope with the environmental threats posed by their investments. More importantly is the role of foreign companies in burying chemical, nuclear and other polluting wastes in the deserts and seas of developing countries, which make the issue take on serious proportions in the light of the imbalance between the mother country and the host State[254].

The Code also addressed the issue of nationalization and compensation resulting from it, as the Code was keen to recognize the right of countries to nationalize and confiscate assets of multinational enterprises operating in its territory. The State should pay appropriate compensation in accordance with applicable national rules, principles and laws. Thus, the Code which takes the elective nature remains filled with a set of obligations that are simultaneously applied and violated by multinational enterprises.

4.2.2.1.2 The evaluation of the United Nations International Code of Conduct

Evaluating the Code's Code of Conduct for Multinational Enterprises leads to many points and observations:

groups such as children and the elderly. These reports are distributed by multinational enterprises.

4. Multinational enterprises respect the principle of control through, inter alia, preventing or mitigating the adverse effects identified in any assessment.
5. These companies take appropriate measures in their activities to reduce the risk of accidents and damage to the environment by adopting best management and technological practices.

[253] Sarmad Gemayel, The Social Responsibility of Foreign Direct Investment (A Critical Analysis of World Trade Organization Data in an Era of Globalization, Journal of Human Sciences, Issue 18, Second Year, 2005, p.19

[254] Ibid, p.19.

1. The universality of this Code stems from the adoption of many principles contained in private codes, as referred to in the adoption of the Conduct Code of the Multinational Enterprises (MNEs) Activities of the United Nations for the ILO Tripartite Declaration of Action, as well as the Code of Conduct Relating to traditional trade practices and technology transfer rules.
2. The legal nature of this code and most of the codes has made their application subject to the desire of companies and their humanity in transactions with developing countries.

   The optional nature of the rules of this Code stems from the machinery that ensures the trouble of bringing them into existence, as the special Committee of Multinational Enterprises[255] has been entrusted with this task. Given the legal nature of the multi-governmental body (considering this body as an advisory body offering only proposals); all its texts are not mandatory[256], as the Code remains optional and non-binding.
3. The formulation of this code shows the sharp differences between the development requirements of developing countries and the expansionist objectives of the capitalist countries, as each of these parties recognizes the seriousness of such companies. The obligation to compel them to a set of rules of conduct is necessary to keep their application subject to the internal control standard of each country so as to ensure its implementation.

   Also, Western countries shows a contradictory position on the legal basis and legal nature of the Code, where in the time that these countries seeking to impose international legal norms that would ensure the extraterritoriality of the legislation of the host States, they refuse to have the legal version of this document binding, (I.e., the law of the host country) by resorting to an international code, and then refuses to make the code mandatory, which makes its name move from transnational companies to transient companies governed only by their own material interests[257].

[255] In order to prepare the Code, the Economic and Social Council of the United Nations issued Resolution No. 191 of 5 December 1976, establishing a committee for multinational corporations.

[256] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 96.

[257] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 99.

4. The evaluation of the Code increase the importance of questioning about the treatment of such companies, i.e. is this treatment fully equal to the national companies, or is it a reciprocal treatment or is there a privileged treatment imposed by the provisions of the Code?

   Article 50 of the Code has been able to solve this problem. This article says; "Multinational corporations should be treated no less than those of national enterprises rises under the same circumstances and are subject to national requirements for the maintenance of public order and the protection of national security in accordance with national constitutions and basic laws, and the established procedures relating to the declared development goals of developing countries." This principle can be found in the national legal texts, including the Investment Act of the Ordinance 01/03[258]. Article 14, paragraph 1, provides that "natural persons and foreign persons shall be treated as such as natural persons and jurists in the field of rights and duties related to investment".

   Developing countries place some reservations on the principle of national treatment, considering that equal treatment between foreign and national commercial firms is in fact discriminatory for multinational corporations, given their high financial and technological capabilities, which can easily crush competing national institutions. Developing countries also called to include an item that does not give national treatment to multinational companies unless they are in line with economic goals.

5. What can be seen on this conduct is that it is also contains to a set of measures to ensure respect for its provisions[259]. These measures are represented in the great media

[258] Order No. 01/03 on investment development. Official Newspaper No. 47 of 2001.

[259] In addition to defining corporate duties, United Nations standards also attach great importance to implementation and application, and depend on three situations:

1. Method 1: rely on the company's own initiative, where companies must:

- Adopts internal operating standards that comply with United Nations standards.
- United Nations standards must be included in contracts and transactions with others.
- Train all employees.
- Deal only with suppliers and other companies that comply with UN standards.
- Monitoring throughout the supply chain.
- Establish privacy and complaint mechanisms for employees.
- Prepare a self-assessment on compliance with standards.

aimed at introducing this code in the countries and following up its implementation within the territory of the state and adopting the state support for these texts in the code through its national legislations.

4.2.2.2 The Regulation of Multinational Enterprises within the framework of the Organisation for Economic Cooperation and Development (OECD)

These basic principles have confirmed the important role played by MNEs in the development of the global economy. Accordingly, the active and positive contribution of these enterprises to economic and social progress should be encouraged to overcome the greatest number of problems and obstacles resulting from the activities of these enterprises, sinceO 1976, OECD[260] have witnessed a decline in productivity, rising in inflation and rising in the unemployment rate[261].

The guidelines issued by the OECD are requests directed from States to multinational corporations that operate on their territory and are concerned with the problems resulting from their international structures. The Commission should make every effort to bring as many multinational enterprises operating in member countries in OECD towards these principles by incorporating them into their own rules.

The OECD countries were interested in multi-national enterprises because of their direct connection to international investment. The organization issued a declaration on

2. Method 2: Monitoring and verifying the application of these principles, and encouraging other bodies such as NGOs, ethical investment initiatives and industry groups on expanding the use of code standards as a basis for monitoring, dialogue and corporate campaigns.
3. Method 3: This method relies on the State, individuals and organizations to use formal enforcement mechanisms, including publicity for judicial and international standards. Companies must pay compensation for any damages they cause. Both lawyers and clients can urge national and international courts and tribunals to use UN standards for the application of reparations and criminal penalties.

[260] The World Economic Forum was formed after World War II to coordinate the Marshall Plan, and its name became the Organization for Economic Co-operation and Development (OECD) in 1961. Members of the organization are committed to democratic governance, and include 30 rich countries, including; Countries of North America, Western Europe, Japan, Australia, Turkey and some Central European countries.

[261] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 102.

international investments and multinational enterprises in 1976, which was amended in 1984, and includes a set of guidelines[262]. These guidelines bring together developing and developed countries to develop principles and develop special mechanisms to monitor or at least guide the activities of multinational corporations. These guidelines aim at achieving a set of results, including[263]:

1. The member countries of the OECD pledged to improve the economic climate as a fundamental objective of the guidelines.
2. Encouraging the positive contribution of multinational corporations to the economic and social progress of States Parties.
3. Integrate these guidelines into facilitation rules, where governments should create a framework for consultation in these guidelines.
4. Trying to find the appropriate legal solutions to the problems facing the investments of these enterprises.
5. To reduce the risk of these enterprises investments to global economies in general, as the countries of the Organization recognize the effective political capabilities of these enterprises and their ability to influence the political within the country that invests.

The declaration related to the international investments by multinational enterprises referred to the general objective of the economic progress of the countries concerned. The aim of this declaration is to improve the opportunities for foreign investment and to solve the problems facing the direct activity of these entities, since the benefit of this organization is to protect and maintain the operations of these enterprises.

The objectives and motives for formulating these guidelines are in line with the objectives and principles of the United Nations International Code of Conduct, both of which recognize the seriousness and obstacles faced by these transnational enterprises, trying to avoid these obstacles and mitigate their risks.

[262] 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.

[263] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 75.

With regard to the legal nature of the guidelines of the Organization's principles, the Council of Ministers of the Organization has made many efforts to assess the situation by setting up a committee called the International Investment Commission and multinational enterprises[264]. The Committee held a series of meetings to evaluate the decisions of the Guidelines for Multinational Enterprises. The Committee emphasized that the effectiveness of the guidelines depended mainly on their understanding and acceptance by multinational enterprises for incorporating their own rules. The Committee also emphasizes that it is not mandated to monitor the conduct of multinational enterprises with these guidelines because it is not a judicial or quasi-judicial institution and refuses to monitor the compliance of multinational enterprises with these guidelines[265]. It is therefore possible to emphasize the legal nature of these principles in view of the party that has prepared them, which advocates and monitors their application at the level of Member States of OECD[266].

The guidelines have been drafted in the form of recommendations addressed to Member States and to the enterprises that regulate their activities in their territory. They are concerned with the behavior that enterprises must exhibit when initiating their activities[267].

These guidelines cannot replace the laws of the countries in which they reside; they represent complementary rules of a non-mandatory nature and are addressed to all members, including the parent company and its subsidiaries, taking into account the degree of exploitation and scientific adaptation of each company.[268]

These guidelines are not responsible for compromising the structure of multinational enterprises as well as their freedom to make decisions about withdrawing a particular

[264] Ben Saleh Rachida, International Organization for Multinational Enterprises, Op cit, p. 71.

[265] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 104.

[266] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 76.

[267] Ben Saleh Rachida, International Organization for Multinational Enterprises, Op cit, p. 71.

[267] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 105.

[268] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 77.

investment in accordance with their overall strategies. Although these rules are not described as binding rules, they are one of the sources of international law in the areas addressed by legal status texts. Thus, these rules generate very important legal effects, despite their optional administrative nature.[269]

The OECD countries have followed an ingenious way of imposing the sum of these guidelines, a classic mode of action. The beginning was through the recognition of these guidelines, and gradually progressed to the stage of the promulgation of the law at the level of each State. Consequently, the guidelines derive their legal value from the extent of their implementation and are considered to be Soft Law but not legally binding.[270]

On the other hand, the report of the International Investment Commission on the legal nature of the guidelines has given the multinational enterprises the full freedom to choose their position on these principles, focusing on the fact that the violation of these principles offered no legal sanction[271].

The report also states that the nature of the competence granted to this committee is illegal, so that the committee cannot follow the behavior and activity of these entities and their conformity with these principles of mismatch, which confirms the advisory role of this committee, which is no more than a consultant and not mandatory.[272]

The adherence of OECD to the optional nature of these guidelines stems from the fear of the consequences of the application of its rules, and therefore it has tended to emphasize the optional character of these rules. They are only relevant to the member States of the Organization for Economic Cooperation and Development (OECD), which makes them limited to implementation, despite their comprehensiveness.

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[269] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 108.

[270] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 77.

[271] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 110.

[272] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 78.

4.2.2.2.1 The content of the guidelines of OECD for regulating the activities of MNEs

These guidelines are comprehensive insofar as they address the issues related to the activities of multinational enterprises, which are many issues, including Restrictive Business Practices (RBPs), the definition of treatment to be allocated to these entities, the areas of work and labor relations.

The 1976 Guidelines for Multinational Enterprises provided an emphasis on the important role multinational enterprises' play in developing the global economy and encouraging the positive contribution of these entities to the economic and social progress required. The guidelines are divided into four main parts; the General Principles Section, the first section dealing with topics related to international investments, the second section dealing with the national treatment of multinational enterprises, and the third section which presents the motives and obstacles facing international investments.

The content of the general principles section identifies general policies relating to the conduct of enterprises and determines the manner in which they should appear in exercising their activities. This section includes a reminder of the objectives and priorities to be observed by these enterprises, which are[273]:

1. Taking into account the priorities of social and economic progress.
2. Ensure industrial development
3. Environment protection
4. Creating jobs and equality among workers
5. Respect human rights and raise the level of the individual
6. E. Development of innovations and transfer of technology
7. Non-interference in the internal affairs of States.
8. Trying to reconcile their operations on the one hand with national policies on the other.
9. The imposition and promulgation of these principles at the level of all concerned parties and the use of these principles in the domestic economic policies of Member States.

[273] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 78.

First section deals with five topics, including information dissemination, competition, taxation, trade union representation, and science and technology.

1. **Dissemination of information**: Multinational enterprises have been obliged to provide information about their activities in the geographic regions in which they operate, but this has been rejected by these enterprises on the grounds that disclosure of such information leads to the disclosure of professional secrets that may endanger the interests of the company[274].
2. **Competition**: The universality of these enterprises imposes the creation of a kind of competition force that transcends the territorial boundaries of the host countries and the State of origin. Thus, the international market and the domestic market are the domain of such competition between powerful and large institutions; so that the pressures on governments of the host countries will be imposed using illegal methods[275]. Therefore, the guidelines of OECD impose on multinational enterprises to follow the rules of local competition, which are established in accordance with the policies of the host countries in which they operate or refrain from all forms of unfair competition[276]. Such entities must refrain from all acts with the opposite effect on competition such as domination, monopolistic methods, anti-competitive behavior, discriminatory prices and other anti-competitive practices[277].
3. **Taxation**: These enterprises are subject to taxes imposed by the enterprises that operate in their territory. Thus, the guidelines oblige these enterprises to provide sufficient information about their work to the tax authorities at

[274] Ibid, p. 79.

[275] These enterprises are working to help their country of origin to exert great economic pressure on countries in illegal ways, such as the prevention of foreign aid. The United States has enacted a law that, by modifying the Foreign Assistance Act 1961, forced the United States to stop assisting countries that compete or confiscate any US company. See; Pocra Idris, Individual Economic Stress in Relations between States. Study in light of the US practice of economic pressure. Dissertation in Public International Law, Institute of Law, Jakarta, Algeria University 1995.

[276] Ben Saleh Rachida, International Organization for Multinational Enterprises, Op cit, p. 75.

[277] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 104.

the level of the countries in which they are active so that countries can identify the tax base for the activities of these entities and be able to know prices and taxes. Therefore, the way for enterprises to carry out this procedure is through subjecting them to the national laws of each country[278].

4. **Workers 'Affairs**: The guidelines included a set of obligations for multinational enterprises, notably recognition of workers' right to trade union representation, and their claim for their rights in case of abuse by the trade union. Workers can also conclude labor-related agreements whether they are related to settling labor disputes or changing the institution's policy. These principles oblige multinational enterprises to inform workers and provide them with all information related to their trade union practices, as well as informing them of the various decisions related to the conduct of their activities, such as the decision to establish a new economic unit or transfer an economic unit elsewhere[279].

   Enterprises are obliged to provide similar treatment, particularly with respect to their benefits from social security grants and their rights to training courses to improve the level. In determining workers' wages, the company must take into account non-discrimination and respect for the nature of the issue and policies of governments that aim at equal opportunities for employment[280].

   The guidelines also require enterprises to deal with enterprises on the principle of good faith by not resorting to the threat of turning every part of the economic unit or workers into other countries as a means of putting pressure on workers to leave their demands. The Guidelines therefore provide great care for workers to eliminate all forms of exploitation in developing countries[281].

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[278] Ben Saleh Rachida, International Organization for Multinational Enterprises, Op cit, p. 77.

[279] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 81.

[280] Ibid, p. 82.

[281] The Code adopted the standards adopted by the United Nations in the area of labor protection. In the Commentary, the standards for the trans boundary responsibilities of corporations in relation to human rights were described as having many obligations for workers, including :

1. Transnational corporations and other business enterprises must not use forced labor.

The organization's interest in social and labor relations shows the strength of labor movements and organizations and their understanding of the seriousness of work in a field that is almost not constant as the branches of companies move according to the principle of double profit. However, multinational corporations have two valuable papers when they negotiate with trade unions:

a. **First**, these companies can threaten to focus their expansion or new investment elsewhere if a strike occurs or if they are forced to give more concessions than they wish. The Canadian company 'Massey-Fergusson' publicly invoked this threat against its Canadian workers in 1968, when they demanded equal pays with their American colleagues. When the company resorted to this threat, the bargaining power of the waste fell directly proportional to the relative importance of their factories in the global business plan, which they fight with it.
b. **Second**: the second paper is in the hands of international companies' giant, which concerns the knowledge of the administrations of these companies and their interests around the world. These companies know which factories are more important, know where they intend to expand their existing investments and at what speed and where new ones arise and where they want to. It also knows when it can make big concessions and when there is a prospect of making no more concessions.

   In short, when a giant multinational company negotiates with a national workers' union, the company can study all the facts, while the union

2. Workers must be employed, paid and provided with fair working conditions.
3. Workers should be given the option of leaving work, and the employer should facilitate their departure by providing them with all necessary documentation.
4. Multinational corporations respect the rights of children to protection from economic exploitation, which includes employment and early exploitation.
5. These enterprises are responsible for the health and professional integrity of the workers and provide them with a working environment in line with the national requirements of the countries in which they operate.
6. Multinational corporations must not require any worker to work for more than 48 hour per week or more than 10 hours per day. See; Document No. IOR42/002/2004 concerning the United Nations Human Rights Standards for Corporations: Towards Legal Accountability issued on 18 January 2004, pp. 27-27.

representatives have none of them. This has put unions in the face of the challenge of large corporations through union cooperation with each other. This has led to the emergence of international labor organizations such as the General Federation of Metal Workers and the General Federation of General Chemical Confederation[282].

5. **Science and Technology**: Multinational enterprises should examine the actions they can take when expanding their activities in the various countries where they operate and encourage innovation in host countries, taking into account the economic differences that exist between them. The guidelines addressed to these entities call for ensuring the rapid dissemination of the results of research and development activities under reasonable conditions[283].

   Enterprises are required to respect host countries' science and technology policies and ensure activities consistent with these policies. The Code also respects these standards and uses them as a reference to understand the human rights in the Guidelines for Multinational Enterprises. Enterprises should also allow the spread of science and technology to the extent that it does not harm their interests, relying on domestic legislation to protect their patents and trademarks[284].

   These guidelines show a clear restraint on the use of the latest technological developments by developing countries. The reason for this is to keep the secret of excellence of these companies.

   The suffering of developing countries that receiving investments continues to exist because of the lack of an explicit, clear and binding organization that can benefit from the advanced technology of these companies. This leads to a conflict of interest between host countries and multinational corporations and creates a kind of intense competition in which technology monopoly plays a crucial role in swaying developed countries.

[282] Karam Samir, Multinational Enterprises, Arab Development Institute, Lebanon Branch, First Edition, 1976.

[283] Karam Samir, Multinational Enterprises, Arab Development Institute, Lebanon Branch, First Edition, 1976.

[284] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 104.

Consequently, domestic legislation does not guarantee the use of technology as a condition for the acceptance of investment, and the legislation adopted by OECD has been criticized so that developing countries have resorted to other structures to create a true organization for it[285].

The second section contains two main points: national treatment and tax liability.

1. **National Treatment**: The national treatment is a sensitive obligation imposed on the receiving countries for the activities of these enterprises. It is the responsibility of States not to discriminate between residents and non-residents in the area of rights and obligations directed at each party and thus equality between them. The governments of the member countries of the Trade and Economic Development Organization shall abide by the principle of national treatment[286]. In accordance with that principle, Governments must, when taking any action with limitations or exceptions, inform the Investment Committee and multinational enterprises within 60 days of existing investments and within 30 days for new investments[287].

   Most blogs interested in organizing the activities of multinational enterprises provide for the principle of national treatment, a principle that preserves their rights and ensures their competition with national institutions. This principle has been widespread among developing countries wishing to bring in investments, where countries recognize to stimulate investment of these enterprises[288].

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[285] The non-aligned countries, at the Conference on Trade and Economic Development (CNUCED), made a series of demands to enable developing countries to benefit from the high technology of these companies. This led to the attempt to develop an international code of conduct on technology transfer, where this subject has been discussed in 1975, and the negotiations reached the end of the Eighth Congress in 1992, which decided to postpone them, and thus, the search in this code was stopped. This has returned the demands of developing countries to zero and enabled the industrialized countries to resort to bilateral or regional solutions.

[286] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 84.

[287] Ben Saleh Rachida, International Organization for Multinational Enterprises, Op cit, p. 78.

[288] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 105.

2. **Tax obligations**: States are obliged to impose a tax on the work of these enterprises, and in return enterprises must respect and comply with tax procedures. On the question of access to bank loans and public markets, the Committee noted that there were no impediments and constraints on multinational enterprises[289].

While the third Section presents one point regarding the motives and obstacles to investments. The Committee mentioned the existence of intense competition between countries to attract investments, which constitute a threat to bilateral cooperation. Therefore, dialogue and equality between countries should be opened so as to avoid the sharp effects that Result from competition between them[290].

The Committee advises that if a State is affected negatively by the legislation of another State, it shall resort to a special body (BAC)[291] to resolve these problems, but States prefer bilateral solutions to the use of this organ. Thus, it is clear through the content of these principles governing the activity of multinational companies that they depend on the internal laws of the Member States of the Organization, because they are more binding on these companies than the principles that remain optional.

The Committee has submitted two additional annexes to this Code; the first includes actions taken by member Governments with a view to establishing and ensuring their application. The second is to require the Council to act against the restrictive commercial practices of multinational corporations that are harmful to international trade, which were taken by the Council on 20 February 1978.[292]

The Committee recognizes the difficulty in Annex II in exposing control over the activities of multinational companies that are harmful to international exchanges especially with regard to the collection of information outside the

[289]Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 84.

[290] Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law, Op cit, p. 105.

[291] Ibid, p. 105.

[292] Bennett Laila. The extent to which the investments of multinational corporations are stimulated in Algerian law, Op cit, 85.

limits of domestic legislation. This has prompted the Code to approve a set of control mechanisms to follow up on the activities of these companies.

Through the above mentioned, the optional nature of these guidelines did not prevent the OECD from providing a package of guarantees for the application of these guidelines, since their breach does not result in the punishment of their non-mandatory nature. However, this did not preclude attempts to impose it on the basis of the submission of its texts, which suggests the seriousness of the character of this code. These guarantees are[293]:

1. The use of the rules of international law and international norms to strengthen its national organization so that it can obtain real technical information.
2. To seek to raise the profile of the guiding initiatives between employers, trade unions, professional organizations, chambers of commerce and enterprises in all countries of the world.
3. Translate the principles into several languages and try to adopt them by the internal legislation of the countries.
4. Subjecting the disputes happened between multinational enterprises and hosts States to numerous solutions, such as bilateral, international and control agreements.
5. Exchanging views of the parties concerned (countries, companies, workers) on the problems related to the guidelines, such as Canada, which receives public authorities, workers' and employers' representatives to discuss how to implement the regulations.
6. To make joint collective efforts to bring the rules of the various national legislations closer together within the framework of the Organization. Taking into account the inviolability of the national sovereignty of Member States in the application of the laws set forth in the Code. This comes through an exchange of views with interested parties on issues related to the guidelines.
7. The use of the guidelines by the Governments themselves in the context of their economic policies, as both the United States of America and Sweden had returned to the guidelines when they formulated the principles of competition and restrictive trade practices.

[293] Ibid, p. 87.

8. Informing the governments of the Investment Committee and multinational companies of all the exceptions they take on one of the principles contained in the Code, especially the principle of national treatment.

Evaluation the guidelines of OECD for regulating the activities of MNEs

Studying these guidelines leads to record many observations that are largely consistent with the observations made regarding the basic principles of the United Nations International Code of Conduct, which can be summarized as follows:

1. The OECD, which includes capitalist states, seeks to strengthen the foundations of the global capitalist system and expand its circle by creating the appropriate conditions for international investment as the ideal framework in which the tool moves at the global level. It is concerned only with international investment and the problems that have emerged from the new structure of multinational affairs, which has already affected the traditional rules of the capitalist system itself and caused many difficulties. This has made international investment in the face of many barriers and obstacles, which raised the concern of the capitalist states in the OECDto look for ways to remove these barriers and find solutions to the problems. However, this does not negate the elimination of these entities; it aims to establish the conditions that enable them to operate freely and without harassment so that they can play their role in advancing and supporting the capitalist system at the global level under the current circumstances.
2. Although the Organization's guidelines are not formally mandatory, they have played an important role in addressing the problems raised by these entities, although they are limited to the Organization's States.
3. These principles were comprehensive, highlighted by addressing the different aspects of their activity, but at the same time they did not live up to the global level because they were limited to

the Western industrialized countries (members of the OECD), making their goals limited.

4. The non-obligatory nature of these principles raises the question of the purpose of drafting these texts. States can address these companies individually through bilateral agreements between them. These agreements, which contain binding legal texts, are more effective than voluntary texts and principles based on good faith and voluntary acceptance of their application. The absence of a mandatory nature, despite the fact that it is confined among a group of countries, proves the strength of these entities, which no one can impose laws upon. It also makes international law prove its original source, the customs, as a first stage of its development.
5. The principles contained in this Code emphasize the need to respect the domestic law of States and public policies in all areas. It also transmits the articles of the Code to the rules of national law in the field of the activities of these companies, which makes these principles based on the national law to protect them and control these companies as active within the field. Despite the evolution of the national laws of each of the countries of the Organization and its consistency with international legislation in regulating the activity of multinational companies, it is very different at the level of the third world countries, whose legislation is still unable to absorb this phenomenon, which has adopted in many of them international rules for these companies without understanding them.
6. Most of the principles set forth in the Code are unrestricted, since they do not aim to restrict the exercise of these companies' activities to the extent that they are designed to modify them in line with the interests of the industrialized countries with each other on one hand and the interests of the industrialized countries with the developing countries on the other.
7. The States of the Organization have developed a set of measures to ensure that their principles are applied, so that they deal with

States as the original States of these companies. Thus, everything imposed on the State or the obligation of the State shall be automatically committed to the Company. This proves the progress of the industrialized countries in the application of legal texts.

8. The evaluation of this Code highlights its importance as an important reference to the development of a comprehensive and binding global organization of the activities of multinational corporations and highlights the significant role it has played in adopting domestic legislation for more motivating legal provisions and monitoring the activities of these entities.

It should be emphasized that, during the duration that has witnessed frequency of arrangements at different levels, and with different participants and varying degrees of binding force, a set of principles and rules relating to the conduct and treatment of multinational enterprises are emerging whether they are called "Soft international law" or legitimate expectations with varying degrees of certainty.

Some of the objective principles are well known and applied in an irreplaceable manner. The degree of accuracy in these principles and rules varies from one case to another and from one economic sector to another. However, it can be emphasized that part of these rules has been used and taken from the national law or general international law. The legal force or extent of the mandatory force of these principles and rules is still under consideration, some of which are legally binding for the formal provision adopted under them, such as international conventions and binding decisions of international organizations. Even in such cases, the style and wording of the relevant provisions affect in a significant way the nature and scope which may have actual binding power.

Many other rules have been adopted in ways that do not gain official force, but are generally accepted by the international actors concerned. The distinguishing features of the rules are important, where the rules on the conduct of multinational enterprises restrict the freedom of action and activity of such enterprises and, in this sense, are used indirectly by host and indigenous States for data on the good practice of multinational enterprises.

The great diversity in the form and format of international practice is directly relevant when determining the indirect legal effects of international norms, and even where no binding legal obligations arise, legitimate expectations may arise for the application of the rules in other cases within reasonable limits. The implicit or explicit functions of various types of international norms of national legislation are an important element in the creation of a "soft law" on the conduct and treatment of multinational enterprises. This function is explicitly stated as a key objective in some cases such as the rules and guidelines of Restrictive Business Practices (RBPs) or what has mentioned implicitly in other cases such as the case in the Code of Conduct on Technology Transfer developed by the CNUCED Conference.

Although the international community's attention to multinationals has been more organized and clear through many attempts to develop legislation and regulation of their own; however, the evasion of comprehensive codes from the mandatory characterization of their contents makes them far from the scope of application despite the mechanisms on which they have tried to base their adoption by Companies, which leads us to ask about the reasons for evading the mandatory characterization on these codes, which can be explained for two reasons:

1. The enormous capacity of these enterprises, making it more difficult to contain these codes to monitor the activities of these entities in the appropriate manner, where this is consider as a recognition of their shortcomings, which made them refer to the domestic laws for the countries that are considered the most binding and strict.
2. The fear of the States of OECD form these entities because the interests of these countries are linked to the interests of these enterprises politically, economically and socially, in addition to the superiority of these companies to the States and the difficulty of its representation at the level of the United Nations and the Organization for Economic Cooperation and Development.

Therefore, the search for the status of these enterprises in the public and private laws and in the comprehensive codes leads to the argument that the growing number of these multinational enterprises operate across borders in ways that exceed the organizational capacities of any national system, which requires the creation of international law

binding for all countries[294], in contrast to the comprehensive codes in its content and its optional nature. This, however, does not negate the fact that the criteria contained in comprehensive codes, whether the United Nations Code or the Organization for Economic Cooperation and Development (OECD), are useful as a measure by which national laws can be judged to determine whether Governments fulfill their obligations to protect the rights violated by such companies by ensuring the development of appropriate regulatory frameworks.

It can be said that, even if an international formula for regulating the activities of multinational enterprises was not binding and I am referring here to the United Nations Code of Conduct on Multinational Enterprises, it will be the basis for the first pillar of a stronger and more binding later work. New concepts are difficult to accept easily and enjoy mandatory character, particularly as they affect the vital sphere of each State. And the conclusion of a binding text and what is achieved through the conclusion of an agreement encounters multiple difficulties with regard to the concept of the idea alone and the consequent obligations of its actions on the States that organize it.

However, the hope in establishing an international organization of multinational enterprises that has a mandatory force still exists, either by revising and enforcing existing codes of conduct, particularly the United Nations Code as a set of rules encompassing all activities of multinational enterprises and this is what the developing countries hope. Or at least wait to elevate these legal norms contained in the earlier Code of Conduct to the level of international law through its evolution from non-binding rules to customary rules of law.

4.3 The status of multinational enterprises in commerce exchanges

The ability of multinational enterprises to influence the composition of international commerce volume stems from the fact that they have production units in different parts of the world. According to old figures dating back to the 1970's; Multinational enterprises had an appropriate proportion of the volume of exported products from the

[294] United Nations Human Rights Standards for Corporations, Towards Legal Accountability, Document No. IOR 42/002/2004, Amnesty International Publications, January 18, 2004, p.3.

growing dill, which accounted for more than 30% of the exports of 6 new industrialized countries, and exceeded 90% of the exports of a country such as Singapore[295].

The basis for these enterprises is to invest in cheap labor for greater profits, as well as a set of policies pursued by developing countries in particular to attract more of them by creating free zones[296]. This has allowed these companies to benefit from many advantages, mainly low or sometimes low taxes, for which they are safe havens. Another factor is to allow them to plant production workshops for products that may not be permitted in the country of the parent company, specially related to environmental aspects.

Many regulations have been introduced to regulate the work of multinational enterprises in international commerce exchanges. One of these regulations is the international business law. This law mainly seeks to guarantee the rights of parties to legal trade transactions. General Agreement on Tariffs and Trade (GATT) is also one of the most prominent laws regulating the activities of multinational enterprises in international commerce[297]. The next section provides an overview of the basic principles of the GATT.

4.3.1 The General Agreement on Tariffs and Trade (GATT)

After World War II, the major powers began to lay the foundations for international economic relations through a series of conventions. These conventions have led to the establishment of the following[298]:

1. The International Monetary Fund (IMF) manages global monetary policy.
2. The International Bank for Reconstruction and Development (IBRD), which took over the management of global financial policies and the reconstruction of Member States.

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

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

[297] Osama al-Mahdoub, Jatumasr and the Arab countries from Havana to Marrakas 1947-1994.

[298] Firas Ashqar, Introduction to International Trade, Jamah University, Faculty of Economics, 2017, p. 105.

3. Initiate international trade negotiations aimed at liberalizing international trade resulting in World Trade Organization (WTO).

After the Havana agreement, which called for the establishment of the WTO and the American refusal to implement its provisions for fear of affecting American interests, the United States called a year ago to sign a comprehensive agreement to liberalize international commerce in commodities, where an international conference was held in Geneva in 1947[299]. The Conference included 23 sessions with a view to negotiating for the liberalization of international commerce[300].

The Convention was an interim agreement for the signing of the Havana agreement, but States continued to negotiate and continued to make customs concessions on various goods. All bilateral agreements were then consolidated to form the General Agreement on Tariffs and Trade (GATT).[301]

4.3.1.1 The basic principles of the GATT

When implementing the Agreement on the Liberalization of Trade in Services, the following principles and rules can be fulfilled:

1. Most favored nation (MFN) principle: This principle means non-discrimination between suppliers of foreign services in terms of market access and conditions of operation. Furthermore, the Convention provides that any benefit granted by a Member State of the Convention to another Member and to another State not involved in the dispute of services should be granted at the same time, without conditions or restrictions, to all Parties to the Convention. This shall not preclude the granting of an advantage to a neighboring State to facilitate exchange only between border services areas, limited to services produced and consumed locally[302]. In any case, the review of exemptions granted shall be reviewed five years after the entry into force of the Services Agreement, noting

[299] 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. 14.

[300] Fadl Muthanna, Potential Effects of the World Trade Organization on Foreign Trade of Developing Countries, Madbouli Library, Cairo, 2000, p. 87.

[301] Osama al-Majdoub, al-Gatt, Egypt and the Arab countries from Havana to Marrakesh 1947-1994. The Egyptian Lebanese House, 1996, p. 74.

[302] Laith Khatib, WTO issues and their implications for Jordan and Arab countries. Op cit, p. 16.

that the second paragraph of the Convention provides that any Member may apply a standard inconsistent with the MFI if expressly provided for in the Annex to Exemptions of Article II.[303]

2. Principle of transparency: This principle is intended to rely on customs tariffs rather than on quantitative restrictions (which lack transparency), i.e., specifying tariff based on the quality, if it was necessary to assess the international commerce. Thus, States that are obliged to protect the national industry or to treat the balance deficit Payments should resort to tariff policy while moving away from quantitative restrictions, such as quotas (import quotas), due to the fact that, under price constraints, the protection or subsidy granted to the domestic product can be easily determined.

   The General Agreement on the Liberalization of Financial Services includes a main point that is reflected in financial disclosure and transparency. In article 3, it states the need for States Parties to exchange all information, procedures, laws, legislation, principles of control and administrative directives relating to financial services with have direct or indirect impact[304].

3. The principle of increased participation of developing countries: Article IV of Part II of the Convention provides for the need to encourage and facilitate the participation of members from developing countries in international commerce through specific commitments negotiated by various members of developing countries in international commerce through specific commitments negotiated by various Members In accordance with Parts III and IV of this Convention, relating to[305]:
   a. Strengthening the capacities of local attackers and increasing their efficiency and competitiveness by allowing developing countries access to technology on a commercial basis.
   b. Improving access of developing countries to distribution channels and information networks.

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

[304] Mohammed Salim Al Harbi, World Trade Organization, Arab Lawyers Forum, 2009.

[305] Laith Khatib, WTO issues and their implications for Jordan and Arab countries. Op cit, p. 16.

c. Liberalization of access to export markets in sectors and means of interest to those States

4. The Principle of Trade Negotiations: This principle means that the World Trade Organization is the appropriate negotiating framework for the implementation of judgments and the settlement of disputes[306].
5. The principle of preferential trade treatment: This means giving developing countries preferential trade relations with developed countries in order to support developing countries' plans for economic development and increase their foreign exchange earnings.[307]
6. The principle of reciprocity: This principle requires that the member states of the Convention liberalize or reduce international commerce, but within the framework of multilateral negotiations based on reciprocity. Meaning that any tariff or non-tariff barriers to a particular country must be offset by equal Value on the other hand so that the benefits obtained by each State and the negotiations are equal and become binding on all States and after which no new amendment can be made except by new negotiations.[308]

In general, this chapter gave a detailed picture of the regulations that sought to regulate the activities of multinational enterprises. The next chapter deals with the governing laws problems in MNEs especially in their activities in international commerce sector.

Chapter five

Private international law related problems of the operation of MNEs

5.1 Chapter introduction:

The idea of global commerce enterprises that split from the source nation firm has been widely accepted in different states and considered as the first forms of globalisation

[306] Ibid, p. 17.

[307] Ibid, p. 17.

[308] Mohammed Salim Al Harbi, World Trade Organization, Op cit.

since 1980s. Multinational enterprises have considered as one of the economically powerful bodies that widely existed in different states all over the world. Consequently, MNEs is considered as a great economical force that accompanies the noticeable changes in the international markets, especially commerce and trade sectors, and the enhanced technological developments[309]. In 1990, Ken'ichi Ohmae[310] described the hugely integration between various nations production services, and the combined economy between multinational systems as a "borderless world" term. The challenges that accompanied the "beardless world" description have been recently discussed in different researches, but the detailed problematics that faced MNEs operations with regard to various aspects, such as nationality, governing rules and many other aspects, are considered as an innovative and significant subject that worth to be studies by new scholars. Therefore this chapter of the research came to shed light on the problems that arrived with this term in MNEs especially in their activities in international commerce sector focusing on four main challenges which are: problematic of MNEs nationality, governing laws, jurisdiction and domicile as follow;

5.2 The Legal problematics concerning with the nationality of MNEs:

Several legal issues were derived from the multinational corporations' nationality concept. This could be explained due to the fact that all jurists have different concepts and visualisation regarding the MNEs nationality[311] . Additionally according to the diverse potentials of companies to enjoying nationality, as well as divergent views on the standard adopted to determine the company's nationality.

Every legal system distinguished in their right to identify the entities which regulate the legal relations that basically describe their legal personality, which control their ability

[309] Jan Wouters and Anna-Luise Chane, Multinational corporations in international law. Leuven center for Global governance studies. Working paper No. 129, December 2013, p.4.

[310] K. Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy*, London ,1990.

[311] Montenegro,A. " The development of Pirelli as as Italian Multinational 1872-1992, " in G. Jones and H. G. Schroter (eds). The Rise of Multinationals in Continental Europe, Aldershot 1993.

to enjoy offered rights, obey the existed obligations, execute applicable legal acts and resort to the followed system justice when needed.

The international public law has witnessed successive developments to cope with the continuous changes of international reality and to follow its growth and its fields diversity; this is from where the recognition of the international legal personality was confirmed by jurists on units that are unmatched by States, including multinational corporations.

Each company has their own nationality that basically defines the country to which it belongs, and to realise the law regulations that must follow, and to differentiate one company from other existed companies. Furthermore, company's nationality helps states to distinguish between the national and the foreign company. The jurists discussed the definition of the company's nationality according to its importance and its distinction from the nationality of natural persons.

Therefore; there is no certain and unified definition of MNEs nationality. Nationality can be defined as a connection between the entity and the state in politically and legally firm[312]. Nationality can also be defined as a determination of the population distribution in legal manner with regard to the international community[313] .Another definition of nationality was recognised by the international court of justice as it legal bond that enable individuals to live, interact and feel through an original and consistent assembly[314].

The definition of nationality varied from one jurist to another; as most of them focus on the legal aspect of this term while taking on the consideration the common obligations between involved individuals and the state. On the other hand, some of them focus on the political aspects between international and regional regulation, others focused on the social bonds between the same state individuals. Whereas other jurists focused on both legal and political relations within the individuals in one state[315].In this

[312] Talaat Al Hadidi. International legal position for Multinational enterprises. Dar Al-Hamed for publishing and distribution, first printing, Amman , 2008, p.194.

[313] Tayeb Zeruti. Mediator to explain Algerian nationality. Al Kahnah Press, Algiers, 2002, p.18.

[314] Adly Abdel Karim. Legal system of contracts between foreign countries and persons. PhD thesis, Faculty of law and political science. University of Abu Bakr Talsman, 2011, p.98.

[315] Tayeb Zeruti. Mediator to explain Algerian nationality, Op. Cit, p.19.

research, the firm nationality can be defined as the company legally connection with one specific state as this company is economically engaged with other state national economy. Consequently, we can conclude that defining company's nationality is very complex therefore several problems were observed regarding this term in the business sector and especially in MNEs business.

MNEs nationality is considered as a moral entity that has an economical and social impact as a legal person[316].Commercial firms distinguished nationality as a significant legal unit that provide the firms with the state protection and privileges that belong to that state legislation[317]. This point indicates the firms' necessity to obey to the state regulations in which they belong to while performing their operations[318]. Although the obvious significant of aquesting firm nationality but this concept made a lot of disputes between jurists and its approval divided jurists to supporters and deniers.

The problematic of nationality of MNEs was mainly represented in some jurists' beliefs that nationality is only belong to natural person and cannot be for moral entities. This point of view defined nationality as political, legal and emotional connections between individuals and the state and this kind of connection cannot be found in moral bodies such as firms[319]. Furthermore, as nationality is considered as political and social relations that enhance the loyalty feelings between the individuals and the state that they belong to, then this concept cannot be applied to MNEs nationality which is considered as a moral entity and total legal relations that has no feelings[320].

Additionally, as some scholars considered nationality as a strong blood connection between citizens and the state; so this term cannot be implemented over a moral entity such as MNEs. As well as, the inability of the moral entities to perform some duties

[316] Ibid, p. 83.

[317] Salami Saed. Implications for the Moral personality of a trading company. Research submitted to obtain a msters degree. Faculty of law and political science, university of Abu Bakr Belqayd, Talsman, 2012, p.79.

[318] Ibid, p.79

[319] Mohammed Farid Al-Arini. Commercial companies, New University house, Alexandria, 2003, p.58.

[320] Salami Saed. Implications for the Moral personality of a trading company, Op. cit., p.80.

and enjoy rights such as voting , electing and engaging public service; this made such term only restricted to natural individuals[321] .

Other researchers refused this argumentation as they considered the basic controller for any individuals (either moral or natural) to have the state nationality is their ability to support the state economy and as moral individuals have this ability in wider manner, therefore they can have the state nationality[322]. Furthermore, contradictory for the idea that nationality is a blood connection between individuals and the state, deniers for this thought believes that naturalisation and the nationality law can provide moral entities with the state nationality without having this blood association. For example in naturalisation way; company's nationality is often governed by their domicile and this rule can be implemented over MNEs nationality[323]. Moreover, according to the previous argument that moral entities such as MNEs are unable to perform some state duties, others indicated that these companies can perform huge political and economical roles[324], so these companies rights pr role are specified according to the state applicable law[325].

There is a contradiction between the definitions of nationality concept when looking at it from the legal or social perspectives. The sense of loyalty toward the state that is recognised as the individual belonged nationality cannot be considered as a legal standards as some individuals such as child or disabled persons can belong to the state nationality without having this kind of feelings[326]. Many jurists found that the nationality of any company is a necessity to realise the legal aspects and rules that this company follow since establishment, to configure the rights amount that offered to this moral entity, and to consider the protection status of this company according to the nationality belonging state polices. So according to the above mentioned information, nationality can be considered as a significant term to determine the status and the rights offered to MNEs .This could be explained as nationality can be realised as a legal

[321] Meta Hussein. Nationality of multinational corporations, Master's degree in Law Division, specializes in international private relations law, 2016,p.9.

[322] Tayeb Zeruti. Mediator to explain Algerian nationality, Op. Cit, p.85

[323] Meta Hussein. Nationality of multinational corporations, Op. cit, p. 10.

[324] Ibid,p.10-11

[325] Salami Saed. Implications for the Moral personality of a trading company, Op. cit, p.81.

[326] Tayeb Zeruti. Mediator to explain Algerian nationality, Op. Cit, p.85

framework for the MNEs establishment and operations , especially when it is existed outside the boundaries of its origin state[327].

On the other hand, the existed contradiction that can be realised with regard to the above clarified argumentation regarding this concept is one of the main issues that could face MNEs in international commerce practices. Additionally, the existed similarities between moral individuals (companies) and natural individuals (citizens) especially in term of enjoying the nationality state rights such as the right to conduct and operate economical activities which could be for both moral and natural individuals. This indicates the necessity to define moral individual nationality in more accurate way[328]. This could be granted through realising the extent of rights, the protection amount that defined in the state legal system that the company is subjected to according to have this state nationality[329].

Although some individuals denied the nationality of moral individuals, but the majority of contemporary jurisprudence as well as national legislation recognize the moral person's enjoyment of nationality[330]. Therefore, the term of nationality was accepted in the field of companies as this concept could carry the meaning of the legal association to a particular state and not the narrow definition of this concept which is the belonging of a natural person to a particular state[331].

So, the company's nationality is the legal association that assigns the company to a particular state where they are economically connected, and which lead these companies to be sovereignty and protected by the state to which its belongs, or in other words, it is the legal relationship between the company and a particular state under which the company is integrated into the national economy of this state, and subjected to their sovereignty and protection[332].

[327] Ibid, p.84.

[328] Meta Hussein. Nationality of multinational corporations, Op. cit, p.11.

[329] Ibid, p.12.

[330] Adly Abdel Karim. Legal system, Op. cit, 2011, p.98.

[331] Talaat Al Hadidi. International legal position, Op. cit, p.150.

[332] Hisham Khaled, Nationality of the Company, University Thought House, Alexandria, 2000, p. 70.

From all above, we can concluded that nationality in the strict sense is to link or subject a legal individual to a specific law, and by applying this definition to the company , the nationality concept can be defined as a company that must be subjected in all its aspects to a state law, so the question arises about standards which must be provided and that allow the company to belong to the state, as it should be noted here that there is a significant difference between the nationality of the individual and the nationality of the company.

In general, the nationality of multinational enterprises is distinguished from the natural individuals' nationality with a variety of characteristics. If we analyze the relationship between any natural individual and the State, we can found that it is specific as a spiritual bond based on individuals' loyalty to the State. This element is rarely available in the moral person. The nationality of multinational enterprises, which is realised as a moral individual, differs from the natural individual nationality as follow;

1. The nationality relation is a real association that involves a social connotation between the individual and the state. So some jurists believe that such association is based on moral and psychological foundations and applies only to natural persons who have a real body and a spirit, rather than moral persons, that represent legal entities, in which their importance only limited to their economical value, and the main purpose behind their recognition is to determine their legal scope and subordination.
2. The importance of nationality for a natural person is represented in the fact that is considered as a tool to determine the citizen statistics in one country, while moral individuals can be neglected in this field.
3. The basis for determining the nationality and the consequences of granting natural persons with nationality concept does not existed for the moral individuals. For example, moral persons cannot take benefit from some nationality taken rights such as the voting right.
4. The legal means that is utilised in determining the nationality of a natural individual are different from the means of determining the moral individual subordination .As in the natural individual case, nationality offered according to the state nationality legalizations, while for moral entities, there are multiple rules that control offering nationality basis such as the place of activity or the Head Office location , so the followed criteria to focus one enterprise activities is a combination between the

nationality and domicile concepts, as company's' nationality is realised as another definition of the domicile concept[333].

5. Any natural individual is often connected with a single state, regardless of their working place, while moral individuals who are distinguished in their international proliferation power may be existed in several countries[334].

So, multinational enterprises represent an example of this moral persons as they are global economical groups that are not actually linked to any country's traditional standards, even if they are divided in several focused and independent legal units but they are actually linked to a single group that shares and monopolizes one activity sector, without imposing to a monitoring power by one state for these illegal activities.

At the end, we should mention that the idea of company's nationality has gained the judiciary acceptance at the end of 19th century (more specifically in the beginning of 20th century). It stated that moral individual represented any commercial company. Furthermore, the judiciary indicated that nationality is considered as a great requirement for both moral and natural individuals. This nationality basically defines the legal terms of any commercial company practices and the law is the basic governor of its practices[335]. For example in 1983, the commercial institutions nationality considered by the "Nancy court" as a significant moral individual that differ than other state members, so they own a unique nationality and has a distinctive financial duties differs than other members obligations and duties. Additionally, in 1953, the French court considered the location of a commercial company head office is the main governor for having the French nationality for this company, and that the French law is the main controller of its activities and operations[336].

Therefore, the recognition of moral person became as an acceptable fact in the contemporary law as it considered as an influential legal entity economically and socially. This entity has gain a wide agreement from jurists according to its financial

[333] Tayeb Zeruti. Mediator to explain Algerian nationality, Op. Cit, p.83

[334] Ibid, p.83

[335] Salami Saed. Implications for the Moral personality of a trading company, Op. cit, p.83.

[336] Ibid, p.85.

abilities, its spread power when compared to the natural person who is recognised with its limited possibilities and means[337].

Nationality is also considered as an essential term for commercial companies as they considered as a moral entity. Nationality concept for this type of companies means its ability to gain the protection of the state to which it belongs, and enjoying the benefits that determined by its legalizations. On the other hand, granting one state nationality means that the company should follow and comply with the laws of this state. Furthermore, the company nationality law should be followed to the conditions of its establishment, administration, eligibility and liquidation[338].

According to above illustrated definitions of nationality concept, we can conclude that jurists are divided to supporters and deniers to the idea of providing moral individuals with the nationality concept. Deniers believed that nationality is a legal and political bond that connect individuals with a specific state, and as moral entities cannot be considered as a part or a component of a state such as citizens; so they cannot gain this state nationality. They also believed that nationality is an emotional or psychological varying bond which is obviously only limited to natural individuals[339] .

They explain their argumentations jurists refer to the nature of nationality term, and according to the fact that companies do not need to a specific state nationality to perform their operations, as the legal system that any company follows belong to the central management, and political subordination is based on the idea of censorship[340].

On the other hand, supporters believed that moral entities nationality differs from the natural individuals' nationality, but this cannot deny the importance of having a universal accepted bond between the moral individual and the state. The supporters for the idea of enjoying moral individuals with nationality considered this term as a basis for controlling the legal activities of such entities according to the rights that is determined to this entity according to the state regulations to which this entity belongs.

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[337] Ibid, p.82

[338] Salami Saed. Implications for the Moral personality of a trading company, Op. cit, p.79.

[339] Mohammed Farid Al-Arini, Commercial Companies, New University House, Alexandria, 2003, p. 58.

[340] Salami Saed. Implications for the Moral personality of a trading company, Op. cit, p.80.

As well as specifying laws that must be obeyed in case of conflicts (even conflict of laws and conflict of international jurisdiction)[341].

So according to the jurists who believe in moral entities (such as MNEs) nationality , this term is important as firstly it helps in realising the rights enjoyed by the moral individual which is limited to the nationals of each state especially in the field of trafficking, such as the right to exemption from taxes and the right to receive financial subsidies, secondly , nationality specify the state which offer legal protection to the moral person, and finally, nationality helps in determining the legal system characteristics that is followed when establishing , managing and liquidating the moral entity.

Therefore, this believer side stated that if the company loses its nationality without acquiring a new nationality, it must be resolved and liquidated[342].

The supporters argumentations were based according to the believe that nationality is a legal system based on belonging to the State or its subordination, which is achieved for the company as a moral person as verified by the natural person. Supporters also believed that moral and natural person are almost similar with respects to the consequences of owning a one state nationality as it is considered a legal system that specify the belonging individuals rights, and to determine the extent to which he can enjoy the rights prescribed by law such as economical activities, tax exemption and , and to determine the necessary protection that is offered by the state to its national companies at the international level as one of its nationals, as well as for the protection of the company in the international field, especially in exceptional circumstances such as war. In addition, to provides these companies with the necessary support to enable it to compete with foreign companies[343].

Last and not least, One of the main issues regarding providing nationality of multinational enterprises is the existence of different specifications and standards that could be followed to provide the moral person with the state nationality or to specify

[341] Tayeb Zeruti. Mediator to explain Algerian nationality, Op. Cit, p.84.

[342] Nadia Fadil, Judgments of the Company in accordance with the Algerian Commercial Law, Dar Houma for Printing, Publishing and Distribution, 6th edition, Algeria, 2006, p. 64.

[343] Salami Saed. Implications for the Moral personality of a trading company, Op. cit, p.83.

its political dependency, which caused the differences between the comparative jurisprudence positions toward the moral individual nationality, and the basic specifications are ; the volition standard, the nationality of the state that its law was chosen to be the basic controller of any followed company, the founders nationality, the establishment place, the exploitation center, the managerial and head controller center standards [344].

In conclusions, although the existed contradictory opinions and point of views regarding MNEs nationality, but it seems essential to define the multinational enterprises nationality and to determine the country to which the company governed while performing their activities , to define the extent of rights that this company enjoy, and to realise the governing laws. So the nationality is considered as a significant legal and political framework for MNEs operations.

5.3 The problematics concerning with the laws that regulate MNEs practices in international commerce:

The laws that regulate MNEs activities in international commerce have faced several issues. One of the main controversy points is these institutions status under the international law regulations. The basic governing laws were basically focusing on the governmentally controlled companies that have international operations and transactions, such as the international finance corporation (IFC) [345] . This made international law had little governance over small private national organisations. That is why the idea of providing MNEs with a specific state nationality became a necessity in order to define which country should be prosecuted when international commerce disputes happened[346]. So the MNEs nationality is considered as the main concern when defining the status of MNEs under international law. This term as discussed earlier is

[344] Abu Ala Al-Nimr, Studies in Private International Law, Homeland in International Private Relations and the Status of Legal Persons, First Edition, Dar al-Nahda al-Arabiya, no date, p. 191

[345] Lador-Lederer, The International Corporation-Its Status in International Law, 1 ISRAELI L. REV. 593-615 (1966); p. 602, Kahn, International Companies-A Study of Companies Having International Legal Status, 3 J. World Trade L. 498-521 (1969), p. 434.

[346] Vagts, The Multinational Enterprise: A New Challenge for Transnational Law, 83 HARV. L. REv. (1970), p. 743.

considered as unstable and very confusing concept[347]. The MNEs character is often distinguished with regard to their foundation and the parent company location[348].

Even If the involved entities locally realise the legal system that they follow and expect the real court judgment that will be taken against them in disputes, but the applicable law over multinational companies raises several issues among the international contracted entities. Therefore, when formulating contracts, the international contract entities seek to prepare a contract formula that suit the multinational company and the natural individual interests. So we can conclude that such international contracts are located between the public and private law and between public international law and private international law. So it is essential when formulating international contracts to pay attention to the must applied law over the international trade practices, as if this contract is not prepared in a legal way that preserve both entities interests, then several problems expected to arise[349]. It must be here, that multinational enterprises have raised several legal problems that shed light on the importance of determining the law that these enterprises should follow and apply[350].

As both the MNEs and their origin state has the same economical concerns, so these states often try to protect the MNEs. Accordingly, MNEs tend to facilitate transactions with the home state in its affairs to ensure its protection in disputes[351]. So, the main problems of MNEs international commerce transactions happened when they located in a foreign state that has low or no compensation paid for MNEs in danger or disputes. As many scholars indicated that to consider international law as the legal framework for MNEs, then these enterprises should follow strong and efficient compensation

[347] Harris, The Protection of Companies in International Law in the Light of the Nottebohm Case, 18 INT'L & COMP. L.Q. ,1969, p. 275.

[348] Litvok and Maule, The Multinational Corporation: Some Economic and Political-Legal Implications, 5 J. WORLD TRADE L., 1971,p. 637.

[349] Hisham Ali Sadiq.The Law Applicable to International Trade Contracts, Knowledge Establishment, Alexandria, 1995, p. 69.

[350] Anayat Abdul Hamid, d. Fouad Abdel Moneim Riad, Samia Rashed. Conflict of laws in terms of place and provisions of jurisprudence in Yemeni law, without publisher, 1997, p. 88

[351] Fatouros, The Computer and the Mudhut: Notes on Multinational Enterprises in Developing Countries, 10 COLUM. J. TRANSNAT'L, 1971, p. 343.

nationalization[352]. So, there is a strong necessity to regulate MNEs under a consistent set of laws in order to avoid the legal conflict and confusion in their operations.

Furthermore, when mentioning the subject of determining the legal rules and law that must be applied over multinational enterprises, this indicates the necessity to discuss the subject of conflicts laws that cause the problematic in the laws that regulate MNEs practices in international commerce. The conflict laws issue means the existence of more than one legal basis for various states which could cause disputes due to the differences between legalization rules between the involved states. The conflict laws indicate the variation between the laws of two countries or more regarding a specific legal judgment that includes a foreign member. So the basic terms that must be included for the presence of the conflict laws issue which is located within the international Private Law are as follow;

- To include a foreign member within the legal relation this means that this relation must follow more than one state law.
- The existence of conflicts between states laws, which means the conflict between the laws of states that gained the status of state and has become a member of the international community because the conflict is between sovereigns in the field of international law.
- The legal relation must be located within the private international law relations, where the jurisprudence emphasises that the conflict is raised only by the legal relations with the foreign element pattern that governed by the private international law, whether related to financial transactions or personal status[353].

So the conflicts laws rules came from the attribution rules that indicates the applicable law on the conflict that is characterized with the international patterns, and to resolving this issue , states often follow some legal rule which is recognised as the rules of conflict of laws or rules of attribution, which represents the laws that guide the judge to the

[352] Riedman, International Law Cases And Material,1969, pp.802-35.

[353] Maher Ibrahim Al-Sadawi, Conflict of Laws and Conflict of International Jurisdiction of Comparative Law and Yemeni Law, Third Edition, 1981, p 98.

applicable and must be followed laws to the special legal centers that include a foreign entity[354].

The laws conflicts appear due to the competition of more than one legal entity on governing a legal center or legal bond either and such laws conflicts could be in place or time**.**

According to the fact that the amount of MNEs and the world commerce transactions have enlarged[355] recently for various purposes, such as; extending their accessibility to other countries markets, take advantage from other countries experienced human capital or new technologies[356], This made these enterprises face several challenges while perform their operations such as weak governments, conflict governing laws and different human rights conducts[357] .the major problematic the face MNEs is the various rules, laws and international standards that regulate MNEs activities[358].

The common regional and national companies' laws cannot have a total ability to avoid all harmful acts that could be existed while operating the international commerce activities by MNEs.

Additionally, the efficiency of domestic law for regulating MNEs international commerce practices is not proved until now. Involved states faced a huge domination challenges according to the globalisation phenomenon that affect the trade sector[359].

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

[355] UNCTAD .Word investment report 2010. Op cit.

[356] Alcacer, J., & Chung, W. Location strategies and knowledge spillovers. Management Science, 53(5), 2007. pp. 760–776.

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

[358] OECD, Responsible business conduct matter 2013. Retrieved from: http://mneguidelines.oecd.org/MNEguidelines_RBCmatters.pdf

[359] 4e root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences." See: John Ruggie, Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, U.N. Human Rights Council 8th Session, Agenda item 3 A/HRC/8/5 ,7 April , 2008 ,p. 3.

MNEs were also governed by self regulations that is utilised to enhance their economy. Such policies is realised as a flexible mean that could add benefits to all involved states. On the other hand this type regulation faced some legal issues between the parent and host countries; according to the fact that MNEs perform their activities in several countries [360] . Additionally, this type of laws that regulate MNEs considered as inefficient monitoring method as it does not have a clear configuration on how to evaluate the MNEs activities in different states[361].

Additionally, the effectiveness of the international law as a tool to regulate the internal states situations was not very clear[362]. The fundamental characteristics of law are the main obstacle toward the effectiveness of international law. Laws realised as the formal declaration of any state, and their rules basically valid within the same state geographical boarders. As well some states should ignore their democratic law and apply some other more developed countries legalization to maintain their economic strength and to keep the production chains with other MNEs foreign states[363]. So, the international law role in managing MNEs was only limited to add some penalties over companies who intend to ignore their internationally legal responsibilities.

Other common regulating norms for MNEs activities within international commerce that face several problems is the corporate codes of conduct such as the UN conduct code. These regulations have not employed until now due to the existed difficulties in evaluating and enforcement approaches. Furthermore, there are no internationally accepted codes of conduct that specialized to organize MNEs framework. The main difficulty was is the un-existence of a total agreement to the norms that all members must follow and respect in the signed treaty that such codes include.

[360] International Council on Human Rights Policy (2002), *Beyond Voluntarism: human rights and the developing international legal obligations of companies*, Versoix, Switzerland, Atar Roto Press,p 11-12, See alsoMuchlinski ,2007, p.115.

[361] Freeman, Michael , *Human Rights: An Interdisciplinary Approach*, Cambridge, Polity Friends of the Earth Annual Report 2002, p 12

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

[363] Joint statement by European Commission/HRVP and US agencies on the Second Anniversary of the Rana Plaza disaster in Bangladesh," European Commission, April 24, 2015.

From all above we can concluded that although there are various domestic, national and international laws that generated to regulates the MNEs activities , but it is considered too difficult to find a specific legal organisation that could regulate all MNEs operations and their international commerce activities as this type of enterprises have a very wide activities that could spread in different countries all over the world and that could be affected with various states rules and governing laws.

Additionally, It is must be mentioned that there are several other Legal issues can be distinguished between the multinational company and the host country laws and regulations. One of these main issues is the conflict between the states sovereignty and the multinational enterprises authority. This issue can be explained due to the nature of these institutions' activities; which demand the transcendence of national boundaries over all world separate sovereign states.

Here we should clarify as according to the previously mentioned information which indicates that multinational enterprises have great potentials and powers to serve the global development, but such power could be utilised for a purposes that contradict with other countries special interests. For example, states governments often seek to add economical or either non-economical targets that guarantee achieving progress and prosperity for their citizens, while the main ultimate goal of MNEs activities, especially in international commerce practices, is to achieve growth and gain profits even if these activities leads to a conflict or they disagree with the host states interests.

There is no doubt that the position of the countries in such situations is more complex than the company's position, as all of these internationally governed companies have a general clear strategy to administer their work and ensure coordination and integration of their activities throughout the world, while the absence of coordination between the countries policies is a clear feature. For example, monetary issues, and taxes are one of the most important issues which indicates the lack of a clear coordination strategy between countries[364].

[364] Abdulkarim Jabir Shangar, An Analytical Study on the Possibility of Economic Ownership and Integration with a Focus on the Banking Sector - Scientific Experiences, PhD Thesis, Introduction to Mustansiriya Universities, Baghdad, 2005, p.85.

Another legal issue that could face multinational enterprises is the issue that is related to the conversion rates. Although multinational enterprises appear as a set of companies, but all of these companies is unified in their economical appearance. This could be explained because all of these companies follow the parent company economical terms. Where the parent company can, according to its interest and with following the first assigned contract terms, transfer the profits achieved by one of the nascent company to another company and use the financial assets of one of its emerging company to finance the activity of another new company.

This mainly could be executed according to what is recognised as conversion rates that control the transformation of goods and services excessive cost between the parent company and other related emerging companies. From all above, we can concluded that multinational company operates under a kind of industrial integration at the international level ,as the role of each company appears in a certain productivity stage. Hence, most of the services and goods trade activities conducted within the same set of multinational enterprises[365].

Other legal issue that is related to MNEs activities in international commerce practices is the labour market issue. The activity of multinational companies leads to some positive effects on the labor market in terms of providing new job opportunities and absorbing some of the unemployment that most countries suffer from. On the other hand, these companies activity also raises a number of global problems which are to the subordination of the nascent public companies in different countries to a unified central administration that is imposed by the parent company and all other nascent companies must abide by them.

According to the fact that the parent company seeks to achieve their goal which is to enhance the multinational companies profit while neglecting the host countries and the workers interests. The labor market problems that could be raised by multinational corporations could be classified into two main issues which are;

Firstly, the legal status of workers in nascent companies: The management of the nascent company must choose the employees and make contracts with them in

[365] Duraid Mahmoud Ali. Legal System of Multinational Enterprises, Dar Al-Amal for Printing, Publishing and Distribution, First Edition, 2008, p. 265.

accordance with the provisions and the labor legislation in the host country. Therefore, there is no legal relationship between the employees of the nascent company and the parent company.

Second, trade union organization of workers in the multinational company: The multinational company finds itself in the face of several international unions, but the effectiveness of these unions in multinational companies less than their effectiveness in the national companies[366].

5.4 The problematics concerning with jurisdiction of MNEs in international commerce:

According to the fact that business expands their activities to a wider across borders fields, the amount of international relations in commercial sector became broader. This generates legally disputes over these civil and commercial themes. National courts are considered as the common entity to resolve international controversies. This fact formed the jurisdiction issue that is concerned about the type and location of court that must resolve this type of disputes, and this issue is considered complex according to the recent globalization phenomenon that affected all life sectors including the law[367]. Furthermore, with regards to the noticeably enhancement in the international disputes amount, the regulations of state courts jurisdiction require amendments. All traditional rules of arbitration that is followed by the state courts is realised as national law regulations[368]. Although the proved success of some uniform regional rules over international jurisdiction, but some states add their special jurisdiction regulations to

[366] Ibid , p. 276

[367] 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.

[368] M. Reimann, Confl icts of Law in Western Europe: A Guide through the Jungle (1995).

imply their judicial power[369]. Consequently, the task of finding and determining the proficient court, or either courts, in international commerce practices conflicts considered as a complex mission for the involved individuals. So the efforts of any litigator to find a unified judicial relief will discover the existed variety national jurisdiction regulations and this could represent the jurisdictional uncertainty issue in international commerce practices especially at disputes between involved MNEs parties.

As previously mentioned, the recognition of the multinational company personality as a moral entity was widely accepted with regard to the work demands and requirements, and according to this identity recognition of multinational enterprises, the applicable law over these companies take two patterns of jurisdiction which are legally jurisdiction and judicial jurisdiction. The jurists of private international law emphasize the importance to distinguish between the judicial jurisdiction and the legislative jurisdiction as each one of them differs than the other[370].

The judicial jurisdiction basically concerns about determining the jurisdiction of the national courts; in order to deal with disputes that involve a foreign entity, in other word, it is responsible in determining the applicable law over disputes that involve foreign entity. While the state courts are the responsible of the legislative jurisdiction, which indicates the authority to resolve the disputes that follow the same state laws which could lead to the denial of justice in some cases as it believed in the regionalism of laws in absolute way.

To realise the problematic concerning with jurisdiction of MNEs, we should recognise the judicial jurisdiction and the legislative jurisdiction.

Each State basically determines the jurisdiction of its courts over national disputes. This definition is considered as one of the manifestations of sovereignty. It shows the state freedom principle in the cases of its court's jurisdiction which is subjected to the rules

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

[370] Safwat Ahmed Abdel-Hafith, The Role of Foreign Investment in the Evolution of the Provisions of Private International Law, Without Publisher, 2000, p. 333.

of international law, and which could be away in some conflicts cases from the Jurisdiction of the local judiciary, and that represent the judicial jurisdiction.

Each state when establishing the rules of international jurisdiction, the international norms and the interests of concluded treaties are the main constraints in this process. Additionally, the state freedom in this field is connected to the authority power which indicates that when one state decides to hold jurisdiction over a specific dispute, this should be done on a basis that ensure the effectiveness of the judgments that lunched by their courts[371].

So the main constraint that governs the state practicing of their jurisdiction over all citizens and the existed entities in its territory is derived from the international law restrictions. The basic considerations that each state follow when determining its jurisdiction can be summarised as follow;

- The state may decide their jurisdiction according to the connection between the dispute subjects with its province.
- The state could decide the jurisdiction of it courts due to the confusion of some involved parties.
- The state may decide their jurisdiction to ensure achieving good justice performance considerations.
- The state could rely on some parties' volitions when establishing the jurisdiction rules of their courts for international character disputes[372].

In accordance with the jurisprudence, the State is competent to legislate on the basis of the right of sovereignty, which enables it to impose its personal and in-kind jurisdiction over its province. Accordingly, the sovereignty of the State extends to all the natural and legal individuals and entities that are located within its territory both natural or moral entities, and MNEs represent one of the essential moral entity that could be existed in any state.

While the modern jurisprudence ensures the right of the state in the jurisdiction field according to the double – functional theory, which indicates that the state has internal

[371] Ali Hussein Yunus, Commercial Companies, Al-Amad Printing Press, 1995, p. 154

[372] Ibrahim Ahmed Ibrahim, International Private Law, Part II, Conflict of Laws and International Jurisdiction, Syed Abdullah Wahba Library, Cairo, 1985, pp. 273-274

jurisdiction over its own society, in addition to establishing the legal rules that determine the foreign center. This could be explained due to the lack of international legal system for a unified legislative body. As well as, the national legislator is governed by the international law rules which justify the double – functional theory, as the national legislator perform both internal jurisdiction and judicial jurisdiction in the name of the international community by necessity. This principle applied when determining nationality and legal regulation for the natural and moral person, but it is not considered as absolute right especially when determining the nationality of the moral individuals, as the state may not impose its nationality or political subordination on some moral persons which is not really connected to their lands, in which such connection basically represented in the extent to which a moral person could contribute to the support the national state economy, and with regard to the economic dependency concept. It must be mentioned here that each country has the right to refuse to recognise the granted nationality of any moral entity if this entity gain the state nationality through fraud or to escape from the state nationality to which it is real belongs, and this is acceptable due to the fraud theory which states that fraud corrupts the conduct.

It is recognized that the nationality or the political subordination determination of a moral person is located within the private conditions of each state, and that there is no differences in this regard between a natural or moral person. Additionally, the attempt to grant the state with the authority to determine the foreign moral entities is recognised as a warning field as it may be considered as violence toward the freedom of the other states in the case of the absolute jurisdiction that is restricted to the same country only.

Legislators in various countries all the world follow the basic rules of the jurisdiction which can summarised in the following points:

1. Courts basically consider the company origin and establishment at conflicts, so if the court finds that there is a legal provision in the assigned contracts provides the court the authority to solve the existed dispute, then this court must obey this legal provision, and this rule included multinational enterprises.
2. If there is no any shown type of laws conflict, then the main director of disputes resolve is the court. While if there is a conflict between two or more legal laws in more than one state, then the court should preliminary determine the must applied and followed law with regard to the MNEs contract. The court should

also follow two main steps to resolve conflicts in this case, which are; to specify the applicable law with regard to the existed conflict place, and to determine the applicable law with regard to the implementation period[373] .

Generally, national judiciary is realised as the basic jurisdiction in various conflict cases. Arbitration is the considered as an exception, but sometimes the opposite may occur, with regard to the essential influence of the contractors' desires. However, there are some cases where the judiciary is used to resolve the existed disputes which can be summarized as follows:

- The unfeasibility to end the existed dispute between contractors by arbitration
- When the arbitrator is not informed and does not existed in the duration that is specified by the arbitral tribunal.
- When one arbitral tribunal withdrawn a previously taken judgment toward an existed conflict before rendering this judgment ;for the purposes of considering it by another arbitral tribunal

According to the ease of utilisation of arbitration and the frequent paid attention to it, the vast majority of entities that are involved in multinational enterprises, which are specialized in international commerce and external investments transactions, include the arbitration clause under the terms of the original contract. In addition to draft a separate contract that is realised as "the arbitration contract" as a special agreement that make clear visualisation of all subjects related to arbitration, such as defining the applicable law to proceedings of arbitration, the conditions of appointing arbitrators, and assigning the arbitral tribunal, the arbitration purposes and other related subjects. There are several international and regional treaties and conventions that are basically focuses on arbitration and its controlling conditions, such as the Hague Convention which is assigned in 15 June 1955, the Treaty of Rome which is realised in 19 of June 1980, the Geneva Convention of Commercial Arbitration and many others[374].

[373] Hisham Khalid, The Conflicting Conflict in Conflict of Laws, University Thought House, 2001, p9

[374] Ibrahim Ahmed Ibrahim, International Private Arbitration, Dar al-Nahda al-Arabiya, Second Edition, 1997, pp. 16-1

Therefore, the idea of generating basic rules of international jurisdiction began to be realised, as a result of the need of States and individuals for these rules according to the existed confuse in states interests. This led States to establish the rules of international jurisdiction in accordance with their laws, given that the State has absolute freedom to regulate its judicial system.

The problems of jurisdiction are the main problem that any MNEs could face while performing their international commerce activities and it has a strong influence on the liability of involved MNEs. It is essential to start with a clarification regarding the MNEs jurisdictional regulations and rules. Any company that has it private formed law, its statutory seat, owning its focal administration, and has special trading activities or businesses can be sued in the state courts with regard to The Civil Jurisdiction and Judgments Act 1982[375]. Therefore; each company seat was recognised as its domicile, and the court should follow the company's internal law to determine each company seat[376]. For example, the company's stationary seat in the United Kingdom is governed by the company registration office, if not existed, the incorporation place, if not exited then it will follow the laws of the formation place[377].

Additionally, there are other jurisdiction regulations that govern MNEs, such as that any company could suit other if disputes happened within its operation in the state courts where it has an agency or branch there[378]. When one corporation works and performs their operations through "no independently existed" other institute, then the second institute will be legally treated as branch of the first corporation although the latest mentioned one is considered as the director and decision maker for both

[375] Brussels Convention art.60 (1) See Collins L, *Dicey and Morris on the Conflicts of Laws* (Sweet and Maxwell, London, 2000, p. 284

[376] The Civil Jurisdiction and Judgments Act 1982 art. 53(1) see Collins, *Dicey and Morris* ,ibid, p. 287

[377] The Brussels Conventions art. 60(2), Clarkson CMV and Hill J, *Jaffey on the Conflicts of Laws* (Butterworths, London, 2002.

[378] Betlem Genit, 'Transnational Litigation against Multinational Corporations Before Dutch civil Courts' in Kamminga Menno T and Saman Zia-Zarifi (cds.), *Liability of Multinational Corporations under Intemalional Law,* (Kluwer Law International, The Hague ,2000, The Civil Jurisdiction and Judgments Act 1982 art. 5(4).

corporations[379]. Moreover, if any claim against any corporation activity rose in one state then the same state court could suit this cooperation[380].

The conflict of international jurisdiction can be defined as the simultaneous jurisdiction of more than one state court, leading to the existence of international jurisdiction conflict, so the conflict of international jurisdiction came after determining the applicable law over state conflicts to define the court that is specialised in resolving the international character disputes, and to find solutions that imposing rights and obligations on the involved parties in the conflict. So the international jurisdiction conflict is that conflict that could be existed between the courts of two states or more to resolve a dispute between legal relations that include at least one foreign entity. The jurisdiction determination is controlled by a set of rules that is recognised as the rules of international jurisdiction conflict. Such rules often seeks to specify the authority of international courts without mentioning the foreign court jurisdiction except in England law as the foreign court's jurisdiction was included and determined in both positive and negative aspect [381]

Common jurisdiction is often considered as the basic controller when one local branch established[382]; as in general states law, when one state company offers the same services in different local branches, then the general jurisdiction will be noticed. That is why it is essential to recongnise the legal conditions that made local branches to be treated legally as the parent company local office, especially for these countries that treat all involved institutions in MNEs as a combined economical system.

But in recent days, subsidiaries is not considered as a company branch and it is considered as a legally independent entity that can be sued itself when it made unsuitable activities or practices, and this widely agreed by domestic and international

[379] Collins, *Dicey and Morris* , Op. cit., p. 299

[380] The Civil Jurisdiction and Judgments Act 1982 art. 5(3) see Collins, *Dicey and Morris* , Op. cit., p. 328

[381] Jabir Abdel Rahman, International Private Arab Law Conflict of Laws and Conflict of Jurisdiction, Part IV, Institute of International Arab Studies, 1964, p.44

[382] The Civil Jurisdiction and Judgments Act 1982 art. 5(4)

civil litigation . For example, in art (5) in Brussels convention[383] confirmed that "*as regards a dispute arising out of the operations of a branch, agency or other establishment,"* Thus companies can be sued *"the courts for the place in which the branch, agency or other establishment is situated"*. From this article we can configure out that branches cannot be sued either if it made inadmissible practice as it is not considered a legally independent entity.

So at the end, we should mention that private international law does not mainly focused on international jurisdiction rules while directly focusing on conflicts of law rules[384].Generally, in the international commercial field, and in more specific, in the contractual disputes, only little unification of international jurisdiction has been achieved at a world-wide level.

5.5 The problematics concerning with domicile of MNEs in international commerce:

Several special regulations and governing jurisdiction rules were launched by the Civil Jurisdiction and Judgment Act 1982 especially for the circumstances when the entity who cased the conflict is domiciled in the United Kingdom or any EU member states. Due to the continued development and integration between other laws, such as the Civil Jurisdiction and Judgments Act 1991, the lugano convention, which is recognised since 1989 and composed of the European Free Trade area members, and the United Kingdom law, four main regulations were governed MNEs according to domiciles of involved companies which are; UN domiciliary, EU domiciliary, EFT domiciliary and other remaining world domiciliary[385].

Companies domicile in conflicts is considered as a jurisdiction problem as it is not concerned about the liability of parent company over other subsidiaries harmful acts. It must be mentioned here that English parent companies has the least issues regarding

[383] Council Regulation (Be) No *44/2001,* of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Official Journal L 12 of 16.01.2001

[384] 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.

[385] Collier JG, *Conflicts of Law* (Oxford University Press, Oxford 2001) p. 72

defining legally the company domicile, as in act 18 in the Civil Jurisdiction and Judgments law that lunched in 1982, the domicile of companies belong to UK if the corporation either formed in the UK, has a registered office in the UK or its establishment was under or considered as a part of the UK law. After that the Brussels Convention article 53 [386]stated that the domicile of any company is governed by the private international law regulations[387].

The main actor of a company domicile is the company seat that must be recognised by the private international law court which is realised as the incorporation doctrine in the UK.

The seat concept was not clearly defined in the UK law so it was essential to offer a clear definition of this concept and for corporate determination that is why the 1982 act clarified that the corporation seat in UK can be only determined if the company has a registered office in UK and formed under the UK law or its operation and activities were directed in the united kingdom[388].

The basic issue that is related to company's domicile is the defendant corporation existence and location; as the corporation must be subjected to the judiciary and attends the jurisdiction during the legal proceedings starting. In some cases, the appeal court could accept the existence of the subsidiary company in the foreign jurisdiction instead of the parent company with specific restrictions[389]. For example, in the UK a deep investigation of the nature of relation between the parent and subsidiary companies will be held with respecting the traditional agency notions, and if this investigation revealed that the relation is closer to the agent and principal relation; then the subsidiary company could present in the jurisdiction instead of the parent company[390]. While in the United States (US), the economical unity between the parent and subsidiary company is the main controller for the confirmation of the existence of subsidiary

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

[387] 1982 Civil Jurisdiction and Judgments Act art. 52(1)

[388] Collins, *Dicey and Morris, Op. cit. ,* p. 288

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

[390] Collins, *Dicey and Morris* , Op. cit.,p. 299, and North P and Fawcett 11, *Cheshire and North's Private International Law* (Butterworths, London, 1999, p. 295

instead of the parent company in the foreign jurisdiction[391]. This approach is considered more logical to treat MNEs.

From all above, we can conclude that it is too complex to determine the MNEs companies' domiciles as there is no universally accepted MNEs legal institute, and as each company in MNEs treated as an independent entity and treated legally according to each independent case. Consequently, generating domicile and jurisdiction over the whole MNEs components is considered impossible mission. As well as, a detailed assessment will be needed with regard to the private international law rules to establish jurisdiction and domicile over parent or subsidiary in different states than its origin corporation state. English courts follow these law regulations to employ jurisdiction over UK domiciled institutes. This clarifies that the plaintiff can select the court of jurisdiction, but according to Anderson Michael" the doctrine of *forum non conveniens* provides an interpretation gap for the case not to be heard in the UK and the USA legal system has similar characteristics"[392].

So as clarified earlier, the MNEs jurisdiction regulations depend on various laws of involved states so it is too complex and un-unified rules. The jurisdiction regulations of MNEs face many challenges according to some international system situations, such as in the countries that lack of regional jurisdiction that control the activities and operations of subsidiaries in different states, and the host countries cannot add jurisdiction over other states that constitute the MNEs subsidiaries components[393] .

In conclusion, all plaintiffs can sue the tort companies according to the host and home laws and regulations as there is no any existed universal court that can sue all MNEs components as discussed above[394]. Furthermore, each company should select forums of home countries as they can only sue corporations in the parent states.

[391] North and Fawcett, *Cheshire and North's* , Op. cit. ,p. 295

[392] Anderson Michael, 'Transnational Corporations and Environmental Damage: Is Tort Law the Answer' (2002) Wasburn Law Journal 399

[393] Lutter M, 'Enterprise Law Corp. vs. Entity Law Inc. - Philip Blumberg's Book from the Point of View of an European Lawyer' (1990) 38 American Journal of Comparative Law 949.

[394] Anderson, Transnational Corporations, Op.Cit.

Chapter six

New legal challenges in relation to MNEs: questions of liability and future directions

6.1 Introduction:

Multinational Enterprises (MNEs) recently became one of the most significant topics with regard to its influences on the whole world states. From the previous chapters, the definitions, characteristics and significance of the multinational enterprises especially in international commerce activities were discussed in details. So it is valuable to visualize the future of such enterprises. Furthermore, according to the fact that multinational enterprises are composed of several companies that are spread over more than one country, then it is also important to realise the liability of MNEs over their shareholders and subsidiaries in international commerce practices. This chapter of the research came to investigate the future of MNEs in general and specially in international commerce, to examine the liability concept of MNEs governing laws. It should be mentioned here that realising the prospect development and future of MNEs can be reached through recognising the current impact of MNEs in developed countries, and this will be discussed in details in this chapter as follow;

6.2 MNEs governing laws liability development:

In the past, the laws of companies, such as in civil law supported the principle of separation of the legal personality of each company, which is based on the fact that each company is a legal entity separate from its members, and it is a distinct economic and legal unit with a dependant economical and administrative power. This gives each company full flexibility in organizing its operations and affairs, and to carry out its responsibilities independently of its shareholders. The US Company Law and the European Emerging Companies Act continue to rely on the principle of corporate independence and its liability independency, including companies of all types, whether they are individual companies or MNEs.

In contrast, companies are realised as a mixture of some international legal systems for a number of countries where they exist. Therefore, the existence of an independent and individual company is not available except in theory, especially in light of the transnational economic spread. In the second half of the 19th century, much legislations about company law were emerged. In fact, the concept of operating a company within the framework of a company's set dominated the business world rather than the concept of an individual company[395].

When following the clear dominance of the corporate set which is represented by multinational companies as well as subsidiaries and affiliates around the world, which may offer stronger economies than the national economy of a state. Despite the obvious proliferation of multinational corporations and their control of various types of businesses since their inception, the governing legal system for the practices of such companies remains unclear to the balance and profits of minority shareholders in the corporate group system, especially since most legal practices are based on theories that support the idea of a single company[396].

Thus, the modern companies often composed of a set of firms that have a common managerial and ownership framework.

It gives the possibility of splitting a large institution to a number of small enterprises for the purposes of accomplishing specific tasks. This subsidiaries trend can be resulted due to some reasons such as to evade potential tort liability and the protection of some subsidiaries from their liability, especially in difficult financial circumstances[397]. The problems faced by multinational corporations coincided with the emergence of capitalism and major corporations in the second half of the nineteenth century, which was mainly appeared due to the limited liability of such companies, as well as allowing such companies to own shares in other companies

[395] Nolan A, 'The Position Of Unsecured Creditors Of Corporate Groups; Towards A Group Responsibility Solution Which Gives Fairness And Equity A Role' (1993) 11 CSU 461.

[396] Lutter M, 'Enterprise Law Corp. vs. Entity Law Inc. - Philip Blumberg's Book from the Point of View of a European Lawyer.' (1990) 38 American Journal of Comparative Law 949.

[397] Cashel Thomas W, 'Multinational Challenge To Corporation Law: The Search For A New Corporate Personality (publication Review)' (1994) 9 JIBL 249

The local and international legalizations seek since ancient times until recent days to enhance the home countries liability and to improve the courts action toward the unjust operations of MNEs. Such efforts aim to strengthening the liability of multinational companies for their erroneous practices that could negatively affect the labour rights, the other states environment or safety[398]. Contradictory, all legal system specialised in offering direct liability for specific companies set and their subsidiaries in some conditions[399]. Furthermore, courts rarely take into consideration the companies set responsibility while neglecting the separate personality of each company[400]. The basic MNEs liability problem in their regulations is that there is no unified legal system that regulates a set of company operations, especially the tort liability issues[401].

The company law history, from economically and legally perspectives, is directly based on the limited liability concept which is mainly applied over the trading companies and especially international trading practices that accompany the industrial revolution. This concept improves the modern enterprises authority and their productivity. With regard to the company's law, the limited liability means that all shareholders are not liable to the parent company or even its creditors, and their obligations are limited to the nominal value of their shares[402].

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[398] Ward Halina, 'Governing Multinationals: The Role of Foreign Direct Liability' (Briefing Paper of the Royal Institute of International Affairs. Energy and Environment Programme, no 18, February 2001).

[399] Muchlinski p, *Multinational Enterprises and the Law.* , Blackwell. Oxford ,1999, p. 328

[400] Gallagher Lynn and Peter Ziegler 'Lifting the Corporate Veil in The Pursuit Of Justice' (1990) July,J.B.L. 292

[401] Anderson Michael, 'Transnational Corporations and Environmental Damage: Is Tort Law the Answer' (2002) 41 Washburn Law Joumal399.

[402] Farrar John H, *Company Law* (Butterworths, London 1998) p. 82, He defines limited liability as "it (limited liability) is a fundamental principle of corporate law that shareholders in a corporation are not liable for the obligations of the enterprise beyond the capital that they contribute in exchange for their shares". Thompson Robert B, 'Unpacking Limited Liability: Direct and Vicarious Liability of Corporate Participants for Torts of the Enterprise' (1994) 47 Vand. L. Rev. 1 defines "Limited liability is a presumptive of law that facilitates the development of public markets for securities, permits the allocation of risk or benefits between parties and supports the certainty of planning by those who have organized the corporation." Farmer Richard S, 'Parent Corporation Responsibility For The Environmental Liabilities Of The Subsidiary: A Search For The Appropriate Standard' (1994) 19 Journal Of Corporation Law 770 gives another definition as that "Limited liability means that the investing shareholder is liable

The limited liability concept clarify that the shareholders liability is only limited to their investment amount, either at insolvency cases, the company cannot force shareholders to pay more than their investment. Similarly, the subsidiaries liability is also restricted to their shareholders investments amount[403]. So, the limited liability concept assures that the restricted liability term is accompanied to the company and subsidiary company shareholders[404]. While the parent company is totally liable over their obligations and torts as it is considered the legal liable entity, but the concept of limited liability arise when the assets of the company cannot cover all its obligations, then all connected shareholders cannot be obliged to pay more than their investments.

The limited liability term was a totally novel concept that is firstly recognised in the beginning of 19th century due to the continuously increased pressure over the rising companies which called for a better utilisation of the new technologies[405].

At the beginning companies intend to gather money from persons; as according the first institutions history, the idea of having the other companies' shares was not accepted by the courts[406]. Later on, this rule was extremely changed after elimination of all restrictions that was imposed over the process of buying shares from other companies. The conclusion that can be seen here is that companies respected the idea of limited liability even before the existence of the legally followed subsidiaries of the MNEs.

According to the traditional law of corporate, each company that represented the companies set is considered as a separate entity, from legally perspective, that has its

for the debts of the corporation only to the extent of its original investment in the entity, the stock purchase money".

[403] Bakst David S, 'Piercing the Corporate Veil for Environmental Torts in the United States and the European Union: The Case for the Proposed Civil Liability Directive' (1996) 19 B. C. Int' & Compo L. Rev. 323

[404] Magaisa Alex, 'Corporate Groups and Victims of Corporate Torts - Towards a new Architecture of Corporate Law in a Dynamic Marketplace Law, 2002 (1) Social Justice &Global Development Journal 1

[405] Hansmann Henry and Kraakman Reiner, 'Toward Unlimited Shareholder Liability for Corporate Torts' (1990-1991) 100 Yale L.J. 1879

[406] Blumberg. " The Multinatio1 Challenge" p. 54 .

own responsibilities and rights that is derived from all other companies set plan[407]. Therefore, limited liability isolated all the companies set, including shareholders, investors and subsidiaries, from being liable over the subsidiary companies activities and actions as it was not clearly defined and discussed in legally laws and according to the fact that limited liability concept came to protect shareholders and subsidiary companies[408]. Shortly, it can be said that the whole group of companies can get the bonus if all the subsidiaries succeed. In contrast, the subsidiaries do not bear the full loss if any problem occurs[409].

Looking at the economic situation in which the principle of limited liability is accepted, we can conclud that a society with greater wealth and huge profits has the greatest opportunity to succeed from less economically viable societies[410]. It can be said that the mechanism of effects resulting from the application of the limited liability principle was not clear when it appeared, or even recently because it was not adopted as one of the basic features in corporation law, but with the increasing processes of manufacturing and with the emergence of technological revolutions this principle emerged as a force of political pressure. In fact, this principle was universally recognized during the first quarter of the twentieth century[411], almost after a half a century when it was accepted.

6.3.1 The liability development of Multinational enterprise over the nascent subsidiaries companies:

[407] Collins Hugh, 'Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration' (1990) 53 Modem Law Review 731

[408] Dine Janet, *The Governance of Corporate Groups* (Cambridge University Press, Cambridge 2000) and Blumberg PI. *The Multinational Challenge To Corporation Law* (Oxford. 1993) p. 143

[409] Note, 'Liability of Parent Corporations for Hazardous Waste Cleanup and Damages' (1985-1986) 99 Harv. L. Rev. 986

[410] Freedman Judith, 'Limited Liability: Large Company Theory and Small Firms' (2000) 63 M.L.R. 317

[411] Leebron David W, 'Limited Liability, Tort Victims, and Creditors' (1991) 91 Colum L Rev 1565

The idea of MNEs is based on the fact that each company has its significant moral identity, which means that each company is only responsible for its debts, while neglecting the other joining companies within these collaboration system debts.

However, taking this concept in all situations can generate serious issues for the parent companies which are considered as the main capital source especially when the nascent subsidiaries companies face difficult financial circumstances. Moreover, when the home company enjoys tremendous financial position and has no liability over the nascent company debts; this could lead bankruptcy of the nascent subsidiaries companies. Therefore, the concept of MNEs dependency does not include the liability of parent company over the nascent subsidiary companies' debts[412].

Therefore, this section of the research came to investigate the main reasons behind the parent company liability over the nascent subsidiary companies' debts, and its legal regulations and basis development.

The basic characteristic that distinguishes MNEs from other existed companies is the presence of centralization of the control over other nascent subsidiaries companies' which are distributed in various areas all over the world.

This centralization of control has made a unity between the parent company and their other subsidiaries, and considered the parent company as the only central force that control this unified system[413]. So, in practical side, there is no actual dependency between the parent and other nascent subsidiary companies'. The centralization of control of the parent company over the subsidiary companies can be represented in the managerial control of the parent company; as it takes the strategic decisions to achieve the net profits. The managerial control of the parent company can be also seen in determining the investment policy of the nascent companies, so that any new company cannot make any new investments outside the general investment designed policy until gaining the approval of the parent company.

[412] Sherif Mohamed Ghannam, the extent of the parent company's liability for the debts of its nascent Egyptian company, published in the Journal of Rights issued by Kuwait University, first issue, the twenty-seventh year, March 2003, p. 355.

[413] Hossam Issa, Multinational Enterprises, Research published in the Journal of Legal and Economic Sciences, Ain Shams University, July 1976, 18 th year, p. 167.

The parent company develops the production plan for each of the nascent subsidiaries companies and it allocates the senior staff and technicians in these companies by the parent company decision[414].

Additionally, parent company owns a centralization of control over the nascent subsidiaries companies through specifying the financial policy of these companies, which define the financial resourcing for subsidiaries. The parent company also controls the followed criteria for distributing profits over nascent companies, and in determining the prices of goods produced by nascent companies which ensure achieving the net profit for the parent company. So, from all above information, it can be concluded that the interest of the nascent subsidiary companies' is unified with the interests of the parent company, and this justified the liability of the parent company for the debts of nascent companies[415].

This concept is followed by the justice court of the European Common business Market, based on articles (85) and (86) of the Treaty that is especially established to the European Common Market, which assess the parent company's liability for the actions of its nascent companies on the basis of centralized control. This liability was based on Article (85) of the Treaty of Rome that generated for the European Common Market which indicated that to consider the parent company liability over its nascent subsidiaries companies is controlled by the spread of these companies in the European market, and the existence of a parent company that own a certain percentage from the financial capital of one or more of these companies. So the parent and these subsidiaries companies appear as a one project company as the parent controls other companies economically and administratively.

So, the European court of Justice (ECJ) believed that the transfer of workers from one company to another in the same relevant multinational company group does not result

[414] Hassan Mohamed Hind, The extent of the responsibility of the parent company for the debt of its nascent company in the group of companies with special reference to the multinational company, PhD thesis, Ain Shams University, 1997, p. 394.

[415] Ahmed Youssef Abdo El-Shahat, The Practice of International Companies Activity in the Field of Technology and the Development of Economies, PhD Thesis, Introduction to Tanta University, 1990, p. 38

in termination of their contracts in the company from which they were transferred[416]. Therefore, the centralization of the parent company's control over nascent companies confirmed the debt liability of the parent company of these subsidiaries, and such liability was developed to be classified into criminal and civil liability.

The civil liability of the parent company over other nascent subsidiaries is based on the idea that the parent company is the basic manager for these other companies, so the company bears all the obligations resulting from the actions by these subsidiaries within its control power limits .Consequently, the parent company liability over the subsidiaries debt requires the company participation in the management of these subsidiaries, and the existence of erroneous actions taken by these connected companies.

For example, if the nascent company contracted with another company, under the direction of the parent company, then the parent company is liable to third parties for any breach of the obligations and damages taken by the nascent company, which is recognised in the trading market as " Wrongful Trading" [417] that include the parent company damages, financial, and profit losses compensation for the third party[418].

Moreover, the tortuous civil liability of the parent company can be caused from the non-contractual issues produced by the parent company and caused damages to others. The tort liability of the parent company appears when the parent company takes a wrong action that result damages. One of the examples that indicate the tort liability of the parent company, is when the parent constructed a nascent company and pretended that it has large capital resources, while in fact it has limited resources, causing confusion in the market and producing damages to some investors.

Additionally, the tortuous liability of the parent company can also be seen when it controls a set of the nascent subsidiaries with the purpose of controlling the market and creating a monopoly for a specific products, which could cause an unfair competition

[416] Hani Mohamed Dweidar, Theory of the monopoly of technological knowledge through secrecy, Community Modern House for Publishing, Alexandria, 1996, p. 24.

[417] Sherif Mohamed Ghannam, the extent of the parent company's liability for the debts, p. 385.

[418] Amjad Mohammed Mansour, the General Theory of Obligations, Sources of Commitment, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2006, p. 289.

with other companies. This provides the company with the ability to impose conditions and controlling prices which could harm the consumers[419] .

Therefore, if the civil liability of the parent company is realized, then it will be completely liable to compensate damages and supplement the debts of the nascent subsidiaries, when these subsidiaries which are controlled by the parent company do not have the assets amount that are enough to repay the debt. This case is recognised as "**debt-***relief lawsuit*" in courts, which is a claim based on civil liability, aims to transfer all or part of the company's debts to the parent company.

Furthermore, the parent company also became and counted liable over the continuous and expanded bankruptcy of any nascent company; as the parent company can be also exposed to the settlement or juridical liquidation processes that are taken against the nascent company as the parent company is considered as the guarantees company for the nascent subsidiary debts[420].

In conclusion, it should be mentioned that if the parent company liability is met, then other obstacles will arise which make the application of these provisions is not an easy process with regard to the conflict of laws issue, which requires the combining the international efforts to adopt international conventions to avoid such obstacles.

6.3.2 Piercing the corporate veil in relation to MNEs

When incorporating MNEs, each company has a unique personality that differ from other corporate companies' members. Thus, there are several benefits that can be taken from the principle of limited liability such as; the weak demand of monitoring other agents, the reduced costs of shareholders monitoring processes, offering incentives for efficient management, and offer optimal solutions for having best investment decisions[421].

[419] Lina Hassan Zaki, Restrictive Practices and the Legal Means to Meet Them, PhD thesis presented to Helwan University, Cairo, 2004, p. 73.

[420] Sherif Mohamed Ghannam, the extent of the parent company's liability for the debts, p.417.

[421] William T. Allen ET Al. Commentaries and cases on the law of busniss organization (3rd ed.),2012, p.97.

The main responsibility of shareholders under the principle of limited liability was only directed to protect their investments. Although this, the enterprise operating risk can include some outside parties including tort victims and borrowers. So, in special cases, shareholders could be considered liable about the company obligations after the corporate veil pierced, in addition to their company investments liability. Therefore, the corporate veil piercing has been considered as a tool to prevent shareholders and joint stock corporations the legal separate personality of corporate for fraudulent uses.

The piercing of corporate veil makes shareholders liable regarding corporations' acts additionally to the corporation legal personality[422]. This process is considered as a complex process; as issues could be arises when ignoring the corporate responsibility. These issues could be generated from the fact that corporate entity aims to avoid risks that could face investors which include commercial adventure risks when transferring to third parties and other creditors. In fact, the entity of corporations could be used in approaches that could cause unfair and fraud acts, but when continuously neglecting corporate personality this could certainly causes fraud and unfairness acts and make no need for this concept to be existed. Furthermore, some socio-economic benefits could be lost as investors could not be encouraged to participate in some risky enterprises.

The concept of corporate veil piercing launched firstly and mainly studies was conducted in Anglo-American jurisdictions. On the other hand, some less prosperous regions such as Latin America have been neglected and have few corporate personality dilemmas. Therefore, the use of corporate personality problems are less frequent in such areas. Later on, some Latin America states have experienced huge economic development and gained noticeable political stability [423] .Thus made corporate personality as a vital part in Latin America development [424] . Moreover, small corporations have considered corporate personality and limited liability as a convenient norm in their acts, which lead to some common personality issues of corporations. Therefore, several measures of how to deal with corporate personality issues were developed.

[422] Ivamy, H. Dictionary of Company Law. London: Butterworths; 1983. P. 43
[423] Bertola, L. & Ocampo, J. The Economic Development of Latin America Since Independence. United Kingdom: Oxford University; 2012. P. 258
[424] Villegas, C. Tratado de las Sociedades. Chile: Editorial Juridica; 1999. PP. 29-35

From all above, the piercing of the corporate veil can be defined as the shareholders liability attribution toward the corporation activities in cases where companies used to add fraud activities[425]. Each corporation have the legal personality attributes and limited liability attribute of shareholders which make each corporation as an independent legal entity that could operate different legal and commercial practices and considered liable for its practices. This indicated the zero responsibility of shareholders about liability from any other related corporation acts. Furthermore, the zero responsibility of liability norms connected to the shareholders acts. From all above, it could be concluded that corporations are an independent person with a positive capacity of reducing the transaction costs, while assets of investors keep safe according the economical liability on their corporation assets contribution[426]

6.3.3 The future of MNEs:

The prediction of the future of Multinational enterprises considered as a difficult task, but there are some events, characteristics and influences of these enterprises that can be taken into consideration and offer an indicator for their prospect future for such enterprises. As according to the fact that these companies continuously seek to expand their industries and products to a wider geographical area, and to enhance their technological developments levels in their production processes which is considered as a strategic goal for all startups companies, all this clarify the prospect spread of this type of companies.

The history of these international enterprises indicates that they are in a continuous grow and development. For example, when tracking the amount of American multinational enterprises, we can visualise the future of such enterprises. US multinational enterprises launched as only 187 companies. At the end of the First World War, the number of these companies & their subsidiaries reached to 250 companies. While in 1929, the subsidiaries amount reached to 500 companies, and in 1945, this

[425] Scheneeman, J. The Law of Corporations and other Business Organizations. 6 th edition. The U.S.A: Delman Cengage Learning; 2012. At Section 7.6, p. 271
[426] Mevorach, I. Insolvency within Multinational Enterprise Groups. New York: Oxford University Press Inc; 2009. At p. 41

amount rose to 1000 company, and became 2000 in 1957, reaching to more than 5500 MNEs subsidiaries in 1967[427].

This increase in the number of subsidiaries belonging to multinational companies indicates a steady increase in the number of these companies, as well as, the innovation and creative abilities of these companies, provide them the privilege to continue, and enhance the demand to their presence. Furthermore, most of these companies allocate large investments amounts to make researches and development strategies within each institution, indicating that the processes of these companies are improving and growing under the renewal and innovation possibility.

For the purposes of maintaining the sovereignty of Multinational enterprises, they take care about having some special technological and technical advancement that are not recognised by the host states which keep their dependence and demand specially for less developed countries. So, these companies considered as the supporter to lead such states to the path of development. MNEs also considered as an essential tool to provide technical progress, and to transfer technical, administrative and organizational knowledge through the provision of specialised labour, which contributes to narrowing the technological gap between developed and developing countries[428] , as such enterprises represent 50% of the developed companies in the industrial sector[429].

The technological inventions and innovations enhance the ability of these companies to continue, expand, and develop; therefore, a huge amount of their investments specialized in the field of research and technological monopoly, which increases its competitiveness globally[430].

[427] Raymond Fernon, The Economic and Political Results of Multinational Enterprises, Translated by Salah Barmada, Damascus: Publications of the Ministry of Culture and National Guidance, 1981, p. 247.
[428] Omar Sakr, Globalization and Contemporary Economic Issues, University House, Cairo, 2003, p.29.
[429] George Kram, Towards New Policies of Arab States towards Multinational Companies, Journal of Arab Studies, vol. 17, no. 10, 1981, P.29.
[430] Omar Al-Farouk, A Study on Foreign Direct Investment and Technology Transfer, Journal of Industrial Cooperation in the Arabian Gulf, Issue 86, October 2001, p.187.

For example, DuPont Company, which is realised as multinational company that its home country based in the United States of America, spent more than 115 million dollars on their scientific research. While IBM Company spent more than five million dollars on their technological and scientific researches before producing 360 types of electronic computers[431]. Such examples indicate the huge amount of investments of such companies that cannot be handled by the vast majority of other national companies. This clarifies the huge demand for such companies to reach to the recent development that these enterprises can exclusively produce.

Furthermore, it is expected that the differences in the labor wages among states, motivate companies to generate relations and make subsidiaries to their activities in countries with lower wages, especially East Asian countries which are characterized by the availability of trained manpower with lower wages values, and this subsidiaries existence expected to expand due to the continuous improvement of the quality and trained labor forces. So, the noticeable decline of wages in some countries especially in China, Pakistan and India, continuously motivate international companies to create branches to their industries in low-wage countries[432]. So as MNEs enable companies to work with skilled and trained personnel with the lowest wages prove their continued existence and competitiveness, in addition this indicate their presence expansion in the future according to the importance of their role in emerging markets.

The huge economical size of multinational companies and the diversity of their activities and products ensure the existence of more financial resources for their activities which as a result ensure their continuity and development.

On the other hand, the maximizing profits factor that is realised as one the main goals of MNEs as discussed before could be considered as a main reason that could cause the shrinkage of the company's existence at a long term. This could be explained as some countries especially poor states could avoid dealing with these companies unless this corporation is accompanied with the purpose of improving their economic situation. So if MNEs could generate a positive relationship between the profit rate and the

[431] Samir Karam, Multinational Enterprises, Institute for Arab Development, Lebanon, 1976, P.38.

[432] Ibrahim Saad-uddin Abdullah, International System and Dependency Mechanisms, Dependency Mechanisms in the Framework of Multinational Capitalism, The Arab Future, Volume 9, No. 90, 1986, p. 108.

improvement of the economic conditions of the host countries, this kind of relation will be considered as a reason for encouraging host countries to make deals, which means prosperity and growth of MNEs in the short and long term. Moreover, multinational corporations often interfere in the internal affairs of developing and host countries, in order to preserve its interests and achieve their goals, which often correspond to the big states interests[433]. Thus, it indicates that the existence of a law that defines the behavior of multinational companies will be of benefit to these companies as well, the existence of this law under a new international economic system that benefits the host countries as well the home countries give additional advantages of MNEs through encouraging states especially developing states dealing with this kind of companies which ensure its development in the future.

So, the existence of MNEs in future and its prospect development is connected with the existence of an accurate law that ensures achieving economic benefit of home and host countries.

Additionally, there are some non-complex industries, such as food industries, extractive industries, or the tobacco industry, can be considered as self-employed industries that can decline the necessity of multinational companies if these countries, especially developed countries, rely on the right development line. So, the amount of MNEs in these industrial fields is not expected to grow as fast as some complex industries such as electronics, airplanes and cars that expected to grow stronger as many countries cannot manufacture them.

[433] Hassan Anbari, Lecturer in International Relations, University Season, 1997, p.88.

Chapter seven

Conclusion and results

7.0 Conclusion and results

This thesis has focused on discovering the main problematic of MNEs governing laws, jurisdiction and domicile issues in order to organize the activity of MNCs within a specific legal framework. At first, the research sought to highlight the important role played by multinational enterprises and their contribution to the development of international commerce, by contrasting the general aspects of multinational enterprises and international commerce. The research found that multinational enterprises are based on the exchange of economic benefits between the host country and the foreign investor. The importance of multinational enterprises for the host country is reflected in the attraction of capital and technology and its contribution to job creation. For the foreign investor; the importance of MNEs represented in its sought to open new markets and achieve the greatest profitability possible.

The research revealed that there is four main patterns to define the term of MNEs as clarified in details in this chapter. This research defined MNEs as an enterprise in the parent country that operates other enterprises in at least two host countries; so it is a representative for all enterprises that have operations and international commerce activities overseas. The emergence of MNEs was strongly connected with the trade activities origin and development. The research revealed that Multinational enterprises (MNEs) did not emerge and developed until the late of the 19th century. The industrial revolution that generated in the 19th century has altered the way that firms and states engaged in trade activities. In the 21st century, MNEs became the basic representative of developing countries activities, and a significant amount of MNEs started their

activities and operations as the condition of world economics has extremely changed. This chapter reveled that there are contradictory thoughts between the critics and supporters of MNEs emergence and evolution. The vast majority of critics bedeviled that MNEs is a selfish corporation that could cause problems for the host government, especially in the political and economic side. While the supporter considered such institutions as a practical prove of international business cooperation efficiency and validity. Their international commerce activities could also benefit the distant regions and less developed nations.

Several common characteristics were realized for MNEs in this chapter. The geographical spread, the power, stability, flexibility, efficiency are the main attributes of MNEs. This chapter also revealed that the differences between the host and the parent company governmental regulations are the main challenge that could face MNEs.

Multinational enterprises were seen as a means of penetrating international markets, internationalizing production and an opportunity for growth of host economies. The importance of multi-national enterprises in host countries is also to achieve many benefits, including expanding income sources, acquiring technology, creating jobs and supporting domestic investment.

The research also sought to highlight the different concepts related to international commerce, the reasons for its establishment and the types of policies that underpin international commerce, as well as the theories related to it. International commerce is the result of the expansion of economic exchanges in human society, which resulted from the expansion of the geographical market of economic exchange. Thus, the market is no longer closed or based on a single geographic area, comprising one society and one political composition; but expanded to carry out commodity and service exchanges between regions with different social and political components. International commerce therefore has its own nature, which differs from the nature of internal commerce in a single State.

The impact of multinational enterprises on the development of international commerce in terms of increasing exports, reducing imports and achieving trade surplus was also discussed. The research found that imports are one of the aspects of international commerce, where imports contributing to the formation of the necessary vertical

formation of the process of economic development, which in turn contributes to the gross national product.

Regarding identifying the legal Status of Multinational Enterprises, regulations of MNEs; the research found that National laws that regulate the work of multinational enterprises have been linked to a range of problems, such as the nationality of multinational enterprises, subjecting enterprises to double taxation, labor laws, accounting laws, and laws governing the performance and control the business of multinational enterprises. These laws also included procedures for national decisions, investment laws and free competition laws. In general, countries seek to limit the capacity and activity of these enterprises by determining the proportion of foreign funds in projects and determining the participation of foreign individuals in local projects, in addition to preventing enterprises from investing in most vital sectors and encouraging them to invest in national sectors.

Moreover, some regional organizations have developed international legal legislation and regulations to regulate the work of multinational enterprises, just as the Latin countries of the Andean era have done in addition to the guidelines developed by the Organization for Economic Co-operation and Development (OECD). Some rules have also emerged in the form of international recommendations such as the ILO Tripartite Declaration and the restrictive trade practices rules of the United Nations Conference on Trade and Development (CNUCED).

The international code of conduct of the United Nations arose in a conflict between conflicting interests. This conflict extended to the definition of its legal nature, so that the developing countries insisted on making the rules of the Code binding rules to enable them to impose their sovereignty from the principle of permanent sovereignty over their natural wealth. The capitalist countries rejected this as guaranteeing the interests of the developing countries at the expense of their interests and prevented the provision of adequate legal guarantees for their investments, and thus insisted on making these rules optional. This explains the existence of some binding rules and other optional rules, which is a special double nature characterized by the rules of the Code. The issue of protecting the environment from pollution is still one of the main areas of discussion and ongoing negotiations. Multinational enterprises stand between two contradictory issues. They are exporters of technology to developing countries, while

they are committed to preserving the environment. This allows for some kind of control over the industries and imports of these enterprises through the national laws of independent States. The Code also addressed the issue of nationalization and compensation resulting from it, as the Code was keen to recognize the right of countries to nationalize and confiscate assets of multinational enterprises operating in its territory.

The guidelines issued by the OECD are requests directed from States to multinational corporations that operate on their territory and are concerned with the problems resulting from their international structures. The Commission should make every effort to bring as many multinational enterprises operating in member countries in OECD towards these principles by incorporating them into their own rules. The objectives and motives for formulating these guidelines were in line with the objectives and principles of the United Nations International Code of Conduct, both of which recognize the seriousness and obstacles faced by these transnational enterprises, trying to avoid these obstacles and mitigate their risks. These guidelines cannot replace the laws of the countries in which they reside; they represent complementary rules of a non-mandatory nature and are addressed to all members. Although these rules are not described as binding rules, they are one of the sources of international law in the areas addressed by legal status texts. Thus, these rules generate very important legal effects, despite their optional administrative nature.

It should be emphasized that, during the duration that has witnessed frequency of arrangements at different levels, and with different participants and varying degrees of binding force, a set of principles and rules relating to the conduct and treatment of multinational enterprises are emerging whether they are called "Soft international law" or legitimate expectations with varying degrees of certainty.

Although the international community's attention to multinationals has been more organized and clear through many attempts to develop legislation and regulation of their own; however, the evasion of comprehensive codes from the mandatory characterization of their contents makes them far from the scope of application despite the mechanisms on which they have tried to base their adoption by Companies, which leads us to ask about the reasons for evading the mandatory characterization on these codes.

Therefore, the search for the status of these enterprises in the public and private laws and in the comprehensive codes leads to the argument that the growing number of these multinational enterprises operate across borders in ways that exceed the organizational capacities of any national system, which requires the creation of international law binding for all countries, in contrast to the comprehensive codes in its content and its optional nature. This, however, does not negate the fact that the criteria contained in comprehensive codes, whether the United Nations Code or the Organization for Economic Cooperation and Development (OECD), are useful as a measure by which national laws can be judged to determine whether Governments fulfill their obligations to protect the rights violated by such companies by ensuring the development of appropriate regulatory frameworks.

It can be said that, even if an international formula for regulating the activities of multinational enterprises was not binding and I am referring here to the United Nations Code of Conduct on Multinational Enterprises, it will be the basis for the first pillar of a stronger and more binding later work. New concepts are difficult to accept easily and enjoy mandatory character, particularly as they affect the vital sphere of each State. And the conclusion of a binding text and what is achieved through the conclusion of an agreement encounters multiple difficulties with regard to the concept of the idea alone and the consequent obligations of its actions on the States that organize it.

However, the hope in establishing an international organization of multinational enterprises that has a mandatory force still exists, either by revising and enforcing existing codes of conduct, particularly the United Nations Code as a set of rules encompassing all activities of multinational enterprises and this is what the developing countries hope. Or at least wait to elevate these legal norms contained in the earlier Code of Conduct to the level of international law through its evolution from non-binding rules to customary rules of law.

The research also found that many regulations have been introduced to regulate the work of multinational enterprises in international commerce exchanges. One of these regulations is the international business law. This law mainly seeks to guarantee the rights of parties to legal trade transactions. General Agreement on Tariffs and Trade (GATT) is also one of the most prominent laws regulating the activities of multinational enterprises in international commerce.

Regarding the problems that arrived with this term in MNEs especially in their activities in international commerce; the research confirmed that multinational enterprises have considered as one of the economically powerful bodies that widely existed in different states all over the world. This chapter came to examine The Legal problematics concerning with the nationality of MNEs, the problematics concerning with the laws that regulate MNEs practices, their jurisdiction and domicile in international commerce activities. With regard to the nationality aspect, MNEs nationality is considered as a moral entity that has an economic and social impact as a legal person. Jurists' have contradictory points of view regarding the nationality term as clarified in this chapter. Although the detailed discussed problematics regarding the nationality of MNEs exist, it is considered as a significant legal and political term to define the extent of rights that the company enjoys and to identify the governing laws.

This chapter of the research also revealed that there are various domestic, national and international laws that generated to regulate the MNEs activities, however, there is no universally accepted law to regulate the activities of such companies due to the complexity of their business activities and commercial practices, and with regard to the globalization phenomenon that affect the trade sector.

Regarding the jurisdictional issue, the research indicated that when focusing on any litigator efforts to find a unified judicial relief, this will reveal the existed variety national jurisdiction regulations and consequently this could represent the jurisdictional uncertainty issue in international commerce practices especially at disputes between involved MNEs parties. Common jurisdiction is often considered as the basic controller when one local branch established.

Finally, the chapter discusses the main problematics concerning with domicile of MNEs in international commerce. It indicates that companies domicile in conflicts is considered as a jurisdiction problem as it is not concerned about the liability of parent company over other subsidiaries harmful acts. The research also clarified the main factor in determining the domicile of a company is the company seat that must be recognised by private international law in court. The basic issue that is related to company's domicile is the defendant corporation existence and location; as the corporation must be subjected to the judiciary and attends the jurisdiction during the legal proceedings starting, and as it is too complex to determine the MNEs companies'

domiciles as there is no universally accepted legal authority for MNEs, and as each member company in MNEs treated as an independent entity and treated legally according to each independent case.

Regarding investigating the future of MNEs specially in international commerce activities, and to realize the liability concept of MNEs governing laws; the research found that the history of these international enterprises indicates that they are in a continuous grow and development. The amount of MNEs and their subsidiaries are in a continuous increase. The MNEs presence expected to be expanded in the future according to the importance of their role in emerging markets. On the other hand, the existence of MNEs in future and its prospect development is connected with the existence of an accurate law that ensures achieving economic benefit of home and host countries.

Regarding the MNEs liability, the local and international legalizations seek since ancient times until recent days to enhance the home countries liability and to improve the courts action toward the unjust operations of MNEs. The company law history, from economically and legally perspectives, is directly based on the limited liability concept which is mainly applied over the trading companies and especially international trading practices that accompany the industrial revolution. Moreover, the MNEs are considered liable over the nascent subsidiary companies in the international commerce practices. The civil liability of the parent company over other nascent subsidiaries is based on the idea that the parent company is the basic manager for these other companies, so the company bears all the obligations resulting from the actions by these subsidiaries within its control power limits .Consequently, the parent company liability over the subsidiaries debt requires the company participation in the management of these subsidiaries, and the existence of erroneous actions taken by these connected companies. From all above we can conclude MNEs are in a continuous development and improvement, and the common spread of their subsidiaries prove the significance of these enterprises and its bright future especially when forming a unified law that govern all their activities and actions, and this enhance the importance of the MNEs liability over nascent subsidiaries companies.

Therefore, the research recommends the need to create and provide the 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 and clear in all aspects related to their activities.

References

- 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
- Abdel-Muttalib Abdel-Hamid - Economic Theory, University Press and Publishing House, Egypt, 2000.
- Abdulkarim Jabir Shangar, An Analytical Study on the Possibility of Economic Ownership and Integration with a Focus on the Banking Sector - Scientific Experiences, PhD Thesis, Introduction to Mustansiriya Universities, Baghdad, 2005.
- Abdulmutallab Abdul Hamid, GATT and WTO mechanisms: from Uruguay to Seattle and Doha. University House, Alexandria, 2003.
- Abu Ala Al-Nimr, Studies in Private International Law, Homeland in International Private Relations and the Status of Legal Persons, First Edition, Dar al-Nahda al-Arabiya.
- Adel Hashish and Majdi Shehab. Principles of International Economics. Al-Halabi Publications, Lebanon, 2003.
- Adel Hashish, Fundamentals of International Economics, New University House, Egypt, 2002, p. 234.
- Adly Abdel Karim. Legal system of contracts between foreign countries and persons. PhD thesis, Faculty of law and political science. University of Abu Bakr Talsman,2011.
- Adnan Saleh, the role of foreign direct investment in the economic development of the developing country with a special reference to the Chinese experience. Journal of Baghdad College of Economic Sciences, University College, 2013.
- Ahmed Abdul Aziz, Jassim Zakaria, Firas Abdul Jalil, multinational companies and their impact on developing countries. Journal of Management and Economics, No. 85, 2010.

- Ahmed Abdul Aziz, multinational companies and their impact on developing countries. Journal of Economic Management, No. 85, 2010.
- Ahmed Youssef Abdo El-Shahat, The Practice of International Companies Activity in the Field of Technology and the Development of Economies, PhD Thesis, Introduction to Tanta University, 1990.
- 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.232-248.
- Alcacer, J., & Chung, W. Location strategies and knowledge spillovers. Management Science, 53(5), 2007. pp. 760–776.
- Ali Abdel Fattah, International Economics Theory and Politics. Third Edition, Dar Al Masirah for Publishing and Distribution, Amman, 2013.
- Ali Ahmed, The Legal System of Contemporary Transnational Corporations and Public International Law. Master's Degree in International Public Law and International Relations. Institute of Legal and Administrative Sciences, University of Algiers, 1987.
- Ali Hussein Yunus, Commercial Companies, Al-Amad Printing Press, 1995
- Aliber, R. Z.,"A theory of direct foreign investment", in C. P. Kindleberger (ed.) The International Firm. Cambridge, Mass: MIT Press, (1970), pp 17-34.
- Alvarez, J.E. 'Are Corporations 'Subjects' of International Law?' NYU School of Law, Public Law Research Paper No. 10–77, (2010). Available at SSRN: http://ssrn.com/abstract=1703465.
- Amjad Mohammed Mansour, The General Theory of Obligations, Sources of Commitment, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2006.
- Anayat Abdul Hamid, d. Fouad Abdel Moneim Riad, Samia Rashed. Conflict of laws in terms of place and provisions of jurisprudence in Yemeni law, without publisher, 1997.
- Anderson Michael, 'Transnational Corporations and Environmental Damage: Is Tort Law the Answer' (2002) Wasburn Law Journal 399.

- Anderson Michael, 'Transnational Corporations And Environmental Damage: Is Tort Law The Answer'(2002) .
- Andrew Crane, Abagail McWilliams, Dirk Matten, Jeremy Moon, & Donald S. Siegel, *The Oxford Handbook of Corporate Social Responsibility*, Oxford University Press, New York, at 377 (2008).
- Arab British Academy for Higher Education, international commerce, 2009. Acessed in [11-4-2018].
- Ashish Gupta and G. P. Sahu. A Literature Review and Classification of Relationship Marketing Research. IGI Global. Copying or distributing in print or electronic forms without written permission of IGI Global is prohibited, 2012.
- Bakst David S, 'Piercing the Corporate Veil for Environmental Torts in the United States and the European Union: The Case for the Proposed Civil Liability Directive' (1996) 19 B. C. Int' & Compo L. Rev. 323.
- Bartlett, C. A., & Ghoshal, S. *Managing Across Borders: The Transnational Solution*. 2nd ed. Boston: Harvard Business School Press, (1998).
- Bashi Ahmed, Foreign Trade and Economic Development, The Case of Developing Countries, Master Thesis, University of Algiers, 1986, p. 85.
- Baughen, Simon. “Multinationals and the Export of Hazard.” *The Modern Law Review*, vol. 58, no. 1, 1995, pp. 54–71. *JSTOR*, JSTOR, www.jstor.org/stable/1096371.
- Beamish, P. W., & Lupton, N. C, Cooperative strategies in international business and management: Reflections on the past 50 years and future directions. Journal of World Business, 51(1): 163–175, 2016
- Ben Amer Tunis, Law of the International Community, Fourth Edition, University Publications, Algeria, 2003.
- Ben Saleh Rachida, International Organization for Multinational Enterprises, Master, Business Law, Faculty of Law and Administrative Sciences, University of Algiers, 2002.
- 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.

- Bergsten, C. F. (1998). Fifty years of the GATT/WTO. lessons from the Past for strategies for the future, Working Paper of Institute for International Economics, (online), Available on: https://piie.com/publications/working-papers/fifty-yearsgattwto-lessons-past-strategies-future.
- Bertola, L. & Ocampo, J. The Economic Development of Latin America Since Independence. United Kingdom: Oxford University; 2012.
- Betlem Genit, 'Transnational Litigation against Multinational Corporations Before Dutch civil Courts' in Kamminga Menno T and Saman Zia-Zarifi (cds.), *Liability of Multinational Corporations under Intemalional Law,* (Kluwer Law International, The Hague ,2000, The Civil Jurisdiction and Judgments Act 1982 art. 5(4).
- Bhaumik, S. K., Driffield, N., & Zhou, Y., Country specific advantage, firm specific advantage and multinationality–Sources of competitive advantage in emerging markets: Evidence from the electronics industry in China. International Business Review, 25(1): 165–176, 2016
- Blumberg PI. The Multinational Challenge to Corporation Law (Oxford. 1993) p. 143
- Brussels Convention art.60 (1) See Collins L, *Dicey and Morris on the Conflicts of Laws* (Sweet and Maxwell, London, 2000.
- Bu Bakr Badadash, The globalization of the global oil company. Thesis for a Doctorate in Economics, 2010.
- Buckley and M. C. Casson, the Future of Multinational Enterprise. London: The Macmillan Press, (1976).
- Buckley, P. J. ,"A critical view of theories of the multinational enterprise", in P. J. Buckley and M. Casson (eds.) , The Economic Theory of Multinational Enterprise. London: The Macmillan Press, (1985), pp. 1-19.
- Buckley, P. J., Doh, J. P., & Benischke, M. H., Towards a renaissance in international business research? Big questions, grand challenges, and the future of IB scholarship. Journal of International Business Studies, 48(9): 1045–1064, 2017
- Buckley, Peter J., the Theory of the Multinational Enterprise, Uppsala, 1987.

- Bukhanov Nazeha and Shaib Rashida, the role of multinational corporations in establishing international trade law. Master Thesis, Faculty of Economic Law and Business Law, 2015
- Bukhanov Nazeha and Shaib Rashida, the role of multinational corporations in establishing international trade law. Master Thesis, Faculty of Economic Law and Business Law, 2015.
- 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.
- Calvet, A. L. ,"A synthesis of foreign direct investment theories and theories of the multinational firm", Journal of International Business Studies, 12(1), (1981)
- Cantwell, John ,"A survey of theories of international production", in C. N. Pitelis and R. Sugden (eds.), The Nature of Transnational Firm. London: Routledge, (1991), pp. 16-63.
- Carmen Elena Dorobat, A Brief History of International Trade Thought: From Pre-Doctrinal Contributions to 21st Century Heterodox Economics, Research Gate. The Journal of Philpsophical Economic: Reflections of Economic and Social Issues, Vo.VIII, Issue 2, spring 2015 ISSN 1843-2298, p.113-120.
- Cashel Thomas W, 'Multinational Challenge to Corporation Law: The Search For A New Corporate Personality (publication Review)' (1994).
- Caves RE. *Multinational Enterprises and Economic Analyses* (Cambridge University Press, Cambridge, Casson Mark, *the Economic Analyses of Multinational Trading Companies* (Reading: U. of Reading, Dept. Of Economics, (1996), p.61.
- Caves, R. E., Multinational Enterprise and Economic Analysis. Cambridge: Cambridge University Press, (1982).
- Chandler Alfred 0 Jr. *Scale and Scope: The Dynamics of Industrial Capitalism* (Harvard University Press Cambridge 1990), Wilkins Mira, The History of Multinational Entelprise in Rugman AM and Brew~r TL (eds.)

Oxford Handbook of international Business (Oxford University Press, Oxford ,(2001).

- Collier JG, *Conflicts of Law* (Oxford University Press, Oxford, 2001.
- Collins Hugh, 'Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration' (1990) 53 Modem Law Review 731.
- Council Regulation (Be) No *44/2001,* of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Official Journal L 12 of 16.01.2001**.**
- Daimler AG v. Bauman, 134 S. Ct. 746, 760-61 (2014).
- Damages' (1985-1986) 99 Harv. L. Rev. 986
- Darcy LC and Murray B, *Cleave Schminhoff's Export Trade* (Sweet & Maxwell, London, 2000**.**
- Dine Janet, 'IJae Governance of Corporate Groups (Cambridge University Press, Cambridge 2(00) p. 45
- Does the sheer size put Amazon under antitrust law?, Argaam, 2018. Available at: https://www.argaam.com/ar/article/articledetail/id/571700
- Dunning JH, Cantwell JA and Corley TAB, 'The Theory of International Production: Some Historical Antecedents' in Hertner Peter and Jones Geoffrey, *Multinationals: Theory and History,* (Gower, Alders hot), (1986).
- Dunning JH, *Multinational Enterprises and the Global Economy* (Addison-Wesley, Wokingham), (1993).
- Dunning JH, The Key Literature on IB Activities: 1960-2000 in Rugman AM. Brewer n. (eds). *Oxford Handbook of International Business* (Oxford University Press, Oxford,(2001).
- Dunning, "Explaining changing patterns of international production : a search for the eclectic theory", Oxford Bulletin of Economics and Statistics, 161,(1979), pp. 269-295.
- Dunning, J. H., "The determinants of international production", Oxford Economic Papers, 25, (1973), p.289-335.
- Dunning, John H., The Multinational Enterprise, George Allen & Irwin, London, 1971
- Duraid Mahmoud Ali. Legal System of Multinational Enterprises, Dar Al-Amal for Printing, Publishing and Distribution, First Edition, 2008.

- *Elsharawy*, Hatem (2006). Developing Controlling and Performance Evaluation Of Multinational Companies Operating in Egypt, PhD thesis, der Georg-August-University.
- Eroglu, Muzaffer , Liability of Multinational Enterprises for Their Subsidiaries' Torts, PhD thesis, Queen Mary College, University of London, May (2007).
- Evren Koksal, The impact of multinational corporations on international relations. Master thesis, Middle East Technical University, Dec. 2006.
- Fadel Muthana preferred the possible effects of the World Trade Organization (WTO) on the foreign trade of developing countries. Madbouli Library, 2000, Cairo.
- Fadl Muthanna, Potential Effects of the World Trade Organization on Foreign Trade of Developing Countries, Madbouli Library, Cairo, 2000
- Farmer Richard S, 'Parent Corporation Responsibility For The Environmental Liabilities Of The Subsidiary: A Search For The Appropriate Standard' (1994) 19 Journal Of Corporation Law 770 .
- Farrar John H, Company Law (Butterworths, London 1998)
- Fatouros, The Computer and the Mudhut: Notes on Multinational Enterprises in Developing Countries, 10 COLUM. J. TRANSNAT'L L.,1971.
- Fayrouz Soltani, The role of trade policies in activating regional and international trade agreements, Algeria case study and Euro-Mediterranean partnership agreement. Master degree, Faculty of Economic and Commercial Sciences and Science of Facilitation, University of Mohammed Khader, 2012.
- Fieldhoouse, D. K., The Multinational: a critique of a concept, (university of Cambridge) 1986
- Firas Ashqar, Introduction to International Trade, Jamah University, Faculty of Economics, 2017.
- Firas Ashqar, Introduction to International Trade, Jamah University, Faculty of Economics, 2017.
- Franko L, *the European Multinationals, London*, (1976).

- Freddy Mnyongani, Accountability of multinational corporations for human violations under international law, submitted in accordance with the requirements for the degree, Doctor of laws, University of South Africa, 2016.
- Freedman Judith, 'Limited Liability: Large Company Theory and Small Firms' (2000) 63 M.L.R. 317.
- Freeman, Michael , *Human Rights: An Interdisciplinary Approach*, Cambridge, Polity Friends of the Earth Annual Report, 2002.
- Gallagher Lynn and Peter Ziegler 'Lifting the Corporate Veil in The Pursuit Of Justice' (1990) July,J.B.L. 292.
- 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.
- Geoffrey Jones, International Business and Emerging Markets: A Long-Run Perspective, Working Paper, 2017.
- George Kram, Towards New Policies of Arab States towards Multinational Companies, Journal of Arab Studies, vol. 17, no. 10, 1981.
- Ghassan al-Amri, the dilemma of the moral and see the decline in the objectives of operations of multinational companies. Research presented at the 7th International Scientific Conference "Implications of the global economic crisis on the organizations of economies, challenges, opportunities, prospects, 2009.
- Global Compact Principle One, UN GLOBAL COMPACT, https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html (last visited Feb. 28, 2014)
- Guitar Rachid, International Responsibility for Violations of Multinational Enterprises for Human Rights, Cairo University Press, Egypt, 2009.
- Gurak H, 'Multinational Enterprises and Foreign Direct Investments' at: http://econwpa.wustl.edu:8089/epslgetlpapersl0404/0404004.pdfaccessed 20 February 2005.
- Hageer Amin, International Economics (Theory and Practice). First Edition, Dar Athera for Publishing and Distribution, 2010.

- Hajir Adnan, International Economics (Theory and Applications). First Edition, Dar Athera for Publishing and Distribution, 2010.
- Hamdi Abdel Azim, The Economics of International Trade, Dar Al-Nahda Publishing and Publishing, Jordan, 2000.
- Hamid Al Jumaili, multinational companies and their role in international production. Journal of Oil and Industry News. No. 401, 2004.
- Hamid Al Jumaili, Multinational Enterprises and Their Role in International Production, Journal of Oil and Industry, Issue (1-4), Abu Dhabi, 2004.
- Hani Mohamed Dweidar, Theory of the monopoly of technological knowledge through secrecy, Community Modern House for Publishing, Alexandria, 1996.
- Hansmann Henry and Kraakman Reiner, 'Toward Unlimited Shareholder Liability for Corporate Torts' (1990-1991) 100 Yale L.J. 1879.
- Harris, The Protection of Companies in International Law in the Light of the Nottebohm Case, 18 INT'L & COMP. L.Q. ,1969**.**
- Hassan Anbari, Lecturer in International Relations, University Season, 1997.
- Hassan Mohamed Hind, The extent of the responsibility of the parent company for the debt of its nascent company in the group of companies with special reference to the multinational company, PhD thesis, Ain Shams University, 1997.
- Hennart, J. F. , A theory of multinational enterprise. Ann Arbor (Michigan): Michigan University Press, (1982).
- Hertner Peter and Jones Geoffrey (eds.), *Multinationals: Theory and History* (Aldershot Gower), (1986).
- Hisham Ali Sadiq.The Law Applicable to International Trade Contracts, Knowledge Establishment, Alexandria, 1995.
- Hisham Khaled, Nationality of the Company, University Thought House, Alexandria, 2000.
- Hisham Khalid, the Conflicting Conflict in Conflict of Laws, University Thought House, 2001.
- Hood N and Young S, *The Economics Of Multinational Entelprises* (Longman, London 1984)

- Hoogvelt, A., Puxty, A. G. & Stopford, J. M., Multinational Enterprise: an Encyclopedic Dictionary of concepts and terms. Basingstoke, London: Macmillan, 1987
- Hossam Issa, Multinational Enterprises, Research published in the Journal of Legal and Economic Sciences, Ain Shams University, July 1976, 18 th year.
- Hussein Othmani, Strategies of Multinational Companies in the Globalization of the Economy, Master's Note, University of Haj Lakhdar, Algeria, 2003.
- Huwaidi Abdul Jalil, Implications of the Euro-Mediterranean Partnership on Foreign Trade. Master Thesis, Faculty of Economic and Commercial Sciences and Facilitation Science. Mohammed Khaydar University, 2013.
- Ibrahim Ahmed Ibrahim, International Private Law, Part II, Conflict of Laws and International Jurisdiction, Syed Abdullah Wahba Library, Cairo, 1985
- Ibrahim Ajil, Multinational Enterprises and State Sovereignty. Master, International Law, Faculty of Law and Politics, Denmark, 2009.
- Ibrahim Ajil, Multinational Legacies and State Sovereignty (Comparative Legal-Economic-Political Study). MA, The Arab Open Academy of Denmark, Faculty of Law and Politics, 2008.
- Ibrahim Al-Akhras, The Role of Transcontinental Companies in China, First Edition, Itrak Publishing, Publishing and Distribution, Cairo, 2012.
- Ibrahim Saad-uddin Abdullah, International System and Dependency Mechanisms, Dependency Mechanisms in the Framework of Multinational Capitalism, The Arab Future, Volume 9, No. 90, 1986.
- International Council on Human Rights Policy (2002), *Beyond Voluntarism: human rights and the developing international legal obligations of companies*, Versoix, Switzerland, Atar Roto Press,p 11-12, See alsoMuchlinski ,2007, p.115.
- Ivamy, H. Dictionary of Company Law. London: Butterworths; 1983.
- J.D. Candidate, University of Pennsylvania; B.A. 1984, State University of New York, Purchase, 1989.

- Jabir Abdel Rahman, International Private Arab Law Conflict of Laws and Conflict of Jurisdiction, Part IV, Institute of International Arab Studies, 1964.
- Jalal Juweida Al Qassas, Money, Banks and Foreign Trade. First Edition, University House, Alexandria, 2010.
- James Yang and Victor Metallo, the Emerging International Taxation Problems, Int. J. Financial Stud. 2018, 6, 6, pp. 2-10.
- Jamie Morgan, Corporation Tax as a Problem of MNC as Organizational Circuits: The Case for Unitary Taxation. The British Journal of Politics and International Relations 18: 463–81, 2016.
- Jan Wouters and Anna-Luise Chane, Multinational corporations in international law. Leuven center for Global governance studies. Working paper No. 129, December 2013.
- Jan Wouters and Anna-Luise Chané, Multinational Corporations in International Law. SSRN Electronic Journal, 2013.
- Jim Sherlock and Jonathan Reuvid, The Handbook of International Trade. A Guide to the Principles and Practice of Export. Second Edition, Published in Association with: The Institute of Export, 2008.
- John Ruggie, Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, U.N. Human Rights Council 8th Session, Agenda item 3 A/HRC/8/5 ,7 April , 2008**.**
- Joint statement by European Commission/HRVP and US agencies on the Second Anniversary of the Rana Plaza disaster in Bangladesh," European Commission, April 24, 2015.
- Jones G. 'the Performance of British Multinational Enterprise, 1890-1945' in Hertner Peter and Jones Geoffrey (eds.), *Afultinationals: flIeor), and History,* (Aldershot, Gower),(1986).
- Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse theory of Law and Democracy* ,Cambridge, MA: MIT Press, 1996.
- K. Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy*, London, 1990.

- Kahn, International Companies-A Study of Companies Having International Legal Status, 3 J. World Trade L. 498-521, 1969.
- Karam Samir, Multinational Enterprises, Arab Development Institute, Lebanon Branch, First Edition, 1976.
- Karam Samir, Multinational Enterprises, Arab Development Institute, Lebanon Branch, First Edition, 1976.
- Kleinaltenkamp, M., & Ehret, M. The value added by specific investments: A framework for managing relationships in the context of value networks. Journal of Business & Industrial Marketing, 2006, 21(2), 65–71.
- Kojima, K. ,Direct Foreign Investment: A Japanese Model of Multinational Business Operations. London: Croom Helm,(1978).
- Kojima, K., Direct Foreign Investment: A Japanese Model of Multinational Business Operations. London: Croom Helm, (1978).
- KoldeEndle, The Multinational Company, Behavioral and Managerial Analysis, Lexington Books, D.C Heath and Company, London, 1974.
- Lador-Lederer, The International Corporation-Its Status in International Law, 1 ISRAELI L. REV. 593-615 ,1966.
- 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.
- Leebron David W, 'Umited Uability, Tort Victims, and Creditors' (1991) 91 Colum L Rev 1565
- Levasseur S. Les investissements directs à l'étranger et stratégies des entreprises multinationals. In: Revue de l'OFCE, No. 5, Iss. 83-1, (2002).
- Lina Hassan Zaki, Restrictive Practices and the Legal Means to Meet Them, PhD thesis presented to Helwan University, Cairo, 2004.
- Litvok and Maule, The Multinational Corporation: Some Economic and Political-Legal Implications, 5 J. World Trade L., 1971
- Lutter M, 'Enterprise Law Corp. vs. Entity Law Inc. - Philip Blumberg's Book from the Point of View of an European Lawyer' ,1990, 38 American Journal of Comparative Law 949.

- Lutter M, 'Enterprise Law Corp. vs. Entity Law Inc. - Philip Blumberg's Book from the Point of View of an European Lawyer.' (1990) 38 American Journal of Comparative Law 949.
- M. Reimann, Confl icts of Law in Western Europe: A Guide through the Jungle ,1995.
- Mabrook Kadban, the international community assets, evolution and people. Section II, Department of University Publications, Algeria, 1994.
- Magaisa Alex, 'Corporate Groups and Victims of Corporate Torts - Towards a new Architecture of Corporate Law in a Dynamic Marketplace Law, 2002 (1) Social Justice &Global Development Journal 1.
- Magdy Mahmoud Shehab et al., Fundamentals of International Economics, New University Publishing House, Egypt, 1998.
- Magdy Mahmoud Shehab et al., Fundamentals of International Economics, New University Publishing House, Egypt, 1998.
- Magdy Mahmoud Shehab, Contemporary International Economics, New University House, Egypt.
- Maher Ibrahim Al-Sadawi, Conflict of Laws and Conflict of International Jurisdiction of Comparative Law and Yemeni Law, Third Edition, 1981
- Mahmoud Khalaf, Introduction to the World of International Relations, Dar Zahran, Amman, 1997.
- Mahmoud Younis, International Economics, Dar Al Ma'arif Al Arabiya, Egypt, 1991.
- Mahmoud Yunus, The Basics of International Trade, University Press and Publishing House, Egypt, 1993.
- Masadee Ammar, international economic relations and the principle of equality under the contemporary international economic order. PhD, International Law and International Relations, University of Algiers, 1997.
- Meier, O. – Schier, G., Enterprises multinationales. Stratégie, restructuration, gouvernance. Paris, Dunod, (2001).
- Meta Hussein. Nationality of multinational corporations, Master's degree in Law Division, specializes in international private relations law, 2016
- Meta Hussein. Nationality of multinational corporations. Master's degree in Law Division, Specializes in International Private Relations Law, 2016.

- Mevorach, I. Insolvency within Multinational Enterprise Groups. New York: Oxford University Press Inc; 2009.
- Michael Freeman, Human Rights: An Interdisciplinary Approach, Cambridge, Polity Friends of the Earth Annual Report, 2002.
- Michael Kleinaltenkamp, Wulff Plinke, and Albrecht So¨llner. Theoretical Perspectives of Business Relationships: Explanation and Configuration. Springer-Verlag Berlin Heidelberg, 2015.
- Michael Rainelli, le commerce international, 9eme édition, édition la découverte, Paris, 2003.
- Miller, Elwood L., Accounting Problems of Multinational Enterprises, D.C. Heath and Company, Toronto, 1979
- Mira Wilkins, "European and North American Multinationals, 1870-1914: Comparison and Contrast", in Ed. Mira Wilkins, The Growth of Multinationals, Edward Elgar Publishing, US, (1991).
- Mohamed Abdel Razzaq, International Economics and International Trade (Theory and Practice). First Edition, University House, Alexandria, 2010.
- Mohamed Abed, International Trade. Bibliotheca Alexandrina, Egypt, 2001.
- Mohamed Khaled Hariri, International Economy, New Printing Press, Syria, 1977.
- Mohamed Nassar, The Role of International Law in the New World Economic System, University Thought House, Alexandria, 2007.
- Mohammad Ayub Khan, Challenges foe MNEs operating in emerging markets, Tecnológico de Monterrey, México, 2014.
- Mohammed Ahmed Al-Siriti, Foreign Trade, Dar Al-Jama'a, Egypt, 2009.
- Mohammed Al-Siriti, Foreign Trade, University House, Egypt.
- Mohammed Farid Al-Arini. Commercial companies, New university house, Alexandria, 2003.
- Mohammed Salim Al Harbi, World Trade Organization, Arab Lawyers Forum, 2009.

- Montenegro,A. " The development of Pirelli as as Italian Multinational 1872-1992, " in G. Jones and H. G. Schroter (eds). The Rise of Multinationals in Continental Europe, Aldershot 1993.
- Mousi Saeed et al., Foreign Trade, Dar Safa Publishing and Distribution, Jordan, 2001.
- Moussa Matar et al., Foreign Trade. Dar Safa Publishing and Distribution, Amman, Jordan, 2001.
- Muchlinski p, Multinational Enterprises and the Law. ,Blackwell. Oxford ,1999.
- Muchlinski, Peter,'The development of human rights responsibilities for multinational enterprises' in Sullivan, Rory, *Business and Human Rights: Dilemmas and Solutions*, Sheffield: Greenleaf publishing ,(2003).
- Muhammad Nabil Al-Shimi, Multinational Corporations and Developing Countries, Benefits and Drawbacks, Al-Dialogue Civilized - Issue: 2960, 2010
- Mustafa Rushdi Shiha, International Markets Concepts, theories and policies. New University House, Alexandria, 2003.
- Mustafa Salameh Hussein, International Organization of Multinational Enterprises, Faculty of Law, Alexandria University, Dar Al-Nahda Al-Arabiya, 1982.
- 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.
- 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), 1-25**.**
- Nadia Fadil, Judgments of the Company in accordance with the Algerian Commercial Law, Dar Houma for Printing, Publishing and Distribution, 6th edition, Algeria, 2006.

- Nicholas S, 'The Theory of Multinational Enterprise as a Transactional Mode' in Hertner Peter and Jones Geoffrey, *Multi1ll1tiol'ltlls: Theory and History,* (Gower, Aldershot, (1986), p. 64.
- Nolan A, 'The Position Of Unsecured Creditors Of Corporate Groups; Towards A Group Responsibility Solution Which Gives Fairness And Equity A Role' (1993).
- North P and Fawcett 11, *Cheshire and North's Private International Law* (Butterworths, London, 1999
- Note, 'Liability of Parent Corporations for Hazardous Waste Cleanup and
- 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
- Nwi Walid, The role of multinational companies in the development of foreign trade in Algeria. Master Thesis in Business Science, International Business, Mohammed Khader University, Department of Business Science, 2015
- OECD (2013). Responsible business conduct matter 2013. Retrieved from http://mneguidelines.oecd.org/MNEguidelines_RBCmatters.pdf
- OECD Guidelines for Multinational Enterprises, Declaration on International Investment and Multinational Enterprises, 27 June 2000.
- OECD, Multinational Enterprises and Disclosure of Information, Paris, 1988
- OECD, OECD Guidelines for Multinational Enterprises. The Secretary-General of the OECD, 2008.
- Olga Petricevic & David J Teece, The structural reshaping of globalization: Implications for strategic sectors, profiting from innovation, and the multinational enterprise, Journal of International Business Studies volume 50, pages1487–1512(2019)
- Omar Al-Farouk, A Study on Foreign Direct Investment and Technology Transfer, Journal of Industrial Cooperation in the Arabian Gulf, Issue 86, October 2001.
- Omar Saadallah and Ahmed bin Nasser. The law of the contemporary international community. Fourth Edition, University Press, Algeria, 2007.

- Omar Sakr, Globalization and Contemporary Economic Issues, University House, Cairo, 2003.
- Org. for Econ. Cooperation and Dev. [OECD], OECD Guidelines for Multinational Enterprises, 15 I.L.M. 9 at 2 (1976) [hereinafter OECD Guidelines]
- Osama al-Mahdoub, Jatumasr and the Arab countries from Havana to Marrakas 1947-1994.
- Osama al-Majdoub, al-Gatt, Egypt and the Arab countries from Havana to Marrakesh 1947-1994. The Egyptian Lebanese House, 1996
- Overview of the UN Global Impact, UN Global Compact, http://www.unglobalcompact.org/AboutTheGC/index.html (last visited Feb. 28, 2014) ("The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption." It is a critical platform for the UN to engage effectively with enlightened global business).
- Oxfam, *Global Finance, Hurts the Poor, Oxfam* America, (2002).
- P. Berman, 'The Globalization of Jurisdiction', 151 University of Pennsylvania Law Review (2002), 311-545
- P. Wautelet, 'What Has International Private Law Achieved in Meeting the Challenges Posed by Globalisation?', in Globalisation and Jurisdiction (2004), 55-77.
- Parry, Thomas G., the Multinational Enterprise: International Investment and Host Country Impacts. Greenwich: Jai Press, (1980).
- Paul Krugman, Growing World Trade: Causes and Consequences. Stanford University, 1995.
- Paul Samuelsonو A Ricardo-Sraffa Paradigm Comparing the Gains from Trade in Inoputs and Finished Goods. Journal of Economic Literature, 2001, 39(4) pp.1204-1214.
- Perry-Kessaris, Multinational enterprises and the law, Module A: MNEs in context Revised edition, 2012.

- Peter Malanczuk, Globalization and the Future Role of Sovereign States, in international economic law with a human face (Friedl Weiss et al. eds., 1998).
- 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.
- Pocra Idris, Individual Economic Stress in Relations between States. Study in light of the US practice of economic pressure. Dissertation in Public International Law, Institute of Law, Jakarta, Algeria University 1995.
- Priel, Victor Z, Some Management Aspects of Multinational Companies, Management International Review, vol.14, No. (4-5)1974, PP. 45-69.
- Ragazzi, G., "Theories of the determinants of direct foreign investment", IMF Staff Papers, 20(July), (1973), pp.471-498.
- Rashad Al-Attar et al., International commerc, Dar Al-Masirah Publishing and Distribution, Jordan, 2000.
- Raymond Fernon, The Economic and Political Results of Multinational Enterprises, Translated by Salah Barmada, Damascus: Publications of the Ministry of Culture and National Guidance, 1981.
- Regina E. Rauxloh, A Call for the End of Impunity for Multinational Corporations, 14 Tex. Wesleyan L. Rev. 297, 305 (2008).
- Richard D. Hayes, Christopher M. Korth, Manucher Roudiani, International Business: An Introduction to the World of the Multinational Firm, Englewood Press, U.S,(1972) .
- Riedman, International Law Cases And Material,1969, pp.802-35
- Robert B. Reich, Who Is Us?, 68 Harv. Bus. Rev. 53 (1990); Edward M. Graham & Paul R. Krugman, Foreign Direct Investment in The United States, 57-84,(3d Ed), 1995.
- Safwat Ahmed Abdel-Hafith, The Role of Foreign Investment in the Evolution of the Provisions of Private International Law, Without Publisher, 2000
- Salami Saed. Implications for the Moral personality of a trading company. Research submitted to obtain a msters degree. Faculty of law and political science, university of Abu Bakr Belqayd, Talsman, 2012**.**

- Sami Afifi Hatem, Foreign Trade between Framing and Organization, Part I, The Egyptian Lebanese House, Egypt, 1993.
- Samir Karam, Multinational Enterprises, Institute for Arab Development, Lebanon, 1976.
- Samuelson, Paul A. and Nordhauses, W. D., Economics. New York: McGraw-Hill, (1989).
- Sarmad Gemayel, The Social Responsibility of Foreign Direct Investment (A Critical Analysis of World Trade Organization Data in an Era of Globalization, Journal of Human Sciences, Issue 18, Second Year, 2005.
- Scheneeman, J. The Law of Corporations and other Business Organizations. 6 th edition. The U.S.A: Delman Cengage Learning; 2012. At Section 7.6.
- Servan Schreiber J, *The A.merican Challenge* ,Hamish Hamilton, London , (1968).
- Sherif Ali Alsous, International Trade (Foundations and Applications). First Edition, Dar Asima for Publishing and Distribution, Amman, Jordan, 2012, pp. 18-19.
- Sherif Ali Alsous, International Trade (Foundations and Applications). First Edition, Dar Asima for Publishing and Distribution, Amman, Jordan, 2012.
- Sherif Mohamed Ghannam, the extent of the parent company's liability for the debts of its nascent Egyptian company, published in the Journal of Rights issued by Kuwait University, first issue, the twenty-seventh year, March 2003.
- Sultan Abu Ali, International Trade Theory and Policy, Cairo, 1981.
- Sultani Salma, Role of Customs in Foreign Trade Policy (The Case of Algeria). Master Thesis, Faculty of Economic Sciences, Facilitation Science and Economic Sciences. University of Algiers, 2003.
- Talaat Al Hadidi. International legal position for Multinational enterprises. Dar Al-Hamed for publishing and distribution, first printing, Amman , 2008**.**
- Tan, J. Multinational Corporations and Social Responsibility in Emerging Markets: Opportunities and Challenges for Research and Practice. Journal of Business Ethics, 2009.

- Tayeb Zeruti. Mediator to explain Algerian nationality. Al Kahnah Press, Algiers, 2002.
- Tayeb Zeruti. Mediator to explain Algerian nationality. Al Kahnah Press, Algiers, 2002**.**
- Teichova A, 'Multinationals in Perspective' in Teichova Alice, Uvy-Leboyer Maurice and Nussbaum Helga (cds). *Multinational Enterprise in Historical Perspective* (Cambridge University Press, Cambridge, (1986).
- The Brussels Conventions art. 60(2), Clarkson CMV and Hill J, *Jaffey on the Conflicts of Laws*, Butterworths, London, 2002.
- The OECD Guidelines for Multinational Enterprises, entered in to force 15 February, (1999).
- The quality of Abdul Khaliq, the international economy from the comparative advantages to the unequal exchange. Dar al-Nahda al-Arabiya, I 4, 1992, pp. 77-81.
- Thompson Robert B, 'Unpacking Limited Liability: Direct and Vicarious Liability of Corporate Participants for Torts of the Enterprise' (1994) 47 Vand. L. Rev. 1
- Tony Romm, Elizabeth Dwoskin and Craig Timberg, Justice Department announces broad antitrust review of Big Tech, 2019
- Tugendhat Christopher. *The Multinationals* (Penguin. Hannondsworth ,(1973).
- U.N. ECON. & SOC. Council, U.N. Comm'n on Human Rights, Economic, Social and Cultural rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), at 4-5 [hereinafter Norms].
- UN, Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations, UN Doc E/5500/Rev.1, ST/ESA/6, 25, (1974).
- UNCTAD .Word investment report 2010. Retrieved from http://unctad.org/en/Docs/wir2010_en.pdf 2013. Accessed in: 5-6-2018.
- United Nations Conference on Trade and Dev. (UNCTAD), World Investment Report 2013: Global Value Chains: Investment and Trade for Development 134 (2013).

- 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.
- United Nations Human Rights Standards for Corporations, Towards Legal Accountability, Document No. IOR 42/002/2004, Amnesty International Publications, January 18, 2004.
- Vagts, the Multinational Enterprise: A New Challenge for Transnational Law, 83 HARV. L. REv. ,1970.
- Villegas, C. Tratado de las Sociedades. Chile: Editorial Juridica; 1999.
- Wallace CD, *The Multinational Enterprises And Legal Control Host State SovereignlY 111 An Era Of Economic Glohalisation* (Martinus Nijhoff. London 2(02).
- Wallace CD, *The Multinational Enterprises And Legal Control Host State Sovereignty 111 An Era Of Economic Globalization* (Martinus Nijhoff. London), (2002).
- Ward Halina, 'Governing Multinationals: The Role of Foreign Direct Liability' (Briefing Paper of the Royal Institute of International Affairs. Energy and Environment Programme, no 18, February 2001.
- Wilkins M. The free-standing company, 1870–1914: An important type of British foreign direct investment. Economic History ReŠiew 39, (1988).
- William T. Allen ET Al. Commentaries and cases on the law of busniss organization (3rd ed.),2012.
- Zander, Iva, The Tortoise Evolution of the Multinational Corporation -- Foreign Technological Activity in Swedish Multinational Firms 1890-1990, A Dissertation for the Doctor's Degree in Business Administration lIB and the author ISBN 91-971730-29, Stockholm School of Economics (1994)
- Zhang, F. Corporate Social Responsibility in Emerging Markets: The Role of Multinational Corporations; An Initial Paper for the Launch of the Foreign Policy Centre Project on “Corporate Responsibility in Emerging Markets” in association with Coca-Cola Great Britain, (2008).