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CONTRACTS OF MULTINATIONAL ENTERPRISES (MNES) AND THE APPLICABLE LAW

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Abstract

MNEs have considered as a significant player in each state economy and turnover that could exceed its public budget. Several laws have been evolved to regulate multinational enterprises activities and operations. This study came to investigate the basic contracts that control multinational enterprises acts and their applicable laws. It also aims to investigate the status and obligations of Multinational enterprises under the recent applicable laws and the used control contracts that govern multinational enterprises operations. A descriptive analytical method was followed in this study to achieve its objectives through analysing the legal contracts and laws that have evolved through the past decades to govern, regulate and recognise the status of Multinational enterprises and their operation. The study revealed that there are several types of multinational enterprises contracts such as, technology transfer contracts, International Public Works Contracts, and Petroleum contracts. States contracts is the basic form of any multinational enterprises contracts which recognised as a contract between one state or any representative state entity and legal foreign entity according to the international law definition. It also clarified that there are several methods of determining the applicable law over multinational enterprises contracts according to the private international law and many other arbitrations approaches. It has recognised widely that the law of will is the basic controller for determining the applicable law in the conducted contracts between the State and the multinational enterprises. On the other hand, when this law is missed, then Judges should search for clues derived from the same contract by assigning the contractual association to rigid and determine controls to the contractors such as the place of contract, the common domicile, nationality, or attribution of flexible controls derived from the subjective nature of the contract, such as the standard of distinguished performance of the contract. The researcher recommended conducting several further studies that are related to this study topic according to its importance as recognising the applicable laws that governing multinational enterprises contracts could help in regulating and configuring out the multinational enterprises status and obligations. The study also recommended constructing and adopting an international convention to add clear criteria to choose the applicable law to the contract in the absence of the law of will, taking into account the requirements of national laws.

Keywords: Multinational enterprises, contracts, applicable law, operations, private international law.

1. Introduction:

Globalised business has become one of the main components of each state business since the last four decades. MNEs have considered as a significant player in each state economy and turnover

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that could exceed its public budget[1].Multinational enterprises can be defined as several corporations that are existed in several states and which share resources and data between one company and another[2].

Multinational enterprises can also have a positive impact on society's technological enhancement[3]. On the other hand, such enterprises can ignore some human rights or cause crimes. Several laws have been evolved to regulate multinational enterprises activities and operations as national codes cannot have a full control on such enterprises harmful acts[4].

Contracts and laws that govern Multinational enterprises (MNEs) activities can be recongnised as all legalizations or techniques that mange multinational enterprises operations regionally, nationally and internationally. Therefore, this study came to investigate the basic contracts that control multinational enterprises acts and their applicable laws. It also aims to investigate the status and obligations of Multinational enterprises under the recent applicable laws and the used control contracts that govern multinational enterprises operations.

1.2 Study Problem:

According to the enormous benefits that brought form multinational enterprises which mentioned earlier, several states have paid a huge attention to attract multinational corporations' activities. While on the other hand, the limited liability of these enterprises can be taken as a tool to evade from their practices consequences such as violating human rights or generating environmental harmful acts[5]. Furthermore, MNEs often accurately focuses on choosing the most suitable laws that could cover their disingenuous practices if their harmful acts were detected to justify their practices as they follow the law. They often take advantage from their financial powers choose legislation and regulations that are in their favor[6]. As well as, multinational enterprises may

[1] John Mikler, 'Global Companies as Actors in Global Policy and Governance' in John Mikler (ed), *The Handbook of Global Companies* (Wiley-Blackwell 2013) 1, 4 ff.

[2] Org. for Econ. Cooperation and Dev. [OECD], *OECD Guidelines for Multinational Enterprises*, 15 I.L.M. 9 at 2 (1976) [hereinafter OECD Guidelines], and Bartlett, C., Beamish, P., Transnational Management: Text, Cases and Readings in Cross-border Management, sixth ed.McGraw-Hill, New York,2010.

[3] Olivier De Schutter, Jan Wouters, Philip De Man, Nicolas Hachez and Mattias Sant'Ana, 'Foreign Direct Investment, Human Development and Human Rights: Framing the Issues' (2009) 3 Human Rights & International Legal Discourse, 137, 159.

[4] Alexandra Gatto, Multinational Enterprises and Human Rights: Obligations under EU Law and International Law (Elgar 2011) 4, 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.

[5] ARED DIAMOND, COLLAPSE: How SOCIETIES CHOOSE TO FAIL OR SUCCEED 454 (2006) (documenting environmental problems caused by foreign owned mines on New Guinea); *see also* STIGLITZ, *supra* note 1, at 456

[6] *Compare* Bill Vlasic, *GM Offers New Buyout to 74,000*, N.Y. TIMES, Feb. 13, 2008, at **Cl** (announcing that GM had $206 billion in total revenue in 2006), *with* WORLD BANK, WORLD DEVELOPMENT INDICATORS DATABASE: TOTAL GDP 2006, *available at*

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exploit their technical superiority and the lack of administrative efficiency in some of the countries in which it operates to bypass certain legalisations governing their practices[7].

Therefore, determining the applicable law and the widespread contracts that control multinational enterprises disputes play a significant role in solving issues that could face these enterprises performance and developing their activities. So, the problem of this study can be summarised is to find the appropriate legal solutions to determine the applicable law of multinational enterprises contracts and the country in which they operate.

1.3 Study significance:

The importance of the study came due to the important role that multinational companies play at the local or international economic level, which imposes the importance of identifying the activities of these companies, their formation mechanisms, their work nature, and their activities impact on achieving economic and social development. Additionally, to finding appropriate solutions to their legal issues, their operations legal constraints, and to determine the applicable law over their disputes.

1.4 Study Methodology

A descriptive analytical method was followed in this study to achieve its objectives through analysing the legal contracts and laws that have evolved through the past decades to govern, regulate and recognise the status of Multinational enterprises and their operation.

2. Contracts of Multinational Enterprises (MNEs):

There are several kinds of multinational enterprises contracts that need precision and long technical expertise to be conducted. States contracts is the basic form of any multinational enterprises contracts which recognised as a contract between one state or any representative state entity and legal foreign entity according to the international law definition[8]. Other legal definition of state contracts is an agreement between a state and other international foreign private entity to generate a large investment projects[9]. The basic challenge in front of any state contracts is the fact that it is a long basis agreement that could face flexibility constraints as it can be utilised in different economical situations which could vary and change with time passes, and without paying any attention to any regularity changes which is initially agreed[10].

http://siteresources.worldbank.org/DATASTATISTICS /Resources/GDP.pdf (listing the GDP of 150 countries as less than $208 billion in 2006).

[7] Jesus Sanchez, *Arco Agrees to Pay $285 Million to End Alaskan Dispute,* L.A. **TIMES,** Sept. 13, 1990, at DI.

[8] UNCTAD, "State contracts, in issues in international investment agreements", (2004), available at: http://unctad.org/en/Docs/iteiit200411_en.pdf

[9] Matringe, J., "Les effets juridiques internationaux des engagements des personnes privies", in Le sujet en droit international, SFDI, Colloque du Mans, Pedone, (2005).

[10] Shany, Y., "Contract claims vs. treaty claims: mapping conflicts between ICSID decisions on multisourced investment claims", The American Journal of International Law, Vol. 99 No. 4, (2005), pp. 845.

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States contracts of multinational enterprises can be divided into various contracts; such as technology transfer contracts, International Public Works Contracts, and Petroleum contracts. The following is a detailed discussion for each type of these contracts information.

2.1 Technology transfer contracts

One of these main MNEs contracts is "Technology transfer contracts" which aims to move modern technology from the developed countries to the least developing ones; for the purposes of enhancing the least developed countries economical and social status[11].

This type of contracts defined as an agreement under which a technology supplier transmit technical information to a technology importer to be utilised in a particular technical method for the production or development of a particular good or for the installation or operation of machinery or equipment or for the provision of services. It should be mentioned here, that sale, purchase, lease or goods rental practices or either trademarks licensing cannot be considered as transfer of technology unless it is received as part of or associated with a technology transfer contract[12].The technology transfer contract focuses on the moral elements such as the invention right, technical knowledge right, or technical services, rather than the physical elements, as equipment and machinery covered by this contract[13]. There are three categories that are included in this type of MNEs contracts which are;

- **Simple technology transfer contracts:**

In this kind of technology transfer contracts; technical knowledge can be transferred through licensing contract by authorizing a national enterprise to use a right owned by a foreign enterprise, which may be in the way of industry creation or the design of a machine, invention or model it invented, whether or not the right was covered by the prescribed protection of industrial property[14]. Or through the technical support contract, or by the training contract in which the transferor obliged to move information and a set of technical knowledge to the receiver technical staff to enable them using transferred technology effectively[15]. This type of contracts enables developing countries to provide human technical capacity, which is realised as an introducer for their ability to have a full control over their transferred technology[16].

- **Complex technology transfer contracts:**

It is an agreement that commits to transfer of technology and technical knowledge, as well as the operation, production and promotion of these units, this include;

[11] Fahad Bejad, Settlement of Disputes of Technology Transfer Contract, Study in Egyptian Law and Saudi Arbitration System, Dar Al-Nahda Al-Arabiya, Cairo, (2009), p. 18.
[12] Article 73 of the Egyptian Trade Law No. 17, 1999.
[13] Jaber Abdel Raouf, A Brief on Technical Development Contracts, 1st Floor, Al-Halabi Publications, Beirut, 2005, p. 30.
[14] Shafiq Muhsin, The Multinational Project from the Legal Point of View, Dar Al Nahda Al Arabiya, Cairo, 2006, p. 44.
[15] Gamal El-Din Salah El-Din, Contracts of Technology Transfer, Dar Al-Fikr Al-Jama'i, Alexandria, 2005, pp. 102-105.
[16] Gamal El-Din Salah El-Din, *Ibid*, p. 106.

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- Key in the hand contract:

In this contract, the supplier of technology is committed to the construction of an industrial complex with the guarantee of its performance and operation. One of its forms is holding the heavy key in the hand, where the carrier in this type is committed to delivering the industrial unit in case of operation, in addition to training the local manpower technically to acquire the technical knowledge and provide the necessary information and scientific documents for the operation and production of the industrial unit[17].

- The production in the hand contract:

This contract defines responsibilities in technology transfer from the first stage to the production stage, which is the responsibility of one party, the carrier. This contract also includes the transfer of effective technology and not only the theoretical knowledge, making it an effective contribution to the development process[18].

- The market in the hand contract:

In this contract the technology supplier raises its commitments to the extent of marketing or purchasing a part of the transferred technology product. This contract is the latest version of complex technology transfer contracts and is used to ensure that technology recipients do not lose after completion of the project.[19]

2.2 International Public Works Contracts:

International public works includes establishing an infrastructure, such as power stations, telecommunication networks, hospitals, bridges, roads, airports and other projects, and as such projects always demand high costs and specialized technology, most countries contract with other foreign ventures that are recognised with its large capital and specialized experience in the field[20]. These contracts are defined as an agreement between the administration and a private foreign person for the purpose of carrying out specific real estate works on behalf of a public legal entity in the interest of a certain public benefit and at a certain price[21], or as a contract that is signed to construct a huge projects that need a large foreign capital and that cannot be held in their national companies due to its little experience or financial sources[22].

[17] Shukri Saeed Abdul Ghaffar Amin, General International Law for Contracts, Dar Al-Fikr Al-Arabi, 1st Floor, Egypt, 2007, p.205.

[18] Gamal El-Din Salah El-Din, *Ibid*, p. 140.

[19] Shukri Saeed Abdul Ghaffar Amin, Ibid, p.207.

[20] Al-Asaad Bashar Mohammed, State Contracts in International Law, 1st Floor, Zain Library, Beirut, 2010, p. 68

[21] Ismail Mohammed Abdul Majeed, International Works Contracts and Arbitration, Halabi Publications, Beirut, 2003, p. 41

[22] Sheikh Esmat Abdullah, Arbitration in Administrative Contracts of International Character, Dar Al-Nahda Al-Arabiya, Cairo, 2008, P.18

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2.3 The Petroleum contracts

Often in this type of contracts, one of the large companies that are specialized in industrialized energy, and have the required financial capitals and technological expertise represents the contracting party with the state in the exploration, production and marketing of oil products[23]. There are a lot of petroleum contract forms according to the conflict interests between the production state and the invested corporations, and one of the main petroleum contract forms is petroleum franchise contracts, petroleum sharing contracts, and production sharing contracts[24].

Petroleum franchise contract form defined as the legal validity that is offered by one state to a foreign company to search, explore and utilise the petroleum resources located on its territory, within a period of time in return for providing the state with an agreed financial profit[25].

While in petroleum sharing contracts form, the state or one of its companies contracted with a foreign company to establish a company in which the state or one of its companies contributes a share in its capital, enjoying the nationality of the producing country, and has the right to engage in oil operations[26].

3. The applicable law over Multinational enterprises contracts:

The applicable law over multinational enterprises operations can be included and clarified in the contract between the state and the MNEs. This section of the paper will handle with the applicable law on the multinational enterprises contracts according to the Private International Law.

It has recognised widely that the law of will is the basic controller for determining the applicable law in the conducted contracts between the State and the multinational enterprises. The legal system of contracts that involves a foreign element passed in many jurisprudential efforts in determining the applicable law until the jurists ended up with adopting the law of will. This law was considered as the basic controller of the International contracts[27].

The law of will is defined in the international law which concerning the freedom of the contract parties as to determine the applicable law to the contract to be concluded if the contract is likely to be subjected to different countries laws[28]. The law of will gives the contractors with wide authorities in choosing the applicable law and the specialised court to resolute disputes.

[23] Asaad Bashar Mohammed, State Contracts in International Law, 1st Floor, Zain Library, Beirut, 2010, p. 55

[24] Abu Zeid Siraj Hussein, Arbitration in oil contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 35

[25] Abu Zeid Siraj Hussein, ibid, p.44

[26] Abu Zeid Siraj Hussein, ibid, p.65.

[27] Asaad Bashar Mohammed, Ibid, p.96.

[28] Hegazy Abdel Fattah Bayoumi, Legal System for the Protection of Electronic Commerce, Dar Al-Fikr Al-Jama'i, Alexandria (2002), p. 170.

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According to the differences between the place of implementing the contract norms and the head office of the multinational enterprise, in addition to the variation of these companies' shareholders, all of this clarifies the need for determining the applicable law over multinational enterprises contracts and their raised disputes. The law of will is often the first and common used way to solve this legal issue. It must be mentioned here that the expression of will to determine the applicable law to the contract, either if it was from the state or from the multinational corporation, shall be either explicit or implied.

The explicit way to express the will law represented when the contract has a clear article which define clearly the contractors intention about the governing law of the contract[29] . This could also be defined through the transferred electronic messages[30].

Explicit expression of will does not raise any difficulty in determining the applicable law to the contract, but the difficulty lies in the absence of explicit expression of will, as the contractors may intentionally ignore permitting the applicable law in advance and before the occurrence of conflict, and this could be explained due to the fear of stopping and contract failure[31].

The jurists disagreed about the principle of the legality of the implicit expression of will; as they believe that neglecting a clear determination of the contract law cannot be missed unintentionally according to the fact that such contracts includes a great fortune so it is not believable to be leave to the discretion of the arbitrators[32]. While the supporters of the implicit expression of will believe that this method can be followed based on international agreements, for example, The International Law Academy that held in Basel, Switzerland, in 1991, recognized that in the absence of an explicit choice of law which governing the contract, then the implicit will of the parties must be drawn from the contracting conditions[33].

Based on the above, we could conclude that the implicit expression of will is subject to several indicators that the judge must base on, one of the most prominent of which is the use of a specific language by the contractors, the place of conclusion of the contract, the place of its execution, the place of residence of the parties or their common nationality or the inclusion of specific provisions and rules derived from the contract[34].

[29] Ibrahim Ibrahim Ahmed, Private International Law, Book I, Conflict of Laws, Dar Al-Nahda Al-Arabiya, Cairo, (2000), p. 351.
[30] Mansour Mohamed Hussein, International Contracts, New University Publishing House, Alexandria, n.d., p. 352.
[31] Sadek Hisham Ali, Law applicable to international trade contracts, 2nd edition, Dar Al-Fikr Al-Jamie, Alexandria, (2001), p. 327.
[32] Hamza Hani Mahmoud, the legal system applicable to international administrative contracts before the international arbitrator, Ed.1, Halabi human rights publications, p. 131.
[33] Abu Ahmed Alaa Mohieldin Mustafa, Arbitration in disputes of international administrative contracts in the light of positive laws and international treaties and the provisions of the arbitration courts, a comparative study, New University House, Egypt,(2008), p 353.
[34] Al-Asaad Bashar Mohammed, Investment Contracts in International Private Relations, Ibid,p.106.

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On the other hand, when the law of will is missed, then Judges should search for clues derived from the same contract by assigning the contractual association to rigid and determine controls to the contractors such as the place of contract, the common domicile, nationality, or attribution of flexible controls derived from the subjective nature of the contract, such as the standard of distinguished performance of the contract[35]. The application of rules of conflict law is used to define attribution rules whose primary function is to refer to a law that resolves conflict in international relations[36].

The rigid attribution of the most related and close law to the contract:

In this case, contracts referred and assigned to the most closely law according to the contract nature. This process is consistent with article 4/1 from the Rome agreement which stated that applicable law over contract will be chosen according to the state law which is most connected and related[37] , and according to this law several legal controls will be added by the legislator to oblige judges to employ these controls when the law of will is missed[38], in a manner that fulfills the legitimate parties expectations and provide them with legal security aspects[39]. It should be mentioned here that this process of determining the applicable law cannot be employed on the unnamed multiform contracts which follow the common domicile and the joint nationality procedures[40].

According to the common domicile of the contractors' process; domicile represents the residence place of individuals, and this comply with the Iraqi and Jordanian legislators and specifically at article 25, article 20/1 of the civil law relatively.

Moreover, the French judgment rules contradict about employing the joint nationality law[41]. This rule was followed by the Spanish Civil Code; in which article 11/5 stipulates that contractual obligations should governed by the law of joint nationality of contractors. One of the most prominent criticisms of this attribution is that foreign nationality is not considered as an influential element in international transactions contracts[42].

Other arbitration process believed that assigning the contractual association to the law of the contract place is one of the most effective approaches to assign the applicable law over Multinational enterprises contracts. Some argue found that this method gives the parties the advantage of prior knowledge of the law that governing the contract, and ensures demonstrating

[35] Sadek Hisham Ali, Ibid, P. 548.
[36] Ibrahim Ibrahim Ahmed, Private International Law, Book I, Conflict of Laws, Dar Al-Nahda Al-Arabiya, Cairo, (2000), P.37.
[37] Al-Asaad Bashar Mohammed, Investment Contracts in International Private Relations, Ibid, P.253.
[38] Op. cit. , p. 255.
[39] Sadek Hisham Ali, ibid, p.557.
[40] Al-Asaad Bashar Mohammed, Investment Contracts in International Private Relations, Ibid, P. 257.
[41] Al-Manzalawi Saleh, applicable Law to e-commerce contracts, Dar Al-Fikr Al-Jama'i, Alexandria, (2008) , p 333
[42] Sadek Hisham Ali, ibid, p.75.

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the applicable solutions in details[43]. This process was followed by the Civil Jordanian law when common domicile differs between contractors.

Flexible contract attribution and Distinguished performance approach

In the flexible contract attribution, the judges examine the terms of the contract and investigate its center which is deduced from the circumstances of the contract[44], and this method followed by the French court in its judgment that pronounced in 26 July 1959 as it stated that" if the contractors do not explicitly choose the contract law, the judges of the subject matter must confront the determination of the applicable law in light of the circumstances the surrounding the contract".

Furthermore, the basic obligation in the contract can be defined according to the distinguished performance approach, which expresses its truth and relies on it to determine the applicable law to the entire contract. Distinguished performance is defined as the search for an essential and important performance in a contractual bond[45]. In the Distinguished performance nature, the focus is on material and objective elements inspired by the nature of the contractual bond. Most contracts are determined by monetary performance. Therefore, subjecting the contract to the law of the debtor's domicile is the main used means by which the most relevant laws of the contract are appointed because of their simplicity, clarity and their protection to the expectations of the contracted parties[46]. The Rome Convention of 1980 adopted the Theory of Distinguished Performance, as article four in the convention states "in the absence of explicit choice, the law of the State with the most trustworthy ties applies to the contract"[47]. The Jordanian Arbitration Law also adopted this theory in Article 31 / B, which states that "if the parties do not agree on the legal rules applicable to the subject of the dispute, the arbitral tribunal shall apply the substantive rules in the law which it considers most relevant to the dispute".

Despite the importance of the theory of distinguished performance in determining the applicable law, but it has been subjected to many criticisms, which can be summarised as follow[48];

- Relying on the discipline of distinguished performance could harm the weak party where the common result is to attribute these contracts to the law of the strong party as it considered the debtor of the distinct performance.
- Difficulty in identifying distinguished performance in complex contracts; such as barter contracts under which ownership is exchanged.

[43] M. Blak Mohamed, the rules of conflict and material rules in the disputes of international trade contracts, Master Thesis, University of Abu Bakr Belkaid, Tlemcen, Algeria, 2010, p. 54.
[44] Sadek Hisham Ali, ibid, p. 564.
[45] Al-Manzalawi Saleh, Ibid, p. 336.
[46] Abdel-Aal Okasha, Law of International Banking Operations, a study in the law applicable to the operations of banks of an international nature, Alexandria, University Press, (1994), p.62.
[47] Roby Mohamed, Construction and Delivery Contracts (BOT): A Study in Private International Law, Dar Al-Nahda Al-Arabiya, Cairo, (2004), p.299.
[48] M. Blak Mohamed, the rules of conflict and material rules, ibid, p.61.

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- Difficulty in identifying and weighting an obligation that constitutes a distinct performance as long as the contract includes multiple obligations.

The researcher supports the idea of employing rigid attribution in determining the applicable law to the contract based on the home of the participated contractors, but in the case of there are differences in the contractors home, judges should apply the law of the place of the contract location.

After reviewing the private law role in determining the applicable law over multinational enterprises contracts as mentioned above, we should clarify the power of arbitrators to determine the applicable law over multinational enterprises contracts. The assigned contracts between multinational enterprises and a state often includes clauses relating to the use of arbitration to settle any dispute arising from the execution of the contract, for the purposes of taking advantage by the conduct of arbitration as an alternative in resolving the dispute from ordinary courts.

The followed methods of arbitrators in determining the applicable law to the MNEs contracts often divided into three main methods.

Method One: The direct determination of the applicable law

Direct determination of the applicable law is done by the arbitrator through analysing the legal and substantive elements of the contract, and then linking these elements to the law to which it is most closely related. Thus, according to this method, the arbitrator does not resort to conflict of laws rules, but rather subject the contract to a particular law according to the circumstances surrounding the contract. One of the arbitral provisions examples in this regard; is the decision of the Arbitration Court of the City of Switzerland, which decided to apply Belgian law on the basis that it is not necessary to search for the rules of applicable private international law to the designation of the applicable law to the contract, but only proving that all the contract elements as; the seller, the buyer, the place of execution of the contract as well as the place of its conclusion are located in Belgium[49].

Method Two: The overarching application of conflict-related regulations

Based on this method, the arbitrator examines the rules of conflict of laws in various national legal systems that are related to the existed disputes. If the legal systems agreed on a specific internal law then this law will be implemented, and this method cover all parties desires and their expectations, because when the rules of conflict of laws in the legal systems unified in one applicable law, it is not possible for the parties to claim that the arbitrator has breached their expectations by applying this law[50].

Method Three: Referring to general principles in private international law

The application of the rules of conflict of laws to one of the parties to the contract, or to the law of the place of arbitration as the most relevant to the contract, has been criticized for the

[49] Abu Zeid Siraj Hussein, Arbitration in oil contracts, Dar Al-Nahda Al-Arabiya, Cairo, (2004), p. 587-589.

[50] Abu Zeid Siraj Hussein, Ibid, p. 589.

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difficulty of determining the location of the arbitration when its sessions are held in more than one country[51]. Therefore, when the arbitrator searches for applicable law, he does not resort to the conflict of law rules in the international law of a particular country but to the rule of conflict widely recognized by the international community[52].

One of the arbitration judgments adopted in this way was the ruling in arbitral case No. 1512 of the year of 1971, which stated that "there is an agreement about the applicable law to contracts between various major systems of conflict of laws in the world, as regarding contracts, it is possible to have a common international law at least when it comes to knowing the law governing the contract in case of implicit selection by the parties[53].

The researcher supports the method in which arbitrators have the ability to determine directly the law applicable to the contract as he believes that this method is consistent with the arbitration system and spirit, and provides arbitrators with the flexibility and ability to determine the law of the contract.

Conclusions:

This study aimed to investigate the status and obligations of Multinational enterprises under the recent applicable laws and the used control contracts that govern multinational enterprises operations. There are several kinds of multinational enterprises contracts that need precision and long technical expertise to be conducted. States contracts is the basic form of any multinational enterprises contracts which recognised as a contract between one state or any representative state entity and legal foreign entity according to the international law definition. States contracts of multinational enterprises can be divided into various contracts; such as technology transfer contracts, International Public Works Contracts, and Petroleum contracts.

This study also concluded that the applicable law over multinational enterprises operations can be included and clarified in the contract between the state and the MNEs. It has recognised widely that the law of will is the basic controller for determining the applicable law in the conducted contracts between the State and the multinational enterprises. The law of will is defined in the international law which concerning the freedom of the contract parties as to determine the applicable law to the contract to be concluded if the contract is likely to be subjected to different countries laws. The expression of will to determine the applicable law to the contract shall be either explicit or implied determined. On the other hand, when the law of will is missed, then Judges should search for clues derived from the same contract by assigning the contractual association to rigid and determine controls to the contractors such as the place of contract, the common domicile, nationality, or attribution of flexible controls derived from the subjective nature of the contract. Furthermore, the assigned contracts between multinational enterprises and a state often includes clauses relating to the use of arbitration to settle any dispute arising from the execution of the contract, the followed methods of arbitrators in determining the

[51] Mohamed Kola, The Development of International Commercial Arbitration in Algerian Law, Baghdadi Publications, Algeria, (2008), p. 217.
[52] Abu Zeid Siraj Hussein, Ibid, p.595
[53] Abu Zeid Siraj Hussein, Ibid,p. 596

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applicable law to the MNEs contracts often divided into three main methods; the direct determination of the applicable law, the overarching application of conflict-related regulations, and Referring to general principles in private international law. The researcher recommended conducting several further studies that are related to this study topic according to its importance as recognising the applicable laws that governing multinational enterprises contracts could help in regulating and configuring out the multinational enterprises status and obligations. The study also recommended constructing and adopting an international convention to add clear criteria to choose the applicable law to the contract in the absence of the law of will, taking into account the requirements of national laws.

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- Abu Zeid Siraj Hussein, Arbitration in oil contracts, Dar Al-Nahda Al-Arabiya, Cairo, (2004).
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- ARED DIAMOND, COLLAPSE: How SOCIETIES CHOOSE TO FAIL OR SUCCEED 454 (2006) (documenting environmental problems caused by foreign owned mines on New Guinea); *see also* STIGLITZ, *supra* note 1, at 456.
- Asaad Bashar Mohammed, State Contracts in International Law, 1st Floor, Zain Library, Beirut, 2010.
- Bartlett, C., Beamish, P., Transnational Management: Text, Cases and Readings in Cross-border Management, sixth ed.McGraw-Hill, New York,2010.
- *Compare* Bill Vlasic, *GM Offers New Buyout to 74,000*, N.Y. TIMES, Feb. 13, 2008, at **Cl** (announcing that GM had $206 billion in total revenue in 2006), *with* WORLD BANK, WORLD DEVELOPMENT INDICATORS DATABASE: TOTAL GDP 2006, *available at* http://siteresources.worldbank.org/DATASTATISTICS /Resources/GDP.pdf (listing the GDP of 150 countries as less than $208 billion in 2006).
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