



***"The Legal Dimension of Modern Aspects of Global Supply Chain Formation." : New Patterns of Business Activity
(Analytical Legal Study)***

Hajer Fatnassi^{1, 2} Amna Alardhy^{*}

¹ Professor of Private Law/ The Higher Institute for Legal Studies(Tunisia),

hajerfatnassi@ymail.com

²Ph.D. Candidate in Private Law/ University of Sfax (Tunisia),

amnaalardhy@gmail.com

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Abstract:

The study examines extended supply chains between international companies and other companies spread in developing countries without there being a standard or legal link. This is because the major economic blocs in the world often resort to circumventing laws that do not suit their interests, so they circumvent the relevant texts. By establishing and organizing companies, and their control over nascent companies, especially those spread in developing countries, is economic control, so that the legal standard is absent, or the large companies conclude contracts and projects within a long contractual chain that results in a complex and extended supply chain, which is a characteristic of modern forms of the emergence of global supply chains, and what is worth noting is this. The connection is that what is meant by modernity here is not considering the element of time, but rather considering its departure from what is legally usual.

Keywords:

Supply chains, multinational companies, standard, economic relations, interests, contract

^{*} Corresponding Author.

I. INTRODUCTION

Looking back at supply chains and their not-so-distant history, we find that the controversial image raised around them is that supply chains have emerged in complex forms, and the simplest way to describe them is that they are a practical reality with unclear legal contours. This leads us to search for justifications for the existence of such situations that are not governed by legal standards. Although legislation is the official general source of national and international law, the ability of the latter to comprehend and keep pace with economic phenomena in the world has not yet reached the level required by the business environment. This environment is characterized by its renewal and its impact by economic, political, social, and scientific conditions, making it a constantly adaptable and changing environment. Therefore, commercial principles that are suitable for such conditions have been established.

1. Significance of study :

Supply chains have increasingly become crucial in connecting developing countries to global markets. The participation of any developing country in global supply chains represents a significant opportunity for the development of its local companies and integration into international trade activities. Studying the modern methods of their formation reflects on the mechanism of dealing with them and their governance in a way that makes the entry of any country into its loops a positive entry where rights are preserved.

2. Statement of the problem:

The problem of study lies in the absence of legal frameworks to deal with the activities of multinational companies that do not actually appear to be responsible, especially those operating in Iraq currently or in the future. This leads to the complication of governing their activities due to the lack of clear legal standards, which exacerbates the negative consequences of the spread of such chains in developing countries.

3. Methodology:

In line with the nature of the topic, an analytical study approach will be adopted to explore the jurisprudential trends that have focused on understanding the modern aspects of the emergence of global supply chains. Each idea related to this topic will be presented and supported by evidence that substantiates it and contributes to its clarification, particularly evidence from the complexity of the legal structure of these companies.

II. The study concepts:

"Since defining terminologies is the first step a researcher must take towards achieving a sound scientific methodology, proceeding with the research on the modern emergence of global supply chains will begin by elucidating the key terminologies as follows:"

1. Meaning of Global Supply Chains:

Global supply chains are a network of trade relationships where production, storage, transportation, and distribution operations are interconnected in an integrated loop. The goal is to reduce costs, speed up market demand fulfillment, enhance competitive positions, and increase profitability. Supply chains are fundamentally linked to the fragmentation and geographical distribution of production and distribution processes across multiple countries, based on the technical or economic efficiency requirements of products. Companies dispersed across countries are responsible for this process (fragmentation). Supply chains are defined as: "The loops that connect resources and operations, starting from the source of raw materials and extending through the delivery or delivery of finished products to the end customer. This includes traders, industrial facilities, supply system operators, internal distribution centers, distributors, and any other entities that facilitate the acceptance and satisfaction of the end customer." (Refai, 2015)

It is defined as: "The integration of activities related to the flow and transformation of goods from the stage of raw materials to the final user in order to improve supply chain relationships to achieve sustainable competitive advantage. This includes planning, coordination, operation, control, and maximizing the benefits of various activities and processes to produce suitable products required by customers in terms of timing, quantity, and appropriate quality, and in the right place and location." (Al-Batanouni, 2012). So, supply chains are a network of partners who supply raw materials, assemble, manufacture products, and then distribute them through single or multiple distribution channels to end customers. Along the

supply chain, there are three parallel flows: goods and services, information, and finances (Belin, 2011)

There are several types of supply chains, including: (Refaai, 2015)

- Centralized Supply Chains(concentration): These chains involve various industries such as the automotive industry, which are typically characterized by few customers and numerous suppliers. They usually operate on a just-in-time supply system.
- Batch-Production Supply Chains: These chains involve intermediary businesses that sit in the middle of the supply chain. They are characterized by having many customers and suppliers, forming a complex network of relationships. (Al-Nghamushi, 2019)
- Trade and Distribution Supply Chains: These chains involve large numbers of customers but relatively few suppliers in comparison. Businesses within these chains operate in various ways, often utilizing electronic commerce, allowing access to a vast customer base while attracting large numbers of customers at low cost.

2. Legal personality:

The concept of international legal personality is considered one of the unstable legal concepts at the international level, much like any newly emerging legal or intellectual product. This has led to considerable differences and variations in perspectives, especially when comparing international law to national legal systems that have defined this concept and identified those subject to it, thereby acquiring rights and assuming obligations within the framework of their domestic laws (Hazoom Badraddin Murgani and Kamal Fathi Drees, 2020). This is somewhat missing in the framework of international law, which is considered in a state of constant change, especially concerning its subjects due to the nature and reality of international relations, particularly regarding multinational corporations. The problem becomes more complicated when the entity branches out and diversifies its branches. This is perhaps one of the most significant obstacles to holding companies accountable for the extension of their supply chain loops (Hazoom Badraddin Murgani and Kamal Fathi Drees, 2020).

One of the most prominent issues that raised the concept of legal personality in global supply chains is the famous case of Rana Plaza, where a class-action lawsuit was filed in Canada in 2015 against one of the major Canadian retailers. The lawsuit alleged that the retailer was responsible for the appalling conditions at the work sites because a very large portion of the factory's production (around half) was produced for the retailer. However, the lawsuit was dismissed on appeal on the basis that the "exceptional circumstances" under which a company could be indirectly responsible for the actions of independent contractors were not present in this case, as the retailer did not "control" the risks due to the absence of legal personality for the activity extending between different entities (George, 2018).

III. The dimensions of the modern emergence of global supply chains:

Discussing the modern emergence of global supply chains involves combining two complementary questions: What are the justifications for the modern emergence of global supply chains? And to what extent can those factors reshape our understanding of business organization?

1. The justifications for the modern emergence of global supply chains:

"When commercial legislation fails to keep up with the evolving nature of business, particularly in international contexts, it opens the door for commercial practices to regulate many situations - of which global supply chains are one - in an unregulated manner. The phenomenon of the emergence of these chains has been highlighted according to an economic criterion, away from the texts that restrict their extension. Companies practicing across borders often collide with regulatory interventions from various states, which differ in their legislative outlook. The escape of these companies from such interventions results in the creation of conditions or entities - supply chains - liberated from legal ties, established through methods adopted by institutions and large companies keen on not disclosing their identities and avoiding compliance with local laws." (article 14, 2006)

Researchers studying the evolution of supply chain patterns emphasize the importance of paying attention to the changes and taking them into consideration, as they have altered the conceptual map of traditional thought regarding the spread and expansion of economic activity. One of the most prominent factors in the formulation of modern global supply chains has been (Qashi, 2007):

- 1- The emergence of economic standards as the basis for the formation of these chains without a clear legal framework to regulate them.
- 2- The emergence of new patterns of specialization and international division of labor: The interaction and impact of multinational corporations on global trade and international investment trends have led to the formation of new patterns of specialization in commercial activities. Decision-making in production and investment has shifted to a global perspective based on economic considerations regarding cost and return. The significant investment, production, marketing, and commercial activities of multinational corporations, coupled with the technological revolution's facilitation of new specialization opportunities, have resulted in new patterns of specialization and division of roles in production processes. Naturally, this has led to new formulations of global supply chains. These corporations play a significant role in deepening this process, with their presence increasingly visible in both industrialized and developing countries.

This trend provides many developing countries with the opportunity to penetrate global markets in various products if managed correctly. The new patterns of role division allow these countries to gain competitive advantages across a wide range of goods, including electrical, electronic, engineering, and chemical industries. It also enhances mechanisms for dealing with multinational corporations to attract them to operate and localize some industries in developing countries, enabling them to move away from primary and extractive goods production towards industries with higher export value-added benefits. (One of the challenges of complex supply chains, specifically in the modern slavery sector, is highlighted by the International Labour Organization data for the year 2012. According to this data, there were 20.9 million people working under forced labour conditions, including 5.5 million children. Approximately 5 to 15 percent of these workers are estimated to be involved in supply chains, and this number significantly increases when considering domestic supply chains as well. The informal economy, in particular, is at risk of the worst forms of child labour. In 2012, it was reported that up to 85 million children were engaged in hazardous work that directly endangered their health, safety, and moral development, constituting the worst forms of child labour. Although obtaining reliable data on sectors where such types of labour are prevalent is challenging, cases of the worst forms of child labour have been identified in sectors corresponding to those where there is an increased risk of contemporary slavery occurring in supply chains.) (Global Estimates and Trends, 2013)

The expansion of commercial activities has led to the emergence of complex forms of supply chains involving hundreds or even thousands of subsidiary companies and direct and indirect suppliers, without a clear legal link between them. This can be attributed either to the parent company's intention to evade responsibility and resort to evasive methods to avoid appearing in the forefront, or it may be due to the length of the supply chain. Suppliers at the first level (the frontline of the extended activity) may have a direct contractual relationship with the parent company. Therefore, examining the legal standard can start with clarity in the contract or joint venture and participating in continuous decision-making and joint product development. The parent company also has the authority to determine certain monitoring mechanisms. However, coordinating with second-level suppliers is more complicated and challenging because they do not have a direct contractual relationship. The central company may request information about its second-level suppliers from its first-level suppliers, who maintain contractual relationships with both parties. Obtaining information about fifth-level suppliers, for example, can be almost impossible, meaning that longer supply chains are more complex and challenging to manage because transparency diminishes across multiple tiers. Distant suppliers are less controllable, and in such cases, the central company may be absent from the picture as a link in the supply chain. Hidden contracts within supply chain tiers further complicate matters.

2- The impact of the modern emergence of global supply chains on reshaping commercial activities :

The danger of modern (complex) approaches to the emergence of supply chains lies in several areas, notably the difficulty in holding the parent company or the central company accountable. Additionally, the absence of these companies from the forefront may lead to laxity

in controlling the behaviour of their partners in their supply chain. (In the garment and textile industry sectors, reports indicate a higher likelihood of contemporary forms of slavery occurring within the complex subcontracting processes characteristic of this sector in various parts of the world. This includes instances in informal and sometimes home-based workshops operating on the margins of the formal economy. It is often stated that contemporary forms of slavery occur within the global supply chains of international brand names.) (Fabrics, 2014) . The ability to control the partners of these companies is actually influenced by two factors: the size of the company and the necessity of resources. Larger central companies have more power to influence the behaviour of suppliers because they have a greater opportunity to allocate business to them (Julia Hartmann and Sabine Moeller, 2014).

Hence, we find that multinational companies with long supply chains, which encompass complex networks of branches, affiliates, suppliers, contractors, and subcontractors, are what give rise to the complex emergence of the supply chains under study.

Given the complexity and scope of supply chains, efforts to identify the forms of emergence of global supply chains can only succeed through the formation of partnerships and the launch of effective and sustainable initiatives involving multiple stakeholders, including authorities, companies, labour unions, consumers, and other stakeholders. The European Union rules on corporate sustainability due diligence and the amended directive for 2021 define stakeholders within the identification section as follows: "Employees of the company, employees of its subsidiaries, and others who are individuals, groups, communities, or entities whose rights or interests, or who may be affected by the products, services, and operations of that company and its subsidiaries and their business relationships."

Each in their respective expertise, aiming to achieve mutually agreed-upon goals. The scope of such initiatives is often international due to the extensive nature of operations across national borders. This highlights the importance of participation, as it allows members of a specific community to play an active role in legislative processes and enhance the level of credibility therein, contributing to both the social-legitimacy and constitutional legitimacy of legislation. The concept of societal legitimacy here is originally derived from the democratic influence of public participation in choosing their representatives in authorities or governments at various levels. This entails the legitimacy of electoral outputs from both legal and social perspectives , This also ensures the enactment of legal texts capable of establishing a business environment where stakeholders are not compelled to circumvent legislative texts formulated by legislative bodies that often lack investigative authority.

The participatory approach and initiatives of multiple stakeholders play a crucial role in addressing several problems, notably in identifying the forms of supply chains we are investigating their emergence. These initiatives provide a comprehensive model by engaging multiple stakeholders, thereby offering a long-term solution to address the potential emergence of new forms in supply chains. Stakeholder forums foster social partnership and involve labour unions, thus providing additional value by ensuring collaboration among various initiatives that serve as a mirror for legislators to address new and future challenges in supply chains to achieve optimal and transparent regulation throughout their extension (Rogers, 2008)

Based on the foregoing, from a legal perspective, what has been mentioned directs economic activity towards a modern approach that transcends the framework of legal standards, leading us to an activity based on the necessity of coordination between legal and economic standards. This is evident in the considerations made by legislators governing commercial activity, whether at the level of regulating multinational corporations, national entities, or even international contracts, to curb opportunistic behaviour. The term "opportunistic behaviour" is defined as the "pursuit of self-interest with cunning." (Williamson, 1985). For those companies, their behaviour sometimes occurs in an unethical or even illegal manner. Article 1 of the French Duty of Vigilance Law stipulates that: "The plan ensures reasonable vigilance measures to identify risks and prevent serious attacks on human rights, fundamental freedoms, the health and safety of individuals, as well as the environment, resulting from the activities of the company and those controlled by it within the state, whether directly or indirectly, as well as the activities of subcontractors or suppliers with whom there is a business relationship, when these activities are related to that relationship."

Finally, it is worth noting the adoption by the UAE legislator of the term "affiliate company," which refers to a company associated through a cooperation and coordination agreement with another company (article 82, 2020). And it is one of the manifestations of the

modern emergence of global supply chains, allowing for the expansion of companies' activities beyond their own supply chains without relying on traditional legal standards.

IV. Conclusion :

1. Many international developments have contributed to the creation of new situations where companies replace states in some economic functions, operating far from state control or intervention. This is particularly true as the capabilities of these institutions and companies sometimes exceed those of the states. These companies have begun to take over facilities and public services that were previously the domain of the state. Gradually, the public sector has transformed into a private sector, leading to a widening gap between the legal framework for commercial activities and the reality of these activities. This has resulted in the emergence of gray areas where multinational companies operate outside the scope and jurisdiction of both national and international laws. While some advocate for a stronger connection between law and business practices, it is evident that what is commercially viable may not always align with legal permissions. Furthermore, the legal regulation of commercial contractual relationships poses complex challenges, as the simplified formula for agreements and performances prescribed by classical law appears inadequate to deal with these complexities.
2. The challenge arising from the temporary gap between legal developments and practical realities in international trade, due to the disruption and ambiguity surrounding legal obligations in the face of corporate activities - supply chains - should not diminish the value of regulating such activities in a way that enhances opportunities for benefitting from them. Rather than focusing solely on the negatives, particularly given that the legal approach to regulating international relations, especially in commercial aspects, suggests that we are moving towards what is known as voluntary instruments in legal obligations, whether between companies, between companies and host countries, or between companies and the countries of origin for foreign investment.

Proposals :

Our study of the subject matter was a response to the realistic need regarding corporate activity worldwide and the changing facets within the business environment. The aim was to highlight the idea of considering companies as a single entity and dealing with them as such, disregarding the legal independence of each company within the group that gives rise to global supply chains. This is because they engage in a unified profit activity, overseen by the same individuals managing the supply chains within them. Additionally, subsidiaries are owned by the parent company, ignoring the relationship between the parent company in one country and the subsidiaries in another. Insisting on the legal independence of each of them ultimately leads to circumventing justice and non-application of the law. This can be overcome by outlining avenues for enhancing corporate social responsibility through local and international legal obligations, to overcome the obstacles arising from contractual nature within global supply chains and the concealment of actors in multinational corporations as legal entities. In addition, there's a lack of adequacy in local legal systems and analytical foundations of international law, which focus on the state, without explicit recognition of the legal duties and obligations of actors like companies alongside shortcomings in managing global supply chains, contractual rights, and compensation. These rights are only available to contract parties and do not extend to third parties, such as companies directed to those companies.

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