Panel 40: **Living-in-between laws: towards a transnational model of ius migrandi. Human mobility, international vulnerabilities and the black holes of global and regional responses to migrations**

Saturday 19, 9-11.15, Aula F

Convenors: **Adriana Di Stefano** (University of Catania), **Antonio Las Casas** (University of Catania)

Discussant: **Giovanna Sciuto (**University of Catania)

The Panel aims at exploring the limits and pitfalls of fragmented legal and social responses to mass population movements as raised at global and regional levels by the most recent migration emergencies in the Arab Region and in the Mediterranean countries. Panelists will generally investigate, from theoretical and empirical multidisciplinary perspectives, the (condition of) "in-betweenness" of people on the move (forced migrants, asylum seekers, displaced persons) crossing territories, meshing societies, living in a legal limbo in the context of a muddled regional order. The exceptional stream of migrants moving from Syria across the Arab Region towards the Mediterranean frontiers calls for a re-thinking of the basic categories underlying the sociological and legal analysis of migrations. The experiences and categories of border camps, confinement and displacement will be dealt with as case studies to ultimately discuss the black holes of international, supranational and domestic legal regimes relating to migrant people living in-between laws. Focusing on "transnational law" as a methodology to be tested through the lens of social science approaches (sociological as well as legal analysis) the discussion intends to unveil the need for collaborative spaces within which one could devise new forms of legalities around the "us" and those vulnerable "others" unduly protected, marginalised, criminalised, victimised, and too many times even "undesirable" but yet "un-returnable" by host countries.

Paper givers:

1) **Usha Natarajan** (The American University in Cairo), ***Forced Displacements from Syria or How to Institutionalize Regimes of Suffering***

   Global and regional responses to the Syrian exodus evidence various shortcomings in the international law on forced displacement. When large populations are forced across international borders, how does international law help mitigate the resultant suffering, public order, development, security, health, sanitation, environmental and other issues? There is a legal vacuum on how to cooperate internationally. Despite mass displacement posing long-standing global and regional challenges, states have maintained this lacuna in international law and thus such displacement has been managed in ad hoc and unjust ways. Burdens are not fairly shared and people are not treated equally. Disciplinary incoherence with regard to population movement is manifest in the problematic legal distinction between refugees and other forcibly displaced peoples. Even more troubling is the disciplinary distinction between forced and voluntary migration, raising questions about the types of suffering international lawyers prioritize and those we obfuscate, normalize and tolerate. Why is the freedom from

fear thus privileged over the freedom from want? Is such a bias preventing us from seeing durable solutions to large scale population movement? Are international laws on population movement systemically enabling certain types of persecution while rendering the resultant suffering invisible?

2) **Alessandra Sciurba** (University of Bergamo), ***Confining Asylum: New European Practices of Migrants' Selection***

   This paper takes into account the actual devices for governing migrant multiplicities put into place by the European governments in order to cope with the so-called refugee crisis. Starting from a theoretical analysis of the 'confinement' as a device which has been historically used in order to separate and select specific groups with peculiar juridical and social status, particular attention will be devoted to the 'Hot Spot System' as it has been implemented in Sicily since Autumn 2015. This system has the declared function of dividing migrants considered as refugees deserving protection, from migrants regarded as a danger or a burden to be expelled. This kind of separation, based on variable criteria, going from the skin color to the nationality, or to the ethnic and religious affiliation, is redefining a sort of 'color line' utilized for improving different forms of migrants' containment with different levels of access to rights and liberties. These processes are not new, but they are assuming an inedited form to be connected to a peculiar instrumental distinction between forced and economic migrations, with the double effect of radically weakening the right to (seek and enjoy) asylum, by increasing the 'clandestinization' of the majority of migrants.

3) **Maria M. Pappalardo** (University of Catania), ***European Human Rights Approaches to Migrations: Current Trends and Dilemmas***

   Especially as far as migration and refugee law is concerned, the South-Eastern frontiers of Europe are experiencing a huge impact of human mobility vis-à-vis the (im)mobility of human rights and obligations of people moving and living across multiple legal spaces; moreover, EU member State and supranational agencies are proving unprepared to cope with the necessity of enhancing and improving a "rights-based mobility" associated with the basic needs of people on the move and with their integration in host countries and societies. Contrasting the nihilism affecting our legal imagination in having to do with the governance of Mediterranean exceptionalism, this paper will critically discuss the mainstream views of international human rights law and refugee law and their black holes in providing adequate normative frameworks to protect migrants as individuals worthy of human rights. The case study is the most recent practice of the European Court of Human Rights concerning immigration detention, confinement, deportation, expulsion or removal of aliens related to migration policies within the partially overlapping and multifaceted systems of the Council of Europe and the EU legal order.

4) **Adriana Di Stefano** (University of Catania), ***Human Mobility, International Vulnerabilities and Human Rights Law: Mapping Intersectionality Approaches on Gender and Child Migration across Europe and Beyond***

This presentation focuses on the legal narratives of children and the gender dimensions of transnational migration, as an emergent area of scholarship. It aims at defining a human rights-based approach to address the main questions surrounding the gendered ramifications of child migrations, as a normative framework for pursuing a gender-sensitive perspective on migrant children in international law. Starting with an illustration of the bare consideration of the migrant child as such in mainstream migration law research, it proposes a reconceptualization of the general understanding of Law and the Female Child Migrant discourse as part of the feminist perspectives on international law and human rights, reviewing the debate on this phenomenon and its gradual shifts from a focus on female children to a gender based one. By analysing and contextualising these overlooked issues within the European scenario, it shows how the international legal regulation essentially fails to address the gendered dimensions and discriminatory effects of child migration processes, even with respect to migration issues that have a predominantly female face. Situating the Child within legal migration research, the paper finally advocates the analysis of gender dimensions of children migratory processes within a broader framework of "empowerment" and social change. The case study is a critical review of the current developments related to "harmful practices" affecting women and children as human rights violations and "intersectional"/multiple discriminations against child migrants living in between laws and social norms.

5 Manuel Goehrs (Ecole de Gouvernance et d'Economie de Rabat, Morocco), A***ssessing a decentralised management of migration flows***

Although local and regional authorities (LRA) are key actors in dealing with migration flows, they are hardly included in decision-making processes on European migration policies. In a recent opinion, the EU Committee of the Regions (CoR) proposed to decentralise the management of migration flows. The Euro-Mediterranean Regional and Local Assembly (ARLEM) made a similar proposition in the form of establishing "migration and integration partnerships" between origin, transit and hosting local and regional authorities. A decentralised policy agenda would consist of a web of cooperation groupings, enabling LRA actors to define common strategies in their fields of competence (employment, language and cultural training, housing, etc). This approach would counterbalance the security-oriented migration policy defined by the intergovernmental bodies of the EU. The question arises what instruments would make this approach possible? The European Grouping for Territorial Cooperation (EGTC) may be a suitable legal tool to create migration and integration partnerships. EGTCs in Europe have radically transformed relationships between LRAs and central governments in dealing with cross-border issues. Moreover, the revision of the regulation establishing the EGTC (2013) explicitly foresees partnerships between Member States, regional and local authorities from the EU and third countries. Nevertheless, in a recent meeting between ARLEM and Libyan municipalities, a deputy director of the 1 CoR invited Libyan mayors to subscribe to this multilevel approach, without referring to EGTCs. In light of this silence, this paper explores the added value and limits of EGTCs in dealing with migration matters.