



IFITIS RESEARCH PROJECT

TEMPORARY STATE OF THE RESEARCH

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Border Crossing Phenomenon and the Law

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- **INTRODUCTION**

The phenomenon as law



The law as phenomenon



Which phenomenon?

A former research on “**Operating Law in a global context**” with a focus on the phenomenon of “**constraint of circulation**”.





The selected phenomenon:

“Full movement beyond control”

- Movement of goods and persons between territories caused by humans
- Full : engagement of all the actors
- Beyond control : uncontrollable



The IFITIS research project :

Full movement beyond control and the law



Theoretical perspective (1/2):

- A **phenomenological** approach
- An **immanent** (not transcendent with a new concept) approach
- A material and social **fact not really antecedent** to the law (S. Romano)
- An “**a priori**” **theory** of the law (A. Reinach, student of E. Husserl)



Theoretical perspective (2/2):

- A **pragmatically jurisprudence** (School of Brussels – Perelman Center)
- A **praxeological approach** (theory of practices)



AIM OF THE RESEARCH

Bring into the law a phenomenon

The phenomenon is:

- **rare:** uncontrollable and full movement
- **complex:** factual and social dimensions
- **silency:** different stakeholders have their own reasons to avoid the topic of total, uncontrolled flows



TOPICAL NATURE OF THE SUBJECT

Modern expressions of an ancient process of circulation:

- Full and uncontrollable movement of **persons**
- Full and uncontrollable movement of **datas**
- Full and uncontrollable movement of **capitals**
- Full and uncontrollable movement of **waste**



STATE OF THE LAW

Various areas of law and large number of legal techniques (transport law, international trade law, EU law, etc.)

But no or very few legal designs on “movement” in itself (and a fortiori : on “full movement beyond control”)



THE THREE - PHASE METHOD

Phase 1 : Multidisciplinary approach

- Descriptions of the phenomenon
- Sample of concrete situations
- Social sciences and exact sciences

Phase 2 : Adoption by the law

- A legal category
- A legal regime

Phase 3 : Re-assessment of legal policies

- Quantitative approach
- Pattern of network of movement
- Impact of the law on the society



KEY LEGAL ASPECTS

Reactivate all the legal resources in order to understand these new flows as an **invisible risk** (and very visible crises).

Deal with the phenomena of mass circulation (mass of migrants, metadata, pools of capital, bulk waste), as a distinct entity, separate from individual flows

How flows change the legal status and jurisdiction of an object in movement.



GEOGRAPHICAL AREAS OF THE RESEARCH

Comparison of :

- European Union

With

- “Continental” countries as... Brazil /Canada /US



OTHER GEOGRAPHICAL AREAS

Extension of the research to:

- Island country (like Japan)
- Smallest but “intensive” (politically and economically speaking) country (like Israel)



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