

Going against the stream: Rights of Nature and the river Meuse

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Canoeing on the Whanganui River in the wilderness of New Zealand is an unforgettable experience. The sheer amount of natural beauty and vast level of biodiversity is truly something to behold. However, this river is not only unique in its natural beauty but also because of its legal standing; it is one of the few natural phenomena in the world which have obtained legal personhood rights, ensuring it to flourish for generations to come (Hutchison, 2014).

This phenomenon is referred to as Rights of Nature (RoN) (Eisma-Osorio et al., 2020). This principle asserts that natural entities should not be regarded as mere property under the law (Darpo, 2021). It recognises that natural entities and communities have the inherent right to exist and thrive. By attributing rights to the Whanganui River, people are given the opportunity to protect, defend, and sue on the river's behalf. Within the RoN context, rivers specifically have been discussed more extensively. A small number of rivers have been granted these rights in countries such as New Zealand, Canada, and Ecuador (Milam, 2002). Whilst these cases are deemed success stories by the RoN movement,



Image: Whanganui River, New Zealand (own photo)

a significant (positive) impact of these changes in legislation on the preservation of nature has not yet materialised (Darpo, 2021). This could be explained by the novelty of the changes or other factors such as incompatibility with existing laws and regulations.

Notwithstanding, Europe is lacking in these examples. This begs the question of why there are no major developments yet and how this phenomenon could develop within the unique context of the EU. To explore this, we will take a closer look at the river Meuse located in our hometown Maastricht. This river rises in France, makes its way through Belgium, and meets the

North Sea in the Netherlands. Spanning multiple countries, establishing rights for this river would require international recognition, something which is unprecedented.

This river currently falls under The Meuse Treaty (Ghent Agreement), also considered the child treaty of the Agreement on the Protection of the Meuse, and was established in 2002. This treaty is signed by Germany, Belgium (The Kingdom, Wallonia, Flanders, and Brussels), France, Luxembourg, and the Netherlands, as the river and its basin concern all these countries. It strives to take care of the Meuse and improve the quality of the water and the aquatic ecosystems of the Meuse basin area. Furthermore, it states to do justice to the valuable character of the Meuse's waters, shores, basin, and coastal waters (Meuse Treaty, 2002).

An intricate part of this treaty was the establishment of the International Meuse Commission (IMC) (Meuse Treaty, 2002). This commission has various responsibilities as described in article 4 of the treaty, such as ensuring compliance with the treaty, coordinating obligations of the European Water Framework Directive (EWFD) and advising parties on preventing accidental pollution (Meuse Treaty, 2002). The MC has an action

programme which meets once a year (Meuse Treaty, 2002). It is made of five permanent working groups and the recommendations made by the commission need to be accepted unanimously. Next to state actors, the IMC recognises various NGOs which act as observers and participate in meetings (Meuse Treaty, 2002).

The treaty addresses the three pillars of sustainability and the importance of the ecological, economic, and social functions of the Meuse. Furthermore, in Article 3 the principles based on European Environmental Law are outlined; principles of precaution, prevention, and rectifying pollution at the source (Meuse Treaty, 2002). Moreover, the 'polluters pays' principle is highlighted. Nevertheless, since the establishment of this treaty, the transboundary pollution problem has not been solved as the Meuse remains a highly polluted river (Schoofs, 2021). There is a major question of liability and different actors (public and private) tend to point fingers at one another instead of tackling the problem head-on (Dunne, 1999). The language used by parties and written in the treaty display an approach towards the Meuse as property that needs to be used carefully for humans to benefit. It is clearly lacking the perspective that the river itself has the inherent right to thrive.

After reflecting on what is currently in place to protect the Meuse, we can engage in a thought experiment on how the inherent rights of the Meuse could be recognised by taking the Meuse Treaty as a starting point. The treaty could be amended by adding rights for the river. The amendment procedure would be complicated and for it to be effective all parties would have to agree. Subsequently, these parties would then have to align their national legislation with the amendments made to the treaty (Peeters & Schomerus, 2016). Furthermore, as previously mentioned, compliance with the EWFD is of key importance, and although there is no explicit mention of acceptance or rejection of RoN in the directive, it should be questioned whether such an amendment of the Meuse treaty would conflict with the EWFD. The directive does outline the authority of member states to form agreements to contribute to the directive's goal of achieving "the elimination of priority hazardous substances and contribute to achieving concentrations in the marine environment near background values for naturally occurring substances." (European Union, 2000, p.3).

Moreover, the role of the IMC, which already has an advisory function, could be expanded by adding an independent working group which focuses on the inherent rights of the river

(functioning as guardians). The main purpose of this working group would be to advise and empower individuals to stand up for the Meuse when they find its intrinsic rights are being violated. In Colombia, for example, the absence of resources and therefore empowerment for the guardians of the Atrato river "undermined their ability to comply with their responsibilities" (Wesche, 2021, p. 555). Selecting the guardians within an international context could even bring more challenges, as the different national interests need to be balanced. Thus, multiple prerequisites are identified for a successful implementation of RoN. It must of course be recognised that this thought experiment of rights for the river Meuse is lacking in depth and rigour.

Conclusively, this blog has demonstrated that RoN is a very complicated topic, especially applied to international law-making. Nonetheless, we hope to spark further discussion about this topic within the European context. Many issues will have to be addressed before rights for a river such as the Meuse can be implemented. Questions such as: "*What cases are severe enough to go to court? How about competing ecosystems? How about clashing interests with different notions of sustainable development?*" need to be addressed. Darpo (2021) argues that the RoN approach to the protection of natural entities

might not be as promising as it sounds, since this new school of thought will face similar challenges as the old ones. Europe already has a multitude of treaties and instruments focused on the protection of the environment and challenges are primarily related to funding and enforcement (Darpo, 2021). The author further argues that establishing RoN would not necessarily offer any profound new instruments and focus should instead be put on overcoming these obstacles of funding and enforcement of those currently in place. Nevertheless, we believe that the discourse surrounding the protection of our environment must become less anthropocentric and the inherent rights of entities such as our Meuse must be recognised.

So, what do you think? Should nature's intrinsic value be represented in the courthouse?

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