

Nature rights are a major issue for the Mediterranean



In the face of the global climate crisis, the decline of biodiversity, anthropogenic pollution, and increasingly destructive industrial projects, the recognition of a right of Nature constitutes one of the necessary levers to engage States and communities of actors, both private and public, towards ecological transition. For about fifty years, local, national, or international initiatives have gradually advanced this right.

Interview with Bernard Mossé, scientific director of the NEEDE Mediterranean association, with Victor David, lawyer and research officer at the Institute for Research and Development (IRD).

1 Rights of Nature: a brief history

The Mediterranean basin is one of the most impacted areas in the world by this ecological crisis. Its protection requires the mobilization of all involved actors and the affected populations. Drawing on his experience in New Caledonia, where he participated in the emergence of a right of Nature that respects both local customs and French law, Victor David, an environmental law lawyer, advocates for elevating the Mediterranean Sea to the status of a legal entity in order to better protect and legally defend it.

In 2022, he launched a feasibility study with the United Nations on the recognition of the Mediterranean as a legal person.

[Bernard Mossé: Victor David, can you introduce yourself and present your research?](#)

Victor David: I am a research officer at the Institute for Research and Development (IRD) and a member of the Mediterranean Institute of Biodiversity and Ecology (IMBE CNRS/AMU). I am currently a researcher in environmental law and sustainable development after having been a lawyer in research administration in a previous life. In 2010, I decided to change careers and start a doctoral thesis.

It focused on environmental law in New Caledonia where I was stationed. The aim was to determine whether the applicable and enforced environmental law in Caledonia corresponded to the Caledonians, particularly the indigenous people, since the law there is of French inspiration. What struck me was the lack of consideration for the culture and worldview of the Kanaks, and more generally of Oceanians, in environmental law.

And that's how I became aware of the emergence of this dynamic around the rights of nature.

Originating from Latin America, particularly in Ecuador, which, marked by the ecological ravages of the oil giant Texaco Chevron, was the first country to enshrine in its constitution, in 2008, the full respect for "Nature," also known as "Pacha Mama." Then it arrived in New Zealand, with the law for the rights protecting the Whanganui River, in 2017, from its source to its mouth, "all indivisible and living... incorporating its physical and metaphysical elements," in accordance with the life principles of local Maori communities.

With this new way of approaching "environmental law," to express it in French terminology, a whole series of areas are concerned. Of course, the law protecting species and living spaces, but also the law concerning pollution, nuisances, waste, or invasive species. It also includes urban planning rules related to the protection of nature. It is important to emphasize this because environmental law does not only concern Nature directly but also industrial, chemical pollution, pesticides, etc.

Human communities around the globe are part of this right to the environment, which indeed gives it an international dimension.

In France, there are a few historical texts, but it is generally agreed that it is only since about fifty years ago, that is, since the Stockholm Conference of 1972, that the idea of this right began to emerge.

In France, we have only had an environmental code since 2000! It is not very old either. It has been almost 25 years now...

It is in this context that my work is situated, which consisted of assisting one of the provinces of New Caledonia in drafting its environmental law in compliance with the law of the French Republic but within the margin of maneuver allowed by its institutional status, which permits a sharing of sovereignty and partial autonomy.

That was the challenge and its complexity...

2 Development of an environmental law in New Caledonia

The Mediterranean basin is one of the most impacted areas in the world by this ecological crisis. Its protection requires mobilization from all involved actors and the affected populations. Drawing on his experience in New Caledonia, where he participated in the emergence of a Nature law that respects both local customs and French law, Victor David, an environmental law researcher, advocates for elevating the Mediterranean Sea to the status of a legal natural entity to better protect and legally defend it.

In 2022, he launched a feasibility study with the United Nations on the recognition of the Mediterranean as a legal person.

[Bernard Mossé: In 2012, you were therefore asked to create an environmental code for the Loyalty Islands, one of the provinces of New Caledonia.](#)

Victor David: Yes. Through the Nouméa Agreement of 1998, the Caledonian Provinces obtained autonomy regarding environmental standards while having to respect the hierarchy of French norms: organic laws in particular, but also the Constitution, international treaties signed by France, etc.

We still had a certain degree of flexibility to not replicate the French environmental code word for word. That would have been pointless.

[Bernard Mossé: Can we talk about a logic of subsidiarity?](#)

Victor David: We tried to reconcile Kanak customary law and French law. The population of the Loyalty Islands Province was best positioned to produce this environmental law.

Bernard Mossé: Were there any precedents in the world for this hybridization logic?

Victor David: Very few to our knowledge. My research work has precisely been to find interesting examples from plural societies, such as Australia and New Zealand. Especially since these are Oceanian examples: how did they manage to take into account Aboriginal cultural values and Maori cultural values?

BM: Are we in the same historical span from the 1990s to 2010?

VD: Yes. But we realized that Australians had not made particular efforts, except in the area of protected areas where Aboriginal people were involved in their creation and management. For example, by appointing Aboriginal Rangers for monitoring and protection work.

In New Zealand, the environment was not the first area where Maori culture was taken into account; it came gradually. So, I would say that the first major manifestation was the rights protecting the Whanganui River in 2012.

BM: Were there any particular obstacles in French law, resistant to taking into account community identities, compared to Anglo-Saxon rights?

VD: Obviously, we had to take into account the fact that French law does not recognize any people other than the French people, and therefore the cultural values specific to an indigenous people. This was not obvious. It was essential to take these local values into account because ultimately, it is these populations that manage their immediate natural environment. And indeed, several times, when I accompanied the Loyalty Islands Province in meetings with customary authorities, they told me: "But Mr. David, we have not waited for you to protect the environment; we have been doing it for 3000 years, and the environment was doing quite well...!"

However, we should not be naive: archaeological evidence shows that animals disappeared when the very first ancestors of the Kanak arrived... It's like the dodo on Mauritius, this flightless bird that disappeared in the 17th century. So, to answer your question, I think there is no legal obstacle other than respect for the constitution. It is not forbidden to introduce symbolic rules, to involve local populations in the management of natural spaces, etc.

And so, it was a satisfaction to implement this environmental code that closely associates customary authorities.

BM: Beyond the co-management of protected areas, do you have other examples of adaptations of environmental law?

VD: I think of the management of invasive exotic species, which are considered one of the five major causes of biodiversity erosion. Environmental codes

inspired by French law most often impose the eradication of these exotic species.

Some, considered invasive by scientists, have been somewhat tamed by local populations. Among them, some animals have even become totems. Therefore, it was out of the question to impose the eradication of totemic species. We thus introduced into the environmental code of the Loyalty Islands the idea that there would be controlled management of these invasive exotic species. It is up to the authorities of the Kanak clans and tribes to ensure that there is no proliferation of this species outside their perimeter to avoid harming endemic biodiversity. This is one example of legal adaptation.

Another example could inspire many municipalities in mainland France. The Province has precisely implemented what is called the principle of subsidiarity. This means that instead of issuing all the rules in the code, it relies on local customary authorities to manage the environment with the aim of preserving biodiversity. Thus, we trust the populations that have managed their environment for 3000 years. It is a dialogue established between the Province as an administrative entity of the French Republic and the customary authorities, which can be a council of great chiefs from one or another of the Loyalty Islands. It is truly a delegation that is put in place: it is the province that will set the rules and sanctions, the referral to the prosecutor, etc. There is thus a real co-management, a true partnership, between customary authorities and the provincial community.

Once again, this can be a source of inspiration for the entirety of French law.

#3 The Oceans and Seas as Legal Entities

Bernard Mossé: Rich from this experience in New Caledonia, which you continue to support, you have initiated an action for the recognition of the Mediterranean as a legal entity. Could you outline the history of this process that you have undertaken?

Victor David: In 2016, the Loyalty Islands province of New Caledonia adopted what is called the “unitary principle of life,” which states that man and nature are one. Based on this principle, the Province commits to recognizing elements of nature as legal persons endowed with their own rights. Thus, the principle was established in 2016 in the environmental code.

Bernard Mossé : Is this at that moment the notion of “legal person”?

Victor David: It is indeed the term already used for rivers and other elements of Nature recognized as subjects of law in different countries. We then realize that to implement this unitary principle of life, it must be transformed into concrete legal texts, that is to say, deciding which species or elements of nature will be able to benefit from the application of this unitary principle of life; how to organize it since, in French law, we do not have an example.

In 2017, the first United Nations Conference on Oceans took place, and as a research institute, we were approached by the government of New Caledonia, which itself was approached by the French government, to make proposals to the United Nations: what are called “voluntary commitments.”

And so, I, who work on the legal personality of elements of nature in the Kanak environment, proposed to work on the idea of the Pacific Ocean as a legal person, as a natural legal entity...

Bernard Mossé: What is this proposal based on?

Victor David: This intellectual approach comes from two elements.

On the one hand, it is the observation of an ocean and marine life deteriorating due to climate change, plastic pollution, overfishing, and industrial fishing that exploits certain marine species to extinction, not to mention the projects for the exploitation of underwater mineral resources.

On the other hand, there was the fact that I was in Oceania. Most Oceanians have a particular relationship with the sea; it is not just a maritime space: the Ocean is a god. In Polynesian and Melanesian mythologies, there is this anthropomorphic idea of the personification of the ocean.

And so considering the ocean as a legal person does not pose a problem intellectually since it is already a person in the minds of Oceanians, a divine person, in an animistic conception of Nature. In the past, the Ocean was considered a deity, and that was enough to protect it: there were customary rules based on this respect. However, this has been lost over time, with colonization, Christianization...

In a way, the ocean has become an object: generally, we have witnessed an objectification of nature. Recognizing the ocean as a holder of rights in our current legal orders would allow us to continue to protect it.

This is what I proposed as a voluntary commitment to the United Nations. To study the obstacles as a researcher, as a lawyer. To see what it yields...

BM: How did you go about giving weight to this proposal?

VD: I involved colleagues from Fiji, New Zealand, and Australia: we started to have exchanges. These were very solemn videoconferences and very

complicated to organize. My first task was to ask: is there anything in international maritime law today that opposes an ocean being a legal person?

We are not going to overturn the world order, so we cannot modify, for example, the Montego Bay Convention of 1982... We need to find a way within the margins of maneuver available to us. I then realized that indeed nothing in international maritime law opposed it.

The Nouméa Convention, one of the regional conventions on the seas, concerning the Pacific Ocean, even states that States must strive to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development, and management of the marine and coastal environment of the convention area...

Pacific coastal States therefore had this possibility of entering into an agreement that recognizes the Ocean as a legal person.

BM: Wasn't there a difficulty related to territorial waters, to the areas over which States are sovereign?

VD : In fact, the Pacific Ocean, unlike the Mediterranean, is immense, and international law rules allow each State to have an exclusive economic zone of 200 nautical miles, that is to say, about 370 kilometers from the baseline, including territorial waters. This is a totally legal definition, but in fact, it is part of what is called a legal degradation of State sovereignty.

The territorial waters are strictly under the authority of the coastal State just like the land, you can prohibit anything you want there. Except for the free movement of ships.

The economic zone allows the exclusive use of everything found there as resources, oil, gas, minerals, rare earths, or fish. If someone else wants to use it, they need the agreement of the coastal State.

Beyond that, there are international waters, and it is the international community that manages them.

So I had launched the idea: if this is the will of the coastal States, they can register maritime spaces, each within its jurisdiction, as subjects of law.

BM: As a subject of law, or, even at that time, had you advanced the novel notion of *natural legal entity*?

VD: No, not yet at that time. In 2017, I was not yet using the term natural legal entity; I arrived at it later on. On the one hand, in France in particular, there was a great deal of skepticism among the legal community about this idea of legal personality for nature, and even a number of very strong oppositions, either unconvinced or simply pessimistic. Sometimes for philosophical reasons.

BM: Are you referring to the dialogue between Michel Serres and Bruno Latour on this point?

VD: There is indeed the idea that granting rights to nature would be anti-humanist. With the consequence of a rivalry between Nature and Humans. Others think that this can be understood in indigenous contexts, but that it cannot be the case in Europe, in the Western legal system...

This debate was directly related to the ongoing work in the Loyalty Islands province. Was I not on the wrong track? Because it is a researcher's work, a scientist, I do not want to act simply out of conviction. I am not an activist or a campaigner. My role was simply to advise the province to ensure the legal security of its environmental law.

Another event also led me to consider opting for a solution other than legal personality, which implies rights, duties, and responsibilities for those who benefit from it: this is the example of India in 2017. The High Court of one of the federal states, Uttarakhand, recognized the Ganges as a legal person. And in the mechanism of recognition of the rights of nature, alongside the enumeration of rights recognized to it, the designation of human representatives of this element before the courts and the Court was provided.

BM: This is one of Bruno Latour's objections: a right of nature requires rights and duties. But also representatives.

VD: Exactly. Of all the questions regarding the rights of nature, this is a fundamental one: we need to know who represents it. I have come to the idea today that we must be extremely flexible on this idea because there is indeed no single rule. There are several scenarios. In Ecuador, it is a popular initiative. Any Ecuadorian citizen can go to protect and assert the rights of nature before a court.

In New Zealand, there are two spokespersons, guardians of the river: one designated by the State, the other by the Maoris, with some sort of board of directors to support: there are two faces, two human faces, as it is said. We see that in Bolivia, Ecuador, Colombia, etc., all over the world, there are different paths.

In mainland France, there has been talk of the Loire Parliament, the Rhône Assembly. On rivers that span several hundred kilometers, it is extremely complicated to know who is legitimate to speak on their behalf...

The Indian court had therefore appointed high-ranking officials of the federal state *ex-officio* for the Ganges. However, those in office at that time, fearing being held responsible for any damage caused by the Ganges, approached the Supreme Court of India, which suspended the decision of the federal court. In

short, the attributes of a legal person do not necessarily suit all elements of Nature.

Obviously, this is an even more crucial question for the rights of the Mediterranean.

This is why I advocate for the creation of a new category of subjects of rights, natural legal entities, with a legal regime to imagine and create.

#4 Towards Legal Protection of the Mediterranean Sea

Bernard Mossé : How did you come to propose the Mediterranean as a legal natural entity ?

Victor David : My journey started from my work in New Caledonia, in the Oceanian context, and from the evolution of rights for Nature worldwide. If we think about this right for rivers and lakes or terrestrial and marine animals, why not for maritime spaces that ultimately have the same protection needs while we continue to consider them as resources? We talk about green economy, blue economy, without really giving importance to the entity itself. So, why not the Mediterranean ? I already had this in mind when in 2022, at the second United Nations Conference on the Oceans, I reported on my work on the Pacific Ocean : what I was able to do and what I was unable to do with the resources at my disposal.

For the Pacific Ocean, it was indeed very complicated. Working with all the coastal countries is extremely complex since there are territories and huge geopolitical stakes : the Indo-Pacific zone, Chinese ambitions, the presence of the West and France... Current governments operate in terms of economy, exploitation, selling fishing licenses to the Chinese... Some dream of becoming the Emirates of the Pacific thanks to the resources of the seabed. Pacific Island States, considered "Small" (the *Small Island Developing States*) due to their small land area, now rightly consider themselves to be large oceanic states because they possess exclusive maritime zones, sometimes thousands of kilometers long. For example, Tuvalu : these are tiny islands with extremely important maritime spaces.

A number of lessons have been learned nonetheless. Based on this, I launched the idea of a voluntary commitment at the United Nations Conference on the Oceans (UNOC) to work on the Mediterranean as a *legal natural entity*.

We indeed needed to find a notion that allows these elements of nature to no longer be *objects* of law, without however granting them the status of *persons*. Thus, we need to define a new, intermediate category, more malleable and adapted to each entity. We can include only rights, or rights and duties...

And so we have great flexibility with this notion of legal natural entity. Why not try to apply it to the Mediterranean Sea ?

Bernard Mossé : What are the specific difficulties for the Mediterranean ?

VD : The main challenge is that we have 21 very heterogeneous legal regimes regarding its protection and that the Mediterranean Sea is degrading rapidly. Scientific studies are quite unanimous, both due to anthropogenic activities and climate change, which also has anthropogenic origins.

BM : What is your strategy in the face of this urgency and legal complexity ?

VD : I start from the idea that we must first create the notion of legal natural entity. A coastal state, for example France, must decide for its territorial waters that the Mediterranean Sea becomes such an entity, in the sense of French law. And that this state conveys the idea to others...

BM : This is the strategy of the oil spot.

VD : Exactly. Obviously, it's better if two states commit to it... and three is even better, and so on...

BM : So, where are you now?

VD : I am at the very beginning of the journey... I am trying to convince first the French lawyers. Even though I have associated Italian and Spanish researchers with this working group. Spain is interesting because it is ahead : the Spanish Parliament recognized a lagoon, the *Mar Menor*, as a legal person two years ago now. We are not in a context of indigenous peoples, as in Oceania or South America; we are in a country of the European Union, with a tradition of Roman law.

This lagoon is located in the Murcia region and was in very poor condition. It was actually a dead lagoon: one day, they found thousands and thousands of dead fish on the shores. That's when the population reacted.

BM : A disaster caused by industrial pollution ?

VD : From agricultural water pollution discharged into the lagoon and from uncontrolled urbanization. It is actually a lagoon where water no longer circulated.

There is a large sandbank surrounding the lagoon. Real estate developers found nothing better than to concrete on both sides, with the administration's

permits... The lagoon became a cesspool, all waste was dumped there: sewage systems, pesticide runoff, everything. And there, there was a citizen reaction and a whole procedure was launched because Spanish law allows it through *popular legislative initiative*. If you gather 500,000 signatures, the Madrid Parliament is obliged to examine the proposed law (in France, it takes 4 million). The movement was led by a professor of legal philosophy, precisely, with I believe 640,000 signatures that eventually reached Madrid. The Spanish Parliament voted a law recognizing the *Mar Menor* as a legal person.

This shows that it is indeed feasible in a country of the European Union. So if we gather a certain number of states on this issue, we can gradually achieve legal protection for the Mediterranean.

I also had official contacts on the South shore, notably with Tunisia, and its Minister of the Environment, originally a law professor. But with the elections, the president decided to change the government. She resumed her position. But she is now convinced and remains active.

BM : [Have you managed to advance the idea in France ?](#)

VD : As I already said, what happened in New Caledonia showed that it was possible to incorporate the notion of natural entity into French law, provided that the sharing of competencies between local authorities is respected. It is a matter of raising awareness that a regime change is needed and it is applicable to the Mediterranean : we cannot consider it as a legal person but as a natural entity, it can have rights and cease to be a maritime space belonging to 21 states. The specificity of a legal natural entity is precisely that it belongs to no one, escaping private or public ownership. Therefore, subsequently, it obviously has the right to exist, to have its reproductive cycles, etc.

Whenever I have the opportunity, I bring this debate to the table, as I did in a conference in Lorient on December 5th.

Entry through local authorities is also important. I have contacts with the City of Marseille and the Sud Region, which seem interested. Work in progress... !

#5 The Mediterranean: a common good or a legal personality?

Bernard Mossé: I would like to conclude with more general considerations. What are the implications of the notion of legal natural entity on our vision of nature?

It is understood that for indigenous peoples, it is linked to a divinized

conception of Nature. For European countries, it would allow, if I understand you correctly, to exempt elements of nature from property rights. But isn't the notion of common good already sufficient?

Victor David: There is a difficulty in the notion of common good. I would say that I have remained with a somewhat negative view of the commons, in the sense of the "tragedy of the commons," of overexploitation of common resources. It is not enough to say that Nature is a common good of humanity for it to be protected.

The example I have had before my eyes, so to speak, is the Great Barrier Reef, to the west of New Caledonia, Australia. It has been part of the UNESCO World Heritage since about forty years ago. It is endangered both by climate change, of course, but also by the industrial, mining, and agricultural activities that the State of Queensland is developing excessively.

All the pollution ends up in the sea, like part of the coal that is loaded in the main ports; or like the fertilizers from banana plantations that end up in the sea... And all this ends up killing the Great Barrier Reef, which is, after all, an Australian pride admired by the whole world. But who really defends it? No one, in fact, except UNESCO, which threatens to withdraw its World Heritage label...

BM: So we need to imagine other solutions?

VD: Yes, create the sui generis status of legal natural entity and, in our case, benefit the Mediterranean. It is not about reinventing the wheel or unnecessarily complicating the protection of the Mediterranean by creating, for example, new bodies for this purpose. There are already bodies today that do not have this vocation a priori but could take it on. For example, there would be legitimacy for the UfM (Union for the Mediterranean) to be the spokesperson for the Mediterranean recognized as a legal natural entity. It has the capacity and legitimacy to speak with both Cyprus or Lebanon as well as Turkey or, of course, France.

So I think there is no need to create a solution ex nihilo. We need to start from the existing to evolve it and have the countries take on this new approach to the Mediterranean.

BM: Isn't the difficulty in moving from national collective goods to an international common good?

VD: It is clear that we are confronted with state sovereignty. Today, each state can do what it wants in its maritime space. So go tell them that they must respect the Mediterranean because it has rights: it is certain that states will think twice about it! But perhaps at the second reflection, some will start to say: OK, I consider the Mediterranean as a legal entity and it is better for everyone...!

BM: And thus grant rights specific to the Mediterranean?

VD: On this question, I draw attention to the fact that there is no competition between the rights of Nature and environmental law.

The rights of Nature are akin to human rights: just as humans have a right to work, a right to health, to education, to life, to dignity, etc....

Environmental law is a whole, a set of public policies, legal rules for public and private actors, etc.

The rights of Nature have no intention of replacing environmental law. The specific rights recognized for the Mediterranean will simply reinforce the protection recognized for the sea by existing texts,

BM: In this regard, I return to a phrase you pronounced regarding New Caledonia: Man and Nature are one.

Is there not a contradiction between this statement and the creation of legal natural entities or even with environmental law? Certainly, Man is part of nature, and one can say in this sense that he is one with it. But is it not in the name of the natural imbalances and the disruptions of the Earth that he causes that he must assume a prominent responsibility towards it, even to the point of creating a specific law?

VD: I think this contradiction is surmountable. When we look at humanity itself, we see that not all humans have always been equal among themselves. I think of women, of slaves. And even today, what do I have in common with Elon Musk: he has a power over the planet that I do not have. But he has as much responsibility as I do towards the Earth, as you say. That man has an increasing responsibility is not incompatible with the fact that the Earth has rights to better defend itself. That is why I wanted to ultimately move out of the debate on the rights of Nature, perhaps even move out of philosophical debates, to really place myself in the legal arena.

BM: I have taken up, after many others, the comparison between genocide and ecocide in an online article. Does this seem to you to go in the right direction?

VD: We have already discussed the question of ecocide together. For me, we cannot "kill" an entity that does not exist legally. In this sense, national and international NGOs that fight for ecocide are putting the cart before the horse. First, let us recognize that Nature and some of its elements are beings, legal entities, and at that moment, we can say that harming them, even irreparably, can constitute an ecocide. I would like to clarify here that in my view, there is no need to give the term ecocide the emotional and historical weight that accompanies the term genocide. Ecocide should simply be the name given to certain serious harms considered as crimes against elements of Nature. Just as we talk about fratricide or homicide. So the main idea for me is the prior recognition of a new status for certain elements of Nature before talking about ecocide. We can very well imagine in the legal process that, indeed, there are

humans designated to speak on behalf of and in the interest of the entity, and not as a state.

BM: Why couldn't the state represent a natural entity?

VD: The problem with the state is that it is both judge and party. It is simultaneously saying that it needs to develop the economy, create jobs, etc. And on the other hand, it should prevent trees from being cut down. Whereas, to bring the contradiction, there needs to be a person who can say: "I am the forest, here are my interests!" This allows for a rebalancing of the trial. Today, on one side, Nature remains an object. On the other, the rights of Nature are nothing more than sophisticated philosophical concepts about life, our worldview, etc. They need to have real legal significance.

Considering the Mediterranean, its species, and its environments as a legal entity in a trial where they would be able to defend themselves, at a concrete, down-to-earth level, would have significant consequences for better protection of Nature. And ultimately in the interest of all.

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