

Protection of the underwater cultural heritage - more urgent than ever!

Panel discussion on the occasion of the conference "In Poseidon's Realm XXVIII" on the topic
"Protection of the underwater cultural heritage - a challenge"
March 24, 2023 at the European Hanse Museum Lübeck

Peter Winterstein



Fig.: Panel discussion IPR XXVIII (Photo/DEGUWA)

Abstract - The panel discussion was subsequently included in the conference program of IPR XXVIII at the suggestion of the Archäologisches Landesamt Schleswig-Holstein (ALSH). For this recommendation I would like to thank the ALSH, for the logistic organization the European Hanse Museum as well as the experts and the participants from the auditorium. This summary does not follow chronologically the sequence of questions and answers. Contributions made in various places during the course of the discussion on each topic have been excerpted and merged. The contributions are presented here as statements rather than in indirect speech and were submitted to the experts for critical review prior to publication. The experts' statements listed after the summary were submitted to the author at the end of the discussion.

Moderation:

Christian Lübcke

Regional Director of the German War Graves Commission (Volksbund Deutsche Kriegsgräberfürsorge e.V.), Regional Office Hamburg

Peter Winterstein

Director DEGUWA

Expert guests:

Jens Auer

State Office for Culture and Monument Preservation Mecklenburg/Vorpommern (LaKD) and Commission for Underwater Archaeology in the Association of State Archaeologists of the Federal Republic of Germany

Mike Belasus

Leopoldina - National Academy of Sciences - Working Group "Archaeological Cultural Heritage

Thomas Dehling

Federal Maritime and Hydrographic Agency (BSH), Head of Department Nautical Hydrography, Wreck Search, Approval Procedures for Wind Turbines in the EEZ

Friederike Hansell

Federal Foreign Office of the Federal Republic of Germany (AA), Department 306-9, Cultural Policy/Coordination Office for UNESCO World Heritage Sites

Matthias Maluck

Schleswig-Holstein State Archaeological Office (ALSH), Department 3 Regional Planning/ Urban Land Use Planning/ International Projects

You can only protect what you know - what is the threat?

Monuments on land and in coastal waters are legally protected in the Germany by the monument protection laws of the federal states. This legal basis is missing in the Exclusive Economic Zone (EEZ) in the North Sea and Baltic Sea, which adjoins the coastal waters.

Archaeological cultural property is mostly invisible in pristine condition and lies hidden in the ground or underwater. As on land, underwater cultural heritage (UWCH) or underwater monuments are threatened by natural processes (erosion), changes in environmental conditions, human intervention on (construction, fishing) and in the ground for the extraction of energy and raw materials, and looting. These processes and interventions can damage or destroy the UWCH. When monuments become known, the responsible authorities record them in databases, document them, take protective measures and, in the worst case, recover them by rescue excavations. Documentation is carried out using modern methods such as 3D scanning and imaging, which are not only excellent tools for processing and classifying known sites, but also form the basis for assessing necessary and possible protective measures. At the same time, the exchange of data between the state archaeological offices and the Federal Maritime and Hydrographic Agency (wreck file), as well as the use of its technology and personnel, contributes to the faster examination of necessary protective measures.

In the case of underwater construction work in the coastal zone (12-mile zone), the affected areas are pre-surveyed by the state offices for possible monuments and archaeologically evaluated. Unknown objects are evaluated and, if they are classified as ground monuments, they are added to the database and placed under protection. An attempt is made not to carry out the construction work at this site in order to protect the monument in situ. If this is not possible, the monument is excavated and preserved in another location. **There is no legal basis for this in the EEZ.**

Another challenge is protection measures for the numerous naval war graves and sea graves of civilian victims (refugee ships) of the First and Second World War (disturbance of the resting of the dead), because they are exposed to the same threats as the UWCH. The Volksbund Deutsche Kriegsgräberfürsorge e.V. cannot provide the necessary protection because it has neither personnel

nor technical resources to do so. Germany's accession to the UNESCO Convention for the Protection of the Underwater Cultural Heritage would significantly improve the situation, as would the rapid accession of as many other countries as possible. This event should result in an appeal to the German Bundestag to join the convention quickly now.

The use of the seas has increased in many areas for decades. The BSH is responsible for spatial planning in the EEZ. A collision between the different interests of utilization (economy) and protection needs (nature conservation and monument protection) of the space in the EEZ arises from their multiple overlapping. In this context, land use should be kept as **balanced as possible**. Accordingly, it is a challenge for the BSH to decide in which regions and areas which interests should be given priority. The expansion targets for wind energy have been raised so high by the federal government that there is little time left to achieve them. The BSH is attempting to handle this as well and as compatibly as possible, as well as taking all interests into account. So far, the approval procedure for wind turbines with the environmental impact assessment offered the possibility to check the negative effects on the environment and to avoid damages (avoidance principle). The environmental assessments also offer archaeologists the chance to include the UWCH and to check if the project has negative impacts on the UWCH and how to avoid them. In parts of the North Sea, the accelerated approval procedure (§72a) means that there are no longer environmental assessments in areas designated for wind energy use. This means that there is no protection for archaeology there at all, because the environmental assessments no longer determine whether ground monuments are located there. **Thus, the accelerated approval procedures are a concrete threat to the UWCH.**

The Leopoldina has urged in its comprehensive discussion paper on underwater cultural heritage that there must be more effective protection measures for the UWCH in the EEZ. It is also emphasized that theoretically and practically trained, scientific specialists are required to achieve comprehensive protection of the UWCH.

In Germany, the possibilities for this are very limited. Only sporadic individual courses are offered. There is no master's degree program in underwater archaeology, and university institutes are generally not oriented toward practice. However, such practically trained forces would be necessary and in demand for the upcoming tasks in the field of UWCH. New professorships and thus a potential must be created in order to be able to fulfill the requirements that would result from a ratification of the UNESCO convention. Land archaeology is already facing the problem of a shortage of specialists, since the monument conservation component is missing from university education, but university graduates in archaeological subjects mainly find employment with excavation companies and in monument conservation.

One speaker from the audience emphasized from the point of view of the universities that it is the task of the universities to educate theoretically, practical knowledge is acquired through practice during the semester break on excavations. It is not the task of universities to train excavation technicians or "underwater excavation technicians". In addition, the archaeological subjects are particularly under pressure to save money and to cut jobs. The prospects of establishing new focal points are very slim. A new professorship in underwater archaeology needs to be created through external funding, and the field of underwater archaeology needs to be integrated into existing research institutes such as GEOMAR that conduct general marine research. Linking different research institutes, such as those in Turkey or France, also allows for the sharing of technical potential. The demands on the state offices have increased considerably. Unlike on land, the ALSH is not active underwater in either construction preparation or research. This is also not planned. (The question from the audience, whether the ALSH "therefore makes itself the vicarious agent of the economy", is answered in the negative). Employment is project-related and therefore limited in time. Monument offices should also be research institutions, but due to the lack of personnel, research is of secondary importance and is only carried out selectively. For this purpose, the ALSH works closely with the University of Kiel, which also trains the necessary research divers. Therefore, the job prospects for students are not very tempting and the interest in this specialization is currently strongly declining (see Kiel), which will worsen the situation for the regional offices in the future. The currently favored

employment of specialists trained abroad is not a long-term solution. There are no institutes in Germany that explicitly support underwater archaeological research. Making up for the lack of personnel by bringing in volunteer archaeologically trained divers is not an alternative for environmental impact prospection in underwater construction projects. Here, geophysical methods and robotics are used to work on large areas, and artificial intelligence (AI) is employed in the evaluation of the large volume of data. The task of the hydrographic area preliminary surveys is to record the topography of the seafloor and near-surface objects (anomalies). The use of divers does not make sense here. Searching and detecting anomalies in the upper part of the seafloor with parametric sonars and magnetics is very time consuming and can only be done from ships or with remotely operated vehicles. It is also only applicable to smaller areas, e.g., preliminary surveys of pipeline routes or locations of individual wind turbines. The use of divers is also not suitable for this phase of prospecting.

On the other hand, the cooperation with voluntary archaeological monument conservators in the area of coasts and lakes is quite solidified, e.g. in Mecklenburg-Western Pomerania, in the monitoring and reporting system and contributes to the state archaeological offices' and research institutions' level of knowledge about underwater cultural heritage. This level of knowledge is very low in relation to that on land.

The UNESCO World Heritage Coordination Office at the Federal Foreign Office (AA) is examining the technical requirements necessary for ratification of the UNESCO Convention on the Protection of the UWCH. In principle, there has been no change in Germany's interest in ratification. The German government supports multilateral cooperation, as in the case of the UNESCO World Heritage Convention or the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The state of affairs in this regard is that the preconditions for ratification of the UNESCO Convention on the Protection of UWCH are currently being reexamined to see what steps need to be taken to move forward with ratification. No information is available on how long this process will take. There is a complaint from the audience that this process has been taking place since 2009, nothing is happening, and everyone is shifting responsibility from one to the other. Another speaker asked not to look back reproachfully, but to join forces now for the ratification.

The person responsible in the UNESCO World Heritage Coordination Office in the Federal Foreign Office (AA) has now picked up the thread again in her function and with her experience from the World Heritage Convention in order to advance ratification. It is a complex task, especially with the negotiations in the Federal-Länder Conference (an explanation of what this complexity consists of was unfortunately not given, author's note). The audience expressed its displeasure that this has been discussed for 14 years without any results; this is dishonest and does not add up. To the final question from the audience, what the accession to the UNESCO convention would mean for the status of the UWCH and its protection in Germany, it is answered that in European neighboring countries, which have already acceded to the convention, the political and institutional interest in the topic has increased considerably. In addition to France and Italy, Croatia is highlighted in particular. There, at least four authorities and institutes deal intensively and with great success with underwater archaeology and the protection of underwater cultural heritage. Already in 2007, the International Center for Underwater Archaeology (ICUA) was established in Zadar as a UNESCO regional field office category II (MCPA). It would be desirable to have such an institution also in a littoral state of the North Sea and the Baltic Sea.

Statements

Auer, Jens and Maluck, Matthias

The Federal Republic of Germany has not yet ratified the UNESCO Convention on the Protection of the Underwater Cultural Heritage. From the point of view of the state archaeologists of the northern German coastal states, however, this step is urgently needed. In view of the energy transition and climate change, the use of the Exclusive Economic Zones (EEZ) in the North Sea and Baltic Sea is

gaining massive momentum. This also has a dramatic impact on the archaeological-cultural landscape heritage. While the coastal states actively protect monuments in coastal waters and inland lakes on the basis of their monument protection laws, there has been no comparable legal basis for the exclusive economic zones in the North and Baltic Seas. There is therefore an urgent need for legal clarification and safeguarding through the ratification of the UNESCO Convention and the associated further regulation of the legal and organizational framework by the federal government. The monument authorities of the coastal states could extend their work to the EEZ without any problems if they were appropriately equipped, since they have the technical expertise and already support the federal government within the framework of administrative assistance. All in all, the protection of historical monuments in the offshore area also requires clearly defined responsibilities and appropriate funding in order to carry out this cultural state task.

In addition, the Convention includes further tasks that can also be assumed by the Länder, provided that appropriate regulations are in place. These include, for example, the obligation to report to UNESCO, the communication with other states also in a coordinating function, the handling of German cultural heritage in the waters of other states and the monitoring of the activities of German ships and nationals with regard to underwater cultural heritage in other countries.

Belasus, Mike

The need for ratification of the UNESCO Convention for the Protection of the Underwater Cultural Heritage must be made visible to the general public in order to gain public support. Contributions to the underwater cultural heritage always receive media attention, regardless of their origin, be it science or individual enrichment of this common property (predatory divers, treasure hunters, etc.). Only through a continuous presence of results of underwater archaeological research in the media can the public be educated about the importance of this area of our cultural heritage. For this reason it is indispensable to anchor maritime archaeological research institutionally in Germany and to present its results on an up-to-date level in media and museums as well as to point out the dangers. This is currently not the case in Germany.

There is already a shortage of appropriately trained specialists for handling underwater cultural property in the field of preventive archaeology (preservation of historical monuments). This deficit often has to be made up with personnel and companies from abroad, where, however, there is currently also a shortage. Ratification of the UNESCO Convention for the Protection of the Aquatic Cultural Heritage will result in an increase in this need in order to meet the requirements of this Convention. However, the field of underwater archaeology is currently only sporadically considered at German universities. For these reasons, there is a need to establish an appropriate comprehensive education for this field at a German university for a future generation of excavation technicians and archaeologists.

Dehling, Thomas

The BSH balances the different interests within the approval procedures.

Objects already known to the BSH are taken into account. The regional development plan and the area development plan already contain specifications for the consideration and safeguarding of the underwater cultural heritage.

Hansell, Frederike

No statement was issued.

Lübcke, Christian

A statement was not issued.

Comment of the author

The panel discussion highlighted the importance of improved protection measures for the underwater cultural heritage on the territory of the Federal Republic. Such protection is now required to an even greater extent in the German EEZ following the simplified permitting process for wind and solar installations. There is no legal basis for the obligation of cultural heritage impact assessments for exploration and construction projects. Ratification of the UNESCO Convention 2001 can make an important contribution to this.

The EEZ is not German territory. The United Nations Convention on the Law of the Sea applies. The Federal Foreign Office is responsible for ratification. Definitely, the (coastal) states play the main role in the implementation of this convention in the North and Baltic Seas, but it may be that the federal government continues to have certain responsibilities in the implementation of the convention, both in the EEZ and beyond it in international waters and waters of other states.

The Federal Foreign Office emphasizes as an overarching goal of the Convention the element promoting cooperation among the States Parties, since the protection of the underwater cultural heritage outside national jurisdiction can only be achieved through international cooperation. cultural heritage outside national jurisdiction can only be achieved through international cooperation and refers to Germany's accession to earlier UNESCO conventions on the protection of global cultural heritage. All the more incomprehensible is the announcement of a new "examination of the conditions" for an accession.

The statements of the responsible state authorities and the scientific community as well as their statements are a declared demand to the German Bundestag to finally create a legislative basis for the underwater cultural heritage in the EEZ with the ratification of the UNESCO Convention. The responsible departments in the ministries and the politically responsible persons should finally present the specifications for a draft law and stop answering the questions about the state of affairs after 12 years of lack of efficiency with platitudes, empty words, "declarations of intent" and false promises (see below). Do we have to assume that the filibustering of a bill could be due to the interests of lobbyists?

The expert and discussion contributions also highlighted the need for an expansion of scientific education and an endowment of specialists at the monument authorities. In the field of research, as in other countries, the basis for an institutional set-up that allows different disciplines to cooperate in marine research must be created. The UNESCO convention is useful for this as well.

I hope that the panel discussion with its statements will be heard by the politically responsible persons and their officials and will lead to an early ratification and implementation of the UNESCO Convention on the Protection of Underwater Cultural Heritage and also that the declared will of the civilian population will receive the deserved attention and consideration.

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Review of the political steps towards the accession of the Federal Republic of Germany to the UNESCO Convention 2001

2001: Germany abstains from the UNESCO ballot in Paris.

2009: The Convention enters into force under international law.

2009: Spatial development plan for the German Exclusive Economic Zone in the North Sea.

2010: DEGUWA's petition for accession is unanimously approved by the Petitions Committee.

2013: From the coalition agreement between CDU, CSU and SPD on the 18th legislative period: "The coalition is committed to the UNESCO Convention on Cultural Diversity and the UNESCO Convention on the Protection of Cultural Property. It will take the initiative to also accede to the UNESCO Convention on the Protection of the Underwater Cultural Heritage."

2015: Communication from the Federal Foreign Office, Department 306-9, Cultural Policy/Coordination Unit UNESCO World Heritage: "The German government intends to ratify the UNESCO Convention for the Protection of the Underwater Cultural Heritage. Work on this is well advanced. It still needs to be clarified, for example, to which existing institution the International Bureau for Underwater Heritage can be linked. The Standing Treaty Commission of the German states must give its approval in principle before the treaty can be submitted to the cabinet. In addition, the associations are still to be heard on the draft law."

2017: Communication from the CDU/CSU parliamentary group in the Bundestag: "Our inquiry with the Foreign Office, which is in charge, revealed that the final draft of an implementation law is expected to go to the vote of the federal and state governments after the summer break."

2018: The 2001 UNESCO Convention is not mentioned in the coalition agreement between the CDU, CSU and SPD for the 19th legislative period.

2018: Communication from the Foreign Office: "...the draft law is ready, but procedurally we are not yet further along, as the legal position in the department has been vacant since last summer. Vacancy should be finished in April, then we will continue at full speed!"

2018: Statement by Dr. Ringbeck, German Foreign Office, on the occasion of the "Underwater Cultural Heritage Forum" in Berlin: "The resolution for ratification is 2019."

2019: The Leopoldina - National Academy of Sciences presents the discussion paper "Traces under water: exploring and protecting the cultural heritage in the North Sea and Baltic Sea".

2020: The FDP parliamentary group uses the publication of the Leopoldina's discussion paper as an opportunity to address a minor inquiry to the federal government on underwater cultural heritage. The answer of the Federal Government to the President of the German Bundestag by the State Secretary the Foreign Office took place on 13.03.2020:

"According to the current state of planning, the German government is aiming to sign the UNESCO Convention for the Protection of the Underwater Cultural Heritage by the end of 2021. The proposal to institutionally represent the protection of cultural assets on the seabed in the governmental authority structure requires examination by the competent authorities at the federal and state levels. This review is currently ongoing at the federal level.

In view of the experience gained with the 2009 North Sea and Baltic Sea spatial plans, the concerns of underwater cultural heritage are to be recast in the marine spatial plan for the Exclusive Economic Zone (EEZ), also taking into account the food for thought provided by the Leopoldina National Academy of Sciences. The spatial plans for the North Sea and Baltic Sea EEZs are to be updated by summer 2021. Preparatory expert discussions are currently taking place, also with the participation of the Leopoldina National Academy of Sciences."

2020: Guidelines for Construction Measures in Coastal Areas, published by the northern German coastal states.

2021: The coalition parties of the 20th legislative period respond to DEGUWA's election test questions on the ratification of the UNESCO Convention 2001 by the German Bundestag:

SPD: "The SPD will work to ensure that it (ratification, author's note) takes place in the coming legislative period."

DIE GRÜNEN: "... we will work to get the ratification process underway as quickly as possible."

FDP: "On March 2, 2020, the parliamentary group of the Free Democrats in the German Bundestag submitted a minor inquiry (BT-Drs. 19/17467) to the Federal Government on the handling of cultural heritage on the seabed. In its response to this minor question, the German government stated that it would aim to sign the UNESCO Convention for the Protection of Underwater Cultural Heritage by the end of 2021. Already at that time, the Free Democrats expressly welcomed and positively assessed this signing. Unfortunately, no signing has taken place so far. Let us remain in conversation about this after the Bundestag elections."

2022: Foreign Minister Baerbock has made Mr. Andreas Michaelis State Secretary at the Federal Foreign Office again.

2022: In response to an inquiry by DEGUWA to Federal Minister Volker Wissing (small question from the FDP) on the status of preparations for ratification by the Federal Government, the following is reported: "After consultation with the specialist department in the AA, the underwater cultural heritage in Germany is already comprehensively protected up to the maritime boundary of the German territorial sea by the monument protection laws of the Länder and even - beyond the UNESCO Convention - without time limit. The spatial scope of application for the UNESCO Convention would be the German Exclusive Economic Zone (EEZ) in the North Sea and Baltic Sea, where measures are already subject to approval in consideration of cultural heritage protection, and - if Germany were to assume the role of coordinating state in the implementation of the Convention - in international waters beyond the EEZ.

In order to regulate the protection of underwater cultural heritage outside the jurisdiction of the Länder and in accordance with existing legislation, an implementing law is envisaged.

The complicated coordination process required for this is currently underway. Unfortunately, however, a concrete date for the end of the coordination process cannot yet be given."

2022: A new appointment will be made in the management of Department 306-9, Cultural Policy/Coordination Office for UNESCO World Heritage at the Federal Foreign Office of the Federal Republic of Germany.

2023: The German Bundestag simplifies approval procedures for wind and solar plants.

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