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The UNESCO Convention on the Protection of Underwater Cultural Heritage: how do we make it work?

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The protection of underwater cultural heritage in Germany

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Although Germany has not yet signed and ratified the UNESCO Convention on the Protection of Underwater Cultural Heritage, the archaeological cultural heritage under water in Germany is both legally and practically protected.

In Germany, with its federal state structure, competencies are shared between the Confederation (Bund) and the 16 states (Länder). Monument protection and the preservation of monuments are within the responsibility of the federal states. Therefore in Germany we have 16 different monument protection laws in Germany. These are similar but not identical.

Thus in the majority of the laws archaeological monuments under water are expressly protected. In the laws of the states Berlin (§ 2 (5), Brandenburg (§ 2 (1)), Bremen (§ 2 (1)), Mecklenburg-Vorpommern (§ 2 (5)), Saarland (§ 2 (4)), Sachsen-Anhalt (§ 2 (2)) and Schleswig-Holstein (§ 1 (2)) the definition of the archaeological monument also explicitly includes cultural goods in or under waters, in some of them also moors are mentioned.

In some other laws, findings in waters are expressly mentioned in the regulations concerning the handling of archaeological discoveries. This is the case in the laws of Hamburg (§ 15 (1)), Niedersachsen (§ 14 (1)) and Sachsen (§ 14 (1)).

This leaves only the monument protection laws of Baden-Württemberg, Bavaria, Hessen and Thuringia without a direct reference to underwater findings. This however does not mean that archaeological heritage under water is not protected, explored and cared for in these states. And the extensive underwater archaeology carried out by the monument authorities of Baden-Württemberg in Lake Constance is good proof of this.

In addition to interpretation of the laws, the European Convention on the Protection of the Archaeological Heritage (Revised), also named the Valletta Convention, which was ratified by Germany in 2003, also obliges all the federal states to protect the archaeological heritage under water. In its Article 1 this Convention defines archaeological heritage as follows:

“(3) The archaeological heritage shall include structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water.”

In most of the states, monuments are automatically subject to the protection of the law (declaratory procedure), if they meet the criteria set out in the legal definition and when identified are entered into a heritage list (Denkmalliste).

In some states the registration of monuments in the heritage list is an administrative act (constitutive procedure) which is subject to a judicial review. Only those objects which are part of the heritage list are legally protected.

Searching for and excavating archaeological finds requires an explicit authorization (permission to dig) in all states of the Federal Republic of Germany. All monument protection laws oblige those who discover archaeological remains to notify the relevant monument protection authorities immediately. The excavation site must remain several (work) days in an unchanged state.

The question who owns the findings is regulated in civil law. According to § 584 BGB (Schatzfundparagraf) a thing which has been hidden for such a long time that the owner can no longer be ascertained, one half belongs to the discoverer and the other half to the landowner of the property where it was found. In case that the monument protection law constitutes a so-called treasure shelf (*quod nullius est fit domini regis*: "that which belongs to nobody becomes our Lord the King's") findings whose owners can no longer be found are the property of the state where they were discovered.

Most of the monument protection laws contain the so-called "polluter pays" principle. Anyone who causes archaeological measures must also bear their costs.

Under certain conditions all laws permit expropriation against compensation.

According to some federal laws monument protection is to be taken into account. Interesting in this context is the Federal Law on Waterways. Its § 7 (4) reads as follows:

"In the maintenance of the Federal Waterways, as well as the establishment and operation of the federal shipping facilities, the requirements of monument protection must be taken into account."

It can be summarized that by German laws underwater archaeological heritage is protected inland and in the territorial sea but not in the Exclusive Economic Zone.

To conclude this short overview let us take a look at the people both professionals and amateurs who care about underwater archaeological heritage.

The Association of Archaeologists in the Federal Republic of Germany members of which are the archaeologists of the State Preservation Offices of the 16 states has formed already in 1993 a "Commission for Underwater Archaeology". This Commission is composed of representatives of the archaeology responsible for coastal and inland waters, as well as experts with relevant experience in the field of inland waterways and maritime archaeology. In the Working Group of the Commission for Underwater Archaeology, it also unites professional underwater archaeologists as well as volunteers of archaeology organized in underwater archaeological associations. The tasks of the Commission are:

- Communication, coordination and integration in the field of conservation of monuments under water and underwater research.
- Consultation of the members of the Association of Archaeologists on the issues of underwater archaeology and the representation of this special field of archaeology to the public.

- Promotion of research and development of regional and international networks for special research questions.
- Training and further education of specialist archaeologists and volunteers in the field of underwater archaeology.
- Promotion and protection of cultural assets under water through public relations work, in particular also in contact with sports divers and their organizations.

The Commission cooperates with the German Society for the Promotion of Underwater Archaeology (*Deutsche Gesellschaft zur Förderung der Unterwasserarchäologie e.V.* (DEGUWA)). This association of professional archaeologists, historians and scientists of related disciplines, as well as laymen and sports divers serves the goal to promote research and teaching in underwater archaeology and to enhance the protection of the underwater cultural heritage. All members of this society work on a voluntary basis.

The objectives are achieved by cooperation with universities, heritage agencies, museums, non-profit organizations and sports divers at national and international levels. Underwater excavations and surveys are carried out in cooperation with the responsible authorities.

Annual conferences serve as venue for the exchange of the latest research results, whilst the *SKYLLIS* journal serves its dissemination. The training scheme of the Society follows the standards of the Nautical Archaeology Society (NAS). The Society is a member of German ICOMOS and a member of the Advisory body of the UNESCO Convention on the Protection of Underwater Cultural Heritage.

The German Sports Divers Association (Verband Deutscher Sporttaucher e.V.) which is the umbrella organization for several local sports divers associations has created three special courses on underwater archaeology in order to inform the sports divers and raise awareness: "Because only what you recognize, you can also understand and protect!".

And what you would probably not suspect for a state known for its Alpine mountains there is also a Bavarian Society for Underwater Archaeology. This association mainly deals with the documentation and preservation of underwater archaeological monuments in Bavarian waters, especially the numerous lakes on the foothills of the Alps. These include, for example, the exploration of prehistoric lakeside settlements or the investigation of old bridge structures and submerged watercraft.

Still there is no doubt that signing and ratifying the UNESCO Convention on the Protection of Underwater Cultural Heritage would strengthen the position of underwater archaeology in Germany.

Sources (*All in German*)

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