

## **Underwater Archaeology vs. Treasure Hunting**

Ever since the discovery of the aqualung in 1943 by Emile Gagnan and Jacques Yves Cousteau a whole new horizon has opened up in the field of underwater exploration. Since then technology has advanced, and every day new methods of approaching the sea are discovered. One of the things that has come to the attention of the public is the plethora of sunken wrecks, vessels their cargoes and numerous other underwater sites. All of these have come to the attention of recreational divers, archaeologists as well as treasure salvagers. The first of these three groups, the so called sport divers have only a recreational interest upon such finds and therefore do not have any direct effect on them. However, the other two groups, the archaeologists and treasure salvagers have a more direct effect on shipwrecks and other underwater sites of historical importance, but with conflicting goals. Archaeologists study such sites to gain a greater understanding of past history while treasure salvagers search for intrinsically valuable objects for personal or private gain. Treasure hunting is a threat not only for archaeology but for the public as a whole. Unfortunately, it is offered in a

well disguised package surrounded by media and dreams of hidden treasure that has a certain appeal to the uninformed viewer. Although archaeologists would like to claim the sole right of excavating underwater sites all over the world, this not likely to happen at least in the near future. Legislation concerning underwater cultural heritage varies from country to country, and it is this inability of some countries to control their underwater frontier that treasure salvagers take advantage of. Here I shall use two well known cases as examples of what should be avoided: the *SS Central America* and the *Nuestra Senora de Atocha* wrecks. I am going to refer to the exploration of the *Isis* wreck as an example of deep water research under proper guidelines. I will evaluate each of these cases, and offer conclusions as to what kind of threats treasure salvagers pose and how they can be dealt from the archaeological standpoint.

The *SS Central America* was a steamship that was lost in the high seas in 1857 and was then rediscovered in 1987 by the Columbus-America Discovery Group. The Central America was well known for its cargo of gold, which was estimated at the time of its loss at 2,189,000 dollars. The wreck lay 160 miles off the coast of South Carolina at a depth of 2500 meters. It was salvaged by the Columbus-America Discovery Group with the assistance of a remotely operated vehicle, and as a result a large quantity

of gold bars, coins and other artifacts was removed. The gold was then brought into the jurisdiction of the Federal District Court of Norfolk, Virginia. The Columbus America Discovery Group sought to be declared as the owner of it or to be given a salvaging award of 1 billion dollars. The gold was insured and the insurers filed a claim for it. Eventually after a series of trials the Columbus America Discovery Group was awarded 90% of the treasure, partly because according to the Court of Appeals they showed a good character in terms of preserving the artifacts and devoted much time to salvaging the Central America.

The second case is the *Nuestra Senora de Atocha* a Spanish vice-flagship that sunk in 1622, 9 miles off the Florida Keys in roughly 60ft of water. It was part of a treasure fleet headed from Havana Cuba to Spain. For some reason or other, it had set sail from Havana during hurricane season and soon met its fate in the Florida waters. It is estimated that the *Nuestra Senora de Atocha* carried an enormous treasure, which consisted of gold and silver bars as well as coins. The total value of the whole fleet's cargo was equivalent to 250 million dollars. During the 1970s and early 1980s the wreck was salvaged by a commercial salvaging firm known as Treasure Salvors Inc. As required by the Florida Archives and History Act the firm entered a contract with the state of Florida to get the exclusive right to

salvage the *Nuestra Senora de Atocha*. According to the contract the state retained 25 percent of the recovered treasure and Treasure Salvors Inc. 75 percent. However in 1975 the US Supreme Court litigation begun defining federal and state jurisdiction for the regulation of natural resources. As a result, the site of the *Nuestra Senora de Atocha* was not included in Florida's boundary. Treasure Salvors Inc therefore repudiated their contract with the state of Florida and filed a suit in the United States District Court requesting that they become the exclusive owners of the *Nuestra Senora de Atocha* and its cargo. According to the so called American Rule in case of admiralty court such as the above mentioned, if the owner of lost or abandoned property cannot be found then the finder of this property takes its title, which is what happened in this case.

The last case I want to mention is the wreck of the *Isis*, which dates to the late Roman period. This wreck was discovered in 1988 by Dr. Robert Ballard. It is located 120 km west off the northwest tip of Sicily and 80km north of the Skerki bank, at a depth of approximately 800 meters. In the years that followed, survey and excavations of the wreck took place with the assistance of a remotely operated vehicle, called Jason. After photographing and completely documenting the layout of the wreck, certain objects were lifted, mostly amphoras and commonwear vessels, with the assistance of

Jason. These artifacts provided the team with substantial information regarding the provenance of the wreck, its cargo and the routes that it followed. A team of professional archaeologists and conservators was on board the research vessel at all times. The Isis was the first ancient ship to be found at such a depth and to be excavated under proper guidelines with the assistance of a remotely operated vehicle.

Going back to the first case, the Central America, the issue that arose out of it was not so much whether the wreck was improperly exploited by a treasure hunting consortium, the Columbus America Discovery Group. Instead the issue was whether the wreck was abandoned by its original owners, in this case the insurance companies. As I have already mentioned Columbus America managed to obtain the right of salvaging the wreck. Because the Central America was 160 miles off the South Carolina coast, it was not subject to the Abandoned Shipwreck Act, which made things much easier. It is these inconsistencies in the legal system which enable groups such as the Columbus America to operate. The exploration of the Central America was fascinating because of its location and the equipment that was used, and that played a major role in the courts decision. Unfortunately, in this case the salvors were given special merit because of the condition of preservation of certain objects that they provided such as certain pieces of

jewelry, coins and even a cigar. What the judge probably did not notice was the fact that it is the job of groups like the Columbus America to preserve the objects that they retrieve otherwise they will not be able to sell them for a good market price. Furthermore, what escaped the attention of the court was the fact that only some of the objects were recovered and preserved, and there were no photographs or site maps for the public. Even worse there was no professional archaeologist on board the research vessel at any time during the salvaging operation. This is not how archaeological excavations work, in which scientific research aims to benefit the public and not the personal gain of the excavator.

In the case of the Nuestra Senora de Atocha the US claimed ownership of the wreck based on the Antiquities Act of 1906. However the court ruled that US jurisdiction based on this act was limited to the control and exploitation of natural resources of the continental shelf and did not include shipwrecks. When after 1975 the Atocha was no longer included under Florida's jurisdiction, Treasure Salvors Inc took over the exclusive right of salvaging the wreck. What is even more disturbing is the fact that initial litigation of this case led to the establishing of the right for private salvors to salvage such wrecks that lie outside the three mile territorial limit. In other words, the actions of salvaging consortiums are even protected by

law. One would expect that the Abandoned Shipwreck Act of 1987 would cover such cases, but unfortunately it protects only historical wrecks that lay within the 3 mile limit. The US maintains a 12 mile territorial sea for the purposes of national security. Furthermore it exercises the right to maintain an exclusive economic zone that expands to 200 miles from the coast. According to the Law of the Sea, this exclusive economic zone gives the right to every coastal nation to exploit and control all living and non-living natural resources. However cultural heritage is not included under the provisions of the Law of the Sea. Nevertheless, there are several countries that have added cultural heritage protection within their continental shelf. It is easy to see from the above that if more countries, including the United States, adopted the right to protect underwater cultural heritage that is located within their continental shelf, it would be much easier to control treasure hunting. Unfortunately, the Abandoned Shipwreck Act, the only line of defense within the 3 mile limit is insufficient and it even promotes treasure salvaging in several ways. First, it clearly states under section 6 that the Federal Register will seek to foster a partnership among others and with salvors in order to manage shipwreck resources of the States and the United States. Second, it never defines under which conditions a shipwreck is considered abandoned, which leaves even more windows of opportunity

open. Therefore if federal law protects the treasure hunters and all other salvors then where does that leave the professional archaeologist? Why should a professional or even a non-professional salvager be given the right for personal gain over something that is someone else's area of study for the benefit of humanity. As long as laws such as the Abandoned Shipwreck Act exist such questions will remain unanswered.

On the other hand we have the wreck of the Isis. This operation provides an ideal model to follow. It is a typical scenario of a wreck lying at a big depth in high seas, with no owner to claim it. Instead of the well organized and scientific team of Dr. Robert Ballard, any treasure salvaging consortium out on a search for forgotten treasure could have salvaged it. Wrecks like the Isis can provide us a large amount of information about our past, provided that they are surveyed and excavated according to proper archaeological guidelines.

Encouragement of preservation of the artifacts as well as the wreck itself remains one of the most important factors to consider. Instead of laying the ground for common law with decisions in cases such as the Central America one, maybe there should be more restrictions enforced, such as requiring the presence of a team of archaeologists on board any salvaging operations. Salvors could still get their share of fame and fortune

while archaeologists will have the opportunity to study and preserve the artifacts in the proper manner, thus ensuring the full protection of our cultural heritage. Unfortunately, the media has made treasure hunters seem like small screen heroes, risking their lives for what they call the search of the past. Because of this the public is unaware of what is really at stake. Gaining popular support is the treasure hunter's main weapon, one that helps him defend himself against archaeologists. Therefore the only way to fight this battle is to educate the public and reform the legal system.

The UNESCO Convention on the protection of underwater cultural heritage is a good start but there is still a lot of work to be done. For example the US could have influenced the outcome of the convention but opposed it. Furthermore, there are many things that need to be reformed within the legal system of the US concerning the protection of underwater cultural heritage. The Abandoned Shipwreck Act might be a good start, but if it remains the way it is, then it is nothing more than a threat for archaeologists and historians. The US have every right to extend control of underwater sites up to the 200 mile limit of the exclusive economic zone, yet for some reason it has not done so. It seems that we still have a long way to go and a continuous legal battle fight but we all have an obligation to follow these steps to preserve our cultural heritage.