TALKING PAPER

"FLYING THE FLAG"

A REVIEW OF POLICY AND BOUNDARIES

The Explorer's Club

Ad Hoc Committee for Marine Artifact Policy

James P. Delgado, Ph.D. FN’97

Jerry L. Ostermiller,

Lee M. Talbot, Ph.D. MED’57 (chair)

January 2013
INTRODUCTION

In 2012 the Explorer’s Club leadership received a proposal from a member requesting permission to fly the Club Flag during upcoming expeditions. The member conducts underwater expeditions to locate historic shipwrecks and, after obtaining legal authority, salvage some items of value for profit, specifically “the marketing of repetitive cargo artifacts de-accessed by governments as heritage objects.”

Because the general public has shown interest in the exploration for treasure and its recovery, enhanced visibility for high-tech undersea adventure has become an essential asset to ensure financial viability by attracting private investors. It has been suggested the proposal for displaying the Explorer’s Club Flag could have benefits for both parties; it could raise the Club's visibility as a non-financial partner through a series of exotic and exciting expeditions which is designed to receive national and international public exposure. In exchange, the member would enjoy the benefit of the Explorer’s Club imprimatur and implied approval, helping indirectly to support these types of undersea expeditions.

As word of the request spread among the general membership it became apparent that EC members representing the scientific community had concerns regarding the proposal. Specifically, professional archaeologist, representing a number of highly reputable institutions, expressed strong opposition. The intensity of their protest was not directed at the legality of these expeditions, as current admiralty law and the laws of some nations and states allow salvage under certain conditions, but is based upon professional and ethical issues.

The controversy over the potential award of a flag and the issue of whether it is acceptable for the Explorers Club to award a flag to any entity or project which engages in any commercial activities led to the Board tabling the flag application in question and the President appointing a three-person ad hoc policy committee. The mandate of the committee and the framework for members’ participation was initially described by President Nichols:

“The Explorers Club specifically prohibits commercial activities under our bylaws and our tax status. I and every member of the Board strictly adhere to this policy. The only question is how to apply this policy to individual flag applications. What activities constitute commercial activities? Does that change depending on the academic specialty involved, each nation’s laws on the subject, the standards of de-accession, and common sense? More importantly, what specific policies should we adopt that the Flag and Honors Committee and our Board use to judge the commerciality of flag applications?

Pursuant to the Board’s direction I have appointed ... [a three man committee] ... to prepare a “talking paper” of issues to be presented at an open forum at the Club where members and experts can participate. The end results would be a policy recommendation for the guidance of the Flag and Honors Committee in reviewing marine archaeology applications.
MISSION OF THE POLICY COMMITTEE

Because the form resolution of this request takes will actually define the institutional values and boundaries of the Explorer’s Club and impact the public perception affecting the Club’s members, the ad hoc "Policy Committee" was charged with reviewing existing Club policy as well as explore current mainstream institutional cultural resource policy. The review is intended to provide contemporary understanding of the contextual relevance for the scientific community’s concerns and provide guidance to respond to any relevant flag requests in the future.

It is important to note that it is not the desire of the Club leadership to focus on individual members, their personal and/or professional philosophies, or even their personalities. On the contrary TEC leadership takes the position that all members of the Club have the right to enjoy all the benefits of belonging to this fellowship organization, an organization founded on the broadest expressions of exploration as defined within the guidelines membership requirements.

Shifting from the micro arguments, which tend to focus energy on individuals and/or emotive arguments of specific endeavors and personalities with their subjective interpretations, to a focus on generally accepted standards leading to well articulated policy definitions will instead allow TEC to provide clear and predictable responses for all future Flag requests consistent with founding principles, our own internal values and respectful of the scientific community.

However, by surveying current "institutional best practices" adopted by established institutions whose reputations for standards reflect similar national and international cultural and resource management issues, the Explorer’s Club can verify that its own internal boundaries accurately reflect both legal and ethical issues appropriately. The goal of this committee is simply to ensure that our historic fellowship organization always presents a predictable and noble message, a message all of our members can be proud to share with the world as we pursue our passions for exploration.

This committee's mandate specifies policy for the guidance of the Flag and Honors Committee solely for reviewing marine archaeology applications. However, this only focuses on part of the controversy, which is fundamentally about the sale of artifacts. Archaeology is archaeology regardless of whatever context it is practiced in. The committee notes that in the long run, the matter to be addressed should be one of sale of any type of scientific sample or artifact, be it from a land excavation, an underwater excavation, a paleontological expedition, coral reef work, and even wildlife work, for the question of selling or disposing of “excess” or “redundant” artifacts might lead some to question whether a wildlife conservation effort or research could benefit from a similar approach, say with sale of coral, ivory, or rare and endangered species parts. This is not a matter of apples and oranges, but rather a reflection on a simple and fundamental principle in science and especially in archaeology. Consequently it is important to remember that the position adopted by The Explorers Club will weigh on all archaeologists who are members, not only those who practice underwater or in a maritime context.

METHODOLOGY

The Committee surveyed existing policy of the TEC to determine the definitions and boundaries, if any, which relate not only to Flag protocol, but to TEC’s founding purpose and values. We then explored the technical arguments and issues germane to the Flag request which initiated this policy review, and which fomented the scientific communities' passionate opposition.
Seeking perspective regarding the topic of how boundaries are set and how artifacts and shipwrecks are perceived by science and history institutions, we surveyed current national and international policy and definitions. We also sought direction from recognized experts representing the nation's most respected cultural institutions, the American Association of Museums and the American Association for State and Local History.

Our survey and literature review of the topic through the proceedings of the Council of American Museums assisted our team to better understand what constitutes accepted practice and standards for science in regards to archaeology, and perhaps more importantly, identify what values are consistent for institutions enjoying national stature.

I. EXPLORER’S CLUB GOALS

As defined within our own documents; "The Explorer’s Club is a multidisciplinary, professional society dedicated to the advancement of field research, scientific exploration, resource conservation, and the ideal that it is vital to preserve the instinct to explore... . The Club serves as a common bond and meeting point for explorers and field scientists worldwide, thus continuing the early goals laid down by its founders in 1904."

"The Explorer differentiates the true explorer and field scientist -- who study an unknown or little known destination, phenomenon and/or area of science to gain knowledge for human kind -- from the tourist or ecotourist who may have primarily traveled widely for pleasure or self education. Extensive travel, photography or similar pursuits in remote parts of the world do not, alone, qualify to become a Member or Fellow. However, one’s active participation in an expedition sponsored by a recognized scientific organization, university or museum is strong evidence of qualifying for full Club membership."

[Committee notes] These statements clearly signal that TEC is not only a fellowship organization, designed to bring together diverse explorers to communicate and share, but that EC has a tradition of commitment serving as a professional institution promoting and supporting scientific research for the betterment of mankind.

In both of these statements TEC goes out of its way to clarify that it is not an amateur, but a scientific association. TEC specifically defines direct association with recognized scientific organizations, universities and museums as the significant key to membership.

II. EXPLORER CLUB ETHICS

"It is the OBLIGATION of an explorer to:

Attempt to acquire new information and to report activities and results accurately. It is the acquisition and dissemination of new knowledge that distinguishes the scientific explorer from adventurer or treasure hunter.

Respect the environment and local culture and leave them undisturbed. Remember that the explorer is the foreigner and the guest.
Respect all local and international laws. Collect only necessary specimens, and then only with permission from the authorities when required."

[Committee notes] TEC Ethics Statements clearly define the organization in such a manner as to distance itself from "treasure hunters" by focusing on the dissemination of knowledge as the prime directive. The respect for environment and culture is also a relevant issue, as artifacts (and minimizing their disturbance) are an integral component of the science environment which recognizes material culture as a client by definition.

Finally, "collecting only necessary specimens" is antithetical to salvage and/or treasure hunting activities.

III. EXPLORER'S CLUB FLAG

"The use of the Explorer's Club Flag is governed by strict standards. To obtain permission a member must show that the expedition holds the promise of scientific results. The flag is intended to serve as a reminder of the dignity of the Club and of the high standards it expects of its members.

The symbol and embodiment of the Club is our flag, which may be awarded to members to carry on scientific expeditions.

Authorization for commercial use of the Club Flag or other properties may be granted only after due consideration by the Board of Directors and appropriate resolution.

Flag and Honors Committee policy: "no purely commercial expedition can be considered for a flag..."

[Committee notes] TEC policies determining the use of the Club Flag are very specific. The term "strict standards" and insisting the burden be on the requestee to prove that the expedition is indeed "for a scientific purpose" goes beyond a general argument that incidental discoveries during salvage may result in serendipitous scientific value.

The salient word in this policy statement is PURPOSE. Only expeditions constituted for the purpose of scientific results warrants Flag status. Furthermore, this policy statement goes on to say that "use of the Flag was never intended for commercial purposes."

Given TEC's ethics and Flag standards, it would be a logical requirement for an expedition requesting a flag to comply with established professional codes of conduct and ethics statements for the disciplines or fields in which the expedition members belong and where the expedition is focused.

IV. AMERICAN ASSOCIATION FOR MUSEUMS

"Professional institutions do not limit themselves to following the letter of the law but also adopt and follow professional standards that reach beyond the law, including those outlined in this code of ethics. In doing so, they foster trust and integrity of the institution and the communities it serves.

Institutions must be aware of all applicable national and international laws and never knowingly acquire stolen, illegally exported, or improperly collected objects."

(AAM) Testimony in favor of The Abandoned Shipwreck Act
“... these wrecks are subject to admiralty law whereby a “finders-keepers” theory awards wrecks to commercial salvors or others establishing a claim to them for the purposes of personal gain.

This “finders-keepers” system directly contradicts laws protecting archaeological sites on land that prohibit salvage, looting and commercial exploitation... exceptions to admiralty are necessary... if commercial mining of these wrecks remains unchecked and they continue to fall prey to any and all who may assert claim to them, as few historic underwater sites will be left for current and future generations of scholars, underwater explorers and enthusiasts, and the general public.”

[Committee notes] AAM is the most highly regarded accreditation organization for all museums in the Americas. They make it clear that the single most important issue for any organization or institution is its commitment to actions which foster trust and integrity.

AAM makes the case that quality institutions not only ensure they meet legal standards, but that respected institutions also understand legal standards are only one expression of social behavior and not, in and of itself, sufficient to serve the best interests of either the institution or the public.

AAM has weighed-in on the specific issue of salvors vs. archaeologists. They have gone on record numerous times to point out deficiencies in maritime law and identified the salvor deficits which are contrary to the practice of good science i.e. protection of artifacts, respect for historic sites and cultural resources which may be legally threatened by current salvor motivation targeting artifact collecting as profit activities.

V. AMERICAN ASSOCIATION FOR STATE AND LOCAL HISTORY

"Acting in the public trust, creditable institutions are expected adopt appropriate ethical statements and professional standards:

Institutions and agencies exist to serve the public interest and must always act in such as way as to maintain public confidence and trust.

Institutions must protect their integrity from both the reality and appearance of undue influence by donors, sponsors and other sources of financial support.

Collections shall not be capitalized or treated as financial assets. Collections shall not be deaccessioned or disposed of in order to provide financial support for institutional operations, facilities maintenance or for any reason other than preservation of acquisition of collections, as defined by institutional policy.

Historical resources shall be acquired, cared for and interpreted with sensitivity to their cultural origins.

No activities shall be undertaken that violate or compromise the integrity of an institution’s mission or the ability of an institution or individual to meet professional standards.

Control of a product (e.g. exhibition, publication, program) shall neither be delegated nor abrogated to outside parties in order to obtain financial support.

Institutions shall review potential cultural sensitivity of materials considered for commercial use with representatives of the appropriate affiliated communities.
Institutions must respect other legal, ethical, and cultural standards regarding individual privacy, human-based research and access to and use of sensitive cultural materials.

Collections shall not be made available to any individual on any basis for personal use for any purpose contrary to accepted collections policies."

[Committee notes] AASLH is not solely a museum focused organization, but they address all expressions of public history, historical sites, and promote professional standards for non-profits engaged in the public trust. Reviewing the above principles, it is clear that "acting in the Public Trust" is the central theme.

AALSH also recognizes the danger of compromise to mission exerted through financial pressures, especially in regards to the sale or disposition of collections. Embedded throughout their ethics statements is the notion that artifacts, programs and even educational exhibits must remain "non-capitalized and never treated as financial assets."

In AASLH's view, it is not that income generation is inherently evil, but experience has taught them that it is virtually impossible to serve the public interest by attempting to solve financial necessity through the identification of artifacts and collections as a financial commodity.

VI. COUNCIL OF AMERICAN MARITIME MUSEUMS (CAMM)

"Institutions shall adhere to archaeological standards consistent with those of the American Associations of Museums / International Congress of Museums (AAM/ICOM), and shall not knowingly acquire or exhibit artifacts which have been stolen, illegally exported from their country of origin, illegally salvaged or removed from commercially exploited archaeological or historic sites..."

"CAMM's review of professional international standards revealed the unanimous opinion that unscientific excavation for profit and the sale of the archaeological resources recovered were ethically unacceptable, even though they might be permitted by law..."

"Once salvaged and items are dispersed to private buyers, they can never be recovered or reassembled (or even located in most instances) should new questions arise or new scientific methods of analysis be developed that provide new information. Retail customers rarely --- if ever--- leave records of their purchase with stores, and auction houses are renowned for guarding the anonymity of their buyers."

"Institutions should therefore adopt a leadership role by not condoning the destruction or commercial exploitation of our public heritage for private gain."

"The issue is an ethical concern, not a legal matter... Few fellowship institutions want to be a policing organization; however, every creditable organization must aspire to be recognized as an ethical one."

COLLECTIONS POLICY ON CONFLICT OF INTEREST

"A DEALER is someone whose principle salary derives from the purchase or sale of historic or other material or who is recognized as a purveyor of said material. It should be understood that in no way can a Dealer’s commercial ties be set aside, the very presence of which call into question a conflict of interest."
Committee notes: The Council of American Maritime Museums is the single national professional organization most closely identified with maritime public history. CAMM’s membership includes virtually all the great maritime museums within the Western hemisphere, and serves as a fellowship organizations for all levels of museum management.

CAMM has vetted years of internal discussion regarding the topic of "salvors vs archaeologist" and has offered input to international bodies, such as UNESCO, regarding the topic. A review of CAMM documents makes it clear that the "cultures" of these two diverse operations, i.e. belief systems as expressed in goals, practice, motives, values and thoughts, are directly opposed.

CAMM takes the position that it is inherently impossible for salvors or treasure hunters to perform true science during their recovery activities because the target of their investment is the commercial gain derived from their expeditions by treating the archaeological sites as a commodity.

VII. INTERNATIONAL CONGRESS OF MUSEUMS (ICOM)

“Institutions should recognize the relationship between the marketplace and the initial and often destructive taking of an object for the commercial market... So far as excavated materials are concerned... institutions should not acquire by purchase objects in any case where governing body or responsible officer has reasonable cause to believe that their recovery involved recent unscientific or international destruction or damage of ancient monuments or archaeological sites...”

VIII. REGISTER OF PROFESSIONAL ARCHAEOLOGISTS (UNITED STATES)

Archaeology is a profession, and the privilege of professional practice requires professional morality and professional responsibility, as well as professional competence, on the part of each practitioner.

I. The Archaeologist’s Responsibility to the Public

1.1 An archaeologist shall:

E. Support and comply with the terms of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property, as adopted by the General Conference, 14 November 1970, Paris.

1.2 An archaeologist shall not:

E. Knowingly be involved in the recovery or excavation of artifacts for commercial exploitation, or knowingly be employed by or knowingly contract with an individual or entity who recovers or excavates archaeological artifacts for commercial exploitation.
IX  INSTITUTE FOR ARCHEOLOGY (UK)

1.7 A member shall not knowingly be employed by, or contract with, an individual or entity whose purpose is the sale of items excavated and/or recovered from archaeological contexts and where such sale may lead to the irretrievable dispersal of the physical and/or intellectual archive, or where such sale may result in an undispersed archive to which public access is routinely denied.

X  ARCHAEOLOGICAL INSTITUTE OF AMERICA (UNITED STATES)

Code of Ethics

Refuse to participate in the trade in undocumented antiquities and refrain from activities that enhance the commercial value of such objects. Undocumented antiquities are those which are not documented as belonging to a public or private collection before December 30, 1970, when the AIA Council endorsed the UNESCO Convention on Cultural Property, or which have not been excavated and exported from the country of origin in accordance with the laws of that country;

AIA Code of Professional Practice

Professional archaeologists should not participate in projects whose primary goal is private gain.

XI  SOCIETY FOR HISTORICAL ARCHAEOLOGY (INTERNATIONAL)

SHA Ethics Statement Principle 6

Items from archaeological contexts shall not be traded, sold, bought or bartered as commercial goods, and it is unethical to take actions for the purpose of establishing the commercial value of objects from archaeological sites or property that may lead to their destruction, dispersal, or exploitation.

XII  UNESCO (INTERNATIONAL)

Rule 2. The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.
XIII  AUSTRALIAN INSTITUTE FOR MARITIME ARCHAEOLOGY

Archaeologists Shall not:

Engage in or support any illicit or unethical trade in archaeological material from any nation, including the commercial excavation, salvage or recovery of archaeological, material for irretrievable dissemination and/or sale.

XIV  CANADIAN ARCHAEOLOGICAL ASSOCIATION

- the commodification of archaeological sites and artifacts through selling and trading is unethical.

XV  EUROPEAN ASSOCIATION OF ARCHAEOLOGISTS

1.7 Archaeologists will not engage in, or allow their names to be associated with, any activity that impacts the archaeological heritage which is carried out for commercial profit which derives directly from or exploits the archaeological heritage itself.

[Committee notes] International scientific practice is consistent in how it interprets institutional responsibility. All member institutions from throughout the world have suffered from the results of third-world licensing and the resultant site damage followed by the sale of "legally recovered" artifacts.

The driving force for both the U.S. and International Scientific Community is one inescapable fact; all site excavation is site destruction. Exotic underwater sites are often all that is left of the physical remains of the culture and life experiences of a unique class of maritime peoples whose ship wreck sites are also the cemeteries of very real human beings. Therefore the profession of scientific research has been consistent about how it goes about its work. The disciplined and painstaking disassembly/recording of each part of the assemblage has proven time and again to be the most valuable resource. It is the spacial alignments and relationships, the common everyday objects, and the implications they impart that warrant an excavation.

For all of these reasons, graduate schools throughout the world have been diligent to enculturate our scientific practitioners not only with mechanical skill sets, but also ensure value sets focusing on respect for the greatest public good remain in the forefront of their profession.
CORE OF THE CONTROVERSY

Among the rationales given for selling excess or redundant artifacts are that:

1. Well organized and operated archaeological salvage operations protect the sites from unorganized and destructive illegal operations;

2. Marine archeology is extremely expensive and the profits from artifact sales are necessary for the operations;

3. The important artifacts are provided to the government involved, researchers and museums;

4. What is sold is redundant or excess.

However, archaeologists dispute the suggestion that artifacts from the past are redundant or excess. Even seemingly “identical” artifacts such as ceramic amphorae or Roman lead anchor stocks have individual traits and characteristics, as do hand-struck coins. These artifacts do not equate to modern computer-supervised manufacturing of mass produced commodities like a plastic water bottle or an IPhone. Studying and understanding the reasons for variation in manufacturing in the past provides insights into human behavior and suggests reasons “why” certain things happened. The Japanese excavation of the 1281 site of the Kublai Khan wrecks off Kyushu found many similar ceramic jars – many of which when carefully examined had flaws in their form and firing. This collection, of many jars that a non-archaeologist might suggest were “redundant” and potentially “excess” demonstrates short cuts in a rushed production process to ready a fleet for invasion – and with similar archaeological evidence of short cuts in the production of the ships and arms for the same fleet, provides a new and compelling reason in part for the defeat of the Khan’s mighty armada in 1281 separate from the traditional legend of a divine wind sinking the invaders. Likewise, “similar” amphorae from ancient wreck sites off Greece have been carefully analyzed with new techniques that extract DNA from seemingly “empty” jars to show what types of liquids or other goods were being shipped, and where the olives, for example, in shipped olive oil came from – virtually reconstructing the spread of ancient agriculture and patterns of sophisticated seagoing trade networks. Were any of these artifacts – the ceramic jars from Japan or Greece – branded as redundant and sold as excess, important scientific and historical information would have been lost.

As shown in the previous sections, the archaeological profession is of one mind; i.e. at no time is the sale of any artifacts considered acceptable. Consequently, if TEC were to adopt a policy at variance with the established professional practice and policies, that would place most all of the scientific professional members of TEC and their professional associations and organizations in an untenable position.