Matriculation number: [redacted]

In Deep Water? White-Collar Perspectives on Commercial Salvage of Historic Wrecks

MSc Transnational Crime, Justice and Security

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University of Glasgow, 4th September 2017

Word count: 14,963

Acknowledgements

I wish to thank my supervisor Dr Donna Yates for helpful comments and pieces of good advice, and my friends for patiently listening to my many attempts at explaining to them exactly how many legal rules it takes to salvage a wreck.

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1: Introduction

It is difficult to deny the cultural association which exists between shipwrecks and the idea of treasure. For centuries, the vast majority of trade in the world was conducted at sea, with significant amounts of wealth traversing the oceans – and, often, also being lost on them. Although the true number is likely to be higher, the United Nations estimated in 2009 that some 3 million wrecks still lie on the ocean floor (Stuart 2011; 45). However, many historic shipwrecks do not only have financially valuable cargo in the form of gold and silver; they can also be of immense archaeological value as they can be packed with archaeological information, having often gone down with all the tools, supplies and cargo necessary for the voyage, with many organic artefacts preserved better under water than on land due to anaerobic conditions in many marine states. Furthermore, unlike terrestrial sites which may have been occupied several times over the centuries, shipwrecks date to one moment in time which offers tight chronological control (Pringle 2013; 803). What shipwrecks do have in common with terrestrial sites, however, is that this archaeological context is destroyed when the site is disturbed by for example persons searching for treasures. Today's media platforms, including well established ones such as Discovery and National Geographic, often feature content focused on treasure hunting in the ocean, frequently presented in a sensationalised manner (Teixeira Duarte 2012; 75). Such portrayals, which equate archaeology with treasure hunting, place the main focus on the finding of historical wrecks and thus essentially endorse anyone who is skilled at finding things to act as an archaeologist (Krieger and Buxton 2012; 275). Thus, the same public which is likely to strongly oppose against looting and destruction of archaeological heritage found on land will often happily watch as underwater sites are subject to similar activities, with the crucial difference that they are presented as a glamourous adventure (Adams 2007; 50). This distinction is well illustrated by archaeologist Kevin Crisman in a comparison of the reactions to exploitation of underwater and terrestrial sites: 'If

these guys [commercial salvage companies] went and planted a bunch of dynamite around the Sphinx, or tore up the floor of the Acropolis, they'd be in jail in a minute' (Aguayo 2007).

It follows, then, that the potentially destructive exploitation of cultural heritage is an important area of research. As Colin Renfrew (2000; 15) has argued, looting constitutes 'the most significant cause of destruction of the archaeological heritage today'. Looting of terrestrial heritage occurs on all continents, with trafficking of illicit antiquities having been estimated to have a significant financial value (McManamon and Morton 2000; 253); and a variety of different measures have been taken to counter such looting and trafficking, including legislation making cultural heritage the property of the state, tighter restrictions on the export of antiquities and – in some places – a legalisation of the antiquities market (see for example Brodie and Renfrew 2005; Kersel and Kletter 2006). Underwater cultural heritage, however, comes with its own specific challenges for those wishing to implement similar measures, as it can be very difficult to effectively protect given its often inaccessible location. In for example the United Kingdom, designated sites may be worked on regularly during the diving season, but might be left unmanned for days or weeks for the rest of the year (Dromgoole 2006; 325). It can also be significantly more difficult to prove that an artefact comes from an underwater site than from a terrestrial one, as the contents of a vessel may be dispersed over a wide area (Forrest and Gribble 2002; 278). Furthermore, it can be harder to establish ownership of a wreck. Many shipwrecks lie in international waters rather than within any state's territorial waters, and are thus outside the protection of statues and treaties applying in territorial waters and not part of any coherent legal regime for handling disputes over their ownership (Doran 2012; 648). Moreover, the traditional ideas which are often discussed in relation to crime against terrestrial heritage might not apply in the same way to heritage found off the shore. A concept such as subsistence looting (Hollowell 2006) – looting

by impoverished local populations as a way of supporting themselves – which is a prominent issue for terrestrial archaeological sites in many countries, does not at all apply to underwater cultural heritage in the same way given the significant expenses which often come with accessing underwater sites.

Rather, those who primarily seek to plunder underwater treasures today, particularly on wrecks located in deep water, appear to be successful companies with access to the very latest technology – they belong to the commercial salvage industry, which is focused on recovering goods deemed to be of financial value from shipwrecks. Through using developments such as SCUBA, sonar and remotely operated submersibles have made deep sea salvage increasingly feasible, salvage companies are now able to access sites which would previously have been considered unreachable (Coleman 2013; 853; Doran 2012; 648). Although there are several current dangers to underwater cultural heritage, with industries such as commercial trawling responsible for significant damage to remains on the seabed**,** it is the industry of commercial salvage that many presume maritime archaeology and underwater cultural heritage management will become increasingly linked to in the future, meaning that it constitutes a particular threat as archaeology could potentially end up being a secondary concern behind the profitability of such enterprises (Adams 2007; 49-50). Furthermore, several major salvage companies seem to be of the opinion that rules are not so much strictly to be followed as they are guidelines leaving plenty of room for creative interpretation – something which to a great extent appears to resemble the mindset of a much discussed group within criminological theory, namely white-collar criminals. However, the activities of commercial salvage companies regarding treatment of historic wrecks have not yet been critically evaluated within the framework of white-collar crime research.

To shed further light on this unexplored issue, this dissertation will thus connect these two fields of study – underwater cultural heritage and white-collar crime. Although both have been extensively covered in academic literature, an analysis of this kind has never been done before and this work will therefore bring a new theoretical perspective on looting of shipwrecks. This work will begin with establishing the background of the topic with particular attention paid to relevant literature, theory and legislation, and by more specifically outlining the methodology which was used in approaching the topic. Then, it will look closer at case studies focusing on three salvage companies which have operated on historic wrecks all over the world, Odyssey Marine Exploration, Arqueonautas and Sea Search Armada, and cover different aspects of commercial salvaging of shipwrecks and how these can be related to perspectives from white-collar crime theory. First, the role that salvage companies can play as the partners of national governments, and how this can place them in a position of trust, something which can enable them to exploit underwater cultural heritage in a way which is lawful but socially harmful, will be discussed. This will then be further elaborated by an analysis of how salvors can attempt to circumvent the law through techniques of creative compliance; and how they can use techniques of neutralisation, especially in the way they attempt to portray their opponents in their statements and press releases and in their own academic publications. Following this, the conclusion will bring together the evidence from the three section, taking into account implications for the future and what can potentially be done to hinder this form of commercial exploitation of underwater cultural heritage. To begin, however, those theories, and the phenomenon to which I am applying them, all deserve a more thorough introduction.

2: Background

This chapter will establish the background of the topic of this dissertation by discussing it in three different sections. The first will cover the academic work which has been done in the areas of white-collar and corporate crime, the second the relevant literature on shipwreck salvage as well as the legislative framework and ethical standards which apply to underwater cultural heritage; and the third will outline and justify the methodology I have chosen to apply.

White-collar crime is a concept which has now existed for quite some time. Edwin Sutherland (1949) was first to coin the term, referring to criminals of a high social status whose activities were different from traditional street crime. Despite their activities not falling under the criminal law, Sutherland argued that this type of deviance should be recognised as a crime as it could still be harmful. Harmfulness has since remained a central theme of white-collar crime theory as it often plays a distinctive role in it – the harm caused by white-collar crime is often different from that caused by conventional crime; and furthermore it is often mitigated by the value of surrounding legitimate conduct (Green 2006; 34). However, the definition of what exactly the 'white-collar' in white-collar crime refers to remains debated to this day – some would say it refers to the occupational and social characteristics of the offender, how the persons committing these crimes have high social status and possess powerful occupational positions (the 'offender-based' definition); whereas others claim it refers more to the characteristics of the crime, which is often property crime based on deception and concealment (the 'offence-based' definition) (Madensen 2016; 400). This dissertation will not settle on either definition but will rather come to discuss both, as the theories which will be

analysed in particular detail incorporate some elements which are more focused on the offender and some more focused on the offence. Regarding the motivations and explanations for white-collar crime, Sutherland's (1949) original theory of white-collar crime was based on differential association, which assumes that offending behaviour is learned by spending time in an environment where such behaviour is considered to be acceptable or is even encouraged, teaching the potential offender both techniques of committing crimes and motives, drives, rationalisations and attitudes favourable to the violation of the law (Sykes and Matza 1957; 664). Other authors have more recently broadened this view to discuss white-collar crime as driven by opportunity (Madensen 2016); social structures which allow certain groups to influence how the criminal law is formed or applied (Gobert and Punch 2007; Mackenzie and Green 2008); or by the forces of globalisation making it possible for corporations to manage their business in new ways (Passas 2005).

A common issue of white-collar crime when taking the form of corporate crime, that is, crime that is committed by a corporation or by a person acting on behalf of a corporation, is that it can be difficult to assess the liability of those involved (Green 2006; 26). This topic has been the focus of a key debate between Donald Cressey on the one hand and John Braithwaite and Brent Fisse on the other, which more specifically discussed the extent to which corporations can be held responsible for criminal actions. Cressey (1995) argued that although the legal fiction that corporations act like humans and function as a unit is necessary, they should not be confused with humans when studying white-collar crime. As corporations cannot have intentions, their crimes are phantom phenomena which cannot be explained by behavioural theory. Braithwaite and Fisse (1995) claimed in response that criminal responsibility should be applicable to corporations as well as persons, and that corporations have at least a form of intentionality in corporate policy; furthermore, actions can be explained without having to be

intentional. The complexity of corporate crime has further been discussed by for example Maurice Punch (2008), who argues that people in corporations are able to justify their deviant behaviour as corporate actors rather than autonomous individuals (105); and by for example McKendall and Wagner (1997), who view corporate deviance as the result of a combination of variables coming from both external and internal sources providing motive, opportunity and choice (625; 645). This work will not closely engage with the debate over to what extent corporations can function as actors, as it falls well outside its scope, but it needs to be acknowledged as the dissertation will speak of primarily of companies as actors, because most of their actions appear to be based on company policy rather than on the decisions of specific individuals.

The particular theories of white-collar crime which are relevant to this dissertation are techniques of neutralisation and rationalisation, white-collar crime as a violation of trust, and creative compliance; all of which have been covered in the academic literature. The concept of techniques of neutralisation was first introduced by Sykes and Matza (1957), and functioned to them as an integrated theory encompassing Sutherland's idea of differential association and the "vocabularies of justification" developed by Donald Cressey (Stadler and Benson 2012; 495-496). The five techniques they outlined are denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners, and appeal to higher loyalties (Sykes and Matza 1957; 666-669). These, and additional techniques which have been proposed by Heath (2008), can essentially be said to encompass a range of excuses and justifications which can be used to suppress normative values and rationalise deviant behaviour (Stadler and Benson 2012; 495-496). As for white-collar crime as a violation of trust, although first mentioned by Edwin Sutherland (1949), it has primarily been discussed by Susan Shapiro, who argued that this should be the primary definition of white-collar crime

and outlined the different ways in which crimes of trust can be committed (1990). Creative compliance was first outlined by Doreen McBarnet (2006), with the concept defined by her as the practice of using the letter of the law to defeat its spirit, by using technical legal work to ensure that activities fall on the right side of the boundary between the lawful and the illegal – maintaining an appearance of following the law while actually breaking it at the same time (1091). These concepts and theories have recently been applied to several different industries – for example by Rorie (2015), who has studied compliance within the environmental sector. Such works provide interesting points of comparison to the commercial salvage industry, on which no work attempting to apply white-collar crime theories has yet been done.

With regards to the existing discourse on shipwreck salvage, it consists of a legislative framework and academic work which has been done on how commercial salvage affects underwater sites and the extent to which the existing framework is capable of protecting underwater cultural heritage. Before 2001, the main international legislation concerned with the international law of the sea was the United Nations Convention of the Law of the Sea – UNCLOS – created in 1982. The existing article on underwater cultural heritage in UNCLOS has been argued to have no effect on commercial exploitation: Article 303 does set out a general obligation for states to protect their underwater cultural heritage, however it also states that nothing in the article will affect the law of salvage or other rules of admiralty, leaving a loophole for salvors to attempt to gain title or recover artefacts (United Nations 1982; Guérin and Egger 2010; 100-101). This contributed to the feeling that a convention dealing with underwater cultural heritage in its own right had become a necessity; as did a particular case concerned with such exploitation – that of the wreck of *Dodington*, a British East Indiaman which sank in what is now South African territorial waters in 1755. Its wreck made the news when coins from the site appeared at a London auction in 1997, despite the

fact that the wreck and its cargo was protected under South African heritage legislation. The ultimate significance of the case was that it showed that domestic legislation was not always sufficient to protect underwater cultural heritage and that further international cooperation would be needed (Forrest and Gribble 2002; 267). That effort resulted in the creation of the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage. According to Patrick Coleman (2013; 853-584), the primary threat that the UNESCO Convention is focused on protecting underwater cultural heritage from is private salvors with access to new technology that allows them to engage in deep-sea salvage and recover artefacts from wrecks of historic and cultural significance which may previously have been out of reach. The Convention prohibits commercial exploitation of underwater cultural heritage, stating that such exploitation is 'fundamentally incompatible with the protection and proper management of underwater cultural heritage' (UNESCO 2001; Annex, Rule 2). Thus, it attempts to fill the hole existing in the UNCLOS article and also sets out an ethical standard for the management of underwater cultural heritage.

Aside from UNCLOS and the UNESCO Convention, there are other legal technicalities governing the matter of gaining title to wrecks. One of the first main considerations in establishing ownership is whether the wreck is a sovereign ship or a merchant vessel. It is stated in the 1989 International Convention of Salvage, and also a generally accepted principle of admiralty law, that the wrecks of sovereign warships, that is, ships which were part of the navy of a nation-state, have immunity from salvage (International Maritime Organization 1989); they belong in perpetuity to the government of the state in question and are off limits for treasure hunters. Merchant ships, on the other hand, can be fair game for salvors (Nelson 2010; 588). Jie Huang (2014) has specifically discussed the importance of identity for historic shipwrecks and how it affects courts' jurisdiction over wrecks; and

Patrick O'Keefe (2014) has also covered the way jurisdiction over different parts of the ocean floor has an impact on historic shipwrecks. Explained briefly, there can be said to be three different zones of the framework of UNCLOS which are relevant for the question of underwater cultural heritage protection – the first one being territorial waters, wherein states have full sovereignty and the contiguous zone, in which states can prevent infringement of its laws; the second consisting of states' exclusive economic zones (EEZ) and their part of the continental shelf, within which states have sovereign control over natural resources; and the third being international waters where activity is not restricted (O'Keefe 2014; 2). One of the key parts which caused debate over the UNESCO Convention was the extension of powers to states on their continental shelf and EEZ which would mean that any actions directed towards underwater need to be reported to the state – this worried among other nations the United States, which argued that it would upset the balance created by UNCLOS, and resulted in a number of nations choosing not to sign the Convention, creating a complication for UNESCO's attempt at effectively extending protection to underwater cultural heritage (Varmer et al. 2010; 131-132; O'Keefe 2014; 17).

If a wreck does not have sovereign immunity, and is not restricted because of its location – if it lies in international waters rather than in territorial waters or within a state's EEZ – the finder may try to gain title to the wreck or a financial reward. Such attempts tend to be based on two primary legal mechanisms: the law of finds and the law of salvage. Both are well-established principles originating in common case law and ancient Roman law respectively, and are practically universally accepted in maritime law all over the world, although certain specifics can vary between countries as they as largely domestically governed. Despite their different origins, they are often used together in cases of shipwreck salvage (Dromgoole 2013). The law of finds gives title to the person who first finds the wreck, and has been

argued to pose a significant problem when applied to historic wrecks as it practically encourages rapid plunder of wrecks in order to establish a presence at the site (Doran 2012; 657). For the law of finds to apply, the wreck in question must have been abandoned. Abandonment can be either directly expressed by the owner or inferred, if no party appears in court to claim ownership once a discovery has been made (Stuart 2011; 46-47). The law of salvage can apply to ships that are abandoned, derelict or shipwrecked, and after the salvor has recovered a wreck they will go to court to gain a financial reward in return, and, potentially, also title (Doran 2012; 649-650). It is questionable whether it should actually be applicable to cases involving historic wrecks as one of the original criteria held as a requirement for salvage law to apply is that the salvaged vessel should be in peril – which should logically exclude ships which have been at the bottom of the sea for decades or even centuries. However, this logic can stretched by for example arguing that historic wrecks can be in danger of destruction from the elements or from other activities such as fishing or trawling, meaning the law of salvage ought to apply (Doran 2012; 653). Some authors, such as O'Keefe (2014; 48-49), emphasises the issues that exist with salvage of historic wrecks and why it can be seen as being in direct conflict with the aims of the UNESCO Convention, as commercial salvage has an inherent focus on profit. However, it has also been argued by other authors, for example Hallwood and Miceli (2006; 296), that a possible way to proceed forward with the recovery and preservation of shipwrecks is through cooperative efforts between governments and salvage companies, as, given the current state of technology, a few profit-motivated companies are the primary finders of historic wrecks. In the field of law, there thus seems to be a growing interest in balancing the financial interests of salvors with the interest of the world community at large in preserving historic shipwrecks (Doran 2012; 694); and this type of public-private partnership will be covered in the coming chapter.

To integrate these two different topics into one coherent paper, I have used a range of sources consisting of academic works and information from other sources such as news articles, company press releases and websites, and court documents. The latter group is especially important for finding statements of the companies themselves, providing their own explanations of their salvage activities; whereas the academic literature will provide the theoretical frameworks and background information for the topics. I will use qualitative case studies as my main method of analysis, as these are suitable when analysing a phenomenon within its contemporary context (Baxter and Jack 2008; 544). Furthermore, case studies deal with the fact that phenomenon and context will not always be clearly distinguishable in real-world situations (Yin 2014; 17); which applies to this topic as commercial salvage of historic wrecks can take different forms depending on a context which can vary depending on, for example, where in the world it is taking place. Multiple cases will be used as this will allow the discussion to expand beyond the actions of a single company and also beyond a single context. While this does not necessarily provide a basis for generalisation, multiple cases can allow for a replication design which includes an initial step of theory development; after analysing each case, the conclusion of the individual case forms the information which needs replication from other cases, with the individual cases indicating whether a particular proposition is demonstrated or not (Yin 2014; 57-59). This dissertation will follow this model, through setting up a theoretical background of white-collar crime and selecting three theories which are concerned with the opportunity to commit white-collar crime, making commission of white-collar crime more convenient, and the rationalisation of such crimes. The analysis of the cases will then be guided by the proposition that these theories can be applied to salvage companies, a strategy for case study research outlined by Yin (2014; 136).

Three commercial salvage companies which are, or have been, operating internationally will be the main actors in my case studies, which will function as instrumental, meaning that they are intended to provide insight into and facilitate an understanding of a particular topic (Stake 1995); in this case, how salvage of cultural heritage can fall within the theoretical parameters of white-collar crime. These companies include Odyssey Marine Exploration Inc. (Odyssey) and their involvement in activities on the wrecks of the Spanish navy vessel *Nuestra Señora de las Mercedes* and the English warship *HMS Victory*; as well as the Portuguese firm Arqueonautas, which have conducted operations on wrecks in Mozambique and off Cape Verde; and finally another U.S. company, Sea Search Armada (SSA), and its involvement with the wreck of the Spanish galleon *San José* outside the coast of Colombia. The first topic I will use these cases to shed further light on will be the already mentioned contracts which are sometimes formed between governments and private salvors, and the proposition that these have the potential to provide companies with an opportunity to violate the standards of the UNESCO Convention.

3: Trusted Partners

As was briefly described in the previous chapter, it has been proposed that a possible way of managing underwater cultural heritage in the future is through collaboration of commercial salvage companies and national governments or organisations. This is a topic which is of particular interest for this dissertation, as it appears like such collaborations can enable companies to violate the ethical standards for protection of underwater cultural heritage which have been specified by the UNESCO 2001 Convention, especially if viewed from the theoretical perspective of the offence-based definition of white-collar crime. Susan Shapiro (1990; 350) has, focusing on the offence itself and the method of its commission, discussed how white-collar crime could potentially best be defined as a crime of trust rather than as related to the social status of the offender, as 'the violation and manipulation of the norms of trust – of disclosure, disinterestedness, and role competence – represents the modus operandi of white-collar crime'. Edwin Sutherland, too, argued that white-collar crime in the business and professions consists primarily of violations of delegated and implied trust (Forte and Visconti 2007; 493). White-collar crime involving a breach of trust is also a central feature of for example the definition of the crime outlined by the FBI (FBI 2017); and Benson and Simpson (2015; 102) have also named breach of trust as one of three main techniques white-collar criminals use alongside deception, and concealment and conspiracy. The trust relevant to this particular topic is that which is placed in salvage companies when they act in what is essentially a public capacity, entrusted with recovering or managing the underwater cultural heritage of a state. As heritage has a unique value to humanity, it is possible to argue that decisions about activities directed at cultural heritage belong to the public domain (Maarleveld 2011; 108); furthermore, cultural heritage *in situ* is a non-renewable resource, meaning that if it is exhausted, we may lose vital knowledge of our past (Cameron 1994). One

way in which heritage is exhausted is when it is sold off through commercial exploitation, which can thus constitute a taking away of public rights (O'Keefe 2014; 125). The preamble to the UNESCO 2001 Convention further states that responsible and non-intrusive access to underwater cultural heritage *in situ* is a right of the public (UNESCO 2001). One of its aims is thus to increase public awareness of, and involvement in, the protection of underwater cultural heritage (O'Keefe 2014; 30). This chapter will analyse the extent to which the companies featured in the case studies have broken this trust of responsibly managing underwater cultural heritage while being part of a public-private partnership, and ask whether they can therefore be argued to have committed actions which are socially harmful and represent a violation of the ethical standards which have been set by the UNESCO Convention, which include the prohibition of commercial exploitation and ensuring public access.

The public-private partnership is a concept which has been rising to prominence within several different sectors, and for underwater cultural heritage management, it has been proposed as a potential solution for the future, especially by those who are critical of the UNESCO Convention. Among others, Peter Hess, an expert in the field of shipwreck litigation, has claimed that the Convention's ban on commercial exploitation will mean that shipwrecks will increasingly be clandestinely looted instead of reported to governments (Stuart 2011; 71). Involving commercial salvage companies in the recovery of underwater cultural heritage has thus been argued to be a positive, as attempting to ban them from historical wreck sites altogether may result in either less wrecks being found, or increased clandestine behaviour on part of the salvors with more items ending up on the illegal market (Nelson 2010; 599). However, it is not a completely new development within the industry. The case of Sea Search Armada (SSA) and the wreck of the *San José*, which was sunk by the British navy outside Cartagena in 1708 while allegedly carrying gold, jewels and silver coins

of a significant value, is an early example of such an agreement. In 1981, the government of Colombia licenced a company – Glocca Morra, which would shortly afterwards join with other investment groups to form the partnership of Sea Search Armada – to search a certain area of its territorial waters for historic wrecks, including the *San José*. According to SSA's own statements, the company found a site in 1982 which it to this day claims represents the location of the *San José*, and after making this discovery it disclosed the coordinates of the site to the government – only to find afterwards that the government had declared the mission finished and prohibited SSA from entering the port of Cartagena, off of which the search area was located, again (Harbeston 2015). This became the start of a lengthy legal tug-of-war which made headlines once again when the Colombian government announced in December 2015 that it had discovered the *San José* in a location not corresponding to the coordinates given by SSA. It was very recently announced that the Colombian government are planning to salvage the contents of the *San José* through a new public-private partnership (Galéon San José 2017). The government has so far refused to announce the name of the private company involved, but according to the Colombian Minister of Culture it is an 'international' company which is neither Colombian nor American, and which is composed of experts of all competencies. The company, the Minister has stated, was involved in finding the *San José* in 2015 – allegedly at different coordinates than those supplied by the SSA in 1983 – and was the party which proposed a public-private partnership. Supposedly, if the projected operation becomes reality, the company will receive 50% of treasure recovered from the wreck (treasure being objects which are not defined as cultural heritage, as such items are reserved for the Colombian state) (Galeón San José 2017). Thus, even though the particular business between Colombia and Sea Search Armada resulted in a spectacular debacle, similar arrangements are still present in current debates on the involvement of private, profit-oriented salvage companies in the management or recovery of cultural heritage, and two other recent

partnerships provide great opportunities to illustrate how some theories from white-collar crime can be applied to such arrangements.

The first current example of a contemporary public-private partnership involving commercial salvage can be found in Mozambique, a place which has a long history as a centre of trade in the Indian Ocean going back to the 1st millennium AD (Teixeira Duarte 2012; 63). A specific site of interest for maritime archaeologists is the Ilha de Moçambique (Mozambique Island), an island just off northern mainland Mozambique. It was the capital of Portuguese East Africa for nearly 400 years and functioned as a safe port for trading vessels, and in 1991 it was named as a UNESCO World Heritage Site (Jeffery and Parthesius 2013; 170). Since 2000, underwater archaeology in this area has been carried out by the private salvage company Arqueonautas, which has an exclusive licence agreed upon with the Mozambican government as part of a programme focused on underwater cultural heritage recovery. This licence covers a 700 kilometre long stretch of the northern coast of Mozambique, including Mozambique Island (Teixeira Duarte 2012; 77). Arqueonautas is a Portuguese company which was founded in 1995. It is partnered with a lifestyle and clothing brand – also called Arqueonautas – which donates €1 to the salvage company for every piece sold from its clothing collection, and this brand is partly fronted by actor Kevin Costner (Arqueonautas 2015). In this way, the company has established itself as something more than just a salvage company and also seems prepared to promote an image of itself as primarily focused on protecting underwater cultural heritage. This, it could be argued, can function to enhance the trust the public has in the company through creating a profile for itself which does not only include shipwreck salvage but also a wider engagement with the public.

Aside from its activities in Mozambique, Arqueonautas has also pursued similar partnerships elsewhere – for example, it has operated in Cape Verde where it had an arrangement with the government between 1995 and 2000. The company itself states that its focus is on protecting underwater cultural heritage and develop ways in which it can be sustainably managed in the future, and per Arqueonautas own website, the agreement – which according to the company is still in force – has largely been a success and has to a great extent involved cooperation with the local community (Arqueonautas 2017). However, there appears to be a distinctive pattern in its operations in Mozambique which suggests otherwise. Of 40 discovered wrecks, six have so far been selected for excavation and recovery – all of which have yielded gold, silver and collections of commercial value (Teixeira Duarte 2012; 78). This could be seen as an example of cherry-picking wrecks believed to contain valuable goods, rather than focusing on their historical value (Pringle 2013; 806); and does suggest that there is a distinct financial motive underlying the activities of the company. For the particular agreement it has in Mozambique, the deal has been for at least one of the wrecks, the Fort Saint Sebastian wreck, that 50% of the artefacts found in the galleon would fall to Arqueonautas, with the Mozambican government having the right to take the best pieces from the remaining share (Jeffery and Parthesius 2013; 170). Arqueonautas, as a result of its licence, can thus be argued to be engaged in treasure hunting – or archaeology focused on finding items of financial value rather than developing our knowledge of the past – enabled by its access to underwater cultural heritage granted by the partnership. Furthermore, Teixeira Duarte has argued that granting exclusive rights to Arqueonautas has functioned as an obstacle to the development of local maritime archaeology, which was beginning to gain momentum when the contract was created (2012; 77). Recently, UNESCO has also taken a stance against the commercial exploitation of the wrecks in Mozambican waters. In December 2016, it organised a national workshop and assessment mission at Mozambique Island in response to the treasure-hunting

of Arqueonautas. This workshop led to an action plan being developed for future research, capacity building and community engagement in collaboration with the local community and experts (Unite4Heritage 2017). According to the UNESCO website, the government of Mozambique are now trying to find ways to safeguard their underwater cultural patrimony and build capacity to preserve and manage it, particularly through involving the local community which is already protesting against the perceived exploitation of the island's underwater cultural heritage (UNESCO 2016). Mozambique is however not a state party to the UNESCO 2001 Convention, which means that commercial exploitation of the country's underwater cultural heritage is not technically against any written rule, however, as was discussed in the previous chapter, white-collar activities are possible to describe as socially harmful even when they do not fall under the criminal law. Arqueonautas' activities fit this pattern as they seem to be undertaken with a commercial rather than the cultural, or public, interest in mind. Archaeologists argue that for-profit salvage operations fail to provide a number of things which help the public access underwater cultural heritage – for example, scientific publications on excavations and finds are not always made by salvage companies even though they may promise that they will provide them. Arqueonautas has failed to deliver final reports about their excavations in Mozambique as well as a scientific publication on their overall work in the area which has been said to be upcoming on their website for several years; and the reports which do exist are incomplete and more focused on determining the financial value of the finds than on scientific goals (Teixeira Duarte 2012; 83). By not publishing their findings to a required standard, or not at all, the company essentially deprives the public of its right to cultural heritage, and goes against the 2001 Convention which states that failure to publish the details of an excavation and the conclusion to be drawn from these constitutes a 'denial of access' (UNESCO 2001; Article 2, Paragraph 10).

Another recent example of an agreement between a private salvage company and a national government is that which was concluded between Odyssey Marine Exploration and the British government regarding the wreck of the Royal Navy ship *HMS Victory* which sank in 1744 in the English Channel with all hands. Its location was unknown for many years until it was found by Odyssey in 2008, beyond British territorial waters (Pringle 2013; 806). Odyssey declared itself 'salvor-in-possession' and has claimed that preservation *in situ* would be impossible as the wreck in its current location is threatened by erosion, damage from fishing vessels and looting (Odyssey Marine Exploration 2012). However, *HMS Victory*, as a sovereign warship, still formally belonged to the British government, until January 2012 when the government gifted the wreck to the Maritime Heritage Foundation and two other trustees – citing the reason that it did not want to spend its money on managing the wreck. Only one week later, Odyssey Marine announced that it had signed an agreement with the foundation to excavate the wreck (Pringle 2013; 807). This was strongly criticised by prominent archaeologist and member of House of Lords Colin Renfrew who spoke out against the decision of the British government to gift the wreck of the *HMS Victory* to a partnership between the Maritime Heritage Trust and Odyssey Marine Exploration (Pringle 2013; 803). A reason for criticism is that the contract did go against the prohibition of commercial exploitation found in the UNESCO Convention as it contained a provision for the sale of coins, presumably on the open market – however, as the United Kingdom has not signed the Convention, it cannot technically break its rules (Dromgoole 2006; 341). However, this is not the only complication of the agreement. A key phrasing which has been pointed out by Pringle (2013; 807) is that if the financial costs of the operation cannot be covered by the Maritime Heritage Foundation, the foundation may compensate Odyssey with artefacts in lieu of cash. Patrick O'Keefe (2014; 126-127) further notes that even though Odyssey has claimed that its preferred option would be to be paid in cash, the trust is not known to have any

significant financial resources and will likely not be able to compensate Odyssey fully in cash; if this turns out to be the case and artefacts have to be used instead, the operation would become a clear example of commercial exploitation as objects would be bartered for rendered services. In this case, Odyssey, through its partnership with the government, has managed to gain the right to salvage a wreck which would normally be out of its reach by virtue of being a sovereign warship and therefore awarded with immunity from salvage. The explicit abandonment of the *HMS Victory* by the British government, which would have title to the wreck under this rule, of the wreck completely legitimises the company's activity at the site. Furthermore, as it cooperates with the United Kingdom, it also avoids breaking the article in a purely legal sense. Thus, its activities cannot strictly be categorised as criminal – but they may still function as a way to recover artefacts in a manner that goes directly against what is stated in the UNESCO 2001 Convention, as cultural artefacts are likely to function as part of the contract.

Shapiro (1990) points towards the exploitation of structural vulnerabilities of trust relationships as the foundation of white-collar crime. One such structural vulnerability is the provision of opportunity for deception. Being legitimate businesspersons, white-collar criminals often have the advantage of being legitimately present at the site of their illegal activity, which means that any deviant conduct may be perceived as mere normal business conduct (Forte and Visconti 2007; 495). This obviously applies directly to salvage companies working on shipwrecks, and very much distinguishes them from for example the types of clandestine diggers who often loot terrestrial archaeological sites. Their role as accepted partners in public-private partnerships thus gives them not only access to underwater cultural heritage sites but also a possibility to essentially conceal any actions which may contradict legislation and treaties; particularly since, as Shapiro (1990; 353) has argued, it may be

difficult for principals (those who place their trust in others) to constantly observe their fiduciaries (those who they place their trust in), either because of a lack of information or because they do not have the expertise required to evaluate the conduct of their fiduciaries.

As the actions of salvage companies in public-private partnerships are facilitated directly by their professional role; they can be said to adhere to the theoretical opportunity perspective which stresses that opportunity arises when individuals or groups can engage in illegal or unethical behaviour and expect to avoid detection and punishment with reasonable confidence (Gottschalk 2017; 607). Being placed in a position of trust from which it is possible for white-collar criminals and companies to shape the legal framework to a certain extent, naturally affects the opportunity structures for white-collar crime by leading to a reduction of credible oversight (Benson and Simpson 2015; 110). Thus, private salvage companies can be seen as occupying a position within the world of underwater cultural heritage management which can give them the opportunity to exploit public trust for their own ends and profit, something which both Odyssey and Arqueonautas appear to be engaging in within their current partnerships. They can subsequently be argued to violate the standards for management of underwater cultural heritage laid out by UNESCO; and resemble white-collar criminals as defined by for example Shapiro and Sutherland, with the violation of trust being central to the crime or, in this case, their harmful activities. The companies seem to be able to benefit especially from forming partnerships with national governments, which can give them full permission to search for and excavate what would otherwise be considered heritage owned by the public, and, depending on the state they are cooperating, allow them to completely circumvent existing prohibitions on commercial exploitation of artefacts from wreck sites. Partnerships of this type have furthermore been proposed to be highly relevant to the future of underwater cultural heritage management, and it remains difficult to judge what will happen if

UNESCO or other major actors decide to take a stand against excessive involvement of salvage companies. Likely, this will make it even more important for salvors to present their actions as legitimate; and the next chapter will discuss how these companies, whether in partnership with governments or engaged in their own projects, further attempts to maintain an appearance of being lawful actors, whether or not they are actually on the right side of the law or not.

4: Keeping to the Code

The previous chapter illustrated how salvage companies can find themselves comfortably on the right side of the law even as they commit actions which can be seen as ethically harmful. However, when they operate in waters which from a legal perspective are slightly murkier, for example where concerned states have signed the UNESCO Convention or when there is no express abandonment of a wreck, these companies appear to employ certain methods to ensure that they appear to be following the law at all times. Maintaining an appearance of acting in a completely lawful manner naturally means that a crime becomes more convenient – not only is it easier to defend legally, but it is also likely to become easier to actually commit, and this convenience, Peter Gottschalk (2017; 606; 615) has argued, can play a role as an attribute to criminal action. This chapter will argue that one particular concept from criminological theory, creative compliance, can be observed in certain actions of the commercial salvors featured in the case studies, and that creatively complying with regulation can assist them in committing actions harmful to underwater cultural heritage through making such actions more convenient.

Creative compliance was first outlined by Doreen McBarnet (2006; 1091), and is defined as using the letter of the law to break the spirit of the law; something which is accomplished by using technical legal work to handle the packaging, structuring and definition of actions and practices in order to ensure that they fall on the lawful side. It can also result in stepping over the line that divides lawful from unlawful, however, and what determines this is what course is taken when it becomes impossible to cover all aspects of a particular action by taking a clever legal route (McBarnet 2006: 1097). Creative compliance can subsequently also refer to attempting to hide one unlawful action among a chain of lawful actions in a creative legal

argument (McBarnet 2006; 1102); and it can thus effectively facilitate either technically legal (but still harmful) or illegal actions depending on the specific situation. Melissa Rorie (2015; 68-69) further points to the framework of Gunningham et al (2004) of three licences, originally designed with environmental corporations in mind as a helpful tool for analysing the compliance – or lack thereof – of organisations. The three licences of the framework are the legal licence, which consists of constraints imposed by regulatory regimes, and formal criminal justice sanctions; the social licence, meaning the influence of the media, politics, public opinion and organised non-governmental groups; and the economic licence, which is the likelihood to be able to profit, or to suffer a financial setback, as a result of certain actions. Social licence for commercial salvage companies is provided by public opinion and their portrayal in the media, and their economic licence is likely to be determined by the profit that could potentially be gained from selling artefacts from a potentially unlawfully salvaged wreck versus the costs that might be incurred from lengthy court proceeding; and the legal licence will be concerned with the particular legal framework that applies to salvage of historic shipwrecks. The social licence has been argued to play an important role – if it is not met, new legal requirements can arise, but if it is, corporations are able to maintain a 'reputation capital' which carries with it credibility. But this also works the other way around, as succeeding, or failing, to meet legal requirements may determine how a company is viewed by the public (Gunningham et al 2004). Thus, companies have plenty of motivation to assure that they appear compliant.

The first case relevant to this topic concerns Odyssey Marine Exploration and its legal battle with Spain over the 'Black Swan' wreck – real identity *Nuestra Señora de las Mercedes*, a vessel of the Spanish Royal Navy which exploded and sank off Gibraltar in 1804 following an engagement with the British Royal Navy. 'Black Swan' was the code name of a project

Odyssey began working on in 2007, which became known to the public when the company announced that it had recovered $500 million worth of colonial-era gold and silver coins from a shipwreck in international waters (Tsai 2008; 211). The company then filed for ownership of the wreck under both the law of finds and the law of salvage in April 2007, in the court of the Middle District of Florida, and was appointed substitute custodian of the vessel until further order of the court (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Spain, with reason to suspect that the wreck could be Spanish, filed their own claim to the vessel in June 2007, soon followed by a complaint filed to the court requesting more information about the site as Odyssey had not released enough for anyone to be able to determine whether the vessel was the sovereign property of a foreign nation. The company stated that it would release further information as requested but that it had ”found no evidence which would confirm the identity of the ship or an interest to Spain or any other third party in this particular site” (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). In their own press releases, the company further emphasised how it had conducted the recovery in conformity with salvage law and UNCLOS, beyond the territorial waters of any country, and that the ‘Black Swan’ operation had at no point been within the jurisdiction of Spanish authorities (Odyssey Marine Exploration 2007). When Spain tried to dismiss the company’s answer and get Odyssey’s appointment as substitute custodian of the wreck terminated , Odyssey amended its story to say that it had considered the possibility of the wreck being the *Mercedes*, but that there was still no confirmation that the site would represent any specific vessel (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Odyssey was thus clearly unwilling to discuss the identity of the wreck and the possibility that it had been aware that the site represented the remains of the *Nuestra Señora de las Mercedes.* One form which Shapiro (1990; 351) argues that crimes of trust can take is exploitation of the barriers – physical and

social – to the information and property which they possess, through misrepresentation which can either consist of calculated lies and fabrications or simple misstatements. This is something which has been argued to be a frequent problem regarding commercial salvage of wrecks – the frequent lack of transparency on part of the salvage companies, creates an imbalance between the information available to the companies and that accessible to other interested parties, making it harder for such persons or states to both become aware of and claim their rights (Huang 2014: 258).

Looking at Odyssey's company policy, it is furthermore very hard to believe that the specific aims for its operation in that particular geographic area did not include finding the *Mercedes.* According to the company's own website, the project research done by Odyssey focuses on areas where historical records suggest that vessels of high value might lie, and the object of the research is to evaluate the potential value, location and ownership of the wrecks and the viability of finding them (Odyssey Marine Exploration: *Research and Project Development*). At the time of its demise, the *Mercedes* was known to be carrying a significant fortune collected from the Viceroyalty of Peru, meant to support Spain's extensive monetary obligations to France which were the result of a secret agreement formed during the Napoleonic Wars (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Furthermore, in order for the company to proceed to the excavation phase of a shipwreck project once a wreck has been discovered within a search area, the research on it must reasonably predict or preferably even resolve potential conflicts about ownership that might arise over the wreck (Odyssey Marine Exploration: *Research and Project Development*). It thus seems highly unlikely that Odyssey would not have expected to find the *Mercedes*, or at the very least been aware of the possibility of doing so, especially since, as historical documents of a fairly reliable character – eyewitness accounts from persons aboard

accompanying ships – discuss the area where the explosion of the *Mercedes* occurred including an estimate of the distance from land (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Subsequently, if the company researchers were aware that they might discover that particular wreck, it is likely that the question of ownership would have come up during the initial research phase.

Worth mentioning is also that the Kingdom of Spain and U.S. salvage companies have been facing each other in legal disputes over historic shipwrecks before, with a notable case involving the company Sea Hunt Inc. In the 1990s, Sea Hunt found two colonial Spanish wrecks, the *Juno* and the *La Galga*, off the coast of Florida. The company attempted to gain title to the wrecks under the law of finds by claiming that Spain had expressly abandoned them (Shapreau 2001; 293-294). However, the Fourth Circuit Court of Appeal chose to award Spain with the title to both wrecks in 2000, citing that 'courts cannot just turn over the sovereign shipwrecks of other nations to commercial salvors where negotiated treaties show no sign of an abandonment, and where the nations involved all agree that title to the shipwrecks remains with the original owner' (Aznar-Gómez 2006; 273-274). This stated a clear message to salvors that Spain was willing to take action to protect what it perceived to be its cultural patrimony. Also relevant is the required standard of evidence which applies in cases of shipwreck litigation in American federal courts – the lower standard of proof, so-called preponderance of evidence. This means that a party does not need to prove its view of identification to the point where it is 100 per cent credible – it only has to present evidence that holds a superiority in weight, force and importance to the evidence of its opponent (Huang 2014; 260). Given this, it would never be necessary for any party with an interest in the wreck to prove its identity beyond all reasonable doubt. In the case of the *Mercedes*, the evidence which was presented for its identification was indeed enough for the Kingdom of

Spain to win the case in the district court in June 2009 (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Odyssey then chose to appeal to the 11th Circuit Court, protesting that the evidence was not conclusive. The company claimed, for example, that the number of coins it had found, about 595,000, did not match the amount that were supposedly onboard the ship when it sank, 900,000; and the same went for the number of cannon**s** that had been recovered, as the ship supposedly had between 33 and 50, but Odyssey had only found 17(Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Odyssey also argued that because it had only found scattered items rather than the intact remains of a ship, it could not strictly be proven that the site represented the wreck of the *Mercedes*. This was however not enough for the 11th Circuit to overturn the ruling of the district court that the wreck was the *Mercedes* – the court held to the idea that because the ship exploded before sinking, it could hardly be expected to remain a complete wreck, and the explosion likely also meant that the objects in the ship's hold might have been scattered over a wide area, which, together with the significant period of time which had passed since the ship's sinking, would explain why the numbers might not line up (Odyssey Marine Exploration Inc. v. the Unidentified Shipwrecked Vessel 2011). Thus, circumstantial evidence was enough for a decision to be made and upheld even though Odyssey appealed against it. This would make Odyssey's insistence that it did not know the identity of the 'Black Swan' wreck – and after that, that the company could not definitely prove that the wreck was the *Mercedes* – an attempt at creatively complying with the law. As Tsai (2008; 217) argues, Odyssey had a clear interest in revealing as little information about the wreck as possible as this would hinder Spain's ability to investigate the vessel's identity and assert a legal claim of ownership – as the wreck lay in international waters, its identity was crucial for such claims. McBarnet (1991; 325) has discussed, regarding tax evasion, how failure to disclose activities can in itself constitute an offence, and how the question in such situations becomes 'whether

the omission was a product of criminal intent or honest error'. The same question bears asking here, as the evidence does seem to be pointing to the company deliberately trying to avoid disclosing the full extent of knowledge it might have had about the identity of the 'Black Swan'.

Odyssey has furthermore also refused to disclose important information in connection to other cases – such as when a number of artefacts were seized aboard their ship, the *Odyssey Explorer*, outside Limassol, Cyprus, in 2015, on suspicion of having been recovered from Cypriot territorial waters or from the exclusive economic zone of Lebanon (in which states have the right to prohibit activities directed at underwater cultural heritage as per the UNESCO 2001 Convention, which Lebanon has signed) without permission (Milmo 2016). Data from the vessel's AIS (Automatic Identification System, a real time tracking system carried by vessels over 300 tons) seemed to support the theory that the artefacts had been salvaged from a site in the EEZ of Lebanon, while Odyssey maintained in a statement given at the time that it had not operated in Cypriot waters, but – conveniently – did not comment on any activity within the Lebanese EEZ (The Pipeline 2016). This case illustrates how it is possible to avoid the jurisdictional framework which exists for the ocean floor if one's exact location is unknown and can also be said to represent a method of creative compliance – through leaving out the information of where exactly the company had been operating, it attempted to avoid being shown as going against the UNESCO Convention by denying any actions in Cyprus, which was, however, not the relevant area for the actual looting. This could potentially be categorised as an example of non-disclosing disclosure, which essentially involves disclosing things in a way which makes it difficult to spot actions which could constitute an offence, by for example burying such facts among others or attempting to attract attention away from them (McBarnet 1991; 331-333).

Similar methods to those of Odyssey also appear to have been used by Arqueonautas in an attempt by the company to defend its actions regarding its operation on the wreck of the *USS Yorktown*, a U.S. Navy vessel which sank off Cape Verde in 1850. Arqueonautas recovered a number of artefacts from the wreck which were then sold at a Sotheby's auction in 2000. When the U.S. Navy, which claims jurisdiction over all its wrecks, questioned this action and demanded that the items be returned, a member of Arqueonautas' scientific board claimed in a letter to the U.S. Department of Justice that the company's staff had not been able to ascertain the identity of the wreck until after the excavation (Pringle 2013; 806). The U.S. Navy is still trying to find artefacts from the wreck which were dispersed as a result of the sale, which shows how difficult it is to recover objects after they have entered the commercial market. In this case too, the legal technicality of the identity of the shipwrecks played a key role, and had Arqueonautas been aware of the identity of the wreck, they would have been going against not only the principle of the U.S. Navy but also the accepted general rule of sovereign wrecks as possessing immunity from salvage. Once again, it is difficult to determine with certainty exactly how much the company would have known about the identity of the wreck. However, one can question why a thorough process of identification was not conducted between the excavation of the wreck and the auctioning off of artefacts from it.

Thus, it is possible to see how both Odyssey and Arqueonautas use what appear to be forms of creative compliance in their attempts to avoid stepping outside the legal framework, which they are highly unlikely to be unaware of since cases already exist which have dealt with underwater cultural heritage being commercially exploited by treasure hunters. In this, they adapt similar tactics to for example the company featured in arguably the most famous case of corporate crime, Enron, which used creative accounting to bolster its finances – most of the

deals which were brought up in the prosecution of this case depended on key facts being hidden from view (McBarnet 2006; 1097). The frequent denial of knowledge furthermore resembles a technique which Simon Mackenzie and Penny Green (2008; 140) have argued is prevalent among dealers in the antiquities market. These dealers, in addition to sometimes knowingly breaking export and handling laws, can also deliberately prevent themselves from being 'put in positions of knowledge about the origin of objects that would then render a purchase unlawful'. As was stated in the introduction, looting of terrestrial sites is also a serious issue and many objects ending up in the auctions houses in Western Europe and North America are of questionable provenance, and the trade practice of keeping objects' exact origins secret casts doubt on the authenticity of all items which come onto the market (McManamon and Morton 2000; 255). With wrecks, however, the practice of obscuring information appears to play an important role at the source of cultural objects rather than at their market destination, pointing to an additional difference between crimes committed against underwater heritage and those committed against terrestrial cultural heritage. What is also possible to observe, in a continuation of the discussion of the previous chapter, is that because the salvors themselves are often the only ones who have specific knowledge of deep sea sites, due to their general inaccessibility, a situation is created where it is very difficult for anyone else to prove what information the companies would actually have been party to when working on a specific wreck, especially when companies are unwilling to disclose such facts. The possibility for salvage companies to leave out crucial information thus essentially opens up loopholes which both Odyssey and Arqueonautas have possibly been exploiting in order to put artefacts up for sale which would otherwise have been legally beyond their grasp. However, despite this type of attempts at creative compliance, commercial salvors sometimes become subject to criticism, and the next chapter will go into more detail on how salvage companies use techniques of neutralisation and rationalisation to defend and justify their

actions when these are met by questions from other groups with an interest in underwater cultural heritage such as the academic community, states or local populations.

5: ’Fundamentalists’

Having seen how salvage companies can function in privileged ’white-collar’ positions and how they can evade the law through creative legal work, it is now time to turn to the topic of how these companies approach and respond to criticism, and the way in which they justify their own actions. This is something which can be done through neutralisation, which is essentially the act of using a range of excuses and justification in order to suppress normative values while simultaneously rationalising their own behaviour (Stadler and Benson 2012; 495-496). According to Peter Gottschalk (2017; 609), neutralisation theory has been increasing in importance as an explanation for white-collar crime – through applying neutralisation techniques, white-collar criminals are able to deny responsibility, injury and victim, condemn the condemners, and find their own mistakes acceptable. The work within criminological theory that originally outlined techniques of neutralisation and rationalisation was made by Sykes and Matza (1957); with the concept later been further developed and applied specifically to corporate and white-collar crime by for example Heath (2008) and Stadler and Benson (2012).This chapter will, for ease of structure, cover the five techniques in order, discussing relevant examples from the case studies, and also briefly mention further methods of rationalisation which have been proposed – and in doing so, it will be argued that not only are salvage companies committing acts which can be characterised as white-collar crimes, they are also explaining these acts in a way which is consistent with how criminological theory has argued that such crimes are often justified.

First in the outline of Sykes and Matza (1957) are three techniques which involve some form of denial – of responsibility, of injury and of the victim. The first, the denial of responsibility, involves claiming not to be responsible for any harm which has occurred (Sykes and Matza

1957). At least a partial denial of responsibility can potentially be seen in how it is occasionally claimed by salvage companies that they are not the main danger which threatens underwater cultural heritage. This, it has been claimed, is an outdated image propagated by archaeologists and the academic community which is no longer relevant to the present situation (Bederman 2010; 10). According to James Sinclair (2010; 17-18), it is 'absurd' to argue that the professional salvage industry represents the greatest threat to underwater cultural heritage; and furthermore, the majority of the wrecks in the world are of little interest to salvage companies as they do not have any major commercial value. However, it is not possible for salvors to fully deny that they sometimes do excavate and recover items from historic wrecks, and that is where the techniques of denial of injury and denial of the victim come into play. Denial of injury is defined as questioning whether any harm has actually occurred as the result of one's actions, something that can be open to a variety of interpretations (Sykes and Matza 1957; 667). When using such rationalisations, salvors may argue that although they do excavate wrecks, they use such a scientifically rigorous process, with thorough documentation of every step, that they do the exact same work professional archaeologists would (see for example Kingsley 2010). However, historians and archaeologists have long expressed concern about certain methods which have been used by salvors at shipwreck sites, such as explosives and propeller-wash deflectors – both of these blow holes in the seabed, which may damage artefacts (as well as natural heritage) and destroy the archaeological context (Shapreau 2001; 298-299). UNESCO has pointed to examples of this occurring both off Mozambique Island, where sites have been denuded of all natural material and left exposed; and at a site off Panama where salvors had used propeller-wash deflectors on the wreck of a Spanish galleon, recovered artefacts without sufficient analysis and documentation and only provided conservation treatment for artefacts that were deemed to be sellable (UNESCO 2017). The UNESCO Convention also makes a point to

address this through stating that activities directed at underwater sites 'must use non-destructive techniques and survey methods in preference to recovery of objects' (Convention on the Protection of Underwater Cultural Heritage 2001; Annex, Rule 4).

Denial of the victim is the refusal to accept the existence of a distinguishable victim of one's actions (Sykes and Matza 1957; 667). This is common in white-collar crime as its victims are often both geographically and temporally removed from the offence itself, and with regards to commercial salvage operations, the questions of whether there is a victim hinges on the extent to which commercial salvage operations on historic wrecks have a negative effect on the public's access to cultural heritage – as was discussed in Chapter 3, the denial of public access to underwater cultural heritage can be seen as a form of social harm. Odyssey and Arqueonautas maintain, however, that one of their primary concerns is to ensure that the public interest in underwater cultural heritage is preserved. Odyssey points to its wide range of projects aimed at 'sharing the treasures' which include exhibits, merchandise and television programmes as proof of its commitment to the experience of the public (Odyssey Marine Exploration: *Sharing the Treasures*). Arqueonautas claims, in the words of the company's founder, Nikolaus Grauf Sandizell, that it wants everyone to experience 'the significance of seafaring to our culture', something which the company partly works towards through salvaging items so that they can be placed in museums (Arqueonautas 2015). Odyssey furthermore promotes an idea for the future which involves private actors in underwater cultural heritage management through a system in which private individuals would function as stewards who can own and curate objects under a set of legal restrictions (Stemm and Bederman 2010). Items from historic wrecks are also often divided by these companies into two distinct categories: cultural objects and 'trade goods'. The latter is defined as items which were produced, and exist at the site, in large identical or nearly identical quantities and

therefore have little cultural value and can be sold for profit to collectors who have an interest in them (Odyssey Marine Exploration: *Sharing the Treasures*). Daniel de Narvaez (2010; 25-26) further argues, in one of the papers published by Odyssey, that commercialisation of gold and silver bars and uncut emeralds, all of which can be found on several Colombian historic wrecks, would facilitate the recovery of cultural patrimony and irreplaceable historic artefacts that could fill museums, and his argument also addresses the question of public access – how many people can dive down to see view wrecks *in situ* compared to the amount that would be able to visit them in a museum? To insist on such a policy, according to him, shows only arrogance and contempt. The methods of the commercial salvage industry are thus portrayed as a way of sharing heritage with the public, which can be argued to constitute a denial of the public as the victim of such activities. Therefore, the combined arguments that commercial salvage is not as harmful in reality as certain groups argue, and not harmful to public or cultural interests when it does occur, thus pose a denial of both injury and of the victims even though both are very real.

The fourth of the five neutralisation techniques outlined by Sykes and Matza is the condemnation of the condemners. This is when the individual standing accused of a crime chooses to blame the persons accusing them and questioning their motivations (Stadler and Benson 2012; 496). This shifts the focus off themselves and means that the original deviance might be more easily repressed or lost to view (Sykes and Matza 1957; 668). This type of neutralisation is something which can seemingly be observed in a number of statements found in Odyssey's academic papers, which the company has published on its website. A recurring theme in the company's publications appears to be questioning the UNESCO Convention itself, its supporters and those behind its creation. The Convention is for example criticised by David Bederman (2010; 10) for being 'transparently aimed at the threat of looting' while

ignoring other threats to underwater cultural heritage such as trawl damage and environmental degradation; creating an unnecessary and useless distinction between activities which are seen as being directed towards underwater cultural heritage, and activities which merely incidentally affect it. This essentially constitutes a questioning of the motives of those writing the Convention, implying that they have a specific agenda targeting looting, which is characterised by the same people as an activity of the commercial salvage industry. Greg Stemm (2010; 13), the CEO of Odyssey Marine Exploration, even holds the Convention to go against the legal rights of countries that might have a deaccessioning system of cultural management which allows the sale of selected artefacts and creates problems for states wishing to retain a salvage reward system. He also calls the UNESCO policy against commercial exploitation 'bizarre' and more related to a misguided collectivist policy than a practical real world model (Stemm 2010; 14-15). Miguel Gomes da Costa, a spokesperson for Arqueonautas, has, along the same lines, stated that the sale of artefacts is opposed by 'fundamentalists' (Pringle 2013; 806). This sort of language implies that those opposing the trade in artefacts hold an unreasonable opinion which cannot be reconciled with reality. By putting the focus on the attitude of the accusers, the companies position themselves as the voice of reason; and by questioning the Convention, the salvage industry also manages to shift the attention away from its own practices to the logic behind the Convention, which it argues to be flawed and incompatible with reality. If the standards which define their actions as criminal are themselves are faulty or illogical, their actions do not look as questionable as they might otherwise have. Rather than just condemning the attitude of the accusers, it is also possible to deflect their own actions back at them. Sea Search Armada claims that since it found the site of the *San José* in 1981, the Colombian government has attempted 'to illegally confiscate SSA's finds' (Martinez and Prifti 2015). The company's managing director, Jack Harbeston, has accused the government of lying, saying that it 'keeps repeating the Big Lie

(which is unfortunately repeated by the press) that [it] 'won the case' in federal district court and SSA had lost its right to the treasure. Nothing could be further from the truth' (Watts and Burgen 2015). This is a straight-up claim of being on the right side of the law, while the Colombian government is presented as lying and using the press to prop up their story. The argument is not focused on trying to justify the position of Sea Search Armada, but only seeks to question the actions of their accusers; and regardless of where the truth actually lies in the dispute between SSA and Colombia such statements do serve to paint the opposing side in a bad light, and indeed as capable of what salvage companies themselves are frequently accused of.

The fifth type of neutralisation is that of appealing to higher loyalties, which, like condemnation of the condemners, seems to be particularly relevant for the commercial salvage industry. Explaining one's actions by such an appeal can involve claiming they were made for the benefit of others or for the good of a company or an organisation (Stadler and Benson 2012; 496); or that the actions were the result of being caught up in a dilemma (Sykes and Matza 1957; 669). In the case of commercial salvage, the 'good' which companies claim to serve through their actions is the protection of underwater cultural heritage, especially in countries with limited financial resources for expensive maritime archaeology. Examples of this can be seen in how Gomes da Costa of Arqueonautas backs up his statement by saying that in developing countries such as Mozambique, one cannot expect maritime archaeology to be financed by the taxpayers' money, meaning that salvage companies have to get their funds from other means like the sale of recovered artefacts (Pringle 2013; 805). If salvage driven by the partial sale of artefacts were not taking place, he implies, maritime archaeology on a similar scale would not be happening in this location and cultural heritage could potentially be lost. In this, the thinking of the salvage companies appeal to the higher loyalty of protecting

underwater cultural heritage, through claiming that their methods will ultimately be more beneficial to such heritage than for example the principle of *in situ* preservation. Melinda MacConnel, the vice president and general counsel of Odyssey, further stated in 2012 that the forced return of the Mercedes treasure to Spain was ”a sad day for Spanish cultural heritage”, because the decision ”failed to consider that in the future no one will be incentivized to report underwater finds”, and in the future, anything found where there could be a potential Spanish interest could be hidden or melted down instead (Minder 2012). MacConnel’s words echo the sentiment of for example Peter Hess, an expert in the field of shipwreck litigation, who believes that the 2001 UNESCO Convention will have a damaging effect, as it will mean that shipwreck finds will not be reported to any government but will be clandestinely looted instead, as it gives states and the UN more influence over sunken vessels (Stuart 2011; 71). The argument that runs through all of these statements and claims is thus that according to commercial salvors, underwater cultural heritage is endangered by the Convention’s insistence on no exploitation, and they can subsequently justify their operations in developing countries by stressing how the lack of public resources make it impossible to protect underwater cultural heritage without the help of other funds, often coming from the sale of artefacts. Tied to this, it is worth mentioning Heath’s (2008; 603) discussion of the existence of two additional concepts which are possible to identify: that everyone else is doing it, and claims to entitlement. While the second one, which involves the perpetrator feeling they are somehow entitled to commit the crime based on for example moral reasons, such as perceiving themselves to have a right to take revenge on the victim, does not fit particularly well with any of the case studies discussed here, the first one can be seen in how Sean Kingsley (2010) explains that Odyssey is not alone in selling artefacts for profit – rather, this is something which is also done by Arqueonautas, Nanhai Maritime Archaeology and other

companies in order to finance their operations and drive the exploration of underwater sites in certain areas.

Within corporations, it has been suggested that neutralisation is often amplified by the social environment which is created there (Heath 2008; 609-610). While this dissertation does not have the scope nor the data to be able to discuss the specifics of the corporate culture of the relevant salvage companies, it can be assumed that such a culture, alongside the tacit endorsement the industry seems to be given by the media, has a certain influence on the extent to which neutralisations are a part of the decision-making process and operations of these companies. Rationalisations can form part of an overall strategy that might for example lay the groundwork for a legal defence, but they can also be part of a 'vocabulary of motive', which is a set of formulaic responses which encompass the classic techniques of neutralisation (Gobert and Punch 2007; 99). As has been pointed out by Coleman (1995; 366), however, techniques of neutralisation are not just *ex post facto* rationalisations – they are available before the offence occurs, meaning that they can potentially form part of the motivation for the original act. Regardless of the extent to which they function as motivation, it is however possible to see that a wide range of neutralisations and justifications is used by all of the three salvage companies which have functioned as case studies in their own explanations of their actions with similar patterns of especially the techniques of condemning the condemners and appealing to higher loyalties. This fits well with the idea of Gottschalk that neutralisation theory plays an important part in decisions to commit white-collar or corporate crime, and further strengthens the argument that certain activities of salvage companies are possible to characterise as such crimes.

6: Conclusion

Looting and commercial exploitation remain serious issues which have the potential to threaten cultural heritage across the world and under the sea, and it is thus no surprise that the concept has been the subject of a fair amount of discussion within academic literature. However, no attention has so far been given to the idea of those who loot and exploit underwater cultural heritage specifically can be seen as another type of criminals – white-collar criminals. The aim of this work has been to analyse this particular phenomenon and the extent to which the actions of companies which recover underwater cultural heritage can be understood through the application of white-collar crime theory; and it has discussed the actions of three commercial salvage companies, Odyssey Marine Exploration, Arqueonautas and Sea Search Armada, along the lines of three theoretical concepts typically associated with white-collar and corporate crime – crimes of trust, creative compliance, and techniques of neutralisations and rationalisations.

The key findings which emerged from this analysis was that salvage companies can be seen as occupying a position of public trust when they form part of public-private partnerships aimed at excavating or managing underwater cultural heritage, as cultural heritage is a resource which belongs to humanity and which the public, according to UNESCO, has a right to access. From this position, they are able to violate the trust placed in them through gaining exclusive licences which effectively excludes other groups, including local initiatives, from accessing cultural heritage and developing their own management of such resources, and the companies thus abuse the barriers they can create by choosing what information gets released. Additionally, by failing to deliver on promised academic publications, they can effectively be said to deprive the public of the opportunity to derive information about the past from sites, as

it is not possible to excavate sites again once they have been subject to a salvage operation. This, though not necessarily criminal depending on jurisdiction and whether states are party to the UNESCO 2001 Convention, can be said to constitute a type of social harm as it can cause injury to underwater cultural heritage – a non-renewable public resource which belongs to all of humanity. This breach of trust also plays a further role as the possibility to control what information is made available to the public about the wrecks they are operating on means that private salvors are frequently able to sidestep legislation through claiming ignorance or otherwise failing to disclose information on matters which can have a significant impact on whether their actions are lawful or not, something which can be seen as a type of creative compliance with the existing legal framework for shipwreck salvage. Finally, the same techniques of neutralisation and rationalisation which are used by white-collar criminals in other sectors are also available to salvage companies. Notably, they argue that their most controversial action, the commercial exploitation of cultural artefacts, is justified on the grounds of being undertaken for the good of underwater cultural heritage, and companies also condemn their condemners – for example the archaeological community – for their motives, by claiming that those who criticise commercial salvage have a fundamentalist view on the situation which is no longer corresponding to reality, and that the salvage industry is unfairly singled out as the main threat to underwater cultural heritage. Examples of these patterns appear in at least two of the three case studies across the board for all the three theoretical propositions and the results can thus be seen as replicated. This means that although further research of a wider scale will certainly be required for a conclusive treatment on the topic, and it remains difficult to strictly categorise the actions of salvage companies as criminal seeing as they sometimes do not actually break the law as written, it remains fair to conclude that there is a significant resemblance between these concepts from white-collar crime theory and a number of real-life actions of Odyssey, Arqueonautas and SSA. This means that the

theoretical framework of white-collar crime overall could potentially be highly useful for understanding the specific process of looting and irresponsible management of underwater cultural heritage, which appears to differ significantly from the model which has been proposed for exploitation of terrestrial cultural heritage, where the economic context has been argued to play a central role in driving the looting of many sites (Hollowell 2006); with deep sea salvage of underwater cultural heritage, those who recover the objects from sites operate from a vastly different and far more privileged position. Not only, however, can comparisons to white-collar crime facilitate an understanding of the issue in its current form. It can potentially also inform our judgement as to what we might expect from this particular phenomena in the future, and what regulatory responses might be appropriate if a serious attempt to put an end to commercial exploitation and looting of underwater cultural heritage through the operations of the industry is to be made.

Looking to the future, is it inevitable that commercial salvage will become increasingly involved in the management of underwater cultural heritage? If similar patterns which have been observed by criminologists in other sectors – for example the security industry, where private involvement has formed a whole new area of research (see for example Chesterman and Fisher 2009) – will be repeated in the salvage of historic wrecks, it does seem very likely that those who predict further private involvement will be proven right. To reiterate a point from the introduction, it needs to be acknowledged that the participation of archaeologists in deep sea exploration is likely to be continue to be limited as such sites are only accessible through using expensive equipment – for example, the daily cost of using an appropriately equipped oceanographic research vessel can average $30,000-40,000, which is beyond the financial means of most professional archaeologists (Krieger and Buxton 2012; 272-274). This echoes the reasoning which has been observed in other industries, where it has been

suggested that the outsourcing of activities associate with public service occurs when market forces are considered to be more effective than centralised or public intervention (Barak-Erez 2009; 72). This has perhaps so far been best exemplified by Odyssey and *HMS Victory* which was discussed in Chapter 3, but can also be seen in other future projects which have been proposed. For example, Arqueonautas has recently claimed that it is planning to start a project off the Isles of Scilly in cooperation with the Cornwall and Isles of Scilly Maritime Archaeology Society (CISMAS), meant to investigate the Scilly Naval Disaster of 1707 where four warships of the Royal Navy were lost (Arqueonautas 2015). Coincidentally, perhaps, the area between Land's End in Cornwall and the Isles of Scilly is also allegedly to be the place where a ship called the *Merchant Royal*, sometimes called the 'Eldorado of the Seas' because of the treasure it was carrying, sank in 1641. The wreck has so far not be found even though among others Odyssey has previously searched for it (Leonard 2007). However, as O'Keefe (2014; 41) also notes, the likelihood that these collaborations will continue to exist does not mean that private salvors should be left entirely to their own devices, as the crucial problem will remain that commercial salvage will always have profit as one of its aims. Taking action will thus be necessary if the commercial salvage industry is to be publicly recognised as a possible perpetrator of actions – sometimes within the parameters of the law, sometimes outside them – which negatively affect underwater cultural heritage by leading to looting, commercial exploitation, damage to sites or denial of public access to such heritage. Although there have been attempts to fill the existing gaps in domestic and international law through international cooperation, efforts such as the UNESCO Convention are unlikely to reach full effectiveness as long as nations with a significant maritime presence remain unwilling to ratify it. Furthermore, increased local involvement in the management of sites appears to be a potential way forward for underwater sites which are close to shore and reasonably accessible, and appears in the action plan which UNESCO suggested for

Mozambique Island (UNESCO 2016), however, for the many sites which less easy to reach, other responses must also be considered.

A further theoretical implication of the findings in this work is that both definitions of white-collar crime – the offense-based and the offender-based – appear to apply to salvage companies causing social harm, as they occupy a special, beneficial position, but also commit harm using deception and violation of trust. Thus, a regulatory response may be required which targets both of these things. The first aspect of such a response would be to change the public attitude towards the industry, especially towards searching for historic shipwrecks for the purpose of treasure hunting, which is still regarded largely as an acceptable and even adventurous and glamourous pursuit, especially in popular media where it is often given a very positive portrayal. Instead of this, the commercial exploitation conducted by salvors needs to be seen as a type of ethical violation that can have a negative effect on the access of the public to underwater cultural heritage, if not necessarily a criminal one. The second aspect which would be needed is further insight into the operations of commercial salvage companies, which might counter the issue of the lack of information released about shipwrecks and the problems that can arise from it. Such information must be made more readily available in order to combat the issue of salvors deliberately leaving out context or crucial details in order to evade the legal framework. Within the environmental industry, it has further been argued that requiring firm-wide disclosure of environmental information by law (something which is done in parts of the United States and Canada) can function as an effective tool to ensure compliance because in addition to being a legal demand, the extension of information to the public makes it possible for communities to put pressure on companies to adhere to the rules, which constitutes a legal expansion of the social licence (Gunningham et al 2004; 329-330). Similar methods might have potential to be effective within the

commercial salvage industry, as the application of this type of regulatory response would target the omnipresent issue of the lack of information which creates the opportunity for deception which appears to lie at the core of the issue, and also their socially encouraged position as adventurous finders of great lost treasures. Particularly if the public opinion shifted towards becoming more aware of the standards held by for example UNESCO regarding management of cultural heritage, it would be significantly harder for salvage companies to continue to justify their actions if such disclosure was required. Such a response would thus address harmful actions by commercial salvors as a white-collar crime both based on its method of commission and the position of the offender. Until this type of developments are made, however, chances are that certain salvage companies will be able continue to use underwater cultural heritage in ways which do not adhere to the ethical standards of the UNESCO Convention and exploit the historic wrecks that still remain on the seabed – operating literally in deep water, but rarely figuratively so.

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