

Open Access Publication of the Historical Sound Recordings of the Berlin Phonogramm-Archiv

Arguments from Public International Law and Cultural Ethics

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Abstract This paper argues in favor of an open access publication of the holdings of the Berlin Phonogramm-Archiv, which have so far received little attention from lawyers despite their status as World Documentary Heritage. Firstly, it is argued that the public international legal obligations of Germany under the Convention for the Safeguarding of the Intangible Cultural Heritage which require efforts to preserve intangible cultural heritage and make it accessible, are indirectly relevant for the historical sound recordings. Secondly, making the historical sound recordings accessible through digitization is – in addition to the legal perspective – a cultural-ethical imperative in the restitution debate. Read together, it seems that the open access publication of the historical sound recordings would be a pragmatic way to address both the legal and ethical perspectives.

Introduction

The aim of this paper is to draw attention to the public international legal obligations of Germany regarding intangible cultural heritage which have received little attention to date. According to the view of the author, the songs, dialects and other sounds stored on wax cylinders in the Berlin Phonogramm-Archiv (BPhA) represent intangible cultural heritage (and can be distinguished from the wax cylinders as physical objects which represent documentary heritage).¹ If this postulation were to be accepted, the treaty-based obligations of Germany would not only call for state efforts to pre-

serve these sounds, but also to make them accessible. Such an interpretation would also suit the cultural ethical perspective well, as making these historical sound recordings accessible through digitization is a cultural-ethical imperative in the restitution debate.

Relevant duties under public international law

Since 1999, the entire collection of the BPhA has had the status of UNESCO World Documentary Heritage. The world documentary heritage program was established "with the objectives of safeguarding the documentary heritage, facilitating access to it and disseminating it, and raising public awareness of its significance and the need to preserve it."² Documents have been inscribed in the Memory of the World Register since 1997 and the importance of providing access to such heritage was specified on 17 November 2015 in the "Recommendation concerning the preservation of, and access to, documentary heritage including in digital form."³

This is important for the role of documentary heritage as "the primary means of knowledge creation and expression," and its "impact on all areas of humanity's civilization and its further progress" can hardly be overstated. For this and many more reasons, access to such heritage "underpins fundamental freedoms of opinion, expression and information as human rights," according to the Recommendation. Therefore, documentary heritage "should be permanently accessible and re-usable by all without hindrance." In addition, the Recommendation urges "Member States [...] to promote and facilitate maximum inclusive access" (3.2). Furthermore, it is acknowledged that "[t]he avenues for providing access to documentary heritage are multiplying through the growth of information and communication technologies" (3.3).

Germany is very active in this international initiative supporting world documentary heritage and has the highest number of inscriptions of all countries participating (namely 23;⁴ cf., e.g., Elmshäuser 2018 with reference to the origins of the program and German documentary heritage). Nevertheless, in legal terms, world documentary heritage is not protected by any

international treaty so far. Hence, this program does not provide for strict legal obligations.

Even though the wax cylinders themselves embody tangible cultural heritage, the recordings stored on them are more than simple recordings and, thus, can arguably be distinguished from these objects. Most of these sounds have been recorded because the content represents intangible cultural heritage, for example, in the form of "traditional knowledge."⁵ The Convention for the Safeguarding of the Intangible Cultural Heritage, which was adopted by the UNESCO General Conference in 2003, is, therefore, at least indirectly relevant in this regard. In most cases, glimpses of a cultural practice have been recorded, which, according to Article 2(1) of the Convention, constitutes intangible cultural heritage such as "the practices, representations, expressions, knowledge, skills [...] that communities, groups and, in some cases, individuals recognize as part of their cultural heritage."⁶ This general definition in the convention is specified by a non-exhaustive illustrative list of the five main domains (Blake 2020:351), among which is also § 2 lit. a) explicitly naming "oral traditions and expressions, including language as a vehicle of the intangible cultural heritage."

While some might argue that these historical sound recordings represent only tangible documentary heritage, but not intangible heritage,⁷ it is important to note that this distinction largely comes from international treaty making and indeed "has effectively created an arbitrary distinction between 'tangible' and 'intangible' cultural heritage that has little meaning for Indigenous peoples since, for example, it fails to reflect their holistic view of heritage" (Blake 2020:353, with further references). To put it bluntly, if someone were to play the spoken word of an old Arabic dialect to a specific cultural group which recognizes this dialect as the spoken word of their ancestors, they will probably not understand this recording as a mere historical document. Justifying the restriction of access on the basis of a lack of protection under international law in relation to these historical sound recordings (such as by arguing that they were only documentary heritage) would, thus, be rather cynical and go largely against the main motivation to adopt the Intangible Heritage Convention (which constitutes a "counterpoint" to

a Eurocentric image largely favoring tangible objects and monuments over intangible cultural heritage, see Smith and Akagawa 2009:1). It would reduce the value of the recordings to their physical container and, in a way, continue the domination of tangible over intangible cultural heritage, and, thus, also the groups which favor the one over the other.

The immense cultural worth of these historical sound recordings does not stem from the recording technique used (which is, nonetheless, impressive) or the objects used to store the technique (which are also fascinating) but from the sounds themselves and the cultural practices they represent. In other words, this is a classic example in which the "material objects, buildings, and so on are [...] less important than the intangible cultural practices that produced them" (Blake 2020:354), or rather than the intangible cultural practices which are stored on them, in our case.⁸ If we were to grant protection only to the objects instead of the sounds, this would constitute a significant loss for the respective communities, as the cylinders exist but are stored in Berlin. "The matter, thus, is not what heritage is, but what heritage *does*, and for whom it does it" (Hanson 2017:135; cf. Smith 2007). Hence, the Convention on the Safeguarding of the Intangible Cultural Heritage and the obligations it contains should be respected in relation to the historical sound recordings of the BPhA, at least in the opinion of the present author.

The Convention on the Safeguarding of the Intangible Cultural Heritage entered into force in the Spring of 2006 after ratification by 30 states. Germany joined in 2013 as one of 180 State Parties.⁹ According to the prevailing opinion among German legal scholars, international treaties – and, thus, also the Intangible Heritage Convention – are equal to statutory laws in Germany (see, e.g., Geiger 2018:156ff). Article 13 concerning other measures for the conservation of the intangible cultural heritage is primarily relevant for our concerns. It states that "[t]o ensure the safeguarding, development and promotion of the intangible cultural heritage," each State Party shall endeavor, in addition to general political measures (lit. a)), the establishment of specialized bodies (lit. b)) and scientific, technical and artistic studies (lit. c)), in particular also in accordance with lit. d), to "adopt appropriate legal, technical, administrative and financial measures aimed at," among others, "ensur-

ing access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage."¹⁰ In a sense, the plea for making documentary heritage accessible is further strengthened in our case for the intangible cultural heritage represented by the historical sound recordings.

Within the framework of its activities, each State Party shall also "endeavor to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management" (Article 15).¹¹ This is of particular relevance in our case as specific cultural groups might have a considerably stronger interest in these sounds than most people living in Germany, where the recordings are stored. A building bridge is finally represented, because in the Intangible Heritage Convention, "the State Parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end undertake to cooperate at the bilateral, subregional, regional and international levels" (Article 19; see Chechi 2020; and generally Nafziger and Scovazzi 2008).

These articles – read together – might, thus, in legal terms, support the endeavor to digitize and publish the historical sound recordings discussed here. Even though no concrete way of implementing this effort can be derived from the Convention, making the recordings accessible through digitization, as intended here, might be reinforced by it.

Accordingly, it would be helpful if Germany were to include the historical sound recordings in all their facets as intangible cultural heritage in its inventory (Article 12). However, not as its own intangible cultural heritage, but as a way of advertising to the world that such heritage is present in Germany. Without such a listing, it is almost impossible for groups affected to learn about these sound recordings.¹² Until now, many cultural groups whose songs and dialects have been recorded do not know about these recordings and cannot, therefore, profit from and reintegrate them into their traditions. Due to the great importance of these recordings, they would, furthermore, also be worthy of consideration for the so-called Representative List of the Intangible Cultural Heritage of Humanity, according

to Article 16 of the Convention. This is supported by the fact that the Operational Directives for the Implementation of this Convention state as a criterion (in I.2.R.2) that the "[i]nscription of the element will contribute to ensuring visibility and awareness of the significance of the intangible cultural heritage and to encouraging dialogue, thus reflecting cultural diversity worldwide and testifying to human creativity."¹³ Beyond that, registering these sound recordings would be a true sign that cultural heritage is of great value to humanity and not (only) a specific nation or group.

In addition, the Charter on the Preservation of Digital Heritage adopted by the UNESCO General Conference in 2003 stipulates the widest possible public access to "digital heritage," i.e., cultural heritage that has either been created digitally or converted into digital form. This access should also be free – with the exception of sensitive and personal information (Article 2(1)).¹⁴ It quite explicitly emphasizes that there should be a "fair balance between the legitimate rights of creators and other rights holders and the interests of the public to access digital heritage" (Article 2(2)). While this charter has not yet received much attention, the topic and the measures recommended should, nonetheless, not be neglected. This is underlined by the implementation guidelines adopted by the General Conference in its 38th session in November 2015.¹⁵

The World Intellectual Property Organization Treaty on "Performances and Phonograms" should also be mentioned as it explicitly includes phonogram recordings.¹⁶ This treaty generally entered into force in 2002 and for the Federal Republic of Germany in 2010.¹⁷ For our purposes, however, the rights and obligations of performers contained in this treaty are no longer relevant due to the passage of time. Yet, the personal rights referred to in Article 5 as the "Moral Rights of Performers" include a "moral" right to be named as a performer that goes beyond death. This should – insofar as this is possible – be considered when publishing the sound recordings.

The historical sound recordings as research data

The historical sound recordings or their digital copies are also research data. This interpretation is supported by the fact that the sound recordings were not made in order to hear the people as subjects with individual histories or as artists, but specifically to produce supra-individual examples of speech (Lange 2019:16). These recordings can be understood "– analogous to the concept of imaging procedures, to strategies of visualization or visualization in scientific images – as scientific auditory renderings."¹⁸ Such individual research data are not protected by copyright because the prevailing opinion is that they do not constitute a personal intellectual creation of the researchers (Hillegeist 2012:7f).

The UNESCO Recommendation on Open Science adopted in November 2021 is relevant in this regard not as an explicit legal obligation, but as soft law under international law.¹⁹ This recommendation elevates the widely practiced so-called FAIR principles for handling research data, which categorically include "digital and analogue data, both raw and processed," and "sounds," as the "gold standard" (point 7 lit.b). Restrictions of open access to research data must be justified and proportionate (point 8). Although exceptions include the "protection of intellectual property rights, personal information, sacred and secret indigenous knowledge," the historical sound recordings discussed here are largely not protected by intellectual property rights, and the protection of personal information and sacred knowledge affects few, if any, recordings.

Following the recommendation, making the recordings accessible should also be guided by these principles. While the term FAIR is composed of the concepts of "Findable, Accessible, Interoperable and Reusable" file processing and stems from the FORCE 11 community for sustainable research data management (Wilkinson et al. 2016), the CARE (Collective Benefit, Authority to Control, Responsibility and Ethics) Principles for Indigenous Data Governance complement the FAIR principles by giving special consideration to indigenous peoples. The CARE Principles are based on the UNESCO Universal Declaration on Cultural Diversity (2001) and the United Nations Dec-

laration on the Rights of Indigenous Peoples and Principles for Indigenous Data Governance (2007), and are also explicitly mentioned in point 11 of the UNESCO Recommendation on Open Science. Indigenous individuals and groups should also be enabled to benefit from openly accessible research data.²⁰ The main goal is, thus, not only to process research data as effectively as possible but also in a respectful manner, which is particularly relevant regarding the historical sound recordings discussed here.²¹

These principles are also referred to by the NFDI4Culture Consortium, a German national research data infrastructure initiative for culture dedicated to tangible and intangible cultural assets.²² The FAIR principles are, furthermore, included in funding guidelines, such as those of the European Commission.

Cultural-ethical reasons for making the recordings accessible

In addition to perspectives from international law towards making the wax cylinder recordings accessible, the question arises which extralegal reasons might also speak in favor of providing open access to the historical sound recordings. Indeed, it is argued that cultural-ethical considerations also suggest open access publication of historical sound recordings.²³

The first thing to note is that these recordings often represent an act of cultural appropriation. Even though this is a fiercely debated concept which is sometimes used to argue for quite absurd positions, the concept can be generally understood as the use of a cultural product of "cultural insiders" by "cultural outsiders" (Matthes 2018, with further references to Young 2005:136). In addition to stories, motifs, artefacts and works of art, "cultural products" also include traditional knowledge and representations of the members of a particular culture (Matthes 2018, with further references to Young 2005; cf also Young 2008). The term appropriation in this context suggests that this process is problematic. Such an appropriation can harm the "cultural insiders" involved. In our case, it is precisely the silencing of the voices in the archive that is problematic, which is aptly expressed by the

cultural scientist Britta Lange, who speaks of "captured voices" (Lange 2019). She does so because the recordings come quite explicitly and obviously from people in captivity, among others. She proposes to speak of the collections of the BPhA as a "sensitive collection," i.e., a collection which was created under circumstances in which advantage was taken from a military and/or colonial position of power. Thereby, cultural, religious, social and sometimes physical boundaries have been transgressed, and this necessitates a sensitive handling when dealing with these collections (Lange 2012:65 quoted after Hilden 2018:189, Fn. 31). This classification seems to hold true for many recordings, even though Wilhelm Doegen, for instance, in a 1919 report on the scientific work of the Royal Prussian Phonographic Commission in the prisoner of war camps where many recordings were taken, "expressly" affirmed that he had never used coercion:

Finally, it is *expressly stated and declared* here that I have *never forced any people to speak into the apparatus*. Even when some commanders threatened to make the discontented English favor our cause, I first asked the English if they understood that they were doing it for a good international scientific cause. I asked them to tell me if they wanted to do so. Only then, *if they readily and voluntarily undertook* to speak into the apparatus, did I graciously and gratefully accept their offer.²⁴

Mèhèza Kalibani vividly illuminates that physical violence, however, was indeed used to obtain at least some of the recordings in former colonies. He quotes Karl Weule, a geographer and former director of the Ethnological Museum itself, describing a recording situation:

The singer was put in front of the set-up, we made it clear to him how he had to hold his head and that he always had to sing exactly into the funnel axis. [...] It is much worse with [the blind singer] Sulila; even standing in front of the funnel he cannot leave his darned habit of constantly turning his head. [...] With rapid impulsiveness, [...] I immediately grab the blind singer by the neck as soon as he lets his lion's voice ring out. Then I hold the woolly head in a vice-like grip until the bard has finished roaring his heroic song. I did not care whether he twitches and pulls and still tries to turn his head so energetically—I just continue holding it.²⁵

Such descriptions underline why Ronald Radano, the American Africanist, cultural scientist and musicologist, also speaks of "looted voices" in colonial contexts.²⁶ Caution is generally appropriate because the "precarious cir-

cumstances" and the "epistemic violence" present during the recording situation can no longer be reconstructed in detail today.²⁷ Due to this fact, Kalibani pleads to assume that people did not speak or sing into the phonograph voluntarily or with informed and free consent (Kalibani 2021b:50). It is certainly hard and often impossible to come to a final general determination on the question as to how the recordings were taken. Differences depending on which person made or supervised the recordings also certainly exist. It generally seems appropriate to handle the recordings with care. Not, however, in the sense that these recordings must be stored and kept safe behind closed walls. If the voices are considered "looted," strong moral reasons would speak in favor of giving them back to where they belong and, thus, making them accessible, because the recordings are still currently, in a sense, trapped in wax cylinders in the archive.

Now one might object that one can only speak of such problematic cultural appropriation if one accepts cultural essentialism; namely, the notion that cultural group membership can only be determined by a specific set of necessary and sufficient conditions. Otherwise, no distinction could be made between cultural "insiders" and "outsiders" (Matthes 2018 with further references). However, we do not necessarily have to get involved in this quite complex issue of dispute, insofar as we accept that historical language recordings of dialects and songs should not be withheld from the speakers of these dialects – irrespective of whether they embody a necessarily and sufficiently distinct cultural group or see their special interest in the sound recordings as being only rooted in their language. Moreover, it cannot be ruled out that certain relationships can be reconstructed, insofar as certain recordings can also be assigned to specific interpreters.

In any case, the sound recordings of songs and languages, some of which are more than a hundred years old, are a cultural treasure that could develop a very special significance, especially for the people potentially touched by the recordings.²⁸ Recordings from the Arab world, for example, are of great importance to people of certain groups when the recordings embody old Arabic dialects or contain folk songs that are still (or no longer) sung today. For (some of) them, a special interest in accessing these recordings which

can provide specific, possibly new insights into the language and singing traditions probably exists. These recordings offer valuable experiences and insights into the past. This is a very good reason to make these recordings accessible to these people.²⁹

It is difficult to see any disadvantages here. The argument of a potential monetary loss due to a diminishing incentive to visit the BPhA, now housed in the Humboldt Forum, where the recordings could also be prepared for exclusive listening, or to buy a CD with the recordings, is of secondary importance, especially if the situation of the recording is accompanied by questionable circumstances. Moreover, it is not certain that making the recordings accessible on the internet does not, in fact, provide an incentive for a museum visit to marvel at the Edison wax cylinders in person. On the whole, the fact that the historical sound recordings discussed here were mostly made under difficult conditions speaks for making them accessible. Neither the colonial background nor the epistemic violence particularly present in the prisoner of war camps allows us to assume a casual recording situation.³⁰

In addition, the often difficult question of to whom a particular cultural asset should be restituted does not arise with equal rigor when making sound recordings openly accessible through digitization. The cultural asset is not lost by making it accessible through digitization as physical objects might be. Moderated crowdsourcing would then enable a nuanced appropriation of the sound recordings by those who have a particular interest in them.³¹ Moderation and contextualization would also be important because there may well be recordings that should not be played in public, for example, for sacred reasons held by certain groups of people concerned.³² Moderation would allow one to restrict public access to such recordings. Basically, the importance of the collections of the BPhA for humanity as a common cultural heritage is only increased by digitization and publication. Thus, Anette Hoffmann, the cultural scientist and Africanist, also expresses surprise that the recordings, which are basically – and especially in comparison to material objects – easy to "restitute," have not been digitized and made audibly accessible to the world public a long time ago.³³

Conclusion

Wilhelm Doegen, the grammar school teacher who played a leading role in the Phonographic Commission's recordings in German prisoner of war camps, noted in a report that he considered his work to "unite peoples."³⁴ German scholars had "'used the World War for a thoroughly peaceful work of free humanity' to accomplish a 'unique cultural deed'."³⁵ One may believe him or not. Today, however, the cultural-ethical duty to share the historic sound recordings of the BPhA again with those for whom they are probably of special significance seems inescapable.³⁶ In order not to let this task fail due to endlessly complex classification research, there seems to be no way around digitization and a worldwide open access publication. Contrary to what some people mistakenly fear or claim, legal arguments do not stand in the way. Instead, Germany's legal obligations under international law call for an effort to make intangible cultural heritage, recognized as being in the general interest of humanity, accessible to the world public in general and with the widest possible participation of communities, groups and individuals in particular.

Making them accessible through digitization would mean the final liberation of the trapped voices from the archive (Lange 2019). In the words of Don Niles "the rewards are considerable. The voices of long dead ancestors certainly have the power to talk about the past, the present, and the future in ways yet to be fully understood" (Niles & Palie 2003:8).

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Notes

1. For an overview of the impressive collection of the Berlin Phonogramm-Archiv, see Ziegler in the first part of this themed issue.
2. General Guidelines of the Memory of the World (MoW) Programme, approved by the UNESCO Executive Board during its 211th Session (211 EX/10 Decision). Available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000378405>. Accessed 5 December 2024.
3. Recommendation concerning the Preservation of, and Access to, Documentary Heritage Including in Digital Form, adopted by the General Conference at its 38th session Paris, 17 November 2015. Available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000244675>. Accessed 5 December 2024.
4. See the statistics as of December 2018. Available online at: https://www.unesco.org/sites/default/files/medias/files/2022/03/statistics_of_mow.pdf. Accessed 5 December 2024.
5. For a definition of traditional knowledge, cf. Riffel (2014:§ 1).
6. See generally Francioni (2020:52); Ubertazzi (2020). For an interesting, however, not legal, distinction, cf. Kalibani (2021b:44–5), who distinguishes immaterial and intangible heritage. The sound recordings are immaterial heritage to him because they are, to a large extent, unknown to the respective cultural groups which, therefore, lack the ability to recognize their heritage.
7. I am grateful to one of the reviews which mentioned this point.
8. Cf. Blake (2020:354), stating, furthermore, that "it is not necessarily paradoxical that we may have a material heritage inscribed on the World Heritage List and associated intangible values inscribed (or potentially inscribed) on the RL."

9. Federal Law Gazette Germany (BGBl.) II, 2013, No. 19, p. 1009 from 23 July 2013.
10. For a detailed commentary, see Stefano and Wendland (2020:223), with further reference to the Ethical Principles for Safeguarding Intangible Cultural Heritage.
11. Cf. Jacobs (2020:273) considering Article 15 as the "pivotal core of the 2003 Convention."
12. For a strong argument that a first step in the restitution of intangible cultural heritage is to disclose and make easily accessible all information about the historical sound recordings, see Kalibani (2021b).
13. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended latest at its ninth session (UNESCO Headquarters, Paris, 5 to 7 July 2022). Available online at: <https://ich.unesco.org/en/directives>. Accessed 5 December 2024.
14. UNESCO, Charter on the Preservation of the Digital Heritage, adopted at the 32. UNESCO General Conference on 17 October 2003.
15. UNESCO, Recommendation Concerning the Preservation of, and Access to, Documentary Heritage Including in Digital Form.
16. For a more detailed analysis of copyright issues, see the contributions of Czychowski and Nadde in this themed issue.
17. Federal Law Gazette Germany BGBl. II, 2011, No. 24 p. 860 from 20 September 2011.
18. Lange (2019:20), translation by the author with further references to Lange (2011:31ff). Also Cf. – representative of the assessment of the researchers who made these recordings – von Hornbostel (1928:32): "only by means of the phonograph can we get the 'real thing'." According to von Hornbostel (1921:178), only the phonograph made it possible to know "not only what exotic music [...] looks like, but what it really sounds like" (in German: "nicht nur wie exotische Musik [...] aussieht, sondern wie sie wirklich klingt"). Quoted in each case from Carl (2004:136).
19. UNESCO, Recommendation on Open Science, adopted at the 41. UNESCO General Conference on 23 November 2021.
20. Available online at: www.force11.org/group/fairgroup/fairprinciples. Accessed 5 December 2024.
21. On this point, see Mills (2017:110), who holds, however, that "the case for open access is complicated."
22. Available online at: www.forschungsdaten.info/wissenschaftsbereiche/geisteswissenschaften/nfdi-kon-sortien/nfdi4culture/. Accessed 5 December 2024.
23. Cultural ethics is not used here in the sense of a specific philosophical conception but rather as a fundamental ethical argument that seeks to evaluate human behavior in relation to art and cultural goods. Cf., e.g., <https://ethikinstitut.de/themengebiet/kulturethik/allgemein-kulturethik/>. Accessed 5 December 2024.
24. Doegen (2019) [emphasis WD]; handwritten corrections and additions have been included; translation by the author; in German "Zum Schlusse wird hier ausdrücklich festgestellt und erklärt, dass ich niemals irgend einen Volksstamm gezwungen habe, in den Apparat zu sprechen. Selbst da, wo einige Kommandanten die misshütigen Engländer durch Drohungen unserer Sache günstig stimmten, habe ich die Engländer zunächst gefragt, ob sie einsähen, dass sie es für eine gute internationale wissenschaftliche Sache tun würden. Ich habe sie gebeten, mir zu sagen, ob sie es gern täten (if they liked to do so). Nur dann, wenn sie es gern und aus freien Stücken willig unternahmen, in den Apparat zu sprechen, nahm ich ihr Anerbieten freundlichst dankend an."). Also cf. Doegen (2019: VIII, a), for the statement that he had given the prisoners "cigars, cigarettes, sweets, fruit and other foodstuffs" in return for the prisoners' services. See critically Lange (2019:23, with further references).
25. Weule (1908:215–4), quoted after Kalibani (2021b:50–1), (translation MK; German original: "Man hat den Sänger vor den aufgebauten Apparat gestellt, hat ihm klagemacht, wie er den Kopf halten muss, und dass er stets genau in die Trichterachse hinein zu singen hat. [...] Viel schlimmer ist es mit Sulila; seine verflixte

Gewohnheit des ständigen Kopfdrehens kann er auch vor dem Trichter nicht lassen. [...] Mit der raschen Impulsivität [...] fasse ich neuerdings den blinden Sänger einfach am Kragen, sobald er seine Löwenstimme erschallen lässt. Dann halte ich das wollige Haupt wie in einem Schraubstock fest, bis der Barde sein Heldenlied zu Ende gebrüllt hat. Ob er zuckt und zerrt und den Kopf noch so energisch zu wenden versucht – ich halte ihn.“) See also Kalibani (2021a:548–9 and in this issue).

26. Radano 2019. See also comprehensively Carl 2004: esp. 151, who shows "how music in particular plays a very subtle role in the process of appropriating and disciplining the black body, often described as wild, chaotic, and uncontrollable" (in German: "wie gerade Musik in dem Prozess der Aneignung und Disziplinierung des schwarzen, oft als wild, chaotisch, und unkontrollierbar beschriebenen Körpers, eine sehr subtile Rolle spielt"). Also cf. Kalibani (2021a:548ff).

27. Hilden (2018:178). Also on epistemic injustice and epistemic violence, cf. Matthes (2018) with further references; Brunner (2020).

28. On the political responsibility, see Klotz (2020). For an emphasis on the importance of cultural assets for local communities and, accordingly, an argument for strengthening the role of substate communities in protecting cultural heritage, see, e.g., Lixinski (2019).

29. And so the "ICOM Code of Ethics for Museums" also contains a general principle on accessibility under point 1.4: "The governing body should ensure that the museum and its collections are available to all during reasonable hours and for regular periods." Available online at: <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf>. Accessed 5 December 2024. Cf. generally Matthes (2018) with further references to Thompson (2013:89), and the reference to the consequences of exaggerating this argument. The danger, however, that a great significance could also overwrite legitimate and legal ownership is not present in the case at hand since no property rights have to be relinquished in order to make the work accessible through digitization.

30. Cf., e.g., Hoffmann (2020:39), who points out that "[t]he recordings [...] contradict the often common distancing of the 'innocent' practice of sound recording from the violent colonial policies that mostly made it possible in the first place." Also see Hoffmann (2020:60): "Yet over all the archival material [...] lies the shadow of Rudolf Pöch's violent and dehumanizing practices of acquisition, which should no longer be called 'collecting'"; (In German: "[d]ie Aufnahmen [...] der oft üblichen Distanzierung der 'unschuldigen' Praxis der Tonaufnahme von der gewaltsamen Kolonialpolitik [widersprechen], die sie meist erst möglich gemacht hat." Hoffmann (2020:60): "Doch liegt über dem gesamten Archivmaterial [...] der Schlagschatten von Rudolf Pöchs gewaltvollen und dehumanisierenden Praktiken der Beschaffung, die nicht länger als 'Sammeln' bezeichnet werden sollten."

31. Moderation is advantageous because it could prevent potential misuse in contextualization. In addition, it could address the possible specific interests of indigenous groups, for example, if they want to stop playing certain recordings in public for cultural reasons.

32. Kalibani (2021a:552) gives the example that the public playing of the voices of the deceased could be perceived as hurtful in some cultures because of the sacrality attributed to them.

33. Hoffmann (2020:36). Expressing regret in this regard, Meyer-Kalkus (2015:46).

34. Lange (2019:22–3), with further references to Doegen (1925a:9) ("völkerverbindend"). A dialogue from Taufiq al-Adl (2008:77), quoted after Ahmed (2020:82) is particularly fitting for this: "'How do you like your treasures here with us?,' a companion who thankfully assigned me asked jokingly. I replied: 'They are beautifully displayed and indicate their efforts to present them appropriately. I'm glad they're with them and they remember the ancient Egyptians, even though we actually have a claim on them first.' He replied, 'Then why do they ban export from their countries? It would be better if we could increase the number to increase the memory!' Then I said with a laugh, 'Yes, if it were true friendship, less would have to suffice for remembrance.'" (in the German original: "Ein mich dankenswerterweise beauftragter Begleiter fragte im Scherz: 'Wie gefallen Ihnen Ihre Schätze hier bei uns?' Ich antwortete: 'Sie sind wunderbar ausgestellt und deuten von Ihren Bemühungen um eine angemessene Präsentation. Es freut mich, dass sie bei Ihnen sind und Sie sich der alten Ägypter

erinnern, auch wenn wir eigentlich zuerst einen Anspruch auf sie haben.' Er antwortete: 'Warum verbieten Sie dann die Ausfuhr aus Ihren Ländern? Es wäre besser, wenn wir die Anzahl erhöhen könnten, um die Erinnerung zu vergrößern!' Da sagte ich lachend: 'Ja, wenn es sich um wahre Freundschaft handelte, müsste weniger zur Erinnerung Genüge tun.'")

35. Lange (2019:23), with further references to Doegen (1925b:6) (in German: Deutsche Gelehrte hätten "den Weltkrieg zu einer durchaus friedlichen Arbeit freien Menschentums benutzt', um eine 'einzigartige kulturelle Tat' zu vollbringen.").

36. Also see Kalibani (2021b:53), who speaks of the restitution of intangible cultural heritage as a symbolic attempt to restore justice (without assuming that colonial crimes could ever be redressed).

About the author

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