

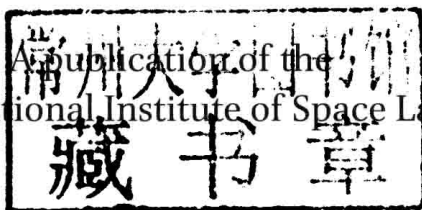
Pioneers of Space Law

Edited by

Stephan Hobe



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Foreword

As is well known, international space law is less than 50 years old. Although the work for the codification of space law started in the late 1950s, shortly after the launching of the first artificial satellite Sputnik 1, the Outer Space Treaty was adopted only in January 1967. However, much earlier, even as early as 1932, the first ideas about legal rules for human activities in outer space were considered. Very little is known about these early drafts and proposals, such as the one of Vladimir Mandl in his famous treatise “Space law – a Problem of Space Flight” published in 1932 in German (*Das Weltraumrecht – ein Problem der Raumfahrt*). But also early pioneering works of other scholars are relatively unknown. Therefore in 2009, the International Institute of Space Law welcomed the initiative of its Directorate of Studies to publish a book about the “Pioneers of Space Law”. It is worth mentioning in this respect, that – at least for the purposes of this book – a pioneer is an eminent scholar who made an original contribution to the science of space law. Some of them had already made considerable (pioneering) contributions to the field of air law, while others started genuinely in the space law field. Essentially, this book is a tribute to the memory of these pioneers, who are no longer among us.

The pioneers to be included in the book and the colleagues who would be asked to write about them were agreed by the Board of Directors of the International Institute of Space Law. Photographs of the pioneers were kindly arranged by the authors, and in most cases come from personal collections. The list of pioneers is by no means intended to be exhaustive, and others could be honoured in a second and further editions of this book.

We trust that this book will be welcomed not only by the community of space lawyers, but also beyond that, within the community of international

lawyers as well as among historians and political scientists interested in the evolution of legal scholarship in the field of space activity. And of course we hope that especially the pioneers would not only have liked this idea, but would also have liked what has been written about them.

Tanja Masson-Zwaan
President, IISL

Stephan Hobe
Chairman, IISL Directorate of Studies



Chapter I **Alex Meyer** (15.12.1879 – 21.08.1978)

Stephan Hobe*

During his long life, Alex Meyer proudly achieved something which only very few other jurists have achieved. He became a pioneer of the science of air law as well as a pioneer of the science of space law.¹

Alex Meyer was already 77 when the first artificial satellite Sputnik I was brought into outer space by the Soviet Union. At that time he could look back on a very successful career as an aviation lawyer.² His two seminal writings, one in 1908 on “The Legal Consequences of “Opening up” Air Space” (*Die Erschließung des Luftraums und ihre rechtlichen Folgen*) and the other, published in 1944 on “Freedom of the Air as a Legal Problem” (*Freiheit der Luft*

* Director of the Institute of Air and Space Law and Holder of the Chair for Public International Law, European and International Economic Law of the University of Cologne.

1 See Stephan Hobe, Vladimir Mandl, Alex Meyer, Welf-Heinrich Prince of Hanover, Friedrich-Wilhelm von Rauchhaupt – *Early Writings in German on the Young Discipline of Space Law*, in PROCEEDINGS OF THE 50TH COLLOQUIUM ON THE LAW OF OUTER SPACE, PRAGUE 2010, 21 et seq, 23-25 (AIAA, 2011).

2 See the *liber amicorum* in his honor which gives an impression of his influence and his writings, MANFRED BODENSCHATZ & KARL-HEINZ BÖCKSTIEGEL & PETER WEIDES (EDS.), *FESTSCHRIFT FÜR ALEX MEYER (LIBER AMICORUM FOR ALEX MEYER)* (1975). On the occasion of his 80th anniversary he received a book with his selected writings, ALEX MEYER, *LUFTRECHT IN FÜNF JAHRZEHNTE* (*AIR LAW IN FIVE DECADES*) (1961), with an Avant Propos of the then Federal Transport Minister of Germany Dr. Hans-Christoph Seehofer.

als Rechtsproblem), many dogmatically inspiring articles on the matter of air law,³ as well as numerous memberships and an active position in the German and international aviation law community had made Meyer a renowned personality in this field on the national and international plane. But as we will show in the following the merits of this great man did not stop with the description of developments in the area of air law. From the very early times on Alex Meyer was aware of new developments of man leaving the Earth and the Earth' atmosphere and reaching outer space. And what he had to contribute was quite remarkable. It is therefore very well justified to rank him among the pioneers of space law. In the following we will first briefly sketch out the biography of Alex Meyer before his contribution to the science of space law will be outlined. This will allow for a conclusion in which we will point out the particular merits of this scholar for the science of space law.

A. Biography⁴

Alexis Moritz Philipp Meyer was born on 15 December 1879 as a son of a Prussian civil servant in Berlin. His first encounter with the Cologne region was when he visited High School in Cologne and Elberfeld, a city today belonging to Wuppertal, which is a 400.000 citizen city in the vicinity of Cologne. Later on Alex Meyer studied law in Geneva, Munich, Berlin and Bonn. He passed the first juridicial state examination in Cologne in 1902 with a notable mark and the second examination in 1907 in Berlin. Before, he had already successfully completed his doctorate in Leipzig on the civil law topic of "Notion and Protection of Credits according to German Civil Law". In 1913 and until 1914 Alex Meyer became a judge in Szechin (formerly Stettin, belonging at that time to East Prussia and today a city in Poland). During the First World War from 1914 to 1917 Alex Meyer served in the German Army. From

3 See the bibliography assembled by Hans Pick which covers 298 entries at pp. 457-482 of the *liber amicorum*; the works specifically on space law are listed at the end of this chapter.

4 For biographical notes about Alex Meyer see HORST BITTLINGER & MARIETTA BENKÖ, INSTITUTE OF AIR AND SPACE LAW 1925 – 2005, 12 *et seq.* (2005); reference is also made to the *curriculum vitae* of Alex Meyer in the archives of the Faculty of Law of the University of Cologne.

1917 until 1918 he worked in the civil administration of Flanders, Brussels. Between 1918 and 1920 Alex Meyer worked in the Federal Ministry for Food and Agriculture. In 1920 he became a civil servant in Koblenz and between 1923 and 1933 worked in the Chancellery of the Reich in Berlin, respectively between 1929 and 1933 in the higher administration (Oberpräsidium) of the Province Brandenburg. From 1933 to 1936 Meyer worked for the Prussian government in Düsseldorf as legal advisor but, due to his Jewish belief, was forced to retire from this post.

The next step of Meyer's professional career is somewhat left in the dark. The uncontested fact is that in 1938 he received a call from New York University to teach Air Law. Whether there was some contribution from the German authorities who because of Meyer's Jewish background did not grant him the visa for the U.S., or for another reason: the curriculum vitae at the Faculty of Law of Cologne University makes it clear that the outbreak of the Second World War made the acceptance of this temporary professorship impossible.

As a consequence Meyer left Germany in 1939 for Zurich, Switzerland. Here, in Switzerland, Meyer survived the Second World War. After the war he was rehabilitated in 1953 when the injury suffered from his forced retirement in 1938 was officially recognized as unjust and when he was put with retroactive effect as of April 1, 1939 at a specifically high post in the German administration.

After the war, in 1950 Alex Meyer returned to Cologne and started to teach air law at the University of Cologne as of 1950. In 1951 he initiated the re-opening of the Institute of Air Law which had been founded in 1925 by Professor Otto Schreiber in Kaliningrad (Königsberg) as the first research unit of its type. The Institute did not exist any more – it was destroyed where it was situated last, *i.e.* at Leipziger Platz in the center of Berlin. Before, the Institute had moved from Königsberg (Kaliningrad) to Leipzig during the period of 1929 to 1939 and then from 1939 to 1945 had its place in Berlin.⁵

Directors after the early death of Otto Schreiber were Hans Oppikofer in Leipzig and Rüdiger Schleicher in Berlin.⁶ After the complete destruction of the Institute in 1945 it did not exist until Meyer started to revive it in 1951.

5 See BITTLINGER & BENKÖ, *supra* note 4, at 1-10.

6 On Rüdiger Schleicher see Stephan Hobe, *In Memoriam Rüdiger Schleicher – Eine Erinnerung an das Wirken des dritten Direktors des Instituts für Luftrecht*, 59 ZEITSCHRIFT FÜR LUFT- UND WELTRAUMRECHT, 1-17 (2010).

The Institute's research work after the Second World War had started as a research facility for air law in 1951. Later on, it was re-named "Institute for Air Law and Questions of Space Law". Already in 1952 Alex Meyer started to edit again a German Journal for Air (and Space as of 1959) Law (*Zeitschrift für Luft- [und Weltraum]recht*) which he felt to be in the tradition of the old "Archive of Air Law" (*Archiv des Luftrechts*) that was edited by the Institute from 1931 until 1943. Meyer was appointed Honorary Professor at the University of Cologne in 1953 and taught air law at this University until 1974. He was active as the president of the Legal Committee of the Council of the Federal Ministry of Traffic, the Legal Committee of the German Society of Air Law, as well as the Air and Space Law Committee of the German Group of the International Law Association. Moreover, Meyer was a member of the Air Transport Commission of the International Chamber of Commerce, of the American Society of International Law and the Instituto de Derecho Aeronáutico y Interplanetario in Buenos Aires.

Alex Meyer published approximately 300 books and articles of which 28 publications are devoted to space law; these publications are listed at the end of this chapter⁷ whereas the oeuvre in air law is documented *supra*.⁸

B. Alex Meyer's Importance for the Development of Space Law

With his 28 publications Alex Meyer added a considerable contribution also to the discipline of space law. Almost all of his articles deal with rather general questions on the legal status of outer space and of the celestial bodies, enriched by articles on the military uses of outer space and the problem of space warfare as well as the question of the applicability of humanitarian international law to outer space activities.

Basically, the main ideas were developed in an article of a very early time, *i.e.* in a paper read at the Third International Astronautical Congress (IAC) in Stuttgart on September 5, 1952. This was early insofar as it was, first of all, before the modern part of space flight started (there were of course some attempts during World War II by Germany, mainly the product of the

⁷ See section D below.

⁸ See *supra* note 3.

engineering of Herman Oberth and Wernher von Braun⁹) on October 4, 1957 by the launch of Sputnik I. Moreover, it took a while before the international community started to draft legal rules in the late 1950s and early 1960s. It is well justified to highlight what Alex Meyer had to say whereby he greatly profited from his deep and profound knowledge of the science of air law. We can find very interesting ideas of a scientist who despite his advanced age still participated very actively in the intellectual discourse of his science and delivered a very substantive contribution. In the following Meyer's main ideas shall be briefly summarized:

1. ***No Need in Space Law for an Analogy to Air Law, to the Law of the Sea or of Antarctica***

It is striking that Meyer was very determined to not allow at all any analogy of this new area of outer space law, neither to air law, nor to the law of the sea. In his opinion outer space would in fact be completely different. It would be very distinct in nature – such was the conviction of Alex Meyer. In other words: it was the fundamentally different structure of the sovereignty of free outer space that would not allow for any analogy. This highlights in a significant way that Meyer had at that early time already the distinct understanding that no rights of sovereignty could and should govern outer space. Rather this new medium for human activities would and should be free of any sovereign rights of states.¹⁰ Of course, also questions of demarcation were addressed in depth.

2. ***The Question of Delimitation of Air and Outer Space***

Whereas at the beginning Meyer pleaded in favor of a boundary at approximately 200 to 300 kilometers above sea level as the boundary between air and outer space,¹¹ he later corrected this view by describing the provisions of

9 See more recently on Wernher von Braun the book of STEFAN BRAUBURGER, WERNHER VON BRAUN (2009).

10 Alex Meyer, *Rechtliche Probleme des Weltraumfluges*, 2 ZEITSCHRIFT FÜR LUFTRECHT, 34 (1953).

11 *Id.*

the Outer Space Treaty. At that time he concluded that the von Karman line at about 80 kilometers above sea level would be an appropriate possibility for delimitation.¹² Other questions associated to this very important problem were, on the one hand, that the Chicago Convention on international air transport would, of course, remain in force and would make evident its full importance.¹³ Moreover, closely connected to problems derived from the Chicago Convention, Meyer insisted that there was no right to fly over foreign territory without an explicit permission when conducting space flight.¹⁴ It is well known that this question is not settled yet in international space law.¹⁵ Even 50 years after Alex Meyer's writing it is unclear, due to a lack of State practice, which legal regime may govern here. Some authors plead for an inclusion of this right of overflight into the freedom of outer space, others negate this possibility with reasons not far away from the ones found by Alex Meyer in the 1950s.¹⁶

3. *The Dispute of the Approach to Delimitation*

And with regard to the delimitation question, Meyer involved himself in a doctrinal dispute. On the one hand, other famous air lawyers like Chaumont in his book on "The Law of Outer Space" ("Le droit de l'espace") as well as Quadri in his Hague Academy lecture entitled "International Space Law"

12 Alex Meyer, *Der Weltraumvertrag*, 16 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN, 65-77 (1967).

13 Alex Meyer, *Die Staatshoheit im Luftraum und die Entwicklungen im Weltraumrecht*, 14 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN, 296 (1965).

14 *Id.*

15 See on that problem *inter alia* Stephan Hobe, *Is there a right through foreign air-space*, in SPACE LAW AND POLICY – SUMMER COURSE: BASIC MATERIALS, 89 *et seq.* (ECSL ed., 1994).

16 See for an overview Walter Schwenk, *Die Bedeutung des Luftrechts für Weltraum-tätigkeiten (The Importance of Air Law for Outer Space Activities)*, in HANDBUCH DES WELTRAUMRECHTS, 135, 141 *et seq.* (Karl-Heinz Böckstiegel ed., 1991); Stephan Hobe, *supra* note 15, *passim*.

(“Droit International Cosmique”)¹⁷ had vigorously pleaded for the so-called functional approach.¹⁸ This approach would not fix a (rather artificial) boundary and link to it the delimitation between air space and outer space but would decide the question of the applicability of air law or space law according to the function of the respective vehicle.¹⁹ If the eventual aim would include outer space, space law would be applicable whereas in the opposite case air law would be applicable.

Meyer did not subscribe to this functional approach. Rather he explicitly expressed his uneasiness about the treatment of air space and outer space being subject to one single legal order. This unity would not be justified, neither from a physicists point of view, nor would it be the appropriate legal designation.²⁰

For Alex Meyer it was clear as early as 1962 that the delimitation of air space and outer space required an international agreement sponsored by the United Nations in which all states had consented on such delimitation of air space and outer space.²¹ With regard to such an agreement one must say that even more than 50 years after Alex Meyer’s writings we are not very close to arriving at such an international agreement.

4. *A Contiguous Zone between Air and Outer Space?*

Another doctrinal dispute was the one with McGill’s Institute of Air and Space Law’s first Director John Cobb Cooper on the existence of a contiguous zone between air space and outer space comparable to the contiguous zone between the coastal state and the High Seas. Whereas Cooper had vehement-

17 CHARLES CHAUMONT, *LE DROIT DE L’ESPACE* (1960) and Roland Quadri, *Droit international cosmique*, in *RECUEIL DES COURS* (1959) III, 510 *et seq.*

18 CHARLES CHAUMONT, *supra* note 17, at 52 and Quadri, *supra* note 17, at 553, 561, 579.

19 Alex Meyer, *Die Bedeutung der Festsetzung einer Grenze zwischen Luftraum und Weltraumgebiet* (*The Importance to Fix a Boundary Between Air and Outer Space*), 11 *ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN*, 106, 112 *et seq.* (1962).

20 This is particularly stressed and extensively argued by Meyer in the just quoted article on the importance of the possibility to fix a boundary between air and outer space, *supra* note 19, 114 *et seq.*

21 See Meyer, *supra* note 19, at 106, 116.