



# General Assembly

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## Committee on the Peaceful Uses of Outer Space

### Definition and delimitation of outer space: views of States members and permanent observers of the Committee

#### Note by the Secretariat

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## II. Replies received from States members of the Committee

### Austria

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With regard to the upper boundary of Austrian territory, Austrian law does not contain a specific altitude expressed in kilometres; instead, it contains a technical and physical description of the upper limits of Austrian airspace. This is in line with the definition of the term “aircraft” as “any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the Earth’s surface” and of the term “aeroplane” as a “power-driven, heavier-than air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight” by the International Civil Aviation Organization in annex 7 (Aircraft Nationality and Registration Marks) to the Convention on International Civil Aviation. This boundary is generally regarded as situated at approximately 80 km, while being subject to change with technological progress.<sup>1</sup> On the one hand, the Austrian approach provides legal certainty with regard to the application of aviation law; on the other hand, it allows for the necessary flexibility with regard to technological development.

The difficulty in determining a definition and delimitation of outer space lies in the constant technological progress that complicates the determination of reliable physical and technological criteria for the establishment of a fixed boundary between airspace and outer space.

A distinction with regard to the applicable law can be made by differentiating between aeronautical and astronautical activities. Aeronautical activities should be regulated by air law and space activities by space law. Space activities, including launch from Earth, transport through airspace to the target orbit in outer space and re-entry, should be governed by one single legal regime, irrespective of the altitude at which they are conducted.

The development of space transportation systems that function between airspace and outer space (so-called “suborbital flights”) raises uncertainties with regard to the applicable legal regime. A discussion of the nature of this legal regime at the international level is important to avoid divergence of the rules established at the national and international levels.

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<sup>1</sup> See I. H. Ph. Diederiks-Verschoor and V. Kopal, *An Introduction to Space Law*, 3rd ed. (Alphen aan den Rijn, Kluwer Law International, 2008), p. 17; Stephan Hobe, “Article I of the Outer Space Treaty”, in *Cologne Commentary on Space Law*, vol. I, *Outer Space Treaty*, Stephan Hobe, Bernhard Schmidt-Tedd and Kai-Uwe Schrogl, eds. (Cologne, Carl Heymans Verlag, 2009), p. 31.