Abstracts of the speech at the Sixty-second session Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space (Vienna, 20–31 March 2023)

Delegation of Ukraine

Item 6 (a). The definition and delimitation of outer space:

Distinguished delegates, Madam Chair,

The Ukrainian delegation will be glad to dedicate its speech today to current issues and problems of international space law, Ukraine's position on the main issues on the agenda of the current session.

The issue of definition and delimitation of outer space is definitely important and relevant.

Ukraine proceeds from the fact that states need to study the accumulated practical experience of using air and outer space, as well as the activities of international organizations regarding the definition and delimitation of outer space. Consistently adheres to the position of the need to demarcate space and airspace according to the territorial principle in order to avoid disputes between states regarding state sovereignty and the application of two different legal regimes.

The exploration and use of outer space, in accordance with the Space Treaty as of 1967, is recognized as the achievement of all mankind, and therefore Ukraine's position on this issue is unequivocal and consists in the need to establish this definition exclusively at the level of a comprehensive international agreement.

According to Art. 6 of the specified Treaty and recommendations on national legislation, which concerns the research and use of outer space for peaceful purposes, approved by the UN General Assembly resolution 68/74 as of 11-th of December, 2013, it is determined that the selection of permit procedures for conducting space activities belongs to the competence of states, but their discretion on this issue should be limited to compliance with international standards. Thus, the issue of delimitation, in our opinion, is exclusively the subject of resolution by the international space community.

The need to demarcate space and air spaces is due to the difference in their legal regimes, primarily in terms of determining the subjects of responsibility under current international law in the respective fields. In addition, international space law must be harmonized with international air law, otherwise, legal conflicts will open a wide gap for legal disputes in this area and inhibit the development of the suborbital space industry.

The theory of space law and its emergence as an independent legal institution of modern international law was characterized by such a feature as proactiveness.

The modern science of space law should live not by what is, but by what "will be". That is why it is expedient today to start a consensual discussion of the definition and delimitation of outer space. Normative regulation at the international level should not be based on a certain delict, because it is a path "from the negative", not for "good".

Moreover, the prospect of establishing a space traffic control system necessitates the delimitation of outer space. This results from the fact that the legal regime of managing space objects directly in space differs in the specific natural conditions of such management and the legal regime of using space objects.

Also, in connection with the growing amount of space debris, attention should be paid to the fact that according to Articles 2 and 3 Convention on International Liability for Damage Caused by Space Objects as of 1972, liability for damage caused by space objects is of 2 kinds precisely according to the territorial principle, namely: for damage caused on the ground or in the air, absolute responsibility is established; and for damage caused in outer space – is responsibility for guilty behavior. Thus, the legal provision of space traffic management and the consequences of its improper results depend entirely on the delimitation of space and airspace.

And in conclusion, let us emphasize that in view of the processes of intensification of the commercialization of space activities, the question of the definition and delimitation of outer space becomes a vital issue in view of the implementation of air and suborbital flights, and for activities in outer space as a whole.

Thank you for attention.