

Speaker: Mr Daniele Bosio

Item 11 – IWG Protection and preservation of the marine environment

DR 54

Thank you, Madame Facilitator.

On the text, Italy supports the comments of the African Group and Costa Rica on paragraph 2 relating to the need that the Fund shall be established “before the approval of a first plan of work for exploitation”.

As far as the Fund is concerned, we would like to present some considerations.

In addition to the legal lacuna highlighted by the Seabed Dispute Chamber we should also consider another, potentially more problematic issue, where damage is caused in the absence of a wrongful act of the operator, and of the sponsoring State. This is the case in which, despite the operator's compliance with the contract, the recommendations and regulations of the Authority – and therefore having made use of all the required diligence – damage has nonetheless occurred. It is an accidental damage which, since it is not dependent on the wrongful conduct of the operator, would be excluded from the duty to repair as required under the UNCLOS.

It is our view that the Fund currently under discussion should also cover such damage. Alternatively, the strict liability of the contractor should be considered.

The topic of liability, which we regret not to see in the agenda of the LTC, notwithstanding the creation of an external support group, whose reports were to be considered by the LTC.

Italy believes it crucial that these negotiations consider thoroughly the issue of liability, which has clear consequences in terms of the scope of the Fund and on the availability of insurance in the market. We reiterate our support to the request of France, which a few sessions ago invited the Secretariat to assess the availability of insurances in the market and we look forward to having such information, to also start considering the appropriateness of any liability cap to be set.

Finally, we believe that the draft should also include a provision on the functioning of the fund. We do not consider it appropriate that the regulations themselves include

such norms on the functioning. Instead, a provision determining that it is for the Council under recommendation of the Finance committee to adopt operational rules of the Fund would be welcomed.

Thank you, Madame Facilitator.