

**Letter dated 9 June 1994 from the Ambassador of Italia to the
Netherlands**

The Hague, 9 June 1994

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Mr. President,

with reference to the request of an Advisory Opinion formulated by the World Health Organization (WHO) on 27 August 1993 and pursuant to article 66 of the ICJ Statute, the Italian Government has requested me to address, by this letter, the following statement to the Court.

After a close examination of the text of the question addressed by WHO to the Court, the Italian Government has reached the conclusion that the question is non-receivable and therefore it respectfully suggests that the Court decline to answer.

In fact the question does not fall within the "scope of activities" of WHO and therefore it does not meet the requirements needed for the application for an Advisory Opinion as provided for by art. 96 para. 2 of the Charter of the U.N., and recalled in the Agreement between the United Nations and the World Health Organization, approved by the General Assembly of the United Nations on 15 November 1947, under which the WHO has been authorized to ask an Advisory Opinion to the Court.

In fact it is not possible to consider the question (on the other hand proposed as a simple hypothesis) of the use of nuclear weapons by a State during a war or an armed conflict as an issue concerning the aims and functions of the WHO, such as they result from the clear formulation of artt. 1 and 2 of Constitution of such Organization, done at New York on 22 July 1946.

On this matter, it must be held that the question of legality or not of the use of nuclear weapons - on the substance of which the Italian Government does not intend to take a stand in this context - precedes logically and juridically the matter of the effects of the use of nuclear weapons on human health and environment. The study of these effects and of the possible techniques for limiting their impact, may fall within the competence of the WHO, even pursuant to art. 2 of the above mentioned Constitution. But one thing is the assessment, inter alia of the impact of these effects and of the possibility of limiting it, another is to question whether acts which produced these effects are legitimate.

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H.E. Mohamed Bedjaoui
President of the International
Court of Justice
The Hague

This last matter, which is the subject theme in the question addressed by the WHO, falls in the Italian Government's opinion, under the competence of other organs and institutions of the United Nations. It is well known that the issue was already raised within the framework of the U.N. General Assembly, the only organ which, together with the Security Council, has the right to directly request an Advisory Opinion to the Court.

Even under this profile, the question submitted by the WHO is non-receivable, as the answer that it would possibly obtain from the Court would in the end represent a limit - notwithstanding its contents - to a free evaluation of the General Assembly in a field that, pursuant to Art. 11 of the UN Charter, is of its specific competence.

For all the above-mentioned grounds, the Italian Government is of the view that this honorable Court should not be seized with the question submitted by the WHO, declaring it as non receivable from a procedural point of view.

The Italian Government is interested in knowing whether the Court intends to convene a sitting in order to debate the considerations submitted in written form. In such a case, it reserves its right to decide whether to take part in it.

Please accept, Mr. President, the assurances of my high consideration.



(Ranieri Tallarigo)