

Legal basis for requesting an advisory opinion

1. There are two concurrent legal bases for referring a matter to the ICJ; the first is in article 37(1) of the Constitution and the second in article IX(2) of the 1946 Agreement between the United Nations and the International Labour Organization (also known as UN-ILO relationship agreement).
2. Article 37(1), originally article 423 of the Treaty of Versailles, provides that any question or dispute relating to the interpretation of the Constitution or of an international labour Convention shall be referred for decision to the ICJ. As it currently reads, article 37(1) suggests that referral of interpretation disputes to the ICJ is compulsory and that the decision of the Court is final and binding (see [GB.322/INS/5](#), para. 27).
3. Article IX(2) of the [1946 UN-ILO relationship agreement](#) provides that “the General Assembly authorizes the International Labour Organization to request advisory opinions of the International Court of Justice *on legal questions arising within the scope of its activities* other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies.” This authorization was required since under article 96(2) of the [UN Charter](#) only organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may request advisory opinions of the Court on legal questions arising within the scope of their activities. Similarly, under article 65 of the [ICJ Statute](#), “the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”
4. The negotiating history of the 1946 UN-ILO relationship agreement confirms that the intention was to secure the possibility to refer legal matters to the ICJ beyond the narrow confines of questions of interpretation of the Constitution or of international labour Conventions. Following the mandate given by the ILC, in its [Resolution](#) of 3 November 1945 concerning the relationship between the International Labour Organisation and the United Nations, a negotiating delegation drew up a draft agreement which was later signed by the Chairperson of the Governing Body on behalf of the Negotiating Delegation on 30 May 1946 ([Official Bulletin](#), vol. XXVII, No. 3, p. 914). During the 1946 Conference discussions on that agreement, the President of the Delegation on constitutional questions clarified that the Agreement provided for a blanket authorisation and did not require a separate request to be made each time that an opinion was sought (ILC, 29th Session, 1946, [Official Bulletin](#), p. 842). At no point was mention made of article 37 or of the need to align the relationship agreement with the constitutional provision. If this had been the intention, the drafters would have simply made a cross-reference to article 37(1).
5. The broad scope of legal matters that may be referred to the ICJ was confirmed in a 1956 advisory opinion, in which the Court stated that an authorized specialized agency of the United Nations “has the general power to ask for an Advisory Opinion of the Court on questions within the scope of its activity” (Judgments of the Administrative Tribunal of the ILO upon Complaints Made against the Unesco, [Advisory Opinion](#), ICJ Reports 1956, p. 99).

6. The Court has further clarified that “three conditions must be satisfied in order to found the jurisdiction of the Court when a request for an advisory opinion is submitted to it by a specialized agency: the agency requesting the opinion must be duly authorized, under the Charter, to request opinions from the Court; the opinion requested must be on a legal question; and this question must be one arising within the scope of the activities of the requesting agency” (see [Legality of the Use by a State of Nuclear Weapons in Armed Conflict](#), Advisory Opinion, ICJ Reports 1996, pp. 71–72).
7. It is therefore clear that the scope of legal matters that can be submitted to the ICJ under article IX(2) of the 1946 UN-ILO relationship agreement is much wider than the questions of interpretation that can be put to the Court under article 37(1) of the Constitution.
8. Within the UN system, there is nothing uncommon about this dual legal basis for referring to the ICJ, on one hand, interpretation questions, and on the other, legal questions arising within the scope of the organization’s activities; see, for instance,
 - art 75 of the [WHO Constitution](#) and art X(2) of the 1948 [UN-WHO agreement](#);
 - art XVII(2) of the [FAO Constitution](#) and art IX(2) of the 1947 [UN-FAO agreement](#);
 - arti XIV(2) of the [UNESCO Constitution](#) and art XI(2) of the 1947 [UN-UNESCO agreement](#).
9. It is interesting to note that in the case of certain specialized agencies, the relevant provision of the relationship agreement is also expressly reflected in the Constitution; for instance, articles 75 and 76 of the WHO Constitution read:

Article 75

Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement.

Article 76

Upon authorization by the General Assembly of the United Nations or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization.

Likewise, article XVII of the FAO Constitution reads:

Article XVII

1. Any question or dispute concerning the interpretation of this Constitution, if not settled by the Conference, shall be referred to the International Court of Justice in conformity with the Statute of the Court or to such other body as the Conference may determine.
2. Any request by the Organization to the International Court of Justice for an advisory opinion on legal questions arising within the scope of its activities shall be in accordance with any agreement between the Organization and the United Nations.

10. Specialized agencies have made use of that dual legal basis in past practice. For instance, the request made by the WHO for an advisory opinion concerning the [Legality of the Use by a State of Nuclear Weapons in Armed Conflict](#) was based on article 76 of the WHO Constitution and article X(2) of the UN-WHO relationship agreement. Likewise, in the advisory opinion on the [Constitution of the Maritime Safety Committee](#), the Intergovernmental Maritime Consultative Organization (IMCO) invoked article 56 of its constituent instrument and article IX of the UN-IMCO relationship agreement.
11. If the ILO Constitution does not follow the same articulation importing the provision of article IX(2) of the UN-ILO relationship agreement into article 37, this is probably due to the fact that, contrary to most UN agencies which were created alongside the UN, the ILO predates the creation of the United Nations. The Constitution has never been modified to align the text of article 37 with that of the UN Charter or the ICJ Statute, possibly because the focus was at the time on the adoption of a new paragraph to article 37 to allow for the establishment of an in-house tribunal.
12. In conclusion, article 37(1) is not the only legal basis for referring a legal question or dispute to the ICJ for an advisory opinion. The UN-ILO relationship agreement, read in conjunction with the UN Charter and the ICJ Statute, permits the ILO to refer legal questions, other than questions of interpretation of the Constitution or of Conventions, to the Court and establishes the jurisdiction of the Court to examine those questions.¹

¹ Parenthetically, there are also other texts that provide for referral to the ICJ; for instance, section 32 of the 1947 Convention on the Privileges and Immunities of Specialized Agencies provides that any difference arising out of the interpretation or application of the Convention shall be referred to the ICJ for advisory opinion and that the opinion given by the Court shall be accepted as decisive. Mention may also be made of former article XII of the ILOAT Statute which provided that an organization having recognized the Tribunal's jurisdiction could challenge the validity of a decision of the Tribunal for reasons of fundamental procedural flaw by requesting an advisory opinion, to the ICJ.