§ 2 Origins of the Eastern Carelia doctrine

From the inception of the advisory jurisdiction of the PCIJ, legal scholars, practitioners, and state representatives have raised the concern that the Court's advisory jurisdiction clashes with the sovereign equality of states.[155] The sovereign equality of states protects a state from being forced to submit its international legal disputes to judicial settlement without its consent.[156] Critics of the Court's advisory jurisdiction are concerned that this fundamental principle is undermined by the power of the Court to issue advisory opinions on matters directly relating to inter-state disputes. States have consequently argued in several advisory proceedings that the Court may only give an advisory opinion if the affected states give their consent.[157] *Sloan* referred to this objection as "[t]he most important challenge to the competence of the Court".[158] This argument has entered the Court's case

155 See on this § 2 and § 3.

156 *Status of Eastern Carelia*, Advisory Opinion, PCIJ Series B 1923, 7 (27); on this, see also *J. Brunnée*, Consent (last updated 2010), in: A. Peters/R. Wolfrum (eds.), The Max Planck Encyclopedia of Public International Law, 2008 (4).

157 ICJ Pleadings, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Written Statement of Bulgaria, 196–197; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Written Statement of Romania, 203; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Written Statement of Hungary, 211; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Written Statement of the Philippines, 296; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Written Statement of South Africa, 377 (442 et seq.); *Western Sahara*, Vol. I, Written Statement of Spain, 202; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Written Statement of Israel, 101–102, paras. 7.9 – 7.10; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of Australia, paras. 21, 32 et seq.; Written Statement of Chile, paras. 4 et seq.; Written Statement of France, para. 19; Written Statement of Israel, paras. 3.6 et seq.; Written Statement of the United Kingdom, paras. 7.14 et seq.; Written Comments of the United Kingdom, para. 3.3; Written Statement of the United States, paras. 1.2, 3.20 et seq.; Written Comments of the United States, para. 2.7; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Written Statement of Israel, 2–3. For an analysis, see *infra*: § 3.

158 *F. B. Sloan*, 38 CLR 5 (1950), 830 (845); discussing state consent as a jurisdictional requirement of the Court's advisory procedure see *K. J. Keith*, The extent of

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law under the name "Eastern Carelia doctrine"[159]. This doctrine originated in the 1923 *Eastern Carelia* advisory opinion of the PCIJ.[160] Since then, the Eastern Carelia doctrine has played an important role in the case law of both the PCIJ[161] and – in a significantly modified form – the ICJ[162]. The fundamental argument of the Eastern Carelia doctrine, which states have consistently invoked over the past 100 years, is the following: If two states have a legal dispute with each other, it is an expression of their sovereign equality to decide whether to submit the dispute to third party judicial settlement. If a party to the dispute refuses its consent, the dispute cannot be decided by any court or tribunal, even by non-binding means such as the advisory opinion procedure. This is a consequence of the sovereign equality of states. If an advisory opinion were given on a legal question which forms the subject-matter of the legal dispute pending between these two states, the issuing of the advisory opinion would circumvent the strict

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the advisory jurisdiction of the International Court of Justice, 1971, 89 et seq; *D. Pratap*, The advisory jurisdiction of the International Court, 1972, 154 et seq.; *M. Pomerance*, The advisory function of the International Court in the League and U.N. eras, 1973, 287 et seq.; *K. J. Keith*, 16 AYBIL 39 (1996), 39-58 (43 et seq.); *C. F. Amerasinghe*, Jurisdiction of International Tribunals, 2003, 528 et seq.; *M. M. Aljaghoub*, The Advisory Function of the International Court of Justice 1946 - 2005, 2006, 97 et seq.; *M. M. Aljaghoub*, 24 ALQ 2 (2010), 191.

159 R. Kolb calls it the "anti-bypassing rule", *R. Kolb*, The International Court of Justice, 2013, 1074.

160 *Status of Eastern Carelia*, Advisory Opinion, PCIJ Series B 1923, 7. Although the PCIJ refused to give the requested advisory opinion, the PCIJ's response was published in the PCIJ's "Series B: Collection of Advisory Opinions" and subsequently referred to as an advisory opinion by the PCIJ, E 2, Second Annual Report, 164.

161 Ibid.; *Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq)*, Advisory Opinion, PCIJ Series B 1925, 6.

162 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, ICJ Reports 1950, 65; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, ICJ Reports 1951, 15; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, 16; *Western Sahara*, Advisory Opinion, ICJ Reports 1975, 12; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, 95; for an overview of the case law of the two Courts on the non-circumvention principle, see *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 89 et seq., 229; *D. Pratap*, The advisory jurisdiction of the International Court, 1972, 142 et seq.; *M. Pomerance*, The advisory function of the International Court in the League and U.N. eras, 1973, 287 et seq.; *M. M. Aljaghoub*, 24 ALQ 2 (2010), 191 (95 et seq.).

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consent requirements of the Court's contentious procedure. To prevent this circumvention and to protect the legal interests of the disputing states, the Court may have to refuse to give the requested advisory opinion.

A. Eastern Carelia case (1923)

I. Background

The *Eastern Carelia* case[163] is the *locus classicus* of the delimitation of the PCIJ's advisory power.[164] The 1923 case also marks the beginning of the Eastern Carelia doctrine. At the heart of the *Eastern Carelia* case was a dispute between Finland and the USSR over the interpretation and application of the 1920 Treaty of Dorpat[165]. The Treaty of Dorpat was a peace treaty concluded in 1920 between Finland and the USSR's precursor – the Russian Soviet Federative Socialist Republic (RSFSR) – which transferred certain areas of the region of Eastern Carelia that were formerly under Finnish control to the RSFSR, while retaining certain autonomy rights.[166] Finland and the USSR were in dispute over whether a declaration made by the Russian delegation during the negotiation of the treaty became part of the treaty. Finland asked the League of Nations to take up the matter.[167] The Council of the League of Nations, through the good offices of Estonia, invited the USSR to accept the dispute resolution mechanism of the

163 *Status of Eastern Carelia*, Advisory Opinion, PCIJ Series B 1923, 7. Although the PCIJ refused to give the requested advisory opinion, the PCIJ's response was published in the PCIJ's "Series B: Collection of Advisory Opinions" and subsequently referred to as an advisory opinion by the PCIJ, E 2, Second Annual Report, p. 164; on the Eastern Carelia opinion, see *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 89–97; *M. Pomerance*, The advisory function of the International Court in the League and U.N. eras, 1973, 65–69; *J. Heliskoski*, Eastern Carelia (Request for Advisory Opinion) (last updated 2007), in: A. Peters/R. Wolfrum (eds.), The Max Planck Encyclopedia of Public International Law, 2008.

164 *G. Abi-Saab*, On Discretion: Reflections on the nature of the consultative function of the International Court of Justice, in: L. Boisson de Chazournes/P. Sands (eds.), International law, the World Court of justice and nuclear weapons, 1999, 36 (39).

165 *League of Nations Treaty Series*, vol. III, pp. 6–79, https://treaties.un.org/doc/Publication/UNTS/LON/Volume%203/v3.pdf. The Treaty is now commonly referred to as the Treaty of Tartu.

166 *Status of Eastern Carelia*, Advisory Opinion, PCIJ Series B 1923, 7 (18 et seq.).

167 Ibid. (23).

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Covenant of the League of Nations and to submit its dispute with Finland to the Council in accordance with Article 17 of the Covenant.[168] However, the USSR refused its consent to any form of judicial dispute settlement.[169] Against this backdrop, the Council by resolution of 21 April 1923 requested an advisory opinion from the PCIJ on the question of whether Articles 10 and 11 of the Treaty of Dorpat between Finland and the RSFSR and the additional declaration of the Russian delegation were legally binding for Finland and the USSR.

II. Article 17 and the Council's competence to request advisory opinions from the PCIJ

Applying Article 14 of the League's Covenant, the PCIJ found that there was in fact a dispute between Finland and the USSR and that this dispute formed the subject-matter of the advisory request. The PCIJ held:

> "[t]hat both parties, while acknowledging the existence and obligatory force of the Treaty, differ as to the interpretation and legal effect of certain provisions, particularly Articles 10 and 11 relating to Eastern Carelia."[170]

Having established the existence of a dispute, the PCIJ then addressed the question whether this would prevent the Court from giving the requested advisory opinion. In particular, the Court raised the question whether it could give an advisory opinion relating to matters which form the subject-matter of a pending dispute between the two states without the consent of these states. Despite raising this question, the Court decided not to answer it:

> "There has been some discussion as to whether questions for an advisory opinion, if they relate to matters which form the subject of a pending dispute between nations, should be put to the Court without the consent of the parties. *It is unnecessary in the present case to deal with this topic*."[171]

168 Ibid. (24).
169 Ibid.
170 Ibid. (22).
171 Ibid. (27), emphasis added.

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Instead, the Court focused on the fact that the USSR was not a party to the League's Covenant and the legal consequences of this for the Council to act under Article 17. The PCIJ found:

> "As Russia is not a Member of the League of Nations, the case is one under Article 17 of the Covenant. According to this article, in the event of a dispute between a Member of the League and a state which is not a Member of the League, the state not a Member of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, and, if this invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council. [...] The submission, therefore, of a dispute between them and a Member of the League for solution according to the methods provided for in the Covenant, could take place only by virtue of their consent. Such consent, however, has never been given by Russia. [...] The Court therefore finds it impossible to give its opinion on a dispute of this kind."[172]

Article 17 para. 1 of the League's Covenant made the Council's competence to act regarding non-Member States subject to that states' consent.[173] Since the USSR – a non-Member State of the League – refused to give its consent, the Council was not competent to request an advisory opinion in relation to the dispute under Article 17 in connection with Article 15 of the Covenant.[174] The PCIJ's own lack of jurisdiction to give the requested advisory opinion was thus just a consequence of the Council's lack of jurisdiction to *request* the opinion. The Court thus addressed its own com-

172 Ibid. (27–28).

173 Art. 17 of the Covenant of the League of Nations read:
"In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council."

174 *G. Abi-Saab*, Les exceptions préliminaires dans la procédure de la Cour internationale, 1966, 79; *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 96; *M. Pomerance*, The advisory function of the International Court in the League and U.N. eras, 1973, 287 et seq.; cf. *R. Kolb*, The Elgar companion to the International Court of Justice, 2014, 267–268.

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petence to give the requested advisory opinion only to the extent it related to the competence of the Council to resolve the dispute brought before it.[175]

III. The birth of the Eastern Carelia doctrine by *obiter dictum*

Despite initially stating that it was "unnecessary" to address the question of state consent, the PCIJ made an *obiter dictum* that attracted much attention, and which was invoked in support of a general consent requirement in later cases.[176] The PCIJ declared:

> "[Article 17 of the Covenant], moreover, only accepts and applies a principle which is a fundamental principle of international law, namely, the principle of the independence of States. It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement. Such consent can be given once and for all in the form of an obligation freely undertaken, but it can, on the contrary, also be given in a special case apart from any existing obligation. The first alternative applies to the Members of the League who, having accepted the Covenant, are under the obligation resulting from the provisions of this pact dealing with the pacific settlement of international disputes."[177]

The Court made two fundamental findings here: First, the principle of the independence of states – now more commonly referred to as sovereign equality of states[178] – requires that any kind of pacific settlement be subject to the consent of the disputing states. The PCIJ not only referenced binding dispute resolution mechanisms in this context, but also non-binding ones such as mediation as well as "any other kind of pacific dispute settlement". Without expressly saying so, by addressing this issue in its *Eastern Carelia* opinion, the PCIJ seems to regard its advisory procedure as such a non-binding "other kind of pacific dispute settlement" which may, in principle,

175 See *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 94 et seq.

176 See in particular the argumentation of Bulgaria, Hungary and Romania in the *Peace Treaties* case before the ICJ. See on this, §3.A.II.

177 *Status of Eastern Carelia*, Advisory Opinion, PCIJ Series B 1923, 7 (27).

178 Instead of many, see *J. Crawford*, Brownlie's Principles of Public International Law, 9. ed. 2019, 430 et seq.

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trigger a consent requirement. The ICJ will depart from the idea that the principle of sovereign equality of states requires the consent of states that are affected from the proceedings regardless of the binding nature of the procedure.[179] Secondly, general consent to the Covenant and the Court's Statute and thus to the Court's advisory opinion procedure suffices as consent. By becoming a party to the League's Covenant and the Court's Statute, a state accepts the provisions governing the Court's advisory opinion procedure and also accepts that the PCIJ may address by means of its advisory procedure legal questions which form the subject of an inter-state dispute.

IV. Propriety of giving the requested advisory opinion

Although the PCIJ had already dismissed the competence of the League's Council to request an advisory opinion from the Court and thus decided that it could not give the requested advisory opinion, the Court nevertheless addressed a more general question: the question of judicial propriety. The refusal of the USSR to cooperate in the present case did not only lead to a lack of competence of the Council. It also affected the functioning of the Court. The Court found that because of the lack of cooperation by the USSR it would not have access to all the relevant facts of the case. The PCIJ held:

> "The Court is aware of the fact that it is not requested to decide a dispute, but to give an advisory opinion. This circumstance, however, does not essentially modify the above considerations. The question put to the Court is not one of abstract law, but concerns directly the main point of the controversy between Finland and Russia, and can only be decided by an investigation into the facts underlying the case. Answering

179 See in particular the Peace Treaties Advisory Opinion where the Court stated: "The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings even where the Request for an Opinion relates to a legal question actually pending between States. The Court's reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.", *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, ICJ Reports 1950, 65 (71).

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> the question would be substantially equivalent to deciding the dispute between the parties. The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court."[180]

The PCIJ implied here an assimilation of its two procedures – the contentious procedure and the advisory procedure. The two procedures do not require two completely different modes of operation from the Court. Instead, the Court, even in giving advisory opinions, performs a judicial task which requires the Court to "investigate into the facts underlying the case". This is remarkable, as the PCIJ could also have understood its advisory function as only requiring the Court to state the abstract law without reference to the facts of the case.

V. Interim conclusions: (un)limited application of the Eastern Carelia 'precedent'

How could the *Eastern Carelia* advisory opinion serve as the main reference point for states in subsequent advisory proceedings to argue for a consent requirement when the PCIJ explicitly stated it was "unnecessary in the present case to deal with this topic"[181]? Maybe the answer lies in the fact that the Court did not say what it did and did not do what it said.[182] On the one hand, the Court emphasized that its reasoning only applied to the present case and that it was guided by the fact that the USSR was not a Member State of the League of Nations. Because of this, Article 17 of the Covenant made the Council's competence to request an advisory opinion subject to the prior consent of the USSR. If the Court's reasoning was limited to non-Member States of the League, the relevance of the *Eastern Carelia* advisory opinion for future advisory proceedings would be very limited.[183] On the other hand, the Court made an *obiter dictum* stating that even non-binding forms of dispute settlement including mediation and advisory opinions required the consent of the disputing states. The idea

180 *Status of Eastern Carelia*, Advisory Opinion, PCIJ Series B 1923, 7 (28–29).

181 Ibid. (27).

182 Cf. *R. Christensen*, Was heißt Gesetzesbindung?, 1989, 64.

183 Arguing that the Court only addressed the legal status of non-Member States, see *M. Pomerance*, The advisory function of the International Court in the League and U.N. eras, 1973, 289.

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that the sovereign equality of states made non-binding forms of dispute settlement subject to state consent is far-reaching and forms the main reference-point for future arguments before the ICJ.[184]

B. Mosul case (1925)

The next step in the development of the Eastern Carelia doctrine was marked by the 1925 *Mosul* case.[185]

I. Background

At the time, Great Britain and Turkey had a dispute about the demarcation of Turkey's border with Iraq. The demarcation process was governed by the 1923 Treaty of Lausanne.[186] Article 3 para. 2 of the Treaty of Lausanne stipulated:

> "The frontier between Turkey and Iraq shall be laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months. In the event of no agreement being reached between the two Governments within the time mentioned, the dispute shall be referred to the Council of the League of Nations."

After Great Britain and Turkey could not agree upon such a "friendly arrangement" in due time, Great Britain asked the League's Secretariat to place the matter on the Council's agenda.[187] The Secretariat complied with this request and informed Turkey accordingly. Turkey, which was not a

184 Arguing that the PCIJ established a general consent requirement, see *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, Dissenting Opinion Krylov, ICJ Reports 1950, 65 (108–111).

185 *Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq)*, Advisory Opinion, PCIJ Series B 1925, 6; on the Mosul case, see *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 97–101; *M. Pomerance*, The advisory function of the International Court in the League and U.N. eras, 1973, 75–78.

186 Treaty of Lausanne, signed 24 July 1923, entry into force 6 August 1924, League of Nations Treaty Series, No. 701, Vol. XXVIII, 12–113.

187 *Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq)*, Advisory Opinion, PCIJ Series B 1925, 6 (15).

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member of the League at the time,[188] agreed "in principle" to the inscription of the question on the Council's agenda[189] and then sent its representative to take part in the Council's discussions.[190] In the pursuing discussions, Great Britain and Turkey disagreed whether the Council could decide the question of delimitation in a binding manner. The Council decided to request an advisory opinion from the PCIJ on this question as well as the question of voting in the Council. Turkey continued to provide the Court with information – albeit under reservation[191] – and replied to certain questions which the Court had put to it in the lead-up to the public hearings,[192] but it did not consent to the judicial settlement of its dispute with Great Britain.[193] Turkey was "convinced that the questions (…) in regard to which Court's advisory opinion is asked are of a distinctly political character and, in the Turkish Government's opinion, cannot form the subject of a legal interpretation".[194]

Turkey thus consented to the Council's involvement, however not to that of the Court.

II. PCIJ reaffirms Eastern Carelia doctrine even where Article 17 is fulfilled

What is most interesting in the *Mosul* case is not so much what the Court addressed but rather what it decided not to address. Even though Turkey was not a member of the League of Nations and although Turkey refused to consent to the judicial settlement of the matter, the Court did not address the question of state consent. Rather, it emphasized that its answer to the request for an advisory opinion must not be understood as judicial settlement of the underlying bilateral dispute. The PCIJ held:

188 For a list of the Member States of the League of Nations, see https://www.britannica.com/topic/League-of-Nations/Members-of-the-League-of-Nations.

189 Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq), Advisory Opinion, PCIJ Series B 1925, 6 (15).

190 Ibid. (16).

191 *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 99.

192 *Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq)*, Advisory Opinion, PCIJ Series B 1925, 6 (9).

193 *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 99.

194 *Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq)*, Advisory Opinion, PCIJ Series B 1925, 6 (8).

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> “Before proceeding to examine the questions put to it by the Council, the Court wishes to observe that it intends strictly to confine itself to consideration of these questions, without in any way prejudging the merits of the problem before the Council; nothing in the present opinion, therefore, is to be interpreted as anticipating the solution of that problem.”[195]

The Court then proceeded to interpret Article 3 para. 2 of the Treaty of Lausanne concluding that the Council may decide the matter with binding force.[196]

Contrary to Russia in the *Eastern Carelia* case, Turkey gave its consent to the involvement of the League’s Council by concluding Article 3 para. 2 sub-para. 2 of the Treaty of Lausanne and by actively participating in the Council’s discussions after the dispute was referred to it.[197] Whereas in the *Eastern Carelia* case, the Council was not duly seized under Article 17 of the Covenant as Russia refused to give its consent, in the *Mosul* case, Turkey accepted the Council’s involvement. The conditions of Article 17 of the Covenant were thus fulfilled, which allowed the Council to request an advisory opinion from the Court under Article 15 of the Covenant.[198] Although the Council was thus competent to request an advisory opinion from the Court, the Court nevertheless stressed that its answer may not be interpreted as a form of judicial dispute settlement. This is directed at Turkey’s refusal of consent to any form of judicial dispute settlement. The Court thereby follows up on the *obiter dictum* it gave in the *Eastern Carelia* case. By stressing that the Court did not intend to settle the dispute between Turkey and Great Britain, it reaffirmed the principle that a state may not be forced to submit its matters to judicial settlement even by non-binding means.

The PCIJ thus made clear that two questions must be distinguished: the first question concerns the requesting organ’s competence to request an advisory opinion from the Court. This competence results from an act of attribution by consent, either in the form of membership in the League of Nations and the Court’s Statute or in the form of *ad-hoc* consent if non-members are involved. The other question concerns the use of advisory opinions as a means of dispute resolution. As the *Mosul* case highlights, the

195 Ibid. (18).
196 Ibid. (19).
197 *K. J. Keith*, The extent of the advisory jurisdiction of the International Court of Justice, 1971, 98.
198 Ibid., 101.

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Court may not deduce its competence to settle a bilateral dispute by means of its advisory opinion procedure from the organ's competence to request an advisory opinion.

C. Conclusions on the origins of the Eastern Carelia doctrine

The PCIJ has introduced the Eastern Carelia doctrine as a potential argument for states to challenge the competence of the Court to issue an advisory opinion. The Court did so when it addressed the question of state consent in the context of non-binding advisory opinions and by linking it to the concept of sovereign equality of states. The transferability of this doctrine to the UN era seems questionable for multiple reasons: First, the relevant provision upon which the PCIJ based its decision not to give the advisory opinion in the *Eastern Carelia* case was Article 17 of the League's Covenant which made any request for an advisory opinion by the Council that related to the settlement of disputes involving non-Member States subject to the consent of the non-Member States. There is no comparable provision in the UNC or the ICJ's Statute. Secondly, the PCIJ – unlike the ICJ – did not address the most contentious matters of its time. As *Spiermann* put it, "[i]n the political history of the League of Nations, the Permanent Court is but a footnote, partly because it did not deal with the main political issues of the day."[199] In contrast, the ICJ addressed several highly controversial political disputes which attracted the attention of states

199 *O. Spiermann*, International legal argument in the permanent court of international justice, 2005, 132. See also *Hudson*, who commented on the role of the PCIJ in the settlement of international disputes in 1944: "Each of the cases had importance for the parties involved, and the successful disposition of it cleared the air in difficult situations. Yet few of the cases became the subject of popular interest. It would be difficult to say that any of the cases threatened to became a *casus belli*, though some of them related to differences which, if the Court had not been available and if they had been allowed to fester, might have led to serious consequences.", *M. O. Hudson*, International Tribunals, 1944, 239.

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and the general public alike.[200] The *Kosovo* case[201] and the *Wall* case[202] are just two examples.[203]

Despite these differences, the notion that states may not be forced to have their disputes settled by an international court without their consent even by means of the advisory procedure continues to have relevance before the new World Court, the ICJ. As the next chapter will illustrate, the ICJ integrated the Eastern Carelia doctrine into its jurisprudence, not, however, without modifying the doctrine in the process.

200 Cf. *S. Rosenne*, The law and practice of the International Court, 1920-2005, 4th ed. 2006, 2.

201 *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, 403.

202 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136.

203 Both cases are examined in detail in the next chapter, see *infra*: § 3 Sections F. and G.

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