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¹ date when the request for an advisory opinion or application was filed with the court Registry

[6] League of Nations

To the Permanent Court of International Justice.

In execution of the Resolution of the Council of the League of Nations adopted on April 21st, 1923, of which a certified true copy is annexed hereto,¹⁾

And by virtue of the authorization given by this Resolution,

The Secretary-General of the League of Nations

Has the honour to present to the Permanent Court of International Justice the request of the Council that the Court will, in accordance with Article 14 of the Covenant of the League, give an advisory opinion upon the following question, taking into consideration the information which the various countries concerned may equally present to the Court:

"Do Articles 10 and 11 of the Treaty of Peace between Finland and Russia, signed at Dorpat on October 14th, 1920, and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?"

The Secretary-General has further the honour to transmit to the Court the documents²⁾ relating to the question, of which a list is attached hereto.³⁾

(Signed) Eric Drummond,
Secretary-General of the League of Nations.

April 27th, 1923.

¹ See pages 7-8.

² Not reproduced. (*Note by the Registrar of the Court.*)

³ See pages 10-12.

[7] Permanent Court of International Justice.

<i>Present:</i>	Mm. Loder,	<i>President,</i>
	Weiss,	<i>Vice-President,</i>
Lord	Finlay,	
MM	Nyholm,	
	Moore,	
	De Bustamante,	<i>Judges,</i>
	Altamira,	
	Oda,	
	Anzilotti,	
	Huber	
	M Wang	<i>Deputy-Judge</i>

No. 5.

The Council of the League of Nations on April 21st, 1923, adopted the following Resolution:

(English text.)

"The Council of the League of Nations requests the Permanent Court of International Justice to give an advisory opinion on the following question, taking into consideration the information which the various countries concerned may equally present to the Court:

"Do Articles 10 and 11 of the Treaty of Peace between Finland and Russia, signed at Dorpat on October 14th, 1920, and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?"

"The Secretary-General is authorized to submit this [8] application to the Court, together with all the documents relating to the question, to inform the Court of the action taken by the Council in the matter, to give all necessary assistance in the examination of the question, and to make arrangements to be represented, if necessary, at the Court."

(French text.)

«Le Conseil de la Société des Nations prie la Cour permanente de Justice internationale de donner son avis consultatif, en prenant en considération les renseignements que pourraient lui adresser également les différents pays intéressés, sur la question suivante:

«Les articles 10 et 11 du Traité de Paix entre la Finlande et la Russie, signé à Dorpat le 14 octobre 1920, ainsi que la Déclaration y annexée de la délégation russe concernant l'autonomie de la Carélie orientale, constituent-ils des engagements d'ordre international obligeant la Russie vis-à-vis de la Finlande à l'exécution des dispositions y contenues?»

«Le Secrétaire général est autorisé à soumettre cette requête à la Cour, ainsi que tous documents relatifs à la question, à exposer à la Cour l'action du Conseil dans la matière, à donner toute l'aide nécessaire à l'examen de l'affaire et à prendre, le cas échéant, des dispositions pour être représenté devant la Cour.»

On the 27th of the same month the Secretary-General of the League, by virtue of this Resolution, sent to the Permanent Court of International Justice the following request:

(English text.)

"In execution of the Resolution of the Council of the League of Nations adopted on April 21st, 1923, of which a certified true copy is annexed hereto,

"And by virtue of the authorization given by this Resolution,

"The Secretary-General of the League of Nations "Has the honour to present to the Permanent Court of International Justice the request of the Council that the Court will, in accordance with Article 14 of the Cove[9]nant of the League, give an advisory opinion upon the following question, taking into consideration the information which the various countries concerned may equally present to the Court:

" 'Do Articles 10 and n of the Treaty of Peace between Finland and Russia, signed at Dorpat on October 14th, 1920, and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?' "

(*French text.*)

*«Le Secrétaire général de la Société des Nations,
«en exécution de la Résolution adoptée par le Conseil le 21 avril 1923, dont copie
conforme est annexée à la présente,
«et en vertu de l'autorisation à lui donnée par ladite Résolution,
«a l'honneur de présenter à la Cour permanente de Justice internationale une
requête du Conseil demandant à la Cour de bien vouloir, conformément à l'article 14 du
Pacte, donner son avis consultatif, en prenant en considération les renseignements que
pourraient lui adresser également les différents pays intéressés, sur la question suivante :
«Les articles 10 et 11 du Traité de Paix entre la Finlande et la Russie, signé à
Dorpat le 14 octobre 1920, ainsi que la Déclaration y annexée de la délégation russe
concernant l'autonomie de la Carélie orientale, constituent-ils des engagements d'ordre
international obligeant la Russie vis-à-vis de la Finlande à l'exécution des dispositions y
contenues?»*

In conformity with Article 73 of the Rules of Court, notice of the request was given to the Members of the League of Nations through the Secretary-General of the League, and to the States mentioned in the Annex to the Covenant.

Furthermore, the Registrar of the Court was directed to notify the Soviet Government of the request. [10]

Together with the request were transmitted the documents, the list of which, as appended to the request itself, is as follows:

1. Treaty of Dorpat, October 14th, 1920.
Authenticated texts in Finnish, Russian and Swedish and French translation supplied by the Finnish Government.
2. Declaration of the Russian Government annexed to the Treaty of Dorpat concerning autonomy of Eastern Carelia.
Authenticated texts in Finnish, Russian and Swedish, and French translation supplied by the Finnish Government.

3. Note by the Secretary-General to the Council submitting a letter from the Finnish Ministry for Foreign Affairs, dated November 26th, 1921. (Doc. C. 506. 1921. VII.)
4. Memorandum by the Secretary-General, dated December 29th, 1921, summarizing the position of Carelia. (Doc. C. 545. 1921. VII.)
5. Note by the Secretary-General, dated December 31st, 1921, accompanying a letter from the Central Government of Carelia to the Council. (Doc. C. 555. 1921. VII.)
6. Minutes of the meeting of the Council held on January 13th and 14th, 1922, and declaration made to the Council by the representative of Finland.
7. Declaration made to the Assembly by the representative of Finland on September 6th, 1922.
8. Note by the Secretary-General submitting to the Council a letter of November 10th, 1922, from M. Enckell, Delegate of Finland. (Doc. C. 95. 1923. VII.)
9. Memorandum by the Secretary-General setting forth the results of the steps taken. (Doc. C. 83. 1923. VII.) [11]
10. Memorandum by the Secretary-General to the Council, April 10th, 1923. (Doc. C. 251. 1923. V.)
11. Letter from M. Enckell, and memorandum of the Finnish Government of April 19th, 1923, accompanied by the memorandum of the three Finnish jurists. (Doc. C. 322. 1923. VII.)
12. Preliminary report to the Council by M. Salandra. (Doc. C. 321. 1923. V.)
13. Report by the representative of Italy dated April 21st, 1923. (Doc. C. 327, 1923. V.)
14. Extract from the Minutes of the Council's Meetings of April 20th and 21st, 1923.
15. Carelian Green Book, 1922.
16. Finnish White Book, February, 1922.
17. Report of the three foreign jurists, 1922.
18. Chronological statement of the stages in the treatment of the question of Eastern Carelia before the Council of the League of Nations.

Furthermore, the Court had before it a certain number of documents transmitted to it on

behalf of the Finnish Government, namely:

1. A paper by M. Erich, called "*La question de la Carelie orientate.*"
2. Final conclusions of the Finnish Government.
3. A paper by M. Erich, called "*La question de la Carelie orientate soumise pour avis a la Cour permanente de Justice internationale.*"
4. Additional note (to legal opinion previously given) by M. Charles de Visscher.
5. Minutes (in Finnish) of the sittings of the Conference of Peace between Finland and Russia, held at Dorpat 12th—October 14th, 1920. [12]
6. Minutes (extracts in French translation) of sittings of the said Conference held on June 15th and 16th, July 28th and October 4th and 5th, 1920.
7. The Soviet Government's note of February 27th, 1923, and the Finnish Government's notes of June 16th and 19th, 1923.

The Court likewise had before it a note from the Polish Minister at the Hague, dated June 28th, 1923, and a telegram from the Esthonian Government dated July 3rd, 1923.

The Court also heard, at the request of the Finnish Government, the statements of its representative, M. Rafael Erich, and received from him a document containing arguments supplementary to those statements. The Court had informed M. Erich before hearing his statement that it would be glad to have his views as to whether it had competence to give effect to the request for an advisory opinion upon the question of Eastern Carelia, submitted to it by the Council of the League of Nations.

The Secretary-General of the League was duly informed of the step taken by the Court in this respect.

M. Tchitcherin, the Russian People's Commissary for Foreign Affairs, on the 11th June despatched to the Court a telegram, which has been read in Court in full, and which is as follows:

(Translation by the Registry.)

"June eleventh. Reply to your 3055 May 19th. The Russian Government finds it impossible to take any part in the proceedings, without legal value either in substance or in form, which the Permanent Court intends to institute as regards the Carelian question.

Whereas the Workers' Commune of Carelia is an autonomous portion of the Russian Federation; whereas its autonomy is based on the decree of the Pan-Russian Central Executive Council, dated June 8th, 1920, which was enacted before the examination of this question by the Russo-Finnish Peace Conference at Dorpat; furthermore, whereas the Treaty [13] of Dorpat, in connection with another matter, refers to the autonomous territory of Carelia as already existing without imposing any obligation in this respect upon Russia; whereas the Russian Delegation at Dorpat declared each time that this question was raised that it was an internal question affecting the Russian Federation; furthermore, whereas Berzine, the President of the Russian Delegation, at the meeting of October 14th, 1920, brought the fact that Carelia was autonomous to the knowledge of the Finnish Delegation solely for their information; furthermore, whereas in a Note dated December 5th, 1920, and addressed to the Finnish Charge d'affaires, Tchitcherin, the Commissary of the People, protested categorically against the action taken by the Finnish Government in placing the Eastern Carelian question before the League of Nations, a course which in the view of the Russian Government constituted an act of hostility to the Russian Federation and an intervention in its domestic affairs; furthermore, whereas, in an official communication published on June 18th, 1922, the Commissary of the People for Foreign Affairs declared that the Russian Government absolutely repudiated the claim of the so-called League of Nations to intervene in the question of the internal situation of Carelia and stated that any attempt on the part of any power to apply to Russia the article of the Covenant of the League relating to disputes between one of its Members and a non-participating State would be regarded by the Russian Government as an act of hostility to the Russian State: the Russian Government categorically refuses to take any part in the examination of this question by the League of Nations or by the Permanent Court. Apart from considerations of law, according to which the question of the status of Carelia is a matter of Russian domestic jurisdiction, the Soviet Government is compelled to affirm that it cannot consider the so-called League of Nations and the Permanent Court as impartial in this matter, having regard to the fact that the majority [14] of the Powers belonging to the League of Nations have not yet accorded the Soviet Government *de jure* recognition, and several of them refuse even to enter into *de facto* relations with it. This situation is further borne out by the fact that the Council of the League of Nations or the

Powers which control it, represented by the Council of Ambassadors, have often taken decisions obviously directed against the most vital interests of the Soviet Republics, and have done so without even asking the views of the Soviet Government. This occurred when the annexation of Bessarabia by Roumania was recognized by them and again when a regime was established at Memel which debarred Russia from any voice in the question of navigation on the Niemen, or again, when Eastern Galicia, the great majority of whose population is Ukrainian, was annexed to Poland. These are the reasons which render it quite impossible for the Russian Government to take any part in the discussion of the Carelia question before the Permanent Court. Stop N. 364. Tchitcherin."

«Onze juin Stop Réponse à votre 3055 du 19 mai Stop Le Gouvernement russe trouve impossible de prendre une part quelconque à la procédure dénuée de valeur légale et dans le fond et dans la forme à laquelle la Cour permanente veut soumettre la question Carélienne Stop Attendu que la Commune de travail Carélienne est une partie autonome de la Fédération russe ne possédant point le droit de relations internationales indépendantes Vrg Attendu ensuite que son autonomie est basée sur le décret du Conseil exécutif central pan-russe du huit juin mil neuf cent vingt qui fut édicté avant l'examen de cette question par la Conférence de Paix russo-finlandaise de Yourief Vrg Attendu aussi que le Traité de Yourief mentionne en traitant un autre sujet la Carélie autonome comme déjà existante sans stipuler d'obligation à ce sujet pour la Russie Vrg Attendu [15] aussi que la délégation russe à Yourief chaque fois que cette question surgissait a toujours déclaré que c'était une affaire intérieure de la Fédération russe Vrg Attendu aussi que le Président de la délégation russe Berzine à la séance du quatorze octobre mil neuf cent vingt porta uniquement à titre d'information à la connaissance de la délégation finlandaise le fait de l'autonomie de la Carélie Vrg Attendu aussi que par une note du cinq décembre mil neuf cent vingt et un au nom du Chargé d'affaires de Finlande le Commissaire du Peuple Tchit-chérine protesta catégoriquement contre l'acte du Gouvernement finlandais qui avait posé la question de la Carélie orientale devant la Société des Nations ce qui dans l'opinion du Gouvernement russe constituait un acte hostile à la Fédération russe et une intervention dans ses affaires intérieures Vrg Attendu aussi que dans une communication officielle publiée le dix huit juin mil neuf cent

vingt deux le Commissariat du Peuple pour les Affaires étrangères déclara que le Gouvernement russe repousse absolument la prétention de la soi-disant Société des Nations d'intervenir dans la question de la situation intérieure de la Carélie et fait savoir que toute tentative de quelque Puissance que ce soit d'appliquer à la Russie l'article des statuts de la Société des Nations relatif aux conflits entre un de ses Membres et une Puissance non participante serait considérée par le Gouvernement russe comme un acte hostile contre la République russe Vrg Le Gouvernement russe refuse absolument toute participation à l'examen de cette question par la Société des Nations ou la Cour permanente Stop Indépendamment des considérations de droit en vertu desquelles la question de la situation de la Carélie est une question intérieure de la Fédération russe le Gouvernement soviétiste se voit obligé de déclarer qu'il ne peut considérer la prétendue Société des Nations et la Cour permanente comme impartiales en cette matière vu que la majorité des Puissances adhérant à la Société des Nations ne reconnaissent point encore de jure le Gouvernement soviétiste et plusieurs d'entre elles refusent d'entrer avec lui même en des relations de fait Stop Cet état de choses est [16] confirmé par le fait que le Conseil de la Société des Nations ou les Puissances qui le dirigent représentées par le Conseil des Ambassadeurs ont souvent adopté des décisions manifestement dirigées contre les intérêts élémentaires des Républiques, soviétistes et cela sans même demander l'avis du Gouvernement comme cela fut le cas quand l'annexion de la Bessarabie à la Roumanie fut reconnue par eux ou quand à Memel un régime fut établi qui écarte la Russie de toute influence dans la question de navigation sur le Niémen¹ ou bien encore quand la Galicie [d'] Orient dont la population est dans son immense majorité ukrainienne fut annexée à la Pologne Stop Telles sont les raisons qui écartent pour le Gouvernement russe toute possibilité de rapports avec la discussion de la question Carélienne devant la Cour permanente Stop N. 364. Tchitchérine.»

II.

Eastern Carelia is a territory of considerable extent, lying between the White Sea and Lake Onega on the east and Finland on the west.

Finland became entirely separated from Russia in 1917. War broke out between the Soviet Government and Finland, the two countries being in controversy as to boundaries and as

to a great many other questions which are enumerated in the Treaty of Dorpat, which was concluded on the 14th October, 1920, and came into force on the 1st January, 1921. While the hostilities were going on two of the Communes of Eastern Carelia Repola and Porajarvi were placed under the protection of Finland.

Articles 10 and 11 of the Treaty of Dorpat are as follows:

(English translation by the Secretariat of the League of Nations.)

Article 10.

"Finland shall, within a time limit of forty-five days, dating from the entry into force of the present Treaty, withdraw her troops from the Communes of Repola and [17] Porajarvi. These Communes shall be re-incorporated in the State of Russia and shall be attached to the autonomous territory of Eastern Carelia, which is to include the Carelian population of the Governments of Archangel and Olonetz, and which shall enjoy the national right of self-determination."

Article 11.

"The Contracting Powers have adopted the following provisions for the benefit of the local population of the Communes of Repola and Porajarvi, with a view to a more detailed regulation of the conditions under which the union of these Communes with the Autonomous Territory of Eastern Carelia referred to in the preceding article is to take place:

"1. The inhabitants of the Communes shall be accorded a complete amnesty, as provided in Article 35 of the present Treaty.

"2. The local maintenance of order in the territory of the Communes shall be undertaken by a militia organised by the local population for a period of two years, dating from the entry into force of the present Treaty.

"3. The inhabitants of these Communes shall be assured of the enjoyment of all their movable property situated in the territory of the Communes, also of the right to dispose and make unrestricted use of the fields which belong to or are cultivated by them and of all other immovable property in their possession, within the limits of the legislation in force in the Autonomous Territory of Eastern Carelia.

"4. All the inhabitants of these Communes shall be free, if they so desire, to leave Russia within a period of one month from the date upon which this Treaty comes into force. Those persons who leave Russia under these conditions shall be entitled to take with them all their personal possessions and shall retain, within the limits of [18] the existing laws in the independent territory of Eastern Carelia, all their rights to any immovable property which they may leave in the territory of these Communes.

"5. Citizens of Finland and Finnish commercial and industrial associations, shall be permitted, for the duration of one year from the date upon which this Treaty comes into force, to complete in these Communes the felling of forests to which they are entitled by contracts signed prior to June 1st, 1920, and to take away the wood felled."

(French text.)

Article 10.

«La Finlande retirera, dans un délai de quarante-cinq jours à partir de la mise en vigueur du présent Traité, ses troupes des communes de Repola et de Porajärvi. Ces communes seront réincorporées dans l'Etat russe et attachées au territoire autonome de la Carélie de l'Est, qui comprendra la population carélienne des gouvernements d'Arkhangel et d'Olonetz et jouira du droit des nations de disposer d'elles-mêmes.»

Article 11.

«Pour régler d'une manière plus précise les conditions de l'union des communes de Repola et de Porajärvi, citées dans l'article précédent, avec le Territoire autonome de la Carélie de l'Est, les dispositions suivantes ont été adoptées par les Puissances contractantes en faveur de la population locale:

«1. Les habitants des communes devront obtenir une amnistie entière, conformément aux stipulations de l'article 35 du présent Traité.

«2. Le maintien de l'ordre local sur le territoire des communes sera confié, pendant une durée de deux ans à partir[19] de la mise en vigueur du présent Traité, à une milice instituée par la population locale.

«3. Il sera garanti aux habitants desdites communes la possession intégrale de leurs biens meubles sur le territoire de ces communes, ainsi que le droit de disposer et d'user librement des champs qui leur appartiennent ou qu'ils cultivent, ainsi que de tous les autres biens immeubles en leur possession, dans les limites des lois en vigueur dans le territoire autonome de la Carélie de l'Est.

«4. Tout habitant de ces communes sera autorisé, s'il le désire, à quitter librement la Russie dans un délai d'un an à partir de la mise en vigueur du présent Traité. Les personnes quittant la Russie sous ces conditions seront autorisées à emporter avec elles tous leurs biens meubles et garderont, dans les limites des lois en vigueur dans le territoire autonome de la Carélie de V Est, tous leurs droits aux immeubles laissés par elles dans le territoire desdites communes.

«5. Il sera accordé aux citoyens finlandais et aux sociétés commerciales et industrielles finlandaises le droit, durant un an à partir de la mise en vigueur du présent Traité, de terminer dans ces communes la coupe des forêts auxquelles ils ont acquis droit en vertu de contrats conclus avant le premier juin 1920, et d'en emporter le bois coupé.»

The Treaty contains also a number of provisions upon other matters, e.g. boundaries, territorial waters, fishing, right of transit, neutralisation of waters and islands, customs, government property and debts, commercial relations and traffic, railways, posts and telegraphs. Article 37 provides for the appointment of a Russo-Finnish Mixed Commission, to see to the execution of the Treaty and to questions of public and private rights which might arise under it.

It will be observed that the Articles 10 and 11 describe the territory of Eastern Careliaas "autonomous," but, except as provided in these articles, there are not in the Treaty itself any provisions as to the nature and extent of the autonomy. [20]

Certain other documents described as "Declarations inserted in the Proces-Verbal by the Finnish and Russian Peace Delegations at Dorpat, October 14th, 1920, at the meeting for the signature of the Treaty of Peace between the Republic of Finland and the Socialist Federative

Republic of the Russian Soviets," were likewise presented to the Court; one of these documents is as follows:

(French text.)

*«Déclaration de la Délégation russe concernant l'autonomie
de la Carélie de V Est.*

«A la séance générale du 14 octobre des délégations de la Paix, la déclaration suivante fut faite au procès-verbal au nom de la délégation russe :

«La République socialiste fédérative des Soviets de Russie garantit à la population carélienne des gouvernements d' Arkhangel et d' Olonetz (Aunus) les droits suivants:

«1) La population carélienne des gouvernements d' Arkhangel et d'Olonetz (Aunus) jouira du droit des nations de disposer d'elles-mêmes.

«2) La Carélie de V Est habitée par cette population formera, en ce qui concerne ses affaires intérieures, un territoire autonome Aini à la Russie sur base fédérative.

«3) Les affaires concernant cette région seront traitées par une représentation nationale élue par la population locale, et ayant le droit d'imposition pour les besoins du, territoire, le droit de rendre des ordonnances et règlements concernant les besoins locaux, ainsi que de régler l'administration interne.

«4) La langue locale indigène sera la langue de l'administration, de la législation et de l'instruction publique.

«5) Le territoire, autonome de la Carélie de l'Est aura le droit de régler sa vie économique selon ses besoins locaux et selon l'organisation économique générale de la République. [21]

«6) *En rapport avec la réorganisation des formations militaires défensives de la République russe, il sera organisé sur le Territoire autonome de la Carélie de l'Est un système de milice ayant pour but la suppression de l'armée permanente, et la création à sa place d'une milice nationale pour la défense locale.*»

(English translation by the permanent Secretariat of the League of Nations.)

"Declaration of the Russian Delegation with regard to the autonomy of Eastern Carelia.

"At the general meeting of Peace delegates on October 14th, the following declaration was inserted in the proces-verbal on behalf of the Russian Delegation:

"The Socialist Federative Republic of the Russian Soviets guarantees the following rights to the Carelian population of the Governments of Archangel and Olonetz (Aunus):

"(1) The Carelian population of the Governments of Archangel and Olonetz (Aunus) shall enjoy the right, of self-determination.

"(2) That part of Eastern Carelia which is inhabited by the said population shall constitute, so far as its internal affairs are concerned, an autonomous territory united to Russia on a federal basis.

"(3) The affairs of this district shall be dealt with by national representatives elected by the local population, and having the right to levy taxes for the needs of the territory, to issue edicts and regulations with regard to local needs, and to regulate internal administration.

"(4) The local native language shall be used in matters of administration, legislation and public education.

"(5) The autonomous territory of Eastern Carelia shall have the right to regulate its economic life in accordance with its local needs, and in accordance with the general economic organization of the Republic. [22]

"(6) In connection with the reorganization of the military defensive forces of the Russian Republic, there shall be organized in the autonomous territory of Eastern Carelia

a militia system, having as its object the suppression of the permanent army and the creation in its place of a national militia for local defence."

III.

It appears from the documents which have been supplied to the Court that the Government of Finland and the Soviet Government are in acute controversy with regard to the above-mentioned Declaration. The Finnish Government maintain that it forms part of the contract between the two countries and that the Treaty was signed on the terms that the Declaration was as binding as the Treaty itself. The Soviet Government maintain that the Declaration was not by way of contract, but was only declaratory of an existing situation and made merely for information.

It appears from the letters and documents before the Court that disputes very early arose between the Finnish and Russian Governments as to alleged failure to carry out the Treaty obligations on a great number of points, one of which related to autonomy for Eastern Carelia.

An examination of the diplomatic correspondence between Finland and Russia, which constitutes the actual record of the controversy between the two countries concerning Eastern Carelia, clearly demonstrates:

1. That there is not, and never has been, any question between the two countries as to the legal existence of the Treaty of Dorpat and the obligatory force of its stipulations.
2. That 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. [23]
3. That Finland claims, while Russia denies, that the declaration, which, though not mentioned in the Treaty is inserted in the protocol of signature concerning it, constitutes part of the terms.

Finland asked the League of Nations to take the matter up, and after some discussion, the Council of the League adopted on January 14th, 1922, the following Resolution:

(English text.)

"The Council of the League of Nations, having heard the statement submitted by the Finnish Delegation on the situation in Eastern Carelia, contained in a letter from the Finnish Government, dated November 26th, 1921, and the statements submitted by the Estonian, Latvian, Polish and Lithuanian representatives, is willing to consider the question with a view to arriving at a satisfactory solution if the two parties concerned agree. The Council is of opinion that one of the interested States, Member of the League, which is in diplomatic relations with the Government of Moscow, might ascertain that Government's intentions in that respect.

"The Council could not but feel satisfaction if one of these States could lend its good offices as between the two parties, in order to assist in the solution of this question, in accordance with the high ideals of conciliation and humanity which animate the League of Nations.

"The Secretary-General is instructed to obtain all necessary information for the Council."

(French text.)

«Le Conseil de la Société des Nations, après avoir entendu les renseignements fournis par la délégation finlandaise sur la situation en Carélie orientale, qui a fait l'objet de la lettre du Gouvernement finlandais en date du 26 novembre 1921, ainsi que les déclarations des représentants de l'Esthonie, de la Lettonie, de la Pologne et de la Lithuanie, est disposé, s'il y a à ce sujet accord entre les deux parties intéressées, à examiner la question en vue [24] de trouver une solution satisfaisante. Le Conseil estime qu'un des Etats intéressés, Membre de la Société, qui est en relations diplomatiques avec le Gouvernement de Moscou, pourrait s'informer de ses dispositions à cet égard.

« Si l'un de ces Etats pouvait aider, par ses bons offices entre les deux parties, à la solution de la question dans le haut esprit de conciliation et d'humanité qui est celui de la Société des Nations, le Conseil ne pourrait que s'en montrer satisfait.

«Le Secrétaire général est invité à recueillir tous renseignements utiles pour l'information du Conseil.»

In accordance with the wish expressed by the Council, the Esthonian Government, which was in diplomatic relations with the Russian Government, invited the latter to submit the question of Eastern Carelia to the examination of the Council, "on the basis of Article 17 of the Covenant," a copy of which was annexed to the Esthonian Government's note. In the same note the Esthonian Government, referring to the Resolution of the Council, asked the Soviet Government whether it would, on its part, consent to submit the question to the Council in conformity with Article 17 of the Covenant "and to cause itself, for that purpose, to be represented on the Council."

The Russian Government, by its note of February 2nd, 1922, declined that request.

Eventually, the Finnish Government, having again brought the matter before the Council, the Council adopted the Resolution set forth at the outset of this Opinion.

IV.

The first observation to be made is that the question put to the Court relates to the obligation alleged to have been incurred by Russia under the Declaration and under Article 10 of the Treaty, that Eastern Carelia should enjoy autonomy, and to the other obligations in respect of the two Communes of Repola and Porajarvi arising under Articles 10 and 11 of the Treaty. An answer to it one way or the other could have no [25] effect upon any of the other points on which Finland and Russia are in dispute as to the execution or non-execution of the Treaty. There is no request for any interpretation of any of the clauses bearing upon the question of execution.

In the second place, it is necessary to arrive at a clear conception of the exact nature of the question before the Court. The Court is asked to give an Advisory Opinion upon the question whether Articles 10 and 11 of the Treaty of Dorpat, and the above-mentioned Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation to Finland.

As already stated, the fact that the Treaty of Dorpat was entered into has never been in dispute.

It appears from the documents presented to the Court that:

(a) Finland's contentions are:

(1) That Articles 10 and 11 of the Treaty of Dorpat and the Declaration inserted in the protocol relative thereto constitute executory obligations which Russia is bound to carry out.

(2) That Russia has not carried out those-obligations.

(b) Russia's contentions are:

(1) That Russia considers the question relating to the autonomy of Eastern Carelia as an internal matter, and that this was brought to the notice of the representatives of Finland at the time of the negotiation of the Treaty of Dorpat. The Declaration was given solely for information.

(2) That the autonomy mentioned under Articles 10 and 11 of the Treaty of Dorpat and in the Declaration refers only to the existing Workers' Commune of Carelia, established by Decree of June 7th, 1920, prior to the conclusion of the Treaty.

A memorandum by the Secretary-General of the League, dated April 10th, 1923 (Doc. C. 251. 1923. V.), brings out with perfect clearness the point really in controversy. It says:

"From this point of view, the question which arises in international law is as follows: Is there or is there not [26] a contractual obligation between Finland and Russia with regard to Eastern Carelia, and, if no such obligation exists, do the requests put forward by Finland constitute acts of interference in the internal affairs of Russia?"

And again, after stating the Russian position, it says:

"Finland maintains, on the other hand that the text of the Treaty of Dorpat is completed by the attached Declarations of the Russian Government; that in virtue of these Declarations the Soviet Government has entered into a contractual obligation based, in particular, on the fact that Finland has ceded afresh to Russia the two Communes of Repola and Porajarvi in exchange for the rights of autonomy promised by Russia to the Carelians; that the closest possible connection exists between the Declarations and the provisions of the Treaty, and indeed that the existence of the Russian Declarations had been a condition of her signing the Treaty; and that it therefore follows that the Finnish Government has the same right to insist upon the execution of the provisions of these Declarations—declarations obtained by it in favour of persons of Finnish race on the other side of the Finnish frontier—as in the case of the provisions of the Treaty itself."

The question whether this Declaration forms part of the obligations into which Russia entered, as Finland asserts, or was merely by way of information, as Russia contends, is, in the very nature of things, a question of fact. The question is, was such an engagement made? The real question put to the Court largely turns upon the Declaration as to autonomy inserted in the protocol of signature relative to the Treaty. If that Declaration forms part of the engagement between Finland and Russia, it would stand for this purpose on the same footing as the Treaty itself.

It has been suggested by the representative of the Finnish Government that the question submitted to the Court should be understood as a preliminary question relating to the nature [27] of the dispute by analogy to Article 15, par. 8 of the Covenant. For the reasons already stated and to be stated, the Court is unable to agree to this interpretation of the question submitted by the Council, an interpretation which, moreover, appears to the Court not to be warranted by the terms of the question.

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.

It follows from the above that the opinion which the Court has been requested to give bears on an actual dispute between Finland and Russia. 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. This rule, 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. As concerns States not members of the League, the situation is quite different; they are not bound by the Covenant. The submission, [28] 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. On the contrary, Russia has, on several occasions, clearly declared that it accepts no intervention by the League of Nations in the dispute with Finland. The refusals which Russia had already opposed to the steps suggested by the Council have been renewed upon the receipt by it of the notification of the request for an advisory opinion. The Court therefore finds it impossible to give its opinion on a dispute of this kind.

It appears to the Court that there are other, cogent reasons which render it very inexpedient that the Court should attempt to deal with the present question. The question whether Finland and Russia contracted on the terms of the Declaration as to the nature of the autonomy of Eastern Carelia is really one of fact. To answer it would involve the duty of ascertaining what evidence might throw light upon the contentions which have been put forward on this subject by Finland and Russia respectively, and of securing the attendance of such witnesses as might be necessary. The Court would, of course, be at a very great disadvantage in such an enquiry, owing to the fact that Russia refuses to take part in it. It appears now to be very doubtful whether there would be available to the Court materials sufficient to enable it to arrive at any judicial conclusion upon the question of fact: What did the parties agree to? The Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to facts, but, under ordinary circumstances, it is certainly expedient that the facts upon which the opinion of the Court is desired should not be in controversy, and it should not be left to the Court itself to ascertain what they are.

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 [29] controversy between Finland and Russia, and can only be decided by an

investigation into the facts underlying the case. Answering 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.

It is with regret that the Court, the Russian Government having refused their concurrence, finds itself unable to pursue the investigation which, as the terms of the Council's Resolution had foreshadowed, would require the consent and co-operation of both parties. There are also the other considerations already adverted to in this opinion, which point to the same conclusion.

The Court cannot regret that the question has been put, as all must now realize that the Council has spared no pains in exploring every avenue which might possibly lead to some solution with a view to settling a dispute between two nations.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-third day of July, nineteen hundred and twenty-three, in two copies, one of which is to be deposited in the Archives of the Court and the other to be forwarded to the Council of the League of Nations.

(Signed) Loder,
President.

(Signed) A. Hammarskjold,
Registrar.

MM. Weiss, Vice-President, Nyholm, de Bustamante and Altamira, judges, declare that they are unable to share the views of the majority of the Court as to the impossibility of giving an advisory opinion on the Eastern Carelian question.

(Initialed) L.

(Initialed) A. H.