It is no exaggeration to say that the whole history of the United Nations has been a series of disputes about the correct interpretation of the Charter.¹

§1344 Whoever applies a rule must first also interpret it, which of course requires ascertaining its meaning. That person will also execute it in the manner in which he thinks it ought to be understood. This is why the member states and the organs of an international organization have an extensive power to interpret their rights, their obligations and their competence under the law of the organization. As long as their interpretations remain unchallenged, the members will continue to interpret their obligations in the manner in which they think they ought to be interpreted, and the organs will continue to exercise the competences to which they think they are entitled. However, such original interpretations may be challenged. This challenge creates a dispute between two parties.

Questions of interpretation are actually disputes, or prospective disputes, concerning the interpretation of relevant rules. For that reason, it is difficult to separate questions of interpretation from disputes. Conversely, most disputes can be traced back to questions of interpretation. A dispute is, to recall the classic definition of the Permanent Court of International Justice, “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”.² We shall consider both interpretation and the settlement of disputes together in the present chapter.

§1345 However closely these two questions may be related, there are nevertheless certain differences between them. Questions of interpretation may be posed

² PCIJ Rep. 1924, Series A, No. 2, at 11. The ICJ has applied this definition in its case law, e.g. in the 1988 Advisory Opinion of the International Court of Justice (Applicability of the Obligation to Arbitrate under Section 21 of the UN Headquarters Agreement), which concerned the question whether a dispute existed between the US and the UN. In this Advisory Opinion, the Court referred to its judgment of 21 December 1962 in the South West Africa cases, indicating that “it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party…. It must be shown that the claim of one party is positively opposed by the other” (ICJ Rep. 1998, at 27). See also the separate opinion by Judge Schwebel, who concluded that there was essential agreement (and, thus, no dispute) between the UN and the US on the interpretation of the Headquarters Agreement, and that the dispute between the parties was mainly about the application of the Agreement (ICJ Rep. 1988, at 43 ff.). See further R. Jennings, Reflections on the Term ‘Dispute’, in R. St. J. Macdonald (ed.), Essays in Honour of Wang Tieya (1994), at 401-405; G. Hafner, Some Legal Aspects of International Disputes, 104 The Journal of International Law and Diplomacy 65-79 (2005); Chr. Schreuer, What is a Legal Dispute?, in I. Buffard et al. (eds.), International Law between Universalism and Fragmentation – Festschrift in Honour of Gerhard Hafner 959-980 (2008).
before any dispute exists. Several interpretations of the Articles of Agreement of the IMF and the World Bank were requested before any dispute arose on the relevant question. Disputes, on the other hand, are not always the result of differences in interpretation. Sometimes the parties are agreed on the legal issues involved but dispute the actual facts to which the rules must be applied. Some disputes, such as that over Kashmir between India and Pakistan, are unsuited to any legal settlement. Furthermore, disputes on legal issues do not always concern the legal order of the relevant organization, and are not always material to the interpretation of that order. As part of their tasks, some international organizations also assist in settling disputes between their members on issues outside their field of operation. The International Court of Justice, for example, can be used for the settlement of any legal dispute outside the scope of the UN. However, our examination here shall be limited to the interpretation of rules of the legal order of international organizations and to the settlement of disputes concerning that interpretation.

I. Means of interpretation

§1346 In general, there are three different canons of interpretation:

(1) the text as the authentic expression of the intention of the law-maker;
(2) the intention of the law-maker as a subjective element independent of the text; and
(3) the declared or apparent object and purpose of the legal rule concerned.6

A. The text; practice of the organization

§1347 Priority is usually given to the text itself.7 The International Court of Justice has said:

---

3 On interpretation in international law in general, see S. Sur, L’interpretation en droit international public (1974).
5 See A. Beirlaen, *La distinction entre les différends juridiques et les différents politiques dans la pratique des organisations internationales*, 11 RBDI 405-441 (1975).