II.174. JURISDICTION RATIONE MATERIAE. Article 36 of the Statute sets out the rules governing the Court’s jurisdiction *ratione materiae*, sometimes called its subject matter jurisdiction. Paragraph 1 of this Article states the fundamental principle of international law: ‘The jurisdiction of the Court comprises all cases which the parties refer to it’. It is subject to the prior condition that the ‘parties’ meet the conditions governing access to the Court as discussed in chapter 10. Since the establishment of the Permanent Court of International Justice this has come to embrace a miscellany of types of case. They all have in common the dominant element that the parties are agreed that a dispute exists between them even if they are unable to agree on its precise definition, and that the Court should be invited to settle that dispute with binding force.

Both the Statute, in Article 36 as supplemented by Article 37, the needs of diplomacy and State practice, have developed a series of methods by which States can express their consent that the Court should decide a particular case, and the Rules of Court prescribe different requirements for each of these different methods (see chapter 19). While these different methods call for separate treatment for purposes of systematic presentation, they are all variants on the single theme of consent *ad litem* for the case at hand, and consequently to some extent one method of expressing consent might seem to duplicate or overlap another. The different ways in which this consent can be expressed include the
introduction of appropriate provisions in a treaty or convention (Article 36, paragraph 1 and Article 37), the special agreement (Article 36, paragraph 1), the so-called forum prorogatum jurisdiction also deduced from paragraph 1, jurisdiction to decide a case ex aequo et bono (Statute, Article 38, paragraph 2) and the so-called optional clause jurisdiction or compulsory jurisdiction (a misnomer) regulated in paragraphs 2 to 5 of Article 36 (see chapter 12). To ensure that the Court has the power to decide whether it has jurisdiction – *ratione personae* and *ratione materiae* – over a particular case, Article 36, paragraph 6, of the Statute confirms that the Court itself is empowered to decide all matters of jurisdiction – frequently known as the *compétence de la compétence* or ‘competence-competence’ (see chapter 13).

Accordingly, four generic types of agreement (and many variations) for referring a matter to the Court can be discerned. These are: the special agreement (*compromis*); the compromissory clause in a given treaty or in an ancillary document to a given treaty; a general treaty for the pacific settlement of disputes either between two States or for a region; and the framework agreement. All of these are variations on the same theme and sometimes they overlap each other. To a large extent these variations have developed in response to the requirements of diplomacy.\(^1\)

**II.174A. Treaties in Force: Statute, Article 36 (1).** Dealing with the jurisdiction of the Court generally, the Informal Inter-Allied Committee of 1944 drew attention to paragraphs 1 and 2 of Article 36 of the Statute of the Permanent Court (paragraph 2 is examined in chapter 12). Paragraph 1 refers to ‘all cases’ and ‘all matters’ as objects of the Court’s jurisdiction *ratione materiae*. Paragraph 2 uses the expression ‘all legal disputes’. The Committee found that the relationship between these two definitions of the Court’s jurisdiction was not clear, since the expression in paragraph 1 is not qualified, as is paragraph 2, by the word ‘legal’ or by any enumeration of the classes of cases with which the Court was competent to deal. The Committee’s report explains:

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\(^1\) All these treaties and agreements are governed by the general international law of treaties. By Art. 102 of the Charter (following Art. 18 of the League Covenant) they have to be registered with the Secretariat of the United Nations. By Art. 102 (2), no party to a treaty subject to registration ‘may invoke that treaty or agreement before any organ of the United Nations’. Accordingly, a party cannot invoke before the Court a treaty or agreement that is subject to registration but which has not been registered.