THE RELATION BETWEEN PROCEEDINGS AND PREMISES. By Carsten Smith. [Oslo: Oslo University Press. 1962. 138 pp. N.kr. 35]

In his study of *The Relation between Proceedings and Premises* Professor Smith examines how far an international tribunal is entitled to introduce of its own accord new material that has not been advanced by the parties and questions whether these 'surprising premises' (p.15), which are unexpected by the disputants, should form part of the reasons of the judgment. He indicates that the new element may be a legal point, a fact, or an evaluation of the evidence, and points out that a departure from the terms of the submissions may easily constitute an excess of jurisdiction (p.18). This is particularly so if it is borne in mind that the parties may have intentionally avoided referring to a specific matter in order that, for example, the relations between themselves should not be further exacerbated (P.23).

One of the purposes of international judicial settlement is to clarify the rules of law. In fact, "at the present stage of legal development in international law, . . . the premises of the tribunals are of such great importance . . . that there is some justification for saying that the reasons will often be even more important than the results" (pp.21-2). The truth of this statement is clearly seen in connection with the decision of the World Court in *The Lotus.* On its facts, this no longer accords with the present state of treaty law, but the *rationes* with regard to sovereignty and limitations thereon are still valid. For this reason, there is something to be said for the author's suggestion that judges be permitted to "enlarge the proceedings" with counsel commenting on the points raised (p.26), and this even if the new issue is raised by the judges in the course of private discussion when framing the judgment (p.76). Whether this amendment is made or not, it must be remembered that it is the duty of the Court to apply international legal norms, regardless of whether they are pleaded or not (p.84).

Analysing the practice of the International Court of Justice, Professor Smith finds a "clear tendency . . . toward considering the Court free to find and apply legal rules within the framework of the dispute" as defined by the parties (p.69). In fact, "it may probably be regarded as *a general principle of international law* that the tribunal ascertains the law itself and is in this process not confined to the legal arguments advanced by the parties. *This principle cannot, however, be said to have been established with any force in the practice of the Court.* It is primarily based on the general tendency in that direction which is expressed in the activity of the Court" (p.70, italics added).

Since the World Court has been established it has become unnecessary for parties to indicate to a tribunal the law which it is to apply. It is to be doubted, however, whether, "should the jurisdiction agreement contain provisions concerning the law to be applied, these clauses would either be disregarded or … the case would probably be declared inadmissible" (p.93). Whenever the Court is called upon to interpret a treaty, the parties involved are to some extent indicating the law to be applied. Again, in the light of regional international law and such cases as the *Asylum Case,* is it true to state that "if it is of importance for the parties to have the disputes settled according to their own concepts of law, it is

both correct and better for the dispute to be submitted to an arbitral tribunal" (p.93)?

The provisions in the Charter (Article 94) indicate that the work of the Court has a political as well as a legal significance. Professor Smith makes a similar point that should not be disregarded. He points out that the Court has a political function in the maintenance of international peace. It should not therefore introduce unnecessary premises to a judgment which might "add a political load to the losing of a case" (p.117).

L.C. GREEN.