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THE INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW: EFFORTS TOWARD A WORLDWIDE COMPARISON OF LAW

*ULRICH DROBNIG**

Practical concern with, and scholarly interest in, specific foreign legal institutions and comparative law in general are increasing rapidly on a worldwide scale. However, there have thus far been few attempts to place at the disposal of the researcher compendia containing a sophisticated analysis of the world's legal systems on a broad, comparative basis. It is becoming clear that the traditional one-man treatises on comparative law,¹ though often admirable masterpieces, are limited by the author's perspective to primarily an individual view of selected geographical areas or subject matters. Although such selections are indispensable for teaching and introductory purposes, they do not satisfy the current demand for a compendium containing a comparison of all legal systems on an international scale and covering broad segments of the law.

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1. Among the more recent treatises in English see R. DAVID & J.E.C. BRIERLY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* (1968); R. SCHLESINGER, *COMPARATIVE LAW* (3d ed. 1970); A. VON MEHREN, *THE CIVIL LAW SYSTEM* (1957); J.H. MERRYMAN, *THE CIVIL LAW TRADITION* (1969); and R. KHAN, *AN INTRODUCTION TO THE STUDY OF COMPARATIVE LAW* (1969).

The seventeenth volume *International Encyclopedia of Comparative Law*, edited under the auspices of the International Association of Legal Science,² is intended to fill this need. A considerable amount of thought and practical experience have already been invested in this probably unprecedented collective enterprise. Although the undertaking is still in its embryonic stages, it has developed sufficiently to be susceptible to an interim assessment of its progress and the solutions developed for the multitude of methodological and organizational problems which have arisen.

I

PURPOSES

In view of the immense investment of effort, time and money in this enterprise, it is appropriate to delineate the primary objectives of the editors of the *Encyclopedia*.

In the first place, a negative delimitation is in order. The *Encyclopedia* was not designed, as its title might perhaps suggest, to serve as a handbook in which practitioners would find the solution to any legal issue arising under the law of some country of the world. A handbook performing this service would necessarily greatly exceed in length the 17,000 pages of the *Encyclopedia* and, moreover, would contradict its expressly scientific purpose.

The *Encyclopedia* addresses itself primarily to lawmakers, national and international. Many European legislators customarily lay the groundwork for major legislative projects by first undertaking a comparative study. A broad systematic comparative work can offer legislators a multitude of models for the solution of recurring as well as novel problems. The variety of alternatives presented should help the legislators of the more advanced countries to improve their legislation, and assist their judges in the interpretation of existing statutes and the development of case-law. But the *Encyclopedia* is intended to be of particular value for the legislators of developing nations. These men are in the course of reorganizing their social and economic orders, and

2. The Association is a non-governmental international association related to UNESCO and concentrates its efforts on the promotion of comparative law. For a description of its activities, see 13 YEARBOOK OF INTERNATIONAL ORGANIZATIONS 270 (1970-71).

some of them strive for comprehensive codification. For this important, but also difficult task, the *Encyclopedia* should serve as a source of information and ideas based on practical experience.

The *Encyclopedia* will be most useful to lawmakers on the international level. The drafting of international legislation for purposes of unification or harmonization of diverging national laws is an unthinkable act, both legally and politically, without a careful comparative study prior to the actual drafting. Judges of international courts will also benefit from this intensive comparative investigation since such investigations are the primary basis for ascertaining the "general principles of law" which are a fundamental source of public international law.

The academic community will be yet another major beneficiary of the project. In universities, the *Encyclopedia* will serve as a very useful tool for the teaching of comparative law on a broad basis. It should also serve to greatly stimulate research in foreign and comparative law since it should constitute in many respects a definite point of departure for future research.

Last but not least, the benefits of just producing the compendium are hard to overestimate. The book incorporates an enormous amount of original research. Numerous personal contacts across national lines and intensive cooperation on a supranational level have been instigated. Many younger lawyers have been introduced into and trained in a broad comparative method, and many novel approaches to legal problems, scientific as well as technical, have been developed.

II

CHARACTERISTICS

The salient features of the *Encyclopedia* have been developed in delimiting and distinguishing it from a predecessor, an uncompleted *Comparative Dictionary of Civil and Commercial Law*.³ That work was in at least two respects national in character. First, the authors and language were German, thus limiting the readership. Second, the terms which the dictionary utilized, and its methodology, were derived from German law. Furthermore, it was concerned primarily with a com-

3. The RECHTSVERGLEICHENDES HANDWÖRTERBUCH FÜR DES ZIVIL- UND HANDELSRECHT which was edited by Schlegelberger was never completed. It was published in Germany between 1927 and 1940 and consisted of more than 4350 pages.

parison of the other continental European legal systems. It dealt with the Anglo-American orbit on a more limited scale, but barely mentioned the non-European legal systems. Structurally, it was divided into articles covering approximately 300 key words, with an average length of about 16 pages per article.

The *Encyclopedia* deliberately deviates in all four respects from this earlier dictionary. It will be primarily an international collective work rather than a national effort. This has consequences principally for the personnel and the language of the compendium, but also affects its structure and coverage.

A. Personnel

The various directing bodies of the *Encyclopedia* as well as the teams of lawyers responsible for writing it are of multi-national composition. It must be conceded, however, that the worldwide invitation to participate that was issued has not been universally accepted.⁴ It has become apparent that both qualified personnel and library facilities for comparative legal research are still entirely lacking or seriously deficient in many countries, and even in wide areas of the world. The dearth of libraries on foreign law cannot be fully compensated by the information fund that is placed at the disposal of each collaborator.⁵ The unfortunate result of these practical difficulties is that those countries in which the skills and tools of comparative law are less developed or lacking are underrepresented among the collaborators. The only consolation is that these countries should derive substantial benefits from the publication of the *Encyclopedia*, and hopefully it should stimulate development of their interest in foreign legal systems.

B. Language

Both the international utility of the *Encyclopedia* and its financial feasibility depend primarily on a solution of the language problem, regarding which there was strenuous debate at the outset of the project.⁶

4. The majority of the authors are from Europe and North America. However, the national reports for volume one have been written by local authors whenever feasible.

5. Few libraries located outside the continents of Europe and North America would contain the material necessary to conduct a worldwide legal study. For further detail on the information fund, see generally § (C) *infra*.

6. Various multilingual solutions were initially considered. Under the most ambitious,

After careful consideration it was decided to publish the *Encyclopedia* entirely in one language, English. Questions of national prestige are thus, if not eliminated, at least drastically reduced. The selection of a single language guarantees the linguistic unity of the entire work that is desirable from the standpoint of the reader and essential for the successful marketing of the work. The selection of English was motivated in particular by the fact that it is the most widely used language in the world today, and thus, the publication should reach the largest possible audience.

The advantages of a unilingual text are not without their corresponding costs, since a relatively large number of contributions must be translated into English. The price that must be paid (in every sense of the phrase) for these translations was underestimated in the beginning. First, it has proven to be difficult to find qualified legal translators, especially for the more exotic languages such as Arabic, Hungarian and Russian. For the more current European languages, a corps of free-lance translators has been selected using the expensive method of trial and error. Optimal results have been achieved by close personal cooperation of non-English-speaking authors with English-speaking graduate students. Second, apart from being expensive, the translations are time-consuming. Not only do they delay publication of the non-English manuscripts, but they also require the precious time of the author and the executive staff, which must be spent in examining and revising the translation. To produce a satisfactory text, a manuscript must often be translated and revised several times. Third, the price in the material sense of the word is the fees that must be paid to the translators. These fees are considerable although much work has been done by a devoted and interested group of persons who do not charge on a commercial basis. Last but not least, the highest price that has to be paid is the diminution of the linguistic quality and elegance of the translated contributions, which is the almost unavoidable consequence of any translation of a technical text.

In spite of these considerable sacrifices, both material and intellectual, the decision in favor of a unilingual version appears to be justified.

the whole text would have appeared in English, French and German. A more modest proposal was to publish only one text of each separate contribution in either English, French, German, Russian or Spanish. The first of these multilingual alternatives was far too expensive. The second was both commercially undesirable and vulnerable to criticism based on national prestige by those countries whose languages were not selected.

The desired internal consistency of the various contributions and the elaboration of a uniform, supranational terminology⁷ demand the use of a single language. In addition, it would be unrealistic to expect many potential readers to understand five languages, while any lawyer with some international experience is likely to be able to read English.

C. Structure

In keeping with a general trend of modern encyclopedic compendia, the new comparative enterprise is not a dictionary as was its German precursor. This again is in part a consequence of its international character. Initial attempts to find specialized key words for the purpose of preparing an encyclopedia of international design which would be valid for all legal systems, and therefore meaningful for readers from every country, proved unsuccessful. The *Encyclopedia* itself may help to create in part a generally accepted supranational legal terminology⁸ that is presently lacking. Experience has shown that divergencies among national systems are much more pronounced regarding details than they are with respect to the delineation of major subjects.⁹ Moreover, even a large number of individual key words might not exhaust a given field and thus would fail to assure the desired full coverage.

These considerations led to the logical conclusion that the whole *Encyclopedia* should be divided into sixteen relatively untechnical major topics, each comprising a full volume of approximately 1000 pages of lexicon format. These volumes are preceded by an introductory volume containing concise descriptions of each legal system of the world—a survey full of novel and interesting information, particularly about the new nations in Africa and Asia:

Vol. I	National Reports (Knapp, Prague)
II	The Legal Systems of the World/Their Comparison and Unification (David, Paris)
III	Private International Law (Lipstein, Cambridge, Eng.)
IV	Persons and the Family (Rheinstein, Chicago)
V	Succession (Neumayer, Würzburg)

7. See § IV (D) *infra*.

8. *Id.*

9. For example, it is relatively easy to delineate "contracts," but on the other hand it is extremely difficult to find the proper placement for nationally limited aspects of contracts such as "consideration" and "cause."

- VI Property and Trust (Lawson, Lancaster)
- VII Contracts in General (von Mehren, Cambridge, Mass.)
- VIII Specific Contracts (Zweigert, Hamburg)
- IX Commercial Transactions and Institutions (Ziegel, Toronto)
- X Quasi-Contracts (von Caemmerer, Freiburg)
- XI Torts (Tunc, Paris)
- XII Law of Transport (Rodière, Paris)
- XIII Business and Private Organizations (Conard, Ann Arbor)
- XIV Copyright and Industrial Property (Ulmer, Munich)
- XV Labor Law (Kahn-Freund, Oxford)
- XVI Civil Procedure (Cappelletti, Florence)
- XVII State and Economy (Blagojevic, Belgrade and Dam, Chicago)

The material in each volume must be further subdivided, and an explanation of these subdivisions is contained within the volume in which they appear. Adjoining subdivisions of the same major topic are all found within the covers of the same volume.

The structure of the *Encyclopedia* outlined above has not yet met with any objection and has proved entirely practicable.

As may be seen from the titles of the volumes, the *Encyclopedia* is at present limited essentially to private and commercial law including a number of fringe areas. This limitation was imperative to keep the project to a manageable size. It is, on the other hand, not necessarily permanent because in the future an extension into penal, constitutional and other branches of public law may be possible.

D. Coverage

The desired international character of the *Encyclopedia* would be incomplete if a world-wide coverage were not achieved. This postulate is probably the most ambitious of the entire endeavor. It has necessitated the elaboration of a proper method of presentation for the *Encyclopedia*¹⁰ and has required special organizational precautions.¹¹

10. See § IV (A) *infra*.

11. See § III (B, C) *infra*.

III

ORGANIZATION

A project of the dimensions of the *Encyclopedia* requires widespread international cooperation. To that end, a rather complicated organizational set-up was unavoidable. Essentially, a three-tier structure has been created that consists of the following positions:

A. *Editors and Responsible Editor*

The International Committee of Comparative Law, the executive committee of the International Association of Legal Science, has appointed eight editors, each representing one of the great systems of law. They are Messrs. David (Paris); Graveson (London); Knapp (Prague); von Mehren (Harvard); Noda (Tokyo); Tschckikvadze (Moscow); Valladão (Rio de Janeiro); Zweigert (Hamburg).¹² Of these, Professor Zweigert, Director of the Max Planck Institute for Foreign Private and Private International Law in Hamburg, has been entrusted with overall responsibility for the administration of the entire enterprise as "Responsible Editor". The day-to-day business is performed by an executive secretary who has a small staff at his disposal.

The Responsible Editor and the executive secretary have assumed responsibility for both the intellectual and technical aspects of the *Encyclopedia*. The Responsible Editor proposes to the Editorial Committee the Chief Editors for the various volumes,¹³ and he appoints, upon the recommendation of the respective Chief Editor, the general reporters for the various chapters.¹⁴ He is also consulted by the Chief Editors concerning the outlines for each volume, and he is expected to comment upon all manuscripts submitted by the general reporters.

On the technical side, the Responsible Editor is charged with furnishing the substantial financial resources from which the honoraria of the general reporters and their expenses for obtaining information,¹⁵ the cost of translations and duplications of manuscripts and a host

12. Three of the original members of the Editorial Committee, Messrs. Egawa (Tokyo), Rozmaryn (Warsaw), and Yntema (Ann Arbor), are deceased.

13. See § III (B) *infra*.

14. See § III (C) *infra*.

15. *Id.*

of incidental expenses are covered.¹⁶ He administers the allocated funds and makes disbursements to authors, informants, translators and other persons, and he has the further task of effecting the publication of the accepted contributions. This entails the multi-faceted and laborious task of editing many thousands of manuscript pages submitted by authors whose levels of responsibility for the proper technical make-up of their work varies greatly.

Much care has been invested by the central staff, in cooperation with the Chief Editors, to establish uniform standards for the external appearance of the contributions. These include preparation of a system of subdivisions and an international uniform system of citations and abbreviations. A "model section" for guidance of authors has also been prepared and distributed.

B. Chief Editors and Advisory Groups

One Chief Editor is responsible for each of the seventeen volumes¹⁷ and has the primary duty of organizing and coordinating work on the major topic entrusted to him. Each Chief Editor has the benefit of a small advisory group of four to seven persons which includes representatives of all the "great" systems of law.¹⁸

Assisted by these advisors and the Responsible Editor, each Chief Editor must first complete the difficult task of laying out a plan for his volume. He also selects, with the approval of the Responsible Editor, a team of general reporters (an average of 10-12 per volume), each of whom is assigned one of the chapters of the volume for which he assumes final responsibility. The Chief Editor then continuously coordinates the work of his general reporters and, in particular, sees to it that the various chapters neither overlap nor leave gaps. The general reporters and advisors of most volumes have met at least once for a few days of discussion regarding their materials.

C. General Reporters and Informants

Each of the 256 general reporters plus some 150 national reporters for vol. I, although guided by his Chief Editor and the Responsible Editor,

16. See § V (A) *infra* for detail on financing the project.

17. See § II (C) *supra* for the names of the chief editors.

18. The Anglo-American, Germanic, Romanic, and Socialist systems of law are commonly held to be the "great" systems of law. Some authors would also include the Islamic and Hindu systems of law in this category.

bears sole responsibility for his chapter.

The *Encyclopedia's* goal of worldwide coverage requires that each general reporter have recourse to information relating to those foreign legal systems which are, for one reason or another, inaccessible to him. For the purpose of gathering information a worldwide network of contacts has been set up. The primary contacts are the authors of the national reports for vol. I, but they may refer requests for information to other suitable persons. This system has generally proven satisfactory, although some of the official information contacts have been slow to respond. The reports of the informants on designated questions of their national law are financed from an information fund which is at the disposal of each general reporter. This fund may also be used to gather information by other means, such as trips for purposes of library research and interviews. It should be mentioned that at an earlier stage a very different solution for the problem of gathering information had been suggested. Under this proposal, extensive reports on each legal system of the world would have been published before embarking on the comparative stage. This idea was rejected because of the enormous amount of additional time and money it would have consumed.

The drafts of each general reporter are read and commented on by his Chief Editor, the advisory group of each volume, and the Responsible Editor. Although this procedure is time-consuming, all manuscripts have been subjected to it because joint scrutiny has proven highly successful. The resulting amendments have effectively improved all contributions. The second draft is also submitted for a similar examination, and the review and amendment procedure is repeated until a satisfactory result is achieved.

In spite of this system of checks it is impossible to insure that each statement about a given system of law and each citation is correct. It would require a large staff of qualified lawyers with an intimate knowledge of most legal systems if all texts were to be checked in detail.

In summary, as complex as this organizational structure may appear, it is the necessary consequence of a need to delegate responsibility and promote maximum consultation. The need to decentralize has resulted in the creation of the three-tiered structure. The need for wide consultation has necessitated that each tier include an advisory group, but the desire for a high degree of efficiency has led to the concentration of final responsibility on each level in a single person. This division of labor and responsibility has proven useful and effective; no serious difficulties have appeared thus far.

IV

METHODOLOGY¹⁹

The international character of the *Encyclopedia* has posed the most difficult problems for the process of comparison itself. In this regard, four questions have been the most difficult to resolve: which legal systems are to be compared; what rôle should be afforded socialist legal systems and religious laws; how should material be structured; and what terminology should be used?

A. Selection of the Legal Systems to be Compared

The *Encyclopedia* claims to cover all legal systems of the world. Taken literally, this would force each author to cover an innumerable mass of national legal systems that differ more or less from each other. Neither our present state of legal documentation nor our traditional methods of writing permit us to realize this goal. It is therefore necessary and has long been the practice to select a limited number of legal systems for discussion.

The decisive question then is, which criteria should be used for choosing the legal systems to be compared? Traditionally, the reply has been that the respective leading systems of the five great "families of law" must be covered.²⁰ A few authors, among them some particularly authoritative ones, have denied the utility of any such *a priori* classification of national legal systems on the ground that none of the "great" legal orders is completely original or typical.²¹ This leads to the decisive objection to the traditional approach: it is based upon the implied assumption that the so-called leading systems have a monopoly on discovering and developing original solutions. Neither in theory nor in practical experience is there any foundation for this assumption.²²

19. This section is based primarily upon a previous writing of this author. See generally, Drobnič, *Methodfragen der Rechtsvergleichung im Lichte der 'International Encyclopedia of Comparative Law,'* in I IUS PRIVATUM GENTIUM—FESTSCHRIFT FÜR MAX RHEINSTEIN 221-33 (E.von Caemmerer, S. Mentschikoff & K. Zweigert ed. 1969).

20. Practically speaking, French, Anglo-American, German, Soviet, and Islamic law. See for references *id.* at 223 n.5.

21. Especially H.C. GUTTERIDGE, *COMPARATIVE LAW* 74 (2d ed. 1949).

22. From an historical perspective the matter may be different, at least in the

It was therefore necessary to develop a new approach to this key issue. The method of selection and presentation which has been adopted is that of the so-called "typical solutions". It is based upon the observation that in fact the legal solutions that have been developed for any given social problem (such as defects of goods sold) are limited in number. The essential task is to find these typical solutions. This necessitates first a very broad survey of the existing state of the law throughout the world. In many areas, existing literature can be helpful for this first step. In addition, the advisory groups for the various volumes and the informants can be consulted. Each of the solutions selected is not described *in abstracto*, but rather as utilized by a specific legal system. Other legal orders that have adopted the same general approach are only mentioned in summary form, but important deviations are explained in detail. The description of the various typical solutions to a given problem is then followed by an intensive comparison and critique.

This method of "typical solutions" is possibly the only realistic means of achieving the claimed worldwide coverage of the *Encyclopedia*, and it also presents the comparative material in a readable form. Contributions setting out the results of broad research by describing in detail the solutions of 10 or 20 countries for various issues would make extremely tiresome reading. Apart from this stylistic advantage the main virtue of the "typical solutions" approach is the limitation which it places upon the number of legal systems that have to be investigated and described in detail.

The Responsible Editor has invested considerable energy in explaining this novel approach to all the general reporters of the comparative volumes in writing and through the course of oral discussions. Moreover, each general reporter has received a printed "model section" of some 10 pages which illustrates the new approach. Some authors have not been able to implement the new method completely effectively, but this difficulty is being remedied wherever possible in the course of the revision(s) to which each manuscript is subjected. The work of those authors who have utilized the "typical solutions" method bears out the virtues of the new approach.

area of private law. The sum total of legal experience will be greater in major countries. This wealth of legal experience when aided by practical imagination and conceptual training is particularly apt to produce a greater number of original solutions.

B. Socialist and Religious Laws

Application of the method of "typical solutions" gave rise to the question of what role the socialist legal systems of Eastern Europe and Asia and the religious systems of law were to play.

The rôle of Socialist Law was intensively discussed at the 1965 Colloquium of the International Committee of Comparative Law on the basis of two reports submitted by Prof. Eörsi (Budapest)²³ and Prof. Hazard (New York)²⁴ and a written comment by Prof. Blagojevič (Belgrade).²⁵ Western as well as Eastern experts were agreed that the laws of the socialist countries must be covered on a basis of full parity. The main issue was whether their integration into the topical "typical solutions" would distort the special socio-economic setting in which they have been created and in which they are applied. The answer is easy where the socialist countries have developed original approaches since these constitute separate "typical solutions" which will be discussed as such. This is particularly true of institutions such as socialist property and planned contracts. Paradoxically, adequate treatment of the socialist laws is more difficult where their solutions are identical or very similar to those of non-socialist countries because the similarity of results may be due to quite different reasons.²⁶ This harmony of results in spite of differing causes is particularly remarkable. However, a full understanding of the solution requires a discussion of the underlying differences of the respective patterns. Thus, in cases in which a common typical solution is reached by socialist as well as non-socialist countries, the distinctive features of the socialist solution must be thoroughly explained.

The religious laws of many Asian and African countries pose a special problem, primarily because of their inaccessibility even to specialists in comparative law. The difficulties of integrating them into the "typical solutions" approach have proven almost insurmountable. In many cases, therefore, it has been decided to adopt an alternate approach of inserting a special chapter setting out, e.g., the Hindu law of property.

23. Eörsi, *Reflexions sur la Méthode de la Comparaison des Droits dans le Domaine du Droit Civil*, 19 REVUE INTERNATIONALE DE DROIT COMPARÉ [REV. INT'L D. COMP.] 397 (1967).

24. Hazard, *Socialist Law and the International Encyclopedia*, 79 HARV. L. REV. 278 (1965).

25. For an interesting account of the meeting by the two Soviet participants see Chkhikvadze & Zivs, *Comparative Law in the Practice of International Scientific Collaboration*, 5 SOVIET L. & GOVT., Summer 1966, at 3, 4-6.

26. The same phenomenon may, of course, also occur in comparing laws of non-socialist countries.

C. *Systematic Structure*

It would be contrary to the international character of the *Encyclopedia* if the arrangement of its contents followed the classifications of any particular national system. If the analysis of the material selected on a worldwide basis is to be integrated into an adequate logical context, the structural criteria must also be cosmopolitan. The details of a new international system of classification will have to be the fruits rather than the stepping-stones of the comparative effort and can therefore not yet be determined. At a rather early stage, however, it was necessary to distribute the material to be covered among the sixteen volumes. Two phenomena are noteworthy in this connection. First, it was deemed desirable, at least for this most general ordering, not to detach the supra-national major topics for the sixteen volumes too much from existing generally accepted classifications. It was contemplated that this would enable uninitiated readers from potentially every nation to at least find their way easily to the proper volume.²⁷ Moreover, it is a fortunate circumstance that certain very basic notions such as contract, property, persons and family, and succession, although varying in detail, on the whole are universally known as designating certain broad areas of law.

However, certain difficulties remain, such as the proper classification of the trust—an institution unknown on the whole outside the Common Law orbit. After very careful consideration it was decided not to treat the trust as a major topic, but to deal with it, following the Continental approach, in the volumes on family, succession, property and contracts, wherever its functional counterparts are being discussed. This splitting-up of a discrete institution is, however, compensated by a short chapter devoted exclusively to the trust in which the history and practical applications as well as the basic notions of the institution are described.

D. *Terminology*

The problems of systematic structure and of terminology are closely intertwined, if for no other reason than because a new system of classification requires the creation of new terminology. Moreover, the insights of worldwide comparison cannot be unambiguously expressed if, e.g.,

27. Within each volume of the encyclopedia further subdivisions may be more original since they can be fully explained there.

English legal terms are used since at least any lawyer from the Anglo-American world will automatically associate them with rules of English law. The lack of an independent comparative terminology is, in fact, a very serious handicap for the *Encyclopedia*. One writer has voiced the serious admonition that without such a firm foundation all the fine comparisons may be built on sand.²⁸ In fact, in the early planning stage the compilation of an international legal dictionary had been proposed as an alternative. But this idea was rejected since the initiators of the *Encyclopedia* preferred a comparative compendium as the more ambitious enterprise that would in itself furnish the basis for a new, comparatively elaborate terminology.

In practice, however, it proved impossible to wait until the happy day on which the terminological harvest of the *Encyclopedia* could be reaped. It was necessary to formulate certain uniform terms in order to offer a relatively consistent text. Uniformity of expression proved to be indispensable in four major situations:

First, certain legal terms are ambiguous for an international audience because while they are familiar to several languages, their connotations differ among those languages. An example is the Anglo/French word "jurisprudence"²⁹ Ambiguity could only be avoided by replacing this term.

Second, new English terms must be coined for those institutions of non-English legal orders which are unknown to English lawyers, e.g., cause, *Rechtsgeschäft* and *Gesellschaft mit beschränkter Haftung*.

Third, and ironically even more difficult, are those cases in which English and American legal terminology differs. It is often impossible to select one over the other without creating, if not bad feelings, at least ample opportunity for misunderstanding. In these situations, a new neutral term must be invented³⁰ which must be sufficiently descriptive to be understood everywhere.

Fourth, no invention, but a convention is necessary in all other instances in which a word current in many languages, but with varying legal implications, is used in a comparative context; the author must not leave any doubt whether he uses the term as understood in state *A*, or in state *B*, or in a general, supranational sense.

28. Mayda, *Quelques Reflexions Critiques sur le Droit Comparé Contemporain*, 22 REV. INT'L D. COMP. 57, 74-6 (1970).

29. The word "jurisprudence" means the practice of the courts in French, whereas in English (as well as in German) it connotes legal writers.

30. Where English and American terminology differ in describing the same thing, a neutral term is called for which must be sufficiently descriptive to be understood

V

TECHNICAL ASPECTS

Of the many technical problems that have been encountered, two interrelated ones deserve special mention: finances and publication.

A. Finances

The costs of producing a work as ambitious as the *Encyclopedia* are enormous. The present discussion may be limited to the scientific part of the enterprise as distinguished from the commercial part, since the costs involved in printing and distribution are assumed by the publishers.³¹ All other items, such as honoraria for the general reporters, expenses for the gathering of information and for meetings, honoraria for translators, fees for typing and duplication, etc., must be covered by the International Association of Legal Science. A very rough estimate of the total cost of the enterprise would be approximately \$3 million. Since the Association has practically no funds of its own and cannot make grants from its current budget, the major task of raising all the necessary funds has fallen upon the Responsible Editor.

In view of the international character of the whole enterprise, international cooperation in its financing would be most appropriate. Long and concerted efforts have been undertaken to this end. A number of smaller contributions have in fact been received from sources in Austria, England and Japan. Major grants have been made by three German foundations, principally by that of the Volkswagenwerk, and further by those of Thyssen and of Krupp. Roughly 50% of the estimated total costs are at present covered by firm commitments. But a major breakthrough on the international scene will probably depend upon the willingness of American foundations to lend assistance—and this has not yet been forthcoming, perhaps because publication of the first chapters was so long delayed.³²

in both countries. For example, the English "company" and the American "corporation" are replaced by the neutral term, "marketable share company."

31. See § V (B) *infra*.

32. The resultant financial insecurity is a major concern to all collaborators. If it cannot be overcome in due time, the completion of this vast undertaking will be prevented.

B. *Publication*

The printing and distribution of the *Encyclopedia* is entrusted to an international consortium of publishers, consisting of Mohr (Siebeck) in Tuebingen, Mouton in Paris and the Hague, and Oceana in Dobbs Ferry, New York.³³

The method of publication has been adapted to the peculiar features of a collective work. At the beginning it had been planned to publish the work volume by volume, as the contributions for each volume became ready. However, it proved impossible to receive the manuscripts of the 10 or 15 general reporters of any volume within a reasonable period of two or even three years. In order not to penalize those who had delivered their manuscripts first, the method of publication has been changed to the advance-sheet installment plan. Every three or four months an installment of 500 pages will be issued comprising a differing number of chapters from various volumes. Each chapter appears as a separate pamphlet and can thus be inserted in its proper place. When a volume is complete, a bound edition will be supplied. The first installment was released in December, 1971, and the second in April, 1972. If publication continues as planned, on a schedule of three to four installments per annum, the whole compendium will be complete after about eight years.

CONCLUSION

Whether it will be possible to bring this unique project to a successful conclusion remains to be seen. Other men will have to judge whether the high goals which were set have been reached. In any event, the foregoing view of the workshop of a very ambitious undertaking should at least testify to the imagination, diligence and patience that have already been invested in the venture by all participants. The description and evaluation of the problems encountered and the solutions found has also pointed to the peculiar difficulties with which any international project of a comparable nature will presumably be confronted. Finances apart, the greatest difficulty outside the legal field is posed by the language problem. Hopefully the *Encyclopedia* itself may furnish the material for clarifying a great deal of the divergencies of legal terminology.

33. Repeated attempts to obtain the support of East European publishing houses were to no avail.

