

FOREWORD

FIVE HUNDRED YEARS SINCE THE REDISCOVERY OF THE AMERICAS

If time is the envelope of human consciousness, and history an intellectual tissue of selected single events, there can be little doubt that time and history together must influence law as another product of thought.

In history as conceived, man remembers great events, events that over the centuries seem to have shaped our lives, decisive as they were for what in French is called *la condition humaine*.

In law, man imagines the rules for humans and human constructs alike to comply with, in order to escape chaos, to promote order and, in its wake, well-being for all.

Law, and international law in particular, is always an attempt to dominate events, to direct their course. It has its triumphs, but also its defeats at the hands of extraneous developments. For history is not limited to our 'story' of destiny, it is also destiny itself, fate as it unfolds, slowly but incessantly, over our heads, outside our reach, outside law. In this sense, history, instead of being a result of reflection, is its object both for historians and for lawyers. To what extent, indeed, do extraneous events affect their views? For lawyers, especially, the question of their appreciation arises, either positively, as a contribution to a better world, or negatively, as an onslaught the reiteration of which should by all means be prevented.

In order to come to grips with himself as an organizer of the present and the future — his first and foremost calling — the lawyer above all has to find his bearings within time and *vis-à-vis* the extraneous forces constantly in operation. As a means to that end, his own view of the past is essential — and saying so, I wish to emphasize that a lawyer's view of past events and circumstances should not necessarily coincide with a historian's conception of the same. Out of the continuous stream of factual elements, the lawyer as an organizer will make his own choice, selecting what is important from an organizational perspective. And in order to structure his findings, he may apply a particular *technique* of recording: periodization according to events that in his estimation heralded a new phase in a certain development — development, a notion repugnant to historians rejecting any idea of growth in legal institutions as if they were organic in character. It is my profound belief that lawyers as organizers are entitled to their own view of, and compartments in, history, including the concept of growth.

But should lawyers agree amongst themselves about one specific view of history? In fact, many different pictures are to be found in the books, and many different criteria appear to be applied. One author, indeed, may vary from another as to the organizational hinges in history, as much as one author may admit more elements of a different nature than his colleague.

Concentrating on international law, it is the rediscovery of the Americas by Christopher Columbus in 1492 that is recognized by many as an important watershed in the history of international law. Why is this so? What was its significance in this respect? It considerably widened the horizon of the world then in existence, with regard to its spatial aspect as well as with regard to the human side. The idea of a Christian unity under Emperor and Pope prevailing in the Middle Ages was gradually replaced by that of the unity of the human race under a common law. It is at this point that the chief merit of Vitoria and Suarez resides. In the ensuing period until 1648, the independent State came into being, and the foundation was laid for a truly 'international' law through all the conflicts arising in the context of the voyages of discovery to the Far East (Telders).

Is there any other historical event to be found as momentous as the rediscovery of the Americas, or comparable at least in its effects? None before the establishment in 1919 of the League of Nations, Max Huber wrote, and I feel compelled to agree with him. In the League, a completely novel tendency towards organizational union was revealed, at a later stage to give rise to the United Nations and a number of European organizations, a reversal (*Umbruch*), Huber thought, not as profound as the transition from medieval to modern international law, yet more than a simple development, more even than a mutation.

Better than Huber did, one cannot gauge the impact the rediscovery had in terms of international law, the impact of destiny on the legal life of all mankind.

With a view to marking the 500th anniversary of the event, the Board of Editors of the Netherlands International Law Review decided to set apart one or more special issues devoted to the Americas and their achievements both in public and in private international law. The underlying assumption was that readers might be interested in what so many American States and American scholars in fact contributed to the development of the two disciplines. The Board, therefore, sent invitations to a number of distinguished jurists in the Western Hemisphere, leaving them free in the choice of their subject. Some of those who responded favourably, in a move of characteristic courtesy also commemorated what their countries owed to the Old Continent.

The results of our contributors' endeavours are now to be published in two separate issues of the Review, the first one consisting of studies in public international law, the second one comprising private international law papers.

On behalf of the Editorial Board of the Netherlands International Law Review, it is my pleasant duty to thank all those who lent their efforts to make a success of the Board's initiative. First of all, there is Professor G. Parra-Aranguren, our

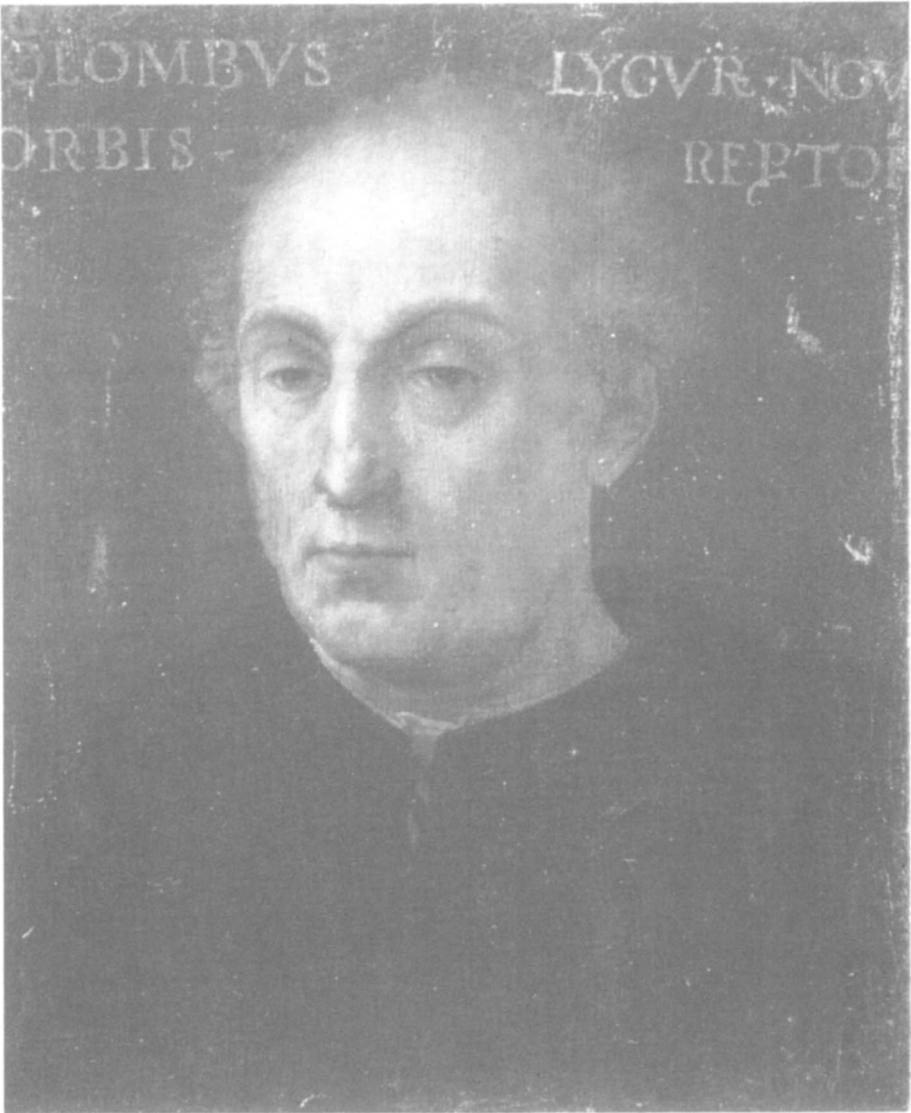
Correspondent in Venezuela, who was extremely helpful in contacting a good number of Latin-American legal experts and in securing their co-operation. The Board owes him a great debt of gratitude, as well as to Professor Mark Janis of the United States, also a Correspondent, who put us in touch with some of his friends. Second, our sincere gratitude is due to those who actually contributed their share in the enterprise. They enabled the Board to realize what was meant as a homage to their own countries.

On a more technical level, we wish to gratefully acknowledge the permission given by the Museo Civico, Como, Italy to include in these pages a reproduction of an early portrait of Columbus.

Last, because he is one of us, but far from least, I recognize Mr. Peter Morris' unfailing devotion to the project. It is he who saw it through its completion, shouldering all the extra work involved. He may claim the two issues as partly his, and should be congratulated on them.

19 February 1992

The Editor-in-Chief



CHRISTOPHER COLUMBUS 1451-1506,
taken from a portrait by an unknown artist, currently
housed at the Museo Civico, Como, Italy.
The photograph was kindly provided by the Museo Civico.