Alumni from all over the world gathered in New Haven October 8–10, 2004, to discuss what has become a dominant question in the development of the School: “How should a Yale Law School education address global issues?” In addition to enjoying reunion dinners and other opportunities to catch up with classmates, they brought their expertise to bear on this question throughout the weekend’s panel discussions and talks. For those who weren’t able to attend, here are some extracts from each discussion. The full program is available on the website at www.law.yale.edu/alumniweekend.
### Alumni Weekend Schedule

#### Friday, October 8
- **9:00am** Registration opens
- **10:00am** Panel Discussion
  - “Terrorism and the Rule of Law: The Challenge for Global Constitutionalism”
  - **Aharon Barak**
    - President, Supreme Court of Israel
    - “Rights without security lose their content. Security without rights? Why fight for it? So, we have to make the proper balance between them. And when I’m talking about making the proper balance between them, I’m not talking about creating new formulas of balancing. I am talking about the old, good formulas. I am against creating new ideas, new formulas, new balancing attitudes for the time of terror on the assumption that when terror is over we will change the formula. No. When the terror is over, you will continue with the same bad formula. The border between “terror” or “no terror” is a very delicate one, and the moment the judiciary makes a decision in a time of terror on the assumption that when terror is over the rule will change, it won’t. It is a point on the blackboard, and the judicial graph—so to speak—will be tremendously influenced by it. I think all of you thought Korematsu was a bad decision, but, okay, so it was reached in time of war, and that’s it. When I read American literature now about the war on terror, suddenly Korematsu is there again. It will never disappear.”*
- **3:00pm** Panel Discussion
  - “Judging International Law”
- **5:00pm** Class of 1954 50th Reunion Champagne Reception
- **5:00pm** Class of 1964 Reception and **James A. Thomas ’64** Portrait Unveiling
- **5:00pm** Graduate Fellows Reception
- **6:00pm** Alumni Reception and Dinner
- **8:15pm** After-Dinner Program
  - Selections from the Yale Slavic Chorus and a Global Conversation with **Harold Hongju Koh, Carla A. Hills ’58**, and **Robert E. Rubin ’64**

#### Saturday, October 9
- **8:15am** Breakfast and Question Time with **Harold Hongju Koh**
- **9:30am** Panel Discussion
  - “Global Human Rights”
  - **9:30am** Panel Discussion
  - “Global Markets”
- **11:00am** Panel Discussion
  - “Global Governance”
- **11:00am** Panel Discussion
  - “Global Connections”
- **12:30pm** Alumni Luncheon and Presentation of the YLSA Award of Merit to **Anthony T. Kronman ’75**
- **6:30pm** Reunion Receptions and Dinners

#### Sunday, October 10
- **10:00am** Reunion Brunches

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*This excerpt, as well as those on the following pages, has been lightly edited for readability. All statements represent the opinions of their author and only their author, and do not represent the views of any organization the author may work for or be associated with.*
Patricia Wald '51
Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit (retired); former judge, International Criminal Tribunal for the Former Yugoslavia

“The trial bench [at the ICTY] operates with three judges; obviously no jury. And the system operates with three working languages: French, English, and Serbo-Croat, which is the dialect spoken in the region. The entire trial is conducted on the basis of the defendant and usually the defendant’s counsel is speaking in Serbo-Croat. In my case the other two judges preferred French, and so they were speaking French most of the time, and I was speaking English most of the time. The prosecutors might be speaking French and might be speaking English. We all had great simulcasts and we had great little TV screens in front of us, which would translate pretty quickly. But the fact remains you cannot run a Perry Mason-type cross examination when the French prosecutor asks questions to the witness, who answers in Serbo-Croat, which is then translated back into French and then translated into English for judges like me. It made the whole trial process very different, and my chief impression was [that] in an international trial court with criminal jurisdiction, procedure is immensely important. I’d say that procedure is ninety percent important, and the remaining ten percent is international law. When it comes time to write the judgment, it may well be you have to hit the international law books, which are some help, not great help. But during the trial, the problem is to afford the defendant what you as an American judge think is fundamentally a fair proceeding according to the rules of procedure that have been adopted by the court. What makes these courts different from my own experience here is that these international criminal courts are sort of operating out there by themselves, they’re not part of a hierarchy, there isn’t a supreme court... There are very few war crimes precedents that had been applied by judges... The big problem I found was, when questions came up that were not governed by the rules that had been adopted by this court itself, to decide whether you thought there was a fundamental fairness question involved in that, as opposed to ‘We don’t do that in America.’ Maybe they do it in a lot of the rest of the world in civil systems. In fact, these courts are going to have a meld of procedures that have maybe a little common law, maybe a lot of common law, maybe some civil law, and maybe some national law.”

From panel: “Judging International Law”
Stephen R. Reinhardt ’54
Judge, U.S. Court of Appeals for the Ninth Circuit

“In the case we had on Guantanamo [detainees], which preceded the Supreme Court decision by a few months, we posed the issue as one of a violation of either national law or international law and decided to deal with the international law question in a footnote. But one of the reasons we did that and decided it on the basis of our own statutes and Constitution, was that as an intermediate court one of the objectives you have is to survive the en banc process and, if you survive that, to survive Supreme Court review.... It’s not a good idea these days to write decisions in a way that’s going to attract any more attention than is necessary, and if you can find a way to decide a case in the least offensive manner, that’s the thing to do. So when we decided the Guantanamo case, we noted the fact that there was a likely violation of international law but thought it would have greater appeal to those legal scholars who would consider our actions if we decided the case on the basis of national law. Now, I think as time goes by our courts are more likely to be willing to say, ‘Yes, we will rest some of our decisions on the fact that other nations and the nations as a whole have reached a judgment on these issues, and we accept that judgment.’”

From panel: “Judging International Law”
Robert E. Rubin ’64  
Chairman of the Executive Committee, Citigroup, Inc.;  
former Secretary, Department of the Treasury  
“The Mexican [financial crisis] is a very good example, because Larry Summers and I went in to see President Clinton. I think this makes the point about Yale Law School—at least what it is in my mind. We said, ‘Mr. President, Mexico’s in enormous trouble. We think those problems could have very serious consequences for the United States. We think we should provide twenty-five billion dollars of assistance. On the other hand, there are no guarantees this is going to work. We think the probabilities are favorable, but there’s real uncertainty. If it doesn’t work, the politics of this are horrendous: the LA Times had a poll saying eighty percent of the American people were against our doing something of this sort.’ Recognizing that almost all issues are complex and that you are dealing with tradeoffs and probabilities, not certainties, was central to every issue I dealt with. That’s what I think a Yale Law School education was about. And President Clinton’s reaction was very interesting, because he looked at us and he said, ‘I understand there are no guarantees, and I understand all these judgments are just judgments about what the likelihoods are.’ Of course, he decided to go ahead with it, but we shared a common probabilistic framework, if you will, an intellectual framework, and a common framework of recognizing the uncertainty and complexity that’s inherent in any meaningful issue.”

Carla A. Hills ’58  
Chairman and CEO, Hills & Company;  
former U.S. Trade Representative  
“I think the world has changed. So I applaud heartily your asking and thinking about law in a globalized world. It no longer is law in the confines of our nation. But even the Supreme Court has cited the rules and regulations in Europe and beyond. What we are seeing is that our own laws and regulations are affecting the sensibilities of governments around the world, and theirs ours. Whether it’s the decibel level of noise that an airplane can come in at, or whether we can sell our health products because they contain something that, maybe for protectionist reasons, others draw the line to carve us out, or whether we can grow genetically modified foods and sell them and let the consumer choose—these are issues that are going to be challenges in the future, and I applaud you so much for thinking broadly about the world as it is today. I only wish I could go to law school all over again.”

James Gustave Speth ’69  
Dean and Professor in the Practice of Sustainable Development, School of Forestry & Environmental Studies, Yale University  
“The core of the effort at global environmental governance was the creation of international environmental law. And today there are very fat international environmental law casebooks, including a score of major hard-law treaties.... The question is, Is it working?... Basically, we brought weak medicine to a critically ill patient. In part we freighted international environmental law with the bulk of the problem, without correcting the weaknesses that are inherent in the international legislative process. We, in some ways, extrapolated from a successful domestic experience—you have a dirty air problem, create a clean air act; you have a dirty water problem, create a clean water act. We extrapolated that to the international level—get a climate problem, get a climate treaty; get a biodiversity loss problem, get a biodiversity treaty—but you can’t pass treaties by majority votes and there are a lot of other factors that mean that we should have predicted we’d end up with toothless treaties. The problem is not weak enforcement, the problem is not weak compliance, the problem has been weak treaties.”

From panel: “A Global Conversation”
Friday, October 8
8:15pm  After-Dinner Program
Selections from the Yale Slavic Chorus and a Global Conversation with
Harold Hongju Koh, Carla A. Hills ’58,
and Robert E. Rubin ’64

Saturday, October 9
8:15am  Breakfast and Question Time
with Harold Hongju Koh
9:30am  Panel Discussion
“Global Human Rights”
11:00am Panel Discussion
“Global Governance”

Daniel Wilkinson ’00
Counsel, Americas Division, Human Rights Watch
“The major challenges we’re facing are Abu Ghraib, Guantanamo Bay, the unlawful combatant cases, and the insistence by the U.S. government that basic tenets of international human rights and humanitarian law do not apply to us in our efforts to combat terrorism. This approach to international law and the ensuing scandals has severely compromised the moral authority of the United States when it comes to human rights. People think about this in the abstract: The U.S. is the most important voice, it pronounces and the whole world listens, as if the United States is the world’s New York Times editorial page. That’s a big part of it, and it’s a problem when we set a bad example. We have examples of governments in other parts of the world justifying repressive policies by comparing what they’re doing to United States practices. But the damage also takes place at the local level. In the countries where we work, some of the most important human rights advocates are the people in the United States embassy, the human rights officers, the political officers, the ambassadors. We collaborate with these people very closely—they’re often the most reliable sources of information in-country, and they intervene in human rights cases. When the U.S. ambassador speaks out in a country, people listen. And in these countries, everyone’s seen those photos of Abu Ghraib, everyone talks about Guantanamo Bay. These are professional diplomats and they can’t openly question U.S. policy, but there they are, questioning the local government’s policy, and they’re perceived as hypocrites.”
From panel: “Global Human Rights”

John Shattuck ’70
Former Assistant Secretary of State for Democracy, Human Rights and Labor; CEO, John F. Kennedy Library Foundation
“The United States played a major role in the whole system of international law and institutions in the area of human rights, starting of course with the Universal Declaration of Human Rights and the role that Eleanor Roosevelt played. And, of course, the whole system of human rights emerged out of the horrors of the Second World War, the Holocaust, the mass killings of civilians...the UN Charter and the body of human rights treaty law that began to emerge in that period, including various covenants on civil and political rights, and economic and social rights, the Geneva Conventions, the torture convention, the genocide convention, and many others. Now it’s important for you to know, as you probably do, that the U.S. has been ambivalent toward that entire system since the very moment of its creation. Indeed, the fact that it is also the creator creates a kind of a paradox within the system, because deeply embedded in U.S. foreign policy tradition are not only the tradition of internationalism, which this system reflects, but also the traditions of exceptionalism.”
From panel: “Global Human Rights”
Stephen M. Cutler ’85  
Director, Division of Enforcement,  
U.S. Securities and Exchange Commission  
“Never before has it been so important to approach matters of regulation and enforcement in as global a way as possible, and that’s because investment today is much more of a global exercise than it’s ever been before. Developments in technology and communications have made national borders essentially irrelevant in the way that capital and information flow. Just to give you a sense of that: cross-border offerings increased almost five times in the ’90s, cross-border acquisitions increased at the same pace. There were 1,250 non-U.S. companies registered and reporting with the SEC as of last year and, if you went back to 1990, there were only 400. So there’s really been an explosion in the way that our markets have become global. And, of course, companies that we used to think of as U.S. companies have become global in their reach. The Enron matter, as lots of people know, involved lots of offshore entities... There are a couple of less well-known cases that are probably as good indications as any of the way in which conduct offshore affects our markets here. One is a case we brought against an employee of a company called U.S. Office Products. It had, and has, a New Zealand subsidiary, and we sued an officer of that subsidiary for trading in New Zealand securities in New Zealand. So you ask, How could the SEC do that? Is this just an example of regulatory imperialism? Are we just imposing our standards of insider trading around the world? And the answer was very simple. We thought his conduct actually had a dramatic impact on U.S. shareholders and the U.S. company of which the New Zealand subsidiary was a part. And the way we thought that was happening was that his trading was taking place in securities of companies that USOP had targeted as acquisition candidates in New Zealand and had asked him to help identify and help negotiate the terms of the acquisitions for. So here you had a New Zealand official reporting to a U.S. company, who was trading in New Zealand securities, but doing so while he was entrusted with material, nonpublic information by the U.S. company. That affected the price at which the U.S. company could ultimately effect its acquisition and it was a fraud on the U.S. company.”  

From panel: “Global Markets”
Reed Hundt ’74
Senior Adviser, McKinsey & Company; former Chairman, Federal Communications Commission

“To me politics is about governance and governance needs tools. And the tools today are not really legal tools. Number one, the primary tool for governance on a global basis, in my experience, is economics translated through markets. Markets, much more than law, provide governing mechanisms. Also, the most important factor in markets over the last thirty years is technology—the great force unleashed principally since my class went to law school. And that technology orders society beyond law’s capability. In fact, when I was in college, ‘www’ meant ‘the whole world is watching’; now it means ‘the world wide web.’ We’ve gone from ‘the streets are for the people’ to ‘the information highway rules the world.’ Those are migrations from fundamentally democratic, populist visions to a world in which technology governs. It is more important I would suggest to you today, to more Americans, that we export software code rather than legal code. It is more important to most Americans that China steals intellectual property rights than that it disregards individual rights. I’m not talking about what I wish were true, I’m not talking about what we were taught in law school we might hope is true, I’m just talking to you about my experience over the last thirty years.”

From panel: “Global Connections”